

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

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**FORM 8-K**

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

Date of report (Date of the earliest event reported): **April 28, 2015**

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**PENN NATIONAL GAMING, INC.**

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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**

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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:

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
  - Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
  - Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
  - Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))
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**Item 1.01. Entry into a Material Definitive Agreement.**

*Merger Agreement*

On April 28, 2015, Penn National Gaming, Inc. ("Penn") entered into that certain Agreement and Plan of Merger (the "Merger Agreement") by and among Penn, Tropicana Las Vegas Hotel and Casino, Inc., a Delaware corporation ("Tropicana"), LV Merger Sub, Inc., a Delaware corporation and a wholly-owned subsidiary of Penn ("Merger Sub"), and Trilliant Gaming Nevada Inc., a Delaware corporation, as the stockholder representative. Tropicana is a holding company that, through its wholly-owned subsidiaries, owns the Tropicana Las Vegas hotel-casino resort.

Upon the terms and subject to the conditions set forth in the Merger Agreement, Merger Sub will merge with and into Tropicana, with Tropicana surviving as a direct wholly-owned subsidiary of Penn (the "Merger"). In the Merger, each issued and outstanding share of Class A common stock of Tropicana, par value \$0.01 per share, and each issued and outstanding share of preferred stock of Tropicana, par value \$0.01 per share, will automatically be converted into the right to receive an amount in cash, without interest, based on the total Merger consideration of approximately \$360.0 million, which is subject to a number of adjustments based on, among other things, Tropicana's working capital, outstanding indebtedness and net operating cash. Penn expects to fund the Merger through cash on hand and borrowings under the Incremental Facilities (as defined below).

The Merger is subject to customary closing conditions, including the receipt of necessary gaming approvals, the expiration or termination of any applicable waiting period under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, and the mailing of an information statement to the stockholders of Tropicana. The Merger Agreement may be terminated under certain circumstances, including by either party if the consummation of the Merger has not occurred by the outside date, January 28, 2016 (subject to extension by up to three months at the election of Penn or Tropicana if the closing has not occurred as a result of the failure to receive certain gaming approvals). The Merger is expected to close by year-end 2015.

The Merger Agreement provides that, upon termination of the Merger Agreement under specified circumstances resulting from the failure to obtain necessary gaming approvals, Tropicana would be entitled to receive an aggregate payment of \$25.0 million from Penn, comprised of a break-up fee of \$21.0 million and the retention of \$4.0 million deposited by Penn into escrow concurrently with the execution of the Merger Agreement.

A copy of the Merger Agreement is filed herewith as Exhibit 10.1 and is incorporated in this Item 1.01 by reference. The foregoing description of the Merger Agreement does not purport to be complete and is qualified in its entirety by reference to the full text of the Merger Agreement. The representations and warranties in the Merger 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 stockholders, or may have been used for the purpose of allocating risk between the parties. Accordingly, the representations and warranties in the Merger Agreement are not necessarily characterizations of the actual state of facts about Tropicana or Penn at the time they were made or otherwise and should only be read in conjunction with the other information that Tropicana and Penn make publicly available in reports, statements and other documents filed with the Securities and Exchange Commission.

On April 29, 2015, Penn issued a press release announcing the execution of the Merger Agreement. A copy of this press release is included as Exhibit 99.1 to this report.

#### *First Amendment and Incremental Joinder Agreement*

In connection with entering into the Merger Agreement, Penn entered into the First Amendment and Incremental Joinder Agreement (the "First Amendment and Incremental Joinder Agreement"), dated as of April 28, 2015 (the "Effective Date"), with certain subsidiaries of Penn party thereto as guarantors and Bank of America, N.A., as administrative agent, collateral agent, swingline lender and letter of credit issuer. Upon the satisfaction of certain conditions precedent by Penn, including, without limitation, the receipt of all required approvals from applicable gaming authorities (such conditions, the "Conditions to Effectiveness"), the First Amendment and Incremental Joinder Agreement will make certain amendments (the "Amendments") to the Credit Agreement, dated as of October 30, 2013 (the "Credit Agreement"), by and among Penn, as borrower, the subsidiaries of Penn party thereto as guarantors, the lenders party thereto from time to time and Bank of America, N.A., as administrative agent, collateral agent, swingline lender and letter of credit issuer. Such Amendments include additional commitments to provide to Penn (1) additional loans under the existing term loan A facility of at least \$136.0 million (the "Incremental Term A Facility") and (2) additional revolving commitments under the existing revolving facility of at least \$133.0 million (the "Incremental Revolving Facility" and, together with the Incremental Term A Facility, the "Incremental Facilities").

Upon the receipt of all required approvals from applicable gaming authorities and the satisfaction of the other Conditions to Effectiveness, which include the absence of any payment event of default under the Credit Agreement or bankruptcy event of default with respect to Penn and compliance with the financial maintenance covenants contained in the Credit Agreement on a pro forma

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basis, the Amendments to the Credit Agreement will be effective. After giving effect to the Amendments, among other changes, Penn will be able to incur additional term loans and revolving loans (subject to obtaining commitments for such loans) in an aggregate principal amount of up to \$700.0 million (inclusive of the Incremental Facilities), plus any additional amount, so long as Penn would not exceed a secured net leverage ratio of 1.50 to 1.00 on a pro forma basis. After giving effect to the Amendments, the Credit Agreement will have three financial covenants, measured quarterly on a trailing four-quarter basis: a maximum senior secured net leverage ratio of 3.25 to 1.00 (with a step-down at March 31, 2018 to 2.75 to 1.00), a maximum total net leverage ratio of 5.25 to 1.00 (with a step-down at March 31, 2018 to 4.50 to 1.00) and a minimum interest coverage ratio of 2.50 to 1.00.

Beginning on the date that is nine months after the Effective Date, Penn will be required to pay a ticking fee on the aggregate amount of the undrawn commitments under the Incremental Term A Facility at a rate that will range from 0.25% to 0.50% per annum, depending on Penn's total net leverage ratio.

If the Conditions to Effectiveness are satisfied and the Incremental Facilities become available to Penn, the terms applicable to the Incremental Facilities will be the same as those applicable to the existing term loan A and revolving credit facilities, as applicable, after giving effect to the Amendments.

If the Conditions to Effectiveness are satisfied and the Incremental Facilities become available to Penn, Penn intends to use all or any portion of the proceeds of the Incremental Term A Facility, along with additional cash on hand and proceeds of borrowings under the revolving credit facility provided under the Credit Agreement (including the Incremental Revolving Facility) to consummate the Merger and to pay fees and expenses in connection with the Merger, the Amendments and the Incremental Facilities. In addition, Penn may use the proceeds of the Incremental Facilities for ongoing working capital needs, capital expenditures, permitted dividends, permitted acquisitions and other general corporate purposes of Penn and its subsidiaries and for any other purpose not otherwise prohibited by the Credit Agreement.

There can be no assurance that the Conditions to Effectiveness will be satisfied. If the receipt of all required approvals from applicable gaming authorities and the other Conditions to Effectiveness are not satisfied by the date that is twelve months after the Effective Date, the Amendments will not become effective and the commitments to provide the Incremental Facilities will terminate.

A copy of the First Amendment and Incremental Joinder Agreement is filed herewith as Exhibit 10.2 and is incorporated in this Item 1.01 by reference. The foregoing description of the First Amendment and Incremental Joinder Agreement does not purport to be complete and is qualified in its entirety by reference to the full text of the First Amendment and Incremental Joinder Agreement.

#### **Item 2.03 Creation of a Direct Financial Obligation or an Obligation under an Off- Balance Sheet Arrangement of a Registrant.**

The information set forth in Item 1.01 hereof to the extent it relates to a material direct financial obligation of Penn is incorporated herein by reference.

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

##### **(d) Exhibits**

<u>Exhibit No.</u>	<u>Description</u>
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- 10.1 Agreement and Plan of Merger, dated April 28, 2015, by and among Penn National Gaming, Inc., Tropicana Las Vegas Hotel and Casino, Inc., LV Merger Sub, Inc. and Trilliant Gaming Nevada Inc.
- 10.2 First Amendment and Incremental Joinder Agreement, dated as of April 28, 2015 , with certain subsidiaries of Penn party thereto as guarantors and Bank of America, N.A., as administrative agent, collateral agent, swingline lender and letter of credit issuer.
- 99.1 Press Release of Penn National Gaming, Inc., dated April 29, 2015.

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### SIGNATURE

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 hereunto duly authorized.

PENN NATIONAL GAMING, INC.

Date: April 29, 2015

By: /s/ Saul V. Reibstein  
Name: Saul V. Reibstein  
Title: Executive Vice President, Finance  
Chief Financial Officer and Treasurer

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### Exhibit Index

<u>Exhibit No.</u>	<u>Description</u>
10.1	Agreement and Plan of Merger, dated April 28, 2015, by and among Penn National Gaming, Inc., Tropicana Las Vegas Hotel and Casino, Inc., LV Merger Sub, Inc. and Trilliant Gaming Nevada Inc.
10.2	First Amendment and Incremental Joinder Agreement, dated as of April 28, 2015, with certain subsidiaries of Penn party thereto as guarantors and Bank of America, N.A., as administrative agent, collateral agent, swingline lender and letter of credit issuer.
99.1	Press Release of Penn National Gaming, Inc., dated April 29, 2015.

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## AGREEMENT AND PLAN OF MERGER

among

TROPICANA LAS VEGAS HOTEL AND CASINO, INC.,

PENN NATIONAL GAMING, INC.,

LV MERGER SUB, INC.,

and

TRILLIANT GAMING NEVADA INC.

(as the Stockholder Representative)

Dated as of April 28, 2015

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## AGREEMENT AND PLAN OF MERGER

AGREEMENT AND PLAN OF MERGER (hereinafter called this "Agreement"), dated as of April 28, 2015, among Tropicana Las Vegas Hotel and Casino, Inc., a Delaware corporation (the "Company"), Penn National Gaming, Inc., a Pennsylvania corporation ("Parent"), LV Merger Sub, Inc., a Delaware corporation and a wholly-owned subsidiary of Parent ("Merger Sub") and Trilliant Gaming Nevada Inc., a Delaware corporation, as the stockholder representative (the "Stockholder Representative").

### RECITALS

WHEREAS, the board of directors of the Company (the "Company Board") has determined that it is fair to, advisable and in the best interests of the Company and the holders of the Class A common stock of the Company, par value \$.01 per share (the "Common Stock"), and the holders of each series of preferred stock of the Company, par value \$.01 per share (the "Preferred Stock"), to enter into this Agreement with Parent and Merger Sub, providing for the merger (the "Merger") of Merger Sub with and into the Company, with the Company as the surviving corporation of the Merger (the "Surviving Corporation");

WHEREAS, the Company Board and the respective boards of directors of Parent and Merger Sub have approved the Merger upon the terms and subject to the conditions set forth in this Agreement and have approved and declared advisable this Agreement;

WHEREAS, concurrently with the execution of this Agreement, and as an express condition to the willingness of Parent and Merger Sub to enter into this Agreement, Alex Yemendjian is entering into a Non-Competition Agreement with Parent pursuant to which, among other things, he has agreed not to compete with the Company for specified periods; and

WHEREAS, the Company, Parent and Merger Sub desire to make certain representations, warranties, covenants and agreements in connection with this Agreement.

NOW, THEREFORE, in consideration of the premises, and of the representations, warranties, covenants and agreements contained herein, the parties hereto agree as follows:

## ARTICLE I

### The Merger; Closing; Effective Time

1.1. The Merger. Upon the terms and subject to the conditions set forth in this Agreement, at the Effective Time, Merger Sub shall be merged with and into the Company, in accordance with the provisions of the Delaware General Corporation Law, as amended (the “DGCL”) and the separate corporate existence of Merger Sub shall thereupon cease. The Company shall be the Surviving Corporation and the separate corporate existence of the Company, with all its rights, privileges, immunities, powers and franchises, shall continue unaffected by the Merger. The Merger shall have the effects set forth in this Agreement and in the applicable provisions of the DGCL.

1.2. Closing. Unless otherwise mutually agreed in writing between the Company and Parent, the closing for the Merger (the “Closing”) shall take place at the offices of Fried, Frank, Harris, Shriver & Jacobson LLP, One New York Plaza, New York, New York, 10004 at 12:00 p.m. (New York time) on the third Business Day (the “Closing Date”) following the day on which the last to be satisfied or waived of the conditions set forth in Article VII (other than those conditions that by their nature are to be satisfied at the Closing, but subject to the fulfillment or waiver of those conditions) shall be satisfied or waived in accordance with this Agreement. For purposes of this Agreement, the term “Business Day” shall mean any day other than a Saturday or Sunday or a day on which banks are required or authorized to close in New York, New York.

1.3. Effective Time. At the Closing, the parties hereto shall cause the Merger to be consummated by causing a certificate of merger (the “Certificate of Merger”) to be executed and filed with the Secretary of State of the State of Delaware in accordance with the relevant provisions of the DGCL, and shall make all other filings, recordings or publications required under the DGCL in connection with the Merger, if any. The Merger shall become effective at the time when the Certificate of Merger has been duly filed with, and accepted for record by, the office of the Secretary of State of the State of Delaware in accordance with the DGCL, or at such later time or date as the parties hereto shall agree and specify in the Certificate of Merger in accordance with applicable Law (the “Effective Time”).

## ARTICLE II

### Certificate of Incorporation and Bylaws of the Surviving Corporation

2.1. The Certificate of Incorporation. The certificate of incorporation of the Company shall be amended and restated in the Merger to be identical to that set forth on Annex B attached hereto (the “Charter”) and, as so amended and restated, shall be the certificate of incorporation of the Surviving Corporation until thereafter amended as provided therein and in accordance with the applicable provisions of the DGCL (subject to Section 6.14).

2.2. The Bylaws. The bylaws of Merger Sub in effect immediately prior to the Effective Time shall, from and after the Effective Time, be the bylaws of the Surviving Corporation (the “Bylaws”) until thereafter amended as provided therein and in accordance with the applicable provisions of the DGCL (subject to Section 6.14).

## ARTICLE III

### Directors and Officers of the Surviving Corporation

3.1. Directors. The parties hereto shall take, and cause to be taken, all actions necessary so that the directors of Merger Sub at the Effective Time shall, from and after the Effective Time, be the initial directors of the Surviving Corporation, each to hold office until their respective successors have been duly elected or appointed and qualified or until their earlier death, resignation or removal in accordance with the Charter and the Bylaws.

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3.2. Officers. The officers of the Company at the Effective Time shall, from and after the Effective Time, be the initial officers of the Surviving Corporation, each to hold office until their respective successors shall have been duly elected or appointed and qualified or until their earlier death, resignation or removal in accordance with the Charter and the Bylaws.

## ARTICLE IV

### Effect of the Merger on Capital Stock; Exchange of Certificates

4.1. Effect on Capital Stock. At the Effective Time, as a result of the Merger and without any action on the part of the holder of any capital stock of the Company, Parent or Merger Sub:

(a) Merger Consideration. Each share (a “Share” and, collectively, “Shares”) of Common Stock and Preferred Stock issued and outstanding immediately prior to the Effective Time other than (i) Shares owned by Parent, Merger Sub or any other direct or indirect wholly-owned subsidiary of Parent, and in each case not held on behalf of a third party, (ii) Dissenting Shares (as defined below), and (iii) Shares held by the Company in treasury or held by any direct or indirect wholly-owned Subsidiary of the Company and not held on behalf of a third party (each Share referred to in clauses (i) through (iii) above being an “Excluded Share” and, collectively, the “Excluded Shares”) shall be converted into the right to receive an amount in cash, without interest, equal to (x) the applicable Per Share Closing Consideration and (y) any amounts required to be paid pursuant to Section 4.1(b)(iv)(A)(2) or Section 4.1(b)(iv)(B), as applicable (collectively, the “Merger Consideration”). All of the Shares shall cease to be outstanding, shall be cancelled and shall

cease to exist, and each certificate (a "Certificate") formerly representing any Shares and any non-certificated Shares represented by book-entry (a "Book Entry Share") (in each case, other than Excluded Shares) shall thereafter cease to have any rights with respect to such Shares and shall represent only the right to receive the applicable Merger Consideration per Share multiplied by the number of such Shares formerly represented thereby, without interest. For the avoidance of doubt, the number of Shares issued and outstanding immediately prior to the Effective Time does not impact the calculation or amount of the aggregate Merger Consideration.

(b) Merger Consideration Adjustment.

(i) Estimates at Closing. Not less than five Business Days prior to the anticipated Closing Date, the Company shall deliver to Parent a good-faith written estimate (the "Pre-Closing Statement") which shall set forth, in each case as of 12:00 midnight Las Vegas time on the Closing Date, (A) the estimated Net Working Capital Variance ("Estimated Net Working Capital Variance"), which shall include an estimate of Net Working Capital, (B) the estimated amount of Indebtedness outstanding ("Estimated Indebtedness") and (C) the estimated amount of Net Operating Cash ("Estimated Net Operating Cash"), which shall include an estimate of Restricted Cash, together with such schedules and data with respect to the determination thereof as may be appropriate to support the calculations set forth in the Pre-Closing Statement. The Pre-Closing Statement shall be prepared with the same accounting principles, practices,

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methodologies and policies set forth on and applied in the preparation of the sample calculation of the aggregate Merger Consideration as of March 31, 2015 attached as Annex C to this Agreement (the "Sample Calculation").

(ii) Closing Statement. As promptly as practicable, but in any case no later than 60 days after the Closing Date, Parent shall cause to be prepared (with the same accounting principles, practices, methodologies and policies set forth on and applied in the preparation of the Sample Calculation) and delivered to the Stockholder Representative a closing statement (the "Closing Statement") setting forth Parent's calculation, in each case as of 12:00 midnight Las Vegas time on the Closing Date, of (A) the Net Working Capital Variance ("Closing Net Working Capital Variance"), which shall include Parent's calculation of Net Working Capital, (B) the amount of Indebtedness outstanding ("Closing Indebtedness") and (C) the amount of Net Operating Cash ("Closing Net Operating Cash"), which shall include Parent's calculation of Restricted Cash, together with such schedules and data with respect to the determination thereof as may be appropriate to support the calculations set forth in the Closing Statement.

(iii) Disputes.

(A) If the Stockholder Representative disagrees with the Closing Statement or Parent's calculation of any amounts on the Closing Statement, the Stockholder Representative may, within 30 days after receipt by the Stockholder Representative of the Closing Statement and such calculations, deliver a written notice to Parent reasonably detailing such disagreement and setting forth the Stockholder Representative's calculation of such disputed amount(s). Any such notice shall specify all items or amounts with which the Stockholder Representative disagrees, and the Stockholder Representative shall be deemed to have agreed with all other items and amounts contained in the Closing Statement, which agreement shall be final and binding upon, and non-appealable by, the Stockholder Representative, holders of Shares and Parent with respect to such undisputed amounts.

(B) In connection with the determination of Closing Net Working Capital Variance, Closing Indebtedness and Closing Net Operating Cash, from the Closing Date through the final calculation of the Merger Consideration contemplated by this Section 4.1(b), (1) Parent shall not take any action with respect to the accounting books and records of the Company or its Subsidiaries on which the Closing Statement is to be based that are not consistent with the Company's past practices, and (2) Parent shall afford, and shall cause the Company to afford, to the Stockholder Representative and its independent accountants reasonable access to the personnel, properties, books and records of the Company and its Subsidiaries for any purpose relating to the adjustment contemplated by this Section 4.1(b).

(C) If a notice of disagreement is delivered in accordance with this Section 4.1(b)(iii), the Stockholder Representative and Parent shall, during

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the 30 days following such delivery, seek in good faith to reach agreement on the disputed items or amounts in order to determine the amount of Closing Net Working Capital Variance, Closing Indebtedness and Closing Net Operating Cash. At the end of such period, if the Stockholder Representative and Parent are unable to reach such agreement, they shall promptly thereafter retain BDO USA, LLP or, if such firm is unable or unwilling to act, such nationally recognized independent public accounting firm as shall be agreed upon in writing by the Stockholder Representative and Parent (such agreement not to be unreasonably withheld, conditioned or delayed) (the "Referee") to review the relevant portions of this Agreement, the Closing Statement and the disputed items or amounts for the purpose of calculating Closing Net Working Capital Variance, Closing Indebtedness and Closing Net Operating Cash. In making such calculation, the Referee shall be instructed to consider only those items or amounts in the Closing Statement and Parent's calculation of Closing Net Working Capital Variance, Closing Indebtedness and Closing Net Operating Cash that the Stockholder Representative included in its notice of disagreement and as to which there remains a disagreement. The Referee shall be instructed to deliver to the Stockholder Representative and Parent, as promptly as practicable (but in no event later than 30 days from the date of engagement of the Referee), a report setting forth its calculation of Closing Net Working Capital Variance, Closing Indebtedness and Closing Net Operating Cash; provided, however, that the Referee may not assign a value to any item greater than the greatest value for such item claimed by either party or less than the smallest value for such item claimed by one of the parties, in the case of Parent, in the Closing Statement or in the case of the Stockholder Representative, in the notice of disagreement delivered in accordance with this Section 4.1(b)(iii). Such report shall be final and binding upon, and non-appealable by, the Stockholder Representative, holders of Shares and Parent. The costs and expenses of the Referee shall be borne in the same proportion that the aggregate dollar amount of such remaining disputed items so submitted to the Referee that are unsuccessfully disputed by Parent, on the one hand, and the Stockholder Representative, on the other hand, as finally determined by the Referee, bears to the total dollar amount of such remaining disputed items so submitted.

(D) The scope of the disputes to be resolved by the Referee shall be limited to (1) whether the Closing Statement and the amounts therein were prepared in accordance with the same accounting principles, practices, methodologies and policies set forth on and applied in the preparation of the Sample Calculation, with respect to the matters that were submitted for resolution to the Referee and (2) whether there were mathematical errors in the Closing Statement. The Referee is not authorized to, and shall be instructed not to, make any other determination, including (i) any determination with respect to any matter included in the Closing Statement or the notice of disagreement that was not submitted for resolution to the Referee, (ii) any determination as to whether GAAP was followed in the preparation of, or any other matter in respect of, the financial statements included in the Company Reports, (iii) any determination as

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to the accuracy of Section 5.1(e) or any other representation or warranty in this Agreement, or (iv) any determination as to compliance by the Company, Merger Sub, Parent or Stockholder Representative with any of its covenants in this Agreement, other than Section 4.1(b)(iii) (B).

(E) The dispute resolution by the Referee under this Section 4.1(b)(iii) shall constitute an expert determination under New York CPLR Article 76 and shall not constitute an arbitration. The determinations of the Referee as to any issue of fact shall be final and binding, absent fraud, bad faith or manifest error. Notwithstanding anything to the contrary contained herein, judgment may be entered upon the determination of the Referee in New York State Supreme Court or any other court having jurisdiction over the party against which such determination is to be enforced.

(iv) Net Adjustment Amount.

(A) If the Net Adjustment Amount is positive, Parent shall within three Business Days of the Net Adjustment Amount being finally determined pursuant to this Section 4.1(b) pay the Net Adjustment Amount to the Escrow Agent by wire transfer of immediately available funds to the bank account specified in accordance with the Escrow Agreement, and the Stockholder Representative and Parent shall promptly jointly instruct the Escrow Agent to use such amount to pay (1) to the Stockholder Representative an amount equal to its expenses incurred in connection with the exercise of its rights under Section 4.1(b)(iii) and (2) to the Paying Agent for further payment to each Person that immediately prior to the Effective Time held Shares (other than the Dissenting Shares) that has surrendered Shares in accordance with Section 4.2(e), an amount equal to the product of (x) such Person's Percentage Ownership and (y) the amount remaining in the Working Capital Escrow Fund after making the payment contemplated by clause (1) of this Section 4.1(b)(iv)(A).

(B) If the Net Adjustment Amount is negative, the Stockholder Representative and Parent shall within three Business Days of the Net Adjustment Amount being finally determined pursuant to this Section 4.1(b) jointly instruct the Escrow Agent to pay to Parent, from the funds, if any, then constituting the Working Capital Escrow Fund an amount equal to the lesser of (1) the absolute value of the Net Adjustment Amount and (2) the Working Capital Escrow Amount; and in the event the amount so paid is the amount contemplated by clause (1) of this Section 4.1(b)(iv)(B), the balance of the Working Capital Escrow Fund shall be paid in accordance with clauses (1) and (2) of Section 4.1(b)(iv)(A).

(C) Any payments made pursuant to this Section 4.1(b) shall be treated as an adjustment to the Merger Consideration for all Tax purposes, unless otherwise required by applicable Law.

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(v) Exclusive Remedy. In the event the Net Adjustment Amount as finally determined is negative and Parent is entitled to payment as contemplated by Section 4.1(B)(iv)(B), Parent acknowledges and agrees that, notwithstanding the amount of such finally determined Net Adjustment Amount, Parent's right to receive payment from the Working Capital Escrow Fund up to an amount not exceeding the balance available in the Working Capital Escrow Fund is and shall be Parent's sole and exclusive remedy after the Closing with respect to any and all claims relating to the adjustment of Merger Consideration contemplated hereby (whether arising from claims of breach of contract, warranty, tortious conduct (including negligence) or otherwise and whether predicated on common law, statute, strict liability, or otherwise), other than claims of, or causes of action arising from, fraud. In furtherance of the foregoing, Parent hereby waives, from and after the Closing, any and all rights, claims and causes of action it may have arising in respect of such adjustment to the Merger Consideration, if any, except for claims and causes of action pursuant to the provisions set forth in this Section 4.1(b) and claims of, or causes of action arising from, fraud.

(c) Definitions. For the purposes of this Agreement:

"2015 CapEx Budget" means the capital expenditure budget amount for the year 2015 set forth in Section 4.1(c) of the Company Disclosure Schedule.

"Base Consideration" means \$360,000,000.

"Cash and Cash Equivalents" means, with respect to the Company and its Subsidiaries, all cash and cash equivalents held by the Company or any of its Subsidiaries, whether restricted or unrestricted, including, for the avoidance of doubt, cash in bank accounts, cash on hand in the cage, on the gaming floor, in retail outlets owned by the Company and its Subsidiaries, in food and beverage outlets owned by the Company and its Subsidiaries and elsewhere within the business of the Company and its Subsidiaries, and Pre-Paid Interest.

"CEO Employment Agreement" means the employment agreement by and between Tropicana Las Vegas, Inc. and Alex Yemendjian, entered into July 1, 2009, as such agreement may be amended from time to time.

"Company Credit Facility" means the credit facility specified in Item 2 of Section 5.1(d)(i) of the Company Disclosure Schedule.



“Credit Facility Payoff Amount” means the amount required to pay in full all amounts due and owing under the Company Credit Facility on the Closing Date as set forth in the Debt Payoff Documents.

“Indebtedness” means, with respect to the Company and its Subsidiaries, without duplication, and including the principal of and any accrued and unpaid interest and accrued and unpaid commitment fees thereon: (A) all obligations (1) for borrowed money or (2) evidenced by notes, debentures, bonds or other similar instruments or debt securities; (B) all obligations issued or assumed as the deferred purchase price of property, assets or services, all conditional sale obligations and all obligations under any title retention agreement (but excluding trade accounts

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payable arising in the ordinary course of business consistent with past practice); (C) all obligations for the reimbursement of any obligor on any letter of credit, banker’s acceptance or similar credit transaction to the extent such letters of credit, banker’s acceptances and similar credit transactions have been drawn upon; (D) all obligations for the payment of rent under capitalized leases under GAAP; (E) all obligations with respect to interest rate or currency swaps, collars, caps and similar hedging obligations; (F) any TLV Management Fees; (G) other than any Separation Payment, all change of control (including under the Company’s equity bonus pool), closing or signing bonus and/or severance or retention or similar or related payments or benefits payable under any Company arrangement or agreement in effect as of or prior to the Closing Date solely as a result of the execution of this Agreement or the consummation of Merger, including any employer-side employment or additional Taxes payable with respect to any of the foregoing; (H) all obligations and Liabilities under the CEO Employment Agreement to the extent not paid prior to Closing or included in current Liabilities in the calculation of Net Working Capital; and (I) all obligations of the type referred to in clauses (A) through (I) above of other Persons for which the Company or any of its Subsidiaries has provided a guarantee (to the extent of such guarantee); provided, however, that, Indebtedness shall not include (i) any intercompany Indebtedness solely between or among the Company and its Subsidiaries or (ii) any current Liabilities to the extent such items are included as Liabilities in the calculation of Net Working Capital. For the avoidance of doubt, Closing Indebtedness will include the Credit Facility Payoff Amount.

“Net Adjustment Amount” means, without duplication, (i) the amount, if any, by which Estimated Net Working Capital Variance is less than Closing Net Working Capital Variance as finally determined pursuant to Section 4.1(b) (“Final Net Working Capital Variance”), minus (ii) the amount, if any, by which Estimated Net Working Capital Variance is greater than Final Net Working Capital Variance, minus (iii) the amount, if any, by which Estimated Indebtedness is less than Closing Indebtedness as finally determined pursuant to Section 4.1(b) (“Final Indebtedness”), plus (iv) the amount, if any, by which Estimated Indebtedness is greater than Final Indebtedness, plus (v) the amount, if any, by which Estimated Net Operating Cash is less than Closing Net Operating Cash as finally determined pursuant to Section 4.1(b) (“Final Net Operating Cash”), minus (vi) the amount, if any, by which Estimated Net Operating Cash is greater than Final Net Operating Cash.

“Net Operating Cash” (which may be positive or negative) equals (a) the Cash and Cash Equivalents of the Company and its Subsidiaries minus (b) Restricted Cash.

“Net Working Capital” (which may be positive or negative) equals (a) the current assets of the Company and its Subsidiaries determined in the same manner as, and including the line items included in the Net Working Capital calculation set forth in, the Sample Calculation, minus (b) the current Liabilities of the Company and its Subsidiaries determined in the same manner as, and including the line items included in the Net Working Capital calculation set forth in, the Sample Calculation, minus (c) the Required Capital Expenditure Shortfall Amount.

“Net Working Capital Variance” (which may be positive or negative) means Net Working Capital minus Target Working Capital.

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“Per Share Closing Consideration” means (i) in respect of each Share of Common Stock, an amount equal to the product of (A) (1) the Base Consideration, plus (2) Estimated Net Working Capital Variance, minus (3) Estimated Indebtedness, plus (4) Estimated Net Operating Cash, minus (5) the Working Capital Escrow Amount, minus (6) the Section 6.2 Reduction Amount, if any, and (B) the Per Share Portion; and (ii) in respect of each Share of Preferred Stock, the product of (A) the amount determined pursuant to preceding clause (i) and (B) the number of Shares of Common Stock into which such Share of Preferred Stock was convertible immediately prior to the Effective Time.

“Per Share Portion” means a fraction, the numerator of which is one, and the denominator of which is the sum of (i) the number of Shares of Common Stock outstanding immediately prior to the Effective Time (excluding the Excluded Shares but including any Dissenting Shares) and (ii) the number of Shares of Common Stock issuable upon the conversion of all of the Shares of Preferred Stock outstanding immediately prior to the Effective Time.

“Percentage Ownership” means the product of (i) the number of Shares of Common Stock held by any Person as of immediately prior to the Effective Time, including for such purpose, the number of Shares of Common Stock into which all Shares of Preferred Stock held by such Person were convertible immediately prior to the Effective Time and (ii) the Per Share Portion.

“Pre-Paid Interest” means the amount held in the bank account identified in Section 4.1(c) of the Company Disclosure Schedule pursuant to the terms of the Company Credit Facility for the purposes of funding interest payments due in respect of the Company’s borrowings thereunder.

“Required Capital Expenditure Shortfall Amount” means an amount equal to (a) the product of (i) the 2015 CapEx Budget, multiplied by (ii) a fraction, (A) the numerator of which is the number of months that have elapsed from January 2015 until the Closing Date (but in no event will such number be greater than 12) and (B) the denominator of which is 12, minus (b) the amount actually spent by the Company and its Subsidiaries on capital expenditures during the period contemplated by foregoing clause (A); provided that in no event shall such amount be less than \$0.

“Restricted Cash” means the sum of (a) if there has not been a Final Resolution of the Specified Matter (each as defined in Section 6.2 of the Company Disclosure Schedule) prior to the Closing, the amount held as of 12:00 midnight Las Vegas time on the Closing Date in the Specified Reserve Account and (b) an amount equal to the average trailing 12-month balance of the casino bankroll (which, for the avoidance of doubt, is comprised of the cash in the casino cage and in cash kiosks on the casino floor) computed on a daily basis, determined (in the case of this clause (b)) for the period ending as of 12:00 midnight Las Vegas time on the day that is five Business Days prior to the Closing Date and in accordance with the same accounting principles, practices, methodologies and policies set forth on and applied in the preparation of the Sample Calculation.

“Separation Payment” means any payment due to any employee of the Surviving Corporation or its Subsidiaries (other than Alex Yemenidjian) pursuant to an employment agreement applicable to such employee that is both (i) in effect immediately prior to the execution of this Agreement and (ii) listed in Section 5.1(h)(i) of the Company Disclosure Schedule or entered into after the date hereof with Parent’s approval in accordance with Section 6.1.

“Specified Reserve Account” means the bank account identified in Section 6.2 of the Company Disclosure Schedule.

“Target Working Capital” means the average trailing 12-month Net Working Capital for the period ending as of 12:00 midnight Las Vegas time on the day that is five Business Days prior to the Closing Date, determined with the same accounting principles, practices, methodologies and policies set forth on and applied in the preparation of the Sample Calculation.

“TLV Management Fees” means the sum of (A) all fees and expenses owing by the Company to Trilliant Management, L.P. (“Trilliant”) pursuant to that certain Management Agreement, dated as of May 17, 2010 (the “Management Agreement”), between Trilliant and Tropicana Las Vegas, Inc. (“TLVI”) immediately prior to the Closing, (B) all amounts which become payable pursuant to the Management Agreement as a result of the termination thereof in connection with the transactions contemplated hereby, and (C) all fees and expenses owing by the Company to Armenco Holdings LLC (“Armenco”) pursuant to that certain Lease Agreement, dated June 22, 2009, between Armenco and TLVI immediately prior to the Closing.

“Working Capital Escrow Amount” means \$1,000,000.

(d) Cancellation of Excluded Shares. Each Excluded Share, by virtue of the Merger and without any action on the part of the holder thereof, shall cease to be outstanding, shall be cancelled without payment of any consideration therefor and shall cease to exist, subject to the right of the Record Holder of any Dissenting Shares to receive the payment to which reference is made in Section 4.2(i) with respect to such Dissenting Shares. As used in this Article IV, the term “Record Holder” means, with respect to any Shares, a Person who was, immediately prior to the Effective Time, the holder of record of such Shares.

(e) Merger Sub. Each share of common stock, par value \$0.01 per share, of Merger Sub issued and outstanding immediately prior to the Effective Time shall be converted into one share of common stock, par value \$0.01 per share, of the Surviving Corporation. From and after the Effective Time, any certificates representing the common stock of Merger Sub shall be deemed for all purposes to represent the number of shares of common stock of the Surviving Corporation into which they were converted in accordance with the immediately preceding sentence.

#### 4.2. Payment.

(a) Paying Agent. At the Effective Time, Parent shall deposit, or shall cause to be deposited, with a paying agent selected by Parent and the Company (the “Paying Agent”),

for the benefit of the Record Holders of Shares, a cash amount in immediately available funds equal to the aggregate Per Share Closing Consideration payable in respect of all Shares other than the Excluded Shares (such aggregate amount as deposited with the Paying Agent, the “Exchange Fund”). If a Dissenting Stockholder effectively withdraws its demand for, or loses its, appraisal rights pursuant to Section 262 of the DGCL with respect to any Dissenting Shares, Parent shall make available or cause to be made available to the Paying Agent additional funds in an amount equal to the product of (i) the number of Dissenting Shares for which such Dissenting Stockholder has withdrawn its demand for, or lost its, appraisal rights pursuant to Section 262 of the DGCL and (ii) the applicable Per Share Closing Consideration. The Paying Agent shall invest the cash portion of the Exchange Fund as directed by Parent; provided that Parent shall ensure that such investments shall be in obligations of or guaranteed by the United States of America, in commercial paper obligations rated A-1 or P-1 or better by Moody’s Investors Service, Inc. or S&P, respectively, in certificates of deposit, bank repurchase agreements or banker’s acceptances of commercial banks with capital exceeding \$1 billion, or in money market funds having a rating in the highest investment category granted by a recognized credit rating agency at the time of investment. Any interest and other income resulting from such investment shall become a part of the Exchange Fund, and any amounts in excess of the aggregate Per Share Closing Consideration payable under Section 4.1(a) shall be promptly returned to the Surviving Corporation. To the extent that there are any losses with respect to any such investments, or the Exchange Fund diminishes for any reason below the level required for the Paying Agent to make prompt cash aggregate payment of the Per Share Closing Consideration under Section 4.1(a), Parent shall, or shall cause the Surviving Corporation to, promptly replace or restore the cash in the Exchange Fund so as to ensure that the Exchange Fund is at all times maintained at a level sufficient for the Paying Agent to make such aggregate payment of the Per Share Closing Consideration under Section 4.1(a).

(b) Escrow Agent. On the date hereof, Parent, the Company and the Stockholder Representative have entered into an escrow agreement (the “Escrow Agreement”) with First American Title Insurance Company (the “Escrow Agent”). At the Effective Time, Parent shall deposit, or shall cause to be deposited, with the Escrow Agent by wire transfer to the applicable bank account under the Escrow Agreement, or pursuant to Section 6.2(c) instruct the Escrow Agent to retain in such bank account, the Working Capital Escrow Amount, which amount shall be held by the Escrow Agent in an escrow fund (together with any interest accrued thereon, the “Working Capital Escrow Fund”), subject to the terms of the Escrow Agreement and this Agreement.

(c) TLV Management Fees. The Company shall cause TLVI to terminate the Management Agreement effective as of immediately following the Effective Time and at the Closing Parent shall pay or cause to be paid the TLV Management Fees, in full, to the Persons entitled thereto as specified in writing by the Company to Parent prior to the Closing.

(d) Company Credit Facility. At the Closing, Parent shall pay or cause to be paid the Credit Facility Payoff Amount, in full, to the Persons entitled thereto as specified in the Debt Payoff Documents.

(e) Payment Procedures.

(i) Letter of Transmittal. As promptly as practicable (and in any event, within three Business Days) after the Effective Time, the Surviving Corporation shall cause the Paying Agent to mail to each Record Holder of Shares (whether represented by one or more Certificates or Book Entry Shares) (x) a letter of transmittal (a "Letter of Transmittal"), substantially in form and substance reasonably satisfactory to Parent, the Company and the Stockholder Representative, specifying that delivery of Certificates shall be effected, and risk of loss and title shall pass, only upon delivery of the Certificates (or documentation in lieu thereof as provided in Section 4.2(h)) to the Paying Agent and containing a provision confirming the appointment of the Stockholder Representative, (y) instructions for use in effecting the surrender of the Certificates (or affidavits of loss in lieu thereof as provided in Section 4.2(h)) in exchange for the Per Share Closing Consideration with respect to the Shares formerly represented thereby and (z) two certificates of non-foreign status (one applicable to individuals and one applicable to entities) in the form prescribed by Treasury Regulation Section 1.1445-2(b). The Letter of Transmittal shall provide for payment by wire transfer of immediately available funds at the election of the holder of Shares surrendered thereby. If any Record Holder of Shares fails to duly execute and return such applicable certificate of non-foreign status at the same time and by the same method as such Record Holder of Shares returns a Letter of Transmittal pursuant to Section 4.2(e)(ii), Parent shall be entitled to withhold and deduct (or to instruct the Paying Agent to withhold and deduct) from any payment to be made herein an amount necessary to comply with Code Section 1445 and the Treasury Regulations thereunder.

(ii) Payment for Shares. Upon delivery to the Paying Agent of a Letter of Transmittal by any Record Holder of Shares represented by Certificates (other than Excluded Shares), duly completed and signed in accordance with its instructions, and surrender of the Certificates (or affidavits of loss in lieu thereof as provided in Section 4.2(h)) that immediately prior to the Effective Time represented such Shares (or affidavits of loss in lieu thereof as provided in Section 4.2(h)), such Record Holder shall be entitled to receive the Per Share Closing Consideration in respect of such Shares, and the Certificate so surrendered shall forthwith be cancelled. Notwithstanding anything to the contrary in this Agreement, no Record Holder of a Book Entry Share shall be required to deliver a Certificate to the Paying Agent to receive the Per Share Closing Consideration in respect of such Shares, but such Record Holder shall be required to deliver a Letter of Transmittal and, upon receipt by the Paying Agent of such Letter of Transmittal duly completed and signed in accordance with its instructions, Parent shall cause the Paying Agent to pay and deliver as promptly as reasonably practicable after the Effective Time, the Per Share Closing Consideration in respect of each Book Entry Share of such holder, and such Book Entry Shares shall forthwith be cancelled. In the event of a transfer of ownership of Shares that is not registered in the transfer records of the Company, a check for any cash to be delivered upon compliance with the procedures described above may be issued to the transferee if the Paying Agent receives documents reasonably required to evidence and effect such transfer and to evidence that any applicable stock transfer Taxes have been paid or that stock transfer Taxes are not applicable. All cash paid as Per Share Closing Consideration upon the surrender of Certificates or in respect of Book Entry Shares in accordance with the terms hereof shall

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be deemed to have been paid in full satisfaction of all rights pertaining to the applicable Shares (other than the right to receive payments, if any, pursuant to Section 4.1(b)(iv)(A)(2) or Section 4.1(b)(iv)(B), as applicable, from the Working Capital Escrow Fund). No interest will be paid or accrued on any amount payable as provided above.

(iii) Upon request of a holder of Shares, the Company and Parent shall use their commercially reasonable efforts to provide the Letter of Transmittal (along with two certificates of non-foreign status, in accordance with Section 4.2(e)(i)(z)) to such holder prior to the Closing and, to the extent such holder delivers to the Company a duly completed and executed Letter of Transmittal surrendering Shares (together with the Certificates therefor, if applicable) at least two Business Days prior to the Closing Date, to arrange for payment in immediately available funds on the Closing Date of the Per Share Closing Consideration to such holder in respect of the Shares so surrendered prior to the Closing. Such Letters of Transmittal and Certificates, if any, shall be held in escrow for the benefit of the holders of Shares and promptly returned to such holders upon request if the Effective Time does not occur.

(f) Transfers. From and after the Effective Time, there shall be no transfers on the stock transfer books of the Company of the Shares that were outstanding immediately prior to the Effective Time. If, after the Effective Time, any Certificate or Book Entry Share is presented to the Surviving Corporation, Parent or the Paying Agent for transfer, it shall be cancelled and exchanged for the cash amount in immediately available funds to which the holder thereof is entitled pursuant to this Article IV.

(g) Termination of Exchange Fund. Any portion of the Exchange Fund (including the proceeds of any investments thereof) that remains unclaimed by the Record Holders of Shares for one year after the Effective Time shall, to the extent permitted by applicable Law, be delivered by the Paying Agent to the Surviving Corporation. Any Record Holder of Shares (other than Excluded Shares) who has not theretofore complied with this Article IV shall thereafter look only to the Surviving Corporation (subject to abandoned property, escheat or similar Laws) for, and the Surviving Corporation shall remain liable for, payment of the Per Share Closing Consideration, without any interest thereon, for such Shares upon surrender of its Certificates (or affidavits of loss in lieu thereof as provided in Section 4.2(h)) or Book Entry Shares. Notwithstanding any provision of this Agreement to the contrary, neither the Surviving Corporation nor the Paying Agent shall be liable to any Person in respect of Shares (or dividends or distributions with respect thereto) delivered to a public official pursuant to applicable abandoned property, escheat or similar Laws. For the purposes of this Agreement, the term "Person" shall mean any individual, corporation (including not-for-profit), general or limited partnership, limited liability company, joint venture, estate, trust, association, organization, Governmental Entity or other entity of any kind or nature.

(h) Lost, Stolen or Destroyed Certificates. In the event any Certificate shall have been lost, stolen or destroyed, upon the making of an affidavit of that fact by the Person claiming such Certificate to be lost, stolen or destroyed and, if reasonably required by Parent, the posting by such Person of a bond in customary amount and upon such terms as may be required by Parent as indemnity against any claim that may be made against it or the Surviving

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Corporation with respect to such Certificate, the Paying Agent will pay the aggregate Per Share Closing Consideration in respect of the number of Shares formerly represented by such lost, stolen or destroyed Certificate.

(i) Dissenting Shares. Notwithstanding anything in this Agreement to the contrary, Shares that are issued and outstanding immediately prior to the Effective Time and which are held by a stockholder who did not vote in favor of the Merger (or consent thereto in writing) and who is entitled to demand and properly demands appraisal of such Shares (the “Dissenting Shares”) pursuant to, and who complies in all respects with, the provisions of Section 262 of the DGCL (the “Dissenting Stockholders”) shall not be converted into or be exchangeable for the right to receive the Merger Consideration, but instead such holder shall be entitled to receive such consideration as may be determined to be due to such Dissenting Stockholder pursuant to Section 262 of the DGCL (and at the Effective Time, such Dissenting Shares shall no longer be outstanding and shall automatically be cancelled and shall cease to exist, and such holder shall cease to have any rights with respect thereto, except the rights set forth in Section 262 of the DGCL), unless and until such holder shall have failed to perfect or shall have effectively withdrawn or lost its right to appraisal under the DGCL. If any Dissenting Stockholder shall have failed to perfect or shall have effectively withdrawn or lost such right, such holder’s Shares shall thereupon be treated as if they had been converted into and become exchangeable for the right to receive, as of the Effective Time, the Merger Consideration for each such Share, in accordance with Section 4.1, without interest. The Company shall give Parent prompt notice and a copy of any written demands for appraisal, attempted withdrawals of such demands, and any other instruments served pursuant to applicable Law that are received by the Company relating to Company stockholders’ rights of appraisal, and, at Parent’s expense, Parent shall have the opportunity and right to direct all negotiations and proceedings with respect to demands for appraisal by Company stockholders under the DGCL, so long as Parent does not create any pre-Closing obligations of the Company. The Company shall not, except with the prior written consent of Parent, voluntarily make any payment with respect to any demands for appraisal, offer to settle or settle any such demands or approve any withdrawal of any such demands.

(j) Tax Withholding. Parent shall be entitled to deduct and withhold (or cause such deduction or withholding to be made) from any amounts payable under this Agreement (or in respect of transactions contemplated herein) such amounts as are required to be deducted or withheld therefrom under the Code or any applicable state, local or foreign Tax laws; provided, however, that Parent shall provide reasonable prior written notice of its intention to so deduct and withhold to the Person in respect of whom such deduction and withholding is required. To the extent that any amounts are so deducted and withheld, those amounts shall be treated as having been paid to the Person in respect of whom such deduction or withholding was made for all purposes under this Agreement.

#### 4.3. Equity Awards.

(a) At the Effective Time, each Share issued and outstanding under the Company Equity Plans shall become fully vested and shall be treated as a Share in accordance with Sections 4.1 and 4.2.

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(b) At or prior to the Effective Time, the Company, the Company Board or the compensation committee of the Company Board (or another committee duly authorized by the Company Board for such purpose), as applicable, shall adopt any resolutions and take such other actions as may be necessary to implement the provisions of this Section 4.3.

4.4. Adjustments to Prevent Dilution. If between the date of this Agreement and the Effective Time the outstanding Shares shall have been changed into a different number of shares or a different class, by reason of any stock dividend, subdivision, reclassification, recapitalization, rights offering, split, combination or exchange of shares, the Merger Consideration correspondingly shall be adjusted to the extent warranted to reflect such stock dividend, subdivision, reclassification, recapitalization, rights offering, split, combination or exchange of shares.

### ARTICLE V

#### Representations and Warranties

5.1. Representations and Warranties of the Company. Except as set forth in the corresponding sections or subsections of the disclosure letter delivered to Parent by the Company prior to entering into this Agreement (the “Company Disclosure Schedule”) (it being agreed that disclosure of any item in any section or subsection of the Company Disclosure Schedule shall be deemed disclosure with respect to any other section or subsection to which the relevance of such item is reasonably apparent on its face), the Company hereby represents and warrants to Parent and Merger Sub that:

(a) Organization, Good Standing and Qualification; Subsidiaries.

(i) Each of the Company and its Subsidiaries is a legal entity duly organized, validly existing and in good standing (with respect to jurisdictions that recognize the concept of good standing) under the Laws of the jurisdiction of its organization and has all requisite corporate or similar power and authority to own, lease and operate its properties and assets and to carry on its business as presently conducted and is qualified to do business and is in good standing as a foreign corporation or other relevant legal entity (with respect to jurisdictions that recognize the concept of good standing) in each jurisdiction where the ownership, leasing or operation of its assets or properties or conduct of its business requires such qualification, except where any such failure to be qualified, in good standing or to have such power or authority, individually or in the aggregate, has not had, and would not reasonably be expected to have, a Company Material Adverse Effect (as defined below).

(ii) The Company has made available to Parent complete and correct copies of the Company’s certificate of incorporation and bylaws, each as amended to the date of this Agreement, and each as so made available is in full force and effect.

As used in this Agreement, the term (i) “Subsidiary” means, when used with respect to any Person, any corporation, limited liability company, partnership, association, trust or other entity of which securities or other ownership interests representing 50% or more of the equity or 50%

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or more of the ordinary voting power (or, in the case of a partnership, 50% or more of the general partnership interests) are, as of such date, owned or controlled, directly or indirectly, by such Person or one or more Subsidiaries of such Person or by such Person and one or more Subsidiaries of such Person; (ii) “Affiliate” means, with respect to any Person, any other Person directly or indirectly controlling, controlled by, or under common control with, such Person, and for purposes of this definition, the term “control” (including the correlative terms “controlling”, “controlled by” and “under common control”

with)” means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise; and (iii) “Company Material Adverse Effect” means a material and adverse effect on the financial condition, assets, Liabilities, business, operations or results of operations of the Company and its Subsidiaries taken as a whole, including such an effect caused by a material casualty or condemnation of any or all of the Company’s and its Subsidiaries’ properties; provided, however, that none of the following, and no change, event, occurrence, development or effect arising out of or resulting from any of the following, shall constitute a “Company Material Adverse Effect” or be taken into account in determining whether a “Company Material Adverse Effect” has occurred:

(x) changes in the general condition of (A) the industries in which the Company and its Subsidiaries operate or (B) the economy, credit, financial or securities markets in the United States or elsewhere in the world, including changes in interest or exchange rates, or

(y) (A) changes in Law, in applicable regulations of any Governmental Entity, in GAAP or in applicable accounting standards, or in the interpretation or enforcement of any of the foregoing by courts or other Governmental Entities of applicable jurisdiction, or any changes in general legal, regulatory or political conditions; (B) the negotiation, execution or announcement of this Agreement, including the impact thereof on relationships, contractual or otherwise, with customers, suppliers, distributors, partners, employees, consultants or regulators or any Transaction Litigation; (C) acts of war (whether or not declared), sabotage or terrorism, military actions or any escalation or worsening of any such acts of war (whether or not declared), sabotage, terrorism or military actions or other similar force majeure events; (D) pandemics, earthquakes, hurricanes, floods, tornados or other natural disasters; (E) any action taken by the Company or its Subsidiaries that is required by this Agreement or taken at Parent’s written request or with Parent’s written consent, or the failure to take any action by the Company or its Subsidiaries if that action is prohibited by this Agreement; (F) any failure to meet any internal or public projections, budgets, forecasts or estimates of revenue, earnings, cash flow or cash position; (G) any change or prospective change in credit ratings and in any analyst recommendations or ratings with respect to the Company or any of its Subsidiaries; or (H) the identity of, or any facts or circumstances related to, Parent, Merger Sub or their respective Affiliates;

provided, further, however, that (I) any change, event, occurrence, development or effect set forth in clause (x)(A), (x)(B), (y)(A), (y)(C) or (y)(D) above may be taken into account in determining whether there has been Company Material Adverse Effect to the extent such change, event, occurrence, development or effect has had a significantly disproportionate adverse effect on the Company and its Subsidiaries, taken as a whole, as compared to other participants in the industries in which the Company and its Subsidiaries operate and (II) notwithstanding the

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exceptions in clauses (y)(F) and (y)(G) above, the facts or occurrences underlying any such failure or change or prospective change referred to therein (if not otherwise falling within any of the exceptions provided by clause (x) or clauses (y)(A) through (H) above) may be taken into account in determining whether there has been or would reasonably be expected to be a Company Material Adverse Effect.

(b) Capital Structure.

(i) The authorized capital stock of the Company consists of 35,062,202 shares, of which 16,500,000 are shares of Class A Common Stock, 16,500,000 are shares of Class B Common Stock, and 2,062,202 are shares of Preferred Stock, of which 750,000 Shares have been designated Class A Convertible Preferred Stock, (C) 545,702 Shares have been designated Class A Series 2 Convertible Preferred Stock, (D) 350,000 Shares have been designated Class A Series 3 Convertible Preferred Stock and (E) 416,500 Shares have been designated Class A Series 4 Convertible Preferred Stock. As of the close of business on April 24, 2015 (the “Measurement Date”), (AA) 4,670,151 Shares of Class A Common Stock (including 2,000 non-vested Shares of Class A Common Stock outstanding under the Company’s 2013 Non-Employee Director Restricted Stock Plan and all other equity incentive plans for non-employee directors (collectively, the “Company Equity Plans”), (BB) 750,000 Shares of Class A Convertible Preferred Stock, (CC) 545,585 Shares of Class A Series 2 Convertible Preferred Stock, (DD) 350,000 Shares of Class A Series 3 Convertible Preferred Stock and (EE) 416,500 Shares of Class A Series 4 Convertible Preferred Stock, were issued and outstanding, all of which were duly authorized, validly issued, fully paid and nonassessable and were issued free of preemptive rights, and (X) no shares of Class B Common Stock were issued and outstanding and (Y) no shares were held by the Company in its treasury. Except as set forth above, as of the Measurement Date, there were no preemptive or other outstanding rights, options, warrants, conversion rights, stock appreciation rights, restricted stock units, redemption rights, repurchase rights, agreements, arrangements, calls or commitments that obligate the Company or any of its Subsidiaries to issue, or sell, or repurchase, or make payments based on the value of, any Shares or other equity securities of the Company or any securities or obligations convertible or exchangeable into or exercisable for, or giving any Person a right to subscribe for or acquire, any Shares or other equity securities of the Company (“Contingent Company Equity”). Other than Preferred Stock, there are no outstanding securities, bonds, debentures, notes or indebtedness of the Company having the right to vote (or convertible into, or exchangeable for, securities having the right to vote) on any matter on which holders of shares of Common Stock are entitled to vote. From the Measurement Date through the date of this Agreement, neither the Company nor any of its Subsidiaries has issued any Contingent Company Equity or any Shares, other than upon conversion of Preferred Stock outstanding as of the Measurement Date in accordance with the terms of the Preferred Stock, if applicable. There are no outstanding contractual obligations of the Company or any of its Subsidiaries pursuant to which the Company or any of its Subsidiaries is currently required, or may in the future be required, to register Shares or other securities under the Securities Act of 1933, as amended (the

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“Securities Act”). All dividends or distributions on the Common Stock or Preferred Stock that have been declared prior to the date hereof have been paid in full.

(ii) Each of the outstanding shares of capital stock or other equity securities of each of the Company’s Subsidiaries is duly authorized, validly issued, fully paid and nonassessable and, except for directors’ qualifying shares (or a nominal amount of shares held pursuant to similar requirements in various jurisdictions), owned by the Company or by a direct or indirect wholly-owned Subsidiary of the Company, free and clear of any lien, charge, pledge, security interest, claim, option to purchase or otherwise acquire any interest or other encumbrance (each, a “Lien”) except for such transfer restrictions of general applicability as may be provided under the Securities Act, and other applicable securities Laws. Except as set forth above, there are no preemptive or other outstanding rights, options, warrants, conversion rights, stock appreciation rights, restricted stock units, redemption rights, repurchase rights, agreements, arrangements, calls or commitments that obligate the Company or any of its Subsidiaries to issue, or sell, or repurchase, or make payments based on the value of, any shares or other equity securities of any of the Subsidiaries of the Company or any securities or obligations convertible or exchangeable into or exercisable for, or giving any Person a right to subscribe for or

acquire, any equity securities of any Subsidiary of the Company. None of the Company or its Subsidiaries owns directly or indirectly any capital stock or other equity securities of any other Person (other than a Subsidiary of the Company). All dividends or distributions on the equity securities of any Subsidiary of the Company that have been declared prior to the date hereof have been paid in full.

(iii) As of the date hereof, the Listed Stockholders hold of record Shares representing approximately 83.4% of the voting power of the outstanding Shares, voting together as a single class.

(c) Corporate Authority and Approval.

(i) The Company has all requisite corporate power and authority and has taken all corporate action necessary in order to execute, deliver and perform its obligations under this Agreement, subject only to adoption and approval of this Agreement by the holders of a majority of the voting power of the outstanding Shares, voting together as a single class, entitled to vote on such matter and two-thirds of the votes cast by holders of such Shares voting thereon at a stockholders' meeting duly called and held for such purpose or by written consent (the "Requisite Stockholder Approval") to consummate the Merger. For purposes of the Requisite Stockholder Approval, holders of Common Stock and Preferred Stock shall vote together as a single class, and each holder of Shares of Preferred Stock shall be entitled to cast a number of votes per Share of Preferred Stock as is equal to the number of votes that such holder would be entitled to cast had such holder converted such Preferred Stock into Common Stock on the record date for such vote. This Agreement has been duly executed and delivered by the Company and, assuming the authorization, execution and delivery hereof by Parent and Merger Sub, constitutes a valid and binding agreement of the Company enforceable against the Company in accordance with its terms, subject to bankruptcy, insolvency,

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fraudulent transfer, reorganization, moratorium and similar Laws of general applicability relating to or affecting creditors' rights generally and to general equity principles (the "Bankruptcy and Equity Exception").

(ii) The Company Board has determined that the Merger is fair to, and in the best interests of, the Company and its stockholders and declared advisable this Agreement, the Merger and the other transactions contemplated hereby, and the Company Board has approved this Agreement, the Merger and the other transactions contemplated hereby and has resolved to recommend the adoption and approval of this Agreement to the holders of Common Stock (such recommendation, the "Company Recommendation"). The Company Board has directed that this Agreement be submitted to the holders of Shares for their adoption and approval. Assuming the representations and warranties of Parent and Merger Sub set forth in Section 5.2(j) are true and correct, the only approval of the stockholders of the Company required to adopt this Agreement and approve the transactions contemplated hereby is the Requisite Stockholder Approval.

(iii) When executed and delivered, the Merger Consent shall constitute the Requisite Stockholder Approval in compliance with applicable Law and the certificate of incorporation and bylaws of the Company, and no other vote or action of the holders of any class or series of the capital stock of the Company will be necessary under applicable Law, the certificate of incorporation or bylaws of the Company to adopt this Agreement and consummate the Merger.

(d) No Conflict; Required Filings and Consents.

(i) The execution, delivery and performance of this Agreement by the Company and the consummation of the Merger by the Company do not and will not: (A) conflict with or violate the certificate of incorporation or bylaws of the Company; (B) assuming all consents, approvals, authorizations, declarations and permits contemplated by clauses (A) through (E) of Section 5.1(d)(ii) have been obtained, and all filings described in such clauses have been made, conflict with, result in any breach or violation of, or constitute a default (or an event which with or without notice, lapse of time or both would become a default) or result in the loss of a benefit under, or give rise to any breach or violation of, a termination or right of termination, acceleration or other alteration in the rights under, any Material Contract; or (C) assuming all consents, approvals, authorizations, declarations and permits contemplated by clauses (A) through (E) of Section 5.1(d)(ii) have been obtained, and all filings described in such clauses have been made, conflict with or violate any Law, Order or Gaming License to which the Company or any of its Subsidiaries is subject except, in the case of clauses (B) and (C) above, for any such conflict, breach, violation, default, termination, acceleration, loss, alteration or other occurrence that would not, individually or in the aggregate, reasonably be expected to have a Company Material Adverse Effect, prevent or materially delay the Company's ability to consummate the transactions contemplated by this Agreement or materially adversely affect the Company's ability to perform its obligations under this Agreement.

(ii) The execution, delivery and performance of this Agreement by the Company and the consummation of the Merger by the Company do not and will not

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require any consent, approval, authorization, declaration or permit of, action by, filing with or notification to, any domestic, foreign or supranational governmental or regulatory authority, agency, commission, body, court or other legislative, executive or judicial governmental entity (each, a "Governmental Entity") on the part of the Company or any of its Subsidiaries except for: (A) the applicable requirements of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), and the rules and regulations promulgated thereunder, including the filing of the Information Statement; (B) the applicable requirements of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended (the "HSR Act") and the rules and regulations promulgated thereunder; (C) the requirements under any Gaming Laws, in respect of any Gaming Licenses or of any Gaming Authorities, in each case, applicable to the Company; (D) the applicable requirements in respect of any Liquor Licenses; (E) the filing with the Secretary of State of the State of Delaware of the Certificate of Merger as required by the DGCL; and (F) any consent, approval, authorization, declaration, permit, action, filing or notification not referred to above, the failure of which to make or obtain, would not, individually or in the aggregate, reasonably be expected to have a Company Material Adverse Effect, prevent or materially delay the Company's ability to consummate the transactions contemplated by this Agreement or materially adversely affect the Company's ability to perform its obligations under this Agreement.

“Gaming Authorities” means, collectively, (i) the Nevada Gaming Commission, (ii) the Nevada State Gaming Control Board, (iii) the Clark County Gaming and Liquor Licensing Board, and (iv) any other Governmental Entity that holds regulatory, licensing or permit authority over gambling, gaming or casino activities conducted or proposed to be conducted within its jurisdiction by a Person or such Person’s Affiliates.

“Gaming Laws” means any federal, state, local or foreign statute, ordinance, rule or regulation governing or relating to the ownership of a Person and the current gambling, gaming or casino activities and operations of such Person or any of such Person’s Affiliates, in each case as amended, from time to time.

“Gaming Licenses” means all Licenses, including any condition or limitation placed thereon, that are necessary for a Person or any of its Affiliates to own and operate its gaming facilities and related amenities issued under the applicable Gaming Laws.

“Liquor Licenses” means all those certain “off sale,” “portable bar” and other alcoholic beverage Licenses issued to the Company or its Subsidiaries pursuant to which the sale of alcoholic beverages is permitted in the restaurants, bars, function rooms and guest rooms of the hotel owned by the Company.

(e) Company Reports; Financial Statements.

(i) The Company has filed or furnished (on a publicly available basis), on a timely basis, all forms, statements, certifications, reports and documents required to be filed or furnished by it with the United States Securities and Exchange Commission

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(the “SEC”) pursuant to the Exchange Act or the Securities Act since December 31, 2012 (the “Applicable Date”) (collectively, together with any exhibits and schedules thereto and other information incorporated therein, the “Company Reports”). Each of the Company Reports, at the time of its filing (or, if amended prior to the date of this Agreement, as of the date of such amendment) complied or, if not yet filed, will comply in all material respects with the applicable requirements of the Securities Act, the Exchange Act and the Sarbanes-Oxley Act of 2002 and any rules and regulations promulgated thereunder applicable to the Company Reports. As of their respective dates (or, if amended prior to the date of this Agreement, as of the date of such amendment), the Company Reports did not, and any Company Reports filed with the SEC on or subsequent to the date of this Agreement will not, contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements made therein, in light of the circumstances in which they were made, not misleading.

(ii) Except as would not, individually or in the aggregate, be reasonably expected to have a Company Material Adverse Effect, (A) the Company maintains disclosure controls and procedures and internal control over financial reporting (as such terms are defined in paragraphs (e) and (f), respectively, of Rule 13a-15 under the Exchange Act) as required by Rule 13a-15 or 15d-15 under the Exchange Act and (B) the Company’s management has disclosed, based on the most recent evaluation of its chief executive officer and its chief financial officer prior to the date of this Agreement, to the Company’s auditors and the audit committee of the Company Board, (1) any significant deficiencies and material weaknesses in the design or operation of its internal controls over financial reporting (as defined in Rule 13a-15(f) under the Exchange Act) that are reasonably likely to adversely affect the Company’s ability to record, process, summarize and report financial information and (2) any fraud, to the Knowledge (as defined below) of the Company, whether or not material, that involves management or other employees who have a significant role in the Company’s internal control over financial reporting. As of the date hereof, there are no outstanding written comments from the SEC with respect to any of the Company Reports.

(iii) Each of the consolidated balance sheets included in or incorporated by reference into the Company Reports (including the related notes and schedules) fairly presents, or, in the case of Company Reports filed on or after the date of this Agreement, will fairly present, in each case, in all material respects, the consolidated financial position of the Company and its Subsidiaries as of its date and each of the consolidated statements of operations and consolidated statements of cash flows included in or incorporated by reference into the Company Reports (including any related notes and schedules) fairly presents, or in the case of Company Reports filed on or after the date of this Agreement, will fairly present, in each case, in all material respects, the consolidated results of operations and cash flows, as the case may be, of the Company and its Subsidiaries for the periods set forth therein (subject, in the case of unaudited statements, to the absence of notes and normal year-end audit adjustments), in each case in accordance with U.S. generally accepted accounting principles (“GAAP”) consistently applied during the periods involved, except as may be noted therein.

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(iv) To the Company’s Knowledge, none of the Company Reports is the subject of ongoing SEC review. The Company has made available to Parent true and complete copies of all written comment letters from the staff of the SEC received since the Applicable Date through the date of this Agreement relating to the Company Reports and all written responses of the Company thereto through the date of this Agreement. None of the Company Reports is the subject of any confidential treatment request by the Company.

(f) Absence of Certain Changes. Since December 31, 2014 through the date of this Agreement, the Company and its Subsidiaries have conducted their businesses in all material respects in the ordinary course of business. Since December 31, 2014 through the date of this Agreement, there has not been any change, event, development, condition, occurrence or effect that, taken together with all other changes, events, developments, conditions, occurrences and effects, has had, or would reasonably be expected to have, a Company Material Adverse Effect.

(g) Litigation; Liabilities.

(i) There are no civil, criminal or administrative actions, suits, claims, hearings, arbitrations, investigations or other proceedings pending or, to the Knowledge of the Company, threatened against the Company or any of its Subsidiaries, in each case that, individually or in the aggregate, would reasonably be expected to have a Company Material Adverse Effect, prevent or materially delay the Company’s ability to consummate the transactions contemplated by this Agreement or materially adversely affect the Company’s ability to perform its obligations under this Agreement. None of the Company or any of its Subsidiaries is a party to or subject to the provisions of any judgment, order, writ, assessment, decision, ruling, injunction, decree or award of any Governmental Entity, whether temporary, preliminary or permanent, that would, individually or

in the aggregate, reasonably be expected to have a Company Material Adverse Effect, prevent or materially delay the Company's ability to consummate the transactions contemplated by this Agreement or materially adversely affect the Company's ability to perform its obligations under this Agreement.

(ii) Neither the Company nor any of its Subsidiaries has any direct or indirect liabilities or obligations of any nature (whether accrued, absolute, matured, liquidated, known, contingent or otherwise) ("Liabilities"), other than Liabilities (A) set forth or reflected or reserved against in the Company's consolidated balance sheet as of December 31, 2014, including the notes thereto, included in the Company Reports, (B) incurred in the ordinary course of business since December 31, 2014 or (C) that would not, individually or in the aggregate, reasonably be expected to have a Company Material Adverse Effect, prevent or materially delay the Company's ability to consummate the transactions contemplated by this Agreement or materially adversely affect the Company's ability to perform its obligations under this Agreement. There are no off-balance sheet arrangements of any type (including any off-balance sheet arrangement required to be disclosed pursuant to Item 303(a)(4) of Regulation S-K promulgated under the Securities Act) that have not been so described in the Company Reports.

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(iii) The term "Knowledge" when used in this Agreement with respect to the Company, shall mean the actual knowledge of those persons set forth in Section 5.1(g)(iii) of the Company Disclosure Schedule after due inquiry of the employees of the Company that report directly to such persons, and, with respect to Parent, shall mean the actual knowledge, after due inquiry, of those persons set forth in Section 5.2(a) of the Parent Disclosure Schedule.

(h) Employee Benefits.

(i) For purposes of this Agreement, "Benefit Plans" means all benefit and compensation plans, contracts, policies, programs, practices, arrangements and/or agreements, including "employee benefit plans" within the meaning of Section 3(3) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), whether or not subject to ERISA, and pension, profit-sharing, savings, termination, executive compensation, phantom stock, change-in-control, retention, salary continuation, vacation, sick leave, disability, death benefit, insurance, hospitalization, medical, dental, life (including all individual life insurance policies as to which any member of the Company Group is the owner, the beneficiary, or both), employee loan, educational assistance, fringe benefit, deferred compensation, retirement or post-retirement, severance, stock option, stock purchase, stock appreciation rights, stock based, equity-linked, incentive and bonus, and employment, consulting or other individual, similar or related agreements, plans, practices, policies, contracts, programs, and/or arrangements, in each case adopted, sponsored, maintained, entered into, participated in, contributed to, or required to be contributed to, by any member of the Company Group, or under or with respect to which any member of the Company Group could reasonably be expected to have any Liability. Section 5.1(h)(i) of the Company Disclosure Schedule sets forth a list of each material Benefit Plan. "Company Group" means the Company and each Subsidiary of the Company.

(ii) Section 5.1(h)(ii) of the Company Disclosure Schedule sets forth a list of each multiemployer plan (within the meaning of Section 3(37) of ERISA) to which any member of the Company Group is obligated to contribute or which any member of the Company Group participates in, sponsors or contributes to, or with respect to which any member of the Company Group could reasonably be expected to have any Liability ("Multiemployer Plans").

(iii) The Company has provided to Parent true and complete copies of (A) all material Benefit Plans that are not Multiemployer Plans or Mandatory Plans and (B) in respect of such Benefit Plans that are not Multiemployer Plans or Mandatory Plans, any amendments, trust agreements or other funding instruments currently in effect, the most recent IRS determination letter, the summary plan description, the two most recent Forms 5500 and the two most recent audited financial statements.

(iv) Each Benefit Plan (other than Benefit Plans that are mandatory under applicable Law and operated by a Governmental Entity ("Mandatory Plans") and other than Multiemployer Plans) and, to the Knowledge of the Company, each Multiemployer Plan, is and has been in compliance with its terms and with ERISA, the

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Internal Revenue Code of 1986, as amended (the "Code") and all other applicable Laws, except as would not, individually or in the aggregate, reasonably be expected to have a Company Material Adverse Effect. Other than Multiemployer Plans, each Benefit Plan intended to be qualified under Section 401(a) of the Code, has received a currently-effective favorable determination letter from the Internal Revenue Service (the "IRS") or has applied to the IRS for such favorable determination letter under Section 401(b) of the Code within the applicable remedial amendment period, and the Company is not aware of any circumstances reasonably likely to result in the loss of the qualification of such Benefit Plan under Section 401(a) of the Code.

(v) Except for the Multiemployer Plans listed on Section 5.1(h)(ii) of the Company Disclosure Schedule, (A) no Benefit Plan is subject to Title IV of ERISA or Section 412 of the Code and (B) no member of the Company Group has any Liability under or with respect to Title IV of ERISA. No Benefit Plan is a "multiple employer plan" within the meaning of Section 210(a) of ERISA or Section 413(c) of the Code.

(vi) With respect to any Multiemployer Plan or any Mandatory Plan, no member of the Company Group has been delinquent in making payments or contributions thereto or has withdrawn either in a complete withdrawal or partial withdrawal from the plan or arrangement (as the terms "complete withdrawal" and "partial withdrawal" are defined in Part 1 of Subtitle E of Title I of ERISA) in a manner that gives rise to withdrawal liability, that has not been satisfied in full. No member of the Company Group has incurred a 70 percent contribution decline (as that phrase is defined in Section 4205 of ERISA) in connection with a Multiemployer Plan within any of the last three plan years. No member of the Company Group has received notice from a trustee, sponsor, administrator or other representative of a Multiemployer Plan that any Multiemployer Plan (A) has incurred an accumulated funding deficiency within the meaning of Section 431(a) of the Code or Section 304(a) of ERISA, (B) is in reorganization (within the meaning of Part 3 of Subtitle E of Title IV of ERISA), (C) is in (or would reasonably be expected to be in) endangered status (under Section 432(b)(1) of the Code or Section 305(b)(1) of ERISA), or (D) is in (or would reasonably be expected to be in) critical status (under Section 432(b)(2) of the Code or Section 305(b)(2) of ERISA).



(vii) Other than the Company and its Subsidiaries, there is no trade or business (whether or not incorporated) (A) under common control within the meaning of Section 4001(b)(1) of ERISA with the Company or any of its Subsidiaries or (B) which together with the Company or any of its Subsidiaries could be treated as a single employer under Section 414(t) of the Code.

(viii) There are no pending or, to the Knowledge of the Company, threatened lawsuits, grievances, arbitration, actions, claims, charges, investigations, hearings or other proceedings (including any administrative hearings, investigations, charges, claims, actions or proceedings), relating to any Benefit Plan (other than any Mandatory Plan or any Multiemployer Plan), other than routine claims for benefits that

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would not, individually or in the aggregate, reasonably be expected to result in a Company Material Adverse Effect.

(ix) No member of the Company Group has any obligations to provide, and no Benefit Plan provides, any benefits (including death or medical benefits) with respect to any former or current employee of the Company Group ("Company Employees") or other current or former service provider beyond termination of service with or retirement from service.

(x) None of the execution of this Agreement, the approval and adoption of this Agreement or the Merger by the stockholders of the Company, or the consummation of the transactions contemplated hereby (whether alone or in connection with any other event(s), condition(s) or circumstance(s), including any termination or service) could (A) result in any payment or benefit becoming due, or increase the amount of compensation, payments or benefits due, to any current or former Company Employee or other current or former service provider, (B) result in or increase any payment or benefits otherwise payable under any Benefit Plan, (C) result in the acceleration of the time of payment or vesting of any compensation or benefits, or (D) result in the forgiveness in whole or in part of any outstanding loans made by the Company Group to any Person.

(xi) Other than as a result of any arrangement adopted or entered into on or following the Closing and that is not disclosed to the Company in writing by Parent prior to the Closing, no amount or benefit that could be received or owed (whether in cash or property or the vesting of property) as a result of or in connection with this Agreement, the Merger or any of the other transactions contemplated hereby, whether alone or together with any other event(s), condition(s) or circumstance(s), by any employee, officer, director, consultant or other service provider of the Company or any of its Subsidiaries or Affiliates, or any other Person who is a "disqualified individual" (as such term is defined in Treasury Regulations Section 1.280G-1), could, as of the Closing, be characterized as an "excess parachute payment" (as such term is defined in Section 280G(b)(1) of the Code).

(xii) No Benefit Plan or other Contract to which the Company or any of its Subsidiaries is a party or otherwise bound provides any individual with a "gross up" or similar payment in respect of any Taxes that may become payable under Section 409A or Section 4999 of the Code.

(xiii) With respect to each Benefit Plan that is a "nonqualified deferred compensation plan" within the meaning of Section 409A(d)(1) of the Code and is subject to Section 409A of the Code, (A) the written terms of such arrangement have at all times since January 1, 2010 been in compliance with, and (B) such arrangement has, at all times while subject to Section 409A of the Code, been operated in compliance with, Section 409A of the Code and applicable guidance thereunder.

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(i) Labor Matters.

(i) Section 5.1(i)(i) of the Company Disclosure Schedule sets forth a list of each collective bargaining agreement or similar Contract with a labor union or labor organization (each a "Union") to which the Company or any of its Subsidiaries is a party to or by which the Company or any of its Subsidiaries is otherwise bound.

(ii) (A) Neither the Company nor any of its Subsidiaries is the subject of any proceeding asserting that the Company or any of its Subsidiaries has committed an unfair labor practice or seeking to compel it to bargain with any Union and (B) there is not, nor has there at any time within the past five years been, any pending or, to the Knowledge of the Company, threatened, labor strike, dispute, walk-out, work stoppage or lockout involving the Company or any of its Subsidiaries, except in either case of the immediately preceding clause (A) or (B) as would not, individually or in the aggregate, reasonably be expected to have a Company Material Adverse Effect.

(iii) The Company and each of its Subsidiaries has complied and is currently in compliance in all material respects with all Laws in respect of personnel, employment and employment practices (including those related to labor, labor relations, fair employment practices, workers' compensation, unemployment insurance, registration, labor, health and safety, occupational safety, plant closings, layoffs, employee and independent contractor classifications, immigration, affirmative action, data privacy and protection, terms and conditions of employment or service, wages and hours and nondiscrimination in employment) and all applicable industrial instruments. All service providers of the Company or its Subsidiaries are correctly classified as employees, independent contractors, or otherwise for all purposes (including any applicable Tax and employment policies or Law), except as would not, individually or in the aggregate, reasonably be expected to result in material liability to the Company or any of its Subsidiaries. The Company and its Subsidiaries have not and are not engaged in any unfair labor practice.

(iv) Neither the Company nor any of its Subsidiaries has engaged in an employee lockout or in any "plant closing" or "mass layoff," as defined in the Worker Adjustment and Retraining Notification Act or any comparable Law without complying with the advance notice provisions thereof.

(j) Compliance.

(i) The businesses of the Company and its Subsidiaries are being, and since January 1, 2012 have been, conducted in accordance with all applicable federal, state, local, foreign or supranational laws, statutes, ordinances, codes, rules and regulations, including all

Gaming Laws (collectively, “Laws”) except for violations that, individually or in the aggregate, would not reasonably be expected to have a Company Material Adverse Effect, prevent or materially delay the Company’s ability to consummate the transactions contemplated by this Agreement or materially adversely affect the Company’s ability to perform its obligations under this Agreement. The Company and its Subsidiaries and, to the Company’s Knowledge, their respective directors, officers, partners, managers, members, key employees and Persons performing management functions similar to those performed by officers, partners or managers

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(collectively, “Management Principals”) each has obtained and is, and since January 1, 2012 has been, in compliance with all permits, licenses, certifications, approvals, registrations, consents, authorizations, franchises, variances, waivers, exemptions, findings of suitability and orders issued or granted by a Governmental Entity (“Licenses”), including Gaming Licenses, necessary to conduct its business, except those the absence of which would not, individually or in the aggregate, reasonably be expected to have a Company Material Adverse Effect, prevent or materially delay the Company’s ability to consummate the transactions contemplated by this Agreement or materially adversely affect the Company’s ability to perform its obligations under this Agreement. To the Knowledge of the Company, no event has occurred which permits, or upon the giving of notice or passage of time or both would permit, revocation, non-renewal, modification, suspension, limitation or termination of any License that currently is in effect, the loss of which, either individually or in the aggregate, would reasonably be expected to have a Company Material Adverse Effect, prevent or materially delay the Company’s ability to consummate the transactions contemplated by this Agreement or materially adversely affect the Company’s ability to perform its obligations under this Agreement. All Licenses of the Company and its Subsidiaries that are material to the business of the Company and its Subsidiaries (whether issued or pending but not yet issued) are listed in Section 5.1(j) of the Company Disclosure Schedule.

(ii) None of the Company and its Subsidiaries or, to the Company’s Knowledge, any of their respective Management Principals has received written notice with respect to any investigation or review by any Gaming Authority or other Governmental Entity of the Company or its Affiliates or their respective Management Principals that is pending or currently contemplated and, to the Knowledge of the Company, no such investigation or review is threatened, other than those the outcome of which would not, individually or in the aggregate, reasonably be expected to have a Company Material Adverse Effect, prevent or materially delay the Company’s ability to consummate the transactions contemplated by this Agreement or materially adversely affect the Company’s ability to perform its obligations under this Agreement.

(iii) Since January 1, 2012, none of the Company and its Subsidiaries or, to the Company’s Knowledge, any of their respective Management Principals, has received any written claim, demand, notice, complaint, court order or administrative order from any Gaming Authority or other Governmental Entity under, or relating to any violation or possible violation of, any Gaming Law which did or would reasonably be expected to result in an individual fine or penalty of \$250,000 or more. To the Knowledge of the Company, there are no facts which if known to any Gaming Authority would reasonably be expected to result in the revocation, limitation or suspension of a Gaming License of the Company or its Affiliates or their respective Management Principals. None of the Company or its Subsidiaries or, to the Company’s Knowledge, any of their respective Management Principals has suffered a suspension, denial, non-renewal, material limitation or revocation of any Gaming License or any other material License since January 1, 2012.

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(k) Takeover Statutes. Assuming the accuracy of the representations and warranties of Parent and Merger Sub set forth in Section 5.2(i), no “fair price”, “moratorium”, “control share acquisition” or other similar antitakeover statute or regulation, including Section 203 of the DGCL (collectively, “Takeover Statutes”) is applicable to the Merger or the other transactions contemplated hereby.

(l) Environmental Matters. Except for such matters that would not, individually or in the aggregate, reasonably be expected to have a Company Material Adverse Effect:

(i) The operations of the Company and its Subsidiaries are being, and since January 1, 2012 have been, conducted in compliance with all applicable Environmental Laws.

(ii) The Company and its Subsidiaries possess and are, and since January 1, 2012 have been, conducted in compliance with all Licenses required under all applicable Environmental Laws for the current operation of their respective businesses.

(iii) There are no pending nor, to the Knowledge of the Company, threatened, and, since January 1, 2012 have not been, any administrative actions, suits, claims, hearings, investigations or proceedings under Environmental Laws or with respect to exposure to Hazardous Substances against the Company or any of its Subsidiaries or, to the Knowledge of the Company, related to the hotel owned by the Company.

(iv) Hazardous Substances have not been released or disposed of, and to the Knowledge of the Company, are not present, on, in, at or from any real property owned or leased by the Company or any of its Subsidiaries in violation of Environmental Laws or in quantities or locations or of a type that would require investigation or remedial action pursuant to any Environmental Law, except for such violations, investigations or remedial actions for which the Company and its Subsidiaries would not reasonably be expected to have any ongoing Liability.

(v) Notwithstanding any other representation or warranty in Article V of this Agreement, the representations and warranties contained in this Section 5.1(l) constitute the sole representations and warranties of the Company relating to any Environmental Law or Hazardous Substances.

As used herein, the term “Environmental Law” means any Law concerning (A) pollution or protection of the environment, or (B) health or safety (as it relates to exposure to Hazardous Substances), in each case as amended and presently in effect.

As used herein, the term “Hazardous Substance” means any substance, pollutant, contaminant, material, or waste, or combination thereof, whether solid, liquid, or gaseous in nature, presently listed, defined, designated or classified as hazardous, toxic or radioactive under any Environmental Law, including asbestos, polychlorinated biphenyls, petroleum and any derivative or by-products thereof and toxic mold.

(m) Taxes.

(i) The Company and each of its Subsidiaries have filed all Tax Returns that they were required to file, and have paid all Taxes owing, except where the failure to file Tax Returns or to pay Taxes would not, individually or in the aggregate, reasonably be expected to have a Company Material Adverse Effect.

(ii) Neither the Company nor any of its Subsidiaries currently is the beneficiary of any extension of time within which to file any Tax Return. No claim has ever been made by a Governmental Entity in a jurisdiction where the Company or any of its Subsidiaries does not file Tax Returns that the Company or any of its Subsidiaries is or may be subject to taxation by that jurisdiction. There are no Liens for Taxes (other than Taxes not yet due and payable) upon any of the assets of the Company or any of its Subsidiaries.

(iii) As of the date hereof, there are not pending or, to the Knowledge of the Company, threatened in writing, any audits (or other similar proceedings initiated by a Governmental Entity) in respect of Taxes imposed on the Company or any Subsidiary which would, individually or in the aggregate, reasonably be expected to have a Company Material Adverse Effect. No deficiency with respect to Taxes has been proposed, asserted or assessed in writing against the Company or any of its Subsidiaries which has not been fully paid or otherwise settled or is not otherwise being contested in good faith by appropriate proceedings except as would not, individually or in the aggregate, reasonably be expected to have a Company Material Adverse Effect.

(iv) Each of the Company and its Subsidiaries have withheld and paid all Taxes required to have been withheld and paid in connection with any amounts paid or owing to any employee, independent contractor, creditor, stockholder, or other third party.

(v) Neither the Company nor any of its Subsidiaries has waived any statute of limitations in respect of Taxes or agreed to any extension of time with respect to a Tax assessment or deficiency.

(vi) Neither the Company nor any of its Subsidiaries is a party to or bound by any Tax allocation or sharing agreement other than any such contract (x) the only parties to which are the Company and one or more of its Subsidiaries or (y) that was entered into in the ordinary course of business and does not relate primarily to Taxes. Neither the Company nor any of its Subsidiaries (A) has been a member of an affiliated group filing a consolidated federal income Tax Return (other than a group the common parent of which was the Company) or (B) has any liability for the Taxes of any Person (other than the Company or any of its Subsidiaries) under Treasury Regulations section 1.1502-6 (or any similar provision of state, local, or non-U.S. Law), as a transferee or successor, by Contract or otherwise.

(vii) Neither the Company nor any of its Subsidiaries will be required to include any item of income in, or exclude any item of deduction from, taxable income for

any taxable period (or portion thereof) ending after the Closing Date as a result of any: (A) change in method of accounting made prior to the Closing for a taxable period ending on or prior to the Closing Date; (B) use of an improper method of accounting prior to the Closing for a taxable period ending on or prior to the Closing Date; (C) "closing agreement" as described in Section 7121 of the Code (or any corresponding or similar provision of state, local, or non-U.S. income tax Law) executed prior to the Closing; (D) intercompany transaction or excess loss account described in Treasury Regulations under Section 1502 of the Code (or any corresponding or similar provision of state, local, or non-U.S. income tax Law) that arose prior to the Closing; (E) installment sale or open transaction disposition made prior to the Closing; (F) prepaid amount received prior to the Closing; or (G) election under Section 108(i) of the Code made prior to the Closing.

(viii) Neither the Company nor any of its Subsidiaries is or has been a party to any "reportable transaction," as defined in Section 6707A(c)(1) of the Code and Treasury Regulations section 1.6011-4(b).

(ix) Notwithstanding any other representation or warranty in Article V of this Agreement, the representations and warranties contained in this Section 5.1(m) constitute the sole representations and warranties of the Company relating to any Tax, Tax Return or Tax matter.

As used in this Agreement, (A) the term "Tax" (including, with correlative meaning, the term "Taxes") means any federal, state, local and non-U.S. income, profits, franchise, gross receipts, environmental, customs duty, capital stock, severance, stamp, payroll, sales, employment, unemployment, disability, use, ad valorem, property, withholding, excise, production, gaming, live entertainment, value added, transfer, license, estimated, occupancy or other tax of any kind whatsoever, together with any interest, penalty or addition thereto, imposed by any Governmental Entity, whether disputed or not, and (B) the term "Tax Return" means any return, claim for refund, report or similar statement (including any attachments or amendments thereto) relating to Taxes and filed or required to be filed with a Governmental Entity.

(n) Intellectual Property.

(i) Section 5.1(n)(i) of the Company Disclosure Schedule sets forth a list of all material Patents, Patent applications, registered Trademarks, applications to register Trademarks, registered Copyrights and applications to register Copyrights, and registered domain names, in each case that are owned by the Company or a Subsidiary (collectively, the "Registered Intellectual Property"). Except as would not, individually or in the aggregate, reasonably be expected to have a Company Material Adverse Effect: (A) the Company and its Subsidiaries are the sole and exclusive owners of all of the Registered Intellectual Property; (B) the Registered Intellectual Property is not subject to any Lien; (C) to the Knowledge of the Company, each item of Registered Intellectual Property is valid and enforceable and is not being misappropriated, violated, or infringed by any third party.

(ii) Except as would not, individually or in the aggregate, reasonably be expected to have a Company Material Adverse Effect (A) to the Knowledge of the

Company, the Company and its Subsidiaries own or have sufficient rights to use all Intellectual Property used in the conduct of the business of the Company and its Subsidiaries as currently conducted; (B) no claims are pending or, to the Knowledge of the Company, threatened, alleging that the Company or any of its Subsidiaries is violating, misappropriating or infringing the rights of any Person with regard to any Intellectual Property; (C) to the Knowledge of the Company, the operation of the business of the Company and its Subsidiaries as currently conducted does not violate, misappropriate or infringe the Intellectual Property of any other Person; (D) the Company and/or its Subsidiaries take and have taken commercially reasonable actions to maintain and preserve any Intellectual Property rights owned by the Company or its Subsidiaries and to maintain the secrecy of any Trade Secrets owned by the Company or its Subsidiaries; (E) the Company and its Subsidiaries maintain policies and procedures regarding data security, privacy, data transfer and the use of data that are commercially reasonable; (F) the Company and its Subsidiaries are in compliance with such policies and Laws pertaining to data privacy and data security and, to the Knowledge of the Company, there have been no circumstances pertaining to the data privacy and data security of the Company and its Subsidiaries that required notification of any Governmental Entity by Law; and (G) to the Knowledge of the Company, there have been (1) no losses or thefts of data or security breaches relating to data used in the business of the Company and its Subsidiaries, (2) no violations of any security policy regarding any such data (3) any unauthorized access or unauthorized use of any data, and (4) no disclosure of any personally identifiable information in the possession, custody or control of the Company or a Subsidiary or a contractor or agent acting on behalf of the Company or a Subsidiary in a manner that violates applicable Laws.

(iii) The Company maintains an electronic database of information relating to individuals that visit the Company's hotel or casino in a commercially reasonable manner in accordance with applicable Law and normal industry practice.

As used in this Agreement, the term "Intellectual Property" means all intellectual property rights of any type or nature recognized by Law, however denominated, throughout the world, including (i) patents, patent applications, patent disclosures, and all related continuations, continuations-in-part, divisionals, reissues, re-examinations, substitutions, and extensions thereof ("Patents"), (ii) trademarks, service marks, corporate names, trade names, domain names, logos, slogans, and other similar designations of source or origin, together with the goodwill symbolized by all of the foregoing ("Trademarks"), (iii) copyrights and copyrightable subject matter, including copyrights in software and compilations and moral rights and rights of attribution and integrity ("Copyrights"), (iv) trade secrets and other confidential information, including proprietary know-how, processes, and methodologies ("Trade Secrets") and (v) all applications and registrations related to any of the foregoing clauses (i) through (iv).

(o) Real Property.

(i) Each parcel of real property owned by the Company is listed in Section 5.1(o)(i) of the Company Disclosure Schedule (the "Owned Real Property"). The Company and its Subsidiaries have good and marketable title to the Owned Real Property

free and clear of any Liens other than Permitted Liens. All facilities located on the Owned Real Property are supplied with such utilities, and have access to and from publicly dedicated streets, as are necessary for their use and operation by the Company as of the date hereof. To the Company's Knowledge, all material buildings and other improvements located on, under, over or within the Owned Real Property (including elevators) are in good operating condition and repair and are structurally sound and free of any material defects. There are no pending condemnation, eminent domain, or similar proceedings or actions pending or, to the Company's Knowledge, threatened with regard to the Owned Real Property. There are no violations or alleged violations of any Laws with respect to the Owned Real Property, including but not limited to zoning and the Americans with Disabilities Act matters that would, individually or in the aggregate, reasonably be expected to have a Company Material Adverse Effect, prevent or materially delay the Company's ability to consummate the transactions contemplated by this Agreement or materially adversely affect the Company's ability to perform its obligations under this Agreement. To the Company's Knowledge, there are no material inquiries, complaints, proceedings or investigations (excluding routine, periodic inspections) pending regarding compliance of the Owned Real Property with any such Laws. There are no outstanding Contracts, options, or rights of first refusal granted to third parties to purchase the Owned Real Property or any portion thereof or interest therein. To the Company's Knowledge, there are no material existing zoning violations with respect to any Owned Real Property. There are no pending proceedings initiated by or on behalf of the Company or any of its Subsidiaries to change or redefine the zoning classification of all or any portion of the Owned Real Property.

(ii) Section 5.1(o)(ii) of the Company Disclosure Schedule lists each franchise, license or other similar Contract providing the right to utilize a brand name or other rights of a hotel chain or system at any Owned Real Property and sets forth the names of the parties thereto, the date of such Contract and each amendment (including side letters and other agreements), guaranty or other Contract binding on the Company or any of its Subsidiaries and relating thereto (collectively, the "Property Franchise"). True and complete copies of the Property Franchise, including so-called property improvement plans required to be completed by the franchisor, the Company or any of its Subsidiaries or any property improvement plans proposed by the franchisor, have been made available to Parent prior to the date hereof.

(iii) Each parcel of real property leased by the Company or its Subsidiaries is listed in Section 5.1(o)(iii) of the Company Disclosure Schedule (the "Leased Real Property"). The Company and its Subsidiaries have a valid leasehold interest in all Leased Real Property free and clear of any Liens other than Permitted Liens. The Company and its Subsidiaries are in possession of all such Leased Real Property, and, except as would not, individually or in the aggregate, reasonably be expected to have a Company Material Adverse Effect, prevent or materially delay the Company's ability to consummate the transactions contemplated by this Agreement or materially adversely affect the Company's ability to perform its obligations under this Agreement, each lease for such Leased Real Property is valid and in full force and effect without default thereunder by the lessee or, to the Company's Knowledge, the lessor.

(iv) "Permitted Liens" means: (A) Liens that relate to Taxes, assessments and governmental charges or levies imposed upon the Company that are not yet due and payable or that are being contested in good faith by appropriate proceedings and for which reserves have been

established on the most recent financial statements included in the Company Reports filed prior to the date of this Agreement, (B) pledges or deposits to secure obligations under workers' compensation Laws or similar legislation or to secure obligations to local or state Governmental Entities in connection with the receipt of funds or other benefits from such Governmental Entity relating to capital projects, (C) inchoate mechanics', carriers', workers', repairers' and similar Liens imposed upon the Company arising or incurred in the ordinary course of business that are not yet due and payable or that are being contested in good faith and for which adequate accruals or reserves have been established in accordance with GAAP, (D) easements (whether or not shown by public records), overlaps, encroachments and other matters not of record which would be disclosed by an accurate survey or a personal inspection of the property, (E) Liens disclosed on existing title reports or existing surveys that have been made available to Parent as of the date hereof, (F) Liens securing Indebtedness or Liabilities described in the Company Reports filed on or after January 1, 2013 that will be released and discharged at or prior to the Closing, (G) Liens arising in connection with Indebtedness of the Company to be released on or prior to the Closing; (H) utility easements for electricity, gas, water, sanitary sewer, surface water drainage or other general easements granted to Governmental Entities in the ordinary course of operating the hotel, casino and other facilities located on the Owned Real Property and (I) any utility company rights, easements or franchises for electricity, water, steam, gas, telephone or other service or the right to use and maintain poles, lines, wires, cables, pipes, boxes and other fixtures and facilities in, over, under and upon the Owned Real Property; provided, however, that in the case of clauses (D), (H) and (I), no such Liens, individually or in the aggregate, adversely affect in any material respect the Company's use of the Owned Real Property in the conduct of its business as conducted as of the date hereof.

(p) Insurance. The Company and its Subsidiaries maintain insurance coverage with reputable insurers in such amounts and covering such risks consistent with normal industry practice. Except for such matters that would not, individually or in the aggregate, reasonably be expected to have a Company Material Adverse Effect, (i) all insurance policies maintained by the Company or any of its Subsidiaries ("Insurance Policies") are in full force and effect and all premiums due with respect to such Insurance Policies have been paid in accordance with the terms of such policies, and (ii) neither the Company nor any of its Subsidiaries is in breach or default of any of its Insurance Policies. All of the Company's material Insurance Policies are listed in Section 5.1(p) of the Company Disclosure Schedule, and the Company has made available to Parent complete and correct copies, as of the date hereof, of each such Insurance Policy.

(q) No Brokers. No broker, finder, financial advisor or investment banker is entitled to any brokerage, finder's or other fee or commission payable by the Company or any of its Subsidiaries in connection with the transactions contemplated by this Agreement based upon arrangements made by or on behalf of the Company or any of its Subsidiaries.

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(r) Affiliate Transactions. As of the date of this Agreement, since the Applicable Date, there have been no transactions, or series of related transactions, Contracts or understandings in effect, nor are there any currently proposed transactions, or series of related transactions, Contracts or understandings, that would be required to be disclosed under Item 404 of Regulation S-K promulgated under the Securities Act that have not been otherwise disclosed in the Company Reports filed prior to the date hereof. There are no transactions, Contracts or other obligations between the Company, on the one hand, and any Affiliate of the Company, on the other, that will continue after Closing.

(s) Contracts.

(i) Except as set forth in Section 5.1(s) of the Company Disclosure Schedule, as of the date of this Agreement, none of the Company or any of its Subsidiaries is a party to or bound by any contract, agreement, commitment, lease, or other instrument or obligation, whether oral or written (each a "Contract"): (A) required to be filed by the Company with the SEC pursuant to Item 601(b)(10) of Regulation S-K under the Securities Act; (B) with respect to partnerships, joint ventures or similar arrangements; (C) containing covenants of the Company or any of its Subsidiaries purporting to limit in any material respect any line of business, any channel of distribution, or geographical area in which the Company or its Subsidiaries may operate; (D) pursuant to which the Company or any of its Subsidiaries has any Indebtedness in an amount in excess of \$500,000 outstanding (other than intercompany Indebtedness); (E) licensing or otherwise specifically concerning Intellectual Property (except for Contracts with respect to non-exclusive, generally commercially available software) that is material to the business of the Company and its Subsidiaries, taken as a whole; (F) that is a collective bargaining agreement, or any other Contract with any labor union, labor organization or works council; (G) pursuant to which the Company or any of its Subsidiaries leases Owned Real Property to any third party other than short term leases that are terminable by the Company or its Subsidiaries without fee or penalty upon thirty days' or less prior notice; (H) that is a Property Franchise; (I) for any construction work (including any additions or expansions) to be performed at any Owned Real Property and under which the Company or any of its Subsidiaries has an obligation in excess of \$250,000 in the aggregate; (J) relating to interest rate caps, interest rate collars, interest rate swaps, currency hedging transactions and other similar arrangements to which the Company or any of its Subsidiaries is a party or an obligor with respect thereto; (K) that require the Company or any of its Subsidiaries to purchase its total requirements of any product or service from a third party or that contain "take or pay" provisions; or (L) that by its terms calls for aggregate payments by or to the Company or any of its Subsidiaries in excess of \$500,000. Each such Contract described in clauses (A) - (L) above is referred to herein as a "Material Contract." As of the date hereof, the Company has made available to Parent an accurate and complete copy of each Material Contract.

(ii) Each of the Material Contracts is valid and binding on the Company and each of its Subsidiaries party thereto and, to the Knowledge of the Company, each other party thereto and is in full force and effect, except for such failures to be valid and binding or to be in full force and effect that, would not, individually or in

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the aggregate, reasonably be expected to have a Company Material Adverse Effect. There is no default under any Material Contract either by the Company or any of its Subsidiaries party thereto or, to the Knowledge of the Company, by any other party thereto, and no event has occurred that with notice or lapse of time or both would constitute a default thereunder by the Company or any of its Subsidiaries party thereto or, to the Knowledge of the Company, any other party thereto, in each case except as would not, individually or in the aggregate, reasonably be expected to have a Company Material Adverse Effect.

(t) Sufficiency of Assets. On the Closing Date (assuming receipt of all consents, approvals and authorizations contemplated by Section 5.1(d)(ii) and Section 5.2(c)(ii)), the Company and its Subsidiaries will own or have the right to use all of the assets, properties and rights necessary to conduct the business of the Company and its Subsidiaries immediately following the Closing in all material respects as it is conducted on the date hereof;

provided however, that nothing in this Section 5.1(t) shall be deemed to constitute a representation or warranty as to the adequacy of the amounts of cash or working capital (or the availability of the same). After giving effect to the Closing, neither the Listed Stockholders nor their respective Affiliates will own any material assets, properties or rights that are used in the business and operations of the Company and its Subsidiaries as conducted as of the date hereof.

(u) No Other Parent Representations or Warranties. Except for the representations and warranties set forth in Section 5.2, the Company hereby acknowledges and agrees that neither Parent, Merger Sub nor any of their respective Subsidiaries, nor any of their respective directors, officers, employees, Affiliates, investment bankers, attorneys, accountants and other advisors or representatives (collectively, "Representatives"), nor any other Person on behalf of Parent, Merger Sub or their respective Representatives, has made or is making any other express or implied representation or warranty with respect to Parent, Merger Sub or any of their respective Subsidiaries or their respective business or operations, including with respect to any information provided or made available to the Company.

5.2. Representations and Warranties of Parent and Merger Sub. Except as set forth in the corresponding sections or subsections of the disclosure letter delivered to the Company by Parent and Merger Sub prior to entering into this Agreement (the "Parent Disclosure Schedule") (it being agreed that disclosure of any item in any section or subsection of the Parent Disclosure Schedule shall be deemed disclosure with respect to any other section or subsection to which the relevance of such item is reasonably apparent on its face), Parent and Merger Sub, jointly and severally, represent and warrant to the Company that:

(a) Organization, Good Standing and Qualification. Each of Parent and Merger Sub is a legal entity duly organized, validly existing and in good standing (with respect to jurisdictions that recognize the concept of good standing) under the Laws of the jurisdiction of its organization and has all requisite corporate or similar power and authority to own, lease and operate its properties and assets and to carry on its business as it is presently conducted and is qualified to do business and is in good standing as a foreign corporation (with respect to jurisdictions that recognize the concept of good standing) or other legal entity in each jurisdiction where the ownership, leasing or operation of its assets or properties or conduct of its business

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requires such qualification, except where any such failure to be so organized, qualified, in good standing or to have such power or authority would not, individually or in the aggregate, reasonably be expected to prevent or materially delay the ability of Parent or Merger Sub to consummate the transactions contemplated by this Agreement or materially adversely affect the ability of Parent or Merger Sub to perform their obligations under this Agreement.

(b) Organizational Authority and Approval. No vote of holders of shares or other equity securities of Parent or any of its Subsidiaries (other than Parent in its capacity as stockholder of Merger Sub) is necessary to approve this Agreement and the Merger and the other transactions contemplated hereby. Each of Parent and Merger Sub has all requisite organizational power and authority and has taken all organizational action necessary in order to execute, deliver and perform its obligations under this Agreement, subject only to the adoption and approval of this Agreement by Parent as the sole stockholder of Merger Sub, which will occur immediately following the execution of this Agreement, and to consummate the Merger. This Agreement has been duly executed and delivered by each of Parent and Merger Sub and, assuming the authorization, execution and delivery hereof by the Company, constitutes a valid and binding agreement of Parent and Merger Sub, enforceable against each of Parent and Merger Sub in accordance with its terms, subject to the Bankruptcy and Equity Exception.

(c) No Conflict; Required Filings and Consents.

(i) The execution, delivery and performance of this Agreement by Parent and Merger Sub and the consummation of the Merger by Parent and Merger Sub do not and will not: (A) conflict with or violate the certificate of incorporation or bylaws or comparable governing documents of Parent or Merger Sub; (B) assuming that all consents, approvals, authorizations, declarations and permits contemplated by clauses (A) through (E) of Section of 5.2(c)(ii) below have been obtained, and all filings described in such clauses have been made, conflict with, result in any breach or violation of or constitute a default (or an event which with or without notice, lapse of time or both would become a default) or result in the loss of a benefit under, or give rise to any breach or violation of, a termination or right of termination, acceleration or other alteration in the rights under, any Contract to which Parent or any of its Subsidiaries is party or is subject; or (C) assuming that all consents, approvals, authorizations, declarations and permits contemplated by clauses (A) through (E) of Section of 5.2(c)(ii) below have been obtained, and all filings described in such clauses have been made, conflict with or violate any Law, License or judgment to which Parent or any of its Subsidiaries is subject, except, in the case of clauses (B) and (C) above, for any such conflict, violation, breach, termination, default, acceleration, loss, alteration or other occurrence that would not, individually or in the aggregate, reasonably be expected to prevent or materially delay the ability of Parent or Merger Sub to consummate the transactions contemplated by this Agreement or materially adversely affect the ability of Parent or Merger Sub to perform their obligations under this Agreement.

(ii) The execution, delivery and performance of this Agreement by Parent and Merger Sub and the consummation of the transactions contemplated hereby by Parent and Merger Sub do not and will not require Parent or Merger Sub to make or

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obtain any consent, approval, authorization, declaration or permit of, action by, filing with or notification to, any Governmental Entity on the part of the Parent or any of its Subsidiaries, except for: (A) the applicable requirements of the Exchange Act and the rules and regulations promulgated thereunder; (B) the applicable requirements of the HSR Act, and the rules and regulations promulgated thereunder; (C) the requirements under any Gaming Laws, in respect of any Gaming Licenses or of any Gaming Authorities, in each case, applicable to Parent or its Affiliates, (D) the applicable requirements in respect of any Liquor Licenses; (E) the filing with the Secretary of State of the State of Delaware of the Certificate of Merger as required by the DGCL; and (F) any such consent, approval, authorization, declaration, permit, action, filing or notification the failure of which to make or obtain, would not, individually or in the aggregate, reasonably be expected to prevent or materially delay the ability of Parent or Merger Sub to consummate the transactions contemplated by this Agreement or materially adversely affect the ability of Parent or Merger Sub to perform their obligations under this Agreement.

(d) Litigation. There are no civil, criminal or administrative actions, suits, claims, hearings, investigations or proceedings pending or, to the Knowledge of Parent, threatened against Parent or Merger Sub that seek to enjoin, or would reasonably be expected to have the effect of preventing, making illegal, or otherwise materially interfering with, any of the transactions contemplated by this Agreement, except as would not, individually or in the

aggregate, reasonably be expected to prevent or materially delay the ability of Parent or Merger Sub to consummate the transactions contemplated by this Agreement or materially adversely affect the ability of Parent or Merger Sub to perform their obligations under this Agreement.

(e) Available Funds. Parent will have at the Closing funds sufficient to (i) pay the aggregate Merger Consideration, (ii) pay any and all fees and expenses required to be paid by Parent and/or Merger Sub in connection with the transactions contemplated by this Agreement and (iii) satisfy all of the other payment obligations of Parent and/or Merger Sub contemplated hereunder.

(f) Capitalization of Merger Sub. The authorized capital stock of Merger Sub consists solely of 1,000 shares of common stock, par value \$0.01 per share, one share of which is validly issued and outstanding. All of the issued and outstanding capital stock of Merger Sub is, and at the Effective Time will be, owned by Parent or a direct or indirect wholly-owned Subsidiary of Parent. Merger Sub has not conducted any business prior to the date hereof and has no, and prior to the Effective Time will have no, assets, liabilities or obligations of any nature other than those incidental to its formation and pursuant to this Agreement and the Merger and the other transactions contemplated by this Agreement.

(g) Brokers. No agent, broker, finder, financial advisor or investment banker is entitled to any brokerage, finder's or other fee or commission payable by the Company or any of its Subsidiaries in connection with the transactions contemplated by this Agreement based upon arrangements made by or on behalf of Parent or Merger Sub.

(h) Licensability. None of Parent or Merger Sub, or to Parent's Knowledge, any of their respective Management Principals or Affiliates which may reasonably be considered

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in the process of determining the suitability of Parent and Merger Sub for any Gaming License by any Gaming Authorities, or any holders of Parent's capital stock or other equity interests who will be required to be licensed or found suitable under applicable Gaming Laws (the foregoing persons collectively, the "Licensing Affiliates"), has abandoned or withdrawn (in each case in response to a communication from a Gaming Authority regarding a likely or impending denial, suspension or revocation) or been denied or had suspended or revoked a Gaming License, or an application for a Gaming License, by a Gaming Authority, within the five years prior to the date hereof. Parent, Merger Sub, and each of their respective Licensing Affiliates which is licensed or holds any Gaming License pursuant to applicable Gaming Laws (collectively, the "Licensed Parties") is in good standing in each of the jurisdictions in which such Licensed Party owns, operates, or manages gaming facilities. To Parent's Knowledge, there are no facts which, if known to any Gaming Authority, would be reasonably likely to (i) result in the denial, revocation, limitation or suspension of a Gaming License of any of the Licensed Parties or (ii) result in a negative outcome to any finding of suitability proceedings of any of the Licensed Parties currently pending, or under the suitability proceedings necessary for the consummation of the Merger.

(i) Compliance with Gaming Laws.

(i) Each of the Licensed Parties, and, to Parent's Knowledge, each of the Licensed Parties' Management Principals, holds all Gaming Licenses and all such permits as are necessary to conduct the business and operations of the Licensed Parties as currently conducted, each of which is in full force and effect in all material respects (the "Parent Permits"), except for such permits not held or in full force and effect as would not, individually or in the aggregate, reasonably be expected to prevent or materially delay the ability of Parent or Merger Sub to consummate the transactions contemplated by this Agreement or materially adversely affect the ability of Parent or Merger Sub to perform their obligations under this Agreement, and no event has occurred which permits, or upon the giving of notice or passage of time or both would permit, revocation, non-renewal, modification, suspension, limitation or termination of any Parent Permit that currently is in effect, the loss of which, either individually or in the aggregate, would reasonably be expected to prevent or materially delay the ability of Parent or Merger Sub to consummate the transactions contemplated by this Agreement or materially adversely affect the ability of Parent or Merger Sub to perform their obligations under this Agreement. Each of the Licensed Parties and each of the Licensed Parties' respective Management Principals is in compliance with the terms of the Parent Permits, except for such failures to comply which would not, individually or in the aggregate, reasonably be expected to prevent or materially delay the ability of Parent or Merger Sub to consummate the transactions contemplated by this Agreement or materially adversely affect the ability of Parent or Merger Sub to perform their obligations under this Agreement. Neither Parent nor any of its Licensing Affiliates has received written notice with respect to any investigation or review by any Gaming Authority or other Governmental Entity of Parent or any of its Licensing Affiliates or Management Principals that is pending, and, to the Knowledge of Parent, no investigation or review is threatened, other than those investigations and reviews the outcome of which would not reasonably be expected to prevent or materially delay the ability of Parent or Merger Sub

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to consummate the transactions contemplated by this Agreement or materially adversely affect the ability of Parent or Merger Sub to perform their obligations under this Agreement.

(ii) No Licensed Party, and, to Parent's Knowledge, no Licensing Affiliate or Management Principal of any Licensed Party, has received any written claim, demand, notice, complaint, court order or administrative order from any Gaming Authority or other Governmental Entity in the past three years under, or relating to any violation or possible violation of, any Gaming Law which did or would be reasonably likely to result in an individual fine or penalty of \$250,000 or more. To the Knowledge of Parent, there are no facts which if known to any Gaming Authority would reasonably be expected to result in the revocation, limitation or suspension of a Gaming License or other material Parent Permit, finding of suitability, registration, or other permit or approval of the Licensed Parties, or any of their respective Licensing Affiliates or Management Principals, except for such revocations, limitations or suspensions which would not, individually or in the aggregate, reasonably be expected to prevent or materially delay the ability of Parent or Merger Sub to consummate the transactions contemplated by this Agreement or materially adversely affect the ability of Parent or Merger Sub to perform their obligations under this Agreement. None of the Licensed Parties, and, to Parent's Knowledge, none of their respective Licensing Affiliates or Management Principals, has suffered a suspension, denial, non-renewal, limitation or revocation of any Parent Permit within the last three years.

(j) Absence of Certain Agreements. Neither Parent nor any of its Affiliates has entered into any Contract or understanding (in each case, whether oral or written), or authorized, committed or agreed to enter into any Contract or understanding (in each case, whether oral or written), (i) pursuant to which any stockholder of the Company would be entitled to receive consideration in respect of such stockholders' Shares of a different amount

or nature than the Merger Consideration or pursuant to which any stockholder of the Company agrees to vote to adopt this Agreement or the Merger or (ii) with any member of the Company's management or directors that relates in any way to the Company or the transactions contemplated by this Agreement.

(k) Stock Ownership. Neither Parent nor Merger Sub is, nor at any time during the last three years has been, an "interested stockholder" of the Company as defined in Section 203 of the DGCL.

(l) No Other Company Representations or Warranties. Except for the representations and warranties set forth in Section 5.1, Parent and Merger Sub hereby acknowledge and agree that neither the Company nor any of its Subsidiaries, nor any of their respective Representatives, nor any other Person on behalf of the Company, its Subsidiaries or their respective Representatives, has made or is making any other express or implied representation or warranty with respect to the Company or any of its Subsidiaries or their respective business or operations, including with respect to any information provided or made available to Parent or Merger Sub. Except for claims arising from fraud, neither the Company nor any of its Subsidiaries, nor any of their respective Representatives, will have or be subject to

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any liability or indemnification obligation to Parent or Merger Sub resulting from the delivery, dissemination or any other distribution to Parent, Merger Sub or their respective Representatives, or the use by Parent, Merger Sub or their respective Representatives of any projections, forecasts or other forward-looking information, business plans or other material provided or made available to Parent, Merger Sub or their respective Representatives, including in certain "data rooms" or management presentations in anticipation or contemplation of any of the transactions contemplated by this Agreement.

(m) Non-Reliance on Company Estimates, Projections, Forecasts, Forward-Looking Statements and Business Plans. In connection with the due diligence investigation of the Company by Parent and Merger Sub, Parent and Merger Sub have received and may continue to receive from the Company certain estimates, projections, forecasts and other forward-looking information, as well as certain business plan information, regarding the Company and its business and operations. Parent and Merger Sub hereby acknowledge and agree that there are uncertainties inherent in attempting to make such estimates, projections, forecasts and other forward-looking statements, as well as in such business plans, with which Parent and Merger Sub are familiar, that Parent and Merger Sub are taking full responsibility for making their own evaluation of the adequacy and accuracy of all estimates, projections, forecasts and other forward-looking information, as well as such business plans, so furnished to them (including the reasonableness of the assumptions underlying such estimates, projections, forecasts, forward-looking information or business plans), and that (except for claims arising from fraud) Parent and Merger Sub will have no claim against the Company or any of its Subsidiaries, or any of their respective Representatives, with respect thereto. Accordingly, Parent and Merger Sub hereby acknowledge that, except as otherwise expressly set forth in this Agreement, none of the Company nor any of its Subsidiaries, nor any of their respective Representatives, has made or is making any representation or warranty with respect to such estimates, projections, forecasts, forward-looking statements or business plans (including the reasonableness of the assumptions underlying such projections, forecasts, forward-looking statements or business plans).

## ARTICLE VI

### Covenants

#### 6.1. Interim Operations.

(a) The Company covenants and agrees that, after the date hereof until the Effective Time (unless Parent shall otherwise approve in writing), and except as otherwise expressly permitted by this Agreement or as required in writing by a Governmental Entity (including Gaming Authorities) of competent jurisdiction or required by applicable Laws (including Gaming Laws), it shall and its Subsidiaries shall conduct their businesses in all material respects in the ordinary course and, to the extent consistent with the foregoing, the Company and its Subsidiaries shall use their respective commercially reasonable efforts to preserve their business organizations substantially intact, maintain satisfactory relationships with customers and suppliers having business dealings with them, maintain the effectiveness of the Company's Licenses and keep available the services of their key employees. Without limiting the generality of the foregoing, from the date of this Agreement until the Effective Time, except

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(A) as otherwise expressly permitted by this Agreement, (B) as Parent may approve in writing (such approval not to be unreasonably delayed, withheld or conditioned) (C) as required in writing by a Governmental Entity (including Gaming Authorities) of competent jurisdiction or required by applicable Laws (including Gaming Laws) or (D) as set forth in Section 6.1(a) of the Company Disclosure Schedule, the Company will not and will cause its Subsidiaries not to:

(i) adopt any change in the certificate of incorporation or bylaws of the Company;

(ii) merge or consolidate the Company or any of its Subsidiaries with any other Person;

(iii) make any acquisition of all or substantially all of the capital stock or assets of any other Person, whether by way of stock purchase, asset purchase, merger or otherwise (other than formation of new wholly-owned Subsidiaries), or of any other assets of any other Person for which the fair market value of the total consideration paid by the Company and its Subsidiaries exceeds \$250,000 individually or \$500,000 in the aggregate;

(iv) issue, sell, deliver, pledge, dispose of, grant, transfer, lease, license, guarantee or encumber, or authorize the issuance, sale, delivery, pledge, disposition, grant, transfer, lease, license, guarantee or encumbrance of, any shares of capital stock or voting debt of the Company or any of its Subsidiaries (other than (A) upon conversion of Preferred Stock outstanding as of the date hereof in accordance with the terms thereof and (B) the issuance of shares or other equity securities by a wholly-owned Subsidiary of the Company to the Company or another wholly-owned Subsidiary of the Company), or securities convertible or exchangeable into or exercisable for any shares of such capital stock or voting debt, or any options, warrants or other rights of any kind to acquire any shares of such capital stock voting debt or such convertible or exchangeable securities, or stock appreciation rights;



(v) except for dividends in respect of the Preferred Stock required to be paid or accrued in accordance with the Company's certificate of incorporation and the certificates of designations thereof, declare, set aside, make or pay any dividend or other distribution, payable in cash, stock, property or otherwise, with respect to any of its capital stock (except dividends paid by any direct or indirect wholly-owned Subsidiary of the Company);

(vi) except for transactions among the Company and its direct or indirect wholly-owned Subsidiaries or among the Company's direct or indirect wholly-owned Subsidiaries, reclassify, split, combine, subdivide or redeem, purchase or otherwise acquire, directly or indirectly, any of its capital stock or securities convertible or exchangeable into or exercisable for any shares of its capital stock;

(vii) subject to Section 6.20, change in any material respect its financial or Tax accounting policies or procedures, except as required by applicable Law or by changes in GAAP;

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(viii) other than Transaction Litigation (which is addressed in Section 6.13), settle, release, waive or compromise any litigation or other pending or threatened proceedings or claims by or before a Governmental Entity or arbitrator if such settlement, release, waiver or compromise (A) with respect to the payment of monetary damages, involves the payment by the Company or any of its Subsidiaries of monetary damages exceeding \$250,000 in any individual matter, net of any amount covered by insurance or third-party indemnification in respect of such matter or (B) with respect to any non-monetary terms and conditions therein, imposes or requires actions that would or would, individually or in the aggregate, reasonably be expected to materially restrict or limit the operations of the business of the Company and its Subsidiaries as conducted on the date hereof;

(ix) except as required by a Benefit Plan in effect prior to the date of this Agreement that is set forth on Section 6.1(a)(ix) of the Company Disclosure Schedule, (A) grant or provide any severance or termination payments or benefits to any current or former Company Employee or any other current or former service provider, (B) increase the compensation or benefits of any current or former Company Employee or any other current or former service provider, other than customary annual increases for non-executive Company Employees in the ordinary course of business consistent with past practice, (C) establish, enter into, adopt, join, terminate or amend any Benefit Plan or any plan, program, arrangement, policy or agreement that would be a Benefit Plan if it were in existence on the date hereof, (D) hire or otherwise retain the services of any new member of the Company Board, officer or other senior executive, (E) take any action to fund or in any other way secure the payment of compensation or benefits under any Contract or Benefit Plan, or (F) except as specifically required by this Agreement, exercise any discretion to accelerate the vesting or payment of any compensation or benefit under any Benefit Plan;

(x) adopt a plan or agreement of complete or partial liquidation or dissolution;

(xi) enter into any new line of business;

(xii) other than (A) any sale, lease, assignment, encumbrances or other disposition of inventory in the ordinary course of business consistent with past practice and (B) dispositions of assets if the book value thereof does not exceed in the aggregate \$500,000, sell, lease, assign, encumber or otherwise dispose of, or agree to sell, lease, assign, encumber or otherwise dispose of, any assets of the Company or any of its Subsidiaries;

(xiii) fail to maintain its existing insurance coverage of all types;

(xiv) except in the ordinary course of business consistent with past practice, enter into any Material Contract, or amend in any material respect or terminate any Material Contract or waive or grant any release or relinquishment of any material rights under, or renew, any Material Contract; provided, that, except as set forth in Section 6.1(a)(xiv) of the Company Disclosure Schedule, entry into, amendment in any

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material respect, termination of, waiver or granting of any release or relinquishment of any material rights under, or renewal of, any Contract either (1) described by any of clauses (B), (C), (D), (F), (G), (H), (I), (K) or (L) of the definition of "Material Contracts," or (2) (x) with a term of 18 months or more, (y) that is not terminable by the Company or its Subsidiaries without fee or penalty upon 90 days' or less prior notice and (z) that by its terms calls for aggregate payments by or to the Company or any of its Subsidiaries in excess of \$1,500,000, shall require Parent approval in accordance with this Section 6.1(a) even if entered in the ordinary course of business consistent with past practice;

(v) enter into any Contract with an Affiliate of the Company (other than a wholly-owned Subsidiary of the Company) (an "Affiliate Contract"), or amend in any material respect or, except as contemplated by this Agreement, terminate any Affiliate Contract or waive or grant any release or relinquishment of any material rights under, or renew, any Affiliate Contract;

(xvi) spend the amounts in the Specified Reserve Account for any purpose other than resolution of the Specified Matter; or

(xvii) agree, authorize or commit to do any of the foregoing.

(b) Nothing contained in this Agreement gives, or is intended to give Parent, directly or indirectly, the right to control or direct the Company's or its Subsidiaries' operations prior to the Effective Time. Prior to the Effective Time, the Company shall exercise, consistent with the terms and subject to the conditions of this Agreement, including this Section 6.1, complete control and supervision over the Company's and its Subsidiaries' operations.

6.2. Specified Matter and Related Escrow. On the date hereof, Parent shall deposit four million dollars (\$4,000,000) with the Escrow Agent pursuant to the Escrow Agreement, which amount shall be held in a separate escrow fund for payment in accordance with this Section 6.2 (together with any interest accrued thereon, the "Section 6.2 Escrow Fund").

(a) The Company shall conduct the Specified Matter in the manner described in Section 6.2(a) of the Company Disclosure Schedule. Upon Final Resolution of the Specified Matter prior to the Closing, the Company shall promptly deliver documented evidence thereof to Parent.

(b) Upon Final Resolution of the Specified Matter, the parties shall instruct the Escrow Agent to release and pay from the Section 6.2 Escrow Fund to the Company the Final Resolution Amount. Following such payment, the parties shall instruct the Escrow Agent to release and pay any remaining balance of the Section 6.2 Escrow Fund (i) if this Agreement is terminated, to the party entitled to payment of the 6.2 Escrow Fund as set forth in Section 8.5(d) or (ii) if the Closing occurs, to Parent. “Final Resolution Amount” shall have the meaning set forth in Section 6.2 of the Company Disclosure Schedule.

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(c) In the event there has not been a Final Resolution of the Specified Matter prior to the Closing, then in connection with the occurrence of the Closing (i) the parties shall instruct the Escrow Agent to (x) release and pay the balance of the Section 6.2 Escrow Fund less the Working Capital Escrow Amount to Parent and (y) retain the Working Capital Escrow Amount in the Working Capital Escrow Fund, and (ii) the Merger Consideration payable at Closing shall be reduced by the Section 6.2 Reduction Amount (as defined in Section 6.2 of the Company Disclosure Schedule).

(d) Upon the termination of this Agreement, the parties shall instruct the Escrow Agent to release and pay the balance of the Section 6.2 Escrow Fund to the Company or Parent, as applicable, pursuant to Section 8.5(d) and the terms of the Escrow Agreement.

(e) In the event of any inconsistency between the terms and provisions of the Escrow Agreement and the terms and provisions of this Agreement, the terms and provisions of this Agreement shall control, absent an express written agreement executed by the parties hereto to the contrary.

### 6.3. Information Statement.

(a) As promptly as practicable following the due execution and delivery of the Merger Consent, the Company shall prepare, and Parent and Merger Sub shall cooperate with the Company in preparation of, an information statement of the type contemplated by Rule 14c—2 under the Exchange Act relating to the Merger and this Agreement (such information statement, including any amendment or supplement thereto, the “Information Statement”). The Information Statement shall also contain (i) the notice of action by written consent required by Section 228(e) of the DGCL and (ii) the notice of availability of appraisal rights and related disclosure required by Section 262 of the DGCL. Without limiting the generality of the foregoing, each of Parent and Merger Sub will promptly furnish to the Company the information relating to it that is required by the Exchange Act and the rules and regulations promulgated thereunder to be set forth in the Information Statement, that is customarily included in information statements prepared in connection with transactions of the type contemplated by this Agreement or that is reasonably requested by the Company. The Company agrees that at the date of mailing to stockholders of the Company, the Information Statement will comply in all material respects with the applicable provisions of the Exchange Act and the rules and regulations thereunder.

(b) Each of Parent and Merger Sub agree that none of the information supplied by it or any of its respective Subsidiaries for inclusion or incorporation by reference in the Information Statement will contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading. The Company shall reasonably promptly notify Parent of the receipt of all comments of the SEC with respect to the Information Statement and of any request by the SEC for any amendment or supplement thereto or for additional information and shall promptly provide to Parent copies of all correspondence between the Company and/or any of its Representatives and the SEC with respect to the Information Statement. The Company shall use its reasonable best efforts (with the assistance of Parent) to promptly provide responses to the SEC with respect to all comments received on the Information Statement from the SEC and the Company shall cause the definitive

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Information Statement to be mailed promptly after the date the SEC staff advises that it has no further comments thereon or that the Company may commence mailing the Information Statement.

(c) Subject to applicable Law, notwithstanding anything to the contrary stated above, prior to filing or mailing the Information Statement or filing any other required filings (or, in each case, any amendment or supplement thereto) or responding to any comments of the SEC with respect thereto, to the fullest extent reasonably practicable the Company shall provide Parent with an opportunity to review and comment on such document or response and shall in good faith consider for inclusion in such document or response comments reasonably proposed by Parent.

6.4. Stockholders Approval. Immediately after the execution of this Agreement and in lieu of calling a meeting of the Company’s stockholders, the Company shall submit the form of irrevocable stockholder written consent attached hereto as Annex D (the “Merger Consent”) to those of the Company’s stockholders listed on Annex E (the “Listed Stockholders”). If the Merger Consent is duly executed by the Listed Stockholders and is delivered to the Company in accordance with Section 228 of the DGCL, then, as promptly as practicable thereafter, the Company shall deliver to Parent a copy (including by facsimile or other electronic image scan transmission) of the Merger Consent, certified as correct and complete by an executive officer of the Company.

### 6.5. Filings; Other Actions; Notification.

#### (a) Cooperation.

(i) Subject to the terms and conditions set forth in this Agreement, the Company and Parent shall cooperate with each other and use (and shall cause their respective Subsidiaries to use) their reasonable best efforts to take or cause to be taken all actions, and do or cause to be done all things, necessary, proper or advisable on its part under this Agreement and applicable Laws (including under any Antitrust Law and under any applicable Gaming Law) to consummate and make effective the Merger and the other transactions contemplated by this Agreement prior to the Termination Date, including preparing and filing as promptly as practicable after the date hereof all documentation to effect all necessary notices, reports and other filings and to obtain as promptly as practicable after the date hereof all consents, registrations, approvals, permits and authorizations (including all Gaming Licenses), necessary or advisable to be obtained from any third party and/or any Governmental Entity

(including the Gaming Authorities), in order to consummate the Merger or any of the other transactions contemplated by this Agreement, including under the HSR Act and the Gaming Laws.

(ii) Parent and the Company each shall, as promptly as reasonably practicable after the date of this Agreement, file or cause to be filed premerger notifications with respect to this Agreement and the transactions contemplated herein as required under the HSR Act, and, in the case of any filings required under the HSR Act, no later than five Business Days after the date of this Agreement. Unless otherwise agreed, each of the Company and Parent will request early termination of the waiting

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period with respect to the Merger under the HSR Act. Subject to applicable Laws relating to the exchange of information, Parent and the Company, to the fullest extent reasonably practicable, will consult with the other and consider in good faith the views of the other in connection with, all of the information relating to Parent or the Company, as the case may be, and any of their respective Subsidiaries, that appears in any notice or filing made with, or written materials submitted to, any third party and/or any Governmental Entity in connection with the Merger and the other transactions contemplated by this Agreement (including the Information Statement). For purposes of this Agreement, "Antitrust Law" means the Sherman Act, as amended, the Clayton Act, as amended, the HSR Act, the Federal Trade Commission Act, as amended, and all other Laws that are designed or intended to prohibit, restrict or regulate actions having the purpose or effect of monopolization or restraint of trade or lessening of competition through merger or acquisition.

(iii) Parent and Merger Sub agree to, and agree to cause their Affiliates and their respective directors, officers, partners, managers, members, principals and stockholders to, prepare and submit to the Gaming Authorities as promptly as practicable, and in any event no later than thirty (30) calendar days from the date of this Agreement, all applications and supporting documents necessary to obtain all required Gaming Licenses.

(b) Information. Subject to applicable Laws, the Company and Parent each shall, upon request by the other, furnish the other with all information concerning itself, its Subsidiaries, directors, officers and stockholders and such other matters as may be reasonably necessary or advisable in connection with the Information Statement or any other statement, filing, notice or application made by or on behalf of Parent, the Company or any of their respective Subsidiaries to any third party and/or any Governmental Entity in connection with the Merger and the transactions contemplated by this Agreement, including under the HSR Act, any other applicable Antitrust Law and the Gaming Laws.

(c) Status. Subject to applicable Laws and the instructions of any Governmental Entity, to the fullest extent reasonably practicable, the Company and Parent each shall keep the other apprised of the status of matters relating to completion of the transactions contemplated hereby, including promptly furnishing the other with copies of notices or other written communications received by Parent or the Company, as the case may be, or any of their respective Subsidiaries, from any third party and/or any Governmental Entity with respect to the Merger and the other transactions contemplated by this Agreement. To the fullest extent reasonably practicable, neither the Company nor Parent shall permit any of its officers or any other Representatives to participate in any meeting with any Governmental Entity in respect of any filings, investigation or other inquiry with respect to the Merger and the other transactions contemplated by this Agreement unless it consults with the other party in advance and, to the extent permitted by such Governmental Entity, gives the other party the opportunity to attend and participate thereat.

(d) Antitrust and Gaming Matters. Without limiting the generality of the other undertakings and limitations on undertakings pursuant to this Section 6.5:

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(i) Parent and the Company shall not take or permit any of their respective Affiliates to take any action that would reasonably be expected to prevent, materially delay or materially impede the consummation of the transactions contemplated by this Agreement;

(ii) Parent and the Company shall promptly provide, or cause to be provided, to each and every federal, state, or local court or Governmental Entity with jurisdiction over enforcement of any applicable Antitrust Law, such information and documents that are necessary, proper or advisable to permit consummation of the transactions contemplated by this Agreement;

(iii) Parent shall promptly provide, or use its reasonable best efforts to cause to be provided, to each and every Gaming Authority such information and documents that are necessary, proper or advisable to obtain the Gaming Licenses, and to the extent any Gaming Authority requests information or documentary material from Parent or its Affiliates, including supporting, supplemental, or additional documentation from any Gaming Authority, then Parent shall in good faith provide, or cause to be provided, as soon as reasonably practicable and after consultation with the Company, information and documentary material that are complete and responsive in all material respects to such request; and

(iv) Parent and the Company shall use their reasonable best efforts to resolve, avoid or eliminate impediments or objections that may be asserted by such Governmental Entity with respect to the transactions contemplated by this Agreement, and avoid the entry or enactment of any permanent, preliminary or temporary injunction or other order, decree, decision, determination, judgment, investigation or Law that would materially delay, restrain, prevent, enjoin or otherwise prohibit consummation of the transactions contemplated by this Agreement prior to the Termination Date.

(v) Notwithstanding the foregoing, nothing in this Section 6.5 or otherwise in this Agreement shall require Parent, the Company or any of their respective Affiliates to (i) litigate or contest any administrative or judicial action or proceeding or any decree, judgment, injunction or other order, whether temporary, preliminary or permanent that would restrain, prevent, enjoin or otherwise prohibit consummation of the transactions contemplated by this Agreement prior to the Termination Date, (ii) propose, negotiate, commit to and effect, by consent decree, hold separate orders or otherwise, the sale, divestiture, disposition, license of any assets, properties, businesses, products, product lines, rights, or services of Parent, Parent's Subsidiaries or Affiliates, the Company, or the Company's Subsidiaries, or any interest or interests therein, or (iii) otherwise take or commit to take actions that after the Closing Date would materially limit Parent's freedom of action with respect to, or its or their ability to retain,

6.6. Access and Reports.

(a) Subject to applicable Law, upon reasonable notice, the Company shall (and shall cause its Subsidiaries to) afford to the officers and other authorized Representatives of Parent, reasonable access, during normal business hours throughout the period prior to the Effective Time, to its employees, properties, books, contracts, personnel files and records and, during such period, the Company shall (and shall cause its Subsidiaries to) furnish to Parent all information concerning its business, properties and personnel as may reasonably be requested; provided, that no investigation or provision of information pursuant to this Section 6.6 shall affect or be deemed to modify any representation or warranty made by the Company herein; provided, further, that notwithstanding the investigation or provision of information by any party, no party shall be deemed to make any representation or warranty except as expressly set forth in this Agreement; and provided, further, that in no event shall Parent be permitted to conduct any sampling of soil, sediment, groundwater, surface water, air or building materials at any real property owned or leased by the Company or any of its Subsidiaries prior to the Effective Time without the prior written consent of the Company. Nothing in this Section 6.6 shall require the Company to provide any access, or to disclose any information (i) if providing such access or disclosing such information would violate applicable Law (including antitrust and privacy Laws) (ii) if such information is protected by attorney-client privilege to the extent such privilege cannot be protected by the Company through exercise of its reasonable efforts or (iii) if such information is required to be kept confidential by reason of Contracts with third parties entered into prior to the date hereof. All such information shall be governed by the terms of the Confidentiality Agreement.

(b) Prior to the Effective Time, with respect to the information disclosed pursuant to this Section 6.6, Parent shall comply and shall use its reasonable best efforts to cause its Representatives to comply with all of its obligations under the Confidentiality Agreement. In any event, Parent shall be responsible for any breach thereof by its Representatives.

(c) The Company shall give prompt written notice to Parent, and Parent shall give prompt written notice to the Company, (i) of any notice or other communication received by such party from any Governmental Entity in connection with the transactions contemplated by this Agreement or from any Person alleging that the consent of such Person is or may be required in connection with the transactions contemplated by this Agreement, if the subject matter of such communication or the failure of such party to obtain such consent could be material to the Company, the Surviving Corporation or Parent, (ii) of any actions, suits, claims, investigations or proceedings commenced or, to such party's knowledge, threatened against, relating to or otherwise affecting such party or any of its Subsidiaries which relate to the transactions contemplated by this Agreement, and (iii) if such party becomes aware of any facts or circumstances that such party believes do, or with the passage of time are reasonably likely to, constitute a material breach of this Agreement by the other party.

6.7. Publicity. The initial press release regarding the Merger shall be a joint press release. Thereafter, the parties will consult with each other and will mutually agree upon any press releases or public announcements pertaining to this Agreement or the transactions contemplated hereby and shall not issue any such press releases or make any such public announcements prior to such consultation and agreement, except as may be required by applicable Law or by obligations pursuant to any listing agreement with any national securities

exchange. Notwithstanding the foregoing, the Company and Parent may make any public statement in response to questions by the press, analysts, investors or those attending industry conferences or financial analysts conference calls, so long as any such statements are not inconsistent with, and do not provide material information not otherwise disclosed in, previous press releases, public disclosures or public statements made jointly by the Company and Parent or made by one party and reviewed by the other and do not reveal non-public information regarding the transactions contemplated by this Agreement.

6.8. Employee Benefits

(a) From the Effective Time and continuing through the first anniversary of the Effective Time, Parent shall provide, or shall cause the Surviving Corporation to provide, to each Company Employee as of immediately prior to the Effective Time (other than any employees covered by a collective bargaining agreement or other Contract or work rule or practice with any labor union, labor organization or works council), to the extent the Company Employee remains employed by the Surviving Corporation, (i) a base salary or regular hourly wage which is no less than the base salary or regular hourly wage provided to such Company Employee by the Company and its Subsidiaries immediately prior to the Effective Time and (ii) other employee benefits that are comparable, in the aggregate, to those provided to such Company Employee by the Company and its Subsidiaries immediately prior to the Effective Time. For the avoidance of doubt, this Section 6.8(a) shall not prohibit transitioning Company Employees to employee benefit plans maintained by Parent provided that the obligations in clause (ii) above are satisfied by such plans.

(b) Parent will, or will cause the Surviving Corporation to, cause any of its employee benefit plans in which a Company Employee is entitled to participate in to take into account for purposes of eligibility, vesting and level of benefits (other than for benefit accruals under defined benefit pension plans), service by such Company Employee with the Company as if such service were with Parent, to the same extent such service was credited under a comparable plan of the Company (except to the extent it would result in a duplication of benefits).

(c) To the extent permitted under applicable Law, with respect to any employee benefit plans of Parent or its Subsidiaries maintained for the benefit of the employees, Parent will cause the Surviving Corporation and its Subsidiaries in respect of Company Employees to use their reasonable efforts to (i) cause there to be waived or waive any pre-existing condition exclusion and actively-at-work requirements and similar limitations, eligibility waiting periods and evidence of insurability and (ii) give effect, in determining any deductible, co-insurance and maximum out-of-pocket limitations, to amounts paid by such Company Employees during the calendar year in which Effective Time occurs under similar plans maintained by the Company and its Subsidiaries.

(d) To the extent that any payment made or to be made (or any amount or other benefit provided or to be provided) with respect to, or which could arise as a result of or in connection with, this Agreement, the Merger or the other transactions contemplated hereby, whether alone or together

(within the meaning of Section 280G(b)(1) of the Code), the Company will: (i) as promptly as reasonably practicable after the date hereof (and in any event no later than 10 Business Days prior to the expected Closing Date), disclose its calculations with respect to all such payments, amounts and benefits to Parent, along with all assumptions used to make those calculations and all data necessary for Parent to confirm the accuracy of those calculations; (ii) except to the extent any such payment, amount or benefit is, by its existing terms, conditioned on the receipt of stockholder approval, not more than seven days prior to the Closing Date, seek and obtain the effective and enforceable consent of each recipient of any such payment, amount or benefit that would otherwise be due and owing, unconditionally waiving such payment, amount or benefit such that such payment, amount or benefit will not be due and owing, paid or retained, absent the stockholder approval of such payments, amounts and benefits in accordance with the requirements of Section 280G(b)(5) of the Code and the applicable treasury regulations thereunder; and (iii) promptly following the execution of all unconditional waivers required by the immediately preceding clause (ii) (and, regardless of whether any such unconditional waivers are required, in no event later than two days prior to the Closing Date), cause all such payments, amounts and benefits to be adequately disclosed to, and obtain the approval of all such payments, amounts and benefits by, all Persons in accordance with the requirements of Section 280G(b)(5) of the Code and the applicable treasury regulations thereunder, in all cases in a manner reasonably satisfactory to Parent. Parent will have the right, and the Company will provide Parent with not less than three Business Days, to review and approve (A) any waivers required by the immediately preceding clause (ii) before such waivers are executed and (B) any disclosure and related solicitation materials required by the immediately preceding clause (iii) before such disclosure and solicitation occur.

(e) Without limiting the obligations of Parent and the Surviving Corporation under Section 4.3, no provision of this Agreement is intended to, or does, (i) prohibit the Surviving Corporation or its Affiliates from amending or terminating any Benefit Plan in accordance with its terms and applicable Law, (ii) require the Surviving Corporation to keep any person employed for any period of time, or (iii) constitute the establishment or adoption of, or amendment to, any Benefit Plan, and no person participating in any such Benefit Plan maintained by either the Company or Parent shall have any claim or cause of action, under ERISA or otherwise, in respect of any provisions of this Agreement as it relates to any such Benefit Plan or otherwise. Notwithstanding anything herein to the contrary, nothing in this Section 6.8 is intended to, or does, confer upon any Person (including any current or former Company Employee or any other current or former service provider of Parent, the Company or any of their respective Subsidiaries or Affiliates) any rights of any nature whatsoever, and no such Person is an intended third-party beneficiary of any portion of this Section 6.8.

6.9. Expenses. Except as otherwise expressly provided herein, whether or not the Merger is consummated, all costs and expenses incurred in connection with this Agreement and the Merger and the other transactions contemplated by this Agreement shall be paid by the party incurring such expense, except (a) Parent and the Company shall each bear 50% of the expenses incurred by the Company in connection with the filing fees for the Information Statement and any Taxes or fees governed by Section 6.15 and (b) Parent shall pay all filing fees payable under the HSR Act.

6.10. Takeover Statutes. If any Takeover Statute is or may become applicable to the Merger or the other transactions contemplated by this Agreement, the Company and the Company Board shall grant such approvals and take such actions as are necessary so that such transactions may be consummated as promptly as practicable on the terms contemplated by this Agreement and otherwise act to eliminate or minimize the effects of such statute or regulation on such transactions.

6.11. Parent Vote and Merger Sub.

(a) Immediately after the date hereof, Parent shall vote (or consent with respect to) or cause to be voted (or a consent to be given with respect to) all of the shares of common stock of Merger Sub in favor of the adoption and approval of this Agreement and the transactions contemplated hereby at a meeting of stockholders of Merger Sub at which this Agreement shall be submitted for adoption and approval and at all adjournments or postponements thereof (or by any action by written consent of the sole stockholder of Merger Sub in lieu of a meeting)

(b) Parent will take all action necessary (i) to cause Merger Sub to perform its obligations under this Agreement to consummate the Merger on the terms and conditions set forth in this Agreement and (ii) to ensure that, prior to the Effective Time, Merger Sub shall not conduct any business or make any investments other than as specifically contemplated by this Agreement. Parent shall be responsible for any failure of Merger Sub to comply with any representation, warranty, covenant or other provision required to be performed on or prior to the Closing under this Agreement.

6.12. Rule 16b-3. Prior to the Effective Time, the Company shall take such steps as may be reasonably required to cause dispositions of Company equity securities (including derivative securities) pursuant to the transactions contemplated hereby by each individual who is a director or officer of the Company to be exempt under Rule 16b-3 promulgated under the Exchange Act.

6.13. Transaction Litigation. In the event that any stockholder litigation related to this Agreement, the Merger or the other transactions contemplated by this Agreement is brought against the Company and/or the members of the Company Board after the date of this Agreement and prior to the Effective Time (“Transaction Litigation”), the Company shall promptly notify Parent of any such Transaction Litigation and shall keep Parent reasonably informed with respect to the status thereof. The Company shall give Parent the opportunity to participate, at its sole cost and expense, in the defense or settlement of any Transaction Litigation in accordance with the terms of a mutually agreed upon joint defense agreement. The Company may not enter into any settlement agreement in respect of any Transaction Litigation that includes terms that would impose any restriction on the Company’s operations following the Closing without Parent’s prior written consent (not to be unreasonably withheld, conditioned or delayed).

6.14. Director and Officer Liability.

(a) From and after the Effective Time, the Surviving Corporation agrees that it will, and Parent agrees that it will cause the Surviving Corporation to, indemnify and hold harmless, to the fullest extent permitted under applicable Law (and also to advance expenses as incurred to the fullest extent permitted under applicable Law, provided that the Person to whom expenses are advanced provides an undertaking to repay such advances if it is ultimately determined that such Person is not entitled to indemnification), each present and former director and officer of the Company and its Subsidiaries (collectively, the “Indemnified Parties”) against any costs or expenses (including reasonable attorneys’ fees), judgments, fines, losses, claims, damages or liabilities incurred in connection with any claim, action, suit, proceeding or investigation, whether civil, criminal, administrative or investigative, arising out of or related to such Indemnified Parties’ service as a director or officer of the Company or its Subsidiaries or services performed by such Persons at the request of the Company or its Subsidiaries at or prior to the Effective Time, whether asserted or claimed prior to, at or after the Effective Time, including the transactions contemplated by this Agreement.

(b) Prior to the Effective Time, the Company shall obtain and fully pay the premium for the extension of the directors’ and officers’ liability coverage of the Company’s existing directors’ and officers’ insurance policies for a claims reporting or discovery period of six years from and after the Effective Time from an insurance carrier with the same or better credit rating as the Company’s current insurance carrier with respect to directors’ and officers’ liability insurance or otherwise reasonably acceptable to the Company (collectively, “D&O Insurance”) with terms, conditions, retentions and limits of liability that are at least as favorable in the aggregate as the Company’s existing policies with respect to any actual or alleged error, misstatement, misleading statement, act, omission, neglect, breach of duty or any matter claimed against a director or officer of the Company or any of its Subsidiaries by reason of him or her serving in such capacity that existed or occurred at or prior to the Effective Time (including in connection with this Agreement or the transactions or actions contemplated hereby). If the Company for any reason fails to obtain such “tail” insurance policies as of the Effective Time, the Surviving Corporation shall, and Parent shall cause the Surviving Corporation to, continue to maintain in effect for a period of at least six years from and after the Effective Time the D&O Insurance in place as of the date hereof with terms, conditions, retentions and limits of liability that are at least as favorable in the aggregate as provided in the Company’s existing policies as of the date hereof, or the Surviving Corporation shall, and Parent shall cause the Surviving Corporation to, use reasonable best efforts to purchase comparable D&O Insurance for such six-year period with terms, conditions, retentions and limits of liability that are at least as favorable in the aggregate as provided in the Company’s existing policies as of the date hereof; provided, however, that in no event shall Parent or the Surviving Corporation be required to expend for such policies pursuant to this sentence an annual premium amount in excess of 200% of the annual premiums currently paid by the Company for such insurance; and provided, further, that if the annual premiums of such insurance coverage exceed such amount, the Surviving Corporation shall obtain a policy with the greatest coverage available for a cost not exceeding such amount. To the extent the Company or any of its Subsidiaries pay any premiums with respect to such “tail” insurance policies prior to 12:00 midnight Las Vegas time on the Closing Date, the amount so paid shall be added to the sum of the Company’s Cash and Cash Equivalents for purposes of the calculations pursuant to Section 4.1(b).

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(c) If Parent or the Surviving Corporation or any of their respective successors or assigns shall (i) consolidate with or merge into any other corporation or entity and shall not be the continuing or surviving corporation or entity of such consolidation or merger or (ii) transfer all or substantially all of its properties and assets to any individual, corporation or other entity, then, and in each such case, proper provisions shall be made so that the successors and assigns of Parent or the Surviving Corporation shall assume all of the obligations set forth in this Section 6.14.

(d) The provisions of this Section 6.14 are intended to be for the benefit of, and shall be enforceable by, each of the Indemnified Parties.

(e) The rights of the Indemnified Parties under this Section 6.14 shall be in addition to any rights such Indemnified Parties may have under the certificate of incorporation, certificate of formation or bylaws of the Company or any of its Subsidiaries, or under any applicable Contracts or Laws. All rights to indemnification and exculpation from liabilities for acts or omissions occurring at or prior to the Effective Time and rights to advancement of expenses relating thereto now existing in favor of any Indemnified Party as provided in the certificate of incorporation or bylaws of the Company or any indemnification agreement between such Indemnified Party and the Company or any of its Subsidiaries, in each case as in effect on the date of this Agreement, shall survive the Merger and shall not be amended, repealed or otherwise modified in any manner that would adversely affect any right thereunder of any such Indemnified Party.

6.15. **Transfer Taxes.** The Company and Parent agree to share equally any and all transfer, documentary, sales, use, stamp, registration and other such similar Taxes and fees (including penalties and interest) incurred in connection with the transactions contemplated by this Agreement.

6.16. **No Intermediary Transaction Tax Shelter.** Parent shall not take any action with respect to the Company subsequent to the Closing that would cause the transactions contemplated hereby to constitute part of a transaction that is the same as, or substantially similar to, the “Intermediary Transaction Tax Shelter” described in Internal Revenue Service Notices 2001-16 and 2008-111.

6.17. **Stockholder Representative.**

(a) The Stockholder Representative shall have the authority, for and on behalf of holders of Shares (except for the holders, if any, of Dissenting Shares), to take such actions and exercise such discretion as are required of the Stockholder Representative pursuant to the terms of this Agreement or the Escrow Agreement, and any such actions shall be binding on each such holder and shall include the following: (i) to receive, hold and deliver to Parent and the Surviving Corporation Certificates and any other documents relating thereto on behalf of such holder; (ii) to give and accept communications and notices on behalf of such holder; (iii) to defend, negotiate, agree to, enter into settlements and compromises of, and comply with orders and awards of courts with respect to, claims against such holder; (iv) to defend, negotiate, agree to, enter into settlements and compromises of, and comply with orders and awards of courts with respect to, any claims or disputes related to this Agreement or the Escrow Agreement on behalf

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of such holder; (v) to amend, supplement, change or waive any provision hereof, subject to compliance with the terms of this Agreement; and (vi) to take any and all actions necessary or appropriate in the sole discretion of the Stockholder Representative to accomplish any of the foregoing. As the representative of such holders, the Stockholder Representative shall act as agent for each such holder and shall have authority to bind each such holder in accordance with the terms of this Agreement and the Escrow Agreement, and Parent and Merger Sub may rely on such appointment and authority. The Stockholder Representative shall be entitled to reimbursement from such holders of any and all fees, expenses and costs incurred in the performance of such Stockholder Representative’s duties hereunder.

(b) The Stockholder Representative shall not be liable to the holders of Shares for any act done or omitted to be taken as Stockholder Representative except expressly as set forth herein. The Persons who immediately prior to the Effective Time held Shares and who received, or are entitled to receive, the Merger Consideration shall, in proportion to the number of Shares of Common Stock held as compared to the total number of such Shares of Common Stock outstanding (including in each such case, the number of Shares of Common Stock into which each Share of Preferred Stock held by such holder is convertible immediately prior to the Effective Time), indemnify and hold harmless the Stockholder Representative and its partners, stockholders, affiliates, directors, officers, fiduciaries, employees and agents of each of the foregoing (each, a “Representative Indemnified Party”) from and against all losses, liabilities, claims or expenses incurred or suffered by the Representative Indemnified Parties as a result of, or arising out of, or relating to any and all actions taken or omitted to be taken by the Stockholder Representative under this Agreement or the Escrow Agreement or in connection with the incurrence, payment, discharge or settlement of any of the obligations of such holders, except for any such losses, liabilities, claims or expenses that arise on account of the Stockholder Representative’s gross negligence or willful misconduct as determined by a court of competent jurisdiction in a final adjudication. None of the Representative Indemnified Parties shall be liable to any Person who immediately prior to the Effective Time held Shares in respect of such arrangements or actions or omissions in connection therewith, except to the extent that such acts or omissions constitute gross negligence or willful misconduct.

(c) A decision, act, consent or instruction of the Stockholder Representative under or relating to this Agreement shall constitute a decision for all Persons who immediately prior to the Effective Time held Shares, and shall be final, binding and conclusive upon each such Person, and Parent and Merger Sub may rely upon any such decision, act, consent or instruction of such Stockholder Representative as being the decision, act, consent or instruction of each such Person. Parent and Merger Sub are hereby relieved from any liability to any Person for any acts done by them in accordance with such decision, act, consent or instruction of the Stockholder Representative.

(d) If Trilliant Gaming Nevada Inc. becomes unable to serve as Stockholder Representative, such other Person or Persons may be designated by the holders of a majority of the Shares outstanding immediately prior to the Effective Time (including the Shares of Preferred Stock on an as-converted to Common Stock basis), and such Person or Persons shall succeed as the Stockholder Representative.

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6.18. **Certain Notifications.** From the date of this Agreement until the Closing, Parent and the Company shall promptly notify each other in writing, as soon as practical after it becomes known to such party, of any fact, circumstance, event or action which will result in, or would reasonably be expected to result in, the failure of Parent or the Company to timely satisfy any of the closing conditions specified in Article VII hereof. Nothing contained in this Section 6.18 shall prevent Parent or the Company from taking any action to cure any of the foregoing. No notice given pursuant to this Section 6.18 shall have any effect on the representations, warranties, covenants or agreements contained in this Agreement for purposes of determining satisfaction of any condition contained herein.

6.19. **Indebtedness.**

(a) Prior to the Effective Time, the Company shall obtain customary debt payoff letters and related ancillary documents in respect of the payment in full of all amounts due under the Company Credit Facility, and providing for the release of all Liens under and the termination of the Company Credit Facility and all related Contracts to which the Company or any of its Subsidiaries is a party, including guarantees conditioned solely upon payment of such amounts (collectively, the “Debt Payoff Documents”), and shall deliver true copies thereof to Parent on or prior to the Closing.

(b) The Company shall, and shall cause its Subsidiaries to, use commercially reasonable efforts to cooperate with Parent or Merger Sub as reasonably requested by Parent in connection with obtaining any debt financing of Parent or its Subsidiaries on or prior to the Effective Time, including commercially reasonable efforts to furnish financial and other pertinent information of the Company necessary to show the pro forma impact of the transactions contemplated by this Agreement on Parent and its Subsidiaries and cooperate with the creation and perfection of pledge and security instruments effective as of the Effective Time; provided, that the Company shall be reimbursed for any reasonable and documented out-of-pocket costs incurred by the Company or its Subsidiaries in connection with such cooperation, and to the extent any such costs and expenses have not been paid prior to the Closing, all of such costs and expenses shall be excluded from current Liabilities for purposes of determining Net Working Capital.

6.20. **Tax Matters.** Without the prior written consent of Parent, neither the Company nor any of its Subsidiaries shall make or change any election, change an annual accounting period, adopt or change any accounting method, file any amended Tax Return, enter into any closing agreement, settle any Tax claim or assessment relating to the Company or any of its Subsidiaries, surrender any right to claim a refund of Taxes, consent to any extension or waiver of the limitation period applicable to any Tax claim or assessment relating to the Company or any of its Subsidiaries, or take any other similar action relating to the filing of any Tax Return or the payment of any Tax, if such election, adoption, change, amendment, agreement, settlement, surrender, consent or other action would have the effect of increasing the Tax liability of the Company or any of its Subsidiaries for any period ending after the Closing Date or decreasing any Tax attribute of the Company or any of its Subsidiaries existing on the Closing Date.

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## ARTICLE VII

### Conditions

7.1. **Conditions to Each Party’s Obligation to Effect the Merger.** The respective obligation of each party to effect the Merger is subject to the satisfaction or waiver at or prior to the Closing of each of the following conditions:

(a) Stockholder Approval. The Company and Parent shall have received duly executed copies of the Merger Consent.

(b) Antitrust. The waiting period (including any extension thereof) applicable to the consummation of the Merger under the HSR Act shall have expired or been earlier terminated.

(c) Requisite Gaming Approvals. All Requisite Gaming Approvals shall have been duly obtained and shall be in full force and effect. For purposes hereof, “Requisite Gaming Approvals” means only those Gaming Licenses from the Nevada Gaming Commission as are necessary in order to

allow the Company and its Subsidiaries, upon the consummation of the Merger, to continue their operation solely of such Subsidiaries' respective gaming activities (which shall not be considered to include any permits, approvals or licenses relating to the service of food or beverages or any other non-gaming activities, regardless of whether any such activities are conducted within the same physical space as gaming activities or in conjunction with such gaming activities).

(d) Orders. No court or other Governmental Entity of competent jurisdiction of the United States or any state thereof shall have enacted, issued, promulgated, enforced or entered any order, decree, stay or injunction (whether temporary, preliminary or permanent) or statute, rule or regulation that is in effect and restrains, enjoins or otherwise prohibits consummation of, or that makes it illegal for any party hereto to consummate, the Merger (collectively, an "Order").

(e) Escrow Agreement. The Escrow Agreement shall have been entered into by each of the parties thereto.

(f) Information Statement. The Information Statement shall have been mailed to the Company's stockholders and twenty days shall have elapsed since the date the Company sent or gave the Information Statement to its stockholders in accordance with clause (b) of Rule 14c-2 promulgated under the Exchange Act.

7.2. Conditions to Obligations of Parent and Merger Sub. The obligations of Parent and Merger Sub to effect the Merger are also subject to the satisfaction or waiver by Parent at or prior to the Closing of the following conditions:

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(a) Representations and Warranties.

(i) the representations and warranties of the Company set forth in the second sentence of Section 5.1(f) shall be true and correct in all respects as of the date of this Agreement;

(ii) the representations and warranties of the Company set forth in Sections 5.1(a)(i), 5.1(b)(i), 5.1(c), 5.1(q) and the second sentence of Section 5.1(o)(i), shall be true and correct (disregarding all materiality and Company Material Adverse Effect qualifications contained in such representations and warranties) in all material respects as of the date of this Agreement and on and as of the Closing Date with the same force and effect as if made on and as of such date (except for those representations and warranties that address matters only as of a particular date, which representations and warranties shall have been true and correct as of such particular date);

(iii) the representations and warranties of the Company set forth in this Agreement, excluding the representations and warranties identified in the foregoing clauses (i) and (ii), shall be true and correct (disregarding all materiality and Company Material Adverse Effect qualifications contained in such representations and warranties) on and as of the Closing Date with the same force and effect as if made on and as of such date (except for those such representations and warranties that address matters only as of a particular date, which representations and warranties shall have been true and correct on and as of such particular date) except for any failures to be so true and correct which would not, individually or in the aggregate, reasonably be expected to have a Company Material Adverse Effect; and

(iv) Parent shall have received a certificate signed on behalf of the Company by the chief executive officer or chief financial officer of the Company to such effect.

(b) Performance of Obligations of the Company. The Company shall have performed in all material respects all obligations required to be performed by it under this Agreement at or prior to the Closing Date, and Parent shall have received a certificate signed on behalf of the Company by the chief executive officer or chief financial officer of the Company to such effect.

(c) No Material Adverse Effect. Since the date of this Agreement, there has not been any change, event, occurrence, condition, development or effect that, taken together with all other changes, events, occurrences, conditions, developments and effects, has had, or would reasonably be expected to have, a Company Material Adverse Effect.

(d) Debt Payoff Documents. The Debt Payoff Documents shall have been obtained and delivered to Parent.

(e) Additional Gaming Approvals. The approvals from the relevant Gaming Authorities required to be obtained by Parent and its Affiliates in connection with the Merger and the Financing shall have been duly obtained and shall be in full force and effect.

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(f) Material Agreements. The agreements set forth in Section 7.2(f) of the Company Disclosure Schedule shall not have been terminated as set forth in such Section 7.2(f) of the Company Disclosure Schedule.

7.3. Conditions to Obligation of the Company. The obligation of the Company to effect the Merger is also subject to the satisfaction or waiver by the Company at or prior to the Closing of the following conditions:

(a) Representations and Warranties. The representations and warranties of Parent and Merger Sub set forth in this Agreement shall be true and correct as of the date of this Agreement and on and as of the Closing Date with the same force and effect as if made on and as of such date (except for those representations and warranties that address matters only as of a particular date, which representations and warranties shall have been true and correct on and as of such particular date) except for any failures to be so true and correct that would not, individually or in the aggregate, reasonably be expected to prevent, materially delay or materially impede the ability of Parent and Merger Sub to consummate the transactions contemplated by this Agreement, and the Company shall have received a certificate signed on behalf of Parent and Merger Sub by a senior executive officer of Parent to such effect.

(b) Performance of Obligations of Parent and Merger Sub. Each of Parent and Merger Sub shall have performed in all material respects all obligations required to be performed by it under this Agreement at or prior to the Closing Date, and the Company shall have received a certificate



signed on behalf of Parent and Merger Sub by a senior executive officer of Parent to such effect.

7.4. Frustration of Closing Conditions. None of the Company, Parent or Merger Sub may rely on the failure of any condition set forth in Section 7.1, 7.2 or 7.3, as the case may be, to be satisfied if such failure was primarily caused by such party's failure to perform its obligations hereunder.

## ARTICLE VIII

### Termination

8.1. Termination by Mutual Consent. This Agreement may be terminated and the Merger may be abandoned at any time prior to the Effective Time, whether before or after the time the Requisite Stockholder Approval is obtained, by mutual written consent of the Company and Parent.

8.2. Termination by Either Parent or the Company. This Agreement may be terminated and the Merger may be abandoned at any time prior to the Effective Time by action of either the board of directors of Parent or the Company Board if:

(a) the Merger shall not have been consummated by January 28, 2016 (as may be extended in accordance with this Section 8.2(a), the "Termination Date") whether such date is before or after the time the Requisite Stockholder Approval is obtained; provided, that if all of the conditions to Closing shall have been satisfied, shall be capable of being satisfied at such

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time or would be capable of being satisfied at such time but for the fact that the condition set forth in Section 7.2(e) is not satisfied, the Termination Date may be extended by Parent or the Company from time to time by written notice to the other to a date not later than April 28, 2016; and provided, further, that the right to terminate this Agreement pursuant to this Section 8.2(a) shall not be available to any party if the failure of the Merger to have been consummated on or before the Termination Date was primarily due to the failure of the party seeking to terminate this Agreement to perform any of its obligations under this Agreement;

(b) any Order permanently restraining, enjoining or otherwise prohibiting consummation of the Merger shall become final and non-appealable (whether before or after the time the Requisite Stockholder Approval is obtained); provided, that the right to terminate this Agreement pursuant to this Section 8.2(b) shall not be available to any party if the enactment, issuance, promulgation, enforcement or entry of such Order, or the Order becoming final and non-appealable, was primarily due to the failure of such party to perform any of its obligations under this Agreement; or

(c) if the Merger Consent, duly executed by the Listed Stockholders, shall not have been delivered to Parent and the Company prior to 9:00 a.m., New York City time, on the date immediately following the date of this Agreement.

8.3. Termination by the Company. This Agreement may be terminated and the Merger may be abandoned by the Company by action of the Company Board at any time prior to the Effective Time, whether such date is before or after the time the Requisite Stockholder Approval is obtained, if there has been a breach of any representation, warranty, covenant or agreement made by Parent or Merger Sub in this Agreement, which breach (a) would give rise to the failure of a condition set forth in Section 7.3(a) or 7.3(b) and (b) (i) by its nature or timing cannot be cured by Parent or Merger Sub by the Termination Date or (ii) if capable of being cured, shall not have been cured by the earlier of (A) the date 30 calendar days following receipt of written notice from the Company of such breach and (B) the Termination Date; provided that, the Company shall not have the right to terminate this Agreement pursuant to this Section 8.3 if it is then in material breach of any representation, warranties, covenants or other agreements hereunder that would result in the closing conditions set forth in Section 7.2(a) or Section 7.2(b) not being satisfied.

8.4. Termination by Parent. This Agreement may be terminated and the Merger may be abandoned by action of the board of directors of Parent, at any time prior to the Effective Time, whether such date is before or after the time the Requisite Stockholder Approval is obtained, if there has been a breach of any representation, warranty, covenant or agreement made by the Company in this Agreement, which breach (a) would give rise to the failure of a condition set forth in Section 7.2(a) or 7.2(b) and (b) (i) by its nature or timing cannot be cured by the Company by the Termination Date or (ii) if capable of being cured, shall not have been cured by the earlier of (A) the date 30 calendar days following receipt of written notice from the Parent of such breach and (B) the Termination Date; provided that, Parent shall not have the right to terminate this Agreement pursuant to this Section 8.4 if Parent or Merger Sub is then in material breach of any representation, warranties, covenants or other agreements hereunder that would result in the closing conditions set forth in Section 7.3(a) or Section 7.3(b) not being satisfied.

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8.5. Effect of Termination and Abandonment.

(a) In the event of termination of this Agreement in accordance with its terms and the abandonment of the Merger pursuant to this Article VIII, this Agreement shall become void and of no effect with no liability to any Person on the part of any party hereto (or of any of its Representatives or Affiliates); provided, however, that (i) no such termination shall relieve or release any party from any liability or damages arising from (A) any failure to consummate the Merger and the other transactions contemplated hereby if required pursuant to this Agreement, or (B) fraud or an intentional and material breach of any provision of this Agreement prior to such termination, and in each case the aggrieved party will be entitled to all rights and remedies available at law or in equity, and (ii) the provisions set forth in Section 6.9, the last sentence of Section 6.6(a), this Section 8.5, Article IX (and the definitions of all defined terms appearing in the foregoing sections) and the Confidentiality Agreement shall survive the termination of this Agreement. For purposes of this Agreement, "intentional and material breach" means a material breach of this Agreement that is a consequence of an act (or failure to act) by the breaching party with the knowledge that the taking of (or the failure to take) such act would, or would be reasonably expected to, cause a breach of this Agreement.

(b) In the event of termination of this Agreement by Parent or the Company pursuant to Section 8.2(a) and, at the time of such termination, all of the conditions set forth in Section 7.1 (other than Section 7.1(c)) and Section 7.2 (other than Section 7.2(e)) shall have been satisfied or shall be capable of being satisfied at such time but the conditions set forth in Section 7.1(c) or Section 7.2(e) have not been satisfied, Parent shall pay the Company, (i) concurrently with a termination by Parent or (ii) as promptly as reasonably practicable (and, in any event, within three (3) Business Days)

following a termination by the Company, \$21,000,000 (the "Break-Up Fee"), by wire transfer of immediately available funds to an account designated by the Company.

(c) In the event of termination of this Agreement by either Parent or the Company pursuant to Section 8.2(b) if such Order is related to Gaming Laws, Parent shall pay the Company, (i) concurrently with a termination by Parent or (ii) as promptly as reasonably practicable (and in any event, within three (3) Business Days) following a termination by the Company, the Break-Up Fee, by wire transfer of immediately available funds to an account designated by the Company.

(d) In the event of termination of this Agreement for (i) any reason other than by Parent in accordance with Section 8.4, the parties shall instruct the Escrow Agent to promptly release and pay the balance of the Section 6.2 Escrow Fund to the Company or (ii) by Parent in accordance with Section 8.4, the parties shall instruct the Escrow Agent to promptly release and pay the balance of the Section 6.2 Escrow Fund to Parent. For the avoidance of doubt, payment of the Section 6.2 Escrow Fund to the Company in accordance with clause (i) of this Section 8.5(d) shall be in addition to any Break-Up Fee otherwise payable to the Company pursuant to Section 8.5(b) or Section 8.5(c).

(e) Any Break-Up Fee payable by Parent pursuant to Section 8.5(b) or Section 8.5(c), as applicable, and/or any amount released to the Company from the Section 6.2 Escrow Fund pursuant to Section 8.5(d)(i) shall be paid as liquidated damages (and not as a penalty), it

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being agreed among the Parties that (i) the actual damages to the Company in such events are impractical to ascertain and the amount of the Break-Up Fee and the Section 6.2 Escrow Fund are reasonable estimates thereof in the circumstances in which they are payable and (ii) upon payment of the Break-Up Fee and any amount to be released to the Company from the Section 6.2 Escrow Fund pursuant to Section 8.5(d)(i), none of Parent, Merger Sub or any of their respective Representatives shall have any further liability or obligation relating to or arising out of this Agreement or any of the transactions contemplated hereby (or the abandonment or termination thereof) or any matters forming the basis for such termination. In no event shall Parent be obligated to pay the Break-Up Fee on more than one occasion.

## ARTICLE IX

### Miscellaneous and General

9.1. Survival. None of the representations and warranties contained in this Agreement or in any instrument delivered under this Agreement shall survive the Effective Time. This Section 9.1 shall not limit any covenant or agreement of the parties to this Agreement which, by its terms, contemplates performance after the Effective Time.

9.2. Modification or Amendment; Waivers.

(a) Subject to the provisions of applicable Law, at any time prior to the Effective Time, the parties hereto may modify or amend this Agreement, by written agreement executed and delivered by duly authorized officers of the respective parties, whether before or after stockholder approval hereof; provided however, after stockholder approval hereof no amendment shall be made which by Law requires the further approval of such stockholders without such further approval. Notwithstanding anything to the contrary in this Agreement, this sentence of this Section 9.2, Section 9.5(a), Section 9.5(c), the last sentence of Section 9.8, and Section 9.17 may not be amended, modified, waived or terminated in a manner adverse in any respect to the Financing Sources without the prior written consent of the Financing Sources, such consent not to be unreasonably withheld, conditioned or delayed.

(b) No failure or delay by any party in exercising any right, power or privilege hereunder shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The rights and remedies herein provided shall be cumulative and not exclusive of any rights or remedies provided by applicable Law.

9.3. Waiver of Conditions. The conditions to each of the parties' obligations to consummate the Merger are for the sole benefit of such party and may be waived by such party in whole or in part to the extent permitted by applicable Laws.

9.4. Counterparts. This Agreement may be executed in any number of counterparts, each such counterpart being deemed to be an original instrument, and all such counterparts shall together constitute the same agreement. Until and unless each party has received a counterpart hereof signed by the other party hereto, this Agreement shall have no effect and no party shall have any right or obligation hereunder (whether by virtue of any other

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oral or written agreement or other communication). This Agreement may be executed by facsimile or electronic signature and a facsimile or electronic signature shall constitute an original for all purposes.

9.5. GOVERNING LAW AND VENUE; WAIVER OF JURY TRIAL; PROCESS AGENT; REMEDIES.

(a) THE AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF DELAWARE WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAW THAT WOULD RESULT IN THE APPLICATION OF LAWS OF ANY OTHER JURISDICTION.

(b) Each party hereto agrees that it shall bring any action, suit or proceeding in respect of any claim arising out of, related to or based on this Agreement or the transactions contained in or contemplated by this Agreement exclusively in the Court of Chancery of the State of Delaware, or to the extent such Court does not have subject matter jurisdiction, any federal court sitting in the State of Delaware (the "Chosen Courts") and solely in connection with claims arising under, related to or based on this Agreement or the transactions that are the subject of this Agreement (i) irrevocably submits to the exclusive jurisdiction of the Chosen Courts, (ii) waives any objection to laying venue in any such action or proceeding in the Chosen Courts, (iii) waives any objection that the Chosen Courts are an inconvenient forum or do not have jurisdiction over any party hereto and (iv) agrees that service of process upon such party in any such action or proceeding shall be effective if notice is given in accordance with Section 9.6 of this Agreement.

(c) EACH PARTY ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY WHICH MAY ARISE UNDER THIS AGREEMENT IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES, AND THEREFORE EACH SUCH PARTY HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY AND ALL RIGHT SUCH PARTY MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT, OR THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT. EACH PARTY CERTIFIES AND ACKNOWLEDGES THAT (i) 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, (ii) EACH PARTY UNDERSTANDS AND HAS CONSIDERED THE IMPLICATIONS OF THIS WAIVER, (iii) EACH PARTY MAKES THIS WAIVER VOLUNTARILY, AND (iv) EACH PARTY HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 9.5(c).

(d) Remedies. Except as otherwise provided in this Agreement (including as set forth in Section 8.5(e)), any and all remedies herein expressly conferred upon a party will be deemed cumulative with and not exclusive of any other remedy conferred hereby, or by law or equity upon such party, and the exercise by a party of any one remedy will not preclude the exercise of any other remedy. The parties hereto agree that irreparable damage would occur if any provision of this Agreement were not performed in accordance with the terms hereof and

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that the parties shall be entitled, unless this Agreement has been terminated in accordance with Article VIII, to an injunction or injunctions to prevent breaches of this Agreement or to enforce specifically the performance of the terms and provisions hereof in any of the Chosen Courts, in addition to any other remedy to which they are entitled at law or in equity. Each party hereby agrees not to raise any objections to the availability of the equitable remedy of specific performance to prevent or restrain breaches or threatened breaches of this Agreement by such party, and to specifically enforce the terms and provisions of this Agreement to prevent breaches or threatened breaches of, or to enforce compliance with, the covenants and obligations of such party under this Agreement. Any party seeking an injunction or injunctions to prevent breaches of this Agreement and to enforce specifically the terms and provisions of this Agreement shall not be required to provide any bond or other security in connection with any such order or injunction. The parties hereto further agree that (i) by seeking the remedies provided for in this Section 9.5(d), a party shall not in any respect waive its right to seek any other form of relief that may be available to a party under this Agreement (including monetary damages) in the event that the remedies provided for in this Section 9.5(d) are not available or otherwise are not granted, and (ii) nothing set forth in this Section 9.5(d) shall require any party hereto to institute any proceeding for (or limit any party's right to institute any proceeding for) specific performance under this Section 9.5(d) prior or as a condition to exercising any termination right under Article VIII (and/or seeking any other form of relief that may be available to a party under this Agreement (including monetary damages)).

9.6. Notices. Any notice, communication, request, instruction or other document to be given hereunder by any party to the others shall be in writing and delivered personally or sent by registered or certified mail, postage prepaid, by facsimile or overnight courier (provided, that any such notice sent by facsimile shall also be sent by overnight courier):

If to Parent or Merger Sub:

Penn National Gaming, Inc.  
825 Berkshire Boulevard, Suite 200  
Wyomissing, Pennsylvania 19610  
Attention: General Counsel  
Facsimile: (610) 373-4966

with a copy (which shall not constitute notice) to:

Milbank, Tweed, Hadley & McCloy LLP  
28 Liberty Street  
New York, NY 10005  
Attention: Scott W. Golenbock, Esq.  
Facsimile: (212) 822-5181

If to the Company:

Tropicana Las Vegas Hotel and Casino, Inc.  
3801 Las Vegas Boulevard South  
Las Vegas, Nevada 89109

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Attention: Alex Yemenidjian  
Facsimile: (702) 739-2703

with a copy (which shall not constitute notice) to:

Fried, Frank, Harris, Shriver & Jacobson LLP  
One New York Plaza  
New York, NY 10004  
Attention: Christopher Ewan, Esq.  
Facsimile: (212) 859-8000

or to such other persons or addresses as may be designated in writing by the party to receive such notice as provided above. Any notice, request, instruction or other document given as provided above shall be deemed given to the receiving party only upon actual receipt by such receiving party.

9.7. Entire Agreement. This Agreement (including any Annexes hereto), the Company Disclosure Schedule, the Parent Disclosure Schedule, the letter agreement, dated July 22, 2014, as amended, modified or supplemented from time to time, between Parent and the Company (the “Confidentiality Agreement”) and the other documents delivered pursuant hereto (including the Escrow Agreement) constitute the entire agreement, and supersede all other prior agreements, understandings, representations and warranties both written and oral, among the parties, with respect to the subject matter hereof.

9.8. No Third Party Beneficiaries. This Agreement is not intended to, and shall not, confer upon any other Person any rights, benefits or remedies of any nature whatsoever under or by reason of this Agreement, other than (a) with respect to the provisions of Section 6.14 (of which each Indemnified Party is an intended beneficiary following the Effective Time) and (b) the rights of the holders of Shares to receive the Merger Consideration following the Effective Time in accordance with the terms and subject to the conditions of this Agreement and the Escrow Agreement. Except as set forth in this Section 9.8, nothing herein, express or implied, is intended to or shall confer upon any other Person any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement; provided, that nothing in this Section 9.8 shall limit the right of the Company or Parent to seek damages as contemplated by Section 8.5. Notwithstanding anything in this Section 9.8 to the contrary, the parties hereto acknowledge and agree that the Financing Sources shall be express third party beneficiaries of Section 8.5(e), Section 9.2, Section 9.5(a), Section 9.5(c), this Section 9.8 and Section 9.17, and the Financing Parties may enforce such provisions.

9.9. Obligations of Parent and of the Company. Whenever this Agreement requires a Subsidiary of Parent to take any action, such requirement shall be deemed to include an undertaking on the part of Parent to cause such Subsidiary to take such action. Whenever this Agreement requires a Subsidiary of the Company to take any action, such requirement shall be deemed to include an undertaking on the part of the Company to cause such Subsidiary to take such action and, after the Effective Time, on the part of the Surviving Corporation to cause such Subsidiary to take such action.

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9.10. Mutual Drafting. The parties have participated jointly in negotiating and drafting this Agreement. In the event that an ambiguity or a question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the parties, and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any provision of this Agreement.

9.11. Definitions. Each of the terms set forth in Annex A is defined in the Section of this Agreement set forth opposite such term. Any capitalized terms used in any Annex or Schedule but not otherwise defined therein, shall have the meaning as defined in this Agreement.

9.12. Severability. The provisions of this Agreement shall be deemed severable and the invalidity or unenforceability of any provision shall not affect the validity or enforceability of the other provisions hereof. If any provision of this Agreement, or the application thereof to any Person or any circumstance, is invalid or unenforceable, (a) a suitable and equitable provision shall be substituted therefor in order to carry out, so far as may be valid and enforceable, the intent and purpose of such invalid or unenforceable provision and (b) the remainder of this Agreement and the application of such provision to other Persons or circumstances shall not be affected by such invalidity or unenforceability, nor shall such invalidity or unenforceability affect the validity or enforceability of such provision, or the application thereof, in any other jurisdiction.

9.13. Interpretation; Construction.

(a) The table of contents and headings herein are for convenience of reference only, do not constitute part of this Agreement and shall not be deemed to limit or otherwise affect any of the provisions hereof.

(b) Where a reference in this Agreement is made to a Section or Annex, such reference shall be to a Section or Annex, as applicable, of this Agreement unless otherwise indicated. Whenever the words “include,” “includes” or “including” are used in this Agreement, they shall be deemed to be followed by the words “without limitation.” The word “extent” in the phrase “to the extent” shall mean the degree to which a subject or other theory extends and such phrase shall not mean “if.”

(c) Any singular term in this Agreement shall be deemed to include the plural, and any plural term the singular. References in the singular or to “him,” “her,” “it,” “itself,” or other like references, and references in the plural or the feminine or masculine reference, as the case may be, shall also, when the context so requires, be deemed to include the plural or singular, or the masculine or feminine reference, as the case may be.

(d) References to any statute shall be deemed to refer to such statute as amended from time to time and to any rules or regulations promulgated thereunder. References to any agreement or contract are to that agreement or contract as amended, modified or supplemented from time to time in accordance with the terms hereof and thereof. References to any Person include the successors and permitted assigns of that Person. References from or

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through any date mean, unless otherwise specified, from and including or through and including such date, respectively.

(e) References to “days” shall refer to calendar days unless Business Days are specified. If any period expires on a day which is not a Business Day or any event or condition is required by the terms of this Agreement to occur or be fulfilled on a day which is not a Business Day, such period shall expire or such event or condition shall occur or be fulfilled, as the case may be, on the next succeeding Business Day. Any action required to be taken “within” a specified time period following the occurrence of an event shall be required to be taken by no later than 5:00 p.m. Eastern time on the last day of such time period, which shall be calculated starting with the day immediately following the date of the event.

(f) An accounting term not otherwise defined has the meaning assigned to it in accordance with GAAP.

(g) All monetary figures shall be in United States dollars unless otherwise specified.

(h) “made available” means (unless otherwise specified), with respect to a particular document, item or other piece of information, inclusion and availability in the virtual data room hosted by RR Donnelley Venue in connection with the Merger on or prior to 5:00 p.m. New York time on

9.14. Disclosure Schedules. Each party hereto has or may have set forth information in the Company Disclosure Schedule or Parent Disclosure Schedule, as applicable, in a section thereof that corresponds to the Section of this Agreement to which it relates. The fact that any item of information is disclosed in the Company Disclosure Schedule or Parent Disclosure Schedule shall not be construed to mean that such information is required to be disclosed by this Agreement. The mere inclusion of an item by the Company in the Company Disclosure Schedule or by Parent and Merger Sub in the Parent Disclosure Schedule as an exception to (or, as applicable, a disclosure for purposes of) a representation or warranty shall not be deemed an admission that (a) such item represents a material exception or material fact, event or circumstance or that such item has had or would reasonably be expected to have, with respect to the Company, a Company Material Adverse Effect, and with respect to Parent, a material adverse effect, as applicable or (b) such information (or any non-disclosed information of comparable or greater significance) is required to be disclosed by the terms of this Agreement or is material to the business, results of operations or financial condition of the Company or Parent, as applicable.

9.15. Assignment; Binding Effect. Neither this Agreement nor any of the rights, interests or obligations hereunder shall be assigned by any of the parties hereto (whether by operation of Law or otherwise) without the prior written consent of the other parties. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns. Any purported assignment in violation of this Agreement is void.

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9.16. Legal Representation.

(a) Each of the parties to this Agreement acknowledges that Fried, Frank, Harris, Shriver & Jacobson LLP (“Fried Frank”) currently serves as counsel to both (a) the Company and its Subsidiaries and (b) Onex Corporation and its Affiliates (the “Onex Group”), including Trilliant Gaming Nevada Inc. in its capacity as the Stockholder Representative, both in connection with the negotiation, preparation, execution and delivery of this Agreement and the Escrow Agreement and the consummation of the Merger and in connection with other matters. There may come a time, including after consummation of the Merger, when the interests of the Onex Group and the Company or any of its Subsidiaries may no longer be aligned or when, for any reason, the Onex Group, Fried Frank or the Company or any of its Subsidiaries believes that Fried Frank can or should no longer represent both the Onex Group and the Company or any of its Subsidiaries. The parties understand and specifically agree that Fried Frank may withdraw from representing the Company and its Subsidiaries and continue to represent the Onex Group (or any other holder of Shares), even if the interests of the Onex Group (or such other holder of Shares), and the interests of the Company or any of its Subsidiaries are or may be adverse, including in connection with any dispute arising out of or relating to this Agreement or any of the documents or transactions contemplated hereby, and even though Fried Frank may have represented the Company and its Subsidiaries in a matter substantially related to such dispute, and Parent, Merger Sub and the Company hereby consent thereto and waive any conflict of interest arising therefrom.

(b) Each of the parties further agrees that, as to all communications on or prior to the Closing Date among Fried Frank, the Company, any of its Subsidiaries and the Onex Group (or any other holder of Shares), the attorney-client privilege, the expectation of client confidence and all other rights to any evidentiary privilege belong to the Onex Group and shall not pass to or be claimed by the Company or any of its Affiliates. In addition, if the Merger is consummated, (i) the Company and its Subsidiaries shall have no right of access to or control over any of Fried Frank’s records related to the Merger or the other transactions contemplated hereby, which shall become the property of (and be controlled by) the Onex Group and (ii) it would be impracticable to remove from the records (including emails and other electronic files) of the Company and its Subsidiaries any privileged communications with Fried Frank. Accordingly, the Company and its Subsidiaries, Parent and Merger Sub agree not to rely upon such privileged communications that may remain in the records of the Company or its Subsidiaries, and the parties agree that no attorney-client privilege, attorney work product or other privilege or protection is waived or intended to be waived by allowing such material to remain in the files of the Company or its Subsidiaries. Furthermore, in the event of a dispute between the Onex Group and the Company or any of its Subsidiaries arising out of or relating to any matter in which Fried Frank acted for them both, none of the attorney-client privilege, the expectation of client confidence or any other rights to any evidentiary privilege will protect from disclosure to the Onex Group any information or documents developed or shared during the course of Fried Frank’s joint representation of the Onex Group and the Company and its Subsidiaries.

9.17. Certain Lender Agreements. The Company agrees, on behalf of itself and its Affiliates, stockholders and Representatives (collectively, the “Company Related Parties”),

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that the Financing Sources and their Affiliates, stockholders and Representatives and each of their successors and assigns (collectively, the “Financing Parties”) shall be subject to no liability or claims (whether legal or equitable, arising under Contract, tort or otherwise) by the Company Related Parties arising out of or relating to this Agreement, the Financing or the transactions contemplated hereby or in connection with the Financing, or the performance of services by such Financing Parties with respect to the foregoing. Without limiting the foregoing, the Company agrees on behalf of the Company Related Parties that any action brought against any Financing Party shall be brought exclusively in a Federal Court or a New York State court sitting in the City of New York, Borough of Manhattan and the provisions of Section 9.5(c) shall apply to any such action. For purposes of this Agreement, “Financing” means the amendments, modifications and/or supplements to Parent’s existing debt financing contemplated in connection with obtaining the additional financing required to fund the transactions contemplated by this Agreement, and “Financing Sources” means the Persons that have entered into agreements with Parent and its Affiliates in connection with the Financing, and the parties to any joinder agreements, indentures or credit agreements entered pursuant thereto or relating thereto, together with their respective Affiliates, and their respective Affiliates’ Representatives and their respective successors and assigns.

[Signature Page Follows]

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IN WITNESS WHEREOF, this Agreement has been duly executed and delivered by the duly authorized officers of the parties hereto as of the date first written above.

TROPICANA LAS VEGAS HOTEL AND CASINO, INC.

By: /s/ Joanne Beckett  
Name: Joanne Beckett  
Title: Vice President & General Counsel

[Signature Page to Merger Agreement]

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PENN NATIONAL GAMING, INC.

By: /s/ Saul V. Reibstein  
Name: Saul V. Reibstein  
Title: EVP, CFO and Treasurer

[Signature Page to Merger Agreement]

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LV MERGER SUB, INC.

By: /s/ Saul V. Reibstein  
Name: Saul V. Reibstein  
Title: President, Secretary and Treasurer

[Signature Page to Merger Agreement]

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TRILLIANT GAMING NEVADA INC.

By: /s/ Robert M. LeBlanc  
Name: Robert M. LeBlanc  
Title: Authorized Representative

By: /s/ Timothy A.R. Duncanson  
Name: Timothy A.R. Duncanson  
Title: Vice President

[Signature Page to Merger Agreement]

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ANNEX A

DEFINED TERMS

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FIRST AMENDMENT AND INCREMENTAL JOINDER AGREEMENT

This First Amendment and Incremental Joinder Agreement, dated as of April 28, 2015 (this “**Agreement**”), by and among Penn National Gaming, Inc., a Pennsylvania corporation (“**Borrower**”), the Subsidiary Guarantors (as defined in the Amended Credit Agreement referred to below), Bank of America, N.A., as L/C Lender, as Swingline Lender and as administrative agent (in such capacity, “**Administrative Agent**”) for (and on behalf of) the Lenders under the Existing Credit Agreement referred to below and, after giving effect thereto, the Amended Credit Agreement and as collateral agent (in such capacity, “**Collateral Agent**”) for the Secured Parties (as defined under the Existing Credit Agreement and, after giving effect thereto, the Amended Credit Agreement).

**RECITALS:**

**WHEREAS**, reference is hereby made to the Credit Agreement, dated as of October 30, 2013 (the “**Original Closing Date**”) (as it may be amended, restated, replaced, supplemented or otherwise modified and in effect immediately prior to giving effect to the amendments contemplated by this Agreement, the “**Existing Credit Agreement**” and the Existing Credit Agreement as modified by this Agreement, the “**Amended Credit Agreement**”; capitalized terms defined in the Amended Credit Agreement and not otherwise defined herein being used herein as therein defined), among Borrower, the Subsidiary Guarantors, the Lenders party thereto from time to time, Administrative Agent, Collateral Agent and the other parties thereto;

**WHEREAS**, pursuant to Section 2.12 of the Amended Credit Agreement, Borrower will obtain (a) \$133,151,413.07 (as such amount may be adjusted pursuant to Section 4(b) of Article IX hereof) in Incremental Existing Tranche Revolving Commitments (the “**Incremental Revolving Commitments**”) from the Lenders party hereto listed on Schedule B hereto (the “**Incremental Revolving Lenders**”) and (b) \$136,704,449.70 (as such amount may be adjusted pursuant to Section 4(b) of Article IX hereof) in Incremental Term A Loan Commitments (the “**Incremental Term A Loan Commitments**” and, together with the Incremental Revolving Commitments, the “**Incremental Commitments**”) from the Lenders party hereto listed on Schedule A hereto (the “**Incremental Term A Lenders**” and, together with the Incremental Revolving Lenders, the “**Incremental Lenders**”); and

**WHEREAS**, Borrower, the Subsidiary Guarantors, the Required Lenders, Administrative Agent and Collateral Agent will make certain amendments to the Existing Credit Agreement and the other Credit Documents (as defined in the Existing Credit Agreement) as set forth herein, immediately after giving effect to the Incremental Commitments;

**NOW, THEREFORE**, in consideration of the premises and agreements, provisions and covenants herein contained and other good and valuation consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

**ARTICLE I**

**AMENDMENTS TO EXISTING CREDIT DOCUMENTS**

**SECTION 1.**     Consent of Required Lenders; Agreement to Provide Incremental Commitments.

(a) Each Person that executes and delivers a lender agreement in substantially the form attached hereto as Annex I (a “**Consenting Lender Agreement**”), or a lender agreement in substantially the form attached hereto as Annex II (a “**New Lender Agreement**”), as applicable, and in each case agrees in connection therewith to provide Incremental Commitments as further set forth therein and herein shall have irrevocably agreed to commit to provide such Incremental Commitments to the Borrower commencing on the Agreement Effective Date (or such later date as any such Consenting Lender Agreement or New Lender Agreement may be provided pursuant to Section 4(b) of Article IX hereof) in such amounts applicable to such Person as are set forth on Schedules A and B annexed hereto, as applicable.

(b) Each Lender under the Existing Credit Agreement that executes and delivers a Consenting Lender Agreement (a “**Consenting Lender**”), and each Person that executes a New Lender Agreement, thereby irrevocably agrees to the amendments to, and waivers and consents under, the Existing Credit Agreement provided for herein and the other amendments, modifications and/or supplements to the other Credit Documents described herein, with respect to all of such Consenting Lender’s Loans and Commitments (including, upon the First Amendment Effective Date, all Incremental Commitments of such Lender or Person executing a New Lender Agreement). Such agreement shall be irrevocably binding on any subsequent assignees, transferees, participants, successors and assigns with respect to such Loans and Commitments, including Incremental Commitments.

(c) Each Consenting Lender Agreement and New Lender Agreement shall be subject to the terms and conditions of this Agreement and shall be binding upon the Lender party thereto and any successor, participant or assignee of such Lender and may not be revoked or terminated by the Lender party thereto or any such successor, participant or assignee.

**SECTION 2.**     Amended Credit Agreement. After giving effect to the Incremental Commitments, the terms and provisions of the Existing Credit Agreement are hereby amended as set forth on Exhibit A attached hereto such that all of the newly inserted and underscored provisions and any formatting changes reflected therein shall be deemed inserted or made, as applicable, and all of the stricken provisions shall be deemed to be deleted therefrom, immediately and automatically upon the First Amendment Effective Date (as defined below). Schedules and Exhibits to the Credit Agreement shall remain as in effect under the Existing Credit Agreement, except with respect to Schedules attached hereto as Exhibit B and Exhibits set forth on Exhibit C attached hereto, each of which shall replace the respective Schedule or Exhibit to the Existing Credit Agreement in its entirety, immediately and automatically upon the First Amendment Effective Date.

**SECTION 3.**     Amendments to Credit Documents. Each Consenting Lender and each Incremental Lender, by executing a New Lender Agreement or a Consenting Lender Agreement, as applicable, consents to, and authorizes Borrower, each Subsidiary Guarantor, Administrative Agent and Collateral Agent to enter into such amendments, restatements, amendment and restatements, supplements and modifications to the Security Documents and other Credit Documents (as defined in the Existing Credit Agreement) as Administrative Agent deems reasonably necessary or desirable in connection with this Agreement and the transactions contemplated hereby.

**ARTICLE II**

## AGREEMENT TO PROVIDE INCREMENTAL COMMITMENTS

Each Incremental Term A Lender has agreed to provide its respective Incremental Term A Loan Commitment as set forth on Schedule A annexed hereto on the terms set forth in this Agreement, and its

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Incremental Term A Loan Commitment shall be binding as of the Agreement Effective Date (or such later date as such Incremental Term A Loan Commitment may be provided pursuant to Section 4(b) of Article IX hereof); provided that the Incremental Term A Loan Commitments shall not be available to be drawn by Borrower prior to the First Amendment Effective Date, and the funding of Incremental Term A Loans under the Incremental Term A Loan Commitments shall be subject to the applicable conditions set forth in Article V hereof. Each Incremental Revolving Lender has agreed to provide its respective Incremental Revolving Commitment as set forth on Schedule B annexed hereto on the terms set forth in this Agreement, and its Incremental Revolving Commitment shall be binding as of the Agreement Effective Date (or such later date as such Incremental Revolving Commitment may be provided pursuant to Section 4(b) of Article IX hereof); provided that the Incremental Revolving Commitments shall not be available to be drawn by Borrower prior to the First Amendment Effective Date, and the funding of each Borrowing under the Incremental Revolving Commitments shall be subject to the applicable conditions set forth in Article V hereof.

The Incremental Commitment of each Incremental Lender is in addition to such Incremental Lender's existing Commitments under the Existing Credit Agreement, if any, which shall continue and, immediately after giving effect to the amendments contemplated hereby, will be subject in all respects to the terms of the Amended Credit Agreement (and, in each case, the other Credit Documents).

**SECTION 1. Applicable Margin.** The Applicable Margin for any Loans made pursuant to the Incremental Term A Loan Commitments (any such loans, the "**Incremental Term A Loans**") shall be the same as the Applicable Margin with respect to the existing Term A Facility Loans. The Applicable Margin and Applicable Fee Percentage for the Incremental Revolving Commitments and Loans made thereunder shall be the same as the Applicable Margin and Applicable Fee Percentage with respect to the Revolving Commitments outstanding under the Existing Credit Agreement and Loans made thereunder immediately prior to the effectiveness of this Agreement; provided that no commitment fees shall accrue under Section 2.05 of the Credit Agreement on the Incremental Revolving Commitments prior to the First Amendment Effective Date.

**SECTION 2. Maturity Date.** The maturity date for any Loans made pursuant to the Incremental Term A Loan Commitments shall be the Term A Facility Maturity Date. The maturity date for the Incremental Revolving Commitments shall be the R/C Maturity Date.

**SECTION 3. Principal Payments.** Borrower shall make principal payments on the Incremental Term A Loans (subject to adjustment for any prepayments made under Section 2.09 or Section 2.10 or Section 2.11(b) or Section 13.04(b)(B) of the Amended Credit Agreement or as provided in Section 2.12, in Section 2.13 or in Section 2.15 of the Amended Credit Agreement) as set forth on Schedule C hereto, with the balance payable on the Term A Facility Maturity Date. Borrower shall not be required to make amortization payments with respect to Revolving Loans made pursuant to the Incremental Revolving Commitments. All Revolving Loans made pursuant to the Incremental Revolving Commitments shall be repaid in full on the R/C Maturity Date and all then-outstanding Incremental Revolving Commitments shall terminate on the R/C Maturity Date.

**SECTION 4. Incremental Term A Loan Commitments.**

(a) This Agreement represents Borrower's request for the Incremental Term A Loan Commitments to be provided on the terms set forth herein on the Agreement Effective Date (or such later date as such Incremental Term A Loan Commitments may be provided pursuant to Section 4(b) of Article IX hereof); provided that Incremental Term A Loan Commitments shall not be available to be drawn by Borrower prior to the First Amendment Effective Date, and the funding of Incremental Term A Loans under the Incremental Term A Loan Commitments shall be

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subject to the applicable conditions set forth in Article V hereof. Borrower and Administrative Agent agree that the Incremental Effective Date for the Incremental Term A Loan Commitments shall occur upon the receipt by the Administrative Agent of the notice of effectiveness described in Section 1(f) of Article V hereof, immediately prior to the effectiveness of the Amended Credit Agreement. It is the understanding, agreement and intention of the parties that any Incremental Term A Loans shall be part of the same Tranche of Loans as the Term A Facility Loans and shall constitute Loans and Term A Facility Loans under the Credit Documents. Any Incremental Term A Loans shall be subject to the provisions of the Amended Credit Agreement and the other Credit Documents and shall be on terms and conditions identical to the existing Term A Facility Loans, except as set forth in this Agreement.

(b) The Incremental Term A Loan Commitments may be drawn in no more than a single drawing. Upon such Borrowing, the Incremental Term A Loans so borrowed shall automatically become Loans and Tranche A Facility Loans outstanding under the Amended Credit Agreement. On the date of funding of the Incremental Term A Loans, such Incremental Term A Loans shall be made as ABR Loans and LIBOR Loans in the same proportion as is then applicable to such existing Tranche A Facility Loans. With respect to Incremental Term A Loans made as LIBOR Loans, (i) the initial Interest Period(s) for all such Incremental Term A Loans hereunder shall commence upon the making of such Incremental Term A Loans and end on the last day of the Interest Period(s) applicable to the existing Tranche A Facility Loans (as of the date of the making of the Incremental Term A Loans) and (ii) such Incremental Term A Loans shall have the same LIBO Rate as the corresponding existing Tranche A Facility Loans (and, if there are multiple Interest Periods and/or multiple LIBO Rates applicable to the existing Tranche A Facility Loans as of such date of the making of the Incremental Term A Loans, then the Incremental Term A Loans shall have multiple Interest Periods ending on the same days (and having the same LIBO Rates) as such Interest Periods, and with respect to amounts proportionate to the amount of existing Tranche A Facility Loans applicable to such Interest Periods). Each Lender holding Incremental Term A Loan Commitments, by executing a Consenting Lender Agreement or a New Lender Agreement, as applicable, thereby consents to such initial Interest Periods and LIBO Rates for the Incremental Term A Loans. Borrower hereby agrees that if, on the date of funding of the Incremental Term A Loans, any Term A Facility Loans have an outstanding Interest Period of greater than one month, Borrower shall terminate each such Interest Period on such date.

(c) Borrower shall pay to Administrative Agent for the account of each Incremental Term A Lender (other than a Defaulting Lender), with respect to such Incremental Term A Lender's Incremental Term A Loan Commitments hereunder, a ticking fee for the period from and including the date that is nine months after the Agreement Effective Date to but not including the date such Incremental Term A Loan Commitment

is funded, terminated or expires (including pursuant to Article VIII hereof), computed at a rate per annum equal to the Applicable Margin for Term A Facility Loans that are LIBOR Loans as set forth on Annex B to the Existing Credit Agreement (and upon the effectiveness thereof, the Amended Credit Agreement) on the actual daily amount of such Incremental Term A Lender's outstanding and undrawn Incremental Term A Loan Commitment. Any accrued ticking fee under this Section 4(c) in respect of any Incremental Term A Loan Commitment shall be payable in arrears on each Quarterly Date and on the date such Incremental Term Loan A Commitment is funded, terminated or expires (including pursuant to Article VIII hereof).

SECTION 5. Incremental Revolving Commitments. This Agreement represents Borrower's request for the Incremental Revolving Commitments to be provided on the terms set forth herein on the Agreement Effective Date (or such later date as such Incremental Revolving Commitments may be provided pursuant to Section 4(b) of Article IX hereof); provided that the Incremental Revolving Commitments

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shall not be available to be drawn by Borrower prior to the First Amendment Effective Date, and the funding of each Borrowing under the Incremental Revolving Commitments shall be subject to the applicable conditions set forth in Article V hereof. Borrower and Administrative Agent agree that the Incremental Effective Date for the Incremental Revolving Commitments shall occur upon the receipt by the Administrative Agent of the notice of effectiveness described in Section 1(f) of Article V hereof, immediately prior to the effectiveness of the Amended Credit Agreement. It is the understanding, agreement and intention of the parties that the Incremental Revolving Commitments shall be part of the Revolving Commitments and all Revolving Loans made pursuant to such commitments shall constitute Loans and Revolving Loans. On the First Amendment Effective Date, the Administrative Agent and the Lenders having Revolving Commitments (including the Incremental Revolving Lenders) shall effectuate such transfers, assignments and adjustments of Revolving Loans and participation interests in L/C Liabilities and Swingline Loans as contemplated by Section 2.12(d) of the Amended Credit Agreement. From and after the First Amendment Effective Date, the Incremental Revolving Commitments and all Revolving Loans made thereunder shall be subject to the provisions of the Amended Credit Agreement and the other Credit Documents and shall have the same terms as the existing Revolving Commitments and Revolving Loans made thereunder except to the extent otherwise provided for herein. Borrower hereby agrees that if, on the First Amendment Effective Date, any Revolving Loans have an outstanding Interest Period of greater than one month, Borrower shall terminate each such Interest Period on such date. For the avoidance of doubt, the Incremental Revolving Commitments shall begin accruing commitment fees under Section 2.05(a) of the Amended Credit Agreement on the First Amendment Effective Date. Borrower shall have the right at any time and from time to time (without premium or penalty) prior to the First Amendment Effective Date to terminate or reduce the aggregate amount of the Incremental Revolving Commitments (which shall be pro rata among the Incremental Revolving Lenders); provided that Borrower shall give notice of each such termination or reduction as provided in Section 4.05 of the Existing Credit Agreement.

SECTION 6. New Lenders. Each Incremental Lender acknowledges and agrees that (a) upon the occurrence of the Agreement Effective Date (or such later date as such Incremental Lender provides a Consenting Lender Agreement or a New Lender Agreement pursuant to Section 4(b) of Article IX hereof) it shall be bound under this Agreement and (b) upon the occurrence of the Incremental Effective Date with respect to the Incremental Commitments it shall be bound under the Existing Credit Agreement (and upon the effectiveness of the amendments contemplated hereby, the Amended Credit Agreement) as a Lender holding Incremental Commitments and that such Incremental Lender shall become (or, in the case it is already a Lender under the Existing Credit Agreement, shall continue to be) a "Lender" under, and for all purposes of, the Existing Credit Agreement (and upon the effectiveness of the amendments contemplated hereby, the Amended Credit Agreement) and the other Credit Documents, and shall perform all the obligations of and shall have all rights of a Lender thereunder (provided that, as set forth herein, prior to the First Amendment Effective Date and the satisfaction of the applicable conditions in Article V hereof the Incremental Commitments shall not be available to be drawn by Borrower).

SECTION 7. Credit Agreement. By executing a Consenting Lender Agreement or a New Lender Agreement, as applicable, each Incremental Lender (i) confirms that it has received a copy of the Existing Credit Agreement and this Agreement (and the Amended Credit Agreement) and the other Credit Documents, together with copies of the financial statements referred to therein and such other documents and information as it has deemed appropriate to make its own credit analysis and decision to enter into this Agreement; (ii) agrees that it will, independently and without reliance upon the Administrative Agent or any other Lender or Agent and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under the Existing Credit Agreement and the Amended Credit Agreement; (iii) appoints and authorizes Administrative Agent and each other Agent to take such action as agent on its behalf and to exercise such powers under the Amended Credit Agreement and the other Credit Documents as are delegated to Administrative Agent

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or such other Agent, as the case may be, by the terms thereof, together with such powers as are reasonably incidental thereto; and (iv) agrees that it will perform in accordance with their terms all of the obligations which by the terms of the Existing Credit Agreement and the Amended Credit Agreement are required to be performed by it as an Incremental Lender and as a Lender.

### ARTICLE III

#### REPRESENTATION AND WARRANTIES

To induce the Lenders party hereto to agree to this Amendment and the Incremental Lenders to provide the Incremental Commitments hereunder, the Credit Parties represent to the Administrative Agent and the Lenders that, as of the Agreement Effective Date:

SECTION 1. Corporate Existence. Borrower and each Restricted Subsidiary (a) is a corporation, partnership, limited liability company or other entity duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization; (b)(i) has all requisite corporate or other power and authority, and (ii) has all governmental licenses, authorizations, consents and approvals necessary to own its Property and carry on its business as now being conducted; and (c) is qualified to do business and is in good standing in all jurisdictions in which the nature of the business conducted by it makes such qualification necessary; except, in the case of clauses (b)(ii) and (c) where the failure thereof individually or in the aggregate would not reasonably be expected to have a Material Adverse Effect.

SECTION 2. Action; Enforceability. Borrower and each Restricted Subsidiary has all necessary corporate or other organizational power, authority and legal right to execute, deliver and perform its obligations under this Agreement and to consummate the transactions herein contemplated; the execution, delivery and performance by Borrower and each Restricted Subsidiary of this Agreement and the consummation of the transactions herein contemplated have been duly authorized by all necessary corporate, partnership or other organizational action on its part; and this Agreement has been duly

and validly executed and delivered by each Credit Party and constitutes its legal, valid and binding obligation, enforceable against each Credit Party in accordance with its terms, except as such enforceability may be limited by (a) bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium or similar laws of general applicability from time to time in effect affecting the enforcement of creditors' rights and remedies and (b) the application of general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

SECTION 3. No Breach; No Default.

(a) None of the execution, delivery and performance by any Credit Party of this Agreement nor the consummation of the transactions herein contemplated do or will (i) conflict with or result in a breach of, or require any consent (which has not been obtained and is in full force and effect) under (x) any Organizational Document of any Credit Party or (y) any applicable Requirement of Law (including, without limitation, any Gaming Law) or (z) any order, writ, injunction or decree of any Governmental Authority binding on any Credit Party, or tortiously interfere with, result in a breach of, or require termination of, any term or provision of any Contractual Obligation of any Credit Party or (ii) constitute (with due notice or lapse of time or both) a default under any such Contractual Obligation or (iii) result in or require the creation or imposition of any Lien (except for the Liens created pursuant to the Security Documents) upon any Property of any Credit Party pursuant to the terms of any such Contractual Obligation, except (1) with respect to (i)(y), (i)(z), (ii) or (iii) which would not reasonably be expected to result in a Material Adverse Effect or (2) consents and approvals under Gaming Laws which are required as a condition to the First Amendment Effective Date; and

(b) No Default or Event of Default has occurred and is continuing.

SECTION 4. Credit Document Representations. Each of the representations and warranties made by the Borrower or any of the Credit Parties in or pursuant to the Credit Documents to which such entity is a party, as amended hereby, are true and correct in all material respects as of such date (except to the extent such representations and warranties are qualified by "materiality" or "Material Adverse Effect," in which case such representations and warranties shall be true and correct in all respects), as applicable, with the same effect as though made on and as of such date, except to the extent such representations and warranties expressly relate to an earlier date (in which case such representations and warranties shall be true and correct in all material respects as of such earlier date (except to the extent such representations and warranties are qualified by "materiality" or "Material Adverse Effect," in which case such representations and warranties shall be true and correct in all respects)).

#### ARTICLE IV

#### CONDITIONS TO THE AGREEMENT EFFECTIVE DATE

This Agreement shall become effective on the date (the "**Agreement Effective Date**") on which each of the following conditions is satisfied or waived:

SECTION 1. Execution of Counterparts. The Administrative Agent shall have received (a) executed counterparts of this Agreement from each Credit Party and (b) executed Consenting Lender Agreements and New Lender Agreements from each Incremental Lender and each other Lender that has delivered a Consenting Lender Agreement and/or a New Lender Agreement on or prior to the time and date set forth in Section 3(a) of Article IX hereof.

SECTION 2. Corporate Documents. The Administrative Agent shall have received:

(a) certified true and complete copies of the Organizational Documents of each Credit Party and of all corporate or other authority for each Credit Party (including board of directors (or other applicable governing authority) resolutions and evidence of the incumbency, including specimen signatures, of officers) with respect to the execution, delivery and performance of this Agreement and the extensions of credit hereunder, certified as of the Agreement Effective Date as complete and correct copies thereof by the secretary or an assistant secretary of each such Credit Party (provided that, in lieu of attaching such Organizational Documents and/or evidence of incumbency, such certificate may certify that (x) since the Original Closing Date, there have been no changes to the Organizational Documents of such Credit Party and (y) no changes have been made to the incumbency certificate of the officers of such Credit Party delivered on the Original Closing Date); and

(b) a certificate as to the good standing of each Credit Party as of a recent date, from the Secretary of State (or other applicable Governmental Authority) of its jurisdiction of incorporation.

SECTION 3. Opinions of Counsel. The Administrative Agent shall have received a favorable written opinion of (i) Skadden, Arps, Slate, Meagher & Flom LLP, special New York, Texas and Illinois counsel for the Credit Parties and (ii) local counsel to the Credit Parties in the jurisdictions set forth on Schedule D hereto, in each case (A) dated the Agreement Effective Date, (B) addressed to Administrative Agent and the Lenders and (C) in a form reasonably satisfactory to Administrative Agent.

SECTION 4. Costs and Expenses. To the extent invoiced at least three (3) Business Days prior to the Agreement Effective Date, all of the reasonable and documented out-of-pocket costs and expenses (including the reasonable fees, expenses and disbursements of Latham & Watkins LLP and one local counsel in each applicable jurisdiction reasonably deemed necessary by Agents) incurred by the Agents in connection with the negotiation, preparation, execution and delivery of this Agreement and the extension and syndication of the Incremental Commitments shall have been paid.

SECTION 5. No Default or Event of Default; Representations and Warranties True. Both immediately prior to and immediately after giving effect to this Agreement:

(a) no Default or Event of Default shall have occurred and be continuing; and

(b) each of the representations and warranties made by the Credit Parties in Article III hereof and in Article VIII of the Credit Agreement and in each of the other Credit Documents to which it is a party shall be true and correct in all material respects on and as of the Agreement Effective Date (it being understood and agreed that any such representation or warranty which by its terms is made as of an earlier date

shall be required to be true and correct in all material respects only as such earlier date, and that any representation and warranty that is qualified as to "materiality," "Material Adverse Effect" or similar language shall be true and correct in all respects on the applicable date).

SECTION 6. Flood Insurance Requirements. Administrative Agent shall have received from Borrower (i) a completed "Life-of-Loan" Federal Emergency Management Agency standard flood hazard determination with respect to each Mortgaged Real Property (together with a notice about special flood hazard area status and flood disaster assistance duly executed by Borrower and the applicable Credit Party relating thereto) and (ii) if any portion of any Mortgaged Real Property is located in an area identified by the Federal Emergency Management Agency (or any successor agency) as a special flood hazard area with respect to which flood insurance has been made available under the National Flood Insurance Act of 1968, the applicable Credit Party shall have, with a financially sound and reputable insurer (determined at the time such insurance was obtained), flood insurance in an amount and otherwise sufficient to comply with all applicable rules and regulations promulgated pursuant to such Flood Insurance Laws and deliver evidence of such compliance in form and substance reasonably acceptable to Administrative Agent.

SECTION 7. Outside Date. The Agreement Effective Date shall have occurred by Friday, May 1, 2015 and Borrower shall have given Administrative Agent written notice (which may be by electronic mail) of the occurrence of the Agreement Effective Date.

## ARTICLE V

### CONDITIONS TO THE FIRST AMENDMENT EFFECTIVE DATE

SECTION 1. Effectiveness of Amended Credit Agreement. The Amended Credit Agreement shall become effective on the first date, on or after the Agreement Effective Date (the "**First Amendment Effective Date**") on which:

(a) Execution of Counterparts. The Administrative Agent shall have received (a) executed counterparts of this Agreement from each Credit Party and (b) executed Consenting Lender Agreements and New Lender Agreements from Lenders constituting the Required Lenders (after giving effect to the Incremental Commitments) (it being understood that such counterparts may have been delivered prior to the First Amendment Effective Date).

(b) Authorizations. All authorizations, approvals or consents of, and filings or registrations with, any Governmental Authority (including, without limitation, all Gaming Approvals) or any securities exchange necessary for the execution, delivery or performance by Borrower or any Restricted Subsidiary of this Agreement or for the legality, validity or enforceability hereof or for the consummation of this Amendment (including the Amended Credit Agreement) and the incurrence of the Incremental Commitments shall have been received;

(c) No Specified Event of Default. No Event of Default under Section 11.01(b) or 11.01(c) of the Amended Credit Agreement shall have occurred and be continuing, and no Event of Default specified in Section 11.01(g) or 11.01(h) with respect to Borrower shall have occurred and be continuing;

(d) Representations and Warranties. Each of (x) the representations and warranties set forth in Sections 8.01(a) (but only with respect to Credit Parties), 8.04(a)(i), 8.05 (but only as it relates to the Credit Documents), 8.09, 8.11(b), 8.14 (but only as it relates to security interests that may be perfected solely through the filing of UCC financing statements, filing of intellectual property security agreements with the United States Patent and Trademark Office and United States Copyright Office and delivery of certificated securities collateral representing Equity Interests in United States Persons), 8.17, 8.21 and 8.27 of the Amended Credit Agreement (it being understood and agreed that any such representation or warranty which by its terms is made as of an earlier date shall be required to be true and correct in all material respects only as such earlier date, and that any representation and warranty that is qualified as to "materiality," "Material Adverse Effect" or similar language shall be true and correct in all respects on the applicable date) and (y) the representations and warranties contained in the acquisition agreement relating to the Subject Acquisition (as defined below) as are material to the interests of the Lenders, but only to the extent that Borrower or any of its Affiliates have the right to terminate its or their obligations under the acquisition agreement relating to the Subject Acquisition as a result of a breach of such representations and warranties in the acquisition agreement relating to the Subject Acquisition shall be true and correct in all material respects on and as of such date; and

(e) Pro Forma Compliance. In the case of any Incremental Revolving Commitments, Borrower shall be in compliance with the Financial Maintenance Covenants on a Pro Forma Basis as of the most recent Calculation Date (*provided that, for such purpose, (x) Consolidated Net Indebtedness shall not take into account any cash or cash equivalents constituting proceeds of any Loans made under any Incremental Commitments to be provided on such date and any Incremental Equivalent Debt to be incurred or issued on such date that may otherwise reduce the amount of Consolidated Net Indebtedness, (y) Consolidated Net Indebtedness shall treat any Incremental Equivalent Debt as senior indebtedness, even if such Incremental Equivalent Debt was issued or incurred on a junior basis to the Obligations, and (z) in the case of any Incremental Revolving Commitments and Incremental Equivalent Debt consisting of revolving credit facilities, pro forma effect shall be given to any New Revolving Loans, Incremental Revolving Loans and any loans under any Incremental Equivalent Debt consisting of a revolving credit facility, in each case, to the extent actually made on such date, but any Incremental Revolving Commitments or Incremental Equivalent Debt consisting of a revolving credit facility shall not otherwise be treated as drawn*);

(f) Notice of Effectiveness. Borrower shall have delivered written notice to Administrative Agent certifying that the condition described in clause (b) has been satisfied.

(g) Incremental Revolving Commitments Upfront Fees. On the First Amendment Effective Date, Borrower shall pay to the Administrative Agent, for the account of each Lender

holding Incremental Revolving Commitments on the First Amendment Effective Date, an upfront fee equal to 0.50% of such Lender's aggregate Incremental Revolving Commitments on such date.

SECTION 2. Conditions to Borrowing Under Incremental Revolving Commitments. The obligations of the Lenders to make any Revolving Loans pursuant to their Incremental Revolving Commitments shall be (a) the occurrence of the First Amendment Effective Date and (b) those set forth in Section 7.02 of the Amended Credit Agreement to the extent applicable.

SECTION 3. Conditions to Borrowing Under Incremental Term A Loan Commitments. Notwithstanding anything to the contrary in any other Credit Document (including, without limitation, Section 7.02 of the Amended Credit Agreement), the obligations of the Lenders to make the Incremental Term A Loans shall be subject solely to the following conditions precedent:

(a) First Amendment Effective Date. The First Amendment Effective Date shall have occurred;

(b) Gaming Approvals. Borrower shall have received all necessary Gaming Approvals to consummate the Subject Acquisition (as defined below) intended to be funded in whole or in part with the proceeds of the Incremental Term A Loans.

(c) No Specified Event of Default. No Event of Default under Section 11.01(b) or 11.01(c) of the Amended Credit Agreement shall have occurred and be continuing, and no Event of Default specified in Section 11.01(g) or 11.01(h) with respect to Borrower shall have occurred and be continuing;

(d) Representations and Warranties. Each of (x) the representations and warranties set forth in Sections 8.01(a) (but only with respect to Credit Parties), 8.04(a)(i), 8.05 (but only as it relates to the Credit Documents), 8.09, 8.11(b), 8.14 (but only as it relates to security interests that may be perfected solely through the filing of UCC financing statements, filing of intellectual property security agreements with the United States Patent and Trademark Office and United States Copyright Office and delivery of certificated securities collateral representing Equity Interests in United States Persons), 8.17, 8.21 and 8.27 of the Amended Credit Agreement (it being understood and agreed that any such representation or warranty which by its terms is made as of an earlier date shall be required to be true and correct in all material respects only as such earlier date, and that any representation and warranty that is qualified as to “materiality,” “Material Adverse Effect” or similar language shall be true and correct in all respects on the applicable date) and (y) the representations and warranties contained in the acquisition agreement relating to the Subject Acquisition (as defined below) as are material to the interests of the Lenders, but only to the extent that Borrower or any of its Affiliates have the right to terminate its or their obligations under the acquisition agreement relating to the Subject Acquisition as a result of a breach of such representations and warranties in the acquisition agreement relating to the Subject Acquisition shall be true and correct in all material respects on and as of such date;

(e) Available Commitments. The aggregate principal amount of Incremental Term A Loans made shall not exceed the aggregate Incremental Term A Loan Commitments in effect at such time. The aggregate principal amount of all outstanding Revolving Loans, *plus* the aggregate amount of the outstanding Swingline Loans, *plus* the aggregate outstanding L/C Liabilities shall not exceed the Total Revolving Commitments (including the Incremental Revolving Commitments) then in effect;

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(f) Notice of Borrowing. Administrative Agent shall have received a Notice of Borrowing, duly completed and complying with Section 4.05 of the Amended Credit Agreement;

(g) Acquisition Closing. The Borrower shall consummate a Permitted Acquisition or other Acquisition not prohibited by the Amended Credit Agreement (such acquisition, the “**Subject Acquisition**”) substantially concurrently with the funding of the Incremental Term A Loans; and

(h) Incremental Term A Loan Commitments Upfront Fees. Substantially concurrently with the incurrence of any Incremental Term A Loans, Borrower shall pay to the Administrative Agent, for the account of each Lender holding Incremental Term A Loan Commitments on such date, an upfront fee equal to 0.50% of the aggregate Incremental Term A Loans funded by such Lender on such date.

## ARTICLE VI

### POST-CLOSING REQUIREMENTS

SECTION 1. Post-Closing Real Property. Borrower shall as soon as practicable, but not later than ninety days (90) after the First Amendment Effective Date (or such later date as Administrative Agent may determine in its reasonable discretion), deliver or cause to be delivered to Collateral Agent the following items with respect to each Mortgaged Real Property, each in form and substance reasonably acceptable to Administrative Agent:

(a) an amendment to each Mortgage encumbering a Mortgaged Real Property (the “**Mortgage Amendments**”) each duly executed and delivered by an authorized officer of each Credit Party party thereto and in form suitable for filing and recording in all filing or recording offices that Administrative Agent may deem necessary or desirable unless Administrative Agent is satisfied in its reasonable discretion that Mortgage Amendments are not required in order to secure the applicable Credit Party’s obligations as modified hereby; and

(b) a (i) modified ALTA 11.2-06 mortgage modification endorsement or local equivalent with respect to the Mortgaged Properties, each in form and substance reasonably satisfactory to Administrative Agent, or other endorsements acceptable to Administrative Agent, (A) insuring (x) against the invalidity or unenforceability of the Mortgages as a result of the Mortgage Amendments and (y) the validity and enforceability of the mortgage modification and (B) providing for an increase in the coverage amount thereof to include the amount of the Incremental Commitments, (ii) date down endorsement (which may be part of the modified ALTA 11 mortgage endorsement) bringing the effective date of the lenders’ title insurance policies (including endorsements which were made a part thereof other than with respect to survey endorsements) previously delivered to Administrative Agent current to the date of the recordation or filing of the mortgage modifications and increasing the coverage provided by such policies by an amount equal to the amount of the Incremental Commitments and (iii) as applicable, a mortgage recording tax endorsement.

SECTION 2. Collateral Expenses. Borrower agrees to pay all fees, costs and expenses incurred in connection with the preparation, execution, filing and recordation of the Mortgage Amendments, including, without limitation, reasonable attorneys’ fees, title insurance premiums, filing and recording fees, title insurance company coordination fees, documentary stamp, mortgage and intangible taxes, if any, and title search charges and other charges incurred in connection with the recordation of the Mortgage Amendments and the other matters described in Section 1 of this Article VI.

## ARTICLE VII

### VALIDITY OF OBLIGATIONS AND LIENS

SECTION 1. Validity of Obligations. Borrower and each Subsidiary Guarantor acknowledges and agrees that, both before and after giving effect to this Agreement and the Amended Credit Agreement, Borrower and each Subsidiary Guarantor is, jointly and severally, indebted to the Lenders and the other Secured Parties for the Obligations, without defense, counterclaim or offset of any kind and the Borrower and each other Credit Party hereby ratifies and reaffirms the validity, enforceability and binding nature of such Obligations both before and after giving effect to this Agreement and the Amended Credit Agreement (except as the enforceability thereof may be limited by bankruptcy, insolvency or similar laws affecting creditors' rights generally and subject to general principles of equity).

SECTION 2. Validity of Liens and Credit Documents. Borrower and each Subsidiary Guarantor hereby ratifies and reaffirms the validity and enforceability (except as the enforceability thereof may be limited by bankruptcy, insolvency or similar laws affecting creditors' rights generally and subject to general principles of equity) of the Liens and security interests granted to Collateral Agent for the benefit of the Secured Parties to secure any of the Secured Obligations (as defined in the Security Agreement and including after giving effect to the Amended Credit Agreement) by Borrower and each Subsidiary Guarantor pursuant to the Credit Documents to which any of Borrower or such Subsidiary Guarantor is a party and hereby confirms and agrees that notwithstanding the effectiveness of this Agreement and the Amended Credit Agreement, and except as expressly amended by this Agreement or pursuant to the Amended Credit Agreement, each such Credit Document is, and shall continue to be, in full force and effect and each is hereby ratified and confirmed in all respects, except that, on and after the effectiveness of this Agreement and the Amended Credit Agreement, each reference in the Credit Documents to the "Credit Agreement", "thereunder", "thereof" (and each reference in the Credit Agreement to this "Agreement", "hereunder" or "hereof") or words of like import shall mean and be a reference to the Amended Credit Agreement.

## ARTICLE VIII

### TERMINATION OF INCREMENTAL COMMITMENTS

SECTION 1. Termination of Incremental Revolving Commitments. If the First Amendment Effective Date shall not have occurred by the date that is nine months after the Agreement Effective Date, the Incremental Revolving Commitments shall automatically terminate at 5:00 p.m., New York time on such date; provided, however that if Borrower or a Restricted Subsidiary has entered into a definitive agreement for a Subject Acquisition prior to the date that is nine months after the Agreement Effective Date, but has not obtained all required gaming approvals to consummate such Subject Acquisition or to consummate the amendments, waivers and other modifications to the Existing Credit Agreement to be effected by this Agreement and the Amended Credit Agreement on or prior to the date that is nine months after the Agreement Effective Date, then the Incremental Revolving Commitments shall not terminate on the date that is nine months after the Agreement Effective Date and instead, if the First Amendment Effective Date shall not have occurred on or prior to the date that is twelve months after the Agreement Effective Date the Incremental Revolving Commitments shall terminate at 5:00 p.m. New York time on the date that is twelve months after the Agreement Effective Date.

SECTION 2. Termination of Incremental Term A Loan Commitments.

(a) If not previously terminated by Borrower, upon a Borrowing of Incremental Term A Loans, the Incremental Term A Loan Commitments shall be terminated in their entirety.

(b) If the Incremental Term A Loan Commitments remain unfunded and outstanding on the date (the "**Termination Date**") that is forty-five (45) days after the later of (a) the First Amendment Effective Date and (b) the date on which Borrower shall have received all necessary Gaming Approvals to consummate a Subject Acquisition intended to be funded in whole or in part with the proceeds of the Incremental Term A Loans (the later of the date described in clauses (a) and (b) being the "**Full Approvals Date**"), the Incremental Term A Loan Commitments shall automatically terminate at 5:00 p.m., New York time on the Termination Date.

(c) If the Full Approvals Date shall not have occurred by the date that is nine months after the Agreement Effective Date, the Incremental Term A Loan Commitments shall automatically terminate at 5:00 p.m., New York time on such date; provided, however, that if Borrower or a Restricted Subsidiary has entered into a definitive agreement for a Subject Acquisition prior to the date that is nine months after the Agreement Effective Date, but has not obtained all required gaming approvals to consummate such Subject Acquisition or to consummate the amendments, waivers and other modifications to the Existing Credit Agreement to be effected by this Agreement and the Amended Credit Agreement on or before the date that is nine months after the Agreement Effective Date, then the Incremental Term A Loan Commitments shall not terminate on the date that is nine months after the Agreement Effective Date pursuant to this Section 2(c) of this Article VIII.

(d) Notwithstanding anything to the contrary in this Amendment, unless earlier terminated, the Incremental Term A Loan Commitments shall terminate at 5:00 p.m. New York time on the date that is twelve months after the Agreement Effective Date.

## ARTICLE IX

### MISCELLANEOUS

SECTION 1. Notice. For purposes of the Credit Agreement, the initial notice address of each Incremental Lender (other than any Incremental Lender that, immediately prior to the execution of this Agreement, is a "Lender" under the Existing Credit Agreement) shall be as set forth below its signature in its New Lender Agreement.

SECTION 2. Amendment to Perfection Certificates. Each Consenting Lender and each Incremental Lender, by executing a New Lender Agreement or a Consenting Lender Agreement, as applicable, consents to, and authorizes Borrower, each Subsidiary Guarantor, Administrative Agent and Collateral Agent to (i) modify the Initial Perfection Certificate by deleting Schedule 6(a) attached thereto and replacing it in its entirety with Schedule 6(a) attached hereto as Exhibit D-I (effective as of the date such Initial Perfection Certificate was delivered) and to (ii) modify the Perfection Certificate



delivered with respect to the fiscal year ending December 31, 2013 by deleting Schedule 6(a) attached thereto and replacing it in its entirety with Schedule 6(a) attached hereto as Exhibit D-II (effective as of the date such Perfection Certificate for the fiscal year ending December 31, 2013 was delivered).

SECTION 3. Payment of Fees to Lenders. No later than the Business Day following the Agreement Effective Date:

(a) Borrower shall pay to the Administrative Agent, for the account of each Lender under the Existing Credit Agreement that has executed a Consenting Lender Agreement prior to 5:00 p.m., New York time on April 27, 2015, a consent fee equal to 0.125% of the amount of such Lender's commitments under the Revolving Credit Facility and the outstanding principal amount of such Lender's Term A Facility Loans and Term B Facility Loans on the Agreement

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Effective Date (in each case, for the avoidance of doubt, excluding any Incremental Commitments).

(b) Borrower shall pay to the Administrative Agent, for the account of each Lender providing Incremental Commitments on the Agreement Effective Date, a commitment fee equal to 0.25% of such Lender's aggregate Incremental Revolving Commitments and Incremental Term A Loan Commitments on the Agreement Effective Date.

SECTION 4. Additional Consents; Additional Incremental Commitments.

(a) In the event any Lender under the Existing Credit Agreement has not been given the opportunity to review this Agreement and execute a Consenting Lender Agreement prior to the Agreement Effective Date, then for three (3) Business Days following the Agreement Effective Date (the "**Additional Consent Date**"), such Lender shall be given the opportunity to execute and deliver a Consenting Lender Agreement to the Administrative Agent prior to 5:00 p.m., New York time on the third (3<sup>rd</sup>) Business Day following the Agreement Effective Date. Any such Lender so executing and delivering a Consenting Lender Agreement shall be deemed to have irrevocably agreed to the amendments to, and waivers and consents under, the Existing Credit Agreement provided for herein and the other amendments, modifications and/or supplements to the other Credit Documents described herein, with respect to all of such Lender's Loans and Commitments and shall be entitled to receive the fee contemplated by Section 3(a) of this Article IX as if it had executed and delivered its Consenting Lender Agreement by the date and time set forth in Section 3(a) of this Article IX. Borrower shall pay such fee to each such Lender within two (2) Business Days of the Additional Consent Date. Such agreement by such Lender shall be irrevocably binding on any subsequent assignees, transferees, participants, successors and assigns with respect to such Loans and Commitments.

(b) Borrower and Administrative Agent may, (b) at any time after the Agreement Effective Date but prior to the earlier of the First Amendment Effective Date and the termination or expiration of the Incremental Term A Loan Commitments or Incremental Revolving Commitments, as applicable, pursuant to Article VIII hereof, agree to add additional Incremental Commitments, and, in connection with any such additional Incremental Commitments, Administrative Agent shall amend Schedules A and B annexed hereto to reflect such additional Incremental Commitments; provided that, without the consent of the Required Lenders, the aggregate principal amount of the Incremental Commitments provided for under this Agreement shall not exceed \$300,000,000 (it being understood that Incremental Commitments may otherwise be provided under the Amended Credit Agreement); provided, further, that the aggregate amount of all Incremental Revolving Commitments, New Term Loans, Incremental Term A Loans, Incremental Term A Loan Commitments, Incremental Term B Loans, Incremental Term B Loan Commitments and Incremental Equivalent Debt (each as defined in the Existing Credit Agreement) issued or incurred on or prior to such date shall not exceed the Incremental Loan Amount. Each Person who agrees to provide an Incremental Commitment after the Agreement Effective Date shall execute and deliver a Consenting Lender Agreement or a New Lender Agreement, as applicable, and shall have thereby irrevocably agreed to commit to provide such Incremental Commitments to the Borrower commencing on the date of such Consenting Lender Agreement or New Lender Agreement, as applicable, in such amounts applicable to such Person as are set forth on Schedules A and B annexed hereto, as applicable, as such Schedules are revised by Administrative Agent pursuant to this Section 4(b). In addition to any fees payable in connection with such Incremental Commitments pursuant to Section 4(c) of Article II hereof and Sections 1(g) and 3(h) of Article V hereof, in connection with any such additional Incremental Commitments, within one Business Day of the date of such Consenting Lender Agreement or New Lender Agreement, as applicable,

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Borrower shall pay to the Administrative Agent, for the account of each Lender providing such additional Incremental Commitments, a commitment fee equal to 0.25% of such Lender's aggregate Incremental Revolving Commitments and Incremental Term A Loan Commitments provided pursuant to such Consenting Lender Agreement or New Lender Agreement, as applicable (without duplication of any Incremental Commitments of such Lender previously provided).

SECTION 5. Amendment, Modification and Waiver. This Agreement may not be amended, modified or waived except by an instrument or instruments in writing signed and delivered on behalf of the Borrower and the Administrative Agent (acting at the direction of such Lenders as may be required under Section 13.04 of the Existing Credit Agreement or, after giving effect to the amendments contemplated hereby, the Amended Credit Agreement) or as set forth in Section 4(b) of this Article IX.

SECTION 6. Entire Agreement. This Agreement, the Amended Credit Agreement and the other Credit Documents, the Consenting Lender Agreements and the New Lender Agreements constitute the entire agreement among the parties with respect to the subject matter hereof and thereof and supersede all other prior agreements and understandings, both written and verbal, among the parties or any of them with respect to the subject matter hereof.

SECTION 7. GOVERNING LAW. THIS AGREEMENT, AND ANY CLAIMS, CONTROVERSIES, DISPUTES, OR CAUSES OF ACTION (WHETHER ARISING UNDER CONTRACT LAW, TORT LAW OR OTHERWISE) BASED UPON OR RELATING TO THIS AGREEMENT, SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK WITHOUT GIVING EFFECT TO ANY CHOICE OF LAW PRINCIPLES THAT WOULD APPLY THE LAWS OF ANOTHER JURISDICTION.

SECTION 8. SERVICE OF PROCESS. EACH PARTY HERETO AGREES THAT SECTION 13.09(b) OF THE EXISTING CREDIT AGREEMENT (OR, AFTER GIVING EFFECT TO THE AMENDMENTS CONTEMPLATED HEREBY, THE AMENDED CREDIT AGREEMENT) SHALL APPLY TO THIS AGREEMENT MUTATIS MUTANDIS.

SECTION 9. Severability. Wherever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement shall be prohibited by or invalid under applicable law, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provisions or the remaining provisions of this Agreement.

SECTION 10. Counterparts. This Agreement may be executed in counterparts (and by different parties hereto on different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. Delivery of an executed signature page to this Agreement by facsimile or other electronic transmission (including portable document format (".pdf") or similar format) shall be effective as delivery of a manually executed counterpart hereof.

SECTION 11. Credit Document. This Agreement shall constitute a "Credit Document" as defined in the Existing Credit Agreement.

SECTION 12. No Novation. This Agreement shall not extinguish the obligations for the payment of money outstanding under the Existing Credit Agreement or discharge or release the priority of any Credit Document or any other security therefor. Nothing herein contained shall be construed as a substitution or novation of the obligations outstanding under the Existing Credit Agreement or the instruments, documents and agreements securing the same, which shall remain in full force and effect. Nothing in this Agreement shall be construed as a release or other discharge of the Borrower or any Credit Party

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from any of its obligations and liabilities under the Existing Credit Agreement or the other Credit Documents.

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**IN WITNESS WHEREOF**, each of the undersigned has caused its duly authorized officer to execute and deliver this Agreement as of the date first written above.

**PENN NATIONAL GAMING, INC.**

By: /s/ Saul V. Reibstein

Name: Saul V. Reibstein  
Title: Executive Vice President — Finance,  
Chief Financial Officer and  
Treasurer

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SUBSIDIARY GUARANTORS:

**DAYTON REAL ESTATE VENTURES, LLC  
DELVEST, LLC  
DEVELOPMENT VENTURES, LLC  
MASSACHUSETTS GAMING VENTURES, LLC  
MOUNTAINVIEW THOROUGHBRED RACING  
ASSOCIATION, LLC  
PENN NATIONAL TURF CLUB, LLC  
ST. LOUIS GAMING VENTURES, LLC  
YOUNGSTOWN REAL ESTATE VENTURES, LLC  
ZIA PARK LLC  
BEULAH PARK GAMING VENTURES, INC.  
BSLO, LLC  
BTN, LLC  
CENTRAL OHIO GAMING VENTURES, LLC  
CRAZY HORSES, INC.  
CRC HOLDINGS, INC.  
EBETUSA.COM, INC.  
HC BANGOR, LLC  
HJC/PDC HOLDINGS, LLC  
HWCC-TUNICA, LLC  
INDIANA GAMING COMPANY, LLC  
MARYLAND GAMING VENTURES, INC.  
OHIO OPCO VENTURES, INC.  
OHIO RACING COMPANY  
PENN NATIONAL HOLDINGS, LLC  
PENN NJ OTW, LLC  
PRINCE GEORGE'S RACING VENTURES, LLC  
RACEWAY PARK, INC.  
THE MISSOURI GAMING COMPANY, LLC  
TOLEDO GAMING VENTURES, LLC**

By: /s/ Saul V. Reibstein  
Name: Saul V. Reibstein  
Title: Treasurer

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**PENN SANFORD, LLC**  
**PENN TENANT, LLC**  
**SOKC, LLC**  
**WESTERN PA GAMING VENTURES, LLC**

**By: PENN NATIONAL GAMING, INC., as  
Sole Member of each of the foregoing entities**

By: /s/ Saul V. Reibstein  
Name: Saul V. Reibstein  
Title: Executive Vice President —  
Finance, Chief Financial Officer  
and Treasurer

**PLAINVILLE GAMING AND REDEVELOPMENT, LLC**

**By: MASSACHUSETTS GAMING  
VENTURES, LLC, as its Sole Member**

By: /s/ Saul V. Reibstein  
Name: Saul V. Reibstein  
Title: Treasurer

**HOLLYWOOD CASINOS, LLC**

**By: CRC HOLDINGS, INC., as its Sole Member**

By: /s/ Saul V. Reibstein  
Name: Saul V. Reibstein  
Title: Treasurer

**LVGV, LLC**

By: /s/ Timothy J. Wilmott  
Name: Timothy J. Wilmott  
Title: President

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**PENN INTERACTIVE VENTURES, LLC**

By: /s/ Chris Rogers  
Name: Chris Rogers  
Title: Secretary and Treasurer

**ALTON CASINO, LLC**  
**HC AURORA, LLC**  
**HC JOLIET, LLC**

By: /s/ Timothy J. Wilmott  
Name: Timothy J. Wilmott  
Title: President, Secretary and Treasurer

**PNGI CHARLES TOWN GAMING, LLC**

By: /s/ John V. Finamore  
Name: John V. Finamore  
Title: Senior Vice President

**SAN DIEGO GAMING VENTURES, LLC**

By: /s/ Saul V. Reibstein  
 Name: Saul V. Reibstein  
 Title: Secretary and Treasurer

**Consented to by:**

**BANK OF AMERICA, N.A.**

as Administrative Agent, as Collateral Agent, as L/C Lender and as Swingline Lender and on behalf of the Consenting Lenders and the Incremental Lenders

By: /s/ Brian D. Corum  
 Name: Brian D. Corum  
 Title: Managing Director

**SCHEDULE A**

**INCREMENTAL TERM A LOAN COMMITMENTS**

<b>Name of Incremental Lender</b>	<b>Amount</b>
Bank of America, N.A.	\$ 12,096,774.19
JPMorgan Chase Bank, N.A.	\$ 29,032,258.06
Citizens Bank of Pennsylvania	\$ 25,000,000.00
Fifth Third Bank	\$ 19,043,159.40
Manufacturers & Traders Trust Company	\$ 12,096,774.19
Goldman Sachs Bank USA	\$ 12,096,774.19
U.S. Bank National Association	\$ 10,887,096.77
SunTrust Bank	\$ 15,000,000.00
United Bank, Inc.	\$ 1,451,612.900
Total:	\$ 136,704,449.70

**SCHEDULE B**

**INCREMENTAL REVOLVING COMMITMENTS**

<b>Name of Incremental Lender</b>	<b>Amount</b>
Bank of America, N.A.	\$ 12,903,225.81
JPMorgan Chase Bank, N.A.	\$ 30,967,741.94
Citizens Bank of Pennsylvania	\$ 25,000,000.00
Fifth Third Bank	\$ 20,312,703.37
Manufacturers & Traders Trust Company	\$ 12,903,225.81
Goldman Sachs Bank USA	\$ 12,903,225.81
U.S. Bank National Association	\$ 11,612,903.23
SunTrust Bank	\$ 5,000,000.00
United Bank, Inc.	\$ 1,548,387.10
Total:	\$ 133,151,413.07

**SCHEDULE C**

**AMORTIZATION PAYMENTS  
INCREMENTAL TERM A LOANS**

The Incremental Term A Loans funded on any date (the “**Incremental Term A Loan Funding Date**”) shall be subject to amortization payments on the same dates set forth in Annex C to the Existing Credit Agreement, beginning on the first such date to occur after the funding of such Incremental Term A Loans. The amortization amount on each such amortization date shall be equal to the product of (a) the amount of Incremental Term A Loans funded on the Incremental Term A Loan Funding Date multiplied by a fraction, (i) the numerator of which is the amount set forth in respect of such date on Annex C to the Existing Credit Agreement (as such amount is in effect on such Incremental Term A Loan Funding Date, after giving effect to adjustments thereof with respect to any prepayments or other repurchases) and (ii) the denominator of which is the outstanding principal amount of the Term A Facility Loans that were made on the Original Closing Date and are outstanding on such Incremental Term A Loan Funding Date; provided, however, that each such amortization payment shall be subject to adjustment for any prepayments made under Section 2.09, Section 2.10 or Section 2.11(b) of the Amended Credit

Agreement or as provided in Section 2.12, Section 2.13, Section 2.15 or Section 13.04(b)(B) of the Amended Credit Agreement, in each case, that occurs after the Incremental Term A Loan Funding Date. In addition, and for the avoidance of doubt, the entire outstanding amount of the Incremental Term A Loans shall be due and payable on the Term A Facility Maturity Date. The Administrative Agent shall be authorized to provide Borrower and the Lenders with a schedule of amortization payments applicable to the Incremental Term A Loans consistent with the Schedule C after the applicable Incremental Term A Loan Funding Date.

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**SCHEDULE D**

**LOCAL COUNSEL JURISDICTIONS**

Delaware  
Indiana  
Mississippi  
Missouri  
Nevada  
New Jersey  
Ohio  
Pennsylvania  
West Virginia

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**EXHIBIT A**

**AMENDED CREDIT AGREEMENT**

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**CREDIT AGREEMENT**

**Dated as of October 30, 2013, as amended by the First Amendment and Incremental Joinder Agreement,  
dated as of April 28, 2015,**

**among**

**PENN NATIONAL GAMING, INC.,  
as Borrower,**

**THE SUBSIDIARIES OF BORROWER PARTY HERETO,  
as Guarantors,**

**THE LENDERS PARTY HERETO,**

**THE L/C LENDERS PARTY HERETO**

**and**

**Bank of America, N.A.,  
as Administrative Agent,**

**and**

**Bank of America, N.A.,  
as Collateral Agent**

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**Merrill Lynch, Pierce, Fenner & Smith, Incorporated, J.P. Morgan Securities LLC and Fifth Third Bank,  
as Joint Physical Bookrunners for the Revolving Facility and the Term A Facility,**

**and**

**J.P. Morgan Securities LLC, Wells Fargo Securities, LLC and UBS Securities LLC,  
as Joint Physical Bookrunners for the Term B Facility**

**and**

**Merrill Lynch, Pierce, Fenner & Smith, Incorporated, J.P. Morgan Securities LLC, Fifth Third Bank,  
Wells Fargo Securities, LLC, UBS Securities LLC, Credit Agricole Corporate and Investment Bank,  
Goldman Sachs Bank USA, Manufacturers & Traders Trust Company,  
Nomura Securities International, Inc., RBS Securities Inc. and SunTrust Robinson Humphrey, Inc.,  
as Joint Lead Arrangers for the Loans and Commitments on the Closing Date**

and

Merrill Lynch, Pierce, Fenner & Smith, Incorporated, J.P. Morgan Securities LLC, Fifth Third Bank,  
Goldman Sachs Bank USA, Manufacturers & Traders Trust Company,  
SunTrust Robinson Humphrey, Inc. and U.S. Bank National Association,  
as Joint Lead Arrangers for the First Amendment Incremental Commitments

and

U.S. Bank National Association,  
as Documentation Agent

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SCHEDULE 8.21	-	Regulation H
SCHEDULE 8.23(a)	-	Real Property
SCHEDULE 8.23(b)	-	Real Property Takings, Etc.
SCHEDULE 8.25(a)	-	No Certificates of Occupancy; Violations, Etc.
SCHEDULE 8.25(b)	-	Encroachment, Boundary, Location, Possession Disputes
SCHEDULE 9.12	-	Designated Unrestricted Subsidiaries
SCHEDULE 9.14	-	Post-Closing Matters
SCHEDULE 10.01	-	Existing Indebtedness
SCHEDULE 10.02	-	Certain Existing Liens
SCHEDULE 10.04	-	Investments

**EXHIBITS:**

EXHIBIT A-1	-	Form of Revolving Note
EXHIBIT A-2	-	Form of Term A Facility Note
EXHIBIT A-3	-	Form of Term B Facility Note

EXHIBIT A-4	-	Form of Swingline Note
EXHIBIT B	-	Form of Notice of Borrowing
EXHIBIT C	-	Form of Notice of Continuation/Conversion

EXHIBIT D	-	Forms of U.S. Tax Compliance Certificate
EXHIBIT E	-	Form of Foreign Lender Certificate
EXHIBIT F	-	Form of Master Lease
EXHIBIT G	-	Form of Solvency Certificate
EXHIBIT H	-	Form of Security Agreement
EXHIBIT I	-	Form of Mortgage
EXHIBIT J	-	Form of Ship Mortgage
EXHIBIT K	-	Form of Assignment and Assumption Agreement
EXHIBIT L	-	Form of Letter of Credit Request
EXHIBIT M	-	Form of Joinder Agreement
EXHIBIT N	-	Form of Perfection Certificate
EXHIBIT O	-	Form of Auction Procedures
EXHIBIT P	-	Form of Open Market Assignment and Assumption Agreement
EXHIBIT Q	-	Form of Term Loan Extension Amendment
EXHIBIT R	-	Form of Revolving Extension Amendment
EXHIBIT S	-	Form of <i>Pari Passu</i> Intercreditor Agreement
EXHIBIT T	-	Form of Second Lien Intercreditor Agreement
EXHIBIT U	-	Form of Master Lease Landlord Acknowledgement
EXHIBIT V	-	Form of Compliance Certificate
EXHIBIT W	-	Form of Employee Matters Agreement
EXHIBIT X	-	Form of Separation and Distribution Agreement
EXHIBIT Y	-	Form of Tax Matters Agreement
EXHIBIT Z	-	Form of Transition Services Agreement

**CREDIT AGREEMENT**, dated as of October 30, 2013 (this “**Agreement**”), among **PENN NATIONAL GAMING, INC.**, a Pennsylvania corporation (“**Borrower**”); the **SUBSIDIARY GUARANTORS** party hereto from time to time; the **LENDERS** from time to time party hereto; the **L/C LENDERS** party hereto; **BANK OF AMERICA, N.A.**, as swingline lender (in such capacity, together with its successors in such capacity, “**Swingline Lender**”); **BANK OF AMERICA, N.A.**, as administrative agent (in such capacity, together with its successors in such capacity, “**Administrative Agent**”); and **BANK OF AMERICA, N.A.**, as collateral agent (in such capacity, together with its successors in such capacity, “**Collateral Agent**”).

WHEREAS, Borrower has requested that the Lenders provide first lien revolving credit and term loan facilities, and the Lenders have indicated their willingness to lend, and the L/C Lender has indicated its willingness to issue letters of credit, in each case, on the terms and subject to the conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual agreements, provisions and covenants contained herein, the parties agree as follows:

## ARTICLE I.

### DEFINITIONS, ACCOUNTING MATTERS AND RULES OF CONSTRUCTION

**SECTION 1.01. Certain Defined Terms.** As used herein, the following terms shall have the following meanings:

“**ABR Loans**” shall mean Loans that bear interest at rates based upon the Alternate Base Rate.

“**Acquisition**” shall mean, with respect to any Person, any transaction or series of related transactions for the (a) acquisition of all or substantially all of the Property of any other Person, or of any business or division of any other Person (other than any then-existing Company), (b) acquisition of more than 50% of the Equity Interests of any other Person, or otherwise causing any other Person to become a Subsidiary of such Person or (c) merger or consolidation of such Person or any other combination of such Person with any other Person (other than any of the foregoing between or among any then-existing Companies).

“**Acquisition Incremental Revolving Commitments**” shall mean Incremental Revolving Commitments intended, at the time such commitments are initially provided, to be used solely or primarily for the purposes of funding a Permitted Acquisition or other Acquisition not prohibited hereunder (including repayment of Indebtedness of the Person acquired, or that is secured by the assets acquired, in such Permitted Acquisition or other Acquisition).

“**Act**” has the meaning set forth in Section 13.14.

“**Additional Credit Party**” has the meaning set forth in Section 9.11.

“**Adjusted Maximum Amount**” has the meaning set forth in Section 6.10.

“**Administrative Agent**” has the meaning set forth in the introductory paragraph hereof.

“**Affected Classes**” has the meaning set forth in Section 13.04(b)(A).

“**Affiliate**” shall mean, with respect to any Person, any other Person that directly or indirectly controls, or is under common control with, or is controlled by, such Person. As used in this definition, “**control**” (including, with its correlative meanings, “**controlled by**” and “**under common control with**”) shall mean possession, directly or indirectly, of power to direct or cause the direction of management or policies (whether through ownership of securities or partnership or other ownership interests, by contract or otherwise); *provided, however*, that, on and after

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the consummation of the Spin-Off, neither GLPI nor any of its Subsidiaries shall constitute an Affiliate of Borrower or any of its Subsidiaries.

“**Agent**” shall mean any of Administrative Agent, Auction Manager, Collateral Agent, Pro Rata Facility Bookrunners, Term B Facility Bookrunners, Lead Arrangers and/or Documentation Agent, as applicable.

“**Agent Party**” has the meaning set forth in Section 13.02(e).

“**Agent Related Parties**” shall mean each Agent and any sub-agent thereof and their respective Affiliates, directors, officers, employees, agents and advisors.

“**Aggregate Existing Investment Reductions**” shall mean, as of any date of determination, the sum of all Existing Investment Reductions received on or prior to such date to the extent that, on the date any such Existing Investment Reduction was received, such Existing Investment Reduction was larger than the Outstanding Investment Amount as of such date (and before giving effect to the receipt of such Existing Investment Reduction).

“**Aggregate Payments**” has the meaning set forth in Section 6.10.

“**Agreement**” has the meaning set forth in the introductory paragraph hereof.

“**All-In Yield**” means, as to any Indebtedness, the yield thereof, whether in the form of interest rate, margin, original issue discount, upfront fees, a LIBO Rate or Alternate Base Rate floor or otherwise, in each case, incurred or payable by Borrower generally to all lenders of such Indebtedness; provided that original issue discount and upfront fees shall be equated to interest rate assuming a 4-year life to maturity (or, if less, the stated life to maturity at the time of incurrence of the applicable Indebtedness); and provided, further, that “All-In Yield” shall not include arrangement, structuring, commitment, underwriting or other similar fees (regardless of whether paid in whole or in part to any or all lenders) or other fees not paid generally to all lenders of such Indebtedness.

“**Alternate Base Rate**” shall mean for any day, the greatest of (i) the rate of interest in effect for such day as publicly announced from time to time by Bank of America as its “prime rate,” (ii) the Federal Funds Rate plus 0.50% *per annum* and (iii) the LIBO Rate for an Interest Period of one (1) month beginning on such day (or if such day is not a Business Day, on the immediately preceding Business Day) plus 100 basis points; *provided* that, with respect to the Term B Facility Loans only, the Alternate Base Rate shall not be less than 1.75%. The “prime rate” is a rate set by Bank of America based upon various factors including Bank of America’s costs and desired return, general economic conditions and other factors, and is used as a reference point for pricing some loans, which may be priced at, above, or below such announced rate. Any change in such prime rate announced by Bank of America shall take effect at the opening of business on the day specified in the public announcement of such change.

“**Alternate Currency**” shall mean Canadian dollars.

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

“**Amortization Payment**” shall mean each scheduled installment of payments on the Term Loans as set forth in Sections 3.01(b), 3.01(c) and 3.01(d).

“**Anti-Terrorism Laws**” has the meaning set forth in Section 8.27(a).

“**Applicable ECF Percentage**” shall mean, for any fiscal year, commencing with the fiscal year ended December 31, 2014, (a) 50% if the Consolidated Total Net Leverage Ratio as of the last day of such fiscal year is equal to or greater than 2.25 to 1.00, (b) 25% if the Consolidated Total Net Leverage Ratio as of the last day of such fiscal year is less than 2.25 to 1.00 and equal to or greater than 2.00 to 1.00 and (c) 0% if the Consolidated Total Net Leverage Ratio as of the last day of such fiscal year is less than 2.00 to 1.00.

“**Applicable Fee Percentage**” shall mean: with respect to any Unutilized R/C Commitments in respect of any Tranche of Revolving Commitments, (i) prior to the Initial Financial Statement Delivery Date, 0.35% (or the percentage per annum set forth in the applicable Incremental Joinder Agreement); and (ii) on and after the Initial Financial Statement Delivery Date, the applicable percentage *per annum* set forth on Annex B (or the applicable Incremental Joinder Agreement) set forth opposite the relevant Consolidated Total Net Leverage Ratio in Annex B (or the applicable Incremental Joinder Agreement) determined as of the most recent Calculation Date. After the Initial Financial Statement Delivery Date, any change in the Consolidated Total Net Leverage Ratio shall be effective to adjust the Applicable Fee Percentage on and as of the date of receipt by Administrative Agent of the Section 9.04 Financials resulting in such change until the date immediately preceding the next date of delivery of Section 9.04 Financials resulting in another such change. If Borrower fails to deliver the Section 9.04 Financials within the times specified in Section 9.04(a) or 9.04(b), as applicable, such ratio shall be deemed to be with respect to any Unutilized R/C Commitments in respect of any Tranche of Revolving Commitments, at Level I as set forth in Annex B (or the applicable Incremental Joinder Agreement) (*provided* that the Applicable Fee Percentage shall be 0% in respect of the First Amendment Incremental Revolving Commitments prior to the First Amendment Incremental Commitments Availability Date), in each case, from the date of any such failure to deliver until Borrower delivers such Section 9.04 Financials. In the event that any financial statement or certification delivered pursuant to Section 9.04 is shown to be inaccurate (an “**Inaccuracy Determination**”), and such inaccuracy, if corrected, would have led to the application of a higher Applicable Fee Percentage for any period (an “**Inaccurate Applicable Fee Percentage Period**”) than the Applicable Fee Percentage applied for such Inaccurate Applicable Fee Percentage Period, then Borrower shall promptly (i) deliver to the Administrative Agent corrected Section 9.04 Financials for such Inaccurate Applicable Fee Percentage Period, (ii) determine the Applicable Fee Percentage for such Inaccurate Applicable Fee Percentage Period based upon the corrected Section 9.04 Financials

and (iii) pay to the Administrative Agent the accrued additional interest owing as a result of such increased Applicable Fee Percentage for such Inaccurate Applicable Fee Percentage Period, which payment shall be promptly applied by the Administrative Agent in accordance with Section 4.01. It is acknowledged and agreed that nothing contained herein shall limit the rights of the Administrative Agent and the Lenders under the Credit Documents, including their rights under Section 3.02 and Article XI and their other respective rights under this Agreement.

“**Applicable Lending Office**” shall mean, for each Lender and for each Type of Loan, the “Lending Office” of such Lender (or of an Affiliate of such Lender) (a) that is a lender on the Closing Date, designated for such Type of Loan on Annexes A-1 through A-3 hereof, (b) set forth on such Lender’s signature page to an Incremental Joinder Agreement for any Lender making any Incremental Commitment pursuant to Section 2.12, (c) set forth on such Lender’s signature page to any Refinancing Amendment for any Lender providing Credit Agreement Refinancing Indebtedness pursuant to Section 2.15, (c) set forth in the Assignment Agreement for any Person that becomes a “Lender” hereunder pursuant to an Assignment Agreement or (d) such other office of such Lender (or of an Affiliate of such Lender) as such Lender may from time to time specify to Administrative Agent and Borrower as the office by which its Loans of such Type are to be made and maintained.

“**Applicable Margin**” shall mean:

(a) for each Type and Class of Loan, other than any Term B Facility Loan, (i) prior to the Initial Financial Statement Delivery Date, the respective percentage *per annum* set forth at Level III as set forth on Annex B (or the applicable Incremental Joinder Agreement) for such Type and Class of Loan; and (ii) on and after the Initial Financial Statement Delivery Date, the applicable percentage *per annum* as set forth on Annex B (or the applicable Incremental Joinder Agreement) for such Type and Class of Loan, set forth opposite the

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relevant Consolidated Total Net Leverage Ratio in Annex B (or the applicable Incremental Joinder Agreement) determined as of the most recent Calculation Date. After the Initial Financial Statement Delivery Date, any change in the Consolidated Total Net Leverage Ratio shall be effective to adjust the Applicable Margin on and as of the date of receipt by Administrative Agent of the Section 9.04 Financials resulting in such change until the date immediately preceding the next date of delivery of Section 9.04 Financials resulting in another such change. If Borrower fails to deliver the Section 9.04 Financials within the times specified in Section 9.04(a) or 9.04(b), as applicable, such ratio shall be deemed to be at Level I as set forth in Annex B (or the applicable Incremental Joinder Agreement) from the date of any such failure to deliver until Borrower delivers such Section 9.04 Financials. In the event of an Inaccuracy Determination, and such inaccuracy, if corrected, would have led to the application of a higher Applicable Margin for any period (an “**Inaccurate Applicable Margin Period**”) than the Applicable Margin applied for such Inaccurate Applicable Margin Period, then Borrower shall promptly (i) deliver to the Administrative Agent corrected Section 9.04 Financials for such Inaccurate Applicable Margin Period, (ii) determine the Applicable Margin for such Inaccurate Applicable Margin Period based upon the corrected Section 9.04 Financials and (iii) pay to the Administrative Agent the accrued additional interest owing as a result of such increased Applicable Margin for such Inaccurate Applicable Margin Period, which payment shall be promptly applied by the Administrative Agent in accordance with Section 4.01. It is acknowledged and agreed that nothing contained herein shall limit the rights of the Administrative Agent and the Lenders under the Credit Documents, including their rights under Section 3.02 and Article XI and their other respective rights under this Agreement; and

(b) for each Term B Facility Loan, (i) 2.50% per annum, with respect to LIBOR Loans and (ii) 1.50% per annum, with respect to ABR Loans.

“**Asset Sale**” shall mean (a) any conveyance, sale, lease, transfer or other disposition (including by way of merger or consolidation and including any sale and leaseback transaction) of any Property (including accounts receivable and Equity Interests of any Person owned by Borrower or any of its Restricted Subsidiaries but not any Equity Issuance) (whether owned on the Closing Date or thereafter acquired) by Borrower or any of its Restricted Subsidiaries to any Person (other than (i) with respect to any Credit Party, to any Credit Party, and (ii) with respect to any other Company, to any Company) to the extent that the aggregate value of such Property sold in any single transaction or related series of transactions is greater than or equal to \$10.0 million and (b) any issuance or sale by any Restricted Subsidiary of its Equity Interests to any Person (other than to any Company); *provided* that the following shall not constitute an “Asset Sale”: (x) any conveyance, sale, lease, transfer or other disposition of obsolete or worn out assets or assets no longer useful in the business of the Credit Parties, (y) licenses of Intellectual Property entered into in the ordinary course of business and (z) any conveyance, sale, transfer or other disposition of cash and/or Cash Equivalents.

“**Assignment Agreement**” shall mean an Assignment and Assumption Agreement substantially in the form attached as Exhibit K hereto.

“**Auction Amount**” shall have the meaning provided in Exhibit O hereto.

“**Auction Manager**” shall mean Bank of America, or another financial institution as shall be selected by Borrower in a written notice to Administrative Agent, in each case in its capacity as Auction Manager.

“**Auction Procedures**” shall mean, collectively, the auction procedures, auction notice, return bid and Borrower Assignment Agreement in substantially the form set forth as Exhibit Q hereto or such other form as is reasonably acceptable to Auction Manager and Borrower so long as the same are consistent with the provisions hereof; *provided, however*, Auction Manager, with the prior written consent of Borrower, may amend or modify the procedures, notices, bids and Borrower Assignment Agreement in connection with any Borrower Loan Purchase (but excluding economic terms of a particular auction after any Lender has validly tendered Term Loans requested in an offer relating to such auction, other than to increase the Auction Amount or raise the Discount Range

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applicable to such auction); *provided, further*, that no such amendments or modifications may be implemented after 24 hours prior to the date and time return bids are due in such auction.

“**Auto-Extension Letter of Credit**” shall have the meaning provided by Section 2.03(b).

“**Available Amount**” shall mean, on any date, an amount not less than zero, equal to:

(a) the aggregate amount of Excess Cash Flow for all fiscal years ending after the Closing Date (not less than zero) (commencing with the fiscal year ending December 31, 2014) and prior to such date *minus* the portion of such Excess Cash Flow that has been (or is, or previously was, required to be) applied to prepay the Loans pursuant to Section 2.10(a)(iv) (except for the portion thereof constituting Declined Amounts) *minus*, without duplication, any voluntary prepayments of Loans referenced in Section 2.10(a)(iv)(y), *minus*, without duplication, any voluntary prepayments of the Other First Lien Indebtedness referenced in Section 2.10(a)(iv)(y), *minus*, without duplication, any reduction in the amount of Excess Cash Flow required to be prepaid pursuant to Section 2.10(a)(iv) by reason of Section 2.10(a)(vi), in each case, in the aggregate for all fiscal years ending after the Closing Date (commencing with the fiscal year ending December 31, 2014) and prior to such date; *plus*

(b) in the event of (i) the Revocation of a Subsidiary that was Designated as an Unrestricted Subsidiary, (ii) the merger, consolidation or amalgamation of an Unrestricted Subsidiary with or into Borrower or a Restricted Subsidiary (where the surviving entity is Borrower or a Restricted Subsidiary) or (iii) the transfer or other conveyance of assets of an Unrestricted Subsidiary to, or liquidation of an Unrestricted Subsidiary into, Borrower or a Restricted Subsidiary, an amount equal to the sum of (x) the fair market value of the Investments deemed made by Borrower and its Restricted Subsidiaries in such Unrestricted Subsidiary at the time such Subsidiary was designated as an Unrestricted Subsidiary, *plus* (y) the amount of the Investments of Borrower and its Restricted Subsidiaries in such Unrestricted Subsidiary made after such designation and prior to the time of such Revocation, merger, consolidation, amalgamation, conveyance or transfer (or of the assets transferred or conveyed, as applicable), other than, in the case of this clause (y), to the extent such Investments funded Investments by such Unrestricted Subsidiary into a Person that, after giving effect to the transaction described in clauses (i), (ii) or (iii) above, will be an Unrestricted Subsidiary; *provided*, that clauses (x) and (y) shall not be duplicative of any reductions in the amount of such Investments pursuant to the proviso to the definition of "Investments"; *plus*

(c) the aggregate amount of any returns, received since the Closing Date and on or prior to such date (including with respect to contracts related to such Investments and including dividends, interest, distributions, returns of principal, sale proceeds, repayments, income, payments under contracts relating to such Indebtedness and similar amounts) by Borrower or any Restricted Subsidiary in respect of any Investments pursuant to Section 10.04(l) to the extent not included in Consolidated Net Income; *plus*

(d) the aggregate amount of Equity Issuance Proceeds (including upon conversion or exchange of a debt instrument into or for any Equity Interests (other than Disqualified Capital Stock)) received by Borrower from or in exchange for the issuance of Equity Interests (other than Disqualified Capital Stock) after the Closing Date and on or prior to such date; *plus*

(e) the aggregate fair market value of assets or Property acquired in exchange for Equity Interests (other than Disqualified Capital Stock) of Borrower after the Closing Date and on or prior to such date; *minus*

(f) the aggregate amount of any (i) Investments made pursuant to Section 10.04(l), (ii) Restricted Payments made pursuant to Section 10.06(i) (ii), (iii) Junior Prepayments pursuant to Section 10.09(a)(ii) (in each case, in reliance on the then-outstanding Available Amount) made since the Closing Date and on or prior to such date and (iv) the aggregate amounts designated by Borrower as New Investment Returns, Specified

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General Investment Returns and Specified Unrestricted Subsidiaries Investment Returns to the extent included in Consolidated Net Income.

**"Bank of America"** shall mean Bank of America, N.A., in its individual capacity, and any successor thereto by merger, consolidation or otherwise.

**"Bankruptcy Code"** shall mean the Title 11 of the United States Code entitled "Bankruptcy," as now or hereinafter in effect, or any successor statute thereto.

**"Beneficial Owner"** has the meaning assigned to such term in Rules 13d-3 and 13d-5 under the Exchange Act. The terms **"Beneficially Owns"** and **"Beneficially Owned"** have a corresponding meaning.

**"Bookrunners"** shall mean, collectively, the Pro Rata Facility Bookrunners and the Term B Facility Bookrunners.

**"Borrower"** has the meaning set forth in the introductory paragraph hereof.

**"Borrower 2019 Notes"** shall mean the outstanding 8 3/4% Senior Subordinated Notes of Borrower due 2019 in the original aggregate principal amount of \$325.0 million.

**"Borrower Assignment Agreement"** shall mean, with respect to any assignment to Borrower or one of its Subsidiaries pursuant to Section 13.05(d) consummated pursuant to the Auction Procedures, an Assignment and Acceptance Agreement substantially in the form of Annex C to the Auction Procedures (as may be modified from time to time as set forth in the definition of Auction Procedures).

**"Borrower Loan Purchase"** shall mean any purchase of Term Loans or Revolving Loans by Borrower or one of its Subsidiaries pursuant to Section 13.05(d).

**"Borrower Materials"** has the meaning set forth in Section 9.04.

**"Borrowing"** shall mean (a) Loans of the same Class and Type made, converted or continued on the same date and, in the case of LIBOR Loans, as to which a single Interest Period is in effect, or (b) a Swingline Loan.

**"Business Day"** shall mean any day, except a Saturday or Sunday, (a) on which commercial banks are not authorized or required to close in New York and (b) if such day relates to a borrowing of, a payment or prepayment of principal of or interest on, a continuation or conversion of or into, or an Interest Period for, a LIBOR Loan or a notice by Borrower with respect to any such borrowing, payment, prepayment, continuation, conversion or Interest Period, that is also a day on which dealings in Dollar deposits are carried out in the London interbank market.

**"Calculation Date"** means the last day of the most recent Test Period.

**"Canadian dollars"** shall mean the lawful money of Canada.

**“Capital Expenditures”** shall mean, for any period any expenditures by Borrower or its Restricted Subsidiaries for the acquisition or leasing of fixed or capital assets (including Capital Lease Obligations) that should be capitalized in accordance with GAAP and any expenditures by such Person for maintenance, repairs, restoration or refurbishment of the condition or usefulness of Property of such Person that should be capitalized in accordance with GAAP; *provided* that the following items shall not constitute Capital Expenditures: (a) expenditures made in connection with the replacement, substitution, restoration or repair of assets to the extent financed with (x) insurance proceeds paid on account of the loss of or damage to the assets being replaced, restored or repaired or (y) awards of

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compensation arising from the taking by eminent domain or condemnation (or transfers in lieu thereof) of the assets being replaced; (b) the purchase price of assets purchased simultaneously with the trade-in of existing assets solely to the extent that the gross amount of such purchase price is reduced by the credit granted by the seller of such assets for the asset being traded in at such time; (c) the purchase of property or equipment to the extent financed with the proceeds of asset sales or other dispositions outside the ordinary course of business that are not required to be applied to prepay the Term Loans pursuant to Section 2.10(a)(iii); (d) expenditures that constitute Permitted Acquisitions or other Acquisitions not prohibited hereunder; (e) any capitalized interest expense reflected as additions to property in the consolidated balance sheet of Borrower and its Restricted Subsidiaries (including in connection with sale-leaseback transactions not prohibited hereunder); (f) any non-cash compensation or other non-cash costs reflected as additions to property in the consolidated balance sheet of Borrower and its Restricted Subsidiaries; and (g) capital expenditures relating to the construction or acquisition of any property or equipment which has been transferred to a Person other than Borrower or any of its Restricted Subsidiaries pursuant to a sale-leaseback transaction not prohibited hereunder and capital expenditures arising pursuant to sale-leaseback transactions.

**“Capital Lease”** as applied to any Person, shall mean any lease of any Property by that Person as lessee that, in conformity with GAAP, is required to be classified and accounted for as a capital lease on the balance sheet of that Person; *provided, however*, that for the avoidance of doubt, any lease that is accounted for by any Person as an operating lease as of the Closing Date and any similar lease entered into after the Closing Date by any Person may, in the sole discretion of Borrower, be accounted for as an operating lease and not as a Capital Lease; and *provided, further*, that, for the avoidance of doubt, the Master Lease will be accounted for as an operating lease and not as a Capital Lease.

**“Capital Lease Obligations”** shall mean, for any Person, all obligations of such Person to pay rent or other amounts under a Capital Lease, and, for purposes of this Agreement, the amount of such obligations shall be the capitalized amount thereof, determined in accordance with GAAP; *provided, however*, that for the avoidance of doubt, any lease that is accounted for by any Person as an operating lease as of the Closing Date and any similar lease entered into after the Closing Date by any Person may, in the sole discretion of Borrower, be accounted for as an operating lease and not as a Capital Lease; and *provided, further*, that, for the avoidance of doubt, the Master Lease will be accounted for as an operating lease and not as a Capital Lease.

**“Cash Collateralize”** shall mean, in respect of an obligation, to provide and pledge (as a first priority perfected security interest) cash collateral in Dollars or other credit support, in each case, at a location and pursuant to documentation in form and substance reasonably satisfactory to (a) Administrative Agent, (b) in the case of obligations owing to an L/C Lender, such L/C Lender, and (c) in the case of obligations owing to the Swingline Lender, Swingline Lender (and **“Cash Collateral”** and **“Cash Collateralization”** have corresponding meanings).

**“Cash Equivalents”** shall mean, for any Person: (a) direct obligations of the United States, or of any agency thereof, or obligations guaranteed as to principal and interest by the United States, or by any agency thereof, in either case maturing not more than one year from the date of acquisition thereof by such Person; (b) time deposits, certificates of deposit or bankers’ acceptances (including eurodollar deposits) issued by (i) any bank or trust company organized under the laws of the United States or any state thereof and having capital, surplus and undivided profits of at least \$500.0 million that is assigned at least a “B” rating by Thomson Financial BankWatch or (ii) any Lender or bank holding company owning any Lender (in each case, at the time of acquisition); (c) commercial paper maturing not more than one year from the date of acquisition thereof by such Person and (i) issued by any Lender or bank holding company owning any Lender or (ii) rated at least “A-2” or the equivalent thereof by S&P or at least “P-2” or the equivalent thereof by Moody’s, respectively, (in each case, at the time of acquisition); (d) repurchase obligations with a term of not more than thirty (30) days for underlying securities of the types described in clause (a) above or (e) below entered into with a bank meeting the qualifications described in clause (b) above (in each case, at the time of acquisition); (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, or by any

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political subdivision or taxing authority thereof or by any foreign government, and rated at least “A” by S&P or “A” by Moody’s (in each case, at the time of acquisition); (f) securities with maturities of six months or less from the date of acquisition backed by standby letters of credit issued by any Lender or any commercial bank satisfying the requirements of clause (b) above (in each case, at the time of acquisition); (g) money market mutual funds that invest primarily in the foregoing items (determined at the time such investment in such fund is made); or (h) solely with respect to any Foreign Subsidiary, (i) marketable direct obligations issued by, or unconditionally guaranteed by, the country in which such Foreign Subsidiary maintains its chief executive office or principal place of business, or issued by any agency of such country and backed by the full faith and credit of such country is rated at least “A” or the equivalent thereof by S&P or “A2” or the equivalent thereof by Moody’s (in each case, at the time of acquisition), (ii) time deposits, certificates of deposit or bankers’ acceptances issued by any commercial bank which is organized and existing under the laws of the country in which such Foreign Subsidiary maintains its chief executive office and principal place of business, or payable to a Company promptly following demand and maturing within one year of the date of acquisition and (iii) other customarily utilized high-quality or cash equivalent-type Investments in the country where such Foreign Subsidiary maintains its chief executive office or principal place of business.

**“Cash Management Agreement”** means any agreement to provide cash management services, including treasury, depository, overdraft, credit or debit card, electronic funds transfer and other cash management arrangements.

**“Cash Management Bank”** shall mean (a) any Person that is a party to a Cash Management Agreement with Borrower and/or any of its Restricted Subsidiaries if such Person was, at the date of entering into such Cash Management Agreement, an Agent, a Lender or an Affiliate of an Agent or a Lender and (b) any Person that is a party a Cash Management Agreement with Borrower and/or any of its Restricted Subsidiaries that was in effect on the Closing Date, if such Person becomes an Agent, a Lender or an Affiliate of an Agent or a Lender within thirty (30) days of the Closing Date, and in the case of each of clauses (a) and (b), such Person executes and delivers to Administrative Agent a letter agreement in form and substance reasonably acceptable to

Administrative Agent pursuant to which such Person (i) appoints Collateral Agent as its agent under the applicable Credit Documents and (ii) agrees to be bound by the provisions of Section 12.03.

“**Casualty Event**” shall mean any loss of title or any loss of or damage to or destruction of, or any condemnation or other taking (or settlement in lieu thereof) (including by any Governmental Authority) of, any Property; *provided, however*, no such event shall constitute a Casualty Event if the proceeds thereof or other compensation in respect thereof is less than \$10.0 million. “Casualty Event” shall include, but not be limited to, any taking of all or any part of any Real Property of Borrower or any of its Restricted Subsidiaries or any part thereof, in or by condemnation or other eminent domain proceedings pursuant to any Law (or settlement in lieu thereof), or by reason of the temporary requisition of the use or occupancy of all or any part of any Real Property of Borrower or any of its Restricted Subsidiaries or any part thereof by any Governmental Authority, civil or military.

“**CERCLA**” shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. § 9601 *et seq.*

“**Change in Law**” means the occurrence, after the date of this Agreement, of any of the following: (a) the adoption or taking effect of any law, rule, regulation or treaty, (b) any change in any law, rule, regulation or treaty or in the administration, interpretation, implementation or application thereof by any Governmental Authority or (c) the making or issuance of any request, rule, guideline or directive (whether or not having the force of law) by any Governmental Authority; *provided* that notwithstanding anything herein to the contrary, (x) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith and (y) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United

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States or foreign regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed to be a “Change in Law”, regardless of the date enacted, adopted or issued.

“**Change of Control**” shall be deemed to have occurred if: (a) any “person” or “group” (as such terms are used in Sections 13(d) and 14(d) of the Exchange Act) is or becomes the Beneficial Owner, directly or indirectly, of Voting Stock representing more than 50% of the voting power of the total outstanding Voting Stock of Borrower, (b) at any time a change of control occurs under and as defined in any documentation relating to any Material Indebtedness of Borrower or any of its Restricted Subsidiaries that is then outstanding (excluding any change of control under any Material Indebtedness of an Acquisition target that occurs as a result of the consummation of such Acquisition) or (c) the tenant under the Master Lease shall cease to be a Wholly Owned Restricted Subsidiary of Borrower.

“**Charges**” has the meaning set forth in Section 13.19.

“**Class**” has the meaning set forth in Section 1.03.

“**Closing Date**” shall mean the date on which the initial extension of credit is made hereunder, which date is October 30, 2013.

“**Closing Date Refinancing**” shall mean the repayment and replacement of all loans and commitments under the Existing Credit Agreement and the purchase, redemption or other acquisition for value of, or retirement, defeasance or discharge of, Borrower 2019 Notes or the acceptance for payment of a majority of Borrower 2019 Notes pursuant to a tender offer.

“**Closing Date Revolving Commitment**” means a Revolving Commitment established on the Closing Date.

“**Closing Date Revolving Facility**” shall mean the credit facility comprising the Closing Date Revolving Commitments and any Incremental Existing Tranche Revolving Commitments of the same Tranche.

“**Code**” shall mean the Internal Revenue Code of 1986, as amended from time to time.

“**Collateral**” shall mean all of the Pledged Collateral, the Mortgaged Real Property, the Mortgaged Vessels all Property encumbered pursuant to Sections 9.08, 9.11 and 9.14, and all other Property of a Credit Party, whether now owned or hereafter acquired, upon which a Lien securing the Obligations is granted or purported to be granted under any Security Document. “Collateral” shall not include any assets or Property that has been released (in accordance with the Credit Documents) from the Lien granted to the Collateral Agent pursuant to the Collateral Documents, unless and until such time as such assets or Property are required by the Credit Documents to again become subject to a Lien in favor of the Collateral Agent.

“**Collateral Account**” shall mean (a) a Deposit Account (as defined in the UCC) of Borrower with respect to which Collateral Agent has “control” (as defined in Section 9-104 of the UCC) or (b) a Securities Account (as defined in the UCC) of Borrower with respect to which Collateral Agent has “control” (as defined in Section 9-106 of the UCC).

“**Collateral Agent**” has the meaning set forth in the introductory paragraph hereof.

“**Commitment Letter**” shall mean the Commitment Letter among the Commitment Parties and Borrower, dated October 11, 2013.

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“**Commitment Parties**” shall mean Merrill Lynch, Pierce, Fenner & Smith, Incorporated, Bank of America, N.A., J.P. Morgan Securities LLC, JPMorgan Chase Bank, N.A., Fifth Third Bank, Wells Fargo Securities, LLC, Wells Fargo Bank, National Association, UBS Securities LLC, UBS Finance, LLC, Credit Agricole Corporate and Investment Bank, Goldman Sachs Bank USA, Manufacturers & Traders Trust Company, Nomura Securities International, Inc., Nomura Corporate Funding Americas, LLC, RBS Securities Inc., The Royal Bank of Scotland plc, SunTrust Robinson Humphrey, Inc. and SunTrust Bank, each in its individual capacity, and any successor thereto by merger, consolidation or otherwise.

“**Commitments**” shall mean the Revolving Commitments, the Term Loan Commitments, the Swingline Commitment, any Other Commitments and any New Term Loan Commitments.

“**Commodity Exchange Act**” means the Commodity Exchange Act (7 U.S.C. § 1 et seq.), as amended from time to time, and any successor statute.

“**Companies**” shall mean Borrower and its Subsidiaries; and “**Company**” shall mean any one of them.

“**Competitor**” shall mean a Person or Affiliate of any Person (other than, subject to the other limitations set forth in this definition, an Affiliate of any Credit Party) that operates, manages or controls the operation of a casino or “racino” or controls, has entered into any agreement to control or is under common control with, in each case directly or indirectly, any entity that operates, manages or controls the operation of a casino or “racino”; *provided* that the foregoing shall not include (i) commercial or corporate banks and (ii) any funds which principally hold passive investments in commercial loans or debt securities for investment purposes in the ordinary course of business.

“**Consolidated Cash Interest Expense**” shall mean, for any Test Period, Consolidated Interest Expense paid in cash with respect to such Test Period net of cash interest income (other than cash interest income in respect of notes receivable and similar items), of Borrower and its Restricted Subsidiaries for such Test Period as determined on a consolidated basis in accordance with GAAP, minus the sum (without duplication) of any of the following to the extent deemed to be included in Consolidated Interest Expense and paid in cash with respect to such Test Period: (a) payments received under Swap Contracts relating to interest rates with respect to such Test Period, (b) arrangement, commitment or upfront fees and similar financing fees, original issue discount, and redemption or prepayment premiums payable during or with respect to such Test Period, (c) interest payable during or with respect to such Test Period with respect to Indebtedness that has been Discharged, (d) any cash costs associated with breakage or termination in respect of hedging agreements for interest rates payable during such Test Period and costs and fees associated with obtaining Swap Contracts and fees payable thereunder, and (e) fees and expenses associated with the consummation of the Transactions. Consolidated Cash Interest Expense shall exclude interest expense in respect of (a) Indebtedness that is excluded from Consolidated Net Indebtedness by reason of clause (ii), (iii) or (iv) of the proviso thereof, to the extent of such exclusion or (b) Indebtedness not in excess of \$500.0 million at any one time outstanding, which constitutes Development Expenses, or the proceeds of which were applied to fund Development Expenses (but only for so long as such Indebtedness or such funded expenses, as the case may be, constitute Development Expenses). For purposes of determining Consolidated Cash Interest Expense for any Test Period that includes any period ending prior to the first anniversary of the Closing Date, Consolidated Cash Interest Expense shall be an amount equal to actual Consolidated Cash Interest Expense from the Closing Date through the date of determination multiplied by a fraction the numerator of which is 365 and the denominator of which is the number of days from the Closing Date through the date of determination.

“**Consolidated Companies**” shall mean Borrower and each Subsidiary of Borrower (whether now existing or hereafter created or acquired), the financial statements of which are (or should be) consolidated with the financial statements of Borrower in accordance with GAAP.

“**Consolidated Current Assets**” means, with respect to any Person at any date, the total consolidated current assets of such Person and its Subsidiaries (other than Unrestricted Subsidiaries) that would, in accordance with GAAP, be classified as current assets on a consolidated balance sheet of such Person and its Subsidiaries (other than Unrestricted Subsidiaries), other than (x) cash and Cash Equivalents and (y) the current portion of deferred income tax assets.

“**Consolidated Current Liabilities**” means, with respect to any Person at any date, all liabilities of such Person and its Subsidiaries (other than Unrestricted Subsidiaries) at such date that would, in accordance with GAAP, be classified as current liabilities on a consolidated balance sheet of such Person and its Subsidiaries (other than Unrestricted Subsidiaries), other than (x) the current portion of any Indebtedness and (y) the current portion of deferred income taxes.

“**Consolidated EBITDA**” shall mean, for any Test Period, the sum (without duplication) of Consolidated Net Income for such Test Period; *plus*

(a) in each case to the extent deducted in calculating such Consolidated Net Income:

(i) provisions for taxes based on income or profits or capital gains, plus franchise or similar taxes, of Borrower and its Restricted Subsidiaries for such Test Period;

(ii) Consolidated Interest Expense (net of interest income (other than interest income in respect of notes receivable and similar items)) of Borrower and its Restricted Subsidiaries for such Test Period, whether paid or accrued and whether or not capitalized;

(iii) any cost, charge, fee or expense (including discounts and commissions and including fees and charges incurred in respect of letters of credit or bankers acceptance financings) (or any amortization of any of the foregoing) associated with any issuance (or proposed issuance) of debt, or equity or any refinancing transaction (or proposed refinancing transaction) or any amendment or other modification of any debt instrument;

(iv) depreciation, amortization (including amortization of goodwill and other intangibles but excluding amortization of prepaid cash expenses that were paid in a prior Test Period) and any other non-cash charges or expenses, including any write off or write downs, reducing Consolidated Net Income (excluding (x) any amortization of a prepaid cash expense that was paid in a prior Test Period and (y) any non-cash charges and expenses that result in an accrual of a reserve for cash charges in any future Test Period that Borrower elects not to add back in the current Test Period; *provided* that Borrower shall treat similar types of charges and expenses on a consistent basis from year to year (it being understood that reserves may be charged in the current Test Period or when paid, as reasonably determined by Borrower)) of Borrower and its Restricted Subsidiaries for such Test Period; *provided* that if any such non-cash charges or expenses represent an accrual of a reserve for potential cash items in any future Test Period, the cash payment in respect thereof in such future Test Period shall be subtracted from Consolidated EBITDA to the extent Borrower elected to previously add back such amounts to Consolidated EBITDA;

(v) any Pre-Opening Expenses;

(vi) the amount of any restructuring charges or reserve (including those relating to severance, relocation costs and one-time compensation charges), costs incurred in connection with any non-recurring strategic initiatives, other business optimization expenses (including incentive costs and expenses relating to business optimization programs and signing, retention and completion bonuses) and any unusual or non-



recurring charges or items of loss or expense (including, without limitation, losses on asset sales (other than asset sales in the ordinary course of business));

(vii) any charges, fees and expenses (or any amortization thereof) (including, without limitation, all legal, accounting, advisory or other transaction-related fees, charges, costs and expenses and any bonuses or success fee payments related to the Transactions) related to the Transactions, any Permitted Acquisition or Investment (including any other Acquisition) or disposition (or any such proposed acquisition, Investment or disposition) (including amortization or write offs of debt issuance or deferred financing costs, premiums and prepayment penalties), in each case, whether or not successful; and

(viii) any losses resulting from mark to market accounting of Swap Contracts or other derivative instruments; *minus*

(b) in each case to the extent included in calculating such Consolidated Net Income:

(i) non-cash items increasing such Consolidated Net Income for such Test Period, other than the accrual of revenue in the ordinary course of business, and other than any items which represent the reversal of any accrual of, or cash reserve for, anticipated cash charges for any prior Test Period subsequent to the issue date which was not added back to Consolidated EBITDA when accrued;

(ii) the amount of any gains resulting from mark to market accounting of Swap Contracts or other derivative instruments;

(iii) any unusual or non-recurring items of income or gain to the extent increasing Consolidated Net Income for such Test Period; *plus*

(c) the amount of cost savings, operating expense reductions and synergies projected by Borrower in good faith to be realized as a result of specified actions taken or with respect to which steps have been initiated (in the good faith determination of Borrower) during such Test Period (or with respect to (x) the Transactions, are reasonably expected to be initiated within twelve (12) months of the Closing Date, or (y) Specified Transactions, are reasonably expected to be initiated within twelve (12) months of the closing date of the Specified Transaction), including in connection with the Transactions or any Specified Transaction (calculated on a Pro Forma Basis as though such cost savings, operating expense reductions and synergies had been realized during the entirety of such Test Period), net of the amount of actual benefits realized during such Test Period from such actions; *provided* that (i) a duly completed Officer's Certificate of Borrower shall be delivered to Administrative Agent together with the applicable Section 9.04 Financials, providing reasonable detail with respect to such cost savings, operating expense reductions and synergies and certifying that such savings, operating expense reductions and synergies are reasonably expected to be realized within twelve (12) months of the taking of such specified actions and are factually supportable in the good faith judgment of Borrower, (ii) such actions are to be taken within (A) in the case of any such cost savings, operating expense reductions and synergies in connection with the Transactions, twelve (12) months after the Closing Date and (B) in all other cases, within twelve (12) months after the consummation of such Specified Transaction, restructuring or implementation of an initiative that is expected to result in such cost savings, expense reductions or synergies, (iii) no cost savings, operating expense reductions and synergies shall be added pursuant to this clause (c) to the extent duplicative of any expenses or charges otherwise added to Consolidated EBITDA, whether through a pro forma adjustment or otherwise, for such Test Period, and (iv) projected amounts (and not yet realized) may no longer be added in calculating Consolidated EBITDA pursuant to this clause (c) to the extent more than twelve (12) months have elapsed after the specified action taken in order to realize such projected cost savings, operating expense reductions and synergies; *provided*, that the aggregate amount of additions made to Consolidated EBITDA for any Test Period pursuant to this clause (c) and Section 1.06(c) shall not (i) exceed

15.0% of Consolidated EBITDA for such Test Period (after giving effect to this clause (c) and Section 1.06(c)) or (ii) be duplicative of one another; *plus*

(d) to the extent not included in Consolidated Net Income or, if otherwise excluded from Consolidated EBITDA due to the operation of clause (b)(iii) above, the amount of insurance proceeds received during such Test Period or after such Test Period and on or prior to the date the calculation is made with respect to such Test Period, attributable to any property which has been closed or had operations curtailed for such Test Period; *provided* that such amount of insurance proceeds shall only be included pursuant to this clause (d) to the extent of the amount of insurance proceeds *plus* Consolidated EBITDA attributable to such property for such Test Period (without giving effect to this clause (d)) does not exceed Consolidated EBITDA attributable to such property during the most recently completed four fiscal quarters for which financial results are available that such property was fully operational (or if such property has not been fully operational for four consecutive fiscal quarters for which financial results are available prior to such closure or curtailment, the Consolidated EBITDA attributable to such property during the Test Period prior to such closure or curtailment (for which financial results are available) annualized over four fiscal quarters); *plus*

(e) cash receipts (or any netting arrangements resulting in reduced cash expenditures) not representing Consolidated EBITDA or Consolidated Net Income in any Test Period to the extent non-cash gains relating to such income were deducted in the calculation of Consolidated EBITDA pursuant to paragraph (b) above for any previous Test Period and not added back.

Consolidated EBITDA shall be further adjusted:

(A) to include the Consolidated EBITDA of (i) any Person, property, business or asset (including a management agreement or similar agreement) (other than an Unrestricted Subsidiary) acquired by Borrower or any Restricted Subsidiary during such Test Period and (ii) any Unrestricted Subsidiary that is revoked and converted into a Restricted Subsidiary during such Test Period, in each case, based on the Consolidated EBITDA of such Person (or attributable to such property, business or asset) for such period (including the portion thereof occurring prior to such acquisition or Revocation), determined as if references to Borrower and its Restricted Subsidiaries in Consolidated Net Income and other defined terms therein were to such Person and its Subsidiaries;

(B) to exclude the Consolidated EBITDA of (i) any Person, property, business or asset (other than an Unrestricted Subsidiary) sold, transferred or otherwise disposed of, closed or classified as discontinued operations by Borrower or any Restricted Subsidiary during such Test Period and (ii) any

Restricted Subsidiary that is designated as an Unrestricted Subsidiary during such Test Period, in each case based on the actual Consolidated EBITDA of such Person for such period (including the portion thereof occurring prior to such sale, transfer, disposition, closing, classification or conversion), determined as if references to Borrower and its Restricted Subsidiaries in Consolidated Net Income and other defined terms therein were to such Person and its Subsidiaries;

(C) in the event of any Expansion Capital Expenditures that were opened for business during such Test Period, by multiplying the Consolidated EBITDA attributable to such Expansion Capital Expenditures (as determined by Borrower) in respect of the first three (3) complete fiscal quarters following opening of the business representing such Expansion Capital Expenditures by: (x) 4 (with respect to the first such quarter), (y) 2 (with respect to the first two such quarters), and (z) 4/3 (with respect to the first three such quarters) and, for the avoidance of doubt, excluding Consolidated EBITDA attributable to such Expansion Capital Expenditures during the quarter in which the business representing such Expansion Capital Expenditure opened (unless such business opened on the first day of a fiscal quarter);

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(D) in the event of any Development Project that was opened for business during such Test Period, by multiplying the Consolidated EBITDA attributable to such Development Project (as determined by Borrower) in respect of the first three (3) complete fiscal quarters following opening of the business representing such Development Project by: (x) 4 (with respect to the first such quarter), (y) 2 (with respect to the first two such quarters), and (z) 4/3 (with respect to the first three such quarters) and, for the avoidance of doubt, excluding Consolidated EBITDA attributable to such Development Project during the quarter in which such Development Project opened (unless such business opened on the first day of a fiscal quarter);

(E) in any fiscal quarter during which a purchase of property that prior to such purchase was subject to any operating lease that will be terminated in connection with such purchase shall occur and during the three (3) following fiscal quarters, by increasing Consolidated EBITDA by an amount equal to the quarterly payment in respect of such lease (as if such purchase did not occur) times (a) four (4) (in the case of the quarter in which such purchase occurs), (b) three (3) (in the case of the quarter following such purchase), (c) two (2) (in the case of the second quarter following such purchase) and (d) one (1) (in the case of the third quarter following such purchase), all as determined on a consolidated basis for Borrower and its Restricted Subsidiaries; and

(F) to exclude the Consolidated EBITDA attributable to Restricted Subsidiaries that are not Guarantors, to the extent the Consolidated EBITDA attributable to such Persons exceeds 20% of Consolidated EBITDA for Borrower and its Restricted Subsidiaries for such Test Period (calculated after giving effect to such limitation); *provided* that, with respect to any Restricted Subsidiary that is not required to become a Guarantor pursuant to this Agreement solely as a result of any applicable Gaming Laws or Gaming Approvals, such limitation shall not apply until the date that is ninety (90) days after the date such Restricted Subsidiary would have otherwise been required to become a Guarantor.

For purposes of determining Consolidated EBITDA for any Test Period that includes any period occurring prior to the Closing Date, Consolidated EBITDA for each fiscal quarter ending after June 30, 2013 shall be calculated on a Pro Forma Basis giving effect to the Transactions, including giving effect to the Master Lease as if it had been in effect during such period and cost savings relating to the Transactions in accordance with clause (c) above (all as reasonably determined by a Responsible Officer of Borrower).

Notwithstanding anything to the contrary contained herein, Consolidated EBITDA shall be deemed to be \$117.5 million for the fiscal quarter ended on September 30, 2012; \$89.3 million for the fiscal quarter ended on December 31, 2012; \$111.6 million for the fiscal quarter ended on March 31, 2013; and \$101.1 million for the fiscal quarter ended on June 30, 2013, it being understood that each of such amounts include \$1.6 million of cost savings in connection with the Transactions, and such amounts, to the extent included in any Test Period, shall reduce the amount that may be added back pursuant to clause (c) above in connection with the Transactions in such Test Period.

“**Consolidated Interest Expense**” shall mean, for any Test Period, the sum of interest expense of Borrower and its Restricted Subsidiaries for such Test Period as determined on a consolidated basis in accordance with GAAP, *plus*, to the extent deducted in arriving at Consolidated Net Income and without duplication, (a) the interest portion of payments on Capital Leases, (b) amortization of financing fees, debt issuance costs and interest or deferred financing or debt issuance costs, (c) arrangement, commitment or upfront fees, original issue discount, redemption or prepayment premiums, (d) commissions, discounts and other fees and charges owed with respect to letters of credit and bankers’ acceptance financing, (e) interest with respect to Indebtedness that has been Discharged, (f) the accretion or accrual of discounted liabilities during such period, (g) interest expense attributable to the movement of the mark-to-market valuation of obligations under Swap Contracts or other derivative instruments, (h) payments made under Swap Contracts relating to interest rates with respect to such Test Period and any costs associated with breakage in respect of hedging agreements for interest rates, (i) all interest expense consisting of liquidated damages for failure to timely comply with registration rights obligations and financing fees, all as calculated on a consolidated basis in accordance with GAAP, (j) fees and expenses associated with the consummation of the

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Transactions (k) annual or quarterly agency fees paid to Administrative Agent and (l) costs and fees associated with obtaining Swap Contracts and fees payable thereunder.

“**Consolidated Net Income**” shall mean, for any Test Period, the aggregate of the net income of Borrower and its Restricted Subsidiaries for such Test Period, on a consolidated basis, determined in accordance with GAAP; *provided* that, without duplication:

(a) any gain or loss (together with any related provision for taxes thereon) realized in connection with (i) any asset sale or (ii) any disposition of any securities by such Person or any of its Restricted Subsidiaries shall be excluded;

(b) any extraordinary gain or loss (together with any related provision for taxes thereon) shall be excluded;

(c) the net income of any Person that (i) is not a Restricted Subsidiary, (ii) is accounted for by the equity method of accounting, (iii) is an Unrestricted Subsidiary or (iv) is a Restricted Subsidiary (or former Restricted Subsidiary) with respect to which a Trigger Event has occurred following the occurrence and during the continuance of such Trigger Event shall be excluded; *provided* that Consolidated Net Income of Borrower and its

Restricted Subsidiaries shall be increased by the amount of dividends or distributions or other payments (including management fees) that are actually paid or are payable in cash to Borrower or a Restricted Subsidiary thereof in respect of such period by such Persons (or to the extent converted into cash);

(d) the undistributed earnings of any Subsidiary of Borrower that is not a Guarantor to the extent that, on the date of determination the payment of cash dividends or similar cash distributions by such Subsidiary (or loans or advances by such subsidiary to any parent company) are not permitted by the terms of any Contractual Obligation (other than under any Credit Document) or Requirement of Law applicable to such Subsidiary shall be excluded, unless such restrictions with respect to the payment of cash dividends and other similar cash distributions have been waived; *provided* that Consolidated Net Income of Borrower and its Restricted Subsidiaries shall be increased by the amount of dividends or distributions or other payments (including management fees) that are actually paid or are payable in cash to Borrower or a Restricted Subsidiary (not subject to such restriction) thereof in respect of such period by such Subsidiaries (or to the extent converted into cash);

(e) any goodwill or other asset impairment charges or other asset write-offs or write downs, including any resulting from the application of Accounting Standards Codification Nos. 350 and No. 360, and any expenses or charges relating to the amortization of intangibles as a result of the application of Accounting Standards Codification No. 805, shall be excluded;

(f) any non-cash charges or expenses related to the repurchase of stock options to the extent not prohibited by this Agreement, and any non-cash charges or expenses related to the grant, issuance or repricing of, or any amendment or substitution with respect to, stock appreciation or similar rights, stock options, restricted stock, or other Equity Interests or other equity based awards or rights or equivalent instruments, shall be excluded;

(g) the cumulative effect of a change in accounting principles shall be excluded;

(h) any expenses or reserves for liabilities shall be excluded to the extent that Borrower or any of its Restricted Subsidiaries is entitled to indemnification therefor under binding agreements; *provided* that any such liabilities for which Borrower or any of its Restricted Subsidiaries is not actually indemnified shall reduce Consolidated Net Income for the period in which it is determined that Borrower or such Restricted Subsidiary

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will not be indemnified (to the extent such liabilities would otherwise reduce Consolidated Net Income without giving effect to this clause (h));

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

(j) gains and losses resulting solely from fluctuations in currency values and the related tax effects shall be excluded, and charges relating to Accounting Standards Codification Nos. 815 and 820 shall be excluded; and

(k) the net income (or loss) of a Restricted Subsidiary that is not a Wholly Owned Subsidiary shall be included in an amount proportional to Borrower's economic ownership interest therein.

**“Consolidated Net Indebtedness”** shall mean, as at any date of determination, (a) the aggregate amount of all Indebtedness of Borrower and its Restricted Subsidiaries (other than any such Indebtedness that has been Discharged) on such date, in an amount that would be reflected on a balance sheet on such date prepared on a consolidated basis in accordance with GAAP, consisting of Indebtedness for borrowed money, obligations in respect of Capital Leases, purchase money Indebtedness, Indebtedness of the kind described in clause (d) of the definition of “Indebtedness”, Indebtedness evidenced by promissory notes and similar instruments and Contingent Obligations in respect of any of the foregoing (to be included only to the extent set forth in clause (iii) below) *minus* (b) Unrestricted Cash *minus* (c) Development Expenses (excluding Development Expenses that consist of Unrestricted Cash that was deducted from Consolidated Net Indebtedness pursuant to clause (b) above, if any); *provided* that (i) Consolidated Net Indebtedness shall not include (A) Indebtedness in respect of letters of credit (including Letters of Credit), except to the extent of unreimbursed amounts thereunder or (B) Indebtedness of the type described in clause (i) of the definition thereof, (ii) the amount of Consolidated Net Indebtedness, in the case of Indebtedness of a Restricted Subsidiary that is not a Wholly Owned Subsidiary, shall be reduced by an amount directly proportional to the amount (if any) by which Consolidated EBITDA was reduced (including through the calculation of Consolidated Net Income) (A) in respect of such non-controlling interest in such Restricted Subsidiary owned by a Person other than Borrower or any of its Restricted Subsidiaries or (B) pursuant to clause (F) of the definition of Consolidated EBITDA (*provided* that in the case of this clause (ii)(B), such Indebtedness is not guaranteed by any Credit Party), (iii) Consolidated Net Indebtedness shall not include Contingent Obligations, *provided, however*, that if and when any such Contingent Obligation is demanded for payment from Borrower or any of its Restricted Subsidiaries, then the amounts of such Contingent Obligation shall be included in such calculations, and (iv) the amount of Consolidated Net Indebtedness, in the case of Indebtedness of a Subsidiary of Borrower that is not a Guarantor and which Indebtedness is not guaranteed by any Credit Party, shall be reduced by an amount directly proportional to the amount by which Consolidated EBITDA was reduced due to the undistributed earnings of such Subsidiary being excluded from Consolidated Net Income pursuant to clause (d) thereof.

**“Consolidated Senior Secured Net Leverage Ratio”** shall mean, as of any date of determination, the ratio of (a) Consolidated Net Indebtedness of Borrower and its Restricted Subsidiaries that is secured by Liens on property or assets of Borrower or its Restricted Subsidiaries as of such date (other than any such Consolidated Net Indebtedness that is expressly subordinated in right of payment to the Obligations pursuant to a written agreement) to (b) Consolidated EBITDA for the Test Period most recently ended prior to such date; *provided*, however that for purposes of Sections 2.09(b)(ii), 10.04(m), 10.06(i) and 10.09(a), Consolidated Net Indebtedness as used in clause (a) above shall be calculated without giving effect to clause (c) of the definition of Consolidated Net Indebtedness.

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**“Consolidated Total Net Leverage Ratio”** shall mean, as at any date of determination, the ratio of (a) Consolidated Net Indebtedness as of such date to (b) Consolidated EBITDA for the Test Period most recently ended prior to such date; *provided*, however that for purposes of (i) determining whether Borrower is in compliance on a Pro Forma Basis under the Financial Maintenance Covenants pursuant to Sections 10.06(i) and 10.09(a), and (ii) determining

the Applicable ECF Percentage for any fiscal year, the amount described in clause (a) above shall be calculated without giving effect to clause (c) of the definition of Consolidated Net Indebtedness.

“**Contingent Obligation**” shall mean, as to any Person, any obligation of such Person guaranteeing or intended to guarantee any Indebtedness (“**primary obligations**”) of any other Person (the “**primary obligor**”) in any manner, whether directly or indirectly, including any obligation of such Person, whether or not contingent, (a) to purchase any such primary obligation or any property constituting direct or indirect security therefor; (b) to advance or supply funds (i) for the purchase or payment of any such primary obligation or (ii) to maintain working capital or equity capital of the primary obligor or otherwise to maintain the net worth or solvency of the primary obligor; (c) to purchase property, securities or services primarily for the purpose of assuring the owner of any such primary obligation of the ability of the primary obligor to make payment of such primary obligation; or (d) otherwise to assure or hold harmless the holder of such primary obligation against loss in respect thereof; *provided, however*, that the term Contingent Obligation shall not include endorsements of instruments for deposit or collection in the ordinary course of business and any lease guarantees executed by any Company in the ordinary course of business. The amount of any Contingent Obligation shall be deemed to be an amount equal to the stated or determinable amount of the primary obligation in respect of which such Contingent Obligation is made (or, if less, the maximum amount of such primary obligation for which such Person may be liable pursuant to the terms of the instrument evidencing such Contingent Obligation) or, if not stated or determinable, the maximum reasonably anticipated potential liability in respect thereof (assuming such Person is required to perform thereunder) as determined by such Person in good faith.

“**Contractual Obligation**” shall mean as to any Person, any provision of any security issued by such Person or of any mortgage, deed of trust, security agreement, pledge agreement, promissory note, indenture, credit or loan agreement, guaranty, securities purchase agreement, instrument, lease, contract, agreement or other contractual obligation to which such Person is a party or by which it or any of its Property is bound or subject.

“**Conversion**” shall mean the conversion, in connection with the Spin-Off, of all outstanding awards granted under Borrower’s long-term incentive compensation plans prior to the Closing Date into options to purchase shares of common stock of Borrower and/or GLPI.

“**Covered Taxes**” shall mean (a) Taxes, other than Excluded Taxes, imposed on or with respect to any payment made by or on account of any obligation of any Credit Party under this Agreement, any Note, any Guarantee or any other Credit Document and (b) to the extent not otherwise described in the foregoing clause (a). Other Taxes.

“**Credit Agreement Refinancing Indebtedness**” means (a) Permitted First Priority Refinancing Debt, (b) Permitted Second Priority Refinancing Debt, (c) Permitted Unsecured Refinancing Debt or (d) other Indebtedness incurred pursuant to a Refinancing Amendment (including, without limitation, Other Term Loans and Other Revolving Loans), in each case, issued, incurred or otherwise obtained (including by means of the extension or renewal of existing Indebtedness) in exchange for, or to extend, renew, replace or refinance, in whole or part, then-existing Term Loans, Revolving Loans (and/or unused Revolving Commitments) and/or Credit Agreement Refinancing Indebtedness (“**Refinanced Debt**”); *provided* that (i) such Indebtedness has the same or a later maturity (*provided* that if such Indebtedness is subordinated to the Obligations or secured by a junior lien on the Collateral or is unsecured, then its maturity shall be no earlier than the 91<sup>st</sup> day after the Final Maturity Date) and, except in the case of any Indebtedness consisting of a revolving credit facility, a Weighted Average Life to Maturity equal to or greater than, the Refinanced Debt, (ii) such Indebtedness shall not have a greater principal amount than the principal amount of the Refinanced Debt, *plus*, accrued interest, fees and premiums (if any) thereon, *plus*, other fees and

expenses associated with the refinancing (including any upfront fees and original issue discount), (iii) such Refinanced Debt shall be repaid, defeased or satisfied and discharged on a dollar-for-dollar basis, and all accrued interest, fees and premiums (if any) in connection therewith shall be paid, on the date such Credit Agreement Refinancing Indebtedness is issued, incurred or obtained, (iv) to the extent such Credit Agreement Refinancing Indebtedness consists of a revolving credit facility, the Revolving Commitments shall be reduced and/or terminated, as applicable, such that the Total Revolving Commitments (after giving effect to such Credit Agreement Refinancing Indebtedness and such reduction or termination) shall not exceed the Total Revolving Commitments immediately prior to the incurrence of such Credit Agreement Refinancing Indebtedness, *plus*, accrued interest, fees and premiums (if any) thereon, *plus*, other fees and expenses associated with the refinancing (including any upfront fees and original issue discount), (v) the terms (excluding pricing, fees, rate floors, premiums, optional prepayment or optional redemption provisions) of such Indebtedness are (as determined by Borrower in good faith), taken as a whole, no more restrictive in any material respect than the terms set forth in this Agreement, (vi) Borrower shall be the sole borrower thereunder and no Subsidiary of Borrower shall guaranty such Indebtedness unless such Subsidiary is also a Guarantor hereunder, and (vii) such Indebtedness shall not be secured by any Liens, except Liens on the Collateral.

“**Credit Documents**” shall mean (a) this Agreement, (b) the Notes, (c) the L/C Documents, (d) the Security Documents, (e) any Pari Passu Intercreditor Agreement, (f) any Second Lien Intercreditor Agreement, (g) any Incremental Joinder Agreement, (h) any Extension Amendment and (i) each other agreement entered into by any Credit Party with Administrative Agent, Collateral Agent and/or any Lender, in connection herewith or therewith evidencing or governing the Obligations (other than the Fee Letter), all as amended from time to time, but shall not include a Swap Contract or Cash Management Agreement.

“**Credit Parties**” shall mean Borrower and the Guarantors.

“**Credit Swap Contracts**” shall mean any Swap Contract between Borrower and/or any or all of its Restricted Subsidiaries and a Swap Provider (excluding any Swap Contract of the type described in the last sentence of the definition of Swap Contract).

“**Creditor**” shall mean each of (a) each Agent, (b) each L/C Lender and (c) each Lender.

“**Debt Issuance**” shall mean the incurrence by Borrower or any Restricted Subsidiary of any Indebtedness after the Closing Date (other than as permitted by Section 10.01). The issuance or sale of any debt instrument convertible into or exchangeable or exercisable for any Equity Interests shall be deemed a Debt Issuance for purposes of Section 2.10(a).

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

“**Declined Amounts**” shall have the meaning given to such term in Section 2.10(b).

“**Default**” shall mean any event or condition that constitutes an Event of Default or that would become, with notice or lapse of time or both, an Event of Default.

“**Default Rate**” shall mean a *per annum* rate equal to, (i) in the case of principal on any Loan, the rate which is 2% in excess of the rate borne by such Loan immediately prior to the respective payment default or other Event of Default, and (ii) in the case of any other Obligations, the rate which is 2% in excess of the rate otherwise applicable to ABR Loans which are Revolving Loans from time to time (determined based on a weighted average if multiple Tranches of Revolving Commitments are then outstanding).

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“**Defaulting Lender**” shall mean, subject to Section 2.14(b), any Lender that (i) has failed to (A) fund all or any portion of its Loans within two (2) Business Days of the date such Loans were required to be funded hereunder unless such Lender has notified Administrative Agent and Borrower in writing that such failure is the result of such Lender’s good faith determination that one or more conditions precedent to funding has not been satisfied (which conditions precedent, together with the applicable default, if any, will be specifically identified in such writing), or (B) comply with its obligations under this Agreement to make a payment to the L/C Lender in respect of a L/C Liability, make a payment to Swingline Lender in respect of a Swingline Loan, and/or make a payment to a Lender of any amount required to be paid to it hereunder, in each case within two (2) Business Days of the date when due, (ii) has notified Borrower, Administrative Agent, a L/C Lender or the Swingline Lender in writing, or has stated publicly, that it will not comply with any such funding obligation hereunder, unless such writing or statement states that such position is based on such Lender’s good faith determination that one or more conditions precedent to funding cannot be satisfied (which conditions precedent, together with the applicable default, if any, will be specifically identified in such writing or public statement), or has defaulted generally (excluding bona fide disputes) on its funding obligations under other loan agreements or credit agreements or other similar agreements, (iii) a Lender Insolvency Event has occurred and is continuing with respect to such Lender or its Parent Company or (iv) any Lender that has, for three or more Business Days after written request of Administrative Agent or Borrower, failed to confirm in writing to Administrative Agent and Borrower that it will comply with its prospective funding obligations hereunder (*provided* that such Lender will cease to be a Defaulting Lender pursuant to this clause (iv) upon Administrative Agent’s and Borrower’s receipt of such written confirmation). Any determination of a Defaulting Lender under clauses (i) through (iv) above will be conclusive and binding absent manifest error.

“**Designated Jurisdiction**” means any county or territory to the extent that such county or territory is in the subject of any Sanction.

“**Designated Non-Cash Consideration**” shall mean the fair market value of non-cash consideration received by Borrower or any of its Restricted Subsidiaries in connection with an Asset Sale that is so designated as Designated Non-Cash Consideration pursuant to an Officers’ Certificate setting forth the basis of such valuation, executed by a financial officer of Borrower, *minus* the amount of cash or Cash Equivalents received in connection with a subsequent sale of or collection on such Designated Non-Cash Consideration.

“**Designation**” has the meaning set forth in Section 9.12(a).

“**Designation Amount**” has the meaning set forth in Section 9.12(a)(ii).

“**Development Expenses**” means, without duplication, the aggregate principal amount, not to exceed \$500 million at any time, of (a) outstanding Indebtedness incurred after the Closing Date, the proceeds of which, at the time of determination, as certified by a Responsible Officer of the Borrower, are pending application and are required or intended to be used to fund and (b) amounts spent after the Closing Date (whether funded with the proceeds of Indebtedness, cash flow or otherwise) to fund, in each case, (i) Expansion Capital Expenditures of Borrower or any Restricted Subsidiary, (ii) a Development Project or (iii) interest, fees or related charges with respect to such Indebtedness; *provided* that (A) Borrower or the Restricted Subsidiary or other Person that owns assets subject to the Expansion Capital Expenditure or Development Project, as applicable, is diligently pursuing the completion thereof and has not at any time ceased construction of such Expansion Capital Expenditure or Development Project, as applicable, for a period in excess of 90 consecutive days (other than as a result of a force majeure event or inability to obtain requisite Gaming Approvals or other governmental authorizations, so long as, in the case of any such Gaming Approvals or other governmental authorizations, Borrower or a Restricted Subsidiary or other applicable Person is diligently pursuing such Gaming Approvals or governmental authorizations), (B) no such Indebtedness or funded costs shall constitute Development Expenses with respect to an Expansion Capital Expenditure project or a Development Project from and after the end of the first full fiscal quarter after the earlier of (x) opening for business, and (y) completion of construction of the applicable Expansion Capital Expenditure project

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or Development Project and (C) in order to avoid duplication, it is acknowledged that to the extent that the proceeds of any Indebtedness referred to in clause (a) above have been applied (whether for the purposes described in clauses (i), (ii) or (iii) above or any other purpose), such Indebtedness shall no longer constitute Development Expenses (it being understood, however, that any such application in accordance with clauses (i), (ii) or (iii) above shall, subject to the other requirements and limitations of this definition, constitute Development Expenses under clause (b) above).

“**Development Project**” shall mean Investments, directly or indirectly, (a) in any Joint Ventures in which Borrower or any of its Restricted Subsidiaries, directly or indirectly, has control or with whom it has a management or similar contract and in which Borrower or any of its Restricted Subsidiaries owns (directly or indirectly) at least 25% of the Equity Interest of such Joint Venture, or (b) in, or expenditures with respect to, casinos and “racinos” or Persons that own casinos or “racinos” (including casinos and “racinos” in development or under construction that are not presently opening or operating with respect to which Borrower or any of its Restricted Subsidiaries has (directly or indirectly through Subsidiaries) entered into a management or similar contract and such contract remains in full force and effect at the time of such Investment), in each case, used to finance, or made for the purpose of allowing such Joint Venture, casino or “racino”, as the case may be, to finance, the purchase or other acquisition of any fixed or capital assets or the refurbishment of existing assets or properties that develops, adds to or significantly improves the property of such Joint Venture, casino or “racino” and assets ancillary or related thereto, or the construction and development of a casino, “racino” or assets ancillary or related thereto and including Pre-Opening Expenses with respect to such Joint Venture, casino or “racino”.

“**Discharged**” shall mean Indebtedness that has been defeased (pursuant to a contractual or legal defeasance) or discharged pursuant to the prepayment or deposit of amounts sufficient to satisfy such Indebtedness as it becomes due or irrevocably called for redemption (and regardless of whether such Indebtedness constitutes a liability on the balance sheet of the obligors thereof); *provided, however*, that the Indebtedness shall be deemed Discharged if

the payment or deposit of all amounts required for defeasance or discharge or redemption thereof have been made even if certain conditions thereto have not been satisfied, so long as such conditions are reasonably expected to be satisfied within 95 days after such prepayment or deposit.

“**Discount Range**” shall have the meaning provided in Exhibit O hereto.

“**Disqualified Capital Stock**” shall mean, with respect to any Person, any Equity Interest of such Person that, by its terms (or by the terms of any security into which it is convertible or for which it is exchangeable), or upon the happening of any event, matures (excluding any maturity as the result of an optional redemption by the issuer thereof) or is mandatorily redeemable or redeemable at the sole option of the holder thereof (other than solely (x) for Qualified Capital Stock or upon a sale of assets, casualty event or a change of control, in each case, subject to the prior payment in full of the Obligations, (y) as a result of a redemption required by Gaming Law or (z) as a result of a redemption that by the terms of such Equity Interest is contingent upon such redemption not being prohibited by this Agreement), pursuant to a sinking fund obligation or otherwise (other than solely for Qualified Capital Stock) or exchangeable or convertible into debt securities of the issuer thereof at the sole option of the holder thereof, in whole or in part, on or prior to the date that is 181 days after the Final Maturity Date then in effect at the time of issuance thereof.

“**Disqualified Lenders**” means such Persons that have been specified in writing to the Administrative Agent (it being understood that the Administrative Agent will distribute the list of such Persons to the Lenders) at least 10 Business Days prior to the Closing Date as being “Disqualified Lenders”.

“**Documentation Agent**” means U.S. Bank N.A., in its capacity as documentation agent hereunder.

“**Dollar Equivalent**” shall mean, at any time, (a) with respect to any amount denominated in Dollars, such amount, and (b) with respect to any amount denominated in any Alternate Currency, the equivalent amount thereof

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in Dollars as determined by the Administrative Agent or the applicable L/C Lender, as the case may be, at such time on the basis of the Spot Rate (determined in respect of the most recent Revaluation Date) for the purchase of Dollars with such Alternate Currency.

“**Dollars**” and “**\$**” shall mean the lawful money of the United States.

“**Domestic Subsidiary**” of any Person shall mean any Subsidiary of such Person incorporated, organized or formed in the United States or any state or territory thereof or the District of Columbia.

“**Eligible Assignee**” shall mean and include (i) a commercial bank, an insurance company, a finance company, a financial institution, any fund that invests in loans or any other “accredited investor” (as defined in Regulation D) and (ii) solely for purposes of Borrower Loan Purchases, Borrower and its Restricted Subsidiaries; *provided, however*, that (x) other than as set forth in clause (ii) of this definition, neither Borrower nor any of Borrower’s Affiliates or Subsidiaries shall be an Eligible Assignee, (y) Eligible Assignee shall not include any Person that is a Competitor unless consented to in writing by Borrower and (z) Eligible Assignee shall not include any Person who is a Defaulting Lender.

“**Employee Benefit Plan**” shall mean an employee benefit plan (as defined in Section 3(3) of ERISA) that is maintained or contributed to by any ERISA Entity.

“**Employee Matters Agreement**” shall mean the employee matters agreement between Borrower and GLPI in substantially the form of Exhibit W hereto.

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

“**Environmental Action**” shall mean (a) any notice, claim, demand or other written or, to the knowledge of any Responsible Officer of Borrower, oral communication alleging liability of Borrower or any of its Restricted Subsidiaries for investigation, remediation, removal, cleanup, response, corrective action or other costs, damages to natural resources, personal injury, property damage, fines or penalties resulting from, related to or arising out of (i) the presence, Release or threatened Release in or into the Environment of Hazardous Material at any location or (ii) any violation of Environmental Law, and shall include, without limitation, any claim seeking damages, contribution, indemnification, cost recovery, compensation or injunctive relief resulting from, related to or arising out of the presence, Release or threatened Release of Hazardous Material or alleged injury or threat of injury to human health, safety or the Environment arising under Environmental Law and (b) any investigation, monitoring, removal or remedial activities undertaken by or on behalf of Borrower or any of its Restricted Subsidiaries, arising under Environmental Law whether or not such activities are carried out voluntarily.

“**Environmental Law**” shall mean any and all applicable treaties, laws, statutes, ordinances, regulations, rules, decrees, judgments, orders, consent orders, consent decrees and other binding legal requirements, and the common law, relating to protection of public health or the Environment, the Release or threatened Release of Hazardous Material, natural resources or natural resource damages, or occupational safety or health.

“**Equity Interests**” shall mean, with respect to any Person, any and all shares, interests, participations or other equivalents, including membership interests (however designated, whether voting or non-voting), of equity of such Person, including, if such Person is a partnership, partnership interests (whether general or limited) and any other interest or participation that confers on a Person the right to receive a share of the profits and losses of, or distributions of assets of, such partnership, whether outstanding on the Closing Date or issued after the Closing Date; *provided, however*, that a debt instrument convertible into or exchangeable or exercisable for any Equity

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Interests or Swap Contracts entered into as a part of, or in connection with, an issuance of such debt instrument shall not be deemed an Equity Interest.

“**Equity Issuance**” shall mean (a) any issuance or sale after the Closing Date by Borrower of any Equity Interests (including any Equity Interests issued upon exercise of any Equity Rights) or any Equity Rights, or (b) the receipt by Borrower after the Closing Date of any capital contribution (whether or not evidenced by any Equity Interest issued by the recipient of such contribution). The issuance or sale of any debt instrument convertible into or exchangeable or exercisable for any Equity Interests shall be deemed a Debt Issuance and not an Equity Issuance for purposes of the definition of Equity Issuance Proceeds; *provided, however*, that such issuance or sale shall be deemed an Equity Issuance upon the conversion or exchange of such debt instrument into Equity Interests.

“**Equity Issuance Proceeds**” shall mean, with respect to any Equity Issuance, the aggregate amount of all cash received in respect thereof by the Person consummating such Equity Issuance net of all investment banking fees, discounts and commissions, legal fees, consulting fees, accountants’ fees, underwriting discounts and commissions and other fees and expenses actually incurred in connection therewith; *provided* that, with respect to any Equity Interests issued upon exercise of any Equity Rights, the Equity Issuance Proceeds with respect thereto shall be determined without duplication of any Equity Issuance Proceeds received in respect of such Equity Rights.

“**Equity Rights**” shall mean, with respect to any Person, any then-outstanding subscriptions, options, warrants, commitments, preemptive rights or agreements of any kind (including any stockholders’ or voting trust agreements) for the issuance, sale, registration or voting of any additional Equity Interests of any class, or partnership or other ownership interests of any type in, such Person; *provided, however*, that a debt instrument convertible into or exchangeable or exercisable for any Equity Interests shall not be deemed an Equity Right.

“**ERISA**” shall mean the Employee Retirement Income Security Act of 1974, as amended from time to time.

“**ERISA Entity**” shall mean any member of an ERISA Group.

“**ERISA Event**” shall mean (a) any “reportable event,” as defined in Section 4043 of ERISA or the regulations issued thereunder, with respect to a Pension Plan (other than an event for which the 30-day notice requirement is waived); (b) with respect to any Pension Plan, the failure to satisfy the minimum funding standard under Section 412 of the Code and Section 302 of ERISA, whether or not waived, the failure by any ERISA Entity to make by its due date a required installment under Section 430(j) of the Code with respect to any Pension Plan or the failure to make any required contribution to a Multiemployer Plan; (c) the filing pursuant to Section 412(c) of the Code or Section 302(c) of ERISA of an application for a waiver of the minimum funding standard with respect to any Pension Plan; (d) the incurrence by any ERISA Entity of any liability under Title IV of ERISA with respect to the termination of any Pension Plan; (e) the receipt by any ERISA Entity from the PBGC or a plan administrator of any notice indicating an intent to terminate any Pension Plan or to appoint a trustee to administer any Pension Plan; (f) the occurrence of any event or condition which would reasonably constitute grounds under ERISA for the termination of or the appointment of a trustee to administer, any Pension Plan; (g) the incurrence by any ERISA Entity of any liability with respect to the withdrawal or partial withdrawal from any Pension Plan or Multiemployer Plan; (h) the receipt by an ERISA Entity of any notice, or the receipt by any Multiemployer Plan from any ERISA Entity of any notice, concerning the imposition of Withdrawal Liability on any ERISA Entity 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; (i) the making of any amendment to any Pension Plan which would be reasonably likely to result in the imposition of a lien or the posting of a bond or other security; (j) the withdrawal of any ERISA Entity from a Pension Plan subject to Section 4063 if ERISA during a plan year in which such ERISA Entity was a “substantial employer” as defined in Section 4001(a)(2) of ERISA or a cessation of operations that is treated as such a withdrawal under Section 4062(e) of ERISA; or (k) the occurrence of a nonexempt prohibited transaction (within

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the meaning of Section 4975 of the Code or Section 406 of ERISA) which would reasonably be expected to result in liability to Borrower or any of its Restricted Subsidiaries.

“**ERISA Group**” shall mean Borrower or any of its Restricted Subsidiaries and all members of a controlled group of corporations and all trades or businesses (whether or not incorporated) under common control which, together with Borrower and its Restricted Subsidiaries, are treated as a single employer under Section 414(b) or (c) of the Code.

“**Events of Default**” has the meaning set forth in Section 11.01.

“**Excess Cash Flow**” shall mean, for any fiscal year of Borrower, an amount, if positive, equal to (without duplication):

(a) Consolidated Net Income; *plus*

(b) an amount equal to the amount of all non-cash charges or losses (including write-offs or write-downs, depreciation expense and amortization expense including amortization of goodwill and other intangibles) to the extent deducted in arriving at such Consolidated Net Income (excluding any such non-cash expense to the extent that it represents an accrual or reserve for potential cash charge in any future period or amortization of a prepaid cash charge that was paid in a prior period and that did not reduce Excess Cash Flow at the time paid); *plus*

(c) the decrease, if any, in Working Capital from the beginning of such period to the end of such period (for the avoidance of doubt, an increase in negative Working Capital is a decrease in Working Capital); *minus*

(d) all payments with respect to restricted stock units upon the Person to whom such restricted stock units were originally issued ceasing to be a director, officer, employee, consultant or advisor and net income or loss allocated to unvested participating restricted stock of Borrower; *plus*

(e) any amounts received from the early extinguishment of Swap Contracts that are not included in Consolidated Net Income; *minus*

(f) the increase, if any, of Working Capital from the beginning of such period to the end of such period; *minus*

(g) any amounts paid in connection with the early extinguishment of Swap Contracts that are not included in Consolidated Net Income; *minus*

(h) the amount of Capital Expenditures made in cash during such period, except to the extent financed with the proceeds of Indebtedness, Asset Sales or Casualty Events (to the extent such proceeds did not increase Consolidated Net Income) of Borrower or its Restricted Subsidiaries; *minus*

(i) the amount of principal payments of the Loans, Other Applicable Indebtedness and Other First Lien Indebtedness of Borrower and its Restricted Subsidiaries (excluding (i) repayments of Revolving Loans or Swingline Loans or other revolving indebtedness, except to the extent the Revolving Commitments or commitments in respect of such other revolving debt, as applicable, are permanently reduced in connection with such repayments, (ii) prepayments of Loans or other Indebtedness, in each case, that reduce the amount of Excess Cash Flow prepayment required to be made with respect to such fiscal year under Section 2.10(a)(iv)(y) (including as a result of Section 2.10(a)(vi)) and (iii) mandatory prepayments of Loans pursuant to Section

2.10(a)(i) or Section 2.10(a)(iii), except to the extent the Net Available Proceeds from such Casualty Event or Asset Sale, as applicable, used to make such mandatory prepayments were included in the calculation of Consolidated Net Income, in each case, except to the extent financed with the proceeds of Indebtedness, Asset Sales or Casualty Events (to the extent such proceeds did not increase Consolidated Net Income) of Borrower or its Restricted Subsidiaries; *minus*

(j) without duplication of amounts deducted pursuant to clause (l) below in prior periods, the amount of Investments made during such period pursuant to Section 10.04 (other than Sections 10.04(a), (b), (c), (d) (except clause (iv) thereof), (e), (f) (except to the extent such amount increased Consolidated Net Income), (g), (h) (to the extent not taken into account in arriving at Consolidated Net Income), (j), (l), (o), and (r)), except to the extent financed with the proceeds of Indebtedness (other than Revolving Loans), Asset Sales or Casualty Events (to the extent such proceeds did not increase Consolidated Net Income) of Borrower or its Restricted Subsidiaries; *minus*

(k) the amount of all non-cash gains to the extent included in arriving at such Consolidated Net Income (excluding any such non-cash gain to the extent it represents the reversal of an accrual or reserve for a potential cash loss in any prior period); *minus*

(l) the amount of all Restricted Payments made during such period pursuant to Section 10.06(i)(i); *minus*

(m) the amount of all Junior Prepayments made during such period pursuant to Section 10.09(a)(i); *minus*

(n) any expenses or reserves for liabilities to the extent that Borrower or any Restricted Subsidiary is entitled to indemnification or reimbursement therefor under binding agreements or insurance claims therefor to the extent Borrower has not received such indemnity or reimbursement payment, in each case, to the extent not taken into account in arriving at Consolidated Net Income.

“**Exchange Act**” shall mean the Securities Exchange Act of 1934, as amended, and the rules and regulations of the SEC promulgated thereunder.

“**Excluded Designation**” has the meaning set forth in Section 9.13(a).

“**Excluded Foreign Subsidiary**” shall mean (a) any Subsidiary that is a “controlled foreign corporation” within the meaning of Section 957 of the Code, (b) any Subsidiary substantially all the assets of which consist of Equity Interests in one or more Subsidiaries described in clause (a) of this definition or (c) any Subsidiary the Equity Interests of which are directly or indirectly owned by any Subsidiary described in clause (a) of this definition.

“**Excluded Immaterial Subsidiaries**” has the meaning set forth in Section 9.13(a).

“**Excluded Information**” shall have the meaning provided in Section 12.07(b).

“**Excluded Subsidiary**” shall mean (a) any Unrestricted Subsidiary, (b) any Immaterial Subsidiary, (c) any Foreign Subsidiary, (d) any Subsidiary that is prohibited by applicable law, rule or regulation (including, without limitation, any Gaming Laws) or by any agreement, instrument or other undertaking to which such Subsidiary is a party or by which it or any of its property or assets is bound from guaranteeing the Obligations; *provided* that any such agreement, instrument or other undertaking (i) is in existence on the Closing Date and listed on Schedule 1.01(A) (or, with respect to a Subsidiary acquired after the Closing Date, as of the date such acquisition) and (ii) in the case of a Subsidiary acquired after the Closing Date, was not entered into in connection with or anticipation of

such acquisition, (e) any Subsidiary with respect to which guaranteeing the Obligations would require consent, approval, license or authorization from any Governmental Authority (including, without limitation, any Gaming Authority), unless such consent, approval, license or authorization has been received and is in effect and (f) any other Subsidiary with respect to which, in the reasonable judgment of Administrative Agent (which shall be confirmed in writing by notice to Borrower), the cost or other consequences (including any adverse tax consequences) of providing a guarantee shall be excessive in view of the benefits to be obtained by the Lenders therefrom. Notwithstanding the foregoing, in no event shall the tenant under the Master Lease be an Excluded Subsidiary.

“**Excluded Swap Obligation**” means, with respect to any Guarantor, (x) as it relates to all or a portion of the Guarantee of such Guarantor, any Swap Obligation if, and to the extent that, such Swap Obligation (or any Guarantee thereof) is or becomes illegal under the Commodity Exchange Act or any rule, regulation or order of the Commodity Futures Trading Commission (or the application or official interpretation of any thereof) by virtue of such Guarantor’s failure for any reason to constitute an “eligible contract participant” as defined in the Commodity Exchange Act and the regulations thereunder at the time the Guarantee of such Guarantor becomes effective with respect to such Swap Obligation or (y) as it relates to all or a portion of the grant by such Guarantor of a security interest, any Swap Obligation if, and to the extent that, such Swap Obligation (or such security interest in respect thereof) is or becomes illegal under the Commodity Exchange Act or any rule, regulation or order of the Commodity Futures Trading Commission (or the application or official interpretation of any thereof) by virtue of such Guarantor’s failure for any reason to constitute an “eligible contract participant” as defined in the Commodity Exchange Act and the regulations thereunder at the time the security interest of such Guarantor becomes effective with respect to such Swap Obligation. If a Swap Obligation arises under a master agreement governing more than one swap, such exclusion shall apply only to the portion of such Swap Obligation that is attributable to swaps for which such Guarantee or security interest is or becomes illegal.



“**Excluded Taxes**” shall mean, with respect to any Agent, any Lender, or any other recipient of any payment to be made by or on account of any obligation of any Credit Party hereunder, (a) income or franchise Taxes imposed on (or measured by) net income or net profits (however denominated), in each case, imposed by the jurisdiction under the laws of which such recipient is organized, in which its principal office is located or in which it is otherwise doing business (other than a business deemed to arise solely by virtue of the transactions contemplated by this Agreement) or, in the case of any Lender, in which its Applicable Lending Office is located, (b) any branch profits Taxes imposed by the United States under Section 884(a) of the Code or any similar Tax imposed by any other jurisdiction described in clause (a) above, (c) in the case of any Lender, other than an assignee pursuant to a request by Borrower under Section 2.11(a), any U.S. federal withholding tax that is imposed on amounts payable to such Person under the laws in effect at the time such Person becomes a party to this Agreement (or designates a new Applicable Lending Office), except to the extent that such Person (or its assignor, if any) was entitled, at the time of designation of a new Applicable Lending Office (or assignment), to receive additional amounts from Borrower with respect to such withholding Tax pursuant to Section 5.06(a), (d) Taxes attributable to such Person’s failure to comply with Section 5.06(b) or 5.06(c) and (e) any United States federal withholding tax imposed under FATCA.

“**Executive Order**” has the meaning set forth in Section 8.27(a).

“**Existing Credit Agreement**” shall mean the Credit Agreement, dated as of July 14, 2011 (as amended and otherwise modified prior to the date hereof), among Borrower, the subsidiary guarantors party thereto, Wells Fargo Bank, National Association, as administrative agent, the lenders party thereto and the other agents party thereto.

“**Existing Investment Reductions**” shall mean all amounts received by Borrower and its Restricted Subsidiaries in respect of Investments listed on Schedule 1.01(B) to the extent such amounts constitute a return of invested capital thereby reducing the amount of such Investment on the balance sheet of Borrower or Restricted

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Subsidiary, as applicable (and, for the avoidance of doubt, not amounts constituting income or returns on invested capital).

“**Existing Letter of Credit**” has the meaning set forth in Section 2.03(n).

“**Existing Revolving Loans**” shall have the meaning provided in Section 2.13(b).

“**Existing Revolving Tranche**” shall have the meaning provided in Section 2.13(b).

“**Existing Term Loan Tranche**” shall have the meaning provided in Section 2.13(a).

“**Existing Tranche**” shall mean any Existing Term Loan Tranche or Existing Revolving Tranche.

“**Expansion Capital Expenditures**” means any capital expenditure by Borrower or any of its Restricted Subsidiaries in respect of the purchase or other acquisition of any fixed or capital assets or the refurbishment of existing assets or properties that, in Borrower’s reasonable determination, adds to or significantly improves (or is reasonably expected to add to or significantly improve) the property of Borrower and its Restricted Subsidiaries, excluding any such capital expenditures financed with Net Available Proceeds of an Asset Sale or Casualty Event and excluding capital expenditures made in the ordinary course made to maintain, repair, restore or refurbish the property of Borrower and its Restricted Subsidiaries in its then existing state or to support the continuation of such Person’s day to day operations as then conducted.

“**Extended Revolving Commitments**” shall have the meaning provided in Section 2.13(b).

“**Extended Revolving Loans**” shall have the meaning provided in Section 2.13(b).

“**Extended Term Loans**” shall have the meaning provided in Section 2.13(a).

“**Extending Lender**” shall have the meaning provided in Section 2.13(c).

“**Extension Amendment**” shall have the meaning provided in Section 2.13(d).

“**Extension Date**” shall mean any date on which any Existing Term Loan Tranche or Existing Revolving Tranche is modified to extend the related scheduled maturity date(s) in accordance with Section 2.13 (with respect to the Lenders under such Existing Term Loan Tranche or Existing Revolving Tranche which agree to such modification).

“**Extension Election**” shall have the meaning provided in Section 2.13(c).

“**Extension Request**” shall mean any Term Loan Extension Request or Revolving Extension Request.

“**Extension Tranche**” shall mean all Extended Term Loans of the same tranche or Extended Revolving Commitments of the same tranche that are established pursuant to the same Extension Amendment (or any subsequent Extension Amendment to the extent such Extension Amendment expressly provides that the Extended Term Loans or Extended Revolving Commitments, as applicable, provided for therein are intended to be a part of any previously established Extension Tranche).

“**fair market value**” shall mean, with respect to any Property, a price (after taking into account any liabilities relating to such Property), as determined in good faith by Borrower, that could be negotiated in an arm’s-

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length free market transaction, for cash, between a willing seller and a willing and able buyer, neither of which is under any compulsion to complete the transaction.

“**Fair Share**” has the meaning set forth in Section 6.10.

“**Fair Share Shortfall**” has the meaning set forth in Section 6.10.

“**FATCA**” means Sections 1471 through 1474 of the Code as of the date of this Agreement (or any amended or successor version that is substantively comparable and not materially more onerous to comply with) and any regulations thereunder or official interpretations thereof and any agreements entered into pursuant to Section 1471(b) of the Code.

“**Federal Funds Rate**” shall mean, for any day, the rate *per annum* (rounded upwards, if necessary, to the nearest 1/100th of 1%) equal to the weighted average of the rates on overnight Federal funds transactions with members of the Federal Reserve System arranged by Federal funds brokers on such day, as published by the Federal Reserve Bank of New York on the Business Day next succeeding such day; *provided, however*, that (a) if the day for which such rate is to be determined is not a Business Day, the Federal Funds Rate for such day shall be such rate on such transactions on the next preceding Business Day as so published on the next succeeding Business Day and (b) if such rate is not so published for any Business Day, the Federal Funds Rate for such Business Day shall be the average rate quoted to Administrative Agent on such Business Day on such transactions by three federal funds brokers of recognized standing, as determined by Administrative Agent.

“**Fee Letter**” shall mean the fee letter agreement dated October 11, 2013, among Borrower and the Commitment Parties.

“**Final Maturity Date**” shall mean the latest of the latest R/C Maturity Date, the Term A Facility Maturity Date, the Term B Facility Maturity Date, the latest New Term Loan Maturity Date, the latest final maturity date applicable to any Extended Term Loans, the latest final maturity date applicable to any Extended Revolving Commitments, the latest final maturity date applicable to any Other Term Loans and the latest final maturity date applicable to any Other Revolving Loans.

“**Financial Maintenance Covenants**” shall mean the covenants set forth in Section 10.08.

“**FIRREA**” shall mean the Financial Institutions Reform, Recovery and Enforcement Act of 1989, as amended.

“**First Amendment**” shall mean that certain First Amendment and Incremental Joinder Agreement, dated as of April 28, 2015, by and among the Borrower, the Subsidiary Guarantors, the Lenders party thereto, the Administrative Agent and the Collateral Agent.

“**First Amendment Closing Date**” shall mean the “Agreement Effective Date” as defined in the First Amendment.

“**First Amendment Incremental Commitments**” shall mean the First Amendment Incremental Revolving Commitments and the First Amendment Incremental Term A Loan Commitments.

“**First Amendment Incremental Commitments Availability Date**” shall mean the first date on or after the First Amendment Closing Date on which each of the conditions set forth in Section 1 of Article V of the First Amendment are satisfied.

“**First Amendment Incremental Revolving Commitments**” shall mean the Incremental Existing Tranche Revolving Commitments provided pursuant to the First Amendment.

“**First Amendment Incremental Revolving Lenders**” shall mean the Lenders providing the Incremental Existing Tranche Revolving Commitments pursuant to the First Amendment.

“**First Amendment Incremental Term A Lenders**” shall mean the Lenders providing the Incremental Term A Commitments pursuant to the First Amendment.

“**First Amendment Incremental Term A Loan Commitments**” shall mean the Incremental Term A Commitments provided pursuant to the First Amendment.

“**First Amendment Incremental Term A Loans**” shall mean the Term A Facility Loans made pursuant to the Incremental Term A Commitments provided pursuant to the First Amendment.

“**Flood Insurance Laws**” means, collectively, (a) the National Flood Insurance Act of 1968 as now or hereafter in effect or any successor statute thereto, (b) the Flood Disaster Protection Act of 1973 as now or hereafter in effect or any successor statute thereto, (c) the National Flood Insurance Reform Act of 1994 as now or hereafter in effect or any successor statute thereto and (d) the Flood Insurance Reform Act of 2004 as now or hereafter in effect or any successor statute thereto.

“**Foreign Lender Certificate**” has the meaning set forth in Section 5.06(b).

“**Foreign Plan**” shall mean any employee benefit plan, program, policy, arrangement or agreement (excluding employment agreements) maintained or contributed to by, or entered into with, Borrower or any Restricted Subsidiary with respect to employees employed outside the United States.

“**Foreign Subsidiary**” shall mean (x) each Subsidiary that is organized under the laws of a jurisdiction other than the United States or any state thereof, or the District of Columbia and (y) each Excluded Foreign Subsidiary.

“**Funding Credit Party**” has the meaning set forth in Section 6.10.

“**Funding Date**” shall mean the date of the making of any extension of credit (whether the making of a Loan or the issuance of a Letter of Credit) hereunder (including the Closing Date).

“**GAAP**” shall mean generally accepted accounting principles set forth as of the relevant date in the opinions and pronouncements of the Accounting Principles Board of the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board (or agencies with similar functions of comparable stature and authority within the U.S. accounting profession), including, without limitation, any Accounting Standards Codifications, which are applicable to the circumstances as of the date of determination.

“**Gaming Approval**” shall mean any and all approvals, authorizations, permits, consents, rulings, orders or directives of any Governmental Authority (including, without limitation, any Gaming Authority) (a) necessary to enable Borrower or any of its Restricted Subsidiaries to engage in, operate or manage the casino, gambling, horse racing or gaming business or otherwise continue to conduct, operate or manage such business substantially as is presently conducted, operated or managed or contemplated to be conducted, operated or managed following the Closing Date (after giving effect to the Transactions), (b) required by any Gaming Law or (c) necessary as is

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contemplated on the Closing Date (after giving effect to the Transactions), to accomplish the financing and other transactions contemplated hereby after giving effect to the Transactions.

“**Gaming Authority**” shall mean any Governmental Authority with regulatory, licensing or permitting authority or jurisdiction over any gaming business or enterprise or horse racing business or enterprise or any Gaming Facility (including, without limitation, the following as of the Closing Date: the Alcohol and Gaming Commission of Ontario, the Florida Division of Pari-Mutuel Wagering, the Illinois Gaming Board, Indiana Gaming Commission, the Iowa Racing and Gaming Commission, Kansas Lottery, Kansas Racing and Gaming Commission, the Maine State Harness Racing Commission, the Maine Gambling Control Board, the Maryland State Lottery Commission, the Maryland Racing Commission, the Maryland Video Lottery Facility Location Commission, the Mississippi Gaming Commission, the Mississippi Department of Revenue, the Missouri Gaming Commission, the Nevada State Gaming Control Board, the Nevada Gaming Commission, the New Jersey Racing Commission, the New Jersey Casino Control Commission, the New Jersey Division of Gaming Enforcement, the New Mexico Gaming Control Board, the New Mexico Racing Commission, the Ohio Casino Control Commission, the Ohio Lottery Commission, the Ohio State Racing Commission, the Ontario Lottery and Gaming Corporation, the Pennsylvania Gaming Control Board, the Pennsylvania State Horse Racing Commission, Texas Racing Commission, the West Virginia Racing Commission and the West Virginia Lottery Commission), or with regulatory, licensing or permitting authority or jurisdiction over any gaming or racing operation (or proposed gaming or racing operation) owned, managed, leased or operated by Borrower or any of its Restricted Subsidiaries.

“**Gaming Facility**” shall mean any gaming establishment and other property or assets ancillary thereto or used in connection therewith, including, without limitation, any casinos, hotels, resorts, race tracks, off-track wagering sites, theaters, parking facilities, recreational vehicle parks, timeshare operations, retail shops, restaurants, other buildings, land, golf courses and other recreation and entertainment facilities, marinas, vessels, barges, ships and related equipment.

“**Gaming Laws**” shall mean all applicable provisions of all: (a) constitutions, treaties, statutes or laws governing Gaming Facilities (including, without limitation, card club casinos and pari mutuel race tracks) and rules, regulations, codes and ordinances of, and all administrative or judicial orders or decrees or other laws pursuant to which, any Gaming Authority possesses regulatory, licensing or permit authority over gambling, gaming, racing or Gaming Facility activities conducted, operated or managed by Borrower or any of its Restricted Subsidiaries within its jurisdiction; (b) Gaming Approvals; and (c) orders, decisions, determinations, judgments, awards and decrees of any Gaming Authority.

“**Gaming License**” shall mean any Gaming Approval or other casino, gambling, horse racing or gaming license issued by any Gaming Authority covering any Gaming Facility.

“**GLPI**” shall mean Gaming and Leisure Properties, Inc., a Pennsylvania corporation.

“**Governmental Authority**” shall mean any government or political subdivision of the United States or any other country, whether federal, state, provincial or local, or any agency, authority, board, bureau, central bank, commission, office, division, department or instrumentality thereof or therein, including, without limitation, any court, tribunal, grand jury or arbitrator, in each case whether foreign or domestic, or any entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to such government or political subdivision including, without limitation, any Gaming Authority.

“**Governmental Real Property Disclosure Requirements**” shall mean any Requirement of Law requiring notification of the buyer, mortgagee or assignee of real property, or notification, registration or filing to or with any Governmental Authority, in connection with the sale, lease, mortgage, assignment or other transfer (including, without limitation, any transfer of control) of any real property, establishment or business, of the actual or threatened

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presence or release in or into the Environment, or the use, disposal or handling of Hazardous Material on, at, under or near the real property, facility or business to be sold, mortgaged, assigned or transferred.

“**Ground Leases**” shall mean, collectively, each ground lease set forth on Schedule 1.01(C) attached hereto as each may be supplemented, replaced, terminated or modified from time to time.

“**Guarantee**” shall mean the guarantee of each Guarantor pursuant to Article VI.

“**Guaranteed Obligations**” has the meaning set forth in Section 6.01.

“**Guarantors**” shall mean each of the Persons listed on Schedule 1.01(D) attached hereto and each Wholly Owned Restricted Subsidiary that may hereafter execute a Joinder Agreement pursuant to Section 9.11, together with their successors and permitted assigns, and “**Guarantor**” shall mean any one of

them; *provided, however*, that notwithstanding the foregoing, (a) Guarantors shall not include any Person that has been released as a Guarantor in accordance with the terms of the Credit Documents and (b) at all times, Tenant (or its successor as tenant under the Master Lease) shall be a Guarantor.

“**Hazardous Material**” shall mean any material, substance, waste, constituent, compound, pollutant or contaminant including, without limitation, petroleum (including, without limitation, crude oil or any fraction thereof or any petroleum product or waste) subject to regulation or which could reasonably be expected to give rise to liability under Environmental Law.

“**Immaterial Subsidiary**” shall mean, at any time, any Restricted Subsidiary of Borrower having assets with an aggregate fair market value of less than \$25.0 million as of the most recent Calculation Date; *provided, however*, that in no event shall the aggregate fair market value of the assets of all Immaterial Subsidiaries exceed the Immaterial Subsidiary Threshold Amount as of the most recent Calculation Date.

“**Immaterial Subsidiary Threshold Amount**” shall mean \$50.0 million.

“**Impacted Loans**” has the meaning set forth in Section 5.02.

“**Inaccuracy Determination**” has the meaning set forth in the definition of “Applicable Fee Percentage.”

“**Inaccurate Applicable Fee Percentage Period**” has the meaning set forth in the definition of “Applicable Fee Percentage.”

“**Inaccurate Applicable Margin Period**” has the meaning set forth in the definition of “Applicable Margin.”

“**Incremental Commitments**” shall mean the Incremental Revolving Commitments and the Incremental Term Loan Commitments.

“**Incremental Effective Date**” has the meaning set forth in Section 2.12(b).

“**Incremental Equivalent Debt**” has the meaning set forth in Section 10.01(t).

“**Incremental Existing Tranche Revolving Commitment**” shall have the meaning set forth in Section 2.12(a).

“**Incremental Joinder Agreement**” has the meaning set forth in Section 2.12(b).

“**Incremental Loan Amount**” shall mean (a) \$700.0 million, *plus*, (b) any additional or other amount, so long as, solely in this case of this clause (b), the Consolidated Senior Secured Net Leverage Ratio does not exceed 1.50 to 1.00, determined on a Pro Forma Basis as of the most recent Calculation Date (it being understood that Borrower may elect whether any Incremental Loan Amount is made in reliance on clause (a) or (b)); *provided that*, for such purpose, (x) Consolidated Net Indebtedness shall not take into account any cash or cash equivalents constituting proceeds of any Loans made under any Incremental Commitments to be provided on such date and any Incremental Equivalent Debt to be incurred or issued on such date that may otherwise reduce the amount of Consolidated Net Indebtedness, (y) Consolidated Senior Secured Net Leverage Ratio for such purpose shall treat any Incremental Equivalent Debt as senior secured indebtedness, even if such Incremental Equivalent Debt was issued or incurred on an unsecured basis or on a junior basis to the Obligations, and (z) in the case of any Incremental Revolving Commitments and Incremental Equivalent Debt consisting of revolving credit facilities, *pro forma* effect shall be given to any Incremental Revolving Loans and any loans under any Incremental Equivalent Debt consisting of a revolving credit facility, in each case, to the extent actually made on such date, but any proposed Incremental Revolving Commitments or Incremental Equivalent Debt consisting of a revolving credit facility shall not otherwise be treated as drawn.

“**Incremental Revolving Commitments**” shall mean Incremental Existing Tranche Revolving Commitments and New Revolving Commitments.

“**Incremental Revolving Loans**” means any Revolving Loans made pursuant to Incremental Revolving Commitments.

“**Incremental Term A Loan Commitments**” shall have the meaning assigned thereto in Section 2.12(a).

“**Incremental Term A Loans**” shall have the meaning assigned thereto in Section 2.12(a).

“**Incremental Term B Loan Commitments**” shall have the meaning assigned thereto in Section 2.12(a).

“**Incremental Term B Loans**” shall have the meaning assigned thereto in Section 2.12(a).

“**Incremental Term Loan Commitments**” shall mean the Incremental Term A Loan Commitments, the Incremental Term B Loan Commitments and the New Term Loan Commitments.

“**Incremental Term Loans**” shall mean the Incremental Term A Loans, the Incremental Term B Loans and any New Term Loans.

“**incur**” shall mean, with respect to any Indebtedness or other obligation of any Person, to create, issue, incur (including by conversion, exchange or otherwise), permit to exist, assume, guarantee or otherwise become liable in respect of such Indebtedness or other obligation (and “**incurrence**,” “**incurred**” and “**incurring**” shall have meanings correlative to the foregoing).

“**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; (c) all obligations of such Person under conditional sale or other title retention agreements relating to property purchased by such Person; (d) all obligations of such Person issued or assumed as the deferred purchase price of property or services (excluding (i) trade accounts payable and accrued obligations incurred in the ordinary course of business, (ii) the financing of insurance premiums, (iii) any such obligations payable solely through the issuance of Equity Interests and (iv) any earn-out obligation until such obligation appears in the liabilities section of the balance sheet of such Person in accordance with GAAP (excluding disclosure on the notes and footnotes thereto); *provided that* any earn-out obligation that appears in the liabilities section of the balance sheet of such Person shall be

excluded, to the extent (x) such Person is indemnified for the payment thereof or (y) amounts to be applied to the payment thereof are in escrow); (e) all Indebtedness (excluding prepaid interest thereon) of others secured by any Lien on property owned or acquired by such Person, whether or not the obligations secured thereby have been assumed; *provided, however*, that if such obligations have not been assumed, the amount of such Indebtedness included for the purposes of this definition will be the amount equal to the lesser of the fair market value of such property and the amount of the Indebtedness secured; (f) with respect to any Capital Lease Obligations of such Person, the capitalized amount thereof that would appear on a balance sheet of such Person prepared as of such date in accordance with GAAP (it being understood that any obligations of such Person under the Master Lease shall not constitute Indebtedness); (g) all net obligations of such Person in respect of Swap Contracts; (h) all obligations of such Person as an account party in respect of letters of credit and bankers' acceptances, except obligations in respect of letters of credit issued in support of obligations not otherwise constituting Indebtedness shall not constitute Indebtedness except to the extent such letter of credit is drawn and not reimbursed within three (3) Business Days of such drawing; (i) all obligations of such Person in respect of Disqualified Capital Stock; and (j) all Contingent Obligations of such Person in respect of Indebtedness of others of the kinds referred to in clauses (a) through (i) above. The Indebtedness of any Person shall include the Indebtedness of any partnership in which such Person is a general partner unless recourse is limited, in which case the amount of such Indebtedness shall be the amount such Person is liable therefor (except to the extent the terms of such Indebtedness expressly provide that such Person is not liable therefor). The amount of Indebtedness of the type described in clause (d) shall be calculated based on the net present value thereof. The amount of Indebtedness of the type referred to in clause (g) above of any Person shall be zero unless and until such Indebtedness shall be terminated, in which case the amount of such Indebtedness shall be the then termination payment due thereunder by such Person. For the avoidance of doubt, it is understood and agreed that (x) casino "chips" and gaming winnings of customers, (y) any obligations of such Person in respect of Cash Management Agreements and (z) any obligations of such Person in respect of employee deferred compensation and benefit plans shall not constitute Indebtedness.

"**Indemnitee**" has the meaning set forth in Section 13.03(b).

"**Initial Financial Statement Delivery Date**" shall mean the date on which Section 9.04 Financials are delivered to Administrative Agent under Section 9.04(a) or (b), as applicable, for the first full fiscal quarter ending after the Closing Date.

"**Initial Perfection Certificate**" has the meaning set forth in the definition of "Perfection Certificate."

"**Intellectual Property**" has the meaning set forth in Section 8.19.

"**Interest Coverage Ratio**" shall mean, with respect to any Test Period, the ratio of (x) Consolidated EBITDA for such Test Period to (y) Consolidated Cash Interest Expense for such Test Period.

"**Interest Period**" shall mean, as to each LIBOR Loan, the period commencing on the date such LIBOR Loan is disbursed or converted to or continued as a LIBOR Loan and ending on the date one, two, three or six months thereafter, as selected by Borrower in its Notice of Borrowing or Notice of Continuation/Conversion, as applicable, or such other period that is twelve months or less requested by Borrower and consented to by all the applicable Lenders; *provided that*:

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

(ii) any Interest Period pertaining to LIBOR Loan that begins on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the calendar month at

the end of such Interest Period) shall end on the last Business Day of the calendar month at the end of such Interest Period; and

(iii) no Interest Period for a Class shall extend beyond the maturity date for such Class.

"**Interest Rate Protection Agreement**" shall mean, for any Person, an interest rate swap, cap or collar agreement or similar arrangement between such Person and one or more financial institutions providing for the transfer or mitigation of interest risks either generally or under specific contingencies.

"**Interim Access Agreement**" shall mean the interim access agreement between GLPI and Tenant, dated on or about October 28, 2013.

"**Investments**" of any Person shall mean (a) any loan or advance of funds or credit by such Person to any other Person, (b) any Contingent Obligation by such Person in respect of the Indebtedness or other obligation of any other Person (*provided that* upon termination of any such Contingent Obligation, no Investment in respect thereof shall be deemed outstanding, except as contemplated in clause (e) below), (c) any purchase or other acquisition of any Equity Interests or indebtedness or other securities of any other Person, (d) any capital contribution by such Person to any other Person, (e) without duplication of any amounts included under clause (b) above, any payment under any Contingent Obligation by such Person in respect of the Indebtedness or other obligation of any other Person or (f) the purchase or other acquisition (in one transaction or a series of transaction) of all or substantially all of the property and assets or business of another Person or assets constituting a business unit, line of business or division of such Person. For purposes of the definition of "Unrestricted Subsidiary" and Section 10.04, "Investment" shall include the portion (proportionate to Borrower's Equity Interest in such Subsidiary) of the fair market value of the net assets of any Subsidiary of Borrower at the time of Designation of such Subsidiary as an Unrestricted Subsidiary pursuant to Section 9.12 (excluding any Subsidiaries designated as Unrestricted Subsidiaries on the Closing Date and set forth on Schedule 9.12); *provided, however*, that upon the Revocation of a Subsidiary that was Designated as an Unrestricted Subsidiary after the Closing Date, the amount of outstanding Investments in Unrestricted Subsidiaries shall be deemed to be reduced by the lesser of (x) the fair market value of such Subsidiary at the time of such Revocation and (y) the amount of Investments in such Subsidiary deemed to have been made (directly or indirectly) at the time of, and made (directly or indirectly) since, the Designation of such Subsidiary as an Unrestricted Subsidiary, to the extent that such amount constitutes an outstanding Investment under clauses (d), (i), (k), (l), (m), (q) or (s) of Section 10.04 at the time of such Revocation.

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

“**Joinder Agreements**” shall mean each Joinder Agreement substantially in the form of Exhibit M attached hereto or such other form as is reasonably acceptable to Administrative Agent and each Joinder Agreement to be entered into pursuant to the Security Agreement.

“**Joint Venture**” shall mean any Person, other than an individual or a Wholly Owned Subsidiary of Borrower, in which Borrower or a Restricted Subsidiary of Borrower (directly or indirectly) holds or acquires an ownership interest (whether by way of capital stock, partnership or limited liability company interest, or other evidence of ownership).

“**Judgment Currency Conversion Date**” has the meaning set forth in Section 13.15(a).

“**Junior Financing**” shall mean unsecured Indebtedness (including unsecured Indebtedness convertible into or exchangeable or exercisable for any Equity Interests) of Borrower or all or any Restricted Subsidiaries

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(a) (i) that is subordinated in right of payment to the Loans and contains subordination provisions that are customary in the good faith determination of Borrower for senior subordinated notes or subordinated notes issued under Rule 144A of the Securities Act (or other corporate issuers in private placements or public offerings of securities) or (ii) that contains subordination provisions reasonably satisfactory to Administrative Agent, (b) that shall not have a scheduled maturity date or any scheduled principal payments or be subject to any mandatory redemption, prepayment, or sinking fund (except for customary change of control provisions and, in the case of bridge facilities, customary mandatory redemptions or prepayments with proceeds of Permitted Refinancings thereof (which Permitted Refinancings would constitute Junior Financing) or Equity Issuances, and customary asset sale provisions that permit application of the applicable proceeds to the payment of the Obligations prior to application to such Junior Financing) due prior to the date that is 91 days after the Final Maturity Date then in effect at the time of issuance (excluding bridge facilities allowing extensions on customary terms to at least 91 days after such Final Maturity Date) and (c) the terms (excluding pricing, fees, rate floors, premiums, optional prepayment or optional redemption provisions) of which are (as determined by Borrower in good faith), taken as a whole, no more restrictive in any material respect than the terms set forth in this Agreement (other than, in the case of any bridge facility, covenants, defaults and remedy provisions customary for bridge financings).

“**Junior Prepayments**” shall have the meaning provided in Section 10.09.

“**L/C Commitments**” shall mean the commitments of the L/C Lender to issue Letters of Credit pursuant to Section 2.03. The L/C Commitments are part of, and not in addition to, the Revolving Commitments.

“**L/C Disbursements**” shall mean a payment or disbursement made by any L/C Lender pursuant to a Letter of Credit.

“**L/C Documents**” shall mean, with respect to any Letter of Credit, collectively, any other agreements, instruments, guarantees or other documents (whether general in application or applicable only to such Letter of Credit) governing or providing for (a) the rights and obligations of the parties concerned or at risk with respect to such Letter of Credit or (b) any collateral security for any of such obligations, each as the same may be amended or modified and in effect from time to time.

“**L/C Interest**” shall mean, for each Revolving Lender, such Lender’s participation interest (or, in the case of each L/C Lender, such L/C Lender’s retained interest) in each L/C Lender’s liability under Letters of Credit and such Lender’s rights and interests in Reimbursement Obligations and fees, interest and other amounts payable in connection with Letters of Credit and Reimbursement Obligations.

“**L/C Lender**” shall mean, as the context may require: (a) with respect to each Existing Letter of Credit, Wells Fargo Bank, National Association, in its capacity as issuer of the Existing Letters of Credit, together with its successors and assigns in such capacity and (b) with respect to all other Letters of Credit, (i) Bank of America or any of its Affiliates, in its capacity as issuer of Letters of Credit issued by it hereunder, together with its successors and assigns in such capacity; (ii) Wells Fargo Bank, National Association or any of its Affiliates, in its capacity as issuer of Letters of Credit issued by it hereunder, together with its successors and assigns in such capacity; and/or (iii) any other Revolving Lender or Revolving Lenders selected by Borrower and reasonably acceptable to Administrative Agent (such approval not to be unreasonably withheld or delayed) that agrees to become an L/C Lender, in each case under this clause (ii) in its capacity as issuer of Letters of Credit issued by such Lender hereunder, together with its successors and assigns in such capacity.

“**L/C Liability**” shall mean, at any time, without duplication, the sum of (a) the Dollar Equivalent of the Stated Amount of all outstanding Letters of Credit at such time plus (b) the aggregate amount of all L/C Disbursements that have not yet been reimbursed at such time (expressed in Dollars in the amount of the Dollar Equivalent thereof in the case of any Letter of Credit denominated in the Alternate Currency) in respect of all Letters

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of Credit. The L/C Liability of any Revolving Lender at any time shall mean such Revolving Lender’s participations and obligations in respect of outstanding Letters of Credit at such time.

“**L/C Payment Notice**” has the meaning provided in Section 2.03(d).

“**L/C Sublimit**” shall mean an amount equal to the lesser of (a) \$150.0 million and (b) the Total Revolving Commitments then in effect. The L/C Sublimit is part of, and not in addition to, the Total Revolving Commitments.

“**Landlord**” shall mean GLP Capital, L.P., a Pennsylvania limited partnership, in its capacity as landlord under the Master Lease, and its successors in such capacity.

“**Laws**” shall mean, collectively, all common law and all international, foreign, federal, state and local statutes, treaties, rules, guidelines, regulations, ordinances, codes and administrative or judicial precedents, including without limitation the interpretation thereof by any Governmental Authority charged

with the enforcement thereof.

“**Lead Arrangers**” shall mean, collectively, (a) Merrill Lynch, Pierce, Fenner & Smith, Incorporated, J.P. Morgan Securities LLC, Fifth Third Bank, Wells Fargo Securities, LLC, UBS Securities LLC, Credit Agricole Corporate and Investment Bank, Goldman Sachs Bank USA, Manufacturers & Traders Trust Company, Nomura Securities International, Inc., RBS Securities Inc. and SunTrust Robinson Humphrey, Inc., in their capacities as joint lead arrangers for the Loans and Commitments extended on the Closing Date hereunder and (b) Merrill Lynch, Pierce, Fenner & Smith, Incorporated, J.P. Morgan Securities LLC, Fifth Third Bank, Goldman Sachs Bank USA, Manufacturers & Traders Trust Company, SunTrust Robinson Humphrey, Inc. and U.S. Bank National Association, in their capacities as joint lead arrangers for the First Amendment Incremental Commitments.

“**Lease**” shall mean any lease, sublease, franchise agreement, license, occupancy or concession agreement.

“**Leased Property**” shall mean all “Leased Property” (as defined in the Master Lease from time to time).

“**Lender Insolvency Event**” shall mean that (i) a Lender or its Parent Company is insolvent, or is generally unable to pay its debts as they become due, or admits in writing its inability to pay its debts as they become due, or makes a general assignment for the benefit of its creditors, or (ii) such Lender or its Parent Company is the subject of a proceeding under any Debtor Relief Law, or a receiver, trustee, conservator, intervenor, administrator, sequestrator, assignee for the benefit of creditors or similar Person charged with reorganization or liquidation of its business or assets (including the Federal Deposit Insurance Corporation or any other state or federal regulatory authority) has been appointed for such Lender or its Parent Company, or such Lender or its Parent Company has taken any action authorizing or indicating its consent to or acquiescence in any such proceeding or appointment; *provided, however*, that a Lender Insolvency Event shall not be deemed to exist solely as the result of the acquisition or maintenance of an ownership interest in such Lender or its Parent Company by a Governmental Authority or an instrumentality thereof so long as such ownership interest does not result in or provide such Lender with immunity from the jurisdiction of courts within the United States or from the enforcement of judgments or writs of attachment on its assets or permit such Lender (or such Governmental Authority) to reject, repudiate, disavow or disaffirm any contracts or agreements made with such Lender.

“**Lenders**” shall mean (a) each Person listed on Annexes A-1, A-2 and A-3, (b) any Lender providing an Incremental Commitment pursuant to Section 2.12 and any Person that becomes a Lender from time to time party hereto pursuant to Section 2.15 and (c) any Person that becomes a “Lender” hereunder pursuant to an Assignment Agreement, in each case, other than any such Person that ceases to be a Lender pursuant to an Assignment Agreement or a Borrower Assignment Agreement. Unless the context requires otherwise, the term “Lenders” shall include the Swingline Lender and the L/C Lender.

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“**Letter of Credit Request**” has the meaning set forth in Section 2.03(b).

“**Letters of Credit**” shall have the meaning set forth in Section 2.03(a) and shall include each Existing Letter of Credit.

“**LIBO Base Rate**” shall mean, with respect to any LIBOR Loan for any Interest Period therefor, the rate *per annum* equal to the London Interbank Offered Rate (“**LIBOR**”) or a comparable or successor rate, which rate is approved by the Administrative Agent, as published in the applicable Reuters screen page (or such other commercially available source providing such quotations as may be designated by the Administrative Agent from time to time) at or about 11:00 a.m., London time, two Business Days prior to the commencement of such Interest Period, for Dollar deposits (for delivery on the first day of such Interest Period) with a term equivalent to such Interest Period; *provided* that to the extent a comparable or successor rate is approved by the Administrative Agent in connection herewith, the approved rate shall be consistent with market practice for LIBOR-based loans (and the application of such rate shall also be in accordance with market practice); *provided, further* that to the extent such market practice is not administratively feasible for the Administrative Agent, such approved rate shall be applied in a manner as otherwise reasonably determined by the Administrative Agent. Notwithstanding the foregoing, the LIBO Base Rate shall not be less than 0.00%.

“**LIBO Rate**” shall mean, for any LIBOR Loan for any Interest Period therefor, a rate *per annum* (rounded upwards, if necessary, to the nearest 1/100th of 1%) determined by Administrative Agent to be equal to the LIBO Base Rate for such Loan for such Interest Period divided by 1 minus the Reserve Requirement (if any) for such Loan for such Interest Period. Notwithstanding the foregoing, (a) for purposes of clause (c) of the definition of Alternate Base Rate, the rates referred to above shall be the rates as of 11:00 a.m., London, England time, on the date of determination (rather than the second Business Day preceding the date of determination) and (b) the LIBO Rate for Term B Facility Loans shall not be less than 0.75%.

“**LIBOR Loans**” shall mean Loans that bear interest at rates based on rates referred to in the definition of “LIBO Rate.”

“**License Revocation**” shall mean the revocation, failure to renew or suspension of, or the appointment of a receiver, supervisor or similar official with respect to, any Gaming License covering any Gaming Facility owned, leased, operated or used by Borrower or any of its Restricted Subsidiaries, but excluding any such revocation, failure to renew, suspension or appointment to the extent such Gaming License relates to a Gaming Facility that (a) is located on a Native American Indian reservation and/or (b) is located in a jurisdiction (i) in which none of Borrower or its Subsidiaries owned, leased, operated or managed a Gaming Facility on the Closing Date and (ii) the Gaming Laws of which have permitted gambling in the form of slot machines and table games to be conducted by any person or persons who are not Native American Indians or are acting or managing gaming operations for or on behalf of Native American Indians for less than two (2) years at the time of any such revocation, failure to renew, suspension or appointment.

“**Lien**” shall mean, with respect to any Property, any mortgage, deed of trust, lien, pledge, security interest, or assignment, hypothecation or encumbrance for security of any kind, or any filing of any financing statement under the UCC or any other similar notice of lien under any similar notice or recording statute of any Governmental Authority (other than such financing statement or similar notices filed for informational or precautionary purposes only), or any conditional sale or other title retention agreement or any lease in the nature thereof.

“**Liquor Authority**” has the meaning set forth in Section 13.13(a).

“**Liquor Laws**” has the meaning set forth in Section 13.13(a).

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“**Loans**” shall mean the Revolving Loans, the Swingline Loans and the Term Loans.

“**Losses**” of any Person shall mean the losses, liabilities, claims (including those based upon negligence, strict or absolute liability and liability in tort), damages, reasonable expenses, obligations, penalties, actions, judgments, penalties, fines, suits, reasonable and documented costs or disbursements (including reasonable fees and expenses of one primary counsel for the Secured Parties collectively, and any local counsel reasonably required in any applicable jurisdiction (and solely in the case of an actual or perceived conflict of interest, where the Persons affected by such conflict inform Borrower in writing of the existence of an actual or perceived conflict of interest prior to retaining additional counsel, one additional of each such counsel for each group of similarly situated Secured Parties), in connection with any Proceeding commenced or threatened in writing, whether or not such Person shall be designated a party thereto) at any time (including following the payment of the Obligations) incurred by, imposed on or asserted against such Person.

“**Margin Stock**” shall mean margin stock within the meaning of Regulation T, Regulation U and Regulation X.

“**Master Lease**” shall mean the Master Lease, to be entered into promptly following the Spin-Off by and among Landlord and Tenant, in substantially the form attached hereto as Exhibit F.

“**Material Adverse Effect**” shall mean (a) a material adverse effect on the business, assets, financial condition or results of operations of Borrower and its Restricted Subsidiaries, taken as a whole and after giving effect to the Transactions (including, without limitation, the Spin-Off), (b) a material adverse effect on the ability of the Credit Parties (taken as a whole) to satisfy their material payment Obligations under the Credit Documents or (c) a material adverse effect on the legality, binding effect or enforceability against any material Credit Party of the Credit Documents to which it is a party or any of the material rights and remedies of any Secured Party thereunder or the legality, priority or enforceability of the Liens on a material portion of the Collateral.

“**Material Indebtedness**” shall mean any Indebtedness the outstanding principal amount of which is in excess of \$50.0 million.

“**Maximum Rate**” has the meaning set forth in Section 13.19.

“**Minimum Collateral Amount**” means, at any time, (i) with respect to Cash Collateral consisting of cash or deposit account balances provided to reduce or eliminate un-reallocated portions of L/C Liabilities during the existence of a Defaulting Lender, an amount equal to 103% of the un-reallocated L/C Liabilities at such time, (ii) with respect to Cash Collateral consisting of cash or deposit account balances provided in accordance with the provisions of Sections 2.01(e), 2.03, 2.10(c), 2.10(e), 2.16(a)(i), 2.16(a)(ii) or 11.01, an amount equal to 103% of the aggregate L/C Liability, and (iii) otherwise, an amount determined by the Administrative Agent and the L/C Lenders in their reasonable discretion.

“**Moody’s**” shall mean Moody’s Investors Service, Inc., or any successor entity thereto.

“**Mortgage**” shall mean an agreement, including, but not limited to, a mortgage, deed of trust or any other document, creating and evidencing a first Lien (subject only to the Liens permitted thereunder) in favor of Collateral Agent on behalf of the Secured Parties on each Mortgaged Real Property, which shall be in substantially the form of Exhibit I or such other form as is reasonably acceptable to Administrative Agent, with such schedules and including such provisions as shall be necessary to conform such document to applicable or local law or as shall be customary under local law, as the same may at any time be amended in accordance with the terms thereof and hereof and such changes thereto as shall be reasonably acceptable to Administrative Agent.

“**Mortgaged Real Property**” shall mean (a) each Real Property listed on Schedule 1.01(E) and (b) each Real Property, if any, which shall be subject to a Mortgage delivered on or after the Closing Date pursuant to Section 9.08, 9.11 or 9.14 (in each case, unless and until such Real Property is no longer subject to a Mortgage).

“**Mortgaged Vessel**” shall mean (a) each Vessel, if any, listed on Schedule 8.13(b) as a “Mortgaged Vessel,” and (b) each Vessel or Replacement Vessel, if any, which shall be subject to a Ship Mortgage after the Closing Date pursuant to Section 9.08 or 9.11 (in each case, unless and until such Vessel or Replacement Vessel is no longer subject to a Mortgage).

“**Multiemployer Plan**” shall mean a multiemployer plan within the meaning of Section 4001(a)(3) of ERISA (a) to which any ERISA Entity is then making or accruing an obligation to make contributions, (b) to which any ERISA Entity has within the preceding five plan years made contributions, including any Person which ceased to be an ERISA Entity during such five year period or (c) with respect to which any Company is reasonably likely to incur liability under Title IV of ERISA.

“**NAIC**” shall mean the National Association of Insurance Commissioners.

“**Net Available Proceeds**” shall mean:

(i) in the case of any Asset Sale pursuant to Section 10.05(c) or pursuant to Section 10.05(p), the aggregate amount of all cash payments (including any cash payments received by way of deferred payment of principal pursuant to a note or otherwise, but only as and when received) received by Borrower or any Restricted Subsidiary directly or indirectly in connection with such Asset Sale, net (without duplication) of (A) the amount of all reasonable fees and expenses and transaction costs paid by or on behalf of Borrower or any Restricted Subsidiary in connection with such Asset Sale (including, without limitation, any underwriting, brokerage or other customary selling commissions and legal, advisory and other fees and expenses, including survey, title and recording expenses, transfer taxes and expenses incurred for preparing such assets for sale, associated therewith); (B) any Taxes paid or estimated in good faith to be payable by or on behalf of any Company as a result of such Asset Sale (after application of all credits and other offsets that arise from such Asset Sale); (C) any repayments by or on behalf of any Company of Indebtedness (other than the Obligations) to the extent that such Indebtedness is secured by a Permitted Lien on the subject Property required to be repaid as a condition to the purchase or sale of such Property; (D) amounts required to be paid to any Person (other than any Company) owning a beneficial interest in the subject Property; and (E) amounts reserved, in accordance with GAAP, against any liabilities associated with such Asset Sale and retained by Borrower or any of its Subsidiaries after such Asset Sale and related thereto, including pension and other post-employment benefit liabilities, purchase price adjustments, liabilities related to environmental matters and liabilities under any indemnification obligations associated with such Asset Sale, all as reflected in an Officer’s Certificate delivered to Administrative Agent; *provided*, that Net Available Proceeds shall include any cash payments received upon the reversal (without the satisfaction of any applicable liabilities in cash in a corresponding amount)



of any reserve described in clause (E) of this clause (i) or, if such liabilities have not been satisfied in cash and such reserve is not reversed within eighteen (18) months after such Asset Sale, the amount of such reserve;

(ii) in the case of any Casualty Event, the aggregate amount of cash proceeds of insurance, condemnation awards and other compensation (excluding proceeds constituting business interruption insurance or other similar compensation for loss of revenue, but including the proceeds of any disposition of Property pursuant to Section 10.05(l)) received by the Person whose Property was subject to such Casualty Event in respect of such Casualty Event net of (A) fees and expenses incurred by or on behalf of Borrower or any Restricted Subsidiary in connection with recovery thereof, (B) repayments of Indebtedness (other than Indebtedness hereunder) to the extent secured by a Lien on such Property that is

permitted by the Credit Documents and that is not junior to the Lien thereon securing the Obligations, and (C) any Taxes paid or payable by or on behalf of Borrower or any Restricted Subsidiary in respect of the amount so recovered (after application of all credits and other offsets arising from such Casualty Event) and amounts required to be paid to any Person (other than any Company) owning a beneficial interest in the subject Property; *provided that*, in the case of a Casualty Event with respect to property that is subject to the Master Lease or a similar lease entered into for the purpose of, or with respect to, operating or managing gaming facilities and related assets, such cash proceeds shall not constitute Net Available Proceeds to the extent, and for so long as, such cash proceeds are required, by the terms of such lease, (x) to be paid to the holder of any mortgage, deed of trust or other security agreement securing indebtedness of the lessor or (y) to be paid to, or for the account of, the lessor or deposited in an escrow account to fund rent and other amounts due with respect to such property and costs to preserve, stabilize, repair, replace or restore such property (in accordance with the provisions of the applicable lease); and

(iii) in the case of any Debt Issuance, the aggregate amount of all cash received in respect thereof by the Person consummating such Debt Issuance in respect thereof net of all investment banking fees, discounts and commissions, legal fees, consulting fees, accountants' fees, underwriting discounts and commissions and other fees and expenses, actually incurred in connection therewith.

**"New Investment Returns"** shall mean the aggregate of all amounts received by Borrower and its Restricted Subsidiaries with respect to Investments made pursuant to Section 10.04(k) on or after the Closing Date (including with respect to contracts related to such Investments and including principal, interest, dividends, distributions, sale proceeds, payments under contracts relating to such Investments or other amounts) that are designated by Borrower as "New Investment Returns" in the Compliance Certificate delivered to the Administrative Agent in respect of the fiscal quarter in which such amounts were received.

**"New Revolving Commitment"** shall have the meaning set forth in Section 2.12(a).

**"New Revolving Loan"** shall have the meaning set forth in Section 2.12(a).

**"New Term Loan Commitments"** has the meaning set forth in Section 2.12(a).

**"New Term Loan Facility"** shall mean each credit facility comprising New Term Loan Commitments and New Term Loans of a particular Tranche, if any.

**"New Term Loan Maturity Date"** shall mean, with respect to any New Term Loans to be made pursuant to the related Incremental Joinder Agreement, the maturity date thereof as determined in accordance with Section 2.12(b).

**"New Term Loan Notes"** shall mean the promissory notes executed and delivered in connection with any New Term Loan Commitments and the related New Term Loans.

**"New Term Loans"** has the meaning set forth in Section 2.12(a).

**"Non-Defaulting Lender"** shall mean each Lender other than a Defaulting Lender.

**"Non-Extension Notice Date"** shall have the meaning provided by Section 2.03(b).

**"Non-U.S. Lender"** has the meaning set forth in Section 5.06(b).

**"Notes"** shall mean the Revolving Notes, the Swingline Note and the Term Loan Notes.

**"Notice of Borrowing"** shall mean a notice of borrowing substantially in the form of Exhibit B or such other form as is reasonably acceptable to Administrative Agent.

**"Notice of Continuation/Conversion"** shall mean a notice of continuation/conversion substantially in the form of Exhibit C or such other form as is reasonably acceptable to Administrative Agent.

**"Obligation Currency"** has the meaning set forth in Section 13.15(a).

**"Obligations"** shall mean all amounts, liabilities and obligations, direct or indirect, contingent or absolute, of every type or description, and at any time existing, owing by any Credit Party to any Secured Party or any of its Agent Related Parties or their respective successors, transferees or assignees pursuant to the terms of any Credit Document, any Credit Swap Contract or, with the prior written approval of Borrower, any Secured Cash Management Agreement (including in each case interest accruing or obligations incurred during the pendency of any bankruptcy, insolvency, receivership or other similar proceeding, regardless of whether allowed or allowable in such proceeding), whether or not the right of such Person to payment in respect of such obligations

and liabilities is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured or unsecured and whether or not such claim is discharged, stayed or otherwise affected by any bankruptcy case or insolvency or liquidation proceeding.

“**OFAC**” has the meaning set forth in Section 8.27(b)(v).

“**Officer’s Certificate**” shall mean, as applied to any entity, a certificate executed on behalf of such entity (or such entity’s manager or member or general partner, as applicable) by its chairman of the board of directors (or functional equivalent) (if an officer), its chief executive officer, its president, any of its vice presidents, its chief financial officer, its chief accounting officer or its treasurer or controller (in each case, or an equivalent officer) in their official (and not individual) capacities.

“**Open Market Assignment and Assumption Agreement**” shall mean an Open Market Assignment and Assumption Agreement substantially in the form attached as Exhibit P hereto or such other form as is reasonably acceptable to Administrative Agent.

“**Organizational Document**” shall mean, relative to any Person, its certificate of incorporation, its certificate of formation, its certificate of partnership, its by-laws, its partnership agreement, its limited liability company agreement, its memorandum or articles of association, share designations or similar organization documents and all shareholder agreements, voting trusts and similar arrangements applicable to any of its authorized Equity Interests.

“**Other Applicable Indebtedness**” shall mean Indebtedness incurred pursuant to Section 10.01(c), (h), (k), (n), (q), (u), (v) and (w).

“**Other Commitments**” means the Other Term Loan Commitments and Other Revolving Commitments.

“**Other Debt**” has the meaning set forth in the definition of “Repricing Transaction.”

“**Other First Lien Indebtedness**” shall mean outstanding Indebtedness that is not incurred under this Agreement and that (a) is secured by the Collateral on a *pari passu* basis with the Obligations and (b) is Permitted First Priority Refinancing Debt, Permitted First Lien Indebtedness or Incremental Equivalent Debt.

“**Other Junior Indebtedness**” shall mean Permitted Unsecured Indebtedness, Permitted Second Lien Indebtedness, Permitted Unsecured Refinancing Debt, Permitted Second Priority Refinancing Debt, Indebtedness

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incurred pursuant to Section 10.01(p), Indebtedness incurred pursuant to Section 10.01(q) or Incremental Equivalent Debt that is secured by a Lien on Collateral junior to the Liens securing the Obligations or that is unsecured.

“**Other Revolving Commitments**” means one or more Tranches of revolving credit commitments hereunder that result from a Refinancing Amendment.

“**Other Revolving Loans**” means one or more Tranches of Revolving Loans that result from a Refinancing Amendment.

“**Other Taxes**” has the meaning set forth in Section 5.06(e).

“**Other Term Loan Commitments**” means one or more Tranches of term loan commitments hereunder that result from a Refinancing Amendment.

“**Other Term Loans**” means one or more Tranches of Term Loans that result from a Refinancing Amendment.

“**Outstanding Investment Amount**” shall mean, as of any date of determination, the aggregate amount (not less than zero) of all Investments made pursuant to Section 10.04(k) on or after the Closing Date, in each case, valued at fair market value at the time each such Investment was made, *minus* (x) New Investment Returns received on or prior to such date of determination, *minus* (y) all Existing Investment Reductions received on or prior to such date (but only to the extent that on the date any such Existing Investment Reduction was received, such Existing Investment Reduction was not larger than the Outstanding Investment Amount as of such date (without giving effect to such Existing Investment Reduction)), *minus* (z) reductions in the amount of such Investments as provided in the definition of “Investment”

“**Paid in Full**” or “**Payment in Full**” and any other similar terms, expressions or phrases shall mean, at any time, (a) with respect to obligations other than the Obligations or the Secured Obligations (as defined in the Security Agreement), the payment in full of all of such obligations and (b) with respect to the Obligations or the Secured Obligations (as defined in the Security Agreement), the irrevocable termination of all Commitments, the payment in full in cash of all Obligations (except undrawn Letters of Credit and Unasserted Obligations), including principal, interest, fees, costs (including post-petition interest, fees and costs even if such interest, fees and costs are not an allowed claim enforceable against any Credit Party in a bankruptcy case under applicable law) and premium (if any), and the discharge or Cash Collateralization of all Letters of Credit outstanding in an amount equal to 103% of the greatest amount for which such Letters of Credit may be drawn (or receipt of backstop letters of credit reasonably satisfactory to the applicable L/C Lender and the Administrative Agent). For purposes of this definition, “**Unasserted Obligations**” means, at any time, contingent indemnity obligations in respect of which no claim or demand for payment has been made at such time.

“**Parent Company**” shall mean, with respect to a Lender, the bank holding company (as defined in Federal Reserve Board Regulation Y), if any, of such Lender, and/or any Person owning, beneficially or of record, directly or indirectly, a majority of the shares of such Lender.

“**Pari Passu Intercreditor Agreement**” means an intercreditor agreement substantially in the form of Exhibit S hereto or such other form as is reasonably acceptable to Administrative Agent.

“**Patriot Act**” has the meaning set forth in Section 8.27(a).

“**PBGC**” shall mean the Pension Benefit Guaranty Corporation referred to and defined in ERISA, or any successor thereto.

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“**Pension Plan**” shall mean an employee pension benefit plan (other than a Multiemployer Plan) that is covered by Title IV of ERISA or subject to the minimum funding standards under Section 412 of the Code or Section 302 of ERISA and is maintained or contributed to by any ERISA Entity or with respect to which any Company is reasonably likely to incur liability under Title IV of ERISA.

“**Perfection Certificate**” shall mean that certain Perfection Certificate, dated as of the Closing Date (the “**Initial Perfection Certificate**”), executed and delivered by Borrower on behalf of Borrower and each of the Guarantors existing on the initial Funding Date, and each other Perfection Certificate (which shall be substantially in the form of Exhibit N or such other form as is reasonably acceptable to Administrative Agent) executed and delivered by the applicable Credit Party from time to time, in each case, as the same may be amended, amended and restated, supplemented or otherwise modified from time to time in accordance with Section 9.04(h)(ii).

“**Permits**” has the meaning set forth in Section 8.15.

“**Permitted Acquisition**” shall mean any acquisition, whether by purchase, merger, consolidation or otherwise, by Borrower or any of its Restricted Subsidiaries of all or substantially all of the business, property or assets of, or Equity Interests in, a Person or any division or line of business of a Person so long as (a) immediately after a binding contract with respect thereto is entered into between Borrower or one of its Restricted Subsidiaries and the seller with respect thereto and after giving pro forma effect to such acquisition and related transactions, no Event of Default has occurred and is continuing or would result therefrom and Borrower and its Restricted Subsidiaries shall be in compliance on a Pro Forma Basis with the Financial Maintenance Covenants as of the most recent Calculation Date (giving effect to such acquisition and any related anticipated incurrences and repayments of Indebtedness as if consummated on the first day of relevant Test Period or, in the case of any Permitted Acquisition or other Acquisition not prohibited hereunder with respect to which the acquisition agreement is entered into prior to the First Amendment Incremental Commitments Availability Date, based on the Financial Maintenance Covenants required for the Test Period ending March 31, 2015, as amended by the First Amendment), (b) immediately after giving effect thereto, Borrower shall be in compliance with Section 10.11, and (c) with respect to a Permitted Acquisition in excess of \$50.0 million, Borrower has delivered to Administrative Agent an Officer’s Certificate to the effect set forth in clauses (a) and (b) above, together with all relevant financial information for the Person or assets to be acquired.

“**Permitted Business**” means any business of the type in which Borrower and its Restricted Subsidiaries are engaged or proposed to be engaged on the date of this Agreement, or any business reasonably related, incidental or ancillary thereto (including assets or businesses complementary thereto).

“**Permitted Business Assets**” means (a) one or more Permitted Businesses, (b) a controlling equity interest in any Person whose assets consist primarily of one or more Permitted Businesses, (c) assets that are used or useful in a Permitted Business or (d) any combination of the preceding clauses (a), (b) and (c), in each case, as determined by Borrower’s Board of Directors or a Responsible Officer or other management of Borrower or the Restricted Subsidiary acquiring such assets, in each case, in its good faith judgment.

“**Permitted First Lien Indebtedness**” means any Indebtedness of Borrower (and Contingent Obligations of the Guarantors in respect thereof) that (a) is secured by the Collateral on a *pari passu* basis to the Liens securing the Obligations and the obligations in respect of any Permitted First Priority Refinancing Debt and is not secured by any property or assets of Borrower or any Restricted Subsidiary other than the Collateral, (b) the holders of such Indebtedness (or their representative) and Administrative Agent shall be party to the *Pari Passu* Intercreditor Agreement, (c) is not scheduled to mature prior to the Final Maturity Date then in effect at the time of issuance (excluding bridge facilities allowing extensions on customary terms to at least such Final Maturity Date), (d) is not at any time guaranteed by any Subsidiaries other than Subsidiaries that are Guarantors, (e) the terms (excluding pricing, fees, rate floors, premiums, optional prepayment or optional redemption provisions) of which are (as determined by Borrower in good faith), taken as a whole, no more restrictive in any material respect than the terms

set forth in this Agreement (other than, in the case of any bridge facility, covenants, defaults and remedy provisions customary for bridge financings) and (f) other than in the case of a revolving credit facility, does not have a Weighted Average Life to Maturity (excluding the effects of any prepayments of Term Loans reducing amortization) that is shorter than that of any outstanding Term Loans (excluding bridge facilities allowing extensions on customary terms at least to such Final Maturity Date).

“**Permitted First Priority Refinancing Debt**” means any secured Indebtedness incurred by Borrower (and Contingent Obligations of the Guarantors in respect thereof) in the form of one or more series of senior secured notes or loans; *provided* that (a) such Indebtedness is secured by the Collateral on a *pari passu* basis (but without regard to the control of remedies) with the Obligations and is not secured by any property or assets of Borrower or any Restricted Subsidiary other than the Collateral, (b) such Indebtedness constitutes Credit Agreement Refinancing Indebtedness, (c) such Indebtedness is not at any time guaranteed by any Subsidiaries other than Subsidiaries that are Guarantors, and (d) the holders of such Indebtedness (or their representative) and Administrative Agent shall be party to the *Pari Passu* Intercreditor Agreement.

“**Permitted Junior Debt Conditions**” means that such applicable debt (i) does not have a scheduled maturity date prior to the date that is 91 days after the Final Maturity Date then in effect at the time of issuance (excluding bridge facilities allowing extensions on customary terms to at least 91 days after such Final Maturity Date), (ii) does not have a Weighted Average Life to Maturity (excluding the effects of any prepayments of Term Loans reducing amortization) that is shorter than that of any outstanding Term Loans (excluding bridge facilities allowing extensions on customary terms to at least ninety-one (91) days after the Final Maturity Date), (iii) shall not have any scheduled principal payments or be subject to any mandatory redemption, prepayment, or sinking fund (except for customary change of control (and, in the case of convertible or exchangeable debt instruments, delisting) provisions and, in the case of bridge facilities, customary mandatory redemptions or prepayments with proceeds of Permitted Refinancings thereof (which Permitted Refinancings would constitute Junior Financing) or Equity Issuances, and customary asset sale provisions that permit application of the applicable proceeds to the payment of the Obligations prior to application to such Junior Financing) due prior to the date that is ninety-one (91) days after the Final Maturity Date then in effect at the time of issuance (excluding bridge facilities allowing extensions on customary terms to at least ninety-one (91) days after such Final Maturity Date), (iv) is not at any time guaranteed by any Subsidiaries other than Subsidiaries that are Guarantors and (v) has terms (excluding pricing, fees, rate floors, premiums, optional prepayment or optional redemption provisions) that are (as determined by Borrower in good faith), taken as a whole, no more restrictive in any material respect than the terms set forth in this Agreement (other than, in the case of any bridge facility, covenants, defaults and remedy provisions customary for bridge financings). For the avoidance of doubt, the usual and customary terms of convertible or exchangeable debt instruments issued in a registered offering or under Rule 144A of the Securities Act shall be deemed to be no more restrictive in an material respect than the terms set forth in this Agreement.

“**Permitted Liens**” has the meaning set forth in Section 10.02.

“**Permitted Refinancing**” shall mean, with respect to any Indebtedness, any refinancing thereof; *provided* that: (a) no Default or Event of Default shall have occurred and be continuing or would arise therefrom; (b) any such refinancing Indebtedness shall (i) not have a stated maturity or, other than in the case of a revolving credit facility, a Weighted Average Life to Maturity that is shorter than that of the Indebtedness being refinanced, (ii) if the Indebtedness being refinanced is subordinated to the Obligations by its terms or by the terms of any agreement or instrument relating to such Indebtedness, be at least as subordinate to the Obligations as the Indebtedness being refinanced (and unsecured if the refinanced Indebtedness is unsecured) and (iii) be in a principal amount that does not exceed the principal amount so refinanced, *plus*, accrued interest, *plus*, any premium or other payment required to be paid in connection with such refinancing, *plus*, the amount of fees and expenses of Borrower or any of its Restricted Subsidiaries incurred in connection with such refinancing, *plus*, any unutilized commitments thereunder; and (c) the obligors on such refinancing Indebtedness shall be the obligors on such Indebtedness being refinanced; *provided, however*, that (i) the borrower of the refinancing indebtedness shall be Borrower or the borrower of the

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indebtedness being refinanced and (ii) any Credit Party shall be permitted to guarantee any such refinancing Indebtedness of any other Credit Party.

“**Permitted Second Lien Indebtedness**” means any Indebtedness of Borrower (and Contingent Obligations of the Guarantors in respect thereof) that (a) is secured by the Collateral on a second priority (or other junior priority) basis to the Liens securing the Obligations and the obligations in respect of any Permitted First Priority Refinancing Debt and any Permitted First Lien Indebtedness and is not secured by any property or assets of Borrower or any Restricted Subsidiary other than the Collateral, (b) meets the Permitted Junior Debt Conditions and (c) the holders of such Indebtedness (or their representative) shall be party to the Second Lien Intercreditor Agreement (as “Second Priority Debt Parties”) with the Administrative Agent.

“**Permitted Second Priority Refinancing Debt**” means secured Indebtedness incurred by Borrower (and Contingent Obligations of the Guarantors in respect thereof) in the form of one or more series of second lien (or other junior lien) secured notes or second lien (or other junior lien) secured loans; *provided* that (a) such Indebtedness is secured by the Collateral on a second priority (or other junior priority) basis to the liens securing the Obligations and the obligations in respect of any Permitted First Priority Refinancing Debt and any Permitted First Lien Indebtedness and is not secured by any property or assets of Borrower or any Restricted Subsidiary other than the Collateral, (b) such Indebtedness constitutes Credit Agreement Refinancing Indebtedness (*provided*, that such Indebtedness may be secured by a Lien on the Collateral that is junior to the Liens securing the Obligations and the obligations in respect of any Permitted First Priority Refinancing Debt and Permitted First Lien Indebtedness, notwithstanding any provision to the contrary contained in the definition of “Credit Agreement Refinancing Indebtedness”), (c) the holders of such Indebtedness (or their representative) shall be party to the Second Lien Intercreditor Agreement (as “Second Priority Debt Parties”) with the Administrative Agent and (d) meets the Permitted Junior Debt Conditions.

“**Permitted Unsecured Indebtedness**” means any unsecured Indebtedness of Borrower (and Contingent Obligations of the Guarantors in respect thereof) that meets the Permitted Junior Debt Conditions or is Junior Financing. For the avoidance of doubt, Disqualified Capital Stock shall not constitute Permitted Unsecured Indebtedness.

“**Permitted Unsecured Refinancing Debt**” means unsecured Indebtedness incurred by Borrower or its Restricted Subsidiaries in the form of one or more series of senior unsecured notes or loans; *provided* that (a) such Indebtedness constitutes Credit Agreement Refinancing Indebtedness and (b) meets the Permitted Junior Debt Conditions.

“**Permitted Vessel Liens**” shall mean maritime Liens on ships, barges or other vessels for damages arising out of a maritime tort, wages of a stevedore, when employed directly by a Person listed in 46 U.S.C. § 31341, crew’s wages, salvage and general average, whether now existing or hereafter arising and other maritime Liens which arise by operation of law during normal operations of such ships, barges or other vessels.

“**Person**” shall mean any individual, corporation, company, association, partnership, limited liability company, joint venture, trust, unincorporated organization or Governmental Authority or any other entity.

“**Pledged Collateral**” has the meaning set forth in the Security Agreement.

“**Post-Increase Revolving Lenders**” has the meaning set forth in Section 2.12(d).

“**Post-Refinancing Revolving Lenders**” has the meaning set forth in Section 2.15(f).

“**Pre-Increase Revolving Lenders**” has the meaning set forth in Section 2.12(d).

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“**Pre-Opening Expenses**” shall mean, with respect to any fiscal period, the amount of expenses (including Consolidated Interest Expense) incurred with respect to capital projects which are appropriately classified as “pre-opening expenses” on the applicable financial statements of Borrower and its Subsidiaries for such period.

“**Pre-Refinancing Revolving Lenders**” has the meaning set forth in Section 2.15(f).

“**Principal Asset**” shall mean the Companies’ gaming properties commonly known as: (i) Hollywood Casino at Charles Town Races, (ii) Hollywood Casino Toledo, (iii) Hollywood Casino Columbus, (iv) Hollywood Casino Lawrenceburg, (v) Hollywood Casino at Penn National Race Course and (vi) Hollywood Casino St. Louis.

“**Principal Office**” shall mean the principal office of Administrative Agent, located on the Closing Date at 901 Main Street, 14<sup>th</sup> Floor, Dallas, Texas 75202-3714, or such other office as may be designated in writing by Administrative Agent.

**“Prior Mortgage Liens”** shall mean, with respect to each Mortgaged Real Property, the Liens identified in Schedule B annexed to the applicable Mortgage as such Schedule B may be amended from time to time to the reasonable satisfaction of Administrative Agent.

**“Pro Forma Basis”** means, with respect to compliance with any test or covenant or calculation of any ratio hereunder, the determination or calculation of such test, covenant or ratio (including in connection with Specified Transactions) in accordance with Section 1.06.

**“Pro Rata Facility Bookrunners”** shall mean, collectively, Merrill Lynch, Pierce, Fenner & Smith Incorporated, J.P. Morgan Securities LLC and Fifth Third Bank, in their capacities as joint physical bookrunners for the Revolving Facility and the Term A Facility.

**“Proceeding”** shall mean any claim, counterclaim, action, judgment, suit, hearing, governmental investigation, arbitration or proceeding, including by or before any Governmental Authority and whether judicial or administrative.

**“Property”** shall mean any right, title or interest in or to property or assets of any kind whatsoever, whether real, personal or mixed and whether tangible or intangible and including all contract rights, income or revenue rights, real property interests, trademarks, trade names, equipment and proceeds of the foregoing and, with respect to any Person, Equity Interests or other ownership interests of any other Person.

**“Public Lender”** has the meaning set forth in Section 9.04.

**“Purchase Money Obligation”** shall mean, for any Person, the obligations of such Person in respect of Indebtedness incurred for the purpose of financing all or any part of the purchase price of any Property (including Equity Interests of any Person) or the cost of installation, construction or improvement of any property or assets and any refinancing thereof; *provided, however*, that such Indebtedness is incurred (except in the case of a refinancing) within 180 days after such acquisition of such Property or the incurrence of such costs by such Person.

**“Qualified Capital Stock”** shall mean, with respect to any Person, any Equity Interests of such Person which is not Disqualified Capital Stock.

**“Qualified Contingent Obligation”** shall mean Contingent Obligations permitted by Section 10.04 in respect of (a) Indebtedness of any Joint Venture in which Borrower or any of its Restricted Subsidiaries owns (directly or indirectly) at least 25% of the Equity Interest of such Joint Venture or (b) Indebtedness of casinos and “racinos” (and properties ancillary or related thereto) with respect to which Borrower or any of its Restricted

Subsidiaries has (directly or indirectly through Subsidiaries) entered into a management or similar contract and such contract remains in full force and effect at the time such Contingent Obligations are incurred.

**“Qualified ECP Guarantor”** means, in respect of any Swap Obligations, each Guarantor that has total assets exceeding \$10,000,000 at the time the relevant Guarantee or grant of the relevant security interest becomes effective with respect to such Swap Obligation or such other person as constitutes an “eligible contract participant” under the Commodity Exchange Act or any regulations promulgated thereunder and can cause another person to qualify as an “eligible contract participant” at such time by entering into a keepwell under Section 1a(18)(A)(v)(II) of the Commodity Exchange Act.

**“Quarter”** shall mean each three month period ending on March 31, June 30, September 30 and December 31.

**“Quarterly Dates”** shall mean the last Business Day of each Quarter in each year, commencing with the last Business Day of the first full Quarter after the Closing Date.

**“R/C Maturity Date”** shall mean, (a) with respect to the Closing Date Revolving Commitments and any Incremental Existing Tranche Revolving Commitments of the same Tranche and any Revolving Loans thereunder, the date that is the fifth anniversary of the Closing Date and (b) with respect to any other Tranche of Revolving Commitments and Revolving Loans, the maturity date set forth therefor in the applicable Incremental Joinder Agreement, Extension Amendment or Refinancing Amendment.

**“R/C Percentage”** of any Revolving Lender at any time shall mean a fraction (expressed as a percentage) the numerator of which is the Revolving Commitment of such Revolving Lender at such time and the denominator of which is the Total Revolving Commitments at such time; *provided, however*, that if the R/C Percentage of any Revolving Lender is to be determined after the Total Revolving Commitments have been terminated, then the R/C Percentage of such Revolving Lender shall be determined immediately prior (and without giving effect) to such termination but after giving effect to any assignments after termination of the Revolving Commitments.

**“Real Property”** shall mean, as to any Person, all the right, title and interest of such Person in and to land, improvements and appurtenant fixtures, including leaseholds (it being understood that for purposes of Schedule 8.23(a), Borrower shall not be required to describe such improvements and appurtenant fixtures in such Schedule).

**“redeem”** shall mean redeem, repurchase, repay, defease (covenant or legal), Discharge or otherwise acquire or retire for value; and **“redemption”** and **“redeemed”** have correlative meanings.

**“Redesignation”** has the meaning set forth in Section 9.13(a).

**“refinance”** shall mean refinance, renew, extend, exchange, replace, defease (covenant or legal) (with proceeds of Indebtedness), Discharge (with proceeds of Indebtedness) or refund (with proceeds of Indebtedness), in whole or in part, including successively; and **“refinancing”** and **“refinanced”** have correlative meanings.

**“Refinancing Amendment”** means an amendment to this Agreement in form and substance reasonably satisfactory to Administrative Agent and Borrower executed by each of (a) Borrower, (b) Administrative Agent, (c) each additional Lender and each existing Lender that agrees to provide any portion of the Credit Agreement Refinancing Indebtedness being incurred pursuant thereto, in accordance with Section 2.15.

**“Register”** has the meaning set forth in Section 2.08(c).

“**Regulation D**” shall mean Regulation D (12 C.F.R. Part 204) of the Board of Governors of the Federal Reserve System of the United States (or any successor), as the same may be amended, modified or supplemented and in effect from time to time and all official rulings and interpretations thereunder or thereof.

“**Regulation T**” shall mean Regulation T (12 C.F.R. Part 220) of the Board of Governors of the Federal Reserve System of the United States (or any successor), as the same may be amended, modified or supplemented and in effect from time to time and all official rulings and interpretations thereunder or thereof.

“**Regulation U**” shall mean Regulation U (12 C.F.R. Part 221) of the Board of Governors of the Federal Reserve System of the United States (or any successor), as the same may be amended, modified or supplemented and in effect from time to time and all official rulings and interpretations thereunder or thereof.

“**Regulation X**” shall mean Regulation X (12 C.F.R. Part 224) of the Board of Governors of the Federal Reserve System of the United States (or any successor), as the same may be amended, modified or supplemented and in effect from time to time and all official rulings and interpretations thereunder or thereof.

“**Reimbursement Obligations**” shall mean the obligations of Borrower to reimburse L/C Disbursements in respect of any Letter of Credit.

“**Related Indemnified Person**” has the meaning set forth in Section 13.03(b).

“**Related Parties**” shall mean, with respect to any Person, such Person’s Affiliates and the partners, directors, officers, employees, agents, trustees, administrators, managers, advisors and representatives of such Person and of such Person’s Affiliates.

“**Release**” shall mean any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, disposing, depositing, dispersing, emanating or migrating of any Hazardous Material in, into, onto or through the Environment.

“**Removal Effective Date**” has the meaning set forth in Section 12.06(b).

“**Replaced Lender**” has the meaning set forth in Section 2.11(a).

“**Replacement Lender**” has the meaning set forth in Section 2.11(a).

“**Replacement Vessel**” shall mean the replacement of any existing Mortgaged Vessel with a vessel, ship, riverboat, barge or improvement on real property, whether such vessel, riverboat, barge or improvement is acquired or constructed and whether or not such vessel, ship, riverboat, barge or improvement is temporarily or permanently moored or affixed to any real property.

“**Repricing Transaction**” shall mean (i) the incurrence by Borrower of a new tranche of replacement term loans under this Agreement (including by way of conversion of Term B Facility Loans into any such new tranche of replacement term loans) (x) having an effective interest rate margin for the respective Type of such replacement term loan that is less than the Applicable Margin for Term B Facility Loans of the respective Type (with the comparative determinations of such margins to be made by Administrative Agent (consistent with generally acceptable financial practices) and to be made after taking into account all upfront or similar fees or original issue discount (amortized assuming a 4-year life to maturity (or, if less, the stated life to maturity at the time of incurrence of the applicable Indebtedness) of such tranche of replacement term loans or Term B Facility Loans, as the case may be) payable to all Lenders holding such replacement term loans or Term B Facility Loans, as the case may be, but exclusive of any arrangement, structuring or other fees payable in connection therewith that are not shared with all

Lenders (in their capacity as such) holding such tranche of replacement term loans or Term B Facility Loans, as the case may be, after giving effect to the syndication thereof) (excluding any such loans incurred in connection with a Change of Control or an Acquisition and any such loan is not made for the primary purposes of reducing overall yield) and (y) the proceeds of which are used to repay, in whole or in part, principal of outstanding Term B Facility Loans (it being understood that a conversion of Term B Facility Loans into any such new tranche of replacement term loans shall constitute a repayment of principal of outstanding Term B Facility Loans), (ii) any amendment, waiver or other modification to this Agreement which would have the effect of reducing the Applicable Margin for Term B Facility Loans (with the determination of such effective reduction to be made in accordance with the applicable provisions set forth in the parenthetical appearing in preceding clause (i)(x)), excluding any such amendment, waiver or modification entered into in connection with a Change of Control or an Acquisition and/or (iii) the incurrence by Borrower or any of its Subsidiaries of (x) any Incremental Term Loans, (y) any other term loans (which, for the avoidance of doubt, does not include bonds) other than under this Agreement or (z) any other bank debt other than under this Agreement (such other term loans referred to in clause (y) above in this clause (iii) and such other bank debt referred to in clause (z) above in this clause (iii) are individually referred to as “**Other Debt**”), the proceeds of which are used in whole or in part to prepay outstanding Term B Facility Loans (except to the extent any such Incremental Term Loans or Other Debt is incurred in connection with a Change of Control or an Acquisition) if such Incremental Term Loans or Other Debt has an effective interest rate margin for the respective Type of such replacement term loan that is less than the Applicable Margin for Term B Facility Loans at the time of the prepayment thereof (with the comparative determination of such margins to be made by Administrative Agent (consistent with generally acceptable financial practices) taking into account all upfront or similar fees or original issue discount (amortized assuming a 4-year life to maturity (or, if less, the stated life to maturity at the time of incurrence of the applicable Indebtedness) of such Incremental Term Loans or Other Debt) payable to all lenders holding such Incremental Term Loans or Other Debt, as the case may be, but exclusive of any arrangement, structuring or other fees payable in connection therewith that are not shared with all Lenders (in their capacity as such) holding such Incremental Term Loans or Other Debt, as the case may be, after giving effect to the syndication thereof). Any such determination by Administrative Agent as contemplated by preceding clauses (i)(x), (ii) and (iii) shall be conclusive and binding on all Lenders holding Term B Facility Loans.

“**Required Lenders**” shall mean, as of any date of determination: (a) prior to the Closing Date, Lenders holding more than 50% of the aggregate amount of the Commitments; and (b) thereafter, Non-Defaulting Lenders the sum of whose outstanding Term Loans, unutilized Term Loan Commitments,

Revolving Loans, Unused R/C Commitments, Swingline Exposure and L/C Liabilities then outstanding represents more than 50% of the aggregate sum (without duplication) of (i) all outstanding Term Loans of all Non-Defaulting Lenders and all unused Term Loan Commitments of all Non-Defaulting Lenders, (ii) all outstanding Revolving Loans of all Non-Defaulting Lenders, (iii) the aggregate Unused R/C Commitments of all Non-Defaulting Lenders, (iv) the Swingline Exposure of all Non-Defaulting Lenders and (v) the L/C Liabilities of all Non-Defaulting Lenders.

**“Required Revolving Lenders”** shall mean, as of any date of determination: (a) at any time prior to the Closing Date, Lenders holding more than 50% of the aggregate amount of the Revolving Commitments and (b) thereafter, Non-Defaulting Lenders holding more than 50% of the aggregate sum of (without duplication) (i) the aggregate principal amount of outstanding Revolving Loans of all Non-Defaulting Lenders, (ii) the aggregate Unused R/C Commitments of all Non-Defaulting Lenders, (iii) the Swingline Exposure of all Non-Defaulting Lenders, and (iv) the L/C Liabilities of all Non-Defaulting Lenders.

**“Required Tranche Lenders”** shall mean: (a) with respect to Lenders having Revolving Commitments or Revolving Loans of any particular Tranche, Non-Defaulting Lenders having more than 50% of the aggregate sum of the Unused R/C Commitments, Revolving Loans, Swingline Exposure and L/C Liabilities, in each case, in respect of such Tranche and then outstanding; (b) with respect to Lenders having Term A Facility Loans, Term A Facility Commitments or Incremental Term A Loan Commitments, Lenders having more than 50% of the aggregate sum of the Term A Facility Loans, unused Term A Facility Commitments, unused Incremental Term A Loans and Incremental Term A Loan Commitments then outstanding; (c) with respect to Lenders having Term B Facility

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Loans, Term B Facility Commitments or Incremental Term B Loan Commitments, Lenders having more than 50% of the aggregate sum of the Term B Facility Loans, unused Term B Facility Commitments and unused Incremental Term B Loan Commitments then outstanding; (d) for each New Term Loan Facility, if applicable, with respect to Lenders having New Term Loans or New Term Loan Commitments, in each case, in respect of such New Term Loan Facility, Lenders having more than 50% of the aggregate sum of such New Term Loans and unused New Term Loan Commitments then outstanding; (e) for each Extension Tranche, if applicable, with respect to Lenders having Extended Revolving Loans or Extended Revolving Commitments or Extended Term Loans or commitments in respect of Extended Term Loans, in each case, in respect of such Extension Tranche, Lenders having more than 50% of the aggregate sum of such Extended Revolving Loans and Extended Revolving Commitments or Extended Term Loans and commitments in respect thereof, as applicable, then outstanding; and (f) for each Tranche of Other Term Loans, Lenders having more than 50% of the aggregate sum of such Other Term Loans and unused Other Term Loan Commitments then outstanding.

**“Requirement of Law”** shall mean, as to any Person, any Law or determination of an arbitrator or any Governmental Authority, in each case applicable to or binding upon such Person or any of its Property or to which such Person or any of its Property is subject.

**“Reserve Requirement”** shall mean, for any day during any Interest Period, the reserve percentage (expressed as a decimal, carried out to five decimal places) in effect on such day, whether or not applicable to any Lender, under regulations issued from time to time by the Board of Governors of the Federal Reserve System of the United States for determining the maximum reserve requirement (including any emergency, supplemental or other marginal reserve requirement) with respect to LIBOR funding by member banks (currently referred to as “Eurocurrency liabilities”). The LIBO Rate for each outstanding LIBOR Loan shall be adjusted automatically as of the effective date of any change in the Reserve Requirement.

**“Resignation Effective Date”** has the meaning set forth in Section 12.06(a).

**“Response Action”** shall mean (a) “response” as such term is defined in CERCLA, 42 U.S.C. § 9601(24), and (b) all other actions required by any Governmental Authority or voluntarily undertaken to: (i) clean up, remove, treat, abate or in any other way address any Hazardous Material in the Environment, (ii) prevent the Release or threatened Release, or minimize the further Release, of any Hazardous Material or (iii) perform studies and investigations in connection with, or as a precondition to, clause (i) or (ii) above.

**“Responsible Officer”** shall mean the chief executive officer of Borrower, the president of Borrower (if not the chief executive officer), any senior or executive vice president of Borrower, the chief financial officer, the chief accounting officer or treasurer of Borrower or, with respect to financial matters, the chief financial officer, the chief accounting officer, senior financial officer or treasurer of Borrower.

**“Restricted Payment”** shall mean dividends (in cash, Property or obligations) on, or other payments or distributions (including return of capital) on account of, or the setting apart of money for a sinking or other analogous fund for, or the purchase, redemption, retirement, defeasance, termination, repurchase or other acquisition of, any Equity Interests or Equity Rights (other than (a) any payment made relating to any Transfer Agreement and (b) any dividends, payments, distributions or other transfers in connection with the Transactions or pursuant to the Transaction Agreements, the Spin-Off and the Conversion) in Borrower or any of its Restricted Subsidiaries, but excluding dividends, payments or distributions paid through the issuance of additional shares of Qualified Capital Stock and any redemption, retirement or exchange of any Qualified Capital Stock in Borrower or such Restricted Subsidiary through, or with the proceeds of, the issuance of Qualified Capital Stock in Borrower or any of its Restricted Subsidiaries.

**“Restricted Subsidiaries”** shall mean all existing and future Subsidiaries of Borrower other than the Unrestricted Subsidiaries.

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**“Revaluation Date”** shall mean, with respect to any Letter of Credit, each of the following: (i) each date of issuance of a Letter of Credit denominated in an Alternate Currency, (ii) each date of an amendment of any such Letter of Credit having the effect of increasing the amount thereof, (iii) each date of any payment by an L/C Lender under any Letter of Credit denominated in an Alternate Currency, and (iv) such additional dates as the Administrative Agent or the applicable L/C Lender shall reasonably determine or the Required Lenders shall require.

**“Reverse Trigger Event”** shall mean the transfer of Equity Interests of any Restricted Subsidiary or any Gaming Facility from trust or other similar arrangement to Borrower or any of its Restricted Subsidiaries from time to time.

**“Revocation”** has the meaning set forth in Section 9.12(b).

“**Revolving Availability Period**” shall mean, (i) with respect to the Revolving Commitments under the Closing Date Revolving Facility, the period from and including the Closing Date to but excluding the earlier of applicable R/C Maturity Date and the date of termination of such Revolving Commitments, and (ii) with respect to any other Tranche of Revolving Commitments, the period from and including the date such Tranche of Revolving Commitments is established to but excluding the earlier of the applicable R/C Maturity Date and the date of termination of such Tranche of Revolving Commitments. Unless the context otherwise requires, references in this Agreement to the Revolving Availability Period shall mean with respect to each Tranche of Revolving Commitments, the Revolving Availability Period applicable to such Tranche.

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

“**Revolving Commitment**” shall mean, for each Revolving Lender, the obligation of such Lender to make Revolving Loans in an aggregate principal amount at any one time outstanding up to but not exceeding the amount set opposite the name of such Lender on Annex A-1 under the caption “Revolving Commitment,” or in the Assignment Agreement pursuant to which such Lender assumed its Revolving Commitment or in any Incremental Joinder Agreement or Refinancing Amendment, as applicable, as the same may be (a) changed pursuant to Section 13.05(b), (b) reduced or terminated from time to time pursuant to Sections 2.04 and/or 11.01, as applicable, or (c) increased or otherwise adjusted from time to time in accordance with this Agreement, including pursuant to Section 2.12 and Section 2.15; it being understood that a Revolving Lender’s Revolving Commitment shall include any Incremental Revolving Commitments, Extended Revolving Commitments and Other Revolving Commitments of such Revolving Lender.

“**Revolving Exposure**” shall mean, with respect to any Lender at any time, the aggregate principal amount at such time of all outstanding Revolving Loans of such Lender, *plus* the aggregate amount at such time of such Lender’s L/C Liability, *plus* the aggregate amount at such time of such Lender’s Swingline Exposure.

“**Revolving Extension Request**” shall have the meaning provided in Section 2.13(b).

“**Revolving Facility**” shall mean each credit facility comprising Revolving Commitments of a particular Tranche.

“**Revolving Lenders**” shall mean (a) on the Closing Date, the Lenders having a Revolving Commitment on Annex A-1 hereof and (b) thereafter, the Lenders from time to time holding Revolving Loans and/or a Revolving Commitment as in effect from time to time.

“**Revolving Loans**” has the meaning set forth in Section 2.01(a).

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“**Revolving Notes**” shall mean the promissory notes substantially in the form of Exhibit A-1.

“**Revolving Tranche Exposure**” shall mean with respect to any Lender and Tranche of Revolving Commitments at any time, the aggregate principal amount at such time of all outstanding Revolving Loans of such Tranche of such Lender, *plus* the aggregate amount at such time of such Lender’s L/C Liability under its Revolving Commitment of such Tranche, *plus* the aggregate amount at such time of such Lender’s Swingline Exposure under its Revolving Commitment of such Tranche.

“**S&P**” shall mean Standard & Poor’s Rating Services, a division of The McGraw-Hill Companies, or any successor thereto.

“**Sanction(s)**” means any international economic sanction administered or enforced by the United States Government (including without limitation, OFAC), the United Nations Security Council, the European Union, Her Majesty’s Treasury or other relevant sanctions authority.

“**SEC**” shall mean the Securities and Exchange Commission of the United States or any successor thereto.

“**Second Lien Intercreditor Agreement**” shall mean an intercreditor agreement substantially in the form of Exhibit T hereto or such other form as is reasonably acceptable to Administrative Agent.

“**Section 9.04 Financials**” shall mean the financial statements delivered, or required to be delivered, pursuant to Section 9.04(a) or (b), together with the accompanying certificate of a Responsible Officer of Borrower delivered, or required to be delivered, pursuant to Section 9.04(c).

“**Secured Cash Management Agreement**” means any Cash Management Agreement that is entered into by and between Borrower and/or any or all of its Restricted Subsidiaries and any Cash Management Bank.

“**Secured Parties**” shall mean the Agents, the Lenders, any Swap Provider that is party to a Credit Swap Contract and any Cash Management Bank that is a party to a Secured Cash Management Agreement.

“**Securities Act**” shall mean the Securities Act of 1933, as amended, and all rules and regulations of the SEC promulgated thereunder.

“**Security Agreement**” shall mean a security agreement substantially in the form of Exhibit H among the Credit Parties and Collateral Agent, as the same may be amended in accordance with the terms thereof and hereof.

“**Security Documents**” shall mean the Security Agreement, the Mortgages, the Ship Mortgages and each other security document or pledge agreement, instrument or other document required by applicable local law or otherwise executed and delivered by a Credit Party to grant or perfect a security interest in any Property acquired or developed that is of the kind and nature that would constitute Collateral on the Closing Date, and any other document, agreement or instrument utilized to pledge or grant as collateral (or perfect any Lien thereon) for the Obligations any Property of whatever kind or nature.

“**Senior Unsecured Notes**” shall mean the outstanding 5 7/8% senior unsecured notes due 2021 of Borrower in the original aggregate principal amount of \$300.0 million.

“**Separation and Distribution Agreement**” shall mean the separation and distribution agreement between Borrower and GLPI in substantially the form of Exhibit X hereto.



“**Ship Mortgage**” shall mean a Ship Mortgage substantially in the form of Exhibit J or such other form as is reasonably acceptable to Administrative Agent made by the applicable Credit Parties in favor of Collateral Agent for the benefit of the Secured Parties, as the same may be amended in accordance with the terms thereof and hereof, or such other agreements reasonably acceptable to Collateral Agent as shall be necessary to comply with applicable Requirements of Law and effective to grant in favor of Collateral Agent for the benefit of the Secured Parties a first preferred mortgage on the Mortgaged Vessel covered thereby, subject only to Permitted Liens.

“**SNDAs**” shall have meaning provided in Section 8.24(e).

“**Solvent**” and “**Solvency**” shall mean, for any Person on a particular date, that on such date (a) the fair value of the Property of such Person is greater than the total amount of liabilities, including, without limitation, contingent liabilities, of such Person, (b) the present fair salable value of the assets of such Person is not less than the amount that will be required to pay the probable liability of such Person on its debts as they become absolute and matured, (c) such Person does not intend to, and does not believe that it will, incur debts and liabilities beyond such Person’s ability to pay as such debts and liabilities mature, (d) such Person is not engaged in a business or a transaction, and is not about to engage in a business or a transaction, for which such Person’s Property would constitute an unreasonably small capital and (e) such Person is able to pay its debts as they become due and payable. For purposes of this definition, the amount of contingent liabilities at any time shall be computed as the amount that, in the light of all the facts and circumstances existing at such time, represents the amount that can reasonably be expected to become an actual or matured liability, without duplication.

“**Specified General Investment Returns**” means the amounts received by Borrower and its Restricted Subsidiaries with respect to Investments made pursuant to Section 10.04(s) (including with respect to contracts related to such Investments and including principal, interest, dividends, distributions, sale proceeds, payments under contracts relating to such Investments or other amounts) that are designated by Borrower as “Specified General Investment Returns” in the Compliance Certificate delivered to the Administrative Agent in respect of the fiscal quarter in which such amounts were received.

“**Specified Sale Leaseback Transaction**” means, with respect to Borrower or any of its Restricted Subsidiaries, an arrangement whereby, directly or indirectly, (a) Borrower or such Restricted Subsidiary 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 which it intends to use for substantially the same purpose or purposes as the property being sold or transferred and (b) (i) such property is sold to, and leased from, GLPI or one of its Subsidiaries or (ii) the acquisition of such property was not funded with Indebtedness (other than Revolving Loans or other revolving credit loans) or with the proceeds of Equity Issuances by Borrower.

“**Specified Transaction**” means (a) any incurrence or repayment of Indebtedness (other than for working capital purposes or under a Revolving Facility), (b) Investment that results in a Person becoming a Restricted Subsidiary or an Unrestricted Subsidiary, (c) any Permitted Acquisition or other Acquisition, (d) any Asset Sale, designation or redesignation of a Restricted Subsidiary that results in a Restricted Subsidiary ceasing to be a Restricted Subsidiary of Borrower, (e) any Acquisition or Investment constituting an acquisition of assets constituting a business unit, line of business or division of another Person and (f) any amendment, modification or waiver to any provision of the Master Lease.

“**Specified Unrestricted Subsidiaries Investment Returns**” means the amounts received by Borrower and its Restricted Subsidiaries with respect to Investments made pursuant to Section 10.04(q) (including with respect to contracts related to such Investments and including principal, interest, dividends, distributions, sale proceeds, payments under contracts relating to such Investments or other amounts) that are designated by Borrower as “Specified Unrestricted Subsidiaries Investment Returns” in the Compliance Certificate delivered to the Administrative Agent in respect of the fiscal quarter in which such amounts were received.

“**Spin-Off**” shall mean, collectively, (a) the contribution of substantially all of assets and liabilities associated with the real property and real estate development business of Borrower (as in effect prior to the Closing Date) to GLPI, (b) the distribution of the assets and liabilities associated with the TRS Properties to GLPI, (c) the distribution of all of the outstanding shares of common stock of GLPI to Borrower’s shareholders and (d) the series of corporate restructurings and other transactions entered into in connection with the foregoing.

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

“**Stated Amount**” of each Letter of Credit shall mean, at any time, the maximum amount available to be drawn thereunder (in each case determined without regard to whether any conditions to drawing could then be met).

“**Subsidiary**” shall mean, as to any Person, (i) any corporation more than 50% of whose stock of any class or classes having by the terms thereof ordinary voting power to elect a majority of the directors of such corporation (irrespective of whether or not at the time stock of any class or classes of such corporation shall have or might have voting power by reason of the happening of any contingency) is at the time owned by such Person and/or one or more Subsidiaries of such Person and (ii) any partnership, limited liability company, association, joint venture or other entity in which such Person and/or one or more Subsidiaries of such Person has more than a 50% equity interest at the time. Unless otherwise qualified, all references to a “Subsidiary” or to “Subsidiaries” in this Agreement shall refer to a Subsidiary or Subsidiaries of Borrower.

“**Swap Contract**” shall mean any agreement entered into in the ordinary course of business (as a bona fide hedge and not for speculative purposes) (including any master agreement and any schedule or agreement, whether or not in writing, relating to any single transaction) that is an interest rate swap agreement, basis swap, forward rate agreement, commodity swap, commodity option, equity or equity index swap or option, bond option, interest rate option, foreign exchange agreement, rate cap, collar or floor agreement, currency swap agreement, cross-currency rate swap agreement, swap option, currency option or any other similar agreement (including any option to enter into any of the foregoing) and is designed to protect any Company against fluctuations in

interest rates, currency exchange rates, commodity prices, or similar risks (including any Interest Rate Protection Agreement). For the avoidance of doubt, the term “Swap Contract” includes, without limitation, any call options, warrants and capped calls entered into as part of, or in connection with, an issuance of convertible or exchangeable debt by Borrower or its Restricted Subsidiaries.

“**Swap Obligation**” means, with respect to any Guarantor, any obligation to pay or perform under any agreement, contract or transaction that constitutes a “swap” within the meaning of section 1a(47) of the Commodity Exchange Act.

“**Swap Provider**” shall mean any Person that is a party to a Swap Contract with Borrower and/or any of its Restricted Subsidiaries if such Person was, at the date of entering into such Swap Contract, a Lender or Agent or Affiliate of a Lender or Agent, and such Person executes and delivers to Administrative Agent a letter agreement in form and substance reasonably acceptable to Administrative Agent pursuant to which such Person (a) appoints Collateral Agent as its agent under the applicable Credit Documents and (b) agrees to be bound by the provisions of Section 12.03.

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“**Swingline Commitment**” shall mean the commitment of the Swingline Lender to make loans pursuant to Section 2.01(e). The Swingline Commitment is part of, and not in addition to, the Revolving Commitments.

“**Swingline Exposure**” shall mean at any time the aggregate principal amount at such time of all outstanding Swingline Loans. The Swingline Exposure of any Revolving Lender at any time shall equal its R/C Percentage of the aggregate Swingline Exposure at such time.

“**Swingline Lender**” shall have the meaning assigned to such term in the preamble hereto.

“**Swingline Loan**” shall mean any loan made by the Swingline Lender pursuant to Section 2.01(e).

“**Swingline Note**” shall mean the promissory note substantially in the form of Exhibit A-4.

“**Swingline Sublimit**” shall mean the lesser of (a) \$50.0 million and (b) the Total Revolving Commitments then in effect. The Swingline Sublimit is part of, not in addition to, the Total Revolving Commitments.

“**Taking**” shall mean a taking or voluntary conveyance during the term of this Agreement of all or part of any Mortgaged Real Property or Mortgaged Vessel, or any interest therein or right accruing thereto or use thereof, as the result of, or in settlement of, any condemnation or other eminent domain proceeding by any Governmental Authority affecting any Mortgaged Real Property or Mortgaged Vessel or any portion thereof, whether or not the same shall have actually been commenced.

“**Tax Benefit**” has the meaning set forth in Section 5.06(g).

“**Tax Matters Agreement**” shall mean the tax matters agreement between Borrower and GLPI in substantially the form of Exhibit Y hereto.

“**Tax Returns**” has the meaning set forth in Section 8.08.

“**Taxes**” shall mean any and all taxes, imposts, duties, charges, fees, levies or other charges or assessments of whatever nature, including income, gross receipts, excise, real or personal property, sales, withholding, social security, retirement, unemployment, occupation, use, service, license, net worth, payroll, franchise, and transfer and recording, imposed by the Internal Revenue Service or any taxing authority (whether domestic or foreign, including any federal, state, U.S. possession, county, local or foreign government or any subdivision or taxing agency thereof) including interest, fines, penalties or additions to tax attributable to or imposed on or with respect to any such taxes, charges, fees, levies or other assessments.

“**Tenant**” shall mean Penn Tenant, LLC, a Pennsylvania limited liability company, in its capacity as tenant under the Master Lease, and its successors in such capacity.

“**Term A Facility**” shall mean the credit facility comprising the Term A Facility Commitments, any Incremental Term A Loan Commitments and the Term A Facility Loans.

“**Term A Facility Commitment**” shall mean, for each Term A Facility Lender, the obligation of such Lender to make a Term A Facility Loan in a principal amount not to exceed the amount set forth opposite the name of such Lender on Annex A-2 under the caption “Term A Facility Commitment,” or in the Assignment Agreement pursuant to which such Lender assumed its Term A Facility Commitment, as applicable, as the same may be (a) changed pursuant to Section 13.05(b) or (b) reduced or terminated from time to time pursuant to Section 2.04 or Section 11.01. The aggregate principal amount of the Term A Facility Commitments of all Term A Facility Lenders on the Closing Date is \$500.0 million.

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“**Term A Facility Lenders**” shall mean (a) on the Closing Date, the Lenders having Term A Facility Commitments on Annex A-2 hereof and (b) thereafter, the Lenders from time to time holding any Incremental Term A Loan Commitments and/or Term A Facility Loans, as the case may be, after giving effect to any assignments thereof permitted by Section 13.05(b).

“**Term A Facility Loans**” shall mean (a) collectively, term loans made pursuant to Section 2.01(b) and (b) term loans made pursuant to any Incremental Term A Loan Commitments.

“**Term A Facility Maturity Date**” shall mean the date that is the fifth anniversary of the Closing Date.

“**Term A Facility Notes**” shall mean the promissory notes substantially in the form of Exhibit A-2.

“**Term B Facility**” shall mean the credit facility comprising the Term B Facility Commitments, any Incremental Term B Loan Commitments and the Term B Facility Loans.

“**Term B Facility Bookrunners**” means, collectively, J.P. Morgan Securities LLC, Wells Fargo Securities LLC and UBS Securities LLC, in their capacities as joint physical bookrunners for the Term B Facility hereunder.

“**Term B Facility Commitment**” shall mean, for each Term B Facility Lender, the obligation of such Lender, if any, to make a Term B Facility Loan to Borrower on the Closing Date in a principal amount not to exceed the amount set forth opposite such Lender’s name under the heading “Term B Facility Commitment” on Annex A-3, or in the Assignment Agreement pursuant to which such Lender assumed its Term B Facility Commitment, as applicable, as the same may be (i) changed pursuant to Section 13.05(b) or (ii) reduced or terminated from time to time pursuant to Section 2.04 or Section 11.01. The aggregate principal amount of the Term B Facility Commitments of all Term B Facility Lenders on the Closing Date is \$250.0 million.

“**Term B Facility Lenders**” shall mean (a) on the Closing Date, the Lenders having Term B Facility Commitments on Annex A-3 hereof and (b) thereafter, the Lenders from time to time holding any Incremental Term B Loan Commitments and/or Term B Facility Loans, as the case may be, after giving effect to any assignments thereof permitted by Section 13.05(b).

“**Term B Facility Loans**” shall mean (a) the term loans made pursuant to Section 2.01(c) and (b) term loans made pursuant to any Incremental Term B Loan Commitments.

“**Term B Facility Maturity Date**” shall mean the date that is the seventh anniversary of the Closing Date.

“**Term B Facility Notes**” shall mean the promissory notes substantially in the form of Exhibit A-3.

“**Term Facilities**” shall mean, collectively, the credit facilities comprising the Term A Facility, the Term B Facility, any New Term Loan Facilities, the credit facilities comprising the Extended Term Loans, if any, and the credit facilities comprising Other Term Loans, if any.

“**Term Loan Commitments**” shall mean, collectively, (a) the Term A Facility Commitments, (b) the Term B Facility Commitments, (c) any Incremental Term Loan Commitments and (d) any Other Term Loan Commitments.

“**Term Loan Extension Request**” shall have the meaning provided in Section 2.13(a).

“**Term Loan Notes**” shall mean, collectively, the Term A Facility Notes, the Term B Facility Notes and any New Term Loan Notes.

“**Term Loans**” shall mean, collectively, the Term A Facility Loans, the Term B Facility Loans, any Extended Term Loans, any Other Term Loans and any New Term Loans.

“**Test Period**” shall mean, for any date of determination, the period of the four most recently ended consecutive fiscal quarters of Borrower and its Restricted Subsidiaries for which quarterly or annual financial statements have been delivered or are required to have been delivered to Administrative Agent or have been filed with the SEC.

“**Total Revolving Commitments**” shall mean, at any time, the Revolving Commitments of all the Revolving Lenders at such time. The Total Revolving Commitments on the Closing Date are \$500.0 million.

“**Tranche**” shall mean (i) when used with respect to the Lenders, each of the following classes of Lenders: (a) Lenders having Revolving Loans incurred pursuant to the Closing Date Revolving Commitment or any Incremental Existing Tranche Revolving Commitments of the same Tranche or Closing Date Revolving Commitments and any Incremental Existing Tranche Revolving Commitments of the same Tranche, (b) Lenders having such other Tranche of Revolving Loans or Revolving Commitments created pursuant to an Extension Amendment or Incremental Joinder Agreement, (c) Lenders having Term A Facility Loans or Term A Facility Commitments and Incremental Term A Loan Commitments, (d) Lenders having Term B Facility Loans or Term B Facility Commitments and Incremental Term B Loan Commitments and (e) Lenders having such other Tranche of Term Loans or Term Loan Commitments created pursuant to an Extension Amendment, Incremental Joinder Agreement or Refinancing Amendment, and (ii) when used with respect to Loans or Commitments, each of the following classes of Loans or Commitments: (a) Revolving Loans incurred pursuant to the Closing Date Revolving Commitment or any Incremental Existing Tranche Revolving Commitments of the same Tranche or Closing Date Revolving Commitments and any Incremental Existing Tranche Revolving Commitments of the same Tranche, (b) such other Tranche of Revolving Loans or Revolving Commitments created pursuant to an Extension Amendment or Incremental Joinder Agreement, (c) Term A Facility Loans or Term A Facility Commitments and Incremental Term A Loan Commitments, (d) Term B Facility Loans or Term B Facility Commitments and Incremental Term B Loan Commitments and (e) such other Tranche of Term Loans or Term Loan Commitments created pursuant to an Extension Amendment, Incremental Joinder Agreement or Refinancing Amendment.

“**Transaction Agreements**” shall mean the Separation and Distribution Agreement, the Master Lease, the Transition Services Agreement, the Tax Matters Agreement, the Employee Matters Agreement and the Interim Access Agreement.

“**Transactions**” shall mean, collectively, (a) the Closing Date Refinancing, (b) the Spin-Off and the other transactions contemplated thereby, including, without limitation, the entering into of the Master Lease and the other Transaction Agreements, (c) the issuance of the Senior Unsecured Notes, (d) the Conversion, (e) the entering into of this Agreement and the other Credit Documents and the borrowings hereunder on the Closing Date and (f) the payment of fees and expenses in connection with the foregoing.

“**Transfer Agreement**” shall mean any trust or similar arrangement required by any Gaming Authority from time to time with respect to the Equity Interests of any Restricted Subsidiary (or any Person that was a Restricted Subsidiary) or any Gaming Facility.

“**Transition Services Agreement**” shall mean the transition services agreement between Borrower and GLPI in substantially the form of Exhibit Z hereto.

“**Trigger Event**” shall mean the transfer of shares of Equity Interests of any Restricted Subsidiary or any Gaming Facility into trust or other similar arrangement required by any Gaming Authority from time to time.

“**TRS Properties**” shall mean GLP Holdings, Inc., Louisiana Casino Cruises, Inc., and Penn Cecil Maryland, Inc., which, directly or indirectly, operate Hollywood Casino Baton Rouge and Hollywood Casino Perryville.

“**Type**” has the meaning set forth in Section 1.03.

“**UCC**” shall mean the Uniform Commercial Code as from time to time in effect in the applicable state or other jurisdiction.

“**UCP**” means, with respect to any Letter of Credit, the Uniform Customs and Practice for Documentary Credits, International Chamber of Commerce (“**ICC**”) Publication No. 600 (or such later version thereof as may be in effect at the time of issuance).

“**Unaffiliated Joint Ventures**” shall mean any joint venture of Borrower or any of its Subsidiaries; *provided, however*, that (i) all Investments in, and other transactions entered into with, such joint venture by Borrower or any of its Restricted Subsidiaries were made in compliance with this Agreement and (ii) no Affiliate (other than Borrower or any Subsidiary or any other Unaffiliated Joint Venture) or officer or director of Borrower or any of its Subsidiaries owns any Equity Interest, or has any material economic interest, in such joint venture (other than through Borrower (directly or indirectly through its Subsidiaries)). No Subsidiary of Borrower shall be an Unaffiliated Joint Venture.

“**United States**” shall mean the United States of America.

“**un-reallocated portion**” has the meaning set forth in Section 2.14(a).

“**Unreimbursed Amount**” has the meaning set forth in Section 2.03(e).

“**Unrestricted Cash**” means the aggregate amount of unrestricted cash and cash equivalents (in each case free and clear of all Liens, other than Permitted Liens that (i) do not restrict the application of such cash and cash equivalents to the repayment of the Obligations or (ii) secure the Obligations) of Borrower and its Restricted Subsidiaries as at such date not to exceed the greater of (x) \$300.0 million and (y) the product of \$15.0 million and the number of Gaming Facilities operated by Borrower and its Restricted Subsidiaries on such date of determination and which are owned by Borrower or its Restricted Subsidiaries or with respect to which Borrower or its Restricted Subsidiaries are required to provide working capital for the operation thereof.

“**Unrestricted Subsidiaries**” shall mean (a) as of the Closing Date, the Subsidiaries listed on Schedule 8.12(c), (b) any Subsidiary of Borrower designated as an “Unrestricted Subsidiary” pursuant to and in compliance with Section 9.12 and (c) any Subsidiary of an Unrestricted Subsidiary (in each case, unless such Subsidiary is no longer a Subsidiary of Borrower or is subsequently designated as a Restricted Subsidiary pursuant to this Agreement).

“**Unutilized R/C Commitment**” shall mean, for any Revolving Lender, at any time, the excess of such Revolving Lender’s Revolving Commitment at such time over the sum of (i) the aggregate outstanding principal amount of all Revolving Loans made by such Revolving Lender, (ii) such Revolving Lender’s L/C Liability at such time and (iii) such Revolving Lender’s Swingline Exposure at such time.

“**Vessel**” shall mean a gaming vessel, barge or riverboat and the fixtures and equipment located thereon (it being understood that for purposes of Schedule 8.13(b), Borrower shall not be required to describe such fixtures and equipment in such Schedule 8.13(b)).

“**Voting Stock**” shall mean, with respect to any Person, the Equity Interests, participations, rights in, or other equivalents of, such Equity Interests, and any and all rights, warrants or options exchangeable for or convertible into such Equity Interests of such Person, in each case, that ordinarily has voting power for the election of directors (or Persons performing similar functions) of such Person, whether at all times or only as long as no senior class of Equity Interests has such voting power by reason of any contingency.

“**Weighted Average Life to Maturity**” shall mean, on any date and with respect to the aggregate amount of the Term Loans (or any applicable portion thereof), an amount equal to (a) the scheduled repayments of such Term Loans to be made after such date, multiplied by the number of days from such date to the date of such scheduled repayments divided by (b) the aggregate principal amount of such Term Loans.

“**Wholly Owned Restricted Subsidiary**” shall mean, with respect to any Person, any Wholly Owned Subsidiary of such Person that is a Restricted Subsidiary. Unless the context clearly requires otherwise, all references to any Wholly Owned Restricted Subsidiary shall mean a Wholly Owned Restricted Subsidiary of Borrower.

“**Wholly Owned Subsidiary**” shall mean, with respect to any Person, any corporation, partnership, limited liability company or other entity of which all of the Equity Interests (other than, in the case of a corporation, directors’ qualifying shares or nominee shares required under applicable law) are directly or indirectly owned or controlled by such Person and/or one or more Wholly Owned Subsidiaries of such Person. Unless the context clearly requires otherwise, all references to any Wholly Owned Subsidiary shall mean a Wholly Owned Subsidiary of Borrower.

“**Withdrawal Liability**” shall mean liability by an ERISA Entity to a Multiemployer Plan as a result of a complete or partial withdrawal from such Multiemployer Plan, as such terms are defined in Part 1 of Subtitle E of Title IV of ERISA.

“**Working Capital**” means, for any Person at any date, the amount (which may be a negative number) of the Consolidated Current Assets of such Person minus the Consolidated Current Liabilities of such Person at such date; *provided* that, for purposes of calculating Working Capital, increases or decreases in Working Capital shall be calculated without regard to any changes in Consolidated Current Assets or Consolidated Current Liabilities as a result of (a) any reclassification in accordance with GAAP of assets or liabilities, as applicable, between current and noncurrent, (b) the effects of purchase accounting or (c) the impact of non-cash items on Consolidated Current Assets and Consolidated Current Liabilities. For purposes of calculating Working

Capital (i) for any period in which a Permitted Acquisition or other Acquisition occurs (other than with respect to any Unrestricted Subsidiary) or any Unrestricted Subsidiary is revoked and converted into a Restricted Subsidiary, the “consolidated current assets” and “consolidated current liabilities” of any Person, property, business or asset so acquired or Unrestricted Subsidiary so revoked, as the case may be (determined on a basis consistent with the corresponding definitions herein, with appropriate reference changes) shall be excluded and (ii) for any period in which any Person, property, business or asset (other than an Unrestricted Subsidiary) is sold, transferred or otherwise disposed of, closed or classified as discontinued operations by Borrower or any Restricted Subsidiary or any Restricted Subsidiary is designated as an Unrestricted Subsidiary, the “consolidated current assets” and “consolidated current liabilities” of any Person, property, business or asset so sold, transferred or otherwise disposed of, closed or classified as discontinued operations or Restricted Subsidiary so designated, as the case may be (determined on a basis consistent with the corresponding definitions herein, with appropriate reference changes) shall be excluded.

**SECTION 1.02. Accounting Terms and Determinations.** Except as otherwise provided in this Agreement, all computations and determinations as to accounting or financial matters (including financial covenants) shall be made in accordance with GAAP as in effect on the Closing Date consistently applied for all applicable periods, and all accounting or financial terms shall have the meanings ascribed to such terms by GAAP. If at any time any change in GAAP would affect the computation of any financial ratio or requirement set forth in

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any Credit Document, and Borrower notifies Administrative Agent that Borrower requests an amendment to any provision hereof to eliminate the effect of any change occurring after the date hereof in GAAP or in the application thereof on the operation of such provision (or if Administrative Agent notifies Borrower that the Required Lenders request an amendment to any provision hereof for such purpose), regardless of whether any such notice is given before or after such change in GAAP or in the application thereof, then such provision shall be interpreted on the basis of GAAP as in effect and applied immediately before such change shall have become effective until such notice shall have been withdrawn or such provision amended in accordance herewith. If at any time any change in GAAP would affect the computation of any financial ratio or requirement set forth in any Credit Document, and Borrower, Administrative Agent or the Required Lenders shall so request, Administrative Agent, the Lenders and Borrower shall negotiate in good faith to amend such ratio or requirement to preserve the original intent thereof in light of such change in GAAP (subject to the approval of the Required Lenders, not to be unreasonably withheld).

**SECTION 1.03. Classes and Types of Loans.** Loans hereunder are distinguished by “Class” and by “Type.” The “Class” of a Loan (or of a Commitment to make a Loan) refers to whether such Loan is a Revolving Loan of any particular Tranche, a Term A Facility Loan, a Term B Facility Loan, a New Term Loan of any particular Tranche, or a Term Loan of any particular Tranche of Term Loans created pursuant to an Extension Amendment or a Refinancing Amendment or a Swingline Loan, each of which constitutes a Class. The “Type” of a Loan refers to whether such Loan is an ABR Loan or a LIBOR Loan, each of which constitutes a Type. Loans may be identified by both Class and Type.

**SECTION 1.04. Rules of Construction.**

(a) In each Credit Document, unless the context clearly requires otherwise (or such other Credit Document clearly provides otherwise), references to (i) the plural include the singular, the singular include the plural and the part include the whole; (ii) Persons include their respective permitted successors and assigns or, in the case of governmental Persons, Persons succeeding to the relevant functions of such Persons; (iii) statutes and regulations include any amendments, supplements or modifications of the same from time to time and any successor statutes and regulations; (iv) unless otherwise expressly provided, any reference to any action of any Secured Party by way of consent, approval or waiver shall be deemed modified by the phrase “in its/their reasonable discretion”; (v) time shall be a reference to time of day New York, New York; (vi) Obligations (other than L/C Liabilities) shall not be deemed “outstanding” if such Obligations have been Paid in Full; and (vii) except as expressly provided in any Credit Document any item required to be delivered or performed on a day that is not a Business Day shall not be required until the next succeeding Business Day.

(b) In each Credit Document, unless the context clearly requires otherwise (or such other Credit Document clearly provides otherwise), (i) “**amend**” shall mean “amend, restate, amend and restate, supplement or modify”; and “**amended**,” “**amending**” and “**amendment**” shall have meanings correlative to the foregoing; (ii) in the computation of periods of time from a specified date to a later specified date, “**from**” shall mean “from and including”; “**to**” and “**until**” shall mean “to but excluding”; and “**through**” shall mean “to and including”; (iii) “**hereof**,” “**herein**” and “**hereunder**” (and similar terms) in any Credit Document refer to such Credit Document as a whole and not to any particular provision of such Credit Document; (iv) “**including**” (and similar terms) shall mean “including without limitation” (and similarly for similar terms); (v) “**or**” has the inclusive meaning represented by the phrase “and/or”; (vi) references to “**the date hereof**” shall mean the date first set forth above; (vii) “**asset**” and “**property**” shall have the same meaning and effect and refer to all tangible and intangible assets and property, whether real, personal or mixed and of every type and description; and (viii) a “**fiscal year**” or a “**fiscal quarter**” is a reference to a fiscal year or fiscal quarter of Borrower.

(c) In this Agreement unless the context clearly requires otherwise, any reference to (i) an Annex, Exhibit or Schedule is to an Annex, Exhibit or Schedule, as the case may be, attached to this Agreement and constituting a part hereof, and (ii) a Section or other subdivision is to a Section or such other subdivision of this Agreement.

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(d) Unless otherwise expressly provided herein, (i) references to Organizational Documents, agreements (including the Credit Documents) and other contractual instruments shall be deemed to include all subsequent amendments, restatements, amendments and restatements, extensions, supplements, reaffirmations and other modifications thereto, but only to the extent that such amendments, restatements, amendments and restatements, extensions, supplements, reaffirmations and other modifications are permitted by the Credit Documents; (ii) references to any Requirement of Law shall include all statutory and regulatory provisions consolidating, amending, replacing, supplementing or interpreting such Requirement of Law, and (iii) for the avoidance of doubt, any reference herein to “the date hereof” or words of similar import shall refer to the date that the Credit Agreement was initially entered into (October 30, 2013).

(e) This Agreement and the other Credit Documents are the result of negotiations among and have been reviewed by counsel to Agents, Borrower and the other parties, and are the products of all parties. Accordingly, they shall not be construed against the Lenders or Agents merely because of Agents’ or the Lenders’ involvement in their preparation.

## SECTION 1.05. Exchange Rates; Currency Equivalents.

(a) The Administrative Agent or the applicable L/C Lender, as applicable, shall determine the Spot Rates as of each Revaluation Date to be used for calculating Dollar Equivalent amounts of extensions of credit hereunder and Obligations denominated in Alternate Currencies. Such Spot Rates shall become effective as of such Revaluation Date and shall be the Spot Rates employed in converting any amounts between the applicable currencies until the next Revaluation Date to occur. Except for purposes of financial statements delivered by Credit Parties hereunder or calculating financial covenants or financial ratios hereunder or except as otherwise provided herein, the applicable amount of any currency (other than Dollars) for purposes of calculating the Dollar Equivalent of the amount of extensions of credit hereunder and of Obligations denominated in the Alternate Currency under the Credit Documents shall be such Dollar Equivalent amount as so determined by the Administrative Agent or the applicable L/C Lender, as applicable.

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

(c) The Administrative Agent does not warrant, nor accept responsibility, nor shall the Administrative Agent have any liability with respect to the administration, submission or any other matter related to the rates in the definition of "LIBO Rate" or with respect to any comparable or successor rate thereto.

## SECTION 1.06. Pro Forma Calculations.

(a) Notwithstanding anything to the contrary herein, the Consolidated Total Net Leverage Ratio, the Consolidated Senior Secured Net Leverage Ratio and the Interest Coverage Ratio shall be calculated in the manner prescribed by this Section 1.06; *provided* that notwithstanding anything to the contrary in clauses (b), (c) or (d) of this Section 1.06, when calculating the Consolidated Total Net Leverage Ratio, the Consolidated Senior Secured Net Leverage Ratio and the Interest Coverage Ratio, as applicable, for purposes of determining actual compliance (and not compliance on a Pro Forma Basis) with any covenant pursuant to Section 10.08, the events described in this Section 1.06 that occurred subsequent to the end of the applicable Test Period shall not be given *pro forma* effect.

(b) For purposes of calculating the Consolidated Total Net Leverage Ratio, the Consolidated Senior Secured Net Leverage Ratio and the Interest Coverage Ratio, Specified Transactions (and the incurrence or

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repayment of any Indebtedness in connection therewith) that have been made (i) during the applicable Test Period and (ii) subsequent to such Test Period and prior to or simultaneously with the event for which the calculation of any such ratio is made shall be calculated on a *pro forma* basis assuming that all such Specified Transactions (and any increase or decrease in Consolidated EBITDA and the component financial definitions used therein attributable to any Specified Transaction) had occurred on the first day of the applicable Test Period. If, since the beginning of any applicable Test Period, any Person that subsequently became a Restricted Subsidiary or was merged, amalgamated or consolidated with or into Borrower or any of its Restricted Subsidiaries since the beginning of such Test Period shall have made any Specified Transaction that would have required adjustment pursuant to this Section 1.06, then the Consolidated Total Net Leverage Ratio, the Consolidated Senior Secured Net Leverage Ratio and the Interest Coverage Ratio shall be calculated to give *pro forma* effect thereto in accordance with this Section 1.06.

(c) Whenever *pro forma* effect is to be given to the Transactions or a Specified Transaction, the *pro forma* calculations shall be made in good faith by a Responsible Officer of Borrower and include, for the avoidance of doubt, the amount of cost savings, operating expense reductions and synergies projected by Borrower in good faith to be realized as a result of specified actions taken or with respect to which steps have been initiated, or are reasonably expected to be initiated, within twelve (12) months of the Closing Date, in the case of the Transactions, and in the case of any other Specified Transaction, within twelve (12) months of the closing date of such Specified Transaction (in the good faith determination of Borrower) (calculated on a *pro forma* basis as though such cost savings, operating expense reductions and synergies had been realized during the entirety of the applicable period), net of the amount of actual benefits realized during such period from such actions; *provided* that, with respect to any such cost savings, operating expense reductions and synergies, the limitations and requirements set forth in clause (c) of the definitions of Consolidated EBITDA (other than the requirement set forth in clause (c) of Consolidated EBITDA that steps have been initiated or taken) shall apply; *provided, further*, that the aggregate amount of additions made to Consolidated EBITDA for any Test Period pursuant to this clause (c) and clause (c) of the definition of "Consolidated EBITDA" shall not (i) exceed 15.0% of Consolidated EBITDA for such Test Period (after giving effect to this clause (c) and clause (c) of the definition of "Consolidated EBITDA") or (ii) be duplicative of one another.

(d) In the event that Borrower or any Restricted Subsidiary incurs (including by assumption or guarantees) or repays (including by redemption, repayment, prepayment, retirement, exchange or extinguishment) any Indebtedness included in the calculations of the Consolidated Total Net Leverage Ratio, the Consolidated Senior Secured Net Leverage Ratio and the Interest Coverage Ratio, as the case may be (in each case, other than Indebtedness incurred or repaid under any revolving credit facility), (i) during the applicable Test Period and/or (ii) subsequent to the end of the applicable Test Period and prior to or simultaneously with the event for which the calculation of any such ratio is made, then the Consolidated Total Net Leverage Ratio, the Consolidated Senior Secured Net Leverage Ratio and the Interest Coverage Ratio shall be calculated giving *pro forma* effect to such incurrence or repayment of Indebtedness, to the extent required, as if the same had occurred on (A) the last day of the applicable Test Period in the case of the Consolidated Total Net Leverage Ratio or the Consolidated Senior Secured Net Leverage Ratio and (B) the first day of the applicable Test Period in the case of the Interest Coverage Ratio. If any Indebtedness bears a floating rate of interest and is being given *pro forma* effect, the interest on such Indebtedness shall be calculated as if the rate in effect on the date of the event for which the calculation of the Interest Coverage Ratio is made had been the applicable rate for the entire period (taking into account any hedging obligations applicable to such Indebtedness); *provided* that, in the case of repayment of any Indebtedness, to the extent actual interest related thereto was included during all or any portion of the applicable Test Period, the actual interest may be used for the applicable portion of such Test Period. Interest on a Capital Lease shall be deemed to accrue at an interest rate reasonably determined by a responsible financial or accounting officer of Borrower to be the rate of interest implicit in such Capital Lease in accordance with GAAP. Interest on Indebtedness that may optionally be determined at an interest rate based upon a factor of a prime or similar rate, a London interbank offered rate, or other rate, shall be determined to have been based upon the rate actually chosen, or if none, then based upon such optional rate chosen as Borrower may designate.

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**SECTION 1.07. Letter of Credit Amounts.** Unless otherwise specified herein, the amount of a Letter of Credit at any time shall be deemed to be the Dollar Equivalent of the stated amount of such Letter of Credit in effect at such time; *provided, however*, that with respect to any Letter of Credit that, by its terms or the terms of any document related thereto, provides for one or more automatic increases in the stated amount thereof, the amount of such Letter of Credit shall be deemed to be the Dollar Equivalent of the maximum stated amount of such Letter of Credit after giving effect to all such increases, whether or not such maximum stated amount is in effect at such time.

## ARTICLE II.

### CREDITS

#### **SECTION 2.01. Loans.**

(a) **Revolving Loans.** Each Revolving Lender agrees, severally and not jointly, on the terms and conditions of this Agreement, to make revolving loans (the “**Revolving Loans**”) to Borrower in Dollars from time to time, on any Business Day during, with respect to any Revolving Commitment of such Revolving Lender, the Revolving Availability Period applicable to such Revolving Commitment, in an aggregate principal amount at any one time outstanding not exceeding the amount of the Revolving Commitment of such Revolving Lender as in effect from time to time; *provided, however*, that, after giving effect to any Borrowing of Revolving Loans, (i) the sum of the aggregate principal amount of (without duplication) all Revolving Loans and Swingline Loans then outstanding plus the aggregate amount of all L/C Liabilities shall not exceed the Total Revolving Commitments as in effect at such time, (ii) the Revolving Exposure of such Revolving Lender shall not exceed such Revolving Lender’s Revolving Commitments in effect at such time, (iii) the Revolving Tranche Exposure of such Revolving Lender in respect of any Tranche of Revolving Commitments shall not exceed such Revolving Lender’s Revolving Commitment of such Tranche in effect at such time and (iv) the Revolving Tranche Exposure of all Revolving Lenders in respect of any Tranche of Revolving Commitments shall not exceed the aggregate Revolving Commitments of such Tranche in effect at such time; *provided, further*, that Borrower may not borrow Revolving Loans in excess of \$100.0 million on the Closing Date. Subject to the terms and conditions of this Agreement, during the applicable Revolving Availability Period, Borrower may borrow, repay and re-borrow the amount of the Revolving Commitments by means of ABR Loans and LIBOR Loans.

(b) **Term A Facility Loans.**

(i) Each Lender with a Term A Facility Commitment on the Closing Date agrees, severally and not jointly, on the terms and conditions of this Agreement, to make a Term A Facility Loan to Borrower in Dollars on the Closing Date in an aggregate principal amount equal to the Term A Facility Commitment of such Lender on the Closing Date. Term A Facility Loans that are repaid or prepaid may not be reborrowed.

(ii) Each Lender with a First Amendment Incremental Term A Loan Commitment agrees, severally and not jointly, on the terms and conditions of the First Amendment and this Agreement, to make a Term A Facility Loan to Borrower in Dollars on any Business Day on or after the First Amendment Incremental Commitments Availability Date and prior to the termination of the First Amendment Incremental Term A Loan Commitments in accordance with the First Amendment in an aggregate principal amount not in excess of the First Amendment Incremental Term A Loan Commitment of such Lender. First Amendment Incremental Term A Loan Commitments, if drawn, shall be drawn in one Borrowing on one Business Day. First Amendment Incremental Term A Loans that are repaid or prepaid may not be reborrowed.

(c) **Term B Facility Loans.** Each Lender with a Term B Facility Commitment agrees, severally and not jointly, on the terms and conditions of this Agreement, to make a Term B Facility Loan to Borrower in Dollars

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on the Closing Date in an aggregate principal amount equal to the Term B Facility Commitment of such Lender. Term B Facility Loans that are repaid or prepaid may not be reborrowed.

(d) **Limit on LIBOR Loans.** No more than twelve (12) separate Interest Periods in respect of LIBOR Loans may be outstanding at any one time in the aggregate under all of the facilities.

(e) **Swingline Loans.**

(i) **Swingline Commitment.** Subject to the terms and conditions set forth herein and in reliance upon the agreements of the other Lenders set forth in this Section 2.01(e), the Swingline Lender at the request of Borrower may, in the Swingline Lender’s sole discretion, make Swingline Loans to Borrower in Dollars from time to time during any Revolving Availability Period, in an aggregate principal amount at any time outstanding that will not result in (x) the aggregate principal amount of outstanding Swingline Loans exceeding the Swingline Sublimit or (y) (1) the sum of the total Revolving Exposures exceeding the Total Revolving Commitments or (2) the Revolving Exposure of any Revolving Lender exceeding the Revolving Commitments of such Lender then in effect; *provided, however*, that the Swingline Lender shall not be required to make a Swingline Loan to refinance an outstanding Swingline Loan. Within the foregoing limits and subject to the terms and conditions set forth herein, Borrower may borrow, repay and re-borrow Swingline Loans. Notwithstanding anything to the contrary contained in this Section 2.01(e) or elsewhere in this Agreement, the Swingline Lender shall not be obligated to make any Swingline Loan at a time when a Revolving Lender is a Defaulting Lender if such Defaulting Lender’s participation in Swingline Loans cannot be reallocated to Non-Defaulting Lenders pursuant to Section 2.14(a) unless arrangements reasonably satisfactory to the Swingline Lender and Borrower have been made to eliminate the Swingline Lender’s risk with respect to the Defaulting Lender’s or Defaulting Lenders’ participation in such Swingline Loans, including by Cash Collateralizing in an amount equal to the Minimum Collateral Amount, or obtaining a backstop letter of credit from an issuer reasonably satisfactory to the Swingline Lender to support, such Defaulting Lender’s or Defaulting Lenders’ Commitment percentage of outstanding Swingline Loans.

(ii) **Swingline Loans.** To request a Swingline Loan, Borrower shall notify Administrative Agent of such request by telephone (promptly confirmed in writing in the form of a Notice of Borrowing by facsimile or electronic mail), not later than 1:00 p.m., New York time, on the day of a proposed Swingline Loan (which day shall be a Business Day). Each such notice shall be irrevocable and shall specify the requested date (which shall be a Business Day) and amount of the requested Swingline Loan. Administrative Agent will promptly advise the Swingline Lender of any such notice received from Borrower. Unless the Swingline Lender has received notice (by telephone or in writing) from the Administrative

Agent (including at the request of any Lender) prior to 2:00 p.m. on the date of the proposed Swingline Loan (A) directing the Swingline Lender not to make such Swingline Loan as a result of the limitations set forth in the first sentence of Section 2.01(e)(i) or (B) that one or more of the applicable conditions specified in Article VII is not then satisfied, then, subject to the terms and conditions hereof, the Swingline Lender shall make each Swingline Loan available to Borrower by depositing the same by wire transfer of immediately available funds in (or, in the case of an account of Borrower maintained with the Swingline Lender, by crediting the same to) the account of Borrower as directed by Borrower in the applicable Notice of Borrowing for such Swingline Loan by 4:00 p.m., New York time, on the requested date of such Swingline Loan. Swingline Loans shall only be incurred and maintained as ABR Loans. Borrower shall not request a Swingline Loan if at the time of or immediately after giving effect to such request a Default or an Event of Default has occurred and is continuing. Swingline Loans shall be made in minimum amounts of \$500,000 and integral multiples of \$250,000 above such amount. Immediately upon the making of a Swingline Loan, each Revolving Lender shall be deemed to, and hereby irrevocably and unconditionally agrees to, purchase from the Swingline Lender a risk participation in such

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Swingline Loan in an amount equal to the product of such Lender's R/C Percentage of such Swingline Loan.

(iii) **Prepayment.** Borrower shall have the right at any time and from time to time to repay any Swingline Loan, in whole or in part, and without any penalty or premium, upon giving written or teletype notice (or telephone notice promptly confirmed by written, or teletype notice) to the Swingline Lender and to Administrative Agent before 12:00 p.m. (Noon), New York time, on the date of repayment at the Swingline Lender's office as the Swingline Lender may from time to time specify to Borrower and Administrative Agent.

(iv) **Refinancing; Participations.**

(A) The Swingline Lender at any time in its sole discretion may request, on behalf of Borrower (which hereby irrevocably authorizes the Swingline Lender to so request on its behalf), that each Revolving Lender make a ABR Loan in an amount equal to such Lender's R/C Percentage of the amount of Swingline Loans then outstanding. Such request shall be made in writing and in accordance with the requirements of Section 2.02, without regard to the minimum and multiples specified in this Agreement for the principal amount of ABR Loans, but subject to the unutilized portion of the Revolving Commitments and the conditions set forth in Section 7.02. The Swingline Lender shall furnish Borrower with a copy of the applicable notice promptly after delivering such notice to the Administrative Agent. Each Revolving Lender shall make an amount equal to its R/C Percentage of the amount specified in such notice available to the Administrative Agent in immediately available funds (and the Administrative Agent may apply Cash Collateral available with respect to the applicable Swingline Loan) for the account of the Swingline Lender at the Administrative Agent's Office for Dollar-denominated payments not later than 1:00 p.m. on the day specified in such notice, whereupon, subject to Section 2.01(e)(iv)(B), each Revolving Lender that so makes funds available shall be deemed to have made a ABR Loan to Borrower in such amount. The Administrative Agent shall remit the funds so received to the Swingline Lender.

(B) If for any reason any Swingline Loan cannot be refinanced by such a Borrowing in accordance with Section 2.01(e)(iv)(A), the request for ABR Loans submitted by the Swingline Lender as set forth herein shall be deemed to be a request by the Swingline Lender that each of the Revolving Lenders fund its risk participation in the relevant Swingline Loan and each Revolving Lender's payment to the Administrative Agent for the account of the Swingline Lender pursuant to Section 2.01(e)(iv)(A) shall be deemed payment in respect of such participation.

(C) If any Revolving Lender fails to make available to the Administrative Agent for the account of the Swingline Lender any amount required to be paid by such Revolving Lender pursuant to Section 2.01(e)(iv)(A) by the time specified in such Section, the Swingline Lender shall be entitled to recover from such Revolving Lender (acting through the Administrative Agent), on demand, such amount with interest thereon for the period from the date such payment is required to the date on which such payment is immediately available to the Swingline Lender, at a rate per annum equal to the greater of the Federal Funds Rate and a rate determined by the Swingline Lender in accordance with banking industry rules on interbank compensation, plus any administrative, processing or similar fees customarily charged by the Swingline Lender in connection with the foregoing. If such Revolving Lender pays such amount (with interest and fees as aforesaid), the amount so paid (other than any such interest or fees) shall constitute such Lender's Revolving Loan included in the relevant Borrowing or funded participation in the relevant Swingline Loan, as the case may be. A certificate of the Swingline Lender submitted to

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any Revolving Lender (through the Administrative Agent) with respect to any amounts owing under this clause (C) shall be conclusive absent manifest error.

(D) Each Revolving Lender's obligation to make Revolving Loans or to purchase and fund risk participations in Swingline Loans pursuant to this Section 2.01(e)(iv) shall be absolute and unconditional and shall not be affected by any circumstance, including (A) any setoff, counterclaim, recoupment, defense or other right which such Revolving Lender may have against the Swingline Lender, Borrower or any other Person for any reason whatsoever, (B) the occurrence or continuance of a Default, or (C) any other occurrence, event or condition, whether or not similar to any of the foregoing; *provided, however*, that each Revolving Lender's obligation to make Revolving Loans pursuant to this Section 2.01(e)(iv) is subject to the conditions set forth in Section 7.02. No such funding of risk participations shall relieve or otherwise impair the obligation of Borrower to repay Swingline Loans, together with interest as provided herein.

(E) The Swingline Lender shall be responsible for invoicing Borrower for interest on the Swingline Loans. Until each Revolving Lender funds its Revolving Loan or risk participation pursuant to this Section 2.01(e) to refinance such Revolving Lender's R/C Percentage of any Swingline Loan, interest in respect of such R/C Percentage shall be solely for the account of the Swingline Lender.

**SECTION 2.02. Borrowings.** Borrower shall give Administrative Agent notice of each borrowing hereunder as provided in Section 4.05 in the form of a Notice of Borrowing. Unless otherwise agreed to by Administrative Agent in its sole discretion, not later than 12:00 p.m. (Noon), New York time, on the date specified for each borrowing in Section 4.05, each Lender shall make available the amount of the Loan or Loans to be made by it on such date to



Administrative Agent, at an account specified by Administrative Agent maintained at the Principal Office, in immediately available funds, for the account of Borrower. Each borrowing of Revolving Loans shall be made by each Revolving Lender *pro rata* based on its R/C Percentage. The amounts so received by Administrative Agent shall, subject to the terms and conditions of this Agreement, be made available to Borrower not later than 4:00 p.m., New York time, on the actual applicable Funding Date, by depositing the same by wire transfer of immediately available funds in (or, in the case of an account of Borrower maintained with Administrative Agent at the Principal Office, by crediting the same to) the account or accounts of Borrower or any other account or accounts in each case as directed by Borrower in the applicable Notice of Borrowing.

### SECTION 2.03. Letters of Credit.

(a) Subject to the terms and conditions hereof, the Revolving Commitments may be utilized, upon the request of Borrower, in addition to the Revolving Loans provided for by Section 2.01(a), for standby and commercial documentary letters of credit (herein collectively called "**Letters of Credit**") issued by the applicable L/C Lender (which L/C Lenders agree to the terms and provisions of this Section 2.03 in reliance upon the agreements of the other Lenders set forth herein) for the account of Borrower or its Subsidiaries; *provided, however*, that in no event shall

(i) the aggregate amount of all L/C Liabilities, *plus* the aggregate principal amount of all the Revolving Loans and Swingline Loans then outstanding, exceed at any time the Total Revolving Commitments as in effect at such time,

(ii) the sum of the aggregate principal amount of all Revolving Loans of any Revolving Lender then outstanding, *plus* such Revolving Lender's L/C Liability *plus* such Revolving Lender's Swingline Exposure exceed at any time such Revolving Lender's Revolving Commitment as in effect at such time,

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(iii) the outstanding aggregate amount of all L/C Liabilities exceed the L/C Sublimit,

(iv) the Dollar Equivalent of the Stated Amount of any Letter of Credit be less than \$100,000 or such lesser amount as is acceptable to the L/C Lender,

(v) the expiration date of any Letter of Credit extend beyond the earlier of (x) the third Business Day preceding the latest R/C Maturity Date then in effect and (y) the date twelve (12) months following the date of such issuance, unless in the case of this clause (y) the Required Revolving Lenders have approved such expiry date in writing (but never beyond the third Business Day prior to the latest R/C Maturity Date then in effect), except for any Letter of Credit that Borrower has agreed to Cash Collateralize in an amount equal to the Minimum Collateral Amount or otherwise backstop (with a letter of credit on customary terms) to the applicable L/C Lender's and the Administrative Agent's reasonable satisfaction, on or prior to the third Business Day preceding the latest R/C Maturity Date then in effect, subject to the ability of Borrower to request Auto-Extension Letters of Credit in accordance with Section 2.03(b),

(vi) any L/C Lender issue any Letter of Credit after it has received notice from Borrower or the Required Revolving Lenders stating that a Default exists until such time as such L/C Lender shall have received written notice of (x) rescission of such notice from the Required Revolving Lenders, (y) waiver or cure of such Default in accordance with this Agreement or (z) Administrative Agent's good faith determination that such Default has ceased to exist,

(vii) any Letter of Credit be issued in a currency other than Dollars or the Alternate Currency nor at a tenor other than sight; or

(viii) the L/C Lender be obligated to issue any Letter of Credit, amend or modify any outstanding Letter of Credit or extend the expiry date of any outstanding Letter of Credit at any time when a Revolving Lender is a Defaulting Lender if such Defaulting Lender's L/C Liability cannot be reallocated to Non-Defaulting Lenders pursuant to Section 2.14(a) unless arrangements reasonably satisfactory to the L/C Lender and Borrower have been made to eliminate the L/C Lender's risk with respect to the participation in Letters of Credit by all such Defaulting Lenders, including by Cash Collateralizing in an amount equal to the Minimum Collateral Amount, or obtaining a backstop letter of credit from an issuer reasonably satisfactory to the L/C Lender to support, each such Defaulting Lender's L/C Liability.

(b) Whenever Borrower requires the issuance of a Letter of Credit it shall give the applicable L/C Lender and Administrative Agent at least three (3) Business Days written notice (or such shorter period of notice acceptable to the L/C Lender). Such Letter of Credit application may be sent by facsimile, by United States mail, by overnight courier, by electronic transmission using the system agreed to by the applicable L/C Lender, by personal delivery or by any other means acceptable to the applicable L/C Lender. Each notice shall be in the form of Exhibit L or such other form as is reasonably acceptable to the applicable L/C Lender appropriately completed (each a "**Letter of Credit Request**") and shall specify a date of issuance not beyond the fifth Business Day prior to latest R/C Maturity Date then in effect. Each Letter of Credit Request must be accompanied by documentation describing in reasonable detail the proposed terms, conditions and format of the Letter of Credit to be issued, and if so requested by any L/C Lender each Letter of Credit Request shall be accompanied by such L/C Lender's form of application but which application shall not contain any operating or financial covenants or any provisions inconsistent with this Agreement. If Borrower so requests in any applicable Letter of Credit Request, the applicable L/C Lender may, in its sole discretion, agree to issue a Letter of Credit that has automatic extension provisions (each, an "**Auto-Extension Letter of Credit**"); *provided* that any such Auto-Extension Letter of Credit must permit the L/C Lender to decline any such extension at least once in each twelve-month period (commencing with the date of issuance of such Letter of Credit) by giving prior notice to the beneficiary thereof not later than a day (the "**Non-Extension Notice Date**") in each such twelve-month period to be agreed upon at the time such Letter of Credit is issued. Unless otherwise directed by the L/C Lender at the time of the original issuance or automatic extension of a

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Letter of Credit, Borrower shall not be required to make a specific request to the L/C Lender for any such extension. Once an Auto-Extension Letter of Credit has been issued, the Lenders shall be deemed to have authorized (but may not require) the L/C Lender to permit the extension of such Letter of Credit at any time to an expiry date not later than the third Business Day preceding the latest R/C Maturity Date then in effect (*provided*, that such three (3) Business Day limitation shall not apply to any Letter of Credit that Borrower has agreed to Cash Collateralize in an amount equal to the Minimum Collateral Amount or otherwise backstop (with a letter of credit on customary terms) to the applicable L/C Lender's and the Administrative Agent's reasonable satisfaction);

provided, however, that the L/C Lender shall not permit any such extension if (A) the L/C Lender has determined that it would not be permitted, or would have no obligation, at such time to issue such Letter of Credit in its revised form (as extended) under the terms hereof (by reason of the provisions of Section 2.03(a) or otherwise), or (B) it has received notice (which may be by telephone or in writing) on or before the day that is seven Business Days before the Non-Extension Notice Date (1) from the Administrative Agent that the Required Lenders have elected not to permit such extension or (2) from the Administrative Agent, any Lender or Borrower that one or more of the applicable conditions specified in Section 7.02 is not then satisfied, and in each such case directing the L/C Lender not to permit such extension. If there is any conflict between the terms and conditions of this Agreement and the terms and condition of any application, the terms and conditions of this Agreement shall govern. Each Lender hereby authorizes each L/C Lender to issue and perform its obligations with respect to Letters of Credit and each Letter of Credit shall be issued in accordance with the customary procedures of such L/C Lender. Borrower acknowledges and agrees that the failure of any L/C Lender to require an application at any time and from time to time shall not restrict or impair such L/C Lender's right to require such an application or agreement as a condition to the issuance of any subsequent Letter of Credit.

(c) On each day during the period commencing with the issuance by the applicable L/C Lender of any Letter of Credit and until such Letter of Credit shall have expired or been terminated, the Revolving Commitment of each Revolving Lender shall be deemed to be utilized for all purposes hereof in an amount equal to such Lender's R/C Percentage of the Dollar Equivalent of the then Stated Amount of such Letter of Credit plus the amount of any unreimbursed drawings thereunder (the amount of such unreimbursed drawings shall be expressed in Dollars in the amount of the Dollar Equivalent thereof in the case of a Letter of Credit denominated in the Alternate Currency). Each Revolving Lender (other than the applicable L/C Lender) severally agrees that, upon the issuance of any Letter of Credit hereunder, it shall automatically acquire from the L/C Lender that issued such Letter of Credit, without recourse, a participation in such L/C Lender's obligation to fund drawings and rights under such Letter of Credit in an amount equal to such Lender's R/C Percentage of such obligation (such obligation to fund drawings shall be expressed in Dollars in the amount of the Dollar Equivalent thereof in the case of a Letter of Credit denominated in the Alternate Currency) and rights, and each Revolving Lender (other than such L/C Lender) thereby shall absolutely, unconditionally and irrevocably assume, as primary obligor and not as surety, and shall be unconditionally obligated to such L/C Lender to pay and discharge when due, its R/C Percentage of such L/C Lender's obligation to fund drawings (such obligation to fund drawings shall be expressed in Dollars in the amount of the Dollar Equivalent thereof in the case of a Letter of Credit denominated in the Alternate Currency) under such Letter of Credit. Such L/C Lender shall be deemed to hold an L/C Liability in an amount equal to its retained interest in the related Letter of Credit after giving effect to such acquisition by the Revolving Lenders other than such L/C Lender of their participation interests.

(d) In the event that any L/C Lender has determined to honor a drawing under a Letter of Credit, such L/C Lender shall promptly notify (the "L/C Payment Notice") Administrative Agent and Borrower of the amount paid by such L/C Lender and the date on which payment is to be made to such beneficiary. In the case of a Letter of Credit denominated in the Alternate Currency, Borrower shall reimburse the L/C Lender that issued such Letter of Credit in Dollars. In the case of any such reimbursement in Dollars of a drawing under a Letter of Credit denominated in the Alternate Currency, the applicable L/C Lender shall notify Administrative Agent and Borrower of the Dollar Equivalent of the amount of the drawing following the determination thereof in accordance with Section 1.05. Borrower hereby unconditionally agrees to pay and reimburse such L/C Lender, through the Administrative Agent, for the amount of payment under such Letter of Credit in Dollars, together with interest

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thereon at a rate *per annum* equal to the Alternate Base Rate in effect from time to time plus the Applicable Margin applicable to Revolving Loans that are maintained as ABR Loans as are in effect from time to time (determined based on a weighted average if multiple Tranches of Revolving Commitments are then outstanding) from the date payment was made to such beneficiary to the date on which payment is due, such payment to be made not later than the second Business Day after the date on which Borrower receives the applicable L/C Payment Notice (or the third Business Day thereafter if such L/C Payment Notice is received on a date that is not a Business Day or after 1:00 p.m., New York time, on a Business Day). Any such payment due from Borrower and not paid on the required date shall thereafter bear interest at rates specified in Section 3.02(b) until paid. Promptly upon receipt of the amount paid by Borrower pursuant to the immediately prior sentence, the applicable L/C Lender shall notify Administrative Agent of such payment and whether or not such payment constitutes payment in full of the Reimbursement Obligation under the applicable Letter of Credit.

(e) Promptly upon its receipt of a L/C Payment Notice referred to in Section 2.03(d), Borrower shall advise the applicable L/C Lender and Administrative Agent whether or not Borrower intends to borrow hereunder to finance its obligation to reimburse such L/C Lender for the amount of the related demand for payment under the applicable Letter of Credit and, if it does so intend, submit a Notice of Borrowing for such borrowing to Administrative Agent as provided in Section 4.05. In the event that Borrower fails to reimburse any L/C Lender, through the Administrative Agent, for a demand for payment under a Letter of Credit by the second Business Day after the date of the applicable L/C Payment Notice (or the third Business Day thereafter if such L/C Payment Notice is received on a date that is not a Business Day or after 1:00 p.m., New York time on a Business Day), such L/C Lender shall promptly notify Administrative Agent of such failure by Borrower to so reimburse and of the amount of the demand for payment (expressed in Dollars in the amount of the Dollar Equivalent thereof in the case of a Letter of Credit denominated in the Alternate Currency). In the event that Borrower fails to either submit a Notice of Borrowing to Administrative Agent as provided above or reimburse such L/C Lender, through the Administrative Agent, for a demand for payment under a Letter of Credit by the second Business Day after the date of the applicable L/C Payment Notice (or the third Business Day thereafter if such L/C Payment Notice is received on a date that is not a Business Day or after 1:00 p.m., New York time, on a Business Day), Administrative Agent shall give each Revolving Lender prompt notice of the amount of the demand for payment (expressed in Dollars in the amount of the Dollar Equivalent thereof in the case of a Letter of Credit denominated in the Alternate Currency) including the interest therein owed by Borrower (the "Unreimbursed Amount"), specifying such Lender's R/C Percentage thereof and requesting payment of such amount.

(f) Each Revolving Lender (other than the applicable L/C Lender) shall pay to Administrative Agent for account of the applicable L/C Lender at the Principal Office in Dollars and in immediately available funds, an amount equal to such Revolving Lender's R/C Percentage of the Unreimbursed Amount upon not less than one Business Day's actual notice by Administrative Agent as described in Section 2.03(e) to such Revolving Lender requesting such payment and specifying such amount. Administrative Agent will promptly remit the funds so received to the applicable L/C Lender in Dollars. Each such Revolving Lender's obligation to make such payments to Administrative Agent for the account of L/C Lender under this Section 2.03(f), and the applicable L/C Lender's right to receive the same, shall be absolute and unconditional and shall not be affected by any circumstance whatsoever, including (i) the failure of any other Revolving Lender to make its payment under this Section 2.03(f), (ii) the financial condition of Borrower or the existence of any Default or (iii) the termination of the Commitments. Each such payment to any L/C Lender shall be made without any offset, abatement, withholding or reduction whatsoever.

(g) Upon the making of each payment by a Revolving Lender, through the Administrative Agent, to an L/C Lender pursuant to Section 2.03(f) in respect of any Letter of Credit, such Revolving Lender shall, automatically and without any further action on the part of Administrative Agent, such L/C Lender or such Revolving Lender, acquire (i) a participation in an amount equal to such payment in the Reimbursement Obligation owing to

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interest and other amounts expressed in Dollars in the amount of the Dollar Equivalent thereof in the case of a Letter of Credit denominated in the Alternate Currency) (other than cost reimbursements) payable by Borrower hereunder and under such L/C Documents in respect of such Reimbursement Obligation. If any L/C Lender receives directly from or for the account of Borrower any payment in respect of any Reimbursement Obligation or any such interest or other amounts (including by way of setoff or application of proceeds of any collateral security), such L/C Lender shall promptly pay to Administrative Agent for the account of each Revolving Lender which has satisfied its obligations under Section 2.03(f), such Revolving Lender's R/C Percentage of the Dollar Equivalent of such payment, each such payment by such L/C Lender to be made in Dollars. In the event any payment received by such L/C Lender and so paid to the Revolving Lenders hereunder is rescinded or must otherwise be returned by such L/C Lender, each Revolving Lender shall, upon the request of such L/C Lender (through Administrative Agent), repay to such L/C Lender (through Administrative Agent) the amount of such payment paid to such Revolving Lender, with interest at the rate specified in Section 2.03(j).

(h) Borrower shall pay to Administrative Agent, for the account of each Revolving Lender, and with respect to each Tranche of Revolving Commitments, in respect of each Letter of Credit and each Tranche of Revolving Commitments for which such Revolving Lender has a L/C Liability, a letter of credit commission equal to (x) the rate *per annum* equal to the Applicable Margin for Revolving Loans of such Tranche made by such Revolving Lender that are LIBOR Loans in effect from time to time, multiplied by (y) the daily Dollar Equivalent of the Stated Amount of such Letter of Credit allocable to such Revolving Lender's Revolving Commitments of such Tranche (such Dollar Equivalent to be determined in accordance with Section 1.05) for the period from and including the date of issuance of such Letter of Credit (i) in the case of a Letter of Credit which expires in accordance with its terms, to and including such expiration date and (ii) in the case of a Letter of Credit which is drawn in full or is otherwise terminated other than on the stated expiration date of such Letter of Credit, to and excluding the date such Letter of Credit is drawn in full or is terminated. Such commission will be non-refundable and is to be paid (1) quarterly in arrears on each Quarterly Date and (2) on each R/C Maturity Date. In addition, Borrower shall pay to each L/C Lender, for such L/C Lender's account a fronting fee (i) with respect to each commercial Letter of Credit, at the rate separately agreed to with such L/C Lender, computed on the Dollar Equivalent of the amount of such Letter of Credit, and payable upon the issuance thereof, (ii) with respect to any amendment of a commercial Letter of Credit increasing the amount of such Letter of Credit, at a rate separately agreed between Borrower and such L/C Lender, computed on the Dollar Equivalent of the amount of such increase, and payable upon the effectiveness of such amendment, and (iii) with respect to each standby Letter of Credit, at the rate of 0.125% per annum, computed on the Dollar Equivalent of the daily amount available to be drawn under such Letter of Credit on a quarterly basis in arrears. Such fronting fee shall be due and payable on each Quarterly Date in respect of the most recently-ended quarterly period (or portion thereof, in the case of the first payment), commencing with the first such date to occur after the issuance of such Letter of Credit, on the latest R/C Maturity Date and thereafter on demand. For purposes of computing the daily amount available to be drawn under any Letter of Credit, the amount of such Letter of Credit shall be determined in accordance with Section 1.07. In addition Borrower agrees to pay to each L/C Lender all charges, costs and expenses in the amounts customarily charged by such L/C Lender, from time to time in like circumstances, with respect to the issuance, amendment, transfer, payment of drawings, and other transactions relating thereto.

(i) Upon the issuance of or amendment or modification to a Letter of Credit, the applicable L/C Lender shall promptly deliver to Administrative Agent and Borrower a written notice of such issuance, amendment or modification and such notice shall be accompanied by a copy of such Letter of Credit or the respective amendment or modification thereto, as the case may be. Promptly upon receipt of such notice, Administrative Agent shall deliver to each Revolving Lender a written notice regarding such issuance, amendment or modification, as the case may be, and, if so requested by a Revolving Lender, Administrative Agent shall deliver to such Revolving Lender a copy of such Letter of Credit or amendment or modification, as the case may be.

(j) If and to the extent that any Revolving Lender fails to pay an amount required to be paid pursuant to Section 2.03(f) or 2.03(g) on the due date therefor, such Revolving Lender shall pay to the applicable L/C Lender

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(through Administrative Agent) interest on such amount with respect to each Tranche of Revolving Commitments held by such Revolving Lender for each day from and including such due date to but excluding the date such payment is made at a rate *per annum* equal to the Federal Funds Rate (as in effect from time to time) for the first three days and at the interest rate (in effect from time to time) applicable to Revolving Loans under such Tranche made by such Revolving Lender that are maintained as ABR Loans for each date thereafter. If any Revolving Lender holds Revolving Commitments of more than one Tranche and such Revolving Lender makes a partial payment of amounts due by it under Section 2.03(f) or 2.03(g), such partial payment shall be allocated pro rata to each Tranche based on the amount of Revolving Commitments of each Tranche held by such Revolving Lender.

(k) The issuance by any L/C Lender of any amendment or modification to any Letter of Credit hereunder that would extend the expiry date or increase the Stated Amount thereof shall be subject to the same conditions applicable under this Section 2.03 to the issuance of new Letters of Credit, and no such amendment or modification shall be issued hereunder (i) unless either (x) the respective Letter of Credit affected thereby would have complied with such conditions had it originally been issued hereunder in such amended or modified form or (y) the Required Revolving Lenders (or other specified Revolving Lenders to the extent required by Section 13.04) shall have consented thereto or (ii) if the beneficiary of the Letter of Credit does not accept the proposed terms of the Letter of Credit.

(l) Notwithstanding the foregoing, no L/C Lender shall be under any obligation to issue any Letter of Credit if at the time of such issuance, (i) any order, judgment or decree of any Governmental Authority or arbitrator shall by its terms purport to enjoin or restrain such L/C Lender from issuing the Letter of Credit, or any Law applicable to such L/C Lender or any request or directive (whether or not having the force of law) from any Governmental Authority with jurisdiction over such L/C Lender shall prohibit, or request that such L/C Lender refrain from, the issuance of letters of credit generally or the Letter of Credit in particular or shall impose upon such L/C Lender with respect to the Letter of Credit any restriction, reserve or capital requirement (for which such L/C Lender is not otherwise compensated hereunder) not in effect on the Closing Date, or shall impose upon such L/C Lender any unreimbursed loss, cost or expense which was not applicable on the Closing Date and which such L/C Lender in good faith deems material to it or (ii) the issuance of the Letter of Credit would violate one or more policies of such L/C Lender applicable to letters of credit generally.

(m) The obligations of Borrower under this Agreement and any L/C Document to reimburse any L/C Lender for a drawing under a Letter of Credit, and to repay any drawing under a Letter of Credit converted into Revolving Loans or Swingline Loans, shall be unconditional and irrevocable, and shall be paid strictly in accordance with the terms of this Agreement and each such other L/C Document under all circumstances, including the following:

(i) any lack of validity or enforceability of this Agreement, any Credit Document or any L/C Document;

(ii) the existence of any claim, setoff, defense or other right that Borrower may have at any time against any beneficiary or any transferee of any Letter of Credit (or any Person for whom any such beneficiary or any such transferee may be acting), any L/C Lender or any other Person, whether in connection with this Agreement, the transactions contemplated hereby or by the L/C Documents or any unrelated transaction;

(iii) any draft, demand, certificate or other document presented under any Letter of Credit proving to be forged, fraudulent, invalid or insufficient in any respect or any statement therein being untrue or inaccurate in any respect; or any loss or delay in the transmission or otherwise of any document required in order to make a drawing under any Letter of Credit; or any defense based upon the failure of any drawing under a Letter of Credit to conform to the terms of the Letter of Credit or any non-application or misapplication by the beneficiary of the proceeds of such drawing;

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(iv) waiver by a L/C Lender of any requirement that exists for the L/C Lender's protection and not the protection of Borrower or any waiver by the L/C Lender which does not in fact materially prejudice Borrower;

(v) honor of a demand for payment presented electronically even if such Letter of Credit requires that demand be in the form of a draft;

(vi) any payment made by a L/C Lender in respect of an otherwise complying item presented after the date specified as the expiration date of, or the date by which documents must be received under such Letter of Credit if presentation after such date is authorized by the UCC, the ISP or the UCP, as applicable;

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

(viii) any other circumstance or happening whatsoever, whether or not similar to any of the foregoing, including any other circumstance that might otherwise constitute a defense available to, or a discharge of, Borrower or a Guarantor.

To the extent that any provision of any L/C Document is inconsistent with the provisions of this Section 2.03, the provisions of this Section 2.03 shall control.

(n) Borrower, Administrative Agent and Revolving Lenders hereby agree that, as of the Closing Date, each letter of credit identified on Schedule 2.03(n) (each, an "**Existing Letter of Credit**") shall be a Letter of Credit as if originally issued under this Agreement, and that the fees and other provisions set forth in this Section 2.03 shall be applicable to each Existing Letter of Credit as of the Closing Date.

(o) On the last Business Day of each month, Borrower and each L/C Lender shall provide to Administrative Agent such information regarding the outstanding Letters of Credit as Administrative Agent shall reasonably request, in form and substance reasonably satisfactory to Administrative Agent (and in such standard electronic format as Administrative Agent shall reasonably specify), for purposes of Administrative Agent's ongoing tracking and reporting of outstanding Letters of Credit. Administrative Agent shall maintain a record of all outstanding Letters of Credit based upon information provided by Borrower and the L/C Lenders pursuant to this Section 2.03(o), and such record of Administrative Agent shall, absent manifest error, be deemed a correct and conclusive record of all Letters of Credit outstanding from time to time hereunder. Notwithstanding the foregoing, if and to the extent Administrative Agent determines that there are one or more discrepancies between information provided by Borrower and any L/C Lender hereunder, Administrative Agent will notify Borrower and such L/C Lender thereof and Borrower and such L/C Lender shall endeavor to reconcile any such discrepancy. In addition to and without limiting the foregoing, with respect to commercial documentary Letters of Credit, on the first Business Day of each week the applicable L/C Lender shall deliver to Administrative Agent, by facsimile or electronic mail, a report detailing the daily outstanding commercial documentary Letters of Credit for the previous week for such Letters of Credit issued in Dollars and for such Letters of Credit issued in the Alternate Currency.

(p) Each Lender and Borrower agree that, in paying any drawing under a Letter of Credit, the L/C Lender shall not have any responsibility to obtain any document (other than any sight draft, certificates and documents expressly required by the Letter of Credit) or to ascertain or inquire as to the validity or accuracy of any such document or the authority of the Person executing or delivering any such document. None of the L/C Lenders,

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the Administrative Agent, any of their respective Affiliates, directors, officers, employees, agents and advisors nor any correspondent, participant or assignee of any L/C Lender shall be liable to any Lender for (i) any action taken or omitted in connection herewith at the request or with the approval of the Lenders or the Required Lenders, as applicable; (ii) any action taken or omitted in the absence of gross negligence, bad faith or willful misconduct or material breach of any Credit Document; or (iii) the due execution, effectiveness, validity or enforceability of any document or instrument related to any Letter of Credit. Borrower hereby assumes all risks of the acts or omissions of any beneficiary or transferee with respect to its use of any Letter of Credit; *provided, however*, that this assumption is not intended to, and shall not, preclude Borrower's pursuing such rights and remedies as it may have against the beneficiary or transferee at law or under any other agreement. None of the L/C Lenders, the Administrative Agent, any of their respective Affiliates, directors, officers, employees, agents and advisors nor any correspondent, participant or assignee of the L/C Lenders shall be liable or responsible for any of the matters described in clauses (i) through (viii) of Section 2.03(m); *provided, however*, that anything in such clauses to the contrary notwithstanding, Borrower may have a claim against a L/C Lender, and a L/C Lender may be liable to Borrower, to the extent, but only to the extent, of any direct, as opposed to consequential or exemplary, damages suffered by Borrower which Borrower proves were caused by such L/C Lender's willful misconduct, bad faith or gross negligence or material breach of any Credit Document or such L/C Lender's willful failure to pay under any Letter of Credit after the presentation to it by the

beneficiary of a sight draft and certificate(s) strictly complying with the terms and conditions of a Letter of Credit. In furtherance and not in limitation of the foregoing, the L/C Lenders may accept documents that appear on their face to be in order, without responsibility for further investigation, regardless of any notice or information to the contrary, and the L/C Lenders shall not be responsible for the validity or sufficiency of any instrument transferring or assigning or purporting to transfer or assign a Letter of Credit or the rights or benefits thereunder or proceeds thereof, in whole or in part, which may prove to be invalid or ineffective for any reason. The L/C Lenders may send a Letter of Credit or conduct any communication to or from the beneficiary via the Society for Worldwide Interbank Financial Telecommunication (“SWIFT”) message or overnight courier, or any other commercially reasonable means of communicating with a beneficiary.

(q) Unless otherwise expressly agreed by the applicable L/C Lender and Borrower when a Letter of Credit is issued (including any such agreement applicable to an Existing Letter of Credit), (i) the rules of the ISP shall apply to each standby Letter of Credit, and (ii) the rules of the UCP shall apply to each commercial Letter of Credit. Notwithstanding the foregoing, the L/C Lenders shall not be responsible to Borrower for, and the L/C Lenders’ rights and remedies against Borrower shall not be impaired by, any action or inaction of the L/C Lenders required or permitted under any law, order, or practice that is required or permitted to be applied to any Letter of Credit or this Agreement, including the law or any order of a jurisdiction where such L/C Lender or the beneficiary is located, the practice stated in the ISP or UCP, as applicable, or in the decisions, opinions, practice statements, or official commentary of the ICC Banking Commission, the Bankers Association for Finance and Trade - International Financial Services Association (BAFT-IFSA), or the Institute of International Banking Law & Practice, whether or not any Letter of Credit chooses such law or practice.

(r) Notwithstanding that a Letter of Credit issued or outstanding hereunder is in support of any obligations of, or is for the account of, a Subsidiary, Borrower shall be obligated to reimburse the applicable L/C Lender hereunder for any and all drawings under such Letter of Credit. Borrower hereby acknowledges that the issuance of Letters of Credit for the account of Subsidiaries inures to the benefit of Borrower, and that Borrower’s business derives substantial benefits from the businesses of such Subsidiaries.

(s) A Revolving Lender may become an additional L/C Lender hereunder with the approval of the Administrative Agent (such approval not to be unreasonably withheld or delayed), Borrower and such Revolving Lender, pursuant to an agreement with, and in form and substance reasonably satisfactory to, the Administrative Agent, Borrower and such Revolving Lender. The Administrative Agent shall notify the Revolving Lenders of any such additional L/C Lender.

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#### **SECTION 2.04. Termination and Reductions of Commitment.**

(a) (i) In addition to any other mandatory commitment reductions pursuant to this Section 2.04, the aggregate amount of the Term A Facility Commitments outstanding on the Closing Date shall be automatically and permanently reduced to zero at 5:00 p.m., New York time, on the Closing Date (after giving effect to the making of the Term A Facility Loans on such date).

(ii) In addition to any other mandatory commitment reductions pursuant to this Section 2.04, the aggregate amount of the Term B Facility Commitments shall be automatically and permanently reduced to zero at 5:00 p.m., New York time, on the Closing Date (after giving effect to the making of the Term B Facility Loans on such date).

(iii) In addition to any other mandatory commitment reductions pursuant to this Section 2.04, the aggregate amount of any Incremental Term Loan Commitments shall be automatically and permanently reduced by the amount of Incremental Term Loans made in respect hereof from time to time.

(iv) The aggregate amount of the Revolving Commitments of any Tranche shall be automatically and permanently reduced to zero on the R/C Maturity Date applicable to such Tranche, and the L/C Commitments and the Swingline Commitment shall be automatically and permanently reduced to zero on the last R/C Maturity Date.

(v) In addition to any other mandatory commitment reductions pursuant to this Section 2.04, the aggregate amount of the First Amendment Incremental Term A Loan Commitments shall be automatically and permanently reduced to zero as set forth in the First Amendment.

(vi) In addition to any other mandatory commitment reductions pursuant to this Section 2.04, the First Amendment Incremental Revolving Commitments shall be automatically and permanently reduced to zero as set forth in the First Amendment.

(b) Borrower shall have the right at any time or from time to time (without premium or penalty except breakage costs (if any) pursuant to Section 5.05) (i) so long as no Revolving Loans, Swingline Loans or L/C Liabilities will be outstanding as of the date specified for termination (after giving effect to all transactions occurring on such date), to terminate the Revolving Commitments in their entirety, (ii) to reduce the aggregate amount of the Unutilized R/C Commitments (which shall be *pro rata* among the Revolving Lenders) and (iii) so long as the remaining Total Revolving Commitments will equal or exceed the aggregate amount of outstanding Revolving Loans, Swingline Exposure and L/C Liabilities, to reduce the aggregate amount of the Revolving Commitments (which shall be *pro rata* among the Revolving Lenders); *provided, however*, that (x) Borrower shall give notice of each such termination or reduction as provided in Section 4.05, and (y) each partial reduction shall be in an aggregate amount at least equal to \$5.0 million (or any whole multiple of \$1.0 million in excess thereof) or, if less, the remaining Unutilized R/C Commitments.

(c) Any Commitment once terminated or reduced may not be reinstated.

(d) Each reduction or termination of any of the Commitments applicable to any Tranche pursuant to this Section 2.04 shall be applied ratably among the Lenders with such a Commitment, as the case may be, in accordance with their respective Commitment, as applicable.

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#### **SECTION 2.05. Fees.**

(a) Borrower shall pay to Administrative Agent for the account of each Revolving Lender (other than a Defaulting Lender), with respect to such Revolving Lender's Revolving Commitments of each Tranche, a commitment fee for the period from and including the Closing Date (or, following the conversion of such Revolving Commitment into another Tranche, the applicable Extension Date) to but not including the earlier of (i) the date such Revolving Commitment is terminated or expires (or is modified to constitute another Tranche) and (ii) the R/C Maturity Date applicable to such Revolving Commitment, in each case, computed at a rate *per annum* equal to the Applicable Fee Percentage in respect of such Tranche in effect from time to time during such period on the actual daily amount of such Revolving Lender's Unutilized R/C Commitment in respect of such Tranche. Notwithstanding anything to the contrary in the definition of "Unutilized R/C Commitments," for purposes of determining Unutilized R/C Commitments in connection with computing commitment fees with respect to Revolving Commitments, a Revolving Commitment of a Revolving Lender shall be deemed to be used to the extent of the outstanding Revolving Loans and L/C Liability of such Revolving Lender (and the Swingline Exposure of such Revolving Lender shall be disregarded for such purpose). Any accrued commitment fee under this Section 2.05(a) in respect of any Revolving Commitment shall be payable in arrears on each Quarterly Date and on the earlier of (i) the date such Revolving Commitment is terminated or expires (or is modified to constitute another Tranche) and (ii) the R/C Maturity Date applicable to such Revolving Commitment.

(b) Borrower shall pay to Administrative Agent for its own account the administrative fee separately agreed to.

(c) At the time of the effectiveness of a Repricing Transaction prior to the date that is six (6) months after the Closing Date, Borrower agrees to pay to Administrative Agent, for the ratable account of each Lender with outstanding Term B Facility Loans (including each Lender that withholds its consent to such Repricing Transaction and is replaced or is removed as a Lender or is repaid under Section 2.11 or 13.04(b), as the case may be), a fee in an amount equal to 1.0% of the aggregate principal amount of Term B Facility Loans that are refinanced, converted, replaced, amended, modified or otherwise repriced in such Repricing Transaction. Such fee shall be due and payable upon the date of the effectiveness of such Repricing Transaction.

(d) Borrower shall pay to Auction Manager for its own account, in connection with any Borrower Loan Purchase, such fees as may be agreed between Borrower and Auction Manager.

(e) Borrower shall pay to each Term B Facility Lender, on the Closing Date, upfront fees equal to 0.50% of such Term B Facility Lender's Term B Facility Loan funded on the Closing Date.

(f) Borrower shall pay to Administrative Agent for the account of the applicable Lenders, the fees set forth in the First Amendment as and when required thereby.

**SECTION 2.06. Lending Offices.** The Loans of each Type made by each Lender shall be made and maintained at such Lender's Applicable Lending Office for Loans of such Type.

**SECTION 2.07. Several Obligations of Lenders.** The failure of any Lender to make any Loan to be made by it on the date specified therefor shall not relieve any other Lender of its obligation to make its Loan on such date, but neither any Lender nor Administrative Agent shall be responsible for the failure of any other Lender to make a Loan to be made by such other Lender, and no Lender shall have any obligation to Administrative Agent or any other Lender for the failure by such Lender to make any Loan required to be made by such Lender. No Revolving Lender will be responsible for failure of any other Lender to fund its participation in Letters of Credit.

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**SECTION 2.08. Notes; Register.**

(a) At the request of any Lender, its Loans of a particular Class shall be evidenced by a promissory note, payable to such Lender (or its nominee) and otherwise duly completed, substantially in the form of Exhibits A-1, A-2, A-3 and A-4 of such Lender's Revolving Loans, Term A Facility Loans, Term B Facility Loans and Swingline Loans, respectively; and in the case of any New Term Loans, such form of promissory note provided pursuant to the applicable Incremental Joinder Agreement; *provided* that any promissory notes issued in respect of New Term Loans, Other Term Loans, Extended Term Loans or Extended Revolving Loans shall be in such form as mutually agreed by Borrower and Administrative Agent.

(b) The date, amount, Type, interest rate and duration of the Interest Period (if applicable) of each Loan of each Class made by each Lender to Borrower and each payment made on account of the principal thereof, shall be recorded by such Lender (or its nominee) on its books and, prior to any transfer of any Note evidencing the Loans of such Class held by it, endorsed by such Lender (or its nominee) on the schedule attached to such Note or any continuation thereof; *provided, however*, that the failure of such Lender (or its nominee) to make any such recordation or endorsement or any error in such recordation or endorsement shall not affect the obligations of Borrower to make a payment when due of any amount owing hereunder or under such Note.

(c) Borrower hereby designates Administrative Agent to serve as its nonfiduciary agent, solely for purposes of this Section 2.08, to maintain a register (the "**Register**") on which it will record the name and address of each Lender, the Commitment from time to time of each of the Lenders, the principal amount of the Loans made by each of the Lenders and each repayment in respect of the principal amount of the Loans of each Lender. Failure to make any such recordation or any error in such recordation shall not affect Borrower's obligations in respect of such Loans. The entries in the Register shall be prima facie evidence of the information noted therein (absent manifest error), and the parties hereto shall treat each Person whose name is recorded in the Register as the owner of a Loan or other obligation hereunder as the owner thereof for all purposes of the Credit Documents, notwithstanding any notice to the contrary. The Register shall be available for inspection by Borrower or any Lender at any reasonable time and from time to time upon reasonable prior notice. No assignment shall be effective unless recorded in the Register; *provided* that Administrative Agent agrees to record in the Register any assignment entered into pursuant to the term hereof promptly after the effectiveness of such assignment.

**SECTION 2.09. Optional Prepayments and Conversions or Continuations of Loans.**

(a) Subject to Section 4.04, Borrower shall have the right to prepay Loans (without premium or penalty, except as provided in Section 2.09(c)), or to convert Loans of one Type into Loans of another Type or to continue Loans of one Type as Loans of the same Type, at any time or from time to time. Borrower shall give Administrative Agent notice of each such prepayment, conversion or continuation as provided in Section 4.05 (and, upon the date specified in any such notice of prepayment, the amount to be prepaid shall become due and payable hereunder; *provided* that Borrower may make any such notice conditional upon the occurrence of a Person's acquisition or sale or any incurrence of indebtedness or issuance of Equity Interests). Each Notice of Continuation/Conversion shall be substantially in the form of Exhibit C. If LIBOR Loans are prepaid or converted other than on the last day of an Interest Period therefor, Borrower shall at such time pay all expenses and costs required by Section 5.05. Notwithstanding the foregoing, and without limiting the

rights and remedies of the Lenders under Article XI, in the event that any Event of Default shall have occurred and be continuing, Administrative Agent may (and, at the request of the Required Lenders, shall), upon written notice to Borrower, have the right to suspend the right of Borrower to convert any Loan into a LIBOR Loan, or to continue any Loan as a LIBOR Loan, in which event all Loans shall be converted (on the last day(s) of the respective Interest Periods therefor) or continued, as the case may be, as ABR Loans. Swingline Loans may not be converted or continued.

(b) **Application.**

(i) The amount of any optional prepayments described in Section 2.09(a) shall be applied to prepay Loans outstanding in order of amortization, in amounts and to Tranches, all as determined by Borrower.

(ii) In addition to the foregoing, and *provided* that the Consolidated Senior Secured Net Leverage Ratio is less than or equal to 1.50 to 1.00, Borrower shall have the right to elect to offer to prepay the Loans *pro rata* to the Term A Facility Loans, the Term B Facility Loans, the New Term Loans, the Extended Term Loans and the Other Term Loans then outstanding and apply any amounts rejected for such prepayment to repurchase, prepay, redeem, retire, acquire, defease or cancel Indebtedness or make Restricted Payments notwithstanding any then applicable limitations set forth in Section 10.09 or 10.06, respectively. If Borrower makes such an election, it shall provide notice thereof to Administrative Agent, who shall promptly, and in any event within one Business Day of receipt, provide such notice to the holders of the Term Loans. Any such notice shall specify the aggregate amount offered to prepay the Term Loans. Each holder of a Term A Facility Loan, a Term B Facility Loan, a New Term Loan, an Other Term Loan or an Extended Term Loan may elect, in its sole discretion, to reject such prepayment offer with respect to an amount equal to or less than (v) with respect to holders of Term A Facility Loans, an amount equal to the aggregate amount so offered to prepay Term A Facility Loans times a fraction, the numerator of which is the principal amount of Term A Facility Loans owed to such holder and the denominator of which is the principal amount of Term A Facility Loans outstanding, (w) with respect to holders of Term B Facility Loans, an amount equal to the aggregate amount so offered to prepay Term B Facility Loans times a fraction, the numerator of which is the principal amount of Term B Facility Loans owed to such holder and the denominator of which is the principal amount of Term B Facility Loans outstanding, (x) with respect to holders of New Term Loans, an amount equal to the aggregate amount so offered to prepay New Term Loans times a fraction, the numerator of which is the principal amount of New Term Loans owed to such holder and the denominator of which is the principal amount of New Term Loans outstanding, (y) with respect to holders of Other Term Loans, an amount equal to the aggregate amount so offered to prepay Other Term Loans times a fraction, the numerator of which is the principal amount of Other Term Loans owed to such holder and the denominator of which is the principal amount of Other Term Loans outstanding and (z) with respect to holders of Extended Term Loans, an amount equal to the aggregate amount so offered to prepay Extended Term Loans times a fraction, the numerator of which is the principal amount of Extended Term Loans owed to such holder and the denominator of which is the principal amount of Extended Term Loans outstanding. Any rejection of such offer must be evidenced by written notice delivered to Administrative Agent within five Business Days of receipt of the offer for prepayment, specifying an amount of such prepayment offer rejected by such holder, if any. Failure to give such notice will constitute an election to accept such offer. Any portion of such prepayment offer so accepted will be used to prepay the Term Loans held by the applicable holders within ten Business Days of the date of receipt of the offer to prepay. Any portion of such prepayment rejected may be used by Borrower and its Restricted Subsidiaries to repurchase, prepay, redeem, retire, acquire, defease or cancel Indebtedness or make Restricted Payments notwithstanding any then applicable limitations set forth in Section 10.09 or 10.06, respectively.

(c) Any prepayment of Term B Facility Loans pursuant to this Section 2.09 or Section 13.04(b) made prior to the date that is six months after the Closing Date in connection with any Repricing Transaction shall be subject to the fee described in Section 2.05(c).

**SECTION 2.10. Mandatory Prepayments.**

(a) Borrower shall prepay the Loans as follows (each such prepayment to be effected in each case in the manner, order and to the extent specified in Section 2.10(b) below):

(i) **Casualty Events.** Within five (5) Business Days after Borrower or any Restricted Subsidiary receives any Net Available Proceeds from any Casualty Event or any disposition pursuant to Section 10.05(l) (or notice of collection by Administrative Agent of the same), in an aggregate principal amount equal to 100% of such Net Available Proceeds (it being understood that applications pursuant to this Section 2.10(a)(i) shall not be duplicative of Section 2.10(a)(iii) below); *provided, however*, that:

(x) if no Event of Default then exists or would arise therefrom, the Net Available Proceeds thereof shall not be required to be so applied on such date to the extent that Borrower delivers an Officer's Certificate to Administrative Agent stating that an amount equal to such proceeds is intended to be used to fund the acquisition of Property used or usable in the business of any Credit Party or repair, replace or restore the Property or other Property used or usable in the business of any Credit Party (in accordance with the provisions of the applicable Security Document in respect of which such Casualty Event has occurred, to the extent applicable, and if the Property is subject to the Master Lease, in accordance with the Master Lease (it being understood that such Property so repaired, replaced, restored or otherwise acquired may be owned by GLPI or a Subsidiary of GLPI and leased to Borrower or a Wholly Owned Subsidiary of Borrower under the Master Lease)), in each case within (A) twelve (12) months following receipt of such Net Available Proceeds or (B) if Borrower or the relevant Restricted Subsidiary enters into a legally binding commitment to reinvest such Net Available Proceeds within twelve (12) months following receipt thereof, within the later of (1) one hundred and eighty (180) days following the date of such legally binding commitment and (2) twelve (12) months following receipt of such Net Available Proceeds, and

(y) if all or any portion of such Net Available Proceeds not required to be applied to the prepayment of Loans pursuant to this Section 2.10(a)(i) is not so used within the period specified by clause (x) above, such remaining portion shall be applied on the last day of such period as specified in Section 2.10(b).

Notwithstanding the foregoing provisions of this Section 2.10(a)(i) or otherwise, no mandatory prepayment shall be required in any fiscal year pursuant to this Section 2.10(a)(i) until the date on which the Net Available Proceeds required to be applied as mandatory prepayments pursuant

to this Section 2.10(a)(i) in such fiscal year shall exceed \$10 million (and thereafter only Net Available Proceeds in excess of such amount shall be required to be applied as mandatory prepayments pursuant to this Section 2.10(a)(i)).

(ii) **Debt Issuance.** Within five (5) Business Days after any Debt Issuance on or after the Closing Date, in an aggregate principal amount equal to 100% of the Net Available Proceeds of such Debt Issuance.

(iii) **Asset Sales.** Within five (5) Business Days after receipt by Borrower or any of its Restricted Subsidiaries of any Net Available Proceeds from any Asset Sale pursuant to Section 10.05(c) or pursuant to Section 10.05(p) (other than any such Asset Sale or disposition constituting a Specified Sale Leaseback Transaction), in an aggregate principal amount equal to 100% of the Net Available Proceeds from such Asset Sale or other disposition (it being understood that applications pursuant to this Section 2.10(a)(iii) shall not be duplicative of Section 2.10(a)(i) or Section 2.10(c)(ii) below above); *provided, however*, that:

(x) an amount equal to the Net Available Proceeds from any Asset Sale pursuant to Section 10.05(c) or pursuant to 10.05(p) (other than any Asset Sale constituting a Specified Sale Leaseback Transaction) shall not be required to be applied as provided above on such date if (1) no Event of Default then exists or would arise therefrom and (2) Borrower delivers an Officer's

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Certificate to Administrative Agent stating that an amount equal to such Net Available Proceeds is intended to be reinvested, directly or indirectly, in assets (which may be pursuant to an acquisition of Equity Interests of a Person that directly or indirectly owns such assets) otherwise permitted under this Agreement of (A) if such Asset Sale was effected by any Credit Party, any Credit Party, and (B) if such Asset Sale was effected by any other Company, any Company, in each case within (x) twelve (12) months following receipt of such Net Available Proceeds or (y) if Borrower or the relevant Restricted Subsidiary enters into a legally binding commitment to reinvest such Net Available Proceeds within twelve (12) months following receipt thereof, within the later of (A) one hundred and eighty (180) days following the date of such legally binding commitment and (B) twelve (12) months following receipt of such Net Available Proceeds (which certificate shall set forth the estimates of the proceeds to be so expended); and

(y) if all or any portion of such Net Available Proceeds is not reinvested in assets in accordance with the Officer's Certificate referred to in clause (x) above (and, in the case of any Net Available Proceeds from an Asset Sale of Collateral, in compliance with clause (y) above) within the period specified by clause (x) above, such remaining portion shall be applied on the last day of such period as specified in Section 2.10(b).

Notwithstanding the foregoing provisions of this Section 2.10(a)(iii) or otherwise, no mandatory prepayment shall be required in any fiscal year pursuant to this Section 2.10(a)(iii) until the date on which the Net Available Proceeds required to be applied as mandatory prepayments pursuant to this Section 2.10(a)(iii) in such fiscal year shall exceed \$10 million (and thereafter only Net Available Proceeds in excess of such amount shall be required to be applied as mandatory prepayments pursuant to this Section 2.10(a)(iii)).

(iv) **Excess Cash Flow.** For each fiscal year (commencing with the fiscal year ending December 31, 2014), not later than five (5) Business Days after the date on which the financial statements of Borrower referred to in Section 9.04(b) for such fiscal year are required to be delivered to Administrative Agent, Borrower shall prepay, in accordance with subsection (b) below, the principal amount of the Loans in an amount equal to (x) Applicable ECF Percentage of Excess Cash Flow for such fiscal year, *minus* (y) the principal amount of (i) Term Loans voluntarily prepaid pursuant to Section 2.09 during such fiscal year *plus* (ii) Revolving Loans voluntarily prepaid pursuant to Section 2.09 to the extent accompanied by an equivalent permanent reduction of the Total Revolving Commitments during such fiscal year, *plus* (iii) Other First Lien Indebtedness voluntarily prepaid (and, to the extent consisting of revolving loans, so long as accompanied by a permanent reduction of the underlying commitments) during such fiscal year to the extent the amount of such Other First Lien Indebtedness so prepaid is not proportionally larger than the amount of Term Loans so prepaid according to the respective principal amounts of Other First Lien Indebtedness and Term Loans as of the beginning of the applicable fiscal year plus the principal amount of any additional Other First Lien Indebtedness or Term Loans incurred during the applicable fiscal year, in each case, except to the extent financed with the proceeds of Indebtedness of Borrower or its Restricted Subsidiaries.

(v) **Prepayments Not Required.** Notwithstanding any other provisions of this Section 2.10(a), to the extent that any of or all the Net Available Proceeds of any Asset Sale or Casualty Event with respect to any property or assets of Foreign Subsidiaries or any Excess Cash Flow attributable to Foreign Subsidiaries, are prohibited or delayed by applicable local law from being repatriated to the United States, the portion of such Net Available Proceeds or Excess Cash Flow so affected will not be required to be applied to repay Term Loans at the times provided in this Section 2.10(a) but may be retained by the applicable Foreign Subsidiary so long as applicable local law does not permit repatriation to the United States (Borrower hereby agreeing to cause the applicable Foreign Subsidiary to promptly take all commercially reasonable actions required by the applicable local law to permit such repatriation), and once

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such repatriation of any of such affected Net Available Proceeds or Excess Cash Flow is permitted under the applicable local law, (x) any such Net Available Proceeds shall be reinvested pursuant to Section 2.10(a)(i) or (iii), as applicable, or applied pursuant to Section 2.10(b) within five (5) Business Days of such repatriation, and (y) any such Excess Cash Flow shall be applied pursuant to Section 2.10(b) within five (5) Business Days of such repatriation. To the extent Borrower determines in good faith that repatriation of any of or all the Net Available Proceeds of any Asset Sale or Casualty Event with respect to any property or assets of Foreign Subsidiaries or any Excess Cash Flow attributable to Foreign Subsidiaries would have a material adverse tax cost consequences on Borrower or any of its Subsidiaries, such Net Available Proceeds or Excess Cash Flow so affected may be retained by the applicable Foreign Subsidiary; *provided* that, on or before the date on which the Net Available Proceeds so retained would otherwise have been required to be applied to reinvestments or prepayments pursuant to Section 2.10(a)(i) or (iii), as applicable (or, in the case of Excess Cash Flow, a date on or before the date that is twelve (12) months after the date such Excess Cash Flow would have so required to be applied to prepayments pursuant to Section 2.10(a)(iv)), unless previously repatriated (in which case, (x) any such Net Available Proceeds shall be reinvested pursuant to Section 2.10(a)(i) or (iii), as applicable, or applied pursuant to Section 2.10(b) within five (5) Business Days of such repatriation, and (y) any such Excess Cash Flow shall be applied pursuant to Section 2.10(b) within five (5) Business Days of such repatriation),



(A) Borrower shall apply an amount equal to such Net Available Proceeds or Excess Cash Flow to such reinvestments or prepayments as if such Net Available Proceeds or Excess Cash Flow had been received by Borrower rather than such Foreign Subsidiary, *minus*, the amount of additional taxes that would have been payable or reserved against if such Net Available Proceeds or Excess Cash Flow had been repatriated (or, if less, the Net Available Proceeds or Excess Cash Flow that would be calculated if received by such Foreign Subsidiary) pursuant to Section 2.10(b) or (B) such Net Available Proceeds or Excess Cash Flow shall be applied to the repayment of Indebtedness of an Foreign Subsidiary.

(vi) **Prepayments of Other First Lien Indebtedness.** Notwithstanding the foregoing provisions of Section 2.10(a)(i), (ii), (iii), (iv) or otherwise, any Net Available Proceeds from any such Casualty Event, Debt Issuance or Asset Sale and any such Excess Cash Flow otherwise required to be applied to prepay the Loans may, at Borrower's option, be applied to prepay the principal amount of Other First Lien Indebtedness only to (and not in excess of) the extent to which a mandatory prepayment in respect of such Casualty Event, Debt Issuance, Asset Sale or Excess Cash Flow is required under the terms of such Other First Lien Indebtedness (with any remaining Net Available Proceeds or Excess Cash Flow, as applicable, applied to prepay outstanding Loans in accordance with the terms hereof), unless such application would result in the holders of Other First Lien Indebtedness receiving in excess of their *pro rata* share (determined on the basis of the aggregate outstanding principal amount of Term Loans and Other First Lien Indebtedness at such time) of such Net Available Proceeds or Excess Cash Flow, as applicable, relative to Lenders, in which case such Net Available Proceeds or Excess Cash Flow, as applicable, may only be applied to prepay the principal amount of Other First Lien Indebtedness on a *pro rata* basis with outstanding Term Loans. To the extent the holders of Other First Lien Indebtedness decline to have such indebtedness repurchased, repaid or prepaid with any such Net Available Proceeds or Excess Cash Flow, as applicable, the declined amount of such Net Available Proceeds or Excess Cash Flow, as applicable, shall promptly (and, in any event, within ten (10) Business Days after the date of such rejection) be applied to prepay Loans in accordance with the terms hereof (to the extent such Net Available Proceeds or Excess Cash Flow, as applicable, would otherwise have been required to be applied if such Other First Lien Indebtedness was not then outstanding). Any such application to Other First Lien Indebtedness shall reduce any prepayments otherwise required hereunder by an equivalent amount.

(b) **Application.** The amount of any required prepayments described in Section 2.10(a) shall be applied to prepay Loans as follows:

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(i) *First*, to the reduction of Amortization Payments on the Term Loans required by Sections 3.01(b), 3.01(c) and 3.01(d) (on a *pro rata* basis among each Tranche of Term Loans, subject to any Declined Amounts) and, in the case of the Term Facilities, to the remaining principal installments with respect thereto in direct order of maturity over the next succeeding four (4) quarterly installments and, thereafter, on a *pro rata* basis; *provided* that, each such prepayment shall, subject to the last paragraph of this Section 2.10(b), be applied to such Term Loans that are ABR Loans to the fullest extent thereof before application to Loans that are LIBOR Loans, and such prepayments of LIBOR Loans shall be applied in a manner that minimizes the amount of any payments required to be made by Borrower pursuant to Section 5.05;

(ii) *Second*, after such time as no Term Loans or Permitted First Priority Refinancing Debt remain outstanding, (x) to repay all outstanding Swingline Loans, and (y) after such time as no Swingline Loans are outstanding, to prepay all outstanding Revolving Loans (in each case, without any reduction in Revolving Commitments); and

(iii) *Third*, after application of prepayments in accordance with clauses (i) and (ii) above, Borrower shall be permitted to retain any such remaining excess.

Notwithstanding the foregoing, any Term Loan Lender may elect, by written notice to Administrative Agent at least one (1) Business Day prior to the prepayment date, to decline all or any portion of any prepayment of its Term Loans, pursuant to this Section 2.10, in which case the aggregate amount of the prepayment that would have been applied to prepay such Term Loans, but was so declined shall be ratably offered to each Term Loan Lender that initially accepted such prepayment. Any such re-offered amounts rejected by such Lenders shall be retained by Borrower (any such retained amounts, "**Declined Amounts**").

Notwithstanding the foregoing, if the amount of any prepayment of Loans required under this Section 2.10 shall be in excess of the amount of the ABR Loans at the time outstanding, only the portion of the amount of such prepayment as is equal to the amount of such outstanding ABR Loans shall be immediately prepaid and, at the election of Borrower, the balance of such required prepayment shall be either (i) deposited in the Collateral Account and applied to the prepayment of LIBOR Loans on the last day of the then next-expiring Interest Period for LIBOR Loans (with all interest accruing thereon for the account of Borrower) or (ii) prepaid immediately, together with any amounts owing to the Lenders under Section 5.05. Notwithstanding any such deposit in the Collateral Account, interest shall continue to accrue on such Loans until prepayment.

(c) **Revolving Credit Extension Reductions.**

(i) Until the final R/C Maturity Date, Borrower shall from time to time immediately prepay the Revolving Loans (and/or provide Cash Collateral in an amount equal to the Minimum Collateral Amount for, or otherwise backstop (with a letter of credit on customary terms reasonably acceptable to the applicable L/C Lender and the Administrative Agent), outstanding L/C Liabilities) in such amounts as shall be necessary so that at all times (a) the aggregate outstanding amount of the Revolving Loans and the Swingline Loans, *plus*, the aggregate outstanding L/C Liabilities shall not exceed the Total Revolving Commitments as in effect at such time and (b) the aggregate outstanding amount of the Revolving Loans of any Tranche and Swingline Loans allocable to such Tranche, *plus* the aggregate outstanding L/C Liabilities under such Tranche shall not exceed the aggregate Revolving Commitments of such Tranche as in effect at such time.

(ii) **Specified Sale Leaseback Transactions.** Within five (5) Business Days after receipt by Borrower or any of its Restricted Subsidiaries of any Net Available Proceeds from any Asset Sale permitted by Section 10.05(c) or Section 10.05(p) that constitutes a Specified Sale Leaseback Transaction, Borrower shall prepay the Revolving Loans and the Swingline Loans in an aggregate principal amount

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equal to 100% of the Net Available Proceeds from such Asset Sale (it being understood that applications pursuant to this Section 2.10(c)(ii) shall not be duplicative of Section 2.10(a)(i) or Section 2.10(a)(iii) above); *provided, however*, that (x) there shall be no reduction in the Total Revolving Commitments unless otherwise elected by Borrower; (y) if the aggregate amount of Net Available Proceeds from any Specified Sale Leaseback

Transaction exceeds the aggregate amount of Revolving Loans and Swingline Loans then outstanding, Borrower shall be entitled to retain such excess. For the avoidance of doubt, Borrower shall not be required to prepay the Term Loans with the Net Available Proceeds of any Specified Sale Leaseback Transaction.

(d) **Prepayment of Term B Facility Loans.** Any prepayment of Term B Facility Loans pursuant to Section 2.10(a)(ii) made prior to the date that is six months after the Closing Date in connection with any Repricing Transaction shall be subject to the fee described in Section 2.05(c).

(e) **Outstanding Letters of Credit.** If any Letter of Credit is outstanding on the 30th day prior to the next succeeding R/C Maturity Date which has an expiry date later than the third Business Day preceding such R/C Maturity Date (or which, pursuant to its terms, may be extended to a date later than the third Business Day preceding such R/C Maturity Date), then (i) if one or more Tranches of Revolving Commitments with a R/C Maturity Date after such R/C Maturity Date are then in effect, such Letters of Credit shall automatically be deemed to have been issued (including for purposes of the obligations of the Lenders with Revolving Commitments to purchase participations therein and to make Revolving Loans and payments in respect thereof and the commissions applicable thereto), effective as of such R/C Maturity Date, solely under (and ratably participated by Revolving Lenders pursuant to) the Revolving Commitments in respect of such non-terminating Tranches of Revolving Commitments, if any, up to an aggregate amount not to exceed the aggregate principal amount of the unutilized Revolving Commitments thereunder at such time, and (ii) to the extent not capable of being reallocated pursuant to clause (i) above, Borrower shall, on such 30th day (or on such later day as such Letters of Credit become incapable of being reallocated pursuant to clause (i) above due to the termination, reduction or utilization of any relevant Revolving Commitments), either (x) Cash Collateralize all such Letters of Credit in an amount not less than the Minimum Collateral Amount with respect to such Letters of Credit (it being understood that such Cash Collateral shall be released to the extent that the aggregate Stated Amount of such Letters of Credit is reduced upon the expiration or termination of such Letters of Credit, so that the Cash Collateral shall not exceed the Minimum Collateral Amount with respect to such Letters of Credit outstanding at any particular time) or (y) deliver to the applicable L/C Lender a standby letter of credit (other than a Letter of Credit) in favor of such L/C Lender in a stated amount not less than the Minimum Collateral Amount with respect to such Letters of Credit, which standby letter of credit shall be in form and substance, and issued by a financially sound financial institution, reasonably acceptable to such L/C Lender and the Administrative Agent. Except to the extent of reallocations of participations pursuant to clause (i) above, the occurrence of a R/C Maturity Date shall have no effect upon (and shall not diminish) the percentage participations of the Revolving Lenders of the relevant Tranche in any Letter of Credit issued before such R/C Maturity Date. For the avoidance of doubt, the parties hereto agree that upon the occurrence of any reallocations of participations pursuant to clause (i) above and, if necessary, the taking of the actions in described clause (ii) above, all participations in Letters of Credit under the terminated Revolving Commitments shall terminate.

#### **SECTION 2.11. Replacement of Lenders.**

(a) Borrower shall have the right to replace any Lender (the “**Replaced Lender**”) with one or more other Eligible Assignees (collectively, the “**Replacement Lender**”), if (x) such Lender is charging Borrower increased costs pursuant to Section 5.01 or 5.06 or such Lender becomes incapable of making LIBOR Loans as provided in Section 5.03 when other Lenders are generally able to do so, (y) such Lender is a Defaulting Lender or (z) Borrower receives a notice from any applicable Gaming Authority that any lender is not qualified to make or hold Loans to, or owed by, Borrower under applicable Gaming Laws (and such Lender is notified by Borrower and Administrative Agent in writing of such disqualification); *provided, however*, that (i) at the time of any such

replacement, the Replacement Lender shall enter into one or more Assignment Agreements (and with all fees payable pursuant to Section 13.05(b) to be paid by the Replacement Lender or Borrower) pursuant to which the Replacement Lender shall acquire all of the Commitments and outstanding Loans of, and in each case L/C Interests of, the Replaced Lender (or if the Replaced Lender is being replaced as a result of being a Defaulting Lender, then the Replacement Lender shall acquire all Revolving Commitments, Revolving Loans and L/C Interests of such Replaced Lender under one or more Tranches of Revolving Commitments or, at the option of Borrower and such Replacement Lender, all other Loans and Commitments held by such Defaulting Lender), (ii) at the time of any such replacement, the Replaced Lender shall receive an amount equal to the sum of (A) the principal of, and all accrued interest on, all outstanding Loans of such Lender (other than any Loans not being acquired by a Replacement Lender), (B) all Reimbursement Obligations (expressed in Dollars in the amount of the Dollar Equivalent thereof in the case of a Letter of Credit denominated in the Alternate Currency) owing to such Lender, together with all then unpaid interest with respect thereto at such time, in the event Revolving Loans or Revolving Commitments owing to such Lender are being repaid and terminated or acquired, as the case may be, and (C) all accrued, but theretofore unpaid, fees owing to the Lender pursuant to Section 2.05 with respect to the Loans being assigned, as the case may be and (iii) all obligations of Borrower owing to such Replaced Lender (other than those specifically described in clause (i) above in respect of Replaced Lenders for which the assignment purchase price has been, or is concurrently being, paid, and other than those relating to Loans or Commitments not being acquired by a Replacement Lender, but including any amounts which would be paid to a Lender pursuant to Section 5.05 if Borrower were prepaying a LIBOR Loan), as applicable, shall be paid in full to such Replaced Lender, as applicable, concurrently with such replacement, as the case may be. Upon the execution of the respective Assignment Agreement, the payment of amounts referred to in clauses (i), (ii) and (iii) above, as applicable, the receipt of any consents that would be required for an assignment of the subject Loans and Commitments to such Replacement Lender in accordance with Section 13.05, the Replacement Lender, if any, shall become a Lender hereunder and the Replaced Lender, as applicable, shall cease to constitute a Lender hereunder and be released of all its obligations as a Lender, except with respect to indemnification provisions applicable to such Lender under this Agreement, which shall survive as to such Lender and, in the case of any Replaced Lender, except with respect to Loans, Commitments and L/C Interests of such Replaced Lender not being acquired by the Replacement Lender; *provided*, that if the applicable Replaced Lender does not execute the Assignment Agreement within three (3) Business Days after Borrower’s request, execution of such Assignment Agreement by the Replaced Lender shall not be required to effect such assignment.

(b) If Borrower receives a notice from any applicable Gaming Authority that any Lender is not qualified to make or hold Loans to, or owed by, Borrower under applicable Gaming Laws (and such Lender is notified by Borrower and Administrative Agent in writing of such disqualification), Borrower shall have the right to replace such Lender with a Replacement Lender in accordance with Section 2.11(a) or prepay the Loans held by such Lender, in each case, in accordance with any applicable provisions of Section 2.11(a), even if a Default or an Event of Default exists (notwithstanding anything contained in such Section 2.11(a) to the contrary). Any such prepayment shall be deemed an optional prepayment, as set forth in Section 2.09 and shall not be required to be made on a *pro rata* basis with respect to Loans of the same Tranche as the Loans held by such Lender (and in any event shall not be deemed to be a Repricing Transaction). Notice to such Lender shall be given at least ten (10) days before the required date of transfer or prepayment (unless a shorter period is required by any Requirement of Law), as the case may be, and shall be accompanied by evidence demonstrating that such transfer or redemption is required pursuant to Gaming Laws. Upon receipt of a notice in accordance with the foregoing, the Replaced Lender shall cooperate with Borrower in effectuating the required transfer or prepayment within the time period set forth in such notice, not to be less than the minimum notice period set forth in the foregoing sentence (unless a shorter period is required under any Requirement of Law). Further, if the transfer or prepayment is triggered by notice from the Gaming Authority that the Lender is disqualified, commencing on the date the Gaming Authority serves the disqualification notice upon Borrower, to the extent

prohibited by law: (i) such Lender shall no longer receive any interest on the Loans; (ii) such Lender shall no longer exercise, directly or through any trustee or nominee, any right conferred by the Loans; and (iii) such Lender shall not receive any remuneration in any form from Borrower for services or otherwise in respect of the Loans.

**SECTION 2.12. Incremental Loan Commitments.**

(a) **Borrower Request.** Borrower may, at any time, by written notice to Administrative Agent, request (i) the establishment of one or more new Tranches of Revolving Commitments (“**New Revolving Commitments**” and the related Revolving Loans, “**New Revolving Loans**”), (ii) an increase to any existing Tranche of Revolving Commitments (“**Incremental Existing Tranche Revolving Commitments**”), (iii) the establishment of additional Term A Facility Loans with terms and conditions identical to the terms and conditions of existing Term A Facility Loans hereunder (“**Incremental Term A Loans**” and the related commitments, “**Incremental Term A Loan Commitments**”), *provided, however*, that, upfront fees or original issue discount may be paid to Lenders providing such Incremental Term A Loan Commitments, (iv) the establishment of additional Term B Facility Loans with terms and conditions identical to the terms and conditions of existing Term B Facility Loans hereunder (“**Incremental Term B Loans**” and the related commitments, “**Incremental Term B Loan Commitments**”); *provided, however*, that, upfront fees or original issue discount may be paid to Lenders providing such Incremental Term B Loan Commitments, and/or (v) the establishment of one or more new Tranches of term loans (“**New Term Loans**” and the related commitments, “**New Term Loan Commitments**”); *provided, however*, that (x) the aggregate amount of all Incremental Revolving Commitments, New Term Loans, Incremental Term A Loans, Incremental Term B Loans and Incremental Equivalent Debt issued or incurred (but excluding any such Incremental Term Loan Commitments that have been terminated prior to such date of determination without being funded (including, for the avoidance of doubt, any First Amendment Incremental Commitments that are terminated without being funded)) on or prior to such date shall not exceed the Incremental Loan Amount and (y) any such request for Incremental Commitments shall be in a minimum amount of \$25.0 million and integral multiples of \$1.0 million above such amount. Borrower may request Incremental Commitments from existing Lenders and from Eligible Assignees; *provided, however*, that (A) any existing Lender approached to provide all or a portion of the Incremental Commitments may elect or decline, in its sole discretion, to provide all or any portion of such Incremental Commitments offered to it and (B) any potential Lender that is not an existing Lender and agrees to make available an Incremental Commitment shall be required to be an Eligible Assignee and shall require approval by Administrative Agent (such approval not to be unreasonably withheld or delayed).

(b) **Incremental Effective Date.** The Incremental Commitments shall be effected by a joinder agreement to this Agreement (the “**Incremental Joinder Agreement**”) executed by Borrower, Administrative Agent and each Lender making or providing such Incremental Commitment, in form and substance reasonably satisfactory to each of them, subject, however, to the satisfaction of the conditions precedent set forth in this Section 2.12. The Incremental Joinder Agreement may, without the consent of any other Lenders, effect such amendments to this Agreement and the other Credit Documents as may be necessary or appropriate, in the opinion of Administrative Agent, to effect the provisions of this Section 2.12. Administrative Agent and Borrower shall determine the effective date (each, an “**Incremental Effective Date**”) of any Incremental Commitments and the final allocation of such Incremental Commitments. The effectiveness of any such Incremental Commitments shall be subject solely to the satisfaction of the following conditions to the reasonable satisfaction of Administrative Agent:

(i) Borrower shall deliver or cause to be delivered any legal opinions or other documents reasonably requested by Administrative Agent in connection with any such Incremental Commitments;

(ii) an Incremental Joinder Agreement shall have been duly executed and delivered by Borrower, Administrative Agent and each Lender making or providing such Incremental Commitment;

(iii) no Event of Default shall have occurred and be continuing or would exist immediately after giving effect to such Incremental Commitments; *provided that*, with respect to the First Amendment Incremental Revolving Commitments and any Incremental Term Loans (and any related Incremental Term Loan Commitments) the proceeds of which are used primarily to fund a Permitted Acquisition or other Acquisition not prohibited hereunder substantially concurrently upon the receipt thereof, the absence of an

Event of Default (other than an Event of Default specified in Section 11.01(b) or 11.01(c) or an Event of Default specified in Section 11.01(g) or 11.01(h) with respect to Borrower) shall not constitute a condition to the effectiveness of such First Amendment Incremental Revolving Commitments and such Incremental Term Loans (and any related Incremental Term Loan Commitments), or the funding of such Incremental Term Loans, unless otherwise agreed by the Borrower and the Incremental Lenders providing such Incremental Term Loans or Incremental Commitments;

(iv) the representations and warranties set forth herein and in the other Credit Documents shall be true and correct in all material respects on and as of such Incremental Effective Date as if made on and as of such date (except where such representations and warranties expressly relate to an earlier date, in which case such representations and warranties shall have been true and correct in all material respects as of such earlier date); *provided that*, any representation and warranty that is qualified as to “materiality,” “Material Adverse Effect” or similar language shall be true and correct in all respects on such dates; and *provided, further*, that, with respect to the First Amendment Incremental Revolving Commitments and any Incremental Term Loans and related Incremental Term Loan Commitments the proceeds of which are used primarily to fund a Permitted Acquisition or other Acquisition not prohibited hereunder (including repayment of Indebtedness of the Person acquired, or that is secured by the assets acquired, in such Permitted Acquisition or other Acquisition) substantially concurrently upon the receipt thereof, the only representations and warranties the making of which shall be a condition to the effectiveness of such First Amendment Incremental Revolving Commitments and such Incremental Term Loans and related Incremental Term Loan Commitments and the funding of such Incremental Term Loans shall be (except as otherwise agreed by the Borrower and the Incremental Lenders providing such Incremental Term Loans or Incremental Commitments) (x) the representations and warranties set forth in Sections 8.01(a) (but only with respect to Credit Parties), 8.04(a)(i), 8.05 (but only as it relates to the Credit Documents), 8.09, 8.11(b), 8.14 (but only as it relates to security interests that may be perfected solely through the filing of UCC financing statements, filing of intellectual property security agreements with the United States Patent and Trademark Office and United States Copyright Office and delivery of certificated securities collateral representing Equity Interests in United States Persons), 8.17, 8.21 and 8.27 and (y) the representations and warranties contained in the acquisition agreement relating to such Permitted Acquisition or other Acquisition as are material to the interests of the Lenders, but only to the extent that Borrower or any of its Affiliates have the right to terminate it or their obligations under such acquisition agreement as a result of a breach of such representations and warranties in such acquisition agreement;

(v) in the case of any Incremental Revolving Commitments, New Term Loans, Incremental Term A Loans and Incremental Term B Loans, Borrower shall be in compliance with the Financial Maintenance Covenants on a Pro Forma Basis as of the most recent Calculation Date (*provided* that, for such purpose, (w) to the extent such Incremental Revolving Commitments constitute Acquisition Incremental Revolving Commitments or that the proceeds of any such Incremental Term Loans (and related Incremental Term Loan Commitments) are or are to be used primarily to fund a Permitted Acquisition or other Acquisition not prohibited hereunder (including repayment of Indebtedness of the Person acquired, or that is secured by the assets acquired, in such Permitted Acquisition or other Acquisition), such compliance shall be determined on a Pro Forma Basis as of the Calculation Date immediately preceding the date on which a binding contract with respect to such Permitted Acquisition or other Acquisition is entered into between the Borrower or a Restricted Subsidiary and the seller with respect thereto, giving effect to such Acquisition Incremental Revolving Commitments (in accordance with clause (z) below) and Incremental Term Loans (and related Incremental Term Loan Commitments) and such Permitted Acquisition or other Acquisition as if incurred and consummated on the first day of the applicable period, (x) Consolidated Net Indebtedness shall not take into account any cash or cash equivalents constituting proceeds of any Loans made under any Incremental Commitments to be provided on such date and any Incremental Equivalent Debt to be incurred or issued on such date that may otherwise reduce the amount of Consolidated Net Indebtedness, (y) Consolidated Net Indebtedness shall treat any

Incremental Equivalent Debt as senior indebtedness, even if such Incremental Equivalent Debt was issued or incurred on a junior basis to the Obligations, and (z) in the case of any Incremental Revolving Commitments and Incremental Equivalent Debt consisting of revolving credit facilities, *pro forma* effect shall be given to any New Revolving Loans, Incremental Revolving Loans and any loans under any Incremental Equivalent Debt consisting of a revolving credit facility, in each case, to the extent actually made on such date (or in the case of any Acquisition Incremental Revolving Commitments or Incremental Equivalent Debt consisting of a revolving credit facility, the proceeds of which are or are to be used primarily to fund a Permitted Acquisition or other Acquisition not prohibited hereunder, to the extent reasonably expected to be drawn on the closing date of such Permitted Acquisition or other Acquisition), but any proposed Incremental Revolving Commitments or Incremental Equivalent Debt consisting of a revolving credit facility shall not otherwise be treated as drawn);

(vi) in order to receive an initial extension of credit under any Incremental Revolving Commitment (other than the First Amendment Incremental Revolving Commitments or Acquisition Incremental Revolving Commitments), Borrower shall be in compliance with the Financial Maintenance Covenants on a Pro Forma Basis as of the most recent Calculation Date;

(vii) without the written consent of the Required Tranche Lenders with respect to any Tranches of then-existing Revolving Commitments that have a maturity date after the proposed maturity date of any New Revolving Commitments, the final stated maturity of any New Revolving Commitments shall not be earlier than the then-existing Final Maturity Date with respect to the then-existing Tranches of Revolving Commitments;

(viii) without the written consent of (x) the Required Tranche Lenders with respect to any Tranches of then-existing Term Loans that have a maturity date after the proposed maturity date of any New Term Loans, the final stated maturity of any New Term Loans shall not be earlier than the then-existing Final Maturity Date with respect to any then-existing Tranche of Term Loans, and (y) the Required Tranche Lenders with respect to any Tranches of then-existing Term Loans that have a Weighted Average Life to Maturity that is longer than the proposed Weighted Average Life to Maturity of any New Term Loans, the Weighted Average Life to Maturity of any New Term Loans shall be no shorter than the Weighted Average Life to Maturity of any then-existing Tranche of Term Loans (without giving effect to the effect of prepayments made under any existing Tranche of Term Loans on amortization); *provided* that (A) Borrower may establish one or more Tranches of New Term Loans such that the Weighted Average Life to Maturity of such Tranche of New Term Loans may be shorter than the Weighted Average Life to Maturity of the then-existing Term B Facility Loans (but, for the avoidance of doubt, not any other Term Loans) (without giving effect to the effect of prepayments made under any existing Tranche of Term Loans on amortization) and (B) the maturity date of such Tranche of New Term Loans may be earlier than the maturity date of the then-existing Term B Facility Loans (but, for the avoidance of doubt, not any other Term Loans); it being understood that, subject to the foregoing, the amortization schedule applicable to such New Term Loans shall be determined by Borrower and the lenders of such New Term Loans with appropriate adjustments to the amortization schedules set forth on Annex C to address such Incremental Term A Loans and with appropriate adjustments to the amortization schedule set forth in Section 3.01(c) to address such Incremental Term B Loans;

(ix) the yields and interest rate margins and, except as set forth in clauses (vii) and (viii) of this Section 2.12(b), amortization schedule, applicable to any New Revolving Commitments and New Term Loans shall be as determined by Borrower and the holders of such Indebtedness;

(x) except as set forth in Section 2.12(a) and in clauses (i) — (ix) of this Section 2.12(b), the terms applicable to any New Revolving Commitments and New Term Loans shall be consistent with those applicable to any then-existing Revolving Commitments or Term Loans, as applicable; *provided* that, any

applicable Incremental Joinder Agreement may provide for (x) any additional or more or less restrictive covenants that are applicable only after the then-existing Final Maturity Date with respect to any then-existing Term Loans or (y) any other terms that are reasonably satisfactory to Administrative Agent;

(xi) any Incremental Term A Loans and Incremental Term B Loans (and the corresponding Incremental Term Loan Commitments) shall have terms identical to the terms of the existing Term Loans (and the existing Term Loan Commitments) of the relevant Tranche hereunder; *provided, however*, that upfront fees or original issue discount may be paid to Lenders providing such Incremental Term A Loans or Incremental Term B Loans as agreed by such Lenders and Borrower, and the conditions applicable to the incurrence of such Incremental Term A Loans and Incremental Term B Loans (and the corresponding Incremental Term Loan Commitments) shall be as provided in this Section 2.12; and

(xii) any Incremental Existing Tranche Revolving Commitments shall have terms identical to the terms of the existing Revolving Commitments of the relevant Tranche hereunder; *provided, however*, that upfront fees may be paid to Lenders providing such Incremental Existing

Upon the effectiveness of any Incremental Commitment pursuant to this Section 2.12, any Person providing an Incremental Commitment that was not a Lender hereunder immediately prior to such time shall become a Lender hereunder. Administrative Agent shall promptly notify each Lender as to the effectiveness of any Incremental Commitments, and (i) in the case of Incremental Revolving Commitments, the Total Revolving Commitments under, and for all purpose of this Agreement, shall be increased by the aggregate amount of such Incremental Revolving Commitments, (ii) any New Revolving Loans shall be deemed to be additional Revolving Loans hereunder, (iii) any Revolving Loans made under Incremental Existing Tranche Revolving Commitments shall be deemed to be Revolving Loans of the relevant Tranche hereunder, (iv) any Incremental Term A Loans (to the extent funded) shall be deemed to be Term A Facility Loans hereunder, (v) any Incremental Term B Loans (to the extent funded) shall be deemed to be Term B Facility Loans hereunder and (vi) any New Term Loans shall be deemed to be additional Term Loans hereunder. Notwithstanding anything to the contrary contained herein, Borrower, Collateral Agent and Administrative Agent may (and each of Collateral Agent and Administrative Agent are authorized by each other Secured Party to) execute such amendments and/or amendments and restatements of any Credit Documents as may be necessary or advisable to effectuate the provisions of this Section 2.12. Such amendments may include provisions allowing any Incremental Term B Loans or New Term Loans to be treated on the same basis as Term B Facility Loans in connection with declining prepayments. In connection with the incurrence of any Incremental Term A Loans, Borrower shall be permitted to terminate any Interest Period applicable to Term A Loans on the date such Incremental Term A Loans are incurred (including, for the avoidance of doubt, on the First Amendment Incremental Commitments Availability Date). In connection with the incurrence of any Incremental Term B Loans, Borrower shall be permitted to terminate any Interest Period applicable to Term B Loans on the date such Incremental Term B Loans are incurred. In connection with the incurrence of any Incremental Existing Tranche Revolving Commitments and related Revolving Loans, Borrower shall be permitted to terminate any Interest Period applicable to Revolving Loans under the applicable existing Tranche of Revolving Commitments on the date such Revolving Loans are first incurred under such Incremental Existing Tranche Revolving Commitments (including, for the avoidance of doubt, the Revolving Loans outstanding under the Closing Date Revolving Commitment on the First Amendment Incremental Commitments Availability Date).

(c) **Terms of Incremental Commitments and Loans.** The yield applicable to the Incremental Revolving Commitments and Incremental Term Loans shall be determined by Borrower and the applicable new Lenders and shall be set forth in each applicable Incremental Joinder Agreement; *provided, however,* that in the case of any Incremental Term B Loans or New Term Loans issued within 18 months after the Closing Date, if the All-In Yield applicable to such Incremental Term B Loans or New Term Loans having a final maturity date no earlier than the Term B Facility Maturity Date and a Weighted Average Life to Maturity no shorter than the Term B Facility

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Loans is greater than the All-In Yield payable pursuant to the terms of this Agreement as amended through the date of such calculation with respect to Term B Facility Loans, *plus* 50 basis points per annum, then the interest rate with respect to the Term B Facility Loans shall be increased (pursuant to the applicable Incremental Joinder Agreement) so as to cause the then applicable All-In Yield under this Agreement on the Term B Facility Loans to equal the All-In Yield then applicable to the Incremental Term B Loans or New Term Loans having a final maturity date no earlier than the Term B Facility Maturity Date and Weighted Average Life to Maturity no shorter than the Term B Facility Loans, *minus* 50 basis points.

(d) **Adjustment of Revolving Loans.** To the extent the Revolving Commitments are being increased on the relevant Incremental Effective Date (whether through New Revolving Commitments or through Incremental Existing Tranche Revolving Commitments), then each of the Revolving Lenders having a Revolving Commitment prior to such Incremental Effective Date (such Revolving Lenders the “**Pre-Increase Revolving Lenders**”) shall assign or transfer to any Revolving Lender which is acquiring a new or additional Revolving Commitment on the Incremental Effective Date (the “**Post-Increase Revolving Lenders**”), and such Post-Increase Revolving Lenders shall purchase from each such Pre-Increase Revolving Lender, at the principal amount thereof, such interests in the Revolving Loans and participation interests in L/C Liabilities and Swingline Loans (but not, for the avoidance of doubt, the related Revolving Commitments) outstanding on such Incremental Effective Date as shall be necessary in order that, after giving effect to all such assignments or transfers and purchases, such Revolving Loans and participation interests in L/C Liabilities and Swingline Loans will be held by Pre-Increase Revolving Lenders and Post-Increase Revolving Lenders ratably in accordance with their Revolving Commitments after giving effect to such Incremental Revolving Commitments (and after giving effect to any Revolving Loans made on the relevant Incremental Effective Date). Such assignments or transfers and purchases shall be made pursuant to such procedures as may be designated by Administrative Agent and shall not be required to be effectuated in accordance with Section 13.05. For the avoidance of doubt, Revolving Loans and participation interests in L/C Liabilities and Swingline Loans assigned or transferred and purchased (or re-allocated) pursuant to this Section 2.12(d) shall, upon receipt thereof by the relevant Post-Increase Revolving Lenders, be deemed to be Revolving Loans and participation interests in L/C Liabilities and Swingline Loans in respect of the relevant new or additional Revolving Commitments acquired by such Post-Increase Revolving Lenders on the relevant Incremental Effective Date and the terms of such Revolving Loans and participation interests (including, without limitation, the interest rate and maturity applicable thereto) shall be adjusted accordingly. In addition, the L/C Sublimit may be increased by an amount not to exceed the amount of any increase in Revolving Commitments with the consent of the applicable L/C Lenders that agreed to provide Letters of Credit under such increase in the L/C Sublimit and the holders of New Revolving Commitments or Incremental Existing Tranche Revolving Commitments providing such increase in Revolving Commitments.

(e) **Equal and Ratable Benefit.** The Loans and Commitments established pursuant to this Section 2.12 shall constitute Loans and Commitments under, and shall be entitled to all the benefits afforded by, this Agreement and the other Credit Documents, and shall, without limiting the foregoing, benefit equally and ratably from the Guarantees and security interests created by the Security Documents. The Credit Parties shall take any actions reasonably required by Administrative Agent to ensure and/or demonstrate that the Lien and security interests granted by the Security Documents continue to secure all the Obligations and continue to be perfected under the UCC or otherwise after giving effect to the establishment of any Incremental Commitments or the funding of Loans thereunder, including, without limitation, the procurement of title insurance endorsements reasonably requested by and satisfactory to the Administrative Agent.

(f) **Incremental Joinder Agreements.** An Incremental Joinder Agreement may, subject to Section 2.12(b), without the consent of any other Lenders, effect such amendments to this Agreement and the other Credit Documents as may be necessary or advisable, in the reasonable opinion of Administrative Agent and Borrower, to effect the provisions of this Section 2.12 (including, without limitation, (A) amendments to Section 2.04(b)(iii) and Section 2.09(b)(i) to permit reductions of Tranches of Revolving Commitments (and prepayments of the related Revolving Loans) with an R/C Maturity Date prior to the R/C Maturity Date applicable to a Tranche of New

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Revolving Commitments without a concurrent reduction of such Tranche of New Revolving Commitments and (B) such other technical amendments as may be necessary or advisable, in the reasonable opinion of Administrative Agent and Borrower, to give effect to the terms and provisions of any Incremental Commitments (and any Loans made in respect thereof)).

(g) **Supersede.** This Section 2.12 shall supersede any provisions in Section 13.04 to the contrary.

### **SECTION 2.13. Extensions of Loans and Commitments.**

(a) Borrower may, at any time request that all or a portion of the Term Loans of any Tranche (an “**Existing Term Loan Tranche**”) be modified to constitute another Tranche of Term Loans in order to extend the scheduled final maturity date thereof (any such Term Loans which have been so modified, “**Extended Term Loans**”) and to provide for other terms consistent with this Section 2.13. In order to establish any Extended Term Loans, Borrower shall provide a notice to Administrative Agent (who shall provide a copy of such notice to each of the Lenders of the applicable Existing Term Loan Tranche) (a “**Term Loan Extension Request**”) setting forth the proposed terms of the Extended Term Loans to be established, which terms shall be identical to those applicable to the Term Loans of the Existing Term Loan Tranche from which they are to be modified except (i) the scheduled final maturity date shall be extended to the date set forth in the applicable Extension Amendment and the amortization shall be as set forth in the Extension Amendment, (ii) (A) the Applicable Margins with respect to the Extended Term Loans may be higher or lower than the Applicable Margins for the Term Loans of such Existing Term Loan Tranche and/or (B) additional fees (including prepayment or termination premiums) may be payable to the Lenders providing such Extended Term Loans in addition to or in lieu of any increased Applicable Margins contemplated by the preceding clause (A), in each case, to the extent provided in the applicable Extension Amendment, (iii) any Extended Term Loans may participate on a *pro rata* basis or a less than *pro rata* basis (but not greater than a *pro rata* basis) in any optional or mandatory prepayments or prepayment of Term Loans hereunder in each case as specified in the respective Term Loan Extension Request, (iv) the final maturity date and the scheduled amortization applicable to the Extended Term Loans shall be set forth in the applicable Extension Amendment and the scheduled amortization of such Existing Term Loan Tranche shall be adjusted to reflect the amortization schedule (including the principal amounts payable pursuant thereto) in respect of the Term Loans under such Existing Term Loan Tranche that have been extended as Extended Term Loans as set forth in the applicable Extension Amendment; *provided, however*, that the Weighted Average Life to Maturity of such Extended Term Loans shall be no shorter than the Weighted Average Life to Maturity of the Term Loans of such Existing Term Loan Tranche and (v) the covenants set forth in Section 10.08 may be modified in a manner acceptable to Borrower, Administrative Agent and the Lenders party to the applicable Extension Amendment, such modifications to become effective only after the Final Maturity Date in effect immediately prior to giving effect to such Extension Amendment (it being understood that each Lender providing Extended Term Loans, by executing an Extension Amendment, agrees to be bound by such provisions and waives any inconsistent provisions set forth in Section 4.02, 4.07(b) or 13.04). Except as provided above, each Lender holding Extended Term Loans shall be entitled to all the benefits afforded by this Agreement (including, without limitation, the provisions set forth in Section 2.09(b) and 2.10(b) applicable to Term Loans) and the other Credit Documents, and shall, without limiting the foregoing, benefit equally and ratably from the Guarantees and security interests created by the Security Documents. The Credit Parties shall take any actions reasonably required by Administrative Agent to ensure and/or demonstrate that the Lien and security interests granted by the Security Documents continue to secure all the Obligations and continue to be perfected under the UCC or otherwise after giving effect to the extension of any Term Loans, including, without limitation, the procurement of title insurance endorsements reasonably requested by and satisfactory to the Administrative Agent. No Lender shall have any obligation to agree to have any of its Term Loans of any Existing Term Loan Tranche modified to constitute Extended Term Loans pursuant to any Term Loan Extension Request. Any Extended Term Loans of any Extension Tranche shall constitute a separate Tranche and Class of Term Loans from the Existing Term Loan Tranche from which they were modified.

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(b) Borrower may, at any time request that all or a portion of the Revolving Commitments of any Tranche (an “**Existing Revolving Tranche**”) and any related Revolving Loans thereunder, “**Existing Revolving Loans**”) be modified to constitute another Tranche of Revolving Commitments in order to extend the termination date thereof (any such Revolving Commitments which have been so modified, “**Extended Revolving Commitments**”) and any related Revolving Loans, “**Extended Revolving Loans**”) and to provide for other terms consistent with this Section 2.13. In order to establish any Extended Revolving Commitments, Borrower shall provide a notice to Administrative Agent (who shall provide a copy of such notice to each of the Lenders of the applicable Existing Revolving Tranche) (a “**Revolving Extension Request**”) setting forth the proposed terms of the Extended Revolving Commitments to be established, which terms shall be identical to those applicable to the Revolving Commitments of the Existing Revolving Tranche from which they are to be modified except (i) the scheduled termination date of the Extended Revolving Commitments and the related scheduled maturity date of the related Extended Revolving Loans shall be extended to the date set forth in the applicable Extension Amendment, (ii) (A) the Applicable Margins with respect to the Extended Revolving Loans may be higher or lower than the Applicable Margins for the Revolving Loans of such Existing Revolving Tranche and/or (B) additional fees may be payable to the Lenders providing such Extended Revolving Commitments in addition to or in lieu of any increased Applicable Margins contemplated by the preceding clause (A), in each case, to the extent provided in the applicable Extension Amendment, (iii) the Applicable Fee Percentage with respect to the Extended Revolving Commitments may be higher or lower than the Applicable Fee Percentage for the Revolving Commitments of such Existing Revolving Tranche and (iv) the covenants set forth in Section 10.08 may be modified in a manner acceptable to Borrower, Administrative Agent and the Lenders party to the applicable Extension Amendment, such modifications to become effective only after the Final Maturity Date in effect immediately prior to giving effect to such Extension Amendment (it being understood that each Lender providing Extended Revolving Commitments, by executing an Extension Amendment, agrees to be bound by such provisions and waives any inconsistent provisions set forth in Section 4.02, 4.07(b) or 13.04). Except as provided above, each Lender holding Extended Revolving Commitments shall be entitled to all the benefits afforded by this Agreement (including, without limitation, the provisions set forth in Sections 2.09(b) and 2.10(b) applicable to existing Revolving Loans) and the other Credit Documents, and shall, without limiting the foregoing, benefit equally and ratably from the Guarantees and security interests created by the Security Documents. The Credit Parties shall take any actions reasonably required by Administrative Agent to ensure and/or demonstrate that the Lien and security interests granted by the Security Documents continue to secure all the Obligations and continue to be perfected under the UCC or otherwise after giving effect to the extension of any Revolving Commitments, including, without limitation, the procurement of title insurance endorsements reasonably requested by and satisfactory to the Administrative Agent. No Lender shall have any obligation to agree to have any of its Revolving Commitments of any Existing Revolving Tranche modified to constitute Extended Revolving Commitments pursuant to any Revolving Extension Request. Any Extended Revolving Commitments of any Extension Tranche shall constitute a separate Tranche and Class of Revolving Commitments from the Existing Revolving Tranche from which they were modified. If, on any Extension Date, any Revolving Loans of any Extending Lender are outstanding under the applicable Existing Revolving Tranche, such Revolving Loans (and any related participations) shall be deemed to be allocated as Extended Revolving Loans (and related participations) and Existing Revolving Loans (and related participations) in the same proportion as such Extending Lender’s Extended Revolving Commitments bear to its remaining Revolving Commitments of the Existing Revolving Tranche.

(c) Borrower shall provide the applicable Extension Request at least five (5) Business Days prior to the date on which Lenders under the Existing Tranche are requested to respond (or such shorter period as is agreed to by Administrative Agent in its sole discretion). Any Lender (an “**Extending**”

**Lender**) wishing to have all or a portion of its Term Loans or Revolving Commitments of the Existing Tranche subject to such Extension Request modified to constitute Extended Term Loans or Extended Revolving Commitments, as applicable, shall notify Administrative Agent (an “**Extension Election**”) on or prior to the date specified in such Extension Request of the amount of its Term Loans or Revolving Commitments of the Existing Tranche that it has elected to modify to constitute Extended Term Loans or Extended Revolving Commitments, as applicable. In the event that the aggregate amount of Term Loans or Revolving Commitments of the Existing Tranche subject to Extension Elections exceeds the amount of Extended Term Loans or Extended Revolving Commitments, as applicable, requested

pursuant to the Extension Request, Term Loans or Revolving Commitments subject to such Extension Elections shall be modified to constitute Extended Term Loans or Extended Revolving Commitments, as applicable, on a *pro rata* basis based on the amount of Term Loans or Revolving Commitments included in such Extension Elections. Borrower shall have the right to withdraw any Extension Request upon written notice to Administrative Agent in the event that the aggregate amount of Term Loans or Revolving Commitments of the Existing Tranche subject to such Extension Request is less than the amount of Extended Term Loans or Extended Revolving Commitments, as applicable, requested pursuant to such Election Request.

(d) Extended Term Loans or Extended Revolving Commitments, as applicable, shall be established pursuant to an amendment (an “**Extension Amendment**”) to this Agreement (which shall be substantially in the form of Exhibit Q or Exhibit R to this Agreement, as applicable, or, in each case, such other form as is reasonably acceptable to Administrative Agent). Each Extension Amendment shall be executed by Borrower, Administrative Agent and the Extending Lenders (it being understood that such Extension Amendment shall not require the consent of any Lender other than (A) the Extending Lenders with respect to the Extended Term Loans or Extended Revolving Commitments, as applicable, established thereby, (B) with respect to any extension of the Revolving Commitments that results in an extension of an L/C Lender’s obligations with respect to Letters of Credit, the consent of such L/C Lender and (C) with respect to any extension of the Revolving Commitments that results in an extension of the Swingline Lender’s obligations with respect to Swingline Loans, the Swingline Lender). An Extension Amendment may, subject to Sections 2.13(a) and (b), without the consent of any other Lenders, effect such amendments to this Agreement and the other Credit Documents as may be necessary or advisable, in the reasonable opinion of Administrative Agent and Borrower, to effect the provisions of this Section 2.13 (including, without limitation, (A) amendments to Section 2.04(b)(iii) and Section 2.09(b)(i) to permit reductions of Tranches of Revolving Commitments (and prepayments of the related Revolving Loans) with an R/C Maturity Date prior to the R/C Maturity Date applicable to a Tranche of Extended Revolving Commitments without a concurrent reduction of such Tranche of Extended Revolving Commitments and (B) such other technical amendments as may be necessary or advisable, in the reasonable opinion of Administrative Agent and Borrower, to give effect to the terms and provisions of any Extended Term Loans or Extended Revolving Commitments, as applicable).

#### **SECTION 2.14. Defaulting Lender Provisions.**

(a) Notwithstanding anything to the contrary in this Agreement, if a Lender becomes, and during the period it remains, a Defaulting Lender, the following provisions shall apply:

(i) the L/C Liabilities and the participations in outstanding Swingline Loan of such Defaulting Lender will, subject to the limitation in the first proviso below, automatically be reallocated (effective on the day such Lender becomes a Defaulting Lender) among the Non-Defaulting Lenders *pro rata* in accordance with their respective Revolving Commitments; *provided that* (i) the sum of each Non-Defaulting Lender’s total Revolving Exposure may not in any event exceed the Revolving Commitment of such Non-Defaulting Lender as in effect at the time of such reallocation, (ii) neither such reallocation nor any payment by a Non-Defaulting Lender pursuant thereto will constitute a waiver or release of any claim Borrower, Administrative Agent, any L/C Lender, the Swingline Lender or any other Lender may have against such Defaulting Lender or cause such Defaulting Lender to be a Non-Defaulting Lender and (iii) the conditions set forth in Section 7.02(a) are satisfied at the time of such reallocation (and, unless Borrower shall have otherwise notified the Administrative Agent at such time, Borrower shall be deemed to have represented and warranted that such conditions are satisfied at such time);

(ii) to the extent that any portion (the “**un-reallocated portion**”) of the Defaulting Lender’s L/C Liabilities and participations in outstanding Swingline Loan cannot be so reallocated, whether by reason of the first proviso in clause (a) above or otherwise, Borrower will, not later than three (3) Business Days after demand by Administrative Agent (at the direction of any L/C Lender and/or the Swingline Lender, as the case may be), (i) Cash Collateralize the obligations of Borrower to the L/C Lender and the

Swingline Lender in respect of such L/C Liabilities or participations in outstanding Swingline Loans, as the case may be, in an amount at least equal to the aggregate amount of the un-reallocated portion of such L/C Liabilities or participations in any outstanding Swingline Loans, or (ii) in the case of such participations in any outstanding Swingline Loans, prepay (subject to clause (c) below) and/or Cash Collateralize in full the un-reallocated portion thereof, or (iii) make other arrangements satisfactory to Administrative Agent, and to the applicable L/C Lender and the Swingline Lender, as the case may be, in their sole discretion to protect them against the risk of non-payment by such Defaulting Lender;

(iii) Borrower shall not be required to pay any fees to such Defaulting Lender under Section 2.05(a); and

(iv) any payment of principal, interest, fees or other amounts received by Administrative Agent for the account of such Defaulting Lender (whether voluntary or mandatory, at maturity, pursuant to Article 11 or otherwise) or received by Administrative Agent from a Defaulting Lender pursuant to Section 4.07 shall be applied at such time or times as may be determined by Administrative Agent as follows: *first*, to the payment of any amounts owing by such Defaulting Lender to Administrative Agent hereunder; *second*, to the payment on a *pro rata* basis of any amounts owing by such Defaulting Lender to any L/C Lender or Swingline Lender hereunder; *third*, if so determined by Administrative Agent or requested by the applicable L/C Lender or Swingline Lender, to be held as Cash Collateral for future funding obligations of that Defaulting Lender of any participation in any Letter of Credit or any Swingline Loan, as applicable; *fourth*, as Borrower may request (so long as no Default or Event of Default exists), to the funding of any Loan in respect of which such Defaulting Lender has failed to fund its portion thereof as required by this Agreement, as determined by Administrative Agent; *fifth*, if so determined by Administrative Agent and Borrower, to be held in a non-interest bearing deposit account and released *pro rata* in order to satisfy such Defaulting Lender’s potential future funding obligations with respect to Loans under this Agreement; *sixth*, to the payment of any amounts owing to the Lenders, the L/C Lender or Swingline Lenders as a result of any judgment of a court of competent jurisdiction obtained by any Lender, any L/C Lender or the Swingline Lender against such Defaulting Lender as a result of

such Defaulting Lender's breach of its obligations under this Agreement; *seventh*, so long as no Default or Event of Default exists, to the payment of any amounts owing to Borrower as a result of any judgment of a court of competent jurisdiction obtained by Borrower against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; and *eighth*, to such Defaulting Lender or as otherwise directed by a court of competent jurisdiction; *provided* that if (x) such payment is a payment of the principal amount of any Loans or L/C Liabilities in respect of which such Defaulting Lender has not fully funded its appropriate share, and (y) such Loans were made or the related Letters of Credit were issued at a time when the conditions set forth in Section 7.02 were satisfied or waived, such payment shall be applied solely to pay the Loans of, and L/C Liabilities owed to, all Non-Defaulting Lenders on a *pro rata* basis prior to being applied to the payment of any Loans of, or L/C Liabilities owed to, such Defaulting Lender. Any payments, prepayments or other amounts paid or payable to a Defaulting Lender that are applied (or held) to pay amounts owed by a Defaulting Lender or to post Cash Collateral pursuant to this Section 2.14(a)(iv) shall be deemed paid to and redirected by such Defaulting Lender, and each Lender irrevocably consents hereto.

(b) **Cure.** If Borrower, Administrative Agent, each L/C Lender and the Swingline Lender agree in writing in their discretion that a Lender is no longer a Defaulting Lender, Administrative Agent will so notify the parties hereto, whereupon as of the effective date specified in such notice and subject to any conditions set forth therein (which may include arrangements with respect to any amounts then held in the segregated account referred to in Section 2.14(a)), (x) such Lender will, to the extent applicable, purchase at par such portion of outstanding Loans of the other Lenders and/or make such other adjustments as Administrative Agent may determine to be necessary to cause the Revolving Exposure, L/C Liabilities and participations in any outstanding Swingline Loans of the Lenders to be on a *pro rata* basis in accordance with their respective Commitments, whereupon such Lender will

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cease to be a Defaulting Lender and will be a Non-Defaulting Lender (and such exposure of each Lender will automatically be adjusted on a prospective basis to reflect the foregoing); *provided* that no adjustments will be made retroactively with respect to fees accrued or payments made by or on behalf of Borrower while such Lender was a Defaulting Lender; and *provided, further*, that no change hereunder from Defaulting Lender to Non-Defaulting Lender will constitute a waiver or release of any claim of any party hereunder arising from such Lender's having been a Defaulting Lender, and (y) all Cash Collateral provided pursuant to Section 2.14(a)(ii) shall thereafter be promptly returned to Borrower.

(c) **Certain Fees.** Anything herein to the contrary notwithstanding, during such period as a Lender is a Defaulting Lender, such Defaulting Lender will not be entitled to any fees accruing during such period pursuant to Section 2.05 or Section 2.03(h) (without prejudice to the rights of the Non-Defaulting Lenders in respect of such fees), *provided* that (i) to the extent that all or a portion of the L/C Liability or the participations in outstanding Swingline Loans of such Defaulting Lender is reallocated to the Non-Defaulting Lenders pursuant to Section 2.14, such fees that would have accrued for the benefit of such Defaulting Lender will instead accrue for the benefit of and be payable to such Non-Defaulting Lenders, *pro rata* in accordance with their respective Commitments, and (ii) to the extent that all or any portion of such L/C Liability or participations in any outstanding Swingline Loans cannot be so reallocated, such fees will instead accrue for the benefit of and be payable to the L/C Lender and the Swingline Lender, as applicable, except to the extent of any un-reallocated portion that is Cash Collateralized (and the *pro rata* payment provisions of Section 4.02 will automatically be deemed adjusted to reflect the provisions of this Section 2.14(c)).

#### SECTION 2.15. Refinancing Amendments.

(a) At any time after the Closing Date, Borrower may obtain Credit Agreement Refinancing Indebtedness in respect of all or any portion of the Term Loans and the Revolving Loans (or unused Revolving Commitments) then outstanding under this Agreement (which for purposes of this clause (a) will be deemed to include any then outstanding Other Term Loans, Incremental Term Loans, Other Revolving Loans or Incremental Revolving Loans), in the form of Other Term Loans, Other Term Loan Commitments, Other Revolving Loans or Other Revolving Commitments pursuant to a Refinancing Amendment; *provided* that, notwithstanding anything to the contrary in this Section 2.15 or otherwise, (1) the borrowing and repayment (except for (A) payments of interest and fees at different rates on Other Revolving Commitments (and related standings), (B) repayments required upon the maturity date of the Other Revolving Commitments or any other Tranche of Revolving Commitments and (C) repayment made in connection with a permanent repayment and termination of commitments (subject to clause (3) below)) of Loans with respect to Other Revolving Commitments after the date of obtaining any Other Revolving Commitments shall be made on a *pro rata* basis with all other Revolving Commitments (subject to clauses (3) and (4) below), (2) to the extent dealing with Swingline Loans and Letters of Credit which mature or expire after a maturity date when there exists New Revolving Commitments with a longer maturity date, all Swingline Loans and Letters of Credit shall be participated on a *pro rata* basis by all Lenders with Commitments in accordance with their percentage of the Revolving Commitments, (3) the permanent repayment of Revolving Loans with respect to, and termination of, Other Revolving Commitments after the date of obtaining any Other Revolving Commitments shall be made on a *pro rata* basis with all other Revolving Commitments, except that Borrower shall be permitted to permanently repay and terminate commitments of any Class with an earlier maturity date on a better than a *pro rata* basis as compared to any other Class with a later maturity date than such Class and (4) assignments and participations of Other Revolving Commitments and Other Revolving Loans shall be governed by the same assignment and participation provisions applicable to other Revolving Commitments and Revolving Loans. Each issuance of Credit Agreement Refinancing Indebtedness under this Section 2.15(a) shall be in an aggregate principal amount that is (x) not less than \$5.0 million and (y) an integral multiple of \$1.0 million in excess thereof.

(b) The effectiveness of any such Credit Agreement Refinancing Indebtedness shall be subject solely to the satisfaction of the following conditions to the reasonable satisfaction of Administrative Agent: (i) any Credit Agreement Refinancing Indebtedness in respect of Revolving Commitments or Other Revolving Commitments will

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have a maturity date that is not prior to the maturity date of the Revolving Loans (or unused Revolving Commitments) being refinanced; (ii) any Credit Agreement Refinancing Indebtedness in respect of Term Loans will have a maturity date that is not prior to the maturity date of, and a Weighted Average Life to Maturity that is not shorter than the Weighted Average Life to Maturity of, the Term Loans being refinanced (determined without giving effect to the impact of prepayments on amortization of Term Loans being refinanced); (iii) the aggregate principal amount of any Credit Agreement Refinancing Indebtedness shall not exceed the principal amount so refinanced, *plus*, accrued interest, *plus*, any premium or other payment required to be paid in connection with such refinancing, *plus*, the amount of reasonable and customary fees and expenses of Borrower or any of its Restricted Subsidiaries incurred in connection with such refinancing, *plus*, any unutilized commitments thereunder; (iv) to the extent reasonably requested by the Administrative Agent, receipt by the Administrative Agent and the Lenders of customary legal opinions and other documents; (v) to the extent reasonably requested by the Administrative Agent, execution of amendments to the Mortgages by the applicable Credit Parties and Collateral Agent, in form and substance reasonably



satisfactory to the Administrative Agent and the Collateral Agent; (vi) to the extent reasonably requested by the Administrative Agent, delivery to the Administrative Agent of title insurance endorsements reasonably satisfactory to the Administrative Agent; and (vii) execution of a Refinancing Amendment by the Credit Parties, Administrative Agent and Lenders providing such Credit Agreement Refinancing Indebtedness.

(c) The Loans and Commitments established pursuant to this Section 2.15 shall constitute Loans and Commitments under, and shall be entitled to all the benefits afforded by, this Agreement and the other Credit Documents, and shall, without limiting the foregoing, benefit equally and ratably from the Guarantees and security interests created by the Security Documents. The Credit Parties shall take any actions reasonably required by Administrative Agent to ensure and/or demonstrate that the Lien and security interests granted by the Security Documents continue to secure all the Obligations and continue to be perfected under the UCC or otherwise after giving effect to the applicable Refinancing Amendment.

(d) Upon the effectiveness of any Refinancing Amendment pursuant to this Section 2.15, any Person providing the corresponding Credit Agreement Refinancing Indebtedness that was not a Lender hereunder immediately prior to such time shall become a Lender hereunder. Administrative Agent shall promptly notify each Lender as to the effectiveness of such Refinancing Amendment, and (i) in the case any Other Revolving Commitments resulting from such Refinancing Amendment, the Total Revolving Commitments under, and for all purpose of this Agreement, shall be increased by the aggregate amount of such Other Revolving Commitments (net of any existing Revolving Commitments being refinanced by such Refinancing Amendment), (ii) any Other Revolving Loans resulting from such Refinancing Amendment shall be deemed to be additional Revolving Loans hereunder, (iii) any Other Term Loans resulting from such Refinancing Amendment shall be deemed to be Term Loans hereunder (to the extent funded) and (iv) any Other Term Loan Commitments resulting from such Refinancing Amendment shall be deemed to be Term Loan Commitments hereunder. Notwithstanding anything to the contrary contained herein, Borrower, Collateral Agent and Administrative Agent may (and each of Collateral Agent and Administrative Agent are authorized by each other Secured Party to) execute such amendments and/or amendments and restatements of any Credit Documents as may be necessary or advisable to effectuate the provisions of this Section 2.15. Such amendments may include provisions allowing any Other Term Loans to be treated on the same basis as Term B Facility Loans in connection with declining prepayments.

(e) Each of the parties hereto hereby agrees that, upon the effectiveness of any Refinancing Amendment, this Agreement shall be deemed amended to the extent (but only to the extent) necessary to reflect the existence and terms of the Credit Agreement Refinancing Indebtedness incurred pursuant thereto (including any amendments necessary to treat the Loans and Commitments subject thereto as Other Term Loans, Other Term Loan Commitments, Other Revolving Loans and/or Other Revolving Commitments). Any Refinancing Amendment may, without the consent of any other Lenders, effect such amendments to this Agreement and the other Credit Documents as may be necessary or appropriate, in the reasonable opinion of Administrative Agent and Borrower, to effect the provisions of this Section 2.15. This Section 2.15 shall supersede any provisions in Section 4.02, 4.07(b) or 13.04 to the contrary.

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(f) To the extent the Revolving Commitments are being refinanced on the effective date of any Refinancing Amendment, then each of the Revolving Lenders having a Revolving Commitment prior to the effective date of such Refinancing Amendment (such Revolving Lenders the “**Pre-Refinancing Revolving Lenders**”) shall assign or transfer to any Revolving Lender which is acquiring an Other Revolving Commitment on the effective date of such amendment (the “**Post-Refinancing Revolving Lenders**”), and such Post-Refinancing Revolving Lenders shall purchase from each such Pre-Refinancing Revolving Lender, at the principal amount thereof, such interests in Revolving Loans and participation interests in L/C Liabilities and Swingline Loans (but not, for the avoidance of doubt, the related Revolving Commitments) outstanding on the effective date of such Refinancing Amendment as shall be necessary in order that, after giving effect to all such assignments or transfers and purchases, such Revolving Loans and participation interests in L/C Liabilities and Swingline Loans will be held by Pre-Refinancing Revolving Lenders and Post-Refinancing Revolving Lenders ratably in accordance with their Revolving Commitments and Other Revolving Commitments, as applicable, after giving effect to such Refinancing Amendment (and after giving effect to any Revolving Loans made on the effective date of such Refinancing Amendment). Such assignments or transfers and purchases shall be made pursuant to such procedures as may be designated by Administrative Agent and shall not be required to be effectuated in accordance with Section 13.05. For the avoidance of doubt, Revolving Loans and participation interests in L/C Liabilities and Swingline Loans assigned or transferred and purchased pursuant to this Section 2.15(f) shall, upon receipt thereof by the relevant Post-Increase Revolving Lenders, be deemed to be Other Revolving Loans and participation interests in L/C Liabilities and Swingline Loans in respect of the relevant Other Revolving Commitments acquired by such Post-Increase Revolving Lenders on the relevant amendment effective date and the terms of such Revolving Loans and participation interests (including, without limitation, the interest rate and maturity applicable thereto) shall be adjusted accordingly.

## **SECTION 2.16. Cash Collateral.**

(a) Certain Credit Support Events. Without limiting any other requirements herein to provide Cash Collateral, if (i) any L/C Lender has honored any full or partial drawing request under any Letter of Credit and such drawing has resulted in an extension of credit hereunder which has not been refinanced as a Revolving Loan or reimbursed, in each case, in accordance with Section 2.03(d) or (ii) Borrower shall be required to provide Cash Collateral pursuant to Section 11.01, Borrower shall, within one (1) Business Day (in the case of clause (i) above) or immediately (in the case of clause (ii) above) following any request by the Administrative Agent or the applicable L/C Lender, provide Cash Collateral in an amount not less than the applicable Minimum Collateral Amount.

(b) Grant of Security Interest. Borrower, and to the extent provided by any Defaulting Lender, such Defaulting Lender, hereby grants to (and subjects to the control of) the Administrative Agent, for the benefit of the Administrative Agent, the L/C Lenders and the Lenders, and agrees to maintain, a first priority security interest in all such cash, deposit accounts and all balances therein, and all other property so provided as Cash Collateral pursuant hereto, and in all proceeds of the foregoing, all as security for the obligations to which such Cash Collateral (including Cash Collateral provided in accordance with Sections 2.01(e), 2.03, 2.10(c), 2.10(e), 2.14, 2.16 or 11.01) may be applied pursuant to Section 2.16(c). If at any time the Administrative Agent determines that Cash Collateral is subject to any right or claim of any Person prior to the right or claim of the Administrative Agent or the L/C Lenders as herein provided, or that the total amount of such Cash Collateral is less than the Minimum Collateral Amount, Borrower will, promptly upon demand by the Administrative Agent, pay or provide to the Administrative Agent additional Cash Collateral in an amount sufficient to eliminate such deficiency (after giving effect to any Cash Collateral provided by any Defaulting Lenders). All Cash Collateral (other than credit support not constituting funds subject to deposit) shall be maintained in blocked, non-interest bearing deposit accounts at the Administrative Agent or as otherwise agreed to by the Administrative Agent. Borrower shall pay on demand therefor from time to time all customary account opening, activity and other administrative fees and charges in connection with the maintenance and disbursement of Cash Collateral in accordance with the account agreement governing such deposit account.

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(c) **Application.** Notwithstanding anything to the contrary contained in this Agreement, Cash Collateral provided under any of this Section 2.16 or Sections 2.01(e), 2.03, 2.10(c), 2.10(e), 2.14 or 11.01 in respect of Letters of Credit shall be held and applied to the satisfaction of the specific L/C Liabilities, obligations to fund participations therein (including, as to Cash Collateral provided by a Defaulting Lender, any interest accrued on such obligation), participations in Swingline Loans and other obligations for which the Cash Collateral was so provided, prior to any other application of such property as may otherwise be provided for herein.

(d) **Release.** Cash Collateral (or the appropriate portion thereof) provided to reduce un-reallocated portions or to secure other obligations shall, so long as no Event of Default then exists, be released promptly following (i) the elimination of the applicable un-reallocated portion or other obligations giving rise thereto (including by the termination of Defaulting Lender status of the applicable Lender (or, as appropriate, the assignment of such Defaulting Lender's Loans and Commitments to a Replacement Lender)) or (ii) the determination by the Administrative Agent and the L/C Lenders that there exists excess Cash Collateral (which, in any event, shall exist at any time that the aggregate amount of Cash Collateral exceeds the Minimum Collateral Amount); *provided, however*, (x) any such release shall be without prejudice to, and any disbursement or other transfer of Cash Collateral shall be and remain subject to, any other Lien conferred under the Credit Documents and the other applicable provisions of the Credit Documents, and (y) Borrower and the L/C Issuer may agree that Cash Collateral shall not be released but instead held to support future anticipated un-reallocated portions or other obligations.

## ARTICLE III.

### PAYMENTS OF PRINCIPAL AND INTEREST

#### **SECTION 3.01. Repayment of Loans.**

(a) **Revolving Loans and Swingline Loans.** Borrower hereby promises to pay (i) to Administrative Agent for the account of each applicable Revolving Lender on each R/C Maturity Date, the entire outstanding principal amount of such Revolving Lender's Revolving Loans of the applicable Tranche, and each such Revolving Loan shall mature on the R/C Maturity Date applicable to such Tranche and (ii) to the Swingline Lender the then unpaid principal amount of each Swingline Loan on the earlier of first R/C Maturity Date after such Swingline Loan is made and the first date after such Swingline Loan is made that is the 15th or last day of a calendar month and is at least two Business Days after such Swingline Loan is made; *provided, however*, that on each date that a Revolving Borrowing is made, Borrower shall repay all Swingline Loans that were outstanding on the date such Borrowing was requested.

(b) **Term A Facility Loans.** Borrower hereby promises to pay to Administrative Agent for the account of the Lenders with Term A Facility Loans made on the Closing Date in repayment of the principal of such Term A Facility Loans, on each date set forth on Annex C, that principal amount of such Term A Facility Loans, to the extent then outstanding, as is set forth opposite such date (subject to adjustment for any prepayments made under Section 2.09 or Section 2.10 or Section 2.11(b) or Section 13.04(b)(B) or as provided in Section 2.12, in Section 2.13 or in Section 2.15), and the remaining principal amount of such Term A Facility Loans on the Term A Facility Maturity Date. For the avoidance of doubt, amortization payments of the Term A Facility Loans advanced under the First Amendment Incremental Term A Loan Commitments pursuant to Section 2.01(b)(ii) shall be governed by the terms of the First Amendment, which amortization payments the Borrower hereby promises to pay to Administrative Agent for the account of the applicable Lenders.

(c) **Term B Facility Loans.** Borrower hereby promises to pay to Administrative Agent for the account of the Lenders with Term B Facility Loans in repayment of the principal of such Term B Facility Loans, (i) on the last Business Day of each fiscal quarter (commencing with the first full fiscal quarter following the Closing Date), an aggregate amount equal to 0.25% of the aggregate principal amount of all Term B Facility Loans

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outstanding on the Closing Date (subject to adjustment for any prepayments made under Section 2.09 or Section 2.10 or Section 2.11(b) or Section 13.04(b)(B) or as provided in Section 2.12, in Section 2.13 or in Section 2.15) and (ii) the remaining principal amount of Term B Facility Loans on the Term B Facility Maturity Date.

(d) **New Term Loans; Extended Term Loans; Other Term Loans.** New Term Loans shall mature in installments as specified in the related Incremental Joinder Agreement pursuant to which such New Term Loans were made, subject, however, to Section 2.12(b). Extended Term Loans shall mature in installments as specified in the applicable Extension Amendment pursuant to which such Extended Term Loans were established, subject, however, to Section 2.13(a). Other Term Loans shall mature in installments as specified in the applicable Refinancing Amendment pursuant to which such Other Term Loans were established, subject, however, to Section 2.15(a).

#### **SECTION 3.02. Interest.**

(a) Borrower hereby promises to pay to Administrative Agent for the account of each Lender interest on the unpaid principal amount of each Loan made or maintained by such Lender to Borrower for the period from and including the date of such Loan to but excluding the date such Loan shall be paid in full at the following rates *per annum*:

(i) during such periods as such Loan (including each Swingline Loan) is an ABR Loan, the Alternate Base Rate (as in effect from time to time), *plus* the Applicable Margin applicable to such Loan, and

(ii) during such periods as such Loan is a LIBOR Loan, for each Interest Period relating thereto, the LIBO Rate for such Loan for such Interest Period, *plus* the Applicable Margin applicable to such Loan.

(b) To the extent permitted by Law, (i) upon the occurrence and during the continuance of an Event of Default (other than Events of Default under Sections 11.01(g) or 11.01(h)), overdue principal and overdue interest in respect of each Loan and all other Obligations not paid when due and (ii) upon the occurrence and during the continuance of an Event of Default under Section 11.01(g) or Section 11.01(h), all Obligations shall, in each case, automatically and without any action by any Person, bear interest at the Default Rate. Interest which accrues under this paragraph shall be payable on demand.

(c) Accrued interest on each Loan shall be payable (i) in the case of each ABR Loan (including Swingline Loans), (x) quarterly in arrears on each Quarterly Date, (y) on the date of any repayment or prepayment in full of all outstanding ABR Loans of any Tranche of Loans (or of any Swingline

Loan) (but only on the principal amount so repaid or prepaid), and (z) at maturity (whether by acceleration or otherwise) and, after such maturity, on demand, and (ii) in the case of each LIBOR Loan, (x) on the last day of each Interest Period applicable thereto and, if such Interest Period is longer than three months, on each date occurring at three-month intervals after the first day of such Interest Period, (y) on the date of any repayment or prepayment thereof or the conversion of such Loan to a Loan of another Type (but only on the principal amount so paid, prepaid or converted) and (z) at maturity (whether by acceleration or otherwise) and, after such maturity, on demand. Promptly after the determination of any interest rate provided for herein or any change therein, Administrative Agent shall give notice thereof to the Lenders to which such interest is payable and to Borrower.

ARTICLE IV.

PAYMENTS; PRO RATA TREATMENT; COMPUTATIONS; ETC.

**SECTION 4.01. Payments.**

(a) All payments of principal, interest, Reimbursement Obligations and other amounts to be made by Borrower under this Agreement and the Notes, and, except to the extent otherwise provided therein, all payments to be made by the Credit Parties under any other Credit Document, shall be made in Dollars, in immediately available funds, without deduction, set-off or counterclaim, to Administrative Agent at its account at the Principal Office, not later than 2:00 p.m., New York time, on the date on which such payment shall become due (each such payment made after such time on such due date may, at the discretion of Administrative Agent, be deemed to have been made on the next succeeding Business Day). 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.

(b) Borrower shall, at the time of making each payment under this Agreement or any Note for the account of any Lender, specify (in accordance with Sections 2.09 and 2.10, if applicable) to Administrative Agent (which shall so notify the intended recipient(s) thereof) or, in the case of Swingline Loans, to the Swingline Lender, the Class and Type of Loans, Reimbursement Obligations or other amounts payable by Borrower hereunder to which such payment is to be applied.

(c) Except to the extent otherwise provided in the third sentence of Section 2.03(h), each payment received by Administrative Agent or by any L/C Lender (directly or through Administrative Agent) under this Agreement or any Note for the account of any Lender shall be paid by Administrative Agent or by such L/C Lender (through Administrative Agent), as the case may be, to such Lender, in immediately available funds, (x) if the payment was actually received by Administrative Agent or by such L/C Lender (directly or through Administrative Agent), as the case may be, prior to 12:00 p.m. (Noon), New York time on any day, on such day and (y) if the payment was actually received by Administrative Agent or by such L/C Lender (directly or through Administrative Agent), as the case may be, after 12:00 p.m. (Noon), New York time, on any day, by 1:00 p.m., New York time, on the following Business Day (it being understood that to the extent that any such payment is not made in full by Administrative Agent or by such L/C Lender (through Administrative Agent), as the case may be, Administrative Agent or such Lender (through Administrative Agent), as applicable, shall pay to such Lender, upon demand, interest at the Federal Funds Rate from the date such amount was required to be paid to such Lender pursuant to the foregoing clauses until the date Administrative Agent or such L/C Lender (through Administrative Agent), as applicable, pays such Lender the full amount).

(d) If the due date of any payment under this Agreement or any Note would otherwise fall on a day that is not a Business Day, such date shall be extended to the next succeeding Business Day, and interest shall be payable for any principal so extended for the period of such extension at the rate then borne by such principal.

**SECTION 4.02. Pro Rata Treatment.** Except to the extent otherwise provided herein: (a) each borrowing of Loans of a particular Class from the Lenders under Section 2.01 shall be made from the relevant Lenders, each payment of commitment fees under Section 2.05 in respect of Commitments of a particular Class shall be made for account of the relevant Lenders, and each termination or reduction of the amount of the Commitments of a particular Class under Section 2.04 shall be applied to the respective Commitments of such Class of the relevant Lenders *pro rata* according to the amounts of their respective Commitments of such Class; (b) except as otherwise provided in Section 5.04, LIBOR Loans of any Class having the same Interest Period shall be allocated *pro rata* among the relevant Lenders according to the amounts of their respective Revolving Commitments and Term Loan Commitments (in the case of the making of Loans) or their respective Revolving Loans and Term Loans (in the case of conversions and continuations of Loans); (c) except as otherwise provided in Section 2.09(b), Section 2.10(b), Section 2.12, Section 2.13, Section 2.14, Section 2.15, Section 13.04 or Section 13.05(d), each payment or

prepayment of principal of any Class of Revolving Loans or of any particular Class of Term Loans shall be made for the account of the relevant Lenders *pro rata* in accordance with the respective unpaid outstanding principal amounts of the Loans of such Class held by them; and (d) except as otherwise provided in Section 2.09(b), Section 2.10(b), Section 2.12, Section 2.13, Section 2.14, Section 2.15, Section 13.04 or Section 13.05(d), each payment of interest on Revolving Loans and Term Loans shall be made for account of the relevant Lenders *pro rata* in accordance with the amounts of interest on such Loans then due and payable to the respective Lenders.

**SECTION 4.03. Computations.** Interest on LIBOR Loans, commitment fees and Letter of Credit fees shall be computed on the basis of a year of 360 days and actual days elapsed (including the first day but excluding the last day) occurring in the period for which such amounts are payable and interest on ABR Loans and Reimbursement Obligations shall be computed on the basis of a year of 365 or 366 days, as the case may be, and actual days elapsed (including the first day but excluding the last day) occurring in the period for which such amounts are payable.

**SECTION 4.04. Minimum Amounts.** Except for mandatory prepayments made pursuant to Section 2.10 and conversions or prepayments made pursuant to Section 5.04, and Borrowings made to pay Reimbursement Obligations, each Borrowing, conversion and partial prepayment of principal of Loans shall be in an amount at least equal to (a) in the case of Term Loans, \$5.0 million with respect to ABR Loans and \$5.0 million with respect to LIBOR Loans and in multiples of \$100,000 in excess thereof or, if less, the remaining Term Loans and (b) in the case of Revolving Loans and Swingline Loans, \$2.5 million with respect to ABR Loans and \$2.5 million with respect to LIBOR Loans and in multiples of \$100,000 in excess thereof (borrowings, conversions or prepayments of or into Loans of different Types or, in the case of LIBOR Loans, having different Interest Periods at the same time hereunder to be deemed separate borrowings, conversions and prepayments for purposes of the foregoing, one for each Type or Interest Period) or, if less, the remaining Revolving

Loans. Anything in this Agreement to the contrary notwithstanding, the aggregate principal amount of LIBOR Loans having the same Interest Period shall be in an amount at least equal to \$1.0 million and in multiples of \$100,000 in excess thereof and, if any LIBOR Loans or portions thereof would otherwise be in a lesser principal amount for any period, such Loans or portions, as the case may be, shall be ABR Loans during such period.

**SECTION 4.05. Certain Notices.** Notices by Borrower to Administrative Agent (or, in the case of repayment of the Swingline Loans, to the Swingline Lender) of terminations or reductions of the Commitments, of Borrowings, conversions, continuations and optional prepayments of Loans and of Classes of Loans, of Types of Loans and of the duration of Interest Periods shall be irrevocable and shall be effective only if received by Administrative Agent (or, in the case of Swingline Loans, the Swingline Lender) by telephone not later than 1:00 p.m., New York time (promptly followed by written notice via facsimile or electronic mail), on at least the number of Business Days prior to the date of the relevant termination, reduction, Borrowing, conversion, continuation or prepayment or the first day of such Interest Period specified in the table below (unless otherwise agreed to by Administrative Agent in its sole discretion), *provided* that Borrower may make any such notice conditional upon the occurrence of a Person’s acquisition or sale or any incurrence of indebtedness or issuance of Equity Interests.

NOTICE PERIODS

Notice	Number of Business Days Prior
Termination or reduction of Commitments	3
Borrowing or optional prepayment of, or conversions into, ABR Loans	1

Notice	Number of Business Days Prior
Borrowing or optional prepayment of, conversions into, continuations as, or duration of Interest Periods for, LIBOR Loans	3
Borrowing or repayment of Swingline Loans	same day

Each such notice of termination or reduction shall specify the amount and the Class of the Commitments to be terminated or reduced. Each such notice of Borrowing, conversion, continuation or prepayment shall specify the Class of Loans to be borrowed, converted, continued or prepaid and the amount (subject to Section 4.04) and Type of each Loan to be borrowed, converted, continued or prepaid and the date of borrowing, conversion, continuation or prepayment (which shall be a Business Day). Each such notice of the duration of an Interest Period shall specify the Loans to which such Interest Period is to relate. Administrative Agent shall promptly notify the Lenders of the contents of each such notice. In the event that Borrower fails to select the Type of Loan within the time period and otherwise as provided in this Section 4.05, such Loan (if outstanding as a LIBOR Loan) will be automatically converted into an ABR Loan on the last day of the then current Interest Period for such Loan or (if outstanding as an ABR Loan) will remain as, or (if not then outstanding) will be made as, an ABR Loan. In the event that Borrower has elected to borrow or convert Loans into LIBOR Loans but fails to select the duration of any Interest Period for any LIBOR Loans within the time period and otherwise as provided in this Section 4.05, such LIBOR Loan shall have an Interest Period of one month.

**SECTION 4.06. Non-Receipt of Funds by Administrative Agent.**

(a) Unless the Administrative Agent shall have received notice from a Lender prior to the proposed date of any Borrowing of LIBOR Loans (or, in the case of any Borrowing of ABR Loans, prior to 12:00 noon on the date of such Borrowing) that such Lender will not make available to the Administrative Agent such Lender’s share of such Borrowing, the Administrative Agent may assume that such Lender has made such share available on such date in accordance with Section 2.02 (or, in the case of a Borrowing of ABR Loans, that such Lender has made such share available in accordance with and at the time required by Section 2.02) and may, in reliance upon such assumption, make available to 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 Borrower severally agree to pay to the Administrative Agent forthwith on demand such corresponding amount in immediately available funds with interest thereon, for each day from and including the date such amount is made available to Borrower to but excluding the date of payment to the Administrative Agent, at (A) in the case of a payment to be made by such Lender, the Federal Funds Rate, plus any administrative, processing or similar fees customarily charged by the Administrative Agent in connection with the foregoing, and (B) in the case of a payment to be made by Borrower, the interest rate applicable to ABR Loans. If Borrower and such Lender shall pay such interest to the Administrative Agent for the same or an overlapping period, the Administrative Agent shall promptly remit to Borrower the amount of such interest paid by Borrower for such period. If such Lender pays its share of the applicable Borrowing to the Administrative Agent, then the amount so paid shall constitute such Lender’s Loan included in such Borrowing. Any payment by Borrower shall be without prejudice to any claim Borrower may have against a Lender that shall have failed to make such payment to the Administrative Agent.

(b) Unless the Administrative Agent shall have received notice from Borrower prior to the date on which any payment is due to the Administrative Agent for the account of the Lenders or the L/C Lenders hereunder that Borrower will not make such payment, the Administrative Agent may assume that Borrower has made such payment on such date in accordance herewith and may, in reliance upon such assumption, distribute to the Lenders or the L/C Lenders, as the case may be, the amount due. In such event, if Borrower has not in fact made such payment, then each of the Lenders or the L/C Lenders, as the case may be, severally agrees to repay to the Administrative Agent forthwith on demand the amount so distributed to such Lender or L/C Lender, in immediately

available funds with interest thereon, for each day from and including the date such amount is distributed to it to but excluding the date of payment to the Administrative Agent, at the Federal Funds Rate. A notice of the Administrative Agent to any Lender or Borrower with respect to any amount owing under this subsection (b) shall be conclusive, absent manifest error.

**SECTION 4.07. Right of Setoff, Sharing of Payments; Etc.**

(a) If any Event of Default shall have occurred and be continuing, each Credit Party agrees that, in addition to (and without limitation of) any right of setoff, banker's lien or counterclaim a Lender may otherwise have, each Lender shall be entitled, at its option (to the fullest extent permitted by law), subject to obtaining the prior written consent of the Administrative Agent to set off and apply any deposit (general or special, time or demand, provisional or final), or other indebtedness, held by it for the credit or account of such Credit Party at any of its offices, in Dollars or in any other currency, against any principal of or interest on any of such Lender's Loans, Reimbursement Obligations or any other amount payable to such Lender hereunder that is not paid when due (regardless of whether such deposit or other indebtedness is then due to such Credit Party), in which case it shall promptly notify such Credit Party thereof; *provided, however*, that such Lender's failure to give such notice shall not affect the validity thereof; and *provided further* that no such right of setoff, banker's lien or counterclaim shall apply to any funds held for further distribution to any Governmental Authority.

(b) Each of the Lenders agrees that, if it should receive (other than pursuant to Section 2.09(b), Section 2.10(b), Section 2.11, Section 2.12, Section 2.13, Section 2.15, Article V, Section 13.04 or Section 13.05(d) or as otherwise specifically provided herein or in the Fee Letter) any amount hereunder (whether by voluntary payment, by realization upon security, by the exercise of the right of setoff or banker's lien, by counterclaim or cross action, by the enforcement of any right under the Credit Documents (including any guarantee), or otherwise) which is applicable to the payment of the principal of, or interest on, the Loans, Reimbursement Obligations or fees, the sum of which with respect to the related sum or sums received by other Lenders is in a greater proportion than the total of such amounts then owed and due to such Lender bears to the total of such amounts then owed and due to all of the Lenders immediately prior to such receipt, then such Lender receiving such excess payment shall purchase for cash without recourse or warranty from the other Lenders an interest in the Obligations of the respective Credit Party to such Lenders in such amount as shall result in a proportional participation by all of the Lenders in such amount; *provided, however*, that if all or any portion of such excess amount is thereafter recovered from such Lender, such purchase shall be rescinded and the purchase price restored to the extent of such recovery, but without interest. Borrower consents to the foregoing arrangements.

(c) Borrower agrees that any Lender so purchasing such a participation may exercise all rights of setoff, banker's lien, counterclaim or similar rights with respect to such participation as fully as if such Lender were a direct holder of Loans or other amounts (as the case may be) owing to such Lender in the amount of such participation.

(d) Nothing contained herein shall require any Lender to exercise any such right or shall affect the right of any Lender to exercise, and retain the benefits of exercising, any such right with respect to any other Indebtedness or obligation of any Credit Party. If, under any applicable bankruptcy, insolvency or other similar law, any Lender receives a secured claim in lieu of a setoff to which this Section 4.07 applies, such Lender shall, to the extent practicable, exercise its rights in respect of such secured claim in a manner consistent with the rights of the Lenders entitled under this Section 4.07 to share in the benefits of any recovery on such secured claim.

(e) Notwithstanding anything to the contrary contained in this Section 4.07, in the event that any Defaulting Lender exercises any right of setoff, (i) all amounts so set off will be paid over immediately to Administrative Agent for further application in accordance with the provisions of Section 2.14 and, pending such payment, will be segregated by such Defaulting Lender from its other funds and deemed held in trust for the benefit of Administrative Agent, each L/C Lender, the Swingline Lender and the Lenders and (ii) the Defaulting Lender will

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provide promptly to Administrative Agent a statement describing in reasonable detail the Obligations owing to such Defaulting Lender as to which it exercised such right of setoff.

## ARTICLE V.

### YIELD PROTECTION, ETC.

#### **SECTION 5.01. Additional Costs.**

(a) If any Change in Law shall:

(i) subject any Lender to any tax of any kind whatsoever with respect to this Agreement, any Note, any Letter of Credit or any Lender's participation therein, any L/C Document or any Loan made by it or change the basis of taxation of payments to such Lender in respect thereof by any Governmental Authority (except for any reserve requirement reflected in the LIBO Rate, Covered Taxes or Excluded Taxes);

(ii) impose, modify or hold applicable any reserve, special deposit, compulsory loan, insurance charge or similar requirement against assets held by, deposits or other liabilities in or for the account of, advances, loans or other extensions of credit by, or any other acquisition of funds by, any office of such Lender, in each case, that is not otherwise included in the determination of the LIBO Rate hereunder; or

(iii) impose on any Lender or the London interbank market any other condition, cost or expense (other than Taxes) affecting this Agreement or LIBOR Loans made by such Lender or any Letter of Credit or participation therein;

and the result of any of the foregoing is to materially increase the cost to such Lender or L/C Lender of making, converting into, continuing or maintaining LIBOR Loans (or of maintaining its obligation to make any LIBOR Loans) or issuing, maintaining or participating in Letters of Credit (or maintaining its obligation to participate in or to issue any Letter of Credit), then, in any such case, Borrower shall, within 10 days of written demand therefor, pay such Lender or L/C Lender any additional amounts necessary to compensate such Lender or L/C Lender for such increased cost. If any Lender or L/C Lender becomes entitled to claim any additional amounts pursuant to this subsection, it shall promptly notify Borrower, through Administrative Agent, of the event by reason of which it has become so entitled.

(b) A certificate as to any additional amounts setting forth the calculation of such additional amounts pursuant to this Section 5.01 submitted by such Lender or L/C Lender, through Administrative Agent, to Borrower shall be conclusive in the absence of clearly demonstrable error. Without limiting the survival of any other covenant hereunder, this Section 5.01 shall survive the termination of this Agreement and the payment of the Notes and all other Obligations payable hereunder.

(c) In the event that any Lender shall have determined that any Change in Law affecting such Lender or any Lending Office of such Lender or the Lender's holding company with regard to capital or liquidity requirements, does or shall have the effect of reducing the rate of return on such Lender's or

such holding company's capital as a consequence of its obligations hereunder, the Commitments of such Lender, the Loans made by, or participations in Letters of Credit and Swingline Loans held by such Lender, or the Letters of Credit issued by such L/C Lender, to a level below that which such Lender or such holding company could have achieved but for such Change in Law (taking into consideration such Lender's policies and the policies of such Lender's holding company with respect to capital adequacy), then from time to time, after submission by such Lender or Borrower

(with a copy to Administrative Agent) of a written request therefor (setting forth in reasonable detail the amount payable to the affected Lender and the basis for such request), Borrower shall promptly pay to such Lender such additional amount or amounts as will compensate such Lender for such reduction.

(d) Failure or delay on the part of any Lender to demand compensation pursuant to this Section 5.01 shall not constitute a waiver of such Lender's right to demand such compensation; *provided, however*, that Borrower shall not be required to compensate a Lender pursuant to this Section 5.01 for any increased costs or reductions incurred more than ninety (90) days prior to the date that such Lender notifies Borrower of the change in law giving rise to such increased costs incurred or reductions suffered and of such Lender's intention to claim compensation therefor; *provided, further*, that if the Change in Law giving rise to such increased costs or reductions is retroactive, then the 90-day period referred to above shall be extended to include the period of retroactive effect thereof.

**SECTION 5.02. Inability To Determine Interest Rate.** If prior to the first day of any Interest Period: (a) Administrative Agent shall have determined (which determination shall be conclusive and binding upon Borrower) that, by reason of circumstances affecting the relevant market, adequate and reasonable means do not exist for ascertaining the LIBO Base Rate for such Interest Period or (b) Administrative Agent shall have received notice from the Required Lenders that Dollar deposits are not available in the relevant amount and for the relevant Interest Period available to the Required Lenders in the London interbank market or (c) the Required Lenders determine that the LIBO Rate for any requested Interest Period with respect to a proposed LIBOR Loan does not adequately and fairly reflect the cost to such Lenders of funding such LIBOR Loans (in each case, "**Impacted Loans**"), Administrative Agent shall give electronic mail or telephonic notice thereof to Borrower and the Lenders as soon as practicable thereof. If such notice is given, (x) any LIBOR Loans requested to be made on the first day of such Interest Period shall be made as ABR Loans, (y) any Loans that were to have been converted on the first day of such Interest Period to LIBOR Loans shall be converted to, or continued as, ABR Loans and (z) any outstanding LIBOR Loans shall be converted, on the first day of such Interest Period, to ABR Loans. Until such notice has been withdrawn by Administrative Agent (which the Administrative Agent agrees to do if the circumstances giving rise to such notice cease to exist), no further LIBOR Loans shall be made, or continued as such, nor shall Borrower have the right to convert Loans to, LIBOR Loans.

Notwithstanding the foregoing, if there are Impacted Loans as provided above, the Administrative Agent, in consultation with Borrower and the affected Lenders, may establish an alternative interest rate for the Impacted Loans, in which case, such alternative rate of interest shall apply with respect to the Impacted Loans (to the extent Borrower does not elect to maintain such Impacted Loans as ABR Loans) until (1) the Administrative Agent revokes the notice delivered with respect to the Impacted Loans (which the Administrative Agent agrees to do if the circumstances giving rise to Impacted Loans cease to exist), (2) the Administrative Agent or the Required Lenders notify the Administrative Agent and Borrower that such alternative interest rate does not adequately and fairly reflect the cost to such Lenders of funding the Impacted Loans, or (3) any Lender determines that any Law has made it unlawful, or that any Governmental Authority has asserted that it is unlawful, for such Lender or its applicable Lending Office to make, maintain or fund Loans whose interest is determined by reference to such alternative rate of interest or to determine or charge interest rates based upon such rate or any Governmental Authority has imposed material restrictions on the authority of such Lender to do any of the foregoing and provides the Administrative Agent and Borrower written notice thereof.

**SECTION 5.03. Illegality.** Notwithstanding any other provision of this Agreement, in the event that any change after the date hereof in any Requirement of Law or in the interpretation or application thereof shall make it unlawful for any Lender or its Applicable Lending Office to honor its obligation to make or maintain LIBOR Loans or issue Letters of Credit hereunder (and, in the sole opinion of such Lender, the designation of a different Applicable Lending Office would either not avoid such unlawfulness or would be disadvantageous to such Lender), then such Lender shall promptly notify Borrower thereof (with a copy to Administrative Agent) and such Lender's obligation to make or continue, or to convert Loans of any other Type into, LIBOR Loans or issue Letters of Credit

shall be suspended until such time as such Lender or L/C Lender may again make and maintain LIBOR Loans or issue Letters of Credit (in which case the provisions of Section 5.04 shall be applicable).

**SECTION 5.04. Treatment of Affected Loans.** If the obligation of any Lender to make LIBOR Loans or to continue, or to convert ABR Loans into, LIBOR Loans shall be suspended pursuant to Section 5.03, such Lender's LIBOR Loans shall be automatically converted into ABR Loans on the last day(s) of the then current Interest Period(s) for such LIBOR Loans (or on such earlier date as such Lender may specify to Borrower with a copy to Administrative Agent as is required by law) and, unless and until such Lender gives notice as provided below that the circumstances specified in Section 5.03 which gave rise to such conversion no longer exist:

- (i) to the extent that such Lender's LIBOR Loans have been so converted, all payments and prepayments of principal which would otherwise be applied to such Lender's LIBOR Loans shall be applied instead to its ABR Loans; and
- (ii) all Loans which would otherwise be made or continued by such Lender as LIBOR Loans shall be made or continued instead as ABR Loans and all ABR Loans of such Lender which would otherwise be converted into LIBOR Loans shall remain as ABR Loans.

If such Lender gives notice to Borrower with a copy to Administrative Agent that the circumstances specified in Section 5.03 which gave rise to the conversion of such Lender's LIBOR Loans pursuant to this Section 5.04 no longer exist (which such Lender agrees to do promptly upon such circumstances ceasing to exist) at a time when LIBOR Loans are outstanding, such Lender's ABR Loans shall be automatically converted, on the first day(s) of the next succeeding Interest Period(s) for such outstanding LIBOR Loans, to the extent necessary so that, after giving effect thereto, all Loans held by the Lenders holding LIBOR Loans and by such Lender are held *pro rata* (as to principal amounts, Types and Interest Periods) in accordance with their respective Commitments.

## SECTION 5.05. Compensation.

(a) Borrower agrees to indemnify each Lender and to hold each Lender harmless from any loss or expense (excluding any loss of profits or margin) which such Lender may sustain or incur as a consequence of (1) default by Borrower in payment when due of the principal amount of or interest on any LIBOR Loan, (2) default by Borrower in making a borrowing of, conversion into or continuation of LIBOR Loans after Borrower has given a notice requesting the same in accordance with the provisions of this Agreement, (3) Borrower making any prepayment other than on the date specified in the relevant prepayment notice, or (4) the conversion or the making of a payment or a prepayment (including any repayments or prepayments made pursuant to Sections 2.09 or 2.10 or as a result of an acceleration of Loans pursuant to Section 11.01 or as a result of the replacement of a Lender pursuant to Section 2.11 or 13.04(b)) of LIBOR Loans on a day which is not the last day of an Interest Period with respect thereto, including in each case, any such loss (excluding any loss of profits or margin) or expense arising from the reemployment of funds obtained by it or from fees payable to terminate the deposits from which such funds were obtained; *provided* that no such amounts under this Section 5.05(a) shall be payable by Borrower in connection with any termination in accordance with Section 2.12(b) of any Interest Period of one month or shorter.

(b) For the purpose of calculation of all amounts payable to a Lender under this Section 5.05 each Lender shall be deemed to have actually funded its relevant LIBOR Loan through the purchase of a deposit bearing interest at the LIBO Base Rate in an amount equal to the amount of the LIBOR Loan and having a maturity comparable to the relevant Interest Period; *provided, however*, that each Lender may fund each of its LIBOR Loans in any manner it sees fit, and the foregoing assumption shall be utilized only for the calculation of amounts payable under this subsection. Any Lender requesting compensation pursuant to this Section 5.05 will furnish to Administrative Agent and Borrower a certificate setting forth the basis and amount of such request and such certificate, absent manifest error, shall be conclusive. Without limiting the survival of any other covenant

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hereunder, this covenant shall survive the termination of this Agreement and the payment of the Obligations and all other amounts payable hereunder.

## SECTION 5.06. Net Payments.

(a) Except as provided in this Section 5.06(a), all payments made by any Credit Party hereunder or under any Note or any Guarantee will be made without setoff, counterclaim or other defense. Except as required by law, all such payments will be made free and clear of, and without deduction or withholding for, any present or future Taxes now or hereafter imposed by any Governmental Authority or taxing authority with respect to such payments (including Taxes imposed or asserted on amounts payable under this Section). If any Covered Taxes are so deducted or withheld, then the applicable Credit Party agrees to increase the sum payable by such Credit Party so that, after such deduction or withholding (including such deduction or withholding on account of Covered Taxes applicable to additional sums payable under this Section) will not be less than the amount provided for herein or in such other Credit Document. The applicable withholding agent shall timely pay the amount of any Taxes deducted or withheld from a payment made by a Credit Party hereunder or under any note or any Guarantee to the relevant Governmental Authority in accordance with applicable law. Borrower shall furnish to Administrative Agent within 45 days after the date the payment of any Taxes is due pursuant to applicable law documentation reasonably satisfactory to such Lender evidencing such payment by the applicable Credit Party. The Credit Parties agree to jointly and severally indemnify and hold harmless the Administrative Agent and each Lender, and reimburse such Lender upon its written request, for the amount of any Covered Taxes so levied or imposed and paid by such Lender (including Taxes (other than Excluded Taxes) imposed or asserted on amounts payable under this Section) and for any other reasonable expenses arising therefrom in each case, whether or not such Covered Taxes were correctly or legally imposed. Such written request shall include a certificate of such Lender setting forth in reasonable detail the basis of such request and such certificate, absent manifest error, shall be conclusive.

(b) (i) Any Lender that is entitled to an exemption from or reduction of withholding Tax with respect to payments made under any Credit Document shall deliver to Borrower and the Administrative Agent, at the time or times reasonably requested by Borrower or the Administrative Agent, such properly completed and executed documentation reasonably requested by Borrower or the Administrative Agent as will permit such payments to be made without withholding or at a reduced rate of withholding. In addition, any Lender, if reasonably requested by Borrower or the Administrative Agent, shall deliver such other documentation prescribed by applicable law or reasonably requested by Borrower or the Administrative Agent as will enable Borrower or the Administrative Agent to determine whether or not such Lender is subject to backup withholding or information reporting requirements. Notwithstanding anything to the contrary in the preceding two sentences, the completion, execution and submission of such documentation (other than such documentation set forth in Section 5.06(b)(ii), (c), and (d) below) shall not be required if in the Lender's reasonable judgment such completion, execution or submission would subject such Lender to any material unreimbursed cost or expense or would materially prejudice the legal or commercial position of such Lender.

(ii) Each Lender that is not a "United States person" (as such term is defined in Section 7701(a)(30) of the Code) (a "**Non-U.S. Lender**") agrees to the extent it is legally entitled to do so to deliver to Borrower and Administrative Agent on or prior to the Closing Date or, in the case of a Lender that is an assignee or transferee of an interest under this Agreement pursuant to Section 13.05 (unless the assigned or transferee Lender was already a Lender hereunder immediately prior to such assignment or transfer and was in compliance with this Section 5.06(b) as of the date of such assignment or transfer), on the date of such assignment or transfer to such Lender, (i) two accurate and complete original signed copies of the applicable Internal Revenue Service Form W-8 together with any applicable attachments certifying to such Lender's entitlement to exemption from or reduction in the rate of United States withholding tax with respect to payments to be made under this Agreement, any other Credit Document or any Guarantee, or (ii) if the Lender is not a "bank" within the meaning of Section 881(c)(3)(A) of the Code, (x) a certificate substantially in the form of Exhibit E (any such certificate, a "**Foreign Lender Certificate**") and (y) two accurate and complete original signed copies of the applicable Internal Revenue Service

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Form W-8 certifying to such Lender's entitlement to the benefits of the exemption for portfolio interest under Section 881(c) of the Code. Each Non-U.S. Lender, to the extent it is not the beneficial owner, shall deliver to Administrative Agent and to Borrower, on or prior to the Closing Date (in the case of each Lender listed on the signature pages hereof), on or prior to the date of the Assignment Agreement pursuant to which it becomes a Lender (in the case of each other Lender), or on such later date when such Lender ceases to act for its own account with respect to any portion of such sums paid or payable, and at such other times as may be necessary in the determination of Borrower or Administrative Agent, (i) two original copies of the forms or statements required to be provided by such Lender under this Section 5.06(b), properly completed and duly executed by such Lender, to establish the portion of any such sums paid or payable with respect to which such Lender acts for its own account and is not subject to United States withholding tax, and (ii) two original copies of Internal Revenue Service Form W-8IMY (or any successor forms) properly completed and duly executed by such Lender, together with the applicable Internal Revenue Service Form W-8, a U.S. Tax Compliance Certificate substantially in the form of Exhibit D-1, D-2 or D-3, as applicable, and/or any other

certification documents from each beneficial owner. In addition, each Lender agrees that from time to time after the Closing Date, when a lapse in time or change in circumstances renders the previous certification obsolete or inaccurate in any material respect, it will deliver to Borrower and Administrative Agent two new accurate and complete original signed copies of the applicable Internal Revenue Service Form W-8 and, as applicable, a Foreign Lender Certificate, as the case may be, and such other forms as may be required in order to confirm or establish the entitlement of such Lender to a continued exemption from or reduction in United States withholding tax with respect to payments under this Agreement and any Note or any Guarantee. Notwithstanding the foregoing, no Lender shall be required to deliver any such form or certificate if a change in treaty, law or regulation has occurred prior to the date on which such delivery would otherwise be required that renders any such form or certificate inapplicable or would prevent the Lender from duly completing and delivering any such form or certificate with respect to it and such Lender so advises Borrower.

(c) Each Lender and Administrative Agent that is a “United States person” (as such term is defined in Section 7701(a)(30) of the Code) shall deliver at the time(s) and in the manner(s) prescribed by applicable law, to Borrower and Administrative Agent (as applicable), a properly completed and duly executed Internal Revenue Service Form W-9, or any successor form, certifying that such Person is exempt from United States backup withholding Tax on payments made hereunder.

(d) If a payment made to a Lender under any Credit Document would be subject to United States federal withholding tax imposed by FATCA if such Lender were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Code, as applicable), such Lender shall deliver to Borrower and Administrative Agent at the time or times prescribed by law and at such time or times reasonably requested by Borrower or Administrative Agent such documentation prescribed by applicable law (including as prescribed by Section 1471(b)(3)(C)(i) of the Code) and such additional documentation reasonably requested by Borrower or Administrative Agent as may be necessary for Borrower and Administrative Agent to comply with their obligations under FATCA and to determine that such Lender has complied with such Lender’s obligations under FATCA or to determine the amount to deduct and withhold from such payment. For purposes of this Section 5.06(d), FATCA shall include any amendments made to FATCA after the date of this Agreement.

(e) In addition, Borrower agrees to (and shall timely) pay any present or future stamp or documentary taxes or any other charges or similar levies which arise from any payment made hereunder or under the Notes or from the execution, delivery, filing, recordation or registration of, or otherwise with respect to, this Agreement or the Notes (hereinafter referred to as “**Other Taxes**”).

(f) Any Lender claiming any additional amounts payable pursuant to this Section 5.06 agrees to use (at the Credit Parties’ expense) reasonable efforts (consistent with its internal policy and legal and regulatory restrictions) to change the jurisdiction of its Applicable Lending Office if the making of such change would avoid the need for, or in the opinion of such Lender, materially reduce the amount of, any such additional amounts that

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may thereafter accrue and would not, in the sole judgment of such Lender, be otherwise disadvantageous to such Lender.

(g) If (i) Administrative Agent or any Lender receives a cash refund in respect of an overpayment of Taxes from a Governmental Authority with respect to, and actually resulting from, an amount of Taxes actually paid to or on behalf of Administrative Agent or such Lender by Borrower (a “**Tax Benefit**”) and (ii) Administrative Agent or such Lender determines in its good faith sole discretion that such Tax Benefit has been correctly paid by such Governmental Authority, and will not be required to be repaid to such Governmental Authority, then Administrative Agent or such Lender shall notify Borrower of such Tax Benefit and forward the proceeds of such Tax Benefit (or relevant portion thereof) to Borrower as reduced by any reasonable expense or liability incurred by Administrative Agent or such Lender in connection with obtaining such Tax Benefit; *provided, however*, that Borrower, upon the request of Administrative Agent or such Lender, agrees to repay the amount paid over to Borrower (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) to Administrative Agent or such Lender in the event Administrative Agent or such Lender is required to repay such refund to such Governmental Authority. This Section 5.06(g) shall not be construed to require Administrative Agent or any Lender to make available its tax returns (or any other information relating to its taxes that it deems confidential) to Borrower or any other Person. Notwithstanding anything to the contrary, in no event will any Lender be required to pay any amount to Borrower 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 Taxes had never been paid.

(h) For purposes of this Section 5.06, the term “applicable law” includes FATCA.

## ARTICLE VI.

### GUARANTEES

**SECTION 6.01. The Guarantees.** Each (a) Guarantor, jointly and severally with each other Guarantor, hereby guarantees as primary obligor and not as surety to each Secured Party and its successors and assigns the prompt payment and performance in full when due (whether at stated maturity, by acceleration, demand or otherwise) of the principal of and interest (including any interest, fees, costs or charges that would accrue but for the provisions of the Bankruptcy Code after any bankruptcy or insolvency petition under the Bankruptcy Code) on the Loans made by the Lenders to, and the Notes held by each Lender of, Borrower, and (b) Credit Party, jointly and severally with each other Credit Party, hereby guarantees as primary obligor and not as surety to each Secured Party and its successors and assigns the prompt payment and performance in full when due (whether at stated maturity, by acceleration or otherwise) of the principal of and interest (including any interest, fees, costs or charges that would accrue but for the provisions of the Bankruptcy Code after any bankruptcy or insolvency petition under the Bankruptcy Code) of all other Obligations from time to time owing to the Secured Parties by any other Credit Party under any Credit Document, any Swap Contract entered into with a Swap Provider or any Cash Management Agreement entered into with a Cash Management Bank, in each case now or hereinafter created, incurred or made, whether absolute or contingent, liquidated or unliquidated and strictly in accordance with the terms thereof; *provided*, that (i) the obligations guaranteed shall exclude obligations under any Swap Contract or Cash Management Agreements with respect to which the applicable Swap Provider or Cash Management Bank, as applicable, provides notice to Borrower that it does not want such Swap Contract or Cash Management Agreement, as applicable, to be secured, and (ii) as to each Guarantor the obligations guaranteed by such Guarantor hereunder shall not include any Excluded Swap Obligations in respect of such Guarantor (such obligations being guaranteed pursuant to clauses (a) and (b) above being herein collectively called the “**Guaranteed Obligations**” (it being understood that the Guaranteed Obligations of Borrower shall be limited to those referred to in clause (b) above)). Each Credit Party, jointly and severally with each other Credit Party, hereby agrees that if any other Credit Party shall fail to pay in full when due (whether at stated maturity, by acceleration or otherwise) any of the Guaranteed Obligations, such Credit Party will promptly pay the same, without any demand or notice whatsoever, and that in the



case of any extension of time of payment or renewal of any of the Guaranteed Obligations, the same will be promptly paid in full when due (whether at extended maturity, by acceleration or otherwise) in accordance with the terms of such extension or renewal.

**SECTION 6.02. Obligations Unconditional.** The obligations of the Credit Parties under Section 6.01 shall constitute a guaranty of payment (and not of collection) and are absolute, irrevocable and unconditional, joint and several, irrespective of the value, genuineness, validity, regularity or enforceability of the Guaranteed Obligations under this Agreement, the Notes or any other agreement or instrument referred to herein or therein, or any substitution, release or exchange of any other guarantee of or security for any of the Guaranteed Obligations, and, to the fullest extent permitted by applicable law, irrespective of any other circumstance whatsoever that might otherwise constitute a legal or equitable discharge or defense of a surety or guarantor (except for payment in full). Without limiting the generality of the foregoing, it is agreed that the occurrence of any one or more of the following shall not alter or impair the liability of any of the Credit Parties with respect to its respective guaranty of the Guaranteed Obligations which shall remain absolute, irrevocable and unconditional under any and all circumstances as described above:

- (i) at any time or from time to time, without notice to the Credit Parties, the time for any performance of or compliance with any of the Guaranteed Obligations shall be extended, or such performance or compliance shall be waived;
- (ii) the maturity of any of the Guaranteed Obligations shall be accelerated, or any of the Guaranteed Obligations shall be amended in any respect, or any right under the Credit Documents or any other agreement or instrument referred to herein or therein shall be amended or waived in any respect or any other guarantee of any of the Guaranteed Obligations or any security therefor shall be released or exchanged in whole or in part or otherwise dealt with;
- (iii) the release of any other Credit Party pursuant to Section 6.08;
- (iv) any renewal, extension or acceleration of, or any increase in the amount of the Guaranteed Obligations, or any amendment, supplement, modification or waiver of, or any consent to departure from, the Credit Documents;
- (v) any failure or omission to assert or enforce or agreement or election not to assert or enforce, delay in enforcement, or the stay or enjoining, by order of court, by operation of law or otherwise, of the exercise or enforcement of, any claim or demand or any right, power or remedy (whether arising under any Credit Documents, at law, in equity or otherwise) with respect to the Guaranteed Obligations or any agreement relating thereto, or with respect to any other guaranty of or security for the payment of the Guaranteed Obligations;
- (vi) any settlement, compromise, release, or discharge of, or acceptance or refusal of any offer of payment or performance with respect to, or any substitutions for, the Guaranteed Obligations or any subordination of the Guaranteed Obligations to any other obligations;
- (vii) the validity, perfection, non-perfection or lapse in perfection, priority or avoidance of any security interest or lien, the release of any or all collateral securing, or purporting to secure, the Guaranteed Obligations or any other impairment of such collateral;
- (viii) any exercise of remedies with respect to any security for the Guaranteed Obligations (including, without limitation, any collateral, including the Collateral securing or purporting to secure any of the Guaranteed Obligations) at such time and in such order and in such manner as the Administrative

Agent and the Secured Parties may decide and whether or not every aspect thereof is commercially reasonable and whether or not such action constitutes an election of remedies and even if such action operates to impair or extinguish any right of reimbursement or subrogation or other right or remedy that any Credit Party would otherwise have and without limiting the generality of the foregoing or any other provisions hereof, each Credit Party hereby expressly waives any and all benefits which might otherwise be available to such Credit Party as a surety under applicable law, including, without limitation, California Civil Code Sections 2809, 2810, 2819, 2939, 2845, 2848, 2849, 2850, 2855, 2899 and 3433; or

- (ix) any other circumstance whatsoever which may or might in any manner or to any extent vary the risk of any Credit Party as a guarantor in respect of the Guaranteed Obligations or which constitutes, or might be construed to constitute, an equitable or legal discharge of any Credit Party as a guarantor of the Guaranteed Obligations, or of such Credit Party under the guarantee contained in this Article 6 or of any security interest granted by any Credit Party in its capacity as a guarantor of the Guaranteed Obligations, whether in a proceeding under the Bankruptcy Code or under any other federal, state or foreign bankruptcy, insolvency, receivership, or similar law, or in any other instance.

The Credit Parties hereby expressly waive diligence, presentment, demand of payment, protest, marshaling and all notices whatsoever, and any requirement that any Secured Party thereof exhaust any right, power or remedy or proceed against any Credit Party under this Agreement or the Notes or any other agreement or instrument referred to herein or therein, or against any other Person under any other guarantee of, or security for, any of the Guaranteed Obligations. The Credit Parties waive any and all notice of the creation, renewal, extension, waiver, termination or accrual of any of the Guaranteed Obligations and notice of or proof of reliance by any Secured Party thereof upon this guarantee or acceptance of this guarantee, and the Guaranteed Obligations, and any of them, shall conclusively be deemed to have been created, contracted or incurred in reliance upon this guarantee, and all dealings between the Credit Parties and the Secured Parties shall likewise be conclusively presumed to have been had or consummated in reliance upon this guarantee. This guarantee shall be construed as a continuing, absolute, irrevocable and unconditional guarantee of payment and performance without regard to any right of offset with respect to the Guaranteed Obligations at any time or from time to time held by the Secured Parties, and the obligations and liabilities of the Credit Parties hereunder shall not be conditioned or contingent upon the pursuit by the Secured Parties or any other Person at any time of any right or remedy against any Credit Party or against any other Person which may be or become liable in respect of all or any part of the Guaranteed Obligations or against any collateral security or guarantee therefor or right of offset with respect thereto. This guarantee shall remain in full force and effect and be binding in accordance with and to the extent of its terms upon the Credit Parties and the successors and assigns thereof, and shall inure to the benefit of the Secured Parties, and their respective successors and assigns, notwithstanding that from time to time during the term of this Agreement there may be no Guaranteed Obligations outstanding.

For the avoidance of doubt, nothing in this Section 6.02 shall permit amendments to the Credit Documents or an acceleration of the Obligations other than as set forth in the Credit Documents.

**SECTION 6.03. Reinstatement.** The obligations of the Credit Parties under this Article VI shall be automatically reinstated if and to the extent that for any reason any payment by or on behalf of any Credit Party in respect of the Guaranteed Obligations is rescinded or must be otherwise restored by any holder of any of the Guaranteed Obligations, whether as a result of any proceedings in bankruptcy or reorganization or otherwise. The Credit Parties jointly and severally agree that they will indemnify each Secured Party on demand for all reasonable costs and expenses (including reasonable fees of counsel) incurred by such Secured Party in connection with such rescission or restoration, including any such costs and expenses incurred in defending against any claim alleging that such payment constituted a preference, fraudulent transfer or similar payment under any bankruptcy, insolvency or similar law, other than any costs or expenses resulting from the gross negligence, bad faith or willful misconduct of, or material breach by, such Secured Party.

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**SECTION 6.04. Subrogation; Subordination.** Each Credit Party hereby agrees that until the payment and satisfaction in full in cash of all Guaranteed Obligations and the expiration and termination of the Commitments of the Lenders under this Agreement it shall not exercise any right or remedy arising by reason of any performance by it of its guarantee in Section 6.01, whether by subrogation, contribution or otherwise, against any Credit Party of any of the Guaranteed Obligations or any security for any of the Guaranteed Obligations. The payment of any amounts due with respect to any indebtedness of any Credit Party now or hereafter owing to any Credit Party by reason of any payment by such Credit Party under the Guarantee in this Article VI is hereby subordinated to the prior payment in full in cash of the Guaranteed Obligations. Upon the occurrence and during the continuance of an Event of Default, each Credit Party agrees that it will not demand, sue for or otherwise attempt to collect any such indebtedness of any other Credit Party to such Credit Party until the Obligations shall have been paid in full in cash. If an Event of Default has occurred and is continuing, and any amounts are paid to the Credit Parties in violation of the foregoing limitation, such amounts shall be collected, enforced and received by such Credit Party as trustee for the Secured Parties and be paid over to Administrative Agent on account of the Guaranteed Obligations without affecting in any manner the liability of such Credit Party under the other provisions of the guaranty contained herein.

**SECTION 6.05. Remedies.** The Credit Parties jointly and severally agree that, as between the Credit Parties and the Lenders, the obligations of any Credit Party under this Agreement and the Notes may be declared to be forthwith due and payable as provided in Article XI (and shall be deemed to have become automatically due and payable in the circumstances provided in said Article XI) for purposes of Section 6.01, notwithstanding any stay, injunction or other prohibition preventing such declaration (or such obligations from becoming automatically due and payable arising under the Bankruptcy Code or any other federal or state bankruptcy, insolvency or other law providing for protection from creditors) as against such other Credit Parties and that, in the event of such declaration (or such obligations being deemed to have become automatically due and payable), such obligations (whether or not due and payable by Borrower) shall forthwith become due and payable by the other Credit Parties for purposes of Section 6.01.

**SECTION 6.06. Continuing Guarantee.** The guarantee in this Article VI is a continuing guarantee of payment, and shall apply to all Guaranteed Obligations whenever arising.

**SECTION 6.07. General Limitation on Guarantee Obligations.** In any action or proceeding involving any state corporate law, or any state, federal or foreign bankruptcy, insolvency, reorganization or other law affecting the rights of creditors generally, if the obligations of any Credit Party under Section 6.01 would otherwise be held or determined to be void, voidable, invalid or unenforceable, or subordinated to the claims of any other creditors, on account of the amount of its liability under Section 6.01, then, notwithstanding any other provision to the contrary, the amount of such liability shall, without any further action by such Credit Party, any Secured Party or any other Person, be automatically limited and reduced to the highest amount that is valid and enforceable and not subordinated to the claims of other creditors as determined in such action or proceeding.

**SECTION 6.08. Release of Guarantors.** If, in compliance with the terms and provisions of the Credit Documents, (i) the Equity Interests of any Guarantor are directly or indirectly sold or otherwise transferred such that such Guarantor no longer constitutes a Restricted Subsidiary (a “**Transferred Guarantor**”) to a Person or Persons, none of which is Borrower or a Restricted Subsidiary, or (ii) any Restricted Subsidiary is designated as or becomes an Unrestricted Subsidiary, Transferred Guarantor, upon the consummation of such sale or transfer, and such Person so designated or which becomes such an Unrestricted Subsidiary, shall be automatically released from its obligations under this Agreement (including under Section 13.03 hereof) and the other Credit Documents, and its obligations to pledge and grant any Collateral owned by it pursuant to any Security Document, and the pledge of Equity Interests in any Transferred Guarantor or any Unrestricted Subsidiary to Collateral Agent pursuant to the Security Documents shall be automatically released, and, so long as Borrower shall have provided the Agents such certifications or documents as any Agent shall reasonably request, Collateral Agent shall take such actions as are necessary to effect and evidence each release described in this Section 6.08 in accordance with the relevant provisions of the Security Documents and this Agreement.

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**SECTION 6.09. Keepwell.** Each Qualified ECP Guarantor hereby jointly and severally absolutely, unconditionally and irrevocably undertakes to provide such funds or other support as may be needed from time to time by each other Credit Party to honor all of its obligations under the Guarantee in respect of Swap Obligations (provided, however, that each Qualified ECP Guarantor shall only be liable under this Section 6.09 for the maximum amount of such liability that can be hereby incurred without rendering its obligations under this Section 6.09, or otherwise under the Guarantee, as it relates to such Credit Party, voidable under applicable law relating to fraudulent conveyance or fraudulent transfer, and not for any greater amount). The obligations of each Qualified ECP Guarantor under this Section shall remain in full force and effect until a discharge of Guaranteed Obligations. Each Qualified ECP Guarantor intends that this Section 6.09 constitute, and this Section 6.09 shall be deemed to constitute, a “keepwell, support, or other agreement” for the benefit of each other Credit Party for all purposes of Section 1a(18)(A)(v)(II) of the Commodity Exchange Act.

**SECTION 6.10. Right of Contribution.** Each Credit Party hereby agrees that to the extent that a Credit Party (a “**Funding Credit Party**”) shall have paid more than its Fair Share (as defined below) of any payment made hereunder, such Credit Party shall be entitled to seek and receive contribution from and against any other Credit Party hereunder which has not paid its Fair Share of such payment. Each Credit Party’s right of contribution shall be subject to the terms and conditions of Section 6.04. The provisions of this Section 6.10 shall in no respect limit the obligations and liabilities of any Credit Party to the Secured Parties, and each Credit Party shall remain liable to the Secured Parties for the full amount guaranteed by such Credit Party hereunder. “**Fair Share**” means, with respect to a Credit Party as of any date of determination, an amount equal to (i) the ratio of (A) the Adjusted Maximum Amount (as defined below) with respect to such Credit Party to (B) the aggregate of the Adjusted Maximum Amounts with respect to all Credit Parties multiplied by

(ii) the aggregate amount paid or distributed on or before such date by all Funding Credit Parties under this Article VI in respect of the Guaranteed Obligations. “**Fair Share Shortfall**” means, with respect to a Credit Party as of any date of determination, the excess, if any, of the Fair Share of such Credit Party over the Aggregate Payments of such Credit Party. “**Adjusted Maximum Amount**” means, with respect to a Credit Party as of any date of determination, the maximum aggregate amount of the obligations of such Credit Party under this Article VI; provided that, solely for purposes of calculating the “Adjusted Maximum Amount” with respect to any Credit Party for purposes of this Section 6.10, any assets or liabilities of such Credit Party arising by virtue of any rights to subrogation, reimbursement or indemnification or any rights to or obligations of contribution hereunder shall not be considered as assets or liabilities of such Credit Party. “**Aggregate Payments**” means, with respect to a Credit Party as of any date of determination, an amount equal to (i) the aggregate amount of all payments and distributions made on or before such date by such Credit party in respect of this Article VI (including in respect of this Section 6.10) minus (ii) the aggregate amount of all payments received on or before such date by such Credit Party from the other Credit Parties as contributions under this Section 6.10. The amounts payable as contributions hereunder shall be determined as of the date on which the related payment or distribution is made by the applicable Funding Credit Party.

## ARTICLE VII.

### CONDITIONS PRECEDENT

#### **SECTION 7.01. Conditions to Initial Extensions of Credit.**

The obligations of Lenders to make any initial extension of credit hereunder (whether by making a Loan or issuing a replacement and/or new Letter of Credit) are subject to the satisfaction of the following:

(a) **Corporate Documents.** Administrative Agent shall have received copies of the Organizational Documents of each Credit Party and evidence of all corporate or other applicable authority for each Credit Party (including resolutions or written consents and incumbency certificates) with respect to the execution, delivery and performance of such of the Credit Documents to which each such Credit Party is intended to be a party as of the Closing Date, certified as of the Closing Date as complete and correct copies thereof by the Secretary or an Assistant

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Secretary of each such Credit Party (or the member or manager or general partner of such Credit Party, as applicable).

(b) **Officer’s Certificate.** Administrative Agent shall have received an Officer’s Certificate of Borrower, dated the Closing Date, certifying that the conditions set forth in Sections 7.02(a)(i) and 7.02(a)(ii) (giving effect to the provisions contained therein) have been satisfied.

(c) **Opinions of Counsel.** Administrative Agent shall have received the following opinions, each of which shall be addressed to the Administrative Agent, the Collateral Agent and the Lenders, dated the Closing Date and covering such matters as the Administrative Agent shall reasonably request in a manner customary for transactions of this type:

(i) an opinion of Skadden, Arps, Slate, Meagher & Flom LLP, special counsel to the Credit Parties; and

(ii) opinions of local counsel to the Credit Parties in such jurisdictions as are set forth in Schedule 7.01.

(d) **Notes.** Administrative Agent shall have received copies of the Notes, duly completed and executed, for each Lender that requested a Note at least three (3) Business Days prior to the Closing Date.

(e) **Credit Agreement.** Administrative Agent shall have received this Agreement (a) executed and delivered by a duly authorized officer of each Credit Party and (b) executed and delivered by a duly authorized officer of each Person that is a Lender on the Closing Date.

(f) **Filings and Lien Searches.** Administrative Agent shall have received (i) UCC financing statements in form appropriate for filing in the jurisdiction of organization of each Credit Party, (ii) results of lien searches conducted in the jurisdictions in which Borrower and its Restricted Subsidiaries are organized, (iii) security agreements or other agreements in appropriate form for filing in the United States Patent and Trademark Office and United States Copyright Office with respect to intellectual property of Borrower to the extent required pursuant to the Security Agreement, and (iv) certificates of ownership with respect to each Mortgaged Vessel identified as owned by Borrower or a Restricted Subsidiary on Schedule 8.13(b), if any.

(g) **Security Agreement.** (i) Administrative Agent shall have received the Security Agreement and the Initial Perfection Certificate, in each case duly authorized, executed and delivered by the applicable Credit Parties, and (ii) Collateral Agent shall have received, to the extent required pursuant to the Security Agreement and not prohibited by applicable Requirements of Law (including, without limitation, any Gaming Laws), (1) original certificates representing the certificated Pledged Securities (as defined in the Security Agreement) required to be delivered to Collateral Agent pursuant to the Security Agreement, accompanied by original undated stock powers executed in blank (except as set forth on Schedule 9.14), and (2) the promissory notes, intercompany notes, instruments, and chattel paper identified under the name of such Credit Parties in Schedule 7 to the Initial Perfection Certificate (other than such certificates, promissory notes, intercompany notes, instruments and chattel paper that constitute “Excluded Property” (as such term is defined in the Security Agreement)), accompanied by undated notations or instruments of assignment executed in blank, and all of the foregoing shall be reasonably satisfactory to Administrative Agent in form and substance (in each case to the extent required to be delivered to Collateral Agent pursuant to the terms of the Security Agreement).

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(h) **[Reserved].**

(i) **Financial Statements.** Administrative Agent shall have received (i) the audited consolidated balance sheets of Borrower and its Subsidiaries (before giving effect to the Transactions) as of December 31, 2010, 2011 and 2012, and the related statements of earnings, changes in stockholders’ equity and cash flows for the fiscal years ended on those dates, together with reports thereon by Ernst & Young LLP, certified public accountants; provided, that the Administrative Agent acknowledges that it has received such balance sheets and related statements of earnings, changes in

stockholders' equity and cash flows and reports thereon, (ii) the unaudited interim consolidated balance sheet of Borrower and its Subsidiaries (before giving effect to the Transactions) and the related statements of earnings, changes in stockholders' equity and cash flows for each fiscal quarter (other than the fourth fiscal quarter of a fiscal year) ending after December 31, 2012, and at least 45 days prior to the Closing Date and (iii) the unaudited pro forma consolidated balance sheet of Borrower and its Subsidiaries (giving effect to the Transactions) and the related statements of earnings, changes in stockholders' equity and cash flows for the fiscal year ended December 31, 2012 and for each fiscal quarter (other than the fourth fiscal quarter of a fiscal year) ended after December 31, 2012 and at least 45 days prior to the Closing Date, in each case which financial statements have been prepared in accordance with GAAP.

(j) **Environmental Assessments.** Administrative Agent shall have received a Phase I environmental assessment report with respect to each of the Mortgaged Real Properties identified on Schedule 7.01(j) from an environmental consulting firm of nationally recognized standing, which report shall identify existing and potential environmental concerns and shall quantify related costs and liabilities, associated with such Mortgaged Real Properties, and such Phase 1 environmental assessment reports shall not indicate environmental conditions that would reasonably be expected to result in a material liability to the Borrower or the Secured Parties.

(k) **[Reserved].**

(l) **Insurance.** Administrative Agent shall have received evidence of insurance complying with the requirements of Section 9.02 and certificates naming Collateral Agent as an additional insured and/or loss payee to the extent required pursuant to such Section 9.02.

(m) **Credit Documents in Full Force and Effect; Fee Letter.** The Credit Documents required to be executed and delivered on or prior to the Closing Date shall be in full force and effect. Borrower shall have complied, or shall comply substantially concurrently with the funding of the Loans hereunder, in all respects with its payment obligations under the Fee Letter required to be performed on the Closing Date.

(n) **Repayment of Indebtedness.**

(i) Borrower and its Restricted Subsidiaries shall have effected (or will, on the Closing Date, effect) the repayment in full of all obligations and indebtedness of Borrower and its Restricted Subsidiaries in respect of the Existing Credit Agreement, including, without limitation, the termination of all outstanding commitments in effect under the Existing Credit Agreement (with the exception of obligations relating to each applicable Existing Letter of Credit issued thereunder), on customary terms and conditions and pursuant to documentation reasonably satisfactory to Administrative Agent. All Liens and guarantees in respect of such obligations shall have been terminated or released (or arrangements for such termination or release reasonably satisfactory to Administrative Agent shall have been made) (with the exception of obligations relating to each applicable Existing Letter of Credit issued thereunder), and Administrative Agent shall have received (or will, on the Closing Date, receive) evidence thereof reasonably satisfactory to Administrative Agent and a "pay-off" letter or letters reasonably satisfactory to Administrative Agent with respect to such obligations and such UCC termination statements, mortgage releases and other instruments, in each case in proper form for recording, as Administrative Agent shall have reasonably requested to

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release and terminate of record the Liens securing such obligations (or arrangements for such termination or release reasonably satisfactory to Administrative Agent shall have been made).

(ii) Administrative Agent shall have received evidence that the Borrower 2019 Notes have been, or concurrently with the Closing Date will be, discharged or defeased in accordance with the terms thereof or a majority of the Borrower 2019 Notes have been accepted for payment pursuant to a tender offer and, in connection therewith, substantially all of the covenants relating to the Borrower 2019 Notes will be terminated and the remaining Borrower 2019 Notes have been called for redemption;

(o) **Consummation of Transactions.**

(i) The Transactions and the consummation thereof shall be in compliance in all material respects with all applicable Laws (including Gaming Laws and Regulation T, Regulation U and Regulation X) and all applicable Gaming Approvals and other applicable regulatory approvals. After giving effect to the Transactions, there shall be no conflict with, or default under, any material Contractual Obligation of Borrower and its Restricted Subsidiaries (including any such material Contractual Obligations (i) entered into pursuant to the Transactions and (ii) in respect of Senior Unsecured Notes) (except as Administrative Agent shall otherwise agree)).

(ii) Administrative Agent shall have received evidence that Senior Unsecured Notes have been, or on the Closing Date will be, issued by Borrower having an aggregate principal amount of (x) \$550.0 million *minus* (y) the amount of Term B Facility Loans to be made on the Closing Date.

(iii) Administrative Agent shall have received a copy of the Interim Access Agreement in form and substance reasonably satisfactory to the Administrative Agent, duly executed by the parties thereto, and an Officer's Certificate of Borrower, certifying that the Interim Access Agreement is in full force and effect as of the Closing Date.

(iv) Administrative Agent shall have received evidence that Borrower has declared the dividend constituting the Spin-Off.

(p) **Approvals.** Other than as set forth in Section 8.06, Section 8.15 and on Schedule 9.14, all necessary Gaming Approvals and Governmental Authority and third party approvals and/or consents in connection with the Transactions, including without limitation, the transactions contemplated by the Credit Documents (excluding consents from third parties pertaining to collateral and security for the Loans which are addressed elsewhere in this Article VII) shall have been obtained and shall remain in full force and effect, and all applicable waiting periods shall have expired without any action being taken by any competent authority which restrains, enjoins, prevents or imposes materially adverse conditions upon the consummation of the Transactions. In addition, there shall not exist any judgment, order, injunction or other restraint, and there shall be no pending litigation or proceeding by any Governmental Authority, prohibiting, enjoining or imposing materially adverse conditions upon the Transactions, or on the consummation thereof.

(q) **Solvency.** Administrative Agent shall have received a certificate in the form of Exhibit G from a Responsible Officer of Borrower with respect to the Solvency of Borrower (on a consolidated basis with its Restricted Subsidiaries), immediately after giving effect to the consummation of the Transactions.

(r) **Payment of Fees and Expenses.** To the extent invoiced at least three (3) Business Days prior to the Closing Date, all costs, fees, expenses (including, without limitation, reasonable legal fees and expenses of Latham & Watkins LLP, and of local counsel in any applicable jurisdiction, if any) of Administrative Agent, Lead Arrangers and (in the case of fees only) the Lenders required to be paid by this Agreement or by the Fee Letter, in

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each case, payable to Administrative Agent, Lead Arrangers and/or Lenders in respect of the Transactions, shall have been paid to the extent due.

(s) **Patriot Act.** On or prior to the Closing Date, Administrative Agent shall have received at least five (5) days prior to the Closing Date all documentation and other information reasonably requested in writing at least ten (10) days prior to the Closing Date by Administrative Agent that Administrative Agent reasonably determines is required by regulatory authorities from the Credit Parties under applicable “know your customer” and anti-money laundering rules and regulations, including without limitation the Patriot Act.

(t) **Material Adverse Changes.** Since December 31, 2012, there has been no event or circumstance that has had or would reasonably be expected to have, either individually or in the aggregate, a Material Adverse Effect.

**SECTION 7.02. Conditions to All Extensions of Credit.** Subject to the limitations set forth in Section 2.12 and the applicable Incremental Joinder Agreement, the obligations of the Lenders to make any Loan or otherwise extend any credit to Borrower upon the occasion of each Borrowing or other extension of credit (whether by making a Loan or issuing a Letter of Credit) hereunder (including the initial borrowing) is subject to the further conditions precedent that:

(a) **No Default or Event of Default; Representations and Warranties True.** Both immediately prior to the making of such Loan or other extension of credit and also after giving effect thereto and to the intended use thereof:

(i) no Default or Event of Default shall have occurred and be continuing (*provided* that this clause (i) shall not apply to any extensions of credit pursuant to an Incremental Term Loan to the extent provided in Section 2.12 and the applicable Incremental Joinder Agreement); *provided* that, with respect to any Revolving Loans the proceeds of which, substantially concurrently upon the receipt thereof, are used to fund any Permitted Acquisition or other Acquisition not prohibited hereunder that is also funded, in whole or in part, with the proceeds of any Borrowing of First Amendment Incremental Term A Loans, the absence of an Event of Default (other than an Event of Default specified in Section 11.01(b) or 11.01(c) or an Event of Default specified in Section 11.01(g) or 11.01(h) with respect to Borrower) shall not constitute a condition to the funding of such Revolving Loans;

(ii) each of the representations and warranties made by the Credit Parties in Article VIII and by each Credit Party in each of the other Credit Documents to which it is a party shall be true and correct in all material respects on and as of the date of the making of such Loan or other extension of credit with the same force and effect as if made on and as of such date (it being understood and agreed that any such representation or warranty which by its terms is made as of an earlier date shall be required to be true and correct in all material respects only as such earlier date, and that any representation and warranty that is qualified as to “materiality,” “Material Adverse Effect” or similar language shall be true and correct in all respects on the applicable date) (*provided* that this clause (ii) shall not apply to any extensions of credit pursuant to an Incremental Term Loan to the extent provided in Section 2.12 and the applicable Incremental Joinder Agreement); *provided, further*, that, with respect to any Revolving Loans the proceeds of which, substantially concurrently upon the receipt thereof are used to fund any Permitted Acquisition or other Acquisition not prohibited hereunder that is also funded, in whole or in part, with the proceeds of any Borrowing of First Amendment Incremental Term A Loans, the only representations and warranties the making of which shall be a condition to the funding of such Revolving Loans shall be (x) the representations and warranties set forth in Sections 8.01(a) (but only with respect to Credit Parties), 8.04(a)(i), 8.05 (but only as it relates to the Credit Documents), 8.09, 8.11(b), 8.14 (but only as it relates to security interests that may be perfected solely through the filing of UCC financing statements, filing of intellectual property security agreements with the United States Patent and Trademark Office and United

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States Copyright Office and delivery of certificated securities collateral representing Equity Interests in United States Persons), 8.17, 8.21 and 8.27 and (y) the representations and warranties contained in the acquisition agreement relating to such Permitted Acquisition or other Acquisition as are material to the interests of the Lenders, but only to the extent that Borrower or any of its Affiliates have the right to terminate its or their obligations under the acquisition agreement with respect to such Permitted Acquisition or other Acquisition as a result of a breach of such representations and warranties in such acquisition agreement; and

(iii) the sum of the aggregate amount of the outstanding Revolving Loans, *plus* the aggregate amount of the outstanding Swingline Loans plus the aggregate outstanding L/C Liabilities shall not exceed the Total Revolving Commitments then in effect.

(b) **Notice of Borrowing.** Administrative Agent shall have received a Notice of Borrowing and/or Letter of Credit Request, as applicable, duly completed and complying with Section 4.05. Each Notice of Borrowing or Letter of Credit Request delivered by Borrower hereunder shall constitute a representation and warranty by Borrower that on and as of the date of such notice and on and as of the relevant borrowing date or date of issuance of a Letter of Credit (both immediately before and after giving effect to such borrowing or issuance and the application of the proceeds thereof) that the applicable conditions in Sections 7.01 or 7.02, as the case may be, have been satisfied.

## ARTICLE VIII.

### REPRESENTATIONS AND WARRANTIES

Each Credit Party represents and warrants to Administrative Agent, the Collateral Agent and Lenders that, at and as of each Funding Date, in each case immediately before and immediately after giving effect to the transactions to occur on such date (*provided*, that such representations and warranties made on the Closing Date shall be made giving effect to the Transactions):

**SECTION 8.01. Corporate Existence; Compliance with Law.**

(a) Borrower and each Restricted Subsidiary (a) is a corporation, partnership, limited liability company or other entity duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization; (b)(i) has all requisite corporate or other power and authority, and (ii) has all governmental licenses, authorizations, consents and approvals necessary to own its Property and carry on its business as now being conducted; and (c) is qualified to do business and is in good standing in all jurisdictions in which the nature of the business conducted by it makes such qualification necessary; except, in the case of clauses (b)(ii) and (c) where the failure thereof individually or in the aggregate would not reasonably be expected to have a Material Adverse Effect.

(b) Neither Borrower nor any Restricted Subsidiary nor any of its Property is in violation of, nor will the continued operation of Borrower's or such Restricted Subsidiary's Property as currently conducted violate, any Requirement of Law (including, without limitation, any zoning or building ordinance, code or approval or permits or any restrictions of record or agreements affecting the Real Property) or is in default with respect to any judgment, writ, injunction, decree or order of any Governmental Authority, where such violations or defaults would reasonably be expected to have a Material Adverse Effect.

**SECTION 8.02. Financial Condition; Etc.** Borrower has delivered to the Administrative Agent or made publically available (a) the audited consolidated balance sheets of Borrower and its Subsidiaries (before giving effect to the Transactions) as of December 31, 2012, and the related statements of earnings, changes in stockholders' equity and cash flows for the fiscal years ended on those dates, together with reports thereon by Ernst & Young LLP, certified public accountants, (b) the unaudited interim consolidated balance sheet of Borrower and its

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Subsidiaries (before giving effect to the Transactions) and the related statements of earnings, changes in stockholders' equity and cash flows for the most recent fiscal quarter ending after December 31, 2012 (other than the fourth fiscal quarter of any fiscal year) and at least 45 days prior to the Closing Date and (c) the unaudited pro forma consolidated balance sheet of Borrower and its Subsidiaries (giving effect to the Transactions) and the related statements of earnings, changes in stockholders' equity and cash flows for the fiscal year ended December 31, 2012 and for the most recent fiscal quarter ending after December 31, 2012 (other than the fourth fiscal quarter of any fiscal year) and at least 45 days prior to the Closing Date. All of said financial statements, including in each case the related schedules and notes, are true, complete and correct in all material respects and have been prepared in accordance with GAAP consistently applied and present fairly in all material respects the financial position of Borrower and its Subsidiaries as of the respective dates of said balance sheets and the results of their operations for the respective periods covered thereby, subject (in the case of interim statements) to normal period-end audit adjustments and the absence of footnotes.

**SECTION 8.03. Litigation.** Except as set forth on Schedule 8.03, there is no Proceeding (other than any (a) *qui tam* Proceeding, to which this Section 8.03 is limited to knowledge of any Responsible Officer of Borrower, and (b) normal overseeing reviews of the Gaming Authorities) pending against, or to the knowledge of any Responsible Officer of Borrower, threatened in writing against, Borrower or any of its Restricted Subsidiaries or any of their respective Properties before any Governmental Authority or private arbitrator that (i) either individually or in the aggregate, would reasonably be expected to have a Material Adverse Effect or (ii) as of the Closing Date only, challenges the validity or enforceability of any of the Credit Documents.

**SECTION 8.04. No Breach; No Default.**

(a) None of the execution, delivery and performance by any Credit Party of any Credit Document or Transaction Agreement to which it is a party nor the consummation of the transactions herein and therein contemplated (including the Transactions) do or will (i) conflict with or result in a breach of, or require any consent (which has not been obtained and is in full force and effect) under (x) any Organizational Document of any Credit Party or (y) any applicable Requirement of Law (including, without limitation, any Gaming Law) or (z) any order, writ, injunction or decree of any Governmental Authority binding on any Credit Party, or tortiously interfere with, result in a breach of, or require termination of, any term or provision of any Contractual Obligation of any Credit Party or (ii) constitute (with due notice or lapse of time or both) a default under any such Contractual Obligation or (iii) result in or require the creation or imposition of any Lien (except for the Liens created pursuant to the Security Documents) upon any Property of any Credit Party pursuant to the terms of any such Contractual Obligation, except with respect to (i)(y), (i)(z), (ii) or (iii) which would not reasonably be expected to result in a Material Adverse Effect.

(b) No Default or Event of Default has occurred and is continuing.

**SECTION 8.05. Action.** Borrower and each Restricted Subsidiary has all necessary corporate or other organizational power, authority and legal right to execute, deliver and perform its obligations under each Credit Document or Transaction Agreement to which it is (or in the case of the Transaction Agreements, will be) a party and to consummate the transactions herein and therein contemplated; the execution, delivery and performance by Borrower and each Restricted Subsidiary of each Credit Document or Transaction Agreement to which it is (or in the case of the Transaction Agreements, will be) a party and the consummation of the transactions herein and therein contemplated have been duly authorized by all necessary corporate, partnership or other organizational action on its part; and this Agreement has been duly and validly executed and delivered by each Credit Party and constitutes, and each of the Credit Documents or Transaction Agreements to which it is (or in the case of the Transaction Agreements, will be) a party when executed and delivered by such Credit Party (and, in the case of any Transaction Agreement, for so long as such Transaction Agreement is in effect) will constitute, its legal, valid and binding obligation, enforceable against each Credit Party in accordance with its terms, except as such enforceability may be limited by (a) bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium or similar laws of general

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applicability from time to time in effect affecting the enforcement of creditors' rights and remedies and (b) the application of general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

**SECTION 8.06. Approvals.** No authorizations, approvals or consents of, and no filings or registrations with, any Governmental Authority or any securities exchange are necessary for the execution, delivery or performance by Borrower or any Restricted Subsidiary of the Credit Documents or Transaction Agreements to which it is (or in the case of the Transaction Agreements, will be) a party or for the legality, validity or enforceability hereof or

thereof or for the consummation of the Transactions, except for: (i) authorizations, approvals or consents of, and filings or registrations with any Governmental Authority or any securities exchange previously obtained, made, received or issued and filings or registrations with any Governmental Authority or any securities exchange in connection with the Spin-Off, (ii) filings and recordings in respect of the Liens created pursuant to the Security Documents, (iii) the filing of executed copies of this Agreement, the Security Agreement and the Notes executed on the Closing Date with the Mississippi Gaming Commission within thirty (30) days after the Closing Date, (iv) the filing of executed copies of this Agreement, the Security Agreement and the Notes executed on the Closing Date with the Pennsylvania Gaming Control Board within ten (10) days after the Closing Date and with the Pennsylvania Horse Racing Commission promptly after the Closing Date, (v) the notification to the Iowa Racing and Gaming Commission of the consummation of the debt transaction and providing executed copies of the documents evidencing the transactions as requested within ten (10) days following the Closing Date, (vi) the delivery of executed copies of this Agreement, the Security Agreement and the Notes executed on the Closing Date to the Indiana Gaming Commission, (vii) the filing of the executed copies of this Agreement, the Security Agreement and the Notes executed on the Closing Date with the Illinois Gaming Board promptly upon their availability, (viii) the delivery to the Ohio Casino Control Commission of (x) executed copies of this Agreement, the Security Agreement and the Notes executed on the Closing Date within ten (10) days of the Closing Date and (y) a list of Persons who are Lenders and/or holders of the Senior Unsecured Notes as of the Closing Date within fifteen (15) days of the Closing Date, (ix) the filings referred to in Section 8.14, (x) waiver by the Gaming Authorities of any qualification requirement on the part of the Lenders who do not otherwise qualify and are not banks or licensed lending institutions, (xi) prior approval of the Transactions by the Gaming Authorities, which approval has been obtained on or prior to the Closing Date, (xii) consents, authorizations and filings that have been obtained or made and are in full force and effect or the failure of which to obtain would not reasonably be expected to have a Material Adverse Effect, (xiii) any required approvals (including prior approvals) of the requisite Gaming Authorities that any Agent, Lender or participant is required to obtain from, or any required filings with, requisite Gaming Authorities to exercise their respective rights and remedies under this Agreement and the other Credit Documents (as set forth in Section 13.13), (xiv) prior approval from the Nevada Gaming Commission of the Security Agreement and the pledge of any Pledged Nevada Gaming Interests (as defined in the Security Agreement), (xv) the delivery of executed copies of this Agreement, the Security Agreement and the Notes executed on the Closing Date to the West Virginia Lottery Commission and (xvi) filings of Credit Documents with other Governmental Authorities, including Gaming Authorities.

#### **SECTION 8.07. ERISA and Foreign Employee Benefit Matters.**

(a) Except as set forth on Schedule 8.07, no ERISA Event has occurred or is reasonably expected to occur that, when taken together with all other such ERISA Events for which liability is reasonably expected to occur, would reasonably be expected to result in a Material Adverse Effect. Except as set forth on Schedule 8.07, as of the Closing Date, no member of the ERISA Group maintains or contributes to any Pension Plan. Except as set forth on Schedule 8.07, each ERISA Entity is in compliance with the presently applicable provisions of ERISA and the Code with respect to each Employee Benefit Plan (other than to the extent such failure to comply would not reasonably be expected to have a Material Adverse Effect). Except as disclosed on Schedule 8.07, using actuarial assumptions and computation methods consistent with Part 1 of Subtitle E of Title IV of ERISA, the aggregate liabilities of any ERISA Entity to all Multiemployer Plans in the event of a complete withdrawal therefrom, as of the

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close of the most recent fiscal year of each such Multiemployer Plan that precedes the Closing Date, would not reasonably be expected to result in a Material Adverse Effect.

(b) Each Foreign Plan is in compliance with all laws, regulations and rules applicable thereto and the respective requirements of the governing documents for such Foreign Plan (other than to the extent such failure to comply would not reasonably be expected to have a Material Adverse Effect). The aggregate of the liabilities to provide all of the accrued benefits under any funded Foreign Plan (based on reasonable assumptions used by such Foreign Plan) does not as of the most recent valuation report (or as of the end of the most recent plan year if there is no recent valuation report) exceed the current fair market value of the assets held in the trust or other funding vehicle for such Foreign Plan by an amount that would reasonably be expected to have a Material Adverse Effect. Other than to the extent such failure to comply would not reasonably be expected to have a Material Adverse Effect, with respect to any unfunded Foreign Plan, reasonable reserves have been established in accordance with prudent business practice or where required by ordinary accounting practices in the jurisdiction in which such Foreign Plan is maintained. There are no actions, suits or claims (other than routine claims for benefits) pending or to the knowledge of any Responsible Officer of Borrower, threatened against Borrower or any of its Restricted Subsidiaries or any ERISA Entity with respect to any Foreign Plan that would reasonably be expected to result in a Material Adverse Effect.

**SECTION 8.08. Taxes and Tax Treatment of Spin-Off Transaction.** (a) Except as set forth on Schedule 8.08 or as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, (i) all tax returns, statements, reports and forms or other documents (including estimated Tax or information returns and including any required, related or supporting information) (collectively, the “**Tax Returns**”) required to be filed with any taxing authority by, or with respect to, Borrower and each of its Restricted Subsidiaries have been timely filed in accordance with all applicable laws; (ii) Borrower and each of its Restricted Subsidiaries has timely paid or made provision for payment of all Taxes shown as due and payable on Tax Returns that have been so filed or that are otherwise due and payable (other than Taxes which are being contested in good faith by appropriate proceedings and for which adequate reserves have been provided in accordance with GAAP and such proceedings operate to suspend collection of the contested Taxes and enforcement of a Lien in respect thereof) and each Tax Return is accurate and complete in all material respects; and (iii) Borrower and each of its Restricted Subsidiaries has made adequate provision in accordance with GAAP for all Taxes payable by Borrower or such Restricted Subsidiary for which no Tax Return has yet been filed. Neither Borrower nor any of its Restricted Subsidiaries has received written notice of any proposed or pending tax assessment, audit or deficiency against Borrower or such Restricted Subsidiary that would in the aggregate reasonably be expected to have a Material Adverse Effect. As of the Closing Date, there are no material Tax sharing agreements or similar arrangements (including Tax indemnity arrangements) with respect to or involving Borrower or any of its Restricted Subsidiaries other than between or among Borrower and its Restricted Subsidiaries.

(b) The Spin-Off will constitute a distribution under Section 355 of the Code and a reorganization under Section 368(a)(1)(D) of the Code in which no gain or loss is recognized by GLPI, Borrower or the shareholders of Borrower.

**SECTION 8.09. Investment Company Act; Other Restrictions.** Neither Borrower nor any of its Restricted Subsidiaries is an “investment company,” or a company “controlled” by an “investment company” required to be regulated under the Investment Company Act of 1940, as amended. Neither Borrower nor any of its Restricted Subsidiaries is subject to regulation under any law or regulation which limits its ability to incur Indebtedness, other than Regulation X and the Gaming Laws.

**SECTION 8.10. Environmental Matters.** Except as set forth on Schedule 8.10 or as would not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect: (i) each of Borrower

and its Restricted Subsidiaries and each of their businesses, operations and Real Property is and in the last five years has been in material compliance with, and each has no liability under any Environmental Law; (ii) each of Borrower and its Restricted Subsidiaries has obtained all Permits material to, and required for, the conduct of their businesses and operations, and the ownership, operation and use of their assets, all as currently conducted, under any Environmental Law, all such Permits are valid and in good standing and, under the currently effective business plans of Borrower and its Restricted Subsidiaries, no material expenditures or operational adjustments would reasonably be expected to be required during the next five years in order to renew or modify such Permits; (iii) there has been no Release or threatened Release of Hazardous Material on, at, under or from any real property or facility presently or formerly owned, leased, operated or, to the knowledge of any Responsible Officer of Borrower or any of its Restricted Subsidiaries, used for waste disposal by Borrower or any of its Restricted Subsidiaries, or any of their respective predecessors in interest that would reasonably be expected to result in liability to Borrower or any of its Restricted Subsidiaries under any Environmental Law; (iv) there is no Environmental Action pending or, to the knowledge of any Responsible Officer of Borrower or any of its Restricted Subsidiaries, threatened, against Borrower or any of its Restricted Subsidiaries or, relating to real property currently or formerly owned, leased, operated or, to the knowledge of any Responsible Officer of Borrower or any of its Restricted Subsidiaries, used for waste disposal, by Borrower or any of its Restricted Subsidiaries or relating to the operations of Borrower or its Restricted Subsidiaries; (v) none of Borrower or any of its Restricted Subsidiaries is obligated to perform any action or otherwise incur any expense under any Environmental Law pursuant to any legally binding order, decree, judgment or agreement by which it is bound or has assumed by contract or agreement, and none of Borrower or any of its Restricted Subsidiaries is conducting or financing any Response Action pursuant to any Environmental Law with respect to any location; (vi) no circumstances exist that would reasonably be expected to (a) form the basis of an Environmental Action against Borrower or any of its Restricted Subsidiaries, or any of their Real Property, facilities or assets or (b) cause any such Real Property, facilities or assets to be subject to any restriction on ownership, occupancy, use or transferability under any Environmental Law; (vii) no real property or facility presently or formerly owned, operated or leased by Borrower or any of its Restricted Subsidiaries and, to the knowledge of any Responsible Officer of Borrower or any of its Restricted Subsidiaries, no real property or facility presently or formerly used for waste disposal by Borrower or any of its Restricted Subsidiaries or owned, leased, operated or used for waste disposal by any of their respective predecessors in interests is (a) listed or proposed for listing on the National Priorities List promulgated pursuant to CERCLA or (b) included on any similar list maintained by any Governmental Authority including, without limitation, any such list relating to petroleum; (viii) no real property or facility presently or formerly owned, or presently leased or operated by Borrower or any of its Restricted Subsidiaries and, to the knowledge of any Responsible Officer of Borrower or any of its Restricted Subsidiaries, no real property or facility formerly leased or operated by Borrower or any of its Restricted Subsidiaries is listed on the Comprehensive Environmental Response, Compensation, and Liability Information System promulgated pursuant to CERCLA as potentially requiring future Response Action; (ix) no Lien has been recorded or, to the knowledge of any Responsible Officer of Borrower or any of its Restricted Subsidiaries, threatened under any Environmental Law with respect to any Real Property or other assets of Borrower or any of its Restricted Subsidiaries; and (x) the execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby will not affect the validity or require the transfer of any Permit held by Borrower or any of its Restricted Subsidiaries under any Environmental Law, and will not require any notification, registration, filing, reporting, disclosure, investigation, remediation or cleanup pursuant to any Governmental Real Property Disclosure Requirements with respect to each of Borrower and its Restricted Subsidiaries or any of their respective predecessors in interest.

**SECTION 8.11. Use of Proceeds.**

(a) Borrower will use the proceeds of:

(i) Term A Facility Loans, Term B Facility Loans and Revolving Loans made on the Closing Date to finance the Transactions and for general corporate purposes, and

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(ii) Revolving Loans and Term Loans made after the Closing Date for working capital, capital expenditures, Permitted Acquisitions (and other Acquisitions not prohibited hereunder) and general corporate purposes and for any other purposes not prohibited by this Agreement.

(b) Neither Borrower nor any of its Restricted Subsidiaries is engaged principally, or as one of its important activities, in the business of extending credit for the purpose, whether immediate, incidental or ultimate, of buying or carrying Margin Stock. No part of the proceeds of any extension of credit (including any Loans and Letters of Credit) hereunder will be used directly or indirectly and whether immediately, incidentally or ultimately to purchase or carry any Margin Stock or to extend credit to others for such purpose or to refund Indebtedness originally incurred for such purpose or for any other purpose, in each case, that entails a violation of, or is inconsistent with, the provisions of Regulation T, Regulation U or Regulation X. The pledge of any Equity Interests by any Credit Party pursuant to the Security Agreement does not violate such regulations.

**SECTION 8.12. Subsidiaries.**

(a) Schedule 8.12(a) sets forth a true and complete list of the following: (i) all the Subsidiaries of Borrower as of the Closing Date; (ii) the name and jurisdiction of incorporation or organization of each such Subsidiary as of the Closing Date; and (iii) as to each such Subsidiary, the percentage and number of each class of Equity Interests of such Subsidiary owned by Borrower and its Subsidiaries as of the Closing Date.

(b) Schedule 8.12(b) sets forth a true and complete list of all the Immaterial Subsidiaries as of the Closing Date.

(c) Schedule 8.12(c) sets forth a true and complete list of all the Unrestricted Subsidiaries as of the Closing Date.

**SECTION 8.13. Ownership of Property; Liens.**

(a) Except as set forth on Schedule 8.13(a), (a) Borrower and each of its Restricted Subsidiaries has good and valid title to, or a valid (with respect to Real Property and Vessels) leasehold interest in (or subleasehold interest in or other right to occupy), all material assets and Property (including Mortgaged Real Property and Mortgaged Vessels) (tangible and intangible) owned or occupied by it (except insofar as marketability may be limited by any laws or regulations of any Governmental Authority affecting such assets), and (b) all such assets and Property are subject to no Liens other than Permitted Liens. All of the assets and Property owned by, leased to or used by Borrower and each of its Restricted Subsidiaries in its respective businesses are in good operating condition and repair in all material respects (ordinary wear and tear and casualty and force majeure excepted) except in each case where the failure of such asset to meet such requirements would not reasonably be expected to result in a Material Adverse Effect.



(b) Schedule 8.13(b) sets forth a true, complete and correct list of each of the Vessels owned, leased, used or occupied by Borrower or a Restricted Subsidiary as of the Closing Date, including the owner of the Vessel, the name of the Vessel, the official number (if any) of the Vessel and the location where such Vessel is docked or stored.

**SECTION 8.14. Security Interest; Absence of Financing Statements; Etc.**

(a) The Security Documents, once executed and delivered, will create, in favor of Collateral Agent for the benefit of the Secured Parties, as security for the obligations purported to be secured thereby, a valid and enforceable security interest in and Lien upon all of the Collateral (subject to any applicable provisions set forth in the Security Documents with respect to limitations or exclusions from the requirement to perfect the security

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interests and Liens on the collateral described therein), and upon (i) filing, recording, registering or taking such other actions as may be necessary with the appropriate Governmental Authorities (including payment of applicable filing and recording taxes), (ii) the taking of possession or control by Collateral Agent of the Pledged Collateral with respect to which a security interest may be perfected only by possession or control which possession or control shall be given to Collateral Agent to the extent possession or control by Collateral Agent is required by the Security Agreement and (iii) delivery of the applicable documents to Collateral Agent in accordance with the provisions of the applicable Security Documents, for the benefit of the Secured Parties, such security interest shall be a perfected security interest in and Lien upon all of the Collateral (subject to any applicable provisions set forth in the Security Documents with respect to limitations or exclusions from the requirement to perfect the security interests and Liens on the collateral described therein) superior to and prior to the rights of all third Persons and subject to no Liens other than Permitted Liens.

(b) Each Ship Mortgage, once executed and delivered, will create, upon filing and recording in the National Vessel Documentation Center of the United States Coast Guard, in favor of Collateral Agent for the benefit of the Secured Parties a legal, valid and enforceable preferred mortgage upon the applicable Mortgaged Vessel or a leasehold interest in the Mortgaged Vessel under Chapter 313 of Title 46 of the United States Code, subject to no Liens other than Permitted Liens.

**SECTION 8.15. Licenses and Permits.** Except as set forth on Schedule 8.15, Borrower and each of its Restricted Subsidiaries hold all material governmental permits, licenses, authorizations, consents and approvals necessary for Borrower and its Restricted Subsidiaries to own, lease, and operate their respective Properties and to operate their respective businesses as now being conducted (collectively, the “**Permits**”), except for Permits the failure of which to obtain would not reasonably be expected to have a Material Adverse Effect. None of the Permits has been modified in any way since the Closing Date that would reasonably be expected to have a Material Adverse Effect. Except as set forth on Schedule 8.15, all Permits are in full force and effect except where the failure to be in full force and effect would not reasonably be expected to have a Material Adverse Effect. Except as set forth on Schedule 8.15, neither Borrower nor any of its Restricted Subsidiaries has received written notice that any Gaming Authority has commenced proceedings to suspend, revoke or not renew any such Permits where such suspensions, revocations or failure to renew would reasonably be expected to have a Material Adverse Effect.

**SECTION 8.16. Disclosure.** The information, reports, financial statements, exhibits and schedules furnished in writing by or on behalf of any Credit Party to any Secured Party in connection with this Agreement and the other Credit Documents or included or delivered pursuant thereto, but in each case excluding all projections and general industry or economic data, whether prior to or after the date of this Agreement, when taken as a whole and giving effect to all supplements and updates, do not contain any untrue statement of material fact or omit to state a material fact necessary in order to make the statements herein or therein, in light of the circumstances under which they were made, not materially misleading. The projections and *pro forma* financial information furnished at any time by any Credit Party to any Secured Party pursuant to this Agreement have been prepared in good faith based on assumptions believed by Borrower to be reasonable at the time made, it being recognized by the Lenders that such financial information as it relates to future events is not to be viewed as fact and that actual results during the period or periods covered by such financial information may differ from the projected results set forth therein by a material amount and no Credit Party, however, makes any representation as to the ability of any Company to achieve the results set forth in any such projections.

**SECTION 8.17. Solvency.** As of each Funding Date, immediately prior to and immediately following (i) with respect to representations made as of the Closing Date, the consummation of the Transactions and (ii) with respect to all representations (including on the Closing Date), the extensions of credit to occur on such Funding Date, Borrower (on a consolidated basis with its Restricted Subsidiaries) is and will be Solvent (after giving effect to Section 6.07).

**SECTION 8.18. [Reserved]**

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**SECTION 8.19. Intellectual Property.** Except as set forth on Schedule 8.19, Borrower and each of its Restricted Subsidiaries owns or possesses adequate licenses or otherwise has the right to use all of the patents, patent applications, trademarks, trademark applications, service marks, service mark applications, trade names, copyrights, trade secrets, know-how and processes (collectively, “**Intellectual Property**”) (including, as of the Closing Date, all Intellectual Property listed in Schedules 9(a), 9(b) and 9(c) to the Initial Perfection Certificate) that are necessary for the operation of its business as presently conducted except where failure to own or have such right would not reasonably be expected to have a Material Adverse Effect and, as of the Closing Date, all registrations listed in Schedules 9(a), 9(b) and 9(c) to the Initial Perfection Certificate are valid and in full force and effect, except where the invalidity of such registrations would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. Except as set forth on Schedule 8.19, as of the Closing Date, no claim is pending or, to the knowledge of any Responsible Officer of Borrower, threatened to the effect that Borrower or any of its Restricted Subsidiaries infringes or conflicts with the asserted rights of any other Person under any material Intellectual Property, except for such claims that would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. Except as set forth on Schedule 8.19, as of the Closing Date, no claim is pending or, to the knowledge of any Responsible Officer of Borrower, threatened to the effect that any such material Intellectual Property owned or licensed by Borrower or any of its Restricted Subsidiaries or which Borrower or any of its Restricted Subsidiaries otherwise has the right to use is invalid or unenforceable, except for such claims that would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

**SECTION 8.20. [Reserved].**

**SECTION 8.21. Regulation H.** Except for the Real Property listed on Schedule 8.21 attached hereto, as of the Closing Date, no Mortgage encumbers improved real property which is located in an area that has been identified by the Secretary of Housing and Urban Development as an area having special flood hazards and in which flood insurance has been made available under the National Flood Insurance Act of 1968.

**SECTION 8.22. Insurance.** Borrower and each of its Restricted Subsidiaries are insured by insurers of recognized financial responsibility (determined as of the date such insurance was obtained) against such losses and risks (other than wind and flood damage) and in such amounts as are prudent and customary in the businesses in which it is engaged, except to the extent that such insurance is not available on commercially reasonable terms. Borrower and each of its Restricted Subsidiaries maintain all insurance required by Flood Insurance Laws (but shall not, for the avoidance of doubt, be required to obtain insurance with respect to wind and flood damage unless and to the extent required by such Flood Insurance Laws).

**SECTION 8.23. Real Estate.**

(a) Schedule 8.23(a) sets forth a true, complete and correct list of all material Real Property owned and all material Real Property leased by Borrower or any of its Restricted Subsidiaries as of the Closing Date and after giving effect to the Master Lease, including a brief description thereof, including, in the case of leases, the street address (to the extent available) and landlord name. Borrower has delivered to Collateral Agent true, complete and correct copies of all such leases other than the Master Lease.

(b) Except as set forth on Schedule 8.23(b), as of the Closing Date and after giving effect to the Master Lease, to the best of knowledge of any Responsible Officer of Borrower no Taking has been commenced or is contemplated with respect to all or any portion of the Real Property or for the relocation of roadways providing access to such Real Property that either individually or in the aggregate would reasonably be expected to have a Material Adverse Effect.

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**SECTION 8.24. Leases.**

(a) Borrower has delivered to Administrative Agent a true, complete and correct copy of the Master Lease, which Tenant will enter into promptly following the Spin-Off, and in no event later than twenty (20) Business Days after the Closing Date.

(b) So long as the Master Lease is then in effect, Borrower and its Restricted Subsidiaries have paid all material payments required to be made by it under (i) the Master Lease and (ii) all other leases of Real Property where any of the Collateral is or may be located from time to time (other than any amount the validity of which is currently being contested in good faith by appropriate proceedings and with respect to which reserves in conformity with GAAP have been provided on the books of Borrower or such Restricted Subsidiary, as the case may be, and any amounts that are due but not yet delinquent), except where failure to make such payments would not reasonably be expected to have a Material Adverse Effect.

(c) As of (i) the initial effective date thereof and thereafter, the Master Lease will be, and (ii) the Closing Date and thereafter, each of the other leases of Real Property listed on Schedule 8.23(a) (as amended, restated, replaced, supplemented or otherwise modified by Schedule 6(b) to the Perfection Certificates that have been delivered pursuant to Section 9.04(h)(ii)) is, in full force and effect and will be or is, as applicable, legal, valid, binding and enforceable against the Credit Party party thereto, in accordance with its terms, in each case, except as such enforceability may be limited by (x) bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium or similar laws of general applicability from time to time in effect affecting the enforcement of creditors' rights and remedies and (y) the application of general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law), except in the case of clause (ii) as would not reasonably be expected to have a Material Adverse Effect.

(d) None of the leases of Real Property set forth on Schedule 8.23(a) (other than the Master Lease and as amended, restated, replaced, supplemented or otherwise modified by Schedule 6(b) to the Perfection Certificates that have been delivered pursuant to Section 9.04(h)(ii)) have been amended, modified or assigned in any manner that would reasonably be expected to result in a Material Adverse Effect. Borrower has not received written notice from Landlord of any existing breach, default, event of default or, to the best of knowledge of any Responsible Officer of Borrower, event that, with or without notice or lapse of time or both, would constitute a breach, default or an event of default by any Credit Party party to any of the leases of Real Property set forth on Schedule 8.23(a) (other than the Master Lease and as amended, restated, replaced, supplemented or otherwise modified by Schedule 6(b) to each of the Perfection Certificates that have been delivered pursuant to Section 9.04(h)(ii)) that would reasonably be expected to have a Material Adverse Effect.

(e) As of the effective date of the Master Lease, the interest of the tenant under the ground leases forming part of the Leased Property is vested in the Landlord, in each case as set forth on Schedule 1.01(C). Borrower will, and will cause each applicable Restricted Subsidiary to, use its commercially reasonable efforts (which shall not include the payment of consideration (other than reasonable attorneys' fees and other expenses reasonably incidental thereto)) to (x) obtain duly executed and delivered subordination, non-disturbance and attornment agreements ("SNDAs") in form and substance reasonably satisfactory to Administrative Agent by the "lessors" (such term to include, with respect to Property subject to the Master Lease, Landlord and any Person who leases any of the Property subject to the Master Lease to Landlord) and the "fee mortgagees" (such term to include, with respect to Property subject to the Master Lease, mortgagees of Landlord and of any Person who leases any of the Property subject to the Master Lease to Landlord), in each case, under each lease as to which Borrower or any Restricted Subsidiary has granted or is required to grant a Mortgage on its interest thereunder (or under any sublease thereof) and (y) obtain the agreement of the lessors (as defined above in this Section 8.24(e)) under each lease as to which Borrower or any Restricted Subsidiary has granted or is required to grant a Mortgage on its interest thereunder (or under any sublease thereof) that such lessor (as defined above in this Section 8.24(e)) will use commercially reasonable efforts to obtain SNDAs from any future fee mortgagees (as defined above) and cause any existing or future fee mortgagee (as defined above in this Section 8.24(e)) on all or any part of the ground lessor's interest in any Real Property under a lease then in effect with respect to which Borrower or a Restricted Subsidiary

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has granted a Mortgage on its leasehold interest thereunder to be at all times subject and subordinate to, and not attach to or encumber or otherwise affect, the lien of the applicable Mortgages. If, at any time after the Closing Date, Borrower or any Restricted Subsidiary enters into a lease of real property as tenant which is required to be subject to a Mortgage or obtains knowledge of or receives written notice from a lessor under a lease with respect to which Borrower or any Restricted Subsidiary has granted a Mortgage on its interest thereunder that a fee mortgage is encumbering the fee interest underlying such lease,

Borrower will, and will cause each applicable Restricted Subsidiary to, use its commercially reasonable efforts (which shall not include the payment of consideration (other than attorneys' fees and other expenses reasonably incidental thereto)) to obtain a duly executed and delivered SNDA by the lessor and/or fee mortgagee, as applicable.

**SECTION 8.25. Mortgaged Real Property.** Except as set forth on Schedule 8.25(a) or as would not reasonably be expected to have a Material Adverse Effect, with respect to each Mortgaged Real Property, as of the Closing Date (a) there has been issued a valid and proper certificate of occupancy or other local equivalent, if any, for the use then being made of such Mortgaged Real Property to the extent required by applicable Requirements of Law and there is no outstanding citation, notice of violation or similar notice indicating that the Mortgaged Real Property contains conditions which are not in compliance with local codes or ordinances relating to building or fire safety or structural soundness and (b) except as set forth on Schedule 8.25(b), there are no material disputes regarding boundary lines, location, encroachment or possession of such Mortgaged Real Property and no Responsible Officer of Borrower has actual knowledge of any state of facts existing which could give rise to any such claim other than those that would not reasonably be expected to have a Material Adverse Effect; *provided, however*, that with respect to any Mortgaged Real Property in which Borrower or a Restricted Subsidiary has a leasehold estate, the foregoing certifications shall be to Borrower's knowledge only.

**SECTION 8.26. Material Adverse Effect.** Since December 31, 2012, there shall not have occurred any event or circumstance that has had or would reasonably be expected to have, either individually or in the aggregate, a Material Adverse Effect.

**SECTION 8.27. Anti-Terrorism Law.**

(a) No Credit Party and, to the knowledge of any Responsible Officer of Borrower, 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 (the "**Patriot Act**").

(b) No Credit Party and, to the knowledge of any Responsible Officer of Borrower, no Affiliate or broker or other agent of any Credit 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

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(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) No Credit Party and, to the knowledge of any Responsible Officer of Borrower, no broker or other agent of any Credit Party acting in any capacity in connection with the Loans (excluding any Secured Party or any Affiliate thereof) (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 (to its knowledge, with respect to customers and patrons of, and visitors to, any Gaming Facility) described in Section 8.27(b), (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.

(d) Neither Borrower, nor any of its Subsidiaries, nor, to the knowledge of Borrower and its Subsidiaries, any director, officer, employee, agent, affiliate or representative thereof, is an individual or entity currently the subject of any Sanctions, nor is Borrower or any Subsidiary located, organized or resident in a Designated Jurisdiction.

ARTICLE IX.

AFFIRMATIVE COVENANTS

Each Credit Party, for itself and on behalf of its Restricted Subsidiaries, covenants and agrees with Administrative Agent, Collateral Agent and Lenders that until the Obligations have been Paid in Full, (and each Credit Party covenants and agrees that it will cause its Restricted Subsidiaries to observe and perform the covenants herein set forth applicable to any such Restricted Subsidiary):

**SECTION 9.01. Existence; Business Properties.**

(a) Borrower and each of its Restricted Subsidiaries shall do or cause to be done all things necessary to preserve, renew and keep in full force and effect its legal existence, except in a transaction permitted by Section 10.05 or, in the case of any Restricted Subsidiary, where the failure to perform such obligations, individually or in the aggregate, would not reasonably be expected to result in a Material Adverse Effect.

(b) Borrower and each of its Restricted Subsidiaries shall do or cause to be done all things necessary to obtain, preserve, renew, extend and keep in full force and effect the rights, licenses, permits, franchises, authorizations, patents, copyrights, trademarks and trade names material to the conduct of its business except where the failure to do so, individually or in the aggregate, would not reasonably be expected to result in a Material Adverse Effect; comply with all applicable Requirements of Law (including any and all Gaming Laws and any and all zoning, building, ordinance, code or approval or any building permits or any restrictions of record or agreements affecting the Real Property) and decrees and orders of any Governmental Authority, whether now in effect or hereafter enacted, except where the failure to comply, individually or in the aggregate, would not reasonably be expected to result in a Material Adverse Effect and at all times maintain and preserve all of its property and keep such property in good repair, working order and condition (ordinary wear

and tear and casualty and force majeure excepted) except where the failure to do so individually or in the aggregate would not reasonably be expected to result in a Material Adverse Effect; *provided, however*, that nothing in this Section 9.01(b) shall prevent (i) sales, conveyances, transfers or other dispositions of assets, consolidations or mergers by or involving any Company or any other transaction in accordance with Section 10.05; (ii) the withdrawal by any Company of its qualification as a foreign corporation in any jurisdiction where such withdrawal, individually or in the aggregate, would not reasonably be expected to result in a Material Adverse Effect; or (iii) the abandonment by any Company of any

rights, permits, authorizations, copyrights, trademarks, trade names, franchises, licenses and patents that such Company reasonably determines are not useful to its business.

#### **SECTION 9.02. Insurance.**

(a) Borrower and its Restricted Subsidiaries shall maintain with insurers of recognized financial responsibility (determined at the time such insurance is obtained) not Affiliates of Borrower insurance on its Property in at least such amounts and against at least such risks as are customarily insured against by companies engaged in the same or a similar business and operating similar properties in localities where Borrower or the applicable Restricted Subsidiary operates; and furnish to Administrative Agent, upon written request, information as to the insurance carried; *provided* that Borrower and its Restricted Subsidiaries shall not be required to maintain insurance with respect to wind and flood damage on any property for any insurance coverage period unless, and to the extent, such insurance is required by an applicable Requirement of Law. Subject to Section 9.14, Collateral Agent shall be named as an additional insured on all third-party liability insurance policies of Borrower and each of its Restricted Subsidiaries (other than directors and officers liability insurance, insurance policies relating to employment practices liability, crime or fiduciary duties, kidnap and ransom insurance policies, and insurance as to fraud, errors and omissions), and Collateral Agent shall be named as mortgagee/loss payee on all property insurance policies of each such Person.

(b) Borrower and each of its Restricted Subsidiaries shall deliver to Administrative Agent on behalf of the Secured Parties, (i) on or prior to the Closing Date, a certificate dated on or prior (but close) to the Closing Date showing the amount and types of insurance coverage as of such date, (ii) promptly following receipt of any notice from any insurer of cancellation of a material policy or material change in coverage from that existing on the Closing Date, a copy of such notice (or, if no copy is available, notice thereof), and (iii) promptly after such information has been received in written form by Borrower or any of its Restricted Subsidiaries, information as to any claim for an amount in excess of \$25.0 million with respect to any property and casualty insurance policy maintained by Borrower or any of its Restricted Subsidiaries.

(c) If any portion of any Mortgaged Real Property is at any time is located in an area identified by the Federal Emergency Management Agency (or any successor agency) as a special flood hazard area with respect to which flood insurance has been made available under the National Flood Insurance Act of 1968 (as now or hereafter in effect or successor act thereto), then Borrower shall, or shall cause the applicable Credit Party to (i) to the extent required pursuant to Flood Insurance Laws, maintain, or cause to be maintained, with a financially sound and reputable insurer (determined at the time such insurance is obtained), flood insurance in an amount and otherwise sufficient to comply with all applicable rules and regulations promulgated pursuant to such Flood Insurance Laws and (ii) deliver to Administrative Agent evidence of such compliance in form and substance reasonably acceptable to Administrative Agent.

(d) In the event that the proceeds of any insurance claim are paid after Collateral Agent has exercised its right to foreclose after an Event of Default, such proceeds shall be paid to Collateral Agent to satisfy any deficiency remaining after such foreclosure. Collateral Agent shall retain its interest in the policies required to be maintained pursuant to this Section 9.02 during any redemption period.

**SECTION 9.03. Taxes.** Borrower and each of its Restricted Subsidiaries shall timely file all material Tax Returns required to be filed by it and pay and discharge promptly when due all material taxes, assessments and governmental charges or levies imposed upon it or upon its income or profits or in respect of its property, before the same shall become delinquent or in default; *provided, however*, that such payment and discharge shall not be required with respect to any such tax, assessment, charge, levy or claim so long as the validity or amount thereof shall be contested in good faith by appropriate proceedings and Borrower and each of its Subsidiaries shall have set aside on its books adequate reserves with respect thereto in accordance with GAAP and such contest operates to

suspend collection of the contested obligation, tax, assessment or charge and, in the case of Liens on the Collateral, enforcement of such Lien.

**SECTION 9.04. Financial Statements, Etc.** Borrower shall deliver to Administrative Agent for distribution by Administrative Agent to the Lenders (unless a Lender expressly declines in writing to accept):

(a) **Quarterly Financials.** As soon as available and in any event within 45 days after the end of each of the first three quarterly fiscal periods of each fiscal year beginning with the fiscal quarter ending September 30, 2013, consolidated statements of operations, cash flows and stockholders' equity of Consolidated Companies for such period and for the period from the beginning of the respective fiscal year to the end of such period, and the related consolidated balance sheet of Consolidated Companies as at the end of such period, setting forth in each case in comparative form the corresponding consolidated statements of operations, cash flows and stockholders' equity for the corresponding period in the preceding fiscal year to the extent such financial statements are available, accompanied by a certificate of a Responsible Officer of Borrower, which certificate shall state that said consolidated financial statements fairly present in all material respects the consolidated financial condition, results of operations and cash flows of Consolidated Companies in accordance with GAAP, consistently applied, as at the end of, and for, such period (subject to normal year-end audit adjustments and except for the absence of footnotes);

(b) **Annual Financials.** As soon as available and in any event within 90 days after the end of each fiscal year beginning with the fiscal year ending December 31, 2013, consolidated statements of operations, cash flows and stockholders' equity of Consolidated Companies for such year and the related consolidated balance sheet of Consolidated Companies as at the end of such year, setting forth in each case in comparative form the corresponding information as of the end of and for the preceding fiscal year to the extent such financial statements are available, and, in the case of such consolidated financial statements, accompanied by an opinion, without a going concern or similar qualification or exception as to scope (other than any going concern or similar qualification or exception related to the maturity or refinancing of Indebtedness under the Credit Documents or Credit Agreement Refinancing Debt or

prospective compliance with the financial maintenance covenants), thereon of Ernst & Young LLP or other independent certified public accountants of recognized national standing which opinion shall state that said consolidated financial statements fairly present in all material respects the consolidated financial condition, results of operations and cash flows of Consolidated Companies as at the end of, and for, such fiscal year in conformity with GAAP, consistently applied (except as noted therein);

(c) **Auditor's Certificates; Compliance Certificate.** (i) Concurrently with the delivery of the financial statements referred to in Section 9.04(b), a certificate (which certificate may be limited or eliminated to the extent required by accounting rules or guidelines or to the extent not available on commercially reasonable terms as determined in consultation with the Administrative Agent) of the independent certified public accountants reporting on such financial statements stating that in making the examination necessary therefor no knowledge was obtained of any Event of Default relating to the Financial Maintenance Covenants, except as specified in such certificate; and (ii) at the time it furnishes each set of financial statements pursuant to Section 9.04(a) or Section 9.04(b), a certificate of a Responsible Officer of Borrower in the form of Exhibit V hereto (I) to the effect that no Default has occurred and is continuing (or, if any Default has occurred and is continuing, describing the same in reasonable detail and describing the action that the Companies have taken and propose to take with respect thereto) and (II) setting forth in reasonable detail the computations necessary to determine whether Borrower and its Restricted Subsidiaries are in compliance with Section 10.08 as of the end of the respective fiscal quarter or fiscal year;

(d) **Notice of Default.** Promptly after any Responsible Officer of any Company knows that any Default has occurred, a notice of such Default, breach or violation describing the same in reasonable detail and a description of the action that the Companies have taken and propose to take with respect thereto, a copy of which shall be promptly provided to the West Virginia Lottery Commission;

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(e) **Environmental Matters.** Written notice of any claim, release of Hazardous Material, condition, circumstance, occurrence or event arising under Environmental Law which would reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect;

(f) **Annual Budgets.** Unless a Lender declines to accept, beginning with the fiscal year of Borrower commencing on January 1, 2014, as soon as practicable and in any event within 10 days after the approval thereof by the board of directors of Borrower (but not later than 90 days after the beginning of each fiscal year of Borrower), a consolidated plan and financial forecast for such fiscal year, including a forecasted consolidated balance sheet and forecasted consolidated statements of income and cash flows of Consolidated Companies for such fiscal year and for each quarter of such fiscal year, together with an Officer's Certificate containing an explanation of the assumptions on which such forecasts are based and stating that such plan and projections have been prepared using assumptions believed in good faith by management of Borrower to be reasonable at the time made (it being recognized by the Lenders that such plan and projections are not to be viewed as fact and that actual results during the period or periods covered by such plan and projections may differ from the forecasted results set forth therein by a material amount and no Company makes any representation as to the ability of any Company to achieve the results set forth in any such plan or projections);

(g) **Auditors' Reports.** Promptly upon receipt thereof, copies of all annual, interim or special reports issued to Borrower or any Restricted Subsidiary by independent certified public accountants in connection with each annual, interim or special audit of Borrower's or such Restricted Subsidiary's books made by such accountants, including any management letter commenting on Borrower's or such Restricted Subsidiary's internal controls issued by such accountants to management in connection with their annual audit; *provided, however*, that such reports shall only be made available to Administrative Agent and to those Lenders who request such reports through Administrative Agent;

(h) **Lien Matters; Casualty and Damage to Collateral.**

(i) Prompt written notice of (i) the incurrence of any Lien (other than a Permitted Lien (but excluding Liens incurred pursuant to Section 10.02(l))) on the Collateral or any part thereof, (ii) any Casualty Event or other insured damage to any material portion of the Collateral or (iii) the occurrence of any other event that in Borrower's judgment is reasonably likely to materially adversely affect the aggregate value of the Collateral; and

(ii) Each year, at the time of delivery of annual financial statements with respect to the preceding fiscal year pursuant to Section 9.04(b), a certificate of a Responsible Officer of Borrower setting forth the information required pursuant to Schedules 1(a), 1(b), 1(c), 2, 3(a), 3(b), 5, 6(a), 6(b), 6(c), 7, 8, 9(a), 9(b), 9(c) and 10 to the Perfection Certificate or confirming that there has been no change in such information since the date of the Initial Perfection Certificate or the date of the most recent certificate delivered pursuant to this Section 9.04(h)(ii);

(i) **Notice of Material Adverse Effect.** Written notice of the occurrence of any event or occurrence that has had or would reasonably be expected to have a Material Adverse Effect;

(j) **Notice of Default under Master Lease.** Written notice of (i) any amendment or modification of the Master Lease and (ii) receipt of a written notice from the Landlord under the Master Lease of a "Default" or "Event of Default" under and as defined in, the Master Lease or notice of termination of the Master Lease;

(k) **ERISA Information.** Promptly after the occurrence of any ERISA Event that, alone or together with any other ERISA Events that have occurred, would reasonably be expected to result in a Material Adverse Effect, a written notice specifying the nature thereof, what action the Companies or other ERISA Entity have taken,

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are taking or propose to take with respect thereto, and, when known, any action taken or threatened by the IRS, Department of Labor, PBGC or Multiemployer Plan sponsor with respect thereto; and

(l) **Miscellaneous.** Promptly, such financial information, reports, documents and other information with respect to Borrower or any of its Restricted Subsidiaries as Administrative Agent or the Required Lenders may from time to time reasonably request

; *provided* that, notwithstanding the foregoing, nothing in this Section 9.04 shall require delivery of financial information, reports, documents or other information which constitutes attorney work product or is subject to confidentiality agreements or to the extent disclosure thereof would reasonably be expected to result in loss of attorney client privilege with respect thereto.

Reports and documents required to be delivered pursuant to Section 9.04 may be delivered electronically and if so delivered, shall be deemed to have been delivered on the date (i) on which Borrower posts such reports and/or documents, or provides a link thereto on Borrower's website on the Internet at the website address specified below Borrower's name on the signature hereof or such other website address as provided in accordance with Section 13.02; or (ii) on which such reports and/or documents are posted on Borrower's behalf on an Internet or intranet website, if any, to which each Lender and Administrative Agent have access (whether a commercial, third-party website (including the website of the SEC) or whether sponsored by Administrative Agent); *provided* that: Borrower shall provide to Administrative Agent by electronic mail electronic versions (i.e., soft copies) of such reports and/or documents and Administrative Agent shall post such reports and/or documents and notify (which may be by facsimile or electronic mail) each Lender of the posting of any such reports and/or documents. Notwithstanding anything contained herein, in every instance Borrower shall be required to provide the compliance certificate required by Section 9.04(c)(ii) to Administrative Agent in the form of an original paper copy or a .pdf or facsimile copy of the original paper copy.

Concurrently with the delivery of financial statements pursuant to Sections 9.04(a) and 9.04(b) above, in the event that, in the aggregate, the Unrestricted Subsidiaries account for greater than 5% of the Consolidated EBITDA of Borrower and its Subsidiaries on a consolidated basis with respect to the Test Period ended on the last day of the period covered by such financial statements, Borrower shall provide revenues, net income, Consolidated EBITDA (including the component parts thereof), Consolidated Net Indebtedness and cash and Cash Equivalents on hand of Borrower and its Restricted Subsidiaries, on the one hand, and (y) the Unrestricted Subsidiaries, on the other hand (with Consolidated EBITDA to be determined for such Unrestricted Subsidiaries as if references in the definition of Consolidated EBITDA were deemed to be references to the Unrestricted Subsidiaries).

Borrower hereby acknowledges that (a) Administrative Agent will make available to the Lenders and the L/C Lenders materials and/or information provided by or on behalf of Borrower hereunder (collectively, "**Borrower Materials**") by posting the Borrower Materials on IntraLinks/IntraAgency or another similar electronic system (the "**Platform**") and (b) certain of the Lenders (each, a "**Public Lender**") may have personnel who do not wish to receive material non-public information with respect to Borrower or its Affiliates, or the respective securities of any of the foregoing, and who may be engaged in investment and other market-related activities with respect to such Persons' securities. Borrower hereby agrees that it will use commercially reasonable efforts to identify that portion of the Borrower Materials that may be distributed to the Public Lenders and that (w) all such Borrower Materials shall be clearly and conspicuously marked "PUBLIC" which, at a minimum, shall mean that the word "PUBLIC" shall appear prominently on the first page thereof; (x) by marking Borrower Materials "PUBLIC," Borrower shall be deemed to have authorized Administrative Agent, the L/C Lenders and the Lenders to treat such Borrower Materials as not containing any material non-public information (although it may be sensitive and proprietary) with respect to Borrower or its securities for purposes of United States Federal and state securities laws (*provided* however, that to the extent such Borrower Materials constitute information of the type subject to Section 13.10, they shall be treated as set forth in Section 13.10); (y) all Borrower Materials marked "PUBLIC" are permitted to be made available through a portion of the Platform designated "Public Side Information;" and (z) Administrative Agent shall be

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entitled to treat any Borrower Materials that are not marked "PUBLIC" as being suitable only for posting on a portion of the Platform not designated "Public Side Information."

**SECTION 9.05. Maintaining Records; Access to Properties and Inspections.** Borrower and its Restricted Subsidiaries shall keep proper books of record and account in which entries true and correct in all material respects and in material conformity with GAAP and all material Requirements of Law are made. Borrower and its Restricted Subsidiaries will, subject to applicable Gaming Laws, permit any representatives designated by Administrative Agent or any Lender to visit and inspect the financial records and the property of Borrower or such Restricted Subsidiary at reasonable times, upon reasonable notice and as often as reasonably requested, and permit any representatives designated by Administrative Agent or any Lender to discuss the affairs, finances and condition of such Restricted Subsidiaries with the officers thereof and independent accountants therefor (provided Borrower has the opportunity to participate in such meetings); *provided* that, in the absence of a continuing Default or Event of Default, only one such inspection by such representatives (on behalf of Administrative Agent and/or any Lender) shall be permitted in any fiscal year (and such inspection shall be at Administrative Agent and/or such Lenders' expense, as applicable). Notwithstanding anything to the contrary in this Agreement, no Company will be required to disclose, permit the inspection, examination or making of extracts, or discussion of, any document, information or other matter that (i) in respect of which disclosure to Administrative Agent (or its designated representative) or any Lender is then prohibited by law or contract or (ii) is subject to attorney-client or similar privilege or constitutes attorney work product.

**SECTION 9.06. Use of Proceeds.** Borrower shall use the proceeds of the Loans only for the purposes set forth in Section 8.11.

**SECTION 9.07. Compliance with Environmental Law.** Borrower and its Restricted Subsidiaries shall (a) comply with Environmental Law, and will keep or cause all Real Property to be kept free of any Liens imposed under Environmental Law, unless, in each case, failure to do so would not reasonably be expected to have a Material Adverse Effect; (b) in the event of any Hazardous Material at, on, under or emanating from any Real Property which could result in liability under or a violation of any Environmental Law, in each case which would reasonably be expected to have a Material Adverse Effect, undertake, and/or cause any of their respective tenants or occupants to undertake, at no cost or expense to Administrative Agent, Collateral Agent or any Lender, any action required pursuant to Environmental Law to mitigate and eliminate such condition; *provided, however*, that no Company shall be required to comply with any order or directive which is being contested in good faith and by proper proceedings so long as it has maintained adequate reserves with respect to such compliance to the extent required in accordance with GAAP; and (c) at the written request of Administrative Agent, in its reasonable discretion, provide, at no cost or expense to Administrative Agent, Collateral Agent or any Lender, an environmental site assessment (including, without limitation, the results of any soil or groundwater or other testing conducted at Administrative Agent's request) concerning any Real Property now or hereafter owned, leased or operated by Borrower or any of its Restricted Subsidiaries, conducted by an environmental consulting firm proposed by such Credit Party and approved by Administrative Agent in its reasonable discretion indicating the presence or absence of Hazardous Material and the potential cost of any required action in connection with any Hazardous Material on, at, under or emanating from such Real Property; *provided, however*, that such request may be made only if (i) there has occurred and is continuing an Event of Default, or (ii) circumstances exist that reasonably could be expected to form the basis of an Environmental Action against Borrower or any Restricted Subsidiary or any Real Property of Borrower or any of its Restricted Subsidiaries which would reasonably be expected to have a Material Adverse Effect; if Borrower or any of its Restricted Subsidiaries fails to provide the same within sixty (60) days after such request was made (or in such longer period as may be approved by Administrative Agent, in its reasonable discretion), Administrative Agent may but is under no obligation to conduct the same, and Borrower or its Restricted Subsidiary shall grant and hereby grants to Administrative Agent and its agents, advisors and consultants access at reasonable times, and upon reasonable notice to Borrower, to such Real Property and specifically grants

Agent, Collateral Agent or any Lender. Administrative Agent will use its commercially reasonable efforts to obtain from the firm conducting any such assessment usual and customary agreements to secure liability insurance and to treat its work as confidential and shall promptly provide Borrower with all documents relating to such assessment.

**SECTION 9.08. Pledge or Mortgage of Real Property and Vessels.**

(a) Subject to compliance with applicable Gaming Laws, if, after the Closing Date any Credit Party shall acquire any Property (other than any Real Property, any Vessel or Replacement Vessel (other than leasehold interests in any Vessel or Replacement Vessel) or any Property that is subject to a Lien permitted under Section 10.02(i) or Section 10.02(k) to the extent and for so long as the contract or other agreement in which such Lien is granted validly prohibits the creation of Liens securing the Obligations on such Property and to the extent such prohibition is not superseded by the applicable provisions of the UCC), including, without limitation, pursuant to any Permitted Acquisition, or as to which Collateral Agent, for the benefit of the Secured Parties, does not have a perfected Lien and as to which the Security Documents are intended to cover, such Credit Party shall (subject to any applicable provisions set forth in the Security Agreement with respect to limitations on grant of security interests in certain types of assets or Pledged Collateral and limitations or exclusions from the requirement to perfect Liens on such assets or Pledged Collateral) promptly (i) execute and deliver to Collateral Agent such amendments to the Security Documents or such other documents as Collateral Agent deems necessary or advisable in order to grant to Collateral Agent, for the benefit of the Secured Parties, security interests in such Property and (ii) take all actions necessary or advisable to grant to Collateral Agent, for the benefit of the Secured Parties, a perfected first priority security interest (except to the extent limited by applicable Requirements of Law (including, without limitation, any Gaming Laws)), subject to no Liens other than Permitted Liens, in each case, to the extent such actions are required by the Security Agreement; *provided*, that notwithstanding the foregoing, the Credit Parties shall not be required to take such actions with respect to (i) any leasehold interest in any Vessel or Replacement Vessel (other than any such Vessel or Replacement Vessel constituting Leased Property) entered into after the date hereof that has a fair market value (including the reasonably anticipated fair market value of the Gaming Facility or other improvements to be developed thereon) of less than \$250.0 million or a remaining term (including options to extend) of less than 10 years or (ii) any leasehold interest in any Vessel or Replacement Vessel (other than any such Vessel or Replacement Vessel constituting Leased Property) acquired as part of a Permitted Acquisition or other Acquisition permitted hereunder, in either case, if after the exercise of commercially reasonable efforts by the Credit Parties (which shall not include the payment of consideration other than reasonable attorneys' fees and other expenses incidental thereto), the landlord under such lease has not consented to the granting of a such security interest.

(b) If, after the Closing Date, any Credit Party (x) acquires, including, without limitation, pursuant to any Permitted Acquisition, a fee or leasehold interest in Real Property located in the United States which Real Property has a fair market value in excess of \$25.0 million, (y) develops a Gaming Facility on any fee or leasehold interest in Real Property located in the United States which Real Property (including the reasonably anticipated fair market value of the Gaming Facility or other improvements to be developed thereon) has a fair market value in excess of \$25.0 million, determined on an as-developed basis, or (z) acquires a leasehold interest in any Real Property that constitutes Leased Property, in each case, with respect to which a Mortgage was not previously entered into in favor of Collateral Agent (in each case (except with respect to Property described in clause (z) above), other than to the extent such Real Property is subject to a Lien permitted under Section 10.02(i) or 10.02(k) securing Indebtedness to the extent and for so long as the contract or other agreement in which such Lien is granted validly prohibits the creation of Liens securing the Obligations on such Real Property), such Credit Party shall promptly notify Collateral Agent and, if requested by the Required Lenders or Collateral Agent (*provided* that no such request from Collateral Agent or Required Lenders shall be necessary in the case of any Leased Property), within ninety (90) days of such request (or in the case of Leased Property, within fifteen (15) Business Days following the addition of such Leased Property to the Master Lease) (in each case, or such longer period that is reasonably acceptable to Administrative Agent), (i) take such actions and execute such documents as Collateral Agent shall reasonably require to confirm the Lien of an existing Mortgage, if applicable, or to create a new Mortgage on such additional Real Property and (ii) cause to be delivered to Collateral Agent, for the benefit of the Secured Parties, all

documents and instruments reasonably requested by Collateral Agent or as shall be necessary in the opinion of counsel to Collateral Agent to create on behalf of the Secured Parties a valid, perfected, mortgage Lien, subject only to Permitted Liens, including the following:

(1) a Mortgage in favor of Collateral Agent, for the benefit of the Secured Parties, in form for recording in the recording office of the jurisdiction where such Mortgaged Real Property is situated, together with such other documentation as shall be required to create a valid mortgage Lien under applicable law, which Mortgage and other documentation shall be reasonably satisfactory to Collateral Agent and shall be effective to create in favor of Collateral Agent for the benefit of the Secured Parties a valid, perfected, Mortgage Lien on such Mortgaged Real Property subject to no Liens other than Permitted Liens; and

(2) with respect to each Mortgage and each Mortgaged Real Property, each of the items set forth in Sections 7.01(l) and 9.14(b) and, in each case to the extent reasonably requested by the Required Lenders or Collateral Agent, each of the items set forth in Sections 9.14(a)(i)(2), 9.14(a)(i)(3) and 7.01(j) (*provided* that, with respect to Leased Property, the items in Sections 9.14(a)(i)(2) and 9.14(a)(i)(3) (other than fixture filings and title insurance policies) shall not be required prior to the ninetieth (90<sup>th</sup>) day (or such later day as is acceptable to Administrative Agent in its sole discretion) following the date such Property becomes Leased Property);

*provided*, that notwithstanding the foregoing, except for any Property constituting Leased Property, the Credit Parties shall not be required to grant a Mortgage on (i) any leasehold interest in any Real Property entered into after the date hereof that has a fair market value (including the reasonably anticipated fair market value of the Gaming Facility or other improvements to be developed thereon) of less than \$250.0 million or a remaining term (including options to extend) of less than 10 years or (ii) any leasehold interest in any Real Property acquired as part of a Permitted Acquisition or other Acquisition permitted hereunder, in either case, if after the exercise of commercially reasonable efforts by the Credit Parties (which shall not include the payment of consideration other than reasonable attorneys' fees and other expenses incidental thereto), the landlord under such lease has not consented to the granting of a Mortgage;

*provided, further*, that, notwithstanding the foregoing, the delivery of the items required under this Section 9.08(b) shall not be required prior to the date that is one hundred twenty (120) days after the Closing Date.

(c) If, after the Closing Date, any Credit Party (x) acquires, including, without limitation, pursuant to any Permitted Acquisition, a fee interest in a Vessel or a Replacement Vessel with a fair market value in excess of \$25.0 million located or otherwise maintained in the United States and registered with the United States Coast Guard or (y) develops a Gaming Facility with a fair market value in excess of \$25.0 million, determined on an as-developed basis, on any fee interest in a Vessel or a Replacement Vessel located or otherwise maintained in the United States and registered with the United States Coast Guard, in each case, with respect to which a Ship Mortgage was not previously entered into in favor of Collateral Agent (other than to the extent such other Vessel or Replacement Vessel is subject to a Lien permitted under Section 10.02(i) or 10.02(k) securing Indebtedness to the extent and for so long as the contract or other agreement in which such Lien is granted validly prohibits the creation of Liens securing the Obligations on such Vessel or Replacement Vessel), such Credit Party shall promptly notify Collateral Agent and, if requested by the Required Lenders or Collateral Agent, within ninety (90) days of such request (or such longer period that is reasonably acceptable to Administrative Agent), (i) take such actions and execute such documents as Collateral Agent shall reasonably require to confirm the Lien of an existing Ship Mortgage, if applicable, or to create a new Ship Mortgage on such other Vessel or Replacement Vessel and (ii) cause to be delivered to Collateral Agent, for the benefit of the Secured Parties, all documents and instruments reasonably requested by Collateral Agent or as shall be necessary in the opinion of counsel to Collateral Agent to create on behalf of the Secured Parties a legal, valid and enforceable first preferred ship mortgage under Chapter 313 of Title 46 of the United States Code subject to Permitted Liens, including the following:

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(1) a Ship Mortgage reasonably satisfactory to Collateral Agent, granting in favor of Collateral Agent for the benefit of the Secured Parties a legal, valid and enforceable first preferred ship mortgage on each such other Vessel or Replacement Vessel under Chapter 313 of Title 46 of the United States Code subject to Permitted Liens, executed and delivered by a duly authorized officer of the appropriate Credit Party, together with such certificates, affidavits and instruments as shall be reasonably required in connection with filing or recordation thereof and to grant a Lien on each such other Vessel or Replacement Vessel; and

(2) with respect to each Ship Mortgage and each such other Vessel or Replacement Vessel, in each case to the extent reasonably requested by the Required Lenders or Collateral Agent, certificates of insurance as required by each Ship Mortgage, which certificates shall comply with the insurance requirements contained in Section 9.02 and the applicable Ship Mortgage;

*provided, further*, that, notwithstanding the foregoing, the delivery of the items required under this Section 9.08(c) shall not be required prior to the date that is one hundred twenty (120) days after the Closing Date.

(d) Notwithstanding anything contained in Sections 9.08(a), 9.08(b) and 9.08(c) to the contrary (except with respect to Property constituting Leased Property, as to which this Section 9.08(d) shall not apply), in each case, it is understood and agreed that no Lien(s), Mortgage(s) and/or Ship Mortgage(s) in favor of Collateral Agent on any after acquired Property of the applicable Credit Party shall be required to be granted or delivered at such time as provided in such Sections (as applicable) as a result of such Lien(s), Mortgage(s) and/or Ship Mortgage(s) being prohibited by (i) the applicable Gaming Authorities or applicable Law; *provided, however*, that Borrower has used its commercially reasonable efforts to obtain such approvals or (ii) Contractual Obligation (except to the extent invalidated by the applicable provisions of the UCC), *provided*, that such Contractual Obligation (A) is in existence on the Closing Date or (B) except with respect to Mortgages, Ship Mortgages and liens on leaseholds of Vessels or Replacement Vessels, in each case, required pursuant to this Section 9.08, is not prohibited under Section 10.10.

(e) With respect to Lien(s), Mortgage(s) and/or Ship Mortgage(s) relating to any Property acquired (or leased) by any Credit Party after the Closing Date or any Property of any Additional Credit Party or with respect to any Guarantee of any Additional Credit Party, in each case that were not granted or delivered pursuant to Section 9.08(d) or to the second paragraph in Section 9.11, as the case may be, at such time as Borrower reasonably believes such prohibition no longer exists, Borrower shall (and with respect to any items requiring approval from Gaming Authorities, Borrower shall use commercially reasonable efforts to seek the approval from the applicable Gaming Authorities for such Lien(s), Mortgage(s), Ship Mortgage(s) and/or Guarantee and, if such approval is so obtained), comply with Sections 9.08(a), 9.08(b) and/or 9.08(c) or with Section 9.11, as the case may be.

#### **SECTION 9.09. Security Interests; Further Assurances(a)**

(a) Each Credit Party shall, promptly, upon the reasonable request of Collateral Agent, and so long as such request (or compliance with such request) does not violate any Gaming Law or, if necessary, is approved by the Gaming Authority (which Borrower hereby agrees to use commercially reasonable efforts to obtain), at Borrower's expense, execute, acknowledge and deliver, or cause the execution, acknowledgment and delivery of, and thereafter register, file or record, or cause to be registered, filed or recorded, in an appropriate governmental office, any document or instrument supplemental to or confirmatory of the Security Documents or otherwise deemed by Collateral Agent reasonably necessary or desirable to create, protect or perfect or for the continued validity, perfection and priority of the Liens on the Collateral covered or purported to be covered thereby (subject to any applicable provisions set forth in the Security Agreement with respect to limitations on grant of security interests in certain types of Pledged Collateral and limitations or exclusions from the requirement to perfect Liens on such Pledged Collateral and any applicable Requirements of Law including, without limitation, any Gaming Laws) subject to no Liens other than Permitted Liens; *provided* that, notwithstanding anything to the contrary herein or in

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any other Credit Document, in no event shall any Company be required to enter into control agreements with respect to its deposit accounts, securities accounts or commodity accounts. In the case of the exercise by Collateral Agent or the Lenders or any other Secured Party of any power, right, privilege or remedy pursuant to any Credit Document following the occurrence and during the continuation of an Event of Default which requires any consent, approval, registration, qualification or authorization of any Governmental Authority, Borrower and each of its Restricted Subsidiaries shall use commercially reasonable efforts to execute and deliver all applications, certifications, instruments and other documents and papers that Collateral Agent or the Lenders may be so required to obtain. If Collateral Agent reasonably determines that it is required by applicable Requirement of Law to have appraisals prepared in respect of the Real Property of any Credit Party constituting Collateral, Borrower shall provide to Collateral Agent appraisals that satisfy the applicable requirements of the Real Estate Appraisal Reform Amendments of FIRREA.

(b) Without limiting the generality of Section 9.09(a), it is the intent of the parties hereto that all Leased Property be subject to a valid, enforceable and perfected Lien in favor of Collateral Agent within the periods required hereunder (including Sections 9.08 and 9.14). Administrative Agent, Collateral Agent and Borrower agree to cooperate in causing the Leased Property to be subject to such Liens, and Borrower agrees to execute such Security



Documents and amendments or supplements thereto, and take such other actions, as may be reasonably necessary, or reasonably requested by Collateral Agent, to subject the Leased Property to a valid, enforceable and perfected Lien in favor of Collateral Agent within such time periods.

#### **SECTION 9.10. Master Lease.**

(a) Borrower will cause each sublease and each use agreement entered into between Tenant and any other Credit Party with respect to Real Property that is leased from Landlord pursuant to the Master Lease to at all times during the term of the Master Lease to be subject and subordinate to the Master Lease (and to all matters to which the Master Lease is subject and subordinate).

(b) Within twenty (20) Business Days after the Closing Date, Administrative Agent shall have received a copy of the Master Lease duly executed by the parties thereto and an Officer's Certificate of Borrower certifying that the Master Lease is in full force and effect as of such date of delivery.

(c) Borrower will (i) take all actions required by the Master Lease (and such other actions as reasonably requested by Administrative Agent) to cause Landlord to execute and notarize, and, promptly upon receipt (and, in any event, within one (1) Business Day of receipt thereof by Borrower or Tenant), Borrower shall deliver to Administrative Agent, in respect of each Mortgage in respect of Real Property that is leased from Landlord pursuant to the Master Lease, an acknowledgment pursuant to the Master Lease in substantially the form of Exhibit U hereto (or such other form as is agreed to by Administrative Agent in its sole discretion), duly executed and notarized by the Landlord and (ii) designate this Agreement as a "Debt Agreement" pursuant to the definition of the term "Debt Agreement" under the Master Lease.

(d) Within twenty (20) Business Days after the Closing Date, Borrower shall have effected the Spin-Off.

**SECTION 9.11. Additional Credit Parties.** Upon (i) any Credit Party creating or acquiring any Subsidiary that is a Wholly Owned Restricted Subsidiary (other than any Excluded Subsidiary) after the Closing Date, (ii) any Wholly Owned Restricted Subsidiary of a Credit Party ceasing to be an Excluded Subsidiary (including, without limitation, an Immaterial Subsidiary being designated pursuant to Section 9.13 as an Excluded Immaterial Subsidiary) or (iii) any Revocation that results in an Unrestricted Subsidiary becoming a Wholly Owned Restricted Subsidiary (other than any Excluded Subsidiary) of a Credit Party (such Wholly Owned Restricted Subsidiary referenced in clause (i), (ii) or (iii) above, an "**Additional Credit Party**"), such Credit Party shall, assuming and to the extent that it does not violate any Gaming Law or assuming and to the extent it obtains the

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approval of the Gaming Authority to the extent such approval is required by applicable Gaming Laws (which Borrower hereby agrees to use commercially reasonable efforts to obtain), (A) cause each such Wholly Owned Restricted Subsidiary to promptly (but in any event within 45 days (or 95 days, in the event of any Discharge of any Indebtedness in connection with the acquisition of any such Subsidiary) after the later of such event described in clause (i), (ii) or (iii) above or receipt of such approval (or such longer period of time as Administrative Agent may agree to in its sole discretion), execute and deliver all such agreements, guarantees, documents and certificates (including Joinder Agreements, any amendments to the Credit Documents and a Perfection Certificate) as Administrative Agent may reasonably request in order to have such Wholly Owned Restricted Subsidiary become a Guarantor and (B) promptly (I) execute and deliver to Collateral Agent such amendments to or additional Security Documents as Collateral Agent deems necessary or advisable in order to grant to Collateral Agent for the benefit of the Secured Parties, a perfected security interest in the Equity Interests of such new Wholly Owned Restricted Subsidiary which are owned by any Credit Party and required to be pledged pursuant to the Security Agreement, (II) deliver to Collateral Agent the certificates (if any) representing such Equity Interests together with in the case of such Equity Interests, undated stock powers endorsed in blank, (III) cause such new Wholly Owned Restricted Subsidiary to take such actions necessary or advisable (including executing and delivering a Joinder Agreement) to grant to Collateral Agent for the benefit of the Secured Parties, a perfected security interest in the collateral described in (subject to any requirements set forth in the Security Agreement with respect to limitations on grant of security interests in certain types of assets or Pledged Collateral and limitations or exclusions from the requirement to perfect Liens on such Pledged Collateral and excluding acts with respect to perfection of security interests and Liens not required under, or excluded from the requirements under, the Security Agreement) the Security Agreement and all other Property (limited, in the case of Foreign Subsidiaries, to 65% of the voting Equity Interests and 100% of the non-voting Equity Interests of such Foreign Subsidiaries) of such Wholly Owned Restricted Subsidiary in accordance with the provisions of Section 9.08 hereof with respect to such new Wholly Owned Restricted Subsidiary, or by law or as may be reasonably requested by Collateral Agent, and (IV) deliver to Collateral Agent all legal opinions reasonably requested relating to the matters described above covering matters similar to those covered in the opinions delivered on the Closing Date with respect to such Guarantor; *provided, however*, that Borrower shall use its commercially reasonable efforts to obtain such approvals for any Mortgage(s), Ship Mortgage(s) and Lien(s) (including pledge of the Equity Interests of such Subsidiary) to be granted by such Wholly Owned Restricted Subsidiary and for the Guarantee of such Wholly Owned Restricted Subsidiary as soon as reasonably practicable. All of the foregoing actions shall be at the sole cost and expense of the Credit Parties.

Notwithstanding the foregoing in this Section 9.11 to the contrary, it is understood and agreed that (except with respect to Property constituting Leased Property, as to which this paragraph shall not apply), no Lien(s), Mortgage(s), Ship Mortgage(s) and/or Guarantee of the applicable Additional Credit Party shall be required to be granted or delivered at such time as provided in the paragraph above in this Section 9.11 as a result of such Lien(s), Mortgage(s), Ship Mortgage(s) and/or Guarantee being prohibited (i) by the applicable Gaming Authorities, any other applicable Governmental Authorities or applicable Law; *provided, however*, that Borrower has used its commercially reasonable efforts to obtain such approvals for such Lien(s), Mortgage(s), Ship Mortgage(s) and/or Guarantee or (ii) any Contractual Obligation (except to the extent superseded by the applicable provisions of the UCC), *provided*, that such Contractual Obligation (A) is in existence on the Closing Date or, in the case of a Person who will become an Additional Credit Party, is in existence on the date of such acquisition or (B) except with respect to Mortgages, Ship Mortgages and liens on leaseholds of Vessels and Replacement Vessels, in each case, required pursuant to this Section 9.11, is not prohibited by Section 10.10.

#### **SECTION 9.12. Limitation on Designations of Unrestricted Subsidiaries.**

(a) Borrower may, on or after the Closing Date, designate any Subsidiary of Borrower (other than a Subsidiary of Borrower which owns one or more Principal Assets) as an "Unrestricted Subsidiary" under this Agreement (a "**Designation**") only if:

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(i) no Default or Event of Default shall have occurred and be continuing at the time of or immediately after giving effect to such Designation;

(ii) Borrower would be permitted under this Agreement to make an Investment at the time of Designation (assuming the effectiveness of such Designation) in an amount (the “**Designation Amount**”) equal to the sum of (A) the fair market value of the Equity Interest of such Subsidiary owned by Borrower and/or any of the Restricted Subsidiaries on such date and (B) the aggregate amount of Indebtedness of such Subsidiary owed to Borrower and the Restricted Subsidiaries on such date;

(iii) after giving effect to such Designation, Borrower shall be in compliance with the Financial Maintenance Covenants on a Pro Forma Basis as of the most recent Calculation Date; and

(iv) such Subsidiary is not the Tenant under the Master Lease and does not own, operate or manage any Principal Asset.

Upon any such Designation after the Closing Date, Borrower and its Restricted Subsidiaries shall be deemed to have made an Investment in such Unrestricted Subsidiary in an amount equal to the Designation Amount.

(b) Borrower may revoke any Designation of a Subsidiary as an Unrestricted Subsidiary (a “**Revocation**”), whereupon such Subsidiary shall then constitute a Restricted Subsidiary, if:

(i) no Default or Event of Default shall have occurred and be continuing at the time and immediately after giving effect to such Revocation;

(ii) after giving effect to such Revocation, Borrower shall be in compliance with the Financial Maintenance Covenants on a Pro Forma Basis as of the most recent Calculation Date; and

(iii) all Liens and Indebtedness of such Unrestricted Subsidiary and its Subsidiaries outstanding immediately following such Revocation would, if incurred at the time of such Revocation, have been permitted to be incurred for all purposes of this Agreement.

(c) All Designations and Revocations occurring after the Closing Date must be evidenced by an Officer’s Certificate of Borrower delivered to Administrative Agent with the Responsible Officer so executing such certificate certifying compliance with the foregoing provisions of Section 9.12(a) (in the case of any such Designations) and of Section 9.12(b) (in the case of any such Revocations).

(d) If Borrower designates a Guarantor as an Unrestricted Subsidiary in accordance with this Section 9.12, the Obligations of such Guarantor under the Credit Documents shall terminate and be of no further force and effect and all Liens granted by such Guarantor under the applicable Security Documents shall terminate and be released and be of no further force and effect, and all Liens on the Equity Interests and debt obligations of such Guarantor shall be terminated and released and of no further force and effect, in each case, without any action required by Administrative Agent or Collateral Agent. At Borrower’s request, Administrative Agent and Collateral Agent will execute and deliver any instrument evidencing such termination and Collateral Agent shall take all actions appropriate in order to effect such termination and release of such Liens and without recourse or warranty by Collateral Agent (including the execution and delivery of appropriate UCC termination statements and such other instruments and releases as may be necessary and appropriate to effect such release). Any such foregoing actions taken by Administrative Agent and/or Collateral Agent shall be at the sole cost and expense of Borrower.

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### **SECTION 9.13. Limitation on Designation of Immaterial Subsidiaries.**

(a) If for any reason the aggregate fair market value of the assets of all the Immaterial Subsidiaries exceeds the Immaterial Subsidiary Threshold Amount, then, promptly after the occurrence of such event that causes the aggregate fair market value of all Immaterial Subsidiaries to exceed the Immaterial Subsidiary Threshold Amount, Borrower shall designate (an “**Excluded Designation**”) one or more Immaterial Subsidiaries as no longer constituting Immaterial Subsidiaries for all purposes of this Agreement (an “**Excluded Immaterial Subsidiary**”) as may be necessary to ensure that the Immaterial Subsidiary Threshold is satisfied. Borrower may redesignate (a “**Redesignation**”) an Excluded Immaterial Subsidiary as constituting an Immaterial Subsidiary for purposes of this Agreement so long as such redesignated Excluded Immaterial Subsidiary is in compliance with the requirements of the definition of Immaterial Subsidiary and such Redesignation does not cause or otherwise result in the aggregate fair market value of the assets of all Immaterial Subsidiaries (after giving effect to the Redesignation of the Excluded Immaterial Subsidiary as an Immaterial Subsidiary) to exceed the Immaterial Subsidiary Threshold Amount. For purposes of this Section 9.13(a), fair market value shall be determined as of the most recent Calculation Date.

(b) Any such Excluded Designation or Redesignation must be evidenced by an Officer’s Certificate of Borrower delivered to Administrative Agent with the Responsible Officer executing such certificate certifying compliance with the foregoing provisions of Section 9.13(a).

(c) If Borrower redesignates an Excluded Immaterial Subsidiary as an Immaterial Subsidiary in accordance with this Section 9.13, so long as no Default or Event of Default exists, the Obligations of such Excluded Immaterial Subsidiary (as a Guarantor) under the Credit Documents shall terminate and be of no further force and all Liens granted by such Excluded Immaterial Subsidiary (as a Guarantor) under the applicable Security Documents shall terminate and be released and be of no further force and effect, in each case, without any action required by Administrative Agent or Collateral Agent. At Borrower’s request, Administrative Agent and Collateral Agent will execute and deliver any instrument evidencing such termination and Collateral Agent shall take all actions appropriate in order to effect the termination and release of such Lien and without recourse or warranty by Collateral Agent (including the execution and delivery of appropriate UCC termination statements and such other instruments and releases as may be necessary and appropriate to effect such release). Any such foregoing actions taken by Administrative Agent and/or Collateral Agent shall be at the sole cost and expense of Borrower.

### **SECTION 9.14. Post-Closing Matters.** Borrower will cause to be delivered or performed, as applicable, each of the following:

(a) **Mortgage Matters.** On or before the date that is 120 days after the Closing Date (or such later date as is permitted by Administrative Agent in its sole discretion):

(i) **Mortgaged Real Property.** Administrative Agent shall have received with respect to each Mortgaged Real Property identified on Schedule 1.01(E): (1) a Mortgage reasonably satisfactory to Administrative Agent and in form for recording in the recording office of each political subdivision where each such Mortgaged Real Property is situated, which Mortgage shall, when recorded, be effective to create in favor of Collateral Agent on behalf of the Secured Parties a valid, enforceable and perfected first priority Lien (except to the extent limited by applicable Requirements

of Law (including, without limitation, any Gaming Laws)) on such Mortgaged Real Property subordinate to no Liens other than Permitted Liens, (2) with respect to each Mortgage, legal opinions, each of which shall be addressed to Administrative Agent, Collateral Agent and the Lenders, dated the effective date of such Mortgage and covering such matters as the Administrative Agent shall reasonably request in a manner customary for transactions of this type and evidence that Borrower has taken all actions required by Section 9.10(c)(i) with respect to such Mortgage and (3) with respect to each Mortgaged Real Property and Mortgage, such fixture filings, title insurance policies, insurance certificates, surveys, consents, estoppels, Governmental Real Property Disclosure Requirements, certificates, affidavits, instruments, returns and other documents delivered in connection with the Existing Credit Agreement substantially in the form delivered thereunder with such changes

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thereto as shall be necessary to reflect the Transactions and all of the foregoing shall be reasonably satisfactory to Administrative Agent in form and substance.

(ii) **Ship Mortgages.** Administrative Agent shall have received with respect to each Mortgaged Vessel, if any, identified on Schedule 8.13(b): (1) a Ship Mortgage granting in favor of Collateral Agent for the benefit of the Secured Parties a legal, valid and enforceable first preferred ship mortgage on such Mortgaged Vessel under Chapter 313 of Title 46 of the United States Code subject to Permitted Collateral Liens, executed and delivered by a duly authorized officer of the appropriate Credit Party, in each case, together with such certificates, affidavits and instruments as shall be reasonably required in connection with filing or recordation thereof and to grant a Lien on each such Mortgaged Vessel, (2) with respect to each Ship Mortgage, legal opinions, each of which shall be addressed to Administrative Agent, Collateral Agent and the Lenders, dated the effective date of such Ship Mortgage and covering such matters as the Administrative Agent shall reasonably request in a manner customary for transactions of this type and (3) certificates of insurance as required by each Ship Mortgage, which certificates shall comply with the insurance requirements contained in Section 9.02 and the applicable Ship Mortgage, and all of the foregoing shall be reasonably satisfactory to Administrative Agent.

(b) **Flood Area.** Administrative Agent shall have received a completed "Life-of-Loan" Federal Emergency Management Agency standard flood hazard determination with respect to each Mortgaged Real Property for which a Mortgage is granted pursuant to Section 9.14(a)(i) on or before the date the related Mortgage is delivered to Administrative Agent (together with a notice about special flood hazard area status and flood disaster assistance duly executed by Borrower and the applicable Credit Party relating thereto).

(c) **Additional Post-Closing Deliverables.** Each of the documents and other agreements set forth on Schedule 9.14 shall be delivered or performed, as applicable, within the respective time frames specified therein.

## ARTICLE X.

### NEGATIVE COVENANTS

Each Credit Party, for itself and on behalf of its Restricted Subsidiaries, covenants and agrees with the Administrative Agent, Collateral Agent and Lenders that until the Obligations have been Paid in Full (and each Credit Party covenants and agrees that it will cause its Restricted Subsidiaries to observe and perform the covenants herein set forth applicable to any such Restricted Subsidiary):

**SECTION 10.01. Indebtedness.** Borrower and its Restricted Subsidiaries will not incur any Indebtedness, except:

- (a) Indebtedness incurred pursuant to this Agreement and the other Credit Documents;
- (b) Indebtedness outstanding on the Closing Date and listed on Schedule 10.01, and any Permitted Refinancings thereof;
- (c) Indebtedness under any Swap Contracts (including, without limitation, any Interest Rate Protection Agreements); *provided* that such Swap Contracts are entered into for bona fide hedging activities and not for speculative purposes;
- (d) intercompany Indebtedness of Borrower and the Restricted Subsidiaries to Borrower or other Restricted Subsidiaries;

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(e) [Reserved]

(f) Indebtedness in respect of workers' compensation claims, self-insurance obligations, performance bonds, surety appeal or similar bonds, completion guarantees and letters of credit provided by Borrower or any of its Restricted Subsidiaries in the ordinary course of its business (including to support Borrower's or any of its Restricted Subsidiaries' applications for Gaming Licenses or for the purposes referenced in this clause (f));

(g) Indebtedness arising from the honoring by a bank or other financial institution of a check, draft or similar instrument drawn against insufficient funds in the ordinary course of business; *provided, however*, that such Indebtedness is extinguished within five (5) Business Days of its incurrence;

(h) Indebtedness (other than Indebtedness referred to in Section 10.01(b)) in respect of Purchase Money Obligations and Capital Lease Obligations and refinancings or renewals thereof, in an aggregate principal amount not to exceed at any time outstanding, \$100.0 million;

(i) Indebtedness arising in connection with endorsement of instruments for deposit in the ordinary course of business;

(j) guarantees by Borrower or Restricted Subsidiaries of Indebtedness otherwise permitted to be incurred by Borrower or any Restricted Subsidiary under this Section 10.01;

(k) Indebtedness of a Person that becomes a Subsidiary of Borrower or any of its Restricted Subsidiaries after the date hereof in connection with a Permitted Acquisition or other Acquisition permitted hereunder; *provided, however*, that such Indebtedness existed at the time such Person became a

Subsidiary and was not created in anticipation or contemplation thereof, and Permitted Refinancings thereof;

(l) (i) Permitted Unsecured Indebtedness and Permitted Second Lien Indebtedness, so long as (x) Borrower and its Restricted Subsidiaries shall be in compliance with the Financial Maintenance Covenants on a Pro Forma Basis as of the most recent Calculation Date and (y) no Event of Default shall have occurred and be continuing after giving effect thereto and (ii) Permitted Refinancings of any Indebtedness incurred pursuant to clause (i) so long as (x) in the case of Permitted Refinancings of Permitted Second Lien Indebtedness, such Permitted Refinancings qualify as either Permitted Second Lien Indebtedness or Permitted Unsecured Indebtedness or (y) in the case of Permitted Refinancings of Permitted Unsecured Indebtedness, such Permitted Refinancings qualify as Permitted Unsecured Indebtedness;

(m) (i) Permitted First Lien Indebtedness, so long as (w) the Consolidated Senior Secured Net Leverage Ratio shall not exceed 1.50 to 1.00 on a Pro Forma Basis as of the most recent Calculation Date, (x) Borrower and its Restricted Subsidiaries shall be in compliance with the Financial Maintenance Covenants on a Pro Forma Basis as of the most recent Calculation Date, (y) no Event of Default shall have occurred and be continuing after giving effect thereto, and (z) in the reasonable judgment of Borrower, the terms of such Indebtedness, when taken as a whole, are no more restrictive in any material respect than the terms of this Agreement and (ii) Permitted Refinancings of any Indebtedness incurred pursuant to clause (i) so long as such Permitted Refinancings qualify as Permitted First Lien Indebtedness, Permitted Second Lien Indebtedness or Permitted Unsecured Indebtedness;

(n) unsecured Indebtedness of the kind described in clause (d) of the definition of "Indebtedness" so long, in the case of any such Indebtedness other than earn-out obligations, at the time of incurrence thereof, (i) no Event of Default shall have occurred and be continuing after giving effect thereto and (ii) Borrower and its Restricted Subsidiaries shall be in compliance with the Financial Maintenance Covenants on a Pro Forma Basis as of the most recent Calculation Date;

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(o) Permitted Unsecured Refinancing Debt, Permitted First Priority Refinancing Debt and Permitted Second Priority Refinancing Debt;

(p) Indebtedness of Borrower under the Senior Unsecured Notes, and Permitted Refinancings thereof;

(q) unsecured Indebtedness of Borrower or any Restricted Subsidiary in an aggregate principal amount not to exceed \$100.0 million outstanding at any time;

(r) Indebtedness consisting of the financing of insurance premiums in the ordinary course of business; and

(s) Investments under Section 10.04(k), 10.04(l), 10.04(m) and 10.04(s) consisting of guarantees in an aggregate amount not to exceed \$500.0 million at any time;

(t) (A) Indebtedness of Borrower in respect of one or more series of senior unsecured notes or loans, senior secured first lien or junior lien notes or loans or subordinated notes or loans that may be secured by the Collateral on a *pari passu* or junior basis with the Obligations, that are issued or made in lieu of New Revolving Commitments and/or New Term Loan Commitments pursuant to an indenture, a loan agreement or a note purchase agreement or otherwise (any such Indebtedness, "**Incremental Equivalent Debt**"); *provided* that (i) the aggregate principal amount of all Incremental Equivalent Debt issued or incurred pursuant to this Section 10.01(t) shall not, together with any Incremental Revolving Commitments, New Term Loan Commitments (and, without duplication, New Term Loans), Incremental Term A Loan Commitments (and, without duplication, Incremental Term A Loans), and/or Incremental Term B Loan Commitments (and, without duplication, Incremental Term B Loans) issued or incurred (but excluding any such Incremental Term Loan Commitments that have been terminated prior to such date without being funded) on or prior to such date exceed the Incremental Loan Amount (with the Incremental Loan Amount to be determined as if any Incremental Equivalent Debt is senior secured indebtedness even if such Incremental Equivalent Debt is unsecured); (ii) no Event of Default shall have occurred and be continuing or would exist immediately after giving effect to such incurrence or issuance; *provided* that, with respect to any Incremental Equivalent Debt the proceeds of which are used primarily to fund a Permitted Acquisition or other Acquisition substantially concurrently upon the receipt thereof, the absence of an Event of Default shall not constitute a condition to the issuance or incurrence of such Incremental Equivalent Debt; (iii) Borrower shall be in compliance with the Financial Maintenance Covenants on a Pro Forma Basis as of the most recent Calculation Date (*provided* that, for such purpose, (x) Consolidated Net Indebtedness shall not take into account any cash or cash equivalents constituting proceeds of any Incremental Commitments to be provided on such date or any cash or cash equivalents of any Incremental Equivalent Debt to be issued or incurred on such date that may otherwise reduce the amount of Consolidated Net Indebtedness and (y) in the case of any Incremental Revolving Commitments and Incremental Equivalent Debt consisting of revolving credit facilities, *pro forma* effect shall be given to any New Revolving Loans, Revolving Loans under Incremental Revolving Commitments and any loans under any Incremental Equivalent Debt consisting of a revolving credit facility, in each case, to the extent actually made on such date, but any proposed Incremental Revolving Commitments or Incremental Equivalent Debt to be incurred on such date consisting of a revolving credit facility shall not otherwise be treated as drawn); (iv) if such Incremental Equivalent Debt is (x) secured on a *pari passu* basis with the Obligations, such Incremental Equivalent Debt shall have a maturity date and Weighted Average Life to Maturity (without giving effect to prepayments that reduce scheduled amortization) no shorter than any then-existing Tranche of Term Loans or (y) secured on a second lien (or other junior basis) or is unsecured, such Incremental Equivalent Debt shall satisfy the definition of Permitted Junior Debt Conditions; (v) if such Incremental Equivalent Debt is secured (x) on *pari passu* basis with the Obligations, the holders of such Indebtedness (or their representative) and Administrative Agent shall be party to the *Pari Passu* Intercreditor Agreement or (y) or second lien (or other junior) basis to the Obligations, the holders of such Indebtedness (or their representative) shall be party to the Second Lien Intercreditor Agreement (as "Second Priority Debt Parties") with the Administrative Agent; (vi) except as set forth in clauses (i) — (v) of this paragraph (t), the terms (excluding pricing, fees, rate floors, premiums, optional prepayment or optional redemption provisions) of

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such Incremental Equivalent Debt are (as determined by Borrower in good faith), taken as a whole, no more restrictive in any material respect than the terms set forth in this Agreement; and (B) any Permitted Refinancing in respect thereof that satisfies clause (A)(v) and (A)(vi) above;

(u) Indebtedness used to finance, or incurred or issued for the purpose of financing, Expansion Capital Expenditures or Development Projects (including Permitted Refinancings thereof) in an aggregate principal amount not to exceed \$500.0 million at any time outstanding so long as no Event of Default shall have occurred and be continuing after giving effect thereto;

(v) Indebtedness of Restricted Subsidiaries that are Foreign Subsidiaries in an aggregate amount not to exceed \$100.0 million at any time outstanding, so long as such Indebtedness is not guaranteed by any Credit Party; and

(w) Indebtedness in an aggregate amount not to exceed \$100.0 million at any time outstanding consisting of loans advanced by GLPI or its Subsidiaries for the purpose of funding capital expenditures with respect to gaming facilities and related assets, in each case, so long as (i) no Event of Default shall have occurred and be continuing after giving effect thereto and (ii) immediately after giving effect to such Indebtedness Borrower shall be in compliance on a Pro Forma Basis with the Financial Maintenance Covenants as of the most recent Calculation Date.

In the event that any item of Indebtedness meets more than one of the categories set forth above in this Section 10.01, Borrower may classify such item of Indebtedness and only be required to include the amount and type of such Indebtedness in one or more of such clauses, at its election.

In addition, Borrower may, on or prior to the date that is ten (10) Business Days after the First Amendment Incremental Commitments Availability Date, make a one time change in the classification of an item of Indebtedness (or any portion thereof) that was incurred under one or more clauses of this Section 10.01 after the First Amendment Closing Date and prior to the First Amendment Incremental Commitments Availability Date to any other clause of this Section 10.01; *provided* that such Indebtedness (or portion thereof) would be permitted to be incurred pursuant to such other clause at such time of reclassification. On the date of such reclassification, Borrower shall deliver to Administrative Agent a certificate of a Responsible Officer identifying such item of Indebtedness, the clauses of this Section 10.01 that it was initially incurred under and the clause under this Section 10.01 to which it is being reclassified and certifying that such Indebtedness would be permitted to be incurred pursuant to such other clause on the date of such reclassification.

**SECTION 10.02. Liens.** Neither Borrower nor any Restricted Subsidiary shall create, incur, grant, assume or permit to exist, directly or indirectly, any Lien on any Property now owned or hereafter acquired by it or on any income or revenues or rights in respect of any thereof, except (the “**Permitted Liens**”):

(a) Liens for taxes, assessments or governmental charges or levies not yet due and payable or delinquent and Liens for taxes, assessments or governmental charges or levies, which are being contested in good faith by appropriate proceedings and for which adequate reserves have been established in accordance with GAAP;

(b) Liens in respect of property of Borrower or any Restricted Subsidiary imposed by law, which were incurred in the ordinary course of business and do not secure Indebtedness for borrowed money, such as carriers’, warehousemen’s, materialmen’s, landlord’s and mechanics’ liens, maritime liens and other similar Liens arising in the ordinary course of business (i) for amounts not yet overdue for a period of sixty (60) days or (ii) for amounts that are overdue for a period in excess of sixty (60) days that are being contested in good faith by appropriate proceedings (inclusive of amounts that remain unpaid as a result of bona fide disputes with contractors, including where the amount unpaid is greater than the amount in dispute), so long as adequate reserves have been established in accordance with GAAP;

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(c) Liens securing Indebtedness incurred pursuant to Section 10.01(b) and listed on Schedule 10.02; *provided, however*, that (i) such Liens do not encumber any Property of Borrower or any Restricted Subsidiary other than (x) any such Property subject thereto on the Closing Date, (y) after-acquired property that is affixed or incorporated into Property covered by such Lien and (z) proceeds and products thereof, and (ii) the amount of Indebtedness secured by such Liens does not increase, except as contemplated by Section 10.01(b);

(d) easements, rights-of-way, restrictions (including zoning restrictions), covenants, encroachments, protrusions and other similar charges or encumbrances, and minor title deficiencies on or with respect to any Real Property, in each case whether now or hereafter in existence, not (i) securing Indebtedness and (ii) individually or in the aggregate materially interfering with the conduct of the business of Borrower and its Restricted Subsidiaries, taken as a whole;

(e) Liens arising out of judgments or awards not resulting in an Event of Default;

(f) Liens (other than any Lien imposed by ERISA) (i) imposed by law or deposits made in connection therewith in the ordinary course of business in connection with workers’ compensation, unemployment insurance and other types of social security, (ii) incurred in the ordinary course of business to secure the performance of tenders, statutory obligations (other than excise taxes), surety, stay, customs and appeal bonds, statutory bonds, bids, leases, government contracts, trade contracts, rental obligations (limited, in the case of rental obligations, to security deposits and deposits to secure obligations for taxes, insurance, maintenance and similar obligations), utility services, performance and return of money bonds and other similar obligations (exclusive of obligations for the payment of borrowed money), (iii) arising by virtue of deposits made in the ordinary course of business to secure liability for premiums to insurance carriers or (iv) Liens on deposits made to secure Borrower’s or any of its Subsidiaries’ Gaming License applications or to secure the performance of surety or other bonds issued in connection therewith; *provided, however*, that to the extent such Liens are not imposed by Law, such Liens shall in no event encumber any Property other than cash and Cash Equivalents or, in the case of clause (iii), proceeds of insurance policies;

(g) Leases with respect to the assets or properties of any Credit Party or its respective Subsidiaries, in each case entered into in the ordinary course of such Credit Party’s or Subsidiary’s business so long as each of the Leases entered into after the date hereof with respect to Real Property constituting Collateral are subordinate in all respects to the Liens granted and evidenced by the Security Documents and do not, individually or in the aggregate, (x) interfere in any material respect with the ordinary conduct of the business of the Credit Parties and their respective Subsidiaries, taken as a whole, or (y) materially impair the use (for its intended purposes) or the value of the Properties of the Credit Parties and their respective Subsidiaries, taken as a whole; *provided* that upon the request of Borrower, the Collateral Agent shall enter into a customary subordination and non-disturbance and attornment agreement in connection with any such Lease;

(h) Liens arising out of conditional sale, title retention, consignment or similar arrangements for the sale of goods entered into by Borrower or such Restricted Subsidiary in the ordinary course of business;

(i) Liens arising pursuant to Purchase Money Obligations or Capital Lease Obligations (and refinancings or renewals thereof), in each case, incurred pursuant to Section 10.01(h); *provided, however*, that (i) the Indebtedness secured by any such Lien (including refinancings thereof) does not exceed 100% of the cost of the property being acquired, constructed, improved or leased at the time of the incurrence of such Indebtedness (*plus*, in the case of refinancings, accrued interest on the Indebtedness refinanced and fees and expenses relating thereto) and (ii) any such Liens attach only to the property being

financed pursuant to such Purchase Money Obligations or Capital Lease Obligations (or in the case of refinancings which were previously financed pursuant to such Purchase Money Obligations or Capital Lease Obligations) (and directly related assets, including proceeds and replacements thereof) and do not encumber any other Property of Borrower or any Restricted Subsidiary (it being understood that

all Indebtedness to a single lender shall be considered to be a single Purchase Money Obligation, whether drawn at one time or from time to time);

(j) bankers' Liens, rights of setoff and other similar Liens existing solely with respect to cash and Cash Equivalents on deposit in one or more accounts maintained by Borrower or any Restricted Subsidiary, in each case granted in the ordinary course of business in favor of the bank or banks with which such accounts are maintained, securing amounts owing to such bank with respect to cash management and operating account arrangements, including those involving pooled accounts and netting arrangements; *provided, however*, that, unless such Liens are non-consensual and arise by operation of law, in no case shall any such Liens secure (either directly or indirectly) the repayment of any Indebtedness;

(k) Liens on assets of a Person existing at the time such Person is acquired or merged with or into or consolidated with Borrower or any Restricted Subsidiary (and not created in connection with or in anticipation or contemplation thereof); *provided, however*, that such Liens do not extend to assets not subject to such Liens at the time of acquisition (other than improvements and attachments thereon, accessions thereto and proceeds thereof) and are no more favorable to the lienholders than the existing Lien;

(l) in addition to Liens otherwise permitted by this Section 10.02, other Liens incurred with respect to any Indebtedness or other obligations of Borrower or any of its Subsidiaries; *provided, however*, that (x) the aggregate principal amount of such Indebtedness secured by such Liens shall not exceed \$50.0 million at any time outstanding, and (y) any such Liens on Collateral shall be junior or otherwise subordinated in all respects to any Liens in favor of Collateral Agent on any of the Collateral to the reasonable satisfaction of Administrative Agent;

(m) (i) licenses of Intellectual Property to GLPI or one of its Subsidiaries for use in connection with its ownership and operation of the TRS Properties, and (ii) licenses of Intellectual Property granted by Borrower or any Restricted Subsidiary in the ordinary course of business and not interfering in any material respect with the ordinary conduct of the business of Borrower and its Restricted Subsidiaries, taken as a whole;

(n) Liens pursuant to the Credit Documents, including, without limitation, Liens related to Cash Collateralizations;

(o) Permitted Vessel Liens;

(p) Liens arising under applicable Gaming Laws; *provided, however*, that no such Lien constitutes a Lien securing repayment of Indebtedness for borrowed money;

(q) (i) Liens pursuant to the Master Lease and similar leases entered into for the purpose of, or with respect to, operating or managing gaming facilities and related assets, which Liens are limited to the leased property under the applicable lease and granted to the landlord under such lease for the purpose of securing the obligations of the tenant under such lease to such landlord and (ii) Liens on cash and Cash Equivalents (and on the related escrow accounts or similar accounts, if any) required to be paid to the lessors (or lenders to such lessors) under such leases or maintained in an escrow account or similar account pending application of such proceeds in accordance with the applicable lease;

(r) Liens to secure Indebtedness incurred pursuant to Section 10.01(v); *provided* that such Liens do not encumber any Property of Borrower or any Restricted Subsidiary other than any Foreign Subsidiary;

(s) Prior Mortgage Liens with respect to the applicable Mortgaged Real Property;

(t) Liens on cash and Cash Equivalents deposited to Discharge, redeem or defease Indebtedness that was permitted to so be repaid;

(u) Liens arising from precautionary UCC financing statements filings regarding operating leases or consignment of goods entered into in the ordinary course of business;

(v) Liens on the Collateral securing (i) Permitted First Lien Indebtedness permitted under Section 10.01(m) or Permitted First Priority Refinancing Debt and, in each case, subject to the *Pari Passu* Intercreditor Agreement or (ii) Permitted Second Lien Indebtedness permitted under Sections 10.01(l) or 10.01(m) or Permitted Second Priority Refinancing Debt and, in each case, subject to the Second Lien Intercreditor Agreement (as "Second Priority Liens");

(w) Liens on the Collateral securing Incremental Equivalent Debt, and Permitted Refinancings thereof, in each case, permitted under 10.01(t) and subject to the *Pari Passu* Intercreditor Agreement or the Second Lien Intercreditor Agreement (in the case of Liens intended to be subordinated to the Liens securing the Obligations, as "Second Priority Liens"), as and to the extent applicable;

(x) Liens solely on any cash earnest money deposits made by Borrower or any of its Subsidiaries in connection with any letter of intent or purchase agreement in respect of a Permitted Acquisition or Investment (including any other Acquisition) not prohibited by this Agreement;

(y) in the case of any non-Wholly Owned Subsidiary or Joint Venture, any put and call arrangements or restrictions on disposition related to its Equity Interests set forth in its organizational documents or any related joint venture or similar agreement;

(z) Liens arising in connection with transactions relating to the selling or discounting of accounts receivable in the ordinary course of business;

(aa) licenses, leases or subleases granted to other Persons not materially interfering with the conduct of the business of Borrower and its Subsidiaries taken as a whole;

- (bb) any interest or title of a lessor, sublessor, licensee or licensor under any lease or license agreement permitted by this Agreement;
- (cc) Liens created by the applicable Transfer Agreement;
- (dd) Liens securing obligations of any Person in respect of employee deferred compensation and benefit plans in connection with “rabbi trusts” or other similar arrangements; and
- (ee) Liens arising pursuant to Indebtedness incurred pursuant to Section 10.01(u).

In connection with the granting of Liens of the types described in clauses (c), (g), (k), (l), (r), (s), (t), (v) and (w) of this Section 10.02 by Borrower or any of its Restricted Subsidiaries, Administrative Agent and Collateral Agent shall be authorized to take any actions deemed appropriate by it in connection therewith (including, without limitation, by entering into or amending appropriate lien subordination or intercreditor agreements).

**SECTION 10.03. Master Lease.** Neither Borrower nor Tenant will terminate or allow or consent to the termination of the Master Lease or will enter into any amendment, waiver or modification to the Master Lease if (i) such amendment, waiver or modification could reasonably be expected to have a Material Adverse Effect or (ii) after giving pro forma effect to such amendment, waiver or modification, Borrower will not be in compliance with

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the provisions of Section 10.08; *provided* that neither Borrower nor Tenant will allow any amendment, waiver or modification of the Master Lease that (i) shortens the term of the Master Lease to less than twenty (20) years (including extension or renewal options) from the date of such amendment, waiver or modification, (ii) tightens the financial covenants applicable to the tenant under the Master Lease (other than technical amendments to the definitions of such financial terms so long as such amendments do not materially affect the Tenant’s ability to comply with such financial covenants), (iii) amends, waives or modifies Articles XIV (Insurance Proceeds), XV (Condemnation), XVII (Leasehold Mortgagees), XXII (Assignments) or XXXVI (Organized Sale Process) of the Master Lease (including by amendment of the defined terms used therein) in a manner adverse in any material respects to the interests of the Secured Parties or (iv) amends, waives or modifies Article XI (Liens) of the Master Lease to the extent adversely impacting the ability of the Secured Parties to obtain or maintain a Lien on the Properties of Borrower or its Restricted Subsidiaries, in each case, without the consent of the Required Lenders. Tenant shall not transfer its rights or obligations under the Master Lease to any Person other than to Borrower or a Guarantor; *provided, however*, that no such transfer shall be permitted hereunder unless expressly permitted under the Master Lease or consented to in writing by Landlord.

**SECTION 10.04. Investments, Loans and Advances.** Neither Borrower nor any Restricted Subsidiary will, directly or indirectly, make any Investment, except for the following:

- (a) Investments outstanding on the Closing Date and identified on Schedule 10.04 and any Investments received in respect thereof without the payment of additional consideration (other than through the issuance of or exchange of Qualified Capital Stock);
- (b) Investments in cash and Cash Equivalents;
- (c) Borrower may enter into Swap Contracts to the extent permitted by Section 10.01(c);
- (d) Investments (i) by Borrower in any Restricted Subsidiary, (ii) by any Restricted Subsidiary in Borrower, (iii) by a Restricted Subsidiary in another Restricted Subsidiary and (iv) by Borrower or any Restricted Subsidiary in any other Company (*provided* that Investments pursuant to this clause (iv) shall not exceed \$50.0 million in the aggregate outstanding at any time); *provided* that, in each case, any intercompany loan (it being understood and agreed that intercompany receivables or advances made in the ordinary course of business do not constitute loans) in excess of \$10.0 million individually shall be evidenced by a promissory note and, to the extent that the payee, holder or lender of such intercompany loan is a Credit Party, such promissory note shall be pledged (and delivered) by such Credit Party to Collateral Agent on behalf of the Secured Parties;
- (e) Borrower and its Restricted Subsidiaries may sell or transfer assets to the extent permitted by Section 10.05;
- (f) Investments in securities of trade creditors or customers received pursuant to any plan of reorganization or similar arrangement upon the bankruptcy or insolvency of such trade creditors or customers or in settlement of delinquent or overdue accounts in the ordinary course of business;
- (g) Investments made by Borrower or any Restricted Subsidiary as a result of consideration received in connection with an Asset Sale made in compliance with Section 10.05;
- (h) Investments consisting of moving, entertainment and travel expenses, drawing accounts and similar expenditures made to officers, directors and employees in the ordinary course of business not to exceed \$10.0 million in the aggregate at any time outstanding;
- (i) Permitted Acquisitions;

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- (j) extensions of trade credit (including to gaming customers) in the ordinary course of business;
- (k) in addition to Investments otherwise permitted by this Section 10.04, other Investments by Borrower or any of its Restricted Subsidiaries; *provided* that the amount of such Investments to be made pursuant to this Section 10.04(k), together with the Outstanding Investment Amount as of such date, do not exceed the sum of (i) \$500 million *plus* (ii) the Aggregate Existing Investment Reductions as of such date and, *provided further*, that (x) at the time of making such Investment and after giving effect thereto, no Event of Default shall have occurred and be continuing, (y) immediately after giving effect to such Investment Borrower shall be in compliance on a Pro Forma Basis with the Financial Maintenance Covenants as of the most recent Calculation Date and (z) Borrower shall designate each such Investment as having been made pursuant to this Section 10.04(k) in the Compliance Certificate for the fiscal quarter in which such Investment is made;

(l) in addition to Investments otherwise permitted by this Section 10.04, Investments by Borrower or any of its Restricted Subsidiaries; *provided* that (i) the amount of such Investments to be made pursuant to this Section 10.04(l) do not exceed the Available Amount determined at the time such Investment is made, (ii) immediately before and after giving effect thereto, no Event of Default has occurred and is continuing and (iii) immediately after giving effect thereto Borrower shall be in compliance on a Pro Forma Basis with the Financial Maintenance Covenants as of the most recent Calculation Date;

(m) additional Investments so long as, at the time such Investment is made and after giving effect thereto, (x) no Event of Default has occurred and is continuing and (y) the Consolidated Senior Secured Net Leverage Ratio is less than or equal to 1.50 to 1.00 on a Pro Forma Basis as of the most recent Calculation Date;

(n) payments with respect to any Qualified Contingent Obligations, so long as, at the time such Qualified Contingent Obligation was incurred or, if earlier, the agreement to incur such Qualified Contingent Obligations was entered into, such Investment was permitted under this Agreement;

(o) Investments of a Restricted Subsidiary acquired after the Closing Date or of a Person merged or consolidated with or into Borrower or a Restricted Subsidiary, in each case in accordance with the terms of this Agreement to the extent that such Investments were not made in contemplation of or in connection with such acquisition, merger or consolidation and were in existence on the date of such acquisition, merger or consolidation;

(p) Investments in the nature of pledges or deposits with respect to leases or utilities provided to third parties in the ordinary course of business;

(q) Investments in Unrestricted Subsidiaries in an amount not to exceed \$50.0 million outstanding at any time; *provided* that, the amount of such Investments outstanding shall be deemed to equal the aggregate amount, in each case, valued at fair market value at the time each such Investment was made, of such Investments *minus* (x) Specified Unrestricted Subsidiaries Investment Returns received on or prior to such date, and (y) reductions in the amount of such Investments as provided in the definition of "Investment".

(r) the occurrence of a Reverse Trigger Event under any applicable Transfer Agreement; and

(s) so long as immediately before and after giving effect thereto no Event of Default has occurred and is continuing and after giving effect thereto Borrower will be in compliance on a Pro Forma Basis with the Financial Maintenance Covenants as of the most recent Calculation Date, Borrower and its Restricted Subsidiaries may make Investments in an amount not to exceed \$250.0 million outstanding at any time *minus* the aggregate amount of Restricted Payments made pursuant to Section 10.06(i)(i) and the aggregate amount of Junior Prepayments made pursuant to Section 10.09(a)(i); *provided* that, the amount of such Investments outstanding shall be deemed to equal the aggregate amount, in each case, valued at fair market value at the time each such Investment was made, of such

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Investments *minus* (x) Specified General Investment Returns received on or prior to such date, and (y) reductions in the amount of such Investments as provided in the definition of "Investment".

**SECTION 10.05. Mergers, Consolidations and Sales of Assets.** Neither Borrower nor any Restricted Subsidiary will wind up, liquidate or dissolve its affairs or enter into any transaction of merger or consolidation (other than solely to change the jurisdiction of organization or type of organization (to the extent in compliance with the applicable provisions of the Security Agreement)), or convey, sell, lease or sublease (as lessor or sublessor), transfer or otherwise dispose of any substantial part of its business, property or assets, except for:

(a) Capital Expenditures by Borrower and the Restricted Subsidiaries;

(b) Sales or dispositions of used, worn out, obsolete or surplus Property or Property no longer useful in the business of Borrower by Borrower and the Restricted Subsidiaries in the ordinary course of business and the abandonment or other sale of Intellectual Property that is, in the reasonable judgment of Borrower, no longer economically practicable to maintain or useful in the conduct of the business of Borrower and its Restricted Subsidiaries taken as a whole; and the termination or assignment of Contractual Obligations (other than the Master Lease) to the extent such termination or assignment does not have a Material Adverse Effect;

(c) Asset Sales by Borrower or any Restricted Subsidiary; *provided* that (i) at the time of such Asset Sale, no Event of Default then exists or would arise therefrom, (ii) Borrower or any of its Restricted Subsidiaries shall receive not less than 75% of such consideration in the form of (x) cash or Cash Equivalents or (y) Permitted Business Assets (in each case, free and clear of all Liens at the time received other than Permitted Liens) (it being understood that for the purposes of clause (c)(ii)(x), the following shall be deemed to be cash: (A) any liabilities (as shown on Borrower's or such Restricted Subsidiary's most recent balance sheet provided hereunder or in the footnotes thereto) of Borrower or such Restricted Subsidiary, other than liabilities that are by their terms subordinated to the payment in cash of the Obligations, that are assumed by the transferee with respect to the applicable Asset Sale and for which all of its Restricted Subsidiaries shall have been validly released by all applicable creditors in writing, (B) any securities received by such Restricted Subsidiary from such transferee that are converted by such Restricted Subsidiary into cash or Cash Equivalents (to the extent of the cash or Cash Equivalents received) within one hundred and eighty (180) days following the closing of the applicable disposition, (C) any Designated Non-Cash Consideration received in respect of such disposition having an aggregate fair market value, taken together with all other Designated Non-Cash Consideration received pursuant to this clause (C) that is at that time outstanding, not in excess of \$75.0 million, with the fair market value of each item of Designated Non-Cash Consideration being measured at such date of receipt or such agreement, as applicable, and without giving effect to subsequent changes in value) and (iii) the Net Available Proceeds therefrom shall be applied as specified in Section 2.10(a)(iii);

(d) Liens permitted by Section 10.02, Investments may be made to the extent permitted by Sections 10.04 and Restricted Payments may be made to the extent permitted by Section 10.06;

(e) Borrower and the Restricted Subsidiaries may dispose of cash and Cash Equivalents;

(f) Borrower and the Restricted Subsidiaries may lease (as lessor or sublessor) real or personal property to the extent permitted under Section 10.02;



(g) (i) licenses of Intellectual Property to GLPI or any of its Subsidiaries for use in connection with the ownership and operation of the TRS Properties and (ii) licenses and sublicenses by Borrower or any of its Restricted Subsidiaries of software and Intellectual Property in the ordinary course of business shall be permitted;

(h) (A) Borrower or any Restricted Subsidiary may transfer or lease property to or acquire or lease property from Borrower or any Restricted Subsidiary; *provided* that the sum of (x) the aggregate fair market value of all Property transferred by Borrower and Domestic Subsidiaries of Borrower that are Restricted Subsidiaries to Foreign Subsidiaries of Borrower under this clause (A) plus (y) all lease payments made by Borrower and Domestic Subsidiaries of Borrower that are Restricted Subsidiaries to Foreign Subsidiaries of Borrower in respect of leasing of property by Borrower and Domestic Subsidiaries of Borrower that are Restricted Subsidiaries from Foreign Subsidiaries shall not exceed \$25.0 million in any fiscal year of Borrower; (B) any Restricted Subsidiary may merge or consolidate with or into Borrower (as long as Borrower is the surviving Person) or any Guarantor (as long as the surviving Person is, or becomes substantially concurrently with such merger or consolidation, a Guarantor); (C) any Restricted Subsidiary may merge or consolidate with or into any other Restricted Subsidiary (so long as, if either Restricted Subsidiary is a Guarantor, the surviving Person is, or becomes substantially concurrently with such merger or consolidation, a Guarantor); and (D) any Restricted Subsidiary may be voluntarily liquidated, voluntarily wound up or voluntarily dissolved (so long as any such liquidation or winding up does not constitute or involve an Asset Sale to any Person other than to Borrower or any other Restricted Subsidiary or any other owner of equity interests in such Restricted Subsidiary unless such Asset Sale is otherwise permitted pursuant to this Section 10.05); *provided, however*, that, in each case with respect to clauses (A), (B) and (C) of this Section 10.05(h) (other than in the case of a transfer to a Foreign Subsidiary permitted under clause (A) above), the Lien on such property granted in favor of Collateral Agent under the Security Documents shall be maintained in accordance with the provisions of this Agreement and the applicable Security Documents;

(i) voluntary terminations of Swap Contracts and other assets or contracts in the ordinary course of business;

(j) conveyances, sales, leases, transfers or other dispositions which do not constitute Asset Sales;

(k) any taking by a Governmental Authority of assets or property, or any part thereof, under the power of eminent domain or condemnation;

(l) Borrower and its Restricted Subsidiaries may make sales, transfers or other dispositions of property subject to a Casualty Event;

(m) Borrower and its Restricted Subsidiaries may make sales, transfers or other dispositions of Investments in Joint Ventures to the extent required by, or made pursuant to, customary buy/sell arrangements between the joint venture parties set forth in joint venture arrangements and similar binding arrangements;

(n) Borrower and its Restricted Subsidiaries may make sales, transfers or other dispositions pursuant to the Transaction Agreements, including, without limitation, sales, transfers or other dispositions of Equity Interests and other Property to Borrower or any of its Subsidiaries or to GLPI or any of its Subsidiaries in connection with the Spin-Off or the Conversion;

(o) any transfer of Equity Interests of any Restricted Subsidiary or any Gaming Facility in connection with the occurrence of a Trigger Event;

(p) transfers, sales or dispositions of Real Property and related assets to GLPI or its Subsidiaries (including, without limitation, in connection with any Specified Sale Leaseback Transaction), to the extent Borrower or its Restricted Subsidiaries will lease such real property and related assets; *provided* that (i) at the time of such transfer, sale or disposition, no Event of Default then exists or would arise therefrom, (ii) Borrower or any of its Restricted Subsidiaries shall receive not less than 50% of such consideration in the form of cash or Cash Equivalents (free and clear of all Liens at the time received other than Permitted Liens) (it being understood that for the purposes of clause (p)(ii), the following shall be deemed to be cash: (A) any liabilities (as shown on Borrower's or such Restricted Subsidiary's most recent balance sheet provided hereunder or in the footnotes thereto) of Borrower or

such Restricted Subsidiary, other than liabilities that are by their terms subordinated to the payment in cash of the Obligations, that are assumed by the transferee with respect to the applicable transfer, sale or disposition and for which all of its Restricted Subsidiaries shall have been validly released by all applicable creditors in writing and (B) any securities received by such Restricted Subsidiary from such transferee that are converted by such Restricted Subsidiary into cash or Cash Equivalents (to the extent of the cash or Cash Equivalents received) within one hundred and eighty (180) days following the closing of the applicable disposition) and (iii) the Net Available Proceeds therefrom shall be applied as specified in Section 2.10(a)(iii); and

(q) transfers or other dispositions of GLPI Assets and GLPI Liabilities (in each case, as defined in the Separation and Distribution Agreement) to GLPI or its Subsidiaries pursuant to the Separation and Distribution Agreement (as in effect on the date hereof or as amended after the date hereof in a manner not materially adverse to the interests of the Lenders).

Notwithstanding anything contained in this Agreement to the contrary, in no event may any transfer, sale, conveyance or other disposition to any Person other than a Credit Party constitute all or substantially all of Borrower's property or assets, on a consolidated basis; *provided* that the Transactions and any transactions related thereto, including, without limitation, the Spin-Off and the Conversion, shall not constitute a transfer, sale, conveyance or other disposition of all or substantially all of Borrower's property or assets, on a consolidated basis.

To the extent any Collateral is sold, transferred or otherwise disposed of as permitted by this Section 10.05 or in connection with a transaction approved by the Required Lenders, in each case, to a Person other than a Credit Party, so long as no Event of Default exists, such Collateral (unless sold to Borrower or a Guarantor) shall, except as set forth in the proviso to Section 10.05(h), be sold, transferred or otherwise disposed of free and clear of the Liens created by the Security Documents, and Collateral Agent shall take all actions appropriate or reasonably requested by Borrower in order to effect the foregoing at the sole cost and expense of Borrower and without recourse or warranty by Collateral Agent (including the execution and delivery of appropriate UCC termination statements and such other instruments and releases as may be necessary and appropriate to effect such release). To the extent any such sale, transfer or other disposition results in a Guarantor no longer constituting a Subsidiary of Borrower, so long as no Event of Default exists, the Obligations of such Guarantor and all obligations of such Guarantor under the Credit Documents shall terminate and be of no further force and effect, and each of

Administrative Agent and Collateral Agent shall take such actions, at the sole expense of Borrower, as are appropriate or requested by Borrower in connection with such termination.

**SECTION 10.06. Restricted Payments.** Neither Borrower nor any of its Restricted Subsidiaries shall, directly or indirectly, declare or make any Restricted Payment at any time, except, without duplication, (a) Borrower or any Restricted Subsidiary may make Restricted Payments to the extent permitted pursuant to Section 2.09(b)(ii), (b) any Restricted Subsidiary of Borrower may declare and make Restricted Payments to Borrower or any Wholly Owned Subsidiary of Borrower which is a Restricted Subsidiary, (c) any Restricted Subsidiary of Borrower, if such Restricted Subsidiary is not a Wholly Owned Subsidiary, may declare and make Restricted Payments in respect of its Equity Interests to all holders of such Equity Interests generally so long as Borrower or its respective Restricted Subsidiary that owns such Equity Interest or interests in the Person making such Restricted Payments receives at least its proportionate share thereof (based upon its relative ownership of the subject Equity Interests and the terms thereof), (d) Borrower and its Restricted Subsidiaries may engage in transactions to the extent permitted by Section 10.04 and Section 10.05, (e) Borrower and its Restricted Subsidiaries may make Restricted Payments in respect of Disqualified Capital Stock issued in compliance with the terms hereof, (f) Borrower may repurchase common stock or common stock options from present or former officers, directors or employees (or heirs of, estates of or trusts formed by such Persons) of any Company upon the death, disability, retirement or termination of employment of such officer, director or employee or pursuant to the terms of any stock option plan or like agreement; *provided, however*, that the aggregate amount of payments under this clause (f) shall not exceed \$10.0 million in any fiscal year of Borrower, (g) Borrower and its Restricted Subsidiaries may (i) repurchase Equity Interests to the extent deemed to occur upon exercise of stock options, warrants or rights in respect thereof to the

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extent such Equity Interests represent a portion of the exercise price of such options, warrants or rights in respect thereof and (ii) make payments in respect of withholding or similar taxes payable or expected to be payable by any present or former member of management, director, officer, employee, or consultant of Borrower or any of its Subsidiaries or family members, spouses or former spouses, heirs of, estates of or trusts formed by such Persons in connection with the exercise of stock options or grant, vesting or delivery of Equity Interests, (h) Borrower and its Restricted Subsidiaries may make Restricted Payments to allow the payment of cash in lieu of the issuance of fractional shares upon the exercise of options or, warrants or rights or upon the conversion or exchange of or into Equity Interests, or payments or distributions to dissenting stockholders pursuant to applicable law, (i) so long as immediately before and after giving effect thereto no Event of Default has occurred and is continuing and after giving effect thereto Borrower will be in compliance on a Pro Forma Basis with the Financial Maintenance Covenants as of the most recent Calculation Date, Borrower and its Restricted Subsidiaries may make Restricted Payments in an aggregate amount not to exceed (i) \$250.0 million, *minus* the aggregate amount of Junior Prepayments made pursuant to Section 10.09(a)(i) and the aggregate amount of Investments made pursuant to Section 10.04(s), *plus* (ii) the Available Amount, *plus* (iii) such additional amount so long as the Consolidated Senior Secured Net Leverage Ratio is less than or equal to 1.50 to 1.00 on a Pro Forma Basis as of the most recent Calculation Date, (j) Borrower may make Restricted Payments pursuant to or in connection with the Transactions, including, without limitation, the Spin-Off and (k) to the extent constituting Restricted Payments, Borrower may make payments to counterparties under Swap Contracts entered into in connection with the issuance of convertible or exchangeable debt.

**SECTION 10.07. Transactions with Affiliates.** Neither Borrower nor any of its Restricted Subsidiaries shall enter into any transaction, including, without limitation, any purchase, sale, lease or exchange of Property, the rendering of any service or the payment of any management, advisory or similar fees, with any Affiliate (other than Borrower or any Restricted Subsidiary) unless such transaction is upon fair and reasonable terms no less favorable to Borrower or such Restricted Subsidiary, as the case may be, than it would obtain in a comparable arm's length transaction with a Person that is not an Affiliate; *provided, however*, that notwithstanding the foregoing, Borrower and its Restricted Subsidiaries (i) may enter into indemnification and employment agreements and arrangements with directors, officers and employees, (ii) may enter into the transactions described in Borrower's SEC filings prior to the Closing Date, (iii) may make Investments and Restricted Payments permitted hereunder, (iv) may enter into the Transaction Agreements (in each case, including any amendment, restatement, replacement or other modification thereof, so long as such amendment, restatement, replacement or other modification is not adverse to the Lenders in any material respect) and the transactions contemplated thereby, (v) may enter into the transactions contemplated by each applicable Transfer Agreement (vi) may permit Unrestricted Subsidiaries operating the Hollywood Casino Sioux City to use and operate such Gaming Facility in the ordinary course of its business (which for the avoidance of doubt, shall not require the payment of rent or other consideration to Tenant for the use of such Gaming Facility) and (vii) may enter into transactions with Unaffiliated Joint Ventures and Wholly Owned Subsidiaries of Unaffiliated Joint Ventures, in each case, relating to the provision of management services, overhead, sharing of customer lists and customer loyalty programs.

**SECTION 10.08. Financial Covenants.**

(a) **Maximum Consolidated Total Net Leverage Ratio.** Borrower shall not permit the Consolidated Total Net Leverage Ratio as of the last day of any fiscal quarter of Borrower commencing with (i) the first complete fiscal quarter ending after the Closing Date through the fiscal quarter ending December 31, 2014 to exceed 4.00 to 1.00, (ii) the fiscal quarter ending March 31, 2015 and each fiscal quarter thereafter through the fiscal quarter ending December 31, 2017 to exceed 5.25 to 1.00 and (iii) the fiscal quarter ending March 31, 2018 and each fiscal quarter thereafter to exceed 4.50 to 1.00.

(b) **Maximum Consolidated Senior Secured Net Leverage Ratio.** Borrower shall not permit the Consolidated Senior Secured Net Leverage Ratio as of the last day of any fiscal quarter of Borrower commencing

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with (i) the first complete fiscal quarter ending after the Closing Date through the fiscal quarter ending December 31, 2014 to exceed 2.50 to 1.00, (ii) the fiscal quarter ending March 31, 2015 and each fiscal quarter thereafter through the fiscal quarter ending December 31, 2017 to exceed 3.25 to 1.00 and (iii) the fiscal quarter ending March 31, 2018 and each fiscal quarter thereafter to exceed 2.75 to 1.00.

(c) **Minimum Interest Coverage Ratio.** Borrower shall not permit the Interest Coverage Ratio as of the last day of any fiscal quarter of Borrower commencing with the first complete fiscal quarter ending after the Closing Date to be less than 2.50 to 1.00.

**SECTION 10.09. Certain Payments of Indebtedness.** None of Borrower or any of its Restricted Subsidiaries will, nor will they permit any Restricted Subsidiary to voluntarily prepay, redeem, purchase, defease or otherwise satisfy prior to the scheduled maturity thereof in any manner (it being understood that payments of regularly scheduled principal and interest shall be permitted) any Disqualified Capital Stock or Other Junior Indebtedness or make any payment in violation of any subordination terms or intercreditor agreement applicable to any such Indebtedness (such payments, "**Junior**

**Prepayments**”), except (a) so long as no Event of Default shall have occurred and be continuing or would result therefrom and after giving effect thereto Borrower will be in compliance on a Pro Forma Basis with the Financial Maintenance Covenants as of the most recent Calculation Date, Borrower may make Junior Prepayments in an aggregate amount not to exceed (i) \$250.0 million, *minus* the aggregate amount of Restricted Payments made pursuant to Section 10.06(i)(i) and the aggregate amount of Investments made pursuant to Section 10.04(s), *plus* (ii) the Available Amount, *plus* (iii) any additional or other amount (regardless of whether the amounts referenced in clause (i) or (ii) have been utilized) so long as the Consolidated Senior Secured Net Leverage Ratio is less than or equal to 1.50 to 1.00 on a Pro Forma Basis as of the most recent Calculation Date, (b) a Permitted Refinancing of any such Indebtedness (including through exchange offers and similar transactions), (c) the conversion of any such Indebtedness to Equity Interests (or exchange of any such Indebtedness for Equity Interests) of Borrower or any direct or indirect parent of Borrower (other than Disqualified Capital Stock), (d) with respect to intercompany subordinated indebtedness, to the extent consistent with the subordination terms thereof, (e) exchanges of Indebtedness issued in private placements and resold in reliance on Regulation S or Rule 144A for Indebtedness having substantially equivalent terms pursuant to customary exchange offers, (f) prepayment, redemption, purchase, defeasance or satisfaction of Indebtedness of Persons acquired pursuant to, or Indebtedness assumed in connection with, Permitted Acquisition or Investment (including any other Acquisition) not prohibited by this Agreement, (g) Junior Prepayments made pursuant to Section 2.09(b)(ii), (h) Junior Prepayments in respect of intercompany Indebtedness owing to Borrower or its Restricted Subsidiaries will be permitted and (i) prepayments, redemptions, purchases, defeasance or satisfaction of Disqualified Capital Stock with the proceeds of any issuance of Disqualified Capital Stock permitted to be issued hereunder or in exchange for Disqualified Capital Stock or other Equity Interests permitted to be issued hereunder.

**SECTION 10.10. Limitation on Certain Restrictions Affecting Subsidiaries.** None of Borrower or any of its Restricted Subsidiaries shall, directly or indirectly, create any consensual encumbrance or restriction on the ability of any Restricted Subsidiary (other than any Foreign Subsidiary or Immaterial Subsidiary) of Borrower to (a) pay dividends or make any other distributions on such Restricted Subsidiary’s Equity Interests or any other interest or participation in its profits owned by Borrower or any of its Restricted Subsidiaries, or pay any Indebtedness or any other obligation owed to Borrower or any of its Restricted Subsidiaries, (b) make Investments in or to Borrower or any of its Restricted Subsidiaries, (c) transfer any of its Property to Borrower or any of its Restricted Subsidiaries or (d) in the case of any Guarantor, guarantee the Obligations hereunder or, in the case of any Credit Party, subject its portion of the Collateral to the Liens securing the Obligations in favor of the Secured Parties, except that each of the following shall be permitted: (i) any such encumbrances or restrictions existing under or by reason of (x) applicable Law (including any Gaming Law and any regulations, order or decrees of any Gaming Authority or other applicable Governmental Authority) or (y) the Credit Documents, (ii) restrictions on the transfer of Property, or the granting of Liens on Property, in each case, subject to Permitted Liens, (iii) customary restrictions on subletting or assignment of any lease or sublease governing a leasehold interest of any Company, (iv) restrictions on the transfer of any Property, or the granting of Liens on Property, subject to a contract with

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respect to an Asset Sale or other transfer, sale, conveyance or disposition permitted under this Agreement, (v) restrictions contained in the existing Indebtedness listed on Schedule 10.01 and Permitted Refinancings thereof, *provided*, that the restrictive provisions in any such Permitted Refinancing, taken as a whole, are not materially more restrictive than the restrictive provisions in the Indebtedness being refinanced, (vi) restrictions contained in Indebtedness of Persons acquired pursuant to, or assumed in connection with, Permitted Acquisitions or other Acquisitions not prohibited hereunder after the Closing Date and Permitted Refinancings thereof, *provided*, that the restrictive provisions in any such Permitted Refinancing, taken as a whole, are not materially more restrictive than the restrictive provisions in the Indebtedness being refinanced and such restrictions are limited to the Persons or assets being acquired and of the Subsidiaries of such Persons and their assets, (vii) with respect to clauses (a), (b) and (c) above, restrictions contained in any Permitted Unsecured Indebtedness and Permitted Refinancings thereof, or any Permitted Second Lien Indebtedness and Permitted Refinancings thereof, or any other Indebtedness permitted hereunder, in each case, taken as a whole, to the extent not materially more restrictive than those contained in this Agreement, (viii) with respect to clauses (a), (b) and (c) above, restrictions contained in any Incremental Equivalent Debt and Permitted Refinancings thereof, or any other Indebtedness permitted hereunder, in each case, taken as a whole, to the extent not materially more restrictive than those contained in this Agreement, (ix) customary restrictions in joint venture arrangements or management contracts; *provided*, that such restrictions are limited to the assets of such joint ventures and the Equity Interests of the Persons party to such joint venture arrangements or the assignment of such management contract, as applicable, (x) customary non-assignment provisions or other customary restrictions arising under licenses, leases and other contracts entered into in the ordinary course of business; *provided*, that such restrictions are limited to the assets subject to such licenses, leases and contracts and the Equity Interests of the Persons party to such licenses and contracts, (xi) restrictions contained in Indebtedness of Foreign Subsidiaries incurred pursuant to Section 10.01 and Permitted Refinancings thereof; *provided* that such restrictions apply only to the Foreign Subsidiaries incurring such Indebtedness and their Subsidiaries (and the assets thereof), (xii) restrictions contained in Indebtedness used to finance, or incurred for the purpose of financing, Expansion Capital Expenditures and/or Development Projects and Permitted Refinancings thereof, *provided*, that such restrictions apply only to the asset (or the Person owning such asset) being financed pursuant to such Indebtedness, (xiii) restrictions contained in subordination provisions applicable to intercompany debt owed by the Credit Parties; *provided*, that such intercompany debt is subordinated to the Obligations on terms at least as favorable to the Lenders as the subordination of such intercompany debt to any other obligations, (xiv) restrictions contained in the documentation governing the Senior Unsecured Notes on the Closing Date and Permitted Refinancings thereof (so long as the restrictions in any such Permitted Refinancing, taken as a whole, are no more restrictive in any material respect than those in the Senior Unsecured Notes on the Closing Date) and (xv) limitations contained in any Transaction Agreement on the assignment of such Transaction Agreement.

**SECTION 10.11. Limitation on Lines of Business.** Neither Borrower nor any Restricted Subsidiary shall directly or indirectly engage to any material extent (determined on a consolidated basis) in any line or lines of business activity other than Permitted Business.

**SECTION 10.12. Limitation on Changes to Fiscal Year.** Neither Borrower nor any Restricted Subsidiary shall change its fiscal year end to a date other than December 31 of each year (*provided* that any Restricted Subsidiary acquired or formed, or Person designated as an Unrestricted Subsidiary, in each case, after the Closing Date may change its fiscal year to match the fiscal year of Borrower).

**SECTION 10.13. Sanctions.** No Credit Party and, Borrower shall use commercially reasonable efforts to ensure that no broker or other agent of any Credit Party acting in any capacity in connection with the Loans (excluding any Secured Party or any Affiliate thereof), (i) shall conduct any business or engage in making or receiving any contribution of funds, goods or services to or for the benefit of any Person (to its knowledge, with respect to customers and patrons of, and visitors to, any Gaming Facility) described in Section 8.27(b), (ii) shall deal in, or otherwise engage in, any transaction relating to, any property or interests in property blocked pursuant to the Executive Order or (iii) shall engage in or conspire 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.

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EVENTS OF DEFAULT

**SECTION 11.01. Events of Default.** If one or more of the following events (herein called “**Events of Default**”) shall occur and be continuing:

- (a) any representation or warranty made or deemed made by or on behalf of Borrower or any other Credit Party pursuant to any Credit Document or the borrowings or issuances of Letters of Credit hereunder, or any representation, warranty or statement of fact made or deemed made by or on behalf of Borrower or any other Credit Party in any report, certificate, financial statement or other instrument furnished pursuant to any Credit Document, shall prove to have been false or misleading (i) in any material respect, if such representation and warranty is not qualified as to “materiality,” “Material Adverse Effect” or similar language, or (ii) in any respect, if such representation and warranty is so qualified, in each case when such representation or warranty is made, deemed made or furnished;
- (b) default shall be made in the payment of (i) any principal of any Loan or the reimbursement with respect to any Reimbursement Obligation when and as the same shall become due and payable (whether at the stated maturity upon prepayment or repayment or by acceleration thereof or otherwise) or (ii) any interest on any Loans when and as the same shall become due and payable, and such default under this clause (ii) shall continue unremedied for a period of three (3) Business Days;
- (c) default shall be made in the payment of any fee or any other amount (other than an amount referred to in (b) above) due under any Credit Document, when and as the same shall become due and payable, and such default shall continue unremedied for a period of five (5) Business Days;
- (d) default shall be made in the due observance or performance by Borrower or any Restricted Subsidiary of any covenant, condition or agreement contained in Section 9.01(a) (with respect to Borrower only), 9.04(d), 9.06, 9.10(b), 9.10(d) or in Article X;
- (e) default shall be made in the due observance or performance by Borrower or any of its Restricted Subsidiaries of any covenant, condition or agreement contained in any Credit Document (other than those specified in Section 11.01(b), 11.01(c) or 11.01(d)) and, unless such default has been waived, such default shall continue unremedied for a period of thirty (30) days after written notice thereof from Administrative Agent to Borrower;
- (f) Borrower or any of its Restricted Subsidiaries (other than any Immaterial Subsidiary) shall (i) fail to pay any principal or interest, regardless of amount, due in respect of any Indebtedness (other than the Obligations), when and as the same shall become due and payable (after giving effect to any applicable grace period), or (ii) fail to observe or perform any other term, covenant, condition or agreement contained in any agreement or instrument evidencing or governing any such Indebtedness or any event or condition occurs, if the effect of any failure or occurrence referred to in this clause (ii) is to cause, or to permit the holder or holders of such Indebtedness or a trustee on its or their behalf (with or without the giving of notice but giving effect to applicable grace periods) to cause, such Indebtedness (other than Qualified Contingent Obligations) to become due, or to be repurchased, prepaid, defeased or redeemed (automatically or otherwise) or an offer to repurchase, prepay, defease or redeem such Indebtedness to be made prior to its stated maturity; *provided, however*, that (x) clauses (i) and (ii) shall not apply to any offer to repurchase, prepay or redeem Indebtedness of a Person acquired in an Acquisition permitted hereunder, to the extent such offer is required as a result of, or in connection with, such Acquisition, (y) any event or condition causing or permitting the holders of any Indebtedness to cause such Indebtedness to be converted into Qualified Capital Stock (including any such event or condition which, pursuant to its terms may, at the option of Borrower, be satisfied in cash in lieu of conversion into Qualified Capital Stock) shall not constitute an Event of Default pursuant to this paragraph (f) and (z) it shall not constitute an Event of Default pursuant to this

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paragraph (f) unless the aggregate amount of all such Indebtedness referred to in clauses (i) and (ii) exceeds \$75.0 million at any one time;

(g) an involuntary proceeding shall be commenced or an involuntary petition shall be filed in a court of competent jurisdiction in either case under the Bankruptcy Code or any other federal, state or foreign bankruptcy, insolvency, receivership or similar law, in each case seeking (i) relief in respect of Borrower or any of its Restricted Subsidiaries (other than any Immaterial Subsidiary), or of a substantial part of the property or assets of Borrower or any of its Restricted Subsidiaries (other than any Immaterial Subsidiary); (ii) the appointment of a receiver, trustee, custodian, sequestrator, conservator or similar official for Borrower or any of its Restricted Subsidiaries (other than any Immaterial Subsidiary) or for a substantial part of the property or assets of Borrower or any of its Restricted Subsidiaries (other than any Immaterial Subsidiary); or (iii) the winding-up or liquidation of Borrower or of its Restricted Subsidiaries (other than any Immaterial Subsidiary); and such proceeding or petition shall continue undismissed for 60 days or an order or decree approving or ordering any of the foregoing shall be entered;

(h) Borrower or any of its Restricted Subsidiaries (other than any Immaterial Subsidiary) shall (i) voluntarily commence any proceeding or file any petition seeking relief under the Bankruptcy Code or any other federal, state or foreign bankruptcy, insolvency, receivership or similar law; (ii) consent to the institution of, or fail to contest in a timely and appropriate manner, any proceeding or the filing of any petition described in Section 11.01(g); (iii) apply for or consent to the appointment of a receiver, trustee, custodian, sequestrator, conservator or similar official for Borrower or any of its Restricted Subsidiaries (other than any Immaterial Subsidiary) or for a substantial part of the property or assets of Borrower or any of its Restricted Subsidiaries (other than any Immaterial Subsidiary) in any proceeding under the Bankruptcy Code or any other federal, state or foreign bankruptcy, insolvency, receivership, or similar law; (iv) file an answer admitting the material allegations of a petition filed against it in any such proceeding; (v) make a general assignment for the benefit of creditors; (vi) become unable, admit in writing its inability or fail generally to pay its debts as they become due; (vii) take any action for the purpose of effecting any of the foregoing; or (viii) wind up or liquidate (except as permitted hereunder);

(i) one or more judgments for the payment of money in an aggregate amount in excess of \$75.0 million (to the extent not covered by third party insurance) shall be rendered against Borrower or any of its Restricted Subsidiaries (other than any Immaterial Subsidiary) or any combination thereof and the same shall remain undischarged for a period of 60 consecutive days during which execution shall not be effectively stayed, or any action (to the extent such action is not effectively stayed) shall be legally taken by a judgment creditor to levy upon assets or properties of Borrower or any of its Restricted Subsidiaries to enforce any such judgment;

(j) an ERISA Event shall have occurred that, when taken together with all other such ERISA Events, would reasonably be expected to result in a Material Adverse Effect;

(k) with respect to any material Collateral, any security interest and Lien purported to be created by the applicable Security Document shall cease to be in full force and effect, or shall cease to give Collateral Agent, for the benefit of the Secured Parties, the first priority Liens and rights, powers and privileges in each case purported to be created and granted under such Security Document in favor of Collateral Agent, or shall be asserted by any Credit Party or any Affiliate thereof not to be a valid, perfected (except as otherwise provided in this Agreement or such Security Document) security interest in or Lien on the Collateral covered thereby, in each case, other than as a result of an act of the Administrative Agent, the Collateral Agent or any other Secured Party;

(l) any Guarantee shall cease to be in full force and effect or any of the Guarantors or Affiliates thereof repudiates, or attempts to repudiate, any of its obligations under any of the Guarantees (except to the extent such Guarantee ceases to be in effect in connection with any transaction permitted pursuant to Sections 9.12 or 10.05);

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(m) any Credit Document or any material provisions thereof shall at any time and for any reason be declared by a court of competent jurisdiction to be null and void, or a proceeding shall be commenced by any Credit Party seeking to establish the invalidity or unenforceability thereof (exclusive of questions of interpretation of any provision thereof), or any Credit Party shall repudiate or deny that it has any liability or obligation for the payment of principal or interest purported to be created under any Credit Document;

(n) there shall have occurred a Change of Control;

(o) there shall have occurred a License Revocation by any Gaming Authority in one or more jurisdictions in which Borrower or any of its Restricted Subsidiaries owns or operates Gaming Facilities, which License Revocation (in the aggregate with any other License Revocations then in existence) relates to operations of Borrower and/or the Restricted Subsidiaries that in the most recent Test Period accounted for ten percent (10%) or more of the gross revenues of Borrower and its Restricted Subsidiaries on a consolidated basis; *provided, however*, that such License Revocation continues for at least thirty (30) consecutive days after the earlier of (x) the date of cessation of the affected operations as a result of such License Revocation and (y) the date that none of Borrower, nor any of its Restricted Subsidiaries nor the Lenders receive the net cash flows generated by any such operations;

(p) after the effectiveness thereof, the Master Lease shall terminate or otherwise cease to be effective, other than upon the expiration or termination thereof with respect to any particular property or properties pursuant to Sections 1.4, 8.2, 14.5, 15.5 or 33.4 of the Master Lease or pursuant to an amendment, waiver or modification of the Master Lease not prohibited by Section 10.03 of this Agreement, or an "Event of Default" (as defined in the Master Lease) shall have occurred and is continuing under Section 16.1(a), 16.1(g), 16.1(i), 16.1(j) or 16.1(p) of the Master Lease, or the Landlord shall have given Tenant notice of termination of the Master Lease following an "Event of Default" as defined in the Master Lease or the Landlord has issued a "Termination Notice" pursuant to Section 17.1(d) of the Master Lease; or

(q) the provisions of any *Pari Passu* Intercreditor Agreement or Second Lien Intercreditor Agreement shall, in whole or in part, following such *Pari Passu* Intercreditor Agreement or Second Lien Intercreditor Agreement being entered into, terminate, cease to be effective or cease to be legally valid, binding and enforceable against the Persons party thereto, except in accordance with its terms;

then, and in every such event (other than an event described in Section 11.01(g) or 11.01(h) with respect to Borrower), and at any time thereafter during the continuance of such event, Administrative Agent, at the request of the Required Lenders, shall, by notice to Borrower, take any or all of the following actions, at the same or different times: (i) terminate forthwith the Commitments, (ii) declare the Loans and Reimbursement Obligations then outstanding to be forthwith due and payable in whole or in part, whereupon the principal of the Loans and Reimbursement Obligations so declared to be due and payable, together with accrued interest thereon and any unpaid accrued fees and all other liabilities and Obligations of Borrower accrued hereunder and under any other Credit Document (other than Swap Contracts and Cash Management Agreements), 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 Borrower, anything contained herein or in any other Credit Document (other than Swap Contracts and Cash Management Agreements) to the contrary notwithstanding; (iii) exercise any other right or remedy provided under the Credit Documents or at law or in equity and (iv) direct Borrower to pay (and Borrower hereby agrees upon receipt of such notice, or upon the occurrence of any Event of Default specified in Section 11.01(g) or 11.01(h) with respect to Borrower, to pay) to Collateral Agent at the Principal Office such additional amounts of cash, to be held as security by Collateral Agent for L/C Liabilities then outstanding, equal to the aggregate L/C Liabilities then outstanding; and in any event described in Section 11.01(g) or 11.01(h) above with respect to Borrower, the Commitments shall automatically terminate and the principal of the Loans and Reimbursement Obligations then outstanding, together with accrued interest thereon and any unpaid accrued fees and all other liabilities and Obligations of Borrower accrued hereunder and under any other Credit Document, shall automatically become due

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and payable, without presentment, demand, protest or any other notice of any kind, all of which are hereby expressly waived by Borrower, anything contained herein or in any other Credit Document to the contrary notwithstanding.

Notwithstanding the foregoing, (i) Administrative Agent shall provide Landlord with copies of notices issued by Administrative Agent or the Lenders of any event or occurrence under the Credit Documents that enables or permits the Lenders (or Administrative Agent) to accelerate the maturity of the Indebtedness outstanding under the Credit Documents and (ii) in the event of a default by Borrower or any of its Restricted Subsidiaries in the performance of any of their respective obligations under any of the Credit Documents, including, without limitation, any default in the payment of any sums payable under any such agreement, then, in each and every such case, subject to applicable Gaming Regulations (as defined in the Master Lease) and the terms of the Master Lease, the Landlord shall have the right, but not the obligation, to cure or remedy the default or defaults or cause the default or defaults to be cured or remedied (to the extent susceptible to cure or remedy) prior to the end of any applicable notice and cure periods set forth in such Credit Documents, and any such tender of payment or performance by Landlord shall be accepted by Administrative Agent, Collateral Agent and Lenders and shall constitute payment and/or performance by the applicable Company for purposes of the Credit Documents.

**SECTION 11.02. Application of Proceeds.** The proceeds received by Collateral Agent in respect of any sale of, collection from or other realization upon all or any part of the Collateral pursuant to the exercise by Collateral Agent of its remedies, or otherwise received after acceleration of the Loans, shall be applied, in full or in part, together with any other sums then held by Collateral Agent pursuant to this Agreement, promptly by Collateral Agent as follows:

(a) *First*, to the payment of all reasonable costs and expenses, fees, commissions and taxes of such sale, collection or other realization including compensation to Administrative Agent and Collateral Agent and their respective agents and counsel, and all expenses, liabilities and advances made or incurred by Administrative Agent or Collateral Agent in connection therewith and all amounts for which Administrative Agent or Collateral Agent, as applicable is entitled to indemnification pursuant to the provisions of any Credit Document;

(b) *Second*, to the payment of all other reasonable costs and expenses of such sale, collection or other realization and of any receiver of any part of the Collateral appointed pursuant to the applicable Security Documents including compensation to the other Secured Parties and their agents and counsel and all costs, liabilities and advances made or incurred by the other Secured Parties in connection therewith;

(c) *Third*, without duplication of amounts applied pursuant to clauses (a) and (b) above, to the indefeasible payment in full in cash, *pro rata*, of the Obligations;

(d) *Fourth*, to the Administrative Agent for the account of the L/C Lenders, to Cash Collateralize that portion of L/C Liabilities comprised of the aggregate undrawn amount of Letters of Credit; and

(e) *Fifth*, the balance, if any, to the Person lawfully entitled thereto (including the applicable Credit Party or its successors or assigns) or as a court of competent jurisdiction may direct.

In the event that any such proceeds are insufficient to pay in full the items described in clauses (a) through (c) of this Section 11.02, the Credit Parties shall remain liable, jointly and severally, for any deficiency.

Notwithstanding the foregoing, Obligations arising under Secured Cash Management Agreements and Credit Swap Contracts shall be excluded from the application described above if Administrative Agent has not received written notice thereof, together with such supporting documentation as Administrative Agent may request, from the applicable Cash Management Bank or Swap Provider, as the case may be. Each Cash Management Bank or Swap Provider not a party to this Agreement that has given the notice contemplated by the preceding sentence

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shall, by such notice, be deemed to have acknowledged and accepted the appointment of Administrative Agent and the Collateral Agent pursuant to the terms of Article XII hereof for itself and its Affiliates as if a “Lender” party hereto.

## ARTICLE XII.

### AGENTS

**SECTION 12.01. Appointment.** Each of the Lenders hereby irrevocably appoints Bank of America to act on its behalf as the Administrative Agent and the Collateral Agent hereunder and under the other Credit Documents (including as “trustee” or “mortgage trustee” under the Ship Mortgages), and authorizes the Administrative Agent and the Collateral Agent to take such actions on its behalf and to exercise such powers as are delegated to the Administrative Agent or the Collateral Agent by the terms hereof or thereof, together with such actions and powers as are reasonably incidental thereto, including, the execution and filing of a “Corporate Securities and Finance Compliance Affidavit” with the Missouri Gaming Commission pursuant to 11 CSR 45-10.040 and other regulatory requirements of any Gaming Authority consistent with the intents and purposes of this Agreement and the other Credit Documents. Bank of America is hereby appointed Auction Manager hereunder, and each Lender hereby authorizes the Auction Manager to act as its agent in accordance with the terms hereof and of the other Credit Documents; *provided*, that Borrower shall have the right to select and appoint a replacement Auction Manager from time to time by written notice to Administrative Agent, and any such replacement shall also be so authorized to act in such capacity. Each Lender agrees that the Auction Manager shall have solely the obligations in its capacity as the Auction Manager as are specifically described in this Agreement and shall be entitled to the benefits of Article XII, as applicable. Each of the Lenders hereby irrevocably authorize each of the Agents (other than the Administrative Agent, Collateral Agent and the Auction Manager) to take such action on its behalf under the provisions of this Agreement and the other Credit Documents and to exercise such powers and perform such duties as are expressly delegated to such Agent by the terms of this Agreement and the other Credit Documents, together with such other powers as are reasonably incidental thereto. The provisions of this Article are solely for the benefit of the Agents and the Lenders, and neither Borrower nor any other Credit Party shall have rights as a third party beneficiary of any of the provisions of this Article XII, except to the extent set forth in this Section 12.01, Section 12.06 and Section 12.07(b). It is understood and agreed that the use of the term “agent” herein or in any other Credit Documents (or any other similar term) with reference to any Agent is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any applicable Law. Instead such term is used as a matter of market custom, and is intended to create or reflect only an administrative relationship between contracting parties. Each references in this Article XII to the Collateral Agent shall include the Collateral Agent in its capacity as “trustee” or “mortgage trustee” under the Ship Mortgages.

**SECTION 12.02. Rights as a Lender.** Any Person serving as an Agent hereunder shall have the same rights and powers in its capacity as a Lender (if applicable) as any other Lender and may exercise the same as though it were not an Agent, and the term “Lender” or “Lenders” shall, unless otherwise expressly indicated or unless the context otherwise requires, include the Person serving as such Agent hereunder in its individual capacity. Such Person and its Affiliates may accept deposits from, lend money to, own securities of, act as the financial advisor or in any other advisory capacity for and generally engage in any kind of business with Borrower or any Subsidiary or other Affiliate thereof as if such Person were not an Agent hereunder and without any duty to account therefor to the Lenders.

**SECTION 12.03. Exculpatory Provisions.** No Agent shall have any duties or obligations except those expressly set forth herein and in the other Credit Documents, and each Agent’s duties hereunder shall be administrative in nature. Without limiting the generality of the foregoing, no Agent:

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(a) shall be subject to any fiduciary or other implied duties with respect to any Credit Party, any Lender or any other Person, regardless of whether a Default has occurred and is continuing;

(b) shall have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated hereby or by the other Credit Documents that the Agent is required to exercise as directed in writing by the Required Lenders (or such other number or percentage of the Lenders as shall be expressly provided for herein or in the other Credit Documents), *provided* that no Agent shall be required to take any action that, in its opinion or the opinion of its counsel, may expose such Agent to liability or that is contrary to any Credit Document or applicable law, including for the avoidance of doubt any action that may be in violation of the automatic stay under any Debtor Relief Law or that may effect a forfeiture, modification or termination of property of a Defaulting Lender in violation of any Debtor Relief Law; and

(c) shall, except as expressly set forth herein and in the other Credit Documents, have any duty to disclose, and shall not be liable for the failure to disclose, any information relating to any of Borrower or any of its respective Affiliates that is communicated to or obtained by the Person serving as such Agent or any of its Affiliates in any capacity.

No Agent shall be liable for any action taken or not taken by it (i) with the consent or at the request of the Required Lenders (or, such other number or percentage of the Lenders as shall be necessary, or as the Administrative Agent shall believe in good faith shall be necessary, under the circumstances as provided in Sections 11.01 and 13.04) or (ii) in the absence of its own gross negligence or willful misconduct as determined by a court of competent jurisdiction by final and nonappealable judgment. No Agent shall be deemed to have knowledge of any Default unless and until notice describing such Default is given in writing to such Agent by Borrower or a Lender.

No Agent shall be responsible for or have any duty to ascertain or inquire into (i) any statement, warranty or representation made in or in connection with this Agreement or any other Credit Document, (ii) the contents of any certificate, report or other document delivered hereunder or thereunder or in connection herewith or therewith, (iii) the performance or observance of any of the covenants, agreements or other terms or conditions set forth herein or therein or the occurrence of any Default, (iv) the validity, enforceability, effectiveness or genuineness of this Agreement, any other Credit Document or any other agreement, instrument or document or (v) the satisfaction of any condition set forth in Article VII or elsewhere herein, other than to confirm receipt of items expressly required to be delivered to such Agent.

The Administrative Agent shall not be responsible for, and shall not incur any liability with respect to, determining whether any assignee or potential assignee of the Loans or Commitments hereunder is a Competitor or a Disqualified Lender. The Administrative Agent does not warrant, nor accept responsibility, nor shall the Administrative Agent have any liability with respect to the administration, submission or any other matter related to the rates in the definition of "LIBO Rate" or with respect to any comparable or successor rate thereto.

**SECTION 12.04. Reliance by Agents.** Each Agent shall be entitled to rely upon, and shall not incur any liability for relying upon, any notice, request, certificate, consent, statement, instrument, document or other writing (including any electronic message, Internet or intranet website posting or other distribution) believed by it to be genuine and to have been signed, sent or otherwise authenticated by the proper Person. Each Agent also may rely upon any statement made to it orally or by telephone and believed by it to have been made by the proper Person, and shall not incur any liability for relying thereon. In determining compliance with any condition hereunder to the making of a Loan, or the issuance, extension, renewal or increase of a Letter of Credit, that by its terms must be fulfilled to the satisfaction of a Lender, each Agent may presume that such condition is satisfactory to such Lender unless such Agent shall have received notice to the contrary from such Lender prior to the making of such Loan or the issuance of such Letter of Credit. Each Agent may consult with legal counsel (who may be counsel for Borrower), independent accountants and other experts selected by it, and shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or experts.

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**SECTION 12.05. Delegation of Duties.** Each Agent may perform any and all of its duties and exercise its rights and powers hereunder or under any other Credit Document by or through any one or more sub agents appointed by such Agent. Each Agent and any such sub agent may perform any and all of its duties and exercise its rights and powers by or through their respective Related Parties. The exculpatory provisions of this Article shall apply to any such sub agent and to the Related Parties of each Agent and any such sub agent, and shall apply to their respective activities in connection with the syndication of the credit facilities provided for herein as well as activities as an Agent. No Agent shall be responsible for the negligence or misconduct of any sub-agents except to the extent that a court of competent jurisdiction determines in a final and non appealable judgment that an Agent acted with gross negligence, bad faith or willful misconduct in the selection of such sub-agents.

**SECTION 12.06. Resignation of Administrative Agent and Collateral Agent.**

(a) The Administrative Agent and Collateral Agent may at any time give notice of their resignation to the Lenders and Borrower. Upon receipt of any such notice of resignation, the Required Lenders shall have the right, with the prior written consent of Borrower (unless an Event of Default specified in Section 11.01(b) or 11.01(c) or an Event of Default specified in Section 11.01(g) or 11.01(h) with respect to Borrower has occurred and is continuing) to appoint a successor, which shall be a bank with an office in the United States, or an Affiliate of any such bank with an office in the United States. If no such successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within 30 days after the retiring Administrative Agent and Collateral Agent gives notice of their resignation (or such earlier day as shall be agreed by the Required Lenders and Borrower (unless an Event of Default specified in Section 11.01(b) or 11.01(c) or an Event of Default specified in Section 11.01(g) or 11.01(h) with respect to Borrower has occurred and is continuing)) (the "**Resignation Effective Date**"), then the retiring Administrative Agent and Collateral Agent may (but shall not be obligated to) on behalf of the Lenders, appoint a successor Administrative Agent and Collateral Agent meeting the qualifications set forth above. Whether or not a successor has been appointed, such resignation shall become effective in accordance with such notice on the Resignation Effective Date.

(b) If the Person serving as Administrative Agent and Collateral Agent is a Defaulting Lender pursuant to clause (iii) of the definition thereof, the Required Lenders may, to the extent permitted by applicable law, by notice in writing to Borrower and such Person remove such Person as Administrative Agent and Collateral Agent and, in consultation with Borrower, appoint a successor. If no such successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within 30 days (or such earlier day as shall be agreed by the Required Lenders) (the "**Removal Effective Date**"), then such removal shall nonetheless become effective in accordance with such notice on the Removal Effective Date.

(c) With effect from the Resignation Effective Date or the Removal Effective Date (as applicable) (1) the retiring or removed Administrative Agent and Collateral Agent shall be discharged from its duties and obligations hereunder and under the other Credit Documents (except that in the case of any collateral security held by the Administrative Agent or Collateral Agent on behalf of the Secured Parties under any of the Credit Documents, the retiring or removed Administrative Agent or Collateral Agent, as applicable, shall continue to hold such collateral security until such time as a successor Administrative Agent and Collateral Agent is appointed) and (2) except for any indemnity payments or other amounts then owed to the retiring or removed Administrative Agent or Collateral Agent, all payments, communications and determinations provided to be made by, to or through the Administrative Agent or the

Collateral Agent shall instead be made by or to each Secured Party directly, until such time, if any, as the Required Lenders appoint a successor Administrative Agent and Collateral Agent as provided for above. Upon the acceptance of a successor's appointment as Administrative Agent and Collateral Agent hereunder, such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring (or removed) Administrative Agent and Collateral Agent (other than any rights to indemnity payments or other amounts owed to the retiring or removed Administrative Agent or Collateral Agent as of the Resignation Effective Date or the Removal Effective Date, as applicable), and the retiring or removed Administrative Agent and Collateral Agent shall be discharged from all of its duties and obligations hereunder or under the other Credit Documents (if

not already discharged therefrom as provided above in this Section). The fees payable by Borrower to a successor Administrative Agent and Collateral Agent shall be the same as those payable to its predecessor unless otherwise agreed between Borrower and such successor. After the retiring or removed Administrative Agent's and Collateral Agent's resignation or removal hereunder and under the other Credit Documents, the provisions of this Article and Section 13.03 shall continue in effect for the benefit of such retiring or removed Administrative Agent and Collateral Agent, their sub agents and their respective Related Parties in respect of any actions taken or omitted to be taken by any of them while the retiring or removed Administrative Agent and Collateral Agent was acting as Administrative Agent or Collateral Agent.

(d) Any resignation by Bank of America as Administrative Agent and Collateral Agent pursuant to this Section shall also constitute its resignation as L/C Lender and Swingline Lender. If Bank of America resigns as an L/C Lender, it shall retain all the rights, powers, privileges and duties of an L/C Lender hereunder with respect to all of its Letters of Credit outstanding as of the effective date of its resignation as L/C Lender and all L/C Liability with respect thereto, including the right to require the Revolving Lenders to make ABR Loans or fund risk participations in Unreimbursed Amounts pursuant to Sections 2.03(e) and (f). If any L/C Lender resigns as Swingline Lender, it shall retain all the rights of the Swingline Lender provided for hereunder with respect to Swingline Loans made by it and outstanding as of the effective date of such resignation, including the right to require the Revolving Lenders to make ABR Loans or fund risk participations in outstanding Swingline Loans pursuant to Section 2.01(e)(iv). Upon the appointment by Borrower of a successor L/C Lender or Swingline Lender hereunder (which successor shall in all cases be a Lender other than a Defaulting Lender), (a) such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring L/C Lender or Swingline Lender, as applicable, (b) the retiring L/C Lender and Swingline Lender shall be discharged from all of their respective duties and obligations hereunder or under the other Credit Documents, and (c) the successor L/C Lender shall issue letters of credit in substitution for the Letters of Credit of the retiring L/C Lender, if any, outstanding at the time of such succession or make other arrangements satisfactory to the retiring L/C Lender to effectively assume the obligations of the retiring L/C Lender with respect to such Letters of Credit.

#### **SECTION 12.07. Nonreliance on Agents and Other Lenders.**

(a) Each Lender acknowledges that it has, independently and without reliance upon any Agent or any other Lender or any of their Related Parties and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement. Each Lender also acknowledges that it will, independently and without reliance upon any Agent or any other Lender or any of their Related Parties and based on such documents and information as it shall from time to time deem appropriate, continue to make its own decisions in taking or not taking action under or based upon this Agreement, any other Credit Document or any related agreement or any document furnished hereunder or thereunder.

(b) Each Lender acknowledges that in connection with Borrower Loan Purchases, (i) Borrower may purchase or acquire Term Loans or Revolving Loans hereunder from the Lenders from time to time, subject to the restrictions set forth in the definition of Eligible Assignee and in Section 13.05(d), (ii) Borrower currently may have, and later may come into possession of, information regarding such Term Loans or Revolving Loans or the Credit Parties hereunder that is not known to such Lender and that may be material to a decision by such Lender to enter into an assignment of such Loans hereunder ("**Excluded Information**"), (iii) such Lender has independently and without reliance on any other party made such Lender's own analysis and determined to enter into an assignment of such Loans and to consummate the transactions contemplated thereby notwithstanding such Lender's lack of knowledge of the Excluded Information and (iv) Borrower shall have no liability to such Lender, and such Lender hereby waives and releases, to the extent permitted by law, any claims such Lender may have against Borrower, under applicable laws or otherwise, with respect to the nondisclosure of the Excluded Information; *provided, however*, that the Excluded Information shall not and does not affect the truth or accuracy of the representations or warranties of Borrower in the Standard Terms and Conditions set forth in the applicable assignment agreement.

Each Lender further acknowledges that the Excluded Information may not be available to Administrative Agent, Auction Manager or the other Lenders hereunder.

**SECTION 12.08. Indemnification.** The Lenders agree to reimburse and indemnify each Agent in its capacity as such ratably according with its "percentage" as used in determining the Required Lenders at such time or, if the Commitments have terminated and all Loans have been repaid in full, as determined immediately prior to such termination and repayment (with such "percentages" to be determined as if there are no Defaulting Lenders), from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, reasonable expenses or disbursements of any kind whatsoever which may at any time (including, without limitation, at any time following the payment of the Obligations) be imposed on, incurred by or asserted against such Agent in its capacity as such in any way relating to or arising out of this Agreement or any other Credit Document, or any documents contemplated by or referred to herein or the transactions contemplated hereby or any action taken or omitted to be taken by such Agent under or in connection with any of the foregoing, but only to the extent that any of the foregoing is not paid by Borrower or any of its Subsidiaries; *provided, however*, that no Lender shall be liable to any Agent for the payment of any portion of such liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements (x) resulting primarily from the gross negligence, or willful misconduct of such Agent (as determined by a court of competent jurisdiction in a final and non-appealable decision) or (y) relating to or arising out of the Fee Letter. If any indemnity furnished to any Agent for any purpose shall, in the opinion of such Agent be insufficient or become impaired, such Agent may call for additional indemnity and cease, or not commence, to do the acts indemnified against until such additional indemnity is furnished. The agreements in this Section 12.08 shall survive the payment of all Obligations.

**SECTION 12.09. No Other Duties.** Anything herein to the contrary notwithstanding, none of the Administrative Agent, Collateral Agent, Documentation Agent, Lead Arrangers or Bookrunners shall have any powers, duties or responsibilities under this Agreement or any of the other Credit Documents, except in its capacity, as applicable, as the Administrative Agent, the Collateral Agent, an L/C Lender, the Swingline Lender, the Auction Manager or a Lender hereunder.



**SECTION 12.10. Holders.** Administrative Agent may deem and treat the payee of any Note as the owner thereof for all purposes hereof unless and until a written notice of the assignment, transfer or endorsement thereof, as the case may be, shall have been filed with Administrative Agent. Any request, authority or consent of any Person or entity who, at the time of making such request or giving such authority or consent, is the holder of any Note shall be conclusive and binding on any subsequent holder, transferee, assignee or indorsee, as the case may be, of such Note or of any Note or Notes issued in exchange therefor.

**SECTION 12.11. Administrative Agent May File Proofs of Claim.** In case of the pendency of any proceeding under any Debtor Relief Law or any other judicial proceeding relative to any Credit Party, the Administrative Agent (irrespective of whether the principal of any Loan or L/C Liability shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether the Administrative Agent shall have made any demand on Borrower) shall be entitled and empowered, by intervention in such proceeding or otherwise:

(a) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the Loans, L/C Liabilities and all other Obligations that are owing and unpaid and to file such other documents as may be necessary or advisable in order to have the claims of the Secured Parties (including any claim for the reasonable compensation, expenses, disbursements and advances of the Secured Parties and their respective agents and counsel and all other amounts due the Secured Parties under Sections 2.03, 2.05 and 13.03) allowed in such judicial proceeding; and

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(b) to collect and receive any monies or other property payable or deliverable on any such claims and to distribute the same;

and any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Lender (and each Secured Party by accepting the benefits of the Collateral) to make such payments to the Administrative Agent and, in the event that the Administrative Agent shall consent to the making of such payments directly to the Secured Parties, to pay to the Administrative Agent any amount due for the reasonable compensation, expenses, disbursements and advances of the Administrative Agent and its agents and counsel, and any other amounts due the Administrative Agent under Sections 2.03, 2.05 and 13.03.

Nothing contained herein shall be deemed to authorize the Administrative Agent to authorize or consent to or accept or adopt on behalf of any Secured Party any plan of reorganization, arrangement, adjustment or composition affecting the Obligations or the rights of any Secured Party to authorize the Administrative Agent to vote in respect of the claim of any Secured Party in any such proceeding.

**SECTION 12.12. Collateral Matters.**

(a) Each Lender (and each other Secured Party by accepting the benefits of the Collateral) authorizes and directs Collateral Agent to enter into the Security Documents for the benefit of the Secured Parties and to hold and enforce the Liens on the Collateral on behalf of the Secured Parties. Collateral Agent is hereby authorized on behalf of all of the Lenders, without the necessity of any notice to or further consent from any Lender, from time to time prior to an Event of Default, to take any action with respect to any Collateral or Security Documents which may be necessary to perfect and maintain perfected the security interest in and liens upon the Collateral granted pursuant to the Security Documents. The Lenders hereby authorize Collateral Agent to take the actions set forth in Section 13.04(g). Upon request by Administrative Agent at any time, the Lenders will confirm in writing Collateral Agent's authority to release particular types or items of Collateral pursuant to this Section 12.12.

(b) Collateral Agent shall have no obligation whatsoever to the Lenders, the other Secured Parties or any other Person to assure that the Collateral exists or is owned by any Credit Party or is cared for, protected or insured or that the Liens granted to Collateral Agent pursuant to the applicable Security Documents have been properly or sufficiently or lawfully created, perfected, protected or enforced or are entitled to any particular priority, or to exercise or to continue exercising at all or in any manner or under any duty of care, disclosure or fidelity any of the rights, authorities and powers granted or available to Collateral Agent in Section 12.01 or in this Section 12.12 or in any of the Security Documents, it being understood and agreed that in respect of the Collateral or any part thereof, or any act, omission or event related thereto, Collateral Agent may act in any manner it may deem appropriate, in its sole discretion, given Collateral Agent's own interest in the Collateral or any part thereof as one of the Lenders and that Collateral Agent shall have no duty or liability whatsoever to the Lenders or the other Secured Parties, except for its gross negligence or willful misconduct (as determined by a court of competent jurisdiction in a final and non-appealable decision).

**SECTION 12.13. Withholding Tax.** To the extent required by any applicable Requirement of Law, an Agent may withhold from any payment to any Lender, an amount equivalent to any applicable withholding tax. Without limiting or expanding the provisions of Section 5.06, each Lender shall, and does hereby, indemnify the relevant Agent, and shall make payable in respect thereof within thirty (30) calendar days after demand therefor, against any and all Taxes and any and all related losses, claims, liabilities and expenses (including fees, charges and disbursements of any counsel for the Agent) incurred by or asserted against the Agent by the Internal Revenue Service or any other Governmental Authority as a result of the failure of the Agent to properly withhold tax from amounts paid to or for the account of any Lender for any reason (including, without limitation, because the appropriate form was not delivered or not properly executed, or because such Lender failed to notify Administrative Agent of a change in circumstance that rendered the exemption from, or reduction of withholding tax ineffective).

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A certificate as to the amount of such payment or liability delivered to any Lender by Administrative Agent shall be conclusive absent manifest error. Each Lender hereby authorizes Administrative Agent to set off and apply any and all amounts at any time owing to such Lender under this Agreement or any other Security Document against any amount due Administrative Agent under this Section 12.13. The agreements in this Section 12.13 shall survive the resignation and/or replacement of Administrative Agent, any assignment of rights by, or the replacement of, a Lender, and the repayment, satisfaction or discharge of any Loans and all other amounts payable hereunder.

**SECTION 12.14. Secured Cash Management Agreements and Swap Contracts.** Except as otherwise expressly set forth herein or in any Security Document, no Cash Management Bank or Swap Provider that obtains the benefits of Section 11.02, Article VI or any Collateral by virtue of the provisions hereof or of any Security Document shall have any right to notice of any action or to consent to, direct or object to any action hereunder or under any other Credit Document or otherwise in respect of the Collateral (including the release or impairment of any Collateral) other than in its capacity as a

Lender and, in such case, only to the extent expressly provided in the Credit Documents. Notwithstanding any other provision of this Article XII to the contrary, the Administrative Agent shall not be required to verify the payment of, or that other satisfactory arrangements have been made with respect to, Obligations arising under Secured Cash Management Agreements and Swap Contracts unless the Administrative Agent has received written notice of such Obligations, together with such supporting documentation as the Administrative Agent may request, from the applicable Cash Management Bank or Swap Provider, as the case may be.

### ARTICLE XIII.

#### MISCELLANEOUS

**SECTION 13.01. Waiver.** No failure on the part of Administrative Agent, Collateral Agent or any other Secured Party to exercise and no delay in exercising, and no course of dealing with respect to, any right, power or privilege under any Credit Document shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or privilege under any Credit Document preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The remedies provided herein are cumulative and not exclusive of any remedies provided by law.

#### **SECTION 13.02. Notices.**

(a) **General.** Unless otherwise expressly provided herein, all notices and other communications provided for hereunder shall be in writing (including by facsimile or electronic mail). All such written notices shall be mailed certified or registered mail, faxed or delivered to the applicable address, telecopy or facsimile number or (subject to Section 13.02(b) below) electronic mail address, and all notices and other communications expressly permitted hereunder to be given by telephone shall be made to the applicable telephone number, as follows:

(i) if to any Credit Party, any Agent, L/C Lender, and the Swingline Lender, to the address, facsimile number, electronic mail address or telephone number specified for such Person below its name on the signature pages hereof;

(ii) if to any other Lender, to the address, facsimile number, electronic mail address or telephone number specified for such Person below its name on the signature pages hereof or, in the case of any assignee Lender, the applicable Assignment Agreement.

Notices sent by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when received; notices sent by facsimile shall be deemed to have been given when sent (except that, if not given during normal business hours for the recipient, shall be deemed to have been given at the opening of

business on the next business day for the recipient). Notices delivered through electronic communications to the extent provided in Section 13.02(b) below, shall be effective as provided in such Section 13.02(b).

(b) **Electronic Communications.** Notices and other communications to the Lenders hereunder may be delivered or furnished by electronic communication (including e-mail and Internet or intranet websites) pursuant to procedures approved by Administrative Agent; *provided, however*, that the foregoing shall not apply to notices to any Lender pursuant to Article II, Article III or Article IV if such Lender has notified Administrative Agent that it is incapable of receiving notices under such Article by electronic communication. Each Agent or any Credit Party may, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it, *provided* that approval of such procedures may be limited to particular notices or communications.

Unless Administrative Agent otherwise prescribes, (i) notices and other communications sent to an electronic mail address shall be deemed received upon the sender's receipt of an acknowledgement from the intended recipient (such as by the "return receipt requested" function, as available, return electronic mail address or other written acknowledgement); *provided, however*, that if such notice or other communication is not sent during the normal business hours of the recipient, such notice or communication shall be deemed to have been sent at the opening of business on the next business day for the recipient, and (ii) notices or communications posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient at its e-mail address (as described in the foregoing clause (i)) of notification that such notice or communication is available and identifying the website address therefor.

(c) **Change of Address, Etc.** Each Credit Party, each Agent, each L/C Lender and the Swingline Lender may change its respective address, facsimile number, electronic mail address or telephone number for notices and other communications hereunder by notice to the other parties hereto. Each other Lender may change its address, facsimile number, electronic mail address or telephone number for notices and other communications hereunder by notice to Borrower, Administrative Agent, each L/C Lender and the Swingline Lender.

(d) **Reliance by Agents and Lenders.** Agents and the Lenders shall be entitled to rely and act upon any notices (including telephonic Notices of Borrowing and Letter of Credit Requests) purportedly given by or on behalf of Borrower even if (i) such notices were not made in a manner specified herein, were incomplete or were not preceded or followed by any other form of notice specified herein, or (ii) the terms thereof, as understood by the recipient, varied from any confirmation thereof. Borrower shall indemnify each Indemnitee from all Losses resulting from the reliance by such Indemnitee on each notice purportedly given by or on behalf of Borrower (except to the extent resulting from such Indemnitee's own gross negligence, bad faith or willful misconduct or material breach of any Credit Document) and believed by such Indemnitee in good faith to be genuine. All telephonic notices to and other communications with Administrative Agent or Collateral Agent may be recorded by Administrative Agent or Collateral Agent, as the case may be, and each of the parties hereto hereby consents to such recording.

(e) **The 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 BORROWER MATERIALS OR THE ADEQUACY OF THE PLATFORM, AND EXPRESSLY DISCLAIM LIABILITY FOR ERRORS IN OR OMISSIONS FROM THE BORROWER MATERIALS. NO WARRANTY OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY, INCLUDING ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OF THIRD PARTY RIGHTS OR FREEDOM FROM VIRUSES OR OTHER CODE DEFECTS, IS MADE BY ANY AGENT PARTY IN CONNECTION WITH THE BORROWER MATERIALS OR THE PLATFORM. In no event shall any Agent or any of their respective Affiliates, directors, officers, employees, counsel, agents, trustees, investment advisors and attorneys-in-fact (collectively, the "**Agent Parties**") have any liability to Borrower, any other Credit Party, any Lender, any L/C Lender or any other Person for losses, claims, damages, liabilities or expenses of any

kind (whether in tort, contract or otherwise) arising out of Borrower's or Administrative Agent's transmission of Borrower Materials through the Internet, except to the extent that such losses, claims, damages, liabilities or expenses are determined by a court of competent jurisdiction by a final and non-appealable judgment to have resulted from the gross negligence, bad faith or willful misconduct of, or material breach of any Credit Document by, such Agent Party; *provided* however, that in no event shall any Agent Party have any liability to Borrower, any other Credit Party, any Lender, any L/C Lender or any other Person for indirect, special, incidental, consequential or punitive damages (as opposed to direct or actual damages).

### SECTION 13.03. Expenses, Indemnification, Etc.

(a) The Credit Parties, jointly and severally, agree to pay or reimburse:

(i) Agents for all of their reasonable and documented out-of-pocket costs and expenses (including the reasonable fees, expenses and disbursements of Latham & Watkins LLP and one local counsel in each applicable jurisdiction reasonably deemed necessary by Agents and any "ClearPar" costs and expenses) in connection with (1) the negotiation, preparation, execution and delivery of the Credit Documents and the extension and syndication of credit (including the Loans and Commitments) hereunder and (2) the negotiation, preparation, execution and delivery of any modification, supplement, amendment or waiver of any of the terms of any Credit Document (whether or not consummated or effective) requested by the Credit Parties;

(ii) each Agent and each Lender for all reasonable and documented out-of-pocket costs and expenses of such Agent or Lender (*provided* that any legal expenses shall be limited to the reasonable fees, expenses and disbursements of one primary legal counsel for Lenders and Agents selected by Administrative Agent and of one local counsel in each applicable jurisdiction reasonably deemed necessary by Agents (and solely in the case of an actual or perceived conflict of interest, where the Persons affected by such conflict inform Borrower in writing of the existence of an actual or perceived conflict of interest prior to retaining additional counsel, one additional of each such counsel for each group of similarly situated Secured Parties)) in connection with (1) any enforcement or collection proceedings resulting from any Default, including all manner of participation in or other involvement with (x) bankruptcy, insolvency, receivership, foreclosure, winding up or liquidation proceedings, (y) judicial or regulatory proceedings and (z) workout, restructuring or other negotiations or proceedings (whether or not the workout, restructuring or transaction contemplated thereby is consummated), (2) following the occurrence and during the continuance of an Event of Default, the enforcement of any Credit Document, (3) the enforcement of this Section 13.03 and (4) any documentary taxes; and

(iii) Administrative Agent or Collateral Agent, as applicable but without duplication, for all reasonable and documented costs, expenses, assessments and other charges (including reasonable fees and disbursements of one counsel in each applicable jurisdiction) incurred in connection with any filing, registration, recording or perfection of any security interest contemplated by any Credit Document or any other document referred to therein.

Without limiting the rights of any Agent under this Section 13.03(a), each Agent, promptly after a request of Borrower from time to time, will advise Borrower of an estimate of any amount anticipated to be incurred by such Agent and reimbursed by Borrower under this Section 13.03(a).

(b) The Credit Parties, jointly and severally, hereby agree to indemnify each Agent, each Lender and their respective Affiliates, directors, trustees, officers, employees, representatives, advisors, partners and agents (each, an "Indemnitee") from, and hold each of them harmless against, any and all Losses incurred by, imposed on or asserted against any of them directly or indirectly arising out of or by reason of or relating to the negotiation, execution, delivery, performance, administration or enforcement of any Credit Document, any of the transactions

contemplated by the Credit Documents (including the Transactions), any breach by any Credit Party of any representation, warranty, covenant or other agreement contained in any Credit Document in connection with any of the Transactions, the use or proposed use of any of the Loans or Letters of Credit, the issuance of or performance under any Letter of Credit or, the use of any collateral security for the Obligations (including the exercise by any Agent or Lender of the rights and remedies or any power of attorney with respect thereto or any action or inaction in respect thereof), including all amounts payable by any Lender pursuant to Section 12.08, **IN ALL CASES, WHETHER OR NOT CAUSED BY OR ARISING, IN WHOLE OR IN PART, OUT OF THE COMPARATIVE, CONTRIBUTORY OR SOLE NEGLIGENCE OF THE INDEMNITEE**, but excluding (i) any such Losses relating to matters referred to in Sections 5.01 or 5.06 (which shall be the sole remedy in respect of matters referred to therein), (ii) any such Losses arising from the gross negligence, bad faith or willful misconduct or material breach of any Credit Documents by such Indemnitee or its Related Indemnified Persons (as determined by a court of competent jurisdiction in a final and non-appealable decision) and (iii) any such Losses relating to any dispute between and among Indemnitees that does not involve an act or omission by any Company (other than any claims against Administrative Agent, Collateral Agent, any other agent or bookrunner named on the cover page hereto, Swingline Lender or any L/C Lender, in each case, acting in such capacities or fulfilling such roles). For purposes of this Section 13.03(b), a "Related Indemnified Person" of an Indemnitee means (1) any controlling person or controlled affiliate of such Indemnitee, (2) the respective directors, officers, or employees of such Indemnitee or any of its controlling persons or controlled Affiliates and (3) the respective agents of such Indemnitee or any of its controlling persons or controlled Affiliates, in the case of this clause (3), acting at the instructions of such Indemnitee, controlling person or such controlled Affiliate; provided that each reference to a controlled Affiliate or controlling person in this sentence pertains to a controlled Affiliate or controlling person involved in the performance of the Indemnitee's obligations under the facilities.

Without limiting the generality of the foregoing, the Credit Parties, jointly and severally, will indemnify each Agent, each Lender and each other Indemnitee from, and hold each Agent, each Lender and each other Indemnitee harmless against, any Losses incurred by, imposed on or asserted against any of them arising under any Environmental Law as a result of (i) the past, present or future operations of any Company (or any predecessor-in-interest to any Company), (ii) the past, present or future condition of any site or facility owned, operated, leased or used at any time by any Company (or any such predecessor-in-interest) to the extent such Losses arise from or relate to the parties' relationship under the Credit Documents or to any Company's (or such predecessor-in-interest's) (A) ownership, operation, lease or use of such site or facility or (B) any aspect of the respective business or operations of such parties, and, in each case shall include, without limitation, any and all such Losses for which any Company could be found liable, or (iii) any Release or threatened Release of any Hazardous Materials at, on, under or from any such site or facility to the extent such Losses arise from or relate to the parties' relationship under the Credit Documents or to any Company's (or such predecessor-in-interest's) (A) ownership, operation, lease or use of such site or facility

or (B) any aspect of the respective business or operations of such parties, and, in each case shall include, without limitation, any and all such Losses for which any Company could be found liable, including any such Release or threatened Release that shall occur during any period when any Agent or Lender shall be in possession of any such site or facility following the exercise by such Agent or Lender, as the case may be, of any of its rights and remedies hereunder or under any of the Security Documents; *provided, however*, that the indemnity hereunder shall be subject to the exclusions from indemnification set forth in the preceding sentence.

To the extent that the undertaking to indemnify and hold harmless set forth in this Section 13.03 or any other provision of any Credit Document providing for indemnification is unenforceable because it is violative of any law or public policy or otherwise, the Credit Parties, jointly and severally, shall contribute the maximum portion that each of them is permitted to pay and satisfy under applicable law to the payment and satisfaction of all indemnified liabilities incurred by any of the Persons indemnified hereunder.

To the fullest extent permitted by applicable law, no party hereto shall assert, and the parties hereto hereby waive, any claim against any Person, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this

Agreement, any other Credit Document or any agreement or instrument contemplated hereby, the transactions contemplated hereby or thereby, any Loan or Letter of Credit or the use of the proceeds thereof; *provided* that nothing contained in this sentence shall limit the Credit Parties' indemnity and reimbursement obligations to the extent set forth in this Section 13.03 (including the Credit Parties' indemnity and reimbursement obligations to indemnify the Indemnitees for indirect, special, punitive or consequential damage that are included in any third party claim in connection with which such Indemnitee is entitled to indemnification hereunder). No Indemnitee referred to in subsection (b) above shall be liable for any damages arising from the use by unintended recipients of any information or other materials distributed to such unintended recipients by such Indemnitee through telecommunications, electronic or other information transmission systems in connection with this Agreement or the other Credit Documents or the transactions contemplated hereby or thereby other than for direct or actual damages resulting from the gross negligence, bad faith or willful misconduct or material breach of any Credit Document by such Indemnitee as determined by a final and non-appealable judgment of a court of competent jurisdiction.

#### **SECTION 13.04. Amendments and Waiver.**

(a) Neither this Agreement nor any other Credit Document nor any terms hereof or thereof may be amended, modified, changed or waived, unless such amendment, modification, change or waiver is in writing signed by the respective Credit Parties party thereto and the Required Lenders (or Administrative Agent with the consent of the Required Lenders); *provided, however*, that no such amendment, modification, change or waiver shall (and any such amendment, modification, change or waiver set forth below in clauses (i) through (vi) of this Section 13.04(a) shall only require the approval of the Agents and/or Lenders whose consent is required therefor pursuant to such clauses):

(i) extend the date for any scheduled payment of principal on any Loan or Note or extend the stated maturity of any Letter of Credit beyond any R/C Maturity Date (unless such Letter of Credit is required to be cash collateralized or otherwise backstopped (with a letter of credit on customary terms) to the Administrative Agent's and applicable L/C Lender's reasonable satisfaction or the participations therein are required to be assumed by Lenders that have Revolving Commitments which extend beyond such R/C Maturity Date) or extend the termination date of any of the Commitments, or reduce the rate or extend the time of payment of interest (other than as a result of any waiver of the applicability of any post-default increase in interest rates) or fees thereon, or forgive or reduce the principal amount thereof, without the consent of each Lender directly affected thereby (it being understood that any amendment or modification to the financial definitions in this Agreement shall not constitute a reduction in any rate of interest or fees for purposes of this clause (i), notwithstanding the fact that such amendment or modification actually results in such a reduction);

(ii) release (x) all or substantially all of the Collateral (except as provided in the Security Documents) under all the Security Documents or (y) all or substantially all of the Guarantors from the Guarantees, without the consent of each Lender;

(iii) amend, modify, change or waive (x) any provision of Section 11.02 or this Section 13.04 without the consent of each Lender, (y) any other provision of any Credit Document or any other provision of this Agreement that expressly provides that the consent of all Lenders is required, without the consent of each Lender or (z) any provision of any Credit Document that expressly provides that the consent of the Required Tranche Lenders of a particular Tranche or Required Revolving Lenders is required, without the consent of the Required Tranche Lenders of each Tranche or the Required Revolving Lenders, as the case may be (in each case, except for technical amendments with respect to additional extensions of credit (including Extended Term Loans or Extended Revolving Loans) pursuant to this Agreement which afford the benefits or protections to such additional extensions of credit of the type provided to the Term Loans and/or the Revolving Commitments and Revolving Loans, as applicable);

(iv) (x) reduce the percentage specified in the definition of Required Lenders or Required Tranche Lenders or otherwise amend the definition of Required Lenders or Required Tranche Lenders without the consent of each Lender or (y) reduce the percentage specified in the definition of Required Revolving Lenders or otherwise amend the definition of Required Revolving Lenders without the consent of each Revolving Lender (*provided* that, (x) no such consent shall be required for technical amendments with respect to additional extensions of credit pursuant to this Agreement, and (y) with the consent of the Required Lenders, additional extensions of credit (including Extended Term Loans and Extended Revolving Loans) pursuant to this Agreement may be included in the determination of the Required Lenders, Required Tranche Lenders and/or Required Revolving Lenders on substantially the same basis as the extensions of Loans and Commitments are included on the Closing Date);

(v) amend, modify, change or waive Section 4.02 or Section 4.07(b) in a manner that would alter the *pro rata* sharing of payments required thereby, without the consent of each Lender directly affected thereby (except for technical amendments with respect to additional extensions of credit (including Extended Term Loans or Extended Revolving Loans) pursuant to this Agreement which afford the protections to such additional extensions of credit of the type provided to the Term Loans and/or the Revolving Commitments and Revolving Loans, as applicable); or

(vi) impose any greater restriction on the ability of any Lender under a Tranche to assign any of its rights or obligations hereunder without the written consent of the Required Tranche Lenders for such Tranche;

*provided, further*, that no such amendment, modification, change or waiver shall (A) increase the Commitments of any Lender over the amount thereof then in effect without the consent of such Lender (it being understood that waivers or modifications of conditions precedent, covenants, Defaults or Events of Default or of a mandatory reduction in the total Commitments or Total Revolving Commitments or a waiver of a mandatory prepayment shall not constitute an increase of the Commitment of any Lender), (B) without the consent of each L/C Lender, amend, modify, change or waive any provision of Section 2.03 or alter such L/C Lender's rights or obligations with respect to Letters of Credit, (C) without the consent of the Swingline Lender, alter its rights or obligations with respect to Swingline Loans, (D) without the consent of any applicable Agent, amend, modify, change or waive any provision as same relates to the rights or obligations of such Agent, (E) amend, modify, change or waive Section 2.10(b) in a manner that by its terms adversely affects the rights in respect of prepayments due to Lenders holding Loans of one Tranche differently from the rights of Lenders holding Loans of any other Tranche without the prior written consent of the Required Tranche Lenders of each adversely affected Tranche (such consent being in lieu of the consent of the Required Lenders required above in this Section 13.04(a)) (except for technical amendments with respect to additional extensions of credit pursuant to this Agreement (including Extended Term Loans or Extended Revolving Loans) so that such additional extensions may share in the application of prepayments (or commitment reductions) with any Tranche of Term Loans or Revolving Loans, as applicable); *provided, however*, the Required Lenders may waive, in whole or in part, any prepayment so long as the application, as between Tranches, of any portion of such prepayment which is still required to be made is not altered or (F) amend or modify the definition of "Alternate Currency" or Section 1.05 without the prior written consent of all the Revolving Lenders (such consent being in lieu of the consent of the Required Lenders required above in this Section 13.04(a)). Notwithstanding anything to the contrary herein, no Defaulting Lender shall have any right to approve or disapprove any amendment, waiver or consent hereunder, except that (x) the Commitment of such Defaulting Lender may not be increased or extended without the consent of such Defaulting Lender, (y) the principal and accrued and unpaid interest of such Defaulting Lender's Loans shall not be reduced or forgiven (other than as a result of any waiver of the applicability of any post-default increase in interest rates), nor shall the date for any scheduled payment of any such amounts be postponed, without the consent of such Defaulting Lender (it being understood that any amendment or modification to the financial definitions in this Agreement shall not constitute a

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reduction in any rate of interest or fees for purposes of this clause (y), notwithstanding the fact that such amendment or modification actually results in such a reduction) and (z) any waiver, amendment or modification requiring the consent of all Lenders or each affected Lender that by its terms affects any Defaulting Lender more adversely than other affected Lenders shall require the consent of such Defaulting Lender (other than in the case of a consent by the Administrative Agent to permit Borrower and its Subsidiaries to purchase Revolving Commitments (and Revolving Loans made pursuant thereto) of Defaulting Lenders in excess of the amount permitted pursuant to Section 13.04(h)).

In addition, notwithstanding the foregoing, the Fee Letter may only be amended or changed, or rights or privileges thereunder waived, only by the parties thereto in accordance with the respective provisions thereof.

(b) If, in connection with any proposed amendment, modification, change or waiver of or to any of the provisions of this Agreement, the consent of the Required Lenders (or in the case of a proposed amendment, modification, change or waiver affecting a particular Class or Tranche, the Lenders holding a majority of the Loans and Commitments with respect to such Class or Tranche) is obtained but the consent of one or more of such other Lenders whose consent is required is not obtained, then Borrower shall have the right, so long as all non-consenting Lenders whose individual consent is required are treated as described in either clause (A) or (B) below, to either:

(A) replace each such non-consenting Lender or Lenders (or, at the option of Borrower, if such non-consenting Lender's consent is required with respect to a particular Class or Tranche of Loans (or related Commitments), to replace only the Classes or Tranches of Commitments and/or Loans of such non-consenting Lender with respect to which such Lender's individual consent is required (such Classes or Tranches, the "**Affected Classes**") with one or more Replacement Lenders, so long as, at the time of such replacement, each such Replacement Lender consents to the proposed amendment, modification, change or waiver; *provided, further*, that (i) at the time of any such replacement, the Replacement Lender shall enter into one or more Assignment Agreements (and with all fees payable pursuant to Section 13.05(b) to be paid by the Replacement Lender) pursuant to which the Replacement Lender shall acquire all of the Commitments and outstanding Loans of, and in each case L/C Interests of, the Replaced Lender (or, at the option of Borrower if the respective Lender's consent is required with respect to less than all Tranches of Loans (or related Commitments), the Commitments, outstanding Loans and L/C Interests of the Affected Classes), (ii) at the time of any replacement, the Replaced Lender shall receive an amount equal to the sum of (A) the principal of, and all accrued interest on, all outstanding Loans of such Lender (other than any Loans not being acquired by the Replacement Lender), (B) all Reimbursement Obligations (expressed in Dollars in the amount of the Dollar Equivalent thereof in the case of a Letter of Credit denominated in the Alternate Currency) owing to such Lender, together with all then unpaid interest with respect thereto at such time, in the event Revolving Loans or Revolving Commitments owing to such Lender are being acquired and (C) all accrued, but theretofore unpaid, fees and other amounts owing to the Lender with respect to the Loans being so assigned and (iii) all obligations of Borrower owing to such Replaced Lender (other than those specifically described in clause (ii) above in respect of Replaced Lenders for which the assignment purchase price has been, or is concurrently being, paid, and other than those relating to Loans or Commitments not being acquired by the Replacement Lender, but including any amounts which would be paid to a Lender pursuant to Section 5.05 if Borrower were prepaying a LIBOR Loan), as applicable, shall be paid in full to such Replaced Lender, as applicable, concurrently with such replacement. Upon the execution of the respective Assignment Agreement, the payment of amounts referred to in clauses (i), (ii) and (iii) above, as applicable, the receipt of any consents that would be required for an assignment of the subject Loans and Commitments to such Replacement Lender in accordance with Section 13.05, the Replacement Lender, if any, shall become a Lender hereunder and the Replaced Lender, as applicable, shall cease to constitute a Lender hereunder and be released of all its obligations as a Lender, except with respect to indemnification provisions applicable to such Lender under this Agreement, which shall survive as to such Lender and, in the case of any Replaced Lender, except with respect to Loans, Commitments and L/C Interests of such Replaced Lender not being acquired by the Replacement Lender; *provided*, that if the

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applicable Replaced Lender does not execute the Assignment Agreement within three (3) Business Days after Borrower's request, execution of such Assignment Agreement by the Replaced Lender shall not be required to effect such assignment; or

(B) terminate such non-consenting Lender's Commitment and/or repay Loans held by such Lender (or, if such non-consenting Lender's consent is required with respect to a particular Class or Tranche of Loans, the Commitment and Loans of the Affected Class) and, if applicable, Cash Collateralize its applicable R/C Percentage of the L/C Liability, in either case, upon three (3) Business Days' (or such shorter period as is acceptable to Administrative Agent) prior written notice to Administrative Agent at the Principal Office (which notice Administrative Agent shall promptly transmit to each of the Lenders). Any such prepayment of the Loans or termination of the Commitments of such Lender shall be made together with accrued and unpaid interest, fees and other amounts owing to such Lender (including all amounts, if any, owing pursuant to Section 5.05) (or if the applicable consent requires approval of all Lenders of a particular Tranche but not all Lenders, then Borrower shall terminate all Commitments and/or repay all Loans, in each case together with payment of all accrued and unpaid interest, fees and other amounts owing to such Lender (including all amounts, if any, owing pursuant to Section 5.05) under such Tranche), so long as (i) in the case of the repayment of Revolving Loans of any Lender pursuant to this Section 13.04(b)(B), (A) the Revolving Commitment of such Lender is terminated concurrently with such repayment and (B) such Lender's R/C Percentage of all outstanding Letters of Credit is Cash Collateralized or backstopped by Borrower in a manner reasonably satisfactory to Administrative Agent and the L/C Lenders. Immediately upon any repayment of Loans by Borrower pursuant to this Section 13.04(b)(B), such Loans repaid or acquired pursuant hereto shall be cancelled for all purposes and no longer outstanding (and may not be resold, assigned or participated out by Borrower) for all purposes of this Agreement and all other Credit Documents (*provided*, that such purchases and cancellations shall not constitute prepayments or repayments of the Loans for any purpose hereunder (except for purposes of Section 2.09(c))), including, but not limited to (A) the making of, or the application of, any payments to the Lenders under this Agreement or any other Credit Document, (B) the making of any request, demand, authorization, direction, notice, consent or waiver under this Agreement or any other Credit Document, (C) the providing of any rights to Borrower as a Lender under this Agreement or any other Credit Document, and (D) the determination of Required Lenders, or for any similar or related purpose, under this Agreement or any other Credit Document; *provided, however*, that, unless the Commitments which are terminated and Loans which are repaid pursuant to this clause (B) are immediately replaced in full at such time through the addition of new Lenders or the increase of the Commitments and/or outstanding Loans of existing Lenders (who in each case must consent thereto), then, in the case of any action pursuant to this clause (B), the Required Lenders (determined after giving effect to the proposed action) shall specifically consent thereto;

*provided*, that Borrower shall not have the right to replace a Lender, or terminate the Commitments of or repay the Loans of a Lender under this Section 13.04(b), solely as a result of the exercise of such Lender's rights (and the withholding of any required consent by such Lender) pursuant to clauses (A) through (F) of the second proviso to Section 13.04(a).

(c) Administrative Agent and Borrower may (without the consent of Lenders) amend any Credit Document to the extent (but only to the extent) necessary to reflect the existence and terms of Incremental Revolving Loans, Incremental Term Loans, Other Term Loans, Other Revolving Loans, Extended Term Loans and Extended Revolving Loans. Notwithstanding anything to the contrary contained herein, such amendment shall become effective without any further consent of any other party to such Credit Document. In addition, upon the effectiveness of any Refinancing Amendment, Administrative Agent, Borrower and the Lenders providing the relevant Credit Agreement Refinancing Indebtedness may amend this Agreement to the extent (but only to the extent) necessary to reflect the existence and terms of the Credit Agreement Refinancing Indebtedness incurred pursuant thereto (including any amendments necessary to treat the Loans and Commitments subject thereto as Other Term Loans, Other Revolving Loans, Other Revolving Commitments and/or Other Term Loan Commitments).

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Administrative Agent and Borrower may effect such amendments to this Agreement and the other Credit Documents as may be necessary or appropriate, in the reasonable opinion of Administrative Agent and Borrower, to effect the terms of any Refinancing Amendment. Administrative Agent and Collateral Agent may enter into amendments to this Agreement and the other Credit Documents with Borrower as may be necessary in order to establish new tranches or sub-tranches in respect of the Loans and/or Commitments extended pursuant to Section 2.13 or incurred pursuant to Sections 2.12 or 2.15 and such technical amendments as may be necessary or appropriate in the reasonable opinion of Administrative Agent and Borrower in connection with the establishment of such new tranches or sub-tranches, in each case on terms consistent with Section 2.13, Section 2.12 or Section 2.15.

(d) Notwithstanding the foregoing, this Agreement may be amended (or amended and restated) with the written consent of the Required Lenders, Administrative Agent and Borrower (a) to add one or more additional credit facilities to this Agreement and to permit extensions of credit from time to time outstanding thereunder and the accrued interest and fees in respect thereof to share ratably in the benefits of this Agreement and the other Credit Documents with the Term Loans (or any Tranche thereof in the case of additional Term Loans) and the Revolving Loans (or any Tranche of Revolving Commitments in the case of additional Revolving Loans or Revolving Commitments) and the accrued interest and fees in respect thereof and (b) to include appropriately the Lenders holding such credit facilities in any determination of the Required Lenders.

(e) Notwithstanding anything to the contrary herein, (i) any Credit Document may be waived, amended, supplemented or modified pursuant to an agreement or agreements in writing entered into by Borrower and Administrative Agent (without the consent of any Lender) solely to effect administrative changes that are not adverse to any Lender or to correct administrative errors or omissions or to cure an ambiguity, defect or error (including, without limitation, to revise the legal description of any Mortgaged Real Property based on surveys), or to grant a new Lien for the benefit of the Secured Parties or extend an existing Lien over additional property or to make modifications which are not materially adverse to the Lenders and are requested or required by Gaming Authorities or Gaming Laws and (ii) any Credit Document may be waived, amended, supplemented or modified pursuant to an agreement or agreements in writing entered into by Borrower and Administrative Agent (without the consent of any Lender) to permit any changes requested or required by any Governmental Authority that are not materially adverse to the Lenders (including any changes relating to qualifications as a permitted holder of debt, licensing or limits on Property that may be pledged as Collateral or available remedies). Notwithstanding anything to the contrary herein, (A) additional extensions of credit consented to by Required Lenders shall be permitted hereunder on a ratable basis with the existing Loans (including as to proceeds of, and sharing in the benefits of, Collateral and sharing of prepayments), (B) Collateral Agent shall enter into the *Pari Passu* Intercreditor Agreement upon the request of Borrower in connection with the incurrence of Permitted First Priority Refinancing Debt, Permitted First Lien Indebtedness (and Permitted Refinancings thereof that qualify as Permitted First Lien Indebtedness) or Incremental Equivalent Debt (and Permitted Refinancings thereof that satisfy Sections 10.01(t)(A)(v) and 10.01(t)(A)(vi)), as applicable (or any amendments and supplements thereto in connection with the incurrence of additional Permitted First Priority Refinancing Debt, Permitted First Lien Indebtedness (and Permitted Refinancings thereof that qualify as Permitted First Lien Indebtedness) or Incremental Equivalent Debt (and Permitted Refinancings thereof that satisfy Sections 10.01(t)(A)(v) and 10.01(t)(A)(vi))), and (C) Collateral Agent shall enter into the Second Lien Intercreditor Agreement upon the request of Borrower in connection with the incurrence of Permitted Second Priority Refinancing Debt, Permitted Second Lien Indebtedness (and Permitted Refinancings thereof that qualify as Permitted Second Lien Indebtedness) or Incremental Equivalent Debt (and Permitted Refinancings thereof that satisfy Sections 10.01(t)(A)(v) and 10.01(t)(A)(vi)), as applicable (or any amendments and supplements thereto in connection with the incurrence of additional Permitted Second Priority Refinancing Debt, Permitted Second Lien Indebtedness (and Permitted Refinancings thereof that qualify as Permitted Second Lien Indebtedness) or Incremental Equivalent Debt (and Permitted Refinancings thereof that satisfy Sections 10.01(t)(A)(v) and 10.01(t)(A)(vi))).

(f) Notwithstanding anything to the contrary herein, the applicable Credit Party or Parties and Administrative Agent and/or Collateral Agent may (in its or their respective sole discretion, or shall, to the extent

required by any Credit Document) enter into any amendment or waiver of any Credit Document, or enter into any new agreement or instrument, without the consent of any other Person, 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 Requirements of Law or to release any Collateral which is not required under the Security Documents.

(g) Notwithstanding anything to the contrary herein, Administrative Agent and Collateral Agent shall (A) release any Lien granted to or held by Administrative Agent or Collateral Agent upon any Collateral (i) upon Payment in Full of the Obligations (other than (x) obligations under any Swap Contracts as to which acceptable arrangements have been made to the satisfaction of the relevant counterparties and (y) Cash Management Agreements not yet due and payable), (ii) upon the sale, transfer or other disposition of Collateral to the extent required pursuant to the last paragraph in Section 10.05 (and Administrative Agent or Collateral Agent may rely conclusively on a certificate to that effect provided to it by any Credit Party upon its reasonable request without further inquiry) to any Person other than a Credit Party, (iii) if approved, authorized or ratified in writing by the Required Lenders (or all of the Lenders to the extent required by Section 13.04(a)), (iv) if the property subject to such Lien is owned by a Guarantor, upon release of such Guarantor from its obligations under its Guarantee pursuant to Section 6.08, (v) constituting Equity Interests in or property of an Unrestricted Subsidiary, (vi) subject to Liens permitted under Sections 10.02(i) or 10.02(k), in each case, to the extent the documents governing such Liens do not permit such Collateral to secure the Obligations, or (vii) as otherwise may be provided herein or in the relevant Security Documents, and (B) consent to and enter into (and execute documents permitting the filing and recording, where appropriate) the grant of easements and covenants and subordination rights with respect to real property, conditions, restrictions and declarations on customary terms, and subordination, non-disturbance and attornment agreements on customary terms reasonably requested by Borrower with respect to leases entered into by Borrower and its Restricted Subsidiaries, to the extent requested by Borrower and not materially adverse to the interests of the Lenders and, with respect to the Master Lease, to the extent requested by the landlord under the Master Lease in substantially the form attached thereto.

(h) If any Lender is a Defaulting Lender, Borrower shall have the right to terminate such Defaulting Lender's Revolving Commitment and repay the Loans related thereto as provided below so long as Borrower Cash Collateralizes or backstops such Defaulting Lender's applicable R/C Percentage of the L/C Liability to the reasonable satisfaction of the L/C Issuer and the Administrative Agent; *provided* that such terminations of Revolving Commitments shall not exceed 20% of the sum of (x) the initial aggregate principal amount of the Revolving Commitments on the Closing Date *plus* (y) the initial aggregate principal amount of all Incremental Revolving Commitments incurred after the Closing Date and prior to such date of determination; *provided, further*, that Borrower and its Subsidiaries may terminate additional Revolving Commitments and repay the Loans related thereto pursuant to this Section 13.04(h) with the consent of the Administrative Agent. At the time of any such termination and/or repayment, and as a condition thereto, the Replaced Lender shall receive an amount equal to the sum of (A) the principal of, and all accrued interest on, all outstanding Loans of such Lender provided pursuant to such Revolving Commitments, (B) all Reimbursement Obligations (expressed in Dollars in the amount of the Dollar Equivalent thereof in the case of a Letter of Credit denominated in the Alternate Currency) owing to such Lender, together with all then unpaid interest with respect thereto at such time, in the event Revolving Loans or Revolving Commitments owing to such Lender are being repaid and terminated or acquired, as the case may be, and (C) all accrued, but theretofore unpaid, fees owing to the Lender pursuant to Section 2.05 with respect to the Loans being so repaid, as the case may be and all other obligations of Borrower owing to such Replaced Lender (other than those relating to Loans or Commitments not being terminated or repaid) shall be paid in full to such Defaulting Lender concurrently with such termination. At such time, unless the respective Lender continues to have outstanding Loans or Commitments hereunder, such Lender shall no longer constitute a "Lender" for purposes of this Agreement, except with respect to indemnifications under this Agreement (including, without limitation, Sections 4.02, 5.01, 5.03, 5.05, 5.06 and 13.03), which shall survive as to such repaid Lender. Immediately upon any repayment of Loans by Borrower pursuant to this Section 13.04(h), such Loans repaid pursuant hereto shall be cancelled for all

purposes and no longer outstanding (and may not be resold, assigned or participated out by Borrower) for all purposes of this Agreement and all other Credit Documents (*provided*; that such purchases and cancellations shall not constitute prepayments or repayments of the Loans (including, without limitation, pursuant to Section 2.09, Section 2.10 or Article IV) for any purpose hereunder), including, but not limited to (A) the making of, or the application of, any payments to the Lenders under this Agreement or any other Credit Document, (B) the making of any request, demand, authorization, direction, notice, consent or waiver under this Agreement or any other Credit Document, (C) the providing of any rights to Borrower as a Lender under this Agreement or any other Credit Document, and (D) the determination of Required Lenders, or for any similar or related purpose, under this Agreement or any other Credit Document.

#### **SECTION 13.05. Benefit of Agreement; Assignments; Participations.**

(a) This Agreement shall be binding upon and inure to the benefit of and be enforceable by the respective successors and assigns of the parties hereto; *provided, however*, no Credit Party may assign or transfer any of its rights, obligations or interest hereunder or under any other Credit Document (it being understood that a merger or consolidation not prohibited by this Agreement shall not constitute an assignment or transfer) without the prior written consent of all of the Lenders and *provided, further*, that, although any Lender may transfer, assign or grant participations in its rights hereunder, such Lender shall remain a "Lender" for all purposes hereunder (and may not transfer or assign all or any portion of its Commitments, Loans or related Obligations hereunder except as provided in Section 13.05(b)) and the participant shall not constitute a "Lender" hereunder; and *provided, further*, that no Lender shall transfer, assign or grant any participation (w) to a natural person, (x) to a Competitor (unless consented to by Borrower), (y) to a Disqualified Lender (unless consented to by Borrower) or (z) under which the participant shall have rights to approve any amendment to or waiver of this Agreement or any other Credit Document except to the extent such amendment or waiver would (i) extend the date for any scheduled payment on, or the final scheduled maturity of, any Loan, Note or Letter of Credit (unless such Letter of Credit is not extended beyond any applicable R/C Maturity Date (unless such Letter of Credit is required to be cash collateralized or otherwise backstopped (with a letter of credit on customary terms) to the applicable L/C Lender's and the Administrative Agent's reasonable satisfaction or the participations therein are required to be assumed by Lenders that have commitments which extend beyond such R/C Maturity Date)) in which such participant is participating, or reduce the rate or extend the time of payment of interest or fees thereon (except in connection with a waiver of applicability of any post-default increase in interest rates) or reduce the principal amount thereof, or increase the amount of the participant's

participation over the amount thereof then in effect (it being understood that a waiver of any Default or Event of Default or of a mandatory reduction in the total Commitments or Total Revolving Commitments or of a mandatory prepayment shall not constitute a change in the terms of such participation, that an increase in any Commitment (or the available portion thereof) or Loan shall be permitted without the consent of any participant if the participant's participation is not increased as a result thereof and that any amendment or modification to the financial definitions in this Agreement shall not constitute a reduction in any rate of interest or fees for purposes of this clause (i), notwithstanding the fact that such amendment or modification actually results in such a reduction), (ii) consent to the assignment or transfer by any Credit Party of any of its rights and obligations under this Agreement or other Credit Document to which it is a party or (iii) release all or substantially all of the Collateral under all of the Security Documents (except as expressly provided in the Credit Documents) supporting the Loans or Letters of Credit hereunder in which such participant is participating. In the case of any such participation, the participant shall not have any rights under this Agreement or any of the other Credit Documents (the participant's rights against such Lender in respect of such participation to be those set forth in the agreement executed by such Lender in favor of the participant relating thereto). Subject to the last sentence of this paragraph (a), Borrower agrees that each participant shall be entitled to the benefits of Sections 5.01, and 5.06 (subject to the obligations and limitations of such Sections, including Section 5.06(b), (c) and (d) (it being understood that the documentation required under Section 5.06(b), (c) and (d) shall be delivered to the participating 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 13.05. To the extent permitted by law, each participant also shall be entitled to the benefits of Section 4.07 as though it were a Lender. Each Lender that sells a participation shall, acting solely for this

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purpose as a non-fiduciary agent of Borrower, maintain a register on which it enters the name and address of each participant and the principal amounts (and related interest amounts) of each participant's interest in the Loans or other obligations under this Agreement (the "**Participant Register**"). The entries in the Participant Register shall be conclusive, absent manifest error, and such Lender shall treat each Person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary. A participant shall not be entitled to receive any greater payment under Sections 5.01 or 5.06 than the applicable Lender would have been entitled to receive with respect to the participation sold to such participant, unless the entitlement to a greater payment results from any change in applicable Laws after the date the participant became a participant.

(b) No Lender (or any Lender together with one or more other Lenders) may assign all or any portion of its Commitments, Loans and related outstanding Obligations (or, if the Commitments with respect to the relevant Tranche have terminated, outstanding Loans and Obligations) hereunder, except to one or more Eligible Assignees (treating any fund that invests in loans and any other fund that invests in loans and is managed or advised by the same investment advisor of such fund or by an Affiliate of such investment advisor as a single Eligible Assignee) with the consent of (x) Administrative Agent, (y) so long as no Event of Default pursuant to Section 11.01(b) or 11.01(c), or, with respect to Borrower, 11.01(g) or 11.01(h), has occurred and is continuing, Borrower and (z) in the case of an assignment of Revolving Loans or Revolving Commitments, the consent of the Swingline Lender and each L/C Lender (each such consent not to be unreasonably withheld or delayed); *provided* that (x) except in the case of an assignment of the entire remaining amount of the assigning Lender's Commitments and Loans at the time owing to it, the aggregate amount of the Commitments or Loans subject to such assignment shall not be less than \$1.0 million; (y) no such consent shall be necessary in the case of (i) an assignment of Revolving Loans or Revolving Commitments by a Revolving Lender to another Revolving Lender or of Term A Facility Loans by a Term A Facility Lender to another Term A Facility Lender or an Affiliate of a Term A Facility Lender and (ii) an assignment of Term B Facility Loans by a Lender to (A) its parent company and/or any Affiliate of such Lender which is at least 50% owned by such Lender or its parent company or (B) one or more other Lenders or any Affiliate of any such other Lender which is at least 50% owned by such other Lender or its parent company (*provided* that any fund that invests in loans and is managed or advised by the same investment advisor of another fund which is a Lender (or by an Affiliate of such investment advisor) shall be treated as an Affiliate that is at least 50% owned by such other Lender or its parent company for the purposes of this sub-clause (x)(ii)(B)), or (C) in the case of any Lender that is a fund that invests in loans, any other fund that invests in loans and is managed or advised by the same investment advisor of any Lender or by an Affiliate of such investment advisor, and (y) Borrower shall be deemed to have consented to any such assignment unless it shall object thereto by written notice to Administrative Agent within ten (10) Business Days after having received notice thereof. Notwithstanding the foregoing, so long as no Event of Default pursuant to Section 11.01(b) or 11.01(c), or, with respect to Borrower, 11.01(g) or 11.01(h), has occurred and is continuing, no assignment will be permitted to any Lender that will result in such Lender holding, collectively with its Affiliates (including any Person deemed to be an Affiliate for purposes of sub-clause (x)(ii)(B) above), Loans and Commitments having an aggregate principal amount of \$100 million, or greater, without the prior written consent of Borrower (such consent not to be unreasonably withheld, conditioned or delayed); *provided* that Borrower shall be deemed to have consented to any such assignment unless it shall object thereto by written notice to Administrative Agent within ten (10) Business Days after a Responsible Officer has received notice thereof. Each assignee shall become a party to this Agreement as a Lender by execution of an Assignment Agreement; *provided* that (I) Administrative Agent shall, unless it otherwise agrees in its sole discretion, receive at the time of each such assignment, from the assigning or assignee Lender, the payment of a non-refundable assignment fee of \$3,500, (II) no such transfer or assignment will be effective until recorded by Administrative Agent on the Register pursuant to Section 2.08, and (III) such assignments may be made on a *pro rata* basis among Commitments and/or Loans (and related Obligations). To the extent of any assignment permitted pursuant to this Section 13.05(b), the assigning Lender shall be relieved of its obligations hereunder with respect to its assigned Commitments and outstanding Loans (*provided* that such assignment shall not release such Lender of any claims or liabilities that may exist against such Lender at the time of such assignment). At the time of each assignment pursuant to this Section 13.05(b) to a Person which is not already a Lender hereunder, the respective assignee Lender shall, to the extent

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legally entitled to do so, provide to Borrower and Administrative Agent the appropriate Internal Revenue Service Forms (and, if applicable, a Foreign Lender Certificate) as described in Section 5.06(b), 5.06(c) or 5.06(d), as applicable. To the extent that an assignment of all or any portion of a Lender's Commitments, Loans and related outstanding Obligations pursuant to Section 2.11, Section 13.04(b)(B) or this Section 13.05(b) would, under the laws in effect at the time of such assignment, result in increased costs under Section 5.01, 5.03 or (subject to clause (c) in the definition of Excluded Taxes as it relates to assignments pursuant to Section 2.11(a)) 5.06 from those being charged by the respective assigning Lender prior to such assignment, then Borrower shall not be obligated to pay such increased costs (although Borrower, in accordance with and pursuant to the other provisions of this Agreement, shall be obligated to pay any other increased costs of the type described above resulting from changes in any applicable law, treaty, governmental rule, regulation, guideline or order, or in the interpretation thereof, after the date of the respective assignment).

(c) Nothing in this Agreement shall prevent or prohibit any Lender from pledging or assigning a security interest in its rights under this Agreement to secure obligations of such Lender, including any pledge or assignment of a security interest to a Federal Reserve Bank or other central banking authority. No pledge pursuant to this Section 13.05(c) shall release the transferor Lender from any of its obligations hereunder or permit the pledgee to become a lender hereunder without otherwise complying with Section 13.05(b).



(d) Notwithstanding anything to the contrary contained in this Section 13.05 or any other provision of this Agreement, Borrower and its Subsidiaries may, but shall not be required to, purchase outstanding Term Loans pursuant to (x) the Auction Procedures established for each such purchase in an auction managed by Auction Manager and (y) through open market purchases, subject solely to the following conditions:

(i) (x) with respect to any Borrower Loan Purchase pursuant to the Auction Procedures, at the time of the applicable Purchase Notice (as defined in Exhibit O), no Event of Default has occurred and is continuing or would result therefrom, and (y) with respect to any Borrower Loan Purchase consummated through an open market purchase, at the time of the applicable assignment, no Event of Default has occurred and is continuing or would result therefrom;

(ii) immediately upon any Borrower Loan Purchase, the Term Loans purchased pursuant thereto shall be cancelled for all purposes and no longer outstanding (and may not be resold, assigned or participated out by Borrower) for all purposes of this Agreement and all other Credit Documents (*provided*; that such purchases and cancellations shall not constitute prepayments or repayments of the Loans (including, without limitation, pursuant to Section 2.09, Section 2.10 or Article IV) for any purpose hereunder), including, but not limited to (A) the making of, or the application of, any payments to the Lenders under this Agreement or any other Credit Document, (B) the making of any request, demand, authorization, direction, notice, consent or waiver under this Agreement or any other Credit Document, (C) the providing of any rights to Borrower as a Lender under this Agreement or any other Credit Document, and (D) the determination of Required Lenders, or for any similar or related purpose, under this Agreement or any other Credit Document;

(iii) with respect to each Borrower Loan Purchase, Administrative Agent shall receive (x) if such Borrower Loan Purchase is consummated pursuant to the Auction Procedures, a fully executed and completed Borrower Assignment Agreement effecting the assignment thereof, and (y) if such Borrower Loan Purchase is consummated pursuant to an open market purchase, a fully executed and completed Open Market Assignment and Assumption Agreement effecting the assignment thereof;

(iv) open market purchases of Term Loans by Borrower and its Subsidiaries shall not in the aggregate exceed 15% of the sum of (A) the initial aggregate principal amount of the Term Loans on the Closing Date *plus* (B) the initial aggregate principal amount of all Incremental Term Loans incurred after the Closing Date and prior to such date of determination; and

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(v) Borrower may not use the proceeds of any Revolving Loan to fund the purchase of outstanding Loans pursuant to this Section 13.05(d).

The assignment fee set forth in Section 13.05(b) shall not be applicable to any Borrower Loan Purchase consummated pursuant to this Section 13.05(d).

(e) Within forty-five (45) days after the effectiveness of any assignment with respect to which Borrower has consented to pursuant to this Section 13.05, Borrower shall provide notice of such assignment to the West Virginia Lottery Commission.

**SECTION 13.06. Survival.** The obligations of the Credit Parties under Sections 5.01, 5.05, 5.06, 13.03 and 13.20, the obligations of each Guarantor under Section 6.03, and the obligations of the Lenders under Sections 5.06 and 12.08, in each case shall survive the repayment of the Loans and the other Obligations and the termination of the Commitments and, in the case of any Lender that may assign any interest in its Commitments, Loans or L/C Interest (and any related Obligations) hereunder, shall (to the extent relating to such time as it was a Lender) survive the making of such assignment, notwithstanding that such assigning Lender may cease to be a "Lender" hereunder. In addition, each representation and warranty made, or deemed to be made by a notice of any extension of credit, herein or pursuant hereto shall be considered to have been relied upon by the other parties hereto and shall survive the execution and delivery of this Agreement and the Notes and the making of any extension of credit hereunder, regardless of any investigation made by any such other party or on its behalf and notwithstanding that Administrative Agent or any Lender may have had notice or knowledge of any Default or incorrect representation or warranty.

**SECTION 13.07. Captions.** The table of contents and captions and Section headings appearing herein are included solely for convenience of reference and are not intended to affect the interpretation of any provision of this Agreement.

**SECTION 13.08. Counterparts; Interpretation; Effectiveness.** This Agreement may be executed in counterparts (and by different parties hereto on different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Agreement and the other Credit Documents, constitute the entire contract among the parties thereto relating to the subject matter hereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof, other than the Fee Letter, which are not superseded and survive solely as to the parties thereto (to the extent provided therein). This Agreement shall become effective when the Closing Date shall have occurred, and this Agreement shall have been executed and delivered by the Credit Parties and when Administrative Agent shall have received counterparts 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 the parties hereto and their respective successors and assigns. Delivery of an executed counterpart of a signature page of this Agreement by facsimile or electronic mail shall be effective as delivery of a manually executed counterpart of this Agreement.

**SECTION 13.09. Governing Law; Submission to Jurisdiction; Waivers; Etc.**

(a) **GOVERNING LAW.** THIS AGREEMENT AND THE OTHER CREDIT DOCUMENTS AND ANY CLAIMS, CONTROVERSIES, DISPUTES, OR CAUSES OF ACTION (WHETHER ARISING UNDER CONTRACT LAW, TORT LAW OR OTHERWISE) BASED UPON OR RELATING TO THIS AGREEMENT OR THE OTHER CREDIT DOCUMENTS (EXCEPT AS TO ANY OTHER CREDIT DOCUMENT, AS EXPRESSLY SET FORTH IN SUCH OTHER CREDIT DOCUMENT), SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK WITHOUT GIVING EFFECT TO ANY CHOICE OF LAW PRINCIPLES THAT WOULD APPLY THE LAWS OF ANOTHER JURISDICTION.

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(b) **SUBMISSION TO JURISDICTION.** EACH CREDIT PARTY IRREVOCABLY AND UNCONDITIONALLY AGREES THAT IT WILL NOT COMMENCE ANY ACTION, LITIGATION OR PROCEEDING OF ANY KIND OR DESCRIPTION, WHETHER AT LAW OR IN EQUITY, WHETHER IN CONTRACT OR IN TORT OR OTHERWISE, AGAINST THE ADMINISTRATIVE AGENT, ANY LENDER, ANY OF THEIR RESPECTIVE AFFILIATES, OR ANY OF THE PARTNERS, DIRECTORS, OFFICERS, EMPLOYEES, AGENTS OR ADVISORS OF THE FOREGOING IN ANY WAY RELATING TO THIS AGREEMENT OR ANY OTHER CREDIT DOCUMENT OR THE TRANSACTIONS RELATED HERETO OR THERETO, IN ANY FORUM OTHER THAN THE COURTS OF THE STATE OF NEW YORK SITTING IN NEW YORK COUNTY AND OF THE UNITED STATES DISTRICT COURT OF THE SOUTHERN DISTRICT OF NEW YORK, AND ANY APPELLATE COURT FROM ANY THEREOF, AND EACH OF THE PARTIES HERETO IRREVOCABLY AND UNCONDITIONALLY SUBMITS TO THE JURISDICTION OF SUCH COURTS AND AGREES THAT ALL CLAIMS IN RESPECT OF ANY SUCH ACTION, LITIGATION OR PROCEEDING MAY BE HEARD AND DETERMINED IN SUCH NEW YORK STATE COURT OR, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, IN SUCH FEDERAL COURT. EACH OF THE PARTIES HERETO AGREES THAT A FINAL JUDGMENT IN ANY SUCH ACTION, LITIGATION OR PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW. NOTHING IN THIS AGREEMENT OR IN ANY OTHER CREDIT DOCUMENT SHALL AFFECT ANY RIGHT THAT THE ADMINISTRATIVE AGENT OR ANY LENDER MAY OTHERWISE HAVE TO BRING ANY ACTION OR PROCEEDING RELATING TO THIS AGREEMENT OR ANY OTHER CREDIT DOCUMENT AGAINST ANY CREDIT PARTY OR ITS PROPERTIES IN THE COURTS OF ANY JURISDICTION.

(c) **WAIVER OF VENUE.** EACH PARTY HERETO HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY OBJECTION THAT IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER CREDIT DOCUMENT IN ANY COURT REFERRED TO IN PARAGRAPH (b) OF THIS SECTION. EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE DEFENSE OF AN INCONVENIENT FORUM TO THE MAINTENANCE OF SUCH ACTION OR PROCEEDING IN ANY SUCH COURT.

(d) **SERVICE OF PROCESS.** EACH PARTY HERETO IRREVOCABLY CONSENTS TO SERVICE OF PROCESS IN THE MANNER PROVIDED FOR NOTICES IN SECTION 13.02. NOTHING IN THIS AGREEMENT WILL AFFECT THE RIGHT OF ANY PARTY HERETO TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY APPLICABLE LAW.

(e) **WAIVER OF JURY TRIAL.** EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER CREDIT DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (i) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (ii) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND THE OTHER CREDIT DOCUMENTS BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

**SECTION 13.10. Confidentiality.** Each Agent and each Lender agrees to keep information obtained by it pursuant to the Credit Documents confidential in accordance with such Agent's or such Lender's customary practices and agrees that it will only use such information in connection with the transactions contemplated hereby

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and not disclose any of such information other than (a) to such Agent's or such Lender's employees, representatives, directors, attorneys, auditors, agents, professional advisors, trustees or Affiliates who are advised of the confidential nature thereof and instructed to keep such information confidential or to any direct or indirect creditor or contractual counterparty in swap agreements or such creditor's or contractual counterparty's professional advisor (so long as such creditor, contractual counterparty or professional advisor to such contractual counterparty agrees in writing to be bound by the provision of this Section 13.10), (b) to the extent such information presently is or hereafter becomes available to such Agent or such Lender on a non-confidential basis from a Person not an Affiliate of such Agent or such Lender not known to such Agent or such Lender to be violating a confidentiality obligation by such disclosure, (c) to the extent disclosure is required by any Law, subpoena or judicial order or process (*provided* that notice of such requirement or order shall be promptly furnished to Borrower unless such notice is legally prohibited) or requested or required by bank, securities, insurance or investment company regulations or auditors or any administrative body or commission (including the Securities Valuation Office of the NAIC) to whose jurisdiction such Agent or such Lender is subject, (d) to any rating agency to the extent required in connection with any rating to be assigned to such Agent or such Lender; *provided* that prior notice thereof is furnished to Borrower, (e) to pledgees under Section 13.05(c), assignees, participants, prospective assignees or prospective participants, in each case who agree in writing to be bound by the provisions of this Section 13.10 (it being understood that any electronically recorded agreement from any Person listed above in this clause (e) in respect to any electronic information (whether posted or otherwise distributed on Intralinks or any other electronic distribution system) shall satisfy the requirements of this clause (e)), (f) in connection with the exercise of remedies hereunder or under any Credit Document or to the extent required in connection with any litigation with respect to the Loans or any Credit Document or (g) with Borrower's prior written consent.

**SECTION 13.11. Independence of Representations, Warranties and Covenants.** The representations, warranties and covenants contained herein shall be independent of each other and no exception to any representation, warranty or covenant shall be deemed to be an exception to any other representation, warranty or covenant contained herein unless expressly provided, nor shall any such exception be deemed to permit any action or omission that would be in contravention of applicable law.

**SECTION 13.12. Severability.** Wherever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement shall be prohibited by or invalid under applicable law, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provisions or the remaining provisions of this Agreement.

**SECTION 13.13. Gaming Laws.**

(a) Notwithstanding anything to the contrary in this Agreement or any other Credit Document, this Agreement and the other Credit Documents are subject to the Gaming Laws and the laws involving the sale, distribution and possession of alcoholic beverages and/or tobacco, as applicable (the "**Liquor Laws**"). Without limiting the foregoing, Administrative Agent, each other Agent, each Lender and each participant acknowledges that (i) it is the subject of being called forward by any Gaming Authority or any Governmental Authority enforcing the Liquor Laws (the "**Liquor Authority**"), in each of their

discretion, for licensing or a finding of suitability or to file or provide other information, and (ii) all rights, remedies and powers under this Agreement and the other Credit Documents, including with respect to the entry into and ownership and operation of the Gaming Facilities, and the possession or control of gaming equipment, alcoholic beverages or a gaming or liquor license, may be exercised only to the extent that the exercise thereof does not violate any applicable provisions of the Gaming Laws and Liquor Laws and only to the extent that required approvals (including prior approvals) are obtained from the requisite Governmental Authorities.

(b) Notwithstanding anything to the contrary in this Agreement or any other Credit Document, Administrative Agent, each other Agent, each Lender and each participant agrees to cooperate with each Gaming

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Authority and each Liquor Authority (and, in each case, to be subject to Section 2.11) in connection with the administration of their regulatory jurisdiction over Borrower and the other Credit Parties, including, without limitation, the provision of such documents or other information as may be requested by any such Gaming Authorities and/or Liquor Authorities relating to Administrative Agent, any other Agent, any of the Lenders or participants, Borrower and its Subsidiaries or to the Credit Documents.

(c) Notwithstanding anything to the contrary in this Agreement or any other Credit Document, to the extent any provision of this Agreement or any other Credit Document excludes any assets from the scope of the Pledged Collateral, or from any requirement to take any action to make effective or perfect any security interest in favor of Collateral Agent or any other Secured Party in the Pledged Collateral, the representations, warranties and covenants made by Borrower or any Restricted Subsidiary in this Agreement with respect to the creation, perfection or priority (as applicable) of the security interest granted in favor of Collateral Agent or any other Secured Party (including, without limitation, Article VIII of this Agreement) shall be deemed not to apply to such assets.

**SECTION 13.14. USA Patriot Act.** Each Lender that is subject to the Act (as hereinafter defined) to the extent required hereby, notifies Borrower and the Guarantors 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 Borrower and the Guarantors, which information includes the name and address of Borrower and the Guarantors and other information that will allow such Lender to identify Borrower and the Guarantors in accordance with the Act, and Borrower and the Guarantors agree to provide such information from time to time to any Lender.

**SECTION 13.15. Judgment Currency.**

(a) Borrower’s obligations hereunder and under the other Credit Documents to make payments in Dollars (the “**Obligation Currency**”) shall not be discharged or satisfied by any tender or recovery pursuant to any judgment expressed in or converted into any currency other than the Obligation Currency, except to the extent that such tender or recovery results in the effective receipt by Administrative Agent, Collateral Agent, the respective L/C Lender or the respective Lender of the full amount of the Obligation Currency expressed to be payable to Administrative Agent, Collateral Agent, such L/C Lender or such Lender under this Agreement or the other Credit Documents. If, for the purpose of obtaining or enforcing judgment against Borrower in any court or in any jurisdiction, it becomes necessary to convert into or from any currency other than the Obligation Currency (such other currency being hereinafter referred to as the “**Judgment Currency**”) an amount due in the Obligation Currency, the conversion shall be made at the Dollar Equivalent thereof and, in the case of other currencies the rate of exchange (as quoted by Administrative Agent or if Administrative Agent does not quote a rate of exchange on such currency, by a known dealer in such currency designated by Administrative Agent) determined, in each case, as of the day on which the judgment is given (such day being hereinafter referred to as the “**Judgment Currency Conversion Date**”).

(b) If there is a change in the rate of exchange prevailing between the Judgment Currency Conversion and the date of actual payment of the amount due by Borrower, Borrower covenants and agrees to pay, or cause to be paid, such additional amounts, if any (but in any event not a lesser amount), as may be necessary to ensure that the amount paid in the Judgment Currency, when converted at the rate of exchange prevailing on the date of payment, will produce the amount of the Obligation Currency which could have been purchased with the amount of Judgment Currency stipulated in the judgment or judicial award at the rate or exchange prevailing on the Judgment Currency Conversion Date.

(c) For purposes of determining the Dollar Equivalent or any other rate of exchange for this Section 13.15, such amounts shall include any premium and costs payable in connection with the purchase of the Obligation Currency.

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**SECTION 13.16. Waiver of Claims.** Notwithstanding anything in this Agreement or the other Credit Documents to the contrary, the Credit Parties hereby agree that Borrower shall not acquire any rights as a Lender under this Agreement as a result of any Borrower Loan Purchase and may not make any claim as a Lender against any Agent or any Lender with respect to the duties and obligations of such Agent or Lender pursuant to this Agreement and the other Credit Documents; *provided, however*, that, for the avoidance of doubt, the foregoing shall not impair Borrower’s ability to make a claim in respect of a breach of the representations or warranties or obligations of the relevant assignor in a Borrower Loan Purchase, including in the standard terms and conditions set forth in the assignment agreement applicable to a Borrower Loan Purchase.

**SECTION 13.17. No Advisory or Fiduciary Responsibility.** In connection with all aspects of each transaction contemplated hereby (including in connection with any amendment, waiver or other modification hereof or of any other Credit Document), Borrower and each other Credit Party acknowledges and agrees, and acknowledges its Affiliates’ understanding, that: (i) (A) the arranging and other services regarding this Agreement provided by the Administrative Agent, the Collateral Agent, the Documentation Agent, the Bookrunners, the Lead Arrangers and the Lenders are arm’s-length commercial transactions between Borrower, each other Credit Party and their respective Affiliates, on the one hand, and the Administrative Agent, the Collateral Agent, the Documentation Agent, the Bookrunners, the Lead Arrangers and the Lenders, on the other hand, (B) each of Borrower and the other Credit Parties has consulted its own legal, accounting, regulatory and tax advisors to the extent it has deemed appropriate, and (C) Borrower and each other Credit Party is capable of evaluating, and understands and accepts, the terms, risks and conditions of the transactions contemplated hereby and by the other Credit Documents; (ii) (A) the Administrative Agent, the Collateral Agent, the Documentation Agent, the Bookrunners, the Lead Arrangers and each Lender is and has been acting solely as a principal and, except as expressly agreed in writing by the relevant parties, has not been, is not, and will not be acting as an advisor, agent or fiduciary for Borrower, any other Credit Party or any of their respective Affiliates, or any other Person (except as expressly set forth in an any engagement letters between the Administrative Agent, the Collateral Agent, the Documentation Agent, such Bookrunner, such Lead Arranger or such

Lender and Borrower or such Credit Party or Affiliate thereof) and (B) neither the Administrative Agent, the Collateral Agent, the Documentation Agent, the Bookrunners, the Lead Arrangers nor any Lender has any obligation to Borrower, any other Credit Party or any of their respective Affiliates with respect to the transactions contemplated hereby except those obligations expressly set forth herein and in the other Credit Documents or in other written agreements between the Administrative Agent, the Collateral Agent, the Documentation Agent, the Bookrunners, the Lead Arrangers or any Lender on one hand and Borrower, any other Credit Party or any of their respective Affiliates on the other hand; and (iii) the Administrative Agent, the Collateral Agent, the Bookrunners, the Documentation Agent, the Lead Arrangers and the Lenders and their respective Affiliates may be engaged in a broad range of transactions that involve interests that differ from, or conflict with, those of Borrower, the other Credit Parties and their respective Affiliates, and neither the Administrative Agent, the Collateral Agent, the Documentation Agent, the Bookrunners, the Lead Arrangers, nor any Lender has any obligation to disclose any of such interests to Borrower, any other Credit Party or any of their respective Affiliates. Each Credit Party agrees that nothing in the Credit Documents will be deemed to create an advisory, fiduciary or agency relationship or fiduciary or other implied duty between the Administrative Agent, the Collateral Agent, the Documentation Agent, the Bookrunners, the Lead Arrangers and the Lenders, on the one hand, and such Credit Party, its stockholders or its affiliates, on the other. To the fullest extent permitted by law, each of Borrower and each other Credit Party hereby waives and releases any claims that it may have against the Administrative Agent, the Collateral Agent, the Documentation Agent, the Bookrunners, the Lead Arrangers or any Lender with respect to any breach or alleged breach of agency or fiduciary duty in connection with any aspect of any transaction contemplated hereby (other than any agency or fiduciary duty expressly set forth in an any engagement letter referenced in clause (ii)(A)).

**SECTION 13.18. Lender Action.** Each Lender agrees that it shall not take or institute any actions or proceedings, judicial or otherwise, for any right or remedy against any Credit Party or any other obligor under any of the Credit Documents or the Swap Contracts or (with respect to the exercise of rights against the collateral) Cash Management Agreements (including the exercise of any right of setoff, rights on account of any banker's lien or

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similar claim or other rights of self-help), or institute any actions or proceedings, or otherwise commence any remedial procedures, with respect to any Collateral or any other property of any such Credit Party, without the prior written consent of Administrative Agent. The provisions of this Section 13.18 are for the sole benefit of the Agents and Lenders and shall not afford any right to, or constitute a defense available to, any Credit Party.

**SECTION 13.19. Interest Rate Limitation.** Notwithstanding anything to the contrary contained in any Credit Document, the interest paid or agreed to be paid under the Credit Documents (collectively, the "Charges") shall not exceed the maximum rate of non-usurious interest permitted by applicable Law (the "Maximum Rate"). If any Agent or any Lender shall receive interest in an amount that exceeds the Maximum Rate, the excess interest shall be applied to the principal of the Loans or, if it exceeds such unpaid principal, refunded to Borrower. In determining whether the interest contracted for, charged, or received by an Agent or a Lender exceeds the Maximum Rate, such Person may, to the extent permitted by applicable Law, (a) characterize any payment that is not principal as an expense, fee, or premium rather than interest, (b) exclude voluntary prepayments and the effects thereof, and (c) amortize, prorate, allocate, and spread in equal or unequal parts the total amount of interest throughout the contemplated term of the Obligations hereunder. To the extent permitted by applicable Law, the interest and other Charges that would have been payable in respect of such Loan but were not payable as a result of the operation of this Section 13.19 shall be cumulated and the interest and Charges payable to such Lender in respect of other Loans or periods shall be increased (but not above the Maximum Rate therefor) until such cumulated amount, together with interest thereon at the Federal Funds Rate to the date of repayment, shall have been received by such Lender. Thereafter, interest hereunder shall be paid at the rate(s) of interest and in the manner provided in this Agreement, unless and until the rate of interest again exceeds the Maximum Rate, and at that time this Section 13.19 shall again apply. In no event shall the total interest received by any Lender pursuant to the terms hereof exceed the amount that such Lender could lawfully have received had the interest due hereunder been calculated for the full term hereof at the Maximum Rate. If the Maximum Rate is calculated pursuant to this Section 13.19, such interest shall be calculated at a daily rate equal to the Maximum Rate divided by the number of days in the year in which such calculation is made. If, notwithstanding the provisions of this Section 13.19, a court of competent jurisdiction shall finally determine that a Lender has received interest hereunder in excess of the Maximum Rate, Administrative Agent shall, to the extent permitted by applicable Law, promptly apply such excess in the order specified in this Agreement and thereafter shall refund any excess to Borrower or as a court of competent jurisdiction may otherwise order.

**SECTION 13.20. Payments Set Aside.** To the extent that any payment by or on behalf of Borrower is made to any Agent, any L/C Lender or any Lender, or any Agent, any L/C Lender or any Lender exercises its right of setoff, and such payment or the proceeds of such setoff or any part thereof is subsequently invalidated, declared to be fraudulent or preferential, set aside or required (including pursuant to any settlement entered into by such Agent, such L/C Lender or such Lender in its discretion) to be repaid to a trustee, receiver or any other party, in connection with any proceeding under any Debtor Relief Law or otherwise, then (a) to the extent of such recovery, the obligation or part thereof originally intended to be satisfied shall be revived and continued in full force and effect as if such payment had not been made or such setoff had not occurred and the Agents', the L/C Lender's and the Lenders' Liens, security interests, rights, powers and remedies under this Agreement and each Credit Document shall continue in full force and effect, and (b) each Lender severally agrees to pay to Administrative Agent upon demand its applicable share of any amount so recovered from or repaid by any Agent or L/C Lender, *plus* interest thereon from the date of such demand to the date such payment is made at a rate per annum equal to the Federal Funds Rate from time to time in effect. In such event, each Credit Document shall be automatically reinstated (to the extent that any Credit Document was terminated) and Borrower shall take (and shall cause each other Credit Party to take) such action as may be requested by Administrative Agent, the L/C Lenders and the Lenders to effect such reinstatement.

[Signature Pages Follow]

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IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and delivered as of the day and year first above written.

PENN NATIONAL GAMING, INC.

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Address for Notices for Borrower and each Subsidiary  
Guarantor:

Penn National Gaming, Inc.  
825 Berkshire Boulevard  
Suite 200  
Wyomissing, Pennsylvania 19610

Contact Person:  
Facsimile No.:  
Telephone No.:  
Email:

[Signature Page to PNGI Credit Agreement]

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SUBSIDIARY GUARANTORS:

KANSAS PENN GAMING LLC

LGVV, LLC  
PENN NJ OTW, LLC  
PENN SANFORD, LLC  
PENN TENANT, LLC  
PRINCE GEORGE'S RACING VENTURES, LLC  
SAN DIEGO GAMING VENTURES, LLC  
SOKC, LLC  
SWCA DEV, LLC  
TEWKSBURY GAMING VENTURES, LLC  
WESTERN PA GAMING VENTURES, LLC  
ZIA PARK LLC

By: Penn National Gaming, Inc.,  
as Sole Member of each of the  
foregoing entities

By: \_\_\_\_\_  
Name: Timothy J. Wilmott  
Title: Chief Executive Officer

[Signature Page to PNGI Credit Agreement]

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BEULAH PARK GAMING VENTURES, INC.  
BSLO, LLC  
BTN, LLC  
CENTRAL OHIO GAMING VENTURES, LLC  
CRAZY HORSES, INC.  
CRC HOLDINGS, INC.  
DELVEST SUB CORP.  
DELVEST, LLC  
EBETUSA.COM, INC.  
HC AURORA, LLC  
HC BANGOR, LLC  
HC JOLIET, LLC  
HJC/PDC HOLDINGS, LLC  
HOLLYWOOD CASINOS, LLC  
HWCC-TUNICA, LLC  
MOUNTAINVIEW THOROUGHBRED RACING ASSOCIATION, LLC  
MTB TRANSPORTATION, INC.  
NEVADA GAMING VENTURES, INC.  
OHIO OPCO VENTURES, INC.  
OHIO RACING COMPANY  
PENN NATIONAL HOLDINGS, LLC  
PENN NATIONAL TURF CLUB, LLC  
PRINCE GEORGE'S RACING VENTURES, LLC  
RACEWAY PARK, INC.  
ST. LOUIS GAMING VENTURES, LLC  
THE INDIANA GAMING COMPANY, LLC  
THE MISSOURI GAMING COMPANY, LLC  
WESTERN MASS. GAMING VENTURES, LLC

By: \_\_\_\_\_  
Name: Timothy J. Wilmott  
Title: President

[Signature Page to PNGI Credit Agreement]

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SPRINGFIELD GAMING AND REDEVELOPMENT, LLC

By : Western Mass. Gaming Ventures, LLC,  
its Managing Member

By: \_\_\_\_\_  
Name: Timothy J. Wilmott  
Title: President

CLEVELAND REAL ESTATE VENTURES, LLC  
DAYTON REAL ESTATE VENTURES, LLC  
FRGV, LLC  
TOLEDO GAMING VENTURES, LLC  
YOUNGSTOWN REAL ESTATE VENTURES, LLC

By : Delvest, LLC,  
as Sole Member of each of the  
foregoing entities

By: \_\_\_\_\_  
Name: Timothy J. Wilmott  
Title: Chief Executive Officer

ALTON CASINO, LLC  
PNGI CHARLES TOWN GAMING, LLC

By : CRC Holdings, Inc.,  
as Sole Member of each of the  
foregoing entities

By: \_\_\_\_\_  
Name: Timothy J. Wilmott  
Title: President

PNGI HOLDING COMPANY, LLC

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: President

MARYLAND GAMING VENTURES, INC.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: President

[Signature Page to PNGI Credit Agreement]

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**BANK OF AMERICA, N.A.**, as Administrative Agent

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Address for Notices:

Contact Person:  
Facsimile No.:  
Telephone No.:  
Email:

[Signature Page to PNGI Credit Agreement]

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**BANK OF AMERICA, N.A., as Collateral Agent**

By: \_\_\_\_\_

Name:  
Title:

Address for Notices:

Contact Person:  
Facsimile No.:  
Telephone No.:  
Email:

[Signature Page to PNGI Credit Agreement]

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**BANK OF AMERICA, N.A., as Swingline Lender**

By: \_\_\_\_\_

Name:  
Title:

Address for Notices:

Contact Person:  
Facsimile No.:  
Telephone No.:  
Email:

[Signature Page to PNGI Credit Agreement]

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**BANK OF AMERICA, N.A., as an L/C Lender**

By: \_\_\_\_\_

Name:  
Title:

Address for Notices:

Contact Person:  
Facsimile No.:  
Telephone No.:  
Email:

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an L/C Lender

By: \_\_\_\_\_

Name:

Title:

Address for Notices:

Contact Person:

Facsimile No.:

Telephone No.:

Email:

[Signature Page to PNGI Credit Agreement]

---

**BANK OF AMERICA, N.A.**, as Lender

By: \_\_\_\_\_

Name:

Title:

Address for Notices:

Contact Person:

Facsimile No.:

Telephone No.:

Email:

[Signature Page to PNGI Credit Agreement]

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**JPMORGAN CHASE BANK, N.A.**, as Lender

By: \_\_\_\_\_

Name:

Title:

Address for Notices:

Contact Person:

Facsimile No.:

Telephone No.:

Email:

[Signature Page to PNGI Credit Agreement]

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**FIFTH THIRD BANK**, as Lender

By: \_\_\_\_\_

Name:

Title:

Address for Notices:



Contact Person:  
Facsimile No.:  
Telephone No.:  
Email:

[Signature Page to PNGI Credit Agreement]

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**WELLS FARGO BANK, NATIONAL ASSOCIATION, as Lender**

By: \_\_\_\_\_

Name:  
Title:

Address for Notices:

Contact Person:  
Facsimile No.:  
Telephone No.:  
Email:

[Signature Page to PNGI Credit Agreement]

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**UBS LOAN FINANCE LLC, as Lender**

By: \_\_\_\_\_

Name:  
Title:

By: \_\_\_\_\_

Name:  
Title:

Address for Notices:

Contact Person:  
Facsimile No.:  
Telephone No.:  
Email:

[Signature Page to PNGI Credit Agreement]

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**CREDIT AGRICOLE CORPORATE AND  
INVESTMENT BANK, as Lender**

By: \_\_\_\_\_

Name:  
Title:

By: \_\_\_\_\_

Name:  
Title:

Address for Notices:

Contact Person:  
Facsimile No.:  
Telephone No.:  
Email:

[Signature Page to PNGI Credit Agreement]

---

**GOLDMAN SACHS BANK USA, as Lender**

By: \_\_\_\_\_

Name:  
Title:

Address for Notices:

Contact Person:  
Facsimile No.:  
Telephone No.:  
Email:

[Signature Page to PNGI Credit Agreement]

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**MANUFACTURERS & TRADERS TRUST COMPANY,  
as Lender**

By: \_\_\_\_\_

Name:  
Title:

Address for Notices:

Contact Person:  
Facsimile No.:  
Telephone No.:  
Email:

[Signature Page to PNGI Credit Agreement]

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**NOMURA CORPORATE FUNDING AMERICAS, LLC, as Lender**

By: \_\_\_\_\_

Name:  
Title:

Address for Notices:

Contact Person:  
Facsimile No.:  
Telephone No.:

Email:

[Signature Page to PNGI Credit Agreement]

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**THE ROYAL BANK OF SCOTLAND PLC**, as Lender

By: \_\_\_\_\_

Name:

Title:

Address for Notices:

Contact Person:

Facsimile No.:

Telephone No.:

Email:

[Signature Page to PNGI Credit Agreement]

---

**SUNTRUST BANK**, as Lender

By: \_\_\_\_\_

Name:

Title:

Address for Notices:

Contact Person:

Facsimile No.:

Telephone No.:

Email:

[Signature Page to PNGI Credit Agreement]

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**[·]**, as Lender

By: \_\_\_\_\_

Name:

Title:

Address for Notices:

Contact Person:

Facsimile No.:

Telephone No.:

Email:

[Signature Page to PNGI Credit Agreement]

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## REVOLVING COMMITMENTS

<u>Lender</u>	<u>Revolving Commitment</u>
Bank of America, N.A.	\$ 59,456,200
JPMorgan Chase Bank, N.A.	\$ 59,456,200
The Royal Bank of Scotland plc	\$ 40,006,850
Fifth Third Bank	\$ 50,359,050
Wells Fargo Bank, National Association	\$ 29,103,100
UBS Loan Finance LLC	\$ 29,103,100
Goldman Sachs Bank USA	\$ 25,455,300
Credit Agricole Corporate and Investment Bank	\$ 29,103,100
Manufacturers & Traders Trust Company	\$ 32,750,900
SunTrust Bank	\$ 29,103,100
Nomura Corporate Funding Americas, LLC	\$ 15,103,100
U.S. Bank N.A.	\$ 37,500,000
TD Bank, N.A.	\$ 20,000,000
Comerica Bank	\$ 5,000,000
The Huntington National Bank	\$ 12,500,000
National Penn Bank	\$ 7,500,000
The Peoples Bank, Biloxi, Mississippi	\$ 7,500,000
United Bank, Inc.	\$ 5,000,000
Metro Bank	\$ 6,000,000
<b>Total Revolving Commitments:</b>	<b>\$ 500,000,000</b>

ANNEX A-2

## TERM A FACILITY COMMITMENTS

<u>Lender</u>	<u>Term A Facility Commitment</u>
Bank of America, N.A.	\$ 52,303,998
JPMorgan Chase Bank, N.A.	\$ 120,803,998
Fifth Third Bank	\$ 47,453,008
Wells Fargo Bank, National Association	\$ 26,777,000
UBS Loan Finance LLC	\$ 26,777,000
Goldman Sachs Bank USA	\$ 23,420,754
Credit Agricole Corporate and Investment Bank	\$ 26,776,999
Manufacturers & Traders Trust Company	\$ 30,133,244
SunTrust Bank	\$ 26,777,000
Nomura Corporate Funding Americas, LLC	\$ 12,776,999
U.S. Bank N.A.	\$ 37,500,000
TD Bank, N.A.	\$ 20,000,000
Comerica Bank	\$ 5,000,000
The Huntington National Bank	\$ 12,500,000
National Penn Bank	\$ 12,500,000
The Peoples Bank, Biloxi, Mississippi	\$ 7,500,000
United Bank, Inc.	\$ 5,000,000
Metro Bank	\$ 6,000,000
<b>Total Term A Facility Commitments:</b>	<b>\$ 500,000,000</b>

ANNEX A-3

## TERM B FACILITY COMMITMENTS

<u>Lender</u>	<u>Term B Facility Commitment</u>
JPMorgan Chase Bank, N.A.	\$ 250,000,000
<b>Total Term B Facility Commitments:</b>	<b>\$ 250,000,000</b>

ANNEX B

## APPLICABLE FEE PERCENTAGE AND APPLICABLE MARGIN FOR REVOLVING LOANS, SWINGLINE LOANS AND TERM A FACILITY LOANS

Pricing Level	Consolidated Total Net Leverage Ratio	Applicable Margin				Applicable Fee Percentage
		Revolving Loans and Swingline Loans		Term A Facility Loans		
		LIBOR	ABR	LIBOR	ABR	

<b>Level I</b>	Greater than 3.50 to 1.00	2.75%	1.75%	2.75%	1.75%	0.50%
<b>Level II</b>	Less than or equal to 3.50 to 1.00 but greater than 3.0 to 1.00	2.25%	1.25%	2.25%	1.25%	0.40%
<b>Level III</b>	Less than or equal to 3.00 to 1.00 but greater than 2.50 to 1.00	2.00%	1.00%	2.00%	1.00%	0.35%
<b>Level IV</b>	Less than or equal to 2.50 to 1.00 but greater than 2.00 to 1.00	1.75%	0.75%	1.75%	0.75%	0.30%
<b>Level V</b>	Less than or equal to 2.00 to 1.00	1.25%	0.25%	1.25%	0.25%	0.25%

ANNEX C

**AMORTIZATION PAYMENTS  
TERM A FACILITY LOANS**

<u>DATE(1)</u>	<u>PRINCIPAL AMOUNT</u>
March 31, 2014	\$ 6,250,000
June 30, 2014	\$ 6,250,000
September 30, 2014	\$ 6,250,000
December 31, 2014	\$ 6,250,000
March 31, 2015	\$ 6,250,000
June 30, 2015	\$ 6,250,000
September 30, 2015	\$ 6,250,000
December 31, 2015	\$ 6,250,000
March 31, 2016	\$ 9,375,000
June 30, 2016	\$ 9,375,000
September 30, 2016	\$ 9,375,000
December 31, 2016	\$ 9,375,000
March 31, 2017	\$ 12,500,000
June 30, 2017	\$ 12,500,000
September 30, 2017	\$ 12,500,000
December 31, 2017	\$ 12,500,000
March 31, 2018	\$ 12,500,000
June 30, 2018	\$ 12,500,000
September 30, 2018	\$ 12,500,000
The date that is the fifth anniversary of the Closing Date	\$ 325,000,000

(1) If such date is not a Business Day, then the date shall be the next succeeding Business Day unless such Business Day falls in another calendar month, in which case such date shall be the next preceding Business Day.

**EXHIBIT B**

**SCHEDULES TO AMENDED CREDIT AGREEMENT**

None.

**EXHIBIT C**

**EXHIBITS TO AMENDED CREDIT AGREEMENT**

**EXHIBIT V**

**FORM OF COMPLIANCE CERTIFICATE**

The undersigned, a Responsible Officer of Penn National Gaming, Inc., a Pennsylvania corporation ("Borrower"), hereby certifies in such capacity (and not in any individual capacity) to the Administrative Agent and the Lenders, each as defined in the Credit Agreement referred to below, as follows:

1. This Compliance Certificate is delivered to you pursuant to Section 9.04(c) of the Credit Agreement, dated as of October 30, 2013 (as amended by the First Amendment and Incremental Joinder Agreement, dated as of April 28, 2015, and as further amended, restated, supplemented or otherwise modified from time to time, the "Credit Agreement"), by and among Borrower, the Guarantors from time to time party thereto, the Lenders from time to time party thereto, Bank of America, N.A., as Administrative Agent and Collateral Agent, and the other parties party thereto. Capitalized terms used herein and not defined herein shall have the meanings assigned thereto in the Credit Agreement.(1)

2. I have reviewed, or caused to be reviewed under by supervision, the consolidated financial statements of the Consolidated Companies dated as of \_\_\_\_\_ and for the \_\_\_\_\_ period[s] then ended [and such consolidated financial statements fairly present in all material respects the consolidated financial condition, results of operations and cash flows of Consolidated Companies in accordance with GAAP, consistently applied, as at the end of, and for, such period (subject to normal year-end audit adjustments and except for the absence of footnotes)](2).

3. As of the date hereof no Default has occurred and is continuing [except, \_\_\_\_\_] (3).

4. Set forth in Sections I, II and III of Schedule 1 (and the annexes referred to therein) to this Compliance Certificate are computations necessary to determine whether Borrower and its

- 
- (1) In the event of any conflict between the terms of this Compliance Certificate and the Credit Agreement, the Credit Agreement shall control, and any Schedule or Annex attached to this executed Compliance Certificate shall be revised as necessary to conform in all respects to the requirements of the Credit Agreement in effect as of the delivery of this executed Compliance Certificate.
  - (2) To be included for Compliance Certificated delivered in connection with quarterly financial statements delivered pursuant to Section 9.04(a).
  - (3) If a Default has occurred and is continuing, describe the Default and the actions that the Companies have taken and propose to take with respect thereto.

Exhibit V-1

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Restricted Subsidiaries are in compliance with the financial covenants contained in Section 10.08 of the Credit Agreement as of the end of the fiscal [quarter] [year] ended \_\_\_\_\_.

[5. The amounts set forth in Line IV.B of Schedule 1 to this Compliance Certificate are hereby designated as New Investment Returns.](4)

[6. The amounts set forth in Line VI.B of Schedule 1 to this Compliance Certificate are hereby designated as Specified General Investment Returns.](5)

[7. The amounts set forth in Line VII.B of Schedule 1 to this Compliance Certificate are hereby designated as Specified Unrestricted Subsidiaries Investment Returns.](6)

[8. The amount of outstanding Indebtedness set forth in Line (c)(i) of Annex I to Schedule 1 to this Compliance Certificate was incurred after the Closing Date, and the proceeds of such Indebtedness are pending application, and are required or intended to be used to fund [(i) Expansion Capital Expenditures of Borrower or any Restricted Subsidiary, (ii) a Development Project or (iii) interest, fees or related charges with respect to such Indebtedness].

The amount set forth in Line (c)(ii) of Annex I to Schedule 1 to this Compliance Certificate has been spent after the Closing Date (whether funded with the proceeds of Indebtedness, cash flow or otherwise) to fund, [(i) Expansion Capital Expenditures of Borrower or any Restricted Subsidiary, (ii) a Development Project or (iii) interest, fees or related charges with respect to such Indebtedness.](7)

[9. The savings, operating expense reductions and synergies set forth in Schedule 2 to this Compliance Certificate are reasonably expected to be realized within twelve (12) months of the taking of such specified actions and are factually supportable in the good faith judgment of Borrower.](8)

[Signature Page Follows]

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(4) If New Investment Returns were received during the fiscal quarter, include brief description of the related investment and amounts received.

(5) If Specified General Investment Returns were received during the fiscal quarter, include brief description of the related investment and amounts received.

(6) If Specified Unrestricted Subsidiaries Investment Returns were received during the fiscal quarter, include brief description of the related investment and amounts received.

(7) Include as applicable if Development Expenses are being deducted from Consolidated Net Indebtedness, subject to the limitations provided in the definition of "Development Expenses" in the Credit Agreement.

(8) If cost savings, operating expense reductions and synergies are included in Line (d) of Annex III of Schedule 1 to this Compliance Certificate, include reasonable detail thereof as Schedule 2 to this Compliance Certificate.

Exhibit V-2

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IN WITNESS WHEREOF, I have executed this Compliance Certificate as of the date first written above.

**PENN NATIONAL GAMING, INC.**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Exhibit V-3

Schedule 1  
to  
Compliance Certificate

For the Fiscal Quarter / Fiscal Year ended

("Statement Date")  
(\$ in 000's)

The "Applicable Test Period" is the four fiscal quarter period ending on the Statement Date.

**I. Section 10.08(a) — Maximum Consolidated Total Net Leverage Ratio.**

- A. Consolidated Net Indebtedness (see Annex I) as of the Statement Date: \$
- B. Consolidated EBITDA (see Annex III) for the Applicable Test Period: \$
- C. Consolidated Total Net Leverage Ratio (Line I.A ÷ Line I.B): to 1.00

Maximum permitted:

For the first complete fiscal quarter ending after the Closing Date through the fiscal quarter ending December 31, 2014, 4.00 to 1.00;

For the fiscal quarter ending March 31, 2015 through the fiscal quarter ending December 31, 2017, 5.25 to 1.00; and

For each fiscal quarter thereafter, 4.50 to 1.00.

In compliance:

[Yes][No]

**II. Section 10.08(b) — Maximum Consolidated Senior Secured Net Leverage Ratio.**

- A. Consolidated Net Indebtedness (see Annex I) of Borrower and its Restricted Subsidiaries that is secured by Liens on property or assets of Borrower or its Restricted Subsidiaries as of the Statement Date (other than any such Consolidated Net Indebtedness that is expressly subordinated in right of payment to the Obligations pursuant to a written agreement): \$
- B. Consolidated EBITDA (see Annex III) for the Applicable Test Period: \$
- C. Consolidated Senior Secured Net Leverage Ratio (Line II.A , Line II.B): to 1.00

Maximum permitted:

For the first complete fiscal quarter ending after the Closing

Exhibit V-4

Date through the fiscal quarter ending December 31, 2014, 2.50 to 1.00;

For the fiscal quarter ending March 31, 2015 through the fiscal quarter ending December 31, 2017, 3.25 to 1.00; and

For each fiscal quarter thereafter, 2.75 to 1.00.

In compliance:

[Yes][No]

**III. Section 10.08(c) — Minimum Interest Coverage Ratio.**

- A. Consolidated EBITDA (see Annex III) for the Applicable Test Period: \$
- B. Consolidated Cash Interest Expense (see Annex IV) for the Applicable Test Period: \$
- C. Interest Coverage Ratio (Line III.A , Line III.B): to 1.00

Minimum required: 2.50 to 1.00.

In compliance:

[Yes][No]

**IV. New Investment Returns**

- A. Prior "New Investment Returns" (Line IV.C of Schedule 1 to most recently delivered Compliance Certificate): \$
- B. Aggregate of all amounts received during the fiscal quarter ended on the Statement Date by Borrower and its Restricted Subsidiaries with respect to Investments made pursuant to Section 10.04(k) of the Credit Agreement on or after the Closing Date(9) that Borrower hereby designates as "New Investment Returns": \$
- C. Current total "New Investment Returns" (Line IV.A + Line IV.B): \$

**V. Outstanding Investment Amount**

- A. Aggregate amount (not less than zero) of all Investments made pursuant to Section 10.04(k) of the Credit Agreement on or after the Closing Date, in each case, valued at fair market value at the time each such Investment was made: \$
- B. New Investment Returns received on or prior to the Statement Date (Line IV.C): \$

(9) Including with respect to contracts related to such Investments and including principal, interest, dividends, distributions, sale proceeds, payments under contracts relating to such Investments or other amounts.

Exhibit V-5

- C. All Existing Investment Reductions(10) received on or prior to the Statement Date (but only to the extent that on the date any such Existing Investment Reduction was received, such Existing Investment Reduction was not larger than the Outstanding Investment Amount as of such date (without giving effect to such Existing Investment Reduction)): \$
- D. Reductions in the amount of such Investments as of the Statement Date as provided in the definition of "Investment.": \$
- E. Current "Outstanding Investment Amount" (Line V.A - Line V.B — Line V.C — Line V.D): \$

**VI. Specified General Investment Returns**

- A. Prior "Specified General Investment Returns" (Line VI.C of Schedule 1 to most recently delivered Compliance Certificate): \$
- B. Aggregate of all amounts received during the fiscal quarter ended on the Statement Date by Borrower and its Restricted Subsidiaries with respect to Investments made pursuant to Section 10.04(s) of the Credit Agreement(11) that Borrower hereby designates as "Specified General Investment Returns": \$
- C. Current total "Specified General Investment Returns" (Line VI.A + Line VI.B): \$

**VII. Specified Unrestricted Subsidiaries Investment Returns**

- A. Prior "Specified Unrestricted Subsidiaries Investment Returns" (Line VII.C of Schedule 1 to most recently delivered Compliance Certificate): \$
- B. Aggregate of all amounts received during the fiscal quarter ended on the Statement Date by Borrower and its Restricted Subsidiaries with respect to Investments made pursuant to Section 10.04(q) of the Credit Agreement(12) that Borrower hereby designates as "Specified Unrestricted Subsidiaries Investment Returns": \$

(10) Which amount equals all amounts received by Borrower and its Restricted Subsidiaries in respect of Investments listed on Schedule 1.01(B) to the Credit Agreement to the extent such amounts constitute a return of invested capital thereby reducing the amount of such Investment on the balance sheet of Borrower or Restricted Subsidiary, as applicable (and, for the avoidance of doubt, not amounts constituting income or returns on invested capital).

(11) Including with respect to contracts related to such Investments and including principal, interest, dividends, distributions, sale proceeds, payments under contracts relating to such Investments or other amounts.

(12) Including with respect to contracts related to such Investments and including principal, interest, dividends, distributions, sale proceeds, payments under contracts relating to such Investments or other amounts.

Exhibit V-6

- C. Current total "Specified Unrestricted Subsidiaries Investment Returns" (Line VII.A + Line VII.B): \$

Exhibit V-7

**Annex I**

**Consolidated Net Indebtedness as of the Statement Date**

- (a) The aggregate amount of all Indebtedness of Borrower and its Restricted Subsidiaries (other than any such Indebtedness that has been Discharged) on the Statement Date, in an amount that would be reflected on a balance sheet on such date prepared on a consolidated basis in accordance with GAAP, consisting of (a) Indebtedness for borrowed money, (b) obligations in respect of Capital Leases, (c) purchase money Indebtedness, (d) all obligations of such Person issued or assumed as the deferred purchase price of property or services (excluding (i) trade accounts payable and accrued obligations incurred in the ordinary course of business, (ii) the financing \$[ , , ]



of insurance premiums, (iii) any such obligations payable solely through the issuance of Equity Interests and (iv) any earn-out obligation until such obligation appears in the liabilities section of the balance sheet of such Person in accordance with GAAP (excluding disclosure on the notes and footnotes thereto))(13), (e) Indebtedness evidenced by promissory notes and similar instruments and (f) Contingent Obligations in respect of any of the foregoing (to be included only to the extent set forth in the footnote hereto) (14):

*minus*

(b) Unrestricted Cash(15) as of the Statement Date: \$[ , , ]

*minus*

(c) Development Expenses (without duplication):

(13) Any earn-out obligation that appears in the liabilities section of the balance sheet of such Person shall be excluded to the extent (x) such Person is indemnified for the payment thereof or (y) amounts to be applied to the payment therefor are in escrow.

(14) If and when any Contingent Obligation is demanded for payment from Borrower or any of its Restricted Subsidiaries, then the amount of such Contingent Obligation shall be included.

(15) Which amount equals means the aggregate amount of unrestricted cash and cash equivalents (in each case free and clear of all Liens, other than Permitted Liens that (i) do not restrict the application of such cash and cash equivalents to the repayment of the Obligations or (ii) secure the Obligations) of Borrower and its Restricted Subsidiaries as at the Statement Date not to exceed the greater of (x) \$300.0 million and (y) the product of \$15.0 million and the number of Gaming Facilities operated by Borrower and its Restricted Subsidiaries on such date of determination and which are owned by Borrower or its Restricted Subsidiaries or with respect to which Borrower or its Restricted Subsidiaries are required to provide working capital for the operation thereof.

Exhibit V-8

(i) Outstanding Indebtedness incurred after the Closing Date, the proceeds of which are pending application and are required or intended to be used to fund (i) Expansion Capital Expenditures of Borrower or any Restricted Subsidiary, (ii) a Development Project or (iii) interest, fees or related charges with respect to such Indebtedness: \$[ , , ]

(ii) Amounts spent after the Closing Date (whether funded with the proceeds of Indebtedness, cash flow or otherwise) to fund (i) Expansion Capital Expenditures of Borrower or any Restricted Subsidiary, (ii) a Development Project or (iii) interest, fees or related charges with respect to such Indebtedness: \$[ , , ]

(iii) Amounts under (c)(i) and (c)(ii) that consist of Unrestricted Cash that was deducted from Consolidated Net Indebtedness pursuant to Line (b) above, if any: \$[ , , ]

(iv) Netted Development Expenses as of the Statement Date (lesser of (c)(i) + (c)(ii) and \$500.0 million) — (c)(iii): \$[ , , ]

**Consolidated Net Indebtedness:**(16) Sum of (a) – (b) – (c)(iv), as adjusted pursuant to footnote 12 hereto = \$[ , , ]

(16) Consolidated Net Indebtedness shall not include (A) Indebtedness in respect of letters of credit (including Letters of Credit), except to the extent of unreimbursed amounts thereunder or (B) any obligations of Borrower or its Restricted Subsidiaries in respect of Disqualified Capital Stock. The amount of Consolidated Net Indebtedness, in the case of Indebtedness of a Restricted Subsidiary that is not a Wholly Owned Subsidiary, shall be reduced by an amount directly proportional to the amount (if any) by which Consolidated EBITDA was reduced (including through the calculation of Consolidated Net Income) (A) in respect of such non-controlling interest in such Restricted Subsidiary owned by a Person other than Borrower or any of its Restricted Subsidiaries or (B) pursuant to clause (F) of the definition of Consolidated EBITDA (provided that in the case of this clause (B), such Indebtedness is not guaranteed by any Credit Party). The amount of Consolidated Net Indebtedness, in the case of Indebtedness of a Subsidiary of Borrower that is not a Guarantor and which Indebtedness is not guaranteed by any Credit Party, shall be reduced by an amount directly proportional to the amount by which Consolidated EBITDA was reduced due to the undistributed earnings of such Subsidiary being excluded from Consolidated Net Income pursuant to clause (d) of the definition thereof.

Exhibit V-9

**Annex II**

**Consolidated Net Income for the Applicable Test Period**

(a) Aggregate of the net income of Borrower and its Restricted Subsidiaries for such Test Period, on a consolidated basis, determined in accordance with GAAP:(17) \$[ , , ]

*plus*

(b) The sum of (without duplication, and to the extent deducted in calculating Line (a) above):

(i) Any loss (together with any related provision for taxes thereon) realized in connection with (i) any asset sale or \$[ , , ]

(ii) any disposition of any securities by such Person or any of its Restricted Subsidiaries:

(ii)	Any extraordinary loss (together with any related provision for taxes thereon):	\$[ , , ]
(iii)	Any goodwill or other asset impairment charges or other asset write-offs or write downs, including any resulting from the application of Accounting Standards Codification Nos. 350 and No. 360, and any expenses or charges relating to the amortization of intangibles as a result of the application of Accounting Standards Codification No. 805:	\$[ , , ]
(iv)	Any non-cash charges or expenses related to the repurchase of stock options to the extent not prohibited by this Agreement, and any non-cash charges or expenses related to the grant, issuance or repricing of, or any amendment or substitution with respect to, stock appreciation or similar rights, stock options, restricted stock, or other Equity Interests or other equity based awards or rights or equivalent instruments:	\$[ , , ]
(v)	Any loss due to the cumulative effect of a change in accounting principles:	\$[ , , ]
(vi)	Any expenses or reserves for liabilities to the extent that Borrower or any of its Restricted Subsidiaries is entitled to indemnification therefor under binding agreements:	\$[ , , ]
(vii)	Losses, to the extent covered by insurance and actually reimbursed, or, so long as Borrower has made a determination that there exists reasonable evidence that such amount will in fact be reimbursed by the insurer and only to the extent that such amount is (i) not denied by the applicable carrier in writing within 180 days and (ii) in fact	

(17) The net income (or loss) of a Restricted Subsidiary that is not a Wholly Owned Subsidiary shall be included in an amount proportional to Borrower's economic ownership interest therein.

Exhibit V-10

reimbursed within 365 days of the date of such evidence, expenses with respect to liability or casualty events or business interruption:

(viii) Losses resulting solely from fluctuations in currency values and the related tax effects shall be excluded, and charges relating to Accounting Standards Codification Nos. 815 and 820:

*minus*

(c) The sum of (without duplication, and to the extent included in calculating Line (a) above):

(i) Any gain (together with any related provision for taxes thereon) realized in connection with (i) any asset sale or (ii) any disposition of any securities by such Person or any of its Restricted Subsidiaries:

(ii) Any extraordinary gain (together with any related provision for taxes thereon):

(iii) The net income of any Person that (i) is not a Restricted Subsidiary, (ii) is accounted for by the equity method of accounting, (iii) is an Unrestricted Subsidiary or (iv) is a Restricted Subsidiary (or former Restricted Subsidiary) with respect to which a Trigger Event has occurred following the occurrence and during the continuance of such Trigger Event:

(iv) The undistributed earnings of any Subsidiary of Borrower that is not a Guarantor to the extent that, on the date of determination the payment of cash dividends or similar cash distributions by such Subsidiary (or loans or advances by such subsidiary to any parent company) are not permitted by the terms of any Contractual Obligation (other than under any Credit Document) or Requirement of Law applicable to such Subsidiary, unless such restrictions with respect to the payment of cash dividends and other similar cash distributions have been waived:

(v) Any gain due to the cumulative effect of a change in accounting principles:

(vi) Gains resulting solely from fluctuations in currency values and the related tax effects shall be excluded, and charges relating to Accounting Standards Codification Nos. 815 and 820:

*plus* (without duplication)

Exhibit V-11

(d) The amount of dividends or distributions or other payments (including management fees) that are actually paid or are payable in cash to Borrower or a Restricted Subsidiary thereof in respect of the Applicable Test Period by the Persons referred to in Line (c)(iii) above (or to the extent converted into cash):

*plus* (without duplication)

(e)	The amount of dividends or distributions or other payments (including management fees) that are actually paid or are payable in cash to Borrower or a Restricted Subsidiary (not subject to a restriction described in Line (c) (iv) above) thereof in respect of the Applicable Test Period by Subsidiaries referred to in Line (c)(iv) above (or to the extent converted into cash):	\$[ , , ]
<i>minus</i>	(without duplication)	
(f)	The amount of any liabilities added back pursuant to Line (b)(vi) above during a prior period for which it has been determined during the Applicable Test Period that Borrower or any of its Restricted Subsidiaries is not actually indemnified (to the extent such liabilities would otherwise reduce Consolidated Net Income without giving effect to Line (b)(vi) above):	\$[ , , ]
<i>minus</i>		
(g)	The amount of any losses added back during a prior period pursuant to Line (b)(vii) above that were not so reimbursed within 365 days:	\$[ , , ]
<b>Consolidated Net Income:</b> (a) + sum of (b)(i) through (b)(viii) – sum of (c)(i) through (c)(vi) + (d) + (e) – (f) – (g) =		\$[ , , ]

Exhibit V-12

**Annex III**

**Consolidated EBITDA for the Applicable Test Period**

(a)	Consolidated Net Income for the Applicable Test Period (see Annex II):	\$[ , , ]
<i>plus</i>		
(b)	The sum of (without duplication, and in each case to the extent deducted in calculating Consolidated Net Income):	
(i)	Provisions for taxes based on income or profits or capital gains, plus franchise or similar taxes, of Borrower and its Restricted Subsidiaries for the Applicable Test Period:	\$[ , , ]
(ii)	Consolidated Interest Expense (net of interest income (other than interest income in respect of notes receivable and similar items)) of Borrower and its Restricted Subsidiaries for the Applicable Test Period, whether paid or accrued and whether or not capitalized (see Annex IV, Part I):	\$[ , , ]
(iii)	Any cost, charge, fee or expense (including discounts and commissions and including fees and charges incurred in respect of letters of credit or bankers acceptance financings) (or any amortization of any of the foregoing) associated with any issuance (or proposed issuance) of debt, or equity or any refinancing transaction (or proposed refinancing transaction) or any amendment or other modification of any debt instrument:	\$[ , , ]
(iv)	Depreciation, amortization (including amortization of goodwill and other intangibles but excluding amortization of prepaid cash expenses that were paid in a prior Test Period) and any other non-cash charges or expenses, including any write off or write downs, reducing Consolidated Net Income (excluding (x) any amortization of a prepaid cash expense that was paid in a prior Test Period and (y) any non-cash charges and expenses that result in an accrual of a reserve for cash charges in any future Test Period that Borrower elects not to add back in the Applicable Test Period; <i>provided</i> that Borrower shall treat similar types of charges and expenses on a consistent basis from year to year (it being understood that reserves may be charged in the Applicable Test Period or when paid, as reasonably determined by Borrower)) of Borrower and its Restricted Subsidiaries for the Applicable Test Period:(18)	\$[ , , ]

(18) If any such non-cash charges or expenses represent an accrual of a reserve for potential cash items in any future Test Period, the cash payment in respect thereof in such future Test Period shall be subtracted from Consolidated EBITDA to the extent Borrower elected to previously add back such amounts to Consolidated EBITDA.

Exhibit V-13

(v)	Any Pre-Opening Expenses:	\$[ , , ]
(vi)	The amount of any restructuring charges or reserve (including those relating to severance, relocation costs and one-time compensation charges), costs incurred in connection with any non-recurring strategic initiatives, other business optimization expenses (including incentive costs and expenses relating to business optimization programs and signing, retention and completion bonuses) and any unusual or non-recurring charges or items of loss or expense (including, without limitation, losses on asset sales (other than asset sales in the ordinary course of business)):	\$[ , , ]
(vii)	Any charges, fees and expenses (or any amortization thereof) (including, without limitation, all legal,	\$[ , , ]

accounting, advisory or other transaction-related fees, charges, costs and expenses and any bonuses or success fee payments related to the Transactions) related to the Transactions, any Permitted Acquisition or Investment (including any other Acquisition) or disposition (or any such proposed acquisition, Investment or disposition) (including amortization or write offs of debt issuance or deferred financing costs, premiums and prepayment penalties), in each case, whether or not successful:

(viii) Any losses resulting from mark to market accounting of Swap Contracts or other derivative instruments: \$[ , , ]

*minus*

(c) The sum of (without duplication, and in each case to the extent included in calculating Consolidated Net Income): \$[ , , ]

(i) Non-cash items increasing Consolidated Net Income for the Applicable Test Period, other than the accrual of revenue in the ordinary course of business, and other than any items which represent the reversal of any accrual of, or cash reserve for, anticipated cash charges for any prior Test Period subsequent to the issue date which was not added back to Consolidated EBITDA when accrued: \$[ , , ]

(ii) The amount of any gains resulting from mark to market accounting of Swap Contracts or other derivative instruments: \$[ , , ]

(iii) Any unusual or non-recurring items of income or gain to the extent increasing Consolidated Net Income for the

Exhibit V-14

Applicable Test Period: \$[ , , ]

*plus* (without duplication)

(d) The amount of cost savings, operating expense reductions and synergies projected by Borrower in good faith to be realized as a result of specified actions taken or with respect to which steps have been initiated (in the good faith determination of Borrower) during the Applicable Test Period (or with respect to (x) the Transactions, are reasonably expected to be initiated within twelve (12) months of the Closing Date, or (y) Specified Transactions, are reasonably expected to be initiated within twelve (12) months of the closing date of the Specified Transaction), including in connection with the Transactions or any Specified Transaction (calculated on a Pro Forma Basis as though such cost savings, operating expense reductions and synergies had been realized during the entirety of the Applicable Test Period), net of the amount of actual benefits realized during the Applicable Test Period from such actions:(19)(20) \$[ , , ]

*plus* (without duplication)

(e) To the extent not included in Consolidated Net Income or, if otherwise excluded from Consolidated EBITDA due to the operation of Line (c)(iii) above, the amount of insurance proceeds received during the Applicable Test Period or after the Applicable Test Period and on or prior to the date the calculation is made with respect to the Applicable Test

(19) *Provided*, that, (i) such actions shall be taken within (A) in the case of any such cost savings, operating expense reductions and synergies in connection with the Transactions, twelve (12) months after the Closing Date and (B) in all other cases, within twelve (12) months after the consummation of such Specified Transaction, restructuring or implementation of an initiative that is expected to result in such cost savings, expense reductions or synergies, (ii) no cost savings, operating expense reductions and synergies shall be added pursuant to this Line (d) to the extent duplicative of any expenses or charges otherwise added to Consolidated EBITDA, whether through a pro forma adjustment or otherwise, for the Applicable Test Period, and (iii) projected amounts (and not yet realized) may no longer be added in calculating Consolidated EBITDA pursuant to this Line (d) to the extent more than twelve (12) months have elapsed after the specified action taken in order to realize such projected cost savings, operating expense reductions and synergies.

(20) The aggregate amount of additions made to Consolidated EBITDA for the Applicable Test Period pursuant to this Line (d) and Section 1.06(c) of the Credit Agreement shall not (i) exceed 15.0% of Consolidated EBITDA for the Applicable Test Period (after giving effect to this Line (d) and Section 1.06(c) of the Credit Agreement) or (ii) be duplicative of one another.

Exhibit V-15

Period, attributable to any property which has been closed or had operations curtailed for the Applicable Test Period:(21) \$[ , , ]

*plus* (without duplication)

(f) Cash receipts (or any netting arrangements resulting in reduced cash expenditures) not representing Consolidated EBITDA or Consolidated Net Income in the Applicable Test Period to the extent non-cash gains relating to such income were deducted in the calculation of Consolidated EBITDA pursuant to Line (c) above for any previous Test Period and not added back: \$[ , , ]

**Consolidated EBITDA:**(22)(23)(24) (a) + sum of (b)(i) through (b)(viii) — sum of (c)(i) through (c)(iii) + (d) + (e) + (f) = \$[ , , ]

- (21) Such amount of insurance proceeds shall only be included pursuant to this Line (e) to the extent of the amount of insurance proceeds *plus* Consolidated EBITDA attributable to such property for the Applicable Test Period (without giving effect to this Line (e)) does not exceed Consolidated EBITDA attributable to such property during the most recently completed four fiscal quarters for which financial results are available that such property was fully operational (or if such property has not been fully operational for four consecutive fiscal quarters for which financial results are available prior to such closure or curtailment, the Consolidated EBITDA attributable to such property during the Test Period prior to such closure or curtailment (for which financial results are available) annualized over four fiscal quarters).
- (22) Consolidated EBITDA shall be adjusted pursuant to clauses (A) through (F) of the definition thereof in the Credit Agreement.
- (23) For purposes of determining Consolidated EBITDA for any Test Period that includes any period occurring prior to the Closing Date, Consolidated EBITDA for each fiscal quarter ending after June 30, 2013 shall be calculated on a Pro Forma Basis giving effect to the Transactions, including giving effect to the Master Lease as if it had been in effect during such period and cost savings relating to the Transactions in accordance with Line (d) (all as reasonably determined by a Responsible Officer of Borrower).
- (24) Consolidated EBITDA shall be deemed to be \$117.5 million for the fiscal quarter ended on September 30, 2012; \$89.3 million for the fiscal quarter ended on December 31, 2012; \$111.6 million for the fiscal quarter ended on March 31, 2013; and \$101.1 million for the fiscal quarter ended on June 30, 2013, it being understood that each of such amounts include \$1.6 million of cost savings in connection with the Transactions, and such amounts, to the extent included in the Applicable Test Period, shall reduce the amount that may be added back pursuant to Line (d) in connection with the Transactions in the Applicable Test Period.

Exhibit V-16

#### Annex IV

#### **Consolidated Cash Interest Expense for the Applicable Test Period**

##### **I. Consolidated Interest Expense**

(a)	Interest expense of Borrower and its Restricted Subsidiaries for the Applicable Test Period as determined on a consolidated basis in accordance with GAAP:	\$[ , , ]
	<i>plus</i>	
(b)	To the extent deducted in arriving at Consolidated Net Income for the Applicable Test Period and without duplication, the sum of:	\$[ , , ]
(i)	The interest portion of payments on Capital Leases:	\$[ , , ]
(ii)	Amortization of financing fees, debt issuance costs and interest or deferred financing or debt issuance costs:	\$[ , , ]
(iii)	Arrangement, commitment or upfront fees, original issue discount, redemption or prepayment premiums:	\$[ , , ]
(iv)	Commissions, discounts and other fees and charges owed with respect to letters of credit and bankers' acceptance financing:	\$[ , , ]
(v)	Interest with respect to Indebtedness that has been Discharged:	\$[ , , ]
(vi)	The accretion or accrual of discounted liabilities during such period:	\$[ , , ]
(vii)	Interest expense attributable to the movement of the mark-to-market valuation of obligations under Swap Contracts or other derivative instruments:	\$[ , , ]
(viii)	Payments made under Swap Contracts relating to interest rates with respect to the Applicable Test Period:	\$[ , , ]
(ix)	Any costs associated with breakage in respect of hedging agreements for interest rates:	\$[ , , ]
(x)	All interest expense consisting of liquidated damages for failure to timely comply with registration rights obligations and financing fees, all as calculated on a consolidated basis in accordance with GAAP:	\$[ , , ]
(xi)	Fees and expenses associated with the consummation of the Transactions:	\$[ , , ]

Exhibit V-17

(xii)	Annual or quarterly agency fees paid to Administrative Agent:	\$[ , , ]
(xiii)	Costs and fees associated with obtaining Swap Contracts and fees payable thereunder:	\$[ , , ]

**Consolidated Interest Expense:** (a) + sum of (b)(i) through (b)(xiii) =

\$[ , , ]

## II. Consolidated Cash Interest Expense

(a)	Consolidated Interest Expense (See Part I of this Annex IV) paid in cash with respect to the Applicable Test Period, of Borrower and its Restricted Subsidiaries for the Applicable Test Period as determined on a consolidated basis in accordance with GAAP:	\$[ , , ]
<i>minus</i>		
(b)	Cash interest income (other than cash interest income in respect of notes receivable and similar items) of Borrower and its Restricted Subsidiaries for the Applicable Test Period as determined on a consolidated basis in accordance with GAAP:	\$[ , , ]
<i>minus</i>		
(c)	The sum (without duplication) of the following with respect to the Applicable Test Period, in each case that are deemed to be included in Consolidated Interest Expense and paid in cash with respect to the Applicable Test Period:	
(i)	Payments received under Swap Contracts relating to interest rates with respect to the Applicable Test Period:	\$[ , , ]
(ii)	Arrangement, commitment or upfront fees and similar financing fees, original issue discount, and redemption or prepayment premiums payable during or with respect to the Applicable Test Period:	\$[ , , ]
(iii)	Interest payable during or with respect to the Applicable Test Period with respect to Indebtedness that has been Discharged:	\$[ , , ]
(iv)	Any cash costs associated with breakage or termination in respect of hedging agreements for interest rates payable during the Applicable Test Period and costs and fees associated with obtaining Swap Contracts and fees payable thereunder:	\$[ , , ]
(v)	Fees and expenses associated with the consummation of the Transactions:	\$[ , , ]

### Exhibit V-18

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(vi)	Interest expense in respect of Indebtedness that is excluded from Consolidated Net Indebtedness by reason of clause (ii), (iii) or (iv) of the proviso to the definition thereof in the Credit Agreement, to the extent of such exclusion:	\$[ , , ]
(vii)	Interest expense in respect of Indebtedness not in excess of \$500.0 million at any one time outstanding, which constitutes Development Expenses, or the proceeds of which were applied to fund Development Expenses (but only for so long as such Indebtedness or such funded expenses, as the case may be, constitute Development Expenses):	\$[ , , ]

**Consolidated Cash Interest Expense:**(25) (a) — (b) — sum of (c)(i) through (c)(vii) =

\$[ , , ]

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(25) For purposes of determining Consolidated Cash Interest Expense for any Test Period that includes any period ending prior to the first anniversary of the Closing Date, Consolidated Cash Interest Expense shall be an amount equal to actual Consolidated Cash Interest Expense from the Closing Date through the date of determination multiplied by a fraction the numerator of which is 365 and the denominator of which is the number of days from the Closing Date through the date of determination.

### Exhibit V-19

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[Schedule 2  
to  
Compliance Certificate]

[To describe cost savings, operating expense reductions and synergies in reasonable detail if applicable]

### Exhibit V-20

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ANNEX I

## LENDER AGREEMENT — CONSENTING LENDERS

Reference is hereby made to the First Amendment and Joinder Agreement, dated as of April 28, 2015 (the “**Amendment Agreement**”; capitalized terms used herein and not otherwise defined herein shall have the respective meanings given to them in the Amendment Agreement), by and

among Penn National Gaming, Inc., a Pennsylvania corporation, the Subsidiary Guarantors, the Incremental Lenders, Bank of America, N.A., as Administrative Agent for (and on behalf of) the Lenders under the Existing Credit Agreement referred to below and, after giving effect thereto, the Amended Credit Agreement and as Collateral Agent for the Secured Parties (as defined under the Existing Credit Agreement and, after giving effect thereto, the Amended Credit Agreement).

By its signature below, the undersigned hereby (a) consents and agrees to the terms and conditions of the Amendment Agreement (including the amendments to the Existing Credit Agreement attached to the Amendment Agreement as the Amended Credit Agreement), (b) authorizes the Administrative Agent to execute the Amendment Agreement on its behalf as if it were a party thereto and to execute the other amendments, modifications, supplements, instruments or agreements entered into in accordance with Section 3 of Article I of the Amendment Agreement; and (c) represents that it is a Lender under the Existing Credit Agreement.

The undersigned hereby agrees that this Consenting Lender Agreement shall be binding upon the undersigned and each of its successors and any participants and assigns of its Loans or Commitments [(including its Incremental Commitments)](1) under the Existing Credit Agreement (it being understood that any such participation or assignment shall be made in accordance with Section 13.05 of the Existing Credit Agreement), and may not be revoked or withdrawn. The undersigned agrees that it shall notify any potential successor or any participant or assignee of any of its Loans or Commitments under the Existing Credit Agreement of the effectiveness of this Consenting Lender Agreement prior to consummating any such transfer, assignment or participation, subject to Section 13.10 of the Existing Credit Agreement. This Consenting Lender Agreement shall be irrevocable and remain in full force and effect until the First Amendment Effective Date shall have occurred.

[Further, by its signature below, in its capacity as an Incremental Lender under the Amendment Agreement, the undersigned hereby agrees (a) to the terms of the Amendment Agreement and the Amended Credit Agreement and (b) on the terms and subject to the conditions set forth in the Amendment Agreement and the Credit Agreement, to provide its Incremental Term A Loan Commitment and/or its Incremental Revolving Commitment on the Agreement Effective Date.](2)

*[Remainder of this page intentionally left blank]*

\_\_\_\_\_  
(1) To be included only if such Consenting Lender is also agreeing to provide Incremental Commitments.

(2) To be included only if such Consenting Lender is also agreeing to provide Incremental Commitments. If the Consenting Lender agrees to provide Incremental Commitments after the Agreement Effective Date in accordance with Section 4(b) of Article IX, insert appropriate date.

\_\_\_\_\_  
[NAME OF INSTITUTION], as a Consenting Lender [and as an Incremental Lender](3)

By: \_\_\_\_\_

Name:

Title:

[If a second signature is necessary:

By: \_\_\_\_\_

Name:

Title:]

\_\_\_\_\_  
(3) To be included only if such Consenting Lender is also agreeing to provide Incremental Commitments.

[Signature Page to Lender Agreement]

ANNEX II

## LENDER AGREEMENT — NEW INCREMENTAL LENDER

Reference is hereby made to the First Amendment and Joinder Agreement, dated as of April 28, 2015 (the “**Amendment Agreement**”; capitalized terms used herein and not otherwise defined herein shall have the respective meanings given to them in the Amendment Agreement), by and among Penn National Gaming, Inc., a Pennsylvania corporation, the Subsidiary Guarantors, the Incremental Lenders, Bank of America, N.A., as Administrative Agent for (and on behalf of) the Lenders under the Existing Credit Agreement referred to below and, after giving effect thereto, the Amended Credit Agreement and as Collateral Agent for the Secured Parties (as defined under the Existing Credit Agreement and, after giving effect thereto, the Amended Credit Agreement).

By its signature below, in its capacity as an Incremental Lender under the Amendment Agreement, the undersigned hereby (a) consents and agrees to the terms of the Amendment Agreement (including the amendments to the Existing Credit Agreement attached to the Amendment Agreement as the Amended Credit Agreement), (b) authorizes the Administrative Agent to execute the Amendment Agreement on its behalf as if it were a party thereto and to execute the other amendments, modifications, supplements, instruments or agreements entered into in accordance with Section 3 of Article I of the

Amendment Agreement, (c) agrees, on the terms and subject to the conditions set forth in the Amendment Agreement and the Existing Credit Agreement, to provide its Incremental Term A Loan Commitment and/or its Incremental Revolving Commitment on [the Agreement Effective Date](4), (d) agrees that, on the Incremental Effective Date with respect to the Incremental Commitments it is subject to, and bound by, the terms and conditions of the Existing Credit Agreement and other Credit Documents as a Lender thereunder and (e) represents and warrants that it is an Eligible Assignee (as defined in the Amended Credit Agreement).

The undersigned hereby agrees that this New Lender Agreement shall be binding upon the undersigned and each of its successors and any participants and assigns of its Loans or Commitments (including its Incremental Commitments) under the Existing Credit Agreement (it being understood that any such participation or assignment shall be made in accordance with Section 13.05 of the Existing Credit Agreement) and may not be revoked or withdrawn. The undersigned agrees that it shall notify any potential successor and any participant or assignee of any of its Loans or Commitments under the Existing Credit Agreement of the effectiveness of this New Lender Agreement prior to consummating any such transfer, assignment or participation, subject to Section 13.10 of the Existing Credit Agreement. This New Lender Agreement shall be irrevocable and remain in full force and effect until the First Amendment Effective Date shall have occurred.

*[Remainder of this page intentionally left blank]*

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(4) If the Incremental Lender agrees to provide Incremental Commitments after the Agreement Effective Date in accordance with Section 4(b) of Article IX, insert appropriate date.

[Signature Page to Lender Agreement]

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[NAME OF INSTITUTION]

By: \_\_\_\_\_

Name:

Title:

[If a second signature is necessary:

By: \_\_\_\_\_

Name:

Title:]

Address for Notices:

Contact Person:

Fax No.:

Telephone No.:

Email:

[Signature Page to Lender Agreement]

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## NEWS ANNOUNCEMENT

**CONTACT:**

Saul V. Reibstein  
Chief Financial Officer  
610/373-2400

Joseph N. Jaffoni, Richard Land  
JCIR  
212/835-8500 or penn@jcir.com

**PENN NATIONAL GAMING ENTERS INTO DEFINITIVE AGREEMENT TO ACQUIRE TROPICANA LAS VEGAS CASINO HOTEL RESORT FOR \$360 MILLION**

**Recently Renovated Iconic Asset Establishes Attractive Las Vegas Strip Destination for Penn National's Regional Gaming Customers**

Wyomissing, PA (April 29, 2015) — Penn National Gaming, Inc. (PENN: Nasdaq) (“the Company,” “Penn National,” or “Penn National Gaming”) announced today that it entered into a definitive agreement to acquire Tropicana Las Vegas Casino Hotel Resort (“Tropicana Las Vegas” or “Tropicana”) from its shareholders, the largest of which is a partnership between Onex and Alex Yemenidjian, for \$360 million. Penn National intends to fund the acquisition through an expansion of its existing credit facilities and cash on hand.

Tropicana Las Vegas is situated on a 35-acre land parcel at the corner of Tropicana Boulevard and Las Vegas Boulevard, approximately 2.5 miles from McCarran International Airport on the southern end of the Las Vegas Strip. The iconic property features nearly 1,500 guest rooms including 181 suites (of which six are luxury villas). Amenities at the property include a 50,000 square foot casino with over 1,000 gaming positions, a sports book, three full service restaurants, a food court, a 1,200-seat performance theater, the 300 seat Laugh Factory comedy club, over 100,000 square feet of exhibition and meeting space, a five-acre tropical beach event area and spa.

Over the past four years, Tropicana Las Vegas completed over \$200 million of property upgrades including a complete renovation of all guest rooms, which feature a new South Beach theme. In addition, significant improvements were made to the ballroom, conference meeting space and Pavilion exhibition space, the 1,200 seat showcase performance theater, restaurant and entertainment areas, and the facility's infrastructure and mechanical systems. In the Las Vegas Review Journal's 2015 Best of Las Vegas survey, Tropicana Las Vegas garnered awards in several categories including Best Hotel Rooms, Best Hotel Suites and Best Hotel Room Value.

Timothy Wilmott, Chief Executive Officer of Penn National Gaming, commented, “The planned acquisition of Tropicana Las Vegas establishes a strong presence on the Las Vegas Strip for Penn National Gaming, fulfilling an important long-term strategic objective for the Company. With a \$360 million acquisition cost, we believe we have structured a prudent transaction to own and operate a premier Strip asset at an attractive price of entry. Tropicana Las Vegas is positioned to benefit from recent significant capital expenditures and includes 35 acres of land on one of the busiest and most famous intersections in Las Vegas. The property will also benefit from its proximity to the new 20,000-seat capacity MGM - AEG Arena scheduled to open in mid-2016.

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“Given our goal of leveraging Penn National's database of nearly 3 million active regional gaming customers, we have spent the past several years reviewing an acquisition of numerous gaming assets in Las Vegas. The Tropicana is a quality facility that can serve as an attractive destination offering for current Penn National customers, which further enhances our strong competitive position in the regional gaming markets in which we operate across the United States. At the same time, we view this transaction as a strategic opportunity to create value for our shareholders by adhering to our focus on operating disciplines and careful deployment of our capital. The planned acquisition will also further diversify our property portfolio with another wholly-owned and operated asset.

“Penn National has developed a two-phase plan to realize the full value of this transaction which we expect to occur over the next three to five years. In the first phase, we intend to invest approximately \$20 million in facility improvements and integration activities. The integration activities will include the utilization of Penn National's nationwide database to drive increased visitation and yield, and the upgrade of existing technology infrastructure to integrate Tropicana's systems with Penn National's existing systems with the goal of launching Penn National's nationwide player loyalty program, Marquee Rewards, at Tropicana Las Vegas. In the second phase, we intend to evaluate other potential facility enhancements at the property, such as the addition of retail space, food and beverage outlets, casino floor improvements and potentially additional hotel rooms. The scope, budget and timing of any such expansion and improvements will be determined based upon Penn National's initial operation of the property and customer demand for additional amenities.”

Mr. Wilmott concluded, “With our proven management team, operating discipline and return-focused approach to capital expenditures, we believe the Tropicana offers a meaningful opportunity for Penn National, our regional gaming customers and our shareholders.”

The transaction and credit facility expansions are subject to regulatory approvals, the expiration of the applicable Hart-Scott-Rodino waiting period and other customary closing conditions and the transaction is expected to be completed by year-end 2015.

**About Penn National Gaming**

Penn National Gaming owns, operates or has ownership interests in gaming and racing facilities with a focus on slot machine entertainment. At March 31, 2015, the Company operated twenty-six facilities in seventeen jurisdictions, including Florida, Illinois, Indiana, Kansas, Maine, Massachusetts, Maryland, Mississippi, Missouri, Nevada, New Jersey, New Mexico, Ohio, Pennsylvania, Texas, West Virginia, and Ontario. At March 31, 2015, in aggregate, Penn National Gaming's operated facilities featured approximately 31,000 gaming machines, 760 table games and 3,100 hotel rooms.

**Forward-Looking Statements**

This press release contains forward-looking statements within the meaning of the Private Securities Litigation Reform Act of 1995. These statements can be identified by the use of forward looking terminology such as “expects,” “believes,” “estimates,” “projects,” “intends,” “plans,” “seeks,” “may,” “will,”

“should” or “anticipates” or the negative or other variations of these or similar words, or by discussions of future events, strategies or risks and uncertainties, including future plans, strategies, performance, developments, acquisitions, capital expenditures, and operating results. Actual results may vary materially from expectations. These forward looking statements are inherently subject to risks, uncertainties and assumptions about Penn National Gaming and its subsidiaries, including risks related to required regulatory approvals and other conditions to closing, higher leverage, the successful integration of the acquisition, our ability to successfully leverage our player database, market conditions affecting the Las Vegas Strip, ongoing litigation, labor relations , future capital expenditures, the risks associated with construction projects (such as delays and

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unexpected costs) and the availability and cost of capital and accordingly, any forward looking statements are qualified in their entirety by reference to the factors discussed in the Company’s Annual Report on Form 10-K for the year ended December 31, 2014, as well as any subsequent Quarterly Reports on Form 10-Q and Current Reports on Form 8-K, each as filed with the United States Securities and Exchange Commission. The Company does not intend to update publicly any forward-looking statements except as required by law. In light of these risks, uncertainties and assumptions, the forward-looking events discussed in this press release may not occur.

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