



Order Filed on January 30, 2015  
by Clerk  
U.S. Bankruptcy Court  
District of New Jersey

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEW JERSEY  
**Caption in compliance with D.N.J. LBR 9004-2(c)**

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*Co-Counsel to the Debtors and  
Debtors in Possession*

In re:

REVEL AC, INC., et al.,

Debtors.<sup>1</sup>

Chapter 11

Case No. 14-22654 (GMB)

Joint Administration Requested

**Re: Docket Nos. 16, 49, 352, 515, 585,  
651, 823 and 1093**

**FINAL ORDER PURSUANT TO SECTIONS 361, 362, 363, 364, AND  
507 OF THE BANKRUPTCY CODE AND RULE 4001 OF THE  
FEDERAL RULES OF BANKRUPTCY PROCEDURE AUTHORIZING  
THE DEBTORS TO (I) OBTAIN POSTPETITION FINANCING,  
(II) GRANT SENIOR PRIMING LIENS AND SUPERPRIORITY CLAIMS TO  
POSTPETITION LENDERS, (III) USE CASH COLLATERAL, AND  
(IV) PROVIDE ADEQUATE PROTECTION TO PREPETITION SECURED PARTIES**

The relief set forth on the following pages (2) through (74) is hereby ORDERED:

Upon (x) the motion, dated June 19, 2014 (the "DIP Motion"), of Revel AC, Inc. ("Revel AC" or the "DIP Borrower") and the other above-captioned debtors and debtors-in-possession

**DATED: January 30, 2015**

Honorable Gloria M Burns  
United States Bankruptcy Court Judge

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(collectively, the “Revel Entities” or the “Debtors”) in the above-captioned Chapter 11 cases (the “Cases”), for the entry of the Interim DIP Order (defined below) and a final order (this “Final DIP Order,” and together with the Interim DIP Order, the “DIP Orders”) (A) authorizing the Debtors to (I) obtain postpetition priming secured superpriority financing pursuant to Sections 361, 362, and 364 of title 11 of the United States Code (as amended, the “Bankruptcy Code”), (II) grant liens and superpriority claims to the DIP Secured Parties (defined below) pursuant to Section 364 of the Bankruptcy Code, (III) use cash collateral of the Prepetition Secured Parties (defined below) pursuant to Section 363 of the Bankruptcy Code, and (IV) provide adequate protection to the Prepetition Secured Parties pursuant to Sections 361, 362, 363, and 507 of the Bankruptcy Code, and (B) prescribing the form and manner of notice of, and scheduling, a final hearing on the DIP Motion pursuant to Rule 4001(b) and (c) of the Federal Rules of Bankruptcy Procedure (as amended, the “Bankruptcy Rules”) and (y) the Debtors’ Emergency Motion to (I) responding Increase in New Money Commitments, and (III) Grant Related Relief, dated December 24, 2014 (the “DIP Increase Motion”, and together with the DIP Motion, the “Motion”), the Debtors seek, among other things, the following relief:

- (i) the Court’s authorization, pursuant to Sections 364(c)(1), (2), (3) and (d)(1) of the Bankruptcy Code, for the DIP Borrower (a) to obtain post-petition financing consisting of a senior secured priming superpriority revolving credit facility (the “DIP

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Facility”), with Wells Fargo Bank, N.A. (“Wells Fargo”), as administrative agent and collateral agent (in such capacities, respectively, the “DIP Administrative Agent” and “DIP Collateral Agent,” and collectively, the “DIP Agent”), Wells Fargo Bank, N.A. as letter of credit issuer (in such capacity, the “DIP Issuing Bank”) and Wells Fargo Principal Lending, LLC and such other lenders from time to time party thereto (the “DIP Lenders”), pursuant to the Debtor-in-Possession Credit Agreement attached as Exhibit A to the Interim DIP Order entered July 30, 2014 [Docket No. 352] (as amended through the date hereof, including as amended hereby as set forth on Exhibits B, D, E and F hereto, and as hereafter amended, supplemented or otherwise modified from time to time, the “DIP Credit Agreement”), and together with this Final DIP Order, the Interim DIP Order, and all other agreements, documents and instruments delivered or executed in connection therewith, as amended, supplemented or otherwise modified from time to time, including the DIP Budget (defined below) (collectively, the “DIP Loan Documents”), and (b) obtain cash advances and other extensions of credit thereunder (i) during the period (the “Interim Period”) from the date of entry of the Initial Interim DIP Order (defined below) through and including the date of entry of this Final DIP Order by this Court, in the aggregate principal amount of \$61,000,000 plus an amount equal to the aggregate amount necessary to fund all Roll-Up Borrowings required during the Interim

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Period in accordance with the DIP Loan Documents and (ii) thereafter until the Termination Date, on a final basis at any time outstanding, an aggregate principal amount not to exceed \$71,000,000 (inclusive of amounts advanced or otherwise extended prior to entry of this Final DIP Order) plus an amount equal to the aggregate amount necessary to fund all Roll-Up Borrowings required upon entry of this Final DIP Order in accordance with the DIP Loan Documents (all financial accommodations and extensions of credit under the DIP Credit Agreement and the DIP Facility, the “DIP Extensions of Credit”);

(ii) the Court’s authorization for each of the Debtors other than the DIP Borrower (together with any other entities that become guarantors under the DIP Loan Documents, the “DIP Guarantors,” and together with the DIP Borrower, the “DIP Loan Parties”) to jointly and severally guarantee on a secured basis the DIP Borrower’s obligations in respect of the DIP Facility;

(iii) the Court’s authorization for each of the DIP Loan Parties to execute the DIP Credit Agreement and the other DIP Loan Documents to which it is a party and to perform such other and further acts as may be necessary or appropriate in connection therewith;

(iv) the Court’s authorization for the Debtors to use the DIP Extensions of Credit solely in accordance with the proposed budget (subject to variances permitted

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under the DIP Credit Agreement) prepared by the Debtors and annexed hereto as Exhibit A (as updated from time to time pursuant to the DIP Loan Documents, the “DIP Budget”), and as otherwise provided herein and in the other DIP Loan Documents, including to refinance certain indebtedness outstanding under the Prepetition First Lien Credit Agreement (defined below) as provided herein;

(v) the Court’s authorization to grant to the DIP Agent for the benefit of the DIP Lenders, the DIP Issuing Bank and the other secured parties under the DIP Loan Documents (collectively, the “DIP Secured Parties”), in respect of the DIP Obligations (defined below), (A) pursuant to Section 364(c)(1) of the Bankruptcy Code, a superpriority administrative claim; (B) pursuant to Section 364(c)(2) of the Bankruptcy Code, first-priority liens on, and security interests in, all DIP Collateral (defined below) that is not subject to a valid, perfected, and non-avoidable lien in existence on the Petition Date (defined below); (C) pursuant to Section 364(c)(3) of the Bankruptcy Code, junior liens on, and security interests in, certain DIP Collateral; and (D) pursuant to Section 364(d)(1) of the Bankruptcy Code, the Priming Liens (defined below);

(vi) the Court’s authorization to pay the principal, interest, fees, expenses, disbursements, and other amounts payable under the DIP Loan Documents as such amounts become due and payable;

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(vii) the Court’s authorization to use the Prepetition Secured Parties’ “cash collateral” as such term is defined in Section 363 of the Bankruptcy Code (the “Cash Collateral”);

(viii) the Court’s authorization to grant, as of the Petition Date (defined below), adequate protection to the Prepetition Secured Parties, solely to the extent of, and in an aggregate amount equal to, any Diminution in Value (defined below) of their respective interests in any Prepetition Collateral (defined below), and to make payments of interest, fees and expenses to the Prepetition First Lien Agent and the Prepetition First Lien Lenders (each as defined below), in each case, as set forth more fully below and subject to the Carve-Out;

(ix) the modification by the Court of the automatic stay imposed by Section 362 of the Bankruptcy Code to the extent necessary to implement and effectuate the terms and provisions of the DIP Facility, the Interim DIP Order, this Final DIP Order and the other DIP Loan Documents;

(x) the scheduling by the Court of a final hearing (the “Final Hearing”) to consider entry of this Final DIP Order granting the relief requested in the Motion on a final basis and approving the form of notice with respect to the Final Hearing and the transactions contemplated by the Motion;

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(xi) the approval of this Final DIP Order granting the relief requested in the Motion on a final basis; and

(xii) the Court's waiving of any applicable stay (including under Bankruptcy Rule 6004) and providing for the immediate effectiveness of this Final DIP Order.

The Court having considered the Motion, the terms of the DIP Facility and the DIP Loan Documents, the declaration of Shaun Martin, sworn to on June 19, 2014 in support of the First Day Motions, the declaration of Barak Klein, sworn to on June, 19, 2014 in support of the Motion, and the evidence submitted at the interim hearing on the DIP Motion held before this Court on June 20, 2014 and at the hearing on the DIP Increase Motion held before this Court on December 30, 2014, to consider entry of the Interim DIP Order (the "Interim Hearing") and at the Final Hearing held before this Court on January 8, 2015; and the Court having entered on June 20, 2014 that certain Interim Order Pursuant to Sections 361, 362, 363, 364, and 507 of the Bankruptcy Code and Rule 4001 of the Federal Rule of Bankruptcy Procedure (A) Authorizing the Debtors to (I) Obtain Postpetition Financing, (II) Grant Senior Priming Liens and Superpriority Claims to Postpetition Lenders, (III) Use Collateral and (IV) Provide Adequate Protection to Prepetition Secured Parties, and (B) Prescribing Form and Manner of Notice of and Scheduling Final Hearing [Docket No. 49] (the "Initial Interim DIP Order"), as amended by the amended Interim DIP Order entered July 30, 2014 [Docket No. 352], the second amended

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Interim DIP Order entered August 21, 2014 [Docket No. 515], the third amended Interim DIP Order entered September 4, 2014 [Docket No. 585], the fourth amended Interim DIP Order entered September 22, 2014 [Docket No. 651], the fifth amended Interim DIP Order [Docket No. 823], and the sixth amended Interim DIP Order [Docket No. 1093] (the Initial Interim DIP Order, as amended by and together with such aforementioned subsequent orders, collectively, the “Interim DIP Order”); and in accordance with Bankruptcy Rules 2002, 4001(b), (c), and (d), and 9014 and the local rules of the Court, due and proper notice of the Motion, the Interim Hearing and the Final Hearing having been given; and it appearing that approval of the relief requested in the Motion on a final basis is necessary to avoid immediate and irreparable harm to the Debtors, and is otherwise fair and reasonable and in the best interests of the Debtors, their creditors and estates, and essential for the continued operation of the Debtors’ businesses; and, subject to the terms hereof, the Court having determined that there is adequate protection of the liens of the Prepetition Secured Parties; and all objections to the entry of this Final DIP Order having been withdrawn, resolved or overruled by the Court; and after due deliberation and consideration, and for good and sufficient cause appearing therefor:

**THE COURT HEREBY MAKES THE FOLLOWING FINDINGS OF FACT AND CONCLUSIONS OF LAW:**

**Petition Date.** On June 19, 2014 (the “Petition Date”), each of the Debtors filed a voluntary



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petition under Chapter 11 of the Bankruptcy Code with the United States Bankruptcy Court for the District of New Jersey (the “Court”). The Debtors have continued in the management and operation of their businesses and properties as debtors-in-possession pursuant to Sections 1107(a) and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in the Cases.

C. **Jurisdiction and Venue.** The Court has jurisdiction over these proceedings, pursuant to 28 U.S.C. § 1334. Consideration of the Motion constitutes a core proceeding under 28 U.S.C. § 157(b)(2). Venue for the Cases and the proceedings on the Motion is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.

D. **Committee Formation.** On July 2, 2014, the Office of the United States Trustee for the District of New Jersey (the “United States Trustee”) appointed an official committee of unsecured creditors in the Cases (the “Committee”).

E. **Notice.** Notice of the Final Hearing and the relief requested in the Motion has been provided by the Debtors, by electronic mail, facsimile, hand delivery or overnight delivery to the following parties and/or their respective counsel as indicated below: (a) the United States Trustee; (b) the DIP Agent and its counsel; (c) counsel to the Prepetition First Lien Lenders; (d) JPM, in its capacity as administrative agent and collateral agent for the Prepetition First Lien Lenders (in such capacities, the “Prepetition First Lien Agent”); (e) counsel to the Prepetition

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Second Lien Lenders (defined below); (f) Wilmington Trust, National Association, in its capacity as administrative agent and collateral agent for the Prepetition Second Lien Lenders (in such capacities, the “Prepetition Second Lien Agent,” and together with the Prepetition First Lien Agent, the “Prepetition Agents”); (g) Revel AC’s thirty (30) largest unsecured creditors on a consolidated basis (including counsel if known); (h) all parties requesting notices pursuant to Bankruptcy Rule 2002; (i) the Office of the Attorney General for the State of New Jersey; (j) the New Jersey Division of Gaming Enforcement; (k) the New Jersey Casino Control Commission; (l) the Office of the Governor for the State of New Jersey; (m) the United States Attorneys’ Office for the District of New Jersey; (n) the United States Attorney General; (o) the Internal Revenue Service; (p) the Securities and Exchange Commission; (q) holders of Permitted Liens (as defined in the Prepetition First Lien Credit Agreement); (r) the applicable state and local taxing authorities; and (s) U.S. Bank National Association, as Rights Agent and Collateral Agent, in connection with that certain Second Lien Note Claim Contingent Payment Rights Agreement, dated May 21, 2013 (collectively, the “Notice Parties”). Given the nature of the relief requested in the Motion, such notice of the Final Hearing and the relief requested in the Motion constitutes due, sufficient and appropriate notice and complies with the Bankruptcy Code, the Bankruptcy Rules, the local rules of the Court, and any other applicable law, and no further notice relating to this proceeding and the hearing on this Motion is necessary or required.

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(i) *Prepetition First Lien Facilities.* Prior to the Petition Date, pursuant to the terms and conditions set forth in (a) the Amended and Restated First-Lien Credit Agreement, dated as of November 8, 2013 (as the same has been amended, supplemented, modified, extended, renewed, restated and/or replaced, the “Prepetition First Lien Credit Agreement”), by and among Revel AC, the other Revel Entities, as guarantors (collectively, the “Subsidiary Guarantors”), the lenders party thereto (the “Prepetition First Lien Lenders”), JPM, in its capacity as a letter of credit issuing bank, and the Prepetition First Lien Agent; and (b) all other agreements, documents and instruments executed and/or delivered with, to or in favor or for the benefit of the Prepetition First Lien Lenders or the Prepetition First Lien Agent in connection with the Prepetition First Lien Credit Agreement, including, without limitation, the Loan Documents (as defined in the Prepetition First Lien Credit Agreement), the Intercreditor Agreement, dated as of May 21, 2013 (as the same has been amended, supplemented, modified, extended, renewed, restated and/or replaced, the “Intercreditor Agreement”) to which the Prepetition Agents are parties, all security agreements, notes, guarantees, mortgages, Uniform Commercial Code financing statements and all other related agreements, documents and instruments (all the foregoing, together with the Prepetition First Lien Credit Agreement, as all of the same have been supplemented, modified,

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extended, renewed, restated and/or replaced, collectively, the “Prepetition First Lien Financing Documents”), the Prepetition First Lien Lenders:

(a) agreed to extend a senior secured first-out revolving credit facility and participate in letters of credit to Revel AC in the aggregate principal committed amount of up to \$25 million (the “Prepetition Tranche A-1 Revolving Credit Facility”);

(b) agreed to extend a senior secured next-out revolving credit facility and participate in letters of credit to Revel AC in the aggregate principal committed amount of up to \$75 million (the “Prepetition Tranche A-2 Revolving Credit Facility,” and together with the Prepetition Tranche A-1 Revolving Credit Facility, the “Prepetition Revolving Credit Facilities”); and

(c) agreed to extend to Revel AC a senior secured last-out term loan facility, in an aggregate outstanding principal amount of \$50 million (the “Prepetition Tranche B Term Loan Facility,” and together with the Prepetition Revolving Credit Facilities, the “Prepetition First Lien Facilities”).

(ii) *Prepetition Second Lien Term Loan.* Prior to the Petition Date, pursuant to the terms and conditions set forth in (a) the Second-Lien Credit Agreement, dated as of May 21, 2013 (as the same has been amended, supplemented, modified, extended,

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renewed, restated and/or replaced, the “Prepetition Second Lien Credit Agreement,” and together with the Prepetition First Lien Credit Agreement, the “Prepetition Credit Agreements”), by and among Revel AC, the Subsidiary Guarantors, the lenders party thereto (the “Prepetition Second Lien Lenders,” and together with the Prepetition First Lien Lenders, the “Prepetition Lenders”), and the Prepetition Second Lien Agent; and

(b) all other agreements, documents and instruments executed and/or delivered with, to or in favor of or for the benefit of the Prepetition Second Lien Lenders or the Prepetition Second Lien Agent in connection with the Prepetition Second Lien Credit Agreement, including, without limitation, the Loan Documents (as defined in the Prepetition Second Lien Credit Agreement), the Intercreditor Agreement, all security agreements, notes, guarantees, mortgages, Uniform Commercial Code financing statements and all other related agreements, documents and instruments, including any fee letters, executed and/or delivered in connection therewith or related thereto (all the foregoing, together with the Prepetition Second Lien Credit Agreement, as all of the same have been supplemented, modified, extended, renewed, restated and/or replaced at any time prior to the Petition Date, collectively, the “Prepetition Second Lien Financing Documents,” together with the Prepetition First Lien Financing Documents, the “Prepetition Financing Documents”), the Prepetition Second Lien Lenders agreed to

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extend to Revel AC a second lien term loan in an aggregate outstanding principal amount of \$275 million (the “Prepetition Second Lien Term Loan”).

(iii) *Subsidiary Guarantors.* In Article VII of each Prepetition Credit Agreement, the Subsidiary Guarantors agreed, jointly and severally, as primary obligors and not as sureties, to guarantee to each Secured Party (as defined in the respective Prepetition Credit Agreements) the prompt payment in full when due of the applicable Guaranteed Obligations (as defined in the respective Prepetition Credit Agreements).

(iv) *Prepetition First Liens.* Pursuant to those certain Security Documents (as such term is defined in the Prepetition First Lien Credit Agreement, the “Prepetition First Lien Security Documents”), each Revel Entity granted to the Prepetition First Lien Agent for the benefit of the Prepetition First Lien Agent, the Prepetition First Lien Lenders and the other Secured Parties (as such term is defined in the Prepetition First Lien Credit Agreement) (collectively, the “Prepetition First Lien Secured Parties”) as security for the First Lien Prepetition Obligations (defined below), a first-priority security interest in and continuing lien (the “Prepetition First Liens”) on the Collateral (as defined in the Prepetition First Lien Credit Agreement, the “Prepetition Collateral”).

(v) *Prepetition Second Liens.* Pursuant to those certain Security Documents (as such term is defined in the Second Lien Credit Agreement, the “Prepetition Second

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Lien Security Documents” and together with the Prepetition First Lien Security Documents, the “Prepetition Security Documents”), each Revel Entity granted to the Prepetition Second Lien Agent for the benefit of the Prepetition Second Lien Agent, the Prepetition Second Lien Lenders and the other Secured Parties (as such term is defined in the Prepetition Second Lien Credit Agreement) (collectively, the “Prepetition Second Lien Secured Parties,” and together with the Prepetition First Lien Secured Parties, the “Prepetition Secured Parties”) as security for the Second Lien Prepetition Obligations (defined below), a second-priority security interest in and continuing lien (the “Prepetition Second Liens,” and together with the Prepetition First Liens, the “Prepetition Liens”) on the Prepetition Collateral.

(vi) *Intercreditor Agreement.* The relative rights to, and priority of the security interests in, the Prepetition Collateral between and among the Prepetition First Lien Secured Parties, and between and among the Prepetition First Lien Secured Parties, on the one hand, and the Prepetition Second Lien Secured Parties on the other, are set forth in the Intercreditor Agreement and in the Prepetition First Lien Credit Agreement. The Intercreditor Agreement and the intercreditor provisions in the Prepetition First Lien Credit Agreement remain in full force and effect.

G. **Acknowledgments as to Prepetition Obligations.** Without limiting the rights of

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the Committee (or any other party in interest with standing) as and to the extent set forth in paragraph 7 hereof, the Debtors permanently, immediately, and irrevocably acknowledge, represent, stipulate, and agree to the following:

(i) *Prepetition First Lien Obligations.* As of the Petition Date, the Debtors were indebted and liable to the Prepetition First Lien Agent and other Prepetition First Lien Secured Parties under the Prepetition First Lien Financing Documents in the aggregate principal amount of \$137,753,739.15 with respect to the Prepetition First Lien Facilities, including (a) \$10,000,000 with respect to the Prepetition Tranche A-1 Revolving Credit Facility, (b) \$75,000,000 with respect to the Prepetition Tranche A-2 Revolving Credit Facility (of which \$73,100,000 is with respect to outstanding revolving loans and \$1,900,000 is with respect to the issued and undrawn Existing LC), and (c) \$52,753,739.15 with respect to the Prepetition Tranche B Term Loan Facility (including interest paid-in-kind and capitalized prior to the Petition Date), plus (d) in connection with each of the amounts in the foregoing clauses (a), (b) and (c), accrued (other than interest paid-in-kind and capitalized prior to the Petition Date) and unpaid interest thereon, and fees, expenses and all other obligations under the Prepetition First Lien Financing Documents, including any attorneys' and other advisors' fees that are chargeable or reimbursable under the Prepetition First Lien Financing Documents (such



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Caption of Order:

FINAL ORDER PURSUANT TO SECTIONS 361, 362, 363, 364, AND 507 OF THE BANKRUPTCY CODE AND RULE 4001 OF THE FEDERAL RULES OF BANKRUPTCY PROCEDURE AUTHORIZING THE DEBTORS TO (I) OBTAIN POSTPETITION FINANCING, (II) GRANT SENIOR PRIMING LIENS AND SUPERPRIORITY CLAIMS TO POSTPETITION LENDERS, (III) USE CASH COLLATERAL, AND (IV) PROVIDE ADEQUATE PROTECTION TO PREPETITION SECURED PARTIES

obligations of the Debtors under the foregoing clauses (a) through (d), collectively, the “First Lien Prepetition Obligations”). (ii) *Second Lien Prepetition Obligations.* As of the Petition Date, the Debtors were indebted and liable to the Prepetition Second Lien Agent and the Prepetition Second Lien Secured Parties under the Prepetition Second Lien Financing Documents in the aggregate principal amount of (a) \$310,000,000 (including interest paid-in-kind and capitalized prior to the Petition Date), and (b) in connection with the amount in the foregoing clause (a), accrued (other than interest paid-in-kind and capitalized prior to the Petition Date) and unpaid interest thereon, and fees, expenses and all other obligations under the Prepetition Second Lien Financing Documents, including any attorneys’ and other advisors’ fees that are chargeable or reimbursable under the Prepetition Second Lien Financing Documents (such obligations of the Debtors under the foregoing clauses (a) and (b), collectively, the “Second Lien Prepetition Obligations,” and together with the First Lien Prepetition Obligations, the “Prepetition Obligations”).

(iii) *Enforceability, etc. of the First Lien Prepetition Obligations and Prepetition First Liens.* The Prepetition First Lien Financing Documents and the First Lien Prepetition Obligations are (a) legal, valid, binding, and enforceable against each Debtor, and (b) not subject to any contest, attack, objection, reduction, disallowance, recoupment, defense, counterclaim, offset, subordination, re-characterization, avoidance

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Caption of Order:

FINAL ORDER PURSUANT TO SECTIONS 361, 362, 363, 364, AND 507 OF THE BANKRUPTCY CODE AND RULE 4001 OF THE FEDERAL RULES OF BANKRUPTCY PROCEDURE AUTHORIZING THE DEBTORS TO (I) OBTAIN POSTPETITION FINANCING, (II) GRANT SENIOR PRIMING LIENS AND SUPERPRIORITY CLAIMS TO POSTPETITION LENDERS, (III) USE CASH COLLATERAL, AND (IV) PROVIDE ADEQUATE PROTECTION TO PREPETITION SECURED PARTIES

or other claim, cause of action or other challenge of any kind or nature under the Bankruptcy Code, under applicable non-bankruptcy law or otherwise. The Prepetition First Liens granted by the Debtors under the Prepetition First Lien Financing Documents to or for the benefit of the Prepetition First Lien Agent and the other Prepetition First Lien Secured Parties as security for the First Lien Prepetition Obligations encumber the Prepetition Collateral. For the avoidance of doubt, the Prepetition Collateral includes collateral in or upon which a lien or other security interest has been granted in favor or for the benefit of the Prepetition First Lien Agent and the other Prepetition First Lien Secured Parties in connection with, pursuant to, or under the Prepetition First Lien Financing Documents that existed as of the Petition Date and, subject to Section 552 of the Bankruptcy Code, postpetition proceeds, products, offspring, rents, and profits. The

evidencing the Prepetition First Liens have been properly entered into and/or filed or recorded, as applicable, and the Prepetition First Liens properly perfected, including by control, under applicable non-bankruptcy law, and are legal, valid, enforceable, non-avoidable, and not subject to contest, avoidance, attack, offset, re-characterization, subordination or other challenge of any kind or nature under the Bankruptcy Code, under applicable non-bankruptcy law or otherwise. As of the Petition Date, and without giving effect to the DIP Orders, the Debtors are not aware of any liens

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Caption of Order:

FINAL ORDER PURSUANT TO SECTIONS 361, 362, 363, 364, AND 507 OF THE BANKRUPTCY CODE AND RULE 4001 OF THE FEDERAL RULES OF BANKRUPTCY PROCEDURE AUTHORIZING THE DEBTORS TO (I) OBTAIN POSTPETITION FINANCING, (II) GRANT SENIOR PRIMING LIENS AND SUPERPRIORITY CLAIMS TO POSTPETITION LENDERS, (III) USE CASH COLLATERAL, AND (IV) PROVIDE ADEQUATE PROTECTION TO PREPETITION SECURED PARTIES

or security interests having priority over the Prepetition First Liens, except for the Property Tax Liens (defined below) and any other valid, perfected, enforceable and non-avoidable Permitted Liens (as defined in the Prepetition First Lien Credit Agreement) in existence at the time of the commencement of the Cases or perfected subsequent thereto pursuant to Section 546(b) of the Bankruptcy Code that were senior to the Prepetition First Liens (the "Senior Permitted Liens"). The Prepetition First Liens were granted to or for the benefit of the Prepetition First Lien Agent and the Prepetition First Lien Secured Parties for fair consideration and reasonably equivalent value, and were granted contemporaneously with the making of the loans and/or commitments and other financial accommodations secured thereby.

(iv) *Enforceability, etc. of the Second Lien Prepetition Obligations and Prepetition Second Liens.* The Prepetition Second Lien Financing Documents and the Second Lien Prepetition Obligations are (a) legal, valid, binding, and enforceable against each Debtor, and (b) not subject to any contest, attack, objection, reduction, disallowance, recoupment, defense, counterclaim, offset, subordination, re-characterization, avoidance or other claim, cause of action or other challenge of any kind or nature under the Bankruptcy Code, under applicable non-bankruptcy law or otherwise. The Prepetition Second Liens granted by the Debtors under the Prepetition

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Caption of Order:

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Second Lien Financing Documents to or for the benefit of the Prepetition Second Lien Agent and the other Prepetition Second Lien Secured Parties as security for the Second Lien Prepetition Obligations encumber the Prepetition Collateral. The financing statements and other documents evidencing the Prepetition Second Liens have been properly entered into and/or filed or recorded, as applicable, and the Prepetition Second Liens properly perfected, including by control, under applicable non-bankruptcy law, and are legal, valid, enforceable, non-avoidable, and not subject to contest, avoidance, attack, offset, re-characterization, subordination or other challenge of any kind or nature under the Bankruptcy Code, under applicable non-bankruptcy law or otherwise. As of the Petition Date, and without giving effect to the DIP Orders, the Debtors are not aware of any liens or security interests having priority over the Prepetition Second Liens, except the Prepetition First Liens, the Property Tax Liens, and any Senior Permitted Liens. The Prepetition Second Liens were granted to or for the benefit of the Prepetition Second Lien Agent and the Prepetition Second Lien Secured Parties for fair consideration and reasonably equivalent value, and were granted contemporaneously with the making of the loans and/or commitments and other financial accommodations secured thereby.

(v) *No Claims, Causes of Action.* As of the date hereof, the Debtors are not aware of any claims or causes of action against any of the Prepetition First Lien Agent,

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Caption of Order:

FINAL ORDER PURSUANT TO SECTIONS 361, 362, 363, 364, AND 507 OF THE BANKRUPTCY CODE AND RULE 4001 OF THE FEDERAL RULES OF BANKRUPTCY PROCEDURE AUTHORIZING THE DEBTORS TO (I) OBTAIN POSTPETITION FINANCING, (II) GRANT SENIOR PRIMING LIENS AND SUPERPRIORITY CLAIMS TO POSTPETITION LENDERS, (III) USE CASH COLLATERAL, AND (IV) PROVIDE ADEQUATE PROTECTION TO PREPETITION SECURED PARTIES

the Prepetition First Lien Secured Parties, the DIP Agent or the DIP Secured Parties with respect to, in connection with, related to, or arising from the Prepetition First Lien Financing Documents and/or the DIP Loan Documents that may be asserted by the Debtors.

H. **Immediate Need for Postpetition Financing and Use of Cash Collateral.** The Debtors have requested immediate entry of this Final DIP Order pursuant to Bankruptcy Rule 4001(b)(2) and (c)(2). Good cause has been shown for entry of this Final DIP Order. An immediate need exists for the Debtors to obtain funds and liquidity in order to continue operations and to administer and preserve the value of their estates pending the consummation of a proposed sale of all or substantially all of the Debtors' assets and property. The ability of the Debtors to finance their operations, to preserve and maintain the value of the Debtors' assets pending the consummation of such sale and to maximize the return for all creditors requires the availability of the DIP Facility and the use of Cash Collateral. In the absence of the availability of such funds and liquidity in accordance with the terms hereof, the continued operation of the Debtors' businesses would not be possible, and serious and irreparable harm to the Debtors and their estates and creditors would occur. Further, the possibility for a successful sale of the Debtors' assets and subsequent organized liquidation of the Debtors' estates would be jeopardized in the absence of the availability of funds in accordance with the terms of this Final

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Caption of Order:

FINAL ORDER PURSUANT TO SECTIONS 361, 362, 363, 364, AND 507 OF THE BANKRUPTCY CODE AND RULE 4001 OF THE FEDERAL RULES OF BANKRUPTCY PROCEDURE AUTHORIZING THE DEBTORS TO (I) OBTAIN POSTPETITION FINANCING, (II) GRANT SENIOR PRIMING LIENS AND SUPERPRIORITY CLAIMS TO POSTPETITION LENDERS, (III) USE CASH COLLATERAL, AND (IV) PROVIDE ADEQUATE PROTECTION TO PREPETITION SECURED PARTIES

DIP Order. Thus, the ability of the Debtors to preserve and maintain the value of their assets and maximize the return for creditors requires the availability of working capital from the DIP Facility and the use of Cash Collateral.

I. **No Credit Available on More Favorable Terms.** The DIP Secured Parties have agreed to extend credit solely on the terms set forth in this Final DIP Order, the Interim DIP Order and the other DIP Loan Documents. The Debtors have been unable to obtain postpetition financing on more favorable terms and conditions than those provided in this Final DIP Order, including (a) adequate unsecured credit allowable under Bankruptcy Code Section 503(b)(1) as an administrative expense, (b) credit for money borrowed with priority over any or all administrative expenses of the kind specified in Sections 503(b) or 507(b) of the Bankruptcy Code, (c) credit for money borrowed secured by a lien on property of the estate that is not otherwise subject to a lien, or (d) credit for money borrowed secured by a junior lien on property of the estate which is subject to a lien. The Debtors are unable to obtain credit for borrowed money without granting the DIP Liens and the DIP Superpriority Claim (defined below) to (or for the benefit of) the DIP Secured Parties.

J. **Use of Cash Collateral and Proceeds of the DIP Facility, DIP Collateral and Senior Collateral.** All Cash Collateral, all proceeds of the Prepetition Collateral and the DIP Collateral (defined below), including proceeds realized from a sale or disposition thereof, or

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from payment thereon, and all proceeds of the DIP Facility (net of any amounts used to pay fees, costs and expenses payable under this Final DIP Order and/or the Interim DIP Order) shall be used and/or applied solely in accordance with the terms and conditions of this Final DIP Order, the DIP Budget (subject to variances permitted under the DIP Credit Agreement) and the other DIP Loan Documents; provided, that, subject to the limitations set forth in the DIP Budget, up to \$50,000 in the aggregate of the proceeds of the DIP Facility, DIP Collateral, Prepetition Collateral or Cash Collateral may be used by the Committee to investigate the matters covered in paragraph F above (such amount, the “Investigation Budget”).

K. **Adequate Protection for the Prepetition Secured Parties.** The Prepetition First Lien Agent and the Prepetition First Lien Secured Parties have negotiated in good faith regarding the Debtors’ use of the Prepetition Collateral (including the Cash Collateral) to fund the administration of the Debtors’ estates and continued operation of their businesses, in accordance with the terms hereof. The Prepetition First Lien Secured Parties under the Prepetition Revolving Credit Facilities have agreed to permit the Debtors to use the Prepetition Collateral, including the Cash Collateral, in accordance with the terms hereof and the DIP Budget (subject to variances permitted under the DIP Credit Agreement) and subject to the terms and conditions set forth herein, including the protections afforded parties acting in “good faith” under Section 363(m) of the Bankruptcy Code. The Prepetition First Lien Agent and the other Prepetition First

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Lien Secured Parties, as well as the Prepetition Second Lien Agent and the other Prepetition Second Lien Secured Parties, are entitled to the adequate protection as and to the extent set forth herein, to the fullest extent permitted by Sections 361, 362 and 363 of the Bankruptcy Code. Based on the Motion and on the record presented to the Court at the Interim Hearing, the terms of the proposed adequate protection arrangements and of the use of the Prepetition Collateral (including the Cash Collateral) are fair and reasonable, reflect the Debtors' prudent exercise of business judgment and constitute reasonably equivalent value and fair consideration for the Prepetition Agents' consent thereto.

L. **Section 552.** In light of, as applicable, the subordination of certain of the Prepetition First Liens and the Adequate Protection Liens of the Prepetition First Lien Secured Parties to the DIP Liens and the Carve-Out, and the granting of the DIP Liens on the Prepetition Collateral, the Prepetition First Lien Agent and the Prepetition First Lien Secured Parties are each entitled to all of the rights and benefits of Section 552(b) of the Bankruptcy Code, and the Debtors shall not seek to apply the "equities of the case" exception under Section 552(b) of the Bankruptcy Code.

M. **Extension of Financing.** The DIP Secured Parties have indicated a willingness to provide financing to the Debtors in accordance with the DIP Credit Agreement and the other DIP Loan Documents (including the DIP Budget), and subject to (i) the entry of this Final DIP



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Order, (ii) the satisfaction (or waiver by the DIP Secured Parties) of the occurrence of certain conditions precedent set forth in the DIP Credit Agreement, and (iii) findings by this Court that such financing is essential to the Debtors' estates, that the DIP Secured Parties are good faith financiers, and that the DIP Secured Parties' claims, superpriority claims, security interests and liens and other protections granted pursuant to this Final DIP Order and/or the Interim DIP Order and the DIP Facility (including the DIP Superpriority Claim and the DIP Liens) will not be affected by any subsequent reversal, modification, vacatur or amendment of, as the case may be, this Final DIP Order, the Interim DIP Order or any other order, as provided in Section 364(e) of the Bankruptcy Code.

N. **Business Judgment and Good Faith Pursuant to Section 364(e)**. The terms and conditions of the DIP Facility, and the fees paid and to be paid thereunder, are fair, reasonable, and the best available under the circumstances, reflect the Debtors' exercise of prudent business judgment consistent with their fiduciary duties, and are supported by reasonably equivalent value and consideration. The DIP Facility was negotiated in good faith and at arm's length among the Debtors, the DIP Agent and the other DIP Secured Parties. Any credit extended or other indebtedness or liabilities arising under, in respect of, or in connection with the DIP Facility, this Final DIP Order, the Interim DIP Order or any other DIP Loan Document, shall be deemed to have been extended in "good faith" by the DIP Lenders as that

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term is used in Section 364(e) of the Bankruptcy Code, and in express reliance upon the protections afforded by Section 364(e) of the Bankruptcy Code, and the DIP Lenders' claims, the DIP Superpriority Claim (defined below), the DIP Liens (defined below), and the other protections granted pursuant to this Final DIP Order, the Interim DIP Order, and the other DIP Loan Documents, shall be entitled to the full protection of Section 364(e) of the Bankruptcy Code in the event that this Final DIP Order or any portion hereof is vacated, reversed, amended, or modified, on appeal or otherwise.

O. **Relief Essential; Best Interest.** The relief requested in the Motion (and provided in this Final DIP Order) is necessary, essential and appropriate for the continued operation of the Debtors' businesses and the management and preservation of the Debtors' assets and property. It is in the best interest of the Debtors' estates that the Debtors continue to be allowed to incur the DIP Obligations and use the Cash Collateral as contemplated herein. Absent the relief granted herein, the Debtors' estates will be immediately and irreparably harmed. Accordingly, good, adequate, and sufficient cause has been shown to justify the relief granted herein and the immediate entry and effectiveness of this Final DIP Order pursuant to Bankruptcy Rules 4001(b) and (c).

**NOW, THEREFORE,** upon the Motion and the record before this Court with respect to the Motion, including the record made during the Interim Hearing, the hearing on the

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DIP Increase Motion, and the Final Hearing, and with the consent of the Debtors, the Prepetition Agent under the Prepetition Revolving Credit Facilities and the other Prepetition Secured Parties under the Prepetition Revolving Credit Facilities, and the DIP Agent and the other DIP Secured Parties, and good and sufficient cause appearing therefor,

**IT IS ORDERED** that:

1. **Motion Granted.** The Motion is granted on a final basis in accordance with the terms and conditions set forth in this Final DIP Order. Any objections to the Motion with respect to entry of this Final DIP Order to the extent not withdrawn, waived or otherwise resolved, and all reservation of rights included therein, are hereby denied and overruled. Subject to the terms hereof, this Final DIP Order is valid immediately and is fully effective upon its entry.

2. **DIP Facility.**

(a) **DIP Obligations, etc.** The Debtors are expressly and immediately authorized and empowered on a final basis to enter into the DIP Facility and to incur and to perform the DIP Obligations in accordance with and subject to this Final DIP Order and the other DIP Loan Documents, to execute and/or deliver all DIP Loan Documents and all other instruments, certificates, agreements and documents related thereto (to the extent not previously executed or delivered), and to take all actions, which may be reasonably required or otherwise

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necessary for the performance by the Debtors under the DIP Facility, including the creation and perfection of the DIP Liens described and provided for herein. The Debtors are hereby authorized and directed to pay all principal, interest, fees and expenses, indemnities and other amounts described herein and in the other DIP Loan Documents as such shall accrue and become due hereunder or thereunder, including, without limitation, the fees and expenses of the attorneys and financial and other advisors and consultants of the DIP Agent and the DIP Lenders as and to the extent provided for herein and in the other DIP Loan Documents (collectively, all loans, advances, extensions of credit, financial accommodations, fees, expenses and other liabilities and obligations in respect of DIP Extensions of Credit, the DIP Facility and the DIP Loan Documents, the “DIP Obligations”). The DIP Loan Documents and all DIP Obligations shall represent, constitute and evidence, as the case may be, valid and binding obligations of the Debtors, enforceable against the Debtors, their estates and any successors thereto in accordance with their terms. The term of the DIP Facility commenced on the date of entry of the Initial Interim DIP Order and shall end on the date (such date, the “Termination Date”) which is the earlier to occur of (i) the Scheduled Maturity Date or (ii) 3 business days after written notice (a “Default Notice”) is provided to the Debtors, the United States Trustee, and the Committee by the DIP Agent (such 3 business-day period, the “Default Notice Period”) that an Event of Default has occurred and is continuing (subject to any applicable cure period in the DIP Loan

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Documents), in each case subject to the terms and conditions set forth herein and in the other DIP Loan Documents.

(b) **Authorization to Borrow, etc.** Subject to the terms and conditions of this Final DIP Order and the other DIP Loan Documents (including the DIP Budget (subject to variances permitted under the DIP Credit Agreement)), the DIP Borrower is hereby authorized to borrow money and incur letter of credit reimbursement obligations under the DIP Facility up to an aggregate principal amount of \$71,000,000 (of which \$1,900,000 is available only for issuance of letters of credit (and subject to a temporary increase in LC Exposure (as defined in the DIP Credit Agreement) pursuant to Section 2.18(a) of the DIP Credit Agreement)) (inclusive of amounts advanced or otherwise extended prior to the entry of this Final DIP Order), which shall be used solely as provided in this Final DIP Order and the other applicable DIP Loan Documents, including the DIP Budget (including, without limitation, to make Tax Borrowings in accordance with, and as provided in, the DIP Credit Agreement), plus an amount equal to the aggregate amount necessary to fund all Roll-Up Borrowings required in accordance with the DIP Loan Documents. The DIP Guarantors are hereby authorized to unconditionally guarantee, on a joint and several basis, repayment of the DIP Obligations as set forth in the DIP Loan Documents.

(c) **Conditions Precedent.** The DIP Lenders shall have no obligation to

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make any DIP Extension of Credit or any other financial accommodation hereunder or under the other DIP Loan Documents (and the Debtors shall not make any request therefor) unless all conditions precedent to making DIP Extensions of Credit under the DIP Loan Documents have been satisfied or waived in accordance with the terms of the DIP Loan Documents.

(d) **Roll-Up of Prepetition First Lien Obligations.** Upon the Closing Date, the DIP Borrower is authorized and directed to (i) obtain the Roll-Up Borrowings in accordance with the terms of the DIP Credit Agreement and (ii) pay the Prepetition First Lien Agent, on behalf of the Prepetition First Lien Secured Parties, all principal amounts, together with all accrued interest, fees, charges and other amounts, then outstanding and unpaid under the Tranche A-1 Revolving Credit Facility and the Tranche A-2 Revolving Credit Facility in accordance with the Prepetition First Lien Financing Documents and the DIP Loan Documents. The proceeds of any Roll-Up Borrowing shall be used exclusively for the prepayment of “Revolving Loans” (as defined in the Prepetition First Lien Credit Agreement). Notwithstanding the foregoing or anything in the DIP Loan Documents to the contrary, until (x) the entry of an order or orders resolving or dismissing any adversary proceedings or contested matters commenced prior to the Challenge Period Termination Date by the Committee in accordance with paragraph 7 of this Final Order, or (y) if no adversary proceeding or contested matter is commenced prior to the Challenge Period Termination Date by the Committee in accordance with paragraph 7 of this

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Final Order, the Challenge Termination Date (such period, the “Escrow Period”), upon receipt by any Debtor of any net cash proceeds of asset sales, debt issuances or casualty events or any special proceeds or Extraordinary Receipts required to be applied as a mandatory prepayment under the DIP Loan Documents (collectively, the “Mandatory Prepayment Amounts”), in lieu of application of such Mandatory Prepayment Amounts in accordance with the DIP Loan Documents, the Debtors shall transfer such Mandatory Prepayment Amounts, immediately upon receipt by the Debtors, to a segregated bank account in the control of the Debtors with TD Bank to be held in escrow for the benefit of the Debtors and their creditors (including the DIP Secured Parties). During the Escrow Period, the Debtors shall not release such held Mandatory Prepayment Amounts for any purpose and such amounts (or the right of the Debtors to receive such amounts) shall remain, subject to the Committee’s challenge rights as, and to the extent, set forth in paragraph 7 hereof, DIP Collateral and Prepetition Collateral; provided, that the DIP Secured Parties, Prepetition Secured Parties and the Committee reserve all rights with respect to such Mandatory Prepayment Amounts held in escrow. For the avoidance of doubt, amounts held in escrow pursuant to this paragraph shall not be deemed a repayment of the Roll-Up Borrowings, which shall remain outstanding and accrue interest pursuant to the DIP Loan Documents until such Roll-Up Borrowings are repaid or prepaid consistent with further order of the Court. The Debtors shall be entitled to all of the rights, exculpations and indemnities

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afforded to the DIP Agent under the DIP Credit Agreement, *mutatis mutandis*, with respect to actions taken by it in its capacity as escrow agent with respect to such held Mandatory Prepayment Amounts.

(e) **DIP Collateral**. As used herein, "DIP Collateral" shall mean, all now owned or hereafter acquired assets and property in which the Debtors and their estates have an interest, whether real or personal, tangible or intangible, or otherwise, whenever acquired, and any and all proceeds therefrom, including, without limitation, (i) all Prepetition Collateral, and (ii), in addition, all other cash, accounts, deposit accounts, securities accounts, investment property, vehicles, documents, chattel paper, instruments, general intangibles, fixtures, letter of credit rights, accounts receivable, tax refunds, investment property, inventory, goods, plant and equipment, equipment, software, licenses, customer lists, customer records, real property, leaseholds, commercial tort claims, all intercompany claims, any and all proceeds arising from insurance policies, all claims and causes of action of each Debtor and any and all proceeds therefrom, all intellectual property, the equity interests in each direct and indirect subsidiary of the DIP Borrower and the equity interests in Block 73, LLC owned by NB Acquisition in each case in which the Debtors and their estates have an interest, whenever acquired, and any and all proceeds therefrom; provided, that "DIP Collateral" shall exclude (x) any Avoidance Actions and proceeds thereof, and (y) any property over which the creation or granting of such claim



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Caption of Order:

FINAL ORDER PURSUANT TO SECTIONS 361, 362, 363, 364, AND 507 OF THE BANKRUPTCY CODE AND RULE 4001 OF THE FEDERAL RULES OF BANKRUPTCY PROCEDURE AUTHORIZING THE DEBTORS TO (I) OBTAIN POSTPETITION FINANCING, (II) GRANT SENIOR PRIMING LIENS AND SUPERPRIORITY CLAIMS TO POSTPETITION LENDERS, (III) USE CASH COLLATERAL, AND (IV) PROVIDE ADEQUATE PROTECTION TO PREPETITION SECURED PARTIES

would violate any applicable Gaming Laws (collectively, the “Excluded Property”). All terms used in the description of DIP Collateral that are defined in the uniform commercial code as enacted in the state of New Jersey shall have the meanings set forth therein. For the avoidance of doubt, “DIP Collateral” shall include (x) any asset purchase or other similar agreement for the sale or disposition of assets of the Debtors executed by any Debtor after the Petition Date, and any rights of any Debtor thereunder, including any right to receive proceeds of any deposit provided pursuant thereto (other than any Debtor’s rights, claims or causes of action under, or in respect of, any such asset purchase or other similar agreement for the sale or disposition of the Debtors’ assets under which any of the DIP Secured Parties or any of their affiliates are purchasers (pursuant to a cash or credit bid) or any proceeds thereof) and (y) the Reserve Account (as defined in the Prepetition First Lien Credit Agreement). In connection with the Reserve Account, (i) JPMorgan Chase Bank (“JPMorgan”) shall continue to be appointed sub-agent to the DIP Collateral Agent with respect to the Reserve Account to handle disbursements of funds therefrom in accordance with the process set forth in Section 5.18 of the Prepetition First-Lien Credit Agreement and (ii) notwithstanding the provisions of the Prepetition First Lien Credit Agreement, JPMorgan shall take direction with respect to the Reserve Account, including, but not limited to, in connection with disbursements therefrom, solely from the DIP Agent acting on behalf of the DIP Lenders and may disregard conflicting

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instructions from any Prepetition First Lien Lenders. JPMorgan shall be entitled to all of the rights, exculpations and indemnities afforded to the DIP Agent under the DIP Credit Agreement, *mutatis mutandis*, with respect to JPMorgan's actions taken by it in its capacity as sub-agent to the DIP Collateral Agent with respect to the Reserve Account.

(f) **DIP Liens.** Subject to the Carve-Out and as set forth more fully in this Final DIP Order, the Interim DIP Order and the other DIP Loan Documents, the DIP Agent for the benefit of the DIP Secured Parties, effective immediately upon entry of the Initial Interim DIP Order, was granted and upon entry of this Final DIP Order is granted on a final basis security interests in and liens on the DIP Collateral, which security interests and liens shall continue to be valid, binding, perfected, continuing, enforceable and non-avoidable (all liens and security interests granted to the DIP Agent for the benefit of the DIP Secured Parties pursuant to this Final DIP Order, the Interim DIP Order and the other DIP Loan Documents, the "**DIP Liens**"). The DIP Liens shall, in each case, subject to the Carve-Out, constitute:

- (i) pursuant to Section 364(c)(2) of the Bankruptcy Code, valid, enforceable, perfected and non-avoidable first-priority liens on, and security interests in, all DIP Collateral that is not subject to a valid, perfected, and non-avoidable lien in existence on the Petition Date; and
- (ii) pursuant to Sections 364(c)(3) and 364(d)(1) of the Bankruptcy

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Code, valid, enforceable, perfected and non-avoidable senior priming liens on, and security interests in (the "Priming Liens"), all DIP Collateral, which Priming Liens shall, except as otherwise expressly provided in this Final DIP Order, be junior only to any Liens securing principal, interest, fees, charges and other amounts due and owing under the Prepetition Tranche A-1 Revolving Credit Facility (subject to the terms of sections 2.14(c) and 8.03(c) of the DIP Credit Agreement) and any valid, perfected, enforceable and non-avoidable senior property tax liens in existence at the time of the commencement of the Cases and such senior property tax liens perfected subsequent thereto pursuant to Section 546(b) of the Bankruptcy Code (the "Property Tax Liens") and shall be senior to all other liens granted as of the Petition Date and any liens or security interests granted after the Petition Date to provide adequate protection in respect of any of the Prepetition Liens.

(g) **Other Provisions Relating to the DIP Liens.** The DIP Liens shall secure all of the DIP Obligations. The DIP Liens shall not, without the consent of the DIP Agent, be made subject to, or *pari passu* with, any other lien or security interest, other than to the extent expressly provided herein and to the Carve-Out, by any court order heretofore or hereafter

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entered in the Cases, and shall be valid and enforceable against any trustee appointed in the Cases, upon the conversion of any of the Cases to a case under Chapter 7 of the Bankruptcy Code or in any other proceedings related to any of the foregoing (such cases or proceedings, “Successor Cases”), and/or upon the dismissal of any of the Cases. Except as provided in this Final DIP Order, the DIP Liens, the Adequate Protection Liens and the Cash Collateral Adequate Protection Liens shall not be subject to Sections 506(c), 510, 549, 550 or 551 of the Bankruptcy Code or the “equities of the case” exception of Section 552 of the Bankruptcy Code.

(h) **Superpriority Administrative Claim Status.** The DIP Obligations shall, pursuant to Section 364(c)(1) of the Bankruptcy Code, at all times constitute (without the need to file a proof of claim) an allowed joint and several superpriority claim against each of the DIP Loan Parties of the DIP Agent for the benefit of the DIP Secured Parties with priority over any and all other obligations, liabilities, and indebtedness of the DIP Loan Parties, whether now existing or hereafter arising or incurred, of any kind whatsoever, including any and all administrative expenses or other claims of the DIP Loan Parties of the kind specified in or arising under Sections 105, 326, 328, 330, 331, 364, 365, 503(b), 506(c), 507, 546(c), 552(b), 726, 1113, 1114, or any other provision of the Bankruptcy Code, whether or not such expenses or claims may become secured by a judgment lien or other non-consensual lien, levy or attachment, whether now in existence or hereafter incurred by the DIP Loan Parties, and shall at

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all times be senior to the rights of any DIP Loan Party, any DIP Loan Party's estate, and any successor trustee, estate representative, or any creditor, in any of the Cases or any Successor Case, subject only to the Carve-Out (the "DIP Superpriority Claim"). The DIP Superpriority Claim shall be payable from and have recourse to all prepetition and postpetition assets of the DIP Loan Parties (including, but not limited to, the DIP Collateral but, for the avoidance of doubt, excluding the Excluded Property). Other than as expressly provided herein, including in paragraph 8 and with respect to the Carve-Out, no costs or expenses of administration, including, without limitation, professional fees allowed and payable under Bankruptcy Code Sections 328, 330 and 331, or otherwise, that have been or may be incurred in these proceedings or in any Successor Cases, and no priority claims are, or will be, senior to, prior to or *pari passu* with the DIP Liens, the DIP Superpriority Claim or any of the DIP Obligations, or with any other claims of the DIP Secured Parties arising hereunder or under the other DIP Loan Documents, or otherwise in connection with the DIP Facility.

3. **Authorization and Approval to Use Cash Collateral and Proceeds of DIP Facility.** Subject to the terms and conditions of this Final DIP Order and the other DIP Loan Documents, and to the adequate protection granted to or for the benefit of the Prepetition First Lien Secured Parties as hereinafter set forth, each Debtor is authorized to (a) use the Cash Collateral and (b) request and use proceeds of the DIP Extensions of Credit, in each case solely

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in accordance with the DIP Budget (subject to variances permitted under the DIP Credit Agreement), including, without limitation, to make Tax Borrowings in accordance with, and as provided in, the DIP Credit Agreement. The DIP Budget may only be amended, supplemented, modified, restated, replaced, or extended in accordance with the DIP Loan Documents. Notwithstanding anything herein to the contrary, subject only to the Debtors' rights under paragraph 15(b), the Debtors' right to request or use proceeds of DIP Extensions of Credit or to use Cash Collateral shall terminate on the Termination Date. Nothing in this Final DIP Order shall authorize the disposition of any assets of the Debtors or their estates or other proceeds resulting therefrom outside the ordinary course of business, except as permitted herein (subject to any required Court approval). Notwithstanding anything in this Final DIP Order, the Interim DIP Order, any other DIP Loan Document, or any other order by this Court to the contrary, no proceeds of the DIP Facility, Cash Collateral, Prepetition Collateral, or DIP Collateral, and no portion of the Carve-Out, may be used in the Cases or any other proceeding of any kind, or in any jurisdiction, directly or indirectly by any DIP Loan Party, any other Debtor, or any other person or entity, to (i) object to, contest, or raise any defense to, or assert any challenge to the validity, perfection, priority, extent, or enforceability of any amounts due under the DIP Facility, the DIP Loan Documents, the DIP Collateral, the Prepetition Financing Documents, the Prepetition Collateral, or the liens or claims granted under the Prepetition Financing Documents,

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this Final DIP Order, or any other DIP Loan Documents, including the DIP Liens and the DIP Superpriority Claim, (ii) investigate, assert, or prosecute any claims, defenses, or causes of luding, without limitation, any Avoidance Actions) against the DIP Agent, the DIP Lenders, the Prepetition Agents, any Prepetition Secured Party, or their respective agents, affiliates, representatives, attorneys, or advisors, except to contest whether an Event of Default has occurred or is continuing in accordance with paragraph 15 of this Final DIP Order, (iii) prevent, hinder or otherwise delay the DIP Agent's, the DIP Lenders', the Prepetition Agents' or the Prepetition Secured Parties' assertion, enforcement, or realization against or upon the Cash Collateral or the DIP Collateral in accordance with this Final DIP Order, the other DIP Loan Documents, and the Prepetition Financing Documents, except to contest whether an Event of Default has occurred or is continuing in accordance with paragraph 15 of this Final DIP Order, (iv) without the prior written consent of the DIP Agent, the DIP Lenders, or the Prepetition Agents, as applicable, seek to modify any of the rights granted to the DIP Agent, the DIP Lenders, or the Prepetition Agents hereunder or under the DIP Loan Documents or the Prepetition Financing Documents, or (v) take any other action prohibited by the DIP Credit Agreement; provided, however, that, subject to the limitations set forth in the DIP Budget, an amount equal to the Investigation Budget (defined below) may be used by the Committee to investigate the matters covered in paragraph F above.

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4. **Adequate Protection for Prepetition Secured Parties.** As adequate protection for the interests of the Prepetition Agents and the Prepetition Secured Parties in the Prepetition Collateral (including Cash Collateral), the Prepetition Agents, for the benefit of the respective Prepetition Secured Parties, shall receive adequate protection as follows:

(a) **Adequate Protection Liens.** Solely to the extent of, and in an aggregate amount equal to, any diminution in value of their respective interests in the Prepetition Collateral (excluding Cash Collateral), from and after the Petition Date, calculated in accordance with Section 506(a) of the Bankruptcy Code, whether or not resulting from, among other things, the use, sale or lease by the Debtors, depreciation, physical deterioration, or other decline in value, of the Prepetition Collateral (excluding Cash Collateral), the priming of the Prepetition Liens by the DIP Liens, and the imposition or enforcement of the automatic stay of Section 362(a) of the Bankruptcy Code, or otherwise (collectively, "Diminution in Value"), the Prepetition Secured Parties shall have pursuant to Sections 361 and 364(d) of the Bankruptcy Code, replacement security interests in and liens upon (the "Adequate Protection Liens") all of the DIP Collateral. As adequate protection for the use of such Prepetition Secured Parties' Prepetition Collateral that is Cash Collateral, the Prepetition Secured Parties under the Prepetition Revolving Credit Facilities shall have, pursuant to Section 363(e) of the Bankruptcy Code, dollar for dollar replacement security interests in and liens upon (the "Cash Collateral Adequate Protection Liens")



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”) all of the DIP Collateral. The Adequate Protection Liens and the Cash Collateral Adequate Protection Liens of the Prepetition Secured Parties shall be junior and subordinated to the DIP Liens, the Property Tax Liens and any Senior Permitted Liens. The Adequate Protection Liens of the Prepetition First Lien Secured Parties shall be senior and prior to the Adequate Protection Liens and Cash Collateral Adequate Protection Liens of the Prepetition Second Lien Secured Parties and the Prepetition Liens. The Adequate Protection Liens and the Cash Collateral Adequate Protection Liens of the Prepetition Second Lien Secured Parties shall be senior to any Prepetition Second Liens and shall be junior and subordinated to the Adequate Protection Liens and the Cash Collateral Adequate Protection Liens of the Prepetition First Lien Secured Parties, the Prepetition First Liens, the DIP Liens, the Property Tax Liens and any Senior Permitted Liens. The Adequate Protection Liens and the Cash Collateral Adequate Protection Liens shall in all cases be subject to the Carve-Out and the Wind-Down Amounts.

(b) **Adequate Protection Superpriority Claims.** To the extent that the Adequate Protection Liens do not make the Prepetition Secured Parties whole for any Diminution in Value and to the extent that the Cash Collateral Adequate Protection Liens do not make the Prepetition Secured Parties whole for the use of Cash Collateral, the Prepetition Secured Parties shall have, respectively, subject in each case to the payment of the Carve-Out,

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allowed joint and several superpriority administrative expense claims against each of the DIP Loan Parties (the “Adequate Protection Superpriority Claims”) as provided for in Section 507(b) of the Bankruptcy Code, payable from and having recourse to all DIP Collateral, which (i) in the case of the Adequate Protection Superpriority Claim granted to the Prepetition First Lien Secured Parties (the “First Lien Adequate Protection Superpriority Claim”) shall be junior and subordinated to the DIP Superpriority Claim, and (ii) in the case of the Adequate Protection Superpriority Claim granted to the Prepetition Second Lien Secured Parties (the “Second Lien Adequate Protection Superpriority Claim”) shall be junior and subordinated to the DIP Superpriority Claim and the First Lien Adequate Protection Superpriority Claim. For the avoidance of doubt, the Prepetition Secured Parties shall not receive or retain any payments, property, distribution or other amounts in respect of any Adequate Protection Superpriority Claims unless and until the DIP Obligations and (without duplication) the DIP Superpriority Claim have indefeasibly been paid in full in cash.

(c) **Adequate Protection Payments, etc.** Subject only to the Carve-Out and any Wind-Down Amounts, the Prepetition First Lien Agent and the other Prepetition First Lien Secured Parties shall receive from the Debtors, when due, payment of: (i)(x) all accrued and unpaid interest on the First Lien Prepetition Obligations in respect of the Prepetition Tranche A-1 Revolving Credit Facility and the Prepetition Tranche A-2 Revolving Credit Facility owing

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by the Debtors under the Prepetition First Lien Financing Documents at the non-default rates set forth in the Prepetition First Lien Financing Documents, and (y) all accrued and unpaid interest on the First Lien Prepetition Obligations in respect of the Prepetition Tranche B Term Loan Facility owing by the Debtors under the Prepetition First Lien Financing Documents, to be paid in kind by capitalizing such interest and adding it to the aggregate principal amount of the First Lien Prepetition Obligations in respect of the Prepetition Tranche B Term Loan Facility, at the rates set forth in, and pursuant to the terms of, the Prepetition First Lien Credit Financing Documents, to the fullest extent permitted by law; (ii) all other accrued and unpaid fees and disbursements (including all reasonable and documented out-of-pocket legal and advisory fees and expenses) owing to the Prepetition First Lien Agent or the Prepetition First Lien Secured Parties under the Prepetition Revolving Credit Facilities pursuant to the Prepetition First Lien Financing Documents; and (iii) all letter of credit and other fees owing by the Debtors under the Prepetition First Lien Financing Documents in respect of the Prepetition Revolving Credit Facilities, at the non-default rate provided for therein.

(d) **Professional and Advisory Fees.** The Debtors shall pay reasonable and documented professional and advisory fees, costs and expenses of the Prepetition First Lien Agent and the other Prepetition First Lien Secured Parties under the Prepetition Revolving Credit Facilities incurred in connection with the administration and monitoring of the Prepetition

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First Lien Financing Documents and/or the DIP Facility, including the reasonable and documented postpetition fees and expenses of any legal, financial and other advisory professionals, within ten (10) days after receipt of invoices therefor.

(e) **Credit Bid Protection.** Subject to the terms and conditions set forth in the DIP Loan Documents and the Order Authorizing and Approving Bid Procedures entered July 14, 2014 [Docket No. 231], the rights of the DIP Agent and the Prepetition First Lien Agent to credit bid under Section 363(k) of the Bankruptcy Code in connection with any sale of the Debtors' assets and property, including, without limitation, any sale occurring pursuant to Section 363 of the Bankruptcy Code, included as part of any Chapter 11 plan, or conducted by a Chapter 7 trustee under Section 725 of the Bankruptcy Code are preserved.

5. **Monitoring of Collateral.** The Prepetition First Lien Agent and the DIP Agent, and their respective consultants and advisors, shall be given reasonable access to the Debtors' books, records, assets and properties for purposes of monitoring the Debtors' business and the value of the DIP Collateral, and shall be permitted to conduct field audits, collateral examinations and inventory appraisals upon reasonable notice and at reasonable times in respect of the DIP Collateral.

6. **DIP Lien, Adequate Protection Replacement Lien and Cash Collateral Adequate Protection Lien Perfection.** This Final DIP Order and/or the Interim DIP Order shall

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be sufficient and conclusive evidence of the validity, perfection and priority of the DIP Liens, the Adequate Protection Liens and the Cash Collateral Adequate Protection Liens without the necessity of executing, filing or recording any financing statement, deed of trust, mortgage, security agreement, notice of lien, pledge agreement, or other instrument or document which may otherwise be required under the law of any jurisdiction or the taking of any other action to validate or perfect the DIP Liens, the Adequate Protection Liens and the Cash Collateral Adequate Protection Liens or to entitle the DIP Liens, the Adequate Protection Liens, and the Cash Collateral Adequate Protection Liens to the priorities granted herein. Notwithstanding the foregoing, the DIP Agent may, in its sole discretion, file such financing statements, deeds of trust, mortgages, security agreements, notices of liens, pledge agreements, and other instruments and documents, and is hereby granted relief from the automatic stay of Section 362 of the Bankruptcy Code solely in order to do so, and all such financing statements, deeds of trust, mortgages, security agreements, notices of liens, pledge agreements, and other instruments and documents shall be deemed to have been filed or recorded at the time and on the date of the commencement of the Cases. The Debtors shall execute and deliver to the DIP Agent all such financing statements, deeds of trust, mortgages, security agreements, notices of liens, pledge agreements, and other instruments and documents as the DIP Agent may reasonably request to evidence, confirm, validate or perfect, or to insure the contemplated priority of, the DIP Liens,

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the Adequate Protection Liens and the Cash Collateral Adequate Protection Liens. The DIP Agent may file a photocopy of this Final DIP Order and/or the Interim DIP Order as a financing statement with any recording officer designated to file financing statements or with any registry of deeds or similar office in any jurisdiction in which any Debtor has real or personal property and, in such event, the subject filing or recording officer shall be authorized to file or record such copy of this Final DIP Order and/or the Interim DIP Order. To the extent that the Prepetition First Lien Agent is the secured party under any account control agreements, listed as loss payee under any of the Debtors' insurance policies or is the secured party under any Prepetition First Lien Financing Document, the DIP Agent is also deemed to be the secured party under such account control agreements, loss payee under the Debtors' insurance policies and the secured party under each such Prepetition Collateral Document, and shall have all rights and powers attendant to that position (including, without limitation, rights of enforcement) and shall act in that capacity and distribute any proceeds recovered or received in accordance with the terms of this Final DIP Order and/or the Interim DIP Order, as applicable, and the other DIP Loan Documents. The Prepetition First Lien Agent shall serve as agent for the DIP Agent for purposes of perfecting their respective security interests and liens on all DIP Collateral that is of a type such that perfection of a security interest therein may be accomplished only by possession or control by a secured party. In the event that enforcement of the DIP Liens becomes necessary

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and is authorized under the terms of this Final DIP Order or the other DIP Loan Documents, the DIP Agent, in accordance with the DIP Loan Documents, shall be deemed for all purposes to have and be entitled to enforce in this Court or any other court of competent jurisdiction all of the rights, privileges, processes and protections accorded to a person holding a valid, binding and enforceable properly perfected lien or security interest in such DIP Collateral under applicable New Jersey state law.

7. **Reservation of Certain Third Party Rights and Bar of Challenges and Claims**

. Except as set forth below in the immediately following sentence, all of the findings, agreements, terms, provisions and acknowledgments set forth in paragraph F of this Final DIP Order (the "Claims Acknowledgments"), shall be immediately and irrevocably binding on all persons and entities. Notwithstanding the foregoing, nothing in this Final DIP Order shall prejudice any rights a Committee (or any other party with standing to do so) may have (a) to object to or challenge any of the Claims Acknowledgments, including in relation to (i) the validity, extent, perfection or priority of the Prepetition Liens on the Prepetition Collateral, or (ii) the validity, allowability, priority, status or amount of the Prepetition Obligations, or (b) to bring suit against any of the Prepetition Secured Parties in connection with or related to the matters covered by the Claims Acknowledgments; provided, that unless the Committee (or any other party with standing to do so) commences an adversary proceeding or contested matter (as

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applicable) raising such objection or challenge, including without limitation any claim against the Prepetition Secured Parties in the nature of a setoff, counterclaim, equitable subordination, avoidance or defense to the Prepetition Obligations (including but not limited to, those under Sections 506 (subject to the waiver of claims arising under Section 506(c) of the Bankruptcy Code as may be provided herein), 544, 547, 548, 549, 550 and/or 552 of the Bankruptcy Code or by way of suit against any of the Prepetition Secured Parties), by the date that is 45 days after entry of this Final DIP Order (such period shall be referred to as the “Challenge Period,” and the date that is the next calendar day after the termination of the Challenge Period shall be referred to as the “Challenge Period Termination Date”), upon the Challenge Period Termination Date, any and all such challenges and objections by the Committee (or any other party with standing), any Chapter 11 or Chapter 7 trustee appointed herein or in any Successor Case, and any other party in interest shall be deemed to be forever waived and barred, and the Prepetition Obligations under the Prepetition Revolving Credit Facilities, as applicable, shall be deemed to be allowed secured claims within the meaning of Sections 502 and 506 of the Bankruptcy Code for all purposes in connection with the Cases, and the Claims Acknowledgments shall be binding on all creditors, interest holders and parties in interest. To the extent any such objection or complaint is filed, the Claims Acknowledgments shall nonetheless remain binding and preclusive except to the extent expressly challenged in such objection or complaint. In the event that a challenge is



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FINAL ORDER PURSUANT TO SECTIONS 361, 362, 363, 364, AND 507 OF THE BANKRUPTCY CODE AND RULE 4001 OF THE FEDERAL RULES OF BANKRUPTCY PROCEDURE AUTHORIZING THE DEBTORS TO (I) OBTAIN POSTPETITION FINANCING, (II) GRANT SENIOR PRIMING LIENS AND SUPERPRIORITY CLAIMS TO POSTPETITION LENDERS, (III) USE CASH COLLATERAL, AND (IV) PROVIDE ADEQUATE PROTECTION TO PREPETITION SECURED PARTIES

timely commenced and the Court enters a final order determining that the Prepetition First Lien Secured Parties do not have valid and perfected liens on certain DIP Collateral or that the Prepetition First Lien Secured Parties' liens do not entitle the Prepetition First Lien Secured Parties to the value attributable to certain DIP Collateral, then the Roll-Up Borrowings shall not be secured by such successfully challenged portion of the DIP Collateral, provided, however, that such successfully challenged portion of the DIP Collateral shall continue to secure the NM Borrowings in accordance with the Final DIP Order and the DIP Documents.

8. **Carve-Out and Wind-Down Amounts.**

(i) Carve-Out. Subject to the terms and conditions in this paragraph 8, the DIP Liens, the DIP Superpriority Claim, the Adequate Protection Superpriority Claims, the Adequate Protection Liens, the Cash Collateral Adequate Protection Liens and the Prepetition Liens, which have the relative liens and payment priorities set forth herein, shall in all cases be subject and subordinate to the payment of the Carve-Out. For purposes of this Final DIP Order, "Carve-Out" shall mean, collectively: (a) all fees required to be paid to the Clerk of the Bankruptcy Court and to the office of the United States Trustee pursuant to 28 U.S.C. § 1930(a)(6) and 28 U.S.C. § 156(c), plus (b) unpaid fees and expenses of estate professionals (including professionals retained by the Committee) and Winter Harbor LLC (individually, an "Estate Professional" and,

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collectively, the “Estate Professionals”) retained pursuant to sections 327, 328 or 363 of the Bankruptcy Code incurred and accruing after the date the DIP Agent issues a Default Notice, to the extent such fees and expenses are allowed by the Court, in an aggregate amount not to exceed \$275,000 (such amount, the “Professionals’ Carve-Out Cap”) for the Estate Professionals. For fees and expenses incurred by Estate Professionals prior to the date that a Default Notice has been issued, the Debtors shall be permitted to pay fees to the Estate Professionals and reimburse expenses incurred by the Estate Professionals that are allowed by the Court and payable under Sections 328, 330 and 331 or 363 of the Bankruptcy Code, any compensation procedures approved by the Court and permitted under Section 2.01(b) of the Credit Agreement, and to the extent consistent with the DIP Budget, and the same shall not reduce the Professionals’ Carve-Out Cap; provided, however, the Reserved Amounts, which are set forth in Schedule 2.01(b) to the DIP Credit Agreement, are modified as set forth on Exhibit B hereto; provided, further, however, any amounts not used in a prior week for an Estate Professional may be applied to increase the budgeted fees for subsequent weeks and the actual fees incurred in a prior week by an Estate Professional that exceed the budgeted amount for that week may be applied against the budgeted amounts in subsequent weeks. In the event that the DIP Agent issues a Default Notice, the Estate Professionals shall be able to seek payment of

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Caption of Order:

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unpaid fees and expenses incurred and accruing on or prior to the date the DIP Agent issues such Default Notice (the “Pre-Default Fees”) from the Reserved Amounts in accordance with Section 2.01(b) of the DIP Credit Agreement; provided that, such fees and expenses shall in the aggregate not exceed the amount available as the Reserved Amounts (as defined in the DIP Credit Agreement) as of the date of the issuance of the Default Notice (any Pre-Default Fees in excess of such amount, the “Pre-Default Excess Fees”). To the extent that the NM Commitment has terminated prior to the payment of the fees and expenses of the Estate Professionals that have accrued and remain unpaid as of the date of such termination, all Reserved Amounts shall be funded into a reserve deposit account of the DIP Agent that is under the sole control of the DIP Agent (the “Reserved Amounts Account”). The Reserved Amounts contained in the Reserved Amounts Account shall be available to the Borrower (as defined in the DIP Credit Agreement) to pay the fees and expenses of the Estate Professionals that are accrued and unpaid as of the date of termination of the NM Commitment, approved for payment by the Bankruptcy Court and not in excess of the amounts contained in Schedule 2.01(b). The Reserved Amounts and the Reserved Amounts Account (and amounts on deposit therein) shall be maintained by the DIP Agent until, and used for no purpose other than, the payment in full and in cash of the fees and expenses of the Estate Professionals in

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Caption of Order:

FINAL ORDER PURSUANT TO SECTIONS 361, 362, 363, 364, AND 507 OF THE BANKRUPTCY CODE AND RULE 4001 OF THE FEDERAL RULES OF BANKRUPTCY PROCEDURE AUTHORIZING THE DEBTORS TO (I) OBTAIN POSTPETITION FINANCING, (II) GRANT SENIOR PRIMING LIENS AND SUPERPRIORITY CLAIMS TO POSTPETITION LENDERS, (III) USE CASH COLLATERAL, AND (IV) PROVIDE ADEQUATE PROTECTION TO PREPETITION SECURED PARTIES

accordance with the DIP Credit Agreement and this Final DIP Order, and shall not be available for satisfaction of, or subject to, any other claim against the Debtors' estates or subject to any claim, lien, charge, right to payment or other encumbrance of any kind or nature, and shall not be subject to avoidance or recovery by the Debtors or their estates (including any Chapter 11 or Chapter 7 trustee appointed in these cases).

(ii) Wind-Down Amounts. Subject to the terms and conditions contained in this paragraph 8 and subject to the consummation of a Qualifying Sale (defined below), each of the Prepetition Liens, Adequate Protection Liens, the Cash Collateral Adequate Protection Liens and the Adequate Protection Superpriority Claims shall be subject and subordinate to payment of the Wind-Down Amounts. For purposes of this Final DIP Order, "Wind-Down Amounts" means the amounts set forth in the budget (the "Wind-Down Budget") attached hereto as Exhibit C, which budget has been approved by the DIP Agent and the Prepetition First Lien Agent; provided that disbursements to be made in connection with wind-down activities shall not be limited to the specific applicable line item in the Wind-Down Budget so long as there remain unused amounts from other line items in the Wind-Down Budget. The Wind-Down Amounts shall be payable if a sale for cash or by credit bid or some combination thereof of all or substantially all of the assets of the Debtors pursuant to Section 363 of the Bankruptcy

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Caption of Order:

FINAL ORDER PURSUANT TO SECTIONS 361, 362, 363, 364, AND 507 OF THE BANKRUPTCY CODE AND RULE 4001 OF THE FEDERAL RULES OF BANKRUPTCY PROCEDURE AUTHORIZING THE DEBTORS TO (I) OBTAIN POSTPETITION FINANCING, (II) GRANT SENIOR PRIMING LIENS AND SUPERPRIORITY CLAIMS TO POSTPETITION LENDERS, (III) USE CASH COLLATERAL, AND (IV) PROVIDE ADEQUATE PROTECTION TO PREPETITION SECURED PARTIES

Code (a “Qualifying Sale”) is consummated. The Wind-Down Amounts shall be payable from the proceeds of a Qualifying Sale after (x) the DIP Obligations have been paid in full and (y) any unpaid components of the Carve-Out have been paid or deposited in a cash reserve (such proceeds are “Remaining Sale Proceeds”). Upon the consummation of a Qualifying Sale, Remaining Sale Proceeds equal to the sum of all Wind-Down Amounts as set forth in the Wind-Down Budget shall be deposited in a segregated account (the “Wind-Down Account”) which segregated account shall thereafter be utilized by the Debtors to pay Wind-Down Amounts as and when such amounts become due and payable in accordance with the Wind-Down Budget, provided that, upon the payment in full of all expenses necessary to effectuate the wind-down of the Debtors’ affairs, any amounts remaining in the Wind-Down account shall be distributed as proceeds of the Qualifying Sale.

9. **Section 506(c) Claims.** As a further condition of the DIP Facility, any obligation of the DIP Secured Parties to make DIP Extensions of Credit, and the Debtors’ authorization to use the Cash Collateral, the Debtors (and any successors thereto or any representatives thereof, including any trustees appointed in the Cases or any Successor Cases) agree not to assert any rights, benefits or causes of action under Section 506(c) of the Bankruptcy Code as they may relate to or be asserted against the DIP Secured Parties, the DIP Liens, the DIP Collateral, the

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Prepetition First Lien Secured Parties, the Adequate Protection Liens, the Cash Collateral Adequate Protection Liens, the Prepetition First Liens or the Prepetition Collateral; provided that, in the event that White & Case LLP, Winter Harbor LLC, or Fox Rothschild LLP have accrued and unpaid Pre-Default Excess Fees, such professionals shall be permitted to seek allowance of such Pre-Default Excess Fees under Section 506(c) of the Bankruptcy Code in an aggregate amount not to exceed \$750,000, provided further that, (a) nothing herein shall affect any standards that such professionals must meet with respect to a claim under Section 506(c) of the Bankruptcy Code, including, but not limited to, that such professionals shall bear the burden of proof, and (b) all defenses remain available to the parties that would be affected by the requested relief. Nothing contained in this Final DIP Order, in the Interim DIP Order, or in the other DIP Loan Documents, and no action, inaction, or acquiescence by the Prepetition First Lien Secured Parties or the DIP Secured Parties, shall be deemed to be, or shall be considered evidence of, a consent by the Prepetition First Lien Secured Parties or the DIP Secured Parties to any charge, lien, assessment or claim against, or in respect of, the DIP Collateral or the Prepetition Collateral or otherwise.

10. **Collateral Rights.** Except as expressly permitted in this Final DIP Order and the other DIP Loan Documents, in the event that any person or entity that holds a lien or security interest in DIP Collateral that is junior or subordinate to the DIP Liens in such DIP Collateral

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Caption of Order: FINAL ORDER PURSUANT TO SECTIONS 361, 362, 363, 364, AND 507 OF THE BANKRUPTCY CODE AND RULE 4001 OF THE FEDERAL RULES OF BANKRUPTCY PROCEDURE AUTHORIZING THE DEBTORS TO (I) OBTAIN POSTPETITION FINANCING, (II) GRANT SENIOR PRIMING LIENS AND SUPERPRIORITY CLAIMS TO POSTPETITION LENDERS, (III) USE CASH COLLATERAL, AND (IV) PROVIDE ADEQUATE PROTECTION TO PREPETITION SECURED PARTIES

receives or is paid the proceeds of such DIP Collateral, or receives any other payment with respect thereto from any other source, prior to payment in full and in cash and the complete satisfaction of all DIP Obligations, such junior or subordinate lienholder shall be deemed to have received, and shall hold, the proceeds of any such DIP Collateral in trust for the applicable DIP Lenders, and shall immediately turnover such proceeds to the DIP Agent for application in accordance with this Final DIP Order and the other DIP Loan Documents.

11. **Limitations in Respect of Subsequent Court Orders.** Without limiting any other provisions of this Final DIP Order, there shall not be entered in these proceedings, or in any Successor Case, any order which authorizes (i) the obtaining of credit or the incurring of indebtedness that is secured by a security, mortgage, or collateral interest or other lien on all or any portion of the DIP Collateral and/or entitled to priority administrative status which is superior to or *pari passu* with those granted pursuant to this Final DIP Order and/or the Interim DIP Order to or for the benefit of the DIP Secured Parties or the Prepetition First Lien Secured Parties, or (ii) the use of Cash Collateral for any purpose other than as set forth in the DIP Budget, unless, in either case, the DIP Agent and the Prepetition First Lien Agent have provided their prior written consent or all accrued and outstanding DIP Obligations have been or would be paid in full in cash pursuant to the terms of such order.

12. **Cash Management.** The Debtors' cash management system shall at all times be

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maintained (i) in accordance with the terms of the DIP Loan Documents and any order of this Court approving the maintenance of the Debtors' cash management system, and (ii) in a manner which in any event shall be reasonably satisfactory to the DIP Agent. The DIP Agent shall be deemed to have "control" over such accounts for all purposes of perfection under the Uniform Commercial Code. Until the occurrence of an Event of Default, all amounts collected in the cash collection accounts may be used in accordance with this Final DIP Order, the DIP Budget and the other DIP Loan Documents.

13. **Disposition of DIP Collateral.** The Debtors shall not sell, transfer, lease, encumber or otherwise dispose of any portion of the DIP Collateral, except as permitted by the DIP Loan Documents, or as approved by the Court.

14. **Survival of Certain Provisions.** In the event of the entry of any order converting any of these Cases into a Successor Case, the DIP Liens, the DIP Superpriority Claim, the Adequate Protection Liens, the Cash Collateral Adequate Protection Liens and the Adequate Protection Superpriority Claim shall continue in these proceedings and in any Successor Case, and such DIP Liens, DIP Superpriority Claim, Adequate Protection Liens, Cash Collateral Adequate Protection Liens and Adequate Protection Superpriority Claim shall maintain their respective priorities as provided by this Final DIP Order and/or the Interim DIP Order.

15. **Events of Default; Rights and Remedies Upon Event of Default.**



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Caption of Order:

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(a) Upon the occurrence of the Termination Date, the automatic stay provisions of Section 362(a) of the Bankruptcy Code shall be automatically vacated and modified to the extent necessary to permit the DIP Agent and the DIP Secured Parties to exercise all rights and remedies provided in this Final DIP Order and the other DIP Loan Documents, as applicable, and to take any or all of the following actions without further order of or application to this Court: (i) immediately terminate the DIP Loan Parties' use of Cash Collateral and cease making any DIP Extensions of Credit to the DIP Borrower; (ii) immediately declare all DIP Obligations to be immediately due and payable; (iii) immediately terminate the DIP Facility and the availability of any DIP Extensions of Credit thereunder; (iv) immediately set off any and all amounts in accounts maintained by the Debtors with (or subject to a security interest in favor of) the DIP Agent or the DIP Secured Parties against the DIP Obligations, or otherwise enforce rights against the DIP Collateral in the possession of, or subject to a lien in favor of the DIP Agent or the DIP Secured Parties for application towards the DIP Obligations; and (v) take any other actions or exercise any other rights or remedies permitted under this Final DIP Order and the other DIP Loan Documents or applicable law to effect the repayment of the DIP Obligations. This Court shall retain exclusive jurisdiction with respect to all matters relating to the exercise of the rights and remedies hereunder with respect to the Debtors, and under this Final DIP Order and the Interim DIP Order, and with respect to the DIP Collateral, including the judicial

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enforcement of the DIP Liens created hereunder.

(b) During the Default Notice Period: (i) all commitments of the DIP Lenders to provide any DIP Extensions of Credit will be suspended; (ii) the Debtors shall have no right to request or use any proceeds of any DIP Extensions of Credit or DIP Collateral or to use Cash Collateral, other than towards the satisfaction of the Carve-Out, to pay accrued items as set forth in the DIP Budget, or as otherwise necessary to maintain the operations of the business and the value of the DIP Collateral in accordance with the DIP Budget; (iii) any party in interest's sole recourse with respect to opposing the aforementioned modification of the automatic stay under Section 362(a) of the Bankruptcy Code shall be to contest the occurrence and/or continuance of an Event of Default; and (iv) the Debtors and the Committee shall be entitled to an emergency hearing before this Court, solely for the purpose of contesting whether an Event of Default has occurred and/or is continuing.

(c) The automatic stay imposed under Section 362(a) of the Bankruptcy Code is hereby modified pursuant to the terms of the DIP Loan Documents and this Final DIP Order as necessary to (i) permit the Debtors to grant the Adequate Protection Liens, the Cash Collateral Adequate Protection Liens and the DIP Liens and to incur all DIP Obligations and all liabilities and obligations to the Prepetition Secured Parties hereunder and under the other DIP Loan Documents, as the case may be, and (ii) authorize the DIP Agent and the Prepetition First Lien

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Agent to retain and apply payments, and otherwise enforce their respective rights and remedies hereunder.

(d) Notwithstanding anything in this Final DIP Order to the contrary, the Prepetition First Lien Agent shall not be permitted to exercise any rights or remedies for itself or the other Prepetition First Lien Secured Parties unless and until the DIP Obligations are indefeasibly paid and satisfied in full in cash.

16. **Applications of Proceeds of Collateral, Payments and Collections.** As a condition to the DIP Extensions of Credit and the authorization to use Cash Collateral, each Debtor has agreed that proceeds of any DIP Collateral and Prepetition Collateral, any amounts held on account of the DIP Collateral or Prepetition Collateral, and all payments and collections received by the Debtors with respect to all proceeds of DIP Collateral and Prepetition Collateral, shall be used and applied solely in accordance with the DIP Loan Documents (including repayment and reduction of the DIP Obligations) and the DIP Budget (subject to variances permitted under the DIP Credit Agreement).

17. **Proofs of Claim, etc.** None of the DIP Secured Parties or the Prepetition First Lien Secured Parties shall be required to file proofs of claim in any of the Cases or any Successor Cases for any claim allowed herein. Notwithstanding any order entered by the Court in relation to the establishment of a bar date in any of the Cases or any Successor Cases to the

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contrary, the DIP Agent, on behalf of itself and the DIP Secured Parties, and the Prepetition First Lien Agent, on behalf of itself and the Prepetition First Lien Secured Parties, respectively, are hereby authorized and entitled, each in its sole discretion, but not required, to file (and amend and/or supplement, as each sees fit) a proof of claim and/or aggregate proofs of claim in each of the Cases or any Successor Cases for any claim allowed herein; for avoidance of doubt, any such proof of claim may (but is not required to be) filed as one consolidated proof of claim against all of the Debtors, rather than as separate proofs of claim against each Debtor. Any order entered by the Court in relation to the establishment of a bar date for any claim (including without limitation administrative claims) in any of the Cases or any Successor Cases shall not apply to the DIP Agent, the other DIP Secured Parties, the Prepetition First Lien Agent or the other Prepetition First Lien Secured Parties.

18. **Indemnity.** The DIP Agent and the DIP Secured Parties have acted in good faith, and without negligence or violation of public policy or law, in respect of all actions taken by them in connection with or related in any way to negotiating, implementing, documenting or obtaining requisite approvals of the DIP Facility and the use of Cash Collateral, including in respect of the granting of the DIP Liens, the Adequate Protection Liens, and the Cash Collateral Adequate Protection Liens, any challenges or objections to the DIP Facility or the use of Cash Collateral, and all documents related to any and all transactions contemplated by the foregoing.

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Caption of Order:

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Accordingly, the DIP Agent and the DIP Secured Parties, and their respective professionals and advisors, shall be and hereby are indemnified and held harmless by the Debtors in respect of any claim or liability incurred in respect thereof or in any way related thereto. No exception or defense in contract, law, or equity exists as to any obligation set forth, as the case may be, in this paragraph 18 or in the DIP Loan Documents to indemnify and/or hold harmless the DIP Agent and the DIP Secured Parties, except to the extent resulting from the DIP Agent's or the applicable DIP Secured Party's gross negligence or willful misconduct as determined by a final non-appealable order of a court of competent jurisdiction.

19. **Release.** Subject to the rights of the Committee or other party in interest as provided in paragraph 7 of this Final DIP Order, the Debtors forever release, waive, and discharge the DIP Agent, the DIP Secured Parties, the Prepetition First Lien Agent, the Prepetition First Lien Parties, and their affiliates, subsidiaries, assigns, and successors, together with each of the foregoing parties' respective officers, directors, employees, agents, attorneys and professionals (collectively, the "Released Parties"), from any and all claims and causes of action arising out of, based upon, or related to, in whole or in part, any of the DIP Facility, the DIP Loan Documents, the DIP Collateral, the DIP Liens, the DIP Superpriority Claim, the Prepetition Financing Documents, the Prepetition Collateral, the Cash Collateral, or the Prepetition Liens, any aspect of the prepetition relationship among the Debtors relating to any of

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ed by the DIP Loan Documents or the Prepetition Financing Documents, including, without limitation, any claims or defenses as to the extent, validity, priority, or perfection of the DIP Facility, the DIP Loan Documents, the DIP Collateral, the DIP Liens, the DIP Superpriority Claim, the Prepetition Obligations, the Prepetition Financing Documents, the Cash Collateral, the Prepetition Collateral, or the Prepetition Liens, along with any “lender liability” claims and causes of action, any actions, claims, or defenses under Chapter 5 of the Bankruptcy Code, or any other claims and causes of action.

20. **Limitation of Liability.** In determining to extend credit under the DIP Loan Documents, or in exercising any rights or remedies pursuant to this Final DIP Order and the other DIP Loan Documents, the DIP Agent and the DIP Secured Parties shall not be deemed to be in control of the operations of any DIP Loan Party or of any other Debtor or to be acting as a “responsible person” or “owner or operator” with respect to the operation or management of any DIP Loan Party or of any other Debtor (as such terms, or any similar terms, are used in the United States Comprehensive Environmental Response, Compensation and Liability Act, 29 U.S.C. §§ 9601, *et seq.*, as amended, or any similar federal or state statute).

21. **Debtors’ Waivers.** At all times during the Cases, and whether or not an Event of Default has occurred, the Debtors irrevocably waive any right that they may have (a) to challenge the application of any payments authorized by this Final DIP Order as pursuant to

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Section 506(b) of the Bankruptcy Code, (b) to seek authority to grant liens on the DIP Collateral or any portion thereof to any other entities, pursuant to Section 364(d) of the Bankruptcy Code or otherwise, which liens are senior to, or pari passu with, the DIP Liens, the DIP Superpriority Claim, or any other liens or claims granted to the DIP Agent or the DIP Lenders, unless the DIP Obligations are first repaid in full in cash and the DIP Facility is terminated, or (c) to seek authority to obtain postpetition loans or other financial accommodations pursuant to Section 364(c) or 364(d) of the Bankruptcy Code, other than from the DIP Lenders, or as may be otherwise expressly permitted under the DIP Loan Documents, unless the Debtors use the proceeds of such postpetition loans or other financial accommodations to pay in full in cash all DIP Obligations. In addition, in any hearing regarding any exercise of rights or remedies, the only issue that may be raised by any party in opposition thereto shall be whether, in fact, an Event of Default has occurred and is continuing, and the Debtors hereby waive their right to seek relief, including without limitation, under Section 105 of the Bankruptcy Code, to the extent such relief would in any way impair or restrict the rights and remedies of the DIP Agent or the DIP Lenders as set forth in this Final DIP Order or the other DIP Loan Documents, other than to contest whether an Event of Default has occurred or is continuing.

22. **363 Sales.** No sale of any DIP Collateral under Section 363 of the Bankruptcy Code, outside of the ordinary course of business, will be authorized without the DIP Agent's and

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the requisite DIP Lenders' consent. Nothing herein will affect the right of the DIP Agent, the DIP Lenders, the Prepetition First Lien Agent, or the Prepetition First Lien Lenders to give, or withhold, its consent to any proposed sale or other disposition.

23. **Reservation of Rights.** The terms, conditions, and provisions of this Final DIP Order are in addition to and without prejudice to the rights of the DIP Agent and the DIP Secured Parties to pursue any and all rights and remedies under the Bankruptcy Code, the DIP Loan Documents, or any other applicable agreement or law, including, without limitation, rights to (a) seek relief from the automatic stay, (b) seek an injunction, (c) oppose any future request for use of Cash Collateral or for the granting of any interest in the DIP Collateral, or of priority in favor of any other party, (d) object to any sale of assets, or (e) object to applications for allowance or payment of compensation of professionals or other parties seeking compensation or reimbursement from the Debtors' estates.

24. **Headings.** Section headings used herein are for convenience only and are not to affect the construction of or to be taken into consideration in interpreting this Final DIP Order.

25. **Other Rights and Obligations.**

(a) **Good Faith Under Section 364(e) of the Bankruptcy Code; No**

**Modification or Stay of this Final DIP Order.** Based on the findings set forth in this Final DIP Order and/or the Interim DIP Order and in accordance with Section 364(e) of the Bankruptcy



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Caption of Order:

FINAL ORDER PURSUANT TO SECTIONS 361, 362, 363, 364, AND 507 OF THE BANKRUPTCY CODE AND RULE 4001 OF THE FEDERAL RULES OF BANKRUPTCY PROCEDURE AUTHORIZING THE DEBTORS TO (I) OBTAIN POSTPETITION FINANCING, (II) GRANT SENIOR PRIMING LIENS AND SUPERPRIORITY CLAIMS TO POSTPETITION LENDERS, (III) USE CASH COLLATERAL, AND (IV) PROVIDE ADEQUATE PROTECTION TO PREPETITION SECURED PARTIES

Code, which is applicable to the DIP Facility as approved by this Final DIP Order and/or the Interim DIP Order, in the event any or all of the provisions of this Final DIP Order and/or the Interim DIP Order are hereafter modified, amended or vacated by a subsequent order of this Court or any other court, the DIP Secured Parties are entitled to the protections provided in Section 364(e) of the Bankruptcy Code, and no such appeal, modification, amendment or vacation shall affect (a) the validity of any obligation, indebtedness, or liability incurred hereunder by the DIP Borrower or any of the other DIP Loan Parties to the DIP Agent or the DIP Lenders, (b) the payment of any fees required under this Final DIP Order and/or the Interim DIP Order or the other DIP Loan Documents, or (c) the validity and enforceability of any lien, claim, obligation, or priority authorized or created under this Final DIP Order and/or the Interim DIP Order or pursuant to the other DIP Loan Documents. Notwithstanding any such modification, amendment or vacation, any claim granted to the DIP Secured Parties hereunder arising prior to the effective date of such modification, amendment or vacation of any DIP Liens or of the DIP Superpriority Claim granted to or for the benefit of the DIP Secured Parties shall be governed in all respects by the original provisions of this Final DIP Order, and the DIP Secured Parties shall be entitled to all of the rights, remedies, privileges and benefits, including the DIP Liens and the DIP Superpriority Claim granted herein, with respect to any such claim. Because the DIP Extensions of Credit are made in reliance on this Final DIP Order and/or the Interim DIP Order,

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Caption of Order:

FINAL ORDER PURSUANT TO SECTIONS 361, 362, 363, 364, AND 507 OF THE BANKRUPTCY CODE AND RULE 4001 OF THE FEDERAL RULES OF BANKRUPTCY PROCEDURE AUTHORIZING THE DEBTORS TO (I) OBTAIN POSTPETITION FINANCING, (II) GRANT SENIOR PRIMING LIENS AND SUPERPRIORITY CLAIMS TO POSTPETITION LENDERS, (III) USE CASH COLLATERAL, AND (IV) PROVIDE ADEQUATE PROTECTION TO PREPETITION SECURED PARTIES

the DIP Obligations incurred by the Debtors or owed the DIP Secured Parties prior to the effective date of any stay, modification or vacation of this Final DIP Order and/or the Interim DIP Order shall not, as a result of any subsequent order in the Cases or in any Successor Cases, be subordinated, lose their lien priority or superpriority administrative expense claim status, or be deprived of the benefit of the status of the liens and claims granted to the DIP Secured Parties under this Final DIP Order and/or the Interim DIP Order.

(b) **Expenses.** All fees paid and payable, and costs and expenses reimbursed or reimbursable by the DIP Borrower and the other DIP Loan Parties to the DIP Agent and the DIP Secured Parties under the DIP Loan Documents, to the extent set forth in the DIP Loan Documents, including all out-of-pocket expenses, costs and fees incurred by the DIP Secured Parties, including, but not limited to, the fees, disbursements and other charges of counsel and financial advisors, in connection with (i) the preparation, execution, delivery, funding and administration of the DIP Loan Documents and any amendments or waivers with respect thereto, (including, without limitation, all due diligence fees and expenses incurred or sustained in connection with the DIP Loan Documents), (ii) the Cases or any Successor Cases, or (iii) enforcement of any rights or remedies under the DIP Loan Documents, in each case whether or not the transactions contemplated hereby are fully consummated, are hereby approved. The Loan Parties shall promptly pay all such fees, costs, and expenses payable under the DIP Loan

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Caption of Order:

FINAL ORDER PURSUANT TO SECTIONS 361, 362, 363, 364, AND 507 OF THE BANKRUPTCY CODE AND RULE 4001 OF THE FEDERAL RULES OF BANKRUPTCY PROCEDURE AUTHORIZING THE DEBTORS TO (I) OBTAIN POSTPETITION FINANCING, (II) GRANT SENIOR PRIMING LIENS AND SUPERPRIORITY CLAIMS TO POSTPETITION LENDERS, (III) USE CASH COLLATERAL, AND (IV) PROVIDE ADEQUATE PROTECTION TO PREPETITION SECURED PARTIES

Documents in accordance with the DIP Loan Documents, without the necessity of any further application with the Court for approval or payment of such fees, costs, or expenses. Professionals for the DIP Agent and DIP Secured Parties shall not be required to file fee applications or comply with the U.S. Trustee's fee guidelines.

(c) **Binding Effect.** The provisions of this Final DIP Order shall be binding upon and inure to the benefit of the DIP Secured Parties and the Prepetition Secured Parties, the Debtors, and their respective successors and assigns (including any trustee or other fiduciary hereafter appointed or elected as a legal representative of the Debtors, or with respect to the property of any of the Debtors' estates, whether in the Cases, in any Successor Case, or upon dismissal of any such Case or Successor Case; provided, however, that the DIP Secured Parties shall have no obligation to extend any financing to, or permit the use of Cash Collateral or DIP Collateral by, any Chapter 7 or Chapter 11 trustee or similar representative person appointed for any of the Debtors' estates.

(d) **No Third Party Rights.** Except as explicitly provided for herein, this Final DIP Order does not create any rights for the benefit of any third party, creditor, equity holder or any direct, indirect, third party or incidental beneficiary.

(e) **Intercreditor Matters.** Nothing in this Final DIP Order shall be construed to impair or otherwise affect any intercreditor, subordination or similar agreement or

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Caption of Order:

FINAL ORDER PURSUANT TO SECTIONS 361, 362, 363, 364, AND 507 OF THE BANKRUPTCY CODE AND RULE 4001 OF THE FEDERAL RULES OF BANKRUPTCY PROCEDURE AUTHORIZING THE DEBTORS TO (I) OBTAIN POSTPETITION FINANCING, (II) GRANT SENIOR PRIMING LIENS AND SUPERPRIORITY CLAIMS TO POSTPETITION LENDERS, (III) USE CASH COLLATERAL, AND (IV) PROVIDE ADEQUATE PROTECTION TO PREPETITION SECURED PARTIES

arrangement between and among the Prepetition First Lien Secured Parties, or between and among the Prepetition First Lien Secured Parties, on the one hand, and the Prepetition Second Lien Secured Parties on the other, including, without limitation, the Intercreditor Agreement and any intercreditor provisions in the Prepetition First Lien Credit Agreement, which, in each case, are enforceable to the fullest extent provided by Section 510(a) of the Bankruptcy Code and applicable law.

(f) **No Marshaling.** Neither the DIP Secured Parties nor the Prepetition First Lien Secured Parties shall be subject to the equitable doctrine of “marshaling” or any other similar doctrine with respect to any of the DIP Collateral or the Prepetition Collateral, as applicable.

(g) **Section 552(b).** The DIP Secured Parties and the Prepetition Secured Parties shall be entitled to all of the rights and benefits of Section 552(b) of the Bankruptcy Code and the “equities of the case” exception under Section 552(b) of the Bankruptcy Code shall not apply to the DIP Secured Parties with respect to proceeds, product, offspring or profits of any of the Prepetition Collateral or the DIP Collateral.

(h) **Amendment.** The Debtors and the DIP Agent (with the consent of the requisite DIP Secured Parties as provided in and consistent with their respective rights under the DIP Loan Documents) may amend, modify, supplement or waive any provision of the DIP Loan

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Caption of Order:

FINAL ORDER PURSUANT TO SECTIONS 361, 362, 363, 364, AND 507 OF THE BANKRUPTCY CODE AND RULE 4001 OF THE FEDERAL RULES OF BANKRUPTCY PROCEDURE AUTHORIZING THE DEBTORS TO (I) OBTAIN POSTPETITION FINANCING, (II) GRANT SENIOR PRIMING LIENS AND SUPERPRIORITY CLAIMS TO POSTPETITION LENDERS, (III) USE CASH COLLATERAL, AND (IV) PROVIDE ADEQUATE PROTECTION TO PREPETITION SECURED PARTIES

Documents without further notice to or approval of the Court. Except as otherwise provided herein, no waiver, modification, or amendment of any of the provisions hereof shall be effective unless set forth in writing, signed by, or on behalf of, all the Debtors and the DIP Agent (after having obtained the approval of the requisite DIP Secured Parties as provided in the DIP Loan Documents) and approved by the Court after notice to parties in interest.

(i) **Priority of Terms.** In the event of any inconsistency or conflict between any of the terms and provisions of this Final DIP Order and the other DIP Loan Documents, the terms and provisions of this Final DIP Order shall govern.

(j) **Survival of Final DIP Order.** The provisions of this Final DIP Order and any actions taken pursuant hereto shall survive entry of any order which may be entered (i) confirming any Chapter 11 plan in the Cases, (ii) converting any of the Cases to a case under Chapter 7 of the Bankruptcy Code, (iii) to the extent authorized by applicable law, dismissing any of the Cases, (iv) withdrawing of the reference of any of the Cases from this Court or (v) providing for abstention from handling or retaining of jurisdiction of any of the Cases in this Court. The terms and provisions of this Final DIP Order and the Interim DIP Order, including the DIP Liens and DIP Superpriority Claim granted pursuant to this Final DIP Order, and any protections granted to or for the benefit of the Prepetition Secured Parties (including the Adequate Protection Liens, the Cash Collateral Adequate Protection Liens, and the Adequate

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Caption of Order:

FINAL ORDER PURSUANT TO SECTIONS 361, 362, 363, 364, AND 507 OF THE BANKRUPTCY CODE AND RULE 4001 OF THE FEDERAL RULES OF BANKRUPTCY PROCEDURE AUTHORIZING THE DEBTORS TO (I) OBTAIN POSTPETITION FINANCING, (II) GRANT SENIOR PRIMING LIENS AND SUPERPRIORITY CLAIMS TO POSTPETITION LENDERS, (III) USE CASH COLLATERAL, AND (IV) PROVIDE ADEQUATE PROTECTION TO PREPETITION SECURED PARTIES

Protection Superpriority Claims), shall continue in full force and effect notwithstanding the entry of such order, and such DIP Liens and DIP Superpriority Claim and protections for the Prepetition Secured Parties (including the Adequate Protection Liens, the Cash Collateral Adequate Protection Liens, and the Adequate Protection Superpriority Claims) shall maintain their priority as provided by this Final DIP Order, the other DIP Loan Documents and the Prepetition Financing Documents (as the case may be), including any intercreditor arrangement or agreements in respect thereof, until all of the DIP Obligations have been paid and satisfied in full and discharged.

(k) **Enforceability.** This Final DIP Order shall constitute findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052 and shall take effect and be fully enforceable immediately upon execution hereof.

(l) **Waiver of any Applicable Stay.** Any applicable stay (including, without limitation, under Interim Bankruptcy Rule 6004(h)) is hereby waived and shall not apply to this Final DIP Order.

26. **Limited Amendment of DIP Credit Agreement; Committee's Reservation of Rights.** The DIP Credit Agreement shall be deemed amended as, and to the extent, set forth in Exhibit D annexed hereto, and Schedules 2.01(b), 2.01(a) and 8.01 to the DIP Credit Agreement are deemed replaced in their entirety by the revised schedules set forth in Exhibits B, E and F

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Caption of Order:

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annexed hereto, respectively. Subject to the limitations set forth in paragraph 7 of this Final DIP Order, notwithstanding any “cage cash” being transferred to a concentration or other account, the Committee's right to argue that such cash was not subject to a valid and non-avoidable lien as of the Petition Date (i.e., that the transfer of the cash does not constitute or affect perfection to the extent perfection did not previously exist), and the DIP Secured Parties’ and Prepetition Secured Parties’ rights to oppose any such argument, are in each case fully preserved.

**Prepetition Second-Lien Agent.** Notwithstanding the entry of this Final DIP Order and the approval of the Roll Up Borrowings and the DIP Liens as set forth herein, any secured claims of the Prepetition Second Lien Agent for incurred and unpaid costs, expenses and fees payable under the Prepetition Second Lien Financing Documents (the “Second-Lien Charges”) shall be primed by the DIP Liens solely with respect to NM Borrowings under the DIP Facility. All rights and defenses of the DIP Secured Parties, the Prepetition First Lien Secured Parties, and the Prepetition Second Lien Secured Parties with respect to the Second-Lien Charges, including the payment priority of the Second-Lien Charges under the Prepetition Financing Documents, are expressly reserved.

**IGT.** Nothing in this Final DIP Order or in the prior Interim DIP Orders affects the lien priority of any perfected security interest held by creditor IGT.

**Mudrick Capital Management, LP.** In the event that there is (a) an exercise of remedies by the

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DIP Agent with respect to the Pledged Account (as defined in the ERGG Agreement, the “ERGG Pledged Account”), the ERGG Agreement, or the proceeds received pursuant to the ERGG Agreement and deposited in the ERGG Pledged Account (collectively, the “ERGG Assets”) or (b) a sale by the Debtors of the ERGG Assets, Mudrick Capital Management, LP (together with its affiliates, “Mudrick”) shall be entitled to a portion of the net proceeds yielded in connection with such exercise of remedies or sale and attributable to the ERG Assets equal to the face amount of the contingent payment rights held by Mudrick as of the Petition Date (the “Mudrick Amount”) under that certain Second Lien Note Claim Contingent Payment Rights Agreement, dated May 21, 2013, and notwithstanding any other provision herein to the contrary, the right of Mudrick to object to the free and clear sale of the ERGG Assets is fully preserved and no amounts shall be payable from such net proceeds attributable to the ERGG Assets to any other party until the Mudrick Amount is paid in full.

**Konami Gaming Inc.** Konami Gaming Inc. (“Konami”) and Revel Entertainment Group, LLC (“REG”) are parties to the Konami Gaming Purchase Equipment Order #JD11-0058-S REV5, the Amendment thereto dated February 21, 2012 and the Second Amendment thereto effective March 22, 2013 (collectively, the “Konami Agreement”) pursuant to which REG financed the purchase of approximately 201 gaming machines (the “Konami Financed Equipment”) from Konami. REG granted Konami a security interest in the Konami Financed Equipment, and



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Caption of Order:

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Konami perfected its security interest therein by filing UCC financing statements.

Pursuant to the Konami Agreement and conditioned upon Konami's timely receipt of a monthly payment, Konami has granted REG a one-month site-specific and non-exclusive, self-terminating, non-assignable, non-sublicensable, non-transferable, license (that currently expires at 11:59 p.m. on January 31, 2015) to use the intellectual property embodied in or represented by computer software, firmware, hardware, mechanical components, and technical manuals related to the Konami Financed Equipment and the design, artwork, names and marks contained in the Konami Financed Equipment or supplied as spare parts (collectively, the "Konami Intellectual Property"). The Konami Intellectual Property is proprietary to Konami. All right, title and ownership interest in the Konami Intellectual Property remains vested in Konami and, consequently, the Konami Intellectual Property does not constitute property of REG or of any of the Debtors or their respective bankruptcy estates.

Notwithstanding anything to the contrary contained in the Motion, in any Interim DIP Order, in this Final DIP Order, in any agreement, or in any financing statement: (i) the Konami Intellectual Property shall not and does not constitute "DIP Collateral" and the liens and security interests granted to any party shall not and do not constitute security interests in or liens on any of the Konami Intellectual Property, and (ii) the liens and security interests granted to any party shall not and do not have priority senior to Konami's security interests in and liens on the Konami

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Caption of Order:

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Financed Equipment.

Section 362(a) of the Bankruptcy Code does not stay or impair Konami's right to send payment demands to REG for post-petition payment(s) or to demand and receive adequate assurance(s) of future performance from REG, and said rights are hereby preserved in favor of Konami. Notwithstanding anything to the contrary contained in the Motion, in any Interim DIP Order, in this Final DIP Order, in any agreement, or in any financing statement, all rights and remedies of Konami are preserved including, without limitation, Konami's right to seek and obtain injunctive relief and/or relief from the automatic stay with respect to the Konami Financed Equipment or any unlicensed use, attempted transfer, or attempted use at a site other than REG's current site, of any of the Konami Intellectual Property.

**Amenity Tenants.** Notwithstanding any language to the contrary in the Interim DIP Order, this Final DIP Order, or any related documents and agreements, the DIP Liens (and any claims and interests of the DIP Agent and DIP Secured Parties) shall have the same priority relative to the interests of American Cut AC Marc Forgione, LLC, Azure AC Allegretti, LLC, Exhale Enterprises XXI, Inc., GRGAC1, LLC, GRGAC2, LLC, GRGAC3, LLC, Lugo AC, LLC, Mussel Bar AC, LLC, PM Atlantic City, LLC, RJ Atlantic City, LLC and The Marshall Retail Group, LLC (collectively, the "Amenity Tenants") as the Prepetition First Liens (and any claims and interests of the Prepetition First Lender) had relative to the Amenity Tenants' interests as

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Caption of Order:

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they existed as of the Petition Date. Further, notwithstanding any language to the contrary in the Interim DIP Order, this Final DIP Order, or any related documents and agreements, any liens, claims or interests of parties (each an "Adequate Protection Party") granted adequate protection in the Interim DIP Order, this Final DIP Order, or any related documents and agreements, including, but not limited to Adequate Protection Liens, Cash Collateral Adequate Protection Liens and Adequate Protection Superpriority Claims, shall have the same priority relative to the interests of the Amenity Tenants as each respective Adequate Protection Party had relative to the Amenity Tenants' interests as they existed as of the Petition Date.

**Settlement.** If a settlement and plan support agreement (the "Settlement Agreement") consistent with the terms and conditions contained in the term sheet attached hereto as Exhibit G (the "Settlement Term Sheet") is not approved by the Court and effective by its terms on or before February 16, 2015, then, unless the Debtors, the Committee and the DIP Secured Parties agree otherwise:

with respect to the DIP Motion, the Debtors, the Committee, the DIP Secured Parties, and the Prepetition First Lien Secured Parties will be restored to their respective rights and legal positions as of the time immediately prior to entry of this Final Order, as if the Settlement Term Sheet had never been agreed to and the Final DIP Order had never been entered, and the Settlement Term Sheet, any Settlement Agreement and the Final DIP Order shall be null and

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Caption of Order:

FINAL ORDER PURSUANT TO SECTIONS 361, 362, 363, 364, AND 507 OF THE BANKRUPTCY CODE AND RULE 4001 OF THE FEDERAL RULES OF BANKRUPTCY PROCEDURE AUTHORIZING THE DEBTORS TO (I) OBTAIN POSTPETITION FINANCING, (II) GRANT SENIOR PRIMING LIENS AND SUPERPRIORITY CLAIMS TO POSTPETITION LENDERS, (III) USE CASH COLLATERAL, AND (IV) PROVIDE ADEQUATE PROTECTION TO PREPETITION SECURED PARTIES

void and not be enforceable in any manner against any party;

notwithstanding subparagraph (i), any NM Borrowings that were made between January 8, 2015 and February 16, 2015 will be deemed to have been made in reliance on this Final DIP Order and shall be entitled to all of the benefits and protections provided for in this Final DIP Order as if the Settlement Agreement had been approved and become effective by its terms; and

the parties will promptly request that the Court schedule a hearing at the Court's earliest convenience to issue its final ruling on the DIP Financing Motion based upon the record of the hearing on the DIP Motion held on January 8, 2015, as the Court was scheduled to do on January 28, 2015, as if the Settlement Term Sheet had never been agreed to and the Final DIP Order had never been entered.

**Retention of Jurisdiction.** The Court has and will retain jurisdiction to enforce this Final DIP Order according to its terms.

EXHIBIT A  
[DIP BUDGET]

REVELAC, INC., ET AL.  
Weekly Cash-Flow Projection, Debtor-in Possession Financing

All figures in thousands of U.S. dollars

	1 12/21	2 12/28	3 1/4	4 1/11	5 1/18	6 1/25	7 2/1	8 2/8	8 Weeks Ended 2/8	Accrued and unpaid	TOTAL
<b>Collections</b>											
Net gaming revenue	-	-	-	-	-	-	-	-	-	-	-
Net non-gaming revenue	-	-	-	-	-	-	-	-	-	-	-
Return of purchased currency	-	-	-	-	-	-	-	-	-	-	-
<b>Total Collections</b>	-	-	-	-	-	-	-	-	-	-	-
<b>Operating Disbursements</b>											
Payroll, payroll taxes and benefits	273	46	223	38	357	45	280	31	1,293	574	1,868
Food and beverage	-	1	-	-	-	-	-	-	1	-	1
Supplies and services	5	5	46	3	7	1	42	12	121	386	507
Utilities <sup>1</sup>	7	38	207	299	305	36	188	319	1,399	125	1,524
Equipment leases	-	2	1,119	-	-	0	1,114	-	2,234	217	2,452
Advertising, marketing and entertainment	9	-	-	-	-	9	-	-	17	300	317
Insurances	65	303	-	-	56	303	101	-	828	(450)	378
Taxes and fees	3	5	26,000	-	42	0	15	2,008	28,072	206	28,278
Currency purchases	-	-	-	-	-	-	-	-	-	-	-
Vendor deposits	-	-	-	-	-	-	-	-	-	(126)	(126)
Critical-vendor payments and 503(b)(9) claims	-	-	-	-	-	-	-	-	-	259	259
All other operating disbursements	6	-	116	62	8	15	9	134	351	591	942
<b>Total Operating Disbursements</b>	<b>368</b>	<b>400</b>	<b>27,712</b>	<b>401</b>	<b>776</b>	<b>409</b>	<b>1,749</b>	<b>2,503</b>	<b>34,318</b>	<b>2,082</b>	<b>36,400</b>
<b>OPERATING CASH FLOW</b>	<b>\$ (368)</b>	<b>\$ (400)</b>	<b>\$ (27,712)</b>	<b>\$ (401)</b>	<b>\$ (776)</b>	<b>\$ (409)</b>	<b>\$ (1,749)</b>	<b>\$ (2,503)</b>	<b>\$ (34,318)</b>	<b>\$ (2,082)</b>	<b>\$ (36,400)</b>
Interest, pre-petition debt <sup>2</sup>	-	-	-	-	-	-	-	-	-	-	-
All other (sources) / uses <sup>3</sup>	-	-	-	-	-	-	-	-	-	-	-
<b>Bankruptcy-related disbursements</b>											
DIP loan interest <sup>2</sup>	79	112	60	263	-	130	408	193	1,245	347	1,591
DIP loan fees	-	-	2,910	-	-	-	67	1,899	4,875	-	4,875
Professional fees, restructuring <sup>4</sup>	1,159	1,009	326	18	54	173	36	1,745	4,519	4,287	8,807
<b>Total Debt and Bankruptcy Disbursements</b>	<b>1,237</b>	<b>1,120</b>	<b>3,295</b>	<b>281</b>	<b>54</b>	<b>304</b>	<b>512</b>	<b>3,836</b>	<b>10,640</b>	<b>4,634</b>	<b>15,273</b>
<b>Total disbursements</b>	<b>1,605</b>	<b>1,520</b>	<b>31,007</b>	<b>683</b>	<b>830</b>	<b>713</b>	<b>2,260</b>	<b>6,339</b>	<b>44,957</b>	<b>6,715</b>	<b>51,673</b>
<b>NET CASH FLOW</b>	<b>\$ (1,605)</b>	<b>\$ (1,520)</b>	<b>\$ (31,007)</b>	<b>\$ (683)</b>	<b>\$ (830)</b>	<b>\$ (713)</b>	<b>\$ (2,260)</b>	<b>\$ (6,339)</b>	<b>\$ (44,957)</b>	<b>\$ (6,715)</b>	<b>\$ (51,673)</b>
<i>Ending balance, N/M Loans</i>	<i>28,014</i>	<i>28,014</i>	<i>52,014</i>	<i>52,014</i>	<i>53,014</i>	<i>54,014</i>	<i>55,714</i>	<i>62,214</i>	<i>62,214</i>	<i>68,738</i>	<i>68,738</i>
<i>Ending balance, Roll-Up Borrowings<sup>5</sup></i>	<i>56,027</i>	<i>56,027</i>	<i>78,027</i>	<i>78,027</i>	<i>80,027</i>	<i>82,027</i>	<i>82,027</i>	<i>82,027</i>	<i>82,027</i>	<i>82,027</i>	<i>82,027</i>
<b>ENDING OPERATING CASH BALANCE</b>	<b>\$ 10,343</b>	<b>\$ 8,823</b>	<b>\$ 1,816</b>	<b>\$ 1,133</b>	<b>\$ 1,303</b>	<b>\$ 1,590</b>	<b>\$ 1,030</b>	<b>\$ 1,191</b>	<b>\$ 1,191</b>	<b>\$ 1,000</b>	<b>\$ 1,000</b>

1. Assumes agreed monthly payments to ACR, less monthly usage credits  
 2. Accrued and unpaid pre-petition interest and DIP roll-up interest are calculated on a separate schedule for purposes of analyzing recovery scenarios.  
 3. Represents absorption of cage cash, partially offset by disbursement of customer deposits, in w/e 9/7; transfer of brownfield rebate to a segregated account in w/e 10/12; and use of forfeited deposit from Brookfield Asset Management of \$11.0M. 2012 NJTC refund was deposited to a segregated account on w/e 10/19 and is therefore not shown in this schedule.  
 4. Transaction fee of \$2.0MM to Moelis & Co. is expected to be paid out of proceeds of a sale as opposed to being funded by the DIP loan.  
 5. Represents amounts used to repay the principal amounts of any pre-petition debt outstanding per the Interim DIP Order.

EXHIBIT B  
[REVISED SCHEDULE 2.01(b) TO THE DIP CREDIT AGREEMENT]

REVEL AC, INC., ET AL  
 Calculation of Debtor and Unsecured Creditors' Committee professional-fee reserve

	Actual 6/29	Actual 7/6	Actual 7/13	Actual 7/20	Actual 7/27	Actual 8/3	Actual 8/10	Actual 8/17	Actual 8/24	Actual 8/31	Actual 9/7	Actual 9/14	Actual 9/21	Actual 9/28	Actual 10/5	Actual 10/12	Actual 10/19	Actual 10/26	Actual 11/2	Actual 11/9	Actual 11/16	Actual 11/23	Actual 11/30	Actual 12/7
<b>Beginning balance</b>	-	795	1,455	1,941	2,450	2,698	3,166	3,799	4,213	4,646	4,959	5,285	5,328	5,309	4,770	4,966	5,145	5,295	4,661	4,879	5,109	5,306	4,585	4,919
Add: Accruals for Debtor professionals																								
Debtor lead counsel	569	270	270	270	270	270	317	317	317	317	311	311	311	311	241	241	241	241	241	236	236	236	236	305
Debtor local counsel	77	77	77	77	77	77	60	60	60	60	43	43	43	43	37	37	37	37	37	37	37	37	37	35
Financial advisor	79	55	63	61	57	59	77	70	56	61	51	58	54	49	66	46	41	36	35	33	38	41	26	43
Investment banker	-	156	-	-	-	-	150	-	-	47	150	-	13	-	-	150	52	-	168	-	-	-	-	-
Claims agent	45	25	25	25	25	25	24	24	24	24	22	22	22	22	22	22	22	22	22	22	18	18	18	35
All other debtor professionals	25	-	-	-	-	19	-	-	-	47	-	-	122	-	-	-	-	58	-	-	-	-	24	-
Subtotal accruals for Debtor professionals	795	583	434	433	429	450	628	471	458	556	577	434	443	547	366	496	373	394	334	492	329	332	341	417
Add: Accruals for Unsecured Creditors' Committee professionals																								
Unsecured Creditors' Committee lead counsel	-	61	61	61	61	61	49	49	49	49	37	37	37	37	38	38	38	38	38	34	34	34	34	21
Unsecured Creditors' Committee local counsel	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Unsecured Creditors' Committee financial advisor	-	16	16	16	16	16	15	15	15	15	16	16	16	16	0	-	-	-	-	-	-	-	-	-
All other Unsecured Creditors' Committee professionals	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Subtotal accruals for Unsecured Creditors' Committee professionals	-	76	76	76	76	76	64	64	64	64	53	53	53	53	38	38	38	38	38	34	34	34	34	21
<b>Total accruals</b>	<b>795</b>	<b>660</b>	<b>511</b>	<b>510</b>	<b>506</b>	<b>526</b>	<b>692</b>	<b>535</b>	<b>522</b>	<b>621</b>	<b>630</b>	<b>487</b>	<b>496</b>	<b>600</b>	<b>404</b>	<b>534</b>	<b>411</b>	<b>432</b>	<b>373</b>	<b>526</b>	<b>363</b>	<b>366</b>	<b>375</b>	<b>438</b>
Subtract: Payments to Debtor professionals																								
Debtor lead counsel	-	-	-	-	-	-	-	-	-	-	-	-	(458)	(1,085)	-	-	-	(1,021)	-	-	-	(998)	-	-
Debtor local counsel	-	-	-	-	-	-	-	-	-	-	-	(329)	-	(194)	-	-	-	(140)	-	(140)	-	-	-	-
Financial advisor	-	-	-	-	(258)	(57)	(59)	(77)	(70)	(56)	(61)	(51)	(58)	(54)	(49)	(66)	(46)	(41)	(36)	(35)	(33)	(38)	(41)	-
Investment banker	-	-	-	-	-	-	-	-	-	(126)	-	-	-	-	-	(167)	-	-	-	-	(133)	-	-	-
Claims agent	-	-	-	-	-	-	-	(45)	-	(125)	-	-	-	-	-	(96)	-	(3)	-	(90)	-	-	-	-
All other debtor professionals	-	(25)	-	-	-	-	-	-	(19)	-	-	-	-	-	-	-	-	(3)	-	(31)	-	-	-	(8)
Subtotal payments to Debtor professionals	-	(25)	-	-	(258)	(57)	(59)	(122)	(88)	(307)	(61)	(380)	(516)	(1,139)	(49)	(355)	(213)	(1,065)	(36)	(295)	(166)	(1,036)	(41)	(8)
Subtract: Payments to Unsecured Creditors' Committee professionals																								
Unsecured Creditors' Committee lead counsel	-	-	-	-	-	-	-	-	-	-	(244)	-	-	-	(159)	-	-	-	(119)	-	-	-	-	-
Unsecured Creditors' Committee local counsel	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Unsecured Creditors' Committee financial advisor	-	-	-	-	-	-	-	-	-	-	(63)	-	-	-	-	-	(48)	-	-	-	-	(51)	-	-
All other Unsecured Creditors' Committee professionals	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Subtotal payments to Unsecured Creditors' Committee professionals	-	-	-	-	-	-	-	-	-	-	(244)	(63)	-	-	(159)	-	(48)	-	(119)	-	-	(51)	-	-
Subtotal retainers applied to Debtor-professional accruals	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Debtor lead counsel	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Debtor local counsel	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Financial advisor	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Investment banker	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Claims agent	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
All other debtor professionals	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Subtotal retainers applied to Debtor-professional accruals	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
<b>Total payments</b>	<b>-</b>	<b>(25)</b>	<b>(25)</b>	<b>(25)</b>	<b>(258)</b>	<b>(57)</b>	<b>(59)</b>	<b>(122)</b>	<b>(88)</b>	<b>(307)</b>	<b>(305)</b>	<b>(444)</b>	<b>(516)</b>	<b>(1,139)</b>	<b>(208)</b>	<b>(355)</b>	<b>(261)</b>	<b>(1,065)</b>	<b>(156)</b>	<b>(295)</b>	<b>(166)</b>	<b>(1,087)</b>	<b>(41)</b>	<b>(23)</b>
<b>ENDING BALANCE</b>	<b>795</b>	<b>1,455</b>	<b>1,941</b>	<b>2,450</b>	<b>2,698</b>	<b>3,166</b>	<b>3,799</b>	<b>4,213</b>	<b>4,646</b>	<b>4,959</b>	<b>5,285</b>	<b>5,328</b>	<b>5,309</b>	<b>4,770</b>	<b>4,966</b>	<b>5,145</b>	<b>5,295</b>	<b>4,661</b>	<b>4,879</b>	<b>5,109</b>	<b>5,306</b>	<b>4,585</b>	<b>4,919</b>	<b>5,122</b>



REVEL AC, INC., ET AL  
 Calculation of Debtor and Unsecured Creditors' Committee professional-fee reserve

	Actual 12/14	1 12/21	2 12/28	3 1/4	4 1/11	5 1/18	6 1/25	7 2/1	8 2/8	Accrued and unpaid	TOTAL 6/29 to 2/8
<b>Beginning balance</b>	5,122	4,307	4,290	3,711	3,743	4,148	4,341	4,479	4,736	3,829	-
Add: Accruals for Debtor professionals											
Debtor lead counsel	305	305	305	135	135	135	135	135	130	-	8,602
Debtor local counsel	35	35	35	18	18	18	18	18	22	-	1,458
Financial advisor	34	31	17	18	54	34	36	31	31	-	1,542
Investment banker	157	-	-	157	-	-	-	-	157	-	1,337
Claims agent	35	35	35	35	35	35	35	35	35	-	888
All other debtor professionals	-	-	18	-	-	-	-	30	-	-	362
Subtotal accruals for Debtor professionals	565	406	409	206	398	221	224	269	374	-	14,188
Add: Accruals for Unsecured Creditors' Committee professionals											
Unsecured Creditors' Committee lead counsel	21	21	21	25	25	25	25	25	25	-	1,209
Unsecured Creditors' Committee local counsel	-	-	-	-	-	-	-	-	-	-	-
Unsecured Creditors' Committee financial advisor	-	-	-	-	-	-	-	-	-	-	202
All other Unsecured Creditors' Committee professionals	-	-	-	-	-	-	-	-	-	-	-
Subtotal accruals for Unsecured Creditors' Committee professionals	21	21	21	25	25	25	25	25	25	-	1,411
<b>Total accruals</b>	<b>586</b>	<b>427</b>	<b>430</b>	<b>231</b>	<b>423</b>	<b>246</b>	<b>249</b>	<b>294</b>	<b>399</b>	<b>-</b>	<b>15,599</b>
Subtract: Payments to Debtor professionals											
Debtor lead counsel	(869)	-	(969)	-	-	-	-	-	(760)	(2,442)	(8,602)
Debtor local counsel	(170)	(149)	-	-	-	-	-	-	(120)	(357)	(1,458)
Financial advisor	(69)	(34)	(31)	(17)	(18)	(34)	(34)	(36)	(31)	29	(1,482)
Investment banker	(90)	(152)	-	-	-	-	-	-	(138)	(531)	(1,337)
Claims agent	-	(110)	-	(72)	-	-	-	-	(40)	(200)	(878)
All other debtor professionals	(37)	-	(8)	-	-	(78)	-	-	(50)	(30)	(362)
Subtotal payments to Debtor professionals	(1,234)	(445)	(1,009)	(89)	(18)	(34)	(112)	(36)	(1,238)	(3,530)	(14,118)
Subtract: Payments to Unsecured Creditors' Committee professionals											
Unsecured Creditors' Committee lead counsel	(126)	-	-	(110)	-	-	-	-	(68)	(229)	(1,209)
Unsecured Creditors' Committee local counsel	-	-	-	-	-	-	-	-	-	-	-
Unsecured Creditors' Committee financial advisor	(40)	-	-	-	-	-	-	-	-	(0)	(202)
All other Unsecured Creditors' Committee professionals	-	-	-	-	-	-	-	-	-	-	-
Subtotal payments to Unsecured Creditors' Committee professionals	(166)	-	-	(110)	-	-	-	-	(68)	(229)	(1,411)
Subtract: Retainers applied to Debtor-professional accruals											
Debtor lead counsel	-	-	-	-	-	-	-	-	-	-	-
Debtor local counsel	-	-	-	-	-	-	-	-	-	-	-
Financial advisor	-	-	-	-	-	-	-	-	-	-	-
Investment banker	-	-	-	-	-	-	-	-	-	-	(60)
Claims agent	-	-	-	-	-	-	-	-	-	-	(10)
All other debtor professionals	-	-	-	-	-	-	-	-	-	-	(70)
Subtotal retainers applied to Debtor-professional accruals	-	-	-	-	-	-	-	-	-	-	(70)
<b>Total payments</b>	<b>(1,400)</b>	<b>(445)</b>	<b>(1,009)</b>	<b>(199)</b>	<b>(18)</b>	<b>(34)</b>	<b>(112)</b>	<b>(36)</b>	<b>(1,307)</b>	<b>(3,829)</b>	<b>(15,599)</b>
<b>ENDING BALANCE</b>	<b>4,307</b>	<b>4,290</b>	<b>3,711</b>	<b>3,743</b>	<b>4,148</b>	<b>4,341</b>	<b>4,479</b>	<b>4,736</b>	<b>3,829</b>	<b>0</b>	<b>(0)</b>

EXHIBIT C  
[WIND-DOWN BUDGET]

**REVEL AC, INC., ET AL**  
**Wind-down budget after §363 sale by activity and responsible party**<sup>1</sup>

Task	Responsible party							TOTAL
	CRO	Company	Debtor counsel	Lender counsel	Claims agent	UCC counsel and advisors	Accounting firm	
Wind-down activities (9 weeks)								
Monthly reporting, cash management and analytical support		468,442			225,000			468,442
Case management, debtor	254,571		558,000					1,037,571
Case management, other parties				225,000		225,000		450,000
Fee payments to U.S. Trustee							90,000	90,000
Oversight and preparation of final tax returns						75,000		75,000
<b>Subtotal, wind-down activities (9 weeks)</b>	<b>254,571</b>	<b>468,442</b>	<b>558,000</b>	<b>225,000</b>	<b>225,000</b>	<b>75,000</b>	<b>90,000</b>	<b>2,121,013</b>
Transaction expenses								
Investment banker transaction fee, net <sup>2</sup>								1,400,000
KEIP								500,000
<b>Subtotal, transaction expenses</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>1,900,000</b>
Potential administrative claims								
Sales and use tax <sup>3</sup>								1,808,350
Other taxes and/or estimated priority claims <sup>4,5</sup>								1,000,000
<b>Subtotal, potential administrative claims</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>2,808,350</b>
<b>TOTAL WIND-DOWN BUDGET</b>	<b>\$ 254,571</b>	<b>\$ 468,442</b>	<b>\$ 558,000</b>	<b>\$ 225,000</b>	<b>\$ 225,000</b>	<b>\$ 75,000</b>	<b>\$ 75,000</b>	<b>\$ 6,829,363</b>

1. Per the term sheet currently under discussion between the DIP lender and the Unsecured Creditors' Committee, this budget does not include any proposed settlement funds.

2. Transaction fee of \$2.0MM is net of monthly fees of \$150,000 for each of Oct'14 through Jan'15 per the engagement letter

3. Estimated amount based on claim originally filed in 2014.

4. Excludes accrued and unpaid administrative claims shown in the DIP budget, which are to be paid using the Debtors' final draw from the DIP loan upon transfer of the assets

5. Excludes certain asserted and potentially allowed administrative claims not currently in the DIP budget, including ACR and the amenity tenants.

EXHIBIT D  
[AMENDMENTS TO THE DIP CREDIT AGREEMENT]

~~EXECUTION VERSION~~ [[Conformed to reflect first amendment dated January 10, 2015, together with amendments effected through the Interim DIP Orders and additional amendments to be effected pursuant to the Final DIP Order]

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**DEBTOR-IN-POSSESSION CREDIT AGREEMENT**

**dated as of June 20, 2014**

**among**

**REVEL AC, INC.,  
a Debtor and Debtor-in-Possession under Chapter 11 of the Bankruptcy Code,  
as the Borrower,**

**THE GUARANTORS PARTY HERETO,  
each a Debtor and Debtor-in-Possession under Chapter 11 of the Bankruptcy Code,  
as Guarantors,**

**THE LENDERS PARTY HERETO,**

**WELLS FARGO BANK, N.A.,  
as Administrative Agent and Collateral Agent and**

**WELLS FARGO BANK, N.A., as Issuing Bank**

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**WELLS FARGO PRINCIPAL LENDING, LLC,  
as Sole Lead Arranger and Sole Bookrunner**

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3.05(e)	Coverage Ratio Properties
3.06(b)	Trademarks
3.06(c)	Patents
3.06(d)	Copyrights
3.06(e)	Licenses
3.07(a)	Subsidiaries
3.07(c)	Organizational Chart
3.08	Litigation
3.18	Environmental Matters
3.20	Permits
5.04(a)	Insurance
6.01(c)	Existing Indebtedness
6.02(b)	Existing Liens Arising by Operation of Law
6.02(f)	Existing Liens
6.17	Existing Negative Pledges
8.01	Sale Transaction Milestones

EXHIBITS:

A	(Reserved)
B	Form of Assignment and Assumption
C	Form of Borrowing Request
D	Approved Budget
E	(Reserved)
F	(Reserved)
G	Form of Interest Election Request
H	(Reserved)
I	Form of Note
J	(Reserved)
K	Form of Tax Compliance Certificate
L	Form of Cash Flow Forecast
M	Form of Interim Order

**DEBTOR-IN-POSSESSION CREDIT AGREEMENT** (this "Agreement") dated as of June 20, 2014 among REVEL AC, INC., a Delaware corporation and a debtor and debtor-in-possession (the "Borrower") in a case pending under chapter 11 of the Bankruptcy Code (such term and each other capitalized term used but not defined herein having the meaning given to it in Article I), the Guarantors, the Lenders, and **WELLS FARGO BANK, N.A.**, as administrative agent (in such capacity, the "Administrative Agent"), Collateral Agent and an Issuing Bank.

WITNESSETH:

**WHEREAS**, on June 19, 2014 (the "Filing Date"), the Borrower and each of the Guarantors filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the District of New Jersey (such court, together with any other court having competent jurisdiction over the Cases from time to time, the "Bankruptcy Court") and commenced cases numbered 14-22654, 14-22655, 14-22658, 14-22659, 14-22661 and 14-22662 respectively (each, a "Case," and, collectively, the "Cases"), and have continued in the possession and operation of their assets and in the management of their businesses pursuant to sections 1107 and 1108 of the Bankruptcy Code;

**WHEREAS**, the Borrower has requested the Lenders to extend credit in the form of Loans and Letters of Credit at any time and from time to time during the Commitment Period in an aggregate principal amount at any time outstanding not to exceed \$125,000,000; and

**WHEREAS**, the Lenders are willing to extend such credit to the Borrower, and each Issuing Bank is willing to issue Letters of Credit for the account of the Borrower and its Subsidiaries, on the terms and subject to the conditions set forth herein.

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

**ARTICLE I**

**DEFINITIONS**

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

"AC Property Co" shall mean Revel Atlantic City, LLC, a New Jersey limited liability company.

"Acceptable Chapter 11 Plan" shall mean a Chapter 11 Plan that is in form and substance reasonably acceptable to the Agents, the Issuing Bank and the Required Lenders; provided, that any such plan provides for, among other things, releases of (and indemnity for) any and all claims any Loan Party has or may have against the Agents, the Issuing Bank, the Lenders, the administrative and collateral agents under the Prepetition First-Lien Credit Agreement or the Prepetition First-Lien Credit Agreement Lenders and the termination of the Commitments and the payment in full in cash of the Obligations outstanding under the Loan Documents and Cash Collateralization of each Letter of Credit in an amount not less than the Minimum Collateral Amount, on the Plan Effective Date of such Chapter 11 Plan.

"ADA Laws" shall mean the Americans with Disabilities Act of 1990, as amended and supplemented from time to time, and any state or local laws covering similar issues.

“Adjusted LIBOR Rate” shall mean, with respect to any Eurodollar Borrowing for any Interest Period, the higher of (i) (a) an interest rate per annum (rounded upward, if necessary, to the nearest 1/100th of 1%) determined by the Administrative Agent to be equal to the LIBOR Rate for such Eurodollar Borrowing in effect for such Interest Period divided by (b) 1 minus the Statutory Reserves (if any) for such Eurodollar Borrowing for such Interest Period and (ii) 1.00%.

“Administrative Agent” shall have the meaning assigned to such term in the preamble hereto and includes each other person appointed as the successor pursuant to Article IX.

“Administrative Agent Fee” shall have the meaning assigned to such term in Section 2.06(a) hereof.

“Administrative Questionnaire” shall mean an Administrative Questionnaire in form and substance acceptable to the Administrative Agent.

“Advisors” shall mean (a) counsel to the Agents, the Issuing Bank, the Lenders and their Related Parties, limited to (i) one primary counsel for the Agents (as of the Closing Date, Milbank Tweed Hadley & McCloy LLP), (ii) one gaming counsel for the Agents and the Lenders, (iii) one counsel to JPMorgan Chase Bank (as of the Closing Date, Cadwalader, Wickersham & Taft LLP) and (iv) to the extent reasonably necessary or advisable, local counsel in connection with the reorganization of the Loan Parties or otherwise and (b) any financial advisors, investment bankers and other specialty consultants retained by the Agents and counsel for the Agents.

“Affiliate” shall mean, when used with respect to a specified person, another person that directly, or indirectly through one or more intermediaries, Controls or is Controlled by or is under common Control with the person specified; provided, however, that, for purposes of Section 6.09, the term “Affiliate” shall also include any person that directly or indirectly owns more than 15% of any class of Equity Interests having ordinary voting power for the election of directors (or persons performing similar functions) of the person specified.

“Agents” shall mean the Administrative Agent and the Collateral Agent; and “Agent” shall mean any of them.

“Agreement” shall have the meaning assigned to such term in the preamble hereto.

“Alternate Base Rate” shall mean, for any day, a fluctuating rate per annum (rounded upward, if necessary, to the nearest 1/100th of 1%) equal to the highest of (a) the Base Rate in effect on such day and (b) the Federal Funds Effective Rate in effect on such day *plus* 0.50% and (c) the Adjusted LIBOR Rate for an Interest Period of one month beginning on such day (or if such day is not a Business Day, on the immediately preceding Business Day) *plus* 100 basis points. If the Administrative Agent shall have determined (which determination shall be conclusive absent manifest error) that it is unable to ascertain the Federal Funds Effective Rate for any reason, including the inability or failure of the Administrative Agent to obtain sufficient quotations in accordance with the terms of the definition thereof, the Alternate Base Rate shall be determined without regard to clause (b) of the preceding sentence until the circumstances giving rise to such inability no longer exist. Any change in the Alternate Base Rate due to a change in the Base Rate or the Federal Funds Effective Rate shall be effective on the effective date of such change in the Base Rate or the Federal Funds Effective Rate, respectively.

“Anti-Corruption Laws” shall mean all laws, rules, and regulations of any jurisdiction applicable to the Borrower or any of its Subsidiaries or Affiliates from time to time concerning or relating to bribery or corruption.

“Applicable Margin” shall mean a percentage per annum equal to 6.00% with respect to each Loan.

“Applicable Percentage” shall mean, at any time, with respect to any Lender, (a) with respect to the JPM Roll-Up Facility, such Lender’s JPM Roll-Up Commitment Percentage, (b) with respect to the WFB Roll-Up Facility, such Lender’s WFB Roll-Up Commitment Percentage and (c) with respect to the NM Facility, such Lender’s NM Commitment Percentage.

“Appropriate Lender” means, at any time, (a) with respect to the JPM Roll-Up Facility, a Lender that has a JPM Roll-Up Commitment or an outstanding JPM Roll-Up Borrowing at such time, (b) with respect to the WFB Roll-Up Facility, a Lender that has a WFB Roll-Up Commitment or an outstanding WFB Roll-Up Borrowing at such time and (c) with respect to the NM Facility, a Lender that has a NM Commitment or an outstanding NM Borrowing at such time.

“Approved APA” shall mean an asset purchase or other similar agreement for the sale or disposition of all or substantially all of the assets of the Loan Parties, taken as a whole, entered into with the winning bidder pursuant to an auction conducted in accordance with the Bidding Procedures Order, that is in form and substance reasonably acceptable to the Agents, the Issuing Bank and the Required Lenders.

“Approved Budget” shall mean the Loan Parties’ budget attached hereto as Exhibit D, setting forth in reasonable detail the receipts and disbursements of the Loan Parties on a weekly basis from the Filing Date through and including September 21, 2014, as such budget may be amended or modified from time to time by the Borrower provided that the Required Lenders shall have provided prior written consent to any such amendment or modification and in no event shall the Approved Budget show the NM Commitment as more than the Interim Availability Amount prior to the Final Order Entry Date, or greater than the NM Commitment after the Final Order Entry Date and, if at any time after September 21, 2014, there is not an Approved Budget, the Approved Budget shall be zero.

“Approved Fund” shall mean, with respect to any Lender or Eligible Assignee, any Fund that is administered or managed by, or is served as an investment advisor by, (a) such Lender or Eligible Assignee, (b) an Affiliate of such Lender or Eligible Assignee or (c) an entity or an Affiliate of an entity that administers or manages, or is served as an investment advisor by, such Lender or Eligible Assignee.

“Arranger” shall mean Wells Fargo Principal Lending, LLC, as sole lead arranger.

“Asset Sale” shall mean (a) any conveyance, sale, lease, sublease, assignment, transfer or other disposition (including by way of merger or consolidation and including any Sale and Leaseback Transaction) of any property excluding (i) sales or dispositions of inventory, in the ordinary course of business, (ii) assignments and dispositions of cash and cash equivalents and (iii) issuances or sales of Equity Interests described in the following clause (b) and (b) any issuance or sale of any Equity Interests of any Subsidiary of the Borrower, to any person other than (i) the Borrower, (ii) any Subsidiary Guarantor or (iii) other than for purposes of Section 6.06, any other Subsidiary.

“Assignment and Assumption” shall mean an assignment and assumption entered into by a Lender and an Eligible Assignee (with the consent of any party whose consent is required by Section 10.04(b)), and accepted by the Administrative Agent, in substantially the form of Exhibit B or any other form approved by the Administrative Agent.

“Attributable Indebtedness” shall mean, when used with respect to any Sale and Leaseback Transaction, as at the time of determination, (i) to the extent accounted for as a capitalized

lease, the amount of the associated Capital Lease Obligations and (ii) to the extent not accounted for as a capitalized lease, the present value (discounted at a rate equivalent to the Borrower's then current weighted average cost of funds for borrowed money as at the time of determination, compounded on a semi-annual basis) of the total obligations of the lessee for rental payments during the remaining term of the lease included in any such Sale and Leaseback Transaction.

“Avoidance Actions” shall mean the Loan Parties' claims and causes of action under sections 502(d), 544, 545, 547, 548, 549, 550 or 553 of the Bankruptcy Code and any other avoidance actions under the Bankruptcy Code and the proceeds thereof and property received thereby whether by judgment, settlement, or otherwise.

“Bankruptcy Code” shall mean The Bankruptcy Reform Act of 1978, as heretofore and hereafter amended, and codified as 11 U.S.C. Section 101 et seq.

“Bankruptcy Court” shall have the meaning assigned in the Recitals hereto.

“Base Rate” shall mean, for any day, a rate per annum that is equal to the Administrative Agent's prime rate from time to time; each change in the Base Rate shall be effective on the date such change is effective. The corporate prime rate is not necessarily the lowest rate charged by the Administrative Agent to its customers.

“Bidding Procedures Order” shall mean the Bankruptcy Court order, in form and substance reasonably satisfactory to the Agents, the Issuing Bank and the Required Lenders, in connection with a motion to sell all or substantially all of the Loan Parties' assets, among other things, establishing certain bidding procedures, a date by which bids must be submitted by bidders and procedures for an auction process.

“Board” shall mean the Board of Governors of the Federal Reserve System of the United States (or any successor).

“Board of Directors” shall mean, with respect to any person, (i) in the case of any corporation, the board of directors of such person, (ii) in the case of any limited liability company, the sole member, the sole manager or the board of managers of such person, (iii) in the case of any partnership, the Board of Directors of the general partner of such person and (iv) in any other case, the functional equivalent of the foregoing.

“Bookrunner” shall mean Wells Fargo Principal Lending, LLC, as sole bookrunner.

“Borrower” shall have the meaning assigned to such term in the preamble hereto.

“Borrowing” shall mean Loans of the same Class made or continued on the same date and as to which a single Interest Period is in effect.

“Borrowing Request” shall mean a request by the Borrower in accordance with the terms of Section 2.03 and substantially in the form of Exhibit C or such other form as shall be approved by the Administrative Agent.

“Boutique Hotel Lease” shall mean the lease of a portion of the Project to persons who, either directly or indirectly or through Affiliates of such persons, intend to operate or manage a boutique hotel within such portion of the Project.

“Boutique Hotel Up Front Lease Proceeds” shall mean with respect to a Boutique Hotel Lease, the cash proceeds received by the Borrower or any of its Subsidiaries as an upfront payment in consideration for the entering into of the Boutique Hotel Lease, and not as ongoing lease payments, and which for the avoidance of doubt, shall not include any payments received after the opening of any boutique hotel, net of (i) selling or leasing expenses (including reasonable brokers’ or bankers’ fees or commissions, reasonable incentive bonuses paid to officers and employees, legal, accounting and other professional and transactional fees, transfer and similar taxes and the Borrower’s good faith estimate of income taxes actually paid or payable in connection with such lease including any taxes payable upon the repatriation of any such proceeds); (ii) amounts provided as a reserve, in accordance with GAAP, against (x) any liabilities under any indemnification obligations associated with such Boutique Hotel Lease or (y) any other liabilities retained by the Borrower or any of its Subsidiaries associated with the properties leased in such Boutique Hotel Lease (provided that, to the extent and at the time any such amounts are released from such reserve, such amounts shall constitute Boutique Hotel Up Front Lease Proceeds); (iii) the Borrower’s good faith estimate of payments required to be made within 180 days of such Boutique Hotel Lease with respect to unassumed liabilities relating to the properties sold or leased (provided that, to the extent such net cash proceeds are not used to make payments in respect of such unassumed liabilities within 180 days of the entering into of such Boutique Hotel Lease, such cash proceeds shall constitute Boutique Hotel Up Front Lease Proceeds); (iv) the principal amount, premium or penalty, if any, interest and other amounts on any Indebtedness which is secured by a Lien on the properties leased in such Boutique Hotel Lease (so long as such Lien was permitted to encumber such properties under the Loan Documents at the time of such sale) and which is repaid with such proceeds (other than any such Indebtedness assumed by the purchaser of such properties); and (v) all cash costs incurred or to be incurred (as reasonably estimated by the Borrower) by the Borrower or any of its Subsidiaries in connection with or related to the design, development, construction, equipping and opening of the boutique hotel associated with the Boutique Hotel Lease, including any such costs relating to modifications to be made to portions of the Project other than that portion to be operated as a boutique hotel, in order to facilitate the use, operation, construction or development of such boutique hotel (all such costs referenced in this clause (v), the “Boutique Hotel Construction Costs”).

“Buffer Property” shall mean the Real Property described on Schedule 1.01(a).

“Business Day” shall mean any day other than a Saturday, Sunday or other day on which banks in New York City are authorized or required by law to close; provided, however, that when used in connection with a Eurodollar Loan, the term “Business Day” shall also exclude any day on which banks are not open for dealings in dollar deposits in the London interbank market.

“Cage Cash” shall mean cash that is located and maintained on-site at the Project required to be maintained by the provisions of applicable Gaming Laws to satisfy minimum bankroll requirements, mandatory game security reserves, allowances for redemption of casino chips and tokens or payment of winning wagers to gaming patrons.

“Capital Expenditure” shall mean with respect to any person for any period, without duplication, the aggregate amounts that would be reflected as additions to property, plant or equipment on a consolidated balance sheet of such person and its Subsidiaries in accordance with GAAP, but excluding (i) amounts for replacements, substitutions, restorations, acquisitions or repairs of fixed assets, capital assets or equipment in each case to the extent made with insurance or condemnation proceeds resulting from a Casualty Event or with proceeds of an Asset Sale, (ii) the purchase price of property acquired in ordinary course trade-ins to the extent that the gross amount of such purchase price is reduced by the credit granted by the seller of such equipment for the equipment being traded in at such time, (iii) expenditures that constitute any part of consolidated lease expense or arise out of a sale leaseback transaction permitted hereunder, (iv) expenditures that are accounted for as capital expenditures by the

Borrower or any of its Subsidiaries and that actually are paid for, or reimbursed to the Borrower or any of its Subsidiaries in cash or cash equivalents, by a person other than the Borrower or any of its Subsidiaries and for which neither the Borrower nor any of its Subsidiaries has liability, (v) the book value of any asset owned by the Borrower or any of its Subsidiaries prior to or during such period as a result of such person reusing or beginning to reuse such asset during such period without a corresponding expenditure actually having been made in such period, (vi) expenditures that constitute (x) acquisitions permitted under Section 6.04, including additions to plant, property or equipment acquired as part of a purchase of an ongoing business pursuant to such acquisition or transaction expenses constituting transition capital expenditures in connection with such acquisition or (y) other Investments permitted under Section 6.04 constituting an acquisition of a person, business unit or division or substantially all of a person's assets, (vii) expenditures financed with the net cash proceeds of Indebtedness permitted to be incurred under Section 6.01(e) or (o), (viii) expenditures financed with net cash proceeds received by the Borrower from a contribution to its common equity capital or the issuance of its Equity Interests (and identified at the time of such contribution or issuance as being for the purpose of expenditures referred to above) and (ix) interest or labor costs capitalized in accordance with GAAP during such period or reflected as additions to property, plant or equipment in the consolidated balance sheet of the Borrower and its Subsidiaries. For purposes of this definition, the purchase price of equipment or other fixed assets that are purchased simultaneously with the trade-in of existing assets or with insurance proceeds shall be included in Capital Expenditures only to the extent of the gross amount by which such purchase price exceeds the credit granted by the seller of such assets for the assets being traded in at such time or the amount of such insurance proceeds, as the case may be.

“Capital Lease Obligations” of any person shall mean the obligations of such person to pay rent or other amounts under any lease of (or other arrangement conveying the right to use) real or personal property, or a combination thereof, which obligations are required to be classified and accounted for as capital leases on a balance sheet of such person under GAAP, and the amount of such obligations shall be the capitalized amount thereof determined in accordance with GAAP; provided that, notwithstanding the foregoing, the obligations of the Loan Parties under the Energy Services Agreement shall not, for purposes of the Loan Documents, constitute Capital Lease Obligations.

“Carve-Out” shall have the meaning assigned to such term in the Orders.

“Case” and “Cases” shall each have the meaning assigned in the Recitals hereto.

“Cash” shall mean money, currency or a credit balance in any demand or Cash Account.

“Cash Account” shall mean a demand, time, savings, passbook or like account with a bank, savings and loan association, credit union or like organization, other than an account evidenced by a negotiable certificate of deposit.

“Cash Collateralize” shall mean, to pledge and deposit with or deliver to the Administrative Agent, for the benefit of one or more of the Issuing Banks or Lenders, as collateral for LC Exposure or obligations of Lenders to fund participations in respect of LC Exposure, cash or deposit account balances or, if the Administrative Agent and each applicable Issuing Bank shall agree in their sole discretion, other credit support, in each case pursuant to documentation in form and substance reasonably satisfactory to the Administrative Agent and each applicable Issuing Bank. “Cash Collateral”, “Cash Collateralized” and “Cash Collateralization” shall each have a meaning correlative to the foregoing and shall include the proceeds of such cash collateral and other credit support.

“Cash Equivalents” shall mean, as to any person, (a) securities issued, or directly, unconditionally and fully guaranteed or insured, by the United States or any agency or instrumentality



thereof (provided that the full faith and credit of the United States is pledged in support thereof) having maturities of not more than 18 months from the date of acquisition by such person; (b) time deposits and certificates of deposit of any Lender (determined at the time of acquisition or deposit) or any commercial bank having, or which is the principal banking subsidiary of a bank holding company organized under the laws of the United States, any state thereof or the District of Columbia having, capital and surplus aggregating in excess of \$500.0 million and a rating of “A” (or such other similar equivalent rating) or higher (determined at the time of acquisition or deposit) by at least one nationally recognized statistical rating organization (as defined in Rule 436 under the Securities Act) with maturities of not more than one year from the date of acquisition by such person; (c) repurchase obligations with a term of not more than 30 days for underlying securities of the types described in clause (a) above entered into with any bank meeting the qualifications specified in clause (b) above (determined at the time of acquisition), which repurchase obligations are secured by a valid perfected security interest in the underlying securities; (d) commercial paper and variable or fixed rate notes issued by an Approved Fund (or by the parent company thereof) (determined at the time of acquisition) or any person incorporated in the United States, in each case rated at least A-1 or the equivalent thereof by Standard & Poor’s Financial Services LLC or at least P-1 or the equivalent thereof by Moody’s Investors Service Inc. (determined at the time of acquisition), and in each case maturing not more than one year after the date of acquisition by such person; (e) marketable direct obligations issued by, or unconditionally guaranteed by, any state, commonwealth or territory of the United States or any political subdivision or taxing authority thereof having one of the two highest rating categories obtainable from either Standard & Poor’s Financial Services LLC or Moody’s Investors Service Inc. (determined at the time of acquisition) and maturities not more than 18 months from the date of acquisition by such person; (f) investments in investment funds, money market funds or mutual funds substantially all of whose assets are comprised of securities of the types described in clauses (a) through (e) above; (g) investments in money market funds governed by Rule 2(a)(7) of the Investment Company Act of 1940, as amended, rated AAA- (or the equivalent thereof) or better by Standard & Poor’s Financial Services LLC or Aaa3 (or the equivalent thereof) or better by Moody’s Investors Service Inc. at the time of issuance; and (h) demand deposit accounts maintained in the ordinary course of business with any commercial bank meeting the qualifications specified in clause (b) above.

“Cash Flow Forecast” shall have the meaning assigned to such term in Section 5.01(h).

“Cash Management Order” shall mean the order of the Bankruptcy Court, in form and substance reasonably satisfactory to the Agents, the Issuing Bank and the Required Lenders, approving the continued use by the Loan Parties of their cash management system, bank accounts, and business forms.

“Casino License” shall mean any and all licenses, approvals and authorizations under the Gaming Laws required by any Gaming Authority and necessary for the ownership (directly or indirectly) of the Project or for the operation of gaming at the Project.

“Casualty Event” shall mean any involuntary loss of title, damage to or any destruction of, or any condemnation or other Taking (including by any Governmental Authority) of, any property of the Borrower or any of its Subsidiaries. “Casualty Event” shall include but not be limited to Events of Eminent Domain.

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

“Change in Control” shall mean the occurrence of any of the following:

(1) the Permitted Investors, collectively, shall cease to own and control, of record and beneficially, directly or indirectly, more than 50% of the total voting power of the Voting Stock of the Borrower (determined on a fully diluted basis);

(2) the board of directors of the Borrower shall cease to consist of a majority of Continuing Directors; or

(3) the Borrower shall cease to own and control, of record and beneficially, directly or indirectly, 100% of each class of outstanding Equity Interest of each of its Subsidiaries free and clear of all Liens (except Liens created by the Security Documents or otherwise permitted by Section 6.02).

For purposes of this definition, (i) a person shall not be deemed to have beneficial ownership of Equity Interests subject to a stock purchase agreement, merger agreement or similar agreement until the consummation of the transactions contemplated by such agreement and (ii) the appointment of a chief restructuring officer shall not constitute a Change of Control.

“Change in Law” shall mean the occurrence, after the date of this Agreement, of any of the following: (a) the adoption or taking into effect of any law, treaty, order, policy, rule or regulation, (b) any change in any law, treaty, order, policy, rule or regulation or in the administration, interpretation or application thereof by any Governmental Authority or (c) the making or issuance of any request, guideline or directive (whether or not having the force of law) by any Governmental Authority; provided that notwithstanding anything herein to the contrary, (x) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, regulations, guidelines or directives thereunder or issued in connection therewith and (y) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed to be a “Change in Law,” regardless of the date enacted, adopted or issued.

“Chapter 11 Plan” shall mean a chapter 11 plan of the Loan Parties in the Cases.

“Charges” shall have the meaning assigned to such term in Section 10.14.

“Class” when used in reference to any Loan or Borrowing, refers to whether such Loan, or the Loans comprising such Borrowing, is a JPM Roll-Up Borrowing, WFB Roll-Up Borrowing or NM Loan and, when used in reference to any Commitment, refers to whether such Commitment is a JPM Roll-Up Commitment, WFB Roll-Up Commitment or NM Commitment.

“Closing Date” shall mean the first date following the Interim Order Entry Date on which the conditions precedent set forth in Sections 4.01 and 4.03 shall have been satisfied or waived in accordance with Section 10.02 (which in no event shall be more than three (3) Business Days following the Interim Order Entry Date (or such later date as the Administrative Agent and the Required Lenders may agree in their sole discretion)).

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

“Collateral” shall mean, collectively, all of the property subject to the grant of a Lien pursuant to Section 2.22 hereof and all of the Security Agreement Collateral, the Mortgaged Property and all other property of whatever kind and nature subject or purported to be subject from time to time to a Lien under this Agreement, any Security Document or the Orders (including, ~~(i) all of the rights of any Loan Party under any Approved APA and (ii) following the entry of the Final Order, the proceeds of~~

~~Avoidance Actions~~); provided; that “Collateral” shall not in any event include (i) any rights of the Loan Parties under any Approved APA pursuant to which the Lenders or their affiliates are purchasers, or any products or proceeds thereof, or (ii) any Excluded Property (provided that, if and when any property shall cease to be Excluded Property, such property shall be deemed automatically from such time to constitute Collateral).

“Collateral Agent” shall mean Wells Fargo Bank, in its capacity as collateral agent under the Loan Documents for the benefit of the Secured Parties, as the context may require and includes each other person appointed as the successor pursuant to Article IX.

“Commitment Period” shall mean the period from and including the Closing Date to but excluding the Commitment Termination Date.

“Commitment Termination Date” shall mean the earliest to occur of (a) the Maturity Date and (b) the date on which the Commitments shall have been reduced to zero pursuant to Section 2.08(b).

“Commitments” shall mean the NM Commitment, JPM Roll-Up Commitment and the WFB Roll-Up Commitment.

“Communications” shall have the meaning assigned to such term in Section 10.01(d).

“Construction Management Agreement” shall mean that certain Construction Management Agreement between REG and the Construction Manager dated April 5, 2007, together with all riders, addenda and other instruments referred to therein, as amended, modified or supplemented from time to time.

“Construction Manager” shall mean Tishman Construction Corporation of New Jersey.

“Construction Manager Litigation Proceeds” shall mean the actual net cash proceeds received by the Borrower or any of its Subsidiaries from or on behalf of the Construction Manager as damages or in settlement of claims arising from or in connection with disputes between the Borrower and its Subsidiaries and the Construction Manager, net of (i) legal, accounting and other professional fees, (ii) taxes paid or payable in connection therewith, (iii) amounts reserved from such amount for settlement of claims or other actual or potential liabilities (provided that, to the extent and at any time such amounts are released from such reserve such amounts shall constitute Construction Manager Litigation Proceeds) and (iv) amounts previously paid by the Borrower and its Subsidiaries constituting disputed amounts under the Construction Management Agreement.

“Contingent Obligation” shall mean, as to any person, any obligation, agreement, understanding or arrangement of such person guaranteeing or intended to guarantee any Indebtedness (“primary obligations”) of any other person (the “primary obligor”) in any manner, whether directly or indirectly, including any obligation of such person, whether or not contingent, (a) to purchase any such primary obligation or any property constituting direct or indirect security therefor; (b) to advance or supply funds (i) for the purchase or payment of any such primary obligation or (ii) to maintain working capital or equity capital of the primary obligor or otherwise to maintain the net worth or solvency of the primary obligor; (c) to purchase property, securities or services primarily for the purpose of assuring the owner of any such primary obligation of the ability of the primary obligor to make payment of such primary obligation; or (d) otherwise to assure or hold harmless the holder of such primary obligation against loss in respect thereof; provided, however, that the term “Contingent Obligation” shall not include endorsements of instruments for deposit or collection in the ordinary course of business or any product warranties. The amount of any Contingent Obligation shall be deemed to be an amount equal to the

stated or determinable amount of the primary obligation in respect of which such Contingent Obligation is made (or, if less, the maximum amount of such primary obligation for which such person may be liable, whether singly or jointly, pursuant to the terms of the instrument evidencing such Contingent Obligation) or, if not stated or determinable, the maximum reasonably anticipated liability in respect thereof (assuming such person is required to perform thereunder) as determined by such person in good faith.

“Continuing Directors” shall mean the directors (or equivalent persons) of the Borrower on the Closing Date and each other director (or equivalent person), if, in each case, such other director’s (or equivalent person’s) nomination for election to the board of directors (or equivalent governing body) of the Borrower is recommended by at least a majority of the then Continuing Directors.

“Contractual Obligation” shall mean, as to any person, any provision of any security issued by such person or of any agreement, instrument or other contract to which such person is a party or by which it or any of its property is bound.

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

“Control Agreements” shall mean each control agreement (if any) executed and delivered by any Loan Party from time to time pursuant hereto or the Security Agreement.

“Coverage Ratio Properties” shall mean any parcel of real property, excluding the Mortgaged Property, which is included by any owner of the Mortgaged Property or by any Governmental Authority for purposes of determining whether or not the Mortgaged Property complies with any applicable maximum (impervious) lot coverage ratio, it being understood that real property which is Coverage Ratio Property may subsequently cease to be Coverage Ratio Property as a result of a change in the applicable coverage ratio requirements, other action or waiver by any Governmental Authority, or the inclusion of other real property for purposes of determining whether or not the Mortgaged Property complies with any applicable maximum (impervious) lot coverage ratio.

“CRDA” shall mean the Casino Reinvestment Development Authority.

“CRDA Obligations” shall have the meaning assigned to such term in Section 3.25(a).

“Credit Extension” shall mean each of the following: (a) a borrowing of Loans or (b) an issuance of Letters of Credit.

“Creditors Committee Professional Fees” shall have the meaning assigned to such term in Section 3.12(a)

“CUP” shall mean the central utility plant that provides energy, hot water and chilled water to the Project.

“CUP Documents” shall mean the Energy Services Agreement and the CUP Land Lease.

“CUP Easements” shall have the meaning assigned to such term in Section 6.06(m).

“CUP Holder” shall mean ACR Energy Partners, LLC.

“CUP Land Lease” shall mean that certain Lease between the CUP Holder and NB Acquisition LLC, a New Jersey limited liability company, dated as of April 8, 2011.

“Day Club” shall mean a daytime club destination on or near the beach at the Project.

“Declaration of Covenants and Restrictions” shall mean an agreement in such form reasonably satisfactory to the Collateral Agent made by SI LLC.

“Default” shall mean any event, occurrence or condition which is, or upon notice, lapse of time or both would constitute, an Event of Default.

“Default Rate” shall have the meaning assigned to such term in Section 2.07(c).

“DIP Increase Order” shall mean the Sixth Amended Interim Order Pursuant to Sections 361, 362, 363, 364, and 507 of the Bankruptcy Code and Rule 4001 of the Federal Rules of Bankruptcy Procedures (A) Authorizing the Debtors to (I) Obtain Postpetition Financing, (II) Grant Senior Priming Liens and Superpriority Claims to Postpetition Lenders, (III) Use Cash Collateral, and (IV) Provide Adequate Protection to Prepetition Secured Parties, and (B) Prescribe Form and Manner of Notice of and Scheduling Final Hearing [Dkt. No. 1093] entered by the Bankruptcy Court to, among other things, authorize an increase in the amount of NM Commitments, and establish the Tax Borrowing Sub-Commitments, for the purpose of paying property taxes on the Property in accordance with the Tax Settlement Agreement, in form and substance reasonably acceptable to the Lenders.

“Discharge Conditions” with respect to any Facility, (a) the repayment in full in cash of the principal of and interest on (including any interest accruing on or after the commencement of any bankruptcy or insolvency proceeding, whether or not such interest would be or is allowed in such proceeding) all Obligations outstanding under such Facility, (b) payment in full in cash of all other Obligations (other than contingent obligations for which a claim has not yet been made) under such Facility that are due and payable or otherwise accrued and owing at or prior to the time such principal and interest are paid, (c) termination or expiration of all Commitments of any Lender, if any, under such Facility and (d) cancellation, termination or cash collateralization at 103% of the stated amount thereof (in a manner reasonably satisfactory to the Administrative Agent) of all Letters of Credit issued under such Facility or such Letters of Credit are supported by other letters of credit or credit support reasonably satisfactory to the Administrative Agent.

“Disqualified Capital Stock” shall mean any Equity Interest which, by its terms (or by the terms of any security into which it is convertible or for which it is exchangeable), or upon the happening of any event, (a) matures (excluding any maturity as the result of an optional redemption by the issuer thereof) or is mandatorily redeemable (other than solely for Equity Interests which are not otherwise Disqualified Capital Stock), pursuant to a sinking fund obligation or otherwise, or is redeemable at the option of the holder thereof, in whole or in part, on or prior to the 91st day following the Scheduled Maturity Date, (b) is convertible into or exchangeable (unless at the sole option of the issuer thereof) for (i) debt securities or (ii) any Equity Interests referred to in clause (a) above, in each case at any time on or prior to the date that is 91 days after the Scheduled Maturity Date, or (c) contains any repurchase obligation which may come into effect prior to payment in full of all Obligations; provided, however, that any Equity Interests that would not constitute Disqualified Capital Stock but for provisions thereof giving holders thereof (or the holders of any security into or for which such Equity Interests is convertible, exchangeable or exercisable) the right to require the issuer thereof to redeem such Equity Interests upon the occurrence of a change in control or an asset sale occurring prior to the date that is 91 days after the Scheduled Maturity Date shall not constitute Disqualified Capital Stock if such Equity Interests provide

that the issuer thereof will not redeem any such Equity Interests pursuant to such provisions prior to the repayment in full of the Obligations or to the extent such redemption is permitted under this Agreement.

“Disqualification” shall mean, with respect to any person:

(a) the failure of such person if not extended, timely to (i) file pursuant to applicable Gaming Laws any application or waiver request required of such person by any Gaming Authority in connection with any licensing or qualification of such person by reason of the status of such person in connection with the Loan Parties or request designation that the Lender has no status under the Gaming Laws or that the Gaming Authorities will not exercise their discretion to require qualification or (ii) have a finding of failure to cooperate with any Gaming Authority or provide any information or documentation required by any Gaming Authority withdrawn;

(b) the withdrawal by such person (except where requested or permitted by the applicable Gaming Authority) of any such application; or

(c) any final determination by a Gaming Authority pursuant to applicable Gaming Laws (i) that such person is “unsuitable” or disqualified as a lender to the Loan Parties or (ii) denying the issuance to such person of any Casino License required under applicable Gaming Laws to be held by such person as a lender to the Loan Parties.

“Dividend” with respect to any person shall mean that such person has declared or paid a dividend (other than a dividend of Qualified Capital Stock of such person) or returned any equity capital to the holders of its Equity Interests or authorized or made any other distribution, payment or delivery of property (other than Qualified Capital Stock of such person) or cash to the holders of its Equity Interests as such, or redeemed, retired, purchased or otherwise acquired, directly or indirectly, for consideration (other than consideration consisting of Qualified Capital Stock of such person) any of its Equity Interests outstanding (or any options or warrants issued by such person with respect to its Equity Interests), or set aside any funds for any of the foregoing purposes, or shall have permitted any of its Subsidiaries to purchase or otherwise acquire for consideration any of the Equity Interests of such person outstanding (or any options or warrants issued by such person with respect to its Equity Interests). Without limiting the foregoing, “Dividends” with respect to any person shall also include all payments (other than payments in Qualified Capital Stock) made by such person with respect to any stock appreciation rights, plans, equity incentive or achievement plans or any similar plans or setting aside of any funds for the foregoing purposes.

“dollars” or “\$” shall mean lawful money of the United States.

“Eligible Assignee” shall mean (i) a commercial bank organized under the laws of the United States or any state thereof; (ii) a savings and loan association or savings bank organized under the laws of the United States or any state thereof; (iii) a commercial bank organized under the laws of any other country or a political subdivision thereof; provided, that (x) such bank is acting through a branch or agency located in the United States or (y) such bank is organized under the laws of a country that is a member of the Organization for Economic Cooperation and Development or a political subdivision of such country; (iv) any other entity which is an “accredited investor” (as defined in Regulation D under the Securities Act); and (v) any Lender or Approved Fund; provided, that “Eligible Assignee” shall not include (x) the Borrower or any Affiliate of the Borrower (other than a person who is an Affiliate solely because such person owns Voting Stock or other Equity Interests of the Borrower or any of its Subsidiaries) or (y) any person that is subject to a Disqualification.

“Eminent Domain Proceeds” shall mean all cash and cash equivalents received by a Loan Party in respect of any Event of Eminent Domain, net of (a) all direct costs of recovery of such Eminent Domain Proceeds (including legal, accounting, appraisal and insurance adjuster fees and expenses), (b) amounts required to be applied to the repayment of Indebtedness secured by a Permitted Lien (including any penalty, premium or make-whole amounts related thereto) on any asset which is the subject of the Event of Eminent Domain to which such Eminent Domain Proceeds relate and (c) all taxes paid or reasonably estimated to be payable as a result thereof by a Loan Party or any direct or indirect owner of the Borrower (after taking into account any tax credits or deductions and any tax sharing arrangements attributable to the Loan Parties, in each case reducing the amount of taxes so paid or estimated to be payable).

“Employee Benefit Plan” shall mean any “employee benefit plan” as defined in Section 3(3) of ERISA which is sponsored, maintained or contributed to by, or required to be contributed by, any Loan Party or any of its ERISA Affiliates.

“Energy Services Agreement” shall mean the Second Amended and Restated Energy Sales Agreement, dated April 11, 2011, between REG and CUP Holder.

“Environment” shall mean ambient air, indoor air, surface water and groundwater (including potable water, navigable water and wetlands), the land surface or subsurface strata and natural resources.

“Environmental Claim” shall mean any claim, notice, governmental enforcement lien, demand, order, action, suit or proceeding alleging liability or obligation for any investigation, re-remediation, removal, cleanup, response, corrective action, damages to natural resources, personal injury, property damage, punitive damages, fines, penalties or costs resulting from or arising out of (i) the presence, Release or threatened Release of Hazardous Material at any Mortgaged Property or (ii) any violation or alleged violation of any Environmental Law by a Loan Party, and shall include any claim seeking damages, contribution, indemnification, cost recovery, compensation or injunctive relief from a Loan Party resulting from or arising out of the presence, Release or threatened Release of Hazardous Material or alleged injury or threat of injury to public health or safety (as it relates to exposure to Hazardous Materials), or the Environment.

“Environmental Law” shall mean any Laws regulating protection of public health and safety (as it relates to exposure to Hazardous Materials) or the Environment, the Release or threatened Release of Hazardous Materials or Hazardous Materials Activity.

“Environmental Permit” shall mean any Permit required by or from a Governmental Authority under Environmental Law.

“Equity Interest” shall mean, with respect to any person, any and all shares, interests, participations or other equivalents, including membership interests (however designated, whether voting or nonvoting), of equity of such person, including, if such person is a partnership, partnership interests (whether general or limited), and any other interest or participation that confers on a person the right to receive a share of the profits and losses of, or distributions of property of, any such person, whether outstanding on the Closing Date or issued after the Closing Date, but excluding debt convertible or exchangeable into such equity.

“ERGG Agreement” shall mean the Amended and Restated State Economic Redevelopment and Growth Incentive Grant Agreement, dated as of May 20, 2013, by and among Revel Atlantic City, LLC, a New Jersey limited liability company, Revel Entertainment Group, LLC, a

Delaware limited liability company, the New Jersey Economic Development Authority and the Treasurer of The State of New Jersey.

“ERGG Proceeds” shall mean cash proceeds received by the Borrower or REG from the State of New Jersey under the ERGG Agreement.

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

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

“ERISA Event” shall mean (a) any “reportable event,” as defined in Section 4043 of ERISA or the regulations issued thereunder, with respect to a Plan (other than an event for which the 30-day notice period is waived by regulation); (b) with respect to a Plan, the failure to satisfy the minimum funding standard of Section 412 of the Code and Section 302 of ERISA, whether or not waived; (c) the failure to make by its due date a required installment under Section 412(m) of the Code (or Section 430(j) of the Code, as amended by the Pension Protection Act of 2006) with respect to any Plan or the failure to make any required contribution to a Multiemployer Plan; (d) the filing pursuant to Section 412(d) of the Code or Section 303(d) of ERISA (or after the effective date of the Pension Protection Act of 2006, Section 412(c) of the Code and Section 302(c) of ERISA) of an application for a waiver of the minimum funding standard with respect to any Plan; (e) the incurrence by any Loan Party or any of its ERISA Affiliates of any liability under Title IV of ERISA with respect to the termination of any Plan; (f) the receipt by any Loan Party or any of its ERISA Affiliates from the PBGC or a plan administrator of any notice relating to the intention to terminate any Plan or Plans or to appoint a trustee to administer any Plan, or the occurrence of any event or condition which would reasonably be expected to constitute grounds under ERISA for the termination of, or the appointment of a trustee to administer, any Plan; (g) the incurrence by any Loan Party or any of its ERISA Affiliates of any liability with respect to the withdrawal from any Plan or Multiemployer Plan; (h) the receipt by any Loan Party or its ERISA Affiliates of any notice, concerning the imposition of Withdrawal Liability or a determination that a Multiemployer Plan is, or is expected to be, insolvent or in reorganization, within the meaning of Title IV of ERISA; (i) the “substantial cessation of operations” within the meaning of Section 4062(e) of ERISA with respect to a Plan; (j) with respect to any Plan, the imposition of a lien or the posting of a bond or other security pursuant to Section 436(f) of the Code or Section 206(g) of ERISA; and (k) the occurrence of a nonexempt prohibited transaction (within the meaning of Section 4975 of the Code or Section 406 of ERISA) which would reasonably be expected to result in liability to any Loan Party.

“Eurodollar” when used in reference to any Loan or Borrowing, is used when such Loan, or the Loans comprising such Borrowing, are bearing interest at a rate determined by reference to the Adjusted LIBOR Rate.

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

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

“Event of Default” shall have the meaning assigned to such term in Section 8.01.



“Event of Eminent Domain” shall mean, with respect to any property, (a) any compulsory transfer or taking by condemnation, seizure, eminent domain or exercise of a similar power, or transfer under threat of such compulsory transfer or taking or confiscation of such property or the requisition of the use of such property, by any agency, department, authority, commission, board, instrumentality or political subdivision of any state, the United States or another Governmental Authority having jurisdiction or (b) any settlement in lieu of any of the actions described in clause (a) above.

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

“Excluded Property” shall mean (x) any Avoidance Actions and proceeds thereof, and (y) any property over which the creation or granting of a Lien would violate any applicable Gaming Laws.

“Excluded Taxes” shall mean, with respect to any Agent, any Lender or any other recipient of any payment to be made by or on account of any obligation of any Loan Party hereunder or under any other Loan Document, (a) Taxes imposed on or measured by its overall net income (however denominated) and franchise Taxes imposed on it (in lieu of net income taxes) by a jurisdiction (or any political subdivision thereof) as a result of the recipient being organized or having its principal office or, in the case of any Lender, its applicable lending office in such jurisdiction or having any other present or former connection with such jurisdiction (other than a connection deemed to arise solely from such recipient having executed, delivered, become a party to, or performed its obligations or received a payment under, or enforced, or engaged in any other transaction pursuant to this Agreement or any other Loan Document), (b) any Taxes in the nature of the branch profits tax within the meaning of Section 884 of the Code imposed by any jurisdiction described in clause (a), (c) other than an assignee pursuant to a request by any Loan Party under Section 2.16, any U.S. federal withholding tax imposed pursuant to a law in effect (including FATCA) at the time such person becomes a party hereto (or designates a new lending office), except to the extent that such person (or its assignor, if any) was entitled, at the time of designation of a new lending office (or assignment), to receive additional amounts with respect to such withholding tax pursuant to Section 2.15, (d) any withholding tax resulting from a person’s failure to comply with Section 2.15(e) and (e) any taxes imposed under FATCA.

“Existing LC” shall mean letter of credit number TFTS-234767 issued by JPMorgan Chase Bank for the account of the Borrower for the benefit of Companion Property and Casualty with a face amount of \$1,900,000 as of the Closing Date, as such letter of credit may be amended, restated, modified or extended from time to time provided that the outstanding face amount thereof shall not be in excess of the Existing LC Maximum Amount.

“Existing LC Maximum Amount” shall mean, as of any date of determination, an amount equal to \$1,900,000 less the amount drawn under the Existing LC at any time prior to such date.

“Extraordinary Receipts” shall mean (1) actual net cash proceeds received by the Borrower or any of its Subsidiaries in any single occurrence or series of related occurrences (a) as damages or settlement amounts in connection with any Commercial Tort Claims (as defined in the UCC), now or hereafter arising and excluding any of such damages or settlement amounts constituting Special Proceeds, in each case, net of (i) legal, accounting and other professional fees, and taxes paid or payable in connection therewith and (ii) amounts reserved, in accordance with GAAP, from such amount for settlement or payment of claims or other actual or potential liabilities (provided that, to the extent and at any time such amounts are released from such reserve and not applied to such settlement or payment or liabilities, such amounts shall constitute Extraordinary Receipts at such time) or (b) as an upfront payment in consideration for the entering into any joint venture (excluding any such payments constituting Special Proceeds or relating to the Day Club and excluding ongoing lease payments or payments relating to the joint venture or distributions, and which for the avoidance of doubt, shall not include any payments

received after the opening of any such joint venture), net of (i) selling or leasing expenses associated with such joint venture (including reasonable brokers' or bankers' fees or commissions, reasonable incentive bonuses paid to officers and employees, legal, accounting and other professional and transactional fees, transfer and similar taxes and the Borrower's good faith estimate of income taxes actually paid or payable in connection with such upfront payment including any taxes payable upon the repatriation of any such proceeds); (ii) amounts provided as a reserve, in accordance with GAAP, against (x) any liabilities under any indemnification obligations associated with such joint venture or (y) any other liabilities retained by the Borrower or any of its Subsidiaries associated with such joint venture (provided that, to the extent and at the time any such amounts are released from such reserve, such amounts shall constitute Extraordinary Receipts); and (iii) all cash costs incurred or to be incurred (as reasonably estimated by the Borrower) by the Borrower or any of its Subsidiaries in connection with or related to the design, development, construction, equipping and opening of the facilities associated with such joint venture, including any such costs relating to modifications to be made to portions of the Project, in order to facilitate the use, operation, construction or development of such joint venture and (2) actual net cash proceeds received by, or paid to or for the account of, the Borrower or any of its Subsidiaries in any single occurrence or series of related occurrences with respect to tax refunds, net of any amounts required to be paid, as a condition to any such tax refund, on account of taxes secured by a first priority Lien on Collateral by operation of state law.

"Facility" means the JPM Roll-Up Facility, the WFB Roll-Up Facility or the NM Facility, as the context may require.

"FATCA" shall mean Sections 1471 through 1474 of the Code as of the date of this Agreement (or any amended or successor version that is substantively comparable and not materially more onerous to comply with), any current or future regulations or official interpretations thereof and any agreements entered into pursuant to Section 1471(b)(1) of the Code.

"Federal Funds Effective Rate" shall mean, for any day, the weighted average of the rates on overnight federal funds transactions with members of the Federal Reserve System of the United States arranged by federal funds brokers, as published on the next succeeding Business Day by the Federal Reserve Bank of New York, or, if such rate is not so published for any day that is a Business Day, the average of the quotations for the day for such transactions received by the Administrative Agent from three federal funds brokers of recognized standing selected by it.

"Fee Letter" shall mean that certain fee letter, dated as of June 20, 2014 between the Arranger and the Loan Parties, as it may be amended, restated, supplemented or otherwise modified from time to time.

"Fees" shall mean each of the fees under Section 2.06.

"Filing Date" shall have the meaning assigned in the Recitals hereto.

"Final Effective Date" shall mean the first date following the Final Order Entry Date on which the conditions precedent set forth in Sections 4.01, 4.02 and 4.03 shall have been satisfied or waived in accordance with Section 10.02 (which in no event shall be more than three (3) Business Days following the Final Order Entry Date (or such later date as the Administrative Agent and the Required Lenders may agree in their sole discretion)).

"Final Order" shall mean an order of the Bankruptcy Court entered in the Cases, in substantially the form of the Interim Order and in form and substance reasonably satisfactory to the

Agents, the Issuing Bank and the Required Lenders, authorizing and approving on a final basis, among other things, the matters and provisions in the Interim Order and the Roll-Up Borrowings.

“Final Order Entry Date” shall mean the date that the Final Order is entered by the Bankruptcy Court in the Cases.

“Financial Officer” of any person shall mean the chief financial officer, principal accounting officer, treasurer or controller of such person.

“First Day Orders” shall mean all orders entered or to be entered by the Bankruptcy Court granting the relief requested in the motions filed with the Bankruptcy Court on the Filing Date or within five (5) Business Days of the Filing Date or based on motions filed on or about the Filing Date (including, for the avoidance of doubt, the Cash Management Order), which shall each be in form and substance reasonably satisfactory to the Agents and the Required Lenders.

“Flood Insurance Laws” shall mean, collectively, (i) the National Flood Insurance Act of 1968 as now or hereafter in effect or any successor statute thereto, (ii) the Flood Disaster Protection Act of 1973 as now or hereafter in effect or any successor statute thereto, (iii) the National Flood Insurance Reform Act of 1994 as now or hereafter in effect or any successor statute thereto and (iv) the Flood Insurance Reform Act of 2004 as now or hereafter in effect or any successor statute thereto.

“Fund” shall mean any person that is (or will be) engaged in making, purchasing, holding or otherwise investing in commercial loans and similar extensions of credit in the ordinary course of its business.

“GAAP” shall mean generally accepted accounting principles in the United States.

“Gaming Approvals” shall mean, with respect to any action or status by a particular person, any consent, approval or other authorization required for such action or status by such person from a Gaming Authority or under Gaming Laws.

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

“Gaming Facility” shall mean any building or other structure as described within the provisions of N.J.S.A. 5:12-19, including a building or other structure used or expected to be used to enclose space in which a gaming operation is conducted (including any outdoor space where gaming is allowed) and (a) which is wholly owned by a Loan Party or (b) any portion or aspect of which is managed or used, or expected to be managed or used, by a Loan Party.

“Gaming Laws” shall mean all laws, regulations, orders, resolutions, decisions or other rules or rulings pursuant to which any Gaming Authority possesses regulatory, licensing or permit authority over gambling, gaming or related casino activities conducted or to be conducted by the Loan Parties, including, but not limited to, those in connection with material debt transactions and those relating to qualification, waiver or other requirements with respect to the Lenders, the Arranger and the Agents.

“Governmental Authority” shall mean any national, state or local government (whether domestic or foreign), any political subdivision thereof or any other governmental, quasi-governmental,

judicial, public or statutory instrumentality, authority, body, agency, bureau or entity (including the Gaming Authorities, Liquor Authorities, any zoning authority, the FDIC, the Comptroller of the Currency, the Federal Reserve Board, any redevelopment authority, any central bank and any comparable authority), any self-regulatory agency (e.g., FINRA), any entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government or any arbitrator with authority to bind a party at law.

“Guaranteed Obligations” shall have the meaning assigned to such term in Section 7.01.

“Guarantees” shall mean the guarantees issued pursuant to Article VII by the Guarantors.

“Guarantors” shall mean each Subsidiary of the Borrower listed on Schedule 1.01(b), and each other Subsidiary of the Borrower that is or becomes a party to this Agreement pursuant to Section 5.10, each a debtor and debtor-in-possession in a case pending under chapter 11 of the Bankruptcy Code.

“Hazardous Materials” shall mean the following: polychlorinated biphenyls (“PCBs”) or PCB-containing equipment; asbestos or asbestos-containing materials; radon gas, radiation, petroleum, crude oil or any fraction thereof; and any other pollutant, contaminant, or hazardous or toxic chemicals, wastes, materials, or substances, regulated under any Environmental Laws.

“Hazardous Materials Activity” shall mean any manufacture, storage, generation, transportation, processing, treatment, disposal, disposition, abatement, corrective action, response action, removal or remediation of any Hazardous Materials.

“Hedging Agreement” shall mean any swap, cap, collar, forward purchase or similar agreements or arrangements in respect of interest rates either generally or under specific contingencies.

“Hedging Obligations” shall mean obligations under or with respect to Hedging Agreements.

“Improvements” shall mean the improvements, alterations or appurtenances now, or at any time hereafter, located upon, in, under or above the Land or any part thereof.

“Indebtedness” of any person shall mean, without duplication, (a) all obligations of such person for borrowed money; (b) all obligations of such person evidenced by bonds, debentures, notes or similar instruments; (c) all obligations of such person under conditional sale or other title retention agreements relating to property purchased by such person; (d) all obligations of such person issued or assumed as the deferred purchase price of property or services (excluding (i) trade accounts payable and accrued obligations incurred in the ordinary course of business and not overdue by more than 90 days and (ii) earn out obligations which do not constitute a liability on the balance sheet of such person in accordance with GAAP); (e) all Indebtedness of others secured by any Lien on property owned or acquired by such person, whether or not the obligations secured thereby have been assumed, but limited to the lesser of (x) the aggregate principal amount of such Indebtedness and (y) the fair market value of such property; (f) all Capital Lease Obligations of such person; (g) for purposes of Section 8.01(f) only, all Hedging Obligations to the extent required to be reflected on a balance sheet of such person; (h) all Attributable Indebtedness of such person; (i) all obligations of such person for the reimbursement of any obligor in respect of letters of credit, letters of guaranty, bankers’ acceptances and similar credit transactions; and (j) all Contingent Obligations of such person in respect of Indebtedness of others of the kinds referred to in clauses (a) through (i) above; provided that the term “Indebtedness” shall not include (x) deferred or prepaid revenue and (y) purchase price holdbacks in respect of a portion of the purchase price of an asset to satisfy warranty or other unperformed obligations of the seller. The Indebtedness of

any person shall include the Indebtedness of any partnership or joint venture (other than a joint venture that is itself a corporation, limited liability company or limited partnership in which such person is a limited partner) in which such person is a general partner or a joint venturer, unless such Indebtedness is non-recourse to such person. Notwithstanding anything to the contrary contained herein or in any other Loan Document, in no event shall the Energy Services Agreement or the transactions contemplated thereunder, casino "chips" or gaming winnings of customers constitute Indebtedness.

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

"Indemnitee" shall have the meaning assigned to such term in Section 10.03(b).

"Information" shall have the meaning assigned to such term in Section 10.12.

"Insurance Policies" shall mean the insurance policies and coverages required to be maintained by each Loan Party which is an owner, lessee or operator of Mortgaged Property or any part of the Project pursuant to Section 5.04 and all renewals and extensions thereof.

"Insurance Proceeds" shall mean all cash and cash equivalents paid under any casualty insurance policy maintained by a Loan Party (other than payments in respect of business interruption as reasonably determined by the Borrower), net of (a) all costs of recovery of such Insurance Proceeds (including legal, accounting, appraisal and insurance adjuster fees and expenses), (b) all amounts required to be applied to the repayment of Indebtedness secured by a Permitted Lien (including any penalty, premium or make-whole amounts related thereto) on any asset which is the subject of the event to which such Insurance Proceeds relate and (c) all taxes paid or reasonably estimated to be payable as a result thereof, whether by a Loan Party or any direct or indirect owner thereof (after taking into account any tax credits or deductions and any tax sharing arrangements, in each case reducing the amount of taxes so paid or estimated to be payable).

"Insurance Requirements" shall mean, collectively, all material provisions of the Insurance Policies, all material requirements of the issuer of any of the Insurance Policies and all orders, rules, regulations and any other requirements of the National Board of Fire Underwriters (or any other body exercising similar functions) binding upon each Loan Party which is an owner, lessee or operator of Mortgaged Property and applicable to the Mortgaged Property or any use or condition thereof.

"Intellectual Property" shall mean the collective reference to all rights, priorities and privileges relating to intellectual property, whether arising under United States, state, multinational or foreign laws or otherwise, including, without limitation, copyrights, patents, trademarks, service-marks, trade names, technology, know-how and processes, recipes, formulas, trade secrets, or licenses (under which the applicable person is licensor or licensee) relating to any of the foregoing and all rights to sue at law or in equity for any infringement or other impairment thereof, including the right to receive all proceeds and damages therefrom.

"Intellectual Property License Agreements" shall mean those agreements providing for the assignment or license of trademarks and related property from one or more Loan Parties to a Permitted Investor, parent company of the Borrower or Affiliate thereof and the license to one or more Loan Parties of trademarks or related property for use in Atlantic City, New Jersey.

"Intellectual Property Security Agreements" shall mean any Intellectual Property Security Agreement executed and delivered by a Loan Party from time to time, in form and substance reasonably satisfactory to the Collateral Agent.

“Interest Election Request” shall mean a request by the Borrower to continue a Borrowing in accordance with Section 2.09(b), substantially in the form of Exhibit G.

“Interest Payment Date” shall mean (a) with respect to any Eurodollar Loan, the last day of the Interest Period applicable to such Loan and, in the case of a Eurodollar Loan with an Interest Period of more than one month’s duration, each day prior to the last day of such Interest Period that occurs at intervals of one month’s duration after the first day of such Interest Period, (b) with respect to any Eurodollar Borrowing that, pursuant to Section 2.11, becomes a Borrowing that bears interest by reference to the Alternate Base Rate, the last Business Day of each calendar month to occur during any period in which such Loan is outstanding and (c) the Commitment Termination Date.

“Interest Period” shall mean, with respect to any Eurodollar Borrowing, the period commencing on the date of such Borrowing and ending on the numerically corresponding day in the calendar month that is one, two, three or six months thereafter, as the Borrower may elect; provided that (a) if any Interest Period would end on a day other than a Business Day, such Interest Period shall be extended to the next succeeding Business Day unless such next succeeding Business Day would fall in the next calendar month, in which case such Interest Period shall end on the next preceding Business Day, and (b) any Interest Period that commences on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the last calendar month of such Interest Period) shall end on the last Business Day of the last calendar month of such Interest Period. For purposes hereof, the date of a Borrowing initially shall be the date on which such Borrowing is made and thereafter shall be the effective date of the most recent continuation of such Borrowing.

“Interim Availability Amount” shall mean, as of any date of determination, the lesser of (a) the sum of (x) ~~\$23,500,000~~ \$1,000,000 and (b) such lower amount as the Bankruptcy Court may order; provided, that only ~~\$21,600,000~~ \$9,100,000 of such Interim Availability Amount shall be available for NM Borrowings and the other \$1,900,000 shall only be available for a “back to back” Letter of Credit to support, or replace, the Existing LC.

“Interim Order” shall mean an order or orders of the Bankruptcy Court entered in the Cases, substantially in the form of Exhibit M hereto, as such order or orders may be extended, amended, supplemented or modified in a manner reasonably satisfactory to the Agents, the Issuing Bank and the Required Lenders.

“Interim Order Entry Date” shall mean the date on which the Interim Order is entered by the Bankruptcy Court.

“Investigation” shall mean (a) the initiation or prosecution of any claims, causes of action, adversary proceedings, discovery or other litigation against (i) any Agent, the Issuing Bank or any Lender or their respective Related Parties, including with respect to any of the Liens created in connection with the Loan Documents or (ii) the agents, issuing bank or lenders, as applicable, under any of the Prepetition First-Lien Credit Agreement or the Prepetition Second-Lien Credit Agreement or their respective Related Parties, (b) the review or challenge of any Liens granted in connection with the Prepetition First-Lien Credit Agreement or the Prepetition Second-Lien Credit Agreement, or (c) the investigation, initiation or prosecution of claims, causes of action, adversary proceedings or other litigation with respect to Avoidance Actions against any such persons, including but not limited to those that may exist under 11 U.S.C §§ 544, 547, 548 or otherwise.

“Investigation Budget” shall have the meaning assigned to such term in the Orders.

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

“Issuing Bank” shall mean Wells Fargo or such other Lender designated as an Issuing Bank pursuant to Section 2.18.

“JPM Roll-Up Borrowing” shall mean the portion of any Loan that is used to repay the principal amounts of “Tranche A-1 Revolving Loans” (as defined in the Prepetition First-Lien Credit Agreement) outstanding under the Prepetition First-Lien Credit Agreement.

“JPM Roll-Up Commitment” shall mean the commitment of a Lender to make or otherwise fund any JPM Roll-up Borrowing hereunder, expressed as an amount representing the maximum possible aggregate principal amount of such Lender’s Loans hereunder. The amount of each Lender’s JPM Roll-Up Commitment is set forth on Schedule 2.01(a) under the caption “JPM Roll-Up Commitment”. The aggregate amount of the Lenders’ JPM Roll-Up Commitments as of the Closing Date is \$10,000,000.

“JPM Roll-Up Commitment Percentage” shall mean, with respect to any Lender at any time, the percentage of the aggregate JPM Roll-Up Commitments represented by such Lender’s JPM Roll-Up Commitment at such time. If the JPM Roll-Up Commitments have terminated or expired, the JPM Roll-Up Commitment Percentage shall be determined based upon the JPM Roll-Up Commitments most recently in effect, giving effect to any assignments. The initial JPM Roll-Up Commitment Percentage of each Lender is set forth on Schedule 2.01(a) under the caption “JPM Roll-Up Commitment Percentage” or in the Assignment and Assumption pursuant to which such Lender shall have assumed its JPM Roll-Up Commitment, as applicable.

“JPM Roll-Up Facility” shall mean, at any time, the aggregate amount of the Lenders’ JPM Roll-Up Commitments at such time (or, after the expiration or termination of the JPM Roll-Up Commitments, the aggregate amount of the Lenders’ Revolving Credit Exposure relating to the JPM Roll-Up Borrowings).

“JPMorgan Chase Bank” shall mean JPMorgan Chase Bank, N.A.

“Land” shall mean the real estate comprising the Mortgaged Property, which together with the Mortgaged Property as more specifically described, and as shall be more specifically described, in the Mortgages including all oil, gas and mineral rights, oil, gas and minerals, easements, appurtenances, water rights, water stock, rights in and to streets, roads and highways (whether before or after vacation thereof), hereditaments and privileges relating, in any manner whatsoever, to the Land.

“Laws” shall mean, collectively, all international, foreign, Federal, state and local statutes, treaties, rules, guidelines, regulations, ordinances, codes and administrative or judicial precedents or authorities and executive orders, including the interpretation or administration thereof by any Governmental Authority charged with the enforcement, interpretation or administration thereof, and all applicable administrative orders, directed duties, requests, licenses, authorizations and Permits of, and agreements with, any Governmental Authority.

“LC Disbursement” shall mean a payment made by an Issuing Bank pursuant to a Letter of Credit.

“LC Exposure” shall mean, at any time, the sum of (a) the aggregate undrawn amount of all outstanding Letters of Credit at such time plus (b) the aggregate amount of all LC Disbursements that have not yet been reimbursed by or on behalf of the Borrower at such time. The LC Exposure of any Lender at any time shall be its NM Commitment Percentage of the total LC Exposure at such time.

“LC Reimbursement Obligation” shall mean, for any Letters of Credit, the obligations of any person to pay any amounts due in connection therewith.

“Leases” shall mean any and all leases, subleases, tenancies, options, concession agreements, rental agreements, occupancy agreements, franchise agreements, access agreements and any other agreements (including all amendments, extensions, replacements, renewals, modifications or guarantees thereof), whether or not of record and whether now in existence or hereafter entered into, affecting the use or occupancy of all or any portion of any Real Property.

“Lender Superpriority Claim” shall have the meaning assigned to such term in Section 3.26(a).

“Lenders” shall mean (a) the financial institutions that are a party hereto and (b) any financial institution that has become party hereto pursuant to an Assignment and Assumption, other than, in each case, any such financial institution that has ceased to be a party hereto pursuant to an Assignment and Assumption.

“Letter of Credit” shall mean any letter of credit issued or deemed issued pursuant to this Agreement.

“Letter of Credit Expiration Date” shall have the meaning assigned to such term in Section 2.18(c).

“Letter of Credit Fee” shall have the meaning assigned to such term in Section 2.06(c).

“LIBOR Rate” shall mean, with respect to any Eurodollar Borrowing for any Interest Period, the rate appearing on Reuters Screen LIBOR01 Page (or on any successor or substitute page on such screen) at approximately 11:00 a.m., London time, two (2) Business Days prior to the commencement of such interest period, as the rate for dollar deposits in the London interbank market with a maturity comparable to such Interest Period. In the event that such rate does not appear on such page (or on any such successor or substitute page), the “LIBOR Rate” shall be determined by reference to such other publicly available service for displaying interest rates for dollar deposits in the London interbank market as may be selected by the Administrative Agent or, in the absence of such availability, by reference to the rate at which dollar deposits of \$5,000,000 and for a maturity comparable to such interest period are offered by the principal London office of the Administrative Agent in immediately available funds in the London interbank market at approximately 11:00 a.m., London time, two (2) Business Days prior to the commencement of such Interest Period.

“License Revocation or Suspension” shall mean the revocation, failure to renew or suspension of, or the appointment of a receiver, conservator, supervisor or similar official with respect to any casino, gaming or Liquor License issued by any Gaming Authority or applicable Governmental Authority covering any casino or gaming facility operated in connection with the Project.

“Lien” shall mean, with respect to any property, (a) any mortgage, deed of trust, lien, pledge, encumbrance for security, claim, charge, assignment, hypothecation, or security interest of any kind as security, in each of the foregoing cases whether voluntary or imposed by law; and (b) the interest of a vendor or a lessor under any conditional sale agreement, capital lease or title retention agreement (or any financing lease having substantially the same economic effect as any of the foregoing) relating to such property; provided in no event shall an operating lease be deemed to constitute a Lien.



“Liquor Authorities” shall mean, in any jurisdiction in which the Borrower or any of its Subsidiaries possesses, stores, sells or distributes beer, wine or liquor, or proposes to possess, store, sell or distribute beer, wine or liquor, the applicable alcoholic beverage commission or other Governmental Authority responsible for interpreting, administering or enforcing the Liquor Laws.

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

“Liquor License” shall mean, in any jurisdiction in which the Borrower or any of its Subsidiaries possesses, stores, sells or distributes beer, wine or liquor, or proposes to sell or distribute beer, wine or liquor, any license, permit or other authorization to possess, store, sell and distribute beer, wine or liquor that is granted or issued by the Liquor Authorities.

“Loan” shall mean any loans (including, without limitation, Roll-up Borrowings) made by the Lenders to the Borrower pursuant to this Agreement. Loans may be identified by the facility under which such Loans were made (i.e., by Class) as described in Section 1.02.

“Loan Documents” shall mean this Agreement, the Notes (if any) executed and delivered pursuant to Section 2.05(c), the Security Documents, the Fee Letter and any other instruments, certificates, documents or agreements executed and delivered by any Loan Party with or for the benefit of the Administrative Agent, the Collateral Agent or any Lender in its capacity as such pursuant hereto or thereto or in connection herewith or therewith (in each case as the same may be amended, amended and restated, supplemented or otherwise modified from time to time).

“Loan Parties” shall mean the Borrower and the Guarantors.

“Loan Parties’ Professional Fees” shall have the meaning assigned to such term in Section 3.12(a).

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

“Material Adverse Effect” shall mean any event or circumstance which: (a) has a material adverse effect on the business, assets, operations, condition (financial or otherwise) or prospects of the Borrower and its Subsidiaries, taken as a whole, (b) materially and adversely affects the ability of the Borrower and its Subsidiaries, taken as a whole, to pay the Obligations or (c) materially and adversely affects the rights of the Secured Parties under their respective Loan Documents, including the validity, enforceability or priority of the Liens purported to be created by the Security Documents; provided, that the commencement of the Cases shall not constitute a Material Adverse Effect.

“Material Agreement” shall mean (a) the Intellectual Property License Agreements, (b) the Energy Services Agreement, (c) the Transportation Improvement Project Documents, (d) the Redevelopment Agreement, and (e) the REG Lease (but in any case excluding the Loan Documents).

“Material Indebtedness” shall mean any Indebtedness (other than the Loans) or Hedging Obligations of the Borrower or any of its Subsidiaries entered into after the Filing Date in an aggregate outstanding principal amount exceeding \$1,000,000. For purposes of determining Material Indebtedness, the “principal amount” in respect of any Hedging Obligations of any Loan Party at any time shall be the maximum aggregate amount (giving effect to any netting agreements) that such Loan Party would be required to pay if the related Hedging Agreement were terminated at such time.

“Maturity Date” shall mean the earliest to occur of (a) the Scheduled Maturity Date and (b) the acceleration of any Loans and the termination of all Commitments in accordance with the terms of this Agreement.

“Maximum Rate” shall have the meaning assigned to such term in Section 10.14.

“Minimum Collateral Amount” shall mean, at any time, with respect to Cash Collateral consisting of cash or deposit account balances provided in accordance with Sections 2.08, 2.10 or 2.20, an amount equal to 103% of the principal outstanding amount of all LC Exposure subject to such provision.

~~“Minimum Liquidity Requirement Amount” shall have the meaning ascribed to such term in Section 6.10(e).~~

“MNPI” shall have the meaning assigned to such term in Section 10.01(e).

“Mortgage” shall mean an agreement, including, but not limited to, a mortgage, deed of trust or any other document or instrument, including any Order, creating and evidencing a Lien on a Mortgaged Property for the benefit of the Secured Parties in form reasonably satisfactory to the Collateral Agent, in each case, with such schedules and including such provisions as shall be necessary to conform such document to applicable local or foreign law or as shall be customary under applicable local or foreign law.

“Mortgaged Property” shall mean the Real Property listed on Schedule 1.01(c) or otherwise as to which the Collateral Agent for the benefit of the Secured Parties shall be granted a Lien pursuant to the Orders.

“Multiemployer Plan” shall mean a multiemployer plan within the meaning of Section 4001(a)(3) or Section 3(37) of ERISA (a) to which any Loan Party or any ERISA Affiliate is then making or accruing an obligation to make contributions; (b) to which any Loan Party or any ERISA Affiliate has within the preceding five plan years made contributions; or (c) with respect to which any Loan Party could incur liability.

“Net Cash Proceeds” shall mean:

(a) with respect to any Asset Sale (other than any issuance or sale of Equity Interests), the cash proceeds received by Borrower or any of its Subsidiaries (including cash proceeds subsequently received (as and when received by Borrower or any of its Subsidiaries) in respect of non-cash consideration initially received) net of (i) selling expenses (including reasonable brokers’ or bankers’ fees or commissions, reasonable incentive bonuses paid to officers and employees, legal, accounting and other professional and transactional fees, transfer and similar taxes and Borrower’s good faith estimate of income taxes actually paid or payable in connection with such sale including any taxes payable upon the repatriation of any such proceeds); (ii) amounts provided as a reserve, in accordance with GAAP, against (x) any liabilities under any indemnification obligations associated with such Asset Sale or (y) any other liabilities retained by Borrower or any of its Subsidiaries associated with the properties sold in such Asset Sale (provided that, to the extent and at the time any such amounts are released from such reserve, such amounts shall constitute Net Cash Proceeds); (iii) Borrower’s good faith estimate of payments required to be made within 30 days of such Asset Sale with respect to unassumed liabilities relating to the properties sold (provided that, to the extent such cash proceeds are not used to make payments in respect of such unassumed liabilities within 30 days of such Asset Sale, such cash proceeds shall constitute Net Cash Proceeds); and (iv) the principal amount, premium or penalty, if any, interest and other amounts on any Indebtedness which is secured by a Lien on the properties sold in such

Asset Sale (so long as such Lien was permitted to encumber such properties under the Loan Documents at the time of such sale) and which is repaid with such proceeds (other than any such Indebtedness assumed by the purchaser of such properties);

(b) with respect to any issuance of Indebtedness by the Borrower or any of its Subsidiaries, the net cash proceeds thereof, net of customary fees, commissions, costs and other expenses (including legal, accounting and investment banking fees and expenses) incurred in connection therewith; and

(c) with respect to any Casualty Event, the cash insurance proceeds, condemnation awards and other compensation received in respect thereof, including but not limited to Insurance Proceeds and Eminent Domain Proceeds, net of all costs and expenses incurred in connection with the collection of such proceeds, awards or other compensation in respect of such Casualty Event (including (i) any costs incurred in connection with the adjustment or settlement of any claims in respect thereof and (ii) costs incurred in connection with any sale of such assets, including income taxes payable as a result of any gain recognized in connection therewith).

“NM Borrowing” shall mean any Borrowing that is not a Roll-Up Borrowing.

“NM Commitments” shall mean the commitment of a Lender to make or otherwise fund any NM Loan hereunder, expressed as an amount representing the maximum possible aggregate amount of such Lender’s Revolving Credit Exposure hereunder, as such commitment may be (i) reduced from time to time pursuant to Section 2.08, or (ii) reduced or increased from time to time pursuant to assignments by or to such Lender pursuant to Section 10.02. The ~~initial~~ amount of each Lender’s NM Commitment, giving effect to the DIP Increase Order, is set forth on Schedule 2.01(a) under the caption “NM Commitment” or in the Assignment and Assumption pursuant to which such Lender shall have assumed its NM Commitment, as applicable. The aggregate amount of the Lenders’ NM Commitments ~~as of the Closing Date~~ is ~~\$41,900,000~~71,000,000; provided, that, (i) only ~~\$40,000,000~~50,100,000 of such NM Commitments shall be available for NM Borrowings ~~and the other~~(other than the Tax Borrowing), (ii) only \$19,000,000 of such NM Commitments shall be available for an NM Borrowing that is the Tax Borrowing and (iii) \$1,900,000 shall only be available for providing a “back to back” Letter of Credit to support, or replace, the Existing LC.

“NM Commitment Percentage” shall mean, with respect to any Lender at any time, the percentage of the aggregate NM Commitments represented by such Lender’s NM Commitment at such time. If the NM Commitments have terminated or expired, the NM Commitment Percentage shall be determined based upon the NM Commitments most recently in effect, giving effect to any assignments. The initial NM Commitment Percentage of each Lender is set forth on Schedule 2.01(a) under the caption “NM Commitment Percentage” or in the Assignment and Assumption pursuant to which such Lender shall have assumed its NM Commitment, as applicable.

“NM Facility” shall mean, at any time, the aggregate amount of the Lenders’ NM Commitments at such time (or, after the expiration or termination of the NM Commitments, the aggregate amount of the Lenders’ Revolving Credit Exposure relating to the NM Borrowings).

“NM Loan” shall mean any Loan that was not borrowed as part of a Roll-Up Borrowing.

“Notes” shall mean each promissory note made by the Borrower to a Lender evidencing Loans made by such Lender, substantially in the form of Exhibit I, either as originally executed or as the same may from time to time be supplemented, modified, amended, renewed, extended or supplanted.

“Obligations” shall mean obligations of the Borrower and the other Loan Parties from time to time arising under or in respect of the due and punctual payment of (i) the principal of and premium, if any, and interest (including interest accruing during the pendency of any bankruptcy, insolvency, receivership or other similar proceeding, regardless of whether allowed or allowable in such proceeding) on the Loans, when and as due, whether at maturity, by acceleration, upon one or more dates set for prepayment or otherwise, (ii) each payment required to be made by the Borrower and the other Loan Parties under this Agreement in respect of any Letter of Credit, when and as due, including payments in respect of LC Reimbursement Obligations, interest thereon and obligations to provide Cash Collateral and (iii) all other monetary obligations, including fees, costs, expenses and indemnities, whether primary, secondary, direct, contingent, fixed or otherwise (including monetary obligations incurred during the pendency of the Cases and any other bankruptcy, insolvency, receivership or other similar proceeding, regardless of whether allowed or allowable in such proceeding), of the Borrower and the other Loan Parties under this Agreement and the other Loan Documents.

“Officer’s Certificate” shall mean a certificate executed on behalf of a Loan Party by the chairman of the Board of Directors (if an officer), the chief executive officer, the president, any Financial Officer, Vice President or Secretary each in his or her official (and not individual) capacity.

“Orders” shall mean the Interim Order or the Final Order or both, as the context may require.

“Organizational Documents” shall mean, with respect to any person, (i) in the case of any corporation, the certificate of incorporation and by-laws (or similar documents) of such person, (ii) in the case of any limited liability company, the certificate of formation and operating agreement (or similar documents) of such person, (iii) in the case of any limited partnership, the certificate of formation and limited partnership agreement (or similar documents) of such person, (iv) in the case of any general partnership, the partnership agreement (or similar document) of such person and (v) in any other case, the functional equivalent of the foregoing.

“Other Taxes” shall mean any and all present or future stamp, court or documentary Taxes and any other excise, property, mortgage recording or similar Taxes, which arise from any payment made hereunder or under any other Loan Document or from the execution, delivery, performance, enforcement or registration of, from the receipt or perfection of a security interest under, or otherwise with respect to, this Agreement or any other Loan Document.

“Participant” shall have the meaning assigned to such term in Section 10.04(d).

“Participant Register” shall have the meaning assigned to such term in Section 10.04(d).

“Patriot Act” shall have the meaning assigned to such term in Section 4.01(i).

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

“Pension Plan” shall mean any Employee Benefit Plan, other than a Multiemployer Plan, that is subject to Section 412 of the Code or Section 302 of ERISA.

“Permits” shall mean the collective reference to any and all consents, orders, licenses, permits, approvals, notifications, certifications, registrations, written exemptions, regulatory filings or notices and authorizations required under any Requirement of Law (including Gaming Laws), including, without limitation, any Casino License or other Gaming Approvals and the Redevelopment Agreement.

“Permitted Businesses” shall mean (a) the gaming business, (b) the development, construction, ownership and operation of a Gaming Facility, (c) any development, construction, ownership or operation of lodging, retail, restaurant or convention facilities, sports or entertainment facilities, food and beverage distribution operations, transportation services, parking services, recreation, spa, pool, exercise and gym facilities or sales and marketing services, (d) any development, construction, ownership or operation of a full service destination resort, including, without limitation, residential or vacation housing facilities (including, without limitation, timeshares, interval ownership and condominiums and similar developments), parking services or sales and marketing services, (e) any business or other activity, whether or not licensed by Gaming Authorities (including any related internet business) that is ancillary to, necessary for, incidental to, useful to, arising out of, supportive of, related to, connected to or a reasonable extension, development or expansion of any of the foregoing or (f) the ownership by a person of Equity Interests in its Subsidiaries and other Investments permitted hereunder; provided, however, that with respect to the Borrower and its Subsidiaries the foregoing shall only be Permitted Businesses to the extent related to (or ancillary to, necessary for, incidental to, useful to, arising out of, supportive of, or connected to) the Project or in furtherance of the Project’s development, construction, ownership or operation.

“Permitted Encumbrances” shall mean those exceptions specified in Schedule B II of the Title Policy.

“Permitted Investors” shall mean those persons listed on Schedule 1.01(d).

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

“Permitted Prior Liens” shall mean each of the Permitted Liens (a) that has priority over the Liens granted pursuant to the Security Documents by operation of Law that grants special or extraordinary priority or (b) permitted pursuant to Section 6.02(b)(y).

“Permitted Refinancing” shall mean, with respect to any person, any modification, refinancing, refunding, renewal or extension of any Indebtedness of such person; provided that (a) the principal amount (or accreted value, if applicable) thereof does not exceed the principal amount (or accreted value, if applicable) of the Indebtedness so modified, refinanced, refunded, renewed or extended except by (i) an amount equal to unpaid accrued interest, make-whole amounts, penalties and premium thereon plus other amounts paid, and fees (including, without limitation, upfront fees and original issue discount) and expenses reasonably incurred, in connection with such modification, refinancing, refunding, renewal or extension and (ii) an amount equal to any existing commitments unutilized thereunder, (b) the Indebtedness resulting from such modification, refinancing, refunding, renewal or extension has a final maturity date equal to or later than the final maturity date of, and has a Weighted Average Life to Maturity equal to or greater than the Weighted Average Life to Maturity of, the Indebtedness being modified, refinanced, refunded, renewed or extended, (c) at the time thereof, no Default shall have occurred and be continuing, (d) to the extent such Indebtedness being modified, refinanced, refunded, renewed or extended is subordinated in right of payment to the Obligations, the Indebtedness resulting from such modification, refinancing, refunding, renewal or extension is subordinated in right of payment to the Obligations on terms, taken as a whole, that are determined in good faith by a Responsible Officer of the Borrower to be at least as favorable to the Lenders as those contained in the documentation governing the Indebtedness being modified, refinanced, refunded, renewed or extended, (e) Indebtedness of a Subsidiary that is not a Guarantor or the Borrower shall not refinance Indebtedness of the Borrower or a Guarantor, and (f) no person is an obligor under such modified, refinanced, refunded, renewed or extended Indebtedness that was not an obligor (or required to become an obligor) under such Indebtedness prior to such modification, refinancing, refunding, renewal or extension; provided that if

any Loan Party is an obligor under such modified, refinanced, refunded, renewed or extended Indebtedness, other Loan Parties may be guarantors of such Indebtedness.

“person” shall mean any natural person, corporation, limited liability company, trust, joint venture, association, company, partnership, Governmental Authority or other entity.

“Plan” shall mean any employee pension benefit plan (other than a Multiemployer Plan) subject to the provisions of Title IV of ERISA or Section 412 of the Code or Section 302 of ERISA which is maintained or contributed to by any Loan Party or its ERISA Affiliate or with respect to which any Loan Party could incur liability (including under Section 4069 of ERISA).

“Plan Effective Date” shall mean the date of the effectiveness of an Acceptable Chapter 11 Plan pursuant to its terms.

“Plans and Specifications” shall mean the drawings, plans and specifications for the Project prepared by or on behalf of the Borrower and made available to the Administrative Agent.

“Platform” shall have the meaning assigned to such term in Section 10.01(d).

“Prepetition” shall mean, when used with respect to any agreement or instrument or any claim or proceeding or any other matter with respect of any Loan Party, an agreement or instrument that was entered into or became effective, a claim or proceeding that first arose or was first instituted, or another matter that first occurred or, by operation of law, is deemed to have occurred, prior to the Filing Date.

“Prepetition Contingent Payment Rights” shall mean the “CPRs” (as defined in the Prepetition Contingent Payment Rights Agreement).

“Prepetition Contingent Payment Rights Agreement” shall mean that certain Second Lien Note Claim Contingent Payment Rights Agreement, dated as of May 21, 2013, by and between the Borrower and the rights agent thereunder.

“Prepetition Contingent Payment Rights Security Agreement” shall mean that certain Security Agreement, dated as of May 21, 2013, made by the Borrower in favor of the collateral agent thereunder to secure obligations under the Prepetition Contingent Payment Rights Agreement.

“Prepetition First-Lien Credit Agreement” shall mean that certain Amended and Restated First-Lien Credit Agreement, dated as of November 8, 2013, by and among Revel AC, Inc., as borrower, the guarantors party thereto, the lenders party thereto and JPMorgan Chase Bank, as administrative agent, collateral agent and an issuing bank, as amended, supplemented or otherwise modified from time to time to the extent permitted by this Agreement.

“Prepetition First-Lien Credit Agreement Lender” shall mean each “Lender” (under and as defined in the Prepetition First-Lien Credit Agreement) from time to time party to the Prepetition First-Lien Credit Agreement.

“Prepetition First-Lien Credit Agreement Tranche B Term Loan Lender” shall mean each “Tranche B Term Loan Lender” (under and as defined in the Prepetition First-Lien Credit Agreement) from time to time party to the Prepetition First-Lien Credit Agreement.

“Prepetition Payment” shall mean a payment (by way of adequate protection or otherwise) of principal or interest or otherwise on account of any Prepetition (i) Indebtedness, (ii) “critical vendor payments” or (iii) trade payables (including, without limitation, in respect of reclamation claims), or any other Prepetition claims against any Loan Party.

“Prepetition Second-Lien Documents” shall mean the Prepetition Second-Lien Credit Agreement and the other Loan Documents (as defined in the Prepetition Second-Lien Credit Agreement), including each mortgage and other security documents and any guarantee entered into in connection therewith and any related notes.

“Prepetition Second-Lien Credit Agreement” shall mean that certain Second-Lien Credit Agreement, dated as of May 21, 2013, by and among Revel AC, Inc., as borrower, the guarantors party thereto, the lenders party thereto and Wilmington Trust, National Association, as administrative agent and collateral agent, as amended, restated, supplemented or modified from time to time to the extent permitted by this Agreement.

“Private Side Communications” shall have the meaning assigned to such term in Section 10.01(e).

“Primed Liens” shall have the meaning assigned to such term in Section 3.26(d).

“Priming Liens” shall have the meaning assigned to such term in Section 3.26(d).

“Private Siders” shall have the meaning assigned to such term in Section 10.01(e).

“Proceedings” shall have the meaning assigned to such term in Section 5.02(a).

“Project” shall mean the beachfront casino entertainment resort commonly known as Revel Atlantic City Hotel and Casino in Atlantic City, New Jersey.

“Project Site” shall mean that portion of the Mortgaged Property described on Schedule 3.05(b)(i), on which the Project is located.

“Property” shall mean any right, title or interest in or to property or assets of any kind whatsoever, whether real, personal or mixed and whether tangible or intangible and including Equity Interests or other ownership interests of any person and whether now in existence or owned or hereafter entered into or acquired, including all Real Property.

“Public Siders” shall have the meaning assigned to such term in Section 10.01(d).

“Purchase Money Obligation” shall mean, for any person, the obligations of such person in respect of Indebtedness (including Capital Lease Obligations) incurred for the purpose of financing all or any part of the purchase price of any property (including Equity Interests of any person) or the cost of acquisition, repair, installation, construction or improvement of any property and any refinancing thereof; provided, however, that (i) such Indebtedness is incurred or committed within 180 days after such acquisition, repair, installation, construction or improvement of such property by such person and (ii) the amount of such Indebtedness does not exceed 100% of the cost of such acquisition, repair, installation, construction or improvement, as the case may be (including financing costs).

“Qualified Capital Stock” of any person shall mean any Equity Interests of such person that are not Disqualified Capital Stock.

“Real Property” shall mean, collectively, all right, title and interest (including any leasehold, mineral or other estate) in and to any and all parcels of or interests in real property which the relevant Loan Party or Subsidiary owns in fee or in which it holds a leasehold interest as a tenant or in which it holds an easement right as an easement holder or otherwise occupies, or in which it holds an option, which includes, without limitation, the easements on the Project Site, the Project Site and the other Mortgaged Property.

“Redevelopment Agreement” shall mean that certain Redevelopment Agreement, dated November 8, 2007, by and between the City of Atlantic City, The City Council of Atlantic City and Revel Entertainment Group, LLC, as amended by that certain Amendment to the Redevelopment Agreement, dated November 30, 2010, by and between the City Council of Atlantic City and Revel Entertainment Group, LLC, that certain Second Amendment to the Redevelopment Agreement, dated February 10, 2011, by and between the City, the City Council and Revel Entertainment Group, LLC, that certain Third Amendment to the Redevelopment Agreement dated September 22, 2011, by and between the City, the City Council and Revel Entertainment Group, LLC, that certain Fourth Amendment to the Redevelopment Agreement dated November 30, 2011 by and between the City, the City Council and Revel Entertainment Group, LLC, that certain Fifth Amendment to the Redevelopment Agreement, dated November 30, 2011, by and between the City, the City Council and Revel Atlantic City, LLC and that certain Sixth Amendment to the Redevelopment Agreement dated January 27, 2012 and April 9, 2012 by and between the City, the City Council and Revel Entertainment Group, LLC.

“REG” shall mean Revel Entertainment Group, LLC, a New Jersey limited liability company.

“REG Lease” shall mean that certain Ground Lease, dated as of February 17, 2011, between AC Property Co as lessor and REG as lessee, together with all amendments, extensions and renewals of the foregoing.

“Register” shall have the meaning assigned to such term in Section 10.04(c).

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

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

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

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

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

“Release” shall mean any reportable or actionable spilling, leaking, seepage, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, disposing, depositing, dispersing, emanating or migrating of any Hazardous Material in, into, onto or through the Environment, or from, into or throughout any structure or facility.



“Required Facility Lenders” shall mean, at any time, with respect to (a) the JPM Roll-Up Facility, the Lenders having Revolving Credit Exposure relating to the JPM Roll-Up Borrowings and unused JPM Roll-Up Commitments representing more than 50% of the sum of the Revolving Credit Exposure relating to the JPM Roll-Up Borrowings and the unused JPM Roll-Up Commitments at such time, (b) the WFB Roll-Up Facility, the Lenders having Revolving Credit Exposure relating to the WFB Roll-Up Borrowings and unused WFB Roll-Up Commitments representing more than 50% of the sum of the Revolving Credit Exposure relating to the WFB Roll-Up Borrowings and the unused WFB Roll-Up Commitments at such time and (c) the NM Facility, the Lenders having Revolving Credit Exposure relating to the NM Borrowings and unused NM Commitments representing more than 50% of the sum of the Revolving Credit Exposure relating to the NM Borrowings and the unused NM Commitments at such time.

“Required Lenders” shall mean, at any time, Lenders having Revolving Credit Exposure, and unused Commitments representing more than 50% of the sum of the total Revolving Credit Exposure and unused Commitments at such time; provided, that, until the earlier of (i) the satisfaction of the Discharge Conditions with respect to the JPM Facility or (ii) JPMorgan Chase Bank failing to hold a majority of the outstanding Obligations relating to the JPM Roll-Up Borrowings, “Required Lenders” shall mean (a) Lenders having Revolving Credit Exposure relating to the NM Borrowings, and unused NM Commitments representing more than 50% of the sum of the Revolving Credit Exposure relating to the NM Borrowings and unused NM Commitments at such time, (b) Lenders having Revolving Credit Exposure relating to the JPM Roll-Up Borrowings, and unused JPM Roll-Up Commitments representing more than 50% of the sum of the Revolving Credit Exposure relating to the JPM Roll-Up Borrowings and the unused JPM Roll-Up Commitments at such time and (c) Lenders having Revolving Credit Exposure relating to the WFB Roll-Up Borrowings, and unused WFB Roll-Up Commitments representing more than 50% of the sum of the Revolving Credit Exposure relating to the WFB Roll-Up Borrowings and the unused WFB Roll-Up Commitments at such time.

“Requirements of Law” shall mean, as to any person, the Organizational Documents of such person, and any law, treaty, order, rule or regulation or determination of an arbitrator or a court or other Governmental Authority, including, without limitation, zoning and subdivision ordinances, building codes, Permits, Environmental Laws, ADA Laws and Gaming Laws, in each case applicable to or binding upon such person or any of its Property or to which such person or any of its Property is subject.

“Reserved Amounts” shall have the meaning assigned to such term in Section 2.01(b).

“Reserved Amounts Account” shall have the meaning assigned to such term in Section 2.01(b).

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

“Revolving Credit Exposure” shall mean, with respect to any Lender at any time, the sum of the outstanding principal amount of such Lender’s Loans and its LC Exposure at such time.

“Roll-Up Borrowing” shall mean a JPM Roll-Up Borrowing or a WFB Roll-Up Borrowing.

“Roll-Up Ratio” shall mean an amount equal to 2.0:1.0.

“Sale and Leaseback Transaction” has the meaning assigned to such term in Section 6.03 hereto.

“Sanctioned Country” shall mean, at any time, a country or territory which is the subject or target of any Sanctions.

“Sanctioned Person” means, at any time, (a) any person listed in any Sanctions-related list of designated persons maintained by the Office of Foreign Assets Control of the U.S. Department of the Treasury or the U.S. Department of State, (b) any person operating, organized or resident in a Sanctioned Country or (c) any person controlled by any such person.

“Sanctions” shall mean economic or financial sanctions or trade embargoes imposed, administered or enforced from time to time by the U.S. government, including those administered by the Office of Foreign Assets Control of the U.S. Department of the Treasury or the U.S. Department of State.

“Scheduled Maturity Date” shall mean the earliest to occur of (a) ~~October 31, 2014, subject to extension to allow for receipt of any Gaming Approvals required in order to allow the Acceptable Chapter 11 Plan to become effective, but in no event later than January 31, 2015, (b) July 31, 2014 if the Bankruptcy Court shall not have entered the Final Order by the end of such date, (c) February 27, 2015, (b)~~ the Plan Effective Date and ~~(d)~~ the date on which the Loan Parties consummate a transaction for the sale or disposition of all or substantially all of their assets, taken as a whole, whether pursuant to an Approved APA or otherwise.

“Secured Obligations” shall mean the Obligations.

“Secured Parties” shall mean, collectively, the Administrative Agent, the Collateral Agent, the Lenders and the Issuing Bank.

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

“Security Agreement” shall mean a Security Agreement, among the Loan Parties and Collateral Agent for the benefit of the Secured Parties, in form and substance reasonably acceptable to the Collateral Agent and as amended, supplemented or otherwise modified from time to time.

“Security Agreement Collateral” shall mean all property pledged or granted as collateral pursuant to the Security Agreement on date thereof or thereafter.

“Security Documents” shall mean the collective reference to the Orders, the Security Agreement, the Intellectual Property Security Agreements (if any), the Control Agreements (if any), the Mortgages (if any), and all other pledge and security documents now or hereafter delivered to the Collateral Agent or the Administrative Agent granting a Lien on any Property (or associated with such a grant) of any person to secure the obligations and liabilities of any Loan Party under any Loan Document. The Security Documents (other than the Orders) shall supplement, and shall not limit, the grant of a Lien on and security interest in the Collateral pursuant to the Orders.

“Special Proceeds” shall mean, collectively, any Boutique Hotel Up Front Lease Proceeds, Construction Manager Litigation Proceeds or Sportsbook Up Front Lease Proceeds.

“Sportsbook Lease” shall mean the lease of a portion of the Project to persons who, either directly or indirectly or through Affiliates of such persons, intend to operate or manage a sportsbook (and related ancillary activities) within such portion of the Project.

“Sportsbook Up Front Lease Proceeds” shall mean with respect to a Sportsbook Lease, the cash proceeds received by the Borrower or any of its Subsidiaries as an upfront payment in consideration for the entering into of the Sportsbook Lease, and not as ongoing lease payments, and which for the avoidance of doubt, shall not include any payments received after the opening of any sportsbook, net of (i) selling or leasing expenses (including reasonable brokers’ or bankers’ fees or commissions, reasonable incentive bonuses paid to officers and employees, legal, accounting and other professional and transactional fees, transfer and similar taxes and the Borrower’s good faith estimate of income taxes actually paid or payable in connection with such lease including any taxes payable upon the repatriation of any such proceeds); (ii) amounts provided as a reserve, in accordance with GAAP, against (x) any liabilities under any indemnification obligations associated with such Sportsbook Lease or (y) any other liabilities retained by the Borrower or any of its Subsidiaries associated with the properties leased in such Sportsbook Lease (provided that, to the extent and at the time any such amounts are released from such reserve, such amounts shall constitute Sportsbook Up Front Lease Proceeds); (iii) the Borrower’s good faith estimate of payments required to be made within 180 days of such Sportsbook Lease with respect to unassumed liabilities relating to the properties sold or leased (provided that, to the extent such cash proceeds are not used to make payments in respect of such unassumed liabilities within 180 days of the entering into of such Sportsbook Lease, such cash proceeds shall constitute Sportsbook Up Front Lease Proceeds); (iv) the principal amount, premium or penalty, if any, interest and other amounts on any Indebtedness which is secured by a Lien on the properties leased in such Sportsbook Lease (so long as such Lien was permitted to encumber such properties under the Loan Documents at the time of such sale) and which is repaid with such proceeds (other than any such Indebtedness assumed by the purchaser of such properties); and (v) all cash costs incurred or to be incurred (as reasonably estimated by the Borrower) by the Borrower or any of its Subsidiaries in connection with or related to the design, development, construction, equipping and opening of the facilities associated with the Sportsbook Lease, including any such costs relating to modifications to be made to portions of the Project other than that portion to be operated as a sportsbook, in order to facilitate the use, operation, construction or development of such sportsbook (all such costs referenced in this clause (v), the “Sportsbook Construction Costs”).

“Statutory Reserves” shall mean, for any Interest Period for any Eurodollar Borrowing, the average maximum rate at which reserves (including any marginal, supplemental or emergency reserves) are required to be maintained during such Interest Period under Regulation D by member banks of the United States Federal Reserve System in New York City with deposits exceeding one billion dollars against “Eurocurrency liabilities” (as such term is used in Regulation D).

“Subordinated Indebtedness” shall mean Indebtedness of the Borrower or any Guarantor that is by its terms or by the terms of the Orders subordinated in right of payment to the Obligations of the Borrower and such Guarantor, as applicable.

“Subsidiary” shall mean, with respect to any person (the “parent”) at any date, (i) any person the accounts of which would be consolidated with those of the parent in the parent’s consolidated financial statements if such financial statements were prepared in accordance with GAAP as of such date, (ii) any other corporation, limited liability company, association or other business entity of which securities or other ownership interests representing more than 50% of the voting power of all Equity Interests entitled (without regard to the occurrence of any contingency) to vote in the election of the Board of Directors thereof are, as of such date, owned, controlled or held by the parent or one or more subsidiaries of the parent, (iii) any partnership (a) the sole general partner or the managing general partner of which is the parent or one or more subsidiaries of the parent or (b) the only general partners of which are the parent or one or more subsidiaries of the parent and (iv) any other person that is otherwise Controlled by the parent or one or more subsidiaries of the parent. Unless the context requires otherwise, “Subsidiary” refers to a Subsidiary of the Borrower.

“Subsidiary Guarantor” shall mean any Subsidiary of the Borrower that is a Guarantor hereunder.

“Superpriority Claim” shall mean superpriority administrative expense claim with priority over any and all other obligations, liabilities and indebtedness, now existing or hereafter arising, of any kind whatsoever, including any and all administrative expenses or other claims of the kind specified in or arising under sections 105, 326, 328, 330, 331, 503(b), 506(c), 507, 546(c), 552(b), 726, 1113 or 1114 of the Bankruptcy Code.

“Taking” shall mean a taking or voluntary conveyance during the term of this Agreement of all or part of the Real Estate, or any interest therein or right accruing thereto or use thereof, as the result of, or in settlement of, or in contemplation of, any condemnation or other Event of Eminent Domain affecting any Real Property or any portion thereof, whether or not the same shall have actually been commenced.

“Tax Borrowing” shall mean a NM Borrowing in the amount of the Tax Borrowing Sub-Commitments under the NM Commitments; provided, that the proceeds of such NM Borrowing may be used solely to pay local property taxes in respect of the Property pursuant to the Tax Settlement Order and the DIP Increase Order.

“Tax Borrowing Sub-Commitments” shall mean a portion of the NM Commitments in the principal amount of \$19,000,000 established pursuant to the DIP Increase Order.

“Tax Loan” shall mean any Loan that was borrowed pursuant to the first sentence of Section 2.01(d).

“Tax Return” shall mean all original and amended returns, declarations, claims for refund, reports, estimates, information returns and statements required to be filed in respect of any Taxes, including any schedules, forms or other required attachments thereto.

“Tax Settlement Order” shall mean the order entitled Order Approving Settlement Agreement with City of Atlantic City entered by the Bankruptcy Court to approve that certain Settlement Agreement and Mutual Release, by and between the Debtors and the City of Atlantic City, New Jersey (the “Tax Settlement Agreement”), in form and substance reasonably acceptable to the Lenders.

“Taxes” shall mean all present or future taxes, levies, imposts, duties, deductions, withholdings, assessments, fees or other charges imposed by any Governmental Authority, including any interest, additions to tax or penalties applicable thereto.

“Title Policy” shall mean the mortgagee’s policy of title insurance delivered on the “Closing Date” under (and as defined in) the Prepetition First-Lien Credit Agreement insuring that each mortgage delivered thereunder was a valid first and prior enforceable lien on the applicable Loan Parties’ fee simple or leasehold interest in the Mortgaged Property (including any easements appurtenant thereto) subject only to the Permitted Encumbrances.

“Tower II Air Parcel” shall mean the vertical airspace above the podium required for the development of a second tower of the Project.

“Transportation Improvement Project” shall mean that certain road improvement project for the widening and landscaping of roadways to and from the Project described in the Amended and

Restated South Inlet Transportation Improvement Project Donation and Credit Agreement dated as of November 22, 2010 between the CRDA and Revel Entertainment, LLC.

“Transportation Improvement Project Documents” shall mean the (i) Amended and Restated South Inlet Transportation Improvement Project Donation and Credit Agreement dated as of November 22, 2010 between the CRDA and Revel Entertainment, LLC, (ii) Securities Purchase Contract between Revel Entertainment, LLC and the CRDA dated as of August 5, 2009, (iii) Project Grant Agreement, dated December 18, 2007 (executed on January 28, 2011), between the CRDA and Revel Entertainment, LLC, and (iv) Entertainment-Retail District Project Donation and Credit Agreement, dated December 18, 2007, between CRDA and Revel Entertainment, LLC.

“UCC” shall mean the Uniform Commercial Code as in effect from time to time (except as otherwise specified) in any applicable state or jurisdiction.

“United States” shall mean the United States of America.

“Unrestricted Cash” shall mean Cash or Cash Equivalents of the Borrower and its Subsidiaries other than Cage Cash.

“Voting Stock” shall mean, with respect to any person, any class or classes of Equity Interests pursuant to which the holders thereof have the general voting power under ordinary circumstances to elect at least a majority of the Board of Directors of such person.

“Weekly Permitted Collections Deviation” shall mean 15% for each of the first three Test Periods and 10% for each Test Period thereafter.

“Weekly Permitted Disbursements Deviation” shall mean 10% for each of the first three Test Periods and 5% for each Test Period thereafter.

“Weighted Average Life to Maturity” shall mean, when applied to any Indebtedness at any date, the number of years obtained by dividing: (i) the sum of the products obtained by multiplying (a) the amount of each then remaining installment, sinking fund, serial maturity or other required payments of principal, including payment at final maturity, in respect thereof, by (b) the number of years (calculated to the nearest one-twelfth) that will elapse between such date and the making of such payment; by (ii) the then outstanding principal amount of such Indebtedness.

“Wells Fargo” shall mean Wells Fargo Bank, N.A.

“WFB Roll-Up Borrowing” shall mean the portion of any Loan that is used to repay the principal amounts of “Tranche A-2 Revolving Loans” outstanding under the Prepetition First-Lien Credit Agreement.

“WFB Roll-Up Commitment” shall mean the commitment of a Lender to make or otherwise fund any WFB Roll-up Borrowing hereunder, expressed as an amount representing the maximum possible aggregate principal amount of such Lender’s Loans hereunder. The amount of each Lender’s WFB Roll-Up Commitment is set forth on Schedule 2.01(a) under the caption “WFB Roll-Up Commitment”. The aggregate amount of the Lenders’ WFB Roll-Up Commitments as of the Closing Date is \$73,100,000.

“WFB Roll-Up Commitment Percentage” shall mean, with respect to any Lender at any time, the percentage of the aggregate WFB Roll-Up Commitments represented by such Lender’s WFB

Roll-Up Commitment at such time. If the WFB Roll-Up Commitments have terminated or expired, the WFB Roll-Up Commitment Percentage shall be determined based upon the WFB Roll-Up Commitments most recently in effect, giving effect to any assignments. The initial WFB Roll-Up Commitment Percentage of each Lender is set forth on Schedule 2.01(a) under the caption “WFB Roll-Up Commitment Percentage” or in the Assignment and Assumption pursuant to which such Lender shall have assumed its WFB Roll-Up Commitment, as applicable.

“WFB Roll-Up Facility” shall mean, at any time, the aggregate amount of the Lenders’ WFB Roll-Up Commitments at such time (or, after the expiration or termination of the WFB Roll-Up Commitments, the aggregate amount of the Lenders’ Revolving Credit Exposure relating to the WFB Roll-Up Borrowings)

“Wholly Owned Subsidiary” shall mean, as to any person (a) any corporation 100% of whose capital stock (other than directors’ qualifying shares) is at the time owned by such person or one or more Wholly Owned Subsidiaries of such person and (b) any partnership, association, joint venture, limited liability company or other entity in which such person or one or more Wholly Owned Subsidiaries of such person have a 100% equity interest at such time.

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

“Withdrawal Period” has the meaning assigned to such term in Section 10.17(b).

**Section 1.02 Classification of Loans and Borrowings.** For purposes of this Agreement, Loans may be classified and referred to by Class (e.g., a “JPM Roll-Up Loan”, a “WFB Roll-Up Loan” or a “NM Loan”). Borrowings also may be classified and referred to by Class (e.g., a “JPM Roll-Up Borrowing”, a “WFB Roll-Up Borrowing” or a “NM Borrowing”).

**Section 1.03 Terms Generally.** The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words “include,” “includes” and “including” shall be deemed to be followed by the phrase “without limitation.” The word “or” is not exclusive. The word “will” shall be construed to have the same meaning and effect as the word “shall.” Unless the context requires otherwise (a) any definition of or reference to any Loan Document, agreement, instrument or other document herein shall be construed as referring to such agreement, instrument or other document as from time to time amended, restated, amended and restated, supplemented or otherwise modified (subject to any restrictions on such amendments, restatements, amendments and restatements, supplements or modifications set forth herein), (b) any reference herein to any person shall be construed to include such person’s successors and assigns, (c) the words “herein,” “hereof” and “hereunder,” and words of similar import, shall be construed to refer to this Agreement in its entirety and not to any particular provision hereof, (d) all references herein to Articles, Sections, Exhibits and Schedules shall be construed to refer to Articles and Sections of, and Exhibits and Schedules to, this Agreement, (e) any reference to any law or regulation herein shall refer to such law or regulation as amended, modified or supplemented from time to time, (f) the words “asset” and “property” shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts and contract rights and (g) “on,” when used with respect to the Mortgaged Property or any property adjacent to the Mortgaged Property, shall mean “on, in, under, above or about.”

**Section 1.04 Accounting Terms; GAAP.** Except as otherwise expressly provided herein, all financial statements to be delivered pursuant to this Agreement shall be prepared in accordance with GAAP as in effect from time to time and all terms of an accounting or financial nature shall be construed and interpreted in accordance with GAAP, as in effect on the Closing Date unless otherwise agreed to by the Borrower and the Required Lenders; provided, however, that if the Borrower notifies the Administrative Agent that the Borrower wishes to amend Section 6.10 or any financial definition used therein to implement the effect of any change in GAAP or the application thereof occurring after the Closing Date (or if the Administrative Agent notifies the Borrower that the Required Lenders wish to amend Section 6.10 or any financial definition used therein for such purpose), then the Borrower and the Administrative Agent shall negotiate in good faith to amend Section 6.10 or the definitions used therein to preserve the original intent thereof in light of such changes in GAAP; provided further that until the Borrower and the Administrative Agent agree to modify such provisions to reflect such changes in GAAP and, unless such provisions are modified, all determinations of compliance or pro forma compliance with Section 6.10 provided hereunder shall be provided together with a reconciliation between the calculations and amounts set forth therein before and after giving effect to such change in GAAP. Notwithstanding any other provision contained in the Loan Documents, all terms of an accounting or financial nature used in the Loan Documents shall be construed, and all computations of amounts and ratios referred to herein shall be made, without giving effect to any election under Statement of Financial Accounting Standards 159 (or any other Financial Accounting Standard having a similar result or effect) to value any Indebtedness or other liabilities of the Borrower or any of its Subsidiaries at “fair value,” as defined therein. Obligations of the Loan Parties under the CUP Documents shall not constitute Indebtedness or Capital Lease Obligations, notwithstanding any treatment in GAAP to the contrary. All other determinations with respect to whether leases constitute Indebtedness or Capital Lease Obligations shall be made based on GAAP as in effect on the Closing Date.

## ARTICLE II

### THE LOANS

**Section 2.01 Commitments to Lend.** (a) During the Commitment Period, subject to the terms and conditions and relying upon the representations and warranties herein set forth, each Lender agrees, severally and not jointly, to make Loans to the Borrower in amounts such that its Revolving Credit Exposure with respect to a Facility shall not exceed (after giving effect to all Loans repaid and all reimbursements of LC Disbursements made with the making of any Loans) its Commitment with respect to such Facility; provided that, immediately after giving effect to each such Loan under any Facility (i) the aggregate Revolving Credit Exposure of all Lenders with respect to such Facility shall not exceed the Commitments of all Lenders with respect to such Facility, (ii) with respect to each Lender individually, such Lender’s outstanding Loans under such Facility plus, with respect to the NM Facility, its participation interests in outstanding LC Exposure shall not exceed such Lender’s Applicable Percentage of the aggregate amount of Commitments of all Lenders with respect to such Facility, (iii) prior to the Final Effective Date, the sum of (x) the aggregate outstanding principal amount of the NM Loans and (y) the aggregate LC Exposure shall not exceed the Interim Availability Amount and (iv) the aggregate LC Exposure shall not exceed \$1,900,000 (except as provided in Section 2.18(a)). Notwithstanding anything to the contrary contained herein, prior to the Final Effective Date, only ~~\$21,600,000~~59,100,000 of the Interim Availability Amount shall be available for NM Borrowings, and, after the Final Effective Date, only ~~\$40,000,000~~69,100,000 (inclusive of NM Borrowings made prior to the Final Effective Date) of the NM Commitments shall be available for NM Borrowings, and the other \$1,900,000 of NM Commitments shall only be available for providing a “back to back” Letter of Credit to support, or replace, the Existing LC.

(b) On Monday of each week following the Filing Date (beginning with June 23, 2014), a portion of the NM Commitment shall be reserved in an aggregate amount equal to the amount contained in Schedule 2.01(b) for the payment of the Loan Parties' Professional Fees and Creditors Committee Professional Fees for such week (such amounts, the "Reserved Amounts"). The Reserved Amounts shall only be available to the Borrower for NM Borrowings to pay the Loan Parties' Professional Fees and Creditors Committee Professional Fees that are then due and owing, approved for payment by the Bankruptcy Court and not in excess of the amounts contained in Schedule 2.01(b). In connection with any such NM Borrowing to pay the Loan Parties' Professional Fees or the Creditors Committee Professional Fees, the Borrower shall not be required to comply with Section 4.03(b). Once the Borrower pays any Loan Parties' Professional Fees or Creditors Committee Professional Fees from the Reserved Amounts, the aggregate amount that needs to be reserved shall be reduced by such amount. Upon termination of the NM Commitment, no further amounts shall be added to the Reserved Amounts. To the extent that the NM Commitment has terminated prior to the payment of the Loan Parties' Professional Fees and Creditors Committee Professional Fees that have accrued and remain unpaid as of the date of such termination, all Reserved Amounts shall be funded into a reserve deposit account of the Administrative Agent that is under the sole control of the Administrative Agent (the "Reserved Amounts Account"). The Reserved Amounts contained in the Reserved Amounts Account shall be available to the Borrower to pay the Loan Parties' Professional Fees and Creditors Committee Professional Fees that are accrued and unpaid as of the date of termination of the NM Commitment, approved for payment by the Bankruptcy Court and not in excess of the amounts contained in Schedule 2.01(b). The Reserved Amounts and the Reserved Amounts Account (and amounts on deposit therein) shall be maintained by the Administrative Agent until, and used for no purpose other than, the payment in full and in cash of the Loan Parties' Professional Fees and the Creditors Committee Professional Fees in accordance with this Agreement and the Orders, and shall not be available for satisfaction of, or subject to, any other claim against the Loan Parties' estates or subject to any claim, lien, charge, right to payment or other encumbrance of any kind or nature, and shall not be subject to avoidance or recovery by the Loan Parties or their estates (including by any Chapter 11 or Chapter 7 trustee appointed in the Cases).

(c) Amounts borrowed pursuant to this Section 2.01 may be repaid and reborrowed during the Commitment Period; provided, that any amounts repaid in respect of any Tax Borrowing, any JPM Roll-Up Borrowing or any WFB Roll-Up Borrowing may not be reborrowed. The Loans shall (i) bear interest as provided in Section 2.06 hereof and (ii) be entitled to the security interests, Collateral and other rights and benefits provided pursuant to the other Loan Documents.

(d) The Borrower may request a Tax Borrowing one time, the proceeds of which shall be used solely for the purpose of paying local property taxes in respect of the Property pursuant to the Tax Settlement Order and the DIP Increase Order. The Tax Borrowing Sub-Commitments, and the portion of the NM Commitments related thereto, shall automatically reduce to zero upon the making of the Tax Borrowing. For avoidance of doubt, provided that the Borrower requests a Tax Borrowing in the principal amount equal to the Tax Borrowing Sub-Commitment, the Borrower may concurrently request a NM Borrowing, the proceeds of which may also be used to pay a portion of the local property taxes in respect of the Property pursuant to the Tax Settlement Order and the DIP Increase Order.

## **Section 2.02 Loans and Borrowings.**

(a) Each Loan of the same Class shall be made as part of a Borrowing consisting of Loans of the same Class made by the applicable Lenders ratably in accordance with their respective Commitments of the applicable Class. The failure of any Lender to make any Loan required to be made shall not in itself relieve any other Lender of its obligation to lend hereunder (it being understood, however, that no Lender shall be responsible for the failure of any other Lender to make any Loan required to be made by such other Lender).



(b) Subject to Sections 2.11 and 2.12, each Borrowing shall be comprised entirely of Eurodollar Loans as the Borrower may request pursuant to Section 2.03. Each Lender may at its option make any Eurodollar Loan by causing any domestic or foreign branch or Affiliate of such Lender to make such Loan; provided that any exercise of such option shall not affect the obligation of the Borrower to repay such Loan in accordance with the terms of this Agreement. Borrowings of more than one Class may be outstanding at the same time; provided that the Borrower shall not be entitled to request any NM Borrowing that, if made, would result in more than twelve Eurodollar NM Borrowings outstanding hereunder at any one time. For purposes of the foregoing, NM Borrowings having different Interest Periods, regardless of whether they commence on the same date, shall be considered separate NM Borrowings.

(c) At the commencement of each Interest Period for any Eurodollar Borrowing (other than any Roll-Up Borrowing), such Eurodollar Borrowing shall be in an aggregate amount that is an integral multiple of \$100,000 and not less than \$1,000,000.

(d) Notwithstanding any other provision of this Agreement, the Borrower shall not be entitled to request Eurodollar Loans, or to elect to continue any Borrowing, if the Interest Period requested with respect thereto would end after the Maturity Date.

**Section 2.03 Borrowing Procedure.** To request a Borrowing, the Borrower shall deliver, by hand delivery or facsimile, a duly completed and executed Borrowing Request to the Administrative Agent not later than 12:00 p.m., New York City time, three Business Days before the date of the proposed Borrowing (or, on the date of the proposed Borrowing if such Borrowing is to be made on the Closing Date). Each Borrowing Request shall be irrevocable and shall specify the following information in compliance with Section 2.02:

- (a) the aggregate amount of such Borrowing;
- (b) the date of such Borrowing, which shall be a Business Day;
- (c) [Reserved];
- (d) the initial Interest Period to be applicable thereto, which shall be a period contemplated by the definition of the term "Interest Period"; and
- (e) the location and number of the Borrower's account to which funds are to be disbursed, which shall comply with the requirements of Section 2.04.

If no Interest Period is specified with respect to any requested Eurodollar Borrowing, then the Borrower shall be deemed to have selected an Interest Period of one month's duration. Promptly following receipt of a Borrowing Request in accordance with this Section 2.03, the Administrative Agent shall advise each Appropriate Lender of the details thereof and of the amount of such Lender's Applicable Percentage of the applicable Class of Loan to be made as part of the requested Borrowing.

**Section 2.04 Funding of Borrowings.**

(a) Subject to Section 2.21, each Appropriate Lender shall make each applicable Loan to be made by it hereunder on the proposed date thereof by wire transfer of immediately available funds by 12:00 p.m., New York City time, to the account of the Administrative Agent most recently designated by it for such purpose by notice to the Lenders. Subject to Section 2.21, the Administrative Agent will make such Loans available to the Borrower by promptly crediting the amounts so received, in

like funds, to an account of the Borrower maintained with the Administrative Agent in New York City and designated by the Borrower in the applicable Borrowing Request or by wire transfer of immediately available funds to such other account designated by the Borrower from time to time; provided that Loans made to finance the reimbursement of a LC Disbursement as provided in Section 2.18(e) shall be remitted by the Administrative Agent to the applicable Issuing Bank.

(b) Unless the Administrative Agent shall have received notice from a Lender prior to the proposed Borrowing that such Lender will not make available to the Administrative Agent such Lender's share of such Borrowing, the Administrative Agent may assume that such Lender has made such share available on such date in accordance with Section 2.04(a) and may, in reliance upon such assumption and in its sole discretion, make available to the Borrower a corresponding amount. In such event, if a Lender has not in fact made its share of the applicable Borrowing available to the Administrative Agent, then the applicable Lender and the Borrower severally agree to pay to the Administrative Agent forthwith on demand such corresponding amount with interest thereon, for each day from and including the date such amount is made available to the Borrower to but excluding the date of payment to the Administrative Agent, at (i) in the case of such Lender, the greater of the Federal Funds Effective Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation or (ii) in the case of the Borrower, the interest rate applicable to such Borrowing. If such Lender pays such amount to the Administrative Agent, then such amount shall constitute such Lender's Loan included in such Borrowing.

#### **Section 2.05 Repayment of Loans; Evidence of Debt.**

(a) Promise to Repay. The Borrower hereby unconditionally promises to pay to the Administrative Agent for the account of each Lender the then unpaid principal amount of each NM Loan of such Lender and all unreimbursed LC Reimbursement Obligations on the Maturity Date or as otherwise provided herein. The Borrower unconditionally promises to pay to the Administrative Agent for the account of each Lender the then unpaid principal amount of each JPM Roll-Up Borrowing and each WFB Roll-Up Borrowing, in each case, of such Lender on the Maturity Date or as otherwise provided herein.

(b) Lender and Administrative Agent Records. Each Lender shall maintain in accordance with its usual practice an account or accounts evidencing the Indebtedness of the Borrower to such Lender resulting from each Loan made by such Lender from time to time, including the amounts of principal and interest payable and paid to such Lender from time to time under this Agreement. The Administrative Agent shall maintain accounts in which it will record (i) the amount of each Loan made hereunder, the Class thereof and the Interest Period applicable thereto; (ii) the amount of any principal or interest due and payable or to become due and payable from the Borrower to each Lender hereunder; and (iii) the amount of any sum received by the Administrative Agent hereunder for the account of the Lenders and each Lender's share thereof. The entries made in the accounts maintained pursuant to this paragraph shall be *prima facie* evidence of the existence and amounts of the obligations therein recorded; provided that the failure of any Lender or the Administrative Agent to maintain such accounts or any error therein shall not in any manner affect the obligations of the Borrower to repay the Loans in accordance with their terms. In the event of any conflict between the records maintained by any Lender and the records of the Administrative Agent in respect of such matters, the records of the Administrative Agent shall control in the absence of manifest error.

(c) Promissory Notes. Any Lender by written notice to the Borrower (with a copy to the Administrative Agent) may request that Loans made by it be evidenced by a promissory note. In such event, the Borrower shall prepare, execute and deliver to such Lender a Note (in the form of Exhibit I) to evidence such Lender's Loans.

**Section 2.06 Fees .**

(a) Administrative Agent Fees. The Borrower agrees to pay to the Administrative Agent, for its own account, the administrative fees payable in the amounts and at the times separately agreed upon between the Borrower and the Administrative Agent (the "Administrative Agent Fees"). All Fees shall be paid on the dates due, in immediately available funds, to the Administrative Agent. Once paid, none of the Fees shall be refundable under any circumstances.

(b) Commitment Fee. The Borrower agrees to pay to the Administrative Agent for the account of each Lender a commitment fee, which shall accrue at 4.00% per annum on the average daily unused amount of the NM Commitment of such Lender during the period from and including the Closing Date to but excluding the Commitment Termination Date. Accrued commitment fees shall be payable in arrears in respect of the NM Commitments on the last Business Day of each calendar month and on the Commitment Termination Date, commencing on the last Business Day of the month in which the Closing Date occurs. All commitment fees shall be computed on the basis of a year of 360 days and shall be payable for the actual number of days elapsed (including the first day but excluding the last day). For purposes of computing commitment fees with respect to NM Commitments, a NM Commitment of a Lender shall be deemed to be used to the extent of the outstanding NM Loans and LC Exposure of such Lender. Once due and payable, such commitment fee shall be fully earned and shall not be refundable under any circumstances.

(c) Letter of Credit Fees. The Borrower agrees to pay (i) to the Administrative Agent for the account of each Lender a participation fee with respect to its participations in Letters of Credit ("Letter of Credit Fees"), which shall accrue at 6.00% per annum on the average daily amount of such Lender's LC Exposure (excluding any portion thereof attributable to unreimbursed LC Disbursements) during the period from and including the Closing Date to but excluding the later of the Commitment Termination Date and the date on which such Lender ceases to have any LC Exposure; provided, that, during any period that an Event of Default has occurred and is continuing, such participation fee shall be increased by 2.00% and (ii) to each Issuing Bank a fronting fee, which shall accrue at a rate equal to 0.25% per annum on the average daily amount of the LC Exposure arising from or related to Letters of Credit issued by it (excluding any portion thereof attributable to unreimbursed LC Disbursements) during the period from and including the Closing Date to but excluding the later of the Commitment Termination Date and the date on which there ceases to be any LC Exposure, as well as such Issuing Bank's standard administrative fees with respect to the issuance, amendment, renewal or extension of any Letter of Credit or processing of drawings thereunder. Participation fees and fronting fees shall be payable on the last Business Day of each calendar month, commencing on the last Business Day of the month in which the Closing Date occurs; provided that all such fees shall be payable on the Commitment Termination Date and any such fees accruing after the Commitment Termination Date shall be payable on demand. Any other fees payable to any Issuing Bank pursuant to this paragraph shall be payable within 10 days after demand. All participation fees and fronting fees shall be computed on the basis of a year of 360 days and shall be payable for the actual number of days elapsed (including the first day but excluding the last day).

(d) Upfront Fee. The Borrower agrees to pay to the Administrative Agent for the account of each Lender making NM Loans on the Closing Date an upfront fee pursuant to the Fee Letter.

**Section 2.07 Interest on Loans.**

(a) [Reserved].

(b) Eurodollar Loans. Subject to the provisions of Section 2.07(c), the Loans comprising each Eurodollar Borrowing shall bear interest at a rate per annum equal to the Adjusted LIBOR Rate for the Interest Period in effect for such Borrowing plus the Applicable Margin in effect from time to time.

(c) Default Rate. Notwithstanding the foregoing, if any Event of Default has occurred and is continuing, then all Obligations (whether or not overdue) shall, to the extent permitted by applicable law, bear interest, after as well as before judgment, at a rate per annum equal to 2.00% plus the rate otherwise applicable to Loans as provided in Section 2.07(b) (the “Default Rate”).

(d) Interest Payment Dates. Accrued interest on each Loan shall be payable in arrears on each Interest Payment Date for such Loan; provided that (i) interest accrued pursuant to Section 2.07(c) shall be payable on demand and (ii) in the event of any repayment or prepayment of any Loan, accrued interest on the principal amount repaid or prepaid shall be payable on the date of such repayment or prepayment.

(e) Interest Calculation. All interest hereunder shall be computed on the basis of a year of 360 days, except that interest computed by reference to the Alternate Base Rate shall be computed on the basis of a year of 365 days (or 366 days in a leap year), and in each case shall be payable for the actual number of days elapsed (including the first day but excluding the last day). The applicable Alternate Base Rate or Adjusted LIBOR Rate shall be determined by the Administrative Agent in accordance with the provisions of this Agreement and such determination shall be conclusive absent manifest error.

#### **Section 2.08 Termination and Reduction of Commitments**

(a) The NM Commitments shall terminate immediately and without further action on the Commitment Termination Date. The JPM Roll-Up Commitment and the WFB Roll-Up Commitment shall automatically reduce upon the making of each JPM Roll-Up Borrowing and each WFB Roll-Up Borrowing, respectively, in the amount of such Roll-Up Borrowing in accordance with Section 2.21 and shall automatically terminate upon the making of the final Roll-Up Borrowing.

(b) The Borrower may at any time terminate, or from time to time reduce, the NM Commitments; provided that (i) each reduction of the Commitments shall be in an amount that is an integral multiple of \$500,000 and not less than \$1,000,000 and (ii) the Borrower shall not terminate or reduce the NM Commitments if, after giving effect to any concurrent payment of the NM Loans in accordance with Section 2.08 (or, if no such NM Borrowings are outstanding, the deposit of Cash Collateral in an account with the Collateral Agent pursuant to Section 2.20), the aggregate Revolving Credit Exposure under the NM Facility would exceed the aggregate NM Commitments and shall not reduce or terminate NM Commitment relating to the Letter of Credit if, after giving effect thereto, the LC Exposure not fully Cash Collateralized hereunder would exceed \$1,900,000 (except as provided in Section 2.18(a)). For the avoidance of doubt, the Borrower may not terminate any JPM Roll-Up Commitments or WFB Roll-Up Commitments pursuant to this Section 2.08(b).

(c) The Borrower shall notify the Administrative Agent by written notice of any election to terminate or reduce the NM Commitments hereunder not later than 11:00 a.m., New York City time, three Business Days before the date of such termination or reduction. Each such notice shall be irrevocable; provided that a notice of termination of any NM Commitments delivered by the Borrower may state that such notice is conditioned upon the effectiveness of another credit facility or the closing of a securities offering or acquisition or sale, in which case such notice may be revoked by the Borrower (by notice to the Administrative Agent on or prior to the specified prepayment date) if such condition is not

satisfied. Each such notice shall specify the effective date of such termination or reduction. Promptly following receipt of any such notice, the Administrative Agent shall advise the Appropriate Lenders of the contents thereof. Any termination or reduction of any Commitments of any Class shall be permanent. Each reduction of Commitments of any Class shall be made ratably among the Appropriate Lenders in accordance with their respective Applicable Percentage of the Commitments with respect to such Class.

**Section 2.09 Interest Elections.**

(a) General. Subject to Section 2.21, each Borrowing shall have an initial Interest Period as specified in such Borrowing Request. Thereafter, the Borrower may elect to continue such Borrowing and, may elect Interest Periods therefor, all as provided in this Section. The Borrower may elect different options with respect to different portions of the affected Borrowing, in which case each such portion shall be allocated ratably among the Lenders holding the Loans comprising such Borrowing, and the Loans comprising each such portion shall be considered a separate Borrowing. Notwithstanding anything to the contrary, the Borrower shall not be entitled to request any continuation of any NM Borrowing that, if made, would result in more than twelve NM Borrowings outstanding hereunder at any one time.

(b) Interest Election Notice. To make an election pursuant to this Section, the Borrower shall deliver, by hand delivery or facsimile (or other electronic means), a duly completed and executed Interest Election Request to the Administrative Agent not later than the time that a Borrowing Request would be required under Section 2.03 if the Borrower was requesting a Loan to be made on the effective date of such election. Each Interest Election Request shall be irrevocable. Each Interest Election Request shall specify the following information in compliance with Section 2.02:

- (i) the Borrowing to which such Interest Election Request applies and, if different options are being elected with respect to different portions thereof, or if outstanding Borrowings are being combined, allocation to each resulting Borrowing (in which case the information to be specified pursuant to clauses (iii) and (iv) below shall be specified for each resulting Borrowing);
- (ii) the effective date of the election made pursuant to such Interest Election Request, which shall be a Business Day;
- (iii) [Reserved]; and
- (iv) the Interest Period to be applicable thereto after giving effect to such election, which shall be a period contemplated by the definition of the term "Interest Period."

If any such Interest Election Request does not specify an Interest Period (or if the Borrower fails to provide an Interest Election Request for any outstanding Borrowing the Interest Period for which is then ending), then the Borrower shall be deemed to have selected an Interest Period of one month's duration.

Promptly following receipt of an Interest Election Request, the Administrative Agent shall advise each applicable Lender of the details thereof and of such Lender's portion of each resulting Borrowing.

**Section 2.10 Prepayment of Loans.**

- (a) Optional Prepayments.

(i) Prepayments. Subject to Section 2.10(a)(iii), the Borrower shall have the right at any time and from time to time to prepay any Borrowing of any Class, in whole or in part, subject to the requirements of this Section 2.10.

(ii) Notice of Prepayment. The Borrower shall notify the Administrative Agent in writing of any prepayment of any Loans hereunder pursuant to this Section 2.10(a) by not later than 11:00 a.m., New York City time, three Business Days before the date of prepayment. Each such notice shall be irrevocable; provided that a notice of prepayment delivered by the Borrower may state that such notice is conditioned upon the effectiveness of another credit facility or the closing of a securities offering or acquisition or sale, in which case such notice may be revoked by the Borrower (by notice to the Administrative Agent on or prior to the specified prepayment date) if such condition is not satisfied. Each such notice shall specify the prepayment date, the Class and the principal amount, and, in the case of a mandatory prepayment, a reasonably detailed calculation of the amount of such prepayment. Promptly following receipt of any such notice, the Administrative Agent shall advise each Appropriate Lender of the contents thereof. Each partial prepayment of any Borrowing shall be in an amount that would be permitted in the case of a Credit Extension as provided in Section 2.02, except as necessary to apply fully the required amount of a mandatory prepayment. Each prepayment of a Borrowing shall be applied ratably to the Loans included in the prepaid Borrowing. Prepayments shall be accompanied by accrued interest to the extent required by Section 2.07.

(iii) Discharge Obligations. Notwithstanding the foregoing, the Borrower may not (A) make any prepayment of any NM Loan until the Discharge Conditions with respect to the JPM Roll-Up Facility have been met or (B) make any prepayment of any WFB Roll-Up Borrowing until the Discharge Conditions with respect to both the JPM Roll-Up Facility and the NM Facility have been met.

(b) Mandatory Prepayments.

(i) Revolving Credit Exposure. In the event and on such occasion that the aggregate Revolving Credit Exposure for any Facility exceeds the aggregate Commitments for such Facility or the LC Exposure exceeds the lesser of \$1,900,000 (except as provided in Section 2.18(a)) and the aggregate Commitments for the NM Facility, the Borrower shall within one (1) Business Day of receipt of notice from the Administrative Agent (A) prepay Borrowings for such Facility or (B) Cash Collateralize LC Exposure under such Facility in an amount not less than the applicable Minimum Collateral Amount times the LC Exposure so Cash Collateralized, in an aggregate amount so that, after giving effect to such prepayments or Cash Collateralizations, the Revolving Credit Exposure or the LC Exposure for such Facility does not then exceed the lesser of \$1,900,000 (except as provided in Section 2.18(a)) and the aggregate Commitments for such Facility; provided, however, that, subject to Section 2.20, the Borrower shall not be required to Cash Collateralize the LC Exposure pursuant to this Section 2.10(b)(i) unless after the prepayment in full of the NM Loans, the aggregate LC Exposure exceeds the aggregate NM Commitments then in effect.

(ii) Asset Sales, Debt Issuance, Casualty Events, Special Proceeds and Extraordinary Receipts. The Borrower shall make or cause to be made prepayments of the Loans (or, if no Loans are outstanding, deposit Cash Collateral in an account with the Administrative Agent pursuant to Section 2.20) from Net Cash Proceeds, Special Proceeds and from the proceeds of any Extraordinary Receipts, and the Commitments shall be reduced dollar for dollar in connection with each such prepayment, in each case as follows:

(A) Asset Sales. Not later than five Business Days following the receipt of any Net Cash Proceeds of any Asset Sale by the Borrower or any of its Subsidiaries, the Borrower shall make or cause to be made such prepayments and reductions in an aggregate amount equal to 100% of such Net Cash Proceeds; provided that no such prepayment or reduction shall be required under this section with respect to (1) any Asset Sale permitted by Section 6.06(a), (b), (c), (e), (f), (g), (h), (i), (j), (k), (l), (m) or (q); (2) the granting of any Lien permitted by Section 6.02, or (3) any Asset Sale permitted by Section 6.05.

(B) Debt Issuance. Not later than two Business Days following the receipt of any Net Cash Proceeds of any issuance of Indebtedness (other than Indebtedness not prohibited hereunder) by the Borrower or any of its Subsidiaries after the Closing Date, the Borrower shall make or cause to be made such prepayments and reductions in an aggregate amount equal to 100% of such Net Cash Proceeds.

(C) Casualty Events. Not later than 10 Business Days following the receipt of any Net Cash Proceeds of any Casualty Event by the Borrower or any of its Subsidiaries, the Borrower shall make or cause to be made such prepayments and reductions in an aggregate amount equal to 100% of such Net Cash Proceeds.

(D) Special Proceeds; Extraordinary Receipts. Not later than ten (10) Business Days following receipt of Special Proceeds or Extraordinary Receipts by the Borrower or any of its Subsidiaries, the Borrower shall make or cause to be made such prepayments and reductions in an aggregate amount equal to 100% of such Special Proceeds or Extraordinary Receipts.

(iii) Application of Mandatory Prepayments. Subject to Section 8.03, all amounts required to be paid pursuant to Section 2.10(b)(i) shall be applied *first*, to the prepayment of the JPM Roll-Up Borrowings (or, if prior to the ~~Final Order~~, repayment of all principal amounts of “Tranche A-1 Revolving Loans” outstanding under the Prepetition First-Lien Credit Agreement with JPM Roll-Up Borrowings pursuant to Section 2.21, to the prepayment of “Tranche A-1 Revolving Loans” ~~(as defined in the Prepetition First-Lien Credit Agreement)~~), *second*, to the prepayment of the NM Loans, *third*, to the prepayment of the WFB Roll-Up Borrowings (~~“(or, if prior to the Final Order, repayment of all principal amounts of “Tranche A-2 Revolving Loans” outstanding under the Prepetition First-Lien Credit Agreement with WFB Roll-Up Borrowings pursuant to Section 2.21, to the prepayment of “Tranche A-2 Revolving Loans” ~~(as defined in the Prepetition First-Lien Credit Agreement)~~) and *fourth* to deposit Cash Collateral in an account with the Administrative Agent pursuant to Section 2.20 with respect to the outstanding amount of any LC Exposure, in each case, without any corresponding reductions of Commitments. Subject to Section 8.03, all amounts required to be paid pursuant to Section 2.10(b)(ii) shall be applied *first*, to the prepayment of the JPM Roll-Up Borrowing (or, if prior to the ~~Final Order~~, repayment of all principal amounts of “Tranche A-1 Revolving Loans” outstanding under the Prepetition First-Lien Credit Agreement with JPM Roll-Up Borrowings pursuant to Section 2.21, to the prepayment of any outstanding “Tranche A-1 Revolving Loans” ~~(as defined in the Prepetition First-Lien Credit Agreement)~~ with a corresponding reduction in the JPM Roll-Up Commitment), *second*, to the prepayment of the NM Loans, *third*, to the prepayment of the WFB Roll-Up Borrowing (or, if prior to the ~~Final Order~~, ~~to the prepayment of any outstanding~~ repayment of all principal amounts of “Tranche A-2 Revolving Loans” ~~(as defined in the Prepetition First-Lien Credit Agreement)~~ with WFB Roll-Up Borrowings pursuant to Section 2.21, to the prepayment of any outstanding “Tranche A-2 Revolving Loans” with a corresponding reduction in the WFB Roll-Up Commitment) and *fourth*, to deposit Cash Collateral in an account~~

with the Administrative Agent pursuant to Section 2.20 with respect to the outstanding amount of any LC Exposure, and with a corresponding permanent reduction of Commitments to the extent of steps first, second and third.

(iv) Notice of Mandatory Prepayment Events. The Borrower shall use commercially reasonable efforts to give to the Administrative Agent at least one (1) Business Day's prior written notice of each and every prepayment required under this Section 2.10(b), including the amount of such prepayment and the anticipated timing therefor.

**Section 2.11 Alternate Rate of Interest**. If prior to the commencement of any Interest Period for a Eurodollar Borrowing under any Facility:

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

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

then the Administrative Agent shall give written notice thereof to the Borrower and the Appropriate Lenders as promptly as practicable thereafter and, until the Administrative Agent notifies the Borrower and the Appropriate Lenders that the circumstances giving rise to such notice no longer exist, (i) any Interest Election Request that requests the continuation of any Borrowing shall be converted to a Borrowing that bears interest at a rate per annum equal to the Alternate Base Rate in effect for such Borrowing plus the Applicable Margin in effect from time to time and (ii) if any Borrowing Request requests a Eurodollar Borrowing, such Borrowing shall bear interest at a rate per annum equal to the Alternate Base Rate for the Interest Period in effect for such Borrowing plus the Applicable Margin in effect from time to time.

**Section 2.12 Yield Protection**.

(a) Increased Costs Generally. If any Change in Law shall:

(i) impose, modify or deem applicable any reserve, special deposit, compulsory loan, insurance charge or similar requirement against assets of, deposits with or for the account of, or credit extended or participated in, by any Lender (except any reserve requirement reflected in the Adjusted LIBOR Rate) or any Issuing Bank;

(ii) subject any Lender or any Issuing Bank to any (i) Tax of any kind whatsoever with respect to this Agreement or any Loan made by such Lender or any Letter of Credit or participation therein, or change the basis of taxation of payments to such Lender or Issuing Bank in respect thereof (except for (A) Indemnified Taxes or Other Taxes covered by Section 2.15 or (B) the imposition of, or any change in the rate of, any Excluded Tax payable by such Lender or Issuing Bank); or

(iii) impose on any Lender or any Issuing Bank or the London interbank market any other condition, cost or expense affecting this Agreement or Eurodollar Loans made by such Lender or Letter of Credit or participation therein;



and the result of any of the foregoing shall be to increase the cost to such Lender of making or maintaining any Eurodollar Loan (or in the case of clause (ii) above, any Loan), or of maintaining its obligation to make any such Loan or to increase the cost to such Lender or such Issuing Bank of participating in, issuing or maintaining any Letter of Credit (or maintaining its obligation to participate in any Letter of Credit), or to reduce the amount of any sum received or receivable by such Lender or such Issuing Bank hereunder (whether of principal, interest or any other amount), then, upon request of such Lender or Issuing Bank, the Borrower will pay to such Lender or Issuing Bank, as applicable, such additional amount or amounts as will compensate such Lender or such Issuing Bank, as applicable, for such additional costs incurred or reduction suffered.

(b) Capital Requirements. If any Lender or Issuing Bank determines (in good faith, but in its sole absolute discretion) that any Change in Law affecting such Lender or Issuing Bank or any lending office of such Lender or Issuing Bank or such Lender's or Issuing Bank's holding company, if any, regarding capital requirements has or would have the effect of reducing the rate of return on such Lender's or Issuing Bank's capital or on the capital of such Lender's or Issuing Bank's holding company, if any, as a consequence of this Agreement, the Commitments of such Lender or the Loans made by, or participations in Letters of Credit held by, such Lender, or the Letters of Credit issued by such Issuing Bank, to a level below that which such Lender or such Issuing Bank or such Lender's or such Issuing Bank's holding company could have achieved but for such Change in Law (taking into consideration such Lender's or such Issuing Bank's policies and the policies of such Lender's or such Issuing Bank's holding company with respect to capital adequacy), then from time to time the Borrower will pay to such Lender or such Issuing Bank, as applicable, such additional amount or amounts as will compensate such Lender or such Issuing Bank or such Lender's or such Issuing Bank's holding company for any such reduction suffered.

(c) Certificates for Reimbursement. A certificate of a Lender or an Issuing Bank prepared in good faith setting forth the amount or amounts necessary to compensate such Lender or such Issuing Bank or its holding company, as the case may be, as specified in paragraph (a) or (b) of this Section 2.12 and setting forth in reasonable detail the basis of such amounts and delivered to the Borrower shall be conclusive absent manifest error. The Borrower shall pay such Lender or Issuing Bank the amount shown as due on any such certificate within 10 days after receipt thereof.

(d) Delay in Requests. Failure or delay on the part of any Lender or any Issuing Bank to demand compensation pursuant to this Section 2.12 shall not constitute a waiver of such Lender's or such Issuing Bank's right to demand such compensation; provided that the Borrower shall not be required to compensate a Lender or such Issuing Bank pursuant to this Section for any increased costs incurred or reductions suffered more than nine months prior to the date that such Lender or such Issuing Bank, as applicable, notifies the Borrower of the Change in Law giving rise to such increased costs or reductions and of such Lender's or such Issuing Bank's intention to claim compensation therefor (except that, if the Change in Law giving rise to such increased costs or reductions is retroactive, then the nine month period referred to above shall be extended to include the period of retroactive effect thereof).

**Section 2.13 Breakage Payments**. In the event of (a) the payment or prepayment, whether optional or mandatory, of any principal of any Eurodollar Loan earlier than the last day of an Interest Period applicable thereto (including as a result of an Event of Default), (b) [Reserved], (c) the failure to borrow, continue or prepay any Loan on the date specified in any notice delivered pursuant hereto or (d) the assignment of any Eurodollar Loan earlier than the last day of the Interest Period applicable thereto as a result of a request by the Borrower pursuant to Section 2.16(b), then, in any such event, the Borrower shall compensate each Lender for the loss, cost and expense attributable to such event. Such loss, cost or expense to any Lender shall be deemed to equal an amount reasonably determined by such Lender to be the excess, if any, of (i) the amount of interest which would have

accrued on the principal amount of such Loan had such event not occurred, at the LIBOR Rate that would have been applicable to such Loan, for the period from the date of such event to the last day of the then current Interest Period therefor (or, in the case of a failure to borrow or continue, for the period that would have been the Interest Period for such Loan), over (ii) the amount of interest which would accrue on such principal amount for such period at the interest rate which such Lender would bid were it to bid, at the commencement of such period, for dollar deposits of a comparable amount and period from other banks in the Eurodollar market. A certificate of any Lender setting forth in reasonable detail any amount or amounts that such Lender is entitled to receive pursuant to this Section 2.13 shall be delivered to the Borrower (with a copy to the Administrative Agent) and shall be conclusive and binding absent manifest error. The Borrower shall pay such Lender the amount shown as due on any such certificate within 5 Business Days after receipt thereof.

**Section 2.14 Payments Generally; Pro Rata Treatment; Sharing of Setoffs.**

(a) Payments Generally. The Borrower shall make each payment required to be made by it hereunder or under any other Loan Document (whether of principal, interest, fees or reimbursement of LC Disbursements, or of amounts payable under Section 2.12, 2.13, 2.15 or 10.03, or otherwise) on or before the time expressly required hereunder or under such other Loan Document for such payment (or, if no such time is expressly required, prior to 2:00 p.m., New York City time), on the date when due, in immediately available funds, without setoff, deduction or counterclaim. Any amounts received after such time on any date may, in the discretion of the Administrative Agent, be deemed to have been received on the next succeeding Business Day for purposes of calculating interest thereon. All such payments shall be made to the Administrative Agent by wire transfer of immediately available funds to the account of the Administrative Agent most recently designated by it for such purpose by notice to the Borrower, except payments to be made directly to an Issuing Bank as expressly provided herein. The Administrative Agent shall distribute any such payments received by it for the account of any other person to the appropriate recipient promptly following receipt thereof. If any payment under any Loan Document shall be due on a day that is not a Business Day, unless specified otherwise, the date for payment shall be extended to the next succeeding Business Day, and, in the case of any payment accruing interest, interest thereon shall be payable for the period of such extension. All payments under each Loan Document shall be made in dollars, except as expressly specified otherwise.

(b) Pro Rata Treatment. Each Borrowing, each payment or prepayment of principal of or interest on any Loan, each payment of fees (other than the fronting fees and administrative fees paid to the Issuing Bank pursuant to Section 2.06(c)(ii) retained by the Issuing Bank for its own account, and the administrative fees retained by the Agents for their own account), each reduction of the Commitment, each payment with respect to LC Exposure and each continuation of any Loan, in each case, with respect to any Class, shall be allocated pro rata among the relevant Lenders in accordance with the respective Applicable Percentage of such Lenders; provided that, in the event any amount paid to any Lender pursuant to this Section 2.14(b) is rescinded or must otherwise be returned by the Administrative Agent, each Lender shall, upon the request of the Administrative Agent, repay to the Administrative Agent the amount so paid to such Lender, with interest for the period commencing on the date such payment is returned by the Administrative Agent until the date the Administrative Agent receives such repayment at a rate per annum equal to the greater of the Federal Funds Effective Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation. For the avoidance of doubt, the provisions of this Section shall be subject to Section 2.19 and Section 10.17 to the extent applicable.

(c) Insufficient Funds. If at any time insufficient funds are received by and available to the Administrative Agent to pay fully all amounts of principal, unreimbursed LC Disbursements, interest, fees and costs then due hereunder with respect to the Loans, such funds shall be applied (i) *first*,

toward payment of principal, ~~interest,~~ then due hereunder with respect to the JPM Roll-Up Borrowings in an aggregate amount not to exceed \$5,347,504, plus interest then due upon such principal amount, together with any fees and costs then due hereunder with respect to the JPM Roll-Up Borrowings, in each case, ratably among the parties thereto in accordance with the amounts of principal, interest, costs and fees then due to such parties, (i) second, toward payment of principal then due hereunder with respect to the Tax Borrowings in an aggregate amount not to exceed \$13,000,000, ratably among the parties thereto in accordance with the amounts of principal then due to such parties, (iii) third, toward payment of the any unpaid principal, interest, fees and costs then due hereunder with respect to the JPM Roll-Up Borrowings, ratably among the parties ~~entitled~~ thereto in accordance with the amounts of principal, interest, costs and fees then due to such parties, (iiiv) ~~second~~fourth, toward payment of any unpaid principal, interest, fees and costs then due hereunder with respect to the NM Loans and unreimbursed LC Disbursements, ratably among the parties ~~entitled~~ thereto in accordance with the amounts of principal, interest ~~and~~ costs, fees and unreimbursed LC Disbursements then due to such parties, and (iiiv) ~~third~~fifth, toward payment of principal, interest, fees and costs then due hereunder with respect to the WFB Roll-Up Borrowings, ratably among the parties ~~entitled~~ thereto in accordance with the amounts of principal, interest, costs and fees then due to such parties. It is understood that the foregoing does not apply to any adequate protection payments under any federal, state or foreign bankruptcy, insolvency, receivership or similar proceeding, and that the Administrative Agent may, subject to any applicable federal, state or foreign bankruptcy, insolvency, receivership or similar orders, distribute any adequate protection payments it receives on behalf of the Lenders to the Lenders in its sole discretion (i.e., whether to pay the earliest accrued interest, all accrued interest on a pro rata basis or otherwise).

(d) Sharing of Setoff. If any Lender shall, by exercising any right of setoff or counterclaim or otherwise, obtain payment in respect of any principal of or interest on any of its Loans or participations in LC Disbursements or other Obligations resulting in such Lender's receiving payment of a proportion of the aggregate amount of its Loans and participations in LC Disbursements and accrued interest thereon or other Obligations greater than its pro rata share thereof as provided herein, then the Lender receiving such greater proportion shall (x) notify the Administrative Agent of such fact, and (y) purchase (for cash at face value) participations in the Loans and participations in LC Disbursements and such other obligations of the other relevant Lenders, or make such other adjustments as shall be equitable, so that the benefit of all such payments shall be shared by the relevant Lenders ratably in accordance with the aggregate amount of principal of and accrued interest on their respective relevant Loans and participations in LC Disbursements and other amounts owing them, as applicable; provided that:

(i) if any such participations are purchased and all or any portion of the payment giving rise thereto is recovered, such participations shall be rescinded and the purchase price restored to the extent of such recovery, without interest; and

(ii) the provisions of this paragraph shall not be construed to apply to (x) any payment made by the Borrower pursuant to and in accordance with the express terms of this Agreement, (y) the application of Cash Collateral as provided for in Section 2.20(d) or (z) any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Loans or participations in LC Disbursements to any assignee or participant.

Each Loan Party consents to the foregoing and agrees, to the extent it may effectively do so under applicable Requirements of Law, that any Lender acquiring a participation pursuant to the foregoing arrangements may exercise against such Loan Party rights of setoff and counterclaim with respect to such participation as fully as if such Lender were a direct creditor of such Loan Party in the amount of such participation. If under applicable bankruptcy, insolvency or any similar law any Secured Party receives a secured claim in lieu of a setoff or counterclaim to which this Section 2.14 applies, such Secured Party shall to the extent practicable, exercise its rights in respect of such secured claim in a manner consistent

with the rights to which the Secured Party is entitled under this Section 2.14(d) to share in the benefits of the recovery of such secured claim.

(e) Borrower Default. Unless the Administrative Agent shall have received notice from the Borrower prior to the date on which any payment is due to the Administrative Agent for the account of the Lenders or the Issuing Bank hereunder that the Borrower will not make such payment, the Administrative Agent may assume that the Borrower has made such payment on such date in accordance herewith and may, in reliance upon such assumption, distribute to the Lenders or the Issuing Bank, as the case may be, the amount due. In such event, if the Borrower has not in fact made such payment, then each of the Lenders or the Issuing Bank, as the case may be, severally agrees to repay to the Administrative Agent forthwith on demand the amount so distributed to such Lender or the Issuing Bank with interest thereon, for each day from and including the date such amount is distributed to it to but excluding the date of payment to the Administrative Agent, at the greater of the Federal Funds Effective Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation.

### **Section 2.15 Taxes.**

(a) Payments Free of Taxes. Unless required by applicable Law (as determined in good faith by the applicable withholding agent), any and all payments by or on account of any obligation of any Loan Party hereunder or under any other Loan Document shall be made free and clear of and without reduction or withholding for any Indemnified Taxes or Other Taxes; provided that if the applicable withholding agent shall be required by Law to deduct any Indemnified Taxes (including any Other Taxes), then (i) the sum payable by the applicable Loan Party shall be increased as necessary so that after all required deductions or withholdings (including deductions or withholdings applicable to additional sums payable under this Section) have been made, each Agent or Lender, as the case may be, receives an amount equal to the sum it would have received had no such deductions or withholdings been made, (ii) the applicable withholding agent shall make such deductions or withholdings and (iii) the applicable withholding agent shall timely pay the full amount deducted to the relevant Governmental Authority in accordance with applicable Law.

(b) Payment of Other Taxes by Loan Parties. Without limiting the provisions of paragraph (a) above, the relevant Loan Party shall timely pay any Other Taxes to the relevant Governmental Authority in accordance with applicable Law.

(c) Indemnification by the Borrower. The Borrower shall, without duplication of additional amounts paid pursuant to Section 2.15(a), indemnify each Agent and Lender, within 10 days after written demand therefor, for the full amount of any Indemnified Taxes or Other Taxes (including Indemnified Taxes or Other Taxes imposed or asserted on or attributable to amounts payable under this Section) imposed on such Agent or Lender by any Governmental Authority in connection with this Agreement or any other Loan Document and reasonable expenses arising therefrom or with respect thereto, regardless of whether such Indemnified Taxes or Other Taxes were correctly or legally imposed, asserted or otherwise determined to be payable by the relevant Governmental Authority. A certificate, prepared in good faith, as to the amount of such payment or liability and setting forth in reasonable detail the calculation of such payment or liability delivered to the Borrower by a Lender (with a copy to the Administrative Agent), or by an Agent on its own behalf or on behalf of a Lender, shall be conclusive absent manifest error.

(d) Evidence of Payments. As soon as practicable after any payment of Indemnified Taxes or Other Taxes by a Loan Party to a Governmental Authority, such Loan Party shall deliver to the Administrative Agent the original or a certified copy of a receipt issued by such Governmental Authority

evidencing such payment, a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to the Administrative Agent.

(e) Status of Lenders. Each Lender shall, at the time or times prescribed by applicable Law and at such time or times reasonably requested by the Borrower or the Administrative Agent, provide the Borrower and the Administrative Agent with any documentation prescribed by Law, or reasonably requested by the Borrower or the Administrative Agent, certifying as to any entitlement of such Lender to an exemption from, or reduction in, any withholding Tax with respect to any payments to be made to such Lender under the Loan Documents. Each such Lender shall, whenever a lapse in time or change in circumstances renders such documentation expired, obsolete or inaccurate in any material respect, deliver promptly to the Borrower and the Administrative Agent updated or other appropriate documentation (including any new documentation reasonably requested by the applicable withholding agent) or promptly notify the Borrower and the Administrative Agent if such Lender may not lawfully deliver such documentation under applicable Law. Unless the applicable withholding agent has received forms or other documents satisfactory to it indicating that payments under any Loan Document to or for a Lender are not subject to withholding tax or are subject to such Tax at a rate reduced by an applicable tax treaty, the Borrower, Administrative Agent or other applicable withholding agent may withhold amounts required to be withheld by applicable Law from such payments at the applicable rate without an obligation to make payments pursuant to Section 2.15(a). Notwithstanding anything herein to the contrary, the completion, execution and submission of any documentation (other than the documentation set forth in Section 2.15(e)(i), Section 2.15(e)(ii)(I)-(IV) and Section 2.15(e)(iii)) shall not be required if in the Lender's reasonable judgment such completion, execution or submission would subject such Lender to any material unreimbursed cost or expense or would materially prejudice the legal or commercial position of such Lender.

Without limiting the generality of the foregoing:

(i) Each Lender that is a United States person (as defined in Section 7701(a)(30) of the Code) shall deliver to the Borrower and the Administrative Agent on or before the date on which it becomes a party to this Agreement two properly completed and duly signed copies of Internal Revenue Service Form W-9 (or any successor form) certifying that such Lender is exempt from U.S. federal backup withholding.

(ii) Each Lender that is not a United States person (as defined in Section 7701(a)(30) of the Code) shall deliver to the Borrower and the Administrative Agent on or before the date on which it becomes a party to this Agreement (and from time to time thereafter when required by Law or upon the reasonable request of the Borrower or the Administrative Agent) whichever of the following is applicable:

(I) two duly completed copies of Internal Revenue Service Form W-8BEN (or any successor forms) claiming eligibility for benefits of an income tax treaty to which the United States of America is a party,

(II) two duly completed copies of Internal Revenue Service Form W-8ECI (or any successor forms),

(III) in the case of a Lender claiming the benefits of the exemption for portfolio interest under Section 881(c) of the Code, (x) a certificate, in substantially the form of Exhibit K (any such certificate a "United States Tax Compliance Certificate"), or any other form approved by the Administrative Agent, to the effect that such Lender is not (A) a "bank" within the meaning of Section 881(c)(3)(A) of the Code, (B) a "10

percent shareholder” of the Borrower within the meaning of Section 881(c)(3)(B) of the Code, or (C) a “controlled foreign corporation” described in Section 881(c)(3)(C) of the Code and (y) two duly completed copies of Internal Revenue Service Form W-8BEN (or any successor forms),

(IV) to the extent a Lender is not the beneficial owner (for example, where the Lender is a partnership, or is a Lender that has granted a participation), Internal Revenue Service Form W-8IMY (or any successor forms) of the Lender, accompanied by a Form W-8ECI, W-8BEN, United States Tax Compliance Certificate, Form W-9, Form W-8IMY (or other successor forms) or any other required information from each beneficial owner, as applicable (provided that, if the Lender is a partnership (and not a participating Lender) and one or more beneficial owners are claiming the portfolio interest exemption, the United States Tax Compliance Certificate may be provided by such Lender on behalf of such beneficial owner(s)), or

(V) any other form prescribed by applicable requirements of U.S. federal income tax Law as a basis for claiming exemption from or a reduction in U.S. federal withholding tax duly completed together with such supplementary documentation as may be prescribed by applicable requirements of Law to permit the Borrower and the Administrative Agent to determine the withholding or deduction required to be made.

(iii) If a payment made to any Lender or the Administrative Agent under any Loan Document would be subject to United States federal withholding tax imposed by FATCA if such Lender or the Administrative Agent were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) and 1472(b) of the Code, as applicable) and such Lender or the Administrative Agent is entitled to an exemption from such withholding, such Lender and the Administrative Agent shall deliver to the Borrower and the Administrative Agent, at such time or times reasonably requested by the Borrower or the Administrative Agent, such documentation prescribed by applicable law (including as prescribed by Section 1471(b)(3)(C)(i) of the Code) and such additional documentation reasonably requested by the Borrower or the Administrative Agent as may be necessary for the Borrower or the Administrative Agent to comply with its obligations under FATCA and to determine whether such Lender or the Administrative Agent has complied with its obligations under FATCA, or to determine the amount, if any, to deduct and withhold from such payment.

Each Lender shall, from time to time after the initial delivery by such Lender of the forms described above, whenever a lapse in time or change in such Lender’s circumstances renders such forms, certificates or other evidence so delivered expired, obsolete or inaccurate, promptly (1) deliver to the Borrower and the Administrative Agent (in such number of copies as shall be requested by the recipient) renewals, amendments or additional or successor forms, properly completed and duly executed by such Lender, together with any other certificate or statement of exemption required in order to confirm or establish such Lender’s status or that such Lender is entitled to an exemption from or reduction in U.S. federal withholding tax or (2) in the event such Lender is incapable of delivering such forms, certificates or other evidence under applicable Law, notify the Administrative Agent and the Borrower if such Lender may not lawfully deliver such forms, certificates or other evidence under applicable Law.

Notwithstanding any other provision of this clause (e), a Lender shall not be required to deliver any form that such Lender is not legally eligible to deliver.

(f) Treatment of Certain Refunds. If any Agent or Lender determines, in good faith and in its sole discretion, that it has received a refund of any Indemnified Taxes or Other Taxes as to

which it has been indemnified by a Loan Party or with respect to which a Loan Party has paid additional amounts pursuant to this Section, it shall pay to such Loan Party an amount equal to such refund (but only to the extent of indemnity payments made, or additional amounts paid, by such Loan Party under this Section with respect to the Indemnified Taxes or Other Taxes giving rise to such refund), net of all reasonable out-of-pocket expenses (including Taxes) of such Agent or Lender, as the case may be, and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund net of any Taxes payable by any Agent or Lender); provided that the applicable Loan Party, upon the request of such Agent or Lender, agrees to repay the amount paid over such Loan Party (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) to such Agent or Lender in the event such Agent or Lender is required to repay such refund to such Governmental Authority. This paragraph shall not be construed to require any Agent or Lender to make available its Tax Returns (or any other information relating to its taxes that it deems confidential) to the Borrower or any other person. Notwithstanding anything to the contrary, in no event will any Agent or Lender be required to pay any amount to any Loan Party under this Section 2.15(f) the payment of which would place such Agent or Lender in a less favorable net after-tax position than such Agent or Lender would have been in if the additional amounts giving rise to such refund of any Indemnified Taxes or Other Taxes had never been paid.

(g) Payments Made by Administrative Agent. For the avoidance of doubt, any payments made by the Administrative Agent to any Lender shall be treated as payments made by the applicable Loan Party.

(h) Issuing Bank. For all purposes of this Section 2.15, the term “Lender” shall include the Issuing Bank.

#### **Section 2.16 Mitigation Obligations; Replacement of Lenders.**

(a) Designation of a Different Lending Office. If any Lender requests compensation under Section 2.12, or requires the Borrower to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 2.15, then such Lender shall use reasonable efforts to designate a different lending office for funding or booking its Loans hereunder or to assign its rights and obligations hereunder to another of its offices, branches or affiliates, if, in the judgment of such Lender, such designation or assignment (i) would eliminate or reduce amounts payable pursuant to Section 2.12 or 2.15, as the case may be, in the future and (ii) would not subject such Lender to any unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender. The Borrower hereby agrees to pay all reasonable costs and expenses incurred by any Lender in connection with any such designation or assignment. A certificate setting forth such costs and expenses submitted by such Lender to the Borrower shall be conclusive absent manifest error.

(b) Replacement of Lenders. If any Lender requests compensation under Section 2.12, or if the Borrower is required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 2.15, or if the Borrower exercises its replacement rights under Section 10.02(d), then the Borrower may, at its sole expense and effort, upon notice to such Lender and the Administrative Agent, require such Lender to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in, and consents required by, Section 10.04), all of its interests, rights and obligations under this Agreement and the other Loan Documents (or, with respect to an exercise of replacement rights under Section 10.02(d), all of its interest, rights and obligations with respect to the Class of Loans or Commitments that is subject of the related consent, waiver or amendment) to an Eligible Assignee that shall assume such obligations (which assignee may be another Lender, if a Lender accepts such assignment); provided that:

(i) the Borrower shall have paid to the Administrative Agent the processing and recordation fee specified in Section 10.04(b);

(ii) such Lender shall have received payment of an amount equal to the outstanding principal of its Loans, accrued interest thereon, accrued fees and all other amounts payable to it hereunder and under the other Loan Documents (including any amounts under Section 2.13 from the assignee or the Borrower);

(iii) in the case of any such assignment resulting from a claim for compensation under Section 2.12 or payments required to be made pursuant to Section 2.15, such assignment will result in a reduction in such compensation or payments thereafter; and

(iv) such assignment does not conflict with applicable Requirements of Law, including the receipt of any required Gaming Approvals.

A Lender shall not be required to make any such assignment or delegation if, prior thereto, as a result of a waiver by such Lender or otherwise, the circumstances entitling the Borrower to require such assignment and delegation cease to apply.

Each Lender agrees that, if the Borrower elects to replace such Lender in accordance with this Section 2.16(b), it shall promptly execute and deliver to the Administrative Agent an Assignment and Assumption to evidence the assignment and shall deliver to the Administrative Agent any Note (if Notes have been issued in respect of such Lender's Loans) subject to such Assignment and Assumption; provided that the failure of any such Lender to execute an Assignment and Assumption shall not render such assignment invalid and such assignment shall be recorded in the Register.

**Section 2.17 (Reserved) .**

**Section 2.18 Letters of Credit.**

(a) General. Subject to the terms and conditions set forth herein, the Borrower may request the issuance of Letters of Credit as the applicant thereof for the support of its or its Subsidiaries' obligations, in a form reasonably acceptable to the Administrative Agent and the Issuing Bank, at any time and from time to time during the Commitment Period, and the Issuing Bank agrees to issue Letters of Credit requested in accordance with this Section 2.18. In the event of any inconsistency between the terms and conditions of this Agreement and the terms and conditions of any form of letter of credit application or other agreement submitted by the Borrower to, or entered into by the Borrower with, the Issuing Bank relating to any Letter of Credit, the terms and conditions of this Agreement shall control. Notwithstanding anything to the contrary contained herein or in any other Loan Document, the aggregate LC Exposure shall not exceed \$1,900,000; provided, however, there may be a temporary increase in the LC Exposure to \$3,800,000 for the period during which a second Letter of Credit has been issued hereunder to replace the "back to back" Letter of Credit supporting the Existing LC and upon such replacement, the maximum aggregate LC Exposure shall reduce back to \$1,900,000. The issuance of such second Letter of Credit shall be deemed to constitute a use of NM Borrowings in the amount of \$1,900,000, and, immediately upon the replacement of such "back to back" Letter of Credit, the Borrower shall be deemed to have repaid NM Borrowings in the amount of \$1,900,000.

(b) Notice of Issuance, Amendment, Renewal, Extension; Certain Conditions. To request the issuance of a Letter of Credit (or the amendment, renewal or extension of an outstanding Letter of Credit), the Borrower shall hand deliver or telecopy (or transmit by electronic communication, if arrangements for doing so have been approved by the Issuing Bank) to the Issuing Bank and the



Administrative Agent (reasonably in advance of the requested date of issuance, amendment, renewal or extension, but in any event no less than three Business Days or such shorter period as is acceptable to the Issuing Bank) a notice requesting the issuance of a Letter of Credit, or identifying the Letter of Credit to be amended, renewed or extended, and specifying the date of issuance, amendment, renewal or extension (which shall be a Business Day), the date on which such Letter of Credit is to expire (which shall comply with paragraph (c) of this Section), the amount of such Letter of Credit, the name and address of the beneficiary thereof and such other information as shall be necessary to prepare, amend, renew or extend such Letter of Credit. If requested by Issuing Bank, the Borrower also shall submit a letter of credit application on the Issuing Bank's standard form in connection with any request for a Letter of Credit. A Letter of Credit shall be issued, amended, renewed or extended only if (and upon issuance, amendment, renewal or extension of each Letter of Credit the Borrower shall be deemed to represent and warrant that), after giving effect to such issuance, amendment, renewal or extension, the aggregate LC Exposure shall not exceed \$1,900,000 (except as provided in Section 2.18(a)) and the sum of the total Revolving Credit Exposures under the NM Facility shall not exceed the total NM Commitments.

(c) Expiration Date. Maturities for Letter of Credit shall not exceed twelve months (in the case of standby Letters of Credit) or 180 days (in the case of trade Letters of Credit), renewable automatically annually thereafter in the case of standby Letters of Credit. All Letters of Credit shall expire no later than the date that is five Business Days prior to the Commitment Termination Date (such date, the "Letter of Credit Expiration Date"), unless, with the consent of the Issuing Bank, the Borrower agrees, at the time the Borrower requests any such Letter of Credit expiring later than the Letter of Credit Expiration Date, to Cash Collateralize such Letter of Credit on the Business Day prior to the Letter of Credit Expiration Date or all the Lenders have approved such expiry date.

(d) Participations. By the issuance of a Letter of Credit (or an amendment to a Letter of Credit increasing the amount thereof) and without any further action on the part of the Issuing Bank or the Lenders, the Issuing Bank hereby grants to each Lender with a NM Commitment, and each such Lender hereby acquires from the Issuing Bank, a participation in such Letter of Credit equal to such Lender's Applicable Percentage of the aggregate amount available to be drawn under such Letter of Credit. In consideration and in furtherance of the foregoing, each Lender with a NM Commitment hereby absolutely and unconditionally agrees to pay to the Administrative Agent, for the account of the Issuing Bank, such Lender's Applicable Percentage of each LC Disbursement made by the Issuing Bank and not reimbursed by the Borrower on the date due as provided in paragraph (e) of this Section, or of any reimbursement payment required to be refunded to the Borrower for any reason. Each Lender with a NM Commitment acknowledges and agrees that its obligation to acquire participations pursuant to this paragraph in respect of Letters of Credit is absolute and unconditional and shall not be affected by any circumstance whatsoever, including any amendment, renewal or extension of any Letter of Credit or the occurrence and continuance of a Default or reduction or termination of the NM Commitments, and that each such payment shall be made without any offset, abatement, withholding or reduction whatsoever.

(e) Reimbursement. If the Issuing Bank shall make any LC Disbursement in respect of a Letter of Credit, the Borrower shall reimburse such LC Disbursement by paying to the Administrative Agent an amount equal to such LC Disbursement not later than 12:00 p.m., New York City time, (i) two Business Days after the Borrower shall have received notice of such LC Disbursement, if such notice is received by the Borrower prior to 10:00 a.m., New York City time, or (ii) three Business Days after the Borrower received such notice, if such notice is not received prior to such time. If the Borrower fails to make such payment when due, the Administrative Agent shall notify each Lender with a NM Commitment of the applicable LC Disbursement, the payment then due from the Borrower in respect thereof and such Lender's Applicable Percentage thereof. Promptly following receipt of such notice, each Lender with a NM Commitment shall pay to the Administrative Agent its Applicable Percentage of the payment then due from the Borrower, in the same manner as provided in Section 2.04 with respect to

NM Loans made by such Lender (and Section 2.04 shall apply, *mutatis mutandis*, to the payment obligations of the Lenders), and the Administrative Agent shall promptly pay to the Issuing Bank the amounts so received by it from the Lenders. Promptly following receipt by the Administrative Agent of any payment from the Borrower pursuant to this paragraph, the Administrative Agent shall distribute such payment to the Issuing Bank or, to the extent that Lenders have made payments pursuant to this paragraph to reimburse the Issuing Bank, then to such Lenders and the Issuing Bank as their interests may appear. Any payment made by a Lender pursuant to this paragraph to reimburse the Issuing Bank for any LC Disbursement shall not constitute a Loan and shall not relieve the Borrower of its obligation to reimburse such LC Disbursement.

(f) Obligations Absolute. The Borrower's obligation to reimburse LC Disbursements as provided in paragraph (e) of this Section shall be absolute, unconditional and irrevocable, and shall be performed strictly in accordance with the terms of this Agreement under any and all circumstances whatsoever and irrespective of (i) any lack of validity or enforceability of any Letter of Credit or this Agreement, or any term or provision therein, (ii) any draft or other document presented under a Letter of Credit proving to be forged, fraudulent or invalid in any respect or any statement therein being untrue or inaccurate in any respect, (iii) payment by the Issuing Bank under a Letter of Credit against presentation of a draft or other document that does not comply with the terms of such Letter of Credit, or (iv) any other event or circumstance whatsoever, whether or not similar to any of the foregoing, that might, but for the provisions of this Section, constitute a legal or equitable discharge of, or provide a right of setoff against, the Borrower's obligations hereunder. None of the Administrative Agent, the Lenders or the Issuing Bank, nor any of their Related Parties, shall have any liability or responsibility by reason of or in connection with the issuance or transfer of any Letter of Credit or any payment or failure to make any payment thereunder (irrespective of any of the circumstances referred to in the preceding sentence), or any error, omission, interruption, loss or delay in transmission or delivery of any draft, notice or other communication under or relating to any Letter of Credit (including any document required to make a drawing thereunder), any error in interpretation of technical terms or any consequence arising from causes beyond the control of the Issuing Bank; provided that the foregoing shall not be construed to excuse the Issuing Bank from liability to the Borrower to the extent of any direct damages (as opposed to special, indirect, consequential or punitive damages, claims in respect of which are hereby waived by the Borrower to the extent permitted by applicable law) suffered by the Borrower that are caused by the Issuing Bank's failure to exercise care when determining whether drafts and other documents presented under a Letter of Credit comply with the terms thereof. The parties hereto expressly agree that, in the absence of gross negligence or willful misconduct on the part of the Issuing Bank (as finally determined by a court of competent jurisdiction), the Issuing Bank shall be deemed to have exercised care in each such determination. In furtherance of the foregoing and without limiting the generality thereof, the parties agree that, with respect to documents presented which appear on their face to be in substantial compliance with the terms of a Letter of Credit, the Issuing Bank may, in its sole discretion, either accept and make payment upon such documents without responsibility for further investigation, regardless of any notice or information to the contrary, or refuse to accept and make payment upon such documents if such documents are not in strict compliance with the terms of such Letter of Credit.

(g) Disbursement Procedures. The Issuing Bank shall, promptly following its receipt thereof, examine all documents purporting to represent a demand for payment under a Letter of Credit. The Issuing Bank shall promptly notify the Administrative Agent and the Borrower by telephone (confirmed by telecopy) of such demand for payment and whether the Issuing Bank has made or will make an LC Disbursement thereunder; provided that any failure to give or delay in giving such notice shall not relieve the Borrower of its obligation to reimburse the Issuing Bank and the Lenders with respect to any such LC Disbursement.

(h) Interim Interest. If the Issuing Bank shall make any LC Disbursement, then, unless the Borrower shall reimburse such LC Disbursement in full on the date such LC Disbursement is made, the unpaid amount thereof shall bear interest, for each day from and including the date such LC Disbursement is made to but excluding the date that the Borrower reimburses such LC Disbursement, at the rate per annum then applicable to Eurodollar Loans; provided that, if the Borrower fails to reimburse such LC Disbursement when due pursuant to paragraph (e) of this Section, then Section 2.07(c) shall apply. Interest accrued pursuant to this paragraph shall be for the account of the Issuing Bank, except that interest accrued on and after the date of payment by any Lender pursuant to paragraph (e) of this Section to reimburse the Issuing Bank shall be for the account of such Lender to the extent of such payment.

(i) Replacement of the Issuing Bank. The Issuing Bank may be replaced at any time by written agreement among the Borrower, the Administrative Agent, the replaced Issuing Bank and the successor Issuing Bank. The Administrative Agent shall notify the Lenders of any such replacement of the Issuing Bank. At the time any such replacement shall become effective, the Borrower shall pay all unpaid fees accrued for the account of the replaced Issuing Bank pursuant to Section 2.07(d). From and after the effective date of any such replacement, (i) the successor Issuing Bank shall have all the rights and obligations of the Issuing Bank under this Agreement with respect to Letters of Credit to be issued thereafter and (ii) references herein to the term "Issuing Bank" shall be deemed to refer to such successor or to any previous Issuing Bank, or to such successor and all previous Issuing Banks, as the context shall require. After the replacement of an Issuing Bank hereunder, the replaced Issuing Bank shall remain a party hereto and shall continue to have all the rights and obligations of an Issuing Bank under this Agreement with respect to Letters of Credit issued by it prior to such replacement, but shall not be required to issue additional Letters of Credit.

(j) Additional Issuing Banks. The Borrower may at any time, and from time to time, designate one or more additional Lenders with a NM Commitment to act as an issuing bank under this Agreement with the consent of the Administrative Agent (not to be unreasonably withheld) and such Lender. Any Lender designated as an issuing bank pursuant to this Section 2.18(j) shall be deemed to be and shall have all the rights and obligations of an "Issuing Bank" hereunder.

**Section 2.19** [Reserved].

**Section 2.20** Cash Collateral.

(a) Certain Credit Support Events.

(i) Event of Default. Subject to the Orders, if any Event of Default shall occur and be continuing, on the Business Day that the Borrower receives notice from the Issuing Bank, the Administrative Agent or the Required Facility Lenders under the NM Facility demanding the deposit of Cash Collateral, the Borrower shall provide Cash Collateral in an amount not less than the Minimum Collateral Amount of the aggregate outstanding LC Exposure plus any accrued and unpaid interest on unreimbursed LC Disbursements.

(ii) [Reserved].

(iii) Letter of Credit Expiration Date. Unless waived by the Issuing Bank in its sole discretion, if, as of the Letter of Credit Expiration Date, there are any issued and outstanding Letters of Credit that have not been Cash Collateralized, the Borrower shall Cash Collateralize such LC Exposure in an amount not less than the Minimum Collateral Amount (or, with the consent of the Issuing Bank, cause a back-stop letter of credit to be issued for the benefit of, and delivered to, the Issuing Bank by a letter of credit issuer reasonably acceptable to the Issuing

Bank in a face amount not less than the Minimum Collateral Amount applicable to such outstanding LC Exposure).

(iv) Other Provisions. In addition to the requirements pursuant to clauses (i) through (iii) above, the Borrower shall provide Cash Collateral in an amount not less than the applicable Minimum Collateral Amount on the terms and subject to the conditions set forth in other provisions of this Agreement.

(b) Grant of Security Interest. Subject to the Orders, the Borrower hereby grants to the Administrative Agent, for the benefit of the Administrative Agent, the Issuing Banks and the Lenders, and agrees to maintain, a first priority security interest in all such Cash Collateral as security for the obligations to which such Cash Collateral may be applied pursuant to Section 2.20(d). If at any time the Administrative Agent determines that Cash Collateral is subject to any prior right or claim of any person other than the Administrative Agent and the Issuing Banks as herein provided, or that the total amount of such Cash Collateral is less than the Minimum Collateral Amount, the Borrower will, promptly upon demand by the Administrative Agent, pay or provide to the Administrative Agent additional Cash Collateral in an amount sufficient to eliminate such deficiency.

(c) Holding of Cash Collateral. Subject to the Orders, the Administrative Agent shall have exclusive dominion and control, including the exclusive right of withdrawal, over any account holding Cash Collateral. Other than any interest earned on the investment of such deposits, which investments shall be made at the option and sole discretion of the Administrative Agent and at the Borrower's risk and expense, such deposits shall not bear interest. Interest or profits, if any, on such investments shall accumulate in such account. Moneys in such account shall be applied by the Administrative Agent to reimburse the applicable Issuing Bank for LC Disbursements with respect to such Letters of Credit for which it has not been reimbursed and, to the extent not so applied, shall be held for the satisfaction of the reimbursement obligations of the Borrower for the LC Exposure with respect to such Letters of Credit at such time.

(d) Application. Notwithstanding anything to the contrary contained in this Agreement, Cash Collateral provided under this Section 2.20 in respect of Letters of Credit shall be applied to the satisfaction of the specific LC Exposure, obligations to fund participations therein and other obligations for which the Cash Collateral was so provided, prior to any other application of such property as may otherwise be provided for herein.

(e) Termination of Requirement. Cash Collateral (or the appropriate portion thereof) provided to secure other obligations shall no longer be required to be held as Cash Collateral pursuant to this Section 2.20 following (i) the elimination of the obligations giving rise thereto, or (ii) the determination by the Administrative Agent and each Issuing Bank that there exists excess Cash Collateral; provided that, subject to Section 2.19(a), the person providing Cash Collateral and each Issuing Bank may agree that Cash Collateral shall be held to support other obligations; and provided, further, that to the extent that such Cash Collateral was provided by the Borrower, such Cash Collateral shall remain subject to the security interest granted pursuant to the Security Documents.

## **Section 2.21 Roll-Up Borrowings**

(a) Revolving Borrowings ~~Prior~~ prior to the Final Effective Date. Upon each Borrowing of a NM Loan made prior to the Final Effective Date, the Borrower shall simultaneously be deemed to have made a request for a JPM Roll-Up Borrowing (or, after all principal amounts outstanding under the Prepetition First-Lien Credit Agreement consisting of "Tranche A-1 Revolving Loans" (as defined in the Prepetition First-Lien Credit Agreement) have been repaid pursuant to this Section, a WFB

Roll-Up Borrowing) in a principal amount equal to the Roll-Up Ratio multiplied by the principal amount of such Borrowing of a NM Loan. Additionally, in accordance with the terms of this Agreement, on the Interim Order Entry Date, the Borrower shall be deemed to request a Letter of Credit with a face amount not to exceed \$1,900,000 to provide a “back to back” Letter of Credit to support, or replace, the Existing LC.

(b) ~~Final Effective Date. Subject to the Final Order, on the Final Order Entry Date, the Borrower shall be deemed to have made a request for Roll-Up Borrowings comprised of Loans in a principal amount equal to the aggregate amount (including, without limitation, accrued and unpaid interest) of “Revolving Loans” (as defined in the Prepetition First Lien Credit Agreement) outstanding as of such date.~~ (Reserved).

(c) Roll-Up Borrowing Mechanics. The proceeds of the JPM Roll-Up Borrowings shall be used exclusively for the prepayment of “Tranche A-1 Revolving Loans” (as defined in the Prepetition First-Lien Credit Agreement). The proceeds of the WFB Roll-Up Borrowings shall be used exclusively for the prepayment of “Tranche A-2 Revolving Loans” (as defined in the Prepetition First-Lien Credit Agreement). Notwithstanding anything herein to the contrary, as an administrative accommodation, the aggregate amount each Lender is obligated to fund hereunder with respect to any Roll-Up Borrowing shall be netted against the aggregate amount that such Lender, in its capacity as a Prepetition First-Lien Credit Agreement Lender, is entitled to receive as repayment or prepayment for the principal amount of the “Tranche A-1 Revolving Loans” (as defined in the Prepetition First-Lien Credit Agreement) or the “Tranche A-2 Revolving Loans” (as defined in the Prepetition First-Lien Credit Agreement) owed to such Lender, in its capacity as a Prepetition First-Lien Credit Agreement Lender, under the Prepetition First-Lien Credit Agreement on the date of such Roll-Up Borrowing; provided, that each Lender shall have been deemed to have made each Roll-Up Borrowing, and each Loan with respect thereto shall be deemed to be outstanding hereunder, in the aggregate principal amount of such Roll-Up Borrowing notwithstanding the netting provisions of this sentence. For the avoidance of doubt, the Borrower shall be required to pay all accrued interest, fees and other amounts (other than principal) with respect to that portion of the obligations repaid under the Prepetition First-Lien Credit Agreement on each date so repaid in accordance with the terms of the Prepetition First-Lien Credit Agreement. The making of each Roll-Up Borrowing shall constitute a representation and warranty by the Borrower that, on and as of the date thereof (both immediately before and after giving effect to such borrowing and the application of the proceeds thereof), the conditions specified in Sections 4.03(a) and 4.03(b) have been satisfied. Each netting and funding amount as set forth in this paragraph shall be determined by the Administrative Agent, which such determination shall be conclusive absent manifest error. To the extent requested by the Administrative Agent, the Borrower shall deliver, by hand delivery or facsimile, a duly completed and executed Borrowing Request to the Administrative Agent with respect to each of the requests or deemed requests made pursuant to this Section 2.21.

(d) Notwithstanding anything to the contrary set forth in this Agreement, and for avoidance of doubt, the Borrowing of the initial \$13,000,000 in aggregate principal amount of any Tax Loan shall not constitute, and Borrower shall not be deemed to have made, a request for a JPM Roll-Up Borrowing (or, after all principal amounts outstanding under the Prepetition First-Lien Credit Agreement consisting of “Tranche A-1 Revolving Loans” (as defined in the Prepetition First-Lien Credit Agreement) have been repaid pursuant to this Section, a WFB Roll-Up Borrowing) in any amount whatsoever, and no JPM Roll Up Borrowing or WFB Roll up Borrowing shall occur by reason of the making of such initial \$13,000,000 in aggregate principal amount of a Tax Loan, provided that for the avoidance of doubt, any Tax Loan in excess of such initial \$13,000,000 Borrowing shall constitute a NM Loan for purposes of Section 2.21 of this Agreement.

**Section 2.22 Collateral; Grant of Lien and Security Interest.**

(a) Pursuant to the Interim Order and in accordance with the terms thereof, as security for the full and timely payment and performance of all of the Obligations, each of the Loan Parties hereby assigns, pledges and grants to the Collateral Agent, for the benefit of itself and the Secured Parties, a security interest in, and Lien on, all of the property, assets or interests in property or assets of such Person, of any kind or nature whatsoever, real or personal, tangible and intangible now existing or hereafter acquired or created, including all property of the "estate" (within the meaning of the Bankruptcy Code) of the Loan Parties, and all cash, accounts, deposit accounts, securities accounts, investment property, vehicles, documents, chattel paper, instruments, general intangibles, fixtures, letter of credit rights, accounts receivable, investment property, inventory, goods, plant and equipment, equipment, software, licenses, customer lists, customer records, real property, leaseholds, all intercompany claims, any and all proceeds arising from insurance policies, all claims and causes of action of each Loan Party and any and all proceeds therefrom ~~(including the proceeds of any Avoidance Actions following entry of the Final Order)~~, all intellectual property, the equity interests in each direct and indirect subsidiary of the Borrower and the equity interests in Block 73, LLC owned by NB Acquisition, LLC, in each case in which the Loan Parties and their estates have an interest, whenever acquired, and any and all proceeds therefrom. For the avoidance of doubt, such collateral shall include any asset purchase or other similar agreement for the sale or disposition of assets of the Loan Parties executed by any Loan Party after the Filing Date, and any rights of any Loan Party thereunder, including any right to receive proceeds of any deposit provided pursuant thereto.

(b) The security interests and Liens in favor of the Collateral Agent in the Collateral shall be effective immediately upon the entry of the Interim Order and subject and subordinate only to the Carve-Out and the terms and conditions set forth in the Interim Order. Such Liens and security interests and their priority shall remain in effect until the Commitments shall have been terminated and all Obligations shall have been paid in full.

(c) Subject only to prior payment of Carve-Out, no costs or expenses of administration which have been or may be incurred in the Cases or any conversion of the same or in any other proceedings related thereto, and no priority claims, are or will be prior to or on a parity with any claim of any Lender, the Agents or the Issuing Bank against any Loan Party in respect of any Obligation.

(d) Each Loan Party agrees that its Obligations shall constitute allowed administrative expenses in the Cases, having priority over all administrative expenses of and unsecured claims against such Person now existing or hereafter arising, of any kind or nature whatsoever, including, without limitation, all administrative expenses of the kind specified in, or arising or ordered under, Sections 105, 326, 328, 330, 331, 364, 365, 503(b), 506(c), 507, 546(c), 552(b), 726, 1113 and 1114 of the Bankruptcy Code, subject only to prior payment of the Carve-Out and the terms and conditions of the Interim Order.

(e) The Liens and security interests granted pursuant to this Section and the administrative priority granted pursuant to this Section may be independently granted by the Loan Documents and by other Loan Documents hereafter entered into. This Agreement, the Orders and such other Loan Documents supplement each other, and the grants, priorities, rights and remedies of the Agents, the Issuing Bank and the Lenders hereunder and thereunder are cumulative.

(f) The Liens and security interests referred to herein shall be deemed valid and perfected by entry of the Interim Order or the Final Order, as the case may be. The Collateral Agent shall not be required to file any financing statements, mortgages, notices of Lien or similar instruments in any jurisdiction or filing office, take possession or control of any Collateral, or take any other action in order to validate or perfect the Lien and security interest granted by or pursuant to this Agreement, the Interim Order or the Final Order, as the case may be, or any other Loan Document.

(g) The Liens, lien priority, administrative priorities and other rights and remedies granted to the Collateral Agent and the other Secured Parties pursuant to this Agreement, the Orders and the other Loan Documents (specifically including, but not limited to, the existence, perfection and priority of the Liens and security interests provided herein and therein, and the administrative priority provided herein and therein) shall not be modified, altered or impaired in any manner by any other financing or extension of credit or incurrence of Indebtedness by the Loan Parties (pursuant to Section 364 of the Bankruptcy Code or otherwise), or by any dismissal or conversion of any of the Cases, or by any other act or omission whatsoever.

### ARTICLE III

#### REPRESENTATIONS AND WARRANTIES

Each Loan Party represents and warrants to the Administrative Agent, the Collateral Agent and each of the Lenders that:

**Section 3.01 Organization; Powers.** Each Loan Party (a) is duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization, (b) has the corporate, limited liability company or other organizational power and authority, and the legal right, to own and operate its property, to lease the property it operates as lessee and to conduct the business in which it is currently engaged, (c) is duly qualified as a foreign corporation or limited liability company and in good standing under the laws of each jurisdiction where its ownership, lease or operation of property or the conduct of its business requires such qualification, except to the extent the failure to be so qualified or in good standing would not reasonably be expected to result in a Material Adverse Effect and (d) is in compliance with all applicable Requirements of Law except to the extent that the failure to comply therewith would not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect.

**Section 3.02 Authorization; Enforceability.**

(a) Subject to entry of the Orders, each Loan Party has the corporate, limited liability company or other organizational power and authority, and the legal right, to execute, deliver and perform the Loan Documents to which it is a party and to carry out the transactions contemplated thereby, subject to any informational filings or reports required by the Gaming Authorities and subject to the receipt, to the extent not already received, of requisite Gaming Approvals such as those relating to the Loan Documents, the Project, the Loan Parties and the Lenders, including the pledges of Equity Interests of the Loan Parties and their Subsidiaries that are licensed, qualified or registered by the Gaming Authorities and the granting of Liens on other Collateral under the Loan Documents, which filings and reports will be provided, and approvals shall be sought, diligently and in good faith by the Borrower or REG as promptly as possible and, in the case of the Borrower, to borrow and issue Indebtedness hereunder. Subject to the entry of the Orders, each Loan Party has taken all necessary corporate, limited liability company or other organizational action to authorize the execution, delivery and performance of the Loan Documents to which it is a party and, in the case of the Borrower, to authorize the borrowings and issuances of Indebtedness on the terms and conditions of this Agreement and the other Loan Documents.

(b) Each Loan Document has been duly executed and delivered on behalf of each Loan Party party thereto. Subject to entry of the Orders, this Agreement constitutes, and each other Loan Document upon execution by all parties thereto will constitute, a legal, valid and binding obligation of each Loan Party party thereto, enforceable against such Loan Party in accordance with its terms, except as enforceability may be limited by (i) applicable bankruptcy, insolvency, reorganization, moratorium or

similar laws affecting the enforcement of creditors' rights generally or by general equitable principles (whether enforcement is sought by proceedings in equity or at law) and (ii) applicable Gaming Laws.

**Section 3.03 No Consents; No Conflicts; No Defaults.**

(a) Subject to entry of the Orders, no material approval, consent or material authorization of, material filing with, material notice to or other act by or in respect of, any Governmental Authority or any person is required to be obtained, made or taken by any Loan Party in connection with the borrowings hereunder or with the execution, delivery, performance, validity or enforceability of this Agreement or any of the other Loan Documents, except (i) approvals, consents, authorizations, filings, notices and other acts described in Schedule 3.03, including the requisite Gaming Approvals such as those relating to the Loan Documents, the Project, the Loan Parties and the Lender, including the pledge of Equity Interests of the Loan Parties and their Subsidiaries that are licensed, qualified or registered by the Gaming Authorities and the granting of Liens on other Collateral under the Loan Documents which approvals consents, authorizations, filings, notices and other acts have, unless otherwise indicated on Schedule 3.03, been obtained, made or taken (or waived) and are in full force and effect, (ii) ministerial filings and filings with respect to notices given or issued to Governmental Authorities, including notices as to the status of construction of the Project and (iii) organizational approvals of the Loan Parties and other Affiliates that have been obtained.

(b) Subject to entry of the Orders, the execution, delivery and performance of this Agreement, the other Loan Documents, the borrowings hereunder and the use of the proceeds thereof will not violate (i) any applicable Requirement of Law, (ii) any Contractual Obligation of any Loan Party entered into after the Filing Date or (iii) the Organizational Documents of any Loan Party, except to the extent that any such violations, individually or in the aggregate, would not reasonably be expected to result in a Material Adverse Effect, and will not result in, or require, the creation or imposition of any Lien on any of their respective properties or revenues pursuant to any material Requirement of Law or any such Contractual Obligation (other than the Liens created, or permitted to be incurred, by the Security Documents).

(c) No Loan Party is in default under or with respect to any Contractual Obligation (except in respect of Contractual Obligations entered into prior to the Filing Date) in any respect that would reasonably be expected to result in a Material Adverse Effect.

**Section 3.04 Financial Statements; Projections.**

(a) (Reserved).

(b) (Reserved).

(c) (Reserved).

(d) Projections and Approved Budget. The projections, forward-looking statements, estimates and pro forma financial information contained in this Agreement, any other Loan Document, or any other document, certificate or statement furnished to the Agents, the Arranger or the Lenders (including, without limitation, the Approved Budget) are based upon good faith estimates and assumptions believed by the Borrower to be reasonable at the time made, it being recognized by the Agents, the Arranger and the Lenders that such projections, forward-looking statements, estimates and pro forma financial information are not to be viewed as facts and are subject to material contingencies and assumptions, many of which are beyond the control of the Loan Parties, that no assurance can be given that any particular projection, forward-looking statement, estimate or pro forma financial will be realized



and that actual results during the period or periods covered by any such projections, forward-looking statements, estimates and pro forma financial information may differ materially from the projected results.

**Section 3.05 Properties.**

(a) Generally. The Loan Parties are the sole owners of, and have legal title to, or a valid right to use, all of their property necessary to the operation of their businesses, and none of such property is subject to any claims, liabilities, obligations, charges or restrictions of any kind, nature or description (other than claims, liabilities, obligations, charges or restrictions that individually or in the aggregate would not reasonably be expected to have a Material Adverse Effect) or to any Lien, other than Permitted Liens.

(b) Real Property.

(i) As of the Closing Date, Schedule 3.05(b)(i) sets forth a true, complete and correct list of all Real Property, including a brief description thereof, including, in the case of leases where a Loan Party or Subsidiary of the Borrower holds a leasehold interest as tenant, the street address, landlord name, tenant name, lease date and lease expiration date. The Borrower has delivered to the Administrative Agent true, complete and correct copies of all such leases as in effect on the Closing Date.

(ii) All Real Property and the current use thereof comply with all applicable Requirements of Law (including applicable building and zoning ordinances and codes) and with all Insurance Requirements, and none of the Loan Parties are non-conforming users of such Real Property, except, in each case, where noncompliance or such non-conforming use would not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect.

(iii) No Taking has been commenced with respect to all or any portion of any Real Property or for the relocation of roadways providing access to such Real Property except, in each case, as would not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect.

(iv) Except for those disclosed in the Title Policy or as set forth on Schedule 3.05(b)(iv), as of the Closing Date (x) there are no current or pending special or other assessments (other than for *ad valorem* taxes) for public improvements or otherwise affecting any Real Property, nor (y) are there any contemplated improvements to such Real Property that may reasonably be expected to result in such special or other assessments, in any case that would reasonably be expected to result in a Material Adverse Effect.

(v) None of the Loan Parties has suffered, permitted or initiated the joint assessment of any Real Property with any other real property constituting a separate tax lot that is not owned by a Loan Party or is not subject to a Mortgage. As of the Closing Date, the Mortgaged Properties have been properly subdivided or entitled to exception therefrom, and for all purposes the Mortgaged Properties may be mortgaged, conveyed and otherwise dealt with as separate legal lots or parcels.

(vi) Other than exceptions to any of the following that could not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect, (A) all approvals from Governmental Authorities having jurisdiction over the Land and Improvements, including, but not limited to, building permits, street openings or closings, zoning or use permits, variances or special exceptions, zoning reclassifications, setback requirements however established, and

approvals of fire underwriters, have been obtained for the portion of the Improvements that have been constructed, to the extent required under applicable Law, and to the extent so obtained, have not been withdrawn, (B) the construction of the Improvements shall be performed in conformity with all applicable Laws, and the Plans and Specifications, (C) the Plans and Specifications to the extent required by applicable law, have been approved by all applicable Governmental Authorities and (D) all construction heretofore performed on the Improvements has been performed within the perimeter of the Land in accordance with the Plans and Specifications and all applicable Governmental Authorities, and in accordance with any restrictive covenants applicable thereto. There are no existing material structural defects in the Improvements and no material violation of any governmental requirements exists with respect thereto. The anticipated use thereof complies with applicable zoning ordinances and all regulations affecting the Project and all governmental requirements for such use have been satisfied, to the extent required to be satisfied at such time and subject to receipt of Gaming Approvals, except to the extent such noncompliance or failure to satisfy government requirements would not reasonably be expected to result in a Material Adverse Effect.

(vii) As of the Closing Date, except as set forth on Schedule 3.05(b)(vii), there are no outstanding options to purchase or rights of first refusal or restrictions on transferability affecting any Real Property (other than those restrictions on transfer set forth in, or otherwise permitted under, the Redevelopment Agreement (as in effect on the Closing Date) or set forth in the Loan Documents, including, without limitation, Permitted Liens).

(viii) (A) Other than exceptions to any of the following that would not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect, as of the Closing Date, (i) all utility services necessary for the current state of construction of the Project are available, including, without limitation, public sanitary sewer service and storm sewers, public water, electricity, gas and telephone service, and (ii) all permits and approvals have been obtained or are available so that the Improvements may be hooked up to the public sanitary sewer service, which public sanitary sewer service shall be available to the full extent required for the full operation of the Project and shall permit the discharge of sewage for the types and amounts anticipated to be produced from the Project. Other than exceptions to any of the following that would not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect, after the Closing Date, the Borrower reasonably expects to have all utilities available, as and when necessary, to complete the construction of the Improvements.

(B) Other than exceptions to any of the following that would not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect, all public sanitary sewer service and storm sewers necessary for the full operation of the Project are available at the title lines of the Land (or, if they pass through adjoining private land, in accordance with valid public or unencumbered private easements which inure to the benefit of the Borrower and any applicable Loan Parties and run with the Land, copies of which have been delivered to the Administrative Agent).

(C) The Project has all hot and chilled water for purposes of heating and air conditioning, electricity, and gas services necessary for the operation of the Project at the title lines of the Land (or, if they pass through adjoining private or public land, in accordance with valid public or unencumbered private easements or licenses which inure to the benefit of the Borrower and any applicable Loan Parties and run with the Land, copies of which have been delivered to the Administrative Agent).

(ix) All roads necessary for the utilization of the Real Property related to the Project Site for its current and intended purposes are indicated on the Survey and the Plans and Specifications with respect to its intended purposes as of the Closing Date are completed and dedicated to public use and accepted by all Governmental Authorities or are the subject of access easements for the benefit of such Real Property.

(x) Except as would not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect, no building or structure constituting Real Property or any appurtenance thereto or equipment thereon, or the use, operation or maintenance thereof, violates any restrictive covenant affecting such Real Property or encroaches on any easement or on any property owned by others.

(xi) As of the Closing Date, the Project is not subject to a Boutique Hotel Lease or a Sportsbook Lease.

(c) Redevelopment. As of the Closing Date, (i) all resolutions pertaining to the Project and adopted by the City of Atlantic City or the City Council of Atlantic City are set forth on Schedule 3.05(c) hereto, (ii) each of such resolutions is in full force and effect and (iii) the Loan Parties have not breached any of their obligations in respect of such resolutions, except to the extent such breach would not reasonably be expected to result in a Material Adverse Effect.

(d) Project Property. As of the Closing Date, the Real Property set forth on Schedule 3.05(d) constitutes all of the real property currently owned or leased by the Loan Parties and used in the development of the Project, and no other Real Property is necessary to complete the development of the Project and begin operations.

(e) Coverage Ratio Properties. As of the Closing Date, Schedule 3.05(e) sets forth a true, complete and correct list of the Coverage Ratio Properties and the record owner thereof, and no other person has an interest therein.

### **Section 3.06 Intellectual Property**

(a) Ownership No Claims. Each Loan Party owns, or is licensed or otherwise has the right to use, all Intellectual Property that is material to the conduct of its business as currently conducted except as would not reasonably be expected to result in a Material Adverse Effect. As of the Closing Date, no claim has been asserted or is pending by any person challenging the use of any such Intellectual Property or the validity or effectiveness of any such Intellectual Property within the past three (3) years, nor as of the Closing Date does the Borrower know of any valid basis for any such claim, except as would not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect. To the knowledge of the Borrower, the use by each Loan Party of the Intellectual Property that is material to the conduct of its business as currently conducted, does not infringe on the rights of any person, which infringement, individually or in the aggregate, would reasonably be expected to result in a Material Adverse Effect.

(b) Trademarks. As of the Closing Date, Schedule 3.06(b) (i) identifies each of the registrations and pending applications for material trademarks, service-marks and trade names currently registered by, made by or otherwise held by the Loan Parties (other than Excluded Property) and identifies which such person registered, made or otherwise holds, or filed an application with respect to, such Intellectual Property and (ii) specifies as to each, the jurisdiction in which such Intellectual Property has been issued or registered (or, if applicable, in which an application for such issuance or registration

has been filed), including the respective registration or application numbers and applicable dates of registration or application and expiration.

(c) Patents. As of the Closing Date, Schedule 3.06(c) (i) identifies each of the material patents and patent applications currently owned or made by the Loan Parties and identifies which such person applied for or owns such Intellectual Property and (ii) specifies as to each, the jurisdiction in which such Intellectual Property has been issued or registered (or, if applicable, in which an application for such issuance or registration has been filed), including the respective patent or application numbers and applicable dates of issuance or application and expiration.

(d) Copyrights. As of the Closing Date, Schedule 3.06(d) (i) identifies each of the material copyrights applications and registrations currently registered or applied for by the Loan Parties and identifies which such person applied for or registered such Intellectual Property and (ii) specifies as to each, the jurisdiction in which such Intellectual Property has been issued or registered (or, if applicable, in which an application for such issuance or registration has been filed), including the respective registration or application numbers and applicable dates of registration or application and expiration.

(e) Licenses. As of the Closing Date, Schedule 3.06(e) identifies all licenses, sublicenses and other agreements relating to Intellectual Property (excluding Intellectual Property available on a commercial basis in the ordinary course) to which any of the Loan Parties is a party that are material to the conduct of such person's business and pursuant to which (i) any of the Loan Parties is a licensor, sub-licensor, licensee or sub-licensee or the equivalent or (ii) any other person is authorized to use any Intellectual Property of a Loan Party as a licensee, sub-licensee or the equivalent. The Borrower has delivered to the Administrative Agent complete and correct copies of all such licenses entered into prior to the Closing Date, and all such licenses are in full force and effect as of the Closing Date (subject to the Cases).

### **Section 3.07 Equity Interests and Subsidiaries**

(a) The persons listed on Schedule 3.07(a) constitute all the Subsidiaries of the Borrower as of the Closing Date. Schedule 3.07(a) sets forth, as of the Closing Date, (i) the name and jurisdiction of formation of each of the Subsidiaries of the Borrower and (ii) the persons that own its Equity Interests and the percentage and number of each class of Equity Interests owned by any such person. As of the Closing Date, each such Subsidiary is a Wholly Owned Subsidiary of the Borrower.

(b) As of the Closing Date, there are no outstanding subscriptions, options, warrants, calls, rights or other agreements or commitments (other than stock options granted to employees, officers or directors and directors' qualifying shares) of any nature relating to any Equity Interests of the Borrower or any Subsidiary of the Borrower.

(c) An accurate organizational chart, showing the ownership structure of the Borrower and each of its Subsidiaries on the Closing Date is set forth on Schedule 3.07(c).

**Section 3.08 Litigation**. Other than the Cases, except as set forth on Schedule 3.08, no litigation, investigation or proceeding of or before any arbitrator or Governmental Authority is pending or, to the knowledge of the Borrower, threatened in writing by or against any Loan Party, or against any of their respective properties or revenues (a) as of the Closing Date, with respect to any of the Loan Documents or any of the transactions contemplated hereby or thereby or (b) that, individually or in the aggregate, would reasonably be expected to result in a Material Adverse Effect.

**Section 3.09 Agreements.** The Borrower has delivered to the Administrative Agent complete and correct copies of all material amendments to any Material Agreements entered into prior to the Closing Date, and all Material Agreements are in full force and effect as of the Closing Date (subject to the Cases).

**Section 3.10 Federal Reserve Regulations.** No Loan Party is engaged principally, or as one of its principal activities, in the business of extending credit for the purpose of buying or carrying Margin Stock. No part of the proceeds of any Loan will be used, whether directly or indirectly, and whether immediately, incidentally or ultimately, for any purpose that entails a violation of, or that is inconsistent with, the provisions of the regulations of the Board, including Regulation T, U or X.

**Section 3.11 Investment Company Act; Other Regulations.** No Loan Party is an “investment company” or a company “controlled” by an “investment company,” subject to regulation under, the Investment Company Act of 1940, as amended. None of the Loan Parties is subject to regulation under the Federal Power Act or the Interstate Commerce Act or registration under the Investment Company Act of 1940 or under any other federal or state statute or regulation which may limit its ability to incur Indebtedness (other than the Gaming Laws and laws of general applicability) or which may otherwise render all or any portion of the Obligations unenforceable.

**Section 3.12 Use of Proceeds.**

(a) The Borrower will use the proceeds of the Loans and the Letters of Credit made by the Lenders and the Issuing Bank, as applicable, during the Commitment Period to (i) in the case of Roll-Up Borrowings, repay amounts outstanding under the Prepetition First-Lien Credit Agreement consisting of “Tranche A-1 Revolving Loans” (as defined in the Prepetition First-Lien Credit Agreement) and “Tranche A-2 Revolving Loans” (as defined in the Prepetition First-Lien Credit Agreement) together with any interest, fees, expenses, adequate protection payments or other amounts due and payable in connection therewith, (ii) pay reasonable costs, fees and expenses, including fees of the Agents, the Advisors, the Issuing Bank and the Lenders, associated with the transactions contemplated by this Agreement and the other Loan Documents, (iii) in the case of the Reserved Amounts, pay for fees, costs and expenses incurred by persons or firms retained by the Loan Parties pursuant to section 327, 328, 330 or 363 of the Bankruptcy Code (“Loan Parties’ Professional Fees”) and professionals of any statutory committee of unsecured creditors appointed in the Cases (the “Creditors Committee Professional Fees”), (iv) pay for fees and expenses related to the transactions contemplated by this Agreement, (v) in the case of the Letters of Credit, to provide “back to back” support for, or replace, the Existing LC and (vi) provide ongoing working capital requirements of the Loan Parties and to pay for fees, costs and expenses relating to the Cases (other than Loan Parties’ Professional Fees), each in accordance with the Approved Budget.

(b) The Borrower will not request any Borrowing or Letter of Credit, and the Borrower shall not use, and shall procure that its Subsidiaries and its or their respective directors, officers, employees and agents shall not use, the proceeds of any Borrowing or Letter of Credit (i) in furtherance of an offer, payment, promise to pay, or authorization of the payment or giving of money, or anything else of value, to any Person in violation of any Anti-Corruption Laws, (ii) for the purpose of funding, financing or facilitating any activities, business or transaction of or with any Sanctioned Person, or in any Sanctioned Country, or (iii) in any manner that would result in the violation of any Sanctions applicable to any party hereto.

**Section 3.13 Taxes.**

(a) Each of the Loan Parties has filed, or caused to be filed, all material tax returns that are required to have been filed by it in any jurisdiction. Except with respect to real estate taxes due for any fiscal quarter ending on or after June 30, 2014, each of the Loan Parties has paid all taxes shown to be due and payable on such returns and all other taxes payable by it, to the extent the same have become due and payable (other than those taxes it is contesting in good faith and by appropriate proceedings in accordance with applicable law (or which have been subject to such a contest) and with respect to which it has established reserves as are required by GAAP). The Borrower is unaware of any proposed or pending tax assessments, deficiencies or audits which would be imposed on any Real Property or Loan Party that would reasonably be expected to, individually or in the aggregate, result in a Material Adverse Effect. As of the Closing Date, no Loan Party has received any notice that any portion of the Real Property has been reassessed or is currently the subject of a reassessment.

(b) There are no Liens for taxes on any of the properties of the Loan Parties other than Liens permitted pursuant to Section 6.02.

**Section 3.14 No Material Misstatements.** No statement or information (excluding projections, forward-looking statements, estimates, pro forma financial information (as such pro forma financial information relates to future events or forward-looking circumstances) and information of a general, economic or industry nature) contained in this Agreement, any other Loan Document, or any other document, certificate or written statement furnished to the Agents, the Arranger or the Lenders, or any of them, by or on behalf of any Loan Party for use in connection with the transactions contemplated by this Agreement or the other Loan Documents, when taken as a whole and as updated from time to time (but without any obligation on behalf of any Loan Party to provide such update, except expressly as set forth herein), contained any untrue statement of a material fact or omitted to state a material fact necessary in order to make the statements contained herein or therein not materially misleading in light of the circumstances in which the same were made.

**Section 3.15 Labor Matters.** There are no strikes, stoppages, lockouts, slowdowns or other labor disputes pending against any Loan Party, or to the knowledge of the Borrower, threatened against any Loan Party, in each case that would reasonably be expected to, individually or in the aggregate, result in a Material Adverse Effect. The hours worked by, and payments made to, employees of any Loan Party have not been in violation of the Fair Labor Standards Act of 1938, as amended, or any other applicable Requirement of Law dealing with such matters, in any manner which would reasonably be expected to, individually or in the aggregate, result in a Material Adverse Effect. All payments due from any Loan Party on account of employee health and welfare insurance that would reasonably be expected to, individually or in the aggregate, result in a Material Adverse Effect if not paid have been paid or accrued as a liability on the books of such Loan Party.

**Section 3.16 (Reserved) .**

**Section 3.17 Employee Benefit Plans.** Except, in each case, as would not reasonably be expected to result in a Material Adverse Effect, (a) no ERISA Event has occurred or would reasonably be expected to occur, (b) no liability to the PBGC (other than required premium payments) or the Internal Revenue Service in respect of any Employee Benefit Plan, or to any Employee Benefit Plan or any trust established under Title IV of ERISA has been or would reasonably be expected to be incurred by any Loan Party or any of their respective ERISA Affiliates, and (c) the actuarial present value of all benefit liabilities under each Pension Plan (based on those assumptions that would be used to determine whether each such Pension Plan could be terminated in a standard termination under Section 4041(b) of ERISA) did not, as of the last annual valuation date prior to the date on which this representation is made or deemed made, exceed the value of the assets of such Pension Plan allocable to such accrued benefits. Except to the extent required under Section 4980B of the Code or similar state laws, no Employee Benefit

Plan provides health or welfare benefits (through the purchase of insurance or otherwise) for any retired or former employee of any Loan Party or any of their respective ERISA Affiliates. As of the most recent valuation date for each Multiemployer Plan for which an actuarial report is available, the potential liability of the Loan Parties and their ERISA Affiliates for a complete withdrawal from such Multiemployer Plan (within the meaning of Section 4203 of ERISA), when aggregated with such potential liability for a complete withdrawal from all Multiemployer Plans, based on information available pursuant to Section 4221(e) of ERISA, would not reasonably be expected to result in a Material Adverse Effect.

**Section 3.18 Environmental Matters.** Except as set forth on Schedule 3.18:

(a) To the knowledge of the Borrower, each of the Loan Parties is, and during the past three years has been, in compliance with all applicable Environmental Laws and Environmental Permits, except for such noncompliance as would not reasonably be expected to result in a Material Adverse Effect.

(b) To the knowledge of the Borrower, there has not been a Release of Hazardous Materials at, on, under or from the Mortgaged Properties, or at any other location to which any Loan Party has sent Hazardous Material for treatment, storage, or disposal and for which any Loan Party would reasonably be expected to incur liability, in either case which would reasonably be expected to result in a Material Adverse Effect.

(c) Except as would not reasonably be expected to result in a Material Adverse Effect, there is no Environmental Claim under any Environmental Law to which any of the Loan Parties is named as a party that is pending or, to the knowledge of the Borrower, threatened in writing.

(d) Except as would not reasonably be expected to result in a Material Adverse Effect, none of the Loan Parties has received any written request for information, or been notified that it is a potentially responsible party, under CERCLA or otherwise liable for a Release of Hazardous Materials under any other Environmental Law.

(e) Except as would not reasonably be expected to result in a Material Adverse Effect, none of the Loan Parties has (i) entered into any written consent decree, order, or settlement or other agreement that remains outstanding, or is subject to any judgment, decree, or order, in any judicial, administrative, arbitral, or other forum for dispute resolution, pertaining to compliance with or liability under any Environmental Law or as a result of any Environmental Claim or (ii) assumed by contract or, to the knowledge of the Borrower, by operation of law any specific liabilities of any other person under any Environmental Law or for any Hazardous Materials.

**Section 3.19 Orders.** The Interim Order is (and the Final Order when entered will be) effective to create in favor of the Collateral Agent, for the benefit of the Secured Parties, a legal, valid, binding and enforceable perfected security interest in the Collateral and the proceeds and products thereof without the necessity of the execution of mortgages, security agreements, pledge agreements, financing statements or other agreements or documents.

**Section 3.20 Permits.** Other than as set forth on Schedule 3.20 or exceptions to any of the following that would not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect: (a) each Loan Party has obtained and holds all Permits required to own, lease and operate its respective properties and to operate its respective businesses; and (b) each Loan Party has performed and observed all requirements of such Permits (to the extent required to be performed by the date this representation is deemed made) and all such Permits are in full force and effect. Neither the

Borrower nor any of its Subsidiaries has received written notice that any Gaming Authority has commenced proceedings to suspend, revoke or not renew any such Permits where such suspension, revocation or failure to renew would reasonably be expected to result in a Material Adverse Effect.

**Section 3.21 Anti-Corruption Laws and Sanctions.** The Borrower has implemented and maintains in effect policies and procedures designed to ensure compliance by the Borrower, its Affiliates, its Subsidiaries and their respective directors, officers, employees and agents with Anti-Corruption Laws and applicable Sanctions, and the Borrower, its Affiliates, its Subsidiaries and their respective officers and employees and to the knowledge of the Borrower its directors and agents, are in compliance with Anti-Corruption Laws and applicable Sanctions in all material respects. None of (a) the Borrower, any Affiliate, any Subsidiary or any of their respective directors, officers or employees, or (b) to the knowledge of the Borrower, any agent of the Borrower, any Affiliate or any Subsidiary that will act in any capacity in connection with or benefit from the credit facility established hereby, is a Sanctioned Person. No Borrowing or Letter of Credit, use of proceeds or other transaction contemplated by this Agreement will violate Anti-Corruption Laws or applicable Sanctions.

**Section 3.22 Flood Insurance Laws.** No Mortgage encumbers improved real property which is located in an area that has been identified by the Director of the Federal Emergency Management Agency as an area having special flood hazards and in which flood insurance has been made available under Flood Insurance Laws (except any Mortgaged Properties as to which such flood insurance as required by Flood Insurance Laws has been obtained and is in full force and effect as required by this Agreement or the other Loan Documents).

**Section 3.23 Insurance.** Each of the Loan Parties is insured by insurers of recognized financial responsibility (as of the date such insurance was purchased) against such losses and risks and in such amounts as are customary in the businesses in which it is engaged, for companies located in a similar geographic area, taking into account the activities and relative size (as compared to other similarly situated companies) of the Loan Parties and in any event in accordance with Section 5.04.

**Section 3.24 Compliance with Gaming Laws.** Incurrence of the Obligations by the Loan Parties under the Loan Documents complies with all applicable provisions of the Gaming Laws, subject to any informational filings or reports required by the Gaming Authorities and subject to the receipt, to the extent not already received, of requisite Gaming Approvals such as those relating to the Loan Documents, the Project, the Loan Parties and the Lenders, including the pledges of Equity Interests of the Loan Parties and their Subsidiaries that are licensed, qualified or registered by the Gaming Authorities and the granting of Liens on other Collateral under the Loan Documents and qualification or waiver of the Arranger, the Agents and each Lender.

**Section 3.25 CRDA Obligations.**

(a) The obligations of the Loan Parties under the Securities Purchase Contract between Revel Entertainment, LLC and the CRDA dated as of August 5, 2009 pursuant to N.J.S.A. 5:12 §§ 144.1, 162, 163 and 177, are limited to either purchasing bonds of CRDA or making a donation to or direct investment in CRDA eligible projects, in an amount not to exceed 1.25% of the gross gaming revenues attributable to the Project over the fifty year period after opening of the casino (the "CRDA Obligations").

(b) There are no financial obligations of the Loan Parties under the Transportation Improvement Project Documents.



**Section 3.26 Status of Obligations; Perfection and Priority of Security Interests.**

Upon the entry, and pursuant to the terms, of the Interim Order or the Final Order, as applicable, and subject ~~only~~ to the Carve-Out, the Obligations:

(a) pursuant to section 364(c)(1) of the Bankruptcy Code, constitute (without the need to file a proof of claim) a joint and several Superpriority Claim against each Loan Party, with priority over any and all other obligations, liabilities and indebtedness of the Loan Parties, whether now existing or hereafter arising or incurred, of any kind whatsoever, ~~including on the proceeds of Avoidance Actions following entry of the Final Order (but not the Avoidance Actions themselves)~~, and including any and all administrative expenses or other claims of the kind specified in or arising under sections 105, 326, 328, 330, 331, 364, 365, 503(b), 506(c) (following entry of the Final Order), 507, 546(c), 552(b), 726, 1113, 1114 or any other provision of the Bankruptcy Code, whether or not such expenses or claims may become secured by a judgment lien or other non-consensual lien, levy or attachment, whether now in existence or hereafter incurred by the Loan Parties, and shall at all times be senior to the rights of each Loan Party, each Loan Party's estate and any successor trustee, estate representative or any creditor, in any of the Cases or any subsequent cases or proceedings under the Bankruptcy Code (the "Lender Superpriority Claim"), and the Lender Superpriority Claim shall have recourse to and be payable from all prepetition and postpetition assets of the Loan Parties (including, but not limited to, the Collateral but, for the avoidance of doubt, excluding any property over which the creation or granting of such claim would violate any applicable Gaming Laws);

(b) pursuant to section 364(c)(2) of the Bankruptcy Code, are secured by a perfected first priority Lien on all Collateral that is not subject to valid, perfected and non-avoidable Liens as of the Filing Date; and

(c) pursuant to Sections 364(c)(3) and 364(d)(1) of the Bankruptcy Code, are secured by valid, enforceable, perfected and non-avoidable senior priming Liens on, and security interests in (the "Priming Liens"), all Collateral, which Priming Liens, except as otherwise expressly provided in the Final DIP Order, shall be junior only to any Liens ~~that were granted as security for the obligations securing principal, interest, fees, charges and other amounts due and owing~~ in connection with the "Tranche A-1 Revolving Loans" (as defined in the Prepetition First-Lien Credit Agreement), ~~and, prior (subject to entry of the Final Order, the terms of Sections 2.14(c) and 8.03(c) hereof), and~~ any valid, perfected, enforceable and non-avoidable ~~third Person Liens (including, for the avoidance of doubt, any construction liens and senior property tax liens in existence at the time of the commencement of the Cases and such senior property tax liens perfected subsequent thereto pursuant to Section 546(b) of the Bankruptcy Code~~, but excluding any Liens that were granted as security for the obligations in connection with the "Tranche A-2 Revolving Loans" (as defined in the Prepetition First-Lien Credit Agreement), the "Tranche B Term Loans" (as defined in the Prepetition First-Lien Credit Agreement) or any loans under the Prepetition Second-Lien Credit Agreement) ~~in existence at the time of the commencement of the Cases or perfected subsequent thereto pursuant to Section 546(b) of the Bankruptcy Code held by a third Person that were senior to the Liens that were granted as security for the obligations in connection with the Prepetition First Lien Credit Agreement~~, and shall be senior to all other Liens granted as of the Filing Date and any Liens granted after the Filing Date to provide adequate protection in respect of any of the Liens granted as of the Filing Date.

The priorities set forth above are subject, in each case, ~~only~~ to the Carve-Out. All of the Liens and security interests described in this Section 3.26 shall be effective and perfected as of the date that the Bankruptcy Court enters the Interim Order without the necessity of the execution of mortgages, security agreements, pledge agreements, financing statements or other agreements or documents.

## ARTICLE IV

### CONDITIONS TO CREDIT EXTENSIONS

**Section 4.01 Conditions to Effectiveness.** The obligations of the Lenders to make Loans and of each Issuing Bank to issue Letters of Credit hereunder shall not become effective until the date on which each of the following conditions is satisfied:

- (a) **Loan Documents.** There shall have been delivered to the Administrative Agent an executed counterpart of this Agreement and the Fee Letter.
- (b) **Corporate Documents.** The Administrative Agent shall have received:
  - (i) a certificate of the secretary or assistant secretary of each Loan Party dated the Closing Date, certifying (A) that attached thereto is a true and complete copy of each Organizational Document of such Loan Party and that such Organizational Documents shall be in full force and effect as of the Closing Date, (B) that attached thereto is a true and complete copy of resolutions duly adopted by the Board of Directors of such Loan Party authorizing the execution and delivery of the Credit Agreement and any other Loan Documents to be executed as of the Closing Date to which such person is a party and the performance of the Loan Documents to which such person is a party and, in the case of the Borrower, the borrowings hereunder, and that such resolutions have not been modified, rescinded or amended and are in full force and effect and (C) as to the incumbency and specimen signature of each officer executing the Credit Agreement, any other Loan Documents to be executed as of the Closing Date or any other document delivered in connection herewith on behalf of such Loan Party (together with a certificate of another officer as to the incumbency and specimen signature of the secretary or assistant secretary executing the certificate in this clause (i)); and
  - (ii) a certificate as to the good standing of each Loan Party as of a recent date, from such Secretary of State (or other applicable Governmental Authority).
- (c) **Officer's Certificate.** The Administrative Agent shall have received a certificate, dated the Closing Date and signed by a Financial Officer of the Borrower, certifying that the conditions specified in Sections 4.03(a) and 4.03(b) have been satisfied.
- (d) **Approved Budget.** The Agent and the Lenders shall have received the Approved Budget, which shall be in form and substance reasonably satisfactory to the Agent and the Lenders.
- (e) **Fees.** The Arranger, each Agent, the Issuing Bank and the Lenders shall have received all Fees and other amounts due and payable on or prior to the Closing Date, including, to the extent invoiced at least one Business Day prior to the Closing Date, reimbursement or payment of all out-of-pocket expenses (including legal fees and expenses of any Advisors) required to be reimbursed or paid by the Borrower hereunder or under any other Loan Document.
- (f) **Collateral Requirements.** The Collateral Agent shall have received evidence satisfactory to it that it has or concurrently with the Closing Date shall have a perfected Lien on, and security interest in, the Collateral as set forth in Section 3.26.
- (g) **Flood Hazard Determinations.** The Collateral Agent shall have received evidence indicating whether the Property is located within a one hundred year flood plain or identified as a special flood hazard area as defined by the Federal Insurance Administration, and, if so, a flood

notification form signed by the Borrower as evidence that flood insurance is in place for the building and contents along with certificates showing the Collateral Agent listed as an a loss payee or mortgagee thereof.

(h) Insurance Coverage. Evidence of insurance required pursuant to Section 5.04 along with certificates showing the Collateral Agent listed as an additional insured or loss payee, as applicable.

(i) USA Patriot Act. The Agents and the Lenders shall have received, sufficiently in advance of the Closing Date, all documentation and other information that may be required by the Lenders in order to enable compliance with applicable “know your customer” and anti-money laundering rules and regulations, including the United States PATRIOT Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)) (the “Patriot Act”) including the information described in Section 10.13.

(j) No Legal Bar. No order, judgment or decree of any Governmental Authority shall purport to restrain any Lender from making the Loans to be made by it or participation in the LC Exposure to be participated in by it. It is understood and agreed that if any Lender is restrained by any occurrence set forth above, no other unaffected Lender shall be relieved from its obligation to make Loans or participate in LC Exposure subject to satisfaction of the conditions hereunder.

(k) No Gaming Authority Disapproval. No Gaming Authority shall purport to issue an order or decree disapproving of the transactions contemplated by the Loan Documents.

(l) Notes. If requested by any Lender, the Borrower shall have delivered an original Note for such Lender duly executed.

(m) Litigation. Except for the Cases, there shall not exist any pending or threatened litigation, proceeding or investigation that (i) would prohibit, enjoin or contest the transactions contemplated by the Loan Documents or (ii) could have a Material Adverse Effect.

(n) Interim Order. The Interim Order shall have been entered by the Bankruptcy Court in the Cases and shall have been in form and substance reasonably satisfactory to the Agents, the Issuing Bank and the Lenders, and shall be in full force and effect and shall not have been vacated, stayed, revised, modified or amended in any manner without the prior written consent of the Agents, the Issuing Bank and the Lenders.

(o) Filing Date. The Filing Date with respect to each Loan Party shall have occurred, and the First Day Orders sought by the Loan Parties shall have been entered by the Bankruptcy Court and shall have been in form and substance satisfactory to the Administrative Agent in its sole discretion.

(p) Cash Management. All orders entered by the Bankruptcy Court pertaining to cash management (including the Cash Management Order) and adequate protection, and all other motions and documents filed or to be filed with, and submitted to, the Bankruptcy Court in connection therewith, shall be in form and substance reasonably satisfactory to the Agents, the Issuing Bank and the Lenders in their reasonable discretion.

(q) Liquidity. After giving effect to the payment of all fees and expenses to the Agents and the Lenders on the Closing Date, the Borrower shall have Unrestricted Cash of at least \$1,000,000.

**Section 4.02 Final Effective Date.** The obligations of the Lenders to make NM Loans and of each Issuing Bank to issue Letters of Credit hereunder in an aggregate amount in excess of the Interim Availability Amount shall not become effective until the date on which each of the following conditions is satisfied:

(a) Orders. (i) The Interim Order shall be in full force and effect and shall not have been stayed, reversed, vacated, rescinded, modified or amended in any respect; (ii) the Administrative Agent and the Lenders shall have received a certified copy of the Final Order which, in any event, shall have been entered by the Bankruptcy Court ~~no later than July 31, 2014 (or such later date agreed to by the Required Lenders in their sole discretion)~~, and at the time of any such extension of credit the Final Order shall be in full force and effect, and shall not have been vacated, stayed, reversed, modified or amended in any respect without the prior written consent of the Administrative Agent and the Required Lenders; and (iii) if either the Interim Order or the Final Order is the subject of a pending appeal in any respect, none of the making of such extensions of credit, the grant of Liens and Superpriority Claims in accordance with Section 3.26 or otherwise or the performance by the Borrower or any Guarantor of any of their respective obligations under any of the Loan Documents shall be the subject of a presently effective stay;

(b) Closing Date. The Closing Date shall have occurred.

**Section 4.03 Each Credit Extension.** The obligation of each Lender to make any Loan and of each Issuing Bank to issue, amend, renew or extend any Letter of Credit, including the initial Borrowing on the Closing Date, is subject to the following conditions:

(a) Representations and Warranties. The representations and warranties of the Loan Parties in Article III or any other Loan Document shall be true and correct in all material respects on and as of the date of such Borrowing or the date of issuance, amendment, renewal or extension of such Letter of Credit, as applicable, except to the extent that any such representation or warranty (i) specifically refers to an earlier date, in which case it shall be true and correct in all material respects as of such earlier date or (ii) is qualified as to materiality, in which case it shall be true and correct in all respects.

(b) No Default or Event of Default. At the time of and immediately after giving effect to such Borrowing or the issuance, amendment, renewal or extension of such Letter of Credit, as applicable, no Default or Event of Default shall have occurred and be continuing.

(c) Total Commitments. In the case of the extension of credit under any Facility, the sum of the aggregate amount of the outstanding Loans under such Facility plus, with respect to the NM Facility, the aggregate outstanding LC Exposure shall not exceed the aggregate Commitments under such Facility then in effect.

(d) Notice of Borrowing. Except with respect to any Roll-Up Borrowing (unless requested by the Administrative Agent), the Administrative Agent shall have received a Borrowing Request or notice requesting the issuance, amendment, renewal or extension of a Letter of Credit in accordance with the requirements hereof. Each Borrowing request or notice delivered by the Borrower hereunder shall constitute a representation and warranty by the Borrower that on and as of the date of such notice and on and as of the relevant borrowing date or date of issuance of a Letter of Credit (both immediately before and after giving effect to such borrowing or issuance and the application of the proceeds thereof) that the conditions specified in Sections 4.03(a) and 4.03(b) have been satisfied.

## ARTICLE V

### AFFIRMATIVE COVENANTS

Each Loan Party covenants and agrees with each Lender that from and after the Closing Date and until the Commitments have expired or been terminated and the principal of and interest on each Loan, all Fees and all other expenses or amounts payable under any Loan Document shall have been paid in full and all Letters of Credit have expired, been terminated or been Cash Collateralized or supported by “back to back” letters of credit reasonably satisfactory to the Administrative Agent and all LC Disbursements shall have been reimbursed, each Loan Party will, and will cause each of its Subsidiaries to:

**Section 5.01 Financial Statements, Reports, Etc.** Furnish to the Administrative Agent:

(a) (Reserved);

(b) Monthly Reports. As soon as available, but in any event not later than 30 days after the end of each calendar month, the unaudited consolidated balance sheets of Borrower and its consolidated Subsidiaries as at the end of such month and the related unaudited consolidated statements of income and of cash flows for such month and the portion of the fiscal year through the end of such month, setting forth in each case in comparative form the figures for the previous year, certified by a Responsible Officer as being fairly stated in all material respects (subject to normal year-end audit adjustments and the absence of footnotes);

(c) Financial Officer’s Certificate. Concurrently with the delivery of any financial statements pursuant to Section 5.01(b), (i) a certificate of a Financial Officer of the Loan Parties stating that such Financial Officer has obtained no knowledge of the existence of any Default or Event of Default that is continuing except as specified in such certificate and (ii) a compliance certificate showing calculations for determining compliance by the Loan Parties with Section 6.10 as of the last day of the applicable calendar month or fiscal year, as the case may be covered by such financial statements;

(d) Non-Gaming Metric Report. As soon as available, but in any event not later than 30 days after the end of each month, a report setting forth the non-gaming operating metrics for the Borrower and its Subsidiaries for the prior month, in each case, in form reasonably satisfactory to the Administrative Agent;

(e) Discussion and Analysis. On the last Business Day of each week (unless waived by the Required Lenders), a conference call with the Administrative Agent and the Lenders discussing and analyzing the financial condition and results of operations of each of the Loan Parties for such preceding week;

(f) Proceedings. Within fifteen days after the end of each calendar month, a schedule of any Proceedings not previously disclosed pursuant to this Section 5.01(f) involving an alleged liability of, or claims against, any Loan Party, equal to or greater than \$500,000, and promptly after request by the Administrative Agent, such other information as may be reasonably requested by the Administrative Agent to enable the Administrative Agent and its counsel to evaluate any of such Proceedings (to the extent delivery of such information will not violate any confidentiality obligations binding upon the Loan Parties or constitute a waiver of attorney client privilege and in any event excluding any information concerning Proceedings relating to workers’ compensation claims);

(g) Governmental Filings and Notices. Promptly upon request by the Administrative Agent, copies of any other material reports or documents that were filed by any Loan Party with any Governmental Authority and copies of any and all material notices and other material communications from any Governmental Authority with respect to any Loan Party;

(h) Cash Flow Forecasts; Variance Reports. On the last Business Day of each calendar week, (A) a rolling 13-week cash flow forecast (each, a “Cash Flow Forecast”) of the cash receipts and cash disbursements of the Borrower and its Subsidiaries for the immediately following consecutive 13 weeks, set forth on a weekly basis and substantially in the form attached as Exhibit L and (B) a variance report comparing (i) actual “Collections”, “Operating Disbursements”, “Debt and Bankruptcy Disbursements” and “Net Cash Flow” (each of which is a line item in the Approved Budget) for the preceding one-week period to projected “Collections”, “Operating Disbursements”, “Debt and Bankruptcy Disbursements” and “Net Cash Flow” provided for such one-week period in the most recently delivered Cash Flow Forecast and (ii) actual “Collections”, “Operating Disbursements”, “Debt and Bankruptcy Disbursements” and “Net Cash Flow” to the Approved Budget;

(i) Daily Liquidity Reports. Within one Business Day after it is generated by any Loan Party, a daily report of the cash receipts, cash disbursements and ending cash balances (excluding Cage Cash) of the Borrower and its Subsidiaries;

(j) Prepetition First-Lien Credit Agreement. Concurrently with the delivery to JPMorgan Chase Bank, as administrative agent or collateral agent under the Prepetition First-Lien Credit Agreement, copies of all reports, documentation and other information delivered to JPMorgan Chase Bank, as administrative agent or collateral agent under the Prepetition First-Lien Credit Agreement;

(k) Flash Revenue Reports. On the first Business Day following the end of each calendar week after the date hereof, a flash revenue report for such calendar week;

(l) Potential Sale. Within two Business Days of receipt thereof, subject to any reasonable and customary confidentiality obligations that any Loan Party may have, a report describing any interest, formally or informally, by any Person in acquiring all or substantially all of the assets of the Loan Parties; and

(m) Other Information. Promptly, from time to time, such other information regarding the operations, business affairs and financial condition of any Loan Party, as the Administrative Agent or any Lender (through the Agent) may reasonably request (to the extent delivery of such information will not violate any confidentiality obligations binding upon the Loan Parties or constitute a waiver of attorney client privilege).

All such financial statements delivered pursuant to this Section 5.01 shall be complete and correct in all material respects (in the case of financial statements delivered pursuant to subsection (b) of this Section 5.01, subject to normal year-end audit adjustments and the absence of footnotes) and shall be prepared in reasonable detail and in accordance with GAAP applied consistently throughout the periods reflected therein and with prior periods (except as approved by the accountants or Responsible Officer referred to above, as the case may be, and disclosed therein).

**Section 5.02 Litigation and Other Notices.** Furnish to the Administrative Agent written notice of the following promptly (and, in any event, within three Business Days of the occurrence (in the case of clauses (a), (b), (c), (f) or (g)) or obtaining knowledge thereof):

(a) the institution of any action, suit, proceeding (whether administrative, judicial or otherwise), governmental investigation or arbitration against or affecting any Loan Party, or any property of any Loan Party (collectively, “Proceedings”) not previously disclosed in writing by the Borrower to the Administrative Agent that would reasonably be expected to result in a Material Adverse Effect, or any material development in any such Proceeding, in each case together with such other information as may be reasonably available to the Loan Parties to enable the Administrative Agent and its counsel to evaluate

such matters (to the extent delivery of such information will not violate any confidentiality obligations binding upon the Loan Parties or constitute a waiver of attorney client privilege and in any event excluding any information concerning Proceedings relating to workers' compensation claims);

(b) copies of all notices provided to any Loan Party pursuant to any documents evidencing Material Indebtedness relating to material defaults and promptly upon execution and delivery thereof, copies of all amendments to any of the documents evidencing Material Indebtedness;

(c) the institution of any special or other assessments (other than ad valorem taxes) for public improvements or otherwise affecting any Real Property, or any contemplated improvements to such Real Property that would reasonably result in such special or other assessments;

(d) the occurrence of any Default or Event of Default;

(e) the occurrence, or any Responsible Officer of a Loan Party obtaining knowledge of a forthcoming occurrence, of any ERISA Event and in any event within 10 days after any Responsible Officer of a Loan Party knows of such ERISA Event, a written notice specifying the nature thereof, what actions the affected Loan Party or ERISA Affiliate has taken, is taking or proposes to take with respect thereto and, when known, any action taken or threatened by the Internal Revenue Service, the Department of Labor or the PBGC with respect thereto;

(f) any other developments or events that, individually or in the aggregate, have resulted in, or would reasonably be expected to result in, a Material Adverse Effect; and

(g) if reasonably practicable, at least two (2) Business Days prior to the date when the Borrower intends to file or distribute any such pleading, motion or other document (and, if not reasonably practicable, as soon as reasonably practicable), copies of all material pleadings, motions, applications, judicial information, financial information and other documents to be filed by or, if at the direction of Borrower, on behalf of Borrower or any Guarantor with the Bankruptcy Court in the Cases or to be distributed by or, if at the direction of Borrower, on behalf of Borrower or any Guarantor to any official committee appointed in the Cases.

Each notice pursuant to clauses (a), (d) and (f) of this Section 5.02 shall be accompanied by a statement of a Responsible Officer setting forth details of the occurrence referred to therein and stating what action the relevant Loan Party proposes to take with respect thereto.

**Section 5.03 Existence; Businesses and Properties.**

(a) (i) Preserve, renew and keep in full force and effect its organizational existence and in each case remain a Wholly Owned Subsidiary of the Borrower and (ii) take all reasonable action to maintain all rights, privileges, franchises, Permits and licenses (including Liquor Licenses) necessary in the normal conduct of its business, except, in each case, as otherwise permitted by Section 6.05 or Section 6.06 and except, in the case of subsection (ii) above, to the extent that failure to do so would not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect.

(b) Keep all property and systems material to the operation of the business of the Loan Parties in good working order and condition, ordinary wear and tear, accidents and force majeure and, casualty and condemnation events, excepted.

(c) Maintain, as of a particular date, all rights-of-way, easements, grants, privileges, licenses (including Liquor Licenses), certificates, certificates of occupancy (temporary or permanent) and

Permits necessary for the intended use by the Loan Parties of any Real Property at such date, except any such item the loss of which, individually or in the aggregate, would not reasonably be expected to materially and adversely affect or interfere with the Project or Project Site.

(d) Comply with the terms of each lease or other grant of Real Property, including easement grants, so as to not permit any material uncured default on its part to exist thereunder, except, in each case, where noncompliance therewith would not reasonably be expected to materially and adversely affect or interfere with the Project or Project Site.

**Section 5.04 Insurance.**

(a) Generally. At all times maintain in full force and effect the insurance policies and programs listed on Schedule 5.04(a), which policies and programs may be modified or cancelled from time to time if, (i) and only to the extent that, such policies and programs are not then available on commercially reasonable terms and (ii) the resulting coverage is, at the time of the modification or cancellation, customary for companies engaged in the same or similar business, which are similarly situated, and which have obtained or are then obtaining insurance coverage under similar conditions as those then currently applicable to the applicable Loan Party. In the event that, in accordance with the preceding sentence, any Loan Party is, at any time or from time to time, permitted to deviate from the insurance policies and programs described in Schedule 5.04(a) and, thereafter, any such policy or program as set forth in Schedule 5.04(a) becomes available on commercially reasonable terms, the applicable Loan Party, as the case may be, shall promptly procure coverage satisfying the requirement for such policy or program.

(b) Notice to Agents. Deliver to the Agents on behalf of the Lenders, (i) promptly upon request of any Agent or any Lender from time to time, information as to the insurance carried, (ii) promptly following receipt thereof, from any insurer, a copy of any notice of cancellation, non-renewal or material change in coverage from that existing on the Closing Date, unless such coverage is replaced prior to the cancellation or non-renewal thereof in accordance with Schedule 5.04(a), (iii) forthwith, notice of any cancellation, non-renewal or material change in coverage received by any Loan Party, unless such insurance is replaced prior to the cancellation or non-renewal thereof in accordance with Schedule 5.04(a) and (iv) promptly after such information is available to any Loan Party, information as to any claim for an amount in excess of \$500,000 with respect to any property or casualty insurance policy maintained by any such Loan Party.

**Section 5.05 Obligations.**

(a) Payment of Obligations. Pay, discharge or otherwise satisfy at or before maturity or before they become delinquent, as the case may be, in each case consistent with the Approved Budget, all post-Filing Date Taxes imposed upon it or its properties, and all post-Filing Date lawful claims for labor, material and supplies which, if unpaid might give rise to a Lien upon such properties, except where (i) the amount or validity thereof is currently being contested in good faith by appropriate proceedings in accordance with applicable law and reserves in conformity with GAAP with respect thereto have been provided on the books of the relevant Loan Party or (ii) the failure to do so would not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect.

(b) Filing of Returns. Each Loan Party shall timely file, or cause to be filed, all material Tax Returns that are required to be filed by it in any jurisdiction.

**Section 5.06 Employee Benefits.** (a) Comply in all material respects with the applicable provisions of ERISA and the Code and (b) furnish to the Administrative Agent (x) as soon as



possible after, and in any event within 10 business days after any Responsible Officer of any Loan Party knows or has reason to know that, any ERISA Event has occurred that, alone or together with any other ERISA Event would reasonably be expected to result in liability of the Loan Parties or any of their ERISA Affiliates in an aggregate amount that would reasonably be expected to have a Material Adverse Effect or the imposition of a Lien on any of the property of any Loan Party, a statement of a Responsible Officer of the Borrower setting forth details as to such ERISA Event and the action, if any, that the Loan Parties propose to take with respect thereto; (y) upon the reasonable request by the Administrative Agent, copies of (i) each Schedule SB (Actuarial Information) to the annual report (Form 5500 Series) filed by any Loan Party or any ERISA Affiliate with the Internal Revenue Service with respect to each Plan; (ii) the most recent actuarial valuation report for each Plan; (iii) all notices received by any Loan Party or any ERISA Affiliate from a Multiemployer Plan sponsor or any governmental agency concerning an ERISA Event; and (iv) such other documents or governmental reports or filings relating to any Plan (or employee benefit plan (as such term is defined in Section 3(3) of ERISA) sponsored or contributed to by any Loan Party) as the Administrative Agent shall reasonably request and (z) promptly following any request therefor, copies of (i) any documents described in Section 101(k) of ERISA that any Loan Party or its ERISA Affiliate may request with respect to any Multiemployer Plan and (ii) any notices described in Section 101(1) of ERISA that any Loan Party or its ERISA Affiliate may request with respect to any Multiemployer Plan; provided that if any Loan Party or its ERISA Affiliate has not requested such documents or notices from the administrator or sponsor of the applicable Multiemployer Plan, the applicable Loan Party or ERISA Affiliate shall promptly make a request for such documents or notices from such administrator or sponsor and shall provide copies of such documents and notices promptly after receipt thereof.

**Section 5.07 Maintaining Records; Access to Properties and Inspections; Annual Meetings.**

(a) Keep in all material respects records and books of account in accordance with GAAP. Subject to any Gaming Laws restricting or modifying such actions, each Loan Party will permit representatives of the Administrative Agent and any Lender (coordinated through the Administrative Agent), at the Borrower's expense, to visit and inspect any of its properties and examine any of its financial books and records at any reasonable time and upon reasonable prior notice, and as often as may reasonably be desired and during normal business hours, to discuss the business, operations, properties and financial and other condition of any Loan Party with officers of such Loan Party and with their respective independent certified public accountants (provided that a Responsible Officer may be present for any such discussions with independent certified public accountants if the Borrower so chooses); provided that, notwithstanding the foregoing, such inspection rights shall be subject to confidentiality restrictions binding on the Loan Parties and their Subsidiaries, and shall not encompass materials subject to attorney client privilege.

(b) Within 125 days after the end of each fiscal year commencing after the Closing Date, at the request of the Administrative Agent or Required Lenders, hold a meeting or conference call (at a mutually agreeable time and, to the extent applicable, location and venue, the costs of such venue or call to be paid by the Borrower) with all Lenders who choose to attend such meeting, at which meeting shall be reviewed the financial results of the previous fiscal year and the financial condition of the Loan Parties and the budgets presented for the current fiscal year of the Loan Parties.

**Section 5.08 Use of Proceeds.** Use the proceeds of the Loans only for the purposes set forth in Section 3.12(a) of this Agreement.

**Section 5.09 Compliance with Environmental Laws; Permits.**

(a) Except to the extent failure to do so would not reasonably be expected to result in a Material Adverse Effect, comply with, and use commercially reasonable efforts to ensure compliance by all tenants and subtenants, if any, with, all applicable Environmental Laws, and obtain, maintain and comply with, and use commercially reasonable efforts to ensure that all tenants and subtenants obtain, maintain and comply with any and all Environmental Permits.

(b) Except to the extent failure to do so would not reasonably be expected to result in a Material Adverse Effect, conduct and complete all investigations, studies, sampling and testing, and all remedial, removal and other actions required by Environmental Laws, and comply as required with all Environmental Laws governing the Mortgaged Property or the improvements thereon or any other Collateral.

(c) The Administrative Agent may (but shall not be required to) at the Borrower's expense, at any time that the Administrative Agent has a reasonable basis to believe that a Release of Hazardous Materials has occurred at, on or under the Mortgaged Property in violation of Environmental Law, unless such Release could not reasonably be expected to result in a material Environmental Claim (A) retain an independent professional consultant to review any environmental audits, investigations, analyses and reports relating to Hazardous Materials prepared by or for the Loan Parties, (B) conduct an investigation of the Mortgaged Property in respect of such Release or (C) conduct a further Phase I investigation or other environmental assessment of the Mortgaged Property. The Administrative Agent shall retain a Licensed Site Remediation Professional ("LSRP"), as defined in N.J.S.A. 58:10C-2, to conduct any such investigation pursuant to this Section 5.09. For purposes of conducting such a review or investigation, the Administrative Agent and its agents, employees, consultants and contractors shall have the right, upon prior notice, to enter into or onto the Mortgaged Property and to perform such tests on such property (including taking samples of soil, groundwater and suspected asbestos containing materials) as are reasonably necessary to investigate such Release, to conduct such further Phase I investigation or other environmental assessment, or investigate such recommendations as may be set forth in such subsequent Phase I or other environmental assessment report. The Administrative Agent shall share the results of such investigation with the Borrower, shall provide copies of the non-privileged portions of associated reports to the Borrower and provide the Borrower with the reasonable opportunity to participate in any sampling investigation, including the right to take split or other verification samples. Any such investigation shall be conducted, unless otherwise agreed to in writing by the Borrower and the Administrative Agent, during normal business hours and shall be conducted so as not to unreasonably interfere with the ongoing operations at the Mortgaged Property or the Project or cause any damage or loss to any property at the Mortgaged Property or the Project. Any report of any investigation conducted at the request of the Administrative Agent pursuant to this Section 5.09 will be obtained and shall be used by the Administrative Agent and the Lenders solely for the purposes of the Lenders' internal credit decisions, to monitor and police the Loans and to protect the Lenders' security interests, if any, created by the Loan Documents, and unless an Event of Default has occurred and is continuing, or except as may be required by applicable Law and subject to any independent obligations required by applicable Laws or the LSRP, neither the Administrative Agent nor any Lender shall confer with, make filings to or otherwise correspond with any Governmental Authority with respect to or relating to such sampling or investigation without the reasonable consent of, or participation by, the Borrower; provided, however, should any such investigation conducted at the request of the Administrative Agent confirm a Release of Hazardous Materials at, on, under or from the Mortgaged Property, the Borrower shall, at the Borrower's sole cost and expense without prejudice to the Borrower's right to assert any claims against any Governmental Authority or other person, if and to the extent required under Environmental Law, undertake to remediate such Release and shall otherwise comply in all material respects with any Environmental Law with respect to such Release.

(d) Deliver to the Administrative Agent (i) as soon as practicable following receipt thereof, copies in such Loan Party's possession or control of all non-privileged portions of environmental audits, investigations, analyses and reports not previously made available to the Administrative Agent, whether prepared by personnel of such Loan Party or by independent consultants, Governmental Authorities or any other persons, with respect to the Mortgaged Property or with respect to any Environmental Claims that would reasonably be expected to result in a Material Adverse Effect, (ii) reasonably promptly upon the occurrence thereof, written notice describing in reasonable detail (A) any Release required to be reported to any Governmental Authority under any Environmental Laws unless such Release could not reasonably be expected to result in a material Environmental Claim, (B) any remedial action taken by any person in response to (1) any Release of Hazardous Materials which would reasonably be expected to result in a Material Adverse Effect, or (2) any Environmental Claims against such Loan Party that would reasonably be expected to result in a Material Adverse Effect, (iii) as soon as practicable following the sending or receipt thereof by such Loan Party, a copy of any and all material written communications with any third parties with respect to (A) any Environmental Claims that would reasonably be expected to result in a Material Adverse Effect, (B) any Release required to be reported to any Governmental Authority that would reasonably be expected to result in a Material Adverse Effect, and (C) any request for information from any Governmental Authority stating that such Governmental Authority is investigating whether such Loan Party may be potentially responsible under CERCLA or any analogous Environmental Law or may otherwise have liability under any Environmental Law for a Release and (iv) with reasonable promptness, such other documents and information as from time to time may be reasonably requested by the Administrative Agent regarding any matters disclosed pursuant to this Section 5.09(d) or otherwise affecting the Mortgaged Property under any Environmental Law that would reasonably be expected to have a Material Adverse Effect.

**Section 5.10 Additional Collateral; Additional Guarantors.**

(a) If requested by the Collateral Agent, with respect to any property or property interest acquired after the Closing Date by any Loan Party as to which the Collateral Agent, for the benefit of the Secured Parties, does not have a perfected security interest (other than any (i) Excluded Property and (ii) property described in paragraph (c) below), subject to compliance with applicable Gaming Laws promptly (and in any event within twenty (20) Business Days following the date of such acquisition or such longer period as may be reasonably approved by the Administrative Agent) execute and deliver to the Collateral Agent a joinder to this Agreement in a form reasonably satisfactory to the Collateral Agent and such amendments to the Security Agreement or such other documents, and take all the actions, as the Administrative Agent or the Collateral Agent reasonably deems necessary or advisable to grant to the Collateral Agent, for the benefit of the Secured Parties, a perfected security interest in such property (subject only to Permitted Liens and prior and superior in right to any other Lien (except Permitted Prior Liens)), including, without limitation, the filing of UCC financing statements in such jurisdictions as may be reasonably required by the Security Documents or by law or as may be reasonably requested by the Administrative Agent or the Collateral Agent. In addition to the foregoing, upon the request of the Administrative Agent, promptly (and, in any event, no later than twenty (20) Business Days following the date of such request or such longer period as may be reasonably approved by the Administrative Agent) (A) execute and deliver a Control Agreement with respect to any deposit account, securities account or commodity account of any Loan Party, (B) execute and deliver a mortgage, in form and substance reasonably satisfactory to the Administrative Agent and the Collateral Agent, such mortgage to be recorded in the real property records of the appropriate jurisdiction, or execute and deliver to the Collateral Agent for recording a supplement to an existing Mortgage, in either case pursuant to which the applicable Loan Party grants to the Collateral Agent on behalf of the Secured Parties a Lien on any Real Property subject only to Permitted Liens and prior and superior in right to any other Lien (except Permitted Prior Liens), (C) provide the Administrative Agent with an environmental assessment report or reports with respect to any Real Property along with a corresponding reliance letter from an

environmental consultant, such reports and reliance letters to be reasonably satisfactory to the Administrative Agent, indicating that no Hazardous Materials were found in, on or under such Real Property in a manner that could reasonably be expected to result in a Material Adverse Effect and (D) execute and/or deliver such other documents or provide such other information in furtherance thereof as the Administrative Agent or the Collateral Agent may reasonably request to obtain or maintain security interest in any Real Property.

(b) If requested by the Collateral Agent, with respect to any new Subsidiary created or acquired after the Closing Date by any Loan Party, subject to compliance with Gaming Laws, promptly (and in any event within twenty (20) Business Days following the date of such acquisition or creation or such longer period as may be reasonably approved by the Administrative Agent) (i) execute and deliver to the Collateral Agent such amendments to the Security Agreement as the Administrative Agent or the Collateral Agent reasonably deems necessary or advisable to grant to the Collateral Agent, for the benefit of the Secured Parties, a perfected security interest in the Equity Interests of such new Subsidiary (subject only to Permitted Liens); provided that if such Equity Interests constitute Excluded Property, such Equity Interests shall not be required to be pledged, (ii) except with respect to Equity Interests constituting Excluded Property, deliver to the Collateral Agent the certificates (if any) representing such Equity Interests, together with undated stock or similar powers, in blank, executed and delivered by a duly authorized officer of such Loan Party, as applicable, (iii) cause such new Subsidiary (A) to become a party to the Security Agreement and, to the extent applicable, the Intellectual Property Security Agreements and the other Security Documents, and (B) to take such actions reasonably necessary or advisable to grant to the Collateral Agent for the benefit of the Secured Parties a perfected security interest (subject only to Permitted Liens and prior and superior in right to any other Lien (except Permitted Prior Liens)) in the Collateral described in the Security Documents with respect to such new Subsidiary owned by any Loan Party, including, without limitation, the execution and delivery by all necessary persons of Control Agreements (if requested by the Administrative Agent) and the filing of UCC financing statements and other filings in such jurisdictions as may be required by the Security Documents or by law or as may be reasonably requested by the Administrative Agent or the Collateral Agent, (iv) if requested by the Administrative Agent, deliver to the Administrative Agent customary legal opinions relating to the matters described above and (v) execute or deliver such other documents or provide such other information as the Administrative Agent or the Collateral Agent may reasonably request with respect to the foregoing requirements, including delivering documents and taking such other actions which would have been required under Section 4.01 if such new Subsidiary were a Loan Party on the Closing Date. In addition to the foregoing, in the event any such new Subsidiary owns or otherwise has interests in any Real Property or other property with respect to which a recording in the real property records of an appropriate jurisdiction is required or advisable in order to perfect a security interest therein, the Borrower shall, or shall cause the other Loan Parties to, take the actions required by clause (a) of this Section in relation thereto.

(c) Notwithstanding anything to the contrary in this Section 5.10, the Loan Parties shall not be required to (i) (A) take the actions necessary to grant a perfected security interest in, or (B) obtain title and extended coverage insurance with respect to, any Property acquired after the Closing Date to the extent that the Administrative Agent has determined in its sole discretion that the collateral value thereof is insufficient to justify the difficulty, time or expense of taking such actions or obtaining such insurance or (ii) deliver a Phase I Report or a Phase II Report with respect to any fee, easement or other interest in real property acquired after the Closing Date to the extent the Administrative Agent in its reasonable discretion has determined that the size, location and proposed use thereof are insufficient to justify the time and expense of obtaining such reports. Additionally, to the extent any such acquisition relates to Real Property, the definitions, exhibits and schedules to this Agreement and any other Loan Document related to descriptions of Real Property shall be deemed amended to the extent necessary to

reflect such acquisition (and the Administrative Agent is authorized to execute written amendment to such Loan Documents in connection therewith).

**Section 5.11 Security Interests; Further Assurances.** From time to time execute and deliver, or cause to be executed and delivered, such additional instruments, certificates or documents, and take all such actions, as the Administrative Agent may deem necessary or desirable for the continued validity, perfection and priority of the Lien of the Collateral Agent on the Collateral (or with respect to any additions thereto or replacements or proceeds or products thereof which do not constitute Excluded Property) pursuant hereto or thereto. Upon the exercise by the Administrative Agent, Collateral Agent or any Secured Party of any power, right, privilege or remedy pursuant to this Agreement or the other Loan Documents which requires any consent, approval, recording, qualification or authorization of any Governmental Authority, the Borrower shall, or shall cause any other applicable Loan Party to, execute and deliver, or will cause the execution and delivery of, all applications, certifications, instruments and other documents and papers that the Administrative Agent, Collateral Agent or such Secured Party may be required to obtain from the Borrower or the applicable Loan Party for such governmental consent, approval, recording, qualification or authorization. In the event that, notwithstanding the covenants contained in Section 6.02, a Lien not otherwise permitted under this Agreement shall encumber the Mortgaged Property, any other item of Collateral or any portion thereof (or a mechanic's or materialmen's claim of lien shall be filed or otherwise asserted against the Mortgaged Property, any other item of Collateral or any portion thereof), the relevant Loan Party shall promptly discharge or cause to be discharged by payment to the lienor or lien claimant or promptly secure removal by bonding or deposit with the county clerk or otherwise or, at the Administrative Agent's option, and if obtainable promptly obtain title insurance against, any such Lien or mechanics' or materialmen's claims of lien filed or otherwise asserted against the Mortgaged Property or such other item of Collateral or any portion thereof within 60 days after the date of notice thereof (which period the Administrative Agent may extend in its sole discretion so long as the relevant Loan Party is diligently pursuing such actions); provided, that the provisions of this Section 5.11 (and compliance therewith) shall not be deemed to constitute a waiver of any of the provisions of Section 6.02. Each of the Loan Parties shall fully preserve the Lien and the priority (subject to Permitted Prior Liens) of each of the Mortgages and the other Security Documents without cost or expense to the Administrative Agent, the Collateral Agent or the Secured Parties. If any Loan Party fails to promptly discharge, remove or bond off any Lien on the Collateral which is not a Permitted Lien and which is not being contested by the applicable Loan Party in good faith by appropriate proceedings promptly instituted and diligently conducted, within 90 days after the receipt of notice thereof from the Administrative Agent, then the Administrative Agent may, but shall not be required to, procure the release and discharge of such Lien, and in furtherance thereof may, in its sole discretion, effect any settlement or compromise with the lienor or lien claimant or post any bond or furnish any security or indemnity as the Administrative Agent, in its sole discretion, may elect. In settling, compromising or arranging for the discharge of any Liens or claims of Liens under this Section 5.11, the Administrative Agent shall not be required to establish or confirm the validity or amount of the Lien or the claim. The Borrower agrees that all costs and expenses reasonably expended or otherwise incurred pursuant to this Section 5.11 (including reasonable attorneys' fees and disbursements) by the Administrative Agent, the Collateral Agent or any Secured Party shall constitute Obligations and shall be paid by the Borrower in accordance with the terms hereof.

**Section 5.12 Information Regarding Collateral.** Not effect any change (i) in any Loan Party's legal name, (ii) in the location of any Loan Party's chief executive office, (iii) in any Loan Party's identity or organizational structure, (iv) in any Loan Party's Federal Taxpayer Identification Number or organizational identification number, if any, or (v) in any Loan Party's jurisdiction of organization (in each case, including by merging with or into any other entity, reorganizing, dissolving, liquidating, reorganizing or organizing in any other jurisdiction), until (A) it shall have given the Collateral Agent and the Administrative Agent prior written notice of its intention so to do, clearly

describing such change and providing such other information in connection therewith as the Collateral Agent or the Administrative Agent may reasonably request and (B) it shall have taken all action reasonably satisfactory to the Collateral Agent to maintain the perfection and priority of the security interest of the Collateral Agent for the benefit of the Secured Parties in the Collateral, if applicable. Each Loan Party agrees to promptly provide the Collateral Agent with certified Organizational Documents reflecting any of the changes described in the preceding sentence.

**Section 5.13 Compliance with Laws; Permits.**

(a) Comply with all applicable Requirements of Law, noncompliance with which would, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect, and comply in all material respects with its Organizational Documents.

(b) From time to time obtain, maintain, retain, observe, keep in full force and effect and comply with the terms, conditions and provisions of all Permits as shall now or hereafter be necessary under applicable Requirements of Law, except to the extent the failure to do so would not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect.

(c) The Borrower will maintain in effect and enforce policies and procedures designed to ensure compliance by the Borrower, its Affiliates, its Subsidiaries and their respective directors, officers, employees and agents with Anti-Corruption Laws and applicable Sanctions.

**Section 5.14 Plans and Specifications.** The Borrower agrees to maintain, both as physical copies and electronically, each of the drawings, plans and specifications for the Project, in each case in a safe, secure, accessible environment, including, with respect to any physical copies, in a fire-safe room. Each Loan Party will permit representatives of the Administrative Agent and any Lender (coordinated through the Administrative Agent) to inspect such drawings, plans and specifications in accordance with Section 5.07(a).

**Section 5.15 Appraisals.** Promptly after the Administrative Agent requests (but not more than once per calendar year), the Loan Parties will provide the Administrative Agent with appraisals or updates thereof of their Real Property from an appraiser selected and engaged by the Administrative Agent, and prepared on a basis satisfactory to the Administrative Agent, such appraisals and updates to include, without limitation, information required by applicable law and regulations.

**Section 5.16 Coverage Ratio Properties.** Cause each Coverage Ratio Property to be subject at all times to a Declaration of Covenants and Restrictions.

**Section 5.17 Perfection and Priority of Security Interests.** Maintain the perfection and priority of the security interests securing the Secured Obligations as set forth in Section 3.26.

**Section 5.18 Certain Bankruptcy Matters.**

(a) Milestones. ~~The Loan Parties shall cause the Final Order Entry Date to have occurred on or before July 31, 2014.~~ [Reserved].

(b) Other Bankruptcy Matters. The Loan Parties shall use their reasonable best efforts to cause the order confirming the Acceptable Chapter 11 Plan to be entered by the Bankruptcy Court with respect to the Cases to be effective immediately upon entrance thereof without any stay period.

(c) Cash Management. Maintain at all times all of the cash and Cash Equivalents of the Loan Parties in accordance with the requirements under the Cash Management Order in all respects.

**ARTICLE VI**  
**NEGATIVE COVENANTS**

Each Loan Party covenants and agrees with each Lender that, from and after the Closing Date and until the Commitments have expired or been terminated and the principal of and interest on each Loan, all Fees and all other expenses or amounts payable under any Loan Document have been paid in full and all Letters of Credit have expired, been terminated or been Cash Collateralized or supported by “back to back” letters of credit reasonably satisfactory to the Administrative Agent and all LC Disbursements shall have been reimbursed, no Loan Party will, nor will they cause or permit any Subsidiary of the Borrower to:

**Section 6.01 Indebtedness**. Incur, create, assume or permit to exist, directly or indirectly, any Indebtedness, except:

- (a) Indebtedness incurred under this Agreement and the other Loan Documents;
- (b) Indebtedness of any Loan Party to the Borrower or any Guarantor;
- (c) Indebtedness outstanding on the date hereof and listed on Schedule 6.01(c);
- (d) Indebtedness of the Borrower incurred pursuant to the Prepetition First-Lien Credit Agreement or the Prepetition Second-Lien Credit Agreement;
- (e) (Reserved);
- (f) Indebtedness of the Borrower incurred pursuant to the Prepetition Contingent Payment Rights Agreement;
- (g) (Reserved);
- (h) To the extent constituting Indebtedness of the Loan Parties, agreements to pay service fees to professionals (including architects, engineers and designers) in furtherance of and in connection with the development of the Project, in each case to the extent such agreements and related payment provisions are reasonably consistent with commonly accepted industry practices (provided that no such agreements shall give rise to Indebtedness for borrowed money);
- (i) Contingent Obligations of the Loan Parties with respect to Indebtedness of the Loan Parties permitted under this Section 6.01;
- (j) Indebtedness consisting of endorsements of instruments for deposit in the ordinary course of business;
- (k) to the extent constituting Indebtedness, agreements for the deferred payment of premiums or to finance the deferred payment of premiums owing by any Loan Party under any insurance policies entered into in the ordinary course of business in connection with a Permitted Business;

(l) Indebtedness under Hedging Agreements with respect to interest rates not entered into for speculative purposes; provided that such Hedging Agreements (i) relate to payment obligations on Indebtedness otherwise permitted to be incurred by the Loan Documents and (ii) the notional principal amount of such Hedging Agreements at the time incurred does not exceed the principal amount of the Indebtedness to which such Hedging Agreements relate;

(m) (Reserved); and

(n) Indebtedness arising from the honoring by a bank or other financial institution of a check, draft or similar instrument drawn against insufficient funds in the ordinary course of business; provided, however, that such Indebtedness is extinguished within five business days of its incurrence.

**Section 6.02 Liens.** Create, incur, assume or permit to exist, directly or indirectly, any Lien on any property now owned or hereafter acquired by it or on any income or revenues or rights in respect of any thereof, except the following (collectively, the “Permitted Liens”):

(a) Liens for taxes, assessments or governmental charges or claims not yet due and payable or due and payable but not yet delinquent or which are being contested in good faith by appropriate proceedings, provided that adequate reserves with respect to such taxes, assessments, governmental charges or claims being contested are maintained on the books of the applicable Loan Party, to the extent required by GAAP;

(b) carriers’, warehousemen’s, mechanics’, materialmen’s, suppliers’ repairmen’s, landlord’s or other similar Liens (x) arising in the ordinary course of business for amounts which are not overdue for a period of more than 60 days or that are being contested in good faith by appropriate proceedings or (y) that are referenced on Schedule 6.02(b) (in the case of either (x) or (y), in any event, so long as no foreclosure proceedings have been commenced with respect thereto or if commenced, such proceedings are stayed during the pendency of such contest); provided that (i) adequate reserves with respect to such obligations contested in good faith are maintained on the books of the applicable Loan Party, to the extent required by GAAP, (ii) with respect to any Lien permitted pursuant to clause (x) above, such Lien did not become of record prior to the Closing Date, (iii) except as otherwise set forth on Schedule 6.02(b), the aggregate amount of all such Liens referenced on Schedule 6.02(b) shall not exceed the amount set forth on Schedule 6.02(b) as of the Closing Date and (iv) clause (x) above shall not apply to Liens referenced on Schedule 6.02(b) as of the Closing Date;

(c) Liens incurred in the ordinary course of business in connection with workers’ compensation, unemployment insurance, old age pensions and social security benefits or other similar benefits (or to secure letters of credit issued for such purposes), so long as no foreclosure, sale, termination or similar proceedings have been commenced with respect thereto;

(d) Liens incurred on deposits made or cash collateral provided (including in respect of deposits made in the form of letters of credit) to secure the performance of bids, tenders, trade contracts (other than for borrowed money), leases, statutory obligations, appeal bonds, indemnities, release bonds, fee and expense arrangements with trustees and fiscal agents and other obligations of a like or similar nature incurred in the ordinary course of business; provided, that the obligations secured by such Liens and any deposits related thereto shall be no more than as were in effect on the Filing Date;

(e) easements, covenants, rights-of-way, restrictions, subdivisions, parcelizations, encroachments and other similar encumbrances and other minor defects and irregularities in title that, in the aggregate, are not substantial in amount and do not materially detract from the value of the Real Property taken as a whole or materially interfere with the development, construction or operation of the



Project on the Project Site, including, without limitation, those matters set forth on any title policy provided to the Collateral Agent on or prior to the Closing Date or subsequent to the Closing Date with respect to property acquired subsequent to the Closing Date;

(f) Liens in existence on the date hereof listed on Schedule 6.02(f); provided, that no such Lien is spread to cover any additional property (other than proceeds of the sale or other disposition thereof and property appurtenant thereto or improvements thereof) after the Closing Date and that the amount of Indebtedness secured thereby is not increased; and provided further that no such Lien shall (i) materially interfere with the development, construction or operation of the Project on the Project Site, or (ii) result in a Material Adverse Effect or a judgment of foreclosure on any part of the Mortgaged Property;

(g) Liens created pursuant to the Security Documents or the Orders or otherwise securing the Secured Obligations;

(h) leases and subleases, in each case permitted under Section 6.06, and any leasehold mortgage granted by a lessee or sublessee in favor of any party financing the lessee or sublessee under any such lease or sublease; provided, that (i) no Loan Party is liable for the payment of any principal of, or interest, premiums or fees on, such financing and (ii) such leasehold mortgage does not affect or encumber fee title to the property subject to the lease (other than as a result of the encumbrance of such leasehold interest);

(i) licenses of patents, trademarks, copyrights and other Intellectual Property rights granted by a Loan Party in the ordinary course of business and, in the aggregate, not interfering in any material respect with the ability of the Loan Parties to operate the Project in the ordinary course and licenses permitted under Section 6.06(g) or (l);

(j) Liens securing Indebtedness permitted under Section 6.01(d);

(k) Liens in respect of an agreement to effect an Asset Sale, to the extent such Lien extends only to the Property to be disposed of and such Asset Sale is permitted by Section 6.05 or 6.06;

(l) Liens securing Indebtedness permitted under Section 6.01(f); provided, that such Liens shall attach solely to the ERGG Proceeds and not any other asset or property of any Loan Party;

(m) Liens arising out of judgments, attachments or awards not resulting in a Default or Event of Default under Section 8.01(i);

(n) Permitted Encumbrances; provided that the same do not (i) materially interfere with the development, construction or operation of the Project on the Project Site or (ii) result in a Material Adverse Effect or a judgment of foreclosure on any part of the Mortgaged Property;

(o) Liens arising from the filing of precautionary UCC financing statements relating solely to operating leases permitted by this Agreement;

(p) any zoning or similar law or right reserved to or vested in any Governmental Authority to control or regulate the use of any Real Property;

(q) (Reserved);

(r) Liens in respect of customary rights of set off, revocation, refund or chargeback or similar rights under deposit, disbursement or concentration account agreements or under the UCC or arising by operation of law, of banks or other financial institutions where any Loan Party maintains deposit, disbursement or concentration accounts in the ordinary course of a Permitted Business;

(s) (Reserved);

(t) (Reserved);

(u) Liens of sellers of goods to any Loan Party arising under Section 2 of the UCC or similar provisions of applicable law in the ordinary course of business, covering only the goods sold and securing only the unpaid purchase price for such goods and related expenses;

(v) the filing of a subdivision map(s) over Real Property held by the Loan Parties designed to merge one or more of the separate parcels thereof together so long as (i) the entirety of each such parcel shall be owned by Loan Parties, (ii) no portion of the Mortgaged Property is merged with any Real Property that is not part of the Mortgaged Property and (iii) the gross acreage and footprint of the Mortgaged Property remains unaffected in any material respect;

(w) Liens securing Indebtedness permitted under Section 6.01(k), so long as such Liens attach only to the insurance policies with respect to which such Indebtedness is incurred, the proceeds thereof, or deposits made as security for the obligations thereunder;

(x) Liens created pursuant to the Interim Order or the Final Order;

(y) Asset Sales described in Sections 6.06(f) and 6.06(k);

(z) (Reserved);

(aa) From and after the lease or sublease of any interest pursuant to Section 6.06(e), (n), (o) or (p), any reciprocal easement agreement entered into between a Loan Party and the holder of such interest; and

(bb) (i) the CUP Easements in connection with the transactions contemplated under Sections 6.06(m), and (ii) any other easements, covenants or rights-of-way which are not material in nature and granted to tenants in connection with the leases contemplated under Sections 6.06(e).

**Section 6.03 Sale and Leaseback Transactions.** Enter into any arrangement, directly or indirectly, with any person whereby it shall sell or transfer any property, real or personal, used or useful in its business, whether now owned or hereafter acquired, and thereafter rent or lease such property or other property which it intends to use for substantially the same purpose or purposes as the property being sold or transferred (a "Sale and Leaseback Transaction") unless (i) the sale of such property is permitted by Section 6.06, (ii) the Attributable Indebtedness is permitted by Section 6.01 and (iii) any Liens arising in connection with its use of such property are permitted by Section 6.02.

**Section 6.04 Investments, Loans and Advances.** Directly or indirectly, lend money or credit (by way of guarantee or otherwise) or make advances to any person, or purchase or acquire any stock, bonds, notes, debentures or other securities of, or any other equity interest in, or make any capital contribution to, any other person, or purchase or own a futures contract or otherwise become liable for the purchase or sale of currency or other commodities at a future date in the nature of a futures contract (all of the foregoing, collectively, "Investments"), except that the following shall be permitted:

- (a) extensions of trade credit in the ordinary course of business (including, without limitation, advances to patrons of the Project's casino operation consistent with ordinary course gaming operations and applicable Gaming Laws);
- (b) Investments in Cash Equivalents;
- (c) to the extent constituting Investments, the incurrence of Indebtedness permitted by Section 6.01(b);
- (d) loans and advances to employees of the Loan Parties in the ordinary course of business (including, without limitation, for travel, entertainment and relocation expenses) in an aggregate amount (with respect to loans and advances made by all Loan Parties after the Filing Date) not to exceed \$50,000 at any one time outstanding;
- (e) Investments by any Loan Party in the Borrower or any Subsidiary Guarantor;
- (f) Investments received in settlement of debt as liabilities owed to the Loan Parties or in satisfaction of judgments;
- (g) (Reserved);
- (h) to the extent constituting Investments, (i) any Loan Party may consummate a transaction permitted pursuant to Section 6.05, (ii) any Loan Party may engage in Asset Sales permitted pursuant to Section 6.06 (including receipt of consideration constituting Investments), (iii) any Loan Party may make Dividends permitted pursuant to Section 6.08 and (iv) any Loan Party may take actions permitted pursuant to Section 6.09;
- (i) Investments consisting of pledges or deposits made in the ordinary course of business, including the investment of such sums as provided in Sections 6.02(d) and (r);
- (j) Investments consisting of debt securities and other non-cash consideration received as consideration for an Asset Sale permitted by Section 6.06;
- (k) prepaid expenses and similar items in the ordinary course of business pursuant to transactions not otherwise prohibited hereunder; and
- (l) Investments or other payments made in respect of the CRDA Obligations or Investments relating thereto.

The amount of any Investment shall be the initial cost thereof minus all payments received from time to time with respect to such Investment, whether constituting dividends, distributions, sale proceeds, interest, principal or otherwise; and in the case of an Investment which is a Contingent Obligation, the amount thereof shall be determined as provided in the definition of Contingent Obligation and shall be reduced as the underlying obligation is reduced.

**Section 6.05 Mergers and Consolidations.** Wind up, liquidate or dissolve its affairs or enter into any transaction of merger or consolidation, except that the following shall be permitted:

- (a) (Reserved);
- (b) (Reserved);

(c) (Reserved); and

(d) any Loan Party or Subsidiary of a Loan Party may dispose of any of its property in accordance with Section 6.06.

**Section 6.06 Asset Sales.** Effect any Asset Sale, except that the following shall be permitted:

(a) the disposition for fair market value of obsolete, surplus or worn out property or property no longer useful or necessary in the business of the Loan Parties not in excess of \$250,000 in the aggregate;

(b) the disposition of cash or Cash Equivalents (in each case in transactions not prohibited hereunder), Investments permitted pursuant to Section 6.04, inventory in the ordinary course of business, and receivables (in connection with the collection thereof and otherwise as customary in businesses of the type conducted by the Loan Parties);

(c) dispositions permitted by Section 6.05 or Section 6.08;

(d) (Reserved);

(e) subject to the last paragraph of this Section 6.06, the Borrower and its Subsidiaries may enter into any leases or subleases with respect to any of its Real Property;

(f) the dedication of space or other dispositions of property in connection with and in furtherance of constructing structures or improvements reasonably related to the development, construction and operation of the Project; provided, that in each case such dedication or other dispositions are in furtherance of, and do not materially impair or interfere with the use or operations (or intended use or operations) of, the Project;

(g) any Loan Party may (i) license trademarks, trade names, copyrights, patents and other Intellectual Property in the ordinary course of business, provided that such licensing, individually or in the aggregate (with respect to all Loan Parties), does not interfere in any material respect with the ordinary conduct of the business of the Loan Parties and (ii) abandon any trademarks, trade names, copyrights, patents or other Intellectual Property no longer necessary in the business of the Loan Parties;

(h) the incurrence of Liens permitted under Section 6.02; provided, that any leases (whether or not constituting Permitted Liens) shall be permitted only to the extent provided in subsection (f) above and the last paragraph of this Section 6.06;

(i) Asset Sales in connection with or as a result of any Casualty Event; provided, that the Loan Parties otherwise comply with Section 2.10;

(j) Asset Sales by any Loan Party to the Borrower or any Subsidiary Guarantor, including the lease of the land constituting the Project Site by AC Property Co to REG; provided, that in each case each Subsidiary Guarantor shall have taken all actions required pursuant to Section 5.10 with respect to any property acquired by it pursuant to this clause (j);

(k) the granting of easements, rights-of-way and rights of access to Governmental Authorities, utility providers, cable or other communication providers and other parties providing services or benefits to the Project, the Real Property held by the Loan Parties or the public at large that (i) do not

in any case materially detract from the value of the Real Property, taken as a whole, and (ii) would not reasonably be expected to interfere in any material respect with the construction, development or operation of the Project or the Real Property;

(l) the assignment or license of trademarks and related property made pursuant to the Intellectual Property License Agreements;

(m) the lease of the property subject to the CUP Land Lease to CUP Holder or any other party that operates the CUP on the terms set forth in the CUP Land Lease, and any other Asset Sales contemplated under the CUP Land Lease, the Energy Services Agreement or any agreement related or ancillary thereto, in each case on the terms set forth in and in accordance with the Energy Services Agreement; provided that the Collateral Agent on behalf of the Secured Parties shall provide the party to the CUP Land Lease and the agent or representative for the lenders to CUP Holder with a subordination, non-disturbance and attornment agreement relating to (i) the CUP Land Lease and (ii) easements, licenses, leases, permits, rights-of-way, restrictive covenants and other rights or privileges in the nature of easements or restrictive covenants with respect to or that pertain to any property included in the Project that are reasonably necessary or advisable in connection with the provision of utility services to any Mortgaged Property (the "CUP Easements"), in each case as reasonably required pursuant to the terms thereof;

(n) (Reserved);

(o) (Reserved);

(p) (Reserved);

(q) Investments permitted under Section 6.04; and

(r) Asset Sales under, and in accordance with the terms of, an Approved APA.

Notwithstanding the foregoing provisions of this Section 6.06, subsection (f) above shall be subject to the additional provisos that: (a) no Event of Default shall exist and be continuing at the time such transaction, lease or sublease is entered into, (b) such transaction, lease or sublease would not reasonably be expected to materially interfere with, or materially impair or detract from, the operation of the Project, (c) no gaming, hotel or casino operations (other than hotel operations approved in writing by the Required Lenders and the operation of arcades and games for minors) may be conducted on any space that is subject to such transaction, lease or sublease other than by and for the benefit of the Loan Parties and (d) no lease or sublease may provide that a Loan Party subordinate its fee, condominium or leasehold interest to any lessee or any party financing any lessee; provided, that (x) the Collateral Agent on behalf of the Secured Parties shall provide the tenant under any such lease or sublease (at the request of the Borrower) with a subordination, non-disturbance and attornment agreement in form as is reasonably satisfactory to the Collateral Agent and (y) unless the Administrative Agent shall otherwise waive such requirement, with respect to any such lease having a term of five years or more and reasonably anticipated annual rents (whether due to base rent, fixed rents, reasonably anticipated percentage rents or other reasonably anticipated rental income from such lease or sublease) in excess of \$5,000,000 (other than leases solely between Loan Parties), the applicable Loan Party shall enter into, and cause the tenant under any such lease or sublease to enter into with the Collateral Agent for the benefit of the Secured Parties, a subordination, non-disturbance and attornment agreement, in form as is reasonably satisfactory to the Collateral Agent. For the avoidance of doubt, in no event will the Administrative Agent be required to deliver a subordination, non-disturbance and attornment agreement to the tenant under the REG Lease.

**Section 6.07** (Reserved).

**Section 6.08** **Dividends.** Declare or pay, directly or indirectly, any Dividends with respect to any Loan Party, except that the following shall be permitted:

(a) to the extent constituting Dividends, (i) any Loan Party may consummate a transaction permitted pursuant to Section 6.05 and (ii) any Loan Party may make Investments permitted pursuant to Section 6.04;

(b) any Loan Party may pay Dividends to the Borrower or any Subsidiary Guarantor;  
and

(c) to the extent constituting a Dividend, payment of State Distribution Proceeds (as defined in the ERGG Agreement) to the New Jersey Economic Development Authority.

**Section 6.09** **Transactions with Affiliates.** Enter into, directly or indirectly, any transaction or series of related transactions, whether or not in the ordinary course of business, with any Affiliate of any Loan Party (other than between or among the Borrower and one or more of its Subsidiaries), other than on terms and conditions at least as favorable to such Loan Party as would reasonably be obtained by such Loan Party at that time in a comparable arm's-length transaction with a person other than an Affiliate, except that the following shall be permitted:

(a) [Reserved];

(b) a disposition permitted pursuant to Section 6.06 (provided, that for leases of portions of the Project permitted pursuant to Section 6.06(e) and dispositions permitted pursuant to Section 6.06(b)), such leases or dispositions shall be on terms that are not less favorable to the applicable Loan Party than those that might be obtained at the time in a comparable arm's length transaction with persons who are not Affiliates of such Loan Party and the applicable Loan Party has delivered to the Administrative Agent prior to the consummation of any such transaction (1) with respect to any transaction or series of related transactions involving aggregate consideration in excess of \$10,000,000, a resolution of the Board of Directors of the applicable Loan Party certifying that such transaction or series of related transactions complies with this Section 6.09 and that such transaction or series of related transactions has been approved by a majority of the disinterested members of the Board of Directors of the applicable Loan Party, to the extent there are any such disinterested members of such Board of Directors and (2) with respect to any such transaction or series of related transactions that involves aggregate consideration in excess of \$10,000,000, an opinion as to the fairness to the applicable Loan Party at the time such transaction or series of related transactions is entered into from a financial point of view issued by an accounting, appraisal or investment banking firm of national standing), an Investment permitted pursuant to Section 6.04 or a Dividend permitted pursuant to Section 6.08;

(c) customary employment, employee benefit, compensation, indemnification and insurance arrangements with officers, managers and directors of any Loan Party and a key employee incentive program acceptable to the Administrative Agent and the Required Lenders in their sole discretion;

(d) the disposition or issuance by any Loan Party of its Equity Interests permitted pursuant to Section 6.06 and the issuance by the Borrower of its Equity Interests permitted pursuant to Section 6.13;

(e) [Reserved];

- (f) [Reserved];
- (g) transactions contemplated by the Intellectual Property License Agreements; and
- (h) transactions explicitly permitted by the Loan Documents.

**Section 6.10 Financial Covenant.**

- (a) (Reserved).
- (b) (Reserved).
- (c) (Reserved).

(d) Budget Compliance. (1) For each weekly period beginning on each subsequent Monday after the Filing Date and ending on each subsequent Sunday (including the first weekly period beginning on June 23, 2014 and ending on June 29, 2014) covered by the Approved Budget (each such period, a “Test Period”), (w) minimum “Collections” (as set forth in the Approved Budget) of the Borrower and its Subsidiaries for such Test Period as compared to total “Collections” for such Test Period set forth in the Approved Budget, shall not have a negative variance that is in excess of the Weekly Permitted Collections Deviation of the amount set forth in the Approved Budget for such Test Period, (x) maximum “Operating Disbursements” (as set forth in the Approved Budget) of the Borrower and the other Loan Parties during such Test Period shall not exceed the amount set forth in the Approved Budget for such Test Period by more than the Weekly Permitted Disbursements Deviation, (y) maximum “Debt and Bankruptcy Disbursements” (as set forth in the Approved Budget and which shall include professional fees and expenses) of the Borrower and the other Loan Parties during such Test Period shall not exceed the amount set forth in the Approved Budget for such Test Period by more than the Weekly Permitted Disbursements Deviation and (z) the sum of the adverse variances for the 13-week period covered by the Approved Budget shall not exceed \$3,000,000 in the aggregate; and (2) to the extent any additional line item is added to the Approved Budget in accordance with the provisions of this Agreement or the Orders, such line items shall be subject to variance provisions satisfactory to the Required Lenders.

(e) ~~Minimum Liquidity Requirement. Permit, at any time after the Final Order Entry Date, the amount of Unrestricted Cash (excluding Cage Cash) plus undrawn and available NM Loans to be less than \$5,000,000.~~ (Reserved).

**Section 6.11 Prepayments of Other Indebtedness; Modifications of Organizational Documents and Other Documents, Etc.** Directly or indirectly, except as otherwise permitted pursuant to the Orders:

(a) make any optional or voluntary payment, prepayment, repurchase or redemption of principal on, or otherwise voluntarily or optionally defease, any Indebtedness pursuant to the Prepetition First-Lien Credit Agreement (other than as expressly contemplated hereby) or the Prepetition Second-Lien Credit Agreement or any Subordinated Indebtedness or the Prepetition Contingent Payment Rights, or segregate funds for any such payment, prepayment, repurchase, redemption or defeasance, or enter into any derivative or other transaction with any derivatives counter-party obligating any Loan Party to make payments to such derivatives counterparty as a result of any change in market value of such Indebtedness;

(b) terminate, amend or modify, or permit the termination, modification of its Organizational Documents other than any such termination, amendments or modifications or such new

agreements which are not adverse in any material respect to the interests of the Lenders or in connection with the transactions permitted under Section 6.04, 6.05 or 6.06;

(c) agree to any amendments to, or assignments, terminations or waivers of, any of its rights under, any Permits or Material Agreements without in each case obtaining the prior written consent of the Required Lenders if any such amendments, assignments, terminations or waivers would, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect (taking into consideration any viable replacements or substitutions therefor at the time such determination is made);

(d) amend or otherwise change the terms of any Indebtedness pursuant to the Prepetition First-Lien Credit Agreement or the Prepetition Second-Lien Credit Agreement or any Subordinated Indebtedness or the Prepetition Contingent Payment Rights Agreement or make any payment consistent with an amendment thereof or change thereto if the effect of such amendment or change is to increase the outstanding principal amount thereunder (other than as a result of interest payable in kind), increase the interest rate on such Indebtedness, change (to earlier dates) any dates upon which payments of principal or interest are due thereon, change the redemption, prepayment or defeasance provisions thereof (to require any additional or earlier prepayment) or change the subordination provisions of any such Subordinated Indebtedness (or of any guaranty thereof); or

(e) amend, supplement, modify, change, terminate or waive, or consent or agree to any amendment, supplement, modification or change to or termination or waiver of, any provision of any Approved APA; provided, that the Loan Parties may, following written notice to the Administrative Agent, amend, supplement, modify, change or waive any of the terms or provisions of an Approved APA (or enter into a replacement Approved APA) so long as such amendment, supplement, modification, change, waiver or replacement (i) makes any term or condition of such Approved APA more favorable to the Loan Parties and (ii) has been consented to in writing by the Agents, the Issuing Bank and the Required Lenders (such consent not to be unreasonably withheld, conditioned or delayed).

**Section 6.12 Limitation on Certain Restrictions on Subsidiaries.** Enter into or suffer to exist or become effective any consensual encumbrance or restriction on the ability of any Loan Party to (a) pay Dividends in respect of any Equity Interest of such Loan Party held by, or pay or subordinate any Indebtedness owed to, any other Loan Party, (b) make Investments in any other Loan Party or (c) transfer any of its assets to any other Loan Party, except for such encumbrances or restrictions existing under or by reason of (i) the Loan Documents or other Indebtedness permitted hereunder, (ii) Requirements of Law, including those of any Gaming Authority, (iii) any agreement that has been entered into in connection with the disposition of all or substantially all of the Equity Interests or property of a Loan Party or the disposition of property covered by such restriction, (iv) with respect to any property subject to a Lien permitted in accordance with Section 6.02, an agreement that has been entered into in connection with the incurrence of such Liens so long as such restrictions relate solely to the property subject to such Liens and the proceeds of such property, (v) provisions limiting the disposition or distribution of assets or property in joint venture agreements, asset sale agreements, sale-leaseback agreements, stock sale agreements and other similar agreements, which limitation is applicable only to the assets that are the subject of such agreements, (vi) restrictions in respect of Equity Interests and customary provisions with respect to the disposition or distribution of assets or property in partnership or joint venture agreements, asset sale agreements, stock sale agreements and other similar agreements entered into in the ordinary course of business, (vii) restrictions on cash or deposits constituting amounts paid under the ERGG Agreement or relating to the ERGG Agreement, (viii) restrictions with respect to Excluded Property and (ix) other customary nonassignment provisions in leases, licenses and similar agreements and other contracts.

**Section 6.13 Limitation on Issuance of Capital Stock.**



(a) With respect to the Borrower, issue any Equity Interest that is not Qualified Capital Stock.

(b) With respect to any Subsidiary, issue any Equity Interest (including by way of sales of treasury stock) or any options or warrants to purchase, or securities convertible into, any Equity Interest, except (i) for stock splits, stock dividends and additional issuances of Equity Interests which do not decrease the percentage ownership of the Borrower or any Subsidiary in any class of the Equity Interest of such Subsidiary; (ii) Subsidiaries of the Borrower formed after the Closing Date may issue Equity Interests to the Borrower or the Subsidiary of the Borrower which is to own such Equity Interests; and (iii) for issuance of nominal directors' qualifying shares pursuant to Requirements of Law. All Equity Interests issued in accordance with this Section 6.13(b) shall, to the extent required by Sections 5.10 and 5.11 or any Security Agreement or if such Equity Interests are issued by the Borrower, be delivered to the Collateral Agent for pledge pursuant to the applicable Security Agreement.

**Section 6.14 Phase II Development.** At any time (x) develop or improve in any material respect or at any material cost the Tower II Air Parcel, or construct any material improvements or any material building on the Tower II Air Parcel, or (y) enter into any contract or agreement for such construction, development or improvement or for any materials, supplies or labor necessary in connection with such construction, development or improvement.

**Section 6.15 Business; Holding Company Status.**

(a) Enter into any material line of business other than Permitted Businesses;

(b) Permit the Borrower to hold title to the Project Site or the principal assets comprising the Project (except through its Equity Interests in Subsidiaries which hold title to such assets).

**Section 6.16 Fiscal Year; Accounting Policies.** Change its fiscal year-end to a date other than December 31 or make any significant change in its accounting methodology, except as required by GAAP.

**Section 6.17 No Further Negative Pledge.** Enter into or suffer to exist or become effective any agreement that prohibits or limits the ability of a Loan Party to create, incur, assume or suffer to exist any Lien upon any of its property or revenues, whether now owned or hereafter acquired, to secure the Obligations other than (a) this Agreement and the other Loan Documents, Prepetition First-Lien Credit Agreement (and related loan documents), the Prepetition Second-Lien Documents and the Prepetition Contingent Payment Rights Security Agreement, (b) any agreements governing any Liens permitted hereunder (in each such case, any prohibition or limitation shall only be effective against the property financed thereby or subject to such Lien and proceeds thereof), (c) customary nonassignment provisions contained in leases, licenses and similar agreements, joint venture arrangements and other contracts (in each case other than those with respect to Real Property) and so long as such restrictions are limited to such leases, licenses and similar agreements, joint venture arrangements or other contracts, or, in the case of leases, licenses and similar agreements, the property subject thereto), (d) any agreements governing any Excluded Property (in which case any prohibition or limitation shall only be effective against such Excluded Property applicable thereto and proceeds thereof), (e) as required by applicable law or any applicable rule or order, including those of any Gaming Authority (f) restrictions on the transfer of any property subject to a contract with respect to an Asset Sale or other transfer, conveyance or disposition permitted under this Agreement, (g) agreements in existence with respect to a Subsidiary of the Borrower at the time such person becomes a Subsidiary of the Borrower, provided, however, that such agreements are not entered into in anticipation or contemplation of such designation or of such person becoming a Subsidiary of the Borrower, (h) restrictions on deposits made in connection with license

applications or to secure letters of credit or surety or other bonds issued in connection therewith or deposits made in the ordinary course of business with respect to insurance premiums, worker's compensation, statutory obligations, utility deposits, rental obligations, unemployment insurance, performance of tenders, surety and appeal bonds and other similar obligations (or to secure letters of credit or surety or other bonds relating thereto), (i) the subordination provisions of any Indebtedness owed to the Borrower or any of its Subsidiaries, (j) restrictions relating to the ERGG Agreement, any ERGG Proceeds and any accounts in which payments relating to the ERGG Agreement are made and (k) any agreements, encumbrances or restrictions existing on the Closing Date that are listed on Schedule 6.17.

**Section 6.18 (Reserved).**

**Section 6.19 Limitation on Hedge Agreements.** Enter into any Hedging Agreement other than Hedging Agreements entered into in the ordinary course of business (and not for speculative purposes) to protect against changes in interest rates or foreign exchange rates.

**Section 6.20 Limitation on Zoning and Contract Changes and Compliance.**

Without the knowledge and written consent of the Required Lenders, initiate or consent to any zoning change of the Project Site or any Buffer Property or seek any material variance under any existing zoning ordinance or under the Redevelopment Agreement, except, in each case, to the extent such variance or change in zoning or the Redevelopment Agreement would not reasonably be expected to materially and adversely affect the occupancy, use or operation of all or any material portion of the Project Site as a resort hotel and casino.

**Section 6.21 No Joint Assessment; Separate Lots.** Suffer, permit or initiate the joint assessment of any Mortgaged Property owned by it with real property other than the Mortgaged Property owned by it or other Loan Parties.

**Section 6.22 Additional Bankruptcy Matters.**

(a) Investigations. Suffer or permit the use of any proceeds of the Loans or the Letters of Credit or of the Collateral, or suffer or permit any portion of the Carve-Out, to be used for any Investigation in excess of, in aggregate, the Investigation Budget.

(b) Alternative Chapter 11 Plans. File or support the confirmation of any Chapter 11 Plan or liquidation other than an Acceptable Chapter 11 Plan.

(c) Material Contracts. Enter into a material Contractual Obligation without the consent of the Required Lenders (such consent not to be unreasonably withheld).

**ARTICLE VII  
GUARANTEE**

**Section 7.01 The Guarantee.** The Guarantors hereby jointly and severally guarantee, as a primary obligor and not as a surety to each Secured Party and their respective successors and assigns, the prompt payment in full when due (whether at stated maturity, by required prepayment, declaration, demand, by acceleration or otherwise) of the principal of and interest (including any interest, fees, costs or charges that would accrue but for the provisions of the Bankruptcy Code after any bankruptcy or insolvency petition under the Bankruptcy Code) on the Loans made by the Lenders to, and the Notes held by each Lender of, the Borrower, and all other Secured Obligations from time to time owing to the Secured Parties by any Loan Party under any Loan Document (such obligations being herein collectively called the "Guaranteed Obligations"). The Guarantors hereby jointly and severally agree that if the

Borrower or other Guarantor(s) shall fail to pay in full when due (whether at stated maturity, by acceleration or otherwise) any of the Guaranteed Obligations, the Guarantors will promptly pay the same in cash, without any demand or notice whatsoever, and that in the case of any extension of time of payment or renewal of any of the Guaranteed Obligations, the same will be promptly paid in full when due (whether at extended maturity, by acceleration or otherwise) in accordance with the terms of such extension or renewal.

**Section 7.02 Obligations Unconditional.** The obligations of the Guarantors under Section 7.01 shall constitute a guaranty of payment and to the fullest extent permitted by applicable Requirements of Law, are absolute, irrevocable and unconditional, joint and several, irrespective of the value, genuineness, validity, regularity or enforceability of the Guaranteed Obligations of the Borrower under this Agreement, the Notes, if any, or any other agreement or instrument referred to herein or therein, or any substitution, release or exchange of any other guarantee of or security for any of the Guaranteed Obligations, and, irrespective of any other circumstance whatsoever that might otherwise constitute a legal or equitable discharge or defense of a surety or Guarantor (except for payment in full). Without limiting the generality of the foregoing, it is agreed that the occurrence of any one or more of the following shall not alter or impair the liability of the Guarantors hereunder which shall remain absolute, irrevocable and unconditional under any and all circumstances as described above:

- (i) at any time or from time to time, without notice to the Guarantors, the time for any performance of or compliance with any of the Guaranteed Obligations shall be extended, or such performance or compliance shall be waived;
- (ii) any of the acts mentioned in any of the provisions of this Agreement or the Notes, if any, or any other agreement or instrument referred to herein or therein shall be done or omitted;
- (iii) the maturity of any of the Guaranteed Obligations shall be accelerated, or any of the Guaranteed Obligations shall be amended in any respect, or any right under the Loan Documents or any other agreement or instrument referred to herein or therein shall be amended or waived in any respect or any other guarantee of any of the Guaranteed Obligations or any security therefor shall be released or exchanged in whole or in part or otherwise dealt with;
- (iv) any Lien or security interest granted to, or in favor of, the Issuing Bank, any Lender or Agent as security for any of the Guaranteed Obligations shall fail to be perfected; or
- (v) the release of any other Guarantor pursuant to Section 7.09.

The Guarantors hereby expressly waive diligence, presentment, demand of payment, protest and all notices whatsoever, and any requirement that any Secured Party exhaust any right, power or remedy or proceed against the Borrower under this Agreement or the Notes, if any, or any other agreement or instrument referred to herein or therein, or against any other person under any other guarantee of, or security for, any of the Guaranteed Obligations. The Guarantors waive any and all notice of the creation, renewal, extension, waiver, termination or accrual of any of the Guaranteed Obligations and notice of or proof of reliance by any Secured Party upon this Guarantee or acceptance of this Guarantee, and the Guaranteed Obligations, and any of them, shall conclusively be deemed to have been created, contracted or incurred in reliance upon this Guarantee, and all dealings between the Borrower and the Secured Parties shall likewise be conclusively presumed to have been had or consummated in reliance upon this Guarantee. This Guarantee shall be construed as a continuing, absolute, irrevocable and unconditional guarantee of payment without regard to any right of offset with respect to the Guaranteed Obligations at any time or from time to time held by Secured Parties, and the obligations and

liabilities of the Guarantors hereunder shall not be conditioned or contingent upon the pursuit by the Secured Parties or any other person at any time of any right or remedy against the Borrower or against any other person which may be or become liable in respect of all or any part of the Guaranteed Obligations or against any collateral security or guarantee therefor or right of offset with respect thereto. This Guarantee shall remain in full force and effect and be binding in accordance with and to the extent of its terms upon the Guarantors and the successors and assigns thereof, and shall inure to the benefit of the Lenders, and their respective successors and assigns.

**Section 7.03 Reinstatement.** The obligations of the Guarantors under this Article VII shall be automatically reinstated if and to the extent that for any reason any payment by or on behalf of the Borrower or other Loan Party in respect of the Guaranteed Obligations is rescinded or must be otherwise restored by any holder of any of the Guaranteed Obligations, whether as a result of any proceedings in bankruptcy or reorganization or otherwise.

**Section 7.04 Subrogation; Subordination.** Each Guarantor hereby agrees that until the indefeasible payment and satisfaction in full in cash of all Guaranteed Obligations and the expiration and termination of the Commitments of the Lenders under this Agreement it shall waive any claim and shall not exercise any right or remedy, direct or indirect, arising by reason of any performance by it of its guarantee in Section 7.01, whether by subrogation or otherwise, against the Borrower or any other Guarantor of any of the Guaranteed Obligations or any security for any of the Guaranteed Obligations. Any Indebtedness of any Loan Party permitted pursuant to Section 6.01(b) shall be subordinated and junior in right of payment to such Loan Party's Secured Obligations.

**Section 7.05 Remedies.** The Guarantors jointly and severally agree that, as between the Guarantors and the Lenders, the obligations of the Borrower under this Agreement and the Notes, if any, may be declared to be forthwith due and payable as provided in Section 8.01 for purposes of Section 7.01, notwithstanding any stay, injunction or other prohibition preventing such declaration in connection with any proceeding as against the Borrower and that, in the event of such declaration, such obligations (whether or not due and payable by the Borrower) shall forthwith become due and payable by the Guarantors for purposes of Section 7.01.

**Section 7.06 Instrument for the Payment of Money.** Each Guarantor hereby acknowledges that the guarantee in this Article VII constitutes an instrument for the payment of money, and consents and agrees that any Lender or Agent, at its sole option, in the event of a dispute by such Guarantor in the payment of any moneys due hereunder, shall have the right to bring a motion-action under New York CPLR Section 3213.

**Section 7.07 Continuing Guarantee.** The guarantee in this Article VII is a continuing guarantee of payment, and shall apply to all Guaranteed Obligations whenever arising.

**Section 7.08 General Limitation on Guarantee Obligations.** In any action or proceeding involving any state corporate limited partnership or limited liability company law, or any applicable state, federal or foreign bankruptcy, insolvency, reorganization or other law affecting the rights of creditors generally, if the obligations of any Guarantor under Section 7.01 would otherwise be held or determined to be void, voidable, invalid or unenforceable, or subordinated to the claims of any other creditors, on account of the amount of its liability under Section 7.01, then, notwithstanding any other provision to the contrary, the amount of such liability shall, without any further action by such Guarantor, any Loan Party or any other person, be automatically limited and reduced to the highest amount (after giving effect to the right of contribution established in Section 7.10) that is valid and enforceable and not subordinated to the claims of other creditors as determined in such action or proceeding.

**Section 7.09 [Reserved].**

**Section 7.10 Right of Contribution.** Each Guarantor hereby agrees that to the extent that a Guarantor shall have paid more than its proportionate share of any payment made hereunder, such Guarantor shall be entitled to seek and receive contribution from and against any other Guarantor hereunder which has not paid its proportionate share of such payment. Each Guarantor's right of contribution shall be subject to the terms and conditions of Section 7.04. The provisions of this Section 7.10 shall in no respect limit the obligations and liabilities of any Guarantor to the Administrative Agent, the Issuing Bank and the Lenders, and each Guarantor shall remain liable to the Administrative Agent, the Issuing Bank and the Lenders for the full amount guaranteed by such Guarantor hereunder.

**ARTICLE VIII**

**EVENTS OF DEFAULT**

**Section 8.01 Events of Default.** Upon the occurrence and during the continuance of the following events ("Events of Default"), provided in no event shall any such event that occurs prior to the Closing Date constitute an Event of Default:

(a) default shall be made in the payment of any principal of any Loan or any reimbursement obligations in respect of any LC Disbursement when and as the same shall become due and payable, whether at the due date thereof or at a date fixed for prepayment (whether voluntary or mandatory) thereof or by acceleration thereof or otherwise;

(b) default shall be made in the payment of any interest on any Loan or any Fee or any other amount (other than an amount referred to in paragraph (a) above) due under any Loan Document, when and as the same shall become due and payable, and such default shall continue unremedied for a period of three Business Days;

(c) any representation or warranty made or deemed made by any Loan Party in or in connection with any Loan Document or Credit Extension hereunder, or any representation, warranty, statement or information contained in any report, certificate, financial statement or other instrument furnished in connection with or pursuant to any Loan Document, shall prove to have been false or misleading in any material respect when so made, deemed made or furnished;

(d) default shall be made in the due observance or performance by any Loan Party of any covenant, condition or agreement contained in (i) Section 5.01(b) though (e) or Section 5.01(h) though (l), and such default shall continue unremedied or shall not be waived for a period of two (2) Business Days after the occurrence thereof or (ii) Section 5.01(f), 5.02(d), 5.02(g), 5.03(a), 5.08, 5.17 or 5.18 or in Article VI;

(e) default shall be made in the due observance or performance by any Loan Party of any covenant, condition or agreement contained in any Loan Document (other than those specified in paragraphs (a), (b) or (d) immediately above) and such default shall continue unremedied or shall not be waived for a period of 15 days after the earlier of (i) an officer of such Loan Party becoming aware of such default or (ii) receipt by the Borrower of written notice of such default from the Administrative Agent or the Required Lenders to the Borrower;

(f) any Loan Party shall (i) fail to pay any principal or interest, regardless of amount, due in respect of any Indebtedness (other than the Obligations and Indebtedness incurred prior to the Filing Date), when and as the same shall become due and payable beyond any applicable grace period, or

(ii) fail to observe or perform any other term, covenant, condition or agreement contained in any agreement or instrument evidencing or governing any such Indebtedness if the effect of any failure referred to in this clause (ii) is to cause, or to permit the holder or holders of such Indebtedness or a trustee or other representative on its or their behalf to cause, such Indebtedness to become due prior to its stated maturity or become subject to a mandatory offer purchase by the obligor; provided that it shall not constitute an Event of Default pursuant to this paragraph (f) unless the aggregate amount of all such Indebtedness referred to in clauses (i) and (ii) exceeds \$250,000 at any one time (provided that, in the case of Hedging Obligations, the amount counted for this purpose shall be the net amount payable by all Loan Parties if such Hedging Obligations were terminated at such time);

(g) (Reserved);

(h) (Reserved);

(i) one or more judgments, orders or decrees for the payment of money (to the extent not paid or covered by insurance) in excess of \$250,000 required to be satisfied as an administrative expense claim shall be rendered against any Loan Party or any combination thereof after the Filing Date and the same shall remain unstayed, undischarged, unvacated or unbonded for a period of 30 consecutive days during which execution shall not be effectively stayed;

(j) one or more ERISA Events shall have occurred that, when taken together with all other such ERISA Events that have occurred, would reasonably be expected to result in a Material Adverse Effect or in the imposition of a material Lien on any properties of a Loan Party;

(k) (i) with respect to any portion of the Collateral, any security interest and Lien purported to be created by any Security Document or the Orders shall cease to be in full force and effect, or shall cease to give the Collateral Agent, for the benefit of the Secured Parties, the Liens, rights, powers and privileges purported to be created and granted under such Security Document or Order, taken as a whole in favor of the Collateral Agent, or shall be asserted by the Borrower or any other Loan Party not to be a valid, perfected (except as otherwise provided in any Loan Document) security interest in or Lien on the Collateral covered thereby; provided, that no Event of Default shall occur under this clause (k) if the Loan Parties cooperate with the Secured Parties to replace or perfect such security interest and Lien, such security interest and Lien is replaced and the rights, powers and privileges of the Secured Parties are not materially adversely affected by such replacement;

(l) any Loan Document or any material provisions thereof shall at any time and for any reason be declared by a court of competent jurisdiction to be null and void, or a proceeding shall be commenced by any Loan Party, seeking to establish the invalidity or unenforceability thereof (exclusive of questions of interpretation of any provision thereof), or any Loan Party shall repudiate or deny any portion of its liability or obligation for the Obligations;

(m) there shall have occurred a Change in Control;

(n) a License Revocation or Suspension that continues for ten or more consecutive Business Days prohibiting gaming operations accounting for ten percent or more of the consolidated gross revenues (calculated in accordance with GAAP) of the Loan Parties related to gaming operations, including, but not limited to, the appointment of a conservator over the Casino License by the Gaming Authorities;

(o) any Permit or any material provision thereof shall be suspended, revoked, cancelled, terminated or materially and adversely modified or fail to be in full force and effect, if any such

failure, violation, breach, suspension, revocation, cancellation, termination or modification, individually or in the aggregate, would reasonably be expected to result in a Material Adverse Effect;

(p) (i) the Bankruptcy Court shall dismiss any of the Cases or convert any of the Cases to a case under chapter 7 of the Bankruptcy Code or (ii) any Loan Party shall file a motion or other pleading seeking the dismissal of any Case under section 1112 of the Bankruptcy Code or otherwise, in each case without the consent of the Administrative Agent and the Required Lenders;

(q) the Bankruptcy Court shall appoint in any of the Cases (i) a trustee, (ii) a responsible officer or (iii) an examiner with enlarged powers relating to the operation of the business of any Loan Party (powers beyond those set forth in sections 1106(a)(3) and 1106(a)(4) of the Bankruptcy Code) under section 1106(b) of the Bankruptcy Code; provided that the appointment of a chief restructuring officer in any of the Cases shall not constitute an Event of Default pursuant to this clause (q);

(r) (i) the Bankruptcy Court shall enter an order terminating the exclusive right of the Loan Parties to file any Chapter 11 Plan, (ii) the period provided by section 1121 of the Bankruptcy Code for the Loan Parties' exclusive right to file a Chapter 11 Plan shall expire or terminate, or (iii) a Chapter 11 Plan other than the Acceptable Chapter 11 Plan is filed without the consent of the Administrative Agent and the Required Lenders;

(s) (i) the Bankruptcy Court shall enter an order reversing, amending, supplementing, staying, vacating or otherwise amending, supplementing or modifying the Interim Order or the Final Order, or any Loan Party shall apply for authority to do so, without the prior written consent of the Required Lenders, (ii) the Interim Order or Final Order, as applicable, shall cease to create valid and perfected Liens on the Collateral in favor of the Collateral Agent for the benefit of the Secured Parties, (iii) any provision of the Interim Order or the Final Order shall cease to be valid and binding and in full force and effect, (iv) any Loan Party shall fail to comply with the Orders or (v) the Bankruptcy Court shall enter a final, non-appealable order in the Cases charging any of the Collateral under section 506(c) of the Bankruptcy Code against any of the Secured Parties;

(t) any Loan Party shall file any motion or other request with the Bankruptcy Court seeking the authority to, or the Bankruptcy Court shall enter any order authorizing any Loan Party to, (i) use any cash proceeds of any of the Collateral or (ii) obtain any financing under section 364 of the Bankruptcy Code other than the Loans, in each case, without the prior written consent of the Administrative Agent, the Issuing Bank and the Required Lenders, unless, in any case, the motion or other request, seeks or the order provides for the payment in full in cash of the Obligations outstanding under the Loan Documents and all Obligations under the Prepetition First-Lien Credit Agreement and the Prepetition Second-Lien Credit Agreement;

(u) the Bankruptcy Court shall enter an order or orders granting relief from the automatic stay applicable under section 362 of the Bankruptcy Code to the holder or holders of any security interest to permit foreclosure (or the granting of a deed in lieu of foreclosure or the like) on any assets of any Loan Party with an aggregate value of greater than \$100,000, which such value with respect to each such asset shall be deemed to be the greater of the fair market value or book value of such asset;

(v) any Loan Party shall cease, or be enjoined, restrained or in any way prevented by order of a court of competent jurisdiction that has not been stayed from continuing or conducting, all or any material part of its business operations;

(w) without the consent of the Administrative Agent and the Required Lenders, any Loan Party shall file in any Case an application for the approval and/or allowance of any other Superpriority Claim (other than the Carve-Out) or any "claim" (as such word is defined in the Bankruptcy Code) that is *pari passu* with or senior to the claims of the Secured Parties, or there shall arise or be granted and/or allowed any such *pari passu* or senior Superpriority Claim or claim;

(x) except as permitted by the Orders, any Loan Party shall make any Prepetition Payment (including, without limitation, any adequate protection payment) other than (i) in respect of accrued payroll and related expenses as of Filing Date or (ii) in respect of certain creditors, in each case to the extent authorized by the Bankruptcy Court and in accordance with the Approved Budget and the Orders;

(y) other than pursuant to an Approved APA or an Acceptable Chapter 11 Plan, without the prior written consent of the Administrative Agent and the Required Lenders, the liquidation of any Loan Party's business or any (except as permitted pursuant to Section 6.06) of the Collateral pursuant to section 363 of the Bankruptcy Code, through a confirmed plan of reorganization in the Cases or otherwise;

(z) the termination of an Approved APA by any party thereto or in accordance with its terms; provided, that any Approved APA may be replaced by a substitute Approved APA pursuant to the terms of Section 6.11(e);

(aa) any Loan Party shall fail to comply with the terms of any applicable subordination, lien priority or intercreditor agreements;

(bb) the Required Lenders shall determine that there shall have occurred a regulatory event, including the failure to receive any applicable Gaming Approvals, that could reasonably be expected to prohibit the implementation of the sale of the Collateral or the Equity Interest of the Loan Parties, as applicable, pursuant to either Acceptable Chapter 11 Plan, an Approved APA or otherwise within the time periods set forth in the Loan Documents;

(cc) the failure to meet any of the sale transaction and plan milestones set forth on Schedule 8.01;

(dd) an order of the Bankruptcy Court shall be entered creating or permitting the grant of a Lien on the Collateral other than Permitted Liens;

(ee) any of the Loan Parties shall take any action in support of any relief or other matter described in Section 8.01(w), or any other Person shall do so and such application is not contested in good faith by the Loan Parties, and the relief or action requested is granted in an order that is not stayed pending appeal;

(ff) any Loan Party shall file a motion, pleading or proceeding which could reasonably be expected to result in a material impairment of the rights or interests of the Secured Parties or the Agents or a there is a determination by a court with respect to a motion, pleading or proceeding brought by another Person which results in such a material impairment;

(gg) an order confirming an Acceptable Chapter 11 Plan is (i) not in form and substance reasonably satisfactory to the Required Lenders; (ii) not entered by the Bankruptcy Court on or before 11:59 p.m., New York City time on ~~September 30, 2014~~, March 31, 2015, or such later date to



which the Required Lenders have consented in writing or (iii) amended, supplemented, reversed, vacated or otherwise modified without the prior written consent of the Required Lenders;

(hh) the Plan Effective Date shall not have occurred on or before ~~October 31, 2014~~, April 15, 2015, or such later date to which the Required Lenders have consented in writing;

then, and in every such event and at any time thereafter during the continuance of such event, the Administrative Agent, at the written request of the Required Lenders shall, by notice to the Borrower, take any or all of the following actions, at the same or different times, without application to or order of the Bankruptcy Court: (i) terminate forthwith the Commitments, (ii) declare the Loans and reimbursement obligations in respect of any LC Disbursement then outstanding to be forthwith due and payable in whole or in part, whereupon the principal of the Loans and reimbursement obligations in respect of any LC Disbursement so declared to be due and payable, together with accrued interest thereon and any unpaid accrued Fees and all other Obligations 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 and the Guarantors, anything contained herein or in any other Loan Document to the contrary notwithstanding, (iii) subject to any notice or other requirements in the Interim Order (or Final Order, as applicable), set-off amounts held as cash collateral or in the accounts of the Loan Parties and apply such amounts to the Obligations of the Loan Parties hereunder and under the other Loan Documents and (iv) exercise any and all remedies under this Agreement, the Interim Order (or Final Order, as applicable), and applicable law available to the Agents, the Issuing Bank and the Lenders; provided, however, that (x) prior to enforcing any liens or other remedies with respect to the Collateral, the Collateral Agent, the Administrative Agent or the Lenders shall provide to the Borrower (with copies to any official committee and the U.S. Trustee) three (3) Business Days prior written notice or as otherwise provided in the Orders, (y) upon receipt of any such notice, the Borrower may only make distributions (1) in the ordinary course of business to pay accrued items as set forth in the Approved Budget, (2) as otherwise necessary to maintain the operations of the business and the value of the Collateral in accordance with the Approved Budget, (3) with respect to the Carve-Out or (4) as otherwise provided in the Orders, but may not make any other disbursements and (z) in any hearing after the giving of such notice, the only issue that may be raised by any party in opposition thereto shall be whether, in fact, an Event of Default has occurred and is continuing.

In addition, the automatic stay provided in section 362 of the Bankruptcy Code shall, as provided in the Interim Order or the Final Order, as the case may be, be deemed automatically vacated without further action or order of the Bankruptcy Court and the Collateral Agent and the Secured Parties shall be entitled to exercise all of their respective rights and remedies with respect to the Collateral (including rights and remedies under the UCC) in accordance with the Orders. In addition to the remedies set forth above, the Collateral Agent may exercise any other remedies provided for by the Loan Documents and the Orders in accordance with the terms hereof and thereof or any other remedies provided by applicable law.

**Section 8.02 Rescission.** If at any time after termination of the Commitments or acceleration of the maturity of the Loans, the Borrower shall pay all arrears of interest and all payments on account of principal of the Loans owing by it that shall have become due otherwise than by acceleration (with interest on principal and, to the extent permitted by law, on overdue interest, at the rates specified herein) and all Defaults (other than non-payment of principal of and accrued interest on the Loans due and payable solely by virtue of acceleration) shall be remedied or waived pursuant to Section 10.02, then upon the written consent of the Required Facility Lenders and written notice to the Borrower, the termination of the Commitments under the applicable Facility or the acceleration and their consequences may be rescinded and annulled; but such action shall not affect any subsequent Default or

impair any right or remedy consequent thereon. The provisions of the preceding sentence are intended merely to bind the Lenders to a decision that may be made at the election of the Required Facility Lenders, and such provisions are not intended to benefit the Borrower and do not give the Borrower the right to require the Lenders to rescind or annul any acceleration hereunder, even if the conditions set forth herein are met.

**Section 8.03 Application of Proceeds.** Subject to the Carve-Out, the proceeds received by the Collateral Agent in respect of any sale of, collection from or other realization upon all or any part of the Collateral pursuant to the exercise by the Collateral Agent of its remedies shall be applied, in full or in part, together with any other sums then held by the Collateral Agent pursuant to this Agreement, promptly by the Collateral Agent as follows:

(a) *First*, to the payment of all reasonable costs and expenses, fees, commissions and taxes of such sale, collection or other realization including compensation to the Administrative Agent, Collateral Agent and their agents and counsel, and all expenses, liabilities and advances made or incurred by the Administrative Agent and Collateral Agent in connection therewith, and all other outstanding costs, expenses and Fees owing to the Administrative Agent or the Collateral Agent, whether or not relating to such sale collection or realization, and all amounts for which the Administrative Agent or the Collateral Agent is entitled to indemnification pursuant to the provisions of any Loan Document, together with interest on each such amount at the highest rate then in effect under this Agreement from and after the date such amount is due, owing or unpaid until paid in full;

(b) *Second*, to the payment of all other reasonable costs and expenses of such sale, collection or other realization including all costs, liabilities and advances made or incurred by the other Secured Parties in connection therewith, together with interest on each such amount at the highest rate then in effect under this Agreement from and after the date such amount is due, owing or unpaid until paid in full;

(c) *Third*, without duplication of amounts applied pursuant to clauses (a) and (b) above, to the indefeasible payment in full in cash, ~~pro rata, of principal, interest and other amounts constituting Obligations (other than principal under the NM Facility or the WFB Roll Up Facility, reimbursement obligations in respect of LC Disbursements and obligations to Cash Collateralize Letters of Credit), in each case equally and ratably in accordance with the respective amounts thereof then due and owing; provided, that (i) all Obligations (including principal) relating~~ whether or not then due and owing, (i) first, toward payment of Obligations constituting principal hereunder with respect to the JPM Roll-Up Borrowings shall be indefeasibly paid in full in cash prior to the payment of any other Obligations under this clause (c) and (ii) after the indefeasible payment in full in cash of such Obligations relating in an aggregate amount not to exceed \$5,347,504, plus interest upon such principal amount, together with any fees and costs hereunder with respect to the JPM Roll-Up Borrowings, in each case, ratably among the parties thereto in accordance with the amounts of principal, interest, costs and fees due to such parties, (ii) second, toward payment of Obligations constituting principal hereunder with respect to the Tax Borrowings in an aggregate amount not to exceed \$13,000,000, ratably among the parties thereto in accordance with the amounts of principal due to such parties, (iii) third, toward payment of Obligations constituting any unpaid principal, interest, fees and costs hereunder with respect to the JPM Roll-Up Borrowings, all such Obligations relating to the NM Facility shall be indefeasibly paid in full in cash prior to the payment of any other Obligations under this clause (c); ratably among the parties thereto in accordance with the amounts of principal, interest, costs and fees due to such parties, (iv) fourth, toward payment of Obligations constituting any unpaid principal, interest, fees and costs hereunder with respect to the NM Loans and unreimbursed LC Disbursements, ratably among the parties thereto in accordance with the amounts of principal, interest, costs, fees and unreimbursed LC Disbursements due to such parties, and (v) fifth, toward payment of principal, interest, fees and costs hereunder with respect to

the WFB Roll-Up Borrowings, ratably among the parties thereto in accordance with the amounts of principal, interest, costs and fees due to such parties.

(d) *Fourth*, to the indefeasible payment in full in cash, pro rata, of principal amount of the Obligations (including reimbursement obligations in respect of LC Disbursements and obligations to Cash Collateralize Letters of Credit in an amount not less than the Minimum Collateral Amount) and any premium thereon and any interest accrued thereon, in each case equally and ratably in accordance with the respective amounts thereof then due and owing; provided, that all such Obligations relating to the NM Facility shall be indefeasibly paid in full in cash prior to the payment of any other Obligations under this clause (d); and

(e) *Fifth*, the balance, if any, to the person lawfully entitled thereto (including the applicable Loan Party or its successors or assigns) or as a court of competent jurisdiction may direct.

In the event that any such proceeds are insufficient to pay in full the items described in clauses (a) through (e) of this Section 8.03, the Loan Parties shall remain liable, jointly and severally, for any deficiency.

## ARTICLE IX

### THE ADMINISTRATIVE AGENT AND THE COLLATERAL AGENT

**Section 9.01 Appointment and Authority.** Each of the Lenders and the Issuing Bank hereby irrevocably appoints Wells Fargo, to act on its behalf as the Administrative Agent hereunder and under the other Loan Documents and authorizes the Administrative Agent to take such actions on its behalf and to exercise such powers as are delegated to the Administrative Agent by the terms hereof or thereof, together with such actions and powers as are reasonably incidental thereto. Each of the Lenders and the Issuing Bank hereby irrevocably appoints Wells Fargo, to act on its behalf as a Collateral Agent hereunder and under the other Loan Documents for the benefit of the Secured Parties with respect to the Mortgaged Property (and all Collateral provided for with respect to the Mortgages) and authorizes such Collateral Agent to take such actions on its behalf and to exercise such powers as are delegated to such Collateral Agent by the terms hereof or thereof, together with such actions and powers as are reasonably incidental thereto. Each of the Lenders and the Issuing Bank hereby irrevocably appoints Wells Fargo, to act on its behalf as a Collateral Agent hereunder and under the other Loan Documents for the benefit of the Secured Parties with respect to the Collateral provided for hereunder and under the Security Agreement and any other Security Document (other than the Mortgages) and authorizes such Collateral Agent to take such actions on its behalf and to exercise such powers as are delegated to such Collateral Agent by the terms hereof or thereof, together with such actions and powers as are reasonably incidental thereto. The provisions of this Article (other than Section 9.06 and Section 9.10 which benefit, and may be enforced by, the Loan Parties) are solely for the benefit of the Administrative Agent, the Collateral Agent, their Related Parties, the Lenders and the Issuing Bank, and neither the Borrower nor any other Loan Party shall have rights as a third party beneficiary of any of such provisions.

**Section 9.02 Rights as a Lender.** Each person serving as an Agent hereunder shall have the same rights and powers in its capacity as a Lender as any other Lender and may exercise the same as though it were not an Agent and the term “Lender” or “Lenders” shall, unless otherwise expressly indicated or unless the context otherwise requires, include each person serving as an Agent hereunder in its individual capacity. Such person and its Affiliates may accept deposits from, lend money to, own equity interests in, act as the financial advisor or in any other advisory capacity for and generally engage in any kind of business with the Borrower or any Subsidiary or other Affiliate thereof as if such person were not an Agent hereunder and without any duty to account therefor to the Lenders.

**Section 9.03 Exculpatory Provisions.** No Agent shall have any duties or obligations except those expressly set forth herein and in the other Loan Documents. Without limiting the generality of the foregoing, no Agent:

(i) shall be subject to any fiduciary or other implied duties, regardless of whether a Default has occurred and is continuing;

(ii) shall have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated hereby or by the other Loan Documents that such Agent is required to exercise as directed in writing by the Required Lenders (or such other number or percentage of the Lenders as shall be expressly provided for herein or in the other Loan Documents); provided that such Agent shall not be required to take any action that, in its judgment or the judgment of its counsel, may expose such Agent to liability or that is contrary to any Loan Document or applicable Requirements of Law; and

(iii) shall, except as expressly set forth herein and in the other Loan Documents, have any duty to disclose, and shall not be liable for the failure to disclose, any information relating to the Borrower or any of its Affiliates that is communicated to or obtained by the person serving as such Agent or any of its Affiliates in any capacity.

No Agent shall be liable for any action taken or not taken by it (x) with the consent or at the request of the Required Lenders (or such other number or percentage of the Lenders as shall be necessary, or as such Agent shall believe in good faith shall be necessary, under the circumstances as provided in Section 10.02) or (y) in the absence of its own gross negligence or willful misconduct, as determined by the final non-appealable judgment of a court of competent jurisdiction.. No Agent shall be deemed to have knowledge of any Default unless and until notice describing such Default is given to such Agent by the Borrower, a Lender or the Issuing Bank.

No Agent shall be responsible for or have any duty to ascertain or inquire into (i) any statement, warranty or representation made in or in connection with this Agreement or any other Loan Document, (ii) the contents of any certificate, report or other document delivered hereunder or thereunder or in connection herewith or therewith, (iii) the performance or observance of any of the covenants, agreements or other terms or conditions set forth herein or therein or the occurrence of any Default, (iv) the validity, enforceability, effectiveness or genuineness of this Agreement, any other Loan Document or any other agreement, instrument or document or (v) the satisfaction of any condition set forth in Article IV or elsewhere herein, other than to confirm receipt of items expressly required to be delivered to such Agent. Without limiting the generality of the foregoing, the use of the term “agent” in this Agreement with reference to the Administrative Agent or the Collateral Agent is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any applicable law. Instead, such term is used merely as a matter of market custom and is intended to create or reflect only an administrative relationship between independent contracting parties.

Each party to this Agreement acknowledges and agrees that the Administrative Agent may use an outside service provider for the tracking of all UCC financing statements required to be filed pursuant to the Loan Documents and notification to the Administrative Agent, of, among other things, the upcoming lapse or expiration thereof, and that such service provider will be deemed to be acting at the request and on behalf of the Borrower and the other Loan Parties. No Agent shall be liable for any action taken or not taken by such service provider.

**Section 9.04 Reliance by Agent.** Each Agent shall be entitled to rely upon, and shall not incur any liability for relying upon, any notice, request, certificate, consent, statement, instrument,

document or other writing (including any electronic message, Internet or intranet website posting or other distribution) believed by it to be genuine and to have been signed, sent or otherwise authenticated by the proper person. Each Agent also may rely upon any statement made to it orally or by telephone and believed by it to have been made by the proper person, and shall not incur any liability for relying thereon. In determining compliance with any condition hereunder to the making of a Loan, or the issuance of a Letter of Credit, that by its terms must be fulfilled to the satisfaction of a Lender or the Issuing Bank, the Administrative Agent may presume that such condition is satisfactory to such Lender or the Issuing Bank unless the Administrative Agent shall have received notice to the contrary from such Lender prior to the making of such Loan or the issuance of such Letter of Credit. Each Agent may consult with legal counsel (who may be counsel for the Borrower), independent accountants and other experts selected by it, and shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or experts.

**Section 9.05 Delegation of Duties.** Each Agent may perform any and all of its duties and exercise its rights and powers hereunder or under any other Loan Document by or through, or delegate any and all such rights and powers to, any one or more sub-agents appointed by such Agent. Each Agent and any such sub-agent may perform any and all of its duties and exercise its rights and powers by or through their respective Related Parties. The exculpatory provisions of this Article shall apply to any such sub-agent and to the Related Parties of each Agent and any such sub-agent, and shall apply to their respective activities in connection with the syndication of the credit facilities provided for herein as well as activities as Agent. The Administrative Agent hereby appoints JPMorgan Chase Bank as a sub-agent with respect to the Reserve Account (as defined in the Prepetition First-Lien Credit Agreement) to handle disbursements of funds therefrom in accordance with the process set forth in Section 5.18 of the Prepetition First-Lien Credit Agreement.

**Section 9.06 Resignation of Agent.** (a) Each Agent may at any time give notice of its resignation to the Lenders, the Issuing Bank and the Borrower. Upon receipt of any such notice of resignation, the Required Lenders shall have the right, so long as no Default has occurred and is continuing, with the consent of the Borrower (such consent not to be unreasonably withheld or delayed), to appoint a successor, which shall be a bank with an office in the United States, or an Affiliate of any such bank with an office in the United States. If no such successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within 30 days after the retiring Agent gives notice of its resignation, then the retiring Agent may on behalf of the Lenders, appoint a successor Agent meeting the qualifications set forth above, provided that if the Agent shall notify the Borrower and the Lenders that no qualifying person has accepted such appointment, then such resignation shall nonetheless become effective in accordance with such notice and (1) the retiring Agent shall be discharged from its duties and obligations hereunder and under the other Loan Documents (except that in the case of any collateral security held by the Collateral Agent on behalf of the Lenders under any of the Loan Documents, the retiring Collateral Agent shall continue to hold such collateral security as nominee until such time as a successor Collateral Agent is appointed) and (2) all payments and communications provided to be made by, to or through an Agent shall instead be made by or to each Lender and the Issuing Bank directly (and any determinations to be made by the Collateral Agent shall instead be made by the Required Lenders), until such time as the Required Lenders appoint a successor Agent as provided for above in this paragraph. Upon the acceptance of a successor's appointment as Agent hereunder, such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring (or retired) Agent, and the retiring Agent shall be discharged from all of its duties and obligations hereunder or under the other Loan Documents (if not already discharged therefrom as provided above in this paragraph). The fees payable by the Borrower to a successor Agent shall be the same as those payable to its predecessor unless otherwise agreed between the Borrower and such successor. After the retiring Agent's resignation hereunder and under the other Loan Documents, the provisions of this Article IX and Section 10.03 shall continue in effect for the benefit of such retiring Agent, its sub-agents and

their respective Related Parties in respect of any actions taken or omitted to be taken by any of them while the retiring Agent was acting as Agent.

(b) Any resignation by Wells Fargo as Administrative Agent pursuant to Section 9.06(a) shall, unless Wells Fargo gives notice to the Borrower otherwise, also constitute its resignation as Issuing Bank, and such resignation as Issuing Bank shall become effective simultaneously with the discharge of the Administrative Agent from its duties and obligations as set forth in the immediately preceding paragraph (except as to already outstanding Letters of Credit and LC Disbursements, as to which the Issuing Bank shall continue in such capacities until the LC Exposure relating thereto shall be reduced to zero or until the successor Administrative Agent shall succeed to the role of Issuing Bank in accordance with the next sentence and perform the actions required by the next sentence). Upon the acceptance of a successor's appointment as Administrative Agent hereunder, unless Wells Fargo and such successor give notice to the Borrower otherwise, (i) such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring Issuing Bank and (ii) the successor Issuing Bank shall issue letters of credit in substitution for the Letters of Credit, if any, outstanding at the time of such succession or make other arrangements satisfactory to the retiring Issuing Bank to effectively assume the obligations of the retiring Issuing Bank with respect to such Letters of Credit. At the time any such resignation of the Issuing Bank shall become effective, the Borrower shall pay all unpaid fees accrued for the account of the retiring Issuing Bank pursuant to Section 2.06(c).

**Section 9.07 Non-Reliance on Agent and Other Lenders.** Each Lender and the Issuing Bank acknowledges that it has, independently and without reliance upon any Agent or any other Lender and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement. Each Lender further represents and warrants that it has reviewed each document made available to it on the Platform in connection with this Agreement and has acknowledged and accepted the terms and conditions applicable to the recipients thereof. Each Lender and the Issuing Bank also acknowledges that it will, independently and without reliance upon any Agent or any other Lender and based on such documents and information as it shall from time to time deem appropriate, continue to make its own decisions in taking or not taking action under or based upon this Agreement, any other Loan Document or any related agreement or any document furnished hereunder or thereunder.

**Section 9.08 Withholding Tax.** To the extent required by any applicable law, the Administrative Agent may deduct or withhold from any payment to any Lender an amount equivalent to any applicable withholding Tax. If the Internal Revenue Service or any other authority of the United States or other jurisdiction asserts a claim that the Administrative Agent did not properly withhold Tax from amounts paid to or for the account of any Lender or the Issuing Bank for any reason (including, without limitation, because the appropriate form was not delivered or not properly executed, or because such Lender or the Issuing Bank failed to notify the Administrative Agent of a change in circumstance that rendered the exemption from, or reduction of withholding Tax ineffective, or for any other reason), such Lender or the Issuing Bank shall indemnify and hold harmless the Administrative Agent (to the extent that the Administrative Agent has not already been reimbursed by the Borrower pursuant to Sections 2.12 and 2.15 and without limiting any obligation of the Borrower to do so pursuant to such Sections) fully for all amounts paid, directly or indirectly, by the Administrative Agent as Taxes or otherwise, together with all expenses incurred, including legal expenses and any other out-of-pocket expenses, whether or not such Tax was correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to any Lender or the Issuing Bank by the Administrative Agent shall be conclusive absent manifest error. Each Lender and the Issuing Bank hereby authorizes the Administrative Agent to set off and apply any and all amounts at any time owing to such Lender or the Issuing Bank under this Agreement or any other Loan Document against any amount due to the Administrative Agent under this Section 9.08. The agreements

in this Section 9.08 shall survive the resignation or replacement of the Administrative Agent, any assignment of rights by, or the replacement of, a Lender, the termination of the Commitments and the repayment, satisfaction or discharge of all other Obligations.

**Section 9.09 No Other Duties, Etc.** Anything herein to the contrary notwithstanding, neither the Bookrunner nor the Arranger shall have any powers, duties or responsibilities under this Agreement or any of the other Loan Documents, except in its capacity, as applicable, as the Administrative Agent, the Collateral Agent, a Lender or the Issuing Bank hereunder.

**Section 9.10 Collateral Matters.** The Lenders and the Agents irrevocably agree that any Lien on any property granted to or held by the Administrative Agent or the Collateral Agent and the Guarantees provided by the Loan Parties under any Loan Document shall be automatically terminated and released (i) upon payment in full of all Obligations (other than contingent indemnification obligations not yet accrued and payable), (ii) at the time the property subject to such Lien is transferred or to be transferred as part of or in connection with any transfer permitted hereunder or under any other Loan Document (and the Administrative Agent or Collateral Agent may rely conclusively on a certificate to that effect provided to it by any Loan Party upon its reasonable request without further inquiry) to any person other than a Loan Party, (iii) subject to Section 10.02, if the release of such Lien is approved, authorized or ratified in writing by the Required Lenders, or (iv) if the property subject to such Lien is owned by a Guarantor, upon release of such Guarantor from its obligations under its Guarantee pursuant to Section 7.09.

The Agents shall, upon the request of the Borrower, and are hereby irrevocably authorized by the Lenders to:

(i) release or subordinate any Lien on any property granted to or held by the Collateral Agent under any Loan Document to the holder of any Lien on such property that is permitted by Section 6.02(q), to the extent required by the terms of the obligations secured by such Liens;

(ii) consent to and enter into (and execute documents permitting the filing and recording, where appropriate) (x) the grant of easements and covenants, conditions, restrictions and declarations and (y) subordination, non-disturbance and attornment agreements, in each case in favor of the ultimate purchasers, or tenants under leases or subleases of any portion of the Project (including the CUP Land Lease), as applicable, in connection with the transactions contemplated by Section 6.06(e), (k), (m), (n), (o) and (p);

(iii) subordinate any Mortgage to any reciprocal easement agreements, covenants, conditions and restrictions and other similar rights reasonably acceptable to the Administrative Agent which are requested by the Loan Parties pursuant to the transactions contemplated by Sections 6.06(k), (m), (n), (o) and (p); and

(iv) with respect to the transactions contemplated by Section 6.06(m), (A) enter into an intercreditor agreement with the applicable Loan Party, the CUP Holder and the agent or trustee for the persons providing financing for the CUP Holder (the "CUP Holder Agent"), providing for (1) intercreditor provisions in respect of the applicable Loan Party's second Lien on substantially all of the assets of the CUP Holder and (2) an acknowledgement by the CUP Holder Agent of such Loan Party's rights, if any, to control construction of the CUP and (B) one or more consents to assignment with the applicable Loan Party, the CUP Holder or the CUP Holder Agent, in each case, providing for (1) the CUP Holder's consent to the collateral assignment of the Energy Services Agreement by the applicable Loan Party to the Collateral Agent and (2) the

applicable Loan Party's and Collateral Agent's consent to the collateral assignment of the Energy Services Agreement by the CUP Holder to the CUP Holder Agent.

In each case as specified in this Section 9.10, the Agents will (and each Lender irrevocably authorizes the Agents to), at the Borrower's expense, execute and deliver to the applicable Loan Party such documents as such Loan Party may reasonably request to evidence the release of such item of Collateral from the security interest granted under the Security Documents or any such consents or subordination agreements or intercreditor agreements to effectuate the matters referenced above, in each case in accordance with the terms of the Loan Documents, Section 7.09 and this Section 9.10.

**Section 9.11 Enforcement.**

Notwithstanding anything to the contrary contained herein or in any other Loan Document, the authority to enforce rights and remedies hereunder and under the other Loan Documents and the Orders against the Loan Parties or any of them shall be vested exclusively in, and all actions and proceedings at law in connection with such enforcement shall be instituted and maintained exclusively by, the Administrative Agent or the Collateral Agent, or as the Required Lenders may require or otherwise direct, for the benefit of all the Secured Parties; provided, however, that the foregoing shall not prohibit (a) the Administrative Agent or the Collateral Agent from exercising on its own behalf the rights and remedies that inure to its benefit (solely in its capacity as Administrative Agent or the Collateral Agent, as applicable) hereunder and under the other Loan Documents or any Order, (b) the Issuing Bank from exercising the rights and remedies that inure to its benefit (solely in its capacity as Issuing Bank) hereunder and under the other Loan Documents or any Order, (c) any Lender from exercising setoff rights in accordance with, and subject to, the terms of this Agreement, or (d) any Lender from filing proofs of claim or appearing and filing pleadings on its own behalf during the pendency of a proceeding relative to any Loan Party under any bankruptcy or insolvency law.

**ARTICLE X**

**MISCELLANEOUS**

**Section 10.01 Notices.**

(a) Generally. Except in the case of notices and other communications expressly permitted to be given by telephone (and except as provided in paragraph (b) below), all notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by facsimile as follows:

(i) if to any Loan Party, to the Borrower at:

REVEL ENTERTAINMENT GROUP, LLC  
500 Boardwalk  
Atlantic City, New Jersey 08401  
Attention: Loretta Pickus, General Counsel  
Facsimile No.: (609) 572 6665  
Email: lpickus@revelentertainment.com

with a copy to:

White & Case LLP  
1155 Avenue of the Americas



New York, NY 10036  
Attention: Gregory M. Owens, Esq.  
Facsimile No.: (212) 354-8113

- (ii) if to the Administrative Agent, the Collateral Agent or the Issuing Bank, to it at:

Wells Fargo Bank, N.A.  
Agency Services Charlotte  
1525 W. WT Harris Blvd. Charlotte, NC 28262  
Attention: Agency Services  
Facsimile: (704) 715-0017  
Email: [agencyervices.requests@wellsfargo.com](mailto:agencyervices.requests@wellsfargo.com)

with a copy to:

Milbank Tweed Hadley & McCloy LLP  
601 South Figueroa Street, 30<sup>th</sup> Floor  
Los Angeles, CA 90017  
Attention: Thomas Kreller, Esq.  
Facsimile No.: (213) 629-5063  
Email: [TKreller@milbank.com](mailto:TKreller@milbank.com)

- (iii) if to a Lender, to it at its address (or telecopier number) set forth in its Administrative Questionnaire.

Notices sent by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when received; notices sent by telecopier shall be deemed to have been given when sent (except that, if not given during normal business hours for the recipient, shall be deemed to have been given at the opening of business on the next business day for the recipient). Notices delivered through electronic communications to the extent provided in paragraph (b) below, shall be effective as provided in said paragraph (b).

(b) Electronic Communications. Notices and other communications to the Lenders and the Issuing Bank hereunder may (subject to Section 10.01(d)) be delivered or furnished by electronic communication (including e-mail and Internet or intranet websites) pursuant to procedures approved by the Administrative Agent; provided that the foregoing shall not apply to notices to any Lender or the Issuing Bank pursuant to Article II if such Lender or the Issuing Bank, as applicable, has notified the Administrative Agent that it is incapable of receiving notices under such Article by electronic communication. The Administrative Agent, the Collateral Agent or the Borrower may, in their discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it (including as set forth in Section 10.01(d)); provided that approval of such procedures may be limited to particular notices or communications.

Unless the Administrative Agent otherwise prescribes, (i) notices and other communications sent to an e-mail address shall be deemed received upon the sender's receipt of an acknowledgement from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgement); provided that if such notice or other communication is not sent during the normal business hours of the recipient, such notice or communication shall be deemed to have been sent at the opening of business on the next business day for the recipient, and (ii) notices or communications posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient at its e-mail address as described in the

foregoing clause (i) of notification that such notice or communication is available and identifying the website address therefor.

(c) Change of Address, Etc. Any party hereto may change its address or telecopier number for notices and other communications hereunder by notice to the other parties hereto.

(d) Posting. Each Loan Party hereby agrees that it will provide to the Administrative Agent all information, documents and other materials that it is obligated to furnish to the Administrative Agent pursuant to this Agreement and any other Loan Document, including all notices, requests, financial statements, financial and other reports, certificates and other information materials, but excluding any such communication that (i) relates to a request for a new Borrowing or other extension of credit (including any election of an interest rate or interest period relating thereto), (ii) relates to the payment of any principal or other amount due under this Agreement prior to the scheduled date therefor, (iii) provides notice of any Default under this Agreement or (iv) is required to be delivered to satisfy any condition precedent to the effectiveness of this Agreement or any borrowing or other extension of credit hereunder (all such non-excluded communications, collectively, the “Communications”), by transmitting the Communications in an electronic/soft medium in a format reasonably acceptable to the Administrative Agent at [agencyservices.requests@wellsfargo.com](mailto:agencyservices.requests@wellsfargo.com) or at such other e-mail address(es) provided to the Borrower from time to time or in such other form, including hard copy delivery thereof, as the Administrative Agent shall require. In addition, each Loan Party agrees to continue to provide the Communications to the Administrative Agent in the manner specified in this Agreement or any other Loan Document or in such other form, including hard copy delivery thereof, as the Administrative Agent shall require. Nothing in this Section 10.01 shall prejudice the right of the Agents, any Lender or any Loan Party to give any notice or other communication pursuant to this Agreement or any other Loan Document in any other manner specified in this Agreement or any other Loan Document or as any such Agent shall require.

To the extent consented to by the Administrative Agent in writing from time to time, Administrative Agent agrees that receipt of the Communications by the Administrative Agent at its e-mail address(es) set forth above shall constitute effective delivery of the Communications to the Administrative Agent for purposes of the Loan Documents.

Each Loan Party further agrees that Administrative Agent may make the Communications available to the Lenders by posting the Communications on IntraLinks or a substantially similar electronic transmission system (the “Platform”). The Platform is provided “as is” and “as available.” The Agents do not warrant the accuracy or completeness of the Communications, or the adequacy of the Platform and expressly disclaim liability for errors or omissions in the communications. No warranty of any kind, express, implied or statutory, including, without limitation, any warranty of merchantability, fitness for a particular purpose, non-infringement of third party rights or freedom from viruses or other code defects, is made by any Agent in connection with the Communications or the Platform. In no event shall the Administrative Agent or any of its Related Parties have any liability to the Loan Parties, any Lender or any other person for damages of any kind, including direct or indirect, special, incidental or consequential damages, losses or expenses (whether in tort, contract or otherwise) arising out of any Loan Party’s or the Administrative Agent’s transmission of communications through the Internet, except to the extent the liability of such person is found in a final non-appealable judgment by a court of competent jurisdiction to have resulted from such person’s bad faith, gross negligence or willful misconduct or breach of this Agreement.

(e) Public/Private. Each Loan Party hereby authorizes the Administrative Agent to distribute (i) to Private Siders all Communications, including any Communication that the Borrower identifies in writing is to be distributed to Private Siders only (“Private Side Communications”), and (ii)

to Public Siders all Communications other than any Private Side Communication. The Borrower represents and warrants that no Communication (other than Private Side Communications) contains any MNPI. The Borrower agrees to designate as Private Side Communications only those Communications or portions thereof that it reasonably believes in good faith constitute MNPI and agrees to use all commercially reasonable efforts not to designate any Communications provided under Section 5.01(b), (c), (d), (h), (i), (j), (k) and (l) as Private Side Communications. “Private Siders” shall mean Lenders’ employees and representatives who have declared that they are authorized to receive MNPI. “Public Siders” shall mean Lenders’ employees and representatives who have not declared that they are authorized to receive MNPI; it being understood that Public Siders may be engaged in investment and other market-related activities with respect to the Borrower’s or its affiliates’ securities or loans. “MNPI” shall mean the Approved Budget, the Cash Flow Forecast and other material non-public information (within the meaning of United States federal securities laws) with respect to the Borrower, its subsidiaries and any of their respective securities.

Each Lender acknowledges that United States federal and state securities laws prohibit any person from purchasing or selling securities on the basis of material, non-public information concerning the issuer of such securities or, subject to certain limited exceptions, from communicating such information to any other person. Each Lender confirms that it has developed procedures designed to ensure compliance with these securities laws.

Each Lender acknowledges that circumstances may arise that require it to refer to Communications that may contain MNPI. Accordingly, each Lender agrees that it will use commercially reasonable efforts to designate at least one individual to receive Private Side Communications on its behalf in compliance with its procedures and applicable law and identify such designee (including such designee’s contact information) on such Lender’s Administrative Questionnaire. Each Lender agrees to notify the Administrative Agent in writing from time to time of such Lender’s designee’s e-mail address to which notice of the availability of Private Side Communications may be sent by electronic transmission.

Each Lender that elects not to be given access to Private Side Communications does so voluntarily and, by such election, (i) acknowledges and agrees that the Agents and other Lenders may have access to Private Side Communications that such electing Lender does not have and (ii) takes sole responsibility for the consequences of, and waives any and all claims based on or arising out of, not having access to Private Side Communications.

#### **Section 10.02 Waivers; Amendment.**

(a) Generally. No failure or delay by any Agent, the Issuing Bank or any Lender in exercising any right or power hereunder or under any other Loan Document shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or power, or any abandonment or discontinuance of steps to enforce such a right or power, preclude any other or further exercise thereof or the exercise of any other right or power. The rights and remedies of each Agent and the Lenders hereunder and under the other Loan Documents and the Orders are cumulative and are not exclusive of any rights or remedies that they would otherwise have. No waiver of any provision of any Loan Document or consent to any departure by any Loan Party therefrom shall in any event be effective unless the same shall be permitted by this Section 10.02, and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given. Without limiting the generality of the foregoing, the making of a Loan or the issuance of a Letter of Credit shall not be construed as a waiver of any Default, regardless of whether any Agent, the Issuing Bank or any Lender may have had notice or knowledge of such Default at the time. No notice or demand on the Borrower in any case shall entitle the Borrower to any other or further notice or demand in similar or other circumstances.

(b) Required Consents. Subject to Section 10.02(c) and (e), neither this Agreement nor any other Loan Document nor any provision hereof or thereof may be waived, amended, supplemented or modified except, in the case of this Agreement, pursuant to an agreement or agreements in writing entered into by the Borrower and the Administrative Agent or, in the case of any other Loan Document, pursuant to an agreement or agreements in writing entered into by the Administrative Agent, the Collateral Agent (in the case of any Security Document) and the Loan Party or Loan Parties that are party thereto, in each case with the written consent of the Required Lenders; provided that no such agreement shall be effective if the effect thereof would:

(i) increase the Commitment of any Lender without the written consent of such Lender (it being understood that no amendment, modification, termination, waiver or consent with respect to any condition precedent, covenant or Default shall constitute an increase in the Commitment of any Lender);

(ii) reduce the principal amount or premium, if any, of any Loan or LC Disbursement or reduce the rate of interest thereon (other than interest pursuant to Section 2.07(c)), or reduce any Fees payable hereunder, or change the form or currency of payment of any Obligation, without the written consent of each Lender directly affected thereby (it being understood that (A) any amendment or modification to the financial definitions in this Agreement shall not constitute a reduction in the rate of interest for purposes of this clause (ii) and (B) no consent of any other person other than such Lender directly affected thereby shall be required in connection with such actions);

(iii) (A) change the scheduled final maturity of any Loan or any scheduled date of payment, (B) postpone the date for payment of any LC Reimbursement Obligation or any interest, premium or fees payable hereunder, (C) change the amount of, waive or excuse any such payment (other than waiver of any increase in the interest rate pursuant to Section 2.07(c)), or (D) postpone the scheduled date of expiration of any Commitment beyond the Scheduled Maturity Date, in any case, without the written consent of each Lender directly affected thereby (and no consent of any other person shall be required);

(iv) increase the maximum duration of Interest Periods hereunder, without the written consent of each Lender directly affected thereby;

(v) permit the assignment or delegation by the Borrower of any of its rights or obligations under any Loan Document, without the written consent of each Lender (provided that a merger or consolidation (regardless of which person is the survivor thereof) shall not be considered an assignment or delegation);

(vi) release all or substantially all of the Guarantors from their Guarantee (except as expressly provided in Article VII), or limit liability of all or substantially all the Guarantors in respect of their Guarantee, without the written consent of each Lender or in connection with an exercise of remedies;

(vii) amend, modify or waive the Superpriority Claim status of the Obligations or release all or substantially all of the Collateral from the Liens of the Security Documents or the Orders or alter the relative priorities of the Secured Obligations entitled to the Liens of the Security Documents or the Orders, in each case without the written consent of each Lender or in connection with an exercise of remedies;

(viii) change Section 2.14(b), (c) or (d) in a manner that would alter the pro rata sharing of payments or setoffs required thereby or any other provision in a manner that would alter the pro rata allocation among the Lenders of Loan disbursements, including the requirements of Section 2.02(a), without the written consent of each Lender directly affected thereby;

(ix) change Section 2.10(a)(iii), Section 2.10(b)(iii) or Section 8.03, without the written consent of the Required Facility Lenders under the applicable Facility directly affected thereby;

(x) change any provision of this Section 10.02(b) or (c), without the written consent of each Lender directly affected thereby (except for additional restrictions on amendments or waivers consented to by the Required Lenders);

(xi) change the percentage set forth in the definition of "Required Lenders", Required Facility Lenders" or any other provision of any Loan Document (including this Section) specifying the number or percentage of Lenders required to waive, amend or modify any rights thereunder or make any determination or grant any consent thereunder, without the written consent of each Lender, other than to increase such percentage or number or to give any additional Lender or group of Lenders such right to waive, amend or modify or make any such determination or grant any such consent;

(xii) change or waive any provision of Article IX as the same applies to any Agent, or any other provision hereof as the same applies to the rights or obligations of any Agent, in each case without the written consent of such Agent;

(xiii) change or waive any obligation of the Lenders relating to the issuance of or purchase of participations in Letters of Credit, without the written consent of the Administrative Agent and the Issuing Bank;

(xiv) waive any condition set forth in Section 4.01, Section 4.02 or Section 4.03 without the written consent of the Required Facility Lenders with respect to the applicable Facility; or

(xv) impose any greater restriction on the ability of any Lender to assign any of its rights or obligations under a Facility hereunder without the written consent of all of the Lenders under the applicable Facility.

Notwithstanding anything to the contrary herein, (i) (A) any Loan Document may be waived, amended, supplemented or modified pursuant to an agreement or agreements in writing entered into by the Borrower and the Administrative Agent (without the consent of any Lender) solely to cure a defect or error, or to grant a new Lien for the benefit of the Secured Parties or extend an existing Lien over additional property or to make modifications which are not materially adverse to the Lenders and are requested by Gaming Authorities and (B) such amendment shall become effective without any further consent of any other party to such Loan Document and (ii) additional extensions of credit consented to by Required Lenders shall be permitted hereunder on a ratable basis with the existing Loans (including as to proceeds of, and sharing in the benefits of, Collateral and sharing of prepayments).

(c) Collateral. Without the consent of any other person, the applicable Loan Party or Parties and the Administrative Agent or Collateral Agent may (in its or their respective sole discretion, or shall, to the extent required by any Loan Document) enter into any amendment or waiver of any Loan Document, or enter into any new agreement or instrument (including consents to assignments with third

parties), to effect the granting, perfection, protection, expansion or enhancement of any security interest in any Collateral or additional property to become Collateral for the benefit of the Secured Parties (including consents to assignments), or as required by local law to give effect to, or protect any security interest for the benefit of the Secured Parties, in any property or so that the security interests therein comply with applicable Requirements of Law or to terminate any Control Agreements which are not required under the Security Documents and to enter into Control Agreements with respect to accounts created after the Closing Date, to the extent required under the Loan Documents.

(d) Dissenting Lenders. If, in connection with any proposed change, waiver, discharge or termination of the provisions of this Agreement as contemplated by Section 10.02(b), the consent of the Required Lenders or Required Facility Lenders is obtained but the consent of one or more of such other Lenders whose consent is required is not obtained, then the Borrower shall have the right to replace all, but not less than all, of such non-consenting Lender or Lenders (so long as all non-consenting Lenders are so replaced) with one or more persons pursuant to Section 2.16(b) so long as at the time of such replacement each such new Lender consents to the proposed change, waiver, discharge or termination.

(e) Notwithstanding anything in this Section 10.02 to the contrary, (i) in connection with the incurrence by any Loan Party or any Subsidiary thereof of additional Indebtedness, each of the Administrative Agent and the Collateral Agent agree to execute and deliver any amendments, amendments and restatements, re-statements or waivers of or supplements to or other modifications to, any Security Document, and to make or consent to any filings or take any other actions in connection therewith, as may be reasonably deemed by the Borrower to be necessary or reasonably desirable for any Lien on the assets of any Loan Party permitted to secure such additional Indebtedness to become a valid, perfected lien (with such priority as may be designated by the relevant Loan Party or Subsidiary, to the extent such priority is permitted by the Loan Documents) pursuant to the Security Document being so amended, amended and restated, restated, waived, supplemented or otherwise modified or otherwise and (ii) the Agents are authorized by the Lenders to enter into the agreements and instruments permitted under Section 6.06 and Section 9.10.

### **Section 10.03 Expenses; Indemnity; Damage Waiver.**

(a) Costs and Expenses. The Borrower shall pay (i) all reasonable and documented out-of-pocket expenses incurred by the Administrative Agent, the Collateral Agent, the Arranger and their respective Affiliates (including the reasonable fees, charges and disbursements of any Advisors) in connection with the Cases or the syndication of the credit facilities provided for herein (including the obtaining and maintaining of CUSIP numbers for the Loans), the preparation, negotiation, execution, delivery and administration of this Agreement, the other Loan Documents and the Orders or any amendment, amendment and restatement, modification or waiver of the provisions hereof or thereof (whether or not the transactions contemplated hereby or thereby shall be consummated), including in connection with post-closing searches to confirm that security filings and recordations have been properly made and including any costs and expenses of the service provider referred to in Section 9.03, (ii) all reasonable and documented out-of-pocket expenses incurred by the Issuing Bank in connection with the issuance, amendment, renewal or extension of any Letter of Credit or any demand for payment thereunder, (iii) all reasonable and documented out-of-pocket expenses incurred by JPMorgan Chase Bank, as administrative agent under the Prepetition First-Lien Credit Agreement (including the reasonable fees, charges and disbursements of any Advisors (as defined in the Prepetition First-Lien Credit Agreement)) in connection with the Cases, and (iv) all reasonable and documented out-of-pocket expenses incurred by the Administrative Agent, the Collateral Agent, any Lender or the Issuing Bank, in connection with the enforcement or protection of its rights (A) in connection with this Agreement and the other Loan Documents, including its rights under this Section 10.03, or (B) in connection with the Loans

made or Letters of Credit issued hereunder, including all such out-of-pocket expenses incurred during any workout, restructuring or negotiations in respect of such Loans or Letters of Credit.

(b) Indemnification by the Borrower. The Borrower shall indemnify the Administrative Agent (and any sub-agent thereof), the Collateral Agent (and any sub-agent thereof), the Arranger, each Lender, the Issuing Bank and each Related Party of any of the foregoing persons (each such person being called an “Indemnitee”) against, and hold each Indemnitee harmless from, any and all reasonable and documented, out-of-pocket losses, claims, damages, liabilities and related expenses (including the fees, charges and disbursements of any Advisors) incurred by any Indemnitee or asserted against any Indemnitee by any party hereto or any third party arising out of, in connection with, or as a result of (i) the execution or delivery of this Agreement, any other Loan Document, or any amendment, amendment and restatement, modification or waiver of the provisions hereof or thereof, or any agreement or instrument contemplated hereby or thereby or the Cases, the Orders, the performance by the parties hereto of their respective obligations hereunder or thereunder or the consummation of the transactions contemplated hereby or thereby, (ii) any Loan or Letter of Credit or the use or proposed use of the proceeds therefrom (including any refusal by the Issuing Bank to honor a demand for payment under a Letter of Credit if the documents presented in connection with such demand do not strictly comply with the terms of such Letter of Credit), (iii) any actual or alleged presence or Release or threatened Release of Hazardous Materials on, at, under or from, or any Environmental Claim related in any way to any Mortgaged Property or any liability resulting from any Hazardous Materials Activity, (iv) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory, whether brought by a third party or by the Borrower or any other Loan Party, and regardless of whether any Indemnitee is a party thereto; provided that such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities or related expenses that are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from the gross negligence or willful misconduct of such Indemnitee or from a material breach of such Indemnitee’s obligations hereunder or under any other Loan Document. For the avoidance of doubt, this Section 10.03(b) shall not apply to with respect to any Tax-related matter, except to the extent of any Taxes that represent losses, damages, etc. resulting from a non-Tax claim.

(c) Reimbursement by Lenders. To the extent that the Borrower for any reason fails to indefeasibly pay any amount required under paragraph (a) or (b) of this Section 10.03 to be paid by it to the Administrative Agent (or any sub-agent thereof), the Collateral Agent (or any sub-agent thereof), the Issuing Bank or any Related Party of any of the foregoing, each Lender severally agrees to pay to the Administrative Agent (or any such sub-agent), the Collateral Agent (or any sub-agent thereof), the Issuing Bank or such Related Party, as the case may be, such Lender’s pro rata share (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought) of such unpaid amount (such indemnity shall be effective whether or not the related losses, claims, damages, liabilities and related expenses are incurred or asserted by any party hereto or any third party); provided (i) that the unreimbursed expense or indemnified loss, claim, damage, liability or related expense, as the case may be, was incurred by or asserted against the Administrative Agent (or any such sub-agent), the Collateral Agent (or any sub-agent thereof) or the Issuing Bank in its capacity as such, or against any Related Party of any of the foregoing acting for the Administrative Agent (or any such sub-agent), the Collateral Agent (or any sub-agent thereof) or (ii) such indemnity for the Issuing Bank shall not include losses incurred by the Issuing Bank due to one or more Lenders defaulting in their obligations to purchase participations of LC Exposure under Section 2.18(d) or to make Loans under Section 2.18(e). The obligations of the Lenders under this paragraph (c) are subject to the provisions of Section 2.14. For purposes hereof, a Lender’s “pro rata share” shall be determined based upon its share of the sum of the outstanding Loans and unused Commitments at the time.

(d) Waiver of Consequential Damages, Etc. To the fullest extent permitted by applicable Requirements of Law, no Loan Party shall assert, and each Loan Party hereby waives, any claim against any Indemnitee, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement, any other Loan Document or any agreement or instrument contemplated hereby, the transactions contemplated hereby or thereby, any Loan or Letter of Credit or the use of the proceeds thereof. No Indemnitee referred to in paragraph (b) above shall be liable for any damages arising from the use by unintended recipients of any information or other materials distributed by it through telecommunications, electronic or other information transmission systems in connection with this Agreement or the other Loan Documents or the transactions contemplated hereby or thereby, except to the extent any such damages incurred by a Loan Party are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from the gross negligence, bad faith or willful misconduct of such Indemnitee or material breach of any Loan Document by such Indemnitee.

(e) Payments. All amounts due under this Section shall be payable not later than three (3) Business Days after demand therefor.

#### **Section 10.04 Successors and Assigns.**

(a) Successors and Assigns Generally. The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby, except that the Borrower may not assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of the Administrative Agent, the Collateral Agent, the Issuing Bank and each Lender (and any other attempted assignment or transfer by the Borrower shall be null and void) (it being understood that a merger or consolidation shall not constitute such an assignment or transfer) and no Lender may assign or otherwise transfer any of its rights or obligations hereunder except, (i) to an Eligible Assignee in accordance with the provisions of paragraph (b) of this Section 10.04, (ii) by way of participation in accordance with the provisions of paragraph (d) of this Section 10.04 or (iii) by way of pledge or assignment of a security interest subject to the restrictions of paragraph (f) of this Section 10.04. Nothing in this Agreement, expressed or implied, shall be construed to confer upon any person (other than the parties hereto, their respective successors and assigns permitted hereby, Participants to the extent provided in paragraph (d) of this Section 10.04 and, to the extent expressly contemplated hereby, the other Indemnitees) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) Assignments by Lenders. Any Lender may at any time assign to one or more Eligible Assignees all or a portion of its rights and obligations under this Agreement (including all or a portion of its Commitment and the Loans at the time owing to it); provided that any such assignment shall be subject to the following conditions:

(i) (A) the consent (not to be unreasonably withheld or delayed) of the Administrative Agent and the Issuing Bank (provided that no consent of the Administrative Agent shall be required in the case of an assignment to a Lender) shall be required and (B) unless the Administrative Agent otherwise consents, and other than an assignment to a Lender or an Affiliate or Approved Fund of a Lender, with respect to any Commitment or Loans of any Class, the aggregate amount of the Commitment (which for this purpose includes Loans outstanding thereunder) or, if the applicable Commitment is not then in effect, the principal outstanding balance of the Loans of such Class of the assigning Lender subject to each such assignment (determined as of the date the Assignment and Assumption with respect to such assignment is delivered to the Administrative Agent or, if "Trade Date" is specified in the Assignment and Assumption, as of the Trade Date) shall not be less than \$1,000,000 (or, if less, the entire



remaining amount of the Commitment or Loans of such Class of the assigning Lender); provided, that such amount shall be aggregated for assigning Lenders or Eligible Assignees that are Affiliates or Approved Funds of one another;

(ii) each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lender's rights and obligations under this Agreement with respect to the Loans or the Commitment of the Class assigned; and

(iii) the Lenders party to each assignment shall execute and deliver to the Administrative Agent an Assignment and Assumption, together with, unless waived or reduced by the Administrative Agent in its sole discretion, a processing and recordation fee of \$3,500 (provided that only one such fee shall be payable in the case of concurrent assignments by or to two or more entities that are Affiliates or Approved Funds of one another), and the Eligible Assignee, if it shall not be a Lender, shall deliver to the Administrative Agent an Administrative Questionnaire.

Subject to acceptance and recording thereof by the Administrative Agent pursuant to paragraph (c) of this Section 10.04, from and after the effective date specified in each Assignment and Assumption, the Eligible Assignee thereunder shall be a party to this Agreement and, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of a Lender under this Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Assumption, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto) but shall continue to be entitled to the benefits of Sections 2.12, 2.13, 2.15 and 10.03 with respect to facts and circumstances occurring prior to the effective date of such assignment. Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this paragraph shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with paragraph (d) of this Section 10.04.

(c) Register. The Administrative Agent, acting solely for this purpose as a non-fiduciary agent of the Borrower, shall maintain at one of its offices a copy of each Assignment and Assumption delivered to it and a register for the recordation of the names and addresses of the Lenders, and the Commitments of, and principal amounts (and related interest amounts) of the Loans and LC Disbursements owing to, each Lender pursuant to the terms hereof from time to time (the "Register"). The entries in the Register shall be conclusive absent manifest error, and the Borrower, the Administrative Agent, the Issuing Bank and the Lenders shall treat each person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement, notwithstanding notice to the contrary. The Register shall be available for inspection by the Borrower, the Issuing Bank, the Collateral Agent and any Lender, at any reasonable time and from time to time upon reasonable prior notice. Upon its receipt of a duly completed Assignment and Assumption executed by an assigning Lender and an Eligible Assignee, the Eligible Assignee's completed Administrative Questionnaire (unless the Eligible Assignee shall already be a Lender hereunder), all tax forms required to be delivered under Section 2.15, the processing and recordation fee referred to in paragraph (b) of this Section (unless waived) and any written consent to such assignment required by paragraph (b) of this Section, the Administrative Agent promptly shall accept such Assignment and Assumption and record the information contained therein in the Register. No assignment, whether or not evidenced by a Note, shall be effective for purposes of this Agreement unless it has been recorded in the Register as provided in this paragraph (c).

(d) Participations. Any Lender may at any time, without the consent of, or notice to, the Borrower, the Administrative Agent or the Issuing Bank, sell participations to any person (other than a natural person or the Borrower or any of the Borrower's Affiliates or Subsidiaries) (each, a "Participant") in all or a portion of such Lender's rights or obligations under this Agreement (including all or a portion of its Commitment or the Loans owing to it); provided that (i) such Lender's obligations under this Agreement shall remain unchanged, (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations and (iii) the Borrower, the Administrative Agent and the Lenders and Issuing Bank shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement.

Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce the Loan Documents and to approve any amendment, modification or waiver of any provision of the Loan Documents; provided that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, modification or waiver described in clause (i), (ii) or (iii) of the first proviso to Section 10.02(b) that affects such Participant. Subject to paragraph (e) of this Section, the Borrower agrees that each Participant shall be entitled to the benefits of Sections 2.12, 2.13 and 2.15 (subject to the requirements of those Sections) to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to paragraph (b) of this Section. To the extent permitted by law, each Participant also shall be entitled to the benefits of Section 10.08 as though it were a Lender, provided such Participant agrees to be subject to Section 2.14 as though it were a Lender. In addition, each Lender selling a participation to one or more Participants under this Section 10.04(d) shall, acting as a non-fiduciary agent of the Borrower, keep a register, specifying the name and address of each Participant and each such Participant's entitlement to payments of principal and interest with respect to such participation (the "Participant Register"). The entries in the Participant Register shall be conclusive absent manifest error, and such Lender shall treat each person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary.

(e) Limitations on Participant Rights. A Participant shall not be entitled to receive any greater payment under Sections 2.12, 2.13 and 2.15 than the applicable Lender would have been entitled to receive with respect to the participation sold to such Participant, unless the sale of the participation to such Participant is made with the Borrower's prior written consent, not to be unreasonably withheld or delayed.

(f) Certain Pledges. Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement to secure obligations of such Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank; provided that no such pledge or assignment shall release such Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto. In the case of any Lender that is a fund that invests in bank loans, such Lender may, without the consent of the Borrower or the Administrative Agent, collaterally assign or pledge all or any portion of its rights under this Agreement, including the Loans and Notes or any other instrument evidencing its rights as a Lender under this Agreement, to any holder of, trustee for, or any other representative of holders of, obligations owed or securities issued, by such fund, as security for such obligations or securities.

(g) Electronic Execution of Assignments. The words "execution," "signed," "signature," and words of like import in any Assignment and Assumption shall be deemed to include electronic signatures or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable

Requirement of Law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act.

**Section 10.05 Survival of Agreement.** All covenants, agreements, representations and warranties made by the Loan Parties in the Loan Documents and in the certificates or other instruments delivered in connection with or pursuant to this Agreement or any other Loan Document shall be considered to have been relied upon by the other parties hereto and shall survive the execution and delivery of the Loan Documents and the making of any Loans and issuance of any Letters of Credit, regardless of any investigation made by any such other party or on its behalf and notwithstanding that the Agents, the Issuing Bank or any Lender may have had notice or knowledge of any Default or incorrect representation or warranty at the time any credit is extended hereunder, and shall continue in full force and effect as long as the principal of or any accrued interest on any Loan or any fee or any other amount payable under this Agreement is outstanding and unpaid or any Letter of Credit is outstanding and so long as the Commitments have not expired or terminated. The provisions of Sections 2.12, 2.15, 9.10, 10.03, 10.09, 10.10 and 10.12 shall survive and remain in full force and effect regardless of the consummation of the transactions contemplated hereby, the repayment of the Loans, the payment of the LC Reimbursement Obligations, the expiration or termination of the Letters of Credit and the Commitments or the termination of this Agreement or any provision hereof.

**Section 10.06 Counterparts; Integration; Effectiveness.** This Agreement may be executed in counterparts (and by different parties hereto in different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Agreement and the other Loan Documents, and any separate letter agreements with respect to fees payable to the Administrative Agent, constitute the entire contract among the parties relating to the subject matter hereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. Except as provided in Section 4.01, this Agreement shall become effective when it shall have been executed by the Administrative Agent and when the Administrative Agent shall have received counterparts hereof that, when taken together, bear the signatures of each of the other parties hereto. Delivery of an executed counterpart of a signature page of this Agreement by telecopier or other electronic transmission (i.e. a “pdf” or “tif” document) shall be effective as delivery of a manually executed counterpart of this Agreement.

**Section 10.07 Severability.** Any provision of this Agreement held to be invalid, illegal or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such invalidity, illegality or unenforceability without affecting the validity, legality and enforceability of the remaining provisions hereof; and the invalidity of a particular provision in a particular jurisdiction shall not invalidate such provision in any other jurisdiction.

**Section 10.08 Right of Setoff.** If an Event of Default shall have occurred and be continuing, subject to the Orders, each Lender and the Issuing Bank is hereby authorized at any time and from time to time, to the fullest extent permitted by applicable Requirements of Law, to set off and apply any and all deposits (general or special, time or demand, provisional or final, in whatever currency) at any time held and other obligations (in whatever currency) at any time owing by such Lender or the Issuing Bank to or for the credit or the account of the Borrower or any other Loan Party against any and all of the obligations of the Borrower or such Loan Party now or hereafter existing under this Agreement or any other Loan Document to such Lender, irrespective of whether or not such Lender or the Issuing Bank shall have made any demand under this Agreement or any other Loan Document and although such obligations of the Borrower or such Loan Party may be contingent or unmatured or are owed to a branch or office of such Lender or the Issuing Bank different from the branch or office holding such deposit or obligated on such indebtedness. The rights of each Lender and the Issuing Bank under this Section are in

addition to other rights and remedies (including other rights of setoff) that such Lender or the Issuing Bank may have. Each Lender and the Issuing Bank agrees to notify the Borrower and the Administrative Agent promptly after any such setoff and application; provided that the failure to give such notice shall not affect the validity of such setoff and application. Notwithstanding the foregoing, neither any Lender or the Issuing Bank shall have any right of setoff against the Reserved Amounts.

**Section 10.09 Governing Law; Jurisdiction; Consent to Service of Process.**

(a) Governing Law. This Agreement shall be construed in accordance with and governed by the law of the State of New York, without regard to conflicts of law principles that would require the application of the laws of another jurisdiction, and, to the extent applicable, the Bankruptcy Code.

(b) Submission to Jurisdiction. Each party hereto hereby irrevocably and unconditionally submits, for itself and its property, to the exclusive jurisdiction of the Bankruptcy Court and, if the Bankruptcy Court does not have (or abstains from) jurisdiction, the Supreme Court of the State of New York sitting in New York County and of the United States District Court of the Southern District of New York, and any appellate court from any thereof, in any action or proceeding arising out of or relating to any Loan Document, or for recognition or enforcement of any judgment, and each of the parties hereto hereby irrevocably and unconditionally agrees that all claims in respect of any such action or proceeding may be heard and determined in such New York State court or, to the fullest extent permitted by applicable law, in such Federal court. Each of the parties hereto agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Nothing in this Agreement or any other Loan Document shall affect any right that the Administrative Agent, the Issuing Bank or any Lender may otherwise have to bring any action or proceeding relating to this Agreement or any other Loan Document against any Loan Party or its properties in the courts of any jurisdiction.

(c) Waiver of Venue. Each party hereto hereby irrevocably and unconditionally waives, to the fullest extent permitted by applicable Requirements of Law, any objection which it may now or hereafter have to the laying of venue of any suit, action or proceeding arising out of or relating to this Agreement or any other Loan Document in any court referred to in Section 10.09(b). Each of the parties hereto hereby irrevocably waives, to the fullest extent permitted by applicable Requirements of Law, the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court.

(d) Service of Process. Each party hereto irrevocably consents to service of process in any action or proceeding arising out of or relating to any Loan Document, in the manner provided for notices (other than telecopier) in Section 10.01. Nothing in this Agreement or any other Loan Document will affect the right of any party hereto to serve process in any other manner permitted by applicable Requirements of Law.

**Section 10.10 Waiver of Jury Trial.** Each party hereto hereby waives, to the fullest extent permitted by applicable Requirements of Law, any right it may have to a trial by jury in any legal proceeding directly or indirectly arising out of or relating to this Agreement, any other Loan Document or the transactions contemplated hereby (whether based on contract, tort or any other theory). Each party hereto (a) certifies that no representative, agent or attorney of any other party has represented, expressly or otherwise, that such other party would not, in the event of litigation, seek to enforce the foregoing waiver and (b) acknowledges that it and the other parties hereto have been induced to enter into this Agreement by, among other things, the mutual waivers and certifications in this Section.

**Section 10.11 Headings.** Article and Section headings and the Table of Contents used herein are for convenience of reference only, are not part of this Agreement and shall not affect the construction of, or be taken into consideration in interpreting, this Agreement.

**Section 10.12 Treatment of Certain Information; Confidentiality.** Each of the Administrative Agent, the Lenders and the Issuing Bank agrees to maintain the confidentiality of the Information (as defined below), except that Information may be disclosed (a) to its Affiliates and to its and its Affiliates' respective partners, directors, officers, employees, agents, advisors and other representatives (it being understood that the persons to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to keep such Information confidential), (b) pursuant to the order of any court or to the extent requested by any Governmental Authority or regulatory authority (including any self-regulatory authority, such as the National Association of Insurance Commissioners), (c) to the extent required by applicable Requirements of Law or by any subpoena or similar compulsory legal process or in connection with the Cases, (d) to the extent that such information is independently developed by the Administrative Agent or any Lender without use of any Information or any derivative thereof, (e) to the extent that such Information becomes publicly available other than by reason of disclosure by Administrative Agent and the Lenders, any of their affiliates or any of their representatives in breach of this agreement, (f) to any other party hereto, (g) in connection with the exercise of any remedies hereunder or under any other Loan Document or any action or proceeding relating to this Agreement or any other Loan Document or the enforcement of rights hereunder or thereunder, (h) subject to an agreement containing provisions substantially the same as those of this Section 10.12, to (I) any assignee of or Participant in, or any prospective assignee of or Participant in, any of its rights or obligations under this Agreement, (II) any actual or prospective counterparty (or its advisors) to any swap or derivative transaction relating to the Borrower and its obligations or (III) any rating agency for the purpose of obtaining a credit rating applicable to any Lender, (i) with the consent of the Borrower or (j) to the extent such Information (x) becomes publicly available other than as a result of a breach of this Section or (y) becomes available to the Administrative Agent, any Lender or any of their respective Affiliates on a non-confidential basis from a source other than the Borrower that is not to the knowledge of the Administrative Agent or such Lender subject to confidentiality obligations to the Borrower or otherwise prohibited from furnishing or making available such information to the Administrative Agent or any Lender by a contract, legal or fiduciary obligation. For purposes of this Section, "Information" shall mean all information received from the Borrower or any of its Subsidiaries relating to the Borrower or any of its Subsidiaries or any of their respective businesses, other than any such information that is available to the Administrative Agent, any Lender or the Issuing Bank on a non-confidential basis prior to disclosure by the Borrower or any of its Subsidiaries; provided that, in the case of information received from the Borrower or any of its Subsidiaries after the date hereof, such information is clearly identified at the time of delivery as confidential. Any person required to maintain the confidentiality of Information as provided in this Section shall be considered to have complied with its obligation to do so if such person has exercised the same degree of care to maintain the confidentiality of such Information as such person would accord to its own confidential information.

**Section 10.13 USA PATRIOT Act Notice.** Each Lender that is subject to the Patriot Act and the Administrative Agent (for itself and not on behalf of any Lender) hereby notifies the Borrower that pursuant to the requirements of the Patriot Act it is required to obtain, verify and record information that identifies the Borrower, which information includes the name, address and tax identification number of the Borrower and other information regarding the Borrower that will allow such Lender or the Administrative Agent, as applicable, to identify the Borrower in accordance with the Patriot Act. This notice is given in accordance with the requirements of the Patriot Act and is effective as to the Lenders and the Administrative Agent.

**Section 10.14 Interest Rate Limitation.** Notwithstanding anything herein to the contrary, if at any time the interest rate applicable to any Loan, together with all fees, charges and other amounts which are treated as interest on such Loan under applicable Requirements of Law (collectively, the “Charges”), shall exceed the maximum lawful rate (the “Maximum Rate”) which may be contracted for, charged, taken, received or reserved by the Lender holding such Loan in accordance with applicable Requirements of Law, the rate of interest payable in respect of such Loan hereunder, together with all Charges payable in respect thereof, shall be limited to the Maximum Rate and, to the extent lawful, the interest and Charges that would have been payable in respect of such Loan but were not payable as a result of the operation of this Section shall be cumulated and the interest and Charges payable to such Lender in respect of other Loans or periods shall be increased (but not above the Maximum Rate therefor) until such cumulated amount, together with interest thereon at the Federal Funds Effective Rate to the date of repayment, shall have been received by such Lender.

**Section 10.15 Obligations Absolute.** To the fullest extent permitted by applicable Requirements of Law, all obligations of the Loan Parties hereunder shall be absolute and unconditional irrespective of:

- (a) any bankruptcy, insolvency, reorganization, arrangement, readjustment, composition, liquidation or the like of any Loan Party;
- (b) any lack of validity or enforceability of any Loan Document or any other agreement or instrument relating thereto against any Loan Party;
- (c) any change in the time, manner or place of payment of, or in any other term of, all or any of the Obligations, or any other amendment or waiver of or any consent to any departure from any Loan Document or any other agreement or instrument relating thereto;
- (d) any exchange, release or non-perfection of any other Collateral, or any release or amendment or waiver of or consent to any departure from any guarantee, for all or any of the Obligations;
- (e) any exercise or non-exercise, or any waiver of any right, remedy, power or privilege under or in respect hereof or any Loan Document; or
- (f) any other circumstances which might otherwise constitute a defense available to, or a discharge of, the Loan Parties.

**Section 10.16 Waiver of Immunity.** To the extent that the Borrower or any of the other Loan Parties has, or hereafter may be entitled to claim or may acquire, for themselves, any Collateral or other assets of the Loan Parties, any immunity (whether sovereign or otherwise) from suit, jurisdiction of any court or from any legal process (whether through service of notice, attachment prior to judgment, attachment in aid of execution or otherwise) with respect to themselves, any Collateral or any other assets of the Loan Parties, the Borrower and the other Loan Parties hereby waive such immunity in respect of its obligations hereunder and under any promissory notes evidencing the Loans hereunder and any other Loan Document to the fullest extent permitted by applicable Requirements of Law and, without limiting the generality of the foregoing, agrees that the waivers set forth in this Section 10.16 shall be effective to the fullest extent now or hereafter permitted under the Foreign Sovereign Immunities Act of 1976 (as amended, and together with any successor legislation) and are, and are intended to be, irrevocable for purposes thereof.

**Section 10.17 Certain Matters Affecting Lenders.**

(a) If (i) a Gaming Authority issues a finding of Disqualification regarding a Lender (a “Former Lender”), the Administrative Agent shall have the right (but not the duty) to designate bank(s) or other financial institution(s) (in each case, a “Substitute Lender”) that agree to become a substitute lender and to assume the rights and obligations of the Former Lender, subject to receipt by the Administrative Agent of evidence that such Substitute Lender (if not a Lender or Affiliate of a Lender) is an Eligible Assignee and subject to any other requirements of Gaming Authorities. The Substitute Lender shall assume the rights and obligations of the Former Lender under this Agreement. In the event a Former Lender is replaced by a Substitute Lender in accordance with this Section 10.17(a), the Borrower and the Substitute Lender shall pay to the Former Lender all amounts that would have been required to be paid pursuant to Section 2.16(b) had such Former Lender been replaced in accordance with such provisions.

(b) Notwithstanding the provisions of subsection (a) of this Section 10.17, if any Lender becomes a Former Lender, and if the Administrative Agent fails to find a Substitute Lender pursuant to subsection (a) of this Section 10.17 within any time period specified by the appropriate Gaming Authority for the withdrawal of a Former Lender (the “Withdrawal Period”), such Lender shall execute and deliver an Assignment and Assumption with respect to the Commitments and outstanding Loans of such Lender in favor of one or more Eligible Assignees that is not an Affiliate of such Lender, which Eligible Assignee shall be designated by the Borrower with the Administrative Agent’s consent (which consent shall not be unreasonably withheld or delayed), for an amount equal to the unpaid principal amount Loans of such Lender, plus any accrued and unpaid interest, fees and costs payable under this Agreement through the date of the Assignment and Assumption or any other price as set forth by the Gaming Authority, in each case subject to approval by the Gaming Authority. Alternatively, the Borrower may immediately prepay in full the outstanding amount of all Loans of, and Obligations owing to, such Former Lender, together with accrued interest thereon to the earlier of (x) the date of payment or (y) the last day of the applicable Withdrawal Period, and any other amounts that would have been required to be paid to such Former Lender pursuant to Section 2.16 had such Former Lender been replaced in accordance with such provision, and all Commitments of such Former Lender shall expire and terminate upon such prepayment; provided that if, after giving effect to such expiration and termination, the aggregate LC Exposure exceeds the aggregate NM Commitments, the Borrower shall concurrently with such expiration and termination Cash Collateralize LC Exposure in an amount not less than the applicable Minimum Collateral Amount multiplied by such excess amount. This clause (b) shall supersede any provisions of Section 2.14 or 10.02.

(c) Upon the prepayment of all amounts owing to any Lender in accordance with this Section 10.17, such Former Lender shall no longer constitute a “Lender” for purposes hereof; provided, any rights of such Lender to indemnification hereunder shall survive as to such Lender.

(d) The interests, with respect to this Agreement, of any Former Lender shall be subject to the regulatory jurisdiction of all Gaming Authorities.

(e) Assignments by any Lender of its rights and obligations under this Agreement may require obtaining required approvals or making required filings with the Gaming Authorities.

**Section 10.18 Gaming Authorities and Liquor Laws.** Each party to this Agreement hereby acknowledges that the Loan Documents and consummation of the transactions contemplated by the Loan Documents are subject to applicable Gaming Laws, including but not limited to any licensing, qualification or transfer requirements which may be imposed on the Arranger, the Agents and each Lender. The Arranger, the Agents and each Lender agree to cooperate with the Gaming Authorities and Liquor Authorities in connection with the administration of their regulatory jurisdiction over the Loan Parties and their Subsidiaries, including, without limitation, the provision of such documents or other

information as may be requested by any such Gaming Authorities or Liquor Authorities relating to the Arranger, the Agents, any of the Lenders, any Loan Party, any Subsidiary of a Loan Party or the Loan Documents. Notwithstanding any other provision of this Agreement, the Borrower and each Loan Party hereby consent to any such cooperation and disclosure by the Arranger, the Agents and each Lender to any such Gaming Authorities or Liquor Authorities and releases such parties from any liability for any such cooperation or disclosure. The rights, remedies and powers provided in this Agreement may be exercised only to the extent that the exercise thereof does not violate any applicable provision of the Gaming Laws and Liquor Laws and if prior approval of any Gaming Authorities or Liquor Authorities is required therefor, such approval shall be obtained.

**Section 10.19 Absence of Prejudice to the Prepetition Secured Parties With Respect to Matters Before the Bankruptcy Court.** The fact that the Administrative Agent or any Lender may be party to or holder of Prepetition obligations shall in no way prejudice its rights under, or in respect of, any such Prepetition obligations or hereunder, and the Administrative Agent or any such Lender shall be free to bring, oppose or support any matter before the Bankruptcy Court no matter how treated in this Agreement.

[Signature Pages Follow]



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

REVEL AC, INC.,  
a Debtor and Debtor-in-Possession under  
Chapter 11 of the Bankruptcy Code, as the  
Borrower

By: \_\_\_\_\_  
Name:  
Title:

REVEL AC, LLC,  
a Debtor and Debtor-in-Possession under  
Chapter 11 of the Bankruptcy Code, as a  
Guarantor

By: \_\_\_\_\_  
Name:  
Title:

REVEL ATLANTIC CITY, LLC,  
a Debtor and Debtor-in-Possession under  
Chapter 11 of the Bankruptcy Code, as a  
Guarantor

By: \_\_\_\_\_  
Name:  
Title:

REVEL ENTERTAINMENT GROUP, LLC,  
a Debtor and Debtor-in-Possession under  
Chapter 11 of the Bankruptcy Code, as a  
Guarantor

By: \_\_\_\_\_  
Name:  
Title:

NB ACQUISITION, LLC,  
a Debtor and Debtor-in-Possession under  
Chapter 11 of the Bankruptcy Code, as a  
Guarantor

By: \_\_\_\_\_  
Name:  
Title:

SI LLC,  
a Debtor and Debtor-in-Possession under  
Chapter 11 of the Bankruptcy Code, as a  
Guarantor

By: \_\_\_\_\_  
Name:  
Title:

WELLS FARGO BANK, NATIONAL ASSOCIATION,  
as Administrative Agent, Collateral Agent and Issuing  
Bank

By: \_\_\_\_\_  
Name:  
Title:

WELLS FARGO PRINCIPAL LENDING, LLC, as a  
Lender

By: \_\_\_\_\_  
Name:  
Title:

JPMORGAN CHASE BANK, N.A., as a Lender

By: \_\_\_\_\_  
Name:  
Title:

Document comparison by Workshare Compare on Friday, January 30, 2015  
10:24:13 AM

Input:	
Document 1 ID	interwovenSite://AMERICAS_DMS/Americas/90356428/1
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Document 2 ID	interwovenSite://AMERICAS_DMS/Americas/90356428/8
Description	#90356428v8<Americas> - Revel DIP Credit Agreement - amendments to execution version
Rendering set	Standard

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Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
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Deletions	58
Moved from	7
Moved to	7
Style change	0
Format changed	0
Total changes	134

EXHIBIT E  
[REVISED SCHEDULE 2.01(a) TO THE DIP CREDIT AGREEMENT]

**SCHEDULE 2.01(a)**

**JPM Roll-Up Commitment**

<b>Lender</b>	<b>Amount of JPM Roll-Up Commitment</b>	<b>JPM Roll-Up Commitment Percentage</b>
JPMorgan Chase Bank, N.A.	\$10,000,000	100%
<b>Total:</b>	<b>\$10,000,000</b>	<b>100%</b>

**WFB Roll-Up Commitment**

<b>Lender</b>	<b>Amount of Wells Roll-Up Commitment</b>	<b>Wells Roll-Up Commitment Percentage</b>
Wells Fargo Principal Lending, LLC	\$73,100,000	100%
<b>Total:</b>	<b>\$73,100,000</b>	<b>100%</b>

**NM Commitment**

<b>Lender</b>	<b>Amount of NM Commitment</b>	<b>NM Commitment Percentage</b>
Wells Fargo Principal Lending, LLC	\$71,000,000	100%
<b>Total:</b>	<b>\$71,000,000</b>	<b>100%</b>

EXHIBIT F  
[REVISED SCHEDULE 8.01 TO THE DIP CREDIT AGREEMENT]

Schedule 8.01

Sale Transaction Milestones

- (a) On or prior to 3 days following the Filing Date, the Borrower and the Guarantors shall file a bidding procedures motion, in form and substance reasonably satisfactory to the Agents, the Issuing Bank and the Required Lenders, with the Bankruptcy Court;
- (b) On or prior to July 11, 2014, the Bankruptcy Court shall enter the Bidding Procedures Order, which shall, among other things, establish the deadline (i) for parties to deliver to the Borrower letters of intent to bid under the Bidding Procedures Order on or prior to 30 days following the Filing Date, and (ii) for parties to submit binding, irrevocable bids under the Bidding Procedures Order on or prior to 45 days following the Filing Date (the "Bid Deadline");
- (c) On or prior to October 7, 2014, the Borrower shall have received at least one bid that is satisfactory to the Required Lenders;
- (d) Restructuring or other resolution of the obligations under the agreements with the CUP Holder regarding the CUP on terms reasonably satisfactory to the Required Lenders on or before February 27, 2015;
- (e) On or prior to October 7, 2014, the auction shall be conducted;
- (f) On or prior to January 8, 2015, the Bankruptcy Court shall hold a hearing to approve the sale to the winning bidder pursuant to the Approved APA (the "Sale Hearing");
- (g) On or prior to January 8, 2015, the Bankruptcy Court shall enter an order, in form and substance reasonably satisfactory to the Agents, the Issuing Bank and the Required Lenders, approving the sale; and
- (h) On or prior to February 10, 2015, such sale shall have been consummated.



EXHIBIT G  
[SETTLEMENT TERM SHEET]

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**PROPOSED SETTLEMENT TERM SHEET AMONG THE DEBTORS, THE OFFICIAL  
COMMITTEE OF UNSECURED CREDITORS AND WELLS FARGO**

The terms of this term sheet (the "Term Sheet") are provided for discussion purposes only. This Term Sheet summarizes the principal terms and conditions of a proposed settlement among the debtors (collectively, the "Debtors") in the chapter 11 cases entitled *In re Revel, AC, Inc., et al.*, U.S. Bankr. Ct. D. N.J., Case No. 14-22654 (GMB) (the "Chapter 11 Cases"), the Official Committee of Unsecured Creditors in the Chapter 11 Cases (the "UCC"), and the Wells Fargo entities that are either agents or lenders under the Debtors' prepetition and postpetition credit agreements (collectively, "Wells Fargo" and together with the Debtors and the UCC, the "Parties") regarding the various disputes and issues that have arisen among the Parties in connection with the Chapter 11 Cases. This Term Sheet remains subject to, among other things, definitive documentation and the resolution of technical and non-substantive terms not specifically set forth herein.

This Term Sheet is proffered in the nature of a settlement proposal in furtherance of settlement discussions and is intended to be entitled to protection from any use or disclosure to any party or person pursuant to Federal Rule of Evidence 408 and any other applicable statutes or doctrines protecting the use or disclosure of confidential information and information exchanged in the context of settlement discussions.

Purpose of the Settlement Agreement:	The purpose of the Settlement Agreement contemplated by this Term Sheet will be to settle any and all disputes and issues existing among the Parties with respect to the Chapter 11 Cases, including without limitation all disputes and issues regarding the DIP financing (including the UCC's assertions that certain of the Debtors' assets are not encumbered by liens in favor of the Debtors' secured creditors), the proposed sale of substantially all of the Debtors' assets on terms acceptable to Wells Fargo and JPMorgan Chase Bank, N.A. ("JPMorgan" and such sale, the " <u>Proposed Sale</u> "), the ultimate distribution of the proceeds of the Proposed Sale, and the distribution of proceeds of any other property of the Debtors' estates (including other assets, avoidance actions and other litigation claims). The Settlement Agreement will also memorialize the Parties' agreement to pursue and/or support certain further actions and agreements that may be reasonably necessary to implement the terms of the Settlement Agreement on a consensual basis and in a
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	<p>manner designed to avoid future litigation in the Chapter 11 Cases.</p>
<p>Economic Terms of the Settlement Agreement:</p>	<p>The Settlement Agreement shall provide for the following economic terms:</p> <ol style="list-style-type: none"><li>1. Upon and subject to the closing of a Proposed Sale, Wells Fargo agrees that:<ol style="list-style-type: none"><li>a. \$1.35 million of cash proceeds (the “<u>Settlement Payment</u>”) from the Proposed Sale shall be carved-out from its secured recovery and transferred to the Debtors. The Settlement Payment shall be deposited by the Debtors into a segregated account (the “<u>Settlement Payment Account</u>”) that will be specifically earmarked for distribution to the Debtors’ general unsecured creditors on account of allowed unsecured claims, excluding any secured lender deficiency claims. The Settlement Payment Account and the Settlement Payment deposited therein shall be subject to the DIP Liens and Wells Fargo’s replacement liens pending the occurrence of the Effective Date of a chapter 11 plan for the Debtors acceptable to Wells Fargo (an “<u>Acceptable Plan</u>”) or the release of such liens on terms acceptable to Wells Fargo; and</li><li>b. upon the occurrence of the Effective Date of an Acceptable Plan or otherwise with Wells Fargo’s prior written consent, 15% of Wells Fargo’s net recovery on account of the Purchaser Installment Payment included as a component of Polo North’s Purchase Price (the “<u>PN Installment Consideration</u>”) shall be made available to the Debtors’ general unsecured creditors on account of allowed general unsecured claims (excluding any secured lender deficiency claims) when such net recoveries are realized by Wells Fargo. The Debtors and/or Wells Fargo shall not agree to compromise, release, reduce or</li></ol></li></ol>

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	<p>otherwise affect Polo North's obligation to pay and otherwise satisfy the PN Installment Consideration without the express written consent of the UCC.</p> <ol style="list-style-type: none"><li>2. Upon and subject to the closing of the Proposed Sale, the Debtors will distribute to Wells Fargo all sale proceeds from the Proposed Sale other than the amount of proceeds necessary for the Debtors to fund: (a) the Settlement Payment into the Settlement Payment Account in accordance with this Term Sheet; (b) the Litigation Advance into the Settlement Payment Account in accordance with this Term Sheet; (c) payment in full to JPMorgan of any unpaid amounts due on account of its \$10.0 million in first lien claims; (d) any reserves for claims that are either secured by liens on the sale proceeds that are senior to the liens of Wells Fargo or otherwise entitled to a portion of the sale proceeds pursuant to the DIP Financing Order, in each case on terms reasonably acceptable to Wells Fargo; (e) an amount sufficient to pay all accrued and unpaid items set forth in the DIP Budget (as defined in the DIP Financing Order) incurred as of the Closing Date ("<u>Pre-Closing Permitted Administrative Expenses</u>"); and (f) the Wind-Down Amounts (as defined in the DIP Financing Order).</li><li>3. Any proceeds realized by the Debtors from any collateral that is not sold in the Proposed Sale, including, but not limited to, tax refunds or credits and similar receivables, shall be distributed to JPMorgan, the DIP Lenders and the Debtors' prepetition secured lenders in accordance with their relative priorities under the DIP Facility and the prepetition loan documents and subject to all of the waterfall, subordination and turnover provisions contained in the applicable loan documents.</li><li>4. Upon and subject to the closing of the Proposed Sale, Wells Fargo will agree to permit \$150,000 (the "<u>Litigation Advance</u>") of cash proceeds from the Proposed Sale to be deposited into the Settlement Payment Account to be used by the Debtors or their successors (including any liquidating trustee) to</li></ol>
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	<p>reconcile claims, investigate and prosecute any claims or causes of action belonging to the estates (“<u>Litigation Claims</u>”), as well as any avoiding power actions against third parties that did not provide goods or services to the Debtors in the ordinary course of business prior to or in connection with the Chapter 11 Cases (“<u>Avoidance Actions</u>”); <u>provided, however</u>, it being expressly understood, and for the avoidance of doubt, any preference actions against third parties that provided goods or services to the Debtors in the ordinary course of business prior to or in connection with the Chapter 11 Cases, shall be waived and released as part of the chapter 11 plan and shall not be deemed “Avoidance Actions” for the purposes of this Term Sheet, <u>provided, further, however</u>, that such waiver and release shall not apply to (a) any of the Debtors’ insiders or (b) ACR Energy Partners (and its affiliates) or its bondholders or the indenture trustee for such bondholders. Similar to the Settlement Payment, the Litigation Advance deposited in the Settlement Payment Account shall be subject to the DIP Liens and Wells Fargo’s replacement liens pending the occurrence of the Effective Date of an Acceptable Plan or the release of such liens on terms acceptable to Wells Fargo. No Litigation Claims or Avoidance Actions against any of the Debtors’ secured lenders shall be investigated or pursued. Any recoveries realized from Litigation Claims or Avoidance Actions shall first be used to repay the Litigation Advance to Wells Fargo. To the extent that the Litigation Advance is not exhausted to pay the fees and costs incurred in reconciling claims, and in pursuit of Litigation Claims or Avoidance Actions, then any residual amount of the Litigation Advance shall be added to the Settlement Payment and shall be treated for all purposes under this Term Sheet a Settlement Payment. Once the Litigation Advance has been fully repaid, litigation recoveries shall be distributed to the Debtors’ creditors as follows:</p> <p>a. Any recoveries on account of Avoidance Actions shall be allocated <i>pro rata</i> among all allowed unsecured claims, including all allowed secured lender deficiency claims</p>
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	<p>held by any of the Debtors' secured lenders; and</p> <p>b. Any recoveries on account of Litigation Claims shall be allocated <i>pro rata</i> among all allowed unsecured claims, including all secured lender deficiency claims, but any amounts that would be allocated to Tranche B Term Loan lenders or 2<sup>nd</sup> Lien lenders shall instead be distributed to Wells Fargo in enforcement of the waterfall, subordination and turnover provisions contained in the applicable loan documents.</p> <p>5. On the Effective Date of an Acceptable Plan: (a) the Settlement Payment shall become available from the Settlement Payment Account free and clear of Wells Fargo's DIP Liens and replacement liens for distribution to the Debtors' general unsecured creditors on account of allowed unsecured claims, excluding any secured lender deficiency claims; (b) the Debtors' general unsecured creditors, excluding holders of secured lender deficiency claims, shall become entitled to the PN Installment Consideration (as and when Wells Fargo's net recoveries on account of the Purchaser Installment Payment are realized); (c) any remaining Pre-Closing Permitted Administrative Expenses and Wind-Down Amounts shall be paid or reserved for and (d) any remaining estate cash shall be distributed to the Debtors' secured lenders in accordance with their relative priorities under the DIP Facility and/or the prepetition loan documents and subject to all of the waterfall, subordination and turnover provisions contained in the applicable loan documents. For the avoidance of doubt, unless and until the Effective Date of an Acceptable Plan occurs, the Settlement Payment Account and the Settlement Payment deposited therein shall remain subject to Wells Fargo's DIP Liens and replacement liens.</p> <p>6. If the Settlement Payment or the rights to receive the PN Installment Consideration is not made available for holders of allowed unsecured claims, excluding any secured lender deficiency claims, (a) the Debtors</p>
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	<p>shall have the right to revoke their waiver of rights under section 506(c) contained in the DIP Financing Order, (b) the UCC shall have the right to assert a challenge to whether the prepetition first liens (i) encumbered and were perfected in the cage cash and (ii) entitled the prepetition first lien lenders to any value in the SI LLC real property, (c) the UCC shall have the right to argue that postpetition payments of interest and fees on prepetition first lien claims should be recharacterized as principal payments; (d) any roll-up of the first lien claims granted pursuant to any DIP financing shall be of no force or effect as to the Committee's right to argue, and the Court's ability to order, that the payment of interest, fees, costs and charges on prepetition first lien claims are subject to disallowance and/or should be recharacterized as principal payments; and (e) the prohibition against marshalling granted pursuant to any DIP financing order shall be revoked, <i>void ab initio</i> and of no force and effect (collectively, the "<u>Disputed Issues</u>"), <u>provided, however</u>, that in the event any payments to JPMorgan are recharacterized, JPMorgan's rights to retain such payments under the intercreditor provisions of the applicable loan documents are expressly preserved. Upon such failure to make the Settlement Payment, the Debtors and the UCC shall have all rights and claims assertable in connection with the Disputed Issues, and Wells Fargo shall maintain all rights, claims and defenses to any such rights or claims the Debtors or the UCC may assert. Notwithstanding anything to the contrary herein, if Wells Fargo makes the Settlement Payment and the PN Installment Consideration available to general unsecured creditors (excluding secured lender deficiency claims) on terms consistent with this Term Sheet, whether the Settlement Payment is implemented through a chapter 11 plan or otherwise (subject to a further Order of the Court to the extent any payment to unsecured creditors is to be made outside of a plan), the global settlement embodied in this Term Sheet shall remain intact and binding on the Parties, including, without limitation, with respect to the resolution of the Disputed Issues.</p>
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<p>Condition Precedent:</p>	<p>Wells Fargo’s agreement to permit its collateral to be used to fund the Settlement Payment and contribute the PN Installment Consideration shall be conditioned upon the following:</p> <ol style="list-style-type: none"> <li>1. The DIP Budget, Pre-Closing Permitted Administrative Expenses and Wind-Down Amounts shall be acceptable to Wells Fargo, and Wells Fargo shall have no obligation to advance funds to satisfy any claims or amounts in excess of the Pre-Closing Permitted Administrative Expenses and Wind-Down Amounts;</li> <li>2. The full waiver and release by the Debtors and the UCC of any claims or causes of action the estates might otherwise threaten or bring against JPMorgan or Wells Fargo, in any capacity, along with a complete withdrawal by the UCC of all of its objections to the DIP financing, the Proposed Sale and any efforts by the Debtors or Wells Fargo to cause the proceeds of the Proposed Sale to be distributed in a manner consistent with this Term Sheet; and</li> <li>3. The full waiver and release by the Debtors and the UCC of any claims or causes of action the estates might otherwise threaten or bring against any other secured lender that does not object to this settlement or the Approved Plan.</li> </ol>
<p>Liquidating Trustee:</p>	<p>Wells Fargo shall select the Liquidating Trustee, subject to the UCC’s absolute veto and approval rights with respect to such selection. The Liquidating Trustee shall select the Liquidating Trustee’s counsel, subject to Wells Fargo’s absolute veto and approval rights with respect to such selection.</p>
<p>Chapter 11 Plan:</p>	<p>The chapter 11 plan will contain customary exculpation and release provisions in favor of Wells Fargo, JPMorgan, any other secured lender that does not object to this settlement or the Approved Plan, the UCC and its members, and the</p>



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	<p>Debtors and their respective officers and directors who served in such capacities as of the Petition Date.</p>
<p>Settlement Agreement and 9019 Order</p>	<p>The Parties shall enter into a settlement and support agreement (the "<u>Settlement Agreement</u>") memorializing the terms set forth in this Term Sheet and such other terms mutually agreed upon by the Parties.</p> <p>The Debtors shall file a motion by no later than three (3) business days following the Parties' entry into the Settlement Agreement seeking entry of an order by the Bankruptcy Court approving the Settlement Agreement and the terms set forth therein under Rule 9019 of the Federal Rules of Bankruptcy Procedure (the "<u>9019 Order</u>").</p> <p>For the avoidance of doubt, all rights, claims, and defenses of the Debtors' secured lenders that are not party to this Term Sheet are expressly preserved, including any rights to oppose the settlement proposed herein and litigate the Disputed Issues.</p> <p>The Settlement Agreement will not be effective unless and until the Bankruptcy Court enters the 9019 Order. Upon entry of the 9019 Order, the Settlement Agreement will become fully enforceable against the Parties according to its terms.</p>

<sup>1</sup> The Debtors in these Chapter 11 cases, along with the last four digits of each debtor's federal tax identification number, are: Revel AC, Inc. (3856), Revel AC, LLC (4456), Revel Atlantic City, LLC (9513), Revel Entertainment Group, LLC (2321), NB Acquisition, LLC (9387) and SI, LLC (3856). The location of the Debtors' corporate headquarters is 500 Boardwalk, Atlantic City, New Jersey 08401.

<sup>2</sup> Terms used but not otherwise defined herein shall have the meanings given to them in the DIP Credit Agreement.