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8
9 **UNITED STATES BANKRUPTCY COURT**
10 **DISTRICT OF NEVADA**

11 In re

12 NEVADA GAMING PARTNERS, LLC,
13 a Nevada limited liability company,

14
15 Debtor.

Case No. BK-S-16-15521-led

Chapter 11

**MOTION FOR INTERIM AND FINAL
ORDER PURSUANT TO 11 U.S.C. §§ 105,
364, FED R. BANKR. P. 4001(C) AND L.R.
4001(B) AND (C): (I) AUTHORIZING THE
DEBTOR TO OBTAIN POST-PETITION
FINANCING; (II) GRANTING RELATED
RELIEF, AND (III) SCHEDULING FINAL
HEARING**

Hearing Date: OST PENDING
Hearing Time: OST PENDING

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22 Nevada Gaming Partners, LLC, a Nevada limited liability company, as Debtor and Debtor in
23 possession, (“Debtor” or “Borrower”) hereby files this motion for entry of an interim order (the
24 “Interim DIP Order”) and final order (the “Final DIP Order”) pursuant to sections 105(a) and 364 of
25 title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (as amended, the “Bankruptcy Code”),
26 Rule 4001(c) of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) and Rules
27 4001(b) and (c) of the Local Rules for the U.S. Bankruptcy Court, District of Nevada (“Local Rules”):
28 (i) authorizing and approving, among other things, Debtor’s obtaining post-petition financing (the

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1 “Post-Petition Financing”) from NGP Stephanie Property, LLC (the “Lender”), on a Section 364(c)
2 secured and superpriority administrative claim basis.

3 Debtor’s ability to obtain the Post-Petition Financing is critical to Debtor’s ability to continue
4 as a going concern during the course of this chapter 11 bankruptcy case (the “Chapter 11 Case”). The
5 proceeds of the Post-Petition Financing will be used to fund (i) payments to critical vendors, (ii) costs
6 of administering Debtor’s estate, including without limitation, fees assessed by the Office of the
7 United States Trustee (the “US Trustee Fees”) and the fees of the Clerk of Court (“Court Fees”) and
8 allowed fees and expenses of professionals of the estate, as approved by the Bankruptcy Court
9 (“Professional Fees”), (iii) costs and expenses for an anticipated section 363 sale of some or all of
10 Debtor’s businesses, and (iv) other operating expenses, to the extent that Debtor’s use of cash
11 collateral is not adequate to fund payment for any or all of same.

12 Pursuant to Bankruptcy Rule 4001(c), the principal provisions of the Interim DIP Order, a
13 proposed copy of which is attached as **Exhibit “A”** hereto, are as follows (capitalized terms used but
14 not immediately defined herein shall have the meanings ascribed to them later in this Motion or in
15 the Credit Agreement, as the case may be):

- 16 (a) **Nature and Amount of Financing**. Pursuant to a credit agreement, substantially in
17 the form of **Exhibit B** attached to this Motion (the “Credit Agreement” and,
18 collectively with any other Loan Documents executed by Borrower or any other
19 persons in connection with the Credit Agreement, the “Loan Documents”), Lender will
20 lend to Debtor up to \$374,000 cash on a secured, super administrative priority basis
21 under §§ 364(c)(2) and (3) of the Bankruptcy Code. (DIP Order ¶ 2, 7, Credit
22 Agreement §2.1, 2.10).
- 23 (b) **Borrowing Limits**. Borrowings under the Post-Petition Financing cannot exceed (i)
24 on and after the entry of the Interim DIP Order (and Interim Closing Date) and prior to
25 the date of entry of the Final DIP Order, the sum of \$150,000, (ii) on and after the date
26 of entry of the Final DIP Order, the aggregate sum of \$374,000 (inclusive of the sum
27 of \$150,000 advanced pursuant to the Interim DIP Order), but exclusive of interest and
28 Other Loan Related Claims that are capitalized and added to the principal balance of
the Revolving Loans pursuant to the terms of the Credit Agreement. (Credit Agreement
§ 2.9).
- (c) **Borrowing Conditions**. Borrowing(s) under the Post-Petition Financing is
conditioned upon (i) entry of the Post-Petition Financing Orders authorizing the
financing, (ii) Lender’s receipt of Borrower’s executed Credit Agreement and related
loan documents upon entry of each of the Post-Petition Financing Orders; (iii) no
Material Adverse Effect shall have occurred with respect to Borrower, and (iv) no

litigation shall have been commenced or be pending which has not been stayed by the commencement of the Chapter 11 Case and which, if successful, would have a Material Adverse Effect on Borrower taken as a whole, its business or ability to repay the Revolving Loans or which would challenge the Credit Agreement, either or both of the Post-Petition Financing Orders or the transactions contemplated thereby. (Credit Agreement § 4.1, 4.2).

- (d) **Interest Rate and Origination Fee.** Interest accrues at a fixed rate per annum of 10% shall accrue upon the entry of the Final DIP Order. There are no origination or other fees. Accrued Interest is due and payable on each Interest Payment Date. Accrued interest on the Revolving Loans not paid on the Interest Payment Date will be capitalized and added to the outstanding principal balance of the Revolving Loans as of each Interest Payment Date. In the event an Event of Default has occurred and is continuing, interest at a rate *per annum* equal to the rate set forth above plus 5.0% (“Default Interest”) from the date of occurrence of such Event of Default until the date such Event of Default is cured or waived. (Credit Agreement § 2.5).
- (e) **Maturity Date.** Earlier of December 31, 2017, or the Effective Date of a confirmed Reorganization Plan (Credit Agreement § 1.1 and 2.2).
- (f) **Certain Events of Default.** Among other Events of Default under the Credit Agreement, an Event of Default occurs if (i) Borrower fails to timely pay Post-Petition Financing obligations, (ii) proceeds of any Revolving Loan are used to make a payment that is not in strict compliance with Section 2.8 of the Credit Agreement, unless agreed to by Lender, (iii) Borrower materially violates or breaches the Final DIP Order or files any pleadings seeking, joining in, or otherwise consenting to any material violation or breach of the Final DIP Order, (iv) a chapter 11 trustee or examiner with expanded powers is appointed in the Chapter 11 Case, (v) the Chapter 11 Case is converted to a case under chapter 7, or (vi) the Final DIP Order is revoked, reversed, stayed, modified, supplemented or amended without the consent of Lender, (vi) commencement of any suit against Lender that would in any way reduce, set off, or subordinate the Obligations under the Credit Agreement, (vii) the entry of an order in the Chapter 11 Case confirming a plan or plans of reorganization that is not a Lender Approved Reorganization Plan, (viii) the entry of an order in the Chapter 11 Case granting any other super priority administrative claim or Lien equal or superior to that granted to Lender (other than the Carve Out and super-priority claims provided under existing Cash Collateral Orders), (ix) orders granting relief from or modifying the automatic stay to permit one or more creditors to execute upon, enforce or perfect a lien on any material asset of the Borrower. (Credit Agreement § 8.1).
- (g) **Liens.** Upon the date of entry of each Post-Petition Financing Orders, the Obligations of the Borrower under the Loan Documents shall be secured by a first priority Lien on all unencumbered assets and property of the Borrower and a junior Lien on all assets and property of the Borrower that are encumbered by Liens as of the date of each of the Post-Petition Financing Orders. (Credit Agreement §§ 2.10(b), (c))
- (h) **Conversion of Loans to Equity.** All Obligations owing to Lender under the Credit Agreement shall be deemed fully paid and satisfied either (i) on the Lender Approved Plan’s Effective Date by issuing to Bruce I. Familian, or his designee, one-hundred

percent (100%) of the equity interest in the Reorganized Debtor pursuant to the Lender Approved Reorganization Plan, or (ii) on the Effective Date of any confirmed Reorganization Plan that is not a Lender Approved Reorganization Plan in cash (immediately available funds). (Credit Agreement § 7.1(b))

In accordance with Fed. R. Bankr. P. 4001 and LR 4001, Debtor has identified below, by page and paragraph number, the location of each of the following provisions:

Provision	Contained in Credit Agreement or Proposed Order	Location in Credit Agreement or Proposed Order	Location in Motion
(1) A grant of priority or a lien on property of the estate under § 364(c) or (d).	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Credit Agreement §§ 2.10 (a), (b), (c); Proposed Order, ¶ H, Article VII	p. 8, ll. 1-28; p. 9, ll. 1-2
(2) The providing of adequate protection or priority for a claim that arose before the commencement of the case, including the granting of a lien on property of the estate to secure the claim, or the use of property of the estate or credit obtained under § 364 to make cash payments on account of the claim.	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		
(3) A determination of the validity, enforceability, priority, or amount of a claim that arose before the commencement of the case, or of any lien securing the claim.	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		
(4) A waiver or modification of Code provisions or applicable rules relating to the automatic stay.	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Credit Agreement § 8.2; Proposed Order, ¶ I, ¶ 12, Article XI	
(5) A waiver or modification of any entity's authority or right to file a plan, seek an extension of time in which the Debtor has the exclusive right to file a plan, request the use of cash collateral under § 363(c), or request authority to obtain credit under § 364.	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		
(6) The establishment of deadlines for filing a plan of reorganization, for approval of a disclosure statement, for a hearing on confirmation, or for entry of a confirmation order.	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		

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Provision	Contained in Credit Agreement or Proposed Order	Location in Credit Agreement or Proposed Order	Location in Motion
(7) A waiver or modification of the applicability of no bankruptcy law relating to the perfection of a lien on property of the estate, or on the foreclosure or other enforcement of the lien.	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		
(8) A release, waiver, or limitation on any claim or other cause of action belonging to the estate or the trustee, including any modification of the statute of limitations or other deadline to commence an action.	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		
(9) The indemnification of any entity.	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		
(10) A release, waiver, or limitation of any right under § 506(c).	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		
(11) The granting of a lien on any claim or cause of action arising under §§ 544, 545, 547, 548, 549, 553(b), 723(a), or 724(a).	<input checked="" type="checkbox"/> Yes, and <input checked="" type="checkbox"/> No	No - for Interim DIP Order, <u>but yes-</u> for Final DIP Order. Lender reserves right to seek same at Final Hearing under a Final DIP Order	

In addition to the foregoing relief, Debtor requests that the Court:

(i) schedule, pursuant to Bankruptcy Rule 4001 and Local Rule 4001, an interim hearing on this Motion for this Court to consider entry of the Interim DIP Order and the relief set forth therein;

(ii) schedule, through the Interim DIP Order, pursuant to Bankruptcy Rule 4001(c)(2), the final hearing on this Motion (the “Final Hearing”) on or before thirty (30) days from the Interim Hearing to consider entry of the Final DIP Order authorizing borrowings under and approving the terms of the Post-Petition Financing on a final basis as set forth herein; and

(iii) approve Debtor’s notice procedures with respect to the Final Hearing.

In further support of this Motion, Debtor relies upon and incorporates by reference the Declaration of Bruce I. Familian (the “Familian Declaration”) and the Declaration of Edward M. Burr

1 (the “Burr Declaration”) filed concurrently herewith. In further support of this Motion, Debtor submit
2 the following Memorandum of Points and Authorities.

3 **MEMORANDUM OF POINTS AND AUTHORITIES**

4 **I.**

5 **JURISDICTION AND VENUE**

6 1. This Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and
7 1334. Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409. This is a core
8 proceeding pursuant to 28 U.S.C. § 157(b). The statutory predicates for the relief sought herein are
9 Bankruptcy Code §§ 105(a) and 364, Bankruptcy Rule 4001 and Local Rule 4001.

10 **II.**

11 **BACKGROUND**

12 2. On October 12, 2016, Debtor commenced its bankruptcy case by filing a voluntary
13 petition for relief under Chapter 11 of the Bankruptcy Code.

14 3. Debtor is operating its business and managing its affairs as Debtor-in-possession
15 pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee, examiner, or statutory
16 committee has been appointed in this case.

17 4. Debtor has a diversified gaming company that focuses on three business lines: slot
18 route operations (the “Slot Routes”), casino operations (the “Casino Operations”) and slot machine
19 refurbishing (“Refurbishing”). The Slot Routes involve the exclusive installation and operation of
20 slot machines in certain strategic, high traffic, non-casino locations such as (a) grocery stores, drug
21 stores, merchandise stores and convenience stores and (b) bars, restaurants and non-chain
22 convenience stores . The Debtor generally enters two types of contracts for the Slot Routes: space
23 lease arrangements (“Space Leases”) and revenue-sharing arrangements (“Participation
24 Agreements”). Under the Space Leases, the Debtor pays a fixed monthly fee for each location in
25 which it places slot machines. Under the Participation Agreements, the Debtor pays the location
26 owner a percentage of the revenues generated by the slot machines located at that location. In order
27 to enter into a Participation Agreement, in addition to the Debtor, the location owner must also hold
28 all necessary gaming licenses. Both Space Leases and Participation Agreements typically involve

1 long-term contracts that provide the Debtor with the exclusive right to install its slot machines a
2 particular locations. See Familian Declaration, ¶4.

3 5. Debtor seeks Post-Petition Financing to fund, to the extent use of cash collateral is not
4 adequate or sufficient to fund any or all of the following: (i) payments to critical vendors, (ii)
5 operating costs and expenses, (iii) costs of administering Debtor's estate, including without limitation,
6 fees assessed by the Office of the United States Trustee (the "US Trustee Fees") and the fees of the
7 Clerk of Court ("Court Fees") and allowed fees and expenses of professionals of the estate, as
8 approved by the Bankruptcy Court ("Professional Fees"), and (iv) costs and expenses for anticipated
9 section 363 sale of some or all of Debtor's businesses. These actions will maintain the value of
10 Debtor's assets, and is in the best interests of Debtor and its creditors.

11 6. If Debtor is unable to obtain Post-Petition Financing, it will be unable to fund the
12 foregoing chapter 11 administration expenses and reorganize, and thus the value of its estate will be
13 adversely affected. By obtaining Post-Petition Financing, Debtor will be able to fund the necessary
14 costs and expenses to reorganize which will increase the value of its estate, the Prepetition Lender's
15 collateral and maximize payments to creditors. See Familian Declaration, ¶5.

16 7. Lender is an entity related to the Debtor by common ownership and management and
17 is also the Debtor's landlord. Since Debtor, on its own, was unable to obtain direct post-petition
18 financing, the Lender took a loan ("Churchill/Terrin Loan") from CHURCHILL SECURITY
19 INVESTMENTS, LLC, a Nevada limited liability company AND THE TERRIN MICHELLE
20 MORRIS TRUST dated July 12, 2005 ("Churchill/Terrin") which was negotiated at arms-length in
21 good faith from which proceeds the Lender will provide the Post-Petition Financing. The terms of
22 the Post-Petition Financing are no more onerous, and in many respects more favorable, to Debtor than
23 the terms of the Churchill/Terrin Loan. The interest rate is the same. the Churchill/Terrin Loan is
24 secured by a first lien on Lender's own real estate. The principal amount of the Churchill/Terrin Loan
25 is \$500,000 from which another lender's lien on said real estate (in approx. amount of \$76,000) was
26 paid off, and \$50,000 of said funds have been placed in reserve to pay interest on the Churchill/Terrin
27 Loan, leaving a balance of only \$374,000 available for the Lender to lend to the Debtor. See Familian
28 Declaration, ¶6.

1 8. In light of the foregoing, Lender is willing to provide such financing on a superpriority
2 administrative claim basis and secured basis pursuant to Bankruptcy Code Section 364(c). Lender is
3 requesting a Lien on all of Debtor’s unencumbered property and assets to secure the financing and a
4 junior Lien on all assets and properties of Debtor that are encumbered by liens as of the date of the
5 Interim DIP Order. Lender is willing to provide Post-Petition Financing to Debtor pursuant to the
6 terms of the Credit Agreement, provided that the Court permits Lender’s claim to be treated as a
7 superpriority administrative expense under sections 364 (c) (1) and 503(b)(1) and allows the Liens.
8 As set forth in the Credit Agreement, Debtor currently seeks the entry of the Interim DIP Order (and
9 after final hearing, a Final DIP Order) authorizing Debtor to enter the Credit Agreement and obtain
10 the Post-Petition Financing. See Familian Declaration, ¶7.

11 9. Specifically, Lender’ claims under the Credit Agreement and any order approving the
12 Motion shall constitute a superpriority administrative expense pursuant to 11 U.S.C. § 364(c) (1) and
13 503(b)(1) which will have priority over administration expenses pursuant to Sections 503(b) and
14 507(b) subject to (i) the Carve-Out (Carve-Out Expenses per the Credit Agreement) and (ii) and any
15 Superpriority Claim provided to Pre-Petition Lender under any Cash Collateral Order. For purposes
16 of an Interim DIP Order, Lender will not require that its Superpriority Claim be applicable to
17 Avoidance Actions, but reserves the right to seek, at the Final Hearing, a Final DIP Order, that
18 provides that the Superpriority Claim and Liens provided to Lender under the DIP Credit Agreement
19 and Interim DIP Order shall be applicable to proceeds of Avoidance Actions.

20 10. In addition, the other key terms of the proposed Post-Petition Financing are as follows:

21 (a) That there is no Material Adverse Effect and Debtor executes
22 the Credit Agreement and related loan documents, then, Lender will
23 disburse the Post-Petition Financing to Debtor.

24 (b) If Debtor does not pay interest on each Interest Payment Date,
25 then such interest will be capitalized and added to the principal of the
26 Revolving Loans. If a Lender Approved Reorganization Plan is
27 confirmed, then the Post-Petition Financing will be paid and satisfied
28 by the issuance to Lender of new equity in the Reorganized Debtor. If
such a plan is not confirmed, then the Revolving Loans will become due
and payable in cash (immediately available funds) on the Effective Date
of a confirmed Reorganization Plan that is not a Lender Approved
Reorganization Plan, or upon occurrence of an Event of Default.

1 In light of the foregoing, it is essential that the Interim DIP Order be entered immediately to avoid
2 immediate and irreparable harm to the Debtor and its estate.

3 **III.**

4 **LEGAL ARGUMENT**

5 **A. Debtor Have Satisfied the Legal Requirements for Approval of the DIP Credit Facility.**

6 **1. Debtor Cannot Obtain Financing on Terms More Favorable than Those of the**
7 **DIP Credit Facility.**

8 Bankruptcy Code section 364 states that a Debtor in possession that is authorized to operate
9 its business may obtain financing either in the ordinary course of business or outside the ordinary
10 course of business. First, Bankruptcy Code section 364(a) allows the Debtor to obtain unsecured
11 credit and to incur unsecured debt in the ordinary course of business. 11 U.S.C. § 364(a). Second,
12 after notice and a hearing, the Court may authorize a Debtor in possession to obtain unsecured credit
13 or incur unsecured debt outside the ordinary course of business allowable as an administration
14 expense under Bankruptcy Code section 503(b)(1). 11 U.S.C. § 364(b).

15 If the Debtor in possession is unable to obtain unsecured credit on this basis, Bankruptcy Code
16 section 364(c) allows the Court, after notice and a hearing, to authorize the Debtor in possession to
17 obtain credit or to incur debt that has priority over administrative expenses under Bankruptcy Code
18 section 503(b)(1), that is secured by a lien on unencumbered estate property, or that is secured by a
19 junior lien on encumbered estate property. 11 U.S.C. §§ 364(c)(1),(2) and (3).

20 Other than the requirement of notice and a hearing, the only statutory prerequisite under
21 Bankruptcy Code section 364(c) for obtaining credit on a secured basis and superpriority basis is that
22 the Debtor in possession must be unable to obtain unsecured credit allowable as an administrative
23 expense under section 503(b)(1). 11 U.S.C. § 364(c)(2); see also, In re Garland Corp., 6 B.R. 456,
24 461 n. 11 (B.A.P. 1st Cir. 1980) (secured credit under section 364(c)(2) is authorized, after notice and
25 a hearing, upon showing that unsecured credit cannot be obtained); In re Ames Dept. Stores, Inc., 115
26 B.R. 34, 37-39 (Bankr. S.D.N.Y. 1990) (Debtor must show that it has made a reasonable effort to
27 seek other sources of financing under sections 364(a) and (b) of the Bankruptcy Code).

1 The Bankruptcy Code offers a Debtor-in-possession additional flexibility to the extent that it
2 needs to borrow additional funds. Bankruptcy Code Section 364 provides a progression of various
3 protections to induce a post-petition lender to extend credit to a Debtor-in-possession. In re Sun
4 Runner Marine, Inc., 945 Ph.D. 1089, 1092-93 (9th Cir. 1991). These include administrative priority,
5 super-priority and secured status. 11 U.S.C. § 364.

6 In addition, parties who extend credit are protected under § 364(e) from the effects of a
7 reversal on appeal of the authorization to incur debt as long as they have acted in good faith.

8 To demonstrate that the requisite credit is not obtainable on an unsecured basis, the Debtor
9 need only demonstrate “by good faith effort that credit was not available” without the protections
10 afforded to potential Lender by section 364(c) of the Bankruptcy Code. Bray v. Shenandoah Fed.
11 Save. & Loan Assn (In re Snowshoe Co.), 789 Ph.D. 1085, 1088 (4th Cir. 1986). Thus, “[t]he statute
12 imposes no duty to seek credit from every possible lender before concluding that such credit is
13 unavailable.” Id. at 1088; see also In re Ames, 115 B.R. at 40 (holding that Debtor made a reasonable
14 effort to secure financing when it selected the least onerous financing option from the two remaining
15 Lenders); In re Reading Tube Indus., 72 B.R. 329, 332 (Bankr. END. Pa. 1987) (“Given the ‘time is
16 of the essence’ nature of this type of financing, we would not require this or any Debtor to contact a
17 seemingly infinite number of possible Lender.”). Where few Lenders are likely to be able and willing
18 to extend the necessary credit to a Debtor, “it would be unrealistic and unnecessary to require [the
19 Debtor] to conduct such an exhaustive search for financing.” In re Sky Valley, Inc., 100 B.R. 107,
20 113 (Bankr. N.D. Ga. 1988), aff’d sub nom., Anchor Savings Bank FSB v. Sky Valley, Inc., 99 B.R.
21 117, 120 n. 4 (N.D. Ga. 1989).

22 Most of Debtor’s assets are encumbered by Liens and Debtor’s use of cash is subject to a Cash
23 Collateral Order which provides the Pre-Petition Lender with adequate protection payments,
24 replacement liens, superpriority claims and requires that Debtor adhere to an acceptable budget for
25 operating expenses. Accordingly, the Post-Petition Financing in intended to provide payments to
26 critical vendors, operating costs and expenses, US Trustee and Professional Fees, and sale costs for
27 which there are no available funds from use of cash collateral. And, if there are no funds to pay debtor
28 service on Post-Petition Financing, interest and any other loan claims may be capitalized and added

1 to the principal of the Post-Petition Financing. Given (i) the uncertainty of the extent of
2 administration expenses, (ii) the need for Post-Petition Financing to cover expenses for which there
3 are no available funds from use of cash collateral, (iii) the superpriority claims and liens provided to
4 the Pre-Petition Lender for use of cash collateral and (iv) possible inability to make post-petition debt
5 service payments on an unsecured post-petition loan, the likelihood of stand-alone post-petition
6 financing on an unsecured administrative basis to fund cash shortfalls for critical vendor payments,
7 operating expenses, and other chapter 11 administrative expenses during the case would be virtually
8 impossible to obtain. It is highly unlikely that a lender would make an unsecured loan for which no
9 debt service payments can be made during the case unless there is other consideration for the making
10 of such a loan.

11 As set forth in the Familian Declaration, since the Debtor's assets were already subject to
12 liens, Debtor could not offer sufficient collateral to secure a loan, which would be risky given the
13 state of Debtor's financial affairs and the fact that Debtor could not assure any potential lender that it
14 would be able to meet debt service payments. Mr. Familiar utilized the services of Amnon Cohen,
15 Managing Director of Level Capital Partners, a loan broker, to find financing for the Debtor. As
16 expected, he was advised that no unsecured loans to Debtor were available and the offers he received
17 for secured loans were for less dollars with higher interest rates and points than those in the proposed
18 Post-Petition Financing. The results were that the most attractive package was offered by
19 Churchill/Terrin provided that its loan would be made to Lender, secured by Lender's real property,
20 and not to the Debtor. Churchill/Terrin required that its loan to Lender be fully secured by a first
21 position lien on Lender's real property. The Lender would use proceeds of the Churchill/Terrin Loan,
22 to provide the Post-Petition Financing to Debtor, the funds from which would be used fund the
23 payments set forth herein. Unlike the Churchill/Terrin Loan terms, the Post-Petition Financing
24 provides for, but does not require, regular the interest only debt service payments (if Debtor does not
25 make such payments, same will be capitalized and added to the principal balance of the Loans). And,
26 financing can be "repaid" or "satisfied" by (i) issuance of 100% equity interests in the Reorganized
27 Debtor pursuant to a Lender Approved Reorganization Plan, or (ii) become due and payable in cash
28 on the Effective Date of a Reorganization Plan (which is not a Lender Approved Reorganization

1 Plan), or, of course, upon occurrence of an Event of Default. Therefore, unlike the Churchill/Perrin
 2 Loan, prior to the Effective Date of a Reorganization Plan, the Debtor may, but is not required, to
 3 make any debt service payments. Debtor and its financial advisors firmly believe that, under the
 4 circumstances of this case, the proposed Post-Petition Financing is the “best game in town.” See
 5 Familian Declaration, ¶8.

6 **B. Debtor’s Decision to Enter into the DIP Credit Facility Is Supported by Sound Business**
 7 **Judgment.**

8 Courts generally give broad deference to the business decisions of a Debtor. See, e.g.,
 9 Stephens Indus., Inc. v. McClung, 789 F.2d 386, 390 (6th Cir. 1986); In re Continental Air Lines,
 10 Inc., 780 F.2d 1223, 1226 (5th Cir. 1986); In re Lionel Corporation, 722 F.2d 1063, 1070 (2d Cir.
 11 1983); Walter v. Sunwest Bank (In re Walter), 83 B.R. 14, 19-20 (B.A.P. 9th Cir. 1987). In particular,
 12 a bankruptcy court should defer to a Debtor’s reasonable business judgment regarding the need for
 13 funds, so long as the proposed financing agreement does not contain terms that either leverage the
 14 bankruptcy process or that benefit a third party rather than the bankruptcy estate. See, e.g., In re Trans
 15 World Airlines, Inc., 163 B.R. 964, 974 (Bankr. D. Del. 1994) (noting that an interim loan, receivables
 16 facility and asset-based facility were approved because they “reflect[ed] sound and prudent business
 17 judgment ..., [were] reasonable under the circumstances and in the best interest of [the Debtor] and
 18 its creditors”). This was explained by the bankruptcy court in In re Ames Department Stores, Inc.,
 19 115 B.R. 34 (Bankr. S.D.N.Y. 1990):

20 [A] court’s discretion under section 364 is to be utilized on grounds that permit
 21 reasonable business judgment to be exercised so long as the financing
 22 agreement does not contain terms that leverage the bankruptcy process and
 powers or its purpose is not so much to benefit the estate as it is to benefit a
 party-in-interest.

23 Id. at 40.

24 Here, Debtor’s decision to enter into the Post-Petition Financing represents a reasonable
 25 exercise of business judgment. To keep Debtor’s business operating, critical vendors must be paid
 26 and operating expenses must be met. Also, there is an extensive amount of work to be performed by
 27 Debtor’s Professionals in the administration of this Chapter 11 Case and in order pursue confirmation
 28 of a plan of reorganization and to the extent that cash collateral use is not sufficient to fully fund all

1 such expenses Debtor must have the Post-Petition Financing available to fund any shortfalls. Thus,
 2 absent the financing to be provided under the DIP Credit Facility, Debtor may not be able to meet all
 3 of its post-petition operating expenses and chapter 11 administrative obligations. Put another way,
 4 Debtor would be forced to cease operations and abandon the chance to reorganize and successfully
 5 emerge from Chapter 11 unless it has the funds to pay the costs which must be incurred immediately.
 6 See Familian Declaration, ¶9. The success of this Chapter 11 Case therefore turns on Debtor’s ability
 7 continue operations and implement its long-term strategy of restructuring. The Post-Petition
 8 Financing will permit Debtor to accomplish these goals, and achieve its stated objective of
 9 maximizing value for all constituencies.

10 **C. The Terms of the DIP Credit Facility are Reasonable Under The Circumstances And**
 11 **Should Be Approved.**

12 The terms of the DIP Credit Facility are similar to those often included in complex financing
 13 arrangements. Indeed, the Credit Agreement, the Interim DIP Order and the Final DIP Order reflect
 14 the give and take that result from complex financing negotiations. Courts have recognized that a
 15 Debtor often must make significant concessions in exchange for financing. See, e.g., In re Ellingsen
 16 MacLean Oil Co., 65 B.R. 358, 365 (Bankr. W.D. Mich. 1986), *aff’d*, 834 F.2d 599 (6th Cir. 1987)
 17 (chapter 11 post-petition financing is “fraught with dangers for creditors . . .”). Accordingly, courts
 18 recognize that a Debtor may need to “enter into a hard bargain with a creditor in order to acquire the
 19 needed funds to complete reorganization.” *Id.* at 365.

20 Similarly, Lenders often agree to subordinate or “carve-out” from their collateral funds to pay
 21 professionals. See Harvis Trien & Beck, P.C. v. Federal Home Mortgage Corp. (In re Blackwood
 22 Assocs., L.P.), 187 B.R. 856, 860 (Bankr. E.D.N.Y. 1995) (court advised that if professionals really
 23 want to be paid they had best insist upon a “real carve out”); In re Ames, 115 B.R. at 40 (noting
 24 practice of district to insist on carve-out for fees in order to preserve adversary system).

25 **D. The Court Should Schedule Interim and Final Hearings On This Motion Pursuant To**
 26 **Bankruptcy Rule 4001(c)(2).**

27 Fed.R.Bankr.P. 4001(c)(2) provides that a final hearing on a motion to obtain credit pursuant
 28 to § 364 may be commenced not earlier than fourteen (14) days after service of the motion. Upon
 request, however, the Bankruptcy Court is empowered to conduct a preliminary expedited hearing on

1 the motion and authorize the obtaining of credit to the extent necessary to avoid immediate and
2 irreparable harm to a debtor's estate.

3 Pursuant to Fed.R.Bankr.P. 4001(c)(2) the Debtor requests the Court conduct an expedited
4 interim hearing on the Motion (the "Interim Hearing"), and after the entry of the Interim DIP Order
5 allow the Debtor to enter into the Credit Agreement and borrow up to \$100,000 thereunder to pay
6 immediate and critical operating expenses to the extent use of cash collateral is not sufficient to meet
7 those obligations, and, at the Final Hearing, after entry of the Final DIP Order, to allow the Debtor to
8 continue to borrow under the Post-Petition Financing.

9 The Debtor has an urgent and immediate need for cash to fund chapter 11 operations. The
10 Debtor has been unable to obtain financing on terms more favorable than presented herein, although
11 it has attempted to do so. Absent entry of an Interim DIP Order immediately, Debtor's efforts to sell
12 some, if not all, of its businesses and confirm a plan to restructure its businesses, may falter. Under
13 the circumstances, the granting of the relief requested by the Motion is warranted.

14 As set forth in the Burr Declaration the Debtor is projected to have a cash flow shortfall with
15 respect to operating expenses of approximately \$25,000 to \$30,000 per month, before administrative
16 expenses. The cash flow shortfall is the greatest at the beginning of the month when certain monthly
17 expenses are due. The Debtor will be able to mitigate some of this cash flow shortfall in week 1 by
18 being proactive with its cash management and timing of actual payments, but it won't be able to
19 mitigate all shortfalls. The Debtor believes it needs at least \$100,000 to be able to draw upon to cover
20 any cash shortages it may experience, particularly at the beginning of each month. Pending Final
21 Hearing, the Debtor will only draw down on the \$100,000 if it is unable to avoid cash flow losses
22 during the month. The Debtor is moving to reduce operating costs. Once the unprofitable slot route
23 agreements are rejected, and other related overhead is reduced, the Debtor hopes to breakeven on a
24 cash flow basis. And, as the operations of the Klondike Casino improve, the Debtor believes that it
25 will be cash flow positive. See Burr Declaration, ¶5.

26 Debtor respectfully submits that given the Debtor's immediate need to enter the Post-Petition
27 Financing, expedited notice as contemplated by Bankruptcy Rule 4001 is sufficient to permit this
28 Court to approve, on an interim basis, the Debtor's request for approval of Post-Petition Financing.

1 The Debtor will provide notice by facsimile or overnight mail of the Interim Hearing to: (a) Bob L.
2 Olson of the law firm of Snell & Wilmer, counsel for the Pre-Petition Lender, (b) the Office of the
3 United States Trustee for the District of Nevada, Attn: Athanasios Agelakopoulos; (c) counsel for any
4 Committee, and if no such committee was appointed, then to the parties listed on the List of Creditors
5 Holding the 20 Largest Unsecured Claims; (d) all other secured creditors, and (e) all other parties
6 requesting notice pursuant to Bankruptcy Rule 2002.

7 In light of the foregoing, and pursuant to Bankruptcy Rule 4001(c)(2), Debtor requests that
8 the Court schedule the Final Hearing on this Motion no later than thirty (30) days from the date of
9 entry of the Interim DIP Order, and that the Court authorize Debtor to enter into the DIP Credit
10 Facility and Post-Petition Financing on a final basis at such hearing.

11 V.

12 **CONCLUSION**

13 Based upon all the foregoing, as set forth in this Memorandum, the Motion, the Familian
14 Declaration, the OST Motion, and all other papers, documents, or other evidence submitted in support
15 of the Motion, Debtor respectfully requests that the Court grant the Motion in its entirety and: (1)
16 approve the DIP Credit Facility on an interim basis; (2) enter the Interim DIP Order, in substantially
17 the form attached hereto as Exhibit 1; (3) authorize Debtor to borrow on an interim basis under the
18 terms of the Loan Documents and the Interim DIP Order, pending a final hearing on this Motion; (4)
19 grant the Lender the security, liens and superpriority claims provided for under the Interim DIP Order;
20 (5) schedule a final hearing on this Motion; and (6) grant to the Debtor such other relief as the Court
21 deems necessary and appropriate.

22 Dated this 18th day of November, 2016.

23 **FOX ROTHSCHILD LLP**

24 By s/Brett A. Axelrod

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26 Nevada Bar No. 5859
27 MICAELA RUSTIA MOORE, ESQ.
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[Proposed] Counsel for Nevada Gaming Partners, LLC

EXHIBIT A

PROPOSED ORDER

1
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3
4
5
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12 *[Proposed] Counsel for Nevada Gaming Partners, LLC*

UNITED STATES BANKRUPTCY COURT

DISTRICT OF NEVADA

<p>16 In re</p> <p>17 NEVADA GAMING PARTNERS, LLC,</p> <p>18 a Nevada limited liability company,</p> <p>19 Debtor.</p>	<p>Case No. BK-S-16-15521-led</p> <p>Chapter 11</p> <p>INTERIM ORDER PURSUANT TO 11 U.S.C. §§ 105, 364, FED R. BANKR. P. RULE 4001(C) AND L.R. 4001(B) AND (C): (I) AUTHORIZING THE DEBTOR TO OBTAIN POST-PETITION FINANCING; (II) GRANTING RELATED RELIEF, AND (III) SCHEDULING FINAL HEARING</p> <p>Hearing Date:</p> <p>Hearing Time:</p>
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25 The motion of the debtor and debtor-in-possession (the “Debtor” or “Borrower”) in the above-

26 captioned chapter 11 case (the “Chapter 11 Case”), dated _____ [Docket No. ____] (the

27 “Motion”), requesting the entry of an interim order (“Interim DIP Order”) and a final order (“Final

28 DIP Order”) pursuant to sections 105, 361, 362, 363(c), 364(c)(1), 364(c)(2), 364(c)(3), and 364(e)

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1 of title 11 of the United States Code, 11 U.S.C. § 101, et seq. (the “Bankruptcy Code”), and Rules
2 2002, 4001 and 9014 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), seeks,
3 among other things¹:

4 (a) authorization for the Debtor to obtain secured post-petition financing in an aggregate
5 principal amount of up to \$374,000 (the “Post-Petition Financing”), pursuant to section 364 of the
6 Bankruptcy Code, from NGP STEPHANIE PROPERTY, LLC (“Lender”), pursuant to the terms of
7 this Interim DIP Order and that certain Debtor in Possession Revolving Credit Agreement by and
8 among the Borrower, and the Lender, in substantially the form attached to the Motion as Exhibit A
9 (as the same may be amended, restated, supplemented or otherwise modified from time to time,
10 collectively, the “Credit Agreement”), and any related documents required to be delivered by or in
11 connection with the Credit Agreement (together with the Credit Agreement, collectively, the “Loan
12 Documents”);

13 (b) authorization for the Borrower to execute and enter into the Loan Documents and to
14 perform such other and further acts as may be required in connection with the Loan Documents;

15 (c) the grant of security interests, liens, and superpriority claims (including a superpriority
16 administrative claim pursuant to section 364(c)(1) of the Bankruptcy Code, liens pursuant to sections
17 364(c)(2) and 364(c)(3) of the Bankruptcy Code) to the Lender to secure all obligations of the
18 Borrower under and with respect to the Post-Petition Financing;

19 (d) the modification of the automatic stay imposed under section 362 of the Bankruptcy Code
20 to the extent necessary to permit the Borrower and the Lender to implement the terms of this Final
21 DIP Order.

22 A hearing on the Motion was held by this Court on _____, 2016 (“Interim
23 Hearing”). The Court read and considered the Motion, and all pleadings related thereto including all
24 objections to the Motion, as well as the record made by the Debtor and other parties at the Interim
25

26 _____
27 ¹ Capitalized terms used, but not defined herein, shall have the meanings ascribed to such
28 terms in the Credit Agreement and capitalized terms used but not immediately defined in Order shall
have the meanings ascribed to them later in this Order

1 Hearing, and after due deliberation and consideration, and good and sufficient cause appearing
2 therefor:

3 **THE COURT HEREBY FINDS AND CONCLUDES AS FOLLOWS:**

4 **I. Background, Jurisdiction and Notice.**

5 A. On October 12, 2016 (the "Petition Date"), Debtor commenced its bankruptcy case by
6 filing a voluntary petition for relief under Chapter 11 of the Bankruptcy Code. The Debtor is
7 continuing to operate its business and manage its property as debtor-in-possession pursuant to
8 sections 1107(a) and 1108 of the Bankruptcy Code. No statutory committee of unsecured creditors
9 ("Committee"), trustee, or examiner has been appointed in this case.

10 B. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157(b) and 1334.
11 This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue is proper before this Court
12 pursuant to 28 U.S.C. §§ 1408 and 1409.

13 C. The Debtors have complied with Bankruptcy Rule 4001(c) and (d), LR 4001(b) and LR
14 9006 to hold the Interim Hearing on less than twenty-one (21) days' notice by serving the Motion and
15 providing notice of the Interim Hearing by facsimile or overnight mail to: (a) Bob L. Olson of the
16 law firm of Snell & Wilmer, counsel for the Pre-Petition Lender, (b) the Office of the United States
17 Trustee for the District of Nevada, Attn: Athanasios Agelakopoulos; (c) counsel for any Committee,
18 and if no such committee was appointed, then to the parties listed on the List of Creditors Holding
19 the 20 Largest Unsecured Claims; (d) all other secured creditors, and (e) all other parties requesting
20 notice pursuant to Bankruptcy Rule 2002. Given the nature of the relief sought in the Motion, the
21 Court concludes that the foregoing notice was sufficient and adequate under the circumstances and
22 complies with Bankruptcy Rule 4001 in all respects.

23 **II. Findings Regarding the Post-Petition Financing Based on the Record at the Final Hearing.**

24 D. The Debtor has an immediate and critical need to obtain the Post-Petition Financing.
25 Debtor's ability to obtain the Post-Petition Financing is critical to Debtor's ability to continue as a
26 going concern during the course of this Chapter 11 Case. The proceeds of the Post-Petition Financing
27 will be used to fund (i) payments to critical vendors, (ii) costs of administering Debtor's estate,
28 including without limitation, fees assessed by the Office of the United States Trustee (the "US Trustee")

1 Fees”) and the fees of the Clerk of Court (“Court Fees”) and allowed fees and expenses of
2 professionals of the estate, as approved by the Bankruptcy Court (“Professional Fees”), (iii) costs and
3 expenses for anticipated section 363 sale of some or all of Debtor’s businesses, and (iv) other
4 operating expenses, to the extent that Debtor’s use of cash collateral is not adequate to fund payment
5 for any or all of same. The Borrower’s access to sufficient liquidity through the incurrence of the
6 Post-Petition Financing under the terms of this Interim DIP Order are vital to the preservation and
7 maintenance of the going concern value of the Borrower’s estate and to the Borrower’s successful
8 reorganization. Consequently, without access to the Post-Petition Financing, to the extent authorized
9 pursuant to this Interim DIP Order, the Borrower and its estate would suffer immediate and irreparable
10 harm.

11 E. The use of Cash Collateral alone may not be insufficient to meet the Borrower’s post-
12 petition liquidity needs. The Borrower is unable to obtain adequate unsecured credit allowable under
13 sections 364(b) and 503(b)(1) of the Bankruptcy Code. The only sufficient source of credit available
14 to the Borrower is the Post-Petition Financing. The Borrower requires the Post-Petition Financing,
15 in addition to the use of cash collateral under the terms of orders entered by this Court authorizing
16 the Debtor’s use of the cash collateral of Pre-Petition Lender holding Liens on Debtor’s assets (“Cash
17 Collateral Orders”), to satisfy its post-petition liquidity needs.

18 F. The Lender has indicated a willingness to provide the Borrower with certain financing, but
19 solely on the terms and conditions set forth in this Interim DIP Order and in the Loan Documents.
20 After considering all of its alternatives, the Borrower has concluded, in an exercise of its sound
21 business judgment, that the financing to be provided by the Lender pursuant to the terms of this
22 Interim DIP Order and the Loan Documents represents the best financing presently available to the
23 Borrower.

24 G. The Lender has disclosed that it is related to the Debtor by common ownership, is the
25 landlord of the Debtor for premises at 5520 Stephanie St, Las Vegas, NV and may have prepetition
26 claims against the Debtor.

27 J. The security interests and liens granted pursuant to this Interim DIP Order to the Lender,
28 are appropriate under section 364(c)(2) and (c)(3) of the Bankruptcy Code because, among other

1 things, such security interests and liens do not impair the interests of any holder of a valid, binding,
2 continuing, enforceable and fully-perfected prepetition security interest or lien in the property of the
3 Borrower and its Estate.

4 K. Good cause has been shown for immediate entry of this Interim DIP Order pursuant to
5 Bankruptcy Rules 4001 (c)(2), and, to the extent it applies, Bankruptcy Rule 6003, as the Court finds
6 that entry of this Interim DIP Order is necessary to avoid immediate and irreparable harm to the
7 Borrower and its Estate. To the extent the Borrower has not complied with Rule 4001(c)(2), the Court
8 finds good cause to waive that requirement. In particular, the authorization granted herein for the
9 Borrower to execute the Loan Documents, to obtain financing on an interim basis, is necessary to
10 avoid immediate and irreparable harm to the Borrower and its Estate. Entry of this Interim DIP Order
11 is in the best interest of the Borrower, its Estate and creditors. The terms of the Loan Documents are
12 fair and reasonable under the circumstances, reflect the Borrower's exercise of prudent business
13 judgment consistent with its fiduciary duties, and are supported by reasonably equivalent value and
14 fair consideration.

15 L. Although the Borrower and Lender are related to each other (each having common owner)
16 and Lender is also the landlord of the Debtor, the terms and conditions of the Loan Documents and
17 this Interim DIP Order, which are reflective of good faith arm's length negotiations between the
18 Lender and the person which made a loan to Lender in order to provide the Lender with the funds to
19 provide the Post-Petition Financing to the Debtor, are in good faith, and any credit extended and loans
20 made to the Borrower pursuant to this Interim DIP Order shall be, and hereby are, deemed to have
21 been extended, issued or made, as the case may be, in "good faith" within the meaning of section
22 364(e) of the Bankruptcy Code.

23 M. Based on the foregoing, and upon the record made before this Court at the Interim Hearing
24 and good and sufficient cause appearing therefor;

25 **III. Disposition**

26 1. The Motion is approved on an interim basis on the terms and conditions set forth in this
27 Interim DIP Order. This Interim DIP Order shall become effective immediately upon its entry. To the
28

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1 extent the terms of the Loan Documents differ in any material respect from the terms of this Interim
2 DIP Order, this Interim DIP Order shall control.

3 **IV. Authorization of the Post-Petition Financing and Entry Into the Loan Documents**

4 2. The terms and conditions of the Credit Agreement are hereby approved. The Borrower is
5 hereby authorized to enter into the Credit Agreement and other Loan Documents (as more particularly
6 set forth and defined in the Credit Agreement). Immediately upon the entry of this Interim DIP
7 Order, the Borrower is hereby authorized to borrow initial Loans of up to \$100,000 in accordance
8 with this Interim DIP Order, the Credit Agreement, and the other Loan Documents.

9 3. The Borrower is hereby authorized to incur the Obligations solely in accordance with the
10 terms and conditions set forth in the Credit Agreement, other Loan Documents and this Interim DIP
11 Order.

12 **V. Loan Obligations**

13 4. Upon execution and delivery of the Loan Documents, the Loan Documents shall
14 constitute valid, binding and continuing obligations of the Borrower, enforceable against Borrower
15 in accordance with the terms thereof. No obligation, payment, transfer or grant of security under the
16 Loan Documents or this Interim DIP Order shall be stayed, restrained, voided, voidable, or
17 recoverable under the Bankruptcy Code or under any applicable non-bankruptcy law, or subject to
18 any defense, reduction, setoff, recoupment or counterclaim.

19 5. All Loans made to or for the benefit of the Borrower on or after the Petition Date under the
20 Loan Documents (collectively, the "Loans"), all interest thereon, and all Other Loan Related Claims
21 owing by the Borrower to the Lender under the Loan Documents and this Interim DIP Order shall
22 hereinafter be referred to as the "Obligations." The Loans: (i) shall bear interest payable at the rates
23 set forth in the Credit Agreement; (ii) shall be secured in the manner specified in Paragraph 7 below;
24 (iii) shall be payable in accordance with the terms of the Loan Documents; and (iv) shall otherwise
25 be governed by the terms set forth herein and in the Loan Documents.

26 **VI. Use of Loan Proceeds**

27 6. The Borrower shall utilize the proceeds of the Revolving Loans to fund (i) payments
28 to critical vendors, (ii) operating costs and expenses (iii) costs of administering Debtor's estate,

1 including without limitation, fees assessed by the Office of the United States Trustee (the “US Trustee
 2 Fees”), the fees of the Clerk of Court (“Court Fees”) and allowed fees and expenses of professionals
 3 of the estate, as approved by the Bankruptcy Court (“Professional Fees”), and (iv) costs and expenses
 4 for anticipated section 363 sale of some or all of Debtor’s businesses, to the extent that Debtor’s use
 5 of cash collateral is not adequate to fund payment for any or all of same Borrower shall not be
 6 permitted to use the proceeds of the Loans: (i) to finance in any way any action, suit, arbitration,
 7 proceeding, application, motion or other litigation of any type adverse to the interests of Lender or its
 8 rights and remedies under this Agreement, the other Loan Documents, or the Interim DIP Order, (ii)
 9 to finance the payment of, or application for authority to pay, any Prepetition Claim, without the
 10 Lender’s prior written consent (other than with respect to payments to critical vendors as authorized
 11 by this Court), and (iii) to make any payment in settlement of any Claim, action or proceeding, before
 12 any court, arbitrator or other governmental body.

13 **VII. Grant of Superpriority Claims and Liens.**

14 7. As security for the full and timely payment of the Obligations, the Lender is hereby granted:

15 (a) pursuant to section 364(c)(1) of the Bankruptcy Code, an allowed claim in the
 16 Chapter 11 Case of the Borrower having priority over any and all administrative expenses and all
 17 other claims against the Borrower, now existing or hereafter arising, of any kind whatsoever,
 18 including all administrative expenses of the kind specified in sections 503(b) or 507(b) of the
 19 Bankruptcy Code (the “Superpriority Claims”) subject only to the Carve-Out and any Superpriority
 20 Claims provided to Prepetition Lender under any Cash Collateral Orders; and, that the Superpriority
 21 Claims shall be payable out of all of the tangible and intangible property of the Borrower and its
 22 Estate but shall, for purposes of this Interim DIP Order only, shall not be applicable to proceeds of
 23 Avoidance Actions, with the Lender reserving its rights to seek at the Final Hearing a Final DIP Order
 24 which provides that its Superpriority Claim shall be applicable to proceeds of Avoidance Actions;

25 (b) pursuant to section 364(c)(2) of the Bankruptcy Code, a valid, binding, continuing,
 26 enforceable and fully-perfected first priority security interest in and Lien on all assets and property of
 27 the Borrower and its Estate that is not otherwise subject to a Lien as of the date of entry of this Interim
 28 DIP Order, which shall include all tangible and intangible property of the Borrower, except, for

1 purposes of this Interim DIP Order only, Avoidance Actions with the Lender reserving its rights to
2 seek at the Final Hearing a Final DIP Order which provides that the Liens provided to Lender shall
3 be applicable to proceeds of Avoidance Actions,

4 (c) pursuant to section 364(c)(3) of the Bankruptcy Code, a valid, binding, continuing,
5 enforceable and fully-perfected security interest in and Lien upon all assets and property of the
6 Borrower junior to all Liens encumbering such assets and property as of the date of this Final DIP
7 Order, except, for purposes of this Interim DIP Order only, Avoidance Actions, with the Lender
8 reserving its rights to seek at the Final Hearing a Final DIP Order which provides that the Liens
9 provided to Lender shall be applicable to proceeds of Avoidance Actions.

10 Hereinafter all assets and property of the Borrower and its Estate upon which the Lender has
11 been granted Liens pursuant to this Interim DIP Order shall be referred to as the “Collateral”.

12 8. The liens and security interests granted pursuant to this Interim DIP Order (“Liens”) shall
13 not be subject to challenge and shall attach and become valid, binding, continuing, enforceable, fully-
14 perfected and non-avoidable by operation of law as of the Petition Date without any further action by
15 the Borrower, the Lender, or any other person, and without the necessity of execution by the
16 Borrower, or the filing or recordation, of any financing statements, security agreements, vehicle lien
17 applications, mortgages, deeds of trust, assignment of rents, filings with the U.S. Patent and
18 Trademark Office, or other documents. All Collateral shall be free and clear of other Liens, claims
19 and encumbrances, except for Liens and security interests in existence as of the date of this Interim
20 DIP Order, any Liens granted to Pre-Petition Lender pursuant to any agreement between Pre-Petition
21 Lender and Debtor, and any Liens granted to Pre-Petition Lender under any Cash Collateral Orders.
22 The Borrower, upon the request of the Lender (i) shall enter into separate instruments in recordable
23 form on terms reasonably satisfactory to the Lender with respect to any Collateral identified by
24 Lender, (ii) shall authorize the Lender to file and record such financing statements and fixture filings
25 with respect to any Collateral identified by Lender, and (iii) shall take any such other action as
26 required by Lender with respect to Collateral identified by Lender in order to perfect the Liens granted
27 herein. The Lender is authorized to file or record such documents in its discretion, in which event all
28

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1 such documents shall be deemed to have been filed or recorded at the time and on the date of entry
2 of this Interim DIP Order.

3 4 5 **VIII. Carve-Out**

6 9. Upon the occurrence and during the continuation of an Event of Default with respect to
7 which the Lender provides notice to the Borrower and its counsel of the cessation of funding under
8 the Loan Documents (the “Carve-Out Trigger Notice”), to the extent unencumbered funds are not
9 available to pay administrative expenses in full, the Liens and the Superpriority Claims shall be
10 subject to the payment of the Carve-Out. For purposes of this Order, the “Carve-Out” shall mean an
11 aggregate sum of not more than the then existing Borrowing Availability which shall be used to pay
12 (i) all Professional Fees (x) incurred or accrued prior to the Commitment Termination Date and (y)
13 accrued or incurred after the Commitment Termination Date for the payment of costs of winding up
14 the Borrower’s Chapter 11 Case, (ii) US Trustee Fees and (iii) Court Fees. All amounts payable as
15 part of the Carve-Out for Professional Fees shall only be paid to the extent subsequently allowed by
16 order of this Court.

17 **IX. Restrictions on Additional Claims or Liens**

18 10. Except for the Carve-Out and the Liens existing as of the date of this Interim DIP Order
19 (including, without limitation, the Liens and superpriority claims provided to the Pre-Petition Lender
20 pursuant to any agreement between Pre-Petition Lender and Debtor and Cash Collateral Orders), no
21 claim having a priority superior to or *pari passu* with those granted pursuant to this Interim DIP Order
22 shall be allowed, and no Lien having a priority superior to, *pari passu* with, or junior to those granted
23 pursuant to this Interim DIP Order shall be granted, in the Borrower’s Chapter 11 Case while any
24 portion of the Post-Petition Financing (or any refinancing thereof), or the Obligations remain
25 outstanding. Except as expressly permitted by the Credit Agreement, other Loan Documents and this
26 Interim DIP Order, the Borrower shall not grant mortgages, deeds of trust, security interests, or liens
27 in the Collateral to any parties pursuant to section 364(d) of the Bankruptcy Code or otherwise.

28 **X. 11 U.S.C. § 364(e) Protections**

1 11. If any or all of the provisions of this Interim DIP Order are hereafter reversed, modified,
2 vacated or stayed, such reversal, modification, vacation or stay shall not affect (i) the validity of any
3 Obligations incurred pursuant this Interim DIP Order or the Loan Documents, or (ii) the validity or
4 enforceability of any claim, lien, security interest or priority authorized or created hereby or pursuant
5 to the Loan Documents with respect to any Obligations. Notwithstanding any such reversal,
6 modification, vacation or stay, any incurrence of Obligations by the Borrower shall be governed in
7 all respects by the provisions of this Interim DIP Order and the Loan Documents, and the Lender shall
8 be entitled to all of the rights, remedies, protections and benefits granted under section 364(e) of the
9 Bankruptcy Code, this Interim DIP Order, and the Loan Documents with respect to all incurrences of
10 the Obligations by the Borrower.

11 **XI. Vacation of the Automatic Stay**

12 12. Notwithstanding section 362 of the Bankruptcy Code, the automatic stay is hereby vacated
13 and modified to the extent necessary to permit the Lender to exercise, upon the occurrence and during
14 the continuation of any Event of Default, upon ten (10) Business Days' written notice to Borrower's
15 counsel, the Prepetition Lender, counsel for any Committee (or the Committee if the Committee does
16 not have counsel) and the U.S. Trustee, all rights and remedies provided for in this Interim DIP Order,
17 the Loan Documents or applicable law, including, without limitation, taking one or more of the
18 following actions, at the same or different times:

19 (a) reduce the amount of any outstanding Revolving Loan Commitment or suspend or
20 terminate any outstanding Revolving Loan Commitment;

21 (b) charge the Default Interest on the Post-Petition Financing;

22 (c) declare all or any portion of the Obligations, including all or any portion of any
23 Loan, to be forthwith due and payable, all without presentment, demand, protest or further notice of
24 any kind, all of which are expressly waived by Borrower;

25 (d) realize on any or all of the Collateral and exercise any and all remedies under the
26 Loan Documents, and applicable law, and

27 (e) exercise any rights and remedies under the Loan Documents and applicable law,
28 including all remedies provided under the Bankruptcy Code, available to the Lender. The rights and

1 remedies of the Lender specified in this Interim DIP Order are cumulative and not exclusive of any
2 rights or remedies that the Lender may have under the Loan Documents or otherwise.

3
4 **XII. Subordination**

5 13. The Liens and Superpriority Claims provided to Lender under this Interim DIP Order
6 are and shall be subject and subordinate in all respects to the Liens, Replacement Liens, and
7 Superpriority Claims provided to the Pre-Petition Lender under Pre-Petition Lender's loan documents
8 and Cash Collateral Order, and (ii) upon the occurrence and during the continuance of an Event of
9 Default the Obligations are and shall be subordinated in right of payment, to the extent and in the
10 manner provided in the Credit Agreement, to the prior payment of the indebtedness evidenced by the
11 Pre-Petition Lender's loan documents and Cash Collateral Order.

12 14. Prior to the Termination Date as defined in and under the Cash Collateral Order, Debtor
13 shall make and Lender shall be entitled to receive and retain for its own account all payments made
14 under or pursuant to the Credit Agreement, other Loan Documents and this Interim DIP Order.

15 15. If an Event of Default occurs and is continuing, Lender will not commence proceedings
16 to foreclose or realize upon the Collateral provided to it under the Credit Agreement, other Loan
17 Documents and Interim DIP Order unless and until all indebtedness owed to the Pre-Petition Lender
18 under its loan documents and Cash Collateral Order has been fully paid and satisfied. However, the
19 preceding sentence shall not limit Lender's right to (i) terminate forthwith the Revolving Loan
20 Commitments and immediately cease making any further Loans, (ii) declare the Loans or any
21 portion thereof then outstanding to be forthwith due and payable, whereupon the principal of such
22 Loans together with accrued interest thereon and any Other Loan Related Claims and all other
23 liabilities of the Borrower accrued hereunder and under any other Loan Document, shall become
24 forthwith due and payable, without presentment, demand, protest or any other notice of any kind, all
25 of which are and have been expressly waived by the Borrower pursuant to the Credit Agreement,
26 anything contained herein or in any of the Loan Documents to the contrary notwithstanding, and/or
27 (iii) preclude Lender from exercising or enforcing any and all the rights available to Lender under the
28 Credit Agreement, other Loan Documents, this Interim DIP Order and applicable law as long as the

1 exercise thereof does not or will not result in the Obligations being paid to Lender prior to the
2 indebtedness owed to Pre-Petition Lender has been fully paid and satisfied.

3 **XIII. Miscellaneous Provisions**

4 16. The provisions of this Interim DIP Order shall be binding upon and inure to the benefit
5 of the Lender, the Borrower, and their respective successors and assigns. The provisions of this
6 Interim DIP Order and any actions taken pursuant thereto (a) shall survive the entry of any order: (i)
7 confirming any plan of reorganization in the Chapter 11 Case that is not a Lender Approved
8 Reorganization Plan; (ii) converting the Chapter 11 Case to a case under chapter 7 of the Bankruptcy
9 Code; or (iii) dismissing the Chapter 11 Case; and (b) shall continue in full force and effect
10 notwithstanding the entry of any such order, and the claims, liens, and security interests granted
11 pursuant to this Interim DIP Order shall maintain their priority as provided by this Interim DIP Order
12 until all of the Obligations are indefeasibly paid in full and discharged in accordance with the terms
13 of this Interim DIP Order and the Credit Agreement.

14 17. The Borrower is hereby authorized, without further order of this Court, to enter into
15 agreements with the Lender providing for (a) non-material modifications to the Credit Agreement and
16 other Loan Documents, or (b) any other modifications to the Credit Agreement and other Loan
17 Documents necessary to conform the Credit Agreement and other Loan Documents to this Interim
18 DIP Order.

19 18. To the extent applicable, this Interim DIP Order is not subject to the 14-day stay provision
20 of Rule 4001(a)(3) of the Bankruptcy Rules.

21 **XIII. Continuing Effect of the Emergency Cash Collateral Orders**

22 19. This Order shall not alter or amend the terms of the existing Cash Collateral Orders, as
23 entered by the Court.

24 **XIV. NOTICE OF FINAL ORDER**

25 20. Service of Notice. Debtor shall cause a copy of this Interim DIP Order to be served
26 within three (3) business days of its entry, by electronic mail, U.S. Mail or the Court's ECF noticing
27 of the Interim Hearing to: (a) Bob L. Olson of the law firm of Snell & Wilmer, counsel for the Pre-
28 Petition Lender, (b) the Office of the United States Trustee for the District of Nevada, Attn:

1 Athanasios Agelakopoulos; (c) counsel for any Committee, and if no such committee was appointed,
2 then to the parties listed on the List of Creditors Holding the 20 Largest Unsecured Claims; and (d)
3 all other secured creditors, and all other parties requesting notice pursuant to Bankruptcy Rule 2002
4 (the “Notice Parties”).

5 21. Final Hearing. A hearing to consider entry of an order granting the relief set forth in
6 this Interim DIP Order on a final basis (the “Final DIP Order”) shall be held on _____, at
7 _____.m. (the “Final Hearing”) in Courtroom 3 in the Foley Federal Building, Third Floor, 300 Las
8 Vegas Boulevard South, Las Vegas, Nevada 89101; with any objections (the “Objections”) to entry
9 of a Final DIP Order due to be timely filed electronically with the Court and served on the Notice
10 Parties, Debtor’s counsel: Fox Rothschild, LLP, 1980 Festival Plaza Drive, Suite 700, Las Vegas,
11 NV 89135, Attn: Brett A. Axelrod, Esq., and the Lender, NG Property, LLC, 5520 Stephanie St. Las
12 Vegas, NV 89122 (collectively, the “Objection Notice Parties”) (with a courtesy copy delivered
13 directly to the Chambers of the Honorable Laurel E. Davis) so as to be actually received no later than
14 _____, 2016. Replies to timely-filed Objections, if any, shall be filed with the Bankruptcy
15 Court electronically and served so that they are received no later than _____ 2016
16 (with a courtesy copy delivered directly to the Chambers of the Honorable Laurel E. Davis) by the
17 Objection Notice Parties and the objecting party, so as to be actually received by such filing deadline.
18 If no timely Objections are filed, this Interim DIP Order (as modified to provide that the Superpriority
19 Claims and Liens provided to Lender hereunder are applicable to Avoidance Actions) may be deemed
20 the Final DIP Order upon the expiration of the filing deadline for such Objections, as set forth above
21 in this paragraph 18 at the Final Hearing.

22 Dated this ____ day of November, 2016.

23
24 Prepared and respectfully submitted by:

25 **FOX ROTHSCHILD LLP**

26 By: _____
27 BRETT A. AXELROD, ESQ.
Nevada Bar No. 5859
28 MICAELA RUSTIA MOORE, ESQ
Nevada Bar No. 9676

FOX ROTHSCHILD LLP
1980 Festival Plaza Drive, Suite 700
Las Vegas, Nevada 89135
(702) 262-6899
(702) 597-5503 (fax)

1 1980 Festival Plaza Drive, Suite 700
2 Las Vegas, Nevada 89135
3 *[Proposed] Counsel for Nevada Gaming Partners, LLC*

4 **CERTIFICATION OF COUNSEL PURSUANT TO LOCAL RULE 9021**

5 In accordance with Local Rule 9021, counsel submitting this document certifies as follows:

- 6 The Court has waived the requirement of approval in LR 9021(b)(1).
- 7 No party appeared at the hearing or filed an objection to the motion
- 8 I have delivered a copy of this proposed order to all counsel who appeared
9 at the hearing, any unrepresented parties who appeared at the hearing, and
10 each has approved or disapproved the order, or failed to respond, as
11 indicated below:
- 12 I certify that this is a case under Chapter 7 or 13, that I have served a
13 copy of this order with the motion pursuant to LR 9014(g), and that no
14 party has objected to the form or content of the order.

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FOX ROTHSCHILD LLP
1980 Festival Plaza Drive, Suite 700
Las Vegas, Nevada 89135
(702) 262-6899
(702) 597-5503 (fax)

EXHIBIT B

PROPOSED CREDIT AGREEMENT

DEBTOR-IN-POSSESSION REVOLVING CREDIT AGREEMENT

AGREEMENT, dated as of November __, 2016, between NEVADA GAMING PARTNERS, LLC, a Nevada Limited Liability Company (“Borrower” or “Debtor”), debtor-in-possession in a case pending under Chapter 11 of the Bankruptcy Code (the “Chapter 11 Case”); AND NGP STEPHANIE PROPERTY, LLC a Nevada limited liability company (the “Lender” and, together with the Borrower, collectively referred to as the “Parties”). Capitalized terms used, but not immediately defined, in this Agreement shall have the meanings ascribed to such terms later or elsewhere in this Agreement.

RECITALS

WHEREAS, on October 12, 2016 (“Petition Date”), Borrower filed a voluntary petition with the Bankruptcy Court initiating the Chapter 11 Case and has continued in the possession of its assets and in the management of its business pursuant to Bankruptcy Code Sections 1107 and 1108;

WHEREAS, an on-going need exists for the Borrower to obtain additional funds in order to continue the operation of its business as debtor-in-possession under Chapter 11 of the Bankruptcy Code and, accordingly, the Borrower has requested that the Lender extend post-petition financing to the Borrower;

WHEREAS, the Lender is willing to make the Revolving Loans to the Borrower upon the terms and conditions set forth herein;

WHEREAS, all exhibits hereto or expressly identified in this Agreement, are incorporated herein by reference, and taken together, shall constitute a single agreement.

NOW, THEREFORE, in consideration of the mutual covenants hereinafter contained, and for other good and valuable consideration, the parties hereto agree as follows:

ARTICLE I

DEFINITIONS

1.1 Defined Terms.

Capitalized terms used in this Agreement and the other Loan Documents shall have (unless otherwise provided elsewhere in the Loan Documents) the following respective meanings and all section references in the following definitions shall refer to Sections of the Agreement:

“Affiliate” shall mean, as to any Person, any other Person which, directly or indirectly, is in control of, is controlled by, or is under common control with, such Person. For purposes of this definition, “control” of a Person shall mean the power, directly or indirectly, either (a) to vote a majority of the outstanding equity securities having ordinary voting power for the election of directors of such Person or (b) to direct or cause the direction of the management and policies of such Person, whether by contract or otherwise.

“Agreement” shall mean this Debtor-in-Possession Revolving Credit Agreement, as the same may from time to time be amended, modified or supplemented.

“Administrative Claim” shall mean a Claim for costs and expenses of administration of the Chapter 11 Case pursuant to Bankruptcy Code sections 503(b), 507(a)(2) or 507(b), including: (a) the actual and necessary costs and expenses incurred after the Petition Date and through the effective date of a confirmed Reorganization Plan of preserving the Borrower’s Estate and operating the Borrower’s business (such as wages, salaries, or commissions for services, and payments for goods and services); (b) compensation and reimbursement of expenses for legal, financial advisory, accounting, and other services, including but not limited to, Professional Fees allowed pursuant to sections 328, 330(a), or 331 of the Bankruptcy Code or otherwise for the period commencing on the Petition Date and ending on the effective date of a

confirmed Reorganization Plan; (c) all fees and charges assessed against the Estate pursuant to chapter 123 of the Judicial Code and 28 U.S.C. §1930; and (d) all Bankruptcy Court approved requests for compensation or expense reimbursement for making a substantial contribution in the Chapter 11 Case pursuant to Bankruptcy Code §§ 503(b)(3), (4), and (5).

“Advance” shall mean the Lender’s disbursement of proceeds of a Revolving Loan to Borrower in accordance with this Agreement.

“Avoidance Actions” shall mean any actions commenced, or that may be commenced before or after the Effective Date, pursuant to section 544, 545, 547, 548, 550 or 551 of the Bankruptcy Code.

“Bankruptcy Code” shall mean 11 U.S.C. §§ 101, et seq., as amended.

“Bankruptcy Court” shall mean the United States Bankruptcy Court for the District of Nevada.

“Bankruptcy Rules” shall mean the Federal Rules of Bankruptcy Procedure, as the same may from time to time be in effect and applicable to the Chapter 11 Case.

“Borrower” shall have the meaning ascribed thereto in the Preamble.

“Borrowing Availability” means, at any time, (a) the aggregate amount of the Maximum Commitment Amount at such time, *less* (b) the Total Utilization of Revolving Loan Commitments.

“Business Day” shall mean a day other than a Saturday, Sunday or other day on which commercial banks in Nevada are authorized or required by law to close.

“Carve Out Expenses” shall mean an aggregate sum of not more than the Borrowing Availability, which shall be used to pay (i) all Professional Fees (x) incurred or accrued prior to the Commitment Termination Date and (y) accrued or incurred after the Commitment

Termination Date for the payment of costs of winding up the Borrower's Chapter 11 Case, (ii) US Trustee Fees and (iii) Court Fees.

“Cash Collateral Order” shall mean an order entered by the Bankruptcy Court authorizing the Debtor to use cash collateral of the Pre-Petition Lender.

“Chapter 11 Case” shall have the meaning ascribed thereto in the Preamble.

“Claim” has the meaning set forth in section 101(5) of the Bankruptcy Code.

“Closing Dates” shall mean, as applicable, the Interim Closing Date, and the Final Closing Date.

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

“Collateral” shall mean all assets and properties of any kind and nature of the Borrower and the Estate, including without limitation, real property and personal property, all deposit accounts and securities accounts, cash, accounts receivable, chattel paper, inventory, equipment, rolling stock and general intangibles pursuant to Section 364(c) and (d) of the Bankruptcy Code but, for purposes of the Interim DIP Order only excluding Avoidance Actions, with Lender reserving the right to require the Collateral to include Avoidance Actions at the Final Hearing pursuant to the Final DIP Order.

“Commitment Termination Date” shall mean the earliest of (a) the Maturity Date, (b) the date of substantial consummation (as defined in section 1101 of the Bankruptcy Code and which, for purposes of this Agreement, shall be no later than the Effective Date of a confirmed Reorganization Plan), (c) the acceleration of the Revolving Loans and the termination of the Revolving Loan Commitments in accordance with the terms hereof, including Section 8.2, and

(d) the consummation of a sale of a significant or substantial part of the Debtor's property and assets (and/or the Collateral)..

"Court Fees" shall mean fees payable to the Clerk of the Bankruptcy Court.

"Confirmation Order" shall mean the Final Order entered by the Bankruptcy Court (unless the requirement of a Final Order has been waived pursuant to applicable terms and conditions), together with all extensions, modifications and amendments thereto, confirming a Reorganization Plan

"Default" shall mean any of the events specified in Section 8.1, whether or not any requirement for the giving of notice, the lapse of time, or both, or any other condition, has been satisfied.

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

"Effective Date" shall mean the date any Reorganization Plan, which has been confirmed pursuant to the Bankruptcy Court Order, becomes effective in accordance with its terms, or the occurrence of the "Effective Date" as defined in any Reorganization Plan which has been confirmed by the Bankruptcy Court Order.

"Estate" shall mean the estate of Debtor that was created by the commencement of the Chapter 11 Case pursuant to Bankruptcy Code §541, and shall be deemed to include any and all privileges and incorporeal hereditaments of Debtor and any and all interests in property, whether real, personal or mixed, rights, causes of action, avoidance powers or extensions of time that Debtor or the Estate shall have had effective as of the Petition Date or thereafter, whether by virtue of Bankruptcy Code §§ 544, 545, 546, 547, 548, 549 or 550 or otherwise.

"Event of Default" shall have the meaning ascribed thereto in Section 8.1.

“Final Closing Date” means the date of the entry of the Final DIP Order by the Bankruptcy Court and execution by all Parties, to the extent necessary or reasonably required by Lender, of this Agreement or any modification of this Agreement and all other Loan Documents or modification of any other Loan Documents in accordance with the Final DIP Order (other than Revolving Notes to be executed with respect to Loans to be made after Closing Date)

“Final DIP Order” means the Final Order of the Bankruptcy Court entered after a final hearing, upon an application of the Borrower reasonably satisfactory in form and substance to the Lender, under Bankruptcy Rule 4001(c), or such other procedures as approved by the Bankruptcy Court, and assuming satisfaction of the standards prescribed in section 364 of the Bankruptcy Code, together with all extensions, modifications and amendments thereto, which order shall be satisfactory in form and substance to Lender, which, among other matters but not by way of limitation, (i) approves, on a final basis, the transactions contemplated in this Agreement, (ii) authorizes, on a final basis, the Borrower to enter this Agreement and obtain credit, incur indebtedness, provide Lender with the Superpriority Claim and Liens to secure payment of the Obligations in accordance herewith, and (iii) includes a finding that the Lender is extending credit to Borrower in good faith within the meaning of Bankruptcy Code § 364(e).

“Final Order” means an order or judgment entered by the Bankruptcy Court: (a) that has not been reversed, stayed, modified, amended, revoked, varied or set aside, and as to which (i) any right to appeal or seek certiorari, review, reargument, stay or rehearing has been waived or (ii) the time to appeal or seek certiorari, review, reargument, stay or rehearing has expired and no appeal or petition for certiorari, review, reargument, stay or rehearing is pending; or (b) as to which an appeal has been taken or petition for certiorari, review, reargument, stay or rehearing has been filed and (i) such appeal or petition for certiorari, review, reargument, stay or rehearing

has been resolved by the highest court to which the order or judgment was appealed or from which certiorari, review, reargument, stay or rehearing was sought and (ii) the time to appeal further or seek certiorari, review, reargument, stay or rehearing has been waived or expired and no such further appeal or petition for certiorari, review, reargument, stay or rehearing is pending, provided, however, that no order or judgment shall fail to be a “Final Order” hereunder solely because of the possibility that a motion pursuant to section 502(j) or 1144 of the Bankruptcy Code, Rule 59 or 60 of the Federal Rules of Civil Procedure or Bankruptcy Rule 9024 may be Filed with respect to such order or judgment.

“Fiscal Year” shall mean any of the annual accounting periods of the Borrower ending on December 31 of each year.

“General Unsecured Claims” shall mean all the Claims against the Debtor, including any deficiency or other unsecured Claims of Pre-Petition Lender and Claims resulting from rejection of executory contracts and unexpired leases, that are not secured Claims, Administrative Claims, or Priority Claims, and that are not subject to subordination by agreement or otherwise.

“Interest Payment Date” means the last Business Day of each calendar quarter.

“Interim Closing Date” means the date of entry of the Interim DIP Order by the Bankruptcy Court and execution by all Parties of this Agreement and all other Loan Documents (other than Revolving Notes to be executed with respect to Loans to be made after Closing Date).

“Interim DIP Order” means the Order entered by the Bankruptcy Court after an interim hearing (assuming satisfaction of the standards prescribed in section 364 of the Bankruptcy Code and Bankruptcy Rule 4001 and other applicable law) upon an application of the Borrower reasonably satisfactory in form and substance to Lender, together with all extensions,

modifications and amendments thereto, which order shall be satisfactory in form and substance to Lenders, which, among other matters, but not by way of limitation, (i) approves, on an interim basis, the transactions contemplated in this Agreement, (ii) authorizes, on an interim basis, the Borrower to enter this Agreement and obtain credit, incur indebtedness, provide Lender with the Superpriority Claim and Liens to secure payment of the Obligations in accordance herewith, (iii) includes a finding that the Lender is extending credit to Borrower in good faith within the meaning of Bankruptcy Code section 364 (e).

“Lender” shall have the meaning ascribed thereto in the Preamble.

“Lender Approved Reorganization Plan” shall mean a Reorganization Plan, as the same may from time to time be amended, restated, modified or supplemented by mutual agreement of the Parties that is otherwise acceptable in form and substance to Lender in its sole and absolute discretion.

“Lender Approved Plan’s Effective Date” shall mean the date a Lender Approved Reorganization Plan, which has been confirmed pursuant to the Plan Confirmation Order, becomes effective in accordance with its terms, or the occurrence of the “Effective Date” as defined in a Lender Approved Reorganization Plan which has been confirmed by the Plan Confirmation Order.

“Lien” shall mean a charge against or interest in property to secure payment of a debt or performance of an obligation, including (a) any mortgage, deed of trust, pledge, statutory deemed trust, hypothecation, assignment, deposit arrangement, encumbrance, lien (statutory or other), charge or other security interest or any preference, priority or other security agreement or preferential arrangement of any kind or nature whatsoever (including, without limitation, any conditional sale or other title retention agreement and any financing lease having substantially

the same economic effect as any of the foregoing and the filing of any financing statement under the Uniform Commercial Code (other than the filing of any such financing statement which states therein that such filing is a precautionary filing only and is filed in connection with “true leases” only) or comparable law of any jurisdiction), (b) any arrangement or agreement which prohibits Borrower from creating any mortgage, pledge, hypothecation, deposit arrangement, encumbrance, lien, charge or other security interest, or from entering into any agreement or arrangement described in clause (a) of this definition or (c) the sale, assignment, pledge or transfer for security of any accounts, general intangibles or chattel paper of Borrower with or without recourse.

“Litigation” shall have the meaning ascribed thereto in Section 3.4.

“Loans” shall mean the Revolving Loans.

“Loan Documents” shall mean this Agreement, and such additional documents, instruments, and agreements as required under this Agreement and/or as may be reasonably required by the Lender to implement the terms or effectuate the purposes of this Agreement and the Final DIP Order, including, without limitation, the Revolving Notes, security agreement, deed of trust, assignment of rents and all other agreements, instruments, documents and certificates executed and delivered to, or in favor of, Lender and including all other pledges, powers of attorney, consents, assignments, contracts, notices, and all other written matter whether heretofore, now or hereafter executed by or on behalf of Borrower in connection with the Agreement or the transactions contemplated hereby. Any reference in this Agreement or any other Loan Document to a Loan Document shall include all exhibits thereto, and all amendments, restatements, supplements or other modifications thereto, and shall refer to this Agreement as the same may be in effect at any and all times such reference becomes operative.

“Material Adverse Effect” shall mean a material adverse effect on (a) the business, operations, property or condition (financial or otherwise) of the Borrower, (b) the ability of the Borrower to fully and timely perform its Obligations or (c) the validity, priority or enforceability of this Agreement, any of the Revolving Notes or any of the other Loan Documents, or the rights or remedies of the Lender hereunder or thereunder.

“Maturity Date” shall mean the earlier of (a) December 31, 2017, or (b) the Effective Date of confirmed Reorganization Plan.

“Maximum Commitment Amount” shall mean the sum of up to \$374,000, excluding interest and Other Loan Related Claims that are capitalized and added to the principal balance of the Revolving Loans pursuant to the terms of this Agreement.

“Notes” shall mean the Revolving Notes.

“Notice of Revolving Loan” shall have the meaning ascribed thereto in Section 2.3.

“Obligations” shall mean the unpaid principal of and interest (including, without limitation, interest accruing after the maturity of the Revolving Loans) on the Revolving Notes and pursuant to this Agreement, and any Lender Costs.

“Other Loan Related Claims” shall mean any reimbursement obligations, commitment or other fees, indemnities, costs, expenses or other claims to which the Lender is entitled under this Agreement, Revolving Notes or any other Loan Documents.

“Plan Confirmation Order” shall mean the Final Order entered by the Bankruptcy Court (unless Lender waives the requirement of a Final Order), satisfactory in form and substance to Lender, together with all extensions, modifications and amendments thereto confirming a Lender Approved Reorganization Plan.

“Person” shall mean an individual, partnership, corporation, limited liability company, business trust, joint stock company, trust, unincorporated association, joint venture, governmental authority or other entity of whatever nature.

“Petition Date” shall have the meaning ascribed thereto in the Recitals.

“Post-Petition Financing Orders” shall mean the Interim DIP Order, any other interim orders approving the lending pursuant to this Agreement and the Final DIP Order.

“Pre-Petition” means anytime or date prior to the Petition Date.

“Pre-Petition Lender” shall mean the Bank of Nevada and Western Alliance Bank.

“Priority Claim” shall mean a Claim entitled to priority under sections 507(a)(2) through (8) of the Bankruptcy Code.

“Professional” shall mean any Person or Entity: (a) employed pursuant to a Bankruptcy Court order in accordance with sections 327 or 1103 of the Bankruptcy Code and to be compensated for services rendered prior to or on the Effective Date, pursuant to sections 327, 328, 329, 330, or 331 of the Bankruptcy Code; or (b) awarded compensation and reimbursement by the Bankruptcy Court pursuant to section 503(b)(4) of the Bankruptcy Code.

“Professional Fees” shall mean all reasonable fees and expenses incurred by Professionals and allowed by the Bankruptcy Court.

“Professional Fee Claims” shall mean any Claim for compensation or reimbursement of fees and expenses as may be requested by a Professional to the extent such Professional is required to apply to the Bankruptcy Court for payment of such Claim pursuant to sections 326, 328, 330 or 331 of the Bankruptcy Code or as otherwise provided in a Reorganization Plan.

“Reorganized Debtor” shall mean on or after the Effective Date, the Debtor, as a reorganized debtor.

“Reorganization Plan” shall mean a plan of reorganization or liquidation filed by the Debtor, any creditor(s), a trustee or any other party in interest in the Chapter 11 Case.

“Requirement of Law” as to any Person shall mean the certificate of incorporation and bylaws or other organizational or governing documents of such Person, and any law, treaty, rule or regulation or determination of an arbitrator or a court or other governmental authority, in each case, applicable to or binding upon such Person or any of its property or to which such Person or any of its property is subject.

“Revolving Loan” and “Revolving Loans” shall have the meaning ascribed to such terms in Section 2.1, as such Revolving Loans may be increased by interest and fees capitalized and added to the principal balance thereto pursuant to the terms of this Agreement.

“Revolving Loan Commitment” means Lender’s commitment to make Revolving Loans to the Borrower in the aggregate amount of Three-Hundred-Seventy-Four Thousand Dollars (\$374,000), exclusive of interest and Other Loan Related Claims that are capitalized and added to the principal balance of the Revolving Loans pursuant to the terms of this Agreement.

“Revolving Loans - Interim” shall mean the initial Revolving Loan or Revolving Loans under this Agreement as authorized pursuant to the Interim DIP Order totaling up to, and not to exceed, the sum of \$100,000, made on and after the Interim Closing Date and prior to the date of entry of the Final DIP Order.

“Revolving Note” shall have the meaning ascribed thereto in Section 2.2.

“Subsidiary” or “Subsidiaries” of a Person shall mean a corporation, partnership or other entity of which shares of stock or other ownership interests having ordinary voting power (other than stock or such other ownership interests having such power only by reason of the occurrence of a contingency) to elect a majority of the board of directors or other managers of such

corporation, partnership or other entity are at the time owned, or the management of which is otherwise controlled, directly or indirectly through one or more intermediaries, or both, by such Person. Unless otherwise indicated, all references to Subsidiaries are to the Subsidiaries of Borrower.

“Superpriority Claim” shall mean an allowed Administrative Claim against the Borrower having priority over any and all Administrative Claims of the kind specified in Bankruptcy Code sections 503(b) and 507(b), of any kind whatsoever, now existing or hereafter arising, including, without limitation, all Administrative Claims of the kinds or arising under Bankruptcy Code sections 105, 326, 328, 330, 331, 503(b), 506(c), 507(a), 507(b), 726, 1113 or 1114, subject only to the Carve Out Expenses (such superpriority status would not be applicable to any proceeds from Avoidance Actions).

“Total Utilization of Revolving Loan Commitments” means, as of any date of determination, the sum of the aggregate principal amount of all outstanding Revolving Loans excluding interest and Other Loan Related Claims that are capitalized and added to the principal balance of the Revolving Loans pursuant to the terms of this Agreement.

“US Trustee” shall mean the United States Trustee for the District of Nevada.

“US Trustee Fees” shall mean fees payable to the US Trustee pursuant to 28 U.S.C. § 1930.

1.2 Other Definitional Provisions.

(a) Unless otherwise specified therein, all terms defined in this Agreement shall have their respective defined meanings when used in the Notes or other document made or delivered pursuant hereto.

(b) As used herein, in the Notes or any other Loan Document made or delivered pursuant to this Agreement, accounting terms relating to Borrower and accounting terms partly defined in Section 1.1, to the extent not defined, shall have the respective meanings given to them under normal and customary use.

(c) The words “hereof”, “herein” and “hereunder” and words of similar import when used in this Agreement shall refer to this Agreement as a whole, including all Exhibits, as the same may from time to time be amended, restated, modified or supplemented, and not to any particular section, subsection or clause contained in this Agreement or any such Exhibit. The meanings given to terms defined herein shall be equally applicable to both the singular and plural forms of such terms.

(d) Unless the context otherwise requires, each reference herein to any agreement, document or instrument (including the Loan Documents) shall be deemed a reference to such agreement, document or instrument as amended, restated, supplemented or otherwise modified from time to time.

(e) The term “includes” and “including” shall not be construed to imply any limitation.

(f) In this Agreement, in the computation of periods of time from a specified date to a later specified date, the word “from” means “from and including” and the words “to” and “until” each mean “to but excluding.” Periods of days referred to in this Agreement shall be counted in

calendar days unless Business Days are expressly prescribed. Any period determined hereunder by reference to a month or months or year or years shall end on the day in the relevant calendar month in the relevant year, if applicable, immediately preceding the date numerically corresponding to the first day of such period, provided that if such period commences on the last day of a calendar month (or on a day for which there is no numerically corresponding day in the calendar month during which such period is to end), such period shall, unless otherwise expressly required by the other provisions of this Agreement, end on the last day of the calendar month.

1.3 Payment Terms; References to Money.

Except as expressly set forth herein to the contrary, (a) all payments made by the Borrower shall be made in Dollars in respect of principal and interest on the Revolving Loans, and (b) to the extent not otherwise indicated, all amounts of money referenced herein shall mean and be references to amounts of money denominated in Dollars.

ARTICLE II

AMOUNT AND TERMS OF REVOLVING LOANS

2.1 Revolving Loan Commitments.

Subject to the terms and conditions in this Agreement (including without limitation the conditions precedent set forth in ARTICLE IV) from and after the Closing Date, Lender agrees to make Revolving Loans to Borrower from time to time until the Commitment Termination Date in an aggregate principal amount at any one time outstanding not to exceed the Borrowing Availability; provided that Lender shall not be permitted or required to make any Revolving Loan if, after giving effect thereto, the aggregate outstanding principal amount of all Revolving Loans outstanding (exclusive of interest and Other Loan Related Claims that are capitalized and

added to the principal balance of the Revolving Loans pursuant to the terms of this Agreement) would exceed the Borrowing Availability.

Until the Commitment Termination Date, the Borrower may from time to time borrow, prepay and re-borrow the Revolving Loans in whole or in part under this Section 2.1, all in accordance with the terms and conditions in this Agreement. Each Revolving Loan shall be denominated in dollars.

Notwithstanding the foregoing, after entry of the Interim DIP Order, but prior to entry of the Final DIP Order, Loans made to the Borrower hereunder shall be limited to the amount of the Revolving Loan – Interim. Upon entry of the Final DIP Order, Borrower may receive Loans in an aggregate principal amount at any one time outstanding not to exceed the Borrowing Availability.

2.2 Revolving Notes.

Each Revolving Loan made by Lender shall be evidenced by a promissory note issued by the Borrower made payable to the order of Lender substantially in the form of **Exhibit A** (a “Revolving Note”), with appropriate insertions as to date and principal amount and in a principal amount equal to the lesser of (a) the amount of the Revolving Loan Commitment and (b) the aggregate unpaid principal amount of all Revolving Loans made by Lender, exclusive of interest and Other Loan Related Claims that are capitalized and added to the principal balance of the Revolving Loans pursuant to the terms of this Agreement. Each Revolving Note shall (i) be dated as of its date of issuance, (ii) be stated to mature on the Maturity Date or such earlier date the Revolving Loans shall be due and payable in full, whether by acceleration or otherwise, pursuant to the terms of this Agreement and (iii) provide for the payment of all principal, accrued interest and any Other Loan Related Claims.

2.3 Procedure for Revolving Loans and Payments.

(a) Until the Commitment Termination Date, the Borrower may borrow under the Revolving Loan Commitments on any Business Day.

(b) The Revolving Loans (including all interest and Other Loan Related Claims, capitalized and added to the principal balance of the Revolving Loans) shall be paid in full on or prior to the Commitment Termination Date, pursuant to the terms herein. Lender's obligation to make Revolving Loans shall terminate at the close of business on the Business Day immediately preceding the Maturity Date, unless sooner terminated in accordance with the terms hereof.

2.4 [INTENTIONALLY LEFT BLANK].

2.5 Interest Rates, Commitment Fees and Payment Dates.

(a) Each Revolving Loan (and all amounts capitalized and added to the principal balance of the Revolving Loans) shall bear interest at a rate *per annum* of ten per cent (10 %).

(b) There shall be no commitment fee for the Loans provided under this Agreement.

(c) Notwithstanding the foregoing, in the event any Event of Default has occurred and is continuing, the Revolving Loan shall bear interest at a rate *per annum* equal to the rate set forth above plus 5.0% ("Default Interest") from the date of occurrence of such Event of Default until the date such Event of Default is cured or waived (after as well as before judgment). In addition, should any interest on any Revolving Loan or any other obligations payable hereunder not be paid when due (whether at the stated maturity, by acceleration or otherwise), such overdue amount shall bear interest (to the extent permitted by law in the case of interest on interest) at a rate *per annum* equal to rate set forth above plus 5.0%, in each case, from the date of such non-payment until such amount is paid in full (after as well as before judgment).

(d) Accrued Interest is due and payable on each Interest Payment Date. Accrued interest on the Revolving Loans not paid on the Interest Payment Date will be capitalized and added to the outstanding principal balance of the Revolving Loans as of each Interest Payment Date.

(e) Other Loan Related Claims will be capitalized and added to the outstanding principal balance of the Revolving Loans as of the date such Other Loan Related Claims becomes due.

Amounts representing interest and Other Loan Related Claims which are capitalized and added to the outstanding principal balance of Revolving Loan, shall thereafter bear interest in accordance with this Section and otherwise be treated as a Revolving Loan for all purposes of this Agreement (except for purposes of determining the Total Utilization of Revolving Loan Commitments). Interest accruing pursuant to Section 2.5(b) shall be payable in arrears on the Commitment Termination Date.

2.6 Computation of Interest.

(a) Interest shall be calculated for the actual number of days elapsed on the basis of a hypothetical year of 365 days.

(b) Each determination of an interest rate pursuant to any provision of this Agreement shall be conclusive and binding on the Borrower and the Lender in the absence of manifest error. Any payment of interest on any Revolving Loan shall be subject to any applicable withholding taxes and any amount withheld shall be treated as having been paid by the Borrower to the Lender.

2.7 Prepayments.

(a) Optional Prepayments. Borrower may, at any time and from time to time prepay the Revolving Loans, in whole or in part, without premium or penalty. Any prepayment shall be applied in the following order of priority (a) first, to the payment of all Other Loan Related Claims due and payable to the Lender on such date under and in respect of the Loans; and (b) second, to the payment of the outstanding principal amount of all of the Revolving Notes that are due and payable to the Lender on such date, together with all accrued and unpaid interest thereon.

(b) Mandatory Prepayments. If at any time the Total Utilization of the Revolving Loan Commitments exceeds the Maximum Commitment Amount, Borrower shall repay the aggregate outstanding Revolving Loan to the extent required to eliminate such excess.

2.8 Use of Proceeds.

The Borrower shall utilize the proceeds of the Revolving Loans solely (a) to pay critical vendors as authorized by the Bankruptcy Court, and to pay any operating costs and expenses, to the extent such payments cannot be made from use of cash collateral under existing Cash Collateral Orders, (b) to pay any fees, expenses which are incurred or related to the anticipated section 363 sale of some or all of the Debtor's businesses to the extent such payments cannot be made from use of cash collateral under existing Cash Collateral Orders, (c) to pay Professional Fees and US Trustee Fees, to the extent such payments cannot be made from use of cash collateral under existing Cash Collateral Orders, (d) to provide all funds required to be disbursed, or deposited and held for later disbursement upon allowance or other Bankruptcy Court authorization, on or as of the Effective Date (i) to Holders of Professional Fee Claims, (ii) to the U.S. Trustee for US Trustee Fees, and (iii) any Court Fees, due as of the Effective Date of a confirmed Reorganization Plan, all consistent with the Final DIP Order. Borrower shall not be

permitted to use the proceeds of the Loans: (i) to finance in any way any action, suit, arbitration, proceeding, application, motion or other litigation of any type adverse to the interests of Lender or its rights and remedies under this Agreement, the other Loan Documents, or the Post-Petition Financing Orders, (ii) to finance the payment of, or application for authority to pay, any Prepetition Claim, without the Lender's prior written consent (other than payments to critical vendors), and (iii) to make any payment in settlement of any Claim, action or proceeding, before any court, arbitrator or other governmental body.

2.9 Separate Loans Not To Exceed Commitment.

All Loans to the Borrower and all of the other Obligations of Borrower arising under this Agreement and the other Loan Documents shall constitute separate loans to the Borrower, evidenced by a separate promissory note executed by the Borrower; provided, however, that the total outstanding balance of all Loans by Borrower (exclusive of interest and Other Loan Related Claims capitalized and added to the principal balance of the Revolving Loans pursuant to the terms of this Agreement) shall not exceed the Maximum Commitment Amount as in effect from time to time under this Agreement.

2.10 Superpriority Nature of Obligations.

(a) Borrower hereby covenants, represents and warrants that, upon the date of entry of the Final DIP Order, the Obligations of the Borrower hereunder and under the Loan Documents pursuant to Section 364(c)(1) of the Bankruptcy Code, shall at all times constitute a Superpriority Claim, subject only to the Carve Out Expenses and any Superpriority Claim provided to Pre-Petition Lender under any Cash Collateral Order, and, for purposes of the Interim DIP Order only shall not be applicable to proceeds of Avoidance Actions, with Lender

reserving the right to seek such Superpriority Claim to be applicable to Avoidance Actions at the Final Hearing pursuant to a Final DIP Order.

(b) Subject to entry of Final DIP Order, Borrower does hereby grant Lender a first priority Lien on all unencumbered assets and property of the Borrower and the Estate to secure payment of the Obligations, subject only to the Carve Out Expenses and any Liens granted to the Pre-Petition Lender pursuant [to any pre-petition agreement between Pre-Petition Lender and Borrower or pursuant](#) to any Cash Collateral Order. Borrower hereby covenants, represents and warrants that, upon the date of entry of the Final DIP Order, the Obligations of the Borrower hereunder and under the Loan Documents, pursuant to section 364(c)(2) of the Bankruptcy Code, shall be secured by a first priority Lien on all unencumbered assets and property of the Borrower and the Estate, subject only to the Carve Out Expenses and any Liens granted to the Pre-Petition Lender pursuant [to any pre-petition agreement between Pre-Petition Lender and Borrower or pursuant](#) to any Cash Collateral Order.

(c) Subject to entry of Final DIP Order, Borrower does hereby grant Lender a junior Lien on all assets and property of the Borrower and the Estate that are encumbered by Liens as of the date of the Final DIP Order [or Liens created by any Cash Collateral Order](#). Borrower hereby covenants, represents and warrants that, upon the date of entry of the Final DIP Order, the Obligations of the Borrower hereunder and under the Loan Documents, pursuant to section 364(c)(3) of the Bankruptcy Code, shall be secured by a junior Lien on all assets and property of the Borrower and the Estate that are encumbered by Liens as of the date of the Final DIP Order [and Liens created by any Cash Collateral Order](#).

2.11 Payment of Obligations.

Upon the maturity (whether by acceleration or otherwise) of any of the Obligations under this Agreement or any of the other Loan Documents, the Lender shall be entitled to immediate payment of such Obligations without further application to or order of the Bankruptcy Court.

2.12 No Discharge; Survival of Claims.

Borrower agrees that to the extent the Obligations hereunder are not satisfied in full, (i) its Obligations arising hereunder shall not be discharged by the entry of an order confirming a Reorganization Plan (and the Borrower, pursuant to Section 1141(d)(4) of the Bankruptcy Code, hereby waives any such discharge) and (ii) the Superpriority Claim granted to Lender pursuant to the Final DIP Order shall not be affected in any manner by the entry of an order confirming a Reorganization Plan in the Chapter 11 Case.

ARTICLE III

REPRESENTATIONS AND WARRANTIES

To induce Lender to make the Loans, the Borrower, makes the following representations and warranties to Lender with respect to Borrower, as of the date of the entry of each of the Post-Petition Financing Orders which shall survive the execution and delivery of this Agreement.

3.1 Corporate Existence; Compliance with Law.

Borrower (a) is duly organized, validly existing and in good standing under the laws of Nevada; (b) is duly qualified as a foreign corporation or limited liability company, as the case may be, and is in good standing under the laws of each jurisdiction where its ownership or lease of property or the conduct of its business requires such qualification, except where the failure to be so qualified could not reasonably be expected to have a Material Adverse Effect; (c) subject to the entry of the Post-Petition Financing Orders by the Bankruptcy Court, has the requisite corporate power and authority and the legal right to effect the transactions contemplated hereby

and by the other Loan Documents to which it is a party; (d) subject to the entry of the Post-Petition Financing Orders by the Bankruptcy Court, has the requisite corporate power and authority and the legal right to including, without limitation, to own, pledge, mortgage or otherwise encumber and operate its properties, to lease the property it operates under lease and to conduct its business as now, heretofore and proposed to be conducted; and (e) is in compliance with all Requirements of Law except to the extent that the failure to comply therewith could not reasonably be expected to have a Material Adverse Effect.

3.2 Corporate Power, Authorization, Enforceable Obligations.

Upon, and subject to, entry of the Post-Petition Financing Orders, (a) Borrower has the corporate power and authority, and the legal right, to make, deliver and perform the Loan Documents to which it is a party and to authorize the execution, delivery and performance of the Loan Documents to which it is a party, (b) Borrower has the appropriate power and authority to borrow hereunder and has taken all necessary corporate action to authorize the borrowings on the terms and conditions set forth in this Agreement and in the Notes, (c) the Agreement, and each other Loan Document to which it is a party will be, duly executed and delivered on behalf of Borrower, and (d) this Agreement, and each other Loan Document to which Borrower is a party when executed and delivered, will constitute, a legal, valid and binding obligation of the Borrower, enforceable against the Borrower in accordance with its terms, (whether enforcement is sought by proceedings in equity or at law).

3.3 No Legal Bar.

Except for the effect of the filing of the Chapter 11 Case, and subject to the entry of the Post-Petition Financing Orders, the execution, delivery and performance of the Loan Documents to which Borrower is a party, the borrowings by the Borrower hereunder and the use of the

proceeds of the Loans (a) will not violate any Requirement of Law or material contractual obligation of Borrower, (b) will not accelerate or result in the acceleration of any payment obligations of Borrower, and (c) will not result in, or require, the creation or imposition of any Lien on any of the respective properties or revenues of the Borrower pursuant to any such Requirement of Law or material contractual obligation.

3.4 No Default.

Borrower is not in default under, or with respect to, any of its material contractual obligations arising after the Petition Date in any respect which could reasonably be expected to have a Material Adverse Effect. Immediately after giving effect to this Agreement, no post-petition Default or Event of Default has occurred and is continuing.

3.5 Taxes.

Borrower has filed or caused to be filed all tax returns which, to the knowledge of the Borrower are required to be filed. Borrower has paid all taxes shown to be due and payable on said returns or on any assessments made against it or any of its property and all other taxes, fees or other charges imposed on it or any of its property by any governmental authority (other than any tax, fee or other charge the amount or validity of which is currently being contested in good faith by appropriate proceedings and with respect to which reserves in conformity with customary usage has been provided on the books of Borrower or which accrued or became payable prior to the Petition Date); and, no tax Lien has been filed, and, to the knowledge of Borrower, no claim is being asserted, with respect to any such tax, fee or other charge.

3.6 Purpose of Loans.

The Borrower shall not use the proceeds of any Revolving Loan hereunder other than in accordance with this Agreement.

3.7 Accuracy and Completeness of Information.

All information, reports and other papers and data with respect to the Borrower (other than projections) furnished to the Lender by or on behalf of Borrower, were, at the time furnished, complete and correct in all material respects, or have been subsequently supplemented by other information, reports or other papers or data, to the extent necessary to give the Lender a true and accurate knowledge of the subject matter in all material respects other than as set forth in this Agreement, there is no fact known to Borrower which has, or could reasonably be expected to have, a Material Adverse Effect.

3.8 The Required Orders.

(a) On or prior to the date of the making of Revolving Loans – Interim hereunder, the Interim DIP Order shall have been entered and shall not have been stayed, amended (without the Lenders' prior written consent, which consent shall be in their sole discretion), vacated, reversed, rescinded or otherwise modified in any respect.

(b) On or prior to the date of making Revolving Loans in addition to the Revolving Loan – Interim hereunder, the Interim DIP Order and the Final DIP Order, shall have been entered and shall not have been amended, stayed, vacated or rescinded without the Lenders' consent which shall not be unreasonably withheld, conditioned or delayed. Upon the maturity (whether by the acceleration or otherwise) of any of the Obligations of the Borrower hereunder and under the other Loan Documents, then, subject to the provisions of section 8.3 of this Agreement, the Lender shall be entitled to immediate payment of such Obligations and to enforce the remedies provided for hereunder, without further application to or order by the Bankruptcy Court.

3.9 Priority of Claims.

Upon the entry of each of the Post-Petition Financing Orders, the Superpriority Claim status of Lender shall be as set forth herein.

3.10 Reorganization Matters.

(a) The Chapter 11 Case was commenced on the Petition Date in accordance with applicable law and proper notice thereof and the proper notice for the hearings for the approval of the Interim DIP Order and the Final DIP Order has been given.

(b) After the entry of the Interim DIP Order, and pursuant to and to the extent permitted in the Interim DIP Order, and the Final DIP Order, the Obligations will constitute Superpriority Claims, subject only to the Carve Out Expenses and any Superpriority Claims granted to the Pre-Petition Lender under any existing Cash Collateral Orders.

(c) The Interim DIP Order (with respect to the period prior to entry of the Final DIP Order) or the Final DIP Order (with respect to the period on and after entry of the Final DIP Order), as the case may be, is in full force and effect has not been reversed, stayed, modified or amended.

(d) Notwithstanding the provisions of Section 362 of the Bankruptcy Code, upon the maturity (whether by acceleration or otherwise) of any of the Obligations, subject to the provisions of section 8.3 of this Agreement, the Lender shall be entitled to immediate payment of such Obligations and to enforce the remedies provided for hereunder, without further application to or order by the Bankruptcy Court.

ARTICLE IV

CONDITIONS PRECEDENT

4.1 Loans Conditioned Upon Entry of the Interim DIP Order.

The obligations of the Lender to make each Revolving Loan on and after the respective Closing Dates, or to take, fulfill, or perform any other action hereunder is subject to the satisfaction of the following conditions precedent:

(a) Loan Documents. The Lender shall have received this Agreement, the Revolving Note and all other Loan Documents, each other agreement, documents and instruments relating to the loan and other credit transactions contemplated by this Agreement, each duly executed where appropriate and in form and substance satisfactory to the Lender.

(b) No Material Adverse Effect. No Material Adverse Effect shall have occurred with respect to Borrower between the Petition Date and the date of making the initial Revolving Loan and each Revolving Loan thereafter, other than those which customarily occur as a result of the pendency of the Chapter 11 Case.

(c) Interim DIP Order. With respect to the Revolving Loans – Interim, the Interim DIP Order shall have been entered by the Bankruptcy Court. Such Interim DIP Order (i) shall be in full force and effect and (ii) shall not have been stayed, reversed, vacated or rescinded or, without the consent of the Lender, modified or amended in any respect and, if the Interim DIP Order is the subject of a pending appeal in any respect, neither the making of such Loans nor the performance by the Borrowers of any of their Obligations hereunder or under the Loan Documents or under any other instrument or agreement referred to herein shall be the subject of a presently effective stay pending appeal.

(c) Litigation. No litigation shall have been commenced or be pending which has not been stayed by the commencement of the Chapter 11 Case and which, if successful, would have a Material Adverse Effect on Borrower, its business or ability to repay the Revolving Loans or which would challenge this Agreement, Final DIP Order or the transactions contemplated thereby.

4.2 Conditions to Additional Loans upon entry of the 506(a) Order and Plan Confirmation Order.

The obligations of the Lender to make all Revolving Loans pursuant to this Agreement (including, without limitation, the Revolving Loans- Interim), or to take, fulfill, or perform any other action hereunder is subject to the satisfaction of the following conditions precedent:

(a) Conditions Set Forth in Section 4.1. Each of the conditions precedent set forth in Section 4.1 shall be in full force and continuing effect.

(b) Final DIP Order. With respect to all Revolving Loans provided for under this Agreement (including, without limitation, the Revolving Loans – Interim), the Final DIP Order

shall have been entered by the Bankruptcy Court. Such Final DIP Order (i) shall be in full force and effect and (ii) shall not have been stayed, reversed, vacated or rescinded or, without the written consent of the Lender, conditional or delayed, modified or amended in any respect and, if the Final DIP Order is the subject of a pending appeal in any respect, neither the making of such Loans nor the performance by the Borrower of any of its Obligations hereunder or under the Loan Documents or under any other instrument or agreement referred to herein shall be the subject of a presently effective stay pending appeal.

ARTICLE V

NEGATIVE COVENANTS

From the date hereof and for so long as the Revolving Loan Commitments remain in effect, any Revolving Note(s) remain outstanding and unpaid or any Obligation is owing to the Lender hereunder, Borrower hereby agrees that it will not, (and will not seek, unless in connection with an amendment to the Agreement that is reasonably likely to be approved by the Lender), Bankruptcy Court authority to:

5.1 Limitation on Indebtedness.

Create, incur, assume or permit to exist any indebtedness, or enter into any agreement or binding commitment to create, incur, assume or suffer to exist any post-petition indebtedness, except the Revolving Loans and the other Obligations created under this Agreement;

5.2 Limitation on Liens.

Create, incur, assume or permit to exist any post-petition Lien any of its properties, assets or revenues, (whether now owned or hereafter acquired), except for [Liens created by any Cash Collateral Order](#), inchoate Liens for taxes, assessments or governmental charges or levies or

Liens for taxes, assessments, governmental charges or levies not yet due or which are being contested in good faith by appropriate proceedings; *provided* that adequate reserves with respect thereto are maintained on the books of the Borrower;

5.3 Limitation on Sale of Assets.

(a) Convey, sell, lease, assign, transfer or otherwise dispose of any of its property, business or assets (including, without limitation, any capital stock of Borrower, receivables and fee or leasehold interests), whether now owned or hereafter acquired, in each case, in one transaction or a series of transactions to any Person, except:

(i) as otherwise approved in writing prior to the consummation thereof by Lender; and

(ii) the sale or other disposition of obsolete or worn out property in the ordinary course of business and having a book value not exceeding \$10,000 in the aggregate in any Fiscal Year, provided that the net proceeds of each transaction (if any) are applied in prepayment of the Revolving Loans;

(b) Incur, create, assume, suffer to exist or permit any other Superpriority Claim or Lien which is *pari passu* with or senior to the claims of the Lender granted pursuant to this Agreement and the Post-Petition Financing Orders, subject only to the Carve Out Expenses and any Superpriority Claim provided to the Pre-Petition Lender pursuant to a Cash Collateral Order.

5.4 Plan of Reorganization.

Propose, file, solicit votes for, support, consent to or prosecute a Reorganization Plan or disclosure statement attendant thereto for the Borrower that is not a Lender Approved Reorganization Plan or otherwise acceptable to Lender, in form and substance.

ARTICLE VI

[INTENTIONALLY LEFT BLANK]

ARTICLE VII

TERMINATION

7.1 Termination.

(a) The financing arrangements contemplated hereby shall be in effect until the Commitment Termination Date, and the Loans and all other Obligations shall be automatically due and payable in full on such date.

(b) Borrower shall pay the entire Obligations owing to the Lender under this Agreement and other Loan Documents, as follows: (i) all Obligations under this Agreement and other Loan Documents shall be deemed fully paid and satisfied on the Lender Approved Plan's Effective Date by issuing to Bruce I. Familian, or his designee, one-hundred percent (100%) of the equity interest in the Reorganized Debtor pursuant to the Lender Approved Reorganization Plan, (ii) in cash (immediately available funds) on the Effective Date of any confirmed Reorganization Plan that is not a Lender Approved Reorganization Plan, or (iii) in cash (immediately available funds) on or before the date of closing and consummation of the sale of a significant or substantial portion of the Debtor's property and assets (and/or Collateral).

(c) In the event that a Reorganization Plan is not confirmed and/or the Chapter 11 Case is converted to a case under Chapter 7 of the Bankruptcy Code, or dismissed, then the entire Obligations owing to Lender under this Agreement and other Loan Documents shall be fully paid to Lender in cash (immediately available funds) upon the entry of any order (i) converting this Chapter 11 Case to a case under chapter 7 of the Bankruptcy Code or (ii) dismissing this Chapter 11 Case.

7.2 Survival of Obligations Upon Termination of Financing Arrangements.

Except as otherwise expressly provided for in the Loan Documents, no termination or cancellation (regardless of cause or procedure) of any financing arrangement under this Agreement shall in any way affect or impair the obligations, duties and liabilities of the Borrower or the rights of Lender relating to any unpaid portion of the Loans or any other Obligations, due or not due, liquidated, contingent or unliquidated or any transaction or event occurring prior to such termination, or any transaction or event, the performance of which is required after the Commitment Termination Date. Except as otherwise expressly provided herein or in any other Loan Document, all undertakings, agreements, covenants, warranties and representations of or binding upon the Borrower, and all rights of Lender, all as contained in the Loan Documents, shall not terminate or expire, but rather shall survive any such termination or cancellation and shall continue in full force and effect after the Commitment Termination Date.

ARTICLE VII

EVENTS OF DEFAULT; RIGHTS AND REMEDIES

8.1 Events of Default.

Notwithstanding the provisions of section 362 of the Bankruptcy Code and without application or motion to the Bankruptcy Court or any notice to Borrower, and subject to Section 8.2, the occurrence of any one or more of the following events (regardless of the reason therefor) shall constitute an “Event of Default” hereunder:

(a) (i) Borrower shall fail to pay any principal of any Revolving Note when due in accordance with the terms thereof or hereof, (ii) Borrower shall fail to pay any interest on any Revolving Note, any other Obligation or any other amount payable hereunder, within three (3) Business Days after any such interest or other amount becomes due in accordance with the terms

thereof or hereof, or (iii) Borrower fails to perform any of the terms and provisions of this Agreement or of any other Loan Document; or

(b) One or more judgments or decrees shall be entered after the Petition Date against the Borrower involving in the aggregate a liability (to the extent not covered by third party insurance as to which the insurer has acknowledged coverage) of \$10,000 or more, net of insurance proceeds, and all such judgments or decrees shall not have been vacated, discharged, stayed or bonded pending appeal within thirty (30) days from the entry thereof; or

(c) Proceeds of any Revolving Loan made hereunder are used to make a payment that is not in strict compliance with Section 2.8, unless agreed to in writing by the Lender; or

(d) The occurrence of any additional "Event of Default" identified in any of the Loan Documents or the Post-Petition Financing Orders not identified herein; or

(e) The occurrence of any of the following in the Chapter 11 Case:

(i) the dismissal of the Chapter 11 Case, or the conversion of the Chapter 11 Case from one under Chapter 11 to one under Chapter 7 of the Bankruptcy Code, or Borrower shall file a motion or other pleading seeking the dismissal of the Chapter 11 Case under section 1112 of the Bankruptcy Code or otherwise;

(ii) the appointment of a trustee in the Chapter 11 Case or the appointment of an examiner with expanded powers (powers beyond those set forth under sections 1106(a)(3) and (4) of the Bankruptcy Code) to operate, oversee or manage the financial affairs, the business, or reorganization of the Borrower under Bankruptcy Code section 1106(b);

(iii) the entry of an order of competent jurisdiction (1) reversing, staying, vacating or rescinding the Post-Petition Financing Orders or it or they otherwise cease to be in full force and effect or (2) amending, supplementing or otherwise modifying the Post-Petition Financing

Orders without the written consent of the Lender or the filing of a motion for reconsideration (x) in respect of the total Revolving Loan Commitments, without Lender' consent;

(iv) Borrower materially violates or breaches the Post-Petition Financing Orders or files any pleadings seeking, joining in, or otherwise consenting to any material violation or breach of the Post-Petition Financing Orders;

(v) the bringing of a motion or taking of any action by Borrower: (1) to obtain additional financing under section 364(c) or (d) of the Bankruptcy Code not otherwise permitted pursuant to this Agreement; (2) to grant any Lien other than as set forth at Section 5.2 of this Agreement upon or affecting any Collateral; (3) to file, seek or consent to confirmation of a Reorganization Plan or disclosure statement attendant thereto which is not a Lender Approved Reorganization Plan; or (4) which is adverse to Lender' rights, interests and/or remedies hereunder;

(vi) the entry of an order in the Chapter 11 Case granting any other Superpriority Claim or Lien equal or superior to that granted to the Lender (other than the Carve Out Expenses and any Superpriority Claim and Liens granted to the Pre-Petition Lender under [any of its pre-petition agreements with Borrower or under](#) a Cash Collateral Order);

(vii) the entry of an order in the Chapter 11 Case avoiding or requiring repayment or return of any portion of the payments made on account of the Obligations owing under this Agreement;

(viii) the entry of an order in the Chapter 11 Case confirming a Reorganization Plan(s) that is not a Lender Approved Reorganization Plan;

(ix) the Bankruptcy Court shall enter an order or orders granting relief from or modifying the automatic stay applicable under Section 362 of the Bankruptcy Code to permit one

or more creditors to execute upon, enforce or perfect a Lien on any material asset of the Borrower or that otherwise could reasonably be expected to have a Material Adverse Effect on the Borrower' business;

(xi) commencement of any suit against the Lender that would in any way reduce, set off, or subordinate the Obligations under this Agreement; or any such suit that is commenced by any party other than the Borrower, and in the reasonable judgment of the Lender, such suit has a reasonable possibility of success, and if successful, would be reasonably likely to have a Material Adverse Effect;

(xii) the payment of, or application for authority to pay, any prepetition Claim other than pursuant to a Lender Approved Reorganization Plan, without the Lender' prior written consent, or pursuant to an order of the Bankruptcy Court after notice and hearing unless otherwise permitted under this Agreement;

(xiii) the entry of an order in the Chapter 11 Case approving and authorizing the sale of a significant or substantial portion of the Debtor's property and assets (and/or Collateral).

(xiii) the Final DIP Order is not entered within thirty (30) days of the entry of the Interim DIP Order.

8.2 Remedies.

Upon the occurrence and during the continuance of an Event of Default, and without further order of or application to the Bankruptcy Court, the Lender shall, by ten (10) Business Days' prior written notice to the Borrower (with a copy to the US Trustee, counsel for any Committee(s) and counsel for the Pre-Petition Lender), take one or more of the following actions, at the same or different times:

(i) terminate forthwith the Revolving Loan Commitments and immediately cease making any further Loans;

(ii) declare the Loans or any portion thereof then outstanding to be forthwith due and payable, whereupon the principal of such Loans together with accrued interest thereon and any Other Loan Related Claims and all other liabilities of the Borrower accrued hereunder and under any other Loan Document, shall become forthwith due and payable, without presentment, demand, protest or any other notice of any kind, all of which are hereby expressly waived by the Borrower, anything contained herein or in any other Loan Document to the contrary notwithstanding; and

(iii) take any other action or exercise any and all other rights or remedies under the Loan Documents, and under applicable law available to the Lender. For purposes of the Lender's exercise of any and all of its remedial rights upon the occurrence and during the continuation of an Event of Default, the automatic stay imposed by Section 362(a) of the Bankruptcy Code shall be automatically vacated and modified following ten (10) Business Days' prior written notice to Borrower, US Trustee, counsel for any Committee(s) and counsel for the Pre-Petition Lender.

8.3 Subordination

(a) Agreement to Subordinate. Lender agrees that (i) the Liens and Superpriority Claims provided to Lender under this Agreement and Post-Petition Financing Orders are and shall be subject and subordinate in all respects to the Liens, Replacement Liens, and Superpriority Claims provided to the Pre-Petition Lender under Pre-Petition Lender's loan documents and Cash Collateral Order, and (ii) upon the occurrence and during the continuance of an Event of Default the Obligations are and shall be subordinated in right of payment, to the extent and in the manner

provided in this Agreement, to the prior payment of the indebtedness evidenced by the Pre-Petition Lender's loan documents and Cash Collateral Order.

(b) **Payments Before Default.** Prior to the Termination Date as defined in and under the Cash Collateral Order, Debtor shall make and Lender shall be entitled to receive and retain for its own account all payments made under or pursuant to this Agreement, other Loan Documents and Post-Petition Financing Orders.

(c) **Lender's Exercise of Remedies After Default.** If an Event of Default occurs and is continuing, Lender agrees that it will not commence proceedings to foreclose or realize upon the Collateral provided to it under this Agreement, other Loan Documents and Post-Petition Financing Orders unless and until all indebtedness owed to the Pre-Petition Lender under its loan documents and Cash Collateral Order has been fully paid and satisfied. However, the preceding sentence shall not limit Lender's right to (i) terminate forthwith the Revolving Loan Commitments and immediately cease making any further Loans, (ii) declare the Loans or any portion thereof then outstanding to be forthwith due and payable, whereupon the principal of such Loans together with accrued interest thereon and any Other Loan Related Claims and all other liabilities of the Borrower accrued hereunder and under any other Loan Document, shall become forthwith due and payable, without presentment, demand, protest or any other notice of any kind, all of which are hereby expressly waived by the Borrower, anything contained herein or in any other Loan Document to the contrary notwithstanding, and/or (iii) preclude Lender from exercising or enforcing any and all the rights available to Lender under this Agreement, other Loan Documents, Post-Petition Financing Orders and applicable law as long as the exercise thereof does not or will not result in the Obligations being paid to Lender prior to the indebtedness owed to Pre-Petition Lender has been fully paid and satisfied.

ARTICLE IX

MISCELLANEOUS

9.1 Amendments and Waivers.

Neither this Agreement, nor any Revolving Note or any other Loan Document, nor any terms hereof or thereof may be amended, restated, supplemented or modified except in writing signed by each of the Parties hereto

9.2 No Waiver; Cumulative Remedies.

No failure to exercise and no delay in exercising, on the part of Lender, any right, remedy, power or privilege hereunder or under the other Loan Documents shall operate as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. The rights, remedies, powers and privileges herein provided are cumulative and not exclusive of any rights, remedies, powers and privileges provided by law.

9.3 Survival of Representations and Warranties.

All representations and warranties made hereunder, in the other Loan Documents and in any document, certificate or statement delivered pursuant hereto or in connection herewith shall survive the execution and delivery of this Agreement and the Revolving Notes and the making of the Loans hereunder.

9.4 Successors and Assigns; Participations and Assignments.

(a) This Agreement shall be binding upon and inure to the benefit of the Borrower and the Lender and their respective successors and assigns, including any trustee appointed in

this Chapter 11 Case, or upon conversion of this case to a case under chapter 7, a trustee appointed or elected therein.

(b) Lender may sell any participation interest in or otherwise assign its rights under this Agreement or any Obligations of Borrower hereunder without prior written consent of Borrower.

(c) The Borrower authorizes Lender to disclose to any permitted Assignee (each, a “Transferee”) any and all financial information in Lender’s possession concerning the Borrower which has been delivered to Lender.

9.5 Counterparts.

This Agreement may be executed by one or more of the Parties on any number of separate counterparts (including by telecopy or email), and all said counterparts taken together shall be deemed to constitute one and the same instrument. A set of the copies of this Agreement signed by all the parties shall be lodged with the Borrower and the Lender.

9.6 Severability.

Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

9.7 Governing Law.

THIS AGREEMENT AND THE REVOLVING NOTES AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES UNDER THIS AGREEMENT AND THE REVOLVING NOTES SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN

ACCORDANCE WITH, THE LAWS OF THE STATE OF NEVADA WITHOUT REGARD TO THE PRINCIPLES OF CONFLICT OF LAWS THEREOF.

Submission To Jurisdiction; Waivers. Borrower and Lender hereby irrevocably and unconditionally: (a) submit for themselves and their property in any legal action or proceeding relating to this Agreement and the other Loan Documents to which it is a party, or for recognition and enforcement of any judgment in respect thereof, to the jurisdiction of the Bankruptcy Court; (b) consent that any such action or proceeding may be brought in the Bankruptcy Court and waive any objection that they may now or hereafter have to the venue of any such action or proceeding in any such court or that such action or proceeding was brought in an inconvenient court and agree not to plead or claim the same; (c) agree that nothing contained herein shall affect the right to effect service of process in any other manner permitted by law or shall limit the right to sue in any other jurisdiction; and (d) waive, to the maximum extent not prohibited by law, any right they may have to claim or recover in any legal action or proceeding referred to in this Section any special, exemplary, punitive or consequential damages.

9.8 No Waiver.

No failure on the part of Lender to exercise, and no delay in exercising, any right, power or remedy hereunder or any of the other Loan Documents shall operate as a waiver thereof, nor shall any single or partial exercise of any such right, power or remedy preclude any other or further exercise thereof or the exercise of any other right, power or remedy. All remedies hereunder are cumulative and are not exclusive of any other remedies provided by law.

9.9 Waiver of Claims.

Upon the effectiveness of this Agreement, the Borrower shall be deemed to have (a) released and forever discharged Lender and its respective Subsidiaries, Affiliates and their

respective agents, employees, officers, directors, managers, attorneys, Affiliates, successors and assigns (collectively, the “Released Parties”) of and from any and all liabilities, claims, obligations, indebtedness, liens, causes of action and rights of any kind, character or nature whatsoever, whether known or unknown, whether fixed or contingent, and whether liquidated or unliquidated, that the Borrower has, may have or claim to have against any such Released Party and which arises out of or is connected in any way with any action of commission or omission of the Lender existing or occurring on or prior to the date of this Agreement specifically related to, in connection with, and limited to any claims, liabilities or obligations relating to or arising out of or in connection with any of the transactions contemplated by any of the Loan Documents, from the beginning of time until the execution and delivery of this Agreement (collectively, the “Released Claims”) and (b) agree forever to refrain from commencing, instituting or prosecuting any law suit, action or other proceeding against any of the Released Parties with respect to any of such Released Claims.

[SIGNATURES FOLLOW ON NEXT PAGE]

IN WITNESS WHEREOF, the parties hereto has caused this Agreement to be duly executed and delivered by their proper and duly authorized officers as of the day and year first above written.

NEVADA GAMING PARTNERS LLC

NGP STEPHANIE PROPERTY, LLC

By: _____
Name:
Title:

By: _____
Name:
Title:

EXHIBIT A

[FORM OF]

REVOLVING NOTE

REVOLVING CREDIT NOTE

\$374,000

November __, 2016

FOR VALUE RECEIVED, the undersigned, **NEVADA GAMING PARTNERS, LLC**, a Nevada limited liability company, (the “Borrower”), promises to pay to the order of **NGP STEPHANIE PROPERTY, LLC** a Nevada limited liability company (the “Lender”), on the Maturity Date, if not sooner paid, the lesser of (i) the principal sum of **THREE-HUNDRED-SEVENTY-FOUR THOUSAND DOLLARS (\$374,000)**, or (ii) the aggregate unpaid principal amount of all revolving credit loans and extensions of credit made by the Lender to the Borrowers pursuant to that certain Debtor-in-Possession Revolving Credit Agreement between the Borrower and the Lender dated as of _____, as such agreement may be amended, modified or supplemented from time to time (the “**Loan Agreement**”). The Borrower further promises to pay to the order of the Lender interest on the unpaid principal amount of this Revolving Note from time to time outstanding at the rate or rates per annum determined pursuant to Section 2.5 of, or as otherwise provided in, the Loan Agreement, and with such amounts being payable on the dates set forth in Section 2.5 of, or as otherwise provided in, the Loan Agreement.

All payments and prepayments to be made in respect of principal, interest or other amounts due from the Borrower under this Revolving Note shall be payable at 12:00 noon Las Vegas time, on the day when due. The Borrower expressly waives presentment, demand, notice, protest and all other demands and notices in connection with the delivery, acceptance, performance, default or enforcement of this Revolving Note, and an action for any amounts due and unpaid shall therefore accrue immediately.

This Revolving Note is the “Revolving Note” referred to in, and is entitled to the benefits of, the Loan Agreement. This Revolving Note is secured by, and is entitled to the benefits of, certain other Loan Documents, as each of them may be amended, modified or supplemented from time to time. Capitalized terms used in this Revolving Note that are defined in the Loan Agreement have the meanings assigned to them in the Loan Agreement unless otherwise expressly defined in this Revolving Note.

This Revolving Note is governed by, and will be construed and enforced in accordance with, the laws of the State of Nevada. The Borrower consents to the exclusive jurisdiction and venue of the United States Bankruptcy Court for the District of Nevada located

in Las Vegas, Nevada with respect to any suit arising out of, relating to, or mentioning this Revolving Note.

IN WITNESS WHEREOF, and intending to be legally bound, the Borrower has executed, issued and delivered this Revolving Note as of November _____, 2016.

NEVADA GAMING PARTNERS LLC

By: _____

Name:

Title: