

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549
FORM 10-K

(Mark One)

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

For the Fiscal Year Ended December 31, 2022

or

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

For the Transition Period From _____ to _____

Commission file number: 000-55791 (VICI Properties Inc.)

Commission file number: 333-264352-01 (VICI Properties L.P.)

VICI Properties Inc.
VICI Properties L.P.
(Exact name of registrant as specified in its charter)

Maryland	(VICI Properties Inc.)	81-4177147
Delaware	(VICI Properties L.P.)	35-2576503
(State or other jurisdiction of incorporation or organization)		(I.R.S. Employer Identification No.)

535 Madison Avenue, 20th Floor New York, New York 10022

(Address of Principal Executive Offices) (Zip Code)

Registrant's telephone number, including area code: (646) 949-4631

SECURITIES REGISTERED PURSUANT TO SECTION 12(b) OF THE ACT:

Title of each class	Trading Symbol	Name of each exchange on which registered
Common stock, \$0.01 par value	VICI	New York Stock Exchange

SECURITIES REGISTERED PURSUANT TO SECTION 12(g) OF THE ACT:

None

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act.

VICI Properties Inc. Yes ☒ No ☐

VICI Properties L.P. Yes ☒ No ☐

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act.

VICI Properties Inc. Yes ☐ No ☒

VICI Properties L.P. Yes ☐ No ☒

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days.

VICI Properties Inc. Yes ☒ No ☐

VICI Properties L.P. Yes ☒ No ☐

Indicate by check mark whether the registrant has submitted electronically every Interactive Data File required to be submitted pursuant to Rule 405 of Regulation S-T (§ 232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit such files).

VICI Properties Inc. Yes ☒ No ☐

VICI Properties L.P. Yes ☒ No ☐

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, a smaller reporting company, or an emerging growth company. See the definitions of "large accelerated filer," "accelerated filer," "smaller reporting company," and "emerging growth company" in Rule 12b-2 of the Exchange Act.

VICI Properties Inc.				VICI Properties L.P.			
Large accelerated filer	☒	Accelerated filer	☐	Large accelerated filer	☐	Accelerated filer	☐
Non-accelerated filer	☐	Smaller reporting company	☐	Non-accelerated filer	☒	Smaller reporting company	☐
		Emerging growth company	☐			Emerging growth company	☐

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act.

VICI Properties Inc. ☐

VICI Properties L.P. ☐

Indicate by check mark whether the registrant has filed a report on and attestation to its management's assessment of the effectiveness of its internal control over financial reporting under Section 404(b) of the Sarbanes-Oxley Act (15 U.S.C.7262(b)) by the registered public accounting firm that prepared or issued its audit report.

VICI Properties Inc. Yes ☒ No ☐

VICI Properties L.P. Yes ☒ No ☐

If securities are registered pursuant to Section 12(b) of the Act, indicate by check mark whether the financial statements of the registrant included in the filing reflect the correction of an error to previously issued financial statements.

VICI Properties Inc. ☐

VICI Properties L.P. ☐

Indicate by check mark whether any of those error corrections are restatements that required a recovery analysis of incentive-based compensation received by any of the registrant's executive officers during the relevant recovery period pursuant to §240.10D-1(b).

VICI Properties Inc. ☐

VICI Properties L.P. ☐

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Act).

VICI Properties Inc. Yes ☐ No ☒

VICI Properties L.P. Yes ☐ No ☒

As of June 30, 2022 (the last business day of VICI Properties Inc.'s most recently completed second fiscal quarter), the aggregate market value of the common stock held by non-affiliates of VICI Properties Inc. was approximately \$28.6 billion, based on the closing price of the common stock as reported on the NYSE on that date. VICI Properties L.P. had no publicly-traded voting equity as of June 30, 2022.

As of February 21, 2023, VICI Properties Inc. had 1,003,674,749 shares of common stock, \$0.01 par value per share, outstanding. VICI Properties L.P. has no common stock outstanding.

DOCUMENTS INCORPORATED BY REFERENCE

Portions of the VICI Properties Inc.'s definitive proxy statement relating to the 2023 Annual Meeting of Stockholders, to be filed with the Securities and Exchange Commission within 120 days after the end of the calendar year to which this report relates, are incorporated by reference into Part III, Items 10-14 of this Annual Report on Form 10-K.

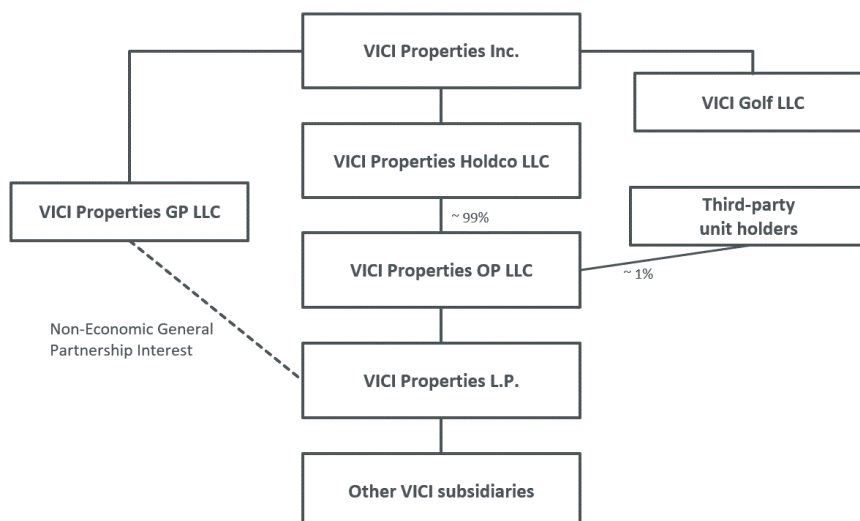
EXPLANATORY NOTE

This report combines the annual reports on Form 10-K for the year ended December 31, 2022 of VICI Properties Inc. and VICI Properties L.P. Unless stated otherwise or the context otherwise requires, references to “VICI” mean VICI Properties Inc. and its consolidated subsidiaries, including VICI Properties OP LLC (“VICI OP”), and references to “VICI LP” mean VICI Properties L.P. and its consolidated subsidiaries. Unless stated otherwise or the context otherwise requires, the terms “the Company,” “we,” “our” and “us” mean VICI and VICI LP, including, collectively, their consolidated subsidiaries.

In order to highlight the differences between VICI and VICI LP, the separate sections in this report for VICI and VICI LP are described below and specifically refer to VICI and VICI LP. In the sections that combine disclosure of VICI and VICI LP, this report refers to actions or holdings of VICI and VICI LP as being “our” actions or holdings. Although VICI LP is the entity that generally, directly or indirectly, enters into contracts and joint ventures, holds assets and incurs debt, we believe that references to “we,” “us” or “our” in this context is appropriate because the business is one enterprise and we operate substantially all of our business and own, either directly or through subsidiaries, substantially all of our assets through VICI LP.

VICI is a real estate investment trust (“REIT”) that is the sole owner of VICI Properties GP LLC (the “General Partner”), the sole general partner of VICI LP. As of December 31, 2022, VICI owns 100% of the limited liability company interests of VICI Properties HoldCo LLC (“HoldCo”), which in turn owns approximately 98.7% of the limited liability company interest of VICI OP (such interests, “VICI OP Units”), our operating partnership, which in turn owns 100% of the limited partnership interest in VICI LP. The balance of the VICI OP Units not held by HoldCo are held by MGM Resorts International and its affiliates.

The following diagram details VICI’s organizational structure as of December 31, 2022.



We believe combining the annual reports on Form 10-K of VICI and VICI LP into this single report:

- enhances investors’ understanding of VICI and VICI LP by enabling investors to view the business as a whole in the same manner as management views and operates the business;
- eliminates duplicative disclosure and provides a more streamlined and readable presentation; and
- creates time and cost efficiencies through the preparation of one combined report instead of two separate reports.

We operate VICI and VICI LP as one business. Because VICI LP is managed by VICI, and VICI conducts substantially all of its operations and owns, either directly or through subsidiaries, substantially all of its assets indirectly through VICI LP, VICI’s executive officers are VICI LP’s executive officers, although, as a partnership, VICI LP does not have a board of directors.

We believe it is important to understand the few differences between VICI and VICI LP in the context of how VICI and VICI LP operate as a consolidated company. VICI is a REIT whose only material asset is its indirect investment in VICI LP, through which it conducts its real property business. VICI also conducts its golf course business through a taxable REIT subsidiary (a “TRS”), VICI Golf LLC, a Delaware limited liability company (“VICI Golf”). As a result, VICI does not conduct business itself other than issuing public equity from time to time, and does not directly incur any material indebtedness, rather VICI LP

holds substantially all of our assets, except for those held in VICI Golf. Except for net proceeds from public equity issuances by VICI, VICI LP generates all capital required by the Company's business, which sources include VICI LP's operations and its direct or indirect incurrence of indebtedness.

VICI consolidates VICI LP for financial reporting purposes, and VICI does not have material assets other than its indirect investment in VICI LP. Therefore, while there are some areas of difference between the Consolidated Financial Statements of VICI and those of VICI LP, the assets and liabilities of VICI and VICI LP are materially the same on their respective financial statements. As of December 31, 2022, the primary areas of difference between the Consolidated Financial Statements of VICI and those of VICI LP were cash and cash equivalents, stockholders' equity and partners' capital, non-controlling interests, and golf operations, which include the assets and liabilities and income and expenses of VICI Golf.

To help investors understand the differences between VICI and VICI LP, this report provides:

- separate consolidated financial statements for VICI and VICI LP;
- a single set of notes to such consolidated financial statements that includes separate discussions of stockholders' equity or partners' equity and per share and per unit data, as applicable;
- a combined Management's Discussion and Analysis of Financial Condition and Results of Operations section that also includes discrete information related to each entity, as applicable;
- separate Part II, Item 5. Market for the Company's Common Equity, Related Stockholder Matters and Issuer Purchases of Equity Securities;
- separate Part II, Item 9A. Controls and Procedures sections; and
- separate Exhibits 31 and 32 certifications for each VICI and VICI LP in order to establish that the requisite certifications have been made and that VICI and VICI LP are each compliant with Rule 13a-14(a) or Rule 15d-14(a) of the Securities Exchange Act of 1934 and 18 U.S.C. §1350.

The separate discussions of VICI and VICI LP in this report should be read in conjunction with each other to understand our results on a consolidated basis and how management operates our business.

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PART I

In this Annual Report on Form 10-K, the words the “Company,” “VICI,” “we,” “our,” and “us” refer to VICI Properties Inc. and its subsidiaries, including VICI LP, on a consolidated basis, unless otherwise stated or the context requires otherwise.

We refer to (i) our Consolidated Financial Statements as our “Financial Statements,” (ii) our Consolidated Balance Sheets as our “Balance Sheet,” (iii) our Consolidated Statements of Operations and Comprehensive Income as our “Statement of Operations,” and (iv) our Consolidated Statement of Cash Flows as our “Statement of Cash Flows.” References to numbered “Notes” refer to the Notes to our Consolidated Financial Statements.

“Apollo” refers to Apollo Global Management, Inc., a Delaware corporation, and, as the context requires, certain of its subsidiaries and affiliates.

“April 2022 Notes” refer collectively to (i) the \$500.0 million aggregate principal amount of 4.375% senior unsecured notes due 2025, (ii) the \$1,250.0 million aggregate principal amount of 4.750% senior unsecured notes due 2028, (iii) the \$1,000.0 million aggregate principal amount of 4.950% senior unsecured notes due 2030, (iv) the \$1,500.0 million aggregate principal amount of 5.125% senior unsecured notes due 2032, and (v) the \$750.0 million aggregate principal amount of 5.625% senior unsecured notes due 2052, in each case issued by VICI LP in April 2022.

“Caesars” refers to Caesars Entertainment, Inc., a Delaware corporation and, as the context requires, its subsidiaries.

“Caesars Las Vegas Master Lease” refers to the lease agreement for Caesars Palace Las Vegas and the Harrah’s Las Vegas facilities, as amended from time to time.

“Caesars Leases” refer collectively to the Caesars Las Vegas Master Lease, the Caesars Regional Master Lease and the Joliet Lease, in each case, unless the context otherwise requires.

“Caesars Regional Master Lease” refers to the lease agreement for the regional properties (other than the facility in Joliet, Illinois) leased to Caesars, as amended from time to time.

“Caesars Transaction” refers to a series of transactions between us and Caesars (formerly Eldorado Resorts, Inc.) in connection with the merger between Eldorado Resorts, Inc. and Caesars, including the acquisition of the Harrah’s New Orleans, Harrah’s Laughlin and Harrah’s Atlantic City, modifications to the Caesars Lease Agreements, and rights of first refusal.

“Century Casinos” refers to Century Casinos, Inc., a Delaware corporation, and, as the context requires, its subsidiaries.

“Century Master Lease” refers to the lease agreement for the (i) Mountaineer Casino, Racetrack & Resort located in New Cumberland, West Virginia, (ii) Century Casino Caruthersville located in Caruthersville, Missouri and (iii) Century Casino Cape Girardeau located in Cape Girardeau, Missouri, as amended from time to time.

“CNB” refers to Cherokee Nation Businesses, L.L.C., and, as the context requires, its subsidiaries.

“Co-Issuer” refers to VICI Note Co. Inc., a Delaware corporation, and co-issuer of the November 2019 Notes, February 2020 Notes and Exchange Notes.

“Credit Agreement” refers to the Credit Agreement, dated as of February 8, 2022, by and among VICI LP, the lenders from time to time party thereto, and JPMorgan Chase Bank, N.A., as administrative agent, as amended from time to time.

“Credit Facilities” refer collectively to the Delayed Draw Term Loan and the Revolving Credit Facility.

“Delayed Draw Term Loan” refers to the three-year unsecured delayed draw term loan facility of VICI LP provided under the Credit Agreement entered into in February 2022, as amended from time to time.

“EBCI” refers to the Eastern Band of Cherokee Indians, a federally recognized Tribe located in western North Carolina, and, as the context requires, its subsidiary and affiliate entities.

“Exchange Notes” refer collectively to (i) the \$1,024.2 million aggregate principal amount of 5.625% senior unsecured notes due 2024, (ii) the \$799.4 million aggregate principal amount of 4.625% senior unsecured notes due 2025, (iii) the \$480.5 million aggregate principal amount of 4.500% senior unsecured notes due 2026, (iv) the \$729.5 million aggregate principal amount of 5.750% senior unsecured notes due 2027, (v) the \$349.3 million aggregate principal amount of 4.500% senior unsecured notes due 2028, and (vi) the \$727.1 million aggregate principal amount of 3.875% senior unsecured notes due 2029, in each case issued by VICI LP and Co-Issuer, in April 2022 pursuant to the Exchange Offers and Consent Solicitations (as defined herein).

“February 2020 Notes” refer collectively to (i) the \$750.0 million aggregate principal amount of 3.500% senior unsecured notes due 2025, (ii) the \$750.0 million aggregate principal amount of 3.750% senior unsecured notes due 2027, and (iii) the \$1.0 billion aggregate principal amount of 4.125% senior unsecured notes due 2030, in each case issued by VICI LP and Co-

Issuer in February 2020.

“Forum Convention Center Mortgage Loan” refers to a \$400.0 million mortgage loan agreement entered into on September 18, 2020 with Caesars for a term of five years and secured by, among other things, the Caesars Forum Convention Center in Las Vegas.

“Foundation Gaming” refers to Foundation Gaming & Entertainment, LLC and, as the context requires, its subsidiaries.

“Foundation Master Lease” refers to the lease agreement for the Fitz Casino & Hotel, located in Tunica, Mississippi, and the WaterView Casino & Hotel, located in Vicksburg, Mississippi, as amended from time to time.

“Gold Strike Lease” refers to the lease agreement with CNB for the Gold Strike Casino Resort, located in Tunica, Mississippi (“Gold Strike”), as amended from time to time.

“Greektown Lease” refers to the lease agreement for the Greektown Casino-Hotel, located in Detroit, Michigan, as amended from time to time.

“Hard Rock” means Hard Rock International, and, as the context requires, its subsidiary and affiliate entities.

“Hard Rock Cincinnati Lease” refers to the lease agreement for the Hard Rock Cincinnati Casino, located in Cincinnati, Ohio, as amended from time to time.

“JACK Master Lease” refers to the lease agreement for the JACK Cleveland Casino located in Cleveland, Ohio, and the JACK Thistledown Racino facility located in North Randall, Ohio, as amended from time to time.

“JACK Entertainment” refers to JACK Ohio LLC, and, as the context requires, its subsidiary and affiliate entities.

“Joliet Lease” refers to the lease agreement for the facility in Joliet, Illinois, as amended from time to time.

“Lease Agreements” refer collectively to our leases with our respective tenants, unless the context otherwise requires.

“Margaritaville Lease” refers to the lease agreement for Margaritaville Resort Casino, located in Bossier City, Louisiana, as amended from time to time.

“Mergers” refer to a series of transactions governed by the MGP Master Transaction Agreement that occurred on April 29, 2022, consisting of (i) the contribution of our interest in VICI LP to VICI OP, which subsequent to the MGP Transactions serves as our new operating partnership, followed by (ii) the merger of MGP with and into Venus Sub LLC, a Delaware limited liability company and wholly owned subsidiary of VICI LP (“REIT Merger Sub”), with REIT Merger Sub surviving the merger; followed by (iii) the distribution by REIT Merger Sub of the interests of the general partner of MGP OP to VICI LP and (iv) the merger of REIT Merger Sub with and into MGP OP, with MGP OP surviving such merger.

“MGM” refers to MGM Resorts International, a Delaware corporation, and, as the context requires, its subsidiaries.

“MGM Grand/Mandalay Bay JV” (previously referred to as the “BREIT JV”) refers to a joint venture that holds the real estate assets of MGM Grand Las Vegas and Mandalay Bay in which we previously held a 50.1% ownership stake as of December 31, 2022. On January 9, 2023, we acquired the remaining 49.9% ownership stake from our joint venture partner, as further described herein.

“MGM Grand/Mandalay Bay Lease” refers to the lease agreement for MGM Grand Las Vegas and Mandalay Bay, as amended from time to time.

“MGM Master Lease” refers to the lease agreement for the properties leased to MGM, excluding those leased under the MGM Grand/Mandalay Bay Lease, as amended from time to time.

“MGM Tax Protection Agreement” refers to the tax protection agreement entered into with MGM upon consummation of the MGP Transactions.

“MGP” refers to MGM Growth Properties LLC, a Delaware limited liability company, which was acquired by the Company on April 29, 2022, and, as the context requires, its subsidiaries.

“MGP Master Transaction Agreement” refers to that certain Master Transaction Agreement between the Company, MGP, MGP OP, VICI LP, REIT Merger Sub, VICI OP, and MGM entered into on August 4, 2021.

“MGP OP” refers to MGM Growth Properties Operating Partnership LP, a Delaware limited partnership, which was acquired by the Company on April 29, 2022, and, as the context requires, its subsidiaries.

“MGP OP Notes” refer collectively to the notes issued by MGP OP and MGP Finance Co-Issuer, Inc. (“MGP Co-Issuer” and, together with MGP OP, the “MGP Issuers”), consisting of (i) the 5.625% Senior Notes due 2024 issued pursuant to the indenture, dated as of April 20, 2016, (ii) the 4.625% Senior Notes due 2025 issued pursuant to the indenture, dated as of June

5, 2020, (iii) the 4.500% Senior Notes due 2026 issued pursuant to the indenture, dated as of August 12, 2016, (iv) the 5.750% Senior Notes due 2027 issued pursuant to the indenture, dated as of January 25, 2019, (v) the 4.500% Senior Notes due 2028 issued pursuant to the indenture, dated as of September 21, 2017, and (vi) the 3.875% Senior Notes due 2029 issued pursuant to the indenture, dated as of November 19, 2020, in each case, as amended or supplemented as of the date hereof, among the MGP Issuers and U.S. Bank National Association, as trustee (the “MGP Trustee”).

“MGP Transactions” refer collectively to a series of transactions pursuant to the MGP Master Transaction Agreement between us, MGP and MGM and the other parties thereto in connection with our acquisition of MGP on April 29, 2022, as contemplated by the MGP Master Transaction Agreement, including the MGM Tax Protection Agreement and the MGM Master Lease.

“Mirage Lease” refers to the lease agreement with Hard Rock for the Mirage, located in Las Vegas, Nevada, as amended from time to time.

“November 2019 Notes” refer collectively to (i) the \$1.25 billion aggregate principal amount of 4.250% senior unsecured notes due 2026, and (ii) the \$1.0 billion aggregate principal amount of 4.625% senior unsecured notes due 2029, in each case issued by VICI LP and VICI Note Co. Inc., as Co-Issuer, in November 2019.

“Partner Property Growth Fund” refers to certain arrangements with certain tenants relating to our funding of “same-store” capital improvements, including redevelopment, new construction projects and other property improvements, in exchange for increased rent pursuant to the terms of our existing Lease Agreements with such tenants.

“PENN Entertainment” refers to PENN Entertainment, Inc., a Pennsylvania corporation, and, as the context requires, its subsidiaries.

“PENN Entertainment Leases” refer collectively to the Margaritaville Lease and the Greektown Lease, unless the context otherwise requires.

“PURE Canadian Gaming” refers to PURE Canadian Gaming, Corp., an Alberta corporation, and, as the context requires, its subsidiaries.

“PURE Master Lease” refers to the lease agreement for the (i) PURE Casino Edmonton located in Edmonton, Alberta, (ii) PURE Casino Yellowhead located in Edmonton, Alberta, (iii) PURE Casino Calgary located in Calgary, Alberta and (iv) PURE Casino Lethbridge located in Lethbridge, Alberta (collectively, the “PURE Portfolio”), as amended from time to time.

“Revolving Credit Facility” refers to the four-year unsecured revolving credit facility of VICI LP provided under the Credit Agreement entered into in February 2022, as amended from time to time.

“Secured Revolving Credit Facility” refers to the five-year first lien revolving credit facility entered into by VICI PropCo in December 2017, as amended, which was terminated on February 8, 2022.

“Seminole Hard Rock” refers to Seminole Hard Rock Entertainment, Inc.

“Senior Unsecured Notes” refer collectively to the November 2019 Notes, the February 2020 Notes, the April 2022 Notes, the Exchange Notes and the MGP OP Notes.

“Southern Indiana Lease” refers to the lease agreement with EBCI for the Caesars Southern Indiana Casino and Hotel, located in Elizabeth, Indiana (“Caesars Southern Indiana”), as amended from time to time.

“Term Loan B Facility” refers to the seven-year senior secured first lien term loan B facility entered into by VICI PropCo in December 2017, as amended from time to time, which was repaid in full on September 15, 2021.

“Venetian Acquisition” refers to our acquisition of the Venetian Resort, with Apollo, which closed on February 23, 2022.

“Venetian Lease” refers to the lease agreement for the Venetian Resort Las Vegas and Venetian Expo, located in Las Vegas, Nevada (the “Venetian Resort”), as amended from time to time.

“Venetian Tenant” refers to an affiliate of certain funds managed by affiliates of Apollo.

“VICI Golf” refers to VICI Golf LLC, a Delaware limited liability company that is the owner of our golf business.

“VICI Issuers” refers to VICI Properties L.P., a Delaware limited partnership and VICI Note Co. Inc., a Delaware corporation.

“VICI LP” refers to VICI Properties L.P., a Delaware limited partnership and a wholly owned subsidiary of VICI OP.

“VICI OP” refers to VICI Properties OP LLC, a Delaware limited liability company and a consolidated subsidiary of VICI, which serves as our operating partnership.

“VICI OP Units” refer to limited liability company interests in VICI OP.

“VICI PropCo” refers to VICI Properties I LLC, a Delaware limited liability company and an indirect wholly owned subsidiary of VICI.

Summary of Risk Factors

Our business is subject to a number of risks, including risks that may prevent us from achieving our business objectives or may adversely affect our business, financial condition, liquidity, results of operations and prospects. These risks are discussed more fully in Item 1A. Risk Factors. These risks include, but are not limited to, the following:

Risks Related to Our Business and Operations

- We are and will always be significantly dependent on our tenants for substantially all of our revenues, and an event that has a material adverse effect on any of our significant tenants’ businesses, financial condition, liquidity, results of operations or prospects could have a material adverse effect on our business, financial condition, liquidity, results of operations and prospects;
- Because a concentrated portion of our revenues are generated from the Las Vegas Strip, we are subject to greater risks than a company that is more geographically diversified;
- Our significant tenants and their subsidiaries are required to pay a significant portion of their cash flow from operations to us pursuant to, and subject to the terms and conditions of, our respective Lease Agreements and loan and other agreements with them. These lease payments, as well as interest payments on their outstanding indebtedness, could adversely affect our significant tenants’ business and financial condition, as well as their ability to satisfy their contractual payment obligations to us;
- We are dependent on the gaming industry and may be susceptible to the risks associated with it, including changes in consumer behavior and discretionary spending as a result of an economic slowdown, increased inflation, rising interest rates, or otherwise, which could materially and adversely affect our business, financial condition, liquidity, results of operations and prospects;
- We and our tenants face extensive regulation from gaming and other regulatory authorities, and our charter provides that any of our shares held by investors who are found to be unsuitable by state gaming regulatory authorities are subject to redemption;
- Our pursuit of investments in, and acquisitions of, experiential assets and other strategic opportunities may be unsuccessful or fail to meet our expectations, and we may not identify all potential costs and liabilities in connection with our acquisition of such properties;
- Required regulatory approvals can delay or prohibit transfers of our gaming properties or the consummation of gaming-related transactions, which could result in periods in which we are unable to receive rent related to, or otherwise realize the benefits of, such transactions, which may have a material adverse effect on our business, financial condition, liquidity, results of operations and prospects;
- Our long-term, triple-net leases may not result in fair market lease rates over time, which could negatively impact our results of operations and cash flows and reduce the amount of funds available to make distributions to stockholders;
- Our tenants may choose not to renew the Lease Agreements;
- We may not be able to purchase properties pursuant to our rights under certain agreements, including put-call and right of first refusal agreements and right of first offer agreements, if we are unable to obtain additional financing. In addition, pursuant to one such agreement, we may be forced to dispose of Harrah’s Las Vegas, possibly on disadvantageous terms;
- The bankruptcy or insolvency of any tenant, borrower or guarantor could result in the termination of the Lease Agreements, the related guarantees or loan agreements and certain Lease Agreements being re-characterized as a disguised financing transactions, resulting in material losses to us;
- We may sell or divest different properties or assets after an evaluation of our portfolio of assets. Such sales or divestitures could affect our costs, revenues, results of operations, financial condition and liquidity;
- Our properties and the properties securing our loans are subject to risks from climate change, natural disasters, such as earthquakes, hurricanes and other extreme weather conditions, and terrorist attacks or other acts of violence, the occurrence of which may adversely affect our business, financial condition, liquidity and results of operations and prospects;
- We are subject to additional risks due to the location of properties that we own outside the United States;
- We face risks associated with cybersecurity incidents and other significant disruptions of our information technology (IT) networks and related systems or those IT networks and systems of third parties;

- The market price and trading volume of shares of our common stock may be volatile;

Risks Related to our Indebtedness and Financing

- We have a substantial amount of indebtedness, and expect to incur additional indebtedness in the future. Our indebtedness exposes us to the risk of default under our debt obligations, increases the risks associated with a downturn in our business or in the businesses of our tenants, and requires us to use a significant portion of our cash to service our debt obligations;
- Disruption in the capital and credit markets may adversely affect our ability to access external financings for our growth and ongoing debt service requirements;
- Future incurrences of debt and/or issuance of preferred equity securities could adversely affect the market price of our common stock;

Risks Related to our Status as a REIT

- We may incur adverse tax consequences if we have failed or fail, to qualify as a REIT for U.S. federal income tax purposes;
- Qualification to be taxed as a REIT involves highly technical and complex provisions of the Code, and violations of these provisions could jeopardize our REIT qualification;
- The cash available for distribution to stockholders may not be sufficient to pay dividends at expected levels, nor can we make assurances of our ability to make distributions in the future. We may use borrowed funds to make distributions;

Risks Related to Our Organizational Structure

- Our charter and bylaws contain provisions that may delay, defer or prevent an acquisition of our common stock or a change in control; and
- Certain provisions of Maryland law may limit the ability of a third party to acquire control of us.

ITEM 1. Business

We are a Maryland corporation that is primarily engaged in the business of owning and acquiring gaming, hospitality and entertainment destinations, subject to long-term triple net leases. Our geographically diverse portfolio currently consists of 49 gaming facilities in the United States and Canada, including Caesars Palace Las Vegas, MGM Grand and the Venetian Resort, three of the most iconic entertainment facilities on the Las Vegas Strip. Our entertainment facilities are leased to leading brands that seek to drive consumer loyalty and value with guests through superior services, experiences, products and continuous innovation. Across over 124 million square feet, our well-maintained properties are currently located across urban, destination and drive-to markets in fifteen states and Canada, contain approximately 59,300 hotel rooms and feature over 450 restaurants, bars, nightclubs and sportsbooks.

Our portfolio also includes certain real estate loan investments, most of which we have originated for strategic reasons in connection with transactions that may provide the potential to convert our investment into the ownership of certain of the underlying real estate in the future. In addition, we own approximately 34 acres of undeveloped or underdeveloped land on and adjacent to the Las Vegas Strip that is leased to Caesars, which we may look to monetize as appropriate. We also own four championship golf courses located near certain of our properties, two of which are in close proximity to the Las Vegas Strip.

We lease our properties to subsidiaries of, or entities managed by, Apollo, Caesars, Century Casinos, CNB, EBCI, Foundation Gaming, JACK Entertainment, MGM, PENN Entertainment, PURE Canadian Gaming and Seminole Hard Rock, with Caesars and MGM being our largest tenants. We believe we have a mutually beneficial relationship with each of our tenants, all of which are leading owners and operators of gaming, entertainment and leisure properties. Our long-term triple-net Lease Agreements with our tenants provide us with a highly predictable revenue stream with embedded growth potential. We believe our geographic diversification limits the effect of changes in any one market on our overall performance. We are focused on driving long-term total returns through managing experiential asset growth and allocating capital diligently, maintaining a highly productive tenant base, and optimizing our capital structure to support external growth. As a growth focused public real estate investment trust with long-term investments, we expect our relationship with our partners will position us for the acquisition of additional properties across leisure and hospitality over the long-term.

Our portfolio is competitively positioned and well-maintained. Pursuant to the terms of the Lease Agreements, which require our tenants to invest in our properties, and in line with our tenants' commitment to build guest loyalty, we anticipate our tenants will continue to make strategic value-enhancing investments in our properties over time, helping to maintain their competitive position. Our long-term triple-net leases provide our tenants with complete control over management at our leased properties, including sole responsibility for all operations and related expenses, including property taxes, insurance and maintenance, repair, improvement and other capital expenditures, as well as over the implementation of environmental sustainability and other initiatives. Given our scale and deep industry knowledge, we believe we are well-positioned to execute highly complementary single-asset and portfolio acquisitions, as well as other investments, to augment growth as market conditions allow, with a focus on disciplined capital allocation.

We conduct our operations as a real estate investment trust ("REIT") for U.S. federal income tax purposes. We generally will not be subject to U.S. federal income taxes on our taxable income to the extent that we annually distribute all of our net taxable income to stockholders and maintain our qualification as a REIT. We believe VICI's election of REIT status, combined with the income generation from the Lease Agreements and loans, will enhance our ability to make distributions to our stockholders, providing investors with current income as well as long-term growth, subject to the macroeconomic environment, other global events and market conditions more broadly. We conduct our real property business through VICI OP and our golf course business through a taxable REIT subsidiary (a "TRS"), VICI Golf.

Our Competitive Strengths

We believe the following strengths effectively position us to execute our business and growth strategies:

- **Leading portfolio of high-quality experiential gaming, hospitality, entertainment and leisure assets.** Our portfolio features world renowned assets on the Las Vegas Strip and market-leading urban, destination and regional properties with significant scale. Our properties are well-maintained and leased to leading brands that seek to drive loyalty and value with guests through superior service and products and continuous innovation. Our portfolio benefits from its strong mix of demand generators, including casinos, guest rooms, restaurants, entertainment facilities, bars and nightclubs and convention space. We believe our properties are generally well-insulated from incremental competition as a result of high replacement costs, as well as regulatory restrictions and long-lead times for new development. The high quality of our properties appeals to a broad base of customers, stimulating traffic and visitation.

Our portfolio is anchored by our Las Vegas properties, including Caesars Palace Las Vegas, MGM Grand and the Venetian Resort, which are located on the Las Vegas Strip. We believe Las Vegas is historically a market characterized by steady economic growth and high consumer and business demand with limited new supply. Our Las Vegas properties, which are among the most iconic entertainment facilities in Las Vegas, feature gaming entertainment, large-scale hotels, extensive food and beverage options, state-of-the-art convention facilities, retail outlets and entertainment showrooms.

Our portfolio also includes market-leading regional resorts and destinations that we believe are benefiting from significant invested capital and positive industry trends and performance over recent years. The regional properties we own include award-winning casinos, hotels and entertainment facilities that are generally market leaders within their respective regions.

Under the terms of the Lease Agreements, our tenants are required to continue to invest in our properties, which we believe enhances the value of our properties and maintains their competitive market position.

- ***Our properties feature diversified sources of revenue on both a business and geographic basis.*** Our portfolio includes 49 geographically diverse casino resorts that serve numerous Metropolitan Statistical Areas (“MSAs”) in the United States and Canada. This diversity reduces our exposure to adverse events that may affect any single market. This also allows our tenants with operations across multiple resorts and geographies to derive revenue streams from an economically diverse set of customers and services to such customers. These services include gaming, food and beverage, entertainment, hospitality and other sources of revenue. We believe that this geographic diversity and the diversity of revenue sources that our tenants derive from our leased properties improves the stability of our rental revenue.
- ***Our long-term Lease Agreements provide a highly predictable base level of rent with embedded growth.*** Our properties are 100% occupied pursuant to our long-term triple-net Lease Agreements by subsidiaries of, or entities managed by, Apollo, Caesars, Century Casinos, CNB, EBCI, Foundation Gaming, JACK Entertainment, MGM, PENN Entertainment, PURE Canadian Gaming and Seminole Hard Rock, which provide us with a predictable level of rental revenue to support future cash distributions to our stockholders. Our Lease Agreements are generally long-term in nature with initial terms ranging from 15 to 30 years and are structured with several tenant renewal options extending the term of the lease for another 5 to 30 years. All of our Lease Agreements provide for annual base rent escalations which range from 1% in the earlier years to the greater of 2% or CPI in the later years, with certain of our leases providing for a cap with respect to the maximum CPI-based increase.

All of our casino resort properties are established assets, in most cases with extensive operating histories. Based on historical performance of the properties, we expect that the properties will continue to generate sufficient revenues for our tenants to pay to us all rent due under the Lease Agreements.

- ***Strong relationships with the operators of our properties and existing agreements provide for visible growth.*** We believe our relationships with the operators of our properties, including our contractual agreements with them and their applicable subsidiaries, will continue to drive significant benefits and mutual alignment of strategic interests in the future. We have entered into several right of first refusal, right of first offer and put-call agreements, as well as other strategic arrangements, including our Partner Property Growth Fund, which we believe provide the opportunity for significant embedded growth as we pursue our future strategic objectives.
- ***Portfolio of strategic loans with leading experiential operators.*** We have entered into strategic financing relationships with market-leading experiential brand operators such as Great Wolf Resorts Inc. (“Great Wolf”), a leading operator of family-oriented indoor waterparks, Cabot, an owner, developer and operator of world-class destination golf resorts and communities, and Canyon Ranch, a leading pioneer in integrative wellness. We believe these relationships may lead to additional mutually beneficial growth opportunities with these industry-leading experiential operators in the future. Furthermore, certain of these financing arrangements provide the potential to convert our investment into ownership of certain of the underlying real estate in the future.
- ***The payment obligations of our tenants are guaranteed by their parent entities, as applicable.*** All of our existing properties are leased to subsidiaries of, or entities managed by, Apollo, Caesars, Century Casinos, CNB, EBCI, Foundation Gaming, JACK Entertainment, MGM, PENN Entertainment, PURE Canadian Gaming and Seminole Hard Rock, substantially all of which guarantee the payment obligations of the respective tenants under their respective leases. The Venetian Tenant’s obligations under the Venetian Lease are not guaranteed by Apollo or any of its affiliates; however, the Venetian Lease does contain certain credit enhancements, which require the Venetian Tenant to

provide a letter of credit to secure rent, real estate taxes and assessments and insurance obligations of the Venetian Tenant for a certain period of time if the operating results from the Venetian Resort do not meet certain thresholds.

In addition to the properties leased from us, certain of our tenants operate numerous other casino resorts, collectively comprising a recognized portfolio of brands in the United States and Canada.

- ***An experienced management team with deep real estate and industry experience.*** We have an experienced and independent management team that has been actively engaged in the leadership, acquisition and investment aspects of the hospitality, gaming, entertainment and real estate industries throughout their careers. Our Chief Executive Officer, Edward Pitoniak, and President and Chief Operating Officer, John Payne, are industry veterans with an average of over 30 years of experience in the REIT, gaming and experiential real estate industries, during which time they were able to drive controlled growth and diversification of significant real estate and gaming portfolios. Mr. Pitoniak's prior service as an independent board member of multiple public companies provides him with a unique and meaningful management perspective and enables him to work with our independent board of directors as a trusted steward of our extensive portfolio. Our Chief Financial Officer and General Counsel have an average of over 20 years of experience in the REIT, real estate and hospitality industries and bring significant leadership and expertise to our team across capital markets, corporate finance, acquisitions, risk management and corporate governance.
- ***A diverse and independent board of directors with robust business and corporate governance experience.*** Our diverse and independent board of directors, which is made up of highly skilled and seasoned real estate, gaming, hospitality, consumer products and corporate professionals, was originally established to ensure no overlap between our tenants and the companies with which our directors are affiliated and has continued to improve and mature since our formation in 2017. For example, since formation we have increased diversity by adding three independent, female directors to our board. As of December 31, 2022, 50% of our independent directors are women, one of whom is racially diverse. In addition, 50% of our board of director leaders (comprised of the Chairs of the board of directors and each committee) are women. Robust corporate governance in the best interests of our stockholders is of central importance to the management of our company, as we have a separate, independent Chair of the board of directors, all members of our board except for our Chief Executive Officer are independent, and all members of our audit committee qualify as an "audit committee financial expert" as defined by the SEC. Directors are elected in uncontested elections by the affirmative vote of a majority of the votes cast on an annual basis, and stockholder approval is required prior to, or in certain circumstances within twelve months following, the adoption by our board of a stockholder rights plan.

Our Properties

Current Portfolio

The following tables summarize our current portfolio of properties which are diversified across a range of primary uses, including gaming, hotel, convention, dining, entertainment, retail, golf course and other resort amenities and activities.

MSA / Property	Location	Approx. Casino Sq. Ft. (000's)	Approx. Gaming Units	Hotel Rooms	Lease Agreement
Current Portfolio - Casinos					
Las Vegas—Destination Gaming					
Caesars Palace Las Vegas	Las Vegas, NV	124	1,580	3,970	Caesars Las Vegas
Excalibur	Las Vegas, NV	93	936	3,981	MGM
Harrah's Las Vegas	Las Vegas, NV	89	1,130	2,540	Caesars Las Vegas
Luxor	Las Vegas, NV	101	864	4,397	MGM
Mandalay Bay	Las Vegas, NV	152	1,059	4,750	MGM
MGM Grand	Las Vegas, NV	169	1,367	6,071	MGM
The Mirage	Las Vegas, NV	94	906	3,044	Mirage
New York - New York/The Park	Las Vegas, NV	81	947	2,024	MGM
Park MGM	Las Vegas, NV	66	810	2,898	MGM
Venetian Resort	Las Vegas, NV	225	1,690	7,100	Venetian
Boston					
MGM Springfield	Springfield, MA	106	1,623	240	MGM

MSA / Property	Location	Approx. Casino Sq. Ft. (000's)	Approx. Gaming Units	Hotel Rooms	Lease Agreement
Calgary					
PURE Casino Calgary	Calgary, AB	22	871	N/A	PURE
PURE Casino Lethbridge	Lethbridge, AB	13	451	N/A	PURE
Chicago					
Harrah's Joliet ⁽¹⁾	Joliet, IL	39	900	200	Joliet
Horseshoe Hammond	Hammond, IN	117	2,090	N/A	Caesars Regional
Cincinnati					
Hard Rock Cincinnati	Cincinnati, OH	100	1,900	N/A	Hard Rock Cincinnati
Cleveland					
JACK Cleveland	Cleveland, OH	96	1,450	N/A	JACK
JACK Thistledown Racino	North Randall, OH	57	1,480	N/A	JACK
MGM Northfield Park	Northfield, OH	73	1,669	N/A	MGM
Dallas					
Horseshoe Bossier City	Bossier City, LA	28	1,120	600	Caesars Regional
Margaritaville Resort Casino	Bossier City, LA	30	1,036	395	Margaritaville
Detroit					
Hollywood Casino at Greektown	Detroit, MI	100	2,219	400	Greektown
MGM Grand Detroit	Detroit, MI	147	2,957	400	MGM
Edmonton					
PURE Casino Edmonton	Edmonton, AB	72	895	N/A	PURE
PURE Casino Yellowhead	Edmonton, AB	75	792	N/A	PURE
Jackson					
WaterView	Vicksburg, MS	37	660	122	Foundation
Kansas City					
Harrah's North Kansas City	North Kansas City, MO	60	1,020	390	Caesars Regional
Laughlin					
Harrah's Laughlin	Laughlin, NV	58	800	1,510	Caesars Regional
Louisville					
Caesars Southern Indiana	Elizabeth, IN	74	1,190	500	EBCI
Memphis					
Fitz	Robinsonville, MS	39	873	506	Foundation
Gold Strike Tunica	Robinsonville, MS	57	1,143	1,109	Gold Strike
Horseshoe Tunica	Robinsonville, MS	63	1,070	510	Caesars Regional
Nashville					
Harrah's Metropolis	Metropolis, IL	24	670	210	Caesars Regional
New Orleans					
Beau Rivage	Biloxi, MS	85	1,591	1,740	MGM
Harrah's Gulf Coast	Biloxi, MS	32	630	500	Caesars Regional
Harrah's New Orleans	New Orleans, LA	104	1,380	450	Caesars Regional
New York					
Empire City	Yonkers, NY	137	4,696	N/A	MGM
Omaha					
Harrah's Council Bluffs	Council Bluffs, IA	23	530	250	Caesars Regional
Horseshoe Council Bluffs	Council Bluffs, IA	55	1,390	150	Caesars Regional

MSA / Property	Location	Approx. Casino Sq. Ft. (000's)	Approx. Gaming Units	Hotel Rooms	Lease Agreement
Pittsburgh					
Mountaineer Casino Resort & Racetrack	New Cumberland, WV	72	1,145	357	Century Portfolio
Philadelphia					
Borgata	Atlantic City, NJ	213	2,979	2,767	MGM
Caesars Atlantic City	Atlantic City, NJ	113	2,030	1,150	Caesars Regional
Harrah's Atlantic City	Atlantic City, NJ	150	1,990	2,590	Caesars Regional
Harrah's Philadelphia	Chester, PA	100	1,770	N/A	Caesars Regional
Reno / Sacramento					
Harrah's Lake Tahoe	Stateline, NV	54	780	510	Caesars Regional
Harvey's Lake Tahoe	Lake Tahoe, NV	51	630	740	Caesars Regional
St. Louis					
Century Casino Cape Girardeau	Cape Girardeau, MO	42	862	N/A	Century Portfolio
Century Casino Caruthersville	Caruthersville, MO	21	534	N/A	Century Portfolio
Washington D.C.					
MGM National Harbor	Prince George's County, MD	150	2,281	308	MGM
Total Casinos	49	4,083	65,386	59,379	

Current Portfolio - Golf Courses

Las Vegas					
Cascata Golf Course	Boulder City, NV	N/A	N/A	N/A	N/A
Rio Secco Golf Course	Henderson, NV	N/A	N/A	N/A	N/A
New Orleans					
Grand Bear Golf Course	Saucier, MS	N/A	N/A	N/A	N/A
Louisville					
Chariot Run Golf Course	Laconia, IN	N/A	N/A	N/A	N/A
Total Golf Courses	4	—	—	—	
Total	53	4,083	65,386	59,379	

(1) Owned by Harrah's Joliet Landco LLC, a joint venture of which VICI PropCo is the 80% owner and the managing member.

Our Lease Agreements

We derive a substantial majority of our revenues from rental revenue from the Lease Agreements for our properties, each of which are “triple-net” leases, pursuant to which the tenant bears responsibility for all property costs and expenses associated with ongoing maintenance and operation, including utilities, property tax and insurance. For an overview of the provisions of our Lease Agreements and the tenant capital expenditure requirements under our Lease Agreements, refer to [Note 4 - Real Estate Portfolio](#) included in our Financial Statements within this Annual Report on Form 10-K.

Our Loan Agreements

Our loan portfolio consists of certain real estate debt investments, most of which we have originated for strategic reasons, and may provide the potential to convert our investment into the ownership of certain of the underlying real estate in a future period. For an overview of the provisions of our loan agreements, refer to [Note 4 - Real Estate Portfolio](#) included in our Financial Statements within this Annual Report on Form 10-K.

Our Embedded Growth Pipeline

We have entered into several put-call, call right, right of first refusal and right of first offer agreements, as well as other strategic arrangements, which we believe provide the opportunity for significant embedded growth as we pursue our future strategic objectives. Each of the transactions contemplated by the following agreements remains subject to the terms and conditions of the applicable agreements, including with respect to due diligence, applicable regulatory approvals and customary closing conditions.

Put-Call Agreements

- **Caesars Indianapolis Put-Call.** We have a put-call right agreement with Caesars (the “Caesars Indianapolis Put-Call Agreement”) with respect to two gaming facilities in Indiana, Harrah’s Hoosier Park and Horseshoe Indianapolis (together, the “Indianapolis Properties”), whereby (i) we have the right to acquire all of the land and real estate assets associated with the Indianapolis Properties at a price equal to 13.0x the initial annual rent of each facility (determined as provided below), and to simultaneously lease back each such property to a subsidiary of Caesars for initial annual rent equal to the property’s trailing four quarters EBITDA at the time of acquisition divided by 1.3 (i.e., the initial annual rent will be set at 1.3x rent coverage) and (ii) Caesars will have the right to require us to acquire the Indianapolis Properties at a price equal to 12.5x the initial annual rent of each facility, and to simultaneously lease back each such Indianapolis Property to a subsidiary of Caesars for initial annual rent equal to the property’s trailing four quarters EBITDA at the time of acquisition divided by 1.3 (i.e., the initial annual rent will be set at 1.3x rent coverage). As of January 1, 2022 and ending on December 31, 2024, either party is able to trigger its respective put or call, as applicable. The Caesars Indianapolis Put-Call Agreement provides that the leaseback of the Indianapolis Properties will be implemented through the addition of the Indianapolis Properties to the Regional Master Lease Agreement.
- **Caesars Forum Put-Call.** We have a put-call agreement with Caesars with respect to the Caesars Forum Convention Center (the “A&R Convention Center Put-Call Agreement”). The A&R Convention Center Put-Call Agreement provides for (i) a call right in our favor, which, if exercised, would result in the sale by Caesars to us and simultaneous leaseback by us to Caesars of the Caesars Forum Convention Center (the “Convention Center Call Right”), at a price equal to 13.0x the initial annual rent for Caesars Forum Convention Center as proposed by Caesars (which shall be between \$25.0 million and \$35.0 million), exercisable by us from September 18, 2025 (the scheduled maturity date of the Forum Convention Center Mortgage Loan) until December 31, 2026, (ii) a put right in favor of Caesars, which, if exercised, would result in the sale by Caesars to us and simultaneous leaseback by us to Caesars of the Caesars Forum Convention Center (the “Convention Center Put Right”) at a price equal to 13.0x the initial annual rent for the Caesars Forum Convention Center as proposed by Caesars (which shall be between \$25.0 million and \$35.0 million), exercisable by Caesars between January 1, 2024 and December 31, 2024, and (iii) if there is an event of default under the Forum Convention Center Mortgage Loan, the Convention Center Put Right will not be exercisable and we, at our option, may accelerate the Convention Center Call Right so that it is exercisable from the date of such event of default until December 31, 2026 (in addition to any other remedies available to us in connection with such event of default).

The A&R Convention Center Put-Call Agreement also provides for, if Caesars exercises the Convention Center Put Right and, among other things, the sale of the Caesars Forum Convention Center to us does not close for certain reasons more particularly described in the A&R Convention Center Put-Call Agreement, a repurchase right in favor of Caesars, which, if exercised, would result in the sale of the Harrah’s Las Vegas property by us to Caesars (the “HLV Repurchase Right”), exercisable by Caesars during a one-year period commencing on the date upon which the closing under the Convention Center Put Right transaction does not occur and ending on the day immediately preceding the one-year anniversary thereof for a price equal to 13.0x the rent of the Harrah’s Las Vegas property for the most recently ended annual period for which Caesars’ financial statements are available as of Caesars’ election to exercise the HLV Repurchase Right.

Call Right Agreements

- **Canyon Ranch Austin Call Right.** We entered into a call right agreement with Canyon Ranch pursuant to which we will have the right to acquire the real estate assets of Canyon Ranch Austin for up to 24 months following stabilization (with the Canyon Ranch Austin Loan balance being settled in connection with the exercise of such call right), which transaction will be structured as a sale leaseback (with the simultaneous entry into a triple-net lease with Canyon Ranch that will have an initial term of 25 years, with eight 5-year tenant renewal options).
- **BigShots Call Right.** We entered into a right of first offer and call right agreement (the “BigShots ROFO and Call Right Agreement”) with an affiliate of BigShots Golf (as defined below), pursuant to which we have a call right to

acquire the real estate assets associated with any BigShots Golf facility financed by us, which transactions will be structured as a sale leaseback.

Right of First Refusal (“ROFR”) and Right of First Offer (“ROFO”) Agreements

- ***Las Vegas Strip Assets ROFR.*** We have a ROFR agreement with Caesars in connection with the consummation of the Caesars Transaction (the “Las Vegas Strip ROFR Agreement”), pursuant to which we have the first right, with respect to the first two Las Vegas Strip assets described below that Caesars proposes to sell, whether pursuant to a sale leaseback or a sale of the real estate and operations (a “WholeCo sale”), to a third party, to acquire any such asset (it being understood that we will have the opportunity to find an operating company should Caesars elect to pursue a WholeCo sale). The Las Vegas Strip assets subject to the Las Vegas Strip ROFR Agreement are the land and real estate assets associated (i) with respect to the first such asset subject to the Las Vegas Strip ROFR Agreement, the Flamingo Las Vegas, Paris Las Vegas, Planet Hollywood and Bally’s Las Vegas gaming facilities, and (ii) with respect to the second such asset subject to the Las Vegas Strip ROFR Agreement, the foregoing assets still unsold plus The LINQ gaming facility. If we enter into a sale leaseback transaction with Caesars with respect to any of these facilities, the leaseback may be implemented through the addition of such properties to the Las Vegas Master Lease Agreement.
- ***Horseshoe Baltimore ROFR.*** We have a ROFR agreement with Caesars pursuant to which we have the first right to enter into a sale leaseback transaction with respect to the land and real estate assets associated with the Horseshoe Baltimore gaming facility (subject to any consent required from Caesars’ joint venture partners with respect to this asset).
- ***Caesars Virginia Development ROFR.*** We have a ROFR agreement with EBCI and Caesars pursuant to which we have the first right to enter into a sale leaseback transaction with respect to the real property associated with the development of a new casino resort in Danville, Virginia.
- ***Canyon Ranch ROFO.*** We have a ROFO agreement with Canyon Ranch with respect to future financing opportunities for Canyon Ranch and certain of its affiliates for the funding of certain facilities (including Canyon Ranch Austin, Canyon Ranch Tucson and Canyon Ranch Lenox, and any other fee owned Canyon Ranch branded wellness resort), until the date that is the earlier of five years from commencement of the Canyon Ranch Austin lease (to the extent applicable) and the date that neither VICI nor any of its affiliates are landlord under such lease, subject to certain specified terms, conditions and exceptions.
- ***BigShots ROFO.*** Pursuant to the BigShots ROFO and Call Right Agreement, for so long as the BigShots Loan (as defined below) remains outstanding and we continue to hold a majority interest therein, we will have a ROFO on any multi-site mortgage, mezzanine, preferred equity, or other similar financing that is treated as debt to be obtained by BigShots Golf (or any of its affiliates) in connection with the development of BigShots Golf, subject to additional terms and conditions.

Other Embedded Growth Agreements

- ***Canyon Ranch Purchase Option.*** We entered into a purchase option agreement with Canyon Ranch, pursuant to which we have an option to acquire the real estate assets associated with the existing Canyon Ranch Tucson and Canyon Ranch Lenox properties, which transactions will be structured as sale leasebacks, in each case solely to the extent Canyon Ranch elects to sell either or both such properties in a sale leaseback structure for a specific period of time, subject to certain conditions.

Our Partner Property Growth Fund

As part of our ongoing dialogue with our tenants, we continually seek opportunities to further our long-term partnerships and pursue our respective strategic objectives. We have entered into certain arrangements, which we collectively refer to as the Partner Property Growth Fund, with certain tenants relating to our funding of “same-store” capital improvements, including redevelopment, new construction projects and other property improvements, in exchange for increased rent pursuant to the terms of our existing Lease Agreements with such tenants (and subject to the specific terms and conditions included in any such agreement). Each of our Lease Agreements include provisions that provide a mechanism for us to pursue such opportunities. We continue to evaluate Partner Property Growth Fund opportunities with certain of our tenants from time to time and expect to pursue further investment as one component of our strategic growth plans, consistent with our aim to work collaboratively with such tenants to invest in growth opportunities and capital improvements that achieve mutually beneficial outcomes. Most recently, we committed to fund \$51.9 million for the construction of a land-based casino with a 38-room hotel tower at Century Casino Caruthersville, which will result in \$4.2 million of incremental annual rent under the Century Master Lease following completion of the projects. The following is a summary of our potential Partner Property Growth Fund opportunities:

- **Hard Rock-Mirage Redevelopment.** In connection with Hard Rock's acquisition of the operations of the Mirage from MGM (and our entry into a triple-net lease agreement with Hard Rock with respect to the land and real estate assets of the Mirage), we agreed with Hard Rock to negotiate definitive documentation providing us the opportunity to fund an up to \$1.5 billion redevelopment of the Mirage through our Partner Property Growth Fund if Hard Rock elects to seek third party financing for such redevelopment. The specific terms of the potential funding remain subject to ongoing discussion in connection with Hard Rock's broader planning of the potential redevelopment, as well as the negotiation of definitive documentation between us and Hard Rock, and there are no assurances that the redevelopment of the Hard Rock-Mirage will occur on the contemplated terms, including through our financing, or at all.
- **Venetian Resort.** In connection with the Venetian Acquisition, we entered into a Property Growth Fund Agreement ("Venetian PGFA") with the Venetian Tenant. Under the Venetian PGFA, we agreed to provide up to \$1.0 billion for various development and construction projects affecting the Venetian Resort to be identified by the Venetian Tenant and that satisfy certain criteria more particularly set forth in the Venetian PGFA, in consideration of additional incremental rent to be paid by the Venetian Tenant under the Venetian Lease Agreement and calculated in accordance with a formula set forth in the Venetian PGFA.

The benefits of the foregoing and any future Partner Property Growth Fund opportunities will be dependent upon independent decisions made by our tenants with respect to any capital improvement projects and the source of funds for such projects, as well as the total funding ultimately provided under such arrangements and there are no assurances that the foregoing and any future Partner Property Growth Fund opportunities will occur on the contemplated terms, including through our financing, or at all. See [Item 1A - "Risk Factors—Risks Related to Our Business and Operations"](#) for additional information.

Our Golf Courses

We own four championship golf courses located near certain of our properties, Rio Secco in Henderson, Nevada, Cascata in Boulder City, Nevada, Chariot Run in Laconia, Indiana and Grand Bear in Saucier, Mississippi (the "Golf Courses"). In addition, Rio Secco and Cascata are in close proximity to the Las Vegas Strip. These golf courses, which are operated by a third-party golf resort operator, CDN Golf Management Inc. ("CDN Golf"), an affiliate of Cabot, pursuant to a golf course management agreement, provide ancillary revenue and benefit from a use agreement entered into with Caesars, both of which agreements are described below.

- **Cabot Golf Course Management Agreement.** On October 1, 2022, we entered into a management agreement with CDN Golf, an affiliate of Cabot, a developer, owner and operator of world-class destination golf resorts and communities, pursuant to which CDN Golf manages our four Golf Courses. Pursuant to the management agreement, CDN Golf has assumed all day-to-day operations of the Golf Courses and the employees at each of the Golf Courses are employees of CDN Golf. We continue to own the Golf Courses within our TRS, VICI Golf. The management agreement has a term of 20 years with two five-year renewal options upon mutual agreement of Cabot and us, subject to certain early termination rights.
- **Golf Course Use Agreement.** Pursuant to a golf course use agreement (as amended, the "Golf Course Use Agreement"), Caesars is granted specific rights and privileges to the Golf Courses, including (i) preferred access to tee times for guests of Caesars casinos and/or hotels located within the same markets as the Golf Courses, (ii) preferred rates for guests of Caesars casinos and/or hotels located within the same markets as the Golf Courses, and (iii) availability for golf tournaments and events at preferred rates and discounts. As of December 31, 2022, current annual payments under the Golf Course Use Agreement are comprised of an approximately \$11.5 million annual membership fee, \$3.7 million of use fees and \$1.4 million of minimum rounds fees, subject to certain adjustments.

Our Relationship with Caesars and MGM

Caesars and MGM, our two largest tenants representing 43% and 36%, respectively, of our annualized rent as of December 31, 2022, are leading owners and operators of gaming, entertainment and leisure properties. Caesars and MGM maintain a diverse brand portfolio with a wide range of options that appeal to a variety of gaming, sports betting, travel and entertainment consumers.

To govern the ongoing relationship between us and Caesars and us and MGM, in addition to the applicable Lease Agreements, we have entered into various agreements with Caesars and MGM and/or their subsidiaries as described herein. The summaries presented herein are not complete and are qualified in their entirety by reference to the full text of the applicable agreements, certain of which are included as exhibits to this Annual Report on Form 10-K.

- **Caesars Guaranty.** Caesars has executed guaranties with respect to the Las Vegas Master Lease (the “Las Vegas Lease Guaranty”), the Regional Master Lease (the “Regional Lease Guaranty”) and the Joliet Lease (the “Joliet Lease Guaranty” and, together with the Las Vegas Lease Guaranty and the Regional Lease Guaranty, the “Caesars Guaranties”), guaranteeing the prompt and complete payment and performance in full of: (i) all monetary obligations of the tenants under the Caesars Leases, including all rent and other sums payable by the tenants under the Caesars Leases and any obligation to pay monetary damages in connection with any breach and to pay any indemnification obligations of the tenants under the Caesars Leases, (ii) the performance when due of all other covenants, agreements and requirements to be performed and satisfied by the tenants under the Caesars Leases, and (iii) all monetary obligations under the Golf Course Use Agreement.
- **MGM Guaranty.** MGM has executed a guaranty with respect to the MGM Master Lease and MGM Grand/Mandalay Bay Lease guaranteeing the prompt and complete payment and performance in full of all monetary obligations of the tenants under the MGM Master Lease and MGM Grand/Mandalay Bay Lease, including all rent and other sums payable by the tenants under the MGM Master Lease and MGM Grand/Mandalay Bay Lease and any obligation to pay monetary damages in connection with any breach and to pay any indemnification obligations of the tenants under the MGM Master Lease and MGM Grand/Mandalay Bay Lease and the performance when due of all other covenants, agreements and requirements to be performed and satisfied by the tenants under the MGM Master Lease and MGM Grand/Mandalay Bay Lease.
- **Caesars Tax Matters Agreement.** We have entered into a tax matters agreement (the “Tax Matters Agreement”), which addresses matters relating to the payment of taxes and entitlement to tax refunds by Caesars, Caesars Entertainment Operating Company, Inc. (“CEOC”), VICI LP and us, and allocates certain liabilities, including providing for certain covenants and indemnities, relating to the payment of such taxes, receipt of such refunds, and preparation of tax returns relating thereto. In general, the Tax Matters Agreement provides for the preparation and filing by Caesars of tax returns relating to CEOC and for the preparation and filing by us of tax returns relating to us and our operations. Under the Tax Matters Agreement, Caesars has agreed to indemnify us for any taxes allocated to CEOC that we are required to pay pursuant to our tax returns and we have agreed to indemnify Caesars for any taxes allocated to us that Caesars or CEOC is required to pay pursuant to a Caesars or CEOC tax return.

Under the Tax Matters Agreement, Caesars has agreed to indemnify us for taxes attributable to acts or omissions taken by Caesars and we have agreed to indemnify Caesars for taxes attributable to our acts or omissions, in each case that cause a failure of the transactions entered into as part of the Plan of Reorganization (as defined below) to qualify as tax-free under the Internal Revenue Code of 1986, as amended (the “Code”).

- **MGM Tax Protection Agreements.** We entered into the MGM Tax Protection Agreement pursuant to which VICI OP has agreed, subject to certain exceptions, for a period of 15 years following the closing of the Mergers (subject to early termination under certain circumstances), to indemnify MGM and certain of its subsidiaries (the “Protected Parties”) for certain tax liabilities resulting from (1) the sale, transfer, exchange or other disposition of a property owned directly or indirectly by MGP OP immediately prior to the closing date of the Mergers (each, a “Protected Property”), (2) a merger, consolidation, transfer of all assets of, or other significant transaction involving VICI OP pursuant to which the ownership interests of the Protected Parties in VICI OP are required to be exchanged in whole or in part for cash or other property, (3) the failure of VICI OP to maintain approximately \$8.5 billion of nonrecourse indebtedness allocable to MGM, which amount may be reduced over time in accordance with the MGM Tax Protection Agreement, and (4) the failure of VICI OP or VICI to comply with certain tax covenants that would impact the tax liabilities of the Protected Parties. In the event that VICI OP or VICI breaches restrictions in the MGM Tax Protection Agreement, VICI OP will be liable for grossed-up tax amounts associated with the income or gain recognized as a result of such breach. In addition, the MGM Grand/Mandalay Bay JV previously entered into a tax protection agreement with MGM with respect to built-in gain and debt maintenance related to MGM Grand Las Vegas and Mandalay Bay, which is effective through mid-2029, and by acquiring MGP in April 2022 and subsequently acquiring the remaining 49.9% interest in the MGM Grand/Mandalay Bay JV in January 2023, we bear any indemnity under this existing tax protection agreement.

Competition

We compete for real property investments with other REITs, gaming companies, investment companies, private equity firms, hedge funds, sovereign funds, lenders and other private investors. In addition, revenues from our properties pursuant to the Lease Agreements are dependent on the ability of our tenants and operators to compete with other gaming operators in their respective markets. The operators of our properties compete on a local, regional, national and international basis for customers. The gaming industry is characterized by a high degree of competition among a large number of participants, including riverboat casinos, dockside casinos, land-based casinos, video lottery, sweepstakes and poker machines not located in casinos, Native American gaming, emerging varieties of Internet gaming, sports betting and other forms of gaming in the United States.

As a landlord, we compete in the real estate market with numerous developers, owners and acquirors of properties. Some of our competitors may be significantly larger, have greater financial resources and lower costs of capital than we have, have greater economies of scale and have greater name recognition than we do. Increased competition will make it more challenging to identify and successfully capitalize on acquisition opportunities that meet our investment objectives. Our ability to compete is also impacted by national and local economic trends, availability of investment alternatives, availability and cost of capital, construction and renovation costs, existing laws and regulations, new legislation and population trends.

Human Capital Management

As of December 31, 2022, we employed 23 employees, all of which are full-time. All of our employees are employed at VICI LP in support of our primary business as a triple-net lease REIT and are primarily located at our corporate headquarters in New York, New York.

- **Corporate Culture and Engagement.** We are committed to creating and sustaining a positive work environment and corporate culture that fosters diversity and inclusion, and employee engagement, through the instillation of our core values, as well as competitive benefit programs, training and internal development opportunities, professional development reimbursement, and community service events. To assist in fulfilling that commitment, we measure our organizational culture, degree of inclusion and employee engagement through, among other things, an annual, independent third-party employee satisfaction survey, which provides management with insights regarding key issues and priorities to maintain and improve the health, well-being and satisfaction of our employees.
- **Board Oversight.** Our management reports to the compensation committee of the board of directors on a regular basis, as well as the full board of directors, as necessary, to periodically review our human capital management programs, including those relating to our diversity and inclusion efforts (led by our Diversity and Inclusion Task Force formed in 2020), employee compensation and benefits, and related matters, such as training and recruiting, retention and hiring practices.
- **Diversity.** As of December 31, 2022, 43% of our directors (and 50% of our independent directors), 50% of our board of director leaders (comprised of the Chairs of the board of directors and each committee), 43% of our employees and 25% of our executive officers were female. In addition, 14% of our directors and 30% of our employees identified as a member of an ethnic and/or racial minority group.
- **Compensation and Benefits.** We offer a comprehensive employee benefits package, including a 401(k) plan, medical, dental and vision insurance, disability insurance, life insurance, paid maternity/paternity leave for birth and foster/adoption placements, and access to an employee assistance program, including mental health and wellness support services. We continually evaluate existing benefits and explore additional or new benefits to be responsive to our employee feedback and meaningfully enhance employee benefits.
- **Education, Training and Development.** We invest in employee education, training and development by conducting regular training programs to educate and advance our employees' understanding of concepts relevant to our business, as well as with respect to issues such as diversity and anti-harassment and other matters outlined in our Code of Business Conduct. We also encourage our employees to pursue professional development through external education and certifications through a broadly applicable and flexible professional development reimbursement policy.

Governmental Regulation and Licensing

The ownership, operation and management of gaming and racing facilities are subject to pervasive regulation. Each of our gaming and racing facilities is subject to regulation under the laws, rules, and regulations of the jurisdiction in which it is located. Gaming laws and regulations generally require gaming industry participants to:

- ensure that unsuitable individuals and organizations have no role in gaming operations;
- establish and maintain responsible accounting practices and procedures;
- maintain effective controls over their financial practices, including establishment of minimum procedures for internal fiscal affairs and the safeguarding of assets and revenues;
- maintain systems for reliable record keeping;
- file periodic reports with gaming regulators; and
- ensure that contracts and financial transactions are commercially reasonable, reflect fair market value and are arm's length transactions.

Gaming laws and regulations primarily impact our business in two respects: (1) our ownership of land and buildings in which gaming activities are operated by our tenants; and (2) the operations of our tenants as operators in the gaming industry. Further, many gaming and racing regulatory agencies in the jurisdictions in which our tenants operate require us and our affiliates to apply for and maintain a license as a key business entity or supplier because of our status as landlord.

Our business and the businesses of our tenants are also subject to various federal, state and local laws and regulations in addition to gaming regulations. These laws and regulations include, but are not limited to, restrictions and conditions concerning alcoholic beverages, environmental matters, labor and employees, anti-discrimination, health care, currency transactions, taxation, zoning and building codes and marketing and advertising. Such laws and regulations could change or could be interpreted differently in the future, or new laws and regulations could be enacted. Material changes, new laws or regulations, or material differences in interpretations by courts or governmental authorities could adversely affect our operating results.

- **Violations of Gaming Laws.** If we, our subsidiaries or the tenants of our properties violate applicable gaming laws, our gaming licenses could be limited, conditioned, suspended or revoked by gaming authorities, and we and any other persons involved could be subject to substantial fines. Further, a supervisor or conservator can be appointed by gaming authorities to operate our gaming properties, or in some jurisdictions, take title to our gaming assets in the jurisdiction, and under certain circumstances, earnings generated during such appointment could be forfeited to the applicable jurisdictions. Violations of laws in one jurisdiction could result in disciplinary action in other jurisdictions. Finally, the loss of our gaming licenses could result in an event of default under certain of our indebtedness, and cross-default provisions in our debt agreements could cause an event of default under one debt agreement to trigger an event of default under our other debt agreements. As a result, violations by us of applicable gaming laws could have a material adverse effect on us.
- **Review and Approval of Transactions.** Substantially all material loans, leases, sales of securities and similar financing transactions by us and our subsidiaries must be reported to and, in some cases, approved by certain gaming authorities. Neither we nor any of our subsidiaries may make a public offering of securities without the prior approval of certain gaming authorities. Changes in control through merger, consolidation, stock or asset acquisitions, management or consulting agreements, or otherwise are subject to receipt of prior approval of gaming authorities. Entities seeking to acquire control of us or one of our subsidiaries must satisfy gaming authorities with respect to a variety of stringent standards prior to assuming control.

Environmental Matters

Our properties are subject to environmental laws regulating, among other things, air emissions, wastewater discharges and the handling and disposal of wastes, including medical wastes. Certain of the properties we own utilize above or underground storage tanks to store heating oil for use at the properties. Other properties were built during the time that asbestos-containing building materials were routinely installed in residential and commercial structures. The Lease Agreements generally obligate our tenants to comply with applicable environmental laws and to indemnify us if their noncompliance results in losses or claims against us, and we expect that any future leases will include the same provisions for other operators. A tenant's failure to comply could result in fines and penalties or the requirement to undertake corrective actions which may result in significant costs to the operator and thus adversely affect their ability to meet their obligations to us.

Pursuant to federal, state and local environmental laws and regulations, a current or previous owner or operator of real property may be required to investigate, remove and/or remediate a release of hazardous substances or other regulated materials at, or emanating from, such property. Further, under certain circumstances, such owners or operators of real property may be held liable for property damage, personal injury and/or natural resource damage resulting from or arising in connection with such releases. Certain of these laws have been interpreted to be joint and several unless the harm is divisible and there is a reasonable basis for allocation of responsibility. We also may be liable under certain of these laws for damage that occurred prior to our ownership of a property or at a site where the current or previous operator of the property sent wastes for disposal. The failure to properly remediate a property may also adversely affect our ability to lease, sell or rent the property or to borrow funds using the property as collateral.

In connection with the ownership of our current properties, as well as properties to be acquired subject to pending or future transactions, we could be legally responsible for environmental liabilities or costs relating to a release of hazardous substances or other regulated materials at or emanating from such property. We are not aware of any environmental issues that are expected to have a material impact on the operations of any of our properties.

Sustainability

We continue to focus on developing our efforts relative to implementing and reporting on environmental sustainability efforts at our properties. We have implemented and continue to pursue tenant engagement initiatives designed to assist us in understanding the environmental impact of our leased properties and to gather environmental sustainability data in order to monitor sustainability metrics throughout our leased property portfolio. Our existing leased properties are leased pursuant to long-term triple-net leases, which provide our tenants with complete control over operations at our leased properties, including the implementation of environmental sustainability initiatives consistent with their business strategies and revenue objectives, and generally do not permit us to require the collection or reporting of environmental sustainability data (subject to relevant provisions in certain of our more recent leases and lease amendments). Although not contractually required, certain of our tenants report to us on, among other things, LEED certification, water and energy use, greenhouse gas emissions and waste diversion. In addition, we have implemented recording and reporting protocols at our Golf Courses through a third-party service provider to facilitate the monitoring of utility data at our Golf Courses in order to more fully understand the environmental impact of our operations, key drivers and trends with respect to utility usage at each of our courses. Pursuant to our management agreement with respect to the Golf Courses, we expect to work in partnership with CDN Golf to continue to implement sustainability initiatives at the Golf Courses and reduce the environmental impact of our Golf Courses. In 2022, we engaged an environmental consultant to evaluate climate change-related risks at each property and across our portfolio in alignment with the Task Force on Climate-Related Financial Disclosures (TCFD) guidelines and incorporated climate change-related risk into our enterprise risk management framework. Our Environmental Sustainability and Social Responsibility Task Force comprising employees across multiple professional levels, including our Chief Financial Officer and General Counsel, is responsible for our environmental sustainability initiatives, and reports to the Nominating and Governance Committee of our Board of Directors on a quarterly basis, and more frequently as necessary, with respect to environmental sustainability matters. Additionally, beginning in the first quarter of 2023, we engaged an external advisor to facilitate our continued enhancement of, among other things, our sustainability performance, our tenant and stakeholder engagement initiatives, and our related reporting (including pursuant to external disclosure frameworks and standards). In partnership with CDN Golf and with the assistance of our consultants and advisors, we expect that our performance assessment and the ongoing expansion of our monitoring and reporting functions will inform our ability to set meaningful performance and improvement targets with respect to the environmental impact of our operations in future years. Certain of our tenants at our leased properties, including Caesars and MGM, have also independently set sustainability-related targets with respect to their overall business and portfolio, which include our leased properties. We are committed to the improvement of environmental conditions through our business activities within the scope of our capabilities, and we periodically engage with key stakeholders with regard to environmental sustainability priorities, among other things.

Intellectual Property

Most of the properties within our portfolio are currently operated and promoted under trademarks and brand names not owned by us. In addition, properties that we may acquire in the future may be operated and promoted under these same trademarks and brand names, or under different trademarks and brand names we do not, or will not, own. During the term that our properties are managed by Apollo, Caesars, Century Casinos, CNB, EBCI, Foundation Gaming, JACK Entertainment, MGM, PENN Entertainment, PURE Canadian Gaming, Seminole Hard Rock and the Venetian Tenant, we are reliant on these parties to maintain and protect the trademarks, brand names and other licensed intellectual property used in the operation or promotion of the leased properties. Operation of the leased properties, as well as our business and financial condition, could be adversely impacted by infringement, invalidation, unauthorized use or litigation affecting any such intellectual property. In addition, if

any of our properties are rebranded, it could have a material adverse effect on us, as we may not enjoy comparable recognition or status under a new brand.

Investment Policies

Our investment objectives are to increase cash flow from operations, achieve sustainable long-term growth and maximize stockholder value to allow for stable dividends and stock appreciation. We have not established a specific policy regarding the relative priority of these investment objectives. Our future investment activities will not be limited to any geographic area or to a specific percentage of our assets. We intend to engage in such future investment activities in a manner that is consistent with our qualification as a REIT for U.S. federal income tax purposes.

- ***Investment in Real Estate or Interests in Real Estate.*** Our business is focused primarily on gaming, hospitality, entertainment and leisure sector properties and activities directly related thereto, which we refer to as “experiential assets”. We believe there are significant, ongoing opportunities to acquire or invest in additional gaming, hospitality, entertainment and leisure assets, both domestically and internationally. We do not have a specific policy to acquire assets primarily for capital gain or primarily for income. In addition, we may purchase or lease income-producing commercial and other types of properties for long-term investment, expand and improve the properties we presently own or other acquired properties, or sell such properties, in whole or in part, when circumstances warrant.

We may participate with third parties in property ownership, through joint ventures or other types of co-ownership, and we may engage in such activities in the future if we determine that doing so would be the most effective means of owning or acquiring properties. We do not expect, however, to enter into a joint venture or other partnership arrangement to make an investment that would not otherwise meet our investment policies. We also may acquire real estate or interests in real estate in exchange for the issuance of common stock, preferred stock or options to purchase stock or interests in our subsidiaries, including VICI OP. We may also pursue opportunities to provide mortgage or mezzanine financing, preferred equity investments or other forms of financing for investment in certain situations where such structure significantly replicates the economics of our leases, provides for strategic growth opportunities and/or partnerships, and may provide the potential to convert our investment into the ownership of the underlying real estate in a future period.

Equity investments in acquired properties may be subject to existing mortgage financing and other indebtedness or to new indebtedness which may be incurred in connection with acquiring or refinancing these investments. Principal and interest on our debt will have a priority over any dividends with respect to our common stock. Investments are also subject to our policy not to be required to register as an investment company under the Investment Company Act of 1940, as amended.

- ***Investments in Real Estate Debt.*** We have made, and may continue to make, investments in mortgages or other forms of real estate-related debt, including, without limitation, traditional mortgages, participating or convertible mortgages, mezzanine loans or preferred equity investments; provided, in each case, that such investment is consistent with our qualification as a REIT. These investments are generally made for strategic purposes including (i) the potential to convert our investment into the ownership of the underlying real estate in a future period, (ii) the opportunity to develop relationships with owners and operators that may lead to other investments and (iii) the ability to make initial investments in experiential asset classes outside of gaming with the goal of increasing our investment activity in these asset classes over time. Investments in real estate-related debt are subject to various risks, including the risk that a borrower may default under certain provisions governing the debt investment and that the collateral securing the investment may not be sufficient to enable us to recover our full investment.
- ***Securities of or Interests in Persons Primarily Engaged in Real Estate Activities and Other Issuers.*** We may invest in securities of other REITs, other entities engaged in real estate activities or securities of other issuers, including for the purpose of exercising control over such entities, subject to the asset tests and gross income tests necessary for our qualification as a REIT. We do not currently have any policy limiting the types of entities in which we may invest or the proportion of assets to be so invested, whether through acquisition of an entity’s common stock, limited liability or partnership interests, interests in another REIT or entry into a joint venture. We have no current plans to make additional investments in entities that are not engaged in real estate activities. Our investment objectives are to maximize the cash flow of our investments, acquire investments with growth potential and provide cash distributions and long-term capital appreciation to our stockholders through increases in the value of our company. We have not established a specific policy regarding the relative priority of these investment objectives.

- **Investments in Short-term Commercial Paper and Discount Notes.** We may invest our excess cash in short-term investment grade commercial paper as well as discount notes issued by government-sponsored enterprises, including the Federal Home Loan Mortgage Corporation and certain of the Federal Home Loan Banks. These investments generally have original maturities of up to 180 days.

Financing Policies

We expect to employ leverage in our capital structure in amounts that we determine appropriate from time to time. Our board of directors has not adopted a policy that limits the total amount of indebtedness that we may incur, but will consider a number of factors in evaluating our level of indebtedness from time to time, as well as the amount of such indebtedness that will be either fixed or variable rate. We are, however, and expect to continue to be, subject to certain indebtedness limitations pursuant to the restrictive covenants of our outstanding indebtedness. We may from time to time modify our debt policy in light of then-current economic conditions, relative availability and costs of debt and equity capital, market values of our properties, general market conditions for debt and equity securities, fluctuations in the market price of our shares of common stock, growth and acquisition opportunities and other factors. If these limits are relaxed, we could potentially become more highly leveraged, resulting in an increased risk of default on our obligations and a related increase in debt service requirements that could adversely affect our financial condition, liquidity and results of operations and our ability to make distributions to our stockholders. To the extent that our board of directors or management determines that it is necessary to raise additional capital, we may, without stockholder approval, borrow money under our Revolving Credit Facility, issue debt or equity securities, including securities senior to our shares, retain earnings (subject to the REIT distribution requirements for U.S. federal income tax purposes), assume indebtedness, obtain mortgage financing on a portion of our owned properties, engage in a joint venture, or employ a combination of these methods.

Corporate Information

We were initially organized as a limited liability company in the State of Delaware on July 5, 2016 as a wholly owned subsidiary of CEOC. On May 5, 2017, we subsequently converted to a corporation under the laws of the State of Maryland and issued shares of common stock to CEOC as part of our formation transactions, which shares were subsequently transferred by CEOC to our initial stockholders.

Our principal executive offices are located at 535 Madison Avenue, 20th Floor, New York, New York 10022 and our main telephone number at that location is (646) 949-4631. Our website address is www.viciproperties.com. None of the information on, or accessible through, our website or any other website identified herein is incorporated in, or constitutes a part of, this Annual Report on Form 10-K. Our electronic filings with the SEC (including annual reports on Form 10-K, quarterly reports on Form 10-Q, and current reports on Form 8-K, and any amendments to these reports), including the exhibits, are available free of charge through our website as soon as reasonably practicable after we electronically file them with or furnish them to the SEC.

CAUTIONARY NOTE REGARDING FORWARD-LOOKING STATEMENTS

Certain statements in this Annual Report on Form 10-K, including statements such as “anticipate,” “believe,” “estimate,” “expect,” “intend,” “plan,” “project,” “target,” “can,” “could,” “may,” “should,” “will,” “would” or similar expressions, constitute “forward-looking statements” within the meaning of the federal securities law. Forward-looking statements are based on our current plans, expectations and projections about future events. We therefore caution you against relying on any of these forward-looking statements. They give our expectations about the future and are not guarantees. These statements involve known and unknown risks, uncertainties and other factors that may cause our actual results, performance and achievements to materially differ from any future results, performance and achievements expressed in or implied by such forward-looking statements.

The forward-looking statements included herein are based upon our current expectations, plans, estimates, assumptions and beliefs that involve numerous risks and uncertainties. Assumptions relating to the foregoing involve judgments with respect to, among other things, future economic, competitive and market conditions and future business decisions, all of which are difficult or impossible to predict accurately and many of which are beyond our control. Although we believe that the expectations reflected in such forward-looking statements are based on reasonable assumptions, our actual results, performance and achievements could differ materially from those set forth in the forward-looking statements and may be affected by a variety of risks and other factors, including, among others:

- the impact of changes in general economic conditions and market developments, including rising inflation, rising interest rates, supply chain disruptions, consumer confidence levels, changes in consumer spending, unemployment levels and depressed real estate prices resulting from the severity and duration of any downturn in the U.S. or global economy;
- the impact of the rise in interest rates on us, including our ability to successfully pursue investments in, and acquisitions of, additional properties and to obtain debt financing for such investments at attractive interest rates, or at all;
- risks associated with our pending and recently closed transactions, including our ability or failure to realize the anticipated benefits thereof;
- our dependence on our tenants at our properties, including their financial condition, results of operations, cash flows and performance, and their affiliates that serve as guarantors of the lease payments, and the negative consequences any material adverse effect on their respective businesses could have on us;
- the possibility that our pending transactions may not be consummated on the terms or timeframes contemplated, or at all;
- the ability of the parties to our pending transactions and any future transactions to satisfy the conditions set forth in the definitive transaction documents, including the ability to receive, or delays in obtaining, the governmental and regulatory approvals and consents required to consummate the pending transactions, or other delays or impediments to completing the transactions;
- our ability to obtain the financing necessary to complete any acquisitions on the terms we expect in a timely manner, or at all;
- the anticipated benefits of certain arrangements with certain tenants in connection with our Partner Property Growth Fund;
- our ability to exercise our purchase rights under our put-call agreements, call agreements, right of first refusal agreements and right of first offer agreements;
- our borrowers’ ability to repay their outstanding loan obligations to us;
- our dependence on the gaming industry;
- our ability to pursue our business and growth strategies may be limited by the requirement that we distribute 90% of our REIT taxable income in order to qualify for taxation as a REIT and that we distribute 100% of our REIT taxable income in order to avoid current entity-level U.S. federal income taxes;
- the impact of extensive regulation from gaming and other regulatory authorities;
- the ability of our tenants to obtain and maintain regulatory approvals in connection with the operation of our properties, or the imposition of conditions to such regulatory approvals;
- the possibility that our tenants may choose not to renew their respective Lease Agreements following the initial or subsequent terms of the leases;
- restrictions on our ability to sell our properties subject to the Lease Agreements;
- our tenants and any guarantors’ historical results may not be a reliable indicator of their future results;

- our substantial amount of indebtedness, and ability to service, refinance and otherwise fulfill our obligations under such indebtedness;
- our historical financial information may not be reliable indicators of, our future results of operations, financial condition and cash flows;
- our inability to successfully pursue investments in, and acquisitions of, additional properties;
- the possibility that we identify significant environmental, tax, legal or other issues that materially and adversely impact the value of assets acquired or secured as collateral (or other benefits we expect to receive) in any of our pending or recently completed transactions;
- the impact of changes to the U.S. federal income tax laws;
- the possibility of adverse tax consequences as a result of our pending or recently completed transactions, including tax protection agreements to which we are a party;
- increased volatility in our stock price, including as a result of our pending or recently completed transactions;
- our inability to maintain our qualification for taxation as a REIT;
- the impact of climate change, natural disasters, war, political and public health conditions or uncertainty or civil unrest, violence or terrorist activities or threats on our properties and changes in economic conditions or heightened travel security and health measures instituted in response to these events;
- the loss of the services of key personnel;
- the inability to attract, retain and motivate employees;
- the costs and liabilities associated with environmental compliance;
- failure to establish and maintain an effective system of integrated internal controls;
- our reliance on distributions received from our subsidiaries, including VICI OP, to make distributions to our stockholders;
- the potential impact on the amount of our cash distributions if we were to sell any of our properties in the future;
- our ability to continue to make distributions to holders of our common stock or maintain anticipated levels of distributions over time;
- competition for transaction opportunities, including from other REITs, investment companies, private equity firms and hedge funds, sovereign funds, lenders, gaming companies and other investors that may have greater resources and access to capital and a lower cost of capital or different investment parameters than us; and
- additional factors discussed herein and listed from time to time as “Risk Factors” in our filings with the SEC, including without limitation, in our subsequent reports on Form 10-K, Form 10-Q and Form 8-K.

Any of the assumptions underlying forward-looking statements could be inaccurate. You are cautioned not to place undue reliance on any forward-looking statements. All forward-looking statements are made as of the date of this Annual Report on Form 10-K and the risk that actual results, performance and achievements will differ materially from the expectations expressed herein will increase with the passage of time. Except as otherwise required by the federal securities laws, we undertake no obligation to publicly update or revise any forward-looking statements, whether as a result of new information, future events, changed circumstances or any other reason. In light of the significant uncertainties inherent in forward-looking statements, the inclusion of such forward-looking statements should not be regarded as a representation by us.

ITEM 1A. Risk Factors

You should be aware that the occurrence of any of the events described in this section and elsewhere in this report or in any other of our filings with the SEC could have a material adverse effect on our business, financial position, results of operations and cash flows. In evaluating us, you should consider carefully, among other things, the risks described below. The risks and uncertainties described below are not the only ones we face, but do represent those risks and uncertainties that we believe are material to us. Additional risks and uncertainties not presently known to us or that, as of the date of this Annual Report on Form 10-K, we deem immaterial may also harm our business. Some statements included in this Annual Report on Form 10-K, including statements in the following risk factors, constitute forward-looking statements. Please refer to the section entitled “Cautionary Note Regarding Forward-Looking Statements.”

Risks Related to Our Business and Operations

We are and will always be significantly dependent on our tenants for substantially all of our revenues. An event that has a material adverse effect on any of our significant tenants’ businesses, financial condition, liquidity, results of operations or prospects could have a material adverse effect on our business, financial condition, liquidity, results of operations and prospects.

We depend on our tenants to operate the properties that we own in a manner that generates revenues sufficient to allow the tenants to meet their obligations to us. Currently, our two largest tenants, Caesars and MGM, comprise approximately 79% of our total estimated annualized cash rent as of December 31, 2022. Because the leases are triple-net leases, in addition to the rent payment obligations for these tenants, we depend on these tenants to pay substantially all insurance, taxes, utilities and maintenance and repair expenses in connection with these leased properties and to indemnify, defend and hold us harmless from and against various claims, litigation and liabilities arising in connection with their businesses. There can be no assurance that our significant tenants will have sufficient assets, income or access to financing to enable them to satisfy their payment and other obligations under their leases with us, or that the applicable guarantor will be able to satisfy its guarantee of the applicable tenant’s obligations.

Our tenants rely on the properties they or their respective subsidiaries own and/or operate for income to satisfy their obligations, including their debt service requirements and rental and other payments due to us or others. If income at these properties were to decline for any reason, or if a tenant’s debt service requirements were to increase or if their creditworthiness were to become impaired for any reason, a tenant or the applicable guarantor may become unable or unwilling to satisfy its payment and other obligations under their leases or other agreements with us. The inability or unwillingness of a significant tenant to meet its payment or other obligations under a lease or other payment obligation with us could materially and adversely affect our business, financial condition, liquidity, results of operations and prospects, including our ability to make distributions to our stockholders.

The gaming and entertainment industry is highly competitive and our tenants’ failure to continue to compete successfully could adversely affect their businesses, financial conditions, results of operations, and cash flows. In particular, our tenants’ businesses may be adversely impacted by the reinvestment and expansion by competitors in existing jurisdictions, an expansion of gaming in existing jurisdictions or into new jurisdictions in which gaming was not previously permitted, which would result in increased competition in these jurisdictions. Additionally, the casino entertainment industry represents a significant source of tax revenues to the various jurisdictions in which casinos operate. From time to time, various state and federal legislators and officials have proposed changes in tax laws, or in the administration of such laws, including increases in tax rates, which would affect the industry. If adopted, such changes could adversely impact the business, financial condition, and results of operations of our significant tenants.

Due to our dependence on rental and other payments from our significant tenants as our primary source of revenue, we may be limited in our ability to enforce our rights under our Lease Agreements or other agreements with our significant tenants or terminate such other agreements or, due to our predominantly master lease structure, certain leases with respect to any particular property. Failure by our significant tenants to comply with the terms of their respective leases or to comply with the gaming regulations to which the leased properties are subject could result in, among other things, the termination of an applicable Lease Agreement, requiring us to find another tenant for such property, to the extent possible, or a decrease or cessation of rental payments by such tenants, as the case may be. In such event, we may lose our interest in a property subject to an applicable ground lease or be unable to locate a suitable, creditworthy tenant at similar rental rates or at all, which would have the effect of reducing our rental revenues and could have a material adverse effect on us.

The occurrence of any of the foregoing events or any other related matters could materially and adversely affect our business, financial condition, liquidity, results of operations, prospects and the value of our common stock.

Because a concentrated portion of our revenues are generated from the Las Vegas Strip, we are subject to greater risks than a company that is more geographically diversified.

Our properties on the Las Vegas Strip generated approximately 45% of our total revenues for the year ended December 31, 2022 and we expect this concentration to continue in the foreseeable future. Therefore, our business may be significantly affected by risks common to the Las Vegas tourism industry. For example, the cost and availability of air services and the impact of any events that disrupt air travel to and from Las Vegas can adversely affect the business of our tenants. We cannot control the number or frequency of flights to or from Las Vegas, but our two largest tenants (Caesars and MGM) rely on air traffic for a significant portion of their visitors to these properties and any reductions in flights to Las Vegas may impact the number of visitors to our properties. Additionally, there is one principal interstate highway between Las Vegas and Southern California, where a large number of the customers that frequent our properties on the Las Vegas Strip reside. Any limitations on travel from Southern California to our properties on the Las Vegas Strip, such as capacity constraints of that highway or any other traffic disruptions, may also affect the number of customers who visit our facilities. Moreover, due to the importance of our ten properties on the Las Vegas Strip, we may be disproportionately affected by general risks such as acts of terrorism, natural disasters, including major fires, floods and earthquakes, severe or inclement weather, and climate change impacts, including heat stress, water stress, and drought, should such developments occur in or nearby, or otherwise impact, Las Vegas. In addition, a material adverse impact on Caesars and/or MGM, even unrelated to their operations in Las Vegas, that negatively affects their financial condition, could materially and adversely affect us, given our reliance on their performance as tenants in our properties on the Las Vegas Strip.

Our tenants are required to pay a significant portion of their cash flow from operations to us pursuant to, and subject to the terms and conditions of, our respective Lease Agreements and loan and other agreements with them. These lease payments, as well as interest payments on their outstanding indebtedness, could adversely affect our tenants' business and financial condition, as well as their ability to satisfy their contractual payment obligations to us.

Our tenants and their subsidiaries are required to pay a significant portion of their cash flow from operations to us pursuant to, and subject to the terms and conditions of, our respective Lease Agreements and loan and other agreements with them. For example, our two largest tenants, Caesars and MGM, are obligated to pay us approximately \$1.2 billion and \$1.1 billion, respectively, in estimated annual payments for 2023 under (i) the Caesars Leases and Caesars' other agreements with us, and (ii) the MGM Master Lease and the MGM Grand/Mandalay Bay Lease, respectively.

In addition, annual rent escalations under our Lease Agreements over specified periods will generally continue to apply regardless of the amount of cash flows generated by the properties that are subject to such Lease Agreements. Through our Partner Property Growth Fund, we may agree with our tenants to fund capital improvements in exchange for increased rent under the applicable Lease Agreement, which would increase the amount of such tenant's rent obligations to us in accordance with the terms of the funding. Accordingly, if the cash flows generated by such properties decrease, do not increase at the same rate as the rent escalations, or do not increase as anticipated in connection with any such capital improvements, the rents payable under such Lease Agreements will comprise a higher percentage of the cash flows generated by the applicable tenant and its subsidiaries, which could make it more difficult for the applicable subsidiaries to meet their payment obligations to us under the Lease Agreements and could ultimately adversely affect the applicable guarantor's ability to satisfy their respective obligations to us under the related guarantees. See [Item 1 "Business-Our Lease Agreements"](#) and [Item 1 "Business-Our Relationship with Caesars and MGM"](#) for additional information regarding such agreements. If our significant tenants' businesses and properties fail to generate sufficient earnings, they may be unable to satisfy their (or their subsidiaries') obligations under their respective Lease Agreements and loan and other agreements, including related guarantees.

Additionally, these obligations may limit our significant tenants' ability to fund their operations or development projects, raise capital, make acquisitions, and otherwise respond to competitive and economic changes by making investments to maintain and grow their portfolio of businesses and properties, which may adversely affect their competitiveness and the ability of their applicable subsidiaries and guarantors to satisfy their obligations to us under the applicable Lease Agreements and the related guarantees, respectively. Moreover, given the importance of our significant tenants to our business, a failure on the part of a significant tenant to maintain its business performance or experience any deterioration of its creditworthiness could materially and adversely affect us, even in the absence of a default under our agreements with such tenant.

In addition, our tenants' indebtedness and the fact that a significant portion of their cash flow may be used to make interest payments could adversely affect their ability to satisfy their obligations to us under the applicable Lease Agreements and other agreements.

We are dependent on the gaming industry and may be susceptible to the risks associated with it, including changes in consumer behavior and discretionary spending as a result of an economic slowdown, increased inflation, rising interest rates, or otherwise, which could materially and adversely affect our business, financial condition, liquidity, results of operations and prospects.

As the landlord and owner of gaming facilities, we are impacted by the risks associated with the gaming industry. Therefore, so long as our investments are concentrated in gaming-related assets, our success is dependent on the gaming industry, which could be adversely affected by economic conditions in general, changes in consumer trends and preferences and other factors over which we and our tenants have no control, including the COVID-19 pandemic and other similar health crises, labor shortages, travel restrictions, supply chain disruptions and property closures. As we are subject to risks inherent in substantial investments in a single industry, a decrease in the gaming business would likely have a greater adverse effect on us than if we owned a more diversified real estate portfolio, particularly because, among other things, a component of the rent under certain of the Lease Agreements will be based, over time, on the performance of the gaming facilities operated by our tenants on our properties and such effect could be material and adverse to our business, financial condition, liquidity, results of operations and prospects.

The gaming industry is characterized by a high degree of competition among a large number of participants, including land-based casinos, riverboat casinos, dockside casinos, video lottery, sweepstakes and poker machines not located in casinos, Native American gaming, emerging varieties of internet gaming, sports betting and other forms of gaming in the United States and, in a broader sense, gaming operators face competition from all manner of leisure and entertainment activities. Gaming competition is intense in most of the markets where our facilities are located. In recent years, there has been additional significant competition in the gaming industry as a result of, among other things, the upgrading or expansion of facilities by existing market participants, the entrance of new gaming participants into a market, increased internet gaming and sports betting or legislative changes in various jurisdictions. As competing properties and new markets are opened, we may be negatively impacted.

Historically, economic indicators such as GDP growth, consumer confidence and employment are correlated with demand for gaming, entertainment and leisure properties, such as casinos and racetracks, and economic recessions, contractions or slowdowns have generally led to a decrease in discretionary spending on associated leisure activities. Decreases in discretionary spending or changing consumer preferences and weakened general economic conditions such as, but not limited to, recessions, lackluster recoveries from recessions, contractions, high unemployment levels, higher income taxes, inflation, low levels of consumer confidence, weakness in the housing market, cultural and demographic changes, instability in global, national and regional economic activity and increased stock market volatility have historically resulted in long-term material adverse effects on leisure and business travel, discretionary spending and other areas of economic behavior that directly impact the gaming industry and, as a result, may negatively impact our revenues and operating cash flows. Because we are dependent on the gaming industry, the immediate and long-term effects of the foregoing on the gaming industry could be material and adverse to our business, financial condition, liquidity, results of operations and prospects.

We and our tenants face extensive regulation from gaming and other regulatory authorities, and our charter provides that any of our shares held by investors who are found to be unsuitable by state gaming regulatory authorities are subject to redemption.

The ownership, operation, and management of gaming and racing facilities are subject to extensive regulation by one or more gaming authorities in each applicable jurisdiction where gaming and racing facilities are permitted. These gaming and racing regulations impact our gaming and racing tenants and persons associated with our gaming and racing facilities, which in many jurisdictions include us as the landlord and owner of the real estate. Certain gaming authorities in the jurisdictions in which we hold properties may require us and/or our affiliates to maintain a license as a principal, key business entity or supplier because of our status as landlord. Gaming regulatory authorities also retain great discretion to require us to be found suitable as a landlord, and certain of our stockholders, officers and directors may be required to be found suitable as well. Gaming regulatory authorities also have broad powers with respect to the licensing of casino operations, and may revoke, suspend, condition or limit the gaming or other licenses of our tenants, impose substantial fines or take other actions, any one of which could adversely impact the business, financial condition and results of operations of our tenants. In addition, in many jurisdictions, licenses are granted for limited durations and require renewal from time to time.

In many jurisdictions, gaming laws can require certain of our stockholders to file an application, be investigated, and qualify or have such person or entity's suitability determined by gaming authorities. Gaming authorities have very broad discretion in determining whether a stockholder is required to file an application and whether an applicant should be deemed suitable. Subject to certain administrative proceeding requirements, the gaming regulators have the authority to deny any application or limit, condition, restrict, revoke or suspend any license, registration, finding of suitability or approval, or fine any person licensed, registered or found suitable or approved, for any cause deemed reasonable by the gaming authorities.

Gaming authorities may conduct investigations into the conduct or associations of our directors, officers, key employees or investors to ensure compliance with applicable standards. If we are required to be found suitable and are found suitable as a landlord, we will be registered as a public company with the gaming authorities and will be subject to disciplinary action if, after we receive notice that a person is unsuitable to be a stockholder or to have any other relationship with us, we:

- pay that person any distribution or interest upon any of our securities;
- allow that person to exercise, directly or indirectly, any voting right conferred through securities held by that person;
- pay remuneration in any form to that person for services rendered or otherwise; or
- fail to pursue all lawful efforts to require such unsuitable person to relinquish his or her securities, including, if necessary, the immediate redemption of such securities in accordance with our charter.

Many jurisdictions also require any person who acquires beneficial ownership of more than a certain percentage of voting securities of a gaming company and, in some jurisdictions, non-voting securities, typically 5% of a publicly traded company, to report the acquisition to gaming authorities, and gaming authorities may require such holders to apply for qualification, licensure or a finding of suitability, subject to limited exceptions for “institutional investors” that hold a company’s securities for passive investment purposes only. Our outstanding shares of capital stock are held subject to applicable gaming laws. Any person owning or controlling at least 5% of the outstanding shares of any class of our capital stock is required to promptly notify us of such person’s identity and apply for qualification, licensure, finding of suitability, or an institutional investor waiver, as applicable. Some jurisdictions may also limit the number of gaming licenses in which a person may hold an ownership or a controlling interest.

Further, certain of our directors, officers, key employees and investors in our shares must meet approval standards of certain gaming regulatory authorities depending on the jurisdiction. If such gaming regulatory authorities were to find such a person or investor unsuitable, we may be required to sever our relationship with that person or the investor may be required to dispose of his, her or its interest in us. Our charter provides that all of our shares held by investors who are found to be unsuitable by regulatory authorities are subject to redemption upon our receipt of notice of such finding.

Additionally, because we and our tenants are subject to regulation in numerous jurisdictions, and because regulatory agencies within each jurisdiction review compliance with gaming laws in other jurisdictions, it is possible that gaming compliance issues in one jurisdiction may lead to reviews and compliance issues in other jurisdictions. The loss of gaming licenses by our tenants could result in, among other things, the cessation of operations at one or more of the facilities we lease to such tenants. The loss of gaming licenses by us could result in, among other things, an event of default under certain of our indebtedness, and cross-default provisions in our debt agreements could cause an event of default under one debt agreement to trigger an event of default under our other debt agreements.

Finally, substantially all material loans, significant acquisitions, leases, sales of securities and similar financing transactions by us and our subsidiaries must be reported to, and in some cases approved by, gaming authorities in advance of the transaction. Changes in control through merger, consolidation, stock or asset acquisitions, management or consulting agreements, or otherwise may be subject to receipt of prior approval of certain gaming authorities. Entities seeking to acquire control of us or one of our subsidiaries (and certain of our affiliates) must satisfy gaming authorities with respect to a variety of stringent standards prior to assuming control. Failure to satisfy the stringent licensing standards may preclude entities from acquiring an ownership or a controlling interest in us or one of our subsidiaries (and certain of our affiliates) and/or require the entities to divest such interest.

Our pursuit of investments in, and acquisitions of, experiential assets and other strategic opportunities may be unsuccessful or fail to meet our expectations, and we may not identify all potential costs and liabilities in connection with our acquisition of such properties.

We intend to continue to pursue acquisitions of gaming, hospitality, entertainment and leisure sector properties and activities directly related thereto, which we refer to as “experiential assets” and other strategic opportunities. Accordingly, we may often be engaged in evaluating potential transactions and other strategic alternatives, including through discussions with potential counterparties. In addition, from time to time, we have entered, and may in the future enter, into strategic arrangements with counterparties, which arrangements may be non-binding or subject to conditions, including the negotiation of definitive documentation. There is no guarantee that any of these discussions or arrangements will result in definitive agreements, the completion of any transaction, or the realization of the anticipated benefits of any transaction and pursuing these opportunities may require the allocation of a significant amount of our management resources to such a transaction, which could negatively impact our operations. Additionally, we may not identify all potential costs and liabilities in the course of our due diligence in connection with these opportunities. In the event that a cost or liability is not adequately identified in the course of such due diligence or addressed in the course of negotiating such transaction, we may not fully realize the anticipated benefit of such

transaction, if at all, or our business, financial condition, liquidity, results of operations and prospects could be adversely affected.

We operate in a highly competitive industry and face competition from other REITs, investment companies, private equity firms and hedge funds, sovereign funds, lenders, gaming companies and other investors, some of whom are significantly larger and have greater resources, access to capital and lower costs of capital or different investment parameters. Increased competition will make it more challenging to identify and successfully capitalize on transaction opportunities that meet our investment objectives. If we cannot identify and purchase or make investments in a sufficient quantity of gaming properties and other experiential properties at favorable prices or if we are unable to finance transactions on commercially favorable terms, our business, financial condition, liquidity, results of operations and prospects could be materially and adversely affected. Additionally, the fact that we must distribute 90% of our REIT taxable income in order to maintain our qualification as a REIT may limit our ability to rely upon rental payments from our leased properties or subsequently acquired properties in order to finance transactions. As a result, if debt or equity financing is not available on acceptable terms, further transactions might be limited or curtailed.

Investments in and acquisitions of gaming properties and other experiential properties, as well as investments in our existing properties through our Partner Property Growth Fund, entail risks associated with real estate investments generally, including that the investment's performance will fail to meet expectations, that the cost estimates for necessary property improvements will prove inaccurate or that the operator or manager will underperform. Adverse economic and market conditions, including rising interest rates and market volatility, as well as the impact of the COVID-19 pandemic, also present challenges with respect to assessing a potential counterparties' historical and projected performance, as well as underlying asset values. In addition, we may not realize the benefits of our Partner Property Growth Fund opportunities on a timely basis, or at all, and such opportunities may be dependent upon independent decisions made by our tenants with respect to any capital improvement projects and the source of funds for such projects, as well as the total funding ultimately requested under such arrangements. In addition, our Partner Property Growth Fund opportunities may be subject to the negotiation of definitive documentation or other conditions, or additional terms and conditions pursuant to our existing Lease Agreements or separate agreements we may enter into with our tenants with respect to such opportunities.

Further, even if we are able to acquire or invest in additional properties in the future, there is no guarantee that such properties will be able to maintain their historical performance or achieve their projected performance, which may prevent the ability of our tenants to pay the partial or total amount of the required lease payments under the respective Lease Agreements or our borrowers to fulfill their payment obligations under the applicable agreement. In addition, our financing of these acquisitions and investments could negatively impact our cash flows and liquidity, require us to incur substantial debt or involve the issuance of new equity, which would be dilutive to existing stockholders. Due to market considerations and in light of the timing typically required to obtain regulatory approvals for gaming transactions, any such financing may take place substantially in advance of closing of such transaction (and the receipt of rent or other payments under a lease or other applicable agreement) and negatively impact our operating results during such period. In addition, we cannot make assurances that we will be successful in implementing our business and growth strategies or that any additional transactions will improve our operating results. The failure to identify and acquire or invest in new properties effectively, or the failure of any acquired properties to perform as expected, could have a material adverse effect on our business, financial condition, liquidity, results of operations and prospects and our ability to make distributions to our stockholders.

We are subject to additional risks due to the location of properties that we own, or may acquire in the future, outside the United States.

In connection with our recently completed acquisition of the real estate assets of the PURE Portfolio, we acquired our first properties outside the United States. Additionally, we may in the future acquire or make investments in additional properties located in other countries, including Canada. The value of the PURE Portfolio and any other properties we purchase in non-U.S. jurisdictions may be affected by factors specific to the laws and business practices of such jurisdictions. The laws and business practices of foreign jurisdictions may expose us to risks that are different from and in addition to those commonly found in the United States, including, but not limited to, the following: (i) the burden of complying with non-U.S. laws including land use and zoning laws or more stringent environmental laws; (ii) existing or new laws relating to the foreign ownership of real property and laws restricting our ability to repatriate earnings and cash into the United States; (iii) the potential for expropriation; (iv) adverse effects of changes in the exchange rate between U.S. dollars and foreign currencies in which revenue is generated at our properties outside the United States; (v) imposition of adverse or confiscatory taxes, changes in real estate and other tax rates or laws and changes in other operating expenses in such foreign jurisdictions; (vi) possible challenges to the anticipated tax treatment of our revenue and our properties; (vii) the potential difficulty of enforcing rights and obligations in other countries; and (viii) our more limited experience and expertise in foreign countries relative to our experience and expertise in the United States.

Required regulatory approvals can delay or prohibit transfers of our gaming properties or the consummation of transactions (including pursuant to our put-call and right of first refusal agreements), which could result in periods in which we are unable to receive rent related to, or otherwise realize the benefits of, such transactions, which may have a material adverse effect on our business, financial condition, liquidity, results of operations and prospects.

Our tenants are (and any pending and future tenants of our gaming properties will be) required to be licensed under applicable law in order to operate any of our properties as gaming facilities. If the Lease Agreements, or any future lease agreement we enter into, are terminated (which could be required by a regulatory agency) or expire, any new tenant must be licensed and receive other regulatory approvals to operate our properties as gaming facilities. Any delay in, or inability of, the new tenant to receive required licenses and other regulatory approvals from the applicable state and county government agencies may prolong the period during which we are unable to collect the applicable rent. Further, in the event that the Lease Agreements or future lease agreements are terminated or expire and a new tenant is not licensed or fails to receive other regulatory approvals, the properties may not be operated as gaming facilities and we will not be able to collect the applicable rent. Moreover, we may be unable to transfer or sell the affected properties as gaming facilities, which could materially and adversely affect our business, financial condition, liquidity, results of operations and prospects.

In addition, given the highly regulated nature of the gaming industry, any future transactions we enter into (including pursuant to our put-call and right of first refusal agreements) are likely to be subject to regulatory approval in one or more jurisdictions, including with respect to any transfers in ownership, operating licensure or other regulatory considerations. If the consummation of a transaction (including with respect to the future entry into a new lease agreement) is delayed or prohibited by regulatory authorities, we may be limited or otherwise unable to realize the benefits of the proposed transaction.

Our long-term, triple-net leases may not result in fair market lease rates over time, which could negatively impact our results of operations and cash flows and reduce the amount of funds available to make distributions to stockholders.

All of our rental revenue and a substantial majority of our total revenue is generated from the Lease Agreements, which are long-term triple-net leases and provide greater flexibility to the respective tenants related to the use of the applicable leased property than would be the case with ordinary property leases, such as the right to sublease certain portions of each leased property, to make alterations in the leased premises and to terminate the lease prior to its expiration under specified circumstances. Furthermore, consistent with typical triple-net leases, our Lease Agreements have longer lease terms and, thus, there is an increased risk that contractual rental increases in future years will fail to result in fair market rental rates during those years. As a result, our results of operations and cash flows and distributions to our stockholders could be lower than they would otherwise be if we did not enter into long-term triple net leases. Inflation as measured by changes in the consumer price index ("CPI") increased at an average of 5.6% in 2022. While certain of our Lease Agreements contain escalation provisions that are tied to changes in the CPI, these annual escalators in some cases do not apply until future periods as specified under the applicable Lease Agreements. In addition, certain of these annual escalators are subject to a maximum cap, which could result in lower rent escalation than any such CPI increase in a single year or over a longer period. For example, under the MGM Master Lease, the CPI escalator is fixed at 2.0% for two through ten of the MGM Master Lease and, for the remainder of the term, the escalator is the greater of 2.0% and CPI, subject to a 3.0% cap. As a result, our results of operations and cash flows and distributions to our stockholders could be lower than they would otherwise be if we did not enter into long-term triple net leases, or entered into such leases on different terms.

Our tenants may choose not to renew the Lease Agreements.

We enter into long-term lease agreements with our tenants, consisting of an initial lease term with the potential for the tenant to extend for multiple additional terms, which may be subject to additional terms and conditions. At the expiration of the initial lease term or of any additional renewal term thereafter, our tenants may choose not to renew the applicable Lease Agreement. If a Lease Agreement expires without renewal and we are not able to find suitable, credit-worthy tenants to replace the previous tenants on the same or more attractive terms, our business, financial condition, liquidity, results of operations and prospects may be materially and adversely affected, including our ability to make distributions to our stockholders at the then current level, or at all. In particular with respect to the coterminous nature of the Caesars Leases, this risk would be exacerbated if Caesars elected not to renew all such lease agreements at any one time.

Our ability to sell or dispose of our properties may be limited by the contractual terms of our Lease Agreements or other agreements with our tenants, or otherwise impacted by matters relating to our real estate ownership.

Our ability to sell or dispose of our properties may be hindered by, among other things, the fact that such properties are subject to the Lease Agreements, as the terms of the Lease Agreements require that a purchaser assume the Lease Agreements or, in certain cases, enter into a severance lease with the tenants for the sold property on substantially the same terms as contained in

the applicable Lease Agreement, which may make our properties less attractive to a potential buyer than alternative properties that may be for sale.

In connection with the MGP Transactions, we entered into the MGM Tax Protection Agreement pursuant to which, subject to certain exceptions, we agreed to indemnify the Protected Parties (as defined in the MGM Tax Protection Agreement) for certain tax liabilities, during the Protected Period (as defined in the MGM Tax Protection Agreement), resulting from (i) the sale, transfer, exchange or other disposition of Protected Property (as defined in the MGM Tax Protection Agreement), (ii) a merger, consolidation, or transfer of all of the assets of, or certain other transactions undertaken by us pursuant to which the ownership interests of the Protected Parties in VICI OP are required to be exchanged in whole or in part for cash or other property, (iii) the failure of VICI OP to maintain approximately \$8.5 billion of nonrecourse indebtedness allocable to the Protected Parties, which amount may be reduced over time in accordance with the MGM Tax Protection Agreement, and (iv) the failure of VICI OP or us to comply with certain tax covenants that would impact the tax liabilities of the Protected Parties. In addition, the MGM Grand/Mandalay Bay JV previously entered into a tax protection agreement with MGM with respect to built-in gain and debt maintenance related to MGM Grand Las Vegas and Mandalay Bay, which is effective through mid-2029, and by acquiring MGP and subsequently the remaining 49.9% interest in the MGM Grand/Mandalay Bay JV, we bear any indemnity under this existing tax protection agreement. In the event that we breach restrictions in these agreements, we will be liable for grossed-up tax amounts associated with the income or gain recognized as a result of such breach. Therefore, although it may be in the best interests of our stockholders for us to sell a certain property, it may be economically prohibitive for us to do so during the specified period because of these indemnity obligations.

Any improvements to a property could also cause mechanic's liens or similar liens to attach to, and constitute liens on, our interests in the properties. To the extent that such liens are recorded against any of our current or future properties, they may restrict our ability to sell or dispose of such properties while they remain in place. In addition, the holders of such liens may enforce them by court action and courts may cause the applicable properties to be sold to satisfy such liens, which could negatively impact our revenues, results of operations, cash flows and distributions to our stockholders. Further, holders of such liens could have priority over our stockholders in the event of bankruptcy or liquidation, and as a result, a trustee in bankruptcy may have difficulty realizing or foreclosing on such properties in any such bankruptcy or liquidation, and the amount of distributions our stockholders could receive in such bankruptcy or liquidation could be reduced.

We may not be able to purchase properties pursuant to our rights under certain agreements, including put-call, call right, right of first refusal agreements and right of first offer agreements, if we are unable to obtain additional financing. In addition, pursuant to one such agreement, we may be forced to dispose of Harrah's Las Vegas to Caesars, possibly on disadvantageous terms.

Pursuant to certain put-call agreements, call agreements, right of first refusal agreements and right of first offer agreements, as further described in [Item 1 "Business-Our Embedded Growth Pipeline"](#), we have certain rights to purchase the properties subject to these agreements, subject to the terms and conditions included in each agreement with respect to each property. In order to exercise these rights and any similar rights we obtain in the future or to fulfill our obligations with respect to certain put rights, we would likely be required to secure additional financing and our substantial level of indebtedness or other factors could limit our ability to do so on attractive terms, or at all. If we are unable to obtain financing on terms acceptable to us, we may not be able to exercise these rights and acquire these properties, including the Caesars Forum Convention Center, or to fulfill our obligations with respect to certain put rights. Even if financing with acceptable terms is available to us, we may not exercise any of these rights. Further, each of the transactions remains subject to the terms and conditions of the applicable agreements, including with respect to due diligence, applicable regulatory approvals and customary closing conditions.

These agreements are subject to additional terms and conditions that may impact our ability to acquire such properties. For example, the A&R Convention Center Put-Call Agreement also provides that if Caesars exercises the Convention Center Put Right and, among other things, the sale of the Caesars Forum Convention Center to us does not close, under certain circumstances, a repurchase right in favor of Caesars, which, if exercised, would result in the sale of the Harrah's Las Vegas property by us to Caesars. Such a sale may be at disadvantageous terms and could have a material adverse effect on our business, financial condition, liquidity, results of operations and prospects.

The bankruptcy or insolvency of any tenant, borrower or guarantor could result in the termination of the Lease Agreements, the related guarantees or loan agreements and certain Lease Agreements being re-characterized as disguised financing transactions, resulting in material losses to us.

We are subject to the credit risk of our tenants and borrowers in connection with the rental and other obligations owed to us under applicable leases, guarantees, and other financing agreements. We cannot provide assurances that our tenants and borrowers will not default on their obligations and fail to make payments to us. In particular, disruptions in the financial and credit markets, local economic conditions and other factors affecting the gaming industry, including the COVID-19 pandemic,

may affect our tenants' and borrowers' ability to obtain financing to operate their businesses or continue to profitability execute their business plans. This, in turn, may cause our tenants and borrowers to be unable to meet their financial obligations, including making rental or loan payments to us, as applicable, which may result in their bankruptcy or insolvency. In addition, in the event of a bankruptcy of our tenants, borrowers or their respective guarantors, any claim for damages under the applicable lease, loan agreement or guarantee may not be paid in full. For these and other reasons, the bankruptcy of one or more of our tenants, borrowers or their respective guarantors could have a material adverse effect on our business, financial condition, liquidity, results of operations and prospects.

Furthermore, with respect to tenants whose obligations are guaranteed by a single guarantor (including Caesars and MGM), although the tenants' performance and payments are guaranteed, a default by the applicable tenant, or by the guarantor with regard to its guarantee, may cause a default under certain circumstances with regard to the entire portfolio covered by the respective Lease Agreements. In event of such a default, there can be no assurances that the tenants or the guarantor would assume the applicable Lease Agreements or the related guarantees, and if such Lease Agreements or guarantees were rejected, the tenant or the guarantor, as applicable, may not have sufficient funds to pay the damages that would be owed to us as a result of the rejection and we might not be able to find a replacement tenant on the same or better terms.

In addition, if Caesars declares bankruptcy, our business could be materially and adversely affected if a bankruptcy court re-characterizes certain components of the Caesars Transaction, specifically the increase in annual rent payable to us associated with Caesars Palace Las Vegas and Harrah's Las Vegas under the Las Vegas Master Lease as a disguised financing transaction. In the event of re-characterization, our claim under a lease agreement with respect to the additional rent acquired in the Caesars Transaction could either be secured or unsecured. Generally, the leases permit us to take steps to create and perfect a security interest in the leased property, but such attempts could be subject to challenge by the tenant or its creditors and, with respect to the additional rent acquired, there is no assurance that a court would find that portion of our claim to be secured. The bankrupt lessee and other affiliates of Caesars and their creditors under this scenario might have the ability to restructure the terms, including the amount owed to us under the applicable lease with respect to the additional rent. If approved by the bankruptcy court, we could be bound by the new terms and prevented from collecting such additional rent acquired in the Caesars Transaction, and our business, results of operations, financial condition and cash flows could be materially and adversely affected.

We may sell or divest different properties or assets after an evaluation of our portfolio of businesses. Such sales or divestitures could affect our costs, revenues, results of operations, financial condition and liquidity.

From time to time, we may evaluate our properties and may, as a result, sell or attempt to sell, divest, or spin-off different properties or assets, subject, if applicable, to the terms of the Lease Agreements. For example, in 2020 and 2021, we, together with Caesars, sold Harrah's Reno, Bally's Atlantic City and Harrah's Louisiana Downs in accordance with the terms of the Regional Master Lease Agreement. These sales or divestitures could affect our costs, revenues, results of operations, financial condition, liquidity and our ability to comply with applicable financial covenants. Divestitures have inherent risks, including possible delays in closing transactions (including potential difficulties in obtaining regulatory approvals), the risk of lower-than-expected sales proceeds for the divested assets, and potential post-closing claims for indemnification. In addition, economic conditions, such as high inflation or rising interest rates, and relatively illiquid real estate markets may result in fewer potential bidders and unsuccessful sales efforts with respect to potential sales or divestitures.

Our properties and the properties securing our loans are subject to climate change, natural disasters, other adverse or extreme weather conditions, casualty and condemnation risks, and terrorist attacks or other acts of violence, the occurrence of which may adversely affect our results of operations, financial condition and liquidity.

Our properties and our borrowers' properties secured as collateral are located in areas that may be subject to climate change and other natural disasters, such as earthquakes, and adverse or extreme weather conditions, including, but not limited to, drought or water stress, heat stress, hurricanes and flooding. Such natural disasters or weather conditions may interrupt operations at the casinos, damage our properties, and reduce the number of customers who visit our facilities in such areas. A severe earthquake could damage or destroy our properties. In addition, our operations could be adversely impacted by a drought, water stress or other cause of acute water shortage. In Las Vegas and the surrounding region, a significant majority of water is sourced from the Colorado River and water levels in Lake Mead, which serves as a reservoir, have steadily declined in recent years, resulting in various regulatory bodies pursuing water conservation initiatives. A severe drought or prolonged water stress experienced in Las Vegas and the surrounding region or in the other regions in which we own properties, as well as the potential impact of regulatory efforts to address such conditions, could adversely affect the business and financial results at our properties located in such regions. Although the tenants and borrowers, as applicable, are required to maintain both property and business interruption insurance coverage, such coverage is subject to deductibles and limits on maximum benefits, including limitation on the coverage period for business interruption, and we cannot make assurances that we or our tenants will be able to fully insure such losses or fully collect, if at all, on claims resulting from such climate change impacts, natural disasters and extreme

weather conditions. While the Lease Agreements and existing loan agreements require, and lease agreements and loan agreements we may enter into in the future are expected to require, that comprehensive insurance and hazard insurance be maintained by the tenants and borrowers, as applicable, there are certain types of losses, generally of a catastrophic nature, such as earthquakes, hurricanes and floods, that may be uninsurable or not economically insurable. Insurance coverage may not be sufficient to pay the full current market value or current replacement cost of a loss. Inflation, changes in building codes and ordinances, environmental considerations, and other factors also might make it infeasible to use insurance proceeds to replace the property after such property has been damaged or destroyed. Under such circumstances, the insurance proceeds received might not be adequate to restore the economic position with respect to such property. If we experience a loss that is uninsured or that exceeds our policy coverage limits, we could lose the capital invested in the damaged properties as well as the anticipated future cash flows from those properties. Furthermore, under such circumstances we may be required under the terms of our debt financing agreements to contribute all or a portion of insurance proceeds to the repayment of such debt, which may prevent us from restoring such properties to their prior state. If the insurance proceeds (after any such required repayment) were insufficient to make the repairs necessary to restore the damaged properties to a condition substantially equivalent to its state immediately prior to the casualty, we may not have sufficient liquidity to otherwise fund the repairs and may be required to obtain additional financing, which could materially and adversely affect our business, financial condition, liquidity, results of operations and prospects.

Additionally, changes to applicable building and zoning laws, ordinances and codes since the initial construction of our properties may limit a tenant's ability to restore the premises of a property to its previous condition in the event of a substantial casualty loss with respect to the property or the ability to refurbish, expand or renovate such property to remain compliant, or increase the cost of construction in order to comply with changes in building or zoning codes and regulations. If a tenant is unable to restore a property to its prior use after a substantial casualty loss or is required to comply with more stringent building or zoning codes and regulations, we may be unable to re-lease the space at a comparable effective rent or sell the property at an acceptable price, which may materially and adversely affect our business, financial condition, liquidity, results of operations and prospects.

Terrorist attacks or other acts of violence may result in declining economic activity, which could harm the demand for services offered by our tenants and the value of our properties or collateral, either generally or with respect to a specific region or property, and might adversely affect the value of an investment in our common stock. Such a resulting decrease in demand could make it difficult for us to renew or re-lease our properties to suitable, credit-worthy tenants at lease rates equal to or above historical rates. Terrorist activities or violence also could directly affect the value of our properties through damage, destruction or loss, and the availability of insurance for such acts, or of insurance generally, might be lower or cost more, which could increase our operating expenses and adversely affect our results of operations and cash flows. To the extent that any of our tenants or borrowers are affected by future terrorist attacks or violence, its business similarly could be adversely affected, including the ability of our tenants or borrowers to continue to meet their obligations to us. These events might erode business and consumer confidence and spending and might result in increased volatility in national and international financial markets and economies. Any one of these events might decrease demand for real estate, decrease or delay the occupancy of our new or redeveloped properties, and limit our access to capital or increase our cost of raising capital.

In addition, our Lease Agreements typically include provisions allowing the applicable tenant to either remove an individual facility from such lease or to terminate such lease in certain cases of casualty or condemnation within the final years of the lease term (as applicable), including, in the case of the Regional Lease Agreement and the MGM Master Lease, the tenant's right to remove a facility in certain cases in which a casualty event representing damage in excess of a certain value threshold occurs to such facility during the final two years of the applicable lease term or a condemnation event occurs that renders such facility unsuitable for its primary intended use. If a facility is removed from a lease or a lease is terminated, in most cases we will likely lose the rent associated with the applicable affected facility or facilities, which would have a negative impact on our financial results. Following any such removal or termination, even if we are able to restore the affected property or any portion thereof, we could be limited to selling such property or leasing such property to a new tenant in order to obtain an alternate source of revenue, which may not happen on terms comparable to the previous lease, or at all.

Extreme weather conditions such as flooding, water stress and heat stress caused by climate change may adversely affect our business.

Pursuant to an assessment from a third-party environmental consultant, we evaluated the degree of risk our individual properties and overall portfolio are subject to due to the potential impact of flooding, heat stress, water stress, drought, extreme winds, wildfires, and seismic events, as well as other extreme weather conditions caused by climate change. The assessment determined that our properties are subject to varying degrees of risk with respect to these potential impacts and, with respect to

our overall portfolio, we determined that flooding, water stress and heat stress pose the greatest material risk to our properties, including:

- water stress and heat stress risks at our Nevada properties;
- flooding, heat stress and wind risks at our properties in the Southeast United States;
- flooding and heat stress risks in the Midwest United States; and
- flooding risks at our properties in the Northeast United States and West Virginia.

Additionally, rising sea levels, changes in precipitation and temperature attributable to climate change, may decrease the value of our properties through physical damage, a decrease in demand and/or a decrease in rent for the properties located in the areas affected by these conditions. If any of the climate and weather scenarios described above were to occur, we may incur material costs to address these conditions and protect such assets (to the extent not covered by our tenants under the terms of our leases) or may sustain damage, a decrease in value or total loss of such assets.

In addition, extreme weather conditions caused by climate change may result in reduced economic activity in these areas, which could reduce consumer demand for our tenants' operations at our properties and harm their operations and financial performance, which could reduce the rent payable to us under the Lease Agreements and make it difficult for us to renew or re-lease our properties on favorable lease terms, or at all. Over the long term, climate change impacts may adversely affect the viability of our tenants' operations and continued investment in our properties, as well as the value of such properties. Furthermore, our insurance premiums may increase as a result of the threat of climate change or the effects of climate change may not be covered by our insurance policies. In addition, changes in federal and state legislation and regulations on climate change could result in increased capital expenditures to improve the energy efficiency of our existing properties or other related aspects of our properties in order to comply with such regulations or otherwise adapt to climate change. Any of the above could have a material and adverse effect on our business, financial condition, liquidity, results of operations and prospects.

Certain properties are subject to restrictions pursuant to reciprocal easement agreements, operating agreements or similar agreements.

Many of the properties that we own or that serve as collateral under our loan agreements are, and properties that we may acquire or lend against in the future may be, subject to use restrictions and/or operational requirements imposed pursuant to ground leases, restrictive covenants or conditions, reciprocal easement agreements or operating agreements or other instruments that could, among other things, adversely affect our ability to lease space to third parties, enforce our rights as a lender and otherwise realize additional value from these properties. Such property restrictions could include the following: limitations on alterations, changes, expansions, or reconfiguration of properties; limitations on transferability or use of properties; limitations affecting parking requirements; or restrictions on exterior or interior signage or facades. In certain cases, consent of the other party or parties to such agreements may be required when altering, reconfiguring, expanding or redeveloping. Failure to secure such consents when necessary may harm our ability to execute leasing strategies, which could adversely affect us.

The loss of the services of key personnel could have a material adverse effect on our business.

Our success and ability to grow depends, in large part, upon the leadership and performance of our executive management team, particularly our Chief Executive Officer, our President and Chief Operating Officer, our Chief Financial Officer and our General Counsel. Any unforeseen loss of our executive officers' services, or any negative market or industry perception with respect to them or arising from their loss, could have a material adverse effect on our business. We do not have key man or similar life insurance policies covering members of our executive management. We have employment agreements with our executive officers, but these agreements do not guarantee that any given executive will remain with us, and there can be no assurance that any such officers will remain with us. In addition, the appointment or replacement of certain key members of our executive management team may be subject to regulatory approvals based upon suitability determinations by gaming regulatory authorities in certain of the jurisdictions where our properties are located. If any of our executive officers is found unsuitable by any such gaming regulatory authorities, or if we otherwise lose their services, we would have to find alternative candidates and may not be able to successfully manage our business or achieve our business objectives, which could materially and adversely affect our financial condition, liquidity, results of operations and prospects.

Environmental compliance costs and liabilities associated with real estate properties owned by us may materially impair the value of those investments.

As an owner of real property, we are subject to various federal, state and local environmental and health and safety laws and regulations. For example we engaged a third-party energy and sustainability consultant who performed a regulatory compliance risk assessment that found that four of our properties are currently subject to active energy use benchmarking requirements due to their location. Although we do not operate or manage most of our properties, as they are subject to triple-net leases, we may

be held primarily or jointly and severally liable for costs relating to the investigation and clean-up of any property from which there has been a release or threatened release of a regulated material as well as other affected properties, regardless of whether we knew of or caused the release, and to preserve claims for damages. Further, some environmental laws create a lien on a contaminated site in favor of the government for damages and the costs the government incurs in connection with such contamination.

Although under the Lease Agreements the tenants are required to indemnify us for certain environmental liabilities, including environmental liabilities they cause, the amount of such liabilities could exceed the financial ability of the applicable tenants or guarantors to indemnify us. In addition, the presence of contamination or the failure to remediate contamination may adversely affect our ability to sell or lease our properties or to borrow using our properties as collateral.

If our separation from CEOC, together with certain related transactions, does not qualify as a transaction that is generally tax-free for U.S. federal income tax purposes, CEOC could be subject to significant tax liabilities and in certain circumstances, we could be required to indemnify CEOC for material taxes pursuant to indemnification obligations under the Tax Matters Agreement.

In connection with our separation from CEOC in 2017, the IRS issued a private letter ruling with respect to certain relevant issues, including relating to the separation and certain related transactions as tax-free for U.S. federal income tax purposes under certain provisions of the Code. The IRS ruling does not address certain requirements for tax-free treatment of the separation. CEOC received from its tax advisors a tax opinion substantially to the effect that, with respect to such requirements on which the IRS did not rule, such requirements should be satisfied. The IRS ruling and the tax opinion that CEOC received relied on (among other things) certain representations, assumptions and undertakings, including those relating to the past and future conduct of our business, and the IRS ruling, and the opinion would not be valid if such representations, assumptions and undertakings were incorrect in any material respect.

Notwithstanding the IRS ruling and tax opinion, the IRS could determine the separation should be treated as a taxable transaction for U.S. federal income tax purposes if it determines any of the representations, assumptions or undertakings that were included in the request for the IRS ruling are false or have been violated or if it disagrees with the conclusions in the opinion that are not covered by the IRS ruling.

If the reorganization fails to qualify for tax-free treatment, in general, CEOC would be subject to tax as if it had sold our assets to us in a taxable sale for their fair market value, and CEOC's creditors who received shares of our common stock pursuant to the Plan of Reorganization would be subject to tax as if they had received a taxable distribution in respect of their claims equal to the fair market value of such shares.

Under the Tax Matters Agreement that we entered into with Caesars, we generally are required to indemnify Caesars against any tax resulting from the separation to the extent that such tax resulted from certain of our representations or undertakings being incorrect or violated. Our indemnification obligations to Caesars are not limited by any maximum amount. As a result, if we are required to indemnify Caesars or such other persons under the circumstances set forth in the Tax Matters Agreement, we may be subject to substantial liabilities.

We face risks associated with cybersecurity incidents and other significant disruptions of our information technology (IT) networks and related systems or those IT networks and systems of third parties.

We use our own IT networks and related systems to access, store, transmit, and manage or support a variety of our business processes and information. We face risks associated with cybersecurity incidents and other significant disruptions of our IT networks and related systems, including as a result of cyber-attacks or cyber-intrusions over the internet, malware or ransomware, computer phishing attempts and other forms of social engineering. We have experienced cybersecurity events such as viruses and attacks on our IT systems. To date, none of these events have had a material impact on our operations or financial results. These cybersecurity incidents or other significant disruptions could be caused by persons inside our organization, persons outside our organization with authorized access to systems inside our organization or by individuals outside our organization through unauthorized access. The risk of a cybersecurity incident or disruption, particularly through cyber-attack or cyber-intrusion, including by computer hackers, foreign governments and cyber terrorists, has generally increased as the number, intensity and sophistication of attempted attacks and intrusions from around the world have increased. Although we make efforts to maintain the security and integrity of our IT networks and related systems and we have implemented various measures to manage the risk of a cybersecurity incident or disruption, there can be no assurance that our security efforts and measures will be effective or that attempted cybersecurity incident or disruptions would not be successful or damaging to our operations. A cybersecurity incident or other significant disruption involving our IT networks and related systems could, among other things: (i) disrupt the proper functioning of our networks and systems; (ii) result in misstated financial reports, violations of loan covenants and/or missed reporting deadlines; (iii) result in our inability to monitor or

maintain our compliance with applicable legal and regulatory requirements; (iv) result in the unauthorized access to, and destruction, loss, theft, misappropriation or release of proprietary, confidential, sensitive or otherwise valuable information of ours or others, which unauthorized parties could use to compete against us or for disruptive, destructive or otherwise harmful purposes and outcomes; (v) require significant management attention and resources to address or remedy any damages that result; (vi) subject us to claims for breach of contract, damages, credits, penalties or termination of certain agreements; (vii) subject us to regulatory enforcement actions, including penalties, fines and investigations; and (viii) damage our reputation among our tenants and investors generally. Any or all of the foregoing could have a material adverse effect on our financial condition, results of operations, cash flow and ability to make distributions with respect to, and the market price of, our common stock. Additionally, increased regulation of data collection, use and retention practices, including self-regulation and industry standards, changes in existing laws and regulations, enactment of new laws and regulations, increased enforcement activity, and changes in interpretation of laws, could increase our cost of compliance and operation or otherwise harm us.

In the conduct of our business, we and our tenants rely on relationships with third parties, including cloud data storage and other information technology service providers, contractors, and other external business partners, for certain functions or for services in support of key portions of our operations. These third-party entities are subject to similar risks as we are relating to cybersecurity, business interruption, and systems and employee failures and an attack against such third-party service provider or partner could have a material adverse effect on our business.

There may be exceptions to our insurance coverage such that our insurance policies may not cover some or all aspects of a cybersecurity incident. Even where a cybersecurity incident is covered by our insurance, the insurance limits may not cover the costs of complete remediation and redress that we may be faced with in the wake of a cybersecurity incident. The successful assertion of one or more large claims against us that exceeds our available insurance coverage, or results in changes to our insurance policies (including premium increases or the imposition of large deductible or co-insurance requirements), could have an adverse effect on us. In addition, we cannot be sure that our existing insurance coverage and coverage for errors and omissions will continue to be available on acceptable terms or that our insurers will not deny coverage as to any future claim.

Properties within our portfolio are, and properties that we may acquire in the future are likely to be, operated and promoted under certain trademarks and brand names that we do not own.

The brands under which our properties are operated are trademarks of their respective owners. In addition, properties that we may acquire in the future may be operated and promoted under these same trademarks and brand names, or under different trademarks and brand names we do not, or will not, own. During the term that our properties are managed by our tenants, we will be reliant on our tenants to maintain and protect the trademarks, brand names and other licensed intellectual property used in the operation or promotion of the leased properties. Operation of the leased properties, as well as our business and financial condition, could be adversely impacted by infringement, invalidation, unauthorized use or litigation affecting any such intellectual property. Moreover, if any of our properties are rebranded unsuccessfully, it could have a material adverse effect on our business, financial condition, liquidity, results of operations and prospects, as such properties may not enjoy comparable recognition or status under a new brand. A transition of management away from one of our tenants could also affect such property's overall strategy and financial performance, which could have a material adverse effect on our business, financial condition, liquidity, results of operations and prospects.

Our board of directors may change our major corporate policies without stockholder approval and those changes may materially and adversely affect us.

Our board of directors will determine and may eliminate or otherwise change our major corporate policies, including our acquisition, investment, financing, growth, operations and distribution policies. While our stockholders have the power to elect or remove directors, changes in our major corporate policies may be made by our board of directors without stockholder approval and those changes could adversely affect our business, financial condition, liquidity, results of operations and prospects, the market price of our common stock and our ability to make distributions to our stockholders and to satisfy our debt service requirements.

The market price and trading volume of shares of our common stock may be volatile.

The market price of our common stock may be volatile. In addition, the stock markets generally may experience significant volatility, often unrelated to the operating performance of the individual companies whose securities are publicly traded. The trading volume in our common stock may fluctuate and cause significant price variations to occur. We cannot make assurances that the market price of our common stock will not fluctuate or decline significantly in the future. If the market price or trading volume of our common stock declines, you may be unable to resell your shares at a profit, or at all.

Some of the factors, many of which are beyond our control, that could negatively affect the market price of our common stock or result in fluctuations in the price or trading volume of our common stock include:

- actual or anticipated variations in our quarterly results of operations or distributions;
- the annual yield from distributions on our common stock as compared to yields on other financial instruments;
- changes in our earnings, revenues or adjusted funds from operations per share estimates;
- changes in market interest rates that may cause purchasers of our shares to demand a higher yield;
- the ongoing adverse impact of the COVID-19 pandemic and responses thereto on us and our tenants;
- rising inflation and falling consumer confidence levels resulting in a downturn in the United States or global economy;
- publication of research reports about us, our tenants or the real estate or gaming industries;
- adverse developments involving our tenants;
- changes in market valuations of similar companies;
- market reaction to any additional capital we raise in the future, including availability and attractiveness of long-term debt financing in connection with future acquisitions;
- our operating performance and the performance of other similar companies;
- our failure to achieve the anticipated benefits of future and any pending acquisitions and other transactions within the timeframe or to the extent anticipated by financial or industry analysts;
- additions or departures of key personnel;
- changes to major corporate policies made by our board of directors without stockholder approval;
- risks relating to any existing or future forward sale agreements;
- equity issuances by us, or future sales of substantial amounts of our common stock by our existing or future stockholders, or the perception that such issuances or future sales may occur;
- other actions by institutional stockholders;
- securities class action litigation which could result in substantial costs and divert our management's attention and resources;
- strategic actions taken by us or our competitors, such as acquisitions, divestments, spin-offs, joint ventures, strategic investments or changes in business strategy;
- speculation in the press or investment community about us, our tenants, our industry or the economy in general;
- publication of research reports about us or our industry by securities analysts;
- new laws or regulations or new interpretations of existing laws or regulations applicable to our business and operations or the gaming industry;
- changes in tax or accounting standards, policies, guidance, interpretations or principles;
- failure to qualify as a REIT for U.S. federal income tax purposes;
- failure to satisfy the listing requirements of the NYSE or the requirements of the Sarbanes Oxley Act of 2002, as amended;
- adverse conditions in the financial markets or general U.S. or international economic conditions, including those unrelated to our performance and those resulting from war, acts of terrorism, public health crises, and responses to such events; and
- the occurrence of any of the other risk factors presented in this Annual Report on Form 10-K or our other SEC filings.

Risks Related to Our Indebtedness and Financing

We have a substantial amount of indebtedness, and expect to incur additional indebtedness in the future. Our indebtedness exposes us to the risk of default under our debt obligations, increases the risks associated with a downturn in our business or in the businesses of our tenants, and requires us to use a significant portion of our cash to service our debt obligations.

We have a substantial amount of indebtedness and debt service requirements. As of December 31, 2022, we had approximately \$15.45 billion in long-term indebtedness, consisting of (i) \$13.95 billion of outstanding senior unsecured indebtedness and (ii) \$1.5 billion of secured debt representing our 50.1% pro-rata portion of the \$3.0 billion property-level debt secured by the MGM Grand Las Vegas and Mandalay Bay held in the MGM Grand/Mandalay Bay JV. Subsequent to year-end, following our consummation of the MGM Grand/Mandalay Bay JV Acquisition on January 9, 2023, the entirety of the \$3.0 billion of

property-level secured debt will be reported on a consolidated basis in our Balance Sheet, thereby bringing our total long-term indebtedness to \$17.05 billion (of which \$3.0 billion is secured debt) as of January 9, 2023.

As of December 31, 2022, we also had \$2.5 billion of available capacity to borrow under the Revolving Credit Facility and \$1.0 billion under the Delayed Draw Term Loan. Subsequent to year-end, (i) on January 6, 2023, we drew approximately \$103.4 million on our Revolving Credit Facility in order to finance the PURE Canadian Gaming Transaction and (ii) on February 8, 2023, the Delayed Draw Term Loan facility expired undrawn in accordance with its terms. The Revolving Credit Facility includes the option to increase the revolving loan commitments by up to \$1.0 billion in the aggregate to the extent that any one or more lenders (from the syndicate or otherwise) agree to provide such additional credit extensions.

Payments of principal and interest under this indebtedness, or any other instruments governing debt we may incur in the future, may leave us with insufficient cash resources to pursue our business and growth strategies or to pay the distributions currently contemplated or necessary to qualify or maintain qualification as a REIT. Our substantial outstanding indebtedness or future indebtedness, and the limitations imposed on us by our debt agreements, could have other significant adverse consequences, including the following:

- our cash flow may be insufficient to meet our required principal and interest payments;
- our vulnerability to adverse economic, industry or competitive developments may be increased;
- we may be required to use a significant portion of our cash flow from operations for the payment of principal and interest on our indebtedness and we may be unable to borrow additional funds as needed or on favorable terms, which could, among other things, adversely affect our ability to capitalize upon emerging acquisition opportunities, including exercising our rights of first refusal, right of first offer and call rights described herein, or fund future working capital, operational and other corporate needs;
- we may be unable to refinance our indebtedness at maturity or the refinancing terms may be less favorable than the terms of our original indebtedness;
- we may be forced to dispose of one or more of our properties, possibly on disadvantageous terms or at a loss;
- we may be limited in our flexibility to plan for, or react to, changes in our business and our industry, which could put us at a disadvantage compared to our competitors with less indebtedness;
- the ability of VICI LP to distribute cash to us may be limited or prohibited, which would materially and adversely affect our ability to make distributions on our common stock;
- we may fail to comply with the covenants in our loan documents, which would entitle the lenders to accelerate payment of outstanding loans; and
- we may be unable to hedge floating rate debt, counterparties may fail to honor their obligations under our hedge agreements and these agreements may not effectively hedge interest rate fluctuation risk.

If any one of these events were to occur, our financial condition, results of operations, cash flows, the market price of our common stock and our ability to satisfy our debt service obligations, pay distributions to our stockholders or refinancing existing or future indebtedness could be materially and adversely affected. In addition, the foreclosure on our properties could create REIT taxable income without accompanying cash proceeds, which could result in entity level taxes to us or could adversely affect our ability to meet the distribution requirements necessary to qualify or maintain qualification as a REIT.

In addition, the Code generally requires that a REIT distribute annually to its stockholders at least 90% of its REIT taxable income (with certain adjustments), determined without regard to the deduction for dividends paid and excluding net capital gains, and that it pay tax at regular corporate rates to the extent that it distributes annually less than 100% of its REIT taxable income, including capital gains. VICI Golf is also subject to U.S. federal income tax at regular corporate rates on any of its taxable income. In order to maintain our status as a REIT and avoid or otherwise minimize current entity-level U.S. federal income taxes, a substantial portion of our cash flow after operating expenses and debt service will be required to be distributed to our stockholders.

Because of the limitations on the amount of cash available to us after satisfying our debt service obligations and our distribution obligations to maintain our status as a REIT and avoid or otherwise minimize current entity-level U.S. federal income taxes, our ability to pursue our business and growth strategies may be limited.

Disruption in the capital and credit markets may adversely affect our ability to access external financings for our growth and ongoing debt service requirements.

We are reliant on the capital and credit markets to finance our growth because we are required to distribute to our stockholders an amount equal to at least 90% of our taxable income (other than net capital gains) each year in order to maintain our qualification as a REIT. We expect to issue additional equity and incur additional indebtedness in the future to finance new

asset acquisitions or investments or investments in our existing properties through our Partner Property Growth Fund, refinance our existing indebtedness, or for general corporate or other purposes. Our access to financing (both equity and debt) on favorable terms, or at all, depends on a variety of factors, many of which are outside of our control, including general economic conditions, such as rising interest rates, inflation, economic recessions, contractions or slowdowns, our credit ratings and outlook, the willingness of lending institutions and other debt investors to grant credit to us and general conditions in the capital and credit markets, including price volatility, dislocations and liquidity disruptions. In addition, when markets are volatile, access to capital and credit markets could be disrupted over an extended period of time and financial institutions may not have the available capital to meet their previous commitments to us under the Revolving Credit Facility and/or the Delayed Draw Term Loan. The failure of financial institutions to meet their funding commitments to us could have a material adverse effect on us, including as a result of making it difficult to obtain additional financing, or financing on favorable terms, that we may need for future growth and/or to refinance our existing indebtedness. We cannot assure you that we will be able to obtain the financing we need for the future growth of our business or to meet our debt service requirements (including refinancing our existing indebtedness), or that a sufficient amount of financing will be available to us on favorable terms, or at all.

Adverse changes in our credit rating may affect our borrowing capacity and borrowing terms.

Our outstanding debt is periodically rated by nationally recognized credit rating agencies. The credit ratings are based upon our operating performance, liquidity and leverage ratios, overall financial condition, and other factors viewed by the credit rating agencies as relevant to both our industry and the economic outlook. In April 2022, S&P Global Ratings and Fitch Ratings independently upgraded their respective credit ratings of VICI to investment grade in connection with the closing of the MGP Transactions. Our credit rating may affect the amount of capital we can access, as well as the terms of any financing we obtain, and there is no guarantee that we will realize increased access to capital or improved terms with respect to any financing we obtain as a result of credit rating upgrades (or that we will be able to maintain such upgraded credit ratings). Because we rely in part on debt financing to fund growth, an adverse change in our credit ratings, including actual changes and changes in outlook, or even the initiation of a review of our credit ratings that could result in an adverse change, could have a material adverse effect on us.

Rising interest rates may increase our overall interest rate expense and could adversely affect our stock price.

Interest rates have recently and are expected to continue to rise from historic lows, and the extent to which interest rates continue to rise or the duration of such heightened interest rates are uncertain. The rise in interest rates has increased our overall interest rate expense and may, along with any future interest rate increases, have an adverse impact on our ability to pay distributions to our stockholders. This risk can be managed or mitigated by utilizing interest rate protection products including interest rate swaps and forward starting interest rate swaps. Although we have previously used and currently use such products with respect to a portion of our indebtedness, there is no assurance that we will use such products in the future, we will utilize any of these products effectively or that such products will be available to us. In addition, in a rising interest rate environment, new debt, whether fixed or variable, is likely to be more expensive, which could, among other things, make the financing of any acquisition or investment more expensive, and we may be unable to incur new debt or replace maturing debt with new debt at equal or better interest rates.

Further, the dividend yield on our common stock (i.e., the annualized distributions per share of our common stock as a percentage of the market price per share of our common stock), will influence the market price of such common stock. Thus, an increase in market interest rates may lead prospective purchasers of our common stock to expect a higher dividend yield. In addition, higher interest rates would likely increase our borrowing costs and potentially decrease our cash available for distribution. Thus, higher market interest rates could also cause the market price of shares of our common stock to decline.

Covenants in our debt agreements limit our operational flexibility, and a covenant breach or default could materially and adversely affect our business, financial condition, liquidity, results of operations and prospects.

The agreements governing our indebtedness contain customary covenants, including restrictions on our ability to incur additional debt, sell certain asset and restrict certain payments, among other things. In addition, we are required to comply with certain financial maintenance covenants. A breach of any of these covenants or covenants under any other agreements governing our indebtedness could result in an event of default. Cross-default provisions in our debt agreements could cause an event of default under one debt agreement to trigger an event of default under our other debt agreements. Upon the occurrence of an event of default under any of our debt agreements, our debt holders could elect to declare all outstanding debt under such agreements to be immediately due and payable. Defaults under our debt instruments could have a material adverse effect on our business, financial condition, liquidity, results of operations and prospects.

We have engaged and may engage in hedging or other derivative transactions that may limit gains or result in losses.

We use derivatives from time to time to hedge certain of our liabilities, anticipated liabilities and foreign currency risk. Although the counterparties of these arrangements are major financial institutions, we are exposed to credit risk in the event of non-performance by the counterparties. This has certain risks, including losses on a hedge position, which may reduce the return on our investments. Such losses may exceed the amount invested in such instruments. In addition, counterparties to a hedging arrangement could default on their obligations. We may have to pay certain costs, such as transaction fees or breakage costs, related to hedging transactions. Any such reduced gains or losses from these derivatives may adversely affect our business or financial condition.

Future incurrences of debt, which would be senior to our shares of common stock upon liquidation, and/or issuance of preferred equity securities, which may be senior to our shares of common stock for purposes of distributions or upon liquidation, could adversely affect the market price of our common stock.

We may in the future attempt to increase our capital resources by incurring additional debt, including medium-term notes, trust preferred securities and senior or subordinated notes, or issuing preferred shares. If a liquidation event were to occur, holders of our debt securities and preferred shares and lenders with respect to other borrowings will receive distributions of our available assets prior to the holders of our shares of common stock. In addition, our preferred stock, if issued, would likely limit our ability to make liquidating or other distributions to the holders of shares of our common stock under certain circumstances. Any future common stock offerings may dilute the holdings of our existing stockholders or reduce the market price of our common stock, or both. Holders of shares of our common stock are not entitled to preemptive rights or other protections against dilution. Since our decision to issue debt securities, incur other forms of indebtedness or to issue additional common stock or preferred stock in the future will depend on future developments, market conditions and other factors beyond our control, we cannot predict or estimate the amount, timing, nature or success of our future offerings. Thus, our stockholders bear the risk of our issuing senior securities, incurring other senior obligations or issuing additional common stock in the future, which may reduce the market price of shares of our common stock, reduce cash available for distribution to common stockholders or dilute their stockholdings in us.

Risks Related to our Status as a REIT

We may incur adverse tax consequences if we have failed or fail, to qualify as a REIT for U.S. federal income tax purposes.

The Code generally requires that a REIT distribute annually to its stockholders at least 90% of its REIT taxable income (with certain adjustments), determined without regard to the deduction for dividends paid and excluding net capital gains, and that it pay tax at regular corporate rates to the extent that it distributes annually less than 100% of its REIT taxable income, including capital gains. In addition, a REIT is required to pay a 4% nondeductible excise tax on the amount, if any, by which the distributions it makes in a calendar year are less than the sum of 85% of its ordinary income, 95% of its capital gain net income and 100% of its undistributed income from prior years. As a result, in order to avoid or otherwise minimize current entity level U.S. federal income taxes, a substantial portion of our cash flow after operating expenses and debt service will be required to be distributed to our stockholders.

We have operated, and intend to continue to operate, in a manner that we believe allows us to qualify as a REIT for U.S. federal income tax purposes under the Code. We have not requested or plan to request a ruling from the IRS that we qualify as a REIT. Qualification as a REIT involves the application of highly technical and complex Code provisions for which there are only limited judicial and administrative interpretations. The complexity of these provisions and of the applicable treasury regulations that have been promulgated under the Code is greater in the case of a REIT that holds its assets through a partnership. The determination of various factual matters and circumstances not entirely within our control may affect our ability to qualify as a REIT. In order to qualify as a REIT, we must satisfy a number of requirements, including requirements regarding the ownership of our stock and the composition of our gross income and assets. Also, a REIT must make distributions to stockholders aggregating annually at least 90% of its net taxable income, excluding any net capital gains.

If we lose our REIT status, or are determined to have lost our REIT status in a prior year, such loss or failure would have a material and adverse effect on us. Additionally, we will face material tax consequences that would substantially reduce our cash available for distribution, including cash available to pay dividends to our stockholders, because:

- we would be subject to U.S. federal income tax and state and local income taxes on our net income at regular corporate rates for the years we did not qualify for taxation as a REIT (and, for such years, would not be allowed a deduction for dividends paid to stockholders in computing our taxable income);
- for tax years beginning after December 31, 2022, we would possibly also be subject to certain taxes enacted by the Inflation Reduction Act of 2022 that are applicable to non-REIT corporations, including the corporate alternative minimum tax and the nondeductible one percent excise tax on certain stock repurchases;

- unless we are entitled to relief under applicable statutory provisions, neither we nor any “successor” corporation, trust or association could elect to be taxed as a REIT until the fifth taxable year following the year during which we were disqualified;
- if we were to re-elect REIT status, we would have to distribute all earnings and profits from non-REIT years before the end of the first new REIT taxable year; and
- for the five years following re-election of REIT status, upon a taxable disposition of an asset owned as of such re-election, we would be subject to corporate-level tax with respect to any built-in gain inherent in such asset at the time of re-election.

Even if we retain our REIT status, if MGP, which merged into our existing subsidiary pursuant to the REIT Merger, loses its REIT status for a taxable year ending on or before the effective time of the REIT Merger, we would be subject to adverse tax consequences that would substantially reduce our cash available for distribution, including cash available to pay dividends to our stockholders, because:

- unless we are entitled to relief under applicable statutory provisions, VICI, as the “successor” by merger to MGP for U.S. federal income tax purposes, could not elect to be taxed as a REIT until the fifth taxable year following the year during which MGP was disqualified;
- VICI, as the successor by merger to MGP, would be subject to any corporate income tax liabilities of MGP, including penalties and interest;
- assuming that we otherwise maintained our REIT qualification, we would be subject to corporate-level tax on the built-in gain in each asset of MGP existing at the time of the REIT Merger if we were to dispose of such MGP asset during the five-year period following the REIT Merger; and
- assuming that we otherwise maintained our REIT qualification, we would succeed to any earnings and profits accumulated by MGP for taxable periods that it did not qualify as a REIT, and we would have to pay a special dividend and/or employ applicable deficiency dividend procedures (including interest payments to the IRS) to eliminate such earnings and profits (or if we do not timely distribute those earnings and profits, we could fail to qualify as a REIT).

In addition, if there is an adjustment to MGP’s taxable income or dividends paid deductions, we could elect to use the deficiency dividend procedure in order to maintain MGP’s REIT status. That deficiency dividend procedure could require us to make significant distributions to our stockholders and to pay significant interest to the IRS.

As a result of these factors, our failure or MGP’s failure (before the REIT Merger) to qualify as a REIT could impair our ability to expand our business and raise capital, and would materially adversely affect the market value of our common stock.

Qualification to be taxed as a REIT involves highly technical and complex provisions of the Code, and violations of these provisions could jeopardize our REIT qualification.

Qualification as a REIT involves the application of highly technical and complex Code provisions for which only limited judicial and administrative authorities exist. Even a technical or inadvertent violation could jeopardize our REIT qualification. Our qualification as a REIT depends on our satisfaction of certain asset, income, organizational, distribution, stockholder ownership and other requirements on a continuing basis. In addition, our ability to satisfy the requirements to qualify as a REIT may depend in part on the actions of third parties over which we have no control or only limited influence, including in cases where we own an equity interest in an entity that is classified as a partnership for U.S. federal income tax purposes.

We may in the future choose to pay dividends in the form of our own common stock, in which case stockholders may be required to pay income taxes in excess of the cash dividends they receive.

We may seek in the future to distribute taxable dividends that are payable in cash or our common stock. Taxable stockholders receiving such dividends will be required to include the full amount of the dividend as ordinary income to the extent of our current and accumulated earnings and profits for U.S. federal income tax purposes as to which non-corporate stockholders will generally be eligible for a deduction equal to 20% of such distributions. As a result, stockholders receiving dividends in the form of common stock may be required to pay income taxes with respect to such dividends in excess of the cash dividends received, if any. If a U.S. stockholder sells the common stock that it receives as a dividend in order to pay this tax, the sales proceeds may be less than the amount included in income with respect to the dividend, depending on the market price of our common stock at the time of the sale. In addition, in such case, a U.S. stockholder could have a capital loss with respect to the common stock sold that could not be used to offset such dividend income. Moreover, with respect to certain non-U.S. stockholders, we may be required to withhold U.S. federal income tax with respect to such dividends, including in respect of all or a portion of such dividend that is payable in common stock. Furthermore, such a taxable share dividend could be viewed as

equivalent to a reduction in our cash distributions, and that factor, as well as the possibility that a significant number of our stockholders determine to sell our common stock in order to pay taxes owed on dividends, may put downward pressure on the market price of our common stock.

Changes to the U.S. federal income tax laws, including the enactment of certain tax reform measures, could have a material and adverse effect on us.

U.S. federal income tax laws governing REITs and other corporations and the administrative interpretations of those laws may be amended at any time, potentially with retroactive effect. Changes to the U.S. federal income tax laws, including the possibility of major tax legislation, could have a material and adverse effect on us or our stockholders. We cannot predict whether, when, to what extent or with what effective dates new U.S. federal tax laws, regulations, interpretations or rulings will be issued. Prospective investors are urged to consult their tax advisors regarding the effect of potential changes to the U.S. federal tax laws on an investment in our common stock.

We could fail to qualify to be taxed as a REIT if income we receive from our tenants is not treated as qualifying income.

Under applicable provisions of the Code, we will not be treated as a REIT unless we satisfy various requirements, including requirements relating to the sources of our gross income. The complexity of these provisions of the Code and of the applicable treasury regulations that have been promulgated under the Code is greater in the case of a REIT such as us that holds its assets directly or indirectly through a partnership. Rents received or accrued by us from our tenants will not be treated as qualifying rent for purposes of these requirements if the leases are not respected as true leases for U.S. federal income tax purposes and instead are treated as service contracts, joint ventures, financings or some other type of arrangement. If some or all of our leases are not respected as true leases for U.S. federal income tax purposes, we may fail to qualify to be taxed as a REIT. Furthermore, our qualification as a REIT will depend on our satisfaction of certain asset, income, organizational, distribution, stockholder ownership and other requirements on a continuing basis. Our ability to satisfy the asset tests depends upon our analysis of the characterization and fair market values of our assets, some of which are not susceptible to a precise determination, and for which we may not obtain independent appraisals.

In addition, subject to certain exceptions, rents received or accrued by us from any tenant (or affiliated tenants) will not be treated as qualifying rent for purposes of these requirements if we (or an actual or constructive owner of 10% or more of our stock) actually or constructively owns 10% or more of the total combined voting power of all classes of such tenant's stock entitled to vote or 10% or more of the total value of all classes of such tenant's stock. Our charter provides restrictions on ownership and transfer of our shares of stock, including restrictions on such ownership or transfer that would cause the rents received or accrued by us from tenants to be treated as non-qualifying rent for purposes of the REIT gross income requirements. Nevertheless, there can be no assurance that such restrictions will be effective in ensuring that rents received or accrued by us from tenants will not be treated as qualifying rent for purposes of REIT qualification requirements.

REIT distribution requirements could adversely affect our ability to execute our business plan.

We generally must distribute annually to our stockholders at least 90% of our REIT taxable income (with certain adjustments), determined without regard to the dividends paid deduction and excluding any net capital gains, in order for us to qualify as a REIT so that U.S. federal corporate income tax does not apply to our earnings that we distribute. To the extent that we satisfy this distribution requirement and qualify for taxation as a REIT but distribute less than 100% of our REIT taxable income, determined without regard to the dividends paid deduction and including any net capital gains, we will be subject to U.S. federal corporate income tax on any undistributed portion of such taxable income. In addition, we will be subject to a 4% nondeductible excise tax if the actual amount that we distribute to our stockholders in a calendar year is less than a minimum amount specified under U.S. federal tax laws. We intend to make distributions to our stockholders to comply with the REIT requirements of the Code and to avoid or otherwise minimize paying entity level federal or excise tax (other than at any taxable REIT subsidiary of ours). We may generate taxable income greater than our income for financial reporting purposes prepared in accordance with GAAP. Further, we may generate taxable income greater than our cash flow from operations after operating expenses and debt service as a result of differences in timing between the recognition of taxable income and the actual receipt of cash or the effect of nondeductible capital expenditures, the creation of reserves or required debt or amortization payments. In order to avoid or otherwise minimize current entity level U.S. federal income taxes, we will generally be required to distribute sufficient cash flow after operating expenses and debt service payments to satisfy the REIT distribution requirements. While we intend to make distributions to our stockholders to comply with the REIT requirements of the Code, we may not have sufficient liquidity to meet the REIT distribution requirements. If our cash flow is insufficient to satisfy the REIT distribution requirements, we could be required to raise capital on unfavorable terms, sell assets at disadvantageous prices, distribute amounts that would otherwise be invested in future acquisitions or issue dividends in the form of shares of our common stock to make distributions sufficient to enable us to pay out enough of our REIT taxable income to satisfy the REIT distribution requirement and to avoid or otherwise minimize corporate income tax and the 4% excise tax in a particular year. These

alternatives could increase our costs or change the value of our equity. Thus, compliance with the REIT requirements may hinder our ability to grow, which could adversely affect the market price of our common stock.

Even if we qualify as a REIT, we may face other tax liabilities that reduce our cash flow.

Even if we qualify for taxation as a REIT, we may be subject to certain U.S. federal, state and local taxes on our income and assets, including taxes on any undistributed income and state or local income, property and transfer taxes. For example, in order to meet the REIT qualification requirements, we currently hold and expect in the future to hold some of our assets and conduct certain of our activities through one or more taxable REIT subsidiaries or other subsidiary corporations that will be subject to federal, state, and local corporate-level income taxes as regular C corporations (i.e., corporations generally subject to corporate-level income tax under Subchapter C of Chapter 1 the Code). In addition, we may incur a 100% excise tax on transactions with a taxable REIT subsidiary if they are not conducted on an arm's length basis. Any of these taxes would decrease cash available for distribution to our stockholders.

Complying with REIT requirements may cause us to liquidate or forgo otherwise attractive opportunities and limit our expansion opportunities.

To qualify as a REIT for U.S. federal income tax purposes, we must continually satisfy tests concerning, among other things, our sources of income, the nature of our investments in real estate and related assets, the amounts we distribute to our stockholders and the ownership of our stock. We may also be required to make distributions to stockholders at disadvantageous times or when we do not have funds readily available for distribution.

As a REIT, we must ensure that, at the end of each calendar quarter, at least 75% of the value of our assets consists of cash, cash items, government securities and "real estate assets" (as defined in the Code), including certain mortgage loans and securities. The remainder of our investments (other than government securities, qualified real estate assets and securities issued by a taxable REIT subsidiary) generally cannot include more than 10% of the outstanding voting securities of any one issuer or more than 10% of the total value of the outstanding securities of any one issuer. In addition, in general, no more than 5% of the value of our total assets (other than government securities, qualified real estate assets and securities issued by a taxable REIT subsidiary) can consist of the securities of any one issuer, and no more than 20% of the value of our total assets can be represented by securities of one or more taxable REIT subsidiaries. In addition, not more than 25% of our total assets may be represented by debt instruments issued by publicly offered REITs that are "nonqualified" debt instruments. If we fail to comply with these requirements at the end of any calendar quarter, we must correct the failure within 30 days after the end of the calendar quarter or qualify for certain statutory relief provisions to avoid losing our REIT qualification and suffering adverse tax consequences. As a result, we may be required to liquidate from our portfolio, or contribute to a taxable REIT subsidiary, or forgo otherwise attractive investments in order to maintain our qualification as a REIT. These actions could have the effect of reducing our income and amounts available for distribution to our stockholders. In addition to the asset tests set forth above, to qualify as a REIT we must continually satisfy tests concerning, among other things, the sources of our income, the amounts we distribute to our stockholders and the ownership of our stock. We may be unable to pursue investments that would be otherwise advantageous to us in order to satisfy the source-of-income or asset-diversification requirements for qualifying as a REIT. Thus, compliance with the REIT requirements may hinder our ability to make certain attractive investments.

We may be subject to built-in gains tax on the disposition of certain of our properties.

If we acquire in the future certain properties in tax-deferred transactions, which properties were held by one or more C corporations before they were held by us (such as all or substantially all of the properties acquired from CEOC pursuant to the formation transactions, as well as certain other properties we have acquired), we may be subject to a built-in gain tax on future disposition of such properties. If we dispose of any such properties during the five-year period following acquisition of the properties from the respective C corporation (i.e., during the five-year period following ownership of such properties by a REIT), we will be subject to U.S. federal income tax (and applicable state and local taxes) at the highest corporate tax rates on any gain recognized from the disposition of such properties to the extent of the excess of the fair market value of the properties on the date that they were contributed to or acquired by us in a tax-deferred transaction over the adjusted tax basis of such properties on such date, which are referred to as built-in gains. Similarly, if we recognize certain other income considered to be built-in income during the five-year period following the property acquisitions described above, we could be subject to U.S. federal tax under the built-in-gains tax rules. We would be subject to this corporate-level tax liability (without the benefit of the deduction for dividends paid) even if we qualify and maintain our status as a REIT. Any recognized built-in gain will retain its character as ordinary income or capital gain and will be taken into account in determining REIT taxable income and the REIT distribution requirements. Any tax on the recognized built-in gain will reduce REIT taxable income. We may choose to forego otherwise attractive opportunities to sell assets in a taxable transaction during the five-year built-in-gain recognition period in order to avoid this built-in-gain tax. However, there can be no assurance that such a taxable transaction will not occur. The

amount of any such built-in-gain tax could be material and the resulting tax liability could have a negative effect on our cash flow and limit our ability to pay distributions required to qualify and maintain our status as a REIT.

Complying with REIT requirements may limit our ability to hedge effectively and may cause us to incur tax liabilities.

The REIT provisions of the Code substantially limit our ability to hedge our assets and liabilities. Income from certain hedging transactions that we may enter into to manage risk of interest rate changes with respect to borrowings made or to be made to acquire or carry real estate assets or from transactions to manage risk of currency fluctuations with respect to any item of income or gain that satisfy the REIT gross income tests (including gain from the termination of such a transaction) does not constitute “gross income” for purposes of the 75% or 95% gross income tests that apply to REITs, provided that certain identification requirements are met. To the extent that we enter into other types of hedging transactions or fail to properly identify such transaction as a hedge, the income is likely to be treated as non-qualifying income for purposes of both of the gross income tests. As a result of these rules, we may be required to limit our use of advantageous hedging techniques or implement those hedges through a taxable REIT subsidiary. This could increase the cost of our hedging activities because the taxable REIT subsidiary may be subject to tax on gains or expose us to greater risks associated with changes in interest rates that we would otherwise want to bear. In addition, losses in the taxable REIT subsidiary will generally not provide any tax benefit, except that such losses could theoretically be carried back or forward against past or future taxable income of the taxable REIT subsidiary.

If we are required to make a purging distribution, we may pay such purging distribution in a combination of common stock and cash.

In order to qualify as a REIT, we must distribute any “earnings and profits,” as defined in the Code, accumulated by us during any period for which we did not qualify as a REIT or by any entity whose accumulated earnings and profits we acquire during any period for which such entity did not qualify as a REIT. Based on our analysis, we do not believe that any earnings and profits were allocated to us in connection with any transaction to which we are party and therefore did not make a purging distribution and do not currently intend to make any purging distribution, with respect to transactions to which we are a party. If we are required to make a purging distribution in the future, we may pay the purging distribution to our stockholders in a combination of cash and shares of our common stock. Each of our stockholders will be permitted to elect to receive the stockholder’s entire entitlement under the purging distribution in either cash or shares of our common stock, subject to a cash limitation. If our stockholders elect to receive a portion of cash in excess of the cash limitation, each such electing stockholder will receive a pro rata portion of cash corresponding to the stockholder’s respective entitlement under the purging distribution declaration. The IRS has issued a revenue procedure that provides that, so long as a REIT complied with certain provisions therein, certain distributions that are paid partly in cash and partly in stock will be treated as taxable dividends that would satisfy the REIT distribution requirements and qualify for the dividends paid deduction for U.S. federal income tax purposes. In a purging distribution, if any, a stockholder of our common stock will be required to report dividend income equal to the amount of cash and common stock received as a result of the purging distribution even though we may distribute no cash or only nominal amounts of cash to such stockholder.

The cash available for distribution to stockholders may not be sufficient to pay dividends at expected levels, nor can we make assurances of our ability to make distributions in the future. We may use borrowed funds to make distributions.

If cash available for distribution is less than the amount necessary to make cash distributions, our inability to make the expected distributions could result in a decrease in the market price of our common stock. All distributions will be made at the discretion of our board of directors and will depend upon various factors, including, but not limited to: our historical and projected financial condition, cash flows, results of operations and REIT taxable income, limitations contained in financing instruments, debt service requirements, operating cash inflows and outflows, including capital expenditures and acquisitions, limitations on our ability to use cash generated in one or more taxable REIT subsidiaries, if any, to fund distributions and applicable law. We may not be able to make distributions in the future. In addition, some of our distributions may include a return of capital. To the extent that we decide to make distributions in excess of our current and accumulated earnings and profits in the future, such distributions would generally be considered a return of capital for federal income tax purposes to the extent of the holder’s adjusted tax basis in their shares. A return of capital is not taxable, but it has the effect of reducing the holder’s adjusted tax basis in our common stock. To the extent that such distributions exceed the adjusted tax basis of a holder’s shares, they will be treated as gain from the sale or exchange of such stock. If we borrow to fund distributions, our future interest costs would increase, thereby reducing our earnings and cash available for distribution from what they otherwise would have been.

For purposes of satisfying the minimum distribution requirement to qualify for and maintain REIT status, our REIT taxable income will be calculated without reference to our cash flow. Consequently, under certain circumstances, we may not have available cash to make our required distributions, and we may need to raise additional equity or debt in order to fund our intended distributions, or we may distribute a portion of our distributions in the form of our common stock or debt instruments,

which could result in dilution or higher leverage, respectively. While the IRS has issued a revenue procedure indicating that certain distributions that are made partly in cash and partly in stock will be treated as taxable dividends that would satisfy that REIT annual distribution requirement and qualify for the dividends paid deduction for U.S. federal income tax purposes, no assurance can be provided that we will be able to satisfy the requirements of the revenue procedure. Therefore, it is unclear whether and to what extent we will be able to make taxable dividends payable in-kind. In addition, to the extent we were to make distributions that include our common stock or debt instruments, a stockholder of ours will be required to report dividend income as a result of such distributions even though we distributed no cash or only nominal amounts of cash to such stockholder.

The U.S. federal income tax treatment of the cash that we might receive from cash settlement of a forward sale agreement is unclear and could jeopardize our ability to meet the REIT qualification requirements.

We enter into forward sale agreements from time to time and, subject to certain conditions, we have the right to elect physical, cash or net share settlement under these agreements at any time and from time to time, in part or in full. In the event that we elect to settle a forward sale agreement for cash and the settlement price is below the forward sale price, we would be entitled to receive a cash payment from the applicable forward purchaser(s). Under Section 1032 of the Code, generally, no gains and losses are recognized by a corporation in dealing in its own shares, including pursuant to a “securities futures contract,” as defined in the Code by reference to the Exchange Act. Although we believe that any amount received by us in exchange for our shares of common stock would qualify for the exemption under Section 1032 of the Code, because it is not entirely clear whether a forward sale agreement qualifies as a “securities futures contract,” the U.S. federal income tax treatment of any cash settlement payment we receive is uncertain. In the event that we recognize a significant gain from the cash settlement of a forward sale agreement, we might not be able to satisfy the gross income requirements applicable to REITs under the Code. If we were to fail to satisfy one or both of the gross income tests for any taxable year, we may nevertheless qualify as a REIT for such year if we were entitled to relief under certain provisions of the Code. If these relief provisions were inapplicable, we would not qualify to be taxed as a REIT.

Risks Related to Our Organizational Structure

VICI is a holding company with no direct operations and relies on distributions received from VICI OP to make distributions to its stockholders.

VICI is a holding company and conducts its operations through direct and indirect subsidiaries, including VICI OP and VICI Golf. VICI does not have, apart from the units that it owns in VICI OP and VICI Golf, any independent operations. As a result, VICI relies on distributions from VICI OP to make any distributions to its stockholders it might declare on its common stock and to meet any of its obligations, including any tax liability on taxable income allocated to it from VICI OP (which might not be able to make distributions to VICI equal to the tax on such allocated taxable income). In turn, the ability of subsidiaries of VICI OP to make distributions to VICI OP, and therefore, the ability of VICI OP to make distributions to VICI, depends on the operating results of these subsidiaries and VICI OP and on the terms of any financing arrangements they have entered into. In addition, because VICI is a holding company, claims of common stockholders of VICI are structurally subordinated to all existing and future liabilities and other obligations (whether or not for borrowed money) and any preferred equity of VICI OP and its subsidiaries. Therefore, in the event of our bankruptcy, liquidation or reorganization, VICI’s assets and those of VICI OP and its subsidiaries will be available to satisfy the claims of VICI common stockholders only after all of VICI’s, VICI OP’s and its subsidiaries’ liabilities and other obligations and any preferred equity of any of them have been paid in full.

VICI OP may, in connection with its acquisition of additional properties or otherwise, issue additional common units or preferred units to third parties. Such issuances would reduce VICI’s ownership in VICI OP. Because stockholders of VICI do not directly own common units or preferred units of VICI OP, they do not have any voting rights with respect to any such issuances or other partnership level activities of VICI OP.

Our rights and the rights of our stockholders to take action against our directors and officers are limited.

The Maryland General Corporation Law (the “MGCL”) provides that a director has no liability in any action based on an act of the director if he or she has acted in good faith, in a manner he or she reasonably believes to be in the corporation’s best interests and with the care that an ordinarily prudent person in a like position would use under similar circumstances. As permitted by the MGCL, our charter limits the liability of our directors and officers to our company and our stockholders for money damages, to the maximum extent permitted by Maryland law. Under Maryland law, our present directors and officers will not have any liability to us or our stockholders for money damages other than liability resulting from:

- actual receipt of an improper benefit or profit in money, property or services; or
- a final judgment based upon a finding that his or her action or failure to act was the result of active and deliberate dishonesty by the director or officer and was material to the cause of action adjudicated.

Our charter provides that we have the power to obligate ourselves, and our amended and restated bylaws obligate us, to indemnify our directors and officers for actions taken by them in those capacities and to pay or reimburse their reasonable expenses in advance of final disposition of a proceeding to the maximum extent permitted by Maryland law. In addition, we have entered into indemnification agreements with our directors and executive officers that provide for indemnification and advancement of expenses to the maximum extent permitted by Maryland law. As a result, we and our stockholders may have more limited rights against our directors and officers than might otherwise exist under common law.

Our charter and bylaws contain provisions that may delay, defer or prevent an acquisition of our common stock or a change in control.

Our charter and bylaws contain provisions, the exercise or existence of which could delay, defer or prevent a transaction or a change in control that might involve a premium price for our stockholders or otherwise be in their best interests, including the following:

- *Our charter contains restrictions on the ownership and transfer of our stock.*

In order for us to qualify as a REIT, no more than 50% of the value of outstanding shares of our stock may be owned, beneficially or constructively, by five or fewer individuals (or certain other persons) at any time during the last half of each taxable year (“closely held”). Subject to certain exceptions, our charter prohibits any stockholder from owning beneficially or constructively, with respect to any class or series of our capital stock, more than 9.8% (in value or by number of shares, whichever is more restrictive) of the aggregate of the outstanding shares of such class or series of our capital stock.

The constructive ownership rules under the Code are complex and may cause the outstanding stock owned by a group of related individuals or entities to be deemed to be constructively owned by one individual or entity. As a result, the acquisition of 9.8% or less of the outstanding shares of a class or series of our stock by an individual or entity could cause that individual or entity or another individual or entity to own constructively in excess of the relevant ownership limits.

Among other restrictions on ownership and transfer of shares, our charter also prohibits any person from owning shares of our stock that would result in our being “closely held” under Section 856(h) of the Code or otherwise cause us to fail to qualify as a REIT. Any attempt to own or transfer shares of our common stock or of any of our other capital stock in violation of these restrictions may result in the shares being automatically transferred to a charitable trust or may be void.

Our charter provides that our board may grant exceptions to the 9.8% ownership limit, subject in each case to certain initial and ongoing conditions designed to protect our status as a REIT. These ownership limits may prevent a third-party from acquiring control of us if our board of directors does not grant an exemption from the ownership limits, even if our stockholders believe the change in control is in their best interests. An exemption from the 9.8% ownership limit has previously been granted to certain stockholders, and our board may in the future provide exceptions to the ownership limit for other stockholders, subject to the aforementioned initial and ongoing conditions designed to protect our status as a REIT.

- *Our board of directors has the power to cause us to issue and authorize additional shares of our capital stock without stockholder approval.*

Our charter authorizes us to issue authorized but unissued shares of common or preferred stock in addition to the shares of common stock issued and outstanding. In addition, our board of directors may, without stockholder approval, amend our charter to increase the aggregate number of our shares of stock or the number of shares of stock of any class or series that we have authority to issue and classify or reclassify any unissued shares of common or preferred stock and set the preferences, rights and other terms of the classified or reclassified shares. As a result, our board of directors may establish a class or series of shares of common or preferred stock that could delay or prevent a transaction or a change in control that might involve a premium price for our shares of common stock or otherwise be in the best interests of our stockholders.

Certain provisions of Maryland law may limit the ability of a third party to acquire control of us.

Certain provisions of the MGCL may have the effect of inhibiting a third party from acquiring us or of impeding a change of control under circumstances that otherwise could provide our common stockholders with the opportunity to realize a premium over the then prevailing market price of such shares, including:

- “business combination” provisions that, subject to limitations, (a) prohibit certain business combinations between an “interested stockholder” (defined generally as any person who beneficially owns 10% or more of the voting power of our outstanding shares of voting stock or an affiliate or associate of ours who, at any time within the two-year period immediately prior to the date in question, was the beneficial owner of 10% or more of the voting power of our then outstanding shares of our common stock) or an affiliate of any interested stockholder and us for five years after the

most recent date on which the stockholder becomes an interested stockholder, and (b) thereafter impose two super-majority stockholder voting requirements on these combinations; and

- “control share” provisions that provide that holders of “control shares” of our company (defined as voting shares of stock that, if aggregated with all other shares of stock owned or controlled by the acquirer (except solely by virtue of a revocable proxy), would entitle the acquirer to exercise one of three increasing ranges of voting power in electing directors) acquired in a “control share acquisition” (defined as the direct or indirect acquisition of ownership or control of “control shares”) have no voting rights with respect to “control shares” except to the extent approved by our stockholders by the affirmative vote of at least two-thirds of all of the votes entitled to be cast on the matter, excluding all votes entitled to be cast by the acquirer of control shares, and by any of our officers and employees who are also our directors.

Our charter provides that, notwithstanding any other provision of our charter or our bylaws, the Maryland Business Combination Act (Title 3, Subtitle 6 of the MGCL) does not apply to any business combination between us and any interested stockholder or any affiliate of any interested stockholder of ours and that we expressly elect not to be governed by the provisions of Section 3-602 of the MGCL in whole or in part. Pursuant to the MGCL, our bylaws contain a provision exempting from the Maryland Control Share Acquisition Act any and all acquisitions by any person of shares of our stock. There can be no assurance that any of these provisions of our charter or bylaws will not be amended or eliminated at any time in the future.

Additionally, provisions of Title 3, Subtitle 8 of the MGCL permit a Maryland corporation such as the Company, by action of its board of directors and without stockholder approval and regardless of what is provided in the charter or bylaws, to elect to avail itself of certain takeover defenses, such as a classified board, unless the charter or a resolution adopted by the board of directors prohibits such election. Our charter provides that we are prohibited from making any such election unless first approved by our stockholders by the affirmative vote of a majority of all votes entitled to be cast on the matter.

ITEM 1B. Unresolved Staff Comments

None.

ITEM 2. Properties

Our geographically diverse portfolio consists of 49 gaming facilities in the United States and Canada, including Caesars Palace Las Vegas, MGM Grand and the Venetian Resort, three of the most iconic entertainment facilities on the Las Vegas Strip, approximately 34 acres of undeveloped or underdeveloped land on and adjacent to the Las Vegas Strip that is leased to Caesars and four championship golf courses located near certain of our properties, two of which are in close proximity to the Las Vegas Strip.

See [Item 1 - “Business - Our Properties”](#) for further information pertaining to our properties.

ITEM 3. Legal Proceedings

In the ordinary course of business, from time to time, we may be subject to legal claims and administrative proceedings. As of December 31, 2022, we are not subject to any litigation that we believe could have, individually or in the aggregate, a material adverse effect on our business, financial condition or results of operations, liquidity or cash flows.

ITEM 4. Mine Safety Disclosures

Not applicable.

PART II

ITEM 5. Market for the Company's Common Equity, Related Stockholder Matters and Issuer Purchases of Equity Securities

VICI Properties Inc.

Market Information

Our common stock trades on the New York Stock Exchange ("NYSE") under the symbol "VICI."

Holders

As of February 21, 2023, there were 1,003,674,749 shares of common stock issued and outstanding that were held by 286 stockholders of record, not including beneficial owners of shares registered in nominee or street name.

Distribution Policy

VICI intends to make regular quarterly distributions to holders of shares of its common stock. Any distributions will be at the sole discretion of its board of directors, and the form, timing and amount of such distributions, if any, will depend upon a number of factors, including VICI's actual and projected results of operations, FFO, AFFO, liquidity, cash flows and financial condition, the revenue it actually receives from its properties, operating expenses, debt service requirements, capital expenditures, prohibitions and other limitations under its financing arrangements, REIT taxable income, the annual REIT distribution requirements, applicable law and such other factors as VICI's board of directors deems relevant. For more information regarding risk factors that could materially and adversely affect us and our ability to make cash distributions refer to "[Part I – Item 1A. Risk Factors](#)".

VICI intends to make distributions to its stockholders to comply with the REIT requirements of the Code and to avoid or otherwise minimize paying entity level federal or excise tax (other than at any TRS). Federal income tax law requires that a REIT distribute annually at least 90% of its REIT taxable income (with certain adjustments), determined without regard to the dividends paid deduction and excluding any net capital gains, and that it pay tax at regular corporate rates to the extent that it annually distributes less than 100% of its REIT taxable income, determined without regard to the dividends paid deduction and including any net capital gains.

Recent Sales of Unregistered Securities

VICI did not sell any unregistered equity securities during the year ended December 31, 2022.

Issuer Repurchases of Equity Securities

During the three months ended December 31, 2022, certain employees surrendered shares of common stock owned by them to VICI to satisfy their statutory minimum federal and state income tax obligations associated with the vesting of shares of restricted common stock and performance-based restricted stock units issued under our 2017 Stock Incentive Plan.

The following table summarizes such common stock repurchases during the three months ended December 31, 2022:

Period	Total Number of Shares Purchased	Average Price Paid per Share ⁽¹⁾	Total Number Of Shares Purchased As Part Of Publicly Announced Plans Or Programs	Maximum Number Of Shares That May Yet Be Purchased Under The Plans Or Programs
October 1, 2022 through October 31, 2022	1,285	\$ 29.85	—	—
November 1, 2022 through November 30, 2022	—	—	—	—
December 1, 2022 through December 31, 2022	—	—	—	—
Total	1,285	\$ 29.85	—	—

(1) The price paid per share is based on the closing price of our common stock as of the date of the determination of the statutory minimum federal income tax.

VICI did not otherwise repurchase any equity securities registered pursuant to Section 12 of the Exchange Act during the three months ended December 31, 2022.

Registered Offering of Securities - Use of Proceeds

Not applicable.

VICI Properties LP

Market Information

There is no established public trading market for limited partnership units of VICI LP.

Holders

As of February 23, 2023, there was one holder of record of limited partnership units of VICI LP.

Distribution Policy

VICI LP intends to make regular quarterly distributions to holders of its units. Any distributions will be at VICI LP's sole discretion, and the form, timing and amount of such distributions, if any, will depend upon a number of factors, including VICI LP's actual and projected results of operations, FFO, AFFO, liquidity, cash flows and financial condition, the revenue it actually receives from properties, operating expenses, debt service requirements, capital expenditures, prohibitions and other limitations under its financing arrangements, REIT taxable income, the annual REIT distribution requirements, applicable law and such other factors as VICI's board of directors deems relevant.

VICI LP intends to make distributions to its unit holders to comply with the REIT requirements of VICI and to avoid or otherwise minimize paying entity level federal or excise tax.

Recent Sales of Unregistered Securities

VICI LP did not sell any unregistered equity securities during the year ended December 31, 2022.

Issuer Repurchases of Equity Securities

During the three months ended December 31, 2022, VICI LP did not repurchase any equity securities registered pursuant to Section 12 of the Exchange Act.

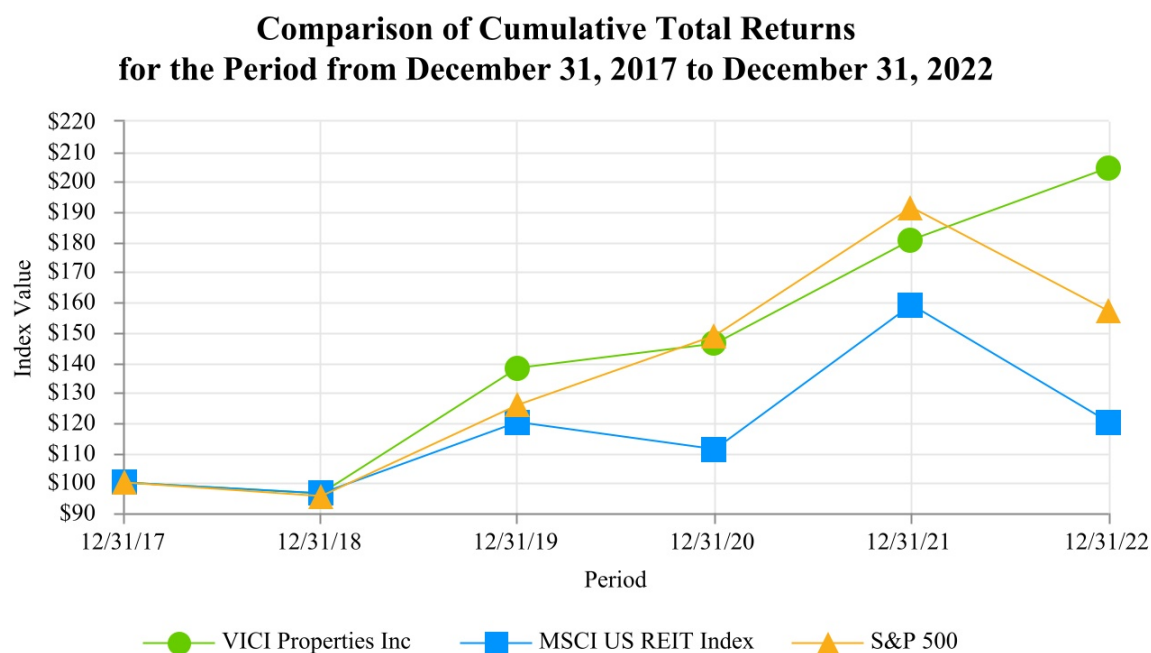
Registered Offering of Securities - Use of Proceeds

Not applicable.

Stock Performance Graph

The graph below compares our cumulative total stockholder return for the period from December 31, 2017 to December 31, 2022 on our common stock with the cumulative total returns of the S&P 500 Index and the MSCI US REIT index. The graph tracks the performance of a \$100 investment in our common stock and in each index (with the reinvestment of all dividends as required by the SEC) from December 31, 2017 until December 31, 2022. The return shown on the graph is not necessarily indicative of future performance.

The following performance graph shall not be deemed to be "filed" for purposes of Section 18 of the Exchange Act, nor shall this information be incorporated by reference into any future filing under the Securities Act or the Exchange Act, except to the extent that we specifically incorporate it by reference into a filing.



Company / Index	12/31/17	12/31/18	12/31/19	12/31/20	12/31/21	12/31/22
VICI Properties Inc.	\$ 100.0	\$ 96.4	\$ 138.0	\$ 146.2	\$ 180.9	\$ 204.6
MSCI US REIT Index	\$ 100.0	\$ 95.5	\$ 120.2	\$ 111.2	\$ 159.1	\$ 120.1
S&P 500	\$ 100.0	\$ 95.6	\$ 125.7	\$ 148.8	\$ 191.5	\$ 156.8

ITEM 6. [Reserved.]

ITEM 7. Management's Discussion and Analysis of Financial Condition and Results of Operations

The following discussion and analysis of the financial condition and results of operations of VICI Properties Inc. and VICI Properties L.P. for the year ended December 31, 2022 should be read in conjunction with the audited consolidated Financial Statements and notes thereto and other financial information included elsewhere in this Annual Report on Form 10-K. Some of the information contained in this discussion and analysis or set forth elsewhere in this Annual Report on Form 10-K, including information with respect to our business and growth strategies, statements regarding the industry outlook and our expectations regarding the future performance of our business contained herein are forward-looking statements. See "Cautionary Note Regarding Forward-Looking Statements." You should also review the ["Risk Factors"](#) section in Item 1A of this Annual Report on Form 10-K for a discussion of important factors that could cause actual results to differ materially from the results described in or implied by such forward-looking statements.

OVERVIEW

We are an owner and acquirer of experiential real estate assets across leading gaming, hospitality, entertainment and leisure destinations. Our geographically diverse portfolio currently consists of 49 gaming facilities in the United States and Canada, including Caesars Palace Las Vegas, MGM Grand and the Venetian Resort, three of the most iconic entertainment facilities on the Las Vegas Strip. Our entertainment facilities are leased to leading brands that seek to drive consumer loyalty and value with guests through superior services, experiences, products and continuous innovation. Across over 124 million square feet, our well-maintained properties are currently located across urban, destination and drive-to markets in fifteen states and Canada, contain approximately 59,300 hotel rooms and feature over 450 restaurants, bars, nightclubs, and sportsbooks.

Our portfolio also includes certain real estate debt investments, most of which we have originated for strategic reasons in connection with transactions that either do or may provide the potential to convert our investment into the ownership of certain of the underlying real estate in the future. In addition, we own approximately 34 acres of undeveloped or underdeveloped land on and adjacent to the Las Vegas Strip that is leased to Caesars, which we may look to monetize as appropriate. We also own four championship golf courses located near certain of our properties, two of which are in close proximity to the Las Vegas Strip.

We conduct our operations as a REIT for U.S. federal income tax purposes. We generally will not be subject to U.S. federal income taxes on our taxable income to the extent that we annually distribute all of our net taxable income to stockholders and maintain our qualification as a REIT. We believe our election of REIT status, combined with the income generation from the Lease Agreements and loans, will enhance our ability to make distributions to our stockholders, providing investors with current income as well as long-term growth, subject to market conditions and the national and international macroeconomic environment. We conduct our real property business through our operating partnership, VICI OP, and our golf course business through a TRS, VICI Golf.

Key 2022 Highlights

Operating Results

- Collected 100% of rent in cash.
- Total revenues increased 72.3% year-over-year to \$2,600.7 million.
- Net income attributable to common stockholders increased 10.2% year-over-year to \$1,117.6 million, and net income attributable to common stockholders per diluted share decreased 27.7% to \$1.27, primarily due to the impact of our CECL allowance and an increased weighted average share count.
- AFFO increased 61.7% year-over-year to \$1,693.8 million and AFFO per diluted share increased 6.1% to \$1.93.

Significant Achievements

- Announced and originated over \$4.5 billion in transaction activity, including:
 - the acquisition of Blackstone Real Estate Investment Trust, Inc.'s ("BREIT") interest in the MGM Grand/Mandalay Bay JV for \$2,758.8 million, inclusive of our assumption of BREIT's pro-rata share of the \$3.0 billion CMBS debt, which upon closing on January 9, 2023 added \$151.6 million of annualized rent to our portfolio;
 - the acquisition of the Fitz Casino & Hotel and WaterView Casino & Hotel from Foundation Gaming for \$293.4 million, which upon closing on December 22, 2022 added \$24.3 million of annualized rent to our portfolio;

- the acquisition of Rocky Gap Casino Resort for \$203.9 million, which remains pending and subject to customary closing conditions, including regulatory approval, and upon closing will add \$15.5 million of annualized rent to our portfolio through the Century Master Lease; and
- the origination of the following loans (each as defined below): (i) Fontainebleau Las Vegas Loan, (ii) Canyon Ranch Austin Loan, (iii) Great Wolf Northeast Loan, (iv) Great Wolf Gulf Coast Texas Loan, (v) Great Wolf South Florida Loan, (vi) Cabot Citrus Farms Loan and (vii) BigShots Loan, for aggregate total commitments of \$1,223.9 million and weighted average interest rate of 8.98%.
- Completed the previously announced MGP Transactions, which upon closing on April 29, 2022, added \$1,012.2 million of annualized rent to our portfolio.
- Completed the previously announced Venetian Acquisition, which upon closing on February 23, 2022, added \$250.0 million of annualized rent to our portfolio.
- Added to the S&P 500 Index on June 8, 2022.
- Announced an increase in our quarterly cash dividend to \$0.39 per share (or \$1.56 per share on an annualized basis), representing a 8.3% increase compared to our previous quarterly dividend.
- Completed an equity offering with an aggregate offering value of \$580.0 million and sold 21,617,592 shares under our ATM Program for aggregate offering value of \$715.9 million, all of which were subject to forward sale agreements and which were settled in January 2023 for aggregate net proceeds of \$1,272.3 million.
- Completed an inaugural \$5.0 billion offering of investment grade senior unsecured notes and entered into \$3.0 billion of forward-starting interest rate swap agreements and treasury locks to hedge a portion of the interest rate exposure, resulting in a weighted average interest rate of 4.51% with respect to the April 2022 Notes.
- Entered into the Credit Facilities, including a \$2.5 billion senior unsecured revolving credit facility, and terminated our previous Secured Revolving Credit Facility.

SUMMARY OF SIGNIFICANT ACTIVITIES

Acquisition Activity

- **MGM Grand/Mandalay Bay JV Interest Acquisition.** Subsequent to year-end, on January 9, 2023, we closed on the previously announced acquisition of the remaining 49.9% interest in the MGM Grand/Mandalay Bay JV (previously referred to as the “BREIT JV”) from BREIT (the “MGM Grand/Mandalay Bay JV Interest Acquisition”) for cash consideration of \$1,261.9 million. We also assumed BREIT’s \$1,497.0 million pro rata share of an aggregate \$3.0 billion of property-level debt, which matures in 2032 and bears interest at a fixed rate of 3.558% per annum through March 2030. The cash consideration was funded through a combination of cash on hand and proceeds from the settlement of the November 2022 Forward Sale Agreements and ATM Forward Sale Agreements (each as defined in [Note 11 - Stockholders Equity](#)). The MGM Grand/Mandalay Bay Lease currently has annual rent of \$303.8 million, all of which will be reflected in our Financial Statements following the closing of the MGM Grand/Mandalay Bay JV Interest Acquisition (and will have annual rent of approximately \$310.0 million upon commencement of the next rental escalation on March 1, 2023). The MGM Grand/Mandalay Bay Lease has a remaining initial lease term of approximately 27 years (expiring in 2050), with two ten-year tenant renewal options. Rent under the lease agreement escalates annually at 2.0% through 2035 (year 15 of the initial lease term) and thereafter at the greater of 2.0% or CPI (subject to a 3.0% ceiling).
- **PURE Canadian Gaming Transaction.** Subsequent to year-end, on January 6, 2023, we acquired the real estate assets of PURE Casino Edmonton, PURE Casino Yellowhead, PURE Casino Calgary, and PURE Casino Lethbridge, all of which are located in Alberta, Canada, from PURE Canadian Gaming for an aggregate purchase price of approximately C\$271.9 million (approximately US\$200.8 million based on the exchange rate at the time of the acquisition) (the “PURE Canadian Gaming Transaction”). We financed the PURE Canadian Gaming Transaction with a combination of cash on hand and by drawing down C\$140.0 million (approximately US\$103.4 million based on the exchange rate at the time of the acquisition) under our Revolving Credit Facility. Simultaneous with the acquisition, we entered into the PURE Master Lease, which has an initial annual rent of approximately C\$21.8 million (approximately US\$16.1 million based on the exchange rate at the time of the acquisition), an initial term of 25 years, with four 5-year tenant renewal options, escalation of 1.25% per annum (with escalation of the greater of 1.5% and Canadian CPI, capped at 2.5%, beginning in lease year four) and minimum capital expenditure requirements of 1.0% of annual net revenue (excluding gaming equipment). The tenant’s obligations under the PURE Master Lease are guaranteed by the parent entity of PURE Canadian Gaming.

- **Foundation Gaming Transaction.** On December 22, 2022, we acquired the real estate assets of the Fitz Casino & Hotel, located in Tunica, Mississippi, and the WaterView Casino & Hotel, located in Vicksburg, Mississippi, from Foundation Gaming for an aggregate purchase price of \$293.4 million (the “Foundation Gaming Transaction”). We financed the Foundation Gaming Transaction with cash on hand. Simultaneous with the acquisition, we entered into the Foundation Master Lease, which has an initial annual rent of \$24.3 million, an initial term of 15 years, with four 5-year tenant renewal options, escalation of 1.0% per annum (with escalation of the greater of 1.5% and CPI, capped at 3%, beginning in lease year four) and minimum capital expenditure requirements of 1.0% of annual net revenue (excluding gaming equipment) over a rolling three-year period. The tenants’ obligations under the Foundation Master Lease are guaranteed by the parent entity, Foundation Gaming.
- **Rocky Gap Casino Transaction.** On August 24, 2022, we and Century Casinos entered into definitive agreements to acquire Rocky Gap Casino, located in Flintstone, Maryland, from Golden Entertainment, Inc. for an aggregate purchase price of \$260.0 million. Pursuant to the transaction agreements, we will acquire an interest in the land and buildings associated with Rocky Gap Casino for approximately \$203.9 million and Century Casinos will acquire the operating assets of the property for approximately \$56.1 million. Simultaneous with the closing of the transaction, the Century Master Lease will be amended to include Rocky Gap Casino and annual rent will increase by \$15.5 million. Additionally, the terms of the Century Master Lease will be extended such that, upon closing of the transaction, the lease will have a full 15-year initial base lease term remaining, with four 5-year tenant renewal options. The tenants’ obligations under the Century Master Lease will continue to be guaranteed by Century Casinos. The transaction is subject to customary regulatory approvals and closing conditions and is expected to close in mid-2023.
- **MGP Transactions.** On April 29, 2022, we closed on the previously announced MGP Transactions governed by the MGP Master Transaction Agreement, pursuant to which we acquired MGP for total consideration of \$11.6 billion, plus the assumption of approximately \$5.7 billion principal amount of debt, inclusive of our 50.1% share of the MGM Grand/Mandalay Bay JV CMBS debt. Upon closing, the MGP Transactions added \$1,012.2 million of annualized rent to our portfolio from 15 Class A entertainment casino resort properties spread across nine regions and comprising 36,000 hotel rooms, 3.6 million square feet of meeting and convention space and hundreds of food, beverage and entertainment venues. Under the terms of the MGP Master Transaction Agreement, each outstanding MGP Class A common share was converted into 1.366 (the “Exchange Ratio”) shares of VICI common stock. The fixed Exchange Ratio represented an agreed upon price of \$43.00 per share of MGP Class A common shares based on VICI’s trailing 5-day volume weighted average price of \$31.47 as of July 30, 2021. MGM received \$43.00 per unit in cash for the redemption of the majority of its MGP OP units that it held for total cash consideration of approximately \$4.404 billion and also retained approximately 12.2 million units in VICI OP. The MGP Class B share that was held by MGM was cancelled and ceased to exist at the effective time of the Mergers.

Simultaneous with the closing of the Mergers on April 29, 2022, we entered into the MGM Master Lease. The MGM Master Lease has an initial term of 25 years, with three 10-year tenant renewal options and has an initial total annual rent of \$860.0 million. Rent under the MGM Master Lease escalates at a rate of 2.0% per annum for the first 10 years and thereafter at the greater of 2.0% per annum or the increase in CPI, subject to a 3.0% cap. The total annual rent under the MGM Master Lease was reduced by \$90.0 million upon the close of MGM’s sale of the operations of the Mirage to Hard Rock and entrance into the Mirage Lease on December 19, 2022, and further reduced by \$40.0 million upon the close of MGM’s sale of the operations of Gold Strike on February 15, 2023 (which takes the total annual rent under the MGM Master Lease to \$730.0 million), each as described below. Additionally, we retained a 50.1% ownership stake in the MGM Grand/Mandalay Bay JV, which owns the real estate assets of MGM Grand Las Vegas and Mandalay Bay. The MGM Grand/Mandalay Bay Lease provides for current total annual base rent of approximately \$303.8 million, of which approximately \$152.2 million was attributable to our investment in the MGM Grand/Mandalay Bay JV as of December 31, 2022, and an initial term of thirty years with two 10-year tenant renewal options. Rent under the MGM Grand/Mandalay Bay Lease escalates at a rate of 2.0% per annum for the first 15 years and thereafter at the greater of 2.0% per annum or CPI, subject to a 3.0% cap. Subsequent to year-end, on January 9, 2023, we closed on the MGM Grand/Mandalay Bay JV Interest Acquisition and accordingly own 100% of the interest in the MGM Grand/Mandalay Bay JV. On a combined basis, as of January 9, 2023, we receive approximately \$1,073.8 million of annual rent under the MGM Master Lease and MGM Grand/Mandalay Bay Lease. Refer to “*MGM Grand/Mandalay Bay JV Interest Acquisition*” above for further details. The tenant’s obligations under the MGM Master Lease and the MGM Grand/Mandalay Bay Lease continue to be guaranteed by MGM.

- **Venetian Acquisition.** On February 23, 2022, we closed on the previously announced transaction to acquire all of the land and real estate assets associated with the Venetian Resort from Las Vegas Sands Corp. (“LVS”) for \$4.0 billion in cash, and the Venetian Tenant acquired the operating assets of the Venetian Resort for \$2.25 billion, of which \$1.2 billion is in the form of a secured term loan from LVS and the remainder was paid in cash. We funded the Venetian

Acquisition with (i) \$3.2 billion in net proceeds from the physical settlement of the March 2021 Forward Sale Agreements and the September 2021 Forward Sale Agreements, (ii) an initial draw on the Revolving Credit Facility of \$600.0 million, and (iii) cash on hand. Simultaneous with the closing of the Venetian Acquisition, we entered into the Venetian Lease with the Venetian Tenant. The Venetian Lease has an initial total annual rent of \$250.0 million and an initial term of 30 years, with two ten-year tenant renewal options. The annual rent is subject to escalation equal to the greater of 2.0% and the increase in the CPI, capped at 3.0%, beginning in the earlier of (i) the beginning of the third lease year, and (ii) the month following the month in which the net revenue generated by the Venetian Resort returns to its 2019 level (the year immediately prior to the onset of the COVID-19 pandemic) on a trailing twelve-month basis.

In connection with the Venetian Acquisition, we entered into a Partner Property Growth Fund Agreement (“Venetian PGF”) with the Venetian Tenant. Under the Venetian PGF, we agreed to provide up to \$1.0 billion for various development and construction projects affecting the Venetian Resort to be identified by the Venetian Tenant and that satisfy certain criteria more particularly set forth in the Venetian PGF, in consideration of additional incremental rent to be paid by the Venetian Tenant under the Venetian Lease and calculated in accordance with a formula set forth in the Venetian PGF.

In addition, LVS agreed with the Venetian Tenant pursuant to an agreement (the “Contingent Lease Support Agreement”) entered into simultaneously with the closing of the Venetian Acquisition to provide lease payment support designed to guarantee the Venetian Tenant’s rent obligations under the Venetian Lease through 2023, subject to early termination if EBITDAR (as defined in such agreement) generated by the Venetian Resort in 2022 equals or exceeds \$550.0 million, or a tenant change of control occurs. We were a third-party beneficiary of the Contingent Lease Support Agreement and had certain enforcement rights pursuant thereto. The EBITDAR generated by the operations of the Venetian Resort exceeded \$550.0 million for the year ended December 31, 2022 and, accordingly, the Contingent Lease Support Agreement early terminated in accordance with its terms.

Loan Origination Activity

- **Great Wolf Northeast Loan.** On December 30, 2022, we entered into a loan with Great Wolf, under which we agreed to provide up to \$287.9 million of senior secured financing (the “Great Wolf Northeast Loan”) the proceeds of which will be used to fund the development of a Great Wolf Lodge in Mashantucket, Connecticut, a 549-room indoor family resort water park project adjacent to the Foxwoods Resort Casino. The Great Wolf Northeast Loan has an initial term of three years with two 12-month extension options, subject to certain conditions and is expected to be funded by us with cash on hand in accordance with a construction draw schedule.
- **Fontainebleau Las Vegas Loan.** On December 23, 2022, we entered into definitive agreements pursuant to which we have agreed to provide up to \$350.0 million in mezzanine loan financing (the “Fontainebleau Las Vegas Loan”) to a partnership between Fontainebleau Development, LLC, a builder, owner, and operator of luxury hospitality, commercial and retail properties, and Koch Real Estate Investments, the real estate investment arm of Koch Industries, to complete the construction of Fontainebleau Las Vegas, a 67-story hotel, gaming, meeting, and entertainment destination coming to the north end of the Las Vegas Strip. The investment was, and will continue to be, funded by us in accordance with a construction draw schedule. Fontainebleau Las Vegas is expected to open in the fourth quarter of 2023.
- **Canyon Ranch Austin Loan.** On October 7, 2022, we entered into a delayed draw term loan facility (the “Canyon Ranch Austin Loan”) with Canyon Ranch, a leading pioneer in global wellness, under which we agreed to provide up to \$200.0 million of secured financing to fund the development of Canyon Ranch Austin in Austin, Texas. We also entered into a call right agreement pursuant to which we will have the right to acquire the real estate assets of Canyon Ranch Austin for up to 24 months following stabilization (with the loan balance being settled in connection with the exercise of such call right), which transaction will be structured as a sale leaseback (with the simultaneous entry into a triple-net lease with Canyon Ranch that will have an initial term of 25 years, with eight 5-year tenant renewal options). In addition, we entered into a purchase option agreement, pursuant to which (i) we have an option to acquire the real estate assets associated with the existing Canyon Ranch Tucson and Canyon Ranch Lenox properties, which transactions will be structured as a sale leaseback, in each case solely to the extent Canyon Ranch elects to sell either or both of such properties in a sale leaseback structure for a specific period of time, subject to certain conditions. In addition, we entered into a right of first offer agreement on future financing opportunities for Canyon Ranch and certain of its affiliates with respect to the funding of certain facilities (including Canyon Ranch Austin, Canyon Ranch Tucson and Canyon Ranch Lenox, and any other fee owned Canyon Ranch branded wellness resort), until the date that is the earlier of five years from commencement of the Canyon Ranch Austin lease (to the extent applicable) and the date that neither VICI nor any of its affiliates are landlord under such lease, subject to certain specified terms, conditions and exceptions.

- **Great Wolf Gulf Coast Texas Loan.** On August 30, 2022, we entered into a loan with Great Wolf under which we agreed to provide up to \$127.0 million of mezzanine financing (the “Great Wolf Gulf Coast Texas Loan”), the proceeds of which will be used to fund the development of Great Wolf Lodge Gulf Coast Texas, a more than \$200.0 million, 532-room indoor water park resort project in Webster, TX. The Great Wolf Gulf Coast Texas Loan has an initial term of three years with two 12-month extension options, subject to certain conditions and is funded by us with cash on hand in accordance with a construction draw schedule.
- **Great Wolf South Florida Loan.** On July 1, 2022, we entered into a loan with Great Wolf under which we agreed to provide up to \$59.0 million of mezzanine financing (the “Great Wolf South Florida Loan”), the proceeds of which will be used to fund the development of Great Wolf Lodge South Florida, a more than \$250.0 million, 500-room indoor water park resort project in Collier County, FL. The Great Wolf South Florida Loan has an initial term of four years with one 12-month extension option subject to certain conditions and is funded with cash on hand in accordance with a construction draw schedule.
- **Cabot Citrus Farms Loan.** On June 6, 2022, we entered into a \$120.0 million delayed draw term loan (the “Cabot Citrus Farms Loan”) with Cabot, a developer, owner and operator of world-class destination golf resorts and communities, the proceeds of which will be used to fund Cabot’s property-wide transformation of Cabot Citrus Farms in Brooksville, Florida, with the addition of a new clubhouse, luxury lodging, health and wellness facilities and a vibrant village center. We also entered into a Purchase and Sale Agreement, pursuant to which upon substantial completion of the asset we will convert a portion of the Cabot Citrus Farms Loan into the ownership of certain Cabot Citrus Farms real estate assets and simultaneously enter into a triple-net lease with Cabot that will have an initial term of 25 years, with five 5-year tenant renewal options.
- **BigShots Loan.** On April 7, 2022, we entered into a loan with BigShots Golf (“BigShots Golf”), a subsidiary of ClubCorp Holdings, Inc. (“ClubCorp”), an Apollo fund portfolio company, under which we agreed to provide up to \$80.0 million of mortgage financing for the construction of certain new BigShots Golf facilities throughout the United States. In addition, we entered into a right of first offer and a call right agreement, pursuant to which (i) we have a call right to acquire the real estate assets associated with any BigShots Golf facility financed by us, which transaction will be structured as a sale leaseback, and (ii) for so long as the BigShots Loan remains outstanding and we continue to hold a majority interest therein, subject to additional terms and conditions, we will have a right of first offer on any multi-site mortgage, mezzanine, preferred equity, or other similar financing that is treated as debt to be obtained by BigShots Golf (or any of its affiliates) in connection with the development of BigShots Golf facilities.

Existing Portfolio Activity

- **Gold Strike Lease.** Subsequent to year-end, on February 15, 2023, in connection with MGM’s sale of the operations of Gold Strike, we entered into the Gold Strike Lease with CNB related to the land and real estate assets of Gold Strike, and entered into an amendment to the MGM Master Lease in order to account for the divestiture of the operations of Gold Strike. The Gold Strike Lease has initial annual base rent of \$40.0 million with other economic terms substantially similar to the MGM Master Lease, including a base term of 25 years with three 10-year tenant renewal options, escalation of 2.0% per annum (with escalation of the greater of 2.0% and CPI, capped at 3.0%, beginning in lease year 11) and minimum capital expenditure requirements of 1.0% of annual net revenue. The Gold Strike Lease is guaranteed by CNB. Upon the closing of the sale of Gold Strike, the MGM Master Lease was amended to account for MGM’s divestiture of the Gold Strike operations and resulted in a reduction of the annual base rent under the MGM Master Lease by \$40.0 million.
- **Mirage Lease.** On December 19, 2022, in connection with MGM’s sale of the operations of the Mirage Hotel & Casino (the “Mirage”) to Hard Rock, we entered into the Mirage Lease and entered into an amendment to the MGM Master Lease relating to the sale of the Mirage. The Mirage Lease has an initial annual base rent of \$90.0 million with other economic terms substantially similar to the MGM Master Lease, including a base term of 25 years with three 10-year tenant renewal options, escalation of 2.0% per annum (with escalation of the greater of 2.0% and CPI, capped at 3.0%, beginning in lease year 11) and minimum capital expenditure requirements of 1.0% of annual net revenue. Upon the closing of the sale of the Mirage, the MGM Master Lease was amended to account for MGM’s divestiture of the Mirage operations and resulted in a reduction of the annual base rent under the MGM Master Lease by \$90.0 million. Additionally, subject to certain conditions, we may fund up to \$1.5 billion of Hard Rock’s redevelopment plan for the Mirage through our Partner Property Growth Fund if Hard Rock elects to seek third-party financing for such redevelopment. The specific terms of the potential funding remain subject to ongoing discussion in connection with Hard Rock’s broader planning of the potential redevelopment, as well as the negotiation of definitive documentation between us and Hard Rock, and there are no assurances that the redevelopment of the Hard Rock-Mirage will occur on the contemplated terms, including through our financing, or at all.

- **Century Casinos Expansion.** On December 1, 2022, we amended the Century Master Lease to provide approximately \$51.9 million in capital through our Partner Property Growth Fund for the construction of a land-based casino with an adjacent 38-room hotel tower at Century Casino Caruthersville. Pursuant to the amendment to the Century Master Lease, we will own the real estate improvements associated with these projects and annual rent under the Century Master Lease will increase by approximately \$4.2 million following completion of the projects.

Other Portfolio Activity

- **Cabot Golf Course Management Agreement.** On October 1, 2022, we entered into a management agreement with CDN Golf, an affiliate of Cabot, a developer, owner and operator of world-class destination golf resorts and communities, pursuant to which CDN Golf manages our four Golf Courses. Pursuant to the management agreement, CDN Golf has assumed all day-to-day operations of the Golf Courses and the employees at each of the Golf Courses are employees of CDN Golf. We continue to own the Golf Courses within our TRS, VICI Golf. The management agreement has a term of 20 years with two five-year renewal options upon mutual agreement of Cabot and us, subject to certain early termination rights.

Financing and Capital Markets Activity

- **January 2023 Offering.** Subsequent to year-end, on January 12, 2023, we completed a primary offering of 30,302,500 shares of common stock (inclusive of 3,952,500 shares sold pursuant to the exercise in full of the underwriters' option to purchase additional common stock) at a public offering price of \$33.00 per share for an aggregate offering value of \$1,000.0 million, resulting in net proceeds, after deduction of the underwriting discount and expenses, of \$964.4 million. The shares are subject to forward sale agreements (the "January 2023 Forward Sale Agreements"), which require settlement by January 16, 2024. We did not initially receive any proceeds from the sale of the shares of common stock in the offering, which were sold to the underwriters by the forward purchasers or their respective affiliates and remain subject to settlement in accordance with the terms of the January 2023 Forward Sale Agreements.
- **November Block Trade.** On November 3, 2022, we completed an offering of 18,975,000 shares of common stock (inclusive of 2,475,000 shares sold pursuant to the exercise in full of the underwriters' option to purchase additional common stock), which the underwriters agreed to purchase from us at a price of \$30.57 per share for an aggregate offering value of \$580.0 million, all of which are subject to forward sale agreements (the "November 2022 Forward Sale Agreements") to be settled by November 6, 2023. We did not initially receive any proceeds from the sale of the shares of common stock in the offering, which were sold to the underwriters by the forward purchasers or their respective affiliates. Subsequent to year-end, on January 6, 2023, we physically settled the November 2022 Forward Sale Agreements in exchange for total net proceeds of approximately \$575.6 million, which were used to pay for a portion of the purchase price of the MGM Grand/Mandalay Bay JV Interest Acquisition.
- **At-The-Market Offering Programs.** During the year ended December 31, 2022, we sold an aggregate of 21,617,592 shares under the ATM Program (as defined in [Note 11 - Stockholders Equity](#)), all of which were subject to forward sale agreements, for estimated aggregate total proceeds of \$715.9 million based on the initial forward sale price with respect to each forward sale agreement. We did not initially receive any proceeds from the sale of the shares of common stock under the ATM Program, which were sold to the underwriters by the forward purchasers or their respective affiliates. Subsequent to year-end, in January 2023, we physically settled all the forward shares issued under the ATM Program in exchange for total net proceeds of approximately \$696.7 million, which were used to pay for a portion of the purchase price of the MGM Grand/Mandalay Bay JV Interest Acquisition.
- **Issuance of Exchange Notes.** In connection with the closing of the MGP Transactions on April 29, 2022, the VICI Issuers issued \$4,110.0 million in aggregate principal amount of Exchange Notes in exchange for the validly tendered and not validly withdrawn MGP OP Notes pursuant to the settlement of the Exchange Offers and Consent Solicitations (each, as defined in [Note 3 - Real Estate Transactions](#)). The Exchange Notes were issued with the same interest rate, maturity date and redemption terms as the corresponding series of MGP OP Notes. Following the issuance of the Exchange Notes pursuant to the settlement of the Exchange Offers and Consent Solicitations, \$90.0 million in aggregate principal amount of MGP OP Notes remained outstanding. See [Note 7 - Debt](#) for additional information.
- **Issuance of April 2022 Notes.** In connection with the closing of the MGP Transactions on April 29, 2022, VICI LP issued (i) \$500.0 million in aggregate principal amount of 4.375% 2025 Notes, (ii) \$1,250.0 million in aggregate principal amount of 4.750% 2028 Notes, (iii) \$1,000.0 million in aggregate principal amount of 4.950% 2030 Notes, (iv) \$1,500.0 million in aggregate principal amount of 5.125% 2032 Notes, and (v) \$750.0 million in aggregate principal amount of 5.625% 2052 Notes, in each case under a supplemental indenture dated as of April 29, 2022, between VICI LP and the Trustee (as defined in [Note 7 - Debt](#)). We used the net proceeds of the offering to (i) fund the consideration for the redemption of a majority of the VICI OP Units received by MGM in the Partnership Merger for \$4,404.0 million in cash in connection with the closing of the MGP Transactions on April 29, 2022, and (ii) pay down

the outstanding \$600.0 million balance on our Revolving Credit Facility. The weighted average interest rate for the senior notes issued in the April 2022 Notes offering is 5.00%, and the adjusted weighted average interest rate, after taking into account the impact of the forward-starting interest rate swaps and treasury locks, is 4.51%.

- **Settlement of September 2021 Forward Sale Agreements and March 2021 Forward Sale Agreements.** On February 18, 2022, we physically settled the September 2021 Forward Sale Agreements and the March 2021 Forward Sale Agreements (each as defined in [Note 11 - Stockholders Equity](#)) in exchange for total net proceeds of approximately \$3.2 billion, which were used to pay for a portion of the purchase price of the Venetian Acquisition.
- **Entry into New Unsecured Credit Agreement.** On February 8, 2022, we entered into the Credit Facilities pursuant to the Credit Agreement, comprised of (i) the Revolving Credit Facility in the amount of \$2.5 billion scheduled to mature on March 31, 2026 and (ii) the Delayed Draw Term Loan in the amount of \$1.0 billion scheduled to mature on March 31, 2025. Concurrently, we terminated our Secured Revolving Credit Facility (including the first priority lien on substantially all of VICI PropCo's and its existing and subsequently acquired wholly owned material domestic restricted subsidiaries' material assets) and our 2017 Credit Agreement (as defined in [Note 7 - Debt](#)). The Delayed Draw Term Loan was available to be drawn up to 12 months following the effective date and on February 8, 2023, the Delayed Draw Term Loan facility expired undrawn in accordance with its terms. The Revolving Credit Facility includes the option to increase the revolving loan commitments by up to \$1.0 billion in the aggregate to the extent that any one or more lenders (from the syndicate or otherwise) agree to provide such additional credit extensions. Borrowings under the Revolving Credit Facility will bear interest at VICI LP's option at a rate based on SOFR (including a credit spread adjustment) plus a margin ranging from 0.775% to 1.325% or a base rate plus a margin ranging from 0.00% to 0.325%, in each case, with the actual margin determined according to VICI LP's debt ratings. On July 15, 2022, the Credit Agreement was amended pursuant to a First Amendment among VICI LP and the lenders party to the Credit Agreement, in order to permit borrowings under the Revolving Credit Facility in certain foreign currencies in an aggregate principal amount of up to the equivalent of \$1.25 billion.
- **Entry into Forward-Starting Interest Rate Swap Agreements and U.S. Treasury Rate Locks.** From December 2021 through April 2022, we entered into five forward-starting interest rate swap agreements with an aggregate notional amount of \$2,500.0 million and two U.S. Treasury Rate Lock agreements with an aggregate notional amount of \$500.0 million. The interest rate swap agreements and treasury locks were intended to reduce the variability in the forecasted interest expense related to the fixed-rate debt we expected to incur in connection with closing the MGP Transactions. In connection with the April 2022 Notes offering, we settled the outstanding forward-starting interest rate swaps and treasury locks for net proceeds of \$206.8 million. Since the forward-starting swaps and treasury locks were hedging the interest rate risk on the April 2022 Notes, the unrealized gain in Accumulated other comprehensive income is being amortized over the term of the respective derivative instruments, which matches that of the underlying note, as a reduction in interest expense.

KEY TRENDS THAT MAY AFFECT OUR BUSINESS

Tenant and Industry Performance

Our tenants and the guarantors of their respective obligations, as applicable, under the Lease Agreements are leading gaming operators across the United States and Canada. Rental payments under the Lease Agreements comprise, and are expected to continue to comprise, a substantial majority of our revenues. Accordingly, we are dependent on, among other things, our tenants' and, as applicable, their respective guarantors', financial performance, the performance of the gaming industry and the health of the economies in the areas where our properties are located for the foreseeable future, and an event that has a material adverse effect on any of our tenant's business, financial condition, liquidity, results of operations or prospects could have a material adverse effect on our business, financial condition, liquidity, results of operations and prospects. In addition, the financial performance of our tenants and their respective guarantors also has a direct impact on our financial results in a given reporting period due to the impact of ASC 326 "Credit Losses" ("ASC 326"), which requires us to estimate and record non-cash expected credit losses related to our investments, including changes on a quarterly basis, that are recorded in our Statement of Operations and impact our reported net income. The change in non-cash allowance for credit losses for a given period is dependent upon, among other things, our tenants' and guarantors' financial performance. For more information regarding ASC 326, refer to [Note 5 - Allowance for Credit Losses](#) included in this Annual Report on Form 10-K.

Business Strategy

Our business prospects and future growth will be significantly influenced by the success of our business strategy, and the timing, availability and terms of financing of any acquisitions and investments that we may complete, as well as broader macroeconomic and other conditions that affect our tenants' operating and financial performance, including those described herein. Further, the pricing of any acquisitions or other investments we may consummate and the terms of any leases that we may enter into will significantly impact our future results. Competition to enter into transactions, including sale leaseback transactions, with attractive properties and desirable tenants is intense, and we can provide no assurance that any future acquisitions, investments or leases will be on terms as favorable to us as those relating to recent or historical transactions.

Impact of the Macroeconomic Environment

We anticipate that we would seek to finance our future growth with a combination of debt and equity, although no assurance can be given that we would be able to issue equity and/or debt in such amounts on favorable terms, or at all, or that we would not determine to incur more debt on a relative basis at the relevant time due to market conditions or otherwise. Recent macroeconomic volatility has introduced significant uncertainty and heightened risk for businesses, including us and our tenants, as a result of the current inflationary environment, including the impact of rising interest rates and increased cost of capital. Our tenants also face additional challenges, including potential changes in consumer confidence levels, behavior and spending and increased operational expenses, such as with respect to labor or energy costs. As a triple-net lessor, increased operational expenses at our leased properties are borne by our tenants and do not directly impact their rent obligations (other than with respect to underlying inflation as applied to the CPI-based escalators described below) or other obligations under our Lease Agreements.

However, the current environment, including rising interest rates and market volatility, impacts our business in certain respects, such as by increasing interest expense with respect to any borrowings under our Credit Facility, increasing volatility of our share price with respect to sales of common stock, and, with respect to potential transactions, evaluating asset and property values in discussions with potential counterparties and obtaining transaction financing on attractive terms, all of which could increase our cost of capital and negatively impact our growth prospects.

With respect to our Lease Agreements, which generally provide for annual rent escalation based on a specified percentage increase and/or increases in CPI, we expect that increasing inflation will result in additional rent increases over time under our CPI-based lease provisions (subject to any applicable caps or periods in which such provisions do not apply). However, these rent increases may not match increasing inflation during periods when inflation rates are greater than the applicable CPI-based caps.

Impact of the COVID-19 Pandemic

Since the emergence of the COVID-19 pandemic in early 2020, among broader public health, societal and global impacts, the pandemic has negatively impacted the economy, including the real estate industry and certain experiential sectors, and contributed to volatility and uncertainty in financial markets. Although our tenants' operations at our leased properties are generally no longer subject to significant operating restrictions, with performance in many cases at or above pre-pandemic levels, they may continue to face challenges in operating their businesses due to the ongoing impact of the COVID-19 pandemic, such as complying with any future operating restrictions, ensuring sufficient staffing and service levels, sustaining customer engagement and maintaining improved operating margins and financial performance.

Overall Implications of Such Material Trends on Our Business

As a triple-net lessor, we believe we are generally in a strong creditor position and structurally insulated from operational and performance impacts of our tenants, both positive and negative. However, the full extent to which the trends set forth herein adversely affect our tenants and/or ultimately impact us depends on future developments that cannot be predicted with confidence, including our tenants' financial performance, the direct and indirect effects of such trends discussed herein (including among other things, rising interest rates, inflation, economic recessions, consumer confidence levels and general conditions in the capital and credit markets) and the impact of any future measures taken in response to such trends on our tenants.

For more information, refer to "[Part I – Item 1A. Risk Factors](#)" included in this Annual Report on Form 10-K.

DISCUSSION OF OPERATING RESULTS

Results of Operations for the Years Ended December 31, 2022 and December 31, 2021

<i>(In thousands)</i>	2022	2021	Variance
Revenues			
Income from sales-type leases	\$ 1,464,245	\$ 1,167,972	\$ 296,273
Income from lease financing receivables and loans	1,041,229	283,242	757,987
Other income	59,629	27,808	31,821
Golf revenues	35,594	30,546	5,048
Total revenues	2,600,697	1,509,568	1,091,129
Operating expenses			
General and administrative	48,340	33,122	15,218
Depreciation	3,182	3,091	91
Other expenses	59,629	27,808	31,821
Golf expenses	22,602	20,762	1,840
Change in allowance for credit losses	834,494	(19,554)	854,048
Transaction and acquisition expenses	22,653	10,402	12,251
Total operating expenses	990,900	75,631	915,269
Income from unconsolidated affiliate	59,769	—	59,769
Interest expense	(539,953)	(392,390)	(147,563)
Interest income	9,530	120	9,410
Loss from extinguishment of debt	—	(15,622)	15,622
Income before income taxes	1,139,143	1,026,045	53,329
Income tax expense	(2,876)	(2,887)	11
Net income	1,136,267	1,023,158	53,340
Less: Net income attributable to non-controlling interests	(18,632)	(9,307)	(9,325)
Net income attributable to common stockholders	\$ 1,117,635	\$ 1,013,851	\$ 44,015

Revenue

For the years ended December 31, 2022 and 2021, our revenue was comprised of the following items:

<i>(In thousands)</i>	2022	2021	Variance
Leasing revenue	\$ 2,461,299	\$ 1,410,980	\$ 1,050,319
Income from loans	44,175	40,234	3,941
Other income	59,629	27,808	31,821
Golf revenues	35,594	30,546	5,048
Total revenues	<u>\$ 2,600,697</u>	<u>\$ 1,509,568</u>	<u>\$ 1,091,129</u>

Leasing Revenue

The following table details the components of our income from sales-type lease and lease financing receivables:

<i>(In thousands)</i>	2022	2021	Variance
Income from sales-type leases	\$ 1,464,245	\$ 1,167,972	\$ 296,273
Income from lease financing receivables ⁽¹⁾	997,054	243,008	754,046
Total leasing revenue	2,461,299	1,410,980	1,050,319
Non-cash adjustment ⁽²⁾	(337,631)	(119,790)	(217,841)
Total contractual leasing revenue	<u>\$ 2,123,668</u>	<u>\$ 1,291,190</u>	<u>\$ 832,478</u>

⁽¹⁾ Represents the MGM Master Lease, Harrah's Call Properties (as defined in [Note 2 - Summary of Significant Accounting Policies](#)), the JACK Master Lease and the Foundation Master Lease, all of which were sale leaseback transactions. In accordance with ASC 842, since the lease agreements were determined to meet the definition of a sales-type lease and control of the asset is not considered to have transferred to us, such lease agreements are accounted for as financings under ASC 310.

⁽²⁾ Amounts represent the non-cash adjustment to income from sales-type leases, direct financing leases and lease financing receivables in order to recognize income on an effective interest basis at a constant rate of return over the term of the leases.

Leasing revenue is generated from rent from our Lease Agreements. Total leasing revenue increased \$1,050.3 million during the year ended December 31, 2022 compared to the year ended December 31, 2021. Total contractual leasing revenue increased \$832.5 million during the year ended December 31, 2022 compared to the year ended December 31, 2021. The increases were primarily driven by the addition of the MGM Master Lease, Venetian Lease and Foundation Master Lease to our portfolio in 2022, as well as the annual rent escalators from certain of our other Lease Agreements.

Income From Loans

Income from loans increased \$3.9 million during the year ended December 31, 2022 compared to the year ended December 31, 2021. The increase was driven by the addition and/or subsequent funding, as applicable, of the Great Wolf Northeast Loan, Fontainebleau Las Vegas Loan, Canyon Ranch Austin Loan, Great Wolf Gulf Coast Texas Loan, Great Wolf South Florida Loan, Cabot Citrus Farms Loan and Great Wolf Maryland loan to our real estate investment portfolio, partially offset by the repayment of the \$70.0 million term loan with JACK Entertainment in October 2021.

Other Income

Other income increased \$31.8 million during the year ended December 31, 2022 compared to the year ended December 31, 2021. The increase was driven primarily by the additional income and offsetting expense as a result of the assumption of certain sub-leases in connection with the closing of the Venetian Acquisition and MGP Transactions. The Lease Agreements require the tenants to pay all costs associated with such ground and use sub-leases and provide for their direct payment to the landlord.

Golf Revenues

Revenues from golf operations increased \$5.0 million during the year ended December 31, 2022 compared to the year ended December 31, 2021. The change was primarily driven by an increase in rounds played at the Golf Courses and an increase in the contractual fees paid to us by Caesars for the use of our Golf Courses, pursuant to a golf course use agreement.

Operating Expenses

For the years ended December 31, 2022 and 2021, our operating expenses were comprised of the following items:

<i>(In thousands)</i>	2022	2021	Variance
General and administrative	\$ 48,340	\$ 33,122	\$ 15,218
Depreciation	3,182	3,091	91
Other expenses	59,629	27,808	31,821
Golf expenses	22,602	20,762	1,840
Change in allowance for credit losses	834,494	(19,554)	854,048
Transaction and acquisition expenses	22,653	10,402	12,251
Total operating expenses	<u>\$ 990,900</u>	<u>\$ 75,631</u>	<u>\$ 915,269</u>

General and Administrative Expenses

General and administrative expenses increased \$15.2 million during the year ended December 31, 2022 compared to the year ended December 31, 2021. The increase was primarily driven by an increase in compensation, including stock-based compensation and the addition of new employees to the corporate team and additional expenses related to the significant growth of our business in 2022.

Other Expenses

Other expenses increased \$31.8 million during the year ended December 31, 2022 compared to the year ended December 31, 2021. The increase was driven primarily by the additional income and offsetting expense as a result of the assumption of certain sub-leases in connection with the Venetian Acquisition and MGP Transactions. The Lease Agreements require the tenants to pay all costs associated with such ground and use sub-leases and provide for their direct payment to the landlord.

Golf Expenses

Expenses from golf operations increased \$1.8 million during the year ended December 31, 2022 compared to the year ended December 31, 2021. The change was primarily driven by increased costs related to the number of rounds of golf played across our Golf Courses. In addition, \$3.2 million and \$3.1 million of depreciation expense was incurred primarily by the golf business during the year ended December 31, 2022 and 2021, respectively.

Change in Allowance for Credit Losses

During the year ended December 31, 2022, we recognized an \$834.5 million increase in our allowance for credit losses, or CECL allowance, primarily driven by initial CECL allowances on our acquisition activity during such period in the amount of \$573.6 million, representing 68.7% of the total CECL allowance for the year ended December 31, 2022. The initial CECL allowances were in relation to (i) the closing of the MGP Transactions on April 29, 2022, which included the (a) classification of the MGM Master Lease as a lease financing receivable and (b) the sales-type sub-lease agreements that we assumed in connection with the closing of the MGP Transactions, (ii) the closing of the Venetian Acquisition on February 23, 2022, which included (a) the classification of the Venetian Lease as a sales-type lease, (b) the estimated future funding commitments under the Venetian PGF and (c) the sales-type sub-lease agreements that we assumed in connection with the closing of the Venetian Acquisition, and (iii) the future funding commitments from the origination of the BigShots Loan, the Cabot Citrus Farms Loan, the Great Wolf South Florida Loan, the Great Wolf Gulf Coast Texas Loan, the Canyon Ranch Austin Loan, the Great Wolf Northeast Loan and the Fontainebleau Las Vegas Loan.

Additional increases were attributable to (i) changes in the macroeconomic model used to scenario condition our reasonable and supportable period, or R&S Period, probability of default, or PD, due to uncertain and potentially negative future market conditions, (ii) an increase in the R&S Period PD of our tenants and their parent guarantors (as applicable) as a result of market volatility during the quarter and (iii) an increase in the R&S Period PD and loss given default, or LGD, as a result of standard annual updates that were made to the inputs and assumptions in the model that we utilize to estimate our CECL allowance. These increases were partially offset by a decrease in the long-term reasonable and supportable period probability of default, or Long-Term Period PD, due to an upgrade of the credit rating of the senior secured debt used to determine the Long-Term Period PD for one of our tenants and as a result of standard annual updates that were made to the Long-Term Period PD default study that we utilize to estimate our CECL allowance.

During the year ended December 31, 2021, we recognized a \$19.6 million decrease in our allowance for credit losses primarily driven by (i) the decrease in the R&S Period PD of our tenants or borrowers and their parent guarantors as a result of an improvement in their economic outlook due to the reopening of all of their gaming operations and relative performance of such operations during 2021, (ii) the decrease in the Long-Term Period PD due to an upgrade of the credit rating of the senior secured debt used to determine the Long-Term Period PD for one of our tenants during 2021 and (iii) the decrease in the R&S Period PD and loss given default as a result of standard annual updates that were made to the inputs and assumptions in the model that we utilize to estimate our CECL allowance. This decrease was partially offset by an increase in the existing amortized cost balances subject to the CECL allowance. Refer to [Note 5 - Allowance for Credit Losses](#) for further details.

Transaction and Acquisition Expenses

Transaction and acquisition costs increased \$12.3 million during the year ended December 31, 2022 compared to the year ended December 31, 2021 driven primarily by increases in costs incurred for the MGP Transactions and Venetian Acquisition during the period that are not capitalized under GAAP. Such balances also includes costs incurred for investments that we are no longer pursuing, the amounts of which fluctuate depending on volume and timing of such non-pursuit.

Non-Operating Income and Expenses

For the years ended December 31, 2022 and 2021, our non-operating income and expenses were comprised of the following items:

<i>(In thousands)</i>	2022	2021	Variance
Income from unconsolidated affiliate	\$ 59,769	\$ —	\$ 59,769
Interest expense	(539,953)	(392,390)	(147,563)
Interest income	9,530	120	9,410
Loss from extinguishment of debt	—	(15,622)	15,622

Income from Unconsolidated Affiliate

Income from unconsolidated affiliate during the year ended December 31, 2022 represents our 50.1% share of the income of the MGM Grand/Mandalay Bay JV for the period of ownership, which interest was acquired as part of the MGP Transactions on April 29, 2022. The income from unconsolidated affiliate includes the amortization of certain basis differences arising from the differences between our purchase price and the underlying carrying value of the joint venture. As the MGM Grand/Mandalay Bay JV interest was acquired by us on April 29, 2022, no such income was recognized for the year ended December 31, 2021. Subsequent to year-end, on January 9, 2023, we purchased BREIT's 49.9% share of interest in the MGM Grand/Mandalay Bay JV and, accordingly, we will consolidate the MGM Grand/Mandalay Bay JV entity in future periods, upon which such income will be presented on a consolidated basis as part of our leasing income.

Interest Expense

Interest expense increased \$147.6 million during the year ended December 31, 2022 compared to the year ended December 31, 2021. The increase was primarily related to the increase in debt from the (i) issuance of the April 2022 Notes, (ii) issuance of the Exchange Notes and (iii) assumption of the MGP OP Notes, the combination of which resulted in an additional \$9.2 billion in notional amount of debt at a weighted average interest rate of 4.70%, net of the impact of the forward-starting interest rate swaps and treasury locks. Further increases were related to (i) the amortization of the commitment fees associated with the bridge facilities entered into in connection with the acquisition of the Venetian Resort and the MGP Transactions, (ii) the commitment fees on the Revolving Credit Facility and the Delayed Draw Term Loan, and (iii) additional interest on the \$600.0 million draw on the Revolving Credit Facility in February 2022 (which was repaid in full on April 29, 2022).

The increases were partially offset by the full repayment of the Term Loan B Facility in September 2021 and certain non-recurring activity during the year ended December 31, 2021, which included (i) the \$64.2 million payment in connection with the early settlement of the outstanding interest rate swap agreements and (ii) the amortization of the commitment fees associated with the Venetian Acquisition Bridge Facility and the MGP Transactions Bridge Facility.

Additionally, the weighted average annualized interest rate of our debt, net of the impact of the forward-starting interest rate swaps and treasury locks, increased to 4.39% during the year ended December 31, 2022 from 4.04% during the year ended December 31, 2021 as a result of a higher weighted average effective interest rate on the April 2022 Notes, Exchange Notes and MGP OP Notes as compared to our outstanding debt during such prior period.

Interest Income

Interest income increased \$9.4 million during the year ended December 31, 2022 compared to the year ended December 31, 2021. The increase was primarily driven by a significant increase in the interest rates and income earned on our excess cash and short-term investments, coupled with an overall increase in our cash on hand throughout the current year as compared to the prior year.

Loss on Extinguishment of Debt

During the year ended December 31, 2021, we recognized a loss on extinguishment of debt of \$15.6 million resulting from the write-off of the unamortized deferred financing fees in connection with the full repayment of our Term Loan B Facility in September 2021. No such loss was recognized during the year ended December 31, 2022.

Results of Operations for the Years Ended December 31, 2021 and 2020

For a comparison of our results of operations for the fiscal years ended December 31, 2021 and 2020, see “[Part II, Item 7. Management’s Discussion and Analysis of Financial Condition and Results of Operations](#)” of our annual report on Form 10-K for the fiscal year ended December 31, 2021, filed with the SEC on February 23, 2022 and incorporated by reference herein.

RECONCILIATION OF NON-GAAP MEASURES

We present VICI’s Funds From Operations (“FFO”), FFO per share, Adjusted Funds From Operations (“AFFO”), AFFO per share, and Adjusted EBITDA, which are not required by, or presented in accordance with, generally accepted accounting principles in the United States (“GAAP”). These are non-GAAP financial measures and should not be construed as alternatives to net income or as an indicator of operating performance (as determined in accordance with GAAP). We believe FFO, FFO per share, AFFO, AFFO per share and Adjusted EBITDA provide a meaningful perspective of the underlying operating performance of VICI’s business.

FFO is a non-GAAP financial measure that is considered a supplemental measure for the real estate industry and a supplement to GAAP measures. Consistent with the definition used by the National Association of Real Estate Investment Trusts (NAREIT), we define FFO as VICI’s net income (or loss) attributable to common stockholders (computed in accordance with GAAP) excluding (i) gains (or losses) from sales of certain real estate assets, (ii) depreciation and amortization related to real estate, (iii) gains and losses from change in control, (iv) impairment write-downs of certain real estate assets and investments in entities when the impairment is directly attributable to decreases in the value of depreciable real estate held by the entity and (v) VICI’s proportionate share of such adjustments from its investment in unconsolidated affiliate.

AFFO is a non-GAAP financial measure that we use as a supplemental operating measure to evaluate VICI’s performance. We calculate VICI’s AFFO by adding or subtracting from FFO non-cash leasing and financing adjustments, non-cash change in allowance for credit losses, non-cash stock-based compensation expense, transaction costs incurred in connection with the acquisition of real estate investments, amortization of debt issuance costs and original issue discount, other non-cash interest expense, non-real estate depreciation (which is comprised of the depreciation related to our golf course operations), capital expenditures (which are comprised of additions to property, plant and equipment related to our golf course operations), impairment charges related to non-depreciable real estate, gains (or losses) on debt extinguishment and interest rate swap settlements, other non-recurring non-cash transactions, our proportionate share of non-cash adjustments from our investment in unconsolidated affiliate (including the amortization of any basis differences) with respect to certain of the foregoing and non-cash adjustments attributable to non-controlling interest with respect to certain of the foregoing.

We calculate VICI’s Adjusted EBITDA by adding or subtracting from AFFO contractual interest expense (including the impact of the forward-starting interest rate swaps and treasury locks) and interest income (collectively, interest expense, net), income tax expense and our proportionate share of such adjustments from VICI’s investment in unconsolidated affiliate.

These non-GAAP financial measures: (i) do not represent VICI’s cash flow from operations as defined by GAAP; (ii) should not be considered as an alternative to VICI’s net income as a measure of operating performance or to cash flows from operating, investing and financing activities; and (iii) are not alternatives to VICI’s cash flow as a measure of liquidity. In addition, these measures should not be viewed as measures of liquidity, nor do they measure our ability to fund all of our cash needs, including our ability to make cash distributions to our stockholders, to fund capital improvements, or to make interest payments on our indebtedness. Investors are also cautioned that FFO, FFO per share, AFFO, AFFO per share and Adjusted EBITDA, as presented, may not be comparable to similarly titled measures reported by other real estate companies, including REITs, due to the fact that not all real estate companies use the same definitions. Our presentation of these measures does not replace the presentation of VICI’s financial results in accordance with GAAP.

Reconciliation of VICI's Net Income to FFO, FFO per Share, AFFO, AFFO per Share and Adjusted EBITDA

<i>(In thousands, except share data and per share data)</i>	Year Ended December 31,	
	2022	2021
Net income attributable to common stockholders	\$ 1,117,635	\$ 1,013,851
Real estate depreciation	—	—
Joint venture depreciation and non-controlling interest adjustments	27,146	—
FFO attributable to common stockholders	1,144,781	1,013,851
Non-cash leasing and financing adjustments	(337,631)	(119,426)
Non-cash change in allowance for credit losses	834,494	(19,554)
Non-cash stock-based compensation	12,986	9,371
Transaction and acquisition expenses	22,653	10,402
Amortization of debt issuance costs and original issue discount	48,595	71,452
Other depreciation	3,060	2,970
Capital expenditures	(1,802)	(2,490)
(Gain) loss on extinguishment of debt and interest rate swap settlements ⁽¹⁾	(5,405)	79,861
Joint venture non-cash adjustments and non-controlling interest adjustments	(27,930)	1,000
AFFO attributable to common stockholders	1,693,801	1,047,437
Interest expense, net	487,233	256,579
Income tax expense	2,876	2,887
Joint venture interest expense and non-controlling interest adjustments	30,755	—
Adjusted EBITDA attributable to common stockholders	\$ 2,214,665	\$ 1,306,903
Net income per common share		
Basic	\$ 1.27	\$ 1.80
Diluted	\$ 1.27	\$ 1.76
FFO per common share		
Basic	\$ 1.30	\$ 1.80
Diluted	\$ 1.30	\$ 1.76
AFFO per common share		
Basic	\$ 1.93	\$ 1.86
Diluted	\$ 1.93	\$ 1.82
Weighted average number of shares of common shares outstanding		
Basic	877,508,388	564,467,362
Diluted	879,675,845	577,066,292

⁽¹⁾ Includes swap breakage costs of approximately \$64.2 million incurred by VICI PropCo on September 15, 2021 in connection with the early settlement of the outstanding interest rate swap agreements.

LIQUIDITY AND CAPITAL RESOURCES

Liquidity

As of December 31, 2022, our available cash and cash equivalents balance, short-term investments and capacity under our Revolving Credit Facility were as follows:

<i>(In thousands)</i>		December 31, 2022
Cash and cash equivalents	\$	208,933
Short-term investments		217,342
Capacity under Revolving Credit Facility ^{(1) (2)}		2,500,000
Proceeds available from settlement of the November 2022 Forward Sale Agreements and ATM Forward Sale Agreements ^{(3) (4)}		1,272,243
Total ⁽⁵⁾	\$	4,198,518

(1) In addition, the Revolving Credit Facility includes the option to increase the revolving loan commitments by up to \$1.0 billion to the extent that any one or more lenders (from the syndicate or otherwise) agree to provide such additional credit extensions.

(2) Subsequent to year-end, on January 3, 2023, we drew on the Revolving Credit Facility in the amount of C\$140.0 million (approximately US\$103.4 million based on the exchange rate at the time of the acquisition) to fund a portion of the purchase price of the PURE Canadian Gaming Acquisition.

(3) Subsequent to year-end, in January 2023 we physically settled the November 2022 Forward Sale Agreements and the then outstanding shares under the ATM Forward Sale Agreements in exchange for total net proceeds of approximately \$1,272.2 million, which were used to pay for a portion of the purchase price of the MGM Grand/Mandalay Bay JV Interest Acquisition.

(4) Subsequent to year-end, on January 12, 2023, we completed a primary offering of 30,302,500 shares of common stock (inclusive of 3,952,500 shares sold pursuant to the exercise in full of the underwriters' option to purchase additional common stock) at a public offering price of \$33.00 per share for an aggregate offering value of \$1,000.0 million. Such amount is not included in the table above and we did not initially receive any proceeds from the sale of the shares of common stock in the offering, which were sold to the underwriters by the forward purchasers or their respective affiliates and remain subject to settlement in accordance with the terms of the January 2023 Forward Sale Agreements.

(5) Amounts exclude the capacity under the Delayed Draw Term Loan as the ability to use the commitments expired on February 8, 2023, and no amounts were drawn upon prior to expiration.

We believe that we have sufficient liquidity to meet our material cash requirements, including our contractual obligations and commitments as well as our additional funding requirements, primarily through currently available cash and cash equivalents, cash received under our Lease Agreements, existing borrowings from banks, including our undrawn capacity under our Revolving Credit Facility, and proceeds from future issuances of debt and equity securities (including issuances under any future "at-the-market" program) for the next 12 months and in future periods.

All of the Lease Agreements call for an initial term of between fifteen and thirty years with additional tenant renewal options and are designed to provide us with a reliable and predictable long-term revenue stream. Our cash flows from operations and our ability to access capital resources could be adversely affected due to uncertain economic factors and volatility in the financial and credit markets, including as a result of the current inflationary environment, sustained rising interest rates, equity market volatility, changes in consumer behavior and spending and the COVID-19 pandemic. In particular, we can provide no assurances that our tenants will not default on their leases or fail to make full rental payments if their businesses become challenged due to, among other things, current or future adverse economic conditions. See "Overview — Impact of Material Trends on our Business" above for additional detail. In the event our tenants are unable to make all of their contractual rent payments as provided by the Lease Agreements, we believe we have sufficient liquidity from the other sources discussed above to meet all of our contractual obligations for a significant period of time. Additionally, we do not have any debt maturities until May 2024. For more information, refer to the risk factors incorporated by reference into [Part I, Item 1A, Risk Factors](#).

Our ability to raise funds through the issuance of debt and equity securities and access to other third-party sources of capital in the future will be dependent on, among other things, general economic conditions, general market conditions for REITs and investment grade issuers, market perceptions, the trading price of our stock and uncertainties related to the macroeconomic environment. We will continue to analyze which sources of capital are most advantageous to us at any particular point in time, but financing available through the capital markets may not be consistently available on terms we deem attractive, or at all.

Material Cash Requirements

Contractual Obligations

Our short-term obligations consist primarily of regular interest payments on our debt obligations, dividends to our common stockholders, distributions to the VICI OP Unit holders, normal recurring operating expenses, recurring expenditures for corporate and administrative needs, certain lease and other contractual commitments related to our golf operations and certain non-recurring expenditures. For more information on our material contractual commitments, refer to [Note 10 - Commitments and Contingent Liabilities](#).

Our long-term obligations consist primarily of principal payments on our outstanding debt obligations and future funding commitments under our lease and loan agreements. As of December 31, 2022, we had \$15.5 billion of debt obligations outstanding (inclusive of \$1.5 billion of secured debt representing our 50.1% pro-rata interest of the \$3.0 billion property-level debt secured by the MGM Grand Las Vegas and Mandalay Bay held in the MGM Grand/Mandalay Bay JV), none of which are maturing in the next twelve months. For a summary of principal debt balances and their maturity dates and principal terms, refer to [Note 7 - Debt](#). For a summary of our future funding commitments under our loan portfolio, refer to [Note 4 - Real Estate Portfolio](#).

Pursuant to our Lease Agreements, capital expenditures, insurance and taxes for our properties are the responsibility of the tenants. Minimum capital expenditure spending requirements of the tenants pursuant to the Lease Agreements are described in [Note 4 - Real Estate Portfolio](#).

Information concerning our material contractual obligations and commitments to make future payments under contracts such as our indebtedness, future funding commitments under our loans and Partner Property Growth Fund and future contractual operating commitments (such as future lease payments under our corporate lease) are included in the following table as of December 31, 2022, including material subsequent events. Amounts in this table omit, among other things, non-contractual commitments and items such as dividends and recurring or non-recurring operating expenses and other expenditures, including acquisitions and other investments:

(In thousands)	Payments Due By Period					
	Total	2023	2024	2025	2026	2027 and Thereafter
Long-term debt, principal						
Senior Unsecured Notes	\$ 13,950,000	\$ —	\$ 1,050,000	\$ 2,050,000	\$ 1,750,000	\$ 9,100,000
MGM Grand/Mandalay Bay JV CMBS	3,000,000	—	—	—	—	3,000,000
Scheduled interest payments	5,787,769	768,406	734,395	665,344	624,219	2,995,405
Total debt contractual obligations	22,737,769	768,406	1,784,395	2,715,344	2,374,219	15,095,405
Leases and contracts						
Future funding commitments – loan investments and Partner Property Growth Fund ⁽³⁾	1,145,831	633,814	449,650	47,367	—	15,000
Golf course operating lease and contractual commitments	47,854	5,734	2,112	2,153	2,197	35,658
Corporate office leases	6,903	967	857	899	929	3,251
Total leases and contract obligations	1,200,588	640,515	452,619	50,419	3,126	53,909
Total contractual commitments	\$ 23,938,357	\$ 1,408,921	\$ 2,237,014	\$ 2,765,763	\$ 2,377,345	\$ 15,149,314

(1) As of December 31, 2022, our 50.1% pro-rata share of the \$3.0 billion MGM Grand/Mandalay Bay CMBS JV debt was part of the balance of our Investment in unconsolidated affiliate on our Balance Sheets. Subsequent to year-end, on January 9, 2023, upon closing of the MGM Grand/Mandalay Bay JV Acquisition and consolidating the operations in the first quarter of 2023 the balance of the \$3.0 billion debt, net of the fair value adjustment, will be presented in Debt, net on our Balance Sheets. The property-level debt has a principal balance of \$3.0 billion, bears interest at a fixed rate of 3.558% per annum through March 2030, and matures in 2032.

(2) Subsequent to year-end, on January 3, 2023, we drew on the Revolving Credit Facility in the amount of C\$140.0 million (approximately US\$103.4 million based on the exchange rate at the time of the acquisition) to fund a portion of the purchase price of the PURE Canadian Gaming Transaction.

(3) The allocation of our future funding commitments is based on a construction draw schedule, commitment funding date, expiration date or other information, as applicable; however, we may be obligated to fund these commitments earlier than such applicable date.

Additional Funding Requirements

In addition to the contractual obligations and commitments set forth in the table above, we have and may enter into additional agreements that commit us to potentially acquire properties in the future, fund future property improvements or otherwise provide capital to our tenants, borrowers and other counterparties, including through our put-call agreements and Partner Property Growth Fund. As of December 31, 2022, we had \$1.0 billion of potential future funding commitments under our Partner Property Growth Fund agreements, the use of which are at the sole discretion of our tenants and will be dependent upon independent decisions made by our tenants with respect to any capital improvement projects and the source of funds for such projects, as well as the total funding ultimately provided under such arrangements.

Cash Flow Analysis

The table below summarizes our cash flows for the years ended December 31, 2022 and 2021:

<i>(In thousands)</i>	2022	2021	Variance (\$)
Cash, cash equivalents and restricted cash			
Provided by operating activities	\$ 1,943,396	\$ 896,350	\$ 1,047,046
(Used in) provided by investing activities	(9,304,014)	41,449	(9,345,463)
Provided by (used in) financing activities	6,829,937	(514,178)	7,344,115
Net (decrease) increase in cash, cash equivalents and restricted cash	\$ (530,681)	\$ 423,621	\$ (954,302)

Cash Flows from Operating Activities

Net cash provided by operating activities increased \$1,047.0 million for the year ended December 31, 2022 compared with the year ended December 31, 2021. The increase is primarily driven by an increase in cash rental payments from the addition of the MGM Master Lease, Venetian Lease and Foundation Master Lease to our real estate portfolio, the annual rent escalators on our Caesars Lease and certain of our other Lease Agreements, the proceeds from settlement of our forward-starting derivative instruments in connection with the April 2022 Notes offering and an increase in loan income as a result of an increase in the principal balance of our loan portfolio.

Cash Flows from Investing Activities

Net cash used in investing activities increased \$9,345.5 million for the year ended December 31, 2022 compared with the year ended December 31, 2021.

During the year ended December 31, 2022, the primary sources and uses of cash from investing activities included:

- Net payments of \$4,574.5 million in relation to the closing of the MGP Transactions, including \$4,404.0 million in connection with the redemption of the majority of the MGP OP units held by MGM, \$90.0 million in connection with the repayment of the outstanding MGP revolving credit facility and acquisition costs;
- Payments for the Venetian Acquisition and the funding of the Partner Property Growth Fund investment for Century Casino Caruthersville for a total cost of \$4,017.9 million, including acquisition costs;
- Payments for the Foundation Gaming Transaction for a total cost of \$296.7 million, including acquisition costs;
- Investment in short-term investments, net of maturities, of \$217.3 million;
- Disbursements to fund portions of the Fontainebleau Las Vegas Loan, Canyon Ranch Austin Loan, Great Wolf Gulf Coast Texas Loan, Great Wolf South Florida Loan, Cabot Citrus Farms Loan, BigShots Loan and Great Wolf Maryland loan, in the aggregate amount of \$193.7 million; and
- Capitalized transaction costs of \$7.7 million.

During the year ended December 31, 2021, the primary sources and uses of cash from investing activities included:

- Proceeds from the repayment of a certain loan with JACK Entertainment and receipt of deferred fees of \$70.4 million;
- Payments to fund a portion of the Great Wolf Maryland loan totaling \$33.6 million;
- Proceeds from net maturities of short-term investments of \$20.0 million;

- Proceeds from the sale of Louisiana Downs and certain parcels of vacant land in the aggregate amount of \$13.3 million;
- Final disbursement for the funding of a new gaming patio amenity at JACK Thistledown Racino of \$6.0 million; and
- Capitalized transaction costs of \$20.7 million.

Cash Flows from Financing Activities

Net cash provided by financing activities increased \$7,344.1 million for the year ended December 31, 2022 compared with the year ended December 31, 2021.

During the year ended December 31, 2022, the primary sources and uses of cash from financing activities included:

- Gross proceeds of \$5,000.0 million from the April 2002 Notes offering;
- Net proceeds of \$3,219.1 million from the sale of an aggregate 119,000,000 shares of our common stock pursuant to the full physical settlement of the September 2021 Forward Sale Agreements and March 2021 Forward Sale Agreements;
- Dividend payments of \$1,219.1 million;
- Initial draw and repayment of \$600.0 million on our Revolving Credit Facility;
- Debt issuance costs of \$146.2 million;
- Distributions of \$17.7 million to non-controlling interests; and
- Repurchase of shares of common stock for tax withholding in connection with the vesting of employee stock compensation of \$6.2 million.

During the year ended December 31, 2021, the primary sources and uses of cash from financing activities included:

- Net proceeds from the sale of an aggregate of \$2,385.8 million of our common stock from our September 2021 equity offering and pursuant to the full physical settlement of the June 2020 Forward Sale Agreement;
- Full repayment of the \$2,100.0 million outstanding aggregate principal amount of our Term Loan B Facility;
- Dividend payments of \$758.8 million;
- Debt issuance costs of \$31.1 million; and
- Distributions of \$8.3 million to non-controlling interest.

Debt

For a summary of our debt obligations as of December 31, 2022, refer to [Note 7 - Debt](#). For a summary of our financing activities in 2022 refer to “Summary of Significant 2022 Activity - Financing and Capital Markets Activity” above.

Covenants

Our debt obligations are subject to certain customary financial and operating covenants that restrict our ability to incur additional debt, sell certain asset and restrict certain payments, among other things. In addition, these covenants are subject to a number of important exceptions and qualifications, including, with respect to the restricted payments covenant, the ability to make unlimited restricted payments to maintain our REIT status.

At December 31, 2022, we were in compliance with all required debt-related covenants, including financial covenants.

CRITICAL ACCOUNTING ESTIMATES

Our Financial Statements are prepared in accordance with GAAP which requires us to make estimates and assumptions about future events that affect the amounts reported in the financial statements and accompanying notes. We believe that the following discussion addresses our most critical accounting estimates, which are those that have a significant level of estimation uncertainty, requiring our most difficult, subjective and complex judgments, and significantly impacts the Balance Sheet and Statement of Operations in the reporting period. Actual results may differ from the estimates. Refer to [Note 2 - Summary of Significant Accounting Policies](#) for a full discussion of our accounting policies.

Purchase Accounting

Our property acquisitions are accounted for under ASC 805 - *Business Combinations* (“ASC 805”), which requires that we allocate the purchase price of our properties to the identifiable assets acquired and liabilities assumed, as applicable. Our acquired properties generally meet the definition of an asset acquisition under ASC 805-50 and we typically allocate the cost of real estate acquired, inclusive of capitalizable transaction costs, to (i) land, (ii) building and improvements and (iii) site improvements, based in each case on their relative estimated fair values using industry standard practices such as market comparables and the cost approach. In an acquisition of multiple properties, we must also allocate the purchase price among the properties, and in certain cases investments in unconsolidated affiliates, which is based on the (a) asset quality and location, (b) property and lease-level operating performance and (c) supply and demand dynamics of each property’s respective market. In addition, any assumed mortgages are recorded at their estimated fair values.

Such allocations use significant estimates which can impact the determination of the accounting as a business combination or asset acquisition and the allocation to the differing components of an acquisition. Management uses industry standard practices to estimate the value assigned to the assets acquired and liabilities assumed in an acquisition, including the value assigned to each property, the liabilities assumed, as applicable, and the land and building property components within each property. Although management believes its estimate of both the value assigned to each property and to the land and building property components within each property is reasonable, no assurance can be given that such amounts will be correct. In particular, a change in the estimates could have a material impact on the business combination determination and the timing and amount of income recognized over the life of the assets acquired and liabilities assumed.

Lease Accounting

We account for our investments in leases under ASC 842 “Leases” (“ASC 842”), which requires significant estimates and judgments by management in its application. Upon lease inception or lease modification, we assess the lease classification of both the land and building components of the property to determine whether each component should be classified as a direct financing, sales-type or operating lease. The determination of lease classification requires the calculation of the rate implicit in the lease, which is driven by significant estimates, including the estimation of both the value assigned to the land and building property components upon acquisition (as further described in “—Purchase Accounting” above) and the estimation of the unguaranteed residual value of such components at the end of the non-cancelable lease term. If the lease component is determined to be a direct financing or sales-type lease, revenue is recognized over the life of the lease using the rate implicit in the lease.

Management uses industry standard practices to estimate both the value assigned to the land and building property components upon acquisition and the unguaranteed residual value of such components, including comparable sales and replacement cost analyses. Although management believes its estimate of both the value assigned to the land and building property components upon acquisition and the unguaranteed residual value of such components is reasonable, no assurance can be given that such amounts will be correct. In particular a change in the estimates could have a material impact on the lease classification determination and the timing and amount of income recognized over the life of the lease.

Allowance for Credit Losses

ASC 326 requires that we measure and record current expected credit losses (“CECL”) for the majority of our investments, the scope of which includes our Investments in leases - sales-type, Investments in leases - financing receivables and Investments in loans. We have elected to use a discounted cash flow model to estimate the Allowance for credit losses, or CECL allowance. This model requires us to develop cash flows which project estimated credit losses over the life of the lease or loan and discount these cash flows at the asset’s effective interest rate. We then record a CECL allowance equal to the difference between the amortized cost basis of the asset and the present value of the expected credit loss cash flows.

Expected losses within our cash flows are determined by estimating the probability of default (“PD”) and loss given default (“LGD”) of our tenants and their parent guarantors over the life of each individual lease or financial asset. The PD and LGD are estimated during a reasonable and supportable period for which we believe we are able to estimate future economic conditions

(the “R&S Period”) and a long-term period for which we revert to long-term historical averages (the “Long-Term Period”). We are unable to use our historical data to estimate losses as we have no loss history to date.

Given the length of our leases, the Long-Term Period PD and LGD are the most material and significant drivers of the CECL allowance. The PD and LGD for the Long-Term Period are estimated using the average historical default rates and historical loss rates, respectively, of public companies over the past 40 years that have similar credit profiles or characteristics to our tenants and their parent guarantors. We have engaged a nationally recognized data analytics firm to assist us with estimating both the PD and LGD of our tenants and their parent guarantors. Changes to the Long-Term Period PD and LGD are generally driven by (i) updated studies from the nationally recognized data analytics firm we employ to assist us with calculating the allowance and (ii) changes in the credit rating assigned to our tenants and their parent guarantors.

The following table illustrates the impact on the CECL allowance of our investment portfolio as a result of a 10% increase and decrease in the weighted average percentages used to estimate Long-Term PD and LGD of all of our tenants and their parent guarantors:

Change	Long-Term PD		Long-Term LGD	
	Change in CECL Allowance %	Change in CECL Allowance \$	Change in CECL Allowance %	Change in CECL Allowance \$
10% increase	0.18 %	\$ 68,648	0.22 %	\$ 81,558
10% decrease	(0.20)%	\$ (70,821)	(0.22)%	\$ (81,558)

Although management believes its estimate of the Long-Term PD and LGD described above is reasonable, no assurance can be given that the Long-Term PD and LGD for our tenants, or other drivers of the CECL allowance, will be correct. Any significant variation of Long-Term PD or LGD from management’s expectations could have a material impact on our financial condition and operating results.

ITEM 7A. Quantitative and Qualitative Disclosures About Market Risk

Interest Rate Risk

Our interest rate risk management objective is to limit the impact of future interest rate changes on our earnings and cash flows. To achieve this objective, our consolidated subsidiaries primarily borrow on a fixed-rate basis for longer-term debt issuances. As of December 31, 2022, we had \$15.5 billion of aggregate principal amount of outstanding indebtedness (inclusive of \$1.5 billion of secured debt representing our 50.1% pro-rata interest of the \$3.0 billion property-level debt secured by the MGM Grand Las Vegas and Mandalay Bay held in the MGM Grand/Mandalay Bay JV), all of which have fixed interest rates.

Additionally, we are exposed to interest rate risk between the time we enter into a transaction and the time we finance the related transaction with long-term fixed-rate debt. In addition, when that long-term debt matures, we may have to refinance such debt at a higher interest rate. In a rising interest rate environment, we have from time to time and may in the future seek to mitigate that risk by utilizing forward-starting interest rate swap agreements, treasury locks and other derivative instruments. Market interest rates are sensitive to many factors that are beyond our control.

Capital Markets Risks

We are exposed to risks related to the equity capital markets, and our related ability to raise capital through the issuance of our common stock or other equity instruments. We are also exposed to risks related to the debt capital markets, and our related ability to finance our business through long-term indebtedness, borrowings under credit facilities or other debt instruments. As a REIT, we are required to distribute a significant portion of our taxable income annually, which constrains our ability to accumulate operating cash flow and therefore requires us to utilize debt or equity capital to finance our business. We seek to mitigate these risks by monitoring the debt and equity capital markets to inform our decisions on the amount, timing, and terms of capital we raise.

ITEM 8. Financial Statements and Supplementary Data

The financial statements required by this item and the reports of the independent accountants thereon required by Item 15 - Exhibits and Financial Statement Schedules of this Form 10-K appear on pages F-2 to F-64. See accompanying [Index to the Consolidated Financial Statements](#) on page F-1.

ITEM 9. Changes in and Disagreements With Accountants on Accounting and Financial Disclosure

None.

ITEM 9A. Controls and Procedures

VICI Properties Inc.

Evaluation of Disclosure Controls and Procedures

VICI maintains disclosure controls and procedures (as defined in Rules 13a-15(e) and 15d-15(e) of the Securities Exchange Act of 1934, as amended (the “Exchange Act”)) designed to provide reasonable assurance that information required to be disclosed in reports filed under the Exchange Act is recorded, processed, summarized and reported within the specified time periods, and is accumulated and communicated to VICI’s management, including VICI’s principal executive officer and principal financial officer, as appropriate, to allow timely decisions regarding required disclosure.

VICI’s management has evaluated, under the supervision and with the participation of VICI’s principal executive officer and principal financial officer, the effectiveness of our disclosure controls and procedures pursuant to Exchange Act Rule 13a-15(e) as of the end of the period covered by this report. Based upon this evaluation, VICI’s principal executive officer and principal financial officer concluded that VICI’s disclosure controls and procedures were effective as of the end of the period covered by this report.

Management's Report on Internal Control over Financial Reporting

VICI’s management is responsible for establishing and maintaining adequate internal control over financial reporting (as defined in Rules 13a-15(f) and 15d-15(f) under the Exchange Act). VICI’s internal control over financial reporting is a process designed under the supervision of its principal executive officer and principal financial officer to provide reasonable assurance regarding the reliability of financial reporting and the preparation of VICI’s consolidated financial statements for external reporting purposes in accordance with GAAP.

VICI’s internal control over financial reporting includes policies and procedures that pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect transactions and dispositions of assets; provide reasonable assurances that transactions are recorded as necessary to permit preparation of financial statements in accordance with GAAP, and that receipts and expenditures are being made only in accordance with authorizations of VICI management; and provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use or disposition of assets that could have a material effect on VICI’s consolidated financial statements.

VICI’s management conducted an assessment of the effectiveness of its internal control over financial reporting as of December 31, 2022 based on the framework established in the updated Internal Control – Integrated Framework (2013) issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO). Based on this assessment, management has determined that VICI’s internal control over financial reporting was effective as of December 31, 2022.

Attestation Report of the Registered Public Accounting Firm

Deloitte & Touche LLP, an independent registered public accounting firm, has audited VICI’s financial statements included in this report on Form 10-K and issued its attestation report, which is included herein and expresses an unqualified opinion on the effectiveness of VICI’s internal control over financial reporting as of December 31, 2022.

Changes in Internal Control Over Financial Reporting

There have been no changes in VICI’s internal control over financial reporting (as defined in Rules 13a-15(f) and 15d-15(f) under the Exchange Act) that occurred during the three months ended December 31, 2022, that have materially affected, or are reasonably likely to materially affect, VICI’s internal control over financial reporting.

VICI Properties L.P.

Evaluation of Disclosure Controls and Procedures

VICI LP maintains disclosure controls and procedures (as defined in Rules 13a-15(e) and 15d-15(e) of the Exchange Act) designed to provide reasonable assurance that information required to be disclosed in reports filed under the Exchange Act is

recorded, processed, summarized and reported within the specified time periods, and is accumulated and communicated to its management, including VICI LP's principal executive officer and principal financial officer, as appropriate, to allow timely decisions regarding required disclosure.

VICI LP's management has evaluated, under the supervision and with the participation of VICI LP's principal executive officer and principal financial officer, the effectiveness of VICI LP's disclosure controls and procedures pursuant to Exchange Act Rule 13a-15(e) as of the end of the period covered by this report. Based upon this evaluation, VICI LP's principal executive officer and principal financial officer concluded that VICI LP's disclosure controls and procedures were effective as of the end of the period covered by this report.

Management's Report on Internal Control over Financial Reporting

VICI LP's management is responsible for establishing and maintaining adequate internal control over financial reporting (as defined in Rules 13a-15(f) and 15d-15(f) under the Exchange Act). VICI LP's internal control over financial reporting is a process designed under the supervision of its principal executive officer and principal financial officer to provide reasonable assurance regarding the reliability of financial reporting and the preparation of VICI LP's consolidated financial statements for external reporting purposes in accordance with GAAP.

VICI LP's internal control over financial reporting includes policies and procedures that pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect transactions and dispositions of assets; provide reasonable assurances that transactions are recorded as necessary to permit preparation of financial statements in accordance with GAAP, and that receipts and expenditures are being made only in accordance with authorizations of VICI LP's management; and provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use or disposition of assets that could have a material effect on VICI LP's consolidated financial statements.

VICI LP's management conducted an assessment of the effectiveness of our internal control over financial reporting as of December 31, 2022 based on the framework established in the updated Internal Control – Integrated Framework (2013) issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO). Based on this assessment, management has determined that VICI LP's internal control over financial reporting was effective as of December 31, 2022.

Attestation Report of the Registered Public Accounting Firm

Deloitte & Touche LLP, an independent registered public accounting firm, has audited VICI LP's financial statements included in this report on Form 10-K and issued its attestation report, which is included herein and expresses an unqualified opinion on the effectiveness of VICI LP's internal control over financial reporting as of December 31, 2022.

Changes in Internal Control Over Financial Reporting

There have been no changes in VICI LP's internal control over financial reporting (as defined in Rules 13a-15(f) and 15d-15(f) under the Exchange Act) that occurred during the three months ended December 31, 2022, that have materially affected, or are reasonably likely to materially affect, VICI LP's internal control over financial reporting.

ITEM 9B. Other Information

None.

ITEM 9C. Disclosure Regarding Foreign Jurisdictions that Prevent Inspections

Not applicable.

PART III

ITEM 10. Directors, Executive Officers and Corporate Governance

The information required by this item is incorporated by reference to the Company's definitive proxy statement to be filed not later than May 1, 2023 with the SEC pursuant to Regulation 14A under the Exchange Act.

ITEM 11. Executive Compensation

The information required by this item is incorporated by reference to the Company's definitive proxy statement to be filed not later than May 1, 2023 with the SEC pursuant to Regulation 14A under the Exchange Act.

ITEM 12. Security Ownership of Certain Beneficial Owners and Management and Related Stockholder Matters

The information required by this item is incorporated by reference to the Company's definitive proxy statement to be filed not later than May 1, 2023 with the SEC pursuant to Regulation 14A under the Exchange Act.

ITEM 13. Certain Relationships and Related Transactions and Director Independence

The information required by this item is incorporated by reference to the Company's definitive proxy statement to be filed not later than May 1, 2023 with the SEC pursuant to Regulation 14A under the Exchange Act.

ITEM 14. Principal Accountant Fees and Services

The information required by this item is incorporated by reference to the Company's definitive proxy statement to be filed not later than May 1, 2023 with the SEC pursuant to Regulation 14A under the Exchange Act.

PART IV

ITEM 15. Exhibits and Financial Statement Schedules

(a)(1). **Financial Statements.**

See the accompanying [Index to Consolidated Financial Statements and Schedules](#) on page F-1.

(a)(2). **Financial Statement Schedules.**

See the accompanying [Index to Consolidated Financial Statements and Schedules](#) on page F-1.

(a)(3). **Exhibits.**

Exhibit Number	Exhibit Description	Filed Herewith	Incorporated by Reference		
			Form	Exhibit	Filing Date
3.1	Articles of Amendment and Restatement of VICI Properties Inc.		8-K	3.1	10/11/2017
3.2	Articles of Amendment to the Articles of Amendment and Restatement of VICI Properties Inc.		8-K	3.1	3/3/2021
3.3	Articles of Amendment to the Articles of Amendment and Restatement of VICI Properties Inc.		8-K	3.1	9/14/2021
3.4	Amended and Restated Bylaws of VICI Properties Inc. (as amended December 19, 2022).	X			
4.1	4.250% Senior Notes Indenture, dated as of November 26, 2019, among VICI Properties L.P., VICI Note Co. Inc., the subsidiary guarantors party thereto and UMB Bank, National Association, as trustee.		8-K	4.1	11/26/2019
4.2	4.625% Senior Notes Indenture, dated as of November 26, 2019, among VICI Properties L.P., VICI Note Co. Inc., the subsidiary guarantors party thereto and UMB Bank, National Association, as trustee.		8-K	4.2	11/26/2019
4.3	3.500% Senior Notes Indenture, dated as of February 5, 2020, among VICI Properties L.P., VICI Note Co. Inc., the subsidiary guarantors party thereto and UMB Bank, National Association, as trustee.		8-K	4.1	2/20/2020
4.4	3.750% Senior Notes Indenture, dated as of February 5, 2020, among VICI Properties L.P., VICI Note Co. Inc., the subsidiary guarantors party thereto and UMB Bank, National Association, as trustee.		8-K	4.2	11/26/2019
4.5	4.125% Senior Notes Indenture, dated as of February 5, 2020, among VICI Properties L.P., VICI Note Co. Inc., the subsidiary guarantors party thereto and UMB Bank, National Association, as trustee.		8-K	4.3	2/20/2020
4.6	Indenture, dated as of April 29, 2022, between VICI Properties L.P. and UMB Bank, National Association, as trustee.		8-K	4.1	4/29/2022
4.7	First Supplemental Indenture, dated as of April 29, 2022, between VICI Properties L.P. and UMB Bank, National Association, as trustee.		8-K	4.2	4/29/2022
4.8	Form of Global Note representing the 4.375% Senior Notes due 2025 (included in Exhibit 4.7).		8-K	4.3	4/29/2022
4.9	Form of Global Note representing the 4.750% Senior Notes due 2028 (included in Exhibit 4.7).		8-K	4.4	4/29/2022
4.10	Form of Global Note representing the 4.950% Senior Notes due 2030 (included in Exhibit 4.7).		8-K	4.5	4/29/2022
4.11	Form of Global Note representing the 5.125% Senior Notes due 2032 (included in Exhibit 4.7).		8-K	4.6	4/29/2022

4.12	Form of Global Note representing the 5.625% Senior Notes due 2052 (included in Exhibit 4.7).	8-K	4.7	4/29/2022
4.13	Indenture, dated as of April 29, 2022, relating to the 5.625% Senior Notes due 2024, between VICI Properties L.P., VICI Note Co. Inc. and UMB Bank, National Association, as trustee.	8-K	4.8	4/29/2022
4.14	Indenture, dated as of April 29, 2022, relating to the 4.625% Senior Notes due 2025, between VICI Properties L.P., VICI Note Co. Inc. and UMB Bank, National Association, as trustee.	8-K	4.9	4/29/2022
4.15	Indenture, dated as of April 29, 2022, relating to the 4.500% Senior Notes due 2026, between VICI Properties L.P., VICI Note Co. Inc. and UMB Bank, National Association, as trustee.	8-K	4.10	4/29/2022
4.16	Indenture, dated as of April 29, 2022, relating to the 5.750% Senior Notes due 2027, between VICI Properties L.P., VICI Note Co. Inc. and UMB Bank, National Association, as trustee.	8-K	4.11	4/29/2022
4.17	Indenture, dated as of April 29, 2022, relating to the 4.500% Senior Notes due 2028, between VICI Properties L.P., VICI Note Co. Inc. and UMB Bank, National Association, as trustee.	8-K	4.12	4/29/2022
4.18	Indenture, dated as of April 29, 2022, relating to the 3.875% Senior Notes due 2029, between VICI Properties L.P., VICI Note Co. Inc. and UMB Bank, National Association, as trustee.	8-K	4.13	4/29/2022
4.19	Form of Global Note representing the 5.625% Senior Notes due 2024 (included in Exhibit 4.13).	8-K	4.14	4/29/2022
4.20	Form of Global Note representing the 4.625% Senior Notes due 2025 (included in Exhibit 4.14).	8-K	4.15	4/29/2022
4.21	Form of Global Note representing the 4.500% Senior Notes due 2026 (included in Exhibit 4.15).	8-K	4.16	4/29/2022
4.22	Form of Global Note representing the 5.750% Senior Notes due 2027 (included in Exhibit 4.16).	8-K	4.17	4/29/2022
4.23	Form of Global Note representing the 4.500% Senior Notes due 2028 (included in Exhibit 4.17).	8-K	4.18	4/29/2022
4.24	Form of Global Note representing the 3.875% Senior Notes due 2029 (included in Exhibit 4.17).	8-K	4.19	4/29/2022
4.25	Description of Securities	X		
10.1	Las Vegas Lease (Conformed through Second Amendment), dated as of July 20, 2020, by and among CPLV Property Owner LLC and Claudine Propco LLC as Landlord and, Desert Palace LLC, CEOC, LLC and Harrah's Las Vegas LLC as Tenant	8-K	10.1	7/21/2020
10.2	Third Amendment to Las Vegas Lease, dated as of September 30, 2020, by and among CPLV Property Owner LLC and Claudine Propco LLC as Landlord and, Desert Palace LLC, CEOC, LLC and Harrah's Las Vegas LLC	10-Q	10.15	10/28/2020
10.3	Fourth Amendment to Las Vegas Lease, dated as of November 18, 2020, by and among CPLV Property Owner LLC and Claudine Propco LLC as Landlord and, Desert Palace LLC, CEOC, LLC and Harrah's Las Vegas LLC	10-K	10.3	2/18/2021
10.4	Fifth Amendment to Las Vegas Lease, dated as of September 3, 2021, by and among CPLV Property Owner LLC and Claudine Propco LLC as Landlord and, Desert Palace LLC, CEOC, LLC and Harrah's Las Vegas LLC	10-Q	10.4	10/27/2021
10.5	Sixth Amendment to Las Vegas Lease, dated as of November 1, 2021, by and among CPLV Property Owner LLC and Claudine Propco LLC as Landlord and, Desert Palace LLC, CEOC, LLC and Harrah's Las Vegas LLC	10-K	10.5	2/23/2022
10.6+	Regional Lease (Conformed through Fifth Amendment), dated as of July 20, 2020, by and among the entities listed on Schedules A and B thereto and CEOC, LLC	8-K	10.2	7/21/2020

10.7+	Sixth Amendment to Regional Lease, dated as of September 30, 2020, by and among the entities listed on Schedules A and B thereto	10-Q	10.13	10/28/2020	
10.8	Seventh Amendment to Regional Lease, dated as of November 18, 2020, by and among the entities listed on Schedules A and B thereto	10-K	10.6	2/18/2021	
10.9	Eighth Amendment to Regional Lease, dated as of September 3, 2021, by and among the entities listed on Schedules A and B thereto	10-Q	10.5	10/27/2021	
10.10+	Ninth Amendment to Regional Lease, dated as of November 1, 2021, by and among the entities listed on Schedules A and B thereto	10-K	10.10	2/23/2022	
10.11	Tenth Amendment to Regional Lease, dated as of December 30, 2021, by and among the entities listed on Schedules A and B thereto	10-K	10.11	2/23/2022	
10.12	Eleventh Amendment to Regional Lease, dated as of August 25, 2022, by and among the entities listed on Schedules A and B thereto.	10-Q	10.1	10/27/2022	
10.13+	Lease (Joliet) (Conformed through Second Amendment), dated as of July 20, 2020, by and between Harrah's Joliet Landco LLC and Des Plaines Development Limited Partnership	8-K	10.3	7/21/2020	
10.14	Third Amendment to Lease (Joliet), dated as of September 30, 2020, by and between Harrah's Joliet Landco LLC and Des Plaines Development Limited Partnership	10-Q	10.14	10/28/2020	
10.15	Fourth Amendment to Lease (Joliet), dated as of November 18, 2020, by and between Harrah's Joliet Landco LLC and Des Plaines Development Limited Partnership	10-K	10.9	2/18/2021	
10.16	Fifth Amendment to Lease (Joliet), dated as of September 3, 2021, by and between Harrah's Joliet Landco LLC and Des Plaines Development Limited Partnership	10-Q	10.6	10/27/2021	
10.17	Sixth Amendment to Lease (Joliet), dated as of November 1, 2021, by and between Harrah's Joliet Landco LLC and Des Plaines Development Limited Partnership	10-K	10.16	2/23/2022	
10.18	Amended and Restated Omnibus Amendment to Leases, dated October 27, 2020	10-Q	10.16	10/28/2020	
10.19	Guaranty of Lease entered into as of July 20, 2020 by and between Eldorado Resorts, Inc. (to be renamed Caesars Entertainment, Inc. and converted to a Delaware corporation on the date thereof), CPLV Property Owner LLC, and Claudine Propco LLC (Las Vegas Master Lease)	8-K	10.4	7/21/2020	
10.20	Guaranty of Lease entered into as of July 20, 2020 by and between Eldorado Resorts, Inc. (to be renamed Caesars Entertainment, Inc. and converted to a Delaware corporation on the date thereof) and the entities listed on Schedule A thereto (Regional Lease).	8-K	10.5	7/21/2020	
10.21	Guaranty of Lease entered into as of July 20, 2020 by and between Eldorado Resorts, Inc. (to be renamed Caesars Entertainment, Inc. and converted to a Delaware corporation on the date thereof) and Harrah's Joliet Landco LLC (Joliet Lease)	8-K	10.6	7/21/2020	
10.22	Amended and Restated Master Lease, by and between MGP Lessor, LLC and MGM Lessee, LLC, dated as of April 29, 2022.	8-K	10.1	4/29/2022	
10.23	First Amendment to Amended and Restated Master Lease, dated as of December 19, 2022, by and between MGP Lessor, LLC and MGM Lessee, LLC.	8-K	10.1	12/19/2022	
10.24	Second Amendment to Amended and Restated Master Lease, dated as of February 15, 2023, by and between MGP Lessor, LLC and MGM Lessee, LLC.				X

10.25	Amended and Restated Guaranty of Master Lease, by and between MGM Resorts International and MGP Lessor, LLC, dated as of April 29, 2022.	8-K	10.2	4/29/2022
10.26	Put-Call Right Agreement entered into as of July 20, 2020 by and between Centaur Propco LLC and Caesars Resort Collection, LLC	8-K	10.8	7/21/2020
10.27	Second Amended and Restated Put-Call Right Agreement entered into as of September 18, 2020 by and among Claudine Propco LLC and Caesars Convention Center Owner, LLC	8-K	10.1	9/18/2020
10.28	Right of First Refusal Agreement entered into as of July 20, 2020 by and between Eldorado Resorts, Inc. (to be renamed Caesars Entertainment, Inc. and converted to a Delaware corporation on the date thereof) and VICI Properties L.P. (Las Vegas Strip Assets).	8-K	10.10	7/21/2020
10.29	Right of First Refusal Agreement entered into as of July 20, 2020 by and between Eldorado Resorts, Inc. (to be renamed Caesars Entertainment, Inc. and converted to a Delaware corporation on the date thereof) and VICI Properties L.P. (Horseshoe Baltimore).	8-K	10.11	7/21/2020
10.30	Tax Protection Agreement, by and among VICI Properties Inc., VICI Properties OP LLC, MGM Resorts International and the other parties thereto, dated as of April 29, 2022.	8-K	10.3	4/29/2022
10.31	Lease, by and between Mandalay PropCo, LLC, MGM Grand PropCo, LLC and MGM Lessee II, LLC, dated as of February 14, 2020	X		
10.32	Guaranty of Lease Documents, by and between MGM Resorts International and Mandalay PropCo, LLC, MGM Grand PropCo, LLC, dated as of February 14, 2020	X		
10.33	Loan Agreement, by and among Mandalay PropCo, LLC, MGM Grand PropCo, LLC, Citi Real Estate Funding Inc., Barclays Capital Real Estate Inc., Deutsche Bank AG, New York Branch, Société Générale Financial Corporation and Citi Real Estate Funding Inc., as administrative agent, dated as of February 14, 2020	X		
10.34	First Amendment to Loan Agreement, dated as of March 30, 2020, among Mandalay Bay PropCo, LLC and MGM Grand PropCo, LLC, collectively as Borrower, and Citi Real Estate Funding Inc., Barclays Capital Real Estate Inc., Deutsche Bank AG, New York Branch, Société Générale Financial Corporation and Citi Real Estate Funding Inc., collectively, as Lender	X		
10.35	Second Amendment to Loan Agreement, dated as of May 1, 2020, among Mandalay PropCo, LLC and MGM Grand PropCo, LLC, collectively as Borrower, and Citi Real Estate Funding Inc., Barclays Capital Real Estate Inc., Deutsche Bank AG, New York Branch, Société Générale Financial Corporation and Citi Real Estate Funding Inc., collectively, as Lender	X		
10.36	Third Amendment to Loan Agreement, dated as of July 15, 2020, among Mandalay PropCo, LLC and MGM Grand PropCo, LLC, collectively as Borrower, and Wilmington Trust, National Association, solely in its capacity as trustee for the benefit of the holders of BX Commercial Mortgage Trust 2020-VIVA, Commercial Mortgage Pass-Through Certificates, Series 2020-VIVA, as Lender	X		
10.37	Credit Agreement, dated as of February 8, 2022, among VICI Properties LP, the lenders from time to time party thereto and JPMorgan Chase Bank, N.A., as administrative agent.	8-K	10.1	2/9/2022
10.38	First Amendment to Credit Agreement, dated as of July 15, 2022, to the Credit Agreement dated as of February 8, 2022, by and among VICI Properties L.P., as Borrower, the financial institutions party thereto as lenders, and JPMorgan Chase Bank, N.A., as Administrative Agent.	10-Q	10.1	7/27/2022
10.39	Second Amended and Restated Agreement of Limited Partnership of VICI Properties L.P.	8-K	10.5	4/29/2022

10.40	Amended and Restated Limited Liability Company Agreement of VICI Properties OP LLC.	8-K	10.4	4/29/2022
10.41	Form of Indemnification Agreement, between VICI Properties Inc. and its directors and officers.	10	10.20	9/28/2017
10.42†	Amended and Restated Employment Agreement, dated as of September 25, 2019, by and between VICI Properties Inc., VICI Properties L.P. and John Payne.	8-K	10.1	9/26/2019
10.43†	Amended and Restated Employment Agreement, dated as of September 25, 2019, by and between VICI Properties Inc., VICI Properties L.P. and Edward Pitoniak.	8-K	10.2	9/26/2019
10.44†	Amended and Restated Employment Agreement, dated as of September 25, 2019, by and between VICI Properties Inc., VICI Properties L.P. and David Kieske.	8-K	10.3	9/26/2019
10.45†	Amended and Restated Employment Agreement, dated as of September 25, 2019, by and between VICI Properties Inc., VICI Properties L.P. and Samantha Gallagher.	8-K	10.4	9/26/2019
10.46†	VICI Properties Inc. 2017 Stock Incentive Plan.	8-K	10.28	10/11/2017
10.47†	Amendment No. 1 to VICI Properties Inc. 2017 Stock Incentive Plan.	10-K	10.52	2/14/2019
10.48†	Form of Restricted Stock Grant.	10-K	10.39	3/28/2018
10.49†	Form of LTIP Time-Based Restricted Stock Grant Agreement.	8-K	10.1	8/30/2018
10.50†	Form of LTIP Performance-Based Restricted Stock Unit Agreement.	8-K	10.2	8/30/2018
21.1	Subsidiaries of VICI Properties Inc.	X		
21.2	Subsidiaries of VICI Properties L.P.	X		
23.1	Consent of Deloitte & Touche LLP for VICI Properties Inc.	X		
23.2	Consent of Deloitte & Touche LLP for VICI Properties L.P.	X		
24.1	Power of Attorney (included on signature page)	X		
31.1	VICI Properties Inc. Certification of Principal Executive Officer Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.	X		
31.2	VICI Properties Inc. Certification of Principal Financial Officer Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.	X		
31.3	VICI Properties L.P. Certification of Principal Executive Officer Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.	X		
31.4	VICI Properties L.P. Certification of Principal Financial Officer Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.	X		
32.1	VICI Properties Inc. Certification of Principal Executive Officer Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.	*		
32.2	VICI Properties Inc. Certification of Principal Financial Officer Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.	*		
32.3	VICI Properties L.P. Certification of Principal Executive Officer Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.	*		
32.4	VICI Properties L.P. Certification of Principal Financial Officer Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.	*		
101.INS	Inline XBRL Instance Document - the instance document does not appear in the Interactive Data File because its XBRL tags are embedded within the Inline XBRL document	X		
101.SCH	Inline XBRL Taxonomy Extension Schema Document	X		

101.CAL	Inline XBRL Taxonomy Extension Calculation Linkbase Document	X
101.DEF	Inline XBRL Taxonomy Extension Definition Linkbase Document	X
101.LAB	Inline XBRL Taxonomy Extension Label Linkbase Document	X
101.PRE	Inline XBRL Taxonomy Extension Presentation Linkbase Document	X
104	Cover Page Interactive Data File (formatted as Inline XBRL and contained in Exhibit 101)	

* Furnished herewith

† Management contracts and compensation plans and arrangements.

+ Portions of the exhibits have been redacted because (i) the registrant customarily and actually treats that information as private or confidential and (ii) the omitted information is not material.

ITEM 16. Form 10-K Summary

None.

SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

VICI PROPERTIES INC.

February 23, 2023

By: /S/ EDWARD B. PITONIAK
Edward B. Pitoniak
Chief Executive Officer and Director

POWER OF ATTORNEY

Each of the officers and directors of VICI Properties Inc., whose signature appears below, in so signing, also makes, constitutes and appoints each of Edward B. Pitoniak, David A. Kieske and Gabriel F. Wasserman, and each of them, his or her true and lawful attorneys-in-fact, with full power and substitution, for him or her in any and all capacities, to execute and cause to be filed with the SEC any and all amendments to this Annual Report on Form 10-K, with exhibits thereto and all other documents connected therewith and to perform any acts necessary to be done in order to file such documents, and hereby ratifies and confirms all that said attorneys-in-fact or their substitute or substitutes may do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Exchange Act of 1934, this report has been signed below by the following persons on behalf of the registrant and in the capacities and on the dates indicated.

Signature	Title	Date
<u>/S/ EDWARD B. PITONIAK</u> Edward B. Pitoniak	Chief Executive Officer and Director (Principal Executive Officer)	February 23, 2023
<u>/S/ DAVID A. KESKE</u> David A. Kieske	Chief Financial Officer (Principal Financial Officer)	February 23, 2023
<u>/S/ GABRIEL F. WASSERMAN</u> Gabriel F. Wasserman	Chief Accounting Officer (Principal Accounting Officer)	February 23, 2023
<u>/S/ JAMES R. ABRAHAMSON</u> James R. Abrahamson	Chair of the Board of Directors	February 23, 2023
<u>/S/ DIANA F. CANTOR</u> Diana F. Cantor	Director	February 23, 2023
<u>/S/ MONICA H. DOUGLAS</u> Monica H. Douglas	Director	February 23, 2023
<u>/S/ ELIZABETH I. HOLLAND</u> Elizabeth I. Holland	Director	February 23, 2023
<u>/S/ CRAIG MACNAB</u> Craig Macnab	Director	February 23, 2023
<u>/S/ MICHAEL D. RUMBOLZ</u> Michael D. Rumbolz	Director	February 23, 2023

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REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

To the stockholders and the Board of Directors of VICI Properties Inc.

Opinion on the Financial Statements

We have audited the accompanying consolidated balance sheets of VICI Properties Inc. and subsidiaries (the "Company") as of December 31, 2022 and 2021, the related consolidated statements of operations and comprehensive income, stockholders' equity, and cash flows, for each of the three years in the period ended December 31, 2022, and the related notes (collectively referred to as the "financial statements"). In our opinion, the financial statements present fairly, in all material respects, the financial position of the Company as of December 31, 2022 and 2021, and the results of its operations and its cash flows for each of the three years in the period ended December 31, 2022, in conformity with accounting principles generally accepted in the United States of America.

We have also audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States) (PCAOB), the Company's internal control over financial reporting as of December 31, 2022, based on criteria established in *Internal Control — Integrated Framework (2013)* issued by the Committee of Sponsoring Organizations of the Treadway Commission and our report dated February 23, 2023, expressed an unqualified opinion on the Company's internal control over financial reporting.

Basis for Opinion

These financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on the Company's financial statements based on our audits. We are a public accounting firm registered with the PCAOB and are required to be independent with respect to the Company in accordance with the U.S. federal securities laws and the applicable rules and regulations of the Securities and Exchange Commission and the PCAOB.

We conducted our audits in accordance with the standards of the PCAOB. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement, whether due to error or fraud. Our audits included performing procedures to assess the risks of material misstatement of the financial statements, whether due to error or fraud, and performing procedures that respond to those risks. Such procedures included examining, on a test basis, evidence regarding the amounts and disclosures in the financial statements. Our audits also included evaluating the accounting principles used and significant estimates made by management, as well as evaluating the overall presentation of the financial statements. We believe that our audits provide a reasonable basis for our opinion.

Critical Audit Matters

The critical audit matters communicated below are matters arising from the current-period audit of the financial statements that were communicated or required to be communicated to the audit committee and that (1) relate to accounts or disclosures that are material to the financial statements and (2) involved our especially challenging, subjective, or complex judgments. The communication of critical audit matters does not alter in any way our opinion on the financial statements, taken as a whole, and we are not, by communicating the critical audit matters below, providing separate opinions on the critical audit matters or on the accounts or disclosures to which they relate.

Allowance for Credit Losses — Refer to Notes 2 and 5 to the financial statements

Critical Audit Matter Description

The Company applies Accounting Standard Codification Topic 326 - *Financial Instruments-Credit Losses* to measure and record current expected credit losses ("CECL") using a discounted cash flow model for its sales-type leases, lease financing receivables and loans. This model requires the Company to develop cash flows which are used to project estimated credit losses over the life of the sales-type lease, lease financing receivable or loan and discount these cash flows at the asset's effective interest rate.

Expected losses within the Company's cash flows are determined by estimating the probability of default ("PD") and loss given default ("LGD") of its tenants or borrowers and their parent guarantors over the life of each sales-type lease, lease financing receivable or loan by using a model from an independent third-party provider. The PD and LGD are estimated during a reasonable and supportable period which is developed by using the current financial condition of the tenants or borrowers and their parent guarantors and applying it to a projection of economic conditions over a two-year term. The PD and LGD are also estimated for a long-term period by using the average historical default rates and historical loss rates of public companies that have similar credit profiles or characteristics to the Company's tenants or borrowers and their parent guarantors. Significant

inputs to the Company's forecasting methods include the tenants' short-term and long-term PD and LGD based on the tenant's or borrower's and their parent guarantor's credit profile as well as the cash flows from each sales-type lease, lease financing receivable or loan.

Given the significant amount of judgment required by management to estimate the allowance for credit losses, performing audit procedures to evaluate the reasonableness of the estimated allowance for credit losses on the Company's portfolio of sales-type leases, lease financing receivables and loans required a high degree of auditor judgment and increased effort, including the need to involve our credit specialists.

How the Critical Audit Matter Was Addressed in the Audit

Our audit procedures related to the allowance for credit losses for the Company's sales-type leases, lease financing receivables and loans included the following, among others:

- We tested the effectiveness of controls over the allowance for credit losses, including management's controls over the data used in the model.
- With the assistance of our credit specialists, we evaluated the reasonableness of the model's methodology, which includes PD and LGD assumptions.
- We tested the inputs used to determine the short-term and long-term PD of the tenants or borrowers and their parent guarantors by agreeing the respective credit rating and equity value of each entity to independent data.
- We reconciled the cash flow inputs used in the CECL model by agreeing them to the respective contractual agreements.

MGP Acquisition — Refer to Note 3 to the financial statements

Critical Audit Matter Description

As described in Note 3 to the consolidated financial statements, on April 29, 2022, the Company acquired MGM Growth Properties LLC ("MGP") for total consideration of \$11.6 billion, plus the assumption of approximately \$5.7 billion principal amount of debt, inclusive of the 50.1% share of the MGM Grand/Mandalay Bay JV CMBS debt.

The acquisition of MGP was accounted for as an asset acquisition under Accounting Standard Codification Topic 805 - *Business Combinations*, and accordingly, the purchase price was allocated to components based on the relative fair values of the assets acquired and liabilities assumed. These components primarily include investment in leases – financing receivables, investment in unconsolidated affiliate, cash and cash equivalents, other assets, accrued expenses and deferred revenue, other liabilities, and debt. To estimate the fair value of the real estate assets acquired, which are included in investment in leases – financing receivables and investment in unconsolidated affiliate, the Company considered a variety of factors including (i) asset quality and location, (ii) property operating performance and (iii) supply and demand dynamics of each property's respective market.

Given the significant amount of judgment required by management to estimate the relative fair value of assets acquired and liabilities assumed, performing audit procedures to evaluate the reasonableness of the estimated fair value required a high degree of auditor judgment and increased effort, including the need to involve our valuation specialists.

How the Critical Audit Matter Was Addressed in the Audit

Our audit procedures related to the MGP Acquisition included the following, among others:

- We tested the effectiveness of controls over the allocation of the purchase price of assets acquired and liabilities assumed, including controls over management's evaluation of inputs and assumptions used in the valuation estimates.
- We obtained and evaluated the third-party valuation report and management's valuation, along with relevant supporting documentation, such as the executed purchase and sale agreement.
- With the assistance of our fair value specialists, we evaluated the valuation methodology by:
 - Assessing the reasonableness of the valuation methodology and significant assumptions used by management and their external valuation specialist, including comparing the key inputs to external market sources.

- Assessing the impact of asset quality and location by comparing the multiples to observable market transactions of similar real estate assets.
- Assessing the impact of supply and demand dynamics by evaluating gaming competition in certain markets.
- Tracing property operating performance to executed lease agreements and operational data.
- Testing the mathematical calculation of the valuation schedules.

/s/ Deloitte & Touche LLP

New York, New York
February 23, 2023

We have served as the Company's auditor since 2016.

REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

To the stockholders and the Board of Directors of VICI Properties Inc.

Opinion on Internal Control over Financial Reporting

We have audited the internal control over financial reporting of VICI Properties Inc. and subsidiaries (the “Company”) as of December 31, 2022, based on criteria established in *Internal Control - Integrated Framework (2013)* issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO). In our opinion, the Company maintained, in all material respects, effective internal control over financial reporting as of December 31, 2022, based on criteria established in *Internal Control - Integrated Framework (2013)* issued by COSO.

We have also audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States) (PCAOB), the consolidated financial statements as of and for the year ended December 31, 2022, of the Company and our report dated February 23, 2023, expressed an unqualified opinion on those consolidated financial statements.

Basis for Opinion

The Company’s management is responsible for maintaining effective internal control over financial reporting and for its assessment of the effectiveness of internal control over financial reporting, included in the accompanying Management’s Report on Internal Control over Financial Reporting. Our responsibility is to express an opinion on the Company’s internal control over financial reporting based on our audit. We are a public accounting firm registered with the PCAOB and are required to be independent with respect to the Company in accordance with the U.S. federal securities laws and the applicable rules and regulations of the Securities and Exchange Commission and the PCAOB.

We conducted our audit in accordance with the standards of the PCAOB. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether effective internal control over financial reporting was maintained in all material respects. Our audit included obtaining an understanding of internal control over financial reporting, assessing the risk that a material weakness exists, testing and evaluating the design and operating effectiveness of internal control based on the assessed risk, and performing such other procedures as we considered necessary in the circumstances. We believe that our audit provides a reasonable basis for our opinion.

Definition and Limitations of Internal Control over Financial Reporting

A company’s internal control over financial reporting is a process designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles. A company’s internal control over financial reporting includes those policies and procedures that (1) pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the company; (2) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that receipts and expenditures of the company are being made only in accordance with authorizations of management and directors of the company; and (3) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use, or disposition of the company’s assets that could have a material effect on the financial statements.

Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Also, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

/s/ Deloitte & Touche LLP

New York, New York
February 23, 2023

REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

To the Partners of VICI Properties L.P. and the Board of Directors of VICI Properties Inc.

Opinion on the Financial Statements

We have audited the accompanying consolidated balance sheets of VICI Properties L.P. and subsidiaries (the "Partnership") as of December 31, 2022 and 2021, the related consolidated statements of operations and comprehensive income, partners' capital, and cash flows, for each of the three years in the period ended December 31, 2022, and the related notes (collectively referred to as the "financial statements"). In our opinion, the financial statements present fairly, in all material respects, the financial position of the Partnership as of December 31, 2022 and 2021, and the results of its operations and its cash flows for each of the three years in the period ended December 31, 2022, in conformity with accounting principles generally accepted in the United States of America.

We have also audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States) (PCAOB), the Partnership's internal control over financial reporting as of December 31, 2022, based on criteria established in *Internal Control — Integrated Framework (2013)* issued by the Committee of Sponsoring Organizations of the Treadway Commission and our report dated February 23, 2023, expressed an unqualified opinion on the Partnership's internal control over financial reporting.

Basis for Opinion

These financial statements are the responsibility of the Partnership's management. Our responsibility is to express an opinion on the Partnership's financial statements based on our audits. We are a public accounting firm registered with the PCAOB and are required to be independent with respect to the Partnership in accordance with the U.S. federal securities laws and the applicable rules and regulations of the Securities and Exchange Commission and the PCAOB.

We conducted our audits in accordance with the standards of the PCAOB. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement, whether due to error or fraud. Our audits included performing procedures to assess the risks of material misstatement of the financial statements, whether due to error or fraud, and performing procedures that respond to those risks. Such procedures included examining, on a test basis, evidence regarding the amounts and disclosures in the financial statements. Our audits also included evaluating the accounting principles used and significant estimates made by management, as well as evaluating the overall presentation of the financial statements. We believe that our audits provide a reasonable basis for our opinion.

Critical Audit Matters

The critical audit matters communicated below are matters arising from the current-period audit of the financial statements that were communicated or required to be communicated to the audit committee and that (1) relate to accounts or disclosures that are material to the financial statements and (2) involved our especially challenging, subjective, or complex judgments. The communication of critical audit matters does not alter in any way our opinion on the financial statements, taken as a whole, and we are not, by communicating the critical audit matters below, providing separate opinions on the critical audit matters or on the accounts or disclosures to which they relate.

Allowance for Credit Losses — Refer to Notes 2 and 5 to the financial statements

Critical Audit Matter Description

The Partnership applies Accounting Standard Codification Topic 326 - *Financial Instruments-Credit Losses* to measure and record current expected credit losses ("CECL") using a discounted cash flow model for its sales-type leases, lease financing receivables and loans. This model requires the Partnership to develop cash flows which are used to project estimated credit losses over the life of the sales-type lease, lease financing receivable or loan and discount these cash flows at the asset's effective interest rate.

Expected losses within the Partnership's cash flows are determined by estimating the probability of default ("PD") and loss given default ("LGD") of its tenants or borrowers and their parent guarantors over the life of each sales-type lease, lease financing receivable or loan by using a model from an independent third-party provider. The PD and LGD are estimated during a reasonable and supportable period which is developed by using the current financial condition of the tenants or borrowers and their parent guarantors and applying it to a projection of economic conditions over a two-year term. The PD and LGD are also estimated for a long-term period by using the average historical default rates and historical loss rates of public companies that have similar credit profiles or characteristics to the Partnership's tenants or borrowers and their parent guarantors. Significant

inputs to the Partnership's forecasting methods include the tenants' short-term and long-term PD and LGD based on the tenant's or borrower's and their parent guarantor's credit profile as well as the cash flows from each sales-type lease, lease financing receivable or loan.

Given the significant amount of judgment required by management to estimate the allowance for credit losses, performing audit procedures to evaluate the reasonableness of the estimated allowance for credit losses on the Partnership's portfolio of sales-type leases, lease financing receivables and loans required a high degree of auditor judgment and increased effort, including the need to involve our credit specialists.

How the Critical Audit Matter Was Addressed in the Audit

Our audit procedures related to the allowance for credit losses for the Partnership's sales-type leases, lease financing receivables and loans included the following, among others:

- We tested the effectiveness of controls over the allowance for credit losses, including management's controls over the data used in the model.
- With the assistance of our credit specialists, we evaluated the reasonableness of the model's methodology, which includes PD and LGD assumptions.
- We tested the inputs used to determine the short-term and long-term PD of the tenants or borrowers and their parent guarantors by agreeing the respective credit rating and equity value of each entity to independent data.
- We reconciled the cash flow inputs used in the CECL model by agreeing them to the respective contractual agreements.

MGP Acquisition — Refer to Note 3 to the financial statements

Critical Audit Matter Description

As described in Note 3 to the consolidated financial statements, on April 29, 2022, the Partnership acquired MGM Growth Properties LLC ("MGP") for total consideration of \$11.6 billion, plus the assumption of approximately \$5.7 billion principal amount of debt, inclusive of the 50.1% share of the MGM Grand/Mandalay Bay JV CMBS debt.

The acquisition of MGP was accounted for as an asset acquisition under Accounting Standard Codification Topic 805 - *Business Combinations*, and accordingly, the purchase price was allocated to components based on the relative fair values of the assets acquired and liabilities assumed. These components primarily include investment in leases – financing receivables, investment in unconsolidated affiliate, cash and cash equivalents, other assets, accrued expenses and deferred revenue, other liabilities, and debt. To estimate the fair value of the real estate assets acquired, which are included in investment in leases – financing receivables and investment in unconsolidated affiliate, the Partnership considered a variety of factors including (i) asset quality and location, (ii) property operating performance and (iii) supply and demand dynamics of each property's respective market.

Given the significant amount of judgment required by management to estimate the relative fair value of assets acquired and liabilities assumed, performing audit procedures to evaluate the reasonableness of the estimated fair value required a high degree of auditor judgment and increased effort, including the need to involve our valuation specialists.

How the Critical Audit Matter Was Addressed in the Audit

Our audit procedures related to the MGP Acquisition included the following, among others:

- We tested the effectiveness of controls over the allocation of the purchase price of assets acquired and liabilities assumed, including controls over management's evaluation of inputs and assumptions used in the valuation estimates.
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 - Assessing the reasonableness of the valuation methodology and significant assumptions used by management and their external valuation specialist, including comparing the key inputs to external market sources.

- Assessing the impact of asset quality and location by comparing the multiples to observable market transactions of similar real estate assets.
- Assessing the impact of supply and demand dynamics by evaluating gaming competition in certain markets.
- Tracing property operating performance to executed lease agreements and operational data.
- Testing the mathematical calculation of the valuation schedules.

/s/ Deloitte & Touche LLP

New York, New York

February 23, 2023

We have served as the Partnership's auditor since 2022.

REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

To the Partners of VICI Properties L.P. and the Board of Directors of VICI Properties Inc.

Opinion on Internal Control over Financial Reporting

We have audited the internal control over financial reporting of VICI Properties L.P. and subsidiaries (the “Partnership”) as of December 31, 2022, based on criteria established in *Internal Control - Integrated Framework (2013)* issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO). In our opinion, the Partnership maintained, in all material respects, effective internal control over financial reporting as of December 31, 2022, based on criteria established in *Internal Control - Integrated Framework (2013)* issued by COSO.

We have also audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States) (PCAOB), the consolidated financial statements as of and for the year ended December 31, 2022, of the Partnership and our report dated February 23, 2023, expressed an unqualified opinion on those consolidated financial statements.

Basis for Opinion

The Partnership’s management is responsible for maintaining effective internal control over financial reporting and for its assessment of the effectiveness of internal control over financial reporting, included in the accompanying Management’s Report on Internal Control over Financial Reporting. Our responsibility is to express an opinion on the Partnership’s internal control over financial reporting based on our audit. We are a public accounting firm registered with the PCAOB and are required to be independent with respect to the Partnership in accordance with the U.S. federal securities laws and the applicable rules and regulations of the Securities and Exchange Commission and the PCAOB.

We conducted our audit in accordance with the standards of the PCAOB. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether effective internal control over financial reporting was maintained in all material respects. Our audit included obtaining an understanding of internal control over financial reporting, assessing the risk that a material weakness exists, testing and evaluating the design and operating effectiveness of internal control based on the assessed risk, and performing such other procedures as we considered necessary in the circumstances. We believe that our audit provides a reasonable basis for our opinion.

Definition and Limitations of Internal Control over Financial Reporting

A company’s internal control over financial reporting is a process designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles. A company’s internal control over financial reporting includes those policies and procedures that (1) pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the company; (2) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that receipts and expenditures of the company are being made only in accordance with authorizations of management and directors of the company; and (3) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use, or disposition of the company’s assets that could have a material effect on the financial statements.

Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Also, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

/s/ Deloitte & Touche LLP

New York, New York
February 23, 2023

VICI PROPERTIES INC.
CONSOLIDATED BALANCE SHEETS
(In thousands, except share and per share data)

	December 31, 2022	December 31, 2021
Assets		
Real estate portfolio:		
Investments in leases - sales-type, net	\$ 17,172,325	\$ 13,136,664
Investments in leases - financing receivables, net	16,740,770	2,644,824
Investments in loans, net	685,793	498,002
Investment in unconsolidated affiliate	1,460,775	—
Land	153,560	153,576
Cash and cash equivalents	208,933	739,614
Short-term investments	217,342	—
Other assets	936,328	424,693
Total assets	<u>\$ 37,575,826</u>	<u>\$ 17,597,373</u>
Liabilities		
Debt, net	\$ 13,739,675	\$ 4,694,523
Accrued expenses and deferred revenue	213,388	113,530
Dividends and distributions payable	380,178	226,309
Other liabilities	952,472	375,837
Total liabilities	<u>15,285,713</u>	<u>5,410,199</u>
Commitments and Contingencies (Note 10)		
Stockholders' equity		
Common stock, \$0.01 par value, 1,350,000,000 shares authorized and 963,096,563 and 628,942,092 shares issued and outstanding at December 31, 2022 and December 31, 2021, respectively	9,631	6,289
Preferred stock, \$0.01 par value, 50,000,000 shares authorized and no shares outstanding at December 31, 2022 and 2021	—	—
Additional paid-in capital	21,645,499	11,755,069
Accumulated other comprehensive income	185,353	884
Retained earnings	93,154	346,026
Total VICI stockholders' equity	21,933,637	12,108,268
Non-controlling interests	356,476	78,906
Total stockholders' equity	22,290,113	12,187,174
Total liabilities and stockholders' equity	<u>\$ 37,575,826</u>	<u>\$ 17,597,373</u>

Note: As of December 31, 2022 and December 31, 2021, our Investments in leases - sales-type, Investments in leases - financing receivables, Investments in loans and Other assets (sales-type sub-leases) are net of \$570.4 million, \$726.7 million, \$6.9 million and \$19.8 million, respectively, and \$434.9 million, \$91.1 million, \$0.8 million, and \$6.5 million, respectively, of Allowance for credit losses. Refer to [Note 5 - Allowance for Credit Losses](#) for further details.

See accompanying Notes to Consolidated Financial Statements.

VICI PROPERTIES INC.
CONSOLIDATED STATEMENTS OF OPERATIONS AND COMPREHENSIVE INCOME
(In thousands, except share and per share data)

	Year Ended December 31,		
	2022	2021	2020
Revenues			
Income from sales-type leases	\$ 1,464,245	\$ 1,167,972	\$ 1,007,508
Income from operating leases	—	—	25,464
Income from lease financing receivables and loans	1,041,229	283,242	153,017
Other income	59,629	27,808	15,793
Golf revenues	35,594	30,546	23,792
Total revenues	2,600,697	1,509,568	1,225,574
Operating expenses			
General and administrative	48,340	33,122	30,661
Depreciation	3,182	3,091	3,731
Other expenses	59,629	27,808	15,793
Golf expenses	22,602	20,762	17,632
Change in allowance for credit losses	834,494	(19,554)	244,517
Transaction and acquisition expenses	22,653	10,402	8,684
Total operating expenses	990,900	75,631	321,018
Income from unconsolidated affiliate	59,769	—	—
Interest expense	(539,953)	(392,390)	(308,605)
Interest income	9,530	120	6,795
Loss from extinguishment of debt	—	(15,622)	(39,059)
Gain upon lease modification	—	—	333,352
Income before income taxes	1,139,143	1,026,045	897,039
Income tax expense	(2,876)	(2,887)	(831)
Net income	1,136,267	1,023,158	896,208
Less: Net income attributable to non-controlling interests	(18,632)	(9,307)	(4,534)
Net income attributable to common stockholders	\$ 1,117,635	\$ 1,013,851	\$ 891,674
Net income per common share			
Basic	\$ 1.27	\$ 1.80	\$ 1.76
Diluted	\$ 1.27	\$ 1.76	\$ 1.75
Weighted average number of shares of common stock outstanding			
Basic	877,508,388	564,467,362	506,140,642
Diluted	879,675,845	577,066,292	510,908,755
Other comprehensive income			
Net income	\$ 1,136,267	\$ 1,023,158	\$ 896,208
Reclassification of derivative (gain) loss to Interest expense	(16,233)	64,239	—
Unrealized gain (loss) on cash flow hedges	200,550	29,166	(27,443)
Comprehensive income	1,320,584	1,116,563	868,765
Comprehensive income attributable to non-controlling interests	(18,428)	(9,307)	(4,534)
Comprehensive income attributable to common stockholders	\$ 1,302,156	\$ 1,107,256	\$ 864,231

See accompanying Notes to Consolidated Financial Statements.

VICI PROPERTIES INC.
CONSOLIDATED STATEMENTS OF STOCKHOLDERS' EQUITY
(In thousands, except per share data)

	Common Stock	Additional Paid-in Capital	Accumulated Other Comprehensive Income (Loss)	Retained Earnings	Total VICI Stockholders' Equity	Non-controlling Interests	Total Stockholders' Equity
Balance as of December 31, 2019	\$ 4,610	\$ 7,817,582	\$ (65,078)	\$ 208,069	\$ 7,965,183	\$ 83,806	\$ 8,048,989
Cumulative effect of adoption of ASC 326	—	—	—	(307,114)	(307,114)	(2,248)	(309,362)
Net income	—	—	—	891,674	891,674	4,534	896,208
Issuance of common stock, net	755	1,538,778	—	—	1,539,533	—	1,539,533
Dividends and distributions declared (\$1.255 per common share)	—	—	—	(653,175)	(653,175)	(8,186)	(661,361)
Stock-based compensation, net of forfeitures	2	7,179	—	—	7,181	—	7,181
Unrealized loss on cash flow hedges	—	—	(27,443)	—	(27,443)	—	(27,443)
Balance as of December 31, 2020	5,367	9,363,539	(92,521)	139,454	9,415,839	77,906	9,493,745
Net income	—	—	—	1,013,851	1,013,851	9,307	1,023,158
Issuance of common stock, net	919	2,383,896	—	—	2,384,815	—	2,384,815
Dividends and distributions declared (\$1.380 per common share)	—	—	—	(807,279)	(807,279)	(8,307)	(815,586)
Stock-based compensation, net of forfeitures	3	7,634	—	—	7,637	—	7,637
Unrealized loss on cash flow hedges	—	—	29,166	—	29,166	—	29,166
Reclassification of derivative loss to Interest expense	—	—	64,239	—	64,239	—	64,239
Balance as of December 31, 2021	6,289	11,755,069	884	346,026	12,108,268	78,906	12,187,174
Net income	—	—	—	1,117,635	1,117,635	18,632	1,136,267
Issuance of common stock, net	3,337	9,786,991	—	—	9,790,328	—	9,790,328
Issuance of VICI OP Units	—	—	—	—	—	374,769	374,769
Reallocation of equity	—	93,338	(52)	—	93,286	(93,286)	—
Dividends and distributions declared (\$1.500 per common share)	—	—	—	(1,370,507)	(1,370,507)	(22,472)	(1,392,979)
Stock-based compensation, net of forfeitures	5	10,101	—	—	10,106	131	10,237
Unrealized gain on cash flow hedges	—	—	200,550	—	200,550	—	200,550
Reclassification of derivative gain to Interest expense	—	—	(16,029)	—	(16,029)	(204)	(16,233)
Balance as of December 31, 2022	\$ 9,631	\$ 21,645,499	\$ 185,353	\$ 93,154	\$ 21,933,637	\$ 356,476	\$ 22,290,113

See accompanying Notes to Consolidated Financial Statements.

VICI PROPERTIES INC.
CONSOLIDATED STATEMENTS OF CASH FLOWS
(In thousands)

	Year Ended December 31,		
	2022	2021	2020
<i>Cash flows from operating activities</i>			
Net income	\$ 1,136,267	\$ 1,023,158	\$ 896,208
Adjustments to reconcile net income to cash flows provided by operating activities:			
Non-cash leasing and financing adjustments	(337,631)	(119,969)	(41,764)
Stock-based compensation	12,986	9,371	7,388
Non-cash transaction costs	8,816	—	—
Depreciation	3,182	3,091	3,731
Amortization of debt issuance costs and original issue discount	32,363	71,452	19,872
Change in allowance for credit losses	834,494	(19,554)	244,517
Income from unconsolidated affiliate	(59,769)	—	—
Distributions from unconsolidated affiliate	64,808	—	—
Net proceeds from settlement of derivatives	201,434	—	—
Loss on extinguishment of debt	—	15,622	39,059
Gain upon lease modification	—	—	(333,352)
Change in operating assets and liabilities:			
Other assets	(5,673)	830	(3,065)
Accrued expenses and deferred revenue	52,261	(88,127)	49,588
Other liabilities	(142)	476	1,458
Net cash provided by operating activities	1,943,396	896,350	883,640
<i>Cash flows from investing activities</i>			
Net cash paid in connection with MGP Transactions	(4,574,536)	—	—
Investments in leases - sales-type	(4,017,851)	—	(1,407,260)
Investments in leases - financing receivables	(296,668)	(6,000)	(2,694,503)
Investments in loans	(193,733)	(33,614)	(535,476)
Principal repayments of lease financing receivables	—	543	1,961
Principal repayments of loan and receipts of deferred fees	5,696	70,448	—
Capitalized transaction costs	(7,704)	(20,697)	(264)
Investments in short-term investments	(306,532)	—	(19,973)
Maturities of short-term investments	89,190	19,973	59,474
Proceeds from sale of real estate	—	13,301	50,050
Acquisition of property and equipment	(1,876)	(2,505)	(2,768)
Net cash (used in) provided by investing activities	(9,304,014)	41,449	(4,548,759)

VICI PROPERTIES INC.
CONSOLIDATED STATEMENTS OF CASH FLOWS
(In thousands)

	Year Ended December 31,		
	2022	2021	2020
<i>Cash flows from financing activities</i>			
Proceeds from offering of common stock, net	3,219,101	2,385,779	1,539,748
Proceeds from April 2022 Notes offering	5,000,000	—	—
Proceeds from Revolving Credit Facility	600,000	—	—
Proceeds from February 2020 Senior Unsecured Notes	—	—	2,500,000
Repayment of Term Loan B Facility	—	(2,100,000)	—
Repayment of Revolving Credit Facility	(600,000)	—	—
Redemption of Second Lien Notes	—	—	(537,538)
CPLV CMBS Debt prepayment penalty reimbursement	—	—	55,401
Repurchase of stock for tax withholding	(6,156)	(1,734)	(207)
Debt issuance costs	(146,189)	(31,126)	(57,794)
Distributions to non-controlling interests	(17,702)	(8,307)	(8,186)
Dividends paid	(1,219,117)	(758,790)	(612,205)
Net cash provided by (used in) financing activities	6,829,937	(514,178)	2,879,219
Net (decrease) increase in cash, cash equivalents and restricted cash	(530,681)	423,621	(785,900)
Cash, cash equivalents and restricted cash, beginning of period	739,614	315,993	1,101,893
Cash, cash equivalents and restricted cash, end of period	\$ 208,933	\$ 739,614	\$ 315,993
<i>Supplemental cash flow information:</i>			
Cash paid for interest	\$ 466,806	\$ 323,219	\$ 262,464
Cash paid for income taxes	3,024	1,790	561
<i>Supplemental non-cash investing and financing activity:</i>			
Dividends and distributions declared, not paid	\$ 380,379	\$ 226,419	\$ 177,894
Deferred transaction costs payable	2,526	3,877	496
Debt issuance costs payable	—	43,005	—
Non-cash change in Investments in leases - financing receivables	189,123	21,139	8,116
Obtaining right-of-use assets in exchange for lease liabilities	541,676	—	282,054
Transfer of Investments in leases - operating to Investments in leases - sales-type and direct financing due to modification of the Caesars Lease Agreements in connection with the Caesars Transaction	—	—	1,023,179
Transfer of Investments in leases - operating to Land due to modification of the Caesars Lease Agreements in connection with the Caesars Transaction	—	—	63,479

See accompanying Notes to Consolidated Financial Statements.

VICI PROPERTIES L.P.
CONSOLIDATED BALANCE SHEETS
(In thousands, except unit and per unit data)

	December 31, 2022	December 31, 2021
Assets		
Real estate portfolio:		
Investments in leases - sales-type, net	\$ 17,172,325	\$ 13,136,664
Investments in leases - financing receivables, net	16,740,770	2,644,824
Investments in loans, net	685,793	498,002
Investment in unconsolidated affiliate	1,460,775	—
Land	153,560	153,576
Cash and cash equivalents	142,600	705,566
Short-term investments	217,342	—
Other assets	856,605	344,014
Total assets	<u>\$ 37,429,770</u>	<u>\$ 17,482,646</u>
Liabilities		
Debt, net	\$ 13,739,675	\$ 4,694,523
Accrued expenses and deferred revenue	206,643	110,056
Distributions payable	380,581	226,309
Other liabilities	937,655	361,270
Total liabilities	<u>15,264,554</u>	<u>5,392,158</u>
Commitments and Contingencies (Note 10)		
Partners' Capital		
Partners' capital, 975,327,936 and 628,942,092 operating partnership units issued and outstanding at December 31, 2022 and December 31, 2021, respectively	21,900,511	12,010,698
Accumulated other comprehensive income	185,201	884
Total VICI LP's capital	<u>22,085,712</u>	<u>12,011,582</u>
Non-controlling interest	79,504	78,906
Total capital attributable to partners	<u>22,165,216</u>	<u>12,090,488</u>
Total liabilities and partners' capital	<u>\$ 37,429,770</u>	<u>\$ 17,482,646</u>

Note: As of December 31, 2022 and December 31, 2021, our Investments in leases - sales-type, Investments in leases - financing receivables, Investments in loans and Other assets (sales-type sub-leases) are net of \$570.4 million, \$726.7 million, \$6.9 million and \$19.8 million, respectively, and \$434.9 million, \$91.1 million, \$0.8 million, and \$6.5 million, respectively, of Allowance for credit losses. Refer to [Note 5 - Allowance for Credit Losses](#) for further details.

See accompanying Notes to Consolidated Financial Statements.

VICI PROPERTIES L.P.
CONSOLIDATED STATEMENTS OF OPERATIONS AND COMPREHENSIVE INCOME
(In thousands, except unit and per unit data)

	Year Ended December 31,		
	2022	2021	2020
Revenues			
Income from sales-type leases	\$ 1,464,245	\$ 1,167,972	\$ 1,007,508
Income from operating leases	—	—	25,464
Income from lease financing receivables and loans	1,041,229	283,242	153,017
Other income	59,629	27,808	15,793
Total revenues	2,565,103	1,479,022	1,201,782
Operating expenses			
General and administrative	48,332	33,122	30,654
Depreciation	121	121	116
Other expenses	59,629	27,808	15,793
Change in allowance for credit losses	834,494	(19,554)	244,517
Transaction and acquisition expenses	22,653	10,402	8,684
Total operating expenses	965,229	51,899	299,764
Income from unconsolidated affiliate	59,769	—	—
Interest expense	(539,953)	(392,390)	(308,605)
Interest income	8,481	103	6,712
Loss from extinguishment of debt	—	(15,622)	(39,059)
Gain upon lease modification	—	—	333,352
Income before income taxes	1,128,171	1,019,214	894,418
Income tax expense	(573)	(1,373)	(276)
Net income	1,127,598	1,017,841	894,142
Less: Net income attributable to non-controlling interest	(9,127)	(9,307)	(4,534)
Net income attributable to partners	\$ 1,118,471	\$ 1,008,534	\$ 889,608
Net income per Partnership unit			
Basic	\$ 1.26	\$ 1.79	\$ 1.76
Diluted	\$ 1.26	\$ 1.75	\$ 1.74
Weighted average number of Partnership units outstanding			
Basic	885,785,509	564,467,362	506,140,642
Diluted	887,952,966	577,066,292	510,908,755
Other comprehensive income			
Net income attributable to partners	\$ 1,118,471	\$ 1,008,534	\$ 889,608
Unrealized gain (loss) on cash flow hedges	200,550	29,166	(27,443)
Reclassification of derivative (gain) loss to Interest expense	(16,233)	64,239	—
Comprehensive income attributable to partners	\$ 1,302,788	\$ 1,101,939	\$ 862,165

See accompanying Notes to Consolidated Financial Statements.

VICI PROPERTIES L.P.
CONSOLIDATED STATEMENTS OF PARTNERS' CAPITAL
(In thousands)

	Partners' Capital	Accumulated Other Comprehensive Income (Loss)	Non-controlling Interest	Total
Balance as of December 31, 2019	\$ 7,946,067	\$ (65,078)	\$ 83,806	\$ 7,964,795
Cumulative effect of adoption of ASC 326	(307,114)	—	(2,248)	(309,362)
Net income	889,608	—	4,534	894,142
Contributions from Parent	1,544,363	—	—	1,544,363
Distributions to Parent	(662,452)	—	—	(662,452)
Distributions to non-controlling interest	—	—	(8,186)	(8,186)
Stock-based compensation, net of forfeitures	7,322	—	—	7,322
Unrealized gain on cash flow hedges	—	(27,443)	—	(27,443)
Balance as of December 31, 2020	9,417,794	(92,521)	77,906	9,403,179
Net income	1,008,534	—	9,307	1,017,841
Contributions from Parent	2,405,602	—	—	2,405,602
Distributions to Parent	(830,498)	—	—	(830,498)
Distributions to non-controlling interest	—	—	(8,307)	(8,307)
Stock-based compensation, net of forfeitures	9,266	—	—	9,266
Unrealized gain on cash flow hedges	—	29,166	—	29,166
Reclassification of derivative loss to Interest expense	—	64,239	—	64,239
Balance as of December 31, 2021	12,010,698	884	78,906	12,090,488
Net income	1,118,471	—	9,127	1,127,598
Contributions from Parent	10,178,426	—	—	10,178,426
Distributions to Parent	(1,419,825)	—	—	(1,419,825)
Distributions to non-controlling interest	—	—	(8,529)	(8,529)
Stock-based compensation, net of forfeitures	12,741	—	—	12,741
Unrealized gain on cash flow hedges	—	200,550	—	200,550
Reclassification of derivative gain to Interest expense	—	(16,233)	—	(16,233)
Balance as of December 31, 2022	\$ 21,900,511	\$ 185,201	\$ 79,504	\$ 22,165,216

See accompanying Notes to Consolidated Financial Statements.

VICI PROPERTIES L.P.
CONSOLIDATED STATEMENTS OF CASH FLOWS
(In thousands)

	Year Ended December 31,		
	2022	2021	2020
<i>Cash flows from operating activities</i>			
Net income	\$ 1,127,598	\$ 1,017,841	\$ 894,142
Adjustments to reconcile net income to cash flows provided by operating activities:			
Non-cash leasing and financing adjustments	(337,631)	(119,969)	(41,764)
Stock-based compensation	12,683	9,266	7,322
Depreciation	121	121	116
Amortization of debt issuance costs and original issue discount	32,363	71,452	19,872
Change in allowance for credit losses	834,494	(19,554)	244,517
Income from unconsolidated affiliate	(59,769)	—	—
Distributions from unconsolidated affiliate	64,808	—	—
Net proceeds from settlement of derivatives	201,434	—	—
Loss on extinguishment of debt	—	15,622	39,059
Gain upon lease modification	—	—	(333,352)
Change in operating assets and liabilities:			
Other assets	(2,717)	2,143	(3,885)
Accrued expenses and deferred revenue	46,837	(91,026)	46,402
Other liabilities	(392)	308	(97)
Net cash provided by operating activities	1,919,829	886,204	872,332
<i>Cash flows from investing activities</i>			
Net cash paid in connection with MGP Transactions	(4,574,536)	—	—
Investments in leases - sales-type	(4,017,851)	—	(1,407,260)
Investments in leases - financing receivables	(296,668)	(6,000)	(2,694,503)
Investments in loans	(193,733)	(33,614)	(535,476)
Principal repayments of lease financing receivables	—	543	1,961
Principal repayments of loan and receipts of deferred fees	5,696	70,448	—
Capitalized transaction costs	(7,704)	(20,697)	(264)
Investments in short-term investments	(306,532)	—	(19,973)
Maturities of short-term investments	89,190	19,973	59,474
Proceeds from sale of real estate	—	13,301	50,050
Acquisition of property and equipment	(65)	(15)	(589)
Net cash (used in) provided by investing activities	(9,302,203)	43,939	(4,546,580)

VICI PROPERTIES L.P.
CONSOLIDATED STATEMENTS OF CASH FLOWS
(In thousands)

	Year Ended December 31,		
	2022	2021	2020
<i>Cash flows from financing activities</i>			
Contributions from Parent	3,219,202	2,386,911	1,539,862
Distributions to Parent	(1,238,920)	(758,300)	(614,057)
Proceeds from April 2022 Notes offering	5,000,000	—	—
Proceeds from Revolving Credit Facility	600,000	—	—
Repayment of Revolving Credit Facility	(600,000)	—	—
Proceeds from February 2020 Senior Unsecured Notes	—	—	2,500,000
Repayment of Term Loan B Facility	—	(2,100,000)	—
Redemption of Second Lien Notes	—	—	(537,538)
CPLV CMBS Debt prepayment penalty reimbursement	—	—	55,401
Repurchase of stock for tax withholding	(6,156)	—	—
Debt issuance costs	(146,189)	(31,126)	(57,794)
Distributions to non-controlling interest	(8,529)	(8,307)	(8,186)
Net cash provided by (used in) financing activities	6,819,408	(510,822)	2,877,688
Net increase (decrease) in cash, cash equivalents and restricted cash	(562,966)	419,321	(796,560)
Cash, cash equivalents and restricted cash, beginning of period	705,566	286,245	1,082,805
Cash, cash equivalents and restricted cash, end of period	<u>\$ 142,600</u>	<u>\$ 705,566</u>	<u>\$ 286,245</u>
<i>Supplemental cash flow information:</i>			
Cash paid for interest	\$ 466,806	\$ 323,219	\$ 262,464
Cash paid for income taxes	1,377	1,397	561
<i>Supplemental non-cash investing and financing activity:</i>			
Distributions Payable	\$ 380,581	\$ 226,309	\$ 176,992
Debt issuance costs payable	—	43,005	—
Deferred transaction costs payable	2,526	3,877	496
Non-cash change in Investments in leases - financing receivables	189,123	21,139	8,116
Obtaining right-of-use assets in exchange for lease liabilities	541,676	—	282,054
Transfer of Investments in leases - operating to Investments in leases - sales-type and direct financing due to modification of the Caesars Lease Agreements in connection with the Caesars Transaction	—	—	1,023,179
Transfer of Investments in leases - operating to Land due to modification of the Caesars Lease Agreements in connection with the Caesars Transaction	—	—	63,479

See accompanying Notes to Consolidated Financial Statements.

**VICI PROPERTIES INC. AND VICI PROPERTIES L.P.
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**

In this Annual Report on Form 10-K, the words the “Company,” “VICI,” “we,” “our,” and “us” refer to VICI Properties Inc. and its subsidiaries, including VICI LP, on a consolidated basis, unless otherwise stated or the context requires otherwise.

We refer to (i) our Consolidated Financial Statements as our “Financial Statements,” (ii) our Consolidated Balance Sheets as our “Balance Sheet,” (iii) our Consolidated Statements of Operations and Comprehensive Income as our “Statement of Operations,” and (iv) our Consolidated Statement of Cash Flows as our “Statement of Cash Flows.” References to numbered “Notes” refer to the Notes to our Consolidated Financial Statements.

“Apollo” refers to Apollo Global Management, Inc., a Delaware corporation, and, as the context requires, certain of its subsidiaries and affiliates.

“April 2022 Notes” refer collectively to (i) the \$500.0 million aggregate principal amount of 4.375% senior unsecured notes due 2025, (ii) the \$1,250.0 million aggregate principal amount of 4.750% senior unsecured notes due 2028, (iii) the \$1,000.0 million aggregate principal amount of 4.950% senior unsecured notes due 2030, (iv) the \$1,500.0 million aggregate principal amount of 5.125% senior unsecured notes due 2032, and (v) the \$750.0 million aggregate principal amount of 5.625% senior unsecured notes due 2052, in each case issued by VICI LP in April 2022.

“Caesars” refers to Caesars Entertainment, Inc., a Delaware corporation and, as the context requires, its subsidiaries.

“Caesars Las Vegas Master Lease” refers to the lease agreement for Caesars Palace Las Vegas and the Harrah’s Las Vegas facilities, as amended from time to time.

“Caesars Leases” refer collectively to the Caesars Las Vegas Master Lease, the Caesars Regional Master Lease and the Joliet Lease, in each case, unless the context otherwise requires.

“Caesars Regional Master Lease” refers to the lease agreement for the regional properties (other than the facility in Joliet, Illinois) leased to Caesars, as amended from time to time.

“Caesars Transaction” refers to a series of transactions between us and Caesars (formerly Eldorado Resorts, Inc.) in connection with the merger between Eldorado Resorts, Inc. and Caesars, including the acquisition of the Harrah’s New Orleans, Harrah’s Laughlin and Harrah’s Atlantic City, modifications to the Caesars Lease Agreements, and rights of first refusal.

“Century Casinos” refers to Century Casinos, Inc., a Delaware corporation, and, as the context requires, its subsidiaries.

“Century Master Lease” refers to the lease agreement for the (i) Mountaineer Casino, Racetrack & Resort located in New Cumberland, West Virginia, (ii) Century Casino Caruthersville located in Caruthersville, Missouri and (iii) Century Casino Cape Girardeau located in Cape Girardeau, Missouri, as amended from time to time.

“CNB” refers to Cherokee Nation Businesses, L.L.C., and, as the context requires, its subsidiaries.

“Co-Issuer” refers to VICI Note Co. Inc., a Delaware corporation, and co-issuer of the November 2019 Notes, February 2020 Notes and Exchange Notes.

“Credit Agreement” refers to the Credit Agreement, dated as of February 8, 2022, by and among VICI LP, the lenders from time to time party thereto, and JPMorgan Chase Bank, N.A., as administrative agent, as amended from time to time.

“Credit Facilities” refer collectively to the Delayed Draw Term Loan and the Revolving Credit Facility.

“Delayed Draw Term Loan” refers to the three-year unsecured delayed draw term loan facility of VICI LP provided under the Credit Agreement entered into in February 2022, as amended from time to time.

“EBCI” refers to the Eastern Band of Cherokee Indians, a federally recognized Tribe located in western North Carolina, and, as the context requires, its subsidiary and affiliate entities.

“Exchange Notes” refer collectively to (i) the \$1,024.2 million aggregate principal amount of 5.625% senior unsecured notes due 2024, (ii) the \$799.4 million aggregate principal amount of 4.625% senior unsecured notes due 2025, (iii) the \$480.5 million aggregate principal amount of 4.500% senior unsecured notes due 2026, (iv) the \$729.5 million aggregate principal amount of 5.750% senior unsecured notes due 2027, (v) the \$349.3 million aggregate principal amount of 4.500% senior unsecured notes due 2028, and (vi) the \$727.1 million aggregate principal amount of 3.875% senior unsecured notes due 2029, in each case issued by VICI LP and Co-Issuer, in April 2022 pursuant to the Exchange Offers and Consent Solicitations (as defined herein).

VICI PROPERTIES INC. AND VICI PROPERTIES L.P.
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

“February 2020 Notes” refer collectively to (i) the \$750.0 million aggregate principal amount of 3.500% senior unsecured notes due 2025, (ii) the \$750.0 million aggregate principal amount of 3.750% senior unsecured notes due 2027, and (iii) the \$1.0 billion aggregate principal amount of 4.125% senior unsecured notes due 2030, in each case issued by VICI LP and Co-Issuer in February 2020.

“Forum Convention Center Mortgage Loan” refers to a \$400.0 million mortgage loan agreement entered into on September 18, 2020 with Caesars for a term of five years and secured by, among other things, the Caesars Forum Convention Center in Las Vegas.

“Foundation Gaming” refers to Foundation Gaming & Entertainment, LLC and, as the context requires, its subsidiaries.

“Foundation Master Lease” refers to the lease agreement for the Fitz Casino & Hotel, located in Tunica, Mississippi, and the WaterView Casino & Hotel, located in Vicksburg, Mississippi, as amended from time to time.

“Gold Strike Lease” refers to the lease agreement with CNB for the Gold Strike Casino Resort, located in Tunica, Mississippi (“Gold Strike”), as amended from time to time.

“Greektown Lease” refers to the lease agreement for the Greektown Casino-Hotel, located in Detroit, Michigan, as amended from time to time.

“Hard Rock” means Hard Rock International, and, as the context requires, its subsidiary and affiliate entities.

“Hard Rock Cincinnati Lease” refers to the lease agreement for the Hard Rock Cincinnati Casino, located in Cincinnati, Ohio, as amended from time to time.

“JACK Master Lease” refers to the lease agreement for the JACK Cleveland Casino located in Cleveland, Ohio, and the JACK Thistledown Racino facility located in North Randall, Ohio, as amended from time to time.

“JACK Entertainment” refers to JACK Ohio LLC, and, as the context requires, its subsidiary and affiliate entities.

“Joliet Lease” refers to the lease agreement for the facility in Joliet, Illinois, as amended from time to time.

“Lease Agreements” refer collectively to our leases with our respective tenants, unless the context otherwise requires.

“Margaritaville Lease” refers to the lease agreement for Margaritaville Resort Casino, located in Bossier City, Louisiana, as amended from time to time.

“Mergers” refer to a series of transactions governed by the MGP Master Transaction Agreement that occurred on April 29, 2022, consisting of (i) the contribution of our interest in VICI LP to VICI OP, which subsequent to the MGP Transactions serves as our new operating partnership, followed by (ii) the merger of MGP with and into Venus Sub LLC, a Delaware limited liability company and wholly owned subsidiary of VICI LP (“REIT Merger Sub”), with REIT Merger Sub surviving the merger; followed by (iii) the distribution by REIT Merger Sub of the interests of the general partner of MGP OP to VICI LP and (iv) the merger of REIT Merger Sub with and into MGP OP, with MGP OP surviving such merger.

“MGM” refers to MGM Resorts International, a Delaware corporation, and, as the context requires, its subsidiaries.

“MGM Grand/Mandalay Bay JV” (previously referred to as the “BREIT JV”) refers to a joint venture that holds the real estate assets of MGM Grand Las Vegas and Mandalay Bay in which we previously held a 50.1% ownership stake as of December 31, 2022. On January 9, 2023, we acquired the remaining 49.9% ownership stake from our joint venture partner, as further described herein.

“MGM Grand/Mandalay Bay Lease” refers to the lease agreement for MGM Grand Las Vegas and Mandalay Bay, as amended from time to time.

“MGM Master Lease” refers to the lease agreement for the properties leased to MGM, excluding those leased under the MGM Grand/Mandalay Bay Lease, as amended from time to time.

“MGM Tax Protection Agreement” refers to the tax protection agreement entered into with MGM upon consummation of the MGP Transactions.

“MGP” refers to MGM Growth Properties LLC, a Delaware limited liability company, which was acquired by the Company on April 29, 2022, and, as the context requires, its subsidiaries.

“MGP Master Transaction Agreement” refers to that certain Master Transaction Agreement between the Company, MGP, MGP OP, VICI LP, REIT Merger Sub, VICI OP, and MGM entered into on August 4, 2021.

VICI PROPERTIES INC. AND VICI PROPERTIES L.P.
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

“MGP OP” refers to MGM Growth Properties Operating Partnership LP, a Delaware limited partnership, which was acquired by the Company on April 29, 2022, and, as the context requires, its subsidiaries.

“MGP OP Notes” refer collectively to the notes issued by MGP OP and MGP Finance Co-Issuer, Inc. (“MGP Co-Issuer” and, together with MGP OP, the “MGP Issuers”), consisting of (i) the 5.625% Senior Notes due 2024 issued pursuant to the indenture, dated as of April 20, 2016, (ii) the 4.625% Senior Notes due 2025 issued pursuant to the indenture, dated as of June 5, 2020, (iii) the 4.500% Senior Notes due 2026 issued pursuant to the indenture, dated as of August 12, 2016, (iv) the 5.750% Senior Notes due 2027 issued pursuant to the indenture, dated as of January 25, 2019, (v) the 4.500% Senior Notes due 2028 issued pursuant to the indenture, dated as of September 21, 2017, and (vi) the 3.875% Senior Notes due 2029 issued pursuant to the indenture, dated as of November 19, 2020, in each case, as amended or supplemented as of the date hereof, among the MGP Issuers and U.S. Bank National Association, as trustee (the “MGP Trustee”).

“MGP Transactions” refer collectively to a series of transactions pursuant to the MGP Master Transaction Agreement between us, MGP and MGM and the other parties thereto in connection with our acquisition of MGP on April 29, 2022, as contemplated by the MGP Master Transaction Agreement, including the MGM Tax Protection Agreement and the MGM Master Lease.

“Mirage Lease” refers to the lease agreement with Hard Rock for the Mirage, located in Las Vegas, Nevada, as amended from time to time.

“November 2019 Notes” refer collectively to (i) the \$1.25 billion aggregate principal amount of 4.250% senior unsecured notes due 2026, and (ii) the \$1.0 billion aggregate principal amount of 4.625% senior unsecured notes due 2029, in each case issued by VICI LP and VICI Note Co. Inc., as Co-Issuer, in November 2019.

“Partner Property Growth Fund” refers to certain arrangements with certain tenants relating to our funding of “same-store” capital improvements, including redevelopment, new construction projects and other property improvements, in exchange for increased rent pursuant to the terms of our existing Lease Agreements with such tenants.

“PENN Entertainment” refers to PENN Entertainment Gaming, Inc., a Pennsylvania corporation, and, as the context requires, its subsidiaries.

“PENN Entertainment Leases” refer collectively to the Margaritaville Lease and the Greektown Lease, unless the context otherwise requires.

“PURE Canadian Gaming” refers to PURE Canadian Gaming, Corp., an Alberta corporation, and, as the context requires, its subsidiaries.

“PURE Master Lease” refers to the lease agreement for the (i) PURE Casino Edmonton located in Edmonton, Alberta, (ii) PURE Casino Yellowhead located in Edmonton, Alberta, (iii) PURE Casino Calgary located in Calgary, Alberta and (iv) PURE Casino Lethbridge located in Lethbridge, Alberta (collectively, the “PURE Portfolio”), as amended from time to time.

“Revolving Credit Facility” refers to the four-year unsecured revolving credit facility of VICI LP provided under the Credit Agreement entered into in February 2022, as amended from time to time.

“Secured Revolving Credit Facility” refers to the five-year first lien revolving credit facility entered into by VICI PropCo in December 2017, as amended, which was terminated on February 8, 2022.

“Seminole Hard Rock” refers to Seminole Hard Rock Entertainment, Inc.

“Senior Unsecured Notes” refer collectively to the November 2019 Notes, the February 2020 Notes, the April 2022 Notes, the Exchange Notes and the MGP OP Notes.

“Southern Indiana Lease” refers to the lease agreement with EBCI for the Caesars Southern Indiana Casino and Hotel, located in Elizabeth, Indiana (“Caesars Southern Indiana”), as amended from time to time.

“Term Loan B Facility” refers to the seven-year senior secured first lien term loan B facility entered into by VICI PropCo in December 2017, as amended from time to time, which was repaid in full on September 15, 2021.

“Venetian Acquisition” refers to our acquisition of the Venetian Resort, with Apollo, which closed on February 23, 2022.

“Venetian Lease” refers to the lease agreement for the Venetian Resort Las Vegas and Venetian Expo, located in Las Vegas, Nevada (the “Venetian Resort”), as amended from time to time.

“Venetian Tenant” refers to an affiliate of certain funds managed by affiliates of Apollo.

VICI PROPERTIES INC. AND VICI PROPERTIES L.P.
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

“VICI Golf” refers to VICI Golf LLC, a Delaware limited liability company that is the owner of our golf business.

“VICI Issuers” refers to VICI Properties L.P., a Delaware limited partnership and VICI Note Co. Inc., a Delaware corporation.

“VICI LP” refers to VICI Properties L.P., a Delaware limited partnership and a wholly owned subsidiary of VICI OP.

“VICI OP” refers to VICI Properties OP LLC, a Delaware limited liability company and a consolidated subsidiary of VICI, which serves as our operating partnership.

“VICI OP Units” refer to limited liability company interests in VICI OP.

“VICI PropCo” refers to VICI Properties 1 LLC, a Delaware limited liability company and an indirect wholly owned subsidiary of VICI.

Note 1 — Business and Organization

We are a Maryland corporation that is primarily engaged in the business of owning and acquiring gaming, hospitality and entertainment destinations, subject to long-term triple net leases. As of December 31, 2022, our geographically diverse portfolio consisted of 45 gaming facilities in the United States (and subsequent to our acquisition of the assets of the Pure Portfolio on January 6, 2023, 49 assets located in the United States and Canada), including Caesars Palace Las Vegas, MGM Grand and the Venetian Resort. Our properties are leased to, and our tenants are, subsidiaries of, or entities managed by, Apollo, Caesars, Century Casinos, EBCI, Foundation Gaming, JACK Entertainment, MGM, PENN Entertainment and Seminole Hard Rock, with Caesars and MGM being our largest tenants. VICI also owns four championship golf courses located near certain of our properties.

VICI, the parent company, is a Maryland corporation and internally managed real estate investment trust (“REIT”) for U.S. federal income tax purposes. Our real property business, which represents the substantial majority of our assets, is conducted through VICI OP and indirectly through VICI LP and our golf course business, VICI Golf, is conducted through a direct wholly owned taxable REIT subsidiary (“TRS”) of VICI. As a REIT, we generally will not be subject to U.S. federal income taxes on our taxable income to the extent that we annually distribute substantially all of our net taxable income to stockholders and maintain our qualification as a REIT.

Note 2 — Summary of Significant Accounting Policies

Basis of Presentation

The accompanying Financial Statements have been prepared in accordance with accounting principles generally accepted in the United States of America (“GAAP”) as set forth in the Accounting Standards Codification (“ASC”), as published by the Financial Accounting Standards Board (“FASB”), and with the applicable rules and regulations of the Securities and Exchange Commission (“SEC”). Certain prior period amounts have been reclassified to conform to the current period presentation.

Use of Estimates

The preparation of financial statements in conformity with GAAP requires us to make estimates and assumptions. These estimates and assumptions affect the reported amounts of assets and liabilities and the disclosure of contingent assets and liabilities at the date of the Financial Statements and the reported amounts of revenues and expenses during the reporting periods. Actual results could differ materially from these estimates.

Principles of Consolidation and Non-controlling Interest

The accompanying consolidated financial statements include our accounts and the accounts of VICI LP, and the subsidiaries in which we or VICI LP has a controlling interest. All intercompany account balances and transactions have been eliminated in consolidation. We consolidate all subsidiaries in which we have a controlling financial interest and variable interest entities for which we or one of our consolidated subsidiaries is the primary beneficiary.

Non-controlling Interests

We present non-controlling interests and classify such interests as a component of consolidated stockholders’ equity or partners’ capital, separate from VICI stockholders’ equity and VICI LP partners’ capital. As of December 31, 2022, VICI’s non-controlling interests represent an approximately 1.3% third-party ownership of VICI OP in the form of VICI OP Units and

VICI PROPERTIES INC. AND VICI PROPERTIES L.P.
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

a 20% third-party ownership of Harrah's Joliet LandCo LLC, the entity that owns the Harrah's Joliet facility and is the lessor under the related Joliet Lease. As VICI OP is a parent entity of VICI LP, VICI LP's only non-controlling interest is that of third-party ownership of Harrah's Joliet LandCo LLC.

Reportable Segments

Our operations consist of real property and real estate lending activities, which represent substantially all of our business. The operating results of both the real property and real estate lending activities are regularly reviewed, in the aggregate, by the chief operating decision maker and considered one operating segment. Our golf operations have been determined to be both quantitatively and qualitatively insignificant to the Company's business. Accordingly, all operations have been considered to represent one reportable segment and no separate disclosures are required.

Cash, Cash Equivalents and Restricted Cash

Cash consists of cash-on-hand and cash-in-bank. Highly liquid investments with an original maturity of three months or less from the date of purchase are considered cash equivalents and are carried at cost, which approximates fair value. As of December 31, 2022 and 2021, we did not have any restricted cash.

Short-Term Investments

Investments with an original maturity of greater than three months and less than one year from the date of purchase are considered short-term investments and are stated at fair value.

We may invest our excess cash in short-term investment grade commercial paper as well as discount notes issued by government-sponsored enterprises including the Federal Home Loan Mortgage Corporation and certain of the Federal Home Loan Banks. These investments generally have original maturities between 91 and 180 days and are accounted for as available for sale securities. Interest on our short-term investments is recognized as interest income in our Statement of Operations. We had \$217.3 million of short-term investments as of December 31, 2022. We did not have any short-term investments as of December 31, 2021.

Purchase Accounting

We assess all of our property acquisitions under ASC 805 - *Business Combinations* ("ASC 805") to determine if such acquisitions should be accounted for as a business combination or an asset acquisition. Under ASC 805, an acquisition does not qualify as a business when (i) substantially all of the fair value is concentrated in a single identifiable asset or group of similar identifiable assets or (ii) the acquisition does not include a substantive process in the form of an acquired workforce or (iii) an acquired contract that cannot be replaced without significant cost, effort or delay. Generally, and to date, all of our acquisitions have been determined to be asset acquisitions and, in accordance with ASC 805-50, all applicable transaction costs are capitalized as part of the purchase price of the acquisition.

We allocate the purchase price to the identifiable assets acquired and liabilities assumed, as applicable, using the relative fair value. Generally, with the exception of the MGP Transactions, our acquisitions consists of properties without existing leases or debt and, accordingly, the assets acquired comprise of land, building and site improvements. Further, since all the components of our leases are classified as sales-type or financing leases, as further described below, the assets acquired are transferred into the net investment in lease or financing receivable, as applicable.

Investments in Leases - Sales-type, Net

We account for our investments in leases under ASC 842 "Leases" ("ASC 842"). Upon lease inception or lease modification, we assess lease classification to determine whether the lease should be classified as a direct financing, sales-type or operating lease. As required by ASC 842, we separately assess the land and building components of the property to determine the classification of each component. If the lease component is determined to be a direct financing or sales-type lease, we record a net investment in the lease, which is equal to the sum of the lease receivable and the unguaranteed residual asset, discounted at the rate implicit in the lease. Any difference between the fair value of the asset and the net investment in the lease is considered selling profit or loss and is either recognized upon execution of the lease or deferred and recognized over the life of the lease, depending on the classification of the lease. Since we purchase properties and simultaneously enter into new leases directly with the tenants, the net investment in the lease is generally equal to the purchase price of the asset, and, due to the long-term nature of our leases, the land and building components of an investment generally have the same lease classification.

VICI PROPERTIES INC. AND VICI PROPERTIES L.P.
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

We have determined that the land and building components of all of the Caesars Leases (excluding the Harrah's New Orleans, Harrah's Laughlin and Harrah's Atlantic City real estate asset components (the "Harrah's Call Properties") of the Caesars Regional Master Lease), Century Master Lease, Hard Rock Cincinnati Lease, PENN Entertainment Leases, Southern Indiana Lease, and Venetian Lease meet the definition of a sales-type lease under ASC 842.

Investments in Leases - Financing Receivables, Net

In accordance with ASC 842, for transactions in which we enter into a contract to acquire an asset and lease it back to the seller under a lease classified as a sales-type lease (i.e., a sale leaseback transaction), control of the asset is not considered to have transferred to us. As a result, we do not recognize the net investment in the lease but instead recognize a financial asset in accordance with ASC 310 "Receivables" ("ASC 310"); however, the accounting for the financing receivable under ASC 310 is materially consistent with the accounting for our investments in leases - sales-type under ASC 842.

We determined that the land and building components of the Foundation Master Lease, Harrah's Call Properties real estate asset components of the Caesars Regional Master Lease, JACK Master Lease and MGM Master Lease meet the definition of a sales-type lease and, since we purchased and leased the assets back to the sellers under sale leaseback transactions, control is not considered to have transferred to us under GAAP. Accordingly, such leases are accounted for as Investments in leases - financing receivables on our Balance Sheet, net of allowance for credit losses, in accordance with ASC 310.

Lease Term

We assess the noncancelable lease term under ASC 842, which includes any reasonably assured renewal periods. All of our Lease Agreements provide for an initial term, with multiple tenant renewal options. We have individually assessed all of our Lease Agreements and concluded that the lease term includes all of the periods covered by extension options as it is reasonably certain our tenants will renew the Lease Agreements. We believe our tenants are economically compelled to renew the Lease Agreements due to the importance of our real estate to the operation of their business, the significant capital they have invested and are required to invest in our properties under the terms of the Lease Agreements and the lack of suitable replacement assets.

Investments in Loans, net

Investments in loans are held-for-investment and are carried at historical cost, inclusive of unamortized loan origination costs and fees and allowances for credit losses. Income is recognized on an effective interest basis at a constant rate of return over the life of the related loan.

Income from Leases and Lease Financing Receivables

We recognize the related income from our sales-type leases and lease financing receivables on an effective interest basis at a constant rate of return over the terms of the applicable leases. As a result, the cash payments accounted for under sales-type leases and lease financing receivables will not equal income from our Lease Agreements. Rather, a portion of the cash rent we receive is recorded as Income from sales-type leases or Income from lease financing receivables and loans, as applicable, in our Statement of Operations and a portion is recorded as a change to Investments in leases - sales-type, net or Investments in leases - financing receivables, net, as applicable.

Upon adoption of ASC 842 on January 1, 2019, we made an accounting policy election to use a package of practical expedients that, among other things, allow us to not reassess prior lease classifications or initial direct costs for leases that existed as of the balance sheet date. Upon the consummation of the Caesars Transaction the land component of Caesars Palace Las Vegas, which was previously determined to be an operating lease under ASC 840, along with the other components of the Caesars Leases were reassessed for lease classification and determined to be sales-type leases. Accordingly, subsequent to July 20, 2020, we no longer have any leases classified as operating or direct financing and, as such, the income relating to the land component of Caesars Palace Las Vegas is recognized as Income from sales-type leases and there is no longer any income recorded through Income from operating leases.

Initial direct costs incurred in connection with entering into investments classified as sales-type leases are included in the balance of the net investment in lease. Such amounts will be recognized as a reduction to Income from investments in leases over the life of the lease using the effective interest method. Costs that would have been incurred regardless of whether the lease was signed, such as legal fees and certain other third-party fees, are expensed as incurred to Transaction and acquisition expenses in our Statement of Operations.

VICI PROPERTIES INC. AND VICI PROPERTIES L.P.
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

Loan origination fees and costs incurred in connection with entering into investments classified as lease financing receivables are included in the balance of the net investment and such amounts will be recognized as a reduction to Income from investments in loans and lease financing receivables over the life of the lease using the effective interest method.

Allowance for Credit Losses

On January 1, 2020, we adopted ASC 326 “Financial Instruments-Credit Losses” (“ASC 326”), which requires that we measure and record current expected credit losses (“CECL”) for the majority of our investments, the scope of which includes our Investments in leases - sales-type, Investments in leases - financing receivables and Investments in loans, as well as our estimate of future funding commitments associated with such investments, as applicable.

We have elected to use a discounted cash flow model to estimate the Allowance for credit losses, or CECL allowance for our Investments in leases - sales-type, Investments in leases - financing receivables and certain of our loans, which comprise the substantial majority of our CECL allowance. This model requires us to develop cash flows which project estimated credit losses over the life of the lease or loan and discount these cash flows at the asset’s effective interest rate. We then record a CECL allowance equal to the difference between the amortized cost basis of the asset and the present value of the expected credit loss cash flows.

Expected losses within our cash flows are determined by estimating the probability of default (“PD”) and loss given default (“LGD”) of our tenants and borrowers and their parent guarantors, as applicable, over the life of each individual lease or financial asset. We have engaged a nationally recognized data analytics firm to assist us with estimating both the PD and LGD of our tenants and borrowers and their parent guarantors, as applicable. The PD and LGD are estimated during a reasonable and supportable period for which we believe we are able to estimate future economic conditions (the “R&S Period”) and a long-term period for which we revert to long-term historical averages (the “Long-Term Period”). The PD and LGD estimates for the R&S Period are developed using the current financial condition of the tenant or borrower and parent guarantor, as applicable, and applied to a projection of economic conditions over a two-year term. The PD and LGD for the Long-Term Period are estimated using the average historical default rates and historical loss rates, respectively, of public companies over approximately the past 40 years that have similar credit profiles or characteristics to our tenants, borrowers and their parent guarantors, as applicable. We are unable to use our historical data to estimate losses as we have no loss history to date.

The CECL allowance is recorded as a reduction to our net Investments in leases - sales-type, Investments in leases - financing receivables, Investments in loans and Sales-type sub-leases (included in Other assets) on our Balance Sheet. We are required to update our CECL allowance on a quarterly basis with the resulting change being recorded in the Statement of Operations for the relevant period. Finally, each time we make a new investment in an asset subject to ASC 326, we are required to record an initial CECL allowance for such asset, which will result in a non-cash charge to the Statement of Operations for the relevant period.

We are required to estimate a CECL allowance related to contractual commitments to extend credit, such as future funding commitments under a revolving credit facility, delayed draw term loan, construction loan or through commitments made to our tenants to fund the development and construction of improvements at our properties through the Partner Property Growth Fund. We estimate the amount that we will fund for each contractual commitment based on (i) discussions with our borrowers and tenants, (ii) our borrowers’ and tenants’ business plans and financial condition and (iii) other relevant factors. Based on these considerations, we apply a CECL allowance to the estimated amount of credit we expect to extend. The CECL allowance for unfunded commitments is calculated using the same methodology as the allowance for all of our other investments subject to the CECL model. The CECL allowance related to these future commitments is recorded as a component of Other liabilities on our Balance Sheet.

Charge-offs are deducted from the allowance in the period in which they are deemed uncollectible. Recoveries previously written off are recorded when received. There were no charge-offs or recoveries for the years ended December 31, 2022, 2021 and 2020.

Refer to [Note 5 - Allowance for Credit Losses](#) for further information.

VICI PROPERTIES INC. AND VICI PROPERTIES L.P.
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

Investments in Land

Our investments in land are held at historical cost and comprised of the following:

- *Las Vegas Land.* We own certain underdeveloped or undeveloped land adjacent to the Las Vegas strip.
- *Vacant, Non-Operating Land.* We own certain vacant, non-operating land parcels located outside of Las Vegas.
- *Eastside Property.* In 2017, we sold 18.4 acres of property located in Las Vegas, Nevada, east of Harrah's Las Vegas, known as the Eastside Property, to Caesars for a sales price of \$73.6 million. It was determined that the transaction did not meet the requirements of a completed sale for accounting purposes due to a put-call option on the land parcels and the Caesars Forum Convention Center. The amount of \$73.6 million is presented as Land with a corresponding amount of \$73.6 million recorded in Other liabilities in our Balance Sheet.

Property and Equipment Used in Operations

Property and equipment used in operations is included within Other assets on our Balance Sheet and represents assets primarily related to VICI Golf, our golf operations. We assign lives to our assets based on our standard policy, which is established by management as representative of the useful life of each category of asset.

Additions to property used in operations are stated at cost. We capitalize the costs of improvements that extend the life of the asset and expense maintenance and repair costs as incurred. Gains or losses on the dispositions of property and equipment are recognized in the period of disposal.

Depreciation is calculated using the straight-line method over the shorter of the estimated useful life of the asset or the related lease as follows:

Depreciable land improvements	2-50 years
Building and improvements	5-25 years
Furniture and equipment	2-5 years

Impairment

We assess our investments in land and property and equipment used in operations for impairment under ASC 360 "Property, Plant and Equipment" ("ASC 360") on a quarterly basis or whenever certain events or changes in circumstances indicate a possible impairment of the carrying value of the asset. Events or circumstances that may occur include changes in management's intended holding period or potential sale to a third party, significant changes in real estate market conditions or tenant financial difficulties resulting in non-payment of the lease.

Impairments are measured as the amount by which the current book value of the asset exceeds the estimated fair value of the asset. With respect to estimated expected future cash flows for determining whether an asset is impaired, assets are grouped at the lowest level of identifiable cash flows.

Investment in Unconsolidated Affiliate

We account for our investment in unconsolidated affiliate using the equity method of accounting as we have the ability to exercise significant influence, but not control, over operating and financing policies of the investment. Our equity method investment represents our 50.1% ownership interest in the MGM Grand/Mandalay Bay JV, which was acquired in the MGP Transactions and, as a result, was recorded at relative fair value. The difference in basis between our share of the carrying value of the MGM Grand/Mandalay Bay JV and the relative fair value upon acquisition is amortized into Income from unconsolidated affiliate over the estimated useful life of the respective underlying real estate assets, the remaining lease term of the MGM Grand/Mandalay Bay JV Lease, or the remaining term of the assumed debt, as applicable. Subsequent to year-end, on January 9, 2023, we acquired the remaining 49.9% interest from Blackstone Real Estate Income Trust, Inc. ("BREIT") for cash consideration of approximately \$1.3 billion and, accordingly, we will be required to consolidate the operations of the MGM Grand/Mandalay Bay JV starting in the first quarter of 2023. Refer to [Note 3 - Real Estate Transactions](#) for further details.

We assess our investment in unconsolidated affiliate for recoverability and, if it is determined that a loss in value of the investment is other than temporary, we write down the investment to its fair value.

VICI PROPERTIES INC. AND VICI PROPERTIES L.P.
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

Other income and Other expenses

Other income primarily represents sub-lease income related to certain ground and use leases. Under the Lease Agreements, the tenants are required to pay all costs associated with such ground and use leases and provides for their direct payment to the landlord. This income and the related expense are recorded on a gross basis in our Statement of Operations as required under GAAP as we are the primary obligor under the ground and use leases.

Fair Value Measurements

We measure the fair value of financial instruments based on assumptions that market participants would use in pricing the asset or liability. As a basis for considering market participant assumptions in fair value measurements, a fair value hierarchy distinguishes between market participant assumptions based on market data obtained from sources independent of the reporting entity and the reporting entity's own assumptions about market participant assumptions. In accordance with the fair value hierarchy, Level 1 assets/liabilities are valued based on quoted prices for identical instruments in active markets, Level 2 assets/liabilities are valued based on quoted prices in active markets for similar instruments, on quoted prices in less active or inactive markets or on other "observable" market inputs, and Level 3 assets/liabilities are valued based significantly on "unobservable" market inputs.

Refer to [Note 9 - Fair Value](#) for further information.

Derivative Financial Instruments

We record our derivative financial instruments as either Other assets or Other liabilities on our Balance Sheet at fair value.

The accounting for changes in the fair value of derivatives depends on the intended use of the derivative, whether we elected to designate a derivative in a hedging relationship and apply hedge accounting and whether the hedging relationship has satisfied the criteria necessary to apply hedge accounting. Derivatives designated and qualifying as a hedge of the exposure to variability in expected future cash flows are considered cash flow hedges. We formally document our hedge relationships and designation at the contract's inception. This documentation includes the identification of the hedging instruments and the hedged items, its risk management objectives, strategy for undertaking the hedge transaction and our evaluation of the effectiveness of its hedged transaction.

On a quarterly basis, we also assess whether the derivative we designated in each hedging relationship is expected to be, and has been, highly effective in offsetting changes in the value or cash flows of the hedged transactions. If it is determined that a derivative is not highly effective at hedging the designated exposure, hedge accounting is discontinued and the changes in fair value of the instrument are included in Net income prospectively. If the hedge relationship is terminated, then the value of the derivative previously recorded in Accumulated other comprehensive income (loss) is recognized in earnings when the hedged transactions affect earnings. Changes in the fair value of our derivative instruments that qualify as hedges are reported as a component of Accumulated other comprehensive income (loss) in our Balance Sheet with a corresponding change in Unrealized gain (loss) in cash flows hedges within Other comprehensive income on our Statement of Operations.

We use derivative instruments to mitigate the effects of interest rate volatility, whether from variable rate debt or future forecasted transactions, which could unfavorably impact our future earnings and forecasted cash flows. We do not use derivative instruments for speculative or trading purposes.

Golf Revenues

VICI Golf and Caesars are party to a golf course use agreement (the "Golf Course Use Agreement"), whereby certain subsidiaries of Caesars are granted certain priority rights and privileges with respect to access and use of certain golf course properties. For the year ended December 31, 2022, payments under the Golf Course Use Agreement were comprised of a \$10.8 million annual membership fee, \$3.5 million of use fees and approximately \$1.4 million of minimum rounds fees. The annual membership fee, use fees and minimum round fees are subject to an annual escalator beginning at the times provided under the Golf Course Use Agreement. Revenue from the Golf Course Use Agreement is recognized in accordance with ASC 606, "Revenue From Contracts With Customers" and recognized ratably over the performance period.

Additional revenues from golf course operations, food and beverage and merchandise sales are recognized at the time of sale or when the service is provided and are reported net of sales tax. Golf memberships sold to individuals are not refundable and are deferred and recognized within golf revenue in the Statements of Operations over the expected life of an active membership, which is typically one year or less.

VICI PROPERTIES INC. AND VICI PROPERTIES L.P.
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

Income Taxes-REIT Qualification

We conduct our operations as a REIT for U.S. federal income tax purposes. To qualify as a REIT, we must meet certain organizational and operational requirements, including a requirement to distribute at least 90% of our annual REIT taxable income to stockholders, determined without regard to the dividends paid deduction and excluding any net capital gains. As a REIT, we generally will not be subject to federal income tax on income that we pay as distributions to our stockholders. If we fail to qualify as a REIT in any taxable year, we will be subject to U.S. federal income tax on our taxable income at regular corporate income tax rates (including any alternative minimum tax or excise tax applicable to non-REIT corporations), and distributions paid to our stockholders would not be deductible by us in computing taxable income. Additionally, any resulting corporate liability created if we fail to qualify as a REIT could be substantial and could materially and adversely affect our net income and net cash available for distribution to stockholders. Unless we were entitled to relief under certain provisions of the Internal Revenue Code of 1986, as amended (the “Code”), we also would be disqualified from re-electing to be taxed as a REIT for the four taxable years following the year in which we failed to qualify to be taxed as a REIT.

The TRS operations (represented by the four golf course businesses) are able to engage in activities resulting in income that would not be qualifying income for a REIT. As a result, certain of our activities which occur within our TRS operations are subject to federal and state income taxes. The provision for income taxes includes current and deferred portions. We use the asset and liability method to provide for income taxes, which requires that our income tax expense reflect the expected future tax consequences of temporary differences between the carrying amounts of assets or liabilities for financial reporting versus income tax purposes.

We recognize any interest and penalties, as incurred, in general and administrative expenses in our Statement of Operations.

Debt Issuance Costs

Debt issuance costs are deferred and amortized to interest expense over the contractual term of the underlying indebtedness. We present unamortized deferred financing costs as a direct deduction from the carrying amount of the associated debt liability.

Transaction and Acquisition Expenses

Transaction and acquisition-related expenses that are not capitalizable under GAAP, including most leasing costs under ASC 842, are expensed in the period they occur. Transaction and acquisition expenses also include dead deal costs.

Stock-Based Compensation

We account for stock-based compensation under ASC 718, *Compensation - Stock Compensation* (“ASC 718”), which requires us to expense the cost of employee services received in exchange for an award of equity instruments based on the grant-date fair value of the award. This expense is recognized ratably over the requisite service period following the date of grant. For non-vested share awards that vest over a predetermined time period, we use the 10-day volume weighted average price using the 10 trading days ending on the grant date. For non-vested share awards that vest based on market conditions, we use a Monte Carlo simulation (risk-neutral approach) to determine the value of each tranche.

The unrecognized compensation relating to awards under our stock incentive plan will be amortized to general and administrative expense over the awards’ remaining vesting periods. Vesting periods for award of equity instruments range from zero to three years.

See [Note 13—Stock-Based Compensation](#) for further information related to the stock-based compensation.

Earnings Per Share and Earnings Per Unit

Earnings per share (“EPS”) or Earnings per unit (“EPU”) is calculated in accordance with ASC 260, “Earnings Per Share”. Basic EPS or EPU is computed by dividing net income applicable to common stockholders or unit holders, as the case may be, by the weighted-average number of shares of common stock or units, as the case may be, outstanding during the period. Diluted EPS or EPU reflects the additional dilution for all potentially dilutive securities including those from our stock incentive plan.

See [Note 12—Earnings Per Share](#) for the detailed EPS and EPU calculations.

VICI PROPERTIES INC. AND VICI PROPERTIES L.P.
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

Underwriting Commissions and Offering Costs

Underwriting commissions and offering costs incurred in connection with common stock offerings are reflected as a reduction of additional paid-in capital. Costs incurred that are not directly associated with the completion of a common stock offering are expensed when incurred.

Concentrations of Credit Risk

Caesars and MGM are the guarantors of all the lease payment obligations of the tenants under the applicable leases of the properties that they each respectively lease from us. Revenue from Caesars, which includes revenue from the Caesars Leases, represented 46%, 85%, and 84% of our lease revenues for the years ended December 31, 2022, 2021 and 2020, respectively. Revenue from MGM, which comprises revenue from the MGM Master Lease and our proportionate share of the MGM Grand/Mandalay Bay JV Lease (and following our acquisition of the remaining 49.9% interest of the MGM Grand/Mandalay Bay JV on January 9, 2023, includes the entire MGM Grand/Mandalay Bay JV Lease), represented 34% of our lease revenues for the year ended December 31, 2022. Additionally, our properties on the Las Vegas Strip generated approximately 45%, 32%, and 30% of our lease revenues for the years ended December 31, 2022, 2021 and 2020, respectively. Other than having two tenants from which we derive and will continue to derive a substantial portion of our revenue and our concentration in the Las Vegas market, we do not believe there are any other significant concentrations of credit risk.

Caesars and MGM are publicly traded companies that are subject to the informational filing requirements of the Securities Exchange Act of 1934, as amended, and are required to file periodic reports on Form 10-K and Form 10-Q and current reports on Form 8-K with the SEC. Caesars' and MGM's SEC filings are available to the public from the SEC's web site at www.sec.gov. We make no representation as to the accuracy or completeness of the information regarding Caesars and MGM that is available through the SEC's website or otherwise made available by Caesars, MGM or any third party, and none of such information is incorporated by reference in this Annual Report on Form 10-K.

Note 3 — Real Estate Transactions

Recent Property Acquisitions

MGM Grand/Mandalay Bay JV Interest Acquisition

Subsequent to year-end, on January 9, 2023, we closed on the previously announced acquisition of the remaining 49.9% interest in the MGM Grand/Mandalay Bay JV (previously referred to as the "BREIT JV") from BREIT (the "MGM Grand/Mandalay Bay JV Interest Acquisition") for cash consideration of \$1,261.9 million. We also assumed BREIT's \$1,497.0 million pro rata share of an aggregate \$3.0 billion of property-level debt, which matures in 2032 and bears interest at a fixed rate of 3.558% per annum through March 2030. The cash consideration was funded through a combination of cash on hand and proceeds from the settlement of the November 2022 Forward Sale Agreements and ATM Forward Sale Agreements (each as defined in [Note 11 - Stockholders Equity](#)). The MGM Grand/Mandalay Bay Lease currently has an annual rent of \$303.8 million, all of which we are entitled to following the closing of the MGM Grand/Mandalay Bay JV Interest Acquisition. The MGM Grand/Mandalay Bay Lease has a remaining initial lease term of approximately 27 years (expiring in 2050), with two ten-year tenant renewal options. Rent under the lease agreement escalates annually at 2.0% through 2035 (year 15 of the initial lease term) and thereafter at the greater of 2.0% or Consumer Price Index ("CPI") (subject to a 3.0% ceiling).

As of December 31, 2022, the MGM Grand/Mandalay Bay JV was accounted for as an equity method investment within Investment in unconsolidated affiliate on our Balance Sheet. In the first quarter of 2023, subsequent to the MGM Grand/Mandalay Bay JV Interest Acquisition, we will be required to consolidate the operations of the MGM Grand/Mandalay Bay JV upon which we anticipate the acquisition will be accounted for as an asset acquisition under ASC 805-50. In connection with the acquisition, we will be required to make an election as to whether we retain the prior cost basis of our 50.1% interest in the MGM Grand/Mandalay Bay JV or remeasure such cost basis based on the purchase price of the MGM Grand/Mandalay Bay JV Interest Acquisition, with the difference in the cost basis recognized through income. Additionally, we will be required to make an election as to whether we retain the current operating lease classification of the MGM Grand/Mandalay Bay Lease or reassess such lease classification, which, in the case of reassessment, we anticipate the lease being classified as a sales-type lease. In both instances, no such election has been made at this time and we continue to evaluate the alternative outcomes of each scenario.

VICI PROPERTIES INC. AND VICI PROPERTIES L.P.
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

PURE Canadian Gaming Transaction

Subsequent to year-end, on January 6, 2023, we acquired the real estate assets of PURE Casino Edmonton in Edmonton, PURE Casino Yellowhead in Edmonton, PURE Casino Calgary in Calgary, and PURE Casino Lethbridge in Lethbridge, all of which are located in Alberta, Canada, from PURE Canadian Gaming for an aggregate purchase price of approximately C\$271.9 million (approximately US\$200.8 million based on the exchange rate at the time of the acquisition) (the “PURE Canadian Gaming Transaction”). We financed the PURE Canadian Gaming Transaction with a combination of cash on hand and drawing down C\$140.0 million (approximately US\$103.4 million based on the exchange rate at the time of the acquisition) under our Revolving Credit Facility. Simultaneous with the acquisition, we entered into the PURE Master Lease. The PURE Master Lease has an initial total annual rent of approximately C\$21.8 million (approximately US\$16.1 million based on the exchange rate at the time of the acquisition), an initial term of 25 years, with four 5-year tenant renewal options, escalation of 1.25% per annum (with escalation of the greater of 1.5% and Canadian CPI, capped at 2.5%, beginning in lease year four) and minimum capital expenditure requirements of 1.0% of annual net revenue (excluding gaming equipment). The tenant’s obligations under the PURE Master Lease are guaranteed by the parent entity of PURE Canadian Gaming.

Foundation Gaming Transaction

On December 22, 2022, we acquired real estate assets of the Fitz Casino & Hotel, located in Tunica, Mississippi, and the WaterView Casino & Hotel, located in Vicksburg, Mississippi, from Foundation Gaming for an aggregate purchase price of \$293.4 million (the “Foundation Gaming Transaction”). We financed the Foundation Gaming Transaction with cash on hand. Simultaneous with the acquisition, we entered into the Foundation Master Lease. The Foundation Master Lease has an initial total annual rent of \$24.3 million, an initial term of 15 years, with four 5-year tenant renewal options, escalation of 1.0% per annum (with escalation of the greater of 1.5% and CPI, capped at 3%, beginning in lease year four) and minimum capital expenditure requirements of 1.0% of annual net revenue (excluding gaming equipment) over a rolling three-year period. The tenants’ obligations under the Foundation Master Lease are guaranteed by the parent entity, Foundation Gaming. We determined that the Foundation Gaming Transaction should be accounted for as an asset acquisition under ASC 805-50 and further, that the land and building components of the Foundation Master Lease meet the definition of a sales-type lease and, since we purchased and leased the assets back to the seller under a sale leaseback transaction, control is not considered to have transferred to us under GAAP. Accordingly, the Foundation Master Lease is accounted for as Investments in leases - financing receivables on our Balance Sheet, net of allowance for credit losses in the amount of \$28.2 million.

Rocky Gap Casino Transaction

On August 24, 2022, we and Century Casinos entered into definitive agreements to acquire Rocky Gap Casino Resort (“Rocky Gap Casino”), located in Flintstone, Maryland, from Golden Entertainment, Inc. for an aggregate purchase price of \$260.0 million. Pursuant to the transaction agreements, we will acquire an interest in the land and buildings associated with Rocky Gap Casino for approximately \$203.9 million, and Century Casinos will acquire the operating assets of the property for approximately \$56.1 million. Simultaneous with the closing of the transaction, the Century Master Lease will be amended to include Rocky Gap Casino, and annual rent under the Century Master Lease will increase by \$15.5 million. Additionally, the terms of the Century Master Lease will be extended such that, upon closing of the transaction, the lease will have a full 15-year initial base lease term remaining, with four 5-year tenant renewal options. The tenants’ obligations under the Century Master Lease will continue to be guaranteed by Century Casinos. The transaction is subject to customary regulatory approvals and closing conditions and is expected to close in mid-2023.

MGP Transactions

On April 29, 2022, we closed on the previously announced MGP Transactions governed by the MGP Master Transaction Agreement, pursuant to which we acquired MGP for total consideration of \$11.6 billion, plus the assumption of approximately \$5.7 billion principal amount of debt, inclusive of our 50.1% share of the MGM Grand/Mandalay Bay JV CMBS debt. Upon closing, the MGP Transactions added \$1,012.0 million of annualized rent to our portfolio from 15 Class A entertainment casino resort properties spread across nine regions and comprising 36,000 hotel rooms, 3.6 million square feet of meeting and convention space and hundreds of food, beverage and entertainment venues.

The acquired portfolio, including properties owned by the MGM Grand/Mandalay Bay JV, includes seven large-scale entertainment and gaming-related properties located on the Las Vegas Strip: Mandalay Bay, MGM Grand Las Vegas, The Mirage, Park MGM, New York-New York (and The Park, a dining and entertainment district located between New York-New York and Park MGM), Luxor and Excalibur. Outside of Las Vegas, we also acquired eight high-quality casino resort properties pursuant to the MGP Transactions: MGM Grand Detroit in Detroit, Michigan, Beau Rivage in Biloxi, Mississippi, Gold Strike

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in Tunica, Mississippi, Borgata in Atlantic City, New Jersey, MGM National Harbor in Prince George's County, Maryland, MGM Northfield Park in Northfield, Ohio, Empire City in Yonkers, New York and MGM Springfield in Springfield, Massachusetts. The acquired portfolio includes two of the five largest hotels in the United States and two of the three largest Las Vegas resorts by room count and convention space.

The following is a summary of the agreements and related activities under the MGP Transactions:

- MGP Master Transaction Agreement.** On August 4, 2021, we entered into the MGP Master Transaction Agreement by and among the Company, MGP, MGP OP, VICI LP, REIT Merger Sub, VICI OP, and MGM. Pursuant to the terms and subject to the conditions set forth in the MGP Master Transaction Agreement, upon the closing of the REIT Merger (as defined in the MGP Master Transaction Agreement) on April 29, 2022, each outstanding Class A common share, no par value per share, of MGP ("MGP Common Shares") (other than MGP Common Shares then held in treasury by MGP or owned by any of MGP's wholly owned subsidiaries) was converted into 1.366 (the "Exchange Ratio") shares of common stock of the Company (such consideration, the "REIT Merger Consideration"). The outstanding Class B common share, no par value per share, of MGP (the "Class B Share"), which was held by MGM, was cancelled at the effective time of the REIT Merger. The REIT Merger is intended to qualify as a "reorganization" within the meaning of Section 368(a) of the Code.

The number of MGP Common Shares converted to shares of VICI common stock was determined as follows:

MGP Common Shares outstanding as of April 29, 2022	156,757,773
Exchange Ratio	1.366
VICI common stock issued ⁽¹⁾	214,131,064
VICI common stock issued for MGP stock-based compensation awards	421,468
Total VICI common stock issued	214,552,532

(1) Amount excludes the cash paid in lieu of approximately 54 fractional MGP Common Shares.

Following the REIT Merger, pursuant to and subject to the terms set forth in the MGP Master Transaction Agreement, at the effective time of the Partnership Merger (as defined in the MGP Master Transaction Agreement), each limited partnership unit in MGP OP (other than the limited partnership units in MGP OP held by REIT Merger Sub or any subsidiary of MGP OP), all of which were held by MGM and certain of its subsidiaries, was converted into the number of VICI OP Units (the "Partnership Merger Consideration") equal to the Exchange Ratio. The Company redeemed a majority of the VICI OP Units received by MGM in the Partnership Merger for \$4,404.0 million in cash using the proceeds from the April 2022 Notes offering (the "Redemption"), as further described in [Note 7 - Debt](#). Following the Redemption, MGM retained approximately 12.2 million VICI OP Units.

- MGM Master Lease and MGM Grand/Mandalay Bay Lease.** Simultaneous with the closing of the Mergers on April 29, 2022, we entered into the MGM Master Lease. The MGM Master Lease has an initial term of 25 years, with three 10-year tenant renewal options and had an initial total annual rent of \$860.0 million. Rent under the MGM Master Lease escalates at a rate of 2.0% per annum for the first 10 years and thereafter at the greater of 2.0% per annum or the increase in the CPI, subject to a 3.0% cap. The tenant's obligations under the MGM Master Lease are guaranteed by MGM. The total annual rent under the MGM Master Lease was reduced by \$90.0 million upon the close of MGM's sale of the operations of the Mirage to Hard Rock and entrance into the Mirage Lease on December 19, 2022, and was further reduced by \$40.0 million upon the close of MGM's sale of the operations of Gold Strike to CNB and entrance into the Gold Strike Lease on February 15, 2023, each as further described below under "*Leasing Activity*".

Additionally, we retained MGP's 50.1% ownership stake in the MGM Grand/Mandalay Bay JV, which owns the real estate assets of MGM Grand Las Vegas and Mandalay Bay. The MGM Grand/Mandalay Bay JV Lease remained unchanged and provided for current total annual base rent of approximately \$303.8 million, of which approximately \$152.2 million is attributable to our investment in the MGM Grand/Mandalay Bay JV, and an initial term of thirty years with two 10-year tenant renewal options. Rent under the MGM Grand/Mandalay Bay Lease escalates at a rate of 2.0% per annum for the first fifteen years and thereafter at the greater of 2.0% per annum or CPI, subject to a 3.0% cap. The tenant's obligations under the MGM Grand/Mandalay Bay JV Lease will be guaranteed by MGM. Subsequent to year-end, on January 9, 2023, we closed on the MGM Grand/Mandalay Bay JV Interest Acquisition and accordingly own 100% of the interest in the MGM Grand/Mandalay Bay JV. Refer to "*MGM Grand/Mandalay Bay JV Interest Acquisition*" above for further details.

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- *Tax Protection Agreement.* In connection with the closing of the MGP Transactions, we entered into the MGM Tax Protection Agreement pursuant to which VICI OP has agreed, subject to certain exceptions, for a period of 15 years following the closing of the Mergers (subject to early termination under certain circumstances), to indemnify MGM and certain of its subsidiaries (the “Protected Parties”) for certain tax liabilities resulting from (1) the sale, transfer, exchange or other disposition of a property owned directly or indirectly by MGP OP immediately prior to the closing date of the Mergers (each, a “Protected Property”), (2) a merger, consolidation, transfer of all assets of, or other significant transaction involving VICI OP pursuant to which the ownership interests of the Protected Parties in VICI OP are required to be exchanged in whole or in part for cash or other property, (3) the failure of VICI OP to maintain approximately \$8.5 billion of nonrecourse indebtedness allocable to MGM, which amount may be reduced over time in accordance with the MGM Tax Protection Agreement, and (4) the failure of VICI OP or VICI to comply with certain tax covenants that would impact the tax liabilities of the Protected Parties. In the event that VICI OP or VICI breaches restrictions in the MGM Tax Protection Agreement, VICI OP will be liable for grossed-up tax amounts associated with the income or gain recognized as a result of such breach. In addition, the MGM Grand/Mandalay Bay JV previously entered into a tax protection agreement with MGM with respect to built-in gain and debt maintenance related to MGM Grand Las Vegas and Mandalay Bay, which is effective through mid-2029, and by acquiring MGP, the Company bears its 50.1% proportionate share in the MGM Grand/Mandalay Bay JV of any indemnity under this existing tax protection agreement. Upon the close of the MGM Grand/Mandalay Bay JV Interest Acquisition on January 9, 2023, the tax protection agreement governing the MGM Grand/Mandalay Bay JV remains and we bear 100% of any indemnity under this existing tax protection agreement.
- *Exchange Offers and Consent Solicitations.* On September 13, 2021, we announced that the VICI Issuers commenced (i) private exchange offers to certain eligible holders (collectively, the “Exchange Offers”) for any and all of each series of the MGP OP Notes for up to an aggregate principal amount of \$4.2 billion of new notes issued by the VICI Issuers and (ii) consent solicitations with respect to each series of MGP OP Notes (collectively, the “Consent Solicitations”) to adopt certain proposed amendments to each of the indentures governing the MGP OP Notes (collectively, the “MGP OP Notes Indentures”), which, among other things, eliminate or modify certain of the covenants, restrictions, provisions and events of default in each of the MGP OP Notes Indentures.

Following the receipt of the requisite consents pursuant to the Consent Solicitations, on September 23, 2021, the MGP Issuers executed supplemental indentures to each of the MGP OP Notes Indentures in order to effect the proposed amendments (the “MGP OP Supplemental Indentures”). The MGP OP Supplemental Indentures became operative upon the settlement of the Exchange Offers and the Consent Solicitations on April 29, 2022 (the “Settlement Date”).

Upon completion of the Exchange Offers and Consent Solicitations, the VICI Issuers issued an aggregate principal amount of \$4,110.0 million in Exchange Notes, each pursuant to a separate indenture dated as of April 29, 2022, among the VICI Issuers and the Trustee. Following the issuance of the Exchange Notes pursuant to the settlement of the Exchange Offers and Consent Solicitations, approximately \$90.0 million aggregate principal amount of MGP OP Notes remain outstanding. See [Note 7 - Debt](#) for additional information.

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NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

We assessed the MGP Transactions in accordance with ASC 805, and determined that the acquisition of MGP did not meet the definition of a business as substantially all the assets were concentrated in a group of similarly identifiable acquired assets, and did not include a substantive process in the form of an acquired workforce. Accordingly, the MGP Transactions were accounted for as an asset acquisition under ASC 805-50 and we determined the consideration transferred under the MGP Transactions was \$11.6 billion, comprised of the following:

<i>(In thousands)</i>	Amount
REIT Merger Consideration ⁽¹⁾	\$ 6,568,480
Redemption payment to MGM	4,404,000
VICI OP Units retained by MGM ⁽²⁾	374,769
Repayment of MGP revolving credit facility ⁽³⁾	90,000
Transactions costs ⁽⁴⁾	119,741
Total consideration transferred	\$ 11,556,990
Assumption of MGP OP Notes and Exchange Notes, at principal value	4,200,000
Assumption of our proportionate share of the MGM Grand/Mandalay Bay JV CMBS debt, at principal value	1,503,000
Total purchase price	\$ 17,259,990

⁽¹⁾ Amount represents the dollar value of 214,375,990 shares of VICI common stock, multiplied by the VICI stock price at the time of closing of \$30.64 per share, which were issued in exchange for the MGP Common Shares outstanding immediately prior to the REIT Merger and certain of the MGP stock-based compensation awards, converted to shares of VICI common stock.

⁽²⁾ Amount represents 12,231,373 VICI OP Units retained by MGM as non-controlling interest in VICI OP, multiplied by the VICI stock price at the time of closing of \$30.64 per share.

⁽³⁾ Represents the total amount outstanding under MGP's revolving credit facility as of April 29, 2022. In connection with the MGP Transactions, such amount was repaid in full and the related credit agreement was terminated.

⁽⁴⁾ In accordance with ASC 805-50, all direct and incremental costs related to the MGP Transactions, primarily related to success-based fees and third-party advisory fees, were included in the consideration transferred.

Under ASC 805-50, we allocated the purchase price by major categories of assets acquired and liabilities assumed using relative fair value. The following is a summary of the allocated relative fair values of the assets acquired and liabilities assumed in the MGP Transactions:

<i>(In thousands)</i>	Amount
Investments in leases - financing receivables ^{(1) (2)}	\$ 14,245,868
Investment in unconsolidated affiliate ^{(2) (3)}	1,465,814
Cash and cash equivalents ⁽⁴⁾	25,387
Other assets ⁽⁴⁾	338,212
Debt, net ⁽⁵⁾	(4,106,082)
Accrued expenses and deferred revenue ⁽⁴⁾	(79,482)
Other liabilities ⁽⁴⁾	(332,727)
Total net assets acquired	\$ 11,556,990

⁽¹⁾ We valued the real estate portfolio at relative fair value using rent multiples taking into consideration a variety of factors, including (i) asset quality and location, (ii) property and lease-level operating performance and (iii) supply and demand dynamics of each property's respective market. The multiples used ranged from 15.0x - 18.5x with a weighted average rent multiple of 16.7x, as determined using relative fair value.

⁽²⁾ The fair value of these assets is based on significant "unobservable" market inputs and, as such, these fair value measurements are considered Level 3 of the fair value hierarchy.

⁽³⁾ We value the Investment in unconsolidated affiliate at relative fair based on our percentage ownership of the net assets of the MGM Grand/Mandalay Bay JV.

⁽⁴⁾ Amounts represents their current carrying value which is equal to fair value. The Other assets and Other liabilities amounts include the gross presentation of certain MGP ground leases which we assumed in connection with the MGP Transactions.

⁽⁵⁾ Amount represents the fair value of debt as of April 29, 2022, which was estimated as a \$93.9 million discount to the notional value. The fair value of our debt instruments was estimated using quoted prices for identical or similar liabilities in markets that are not active and, as such, these fair value measurements are considered Level 2 of the fair value hierarchy.

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Concurrent with the closing of the MGP Transactions and entry into the MGM Master Lease, we assessed the lease classification of the MGM Master Lease and determined that it met the definition of a sales-type lease. Further, since MGM controlled and consolidated MGP prior to the MGP Transactions, the lease was assessed under the sale-leaseback guidance and determined to be a failed sale-leaseback under which the lease is accounted for as a financing receivable under ASC 310. Accordingly, the relative fair value of the MGP assets of \$14.2 billion was recorded as an Investment in leases - financing receivable on our Balance Sheet, net of an initial allowance for credit losses in the amount of \$431.5 million.

In relation to the MGM Grand/Mandalay Bay JV, we determined that such investment is accounted for as an equity method investment and, accordingly, recorded the relative fair value as an Investment in unconsolidated affiliate on our Balance Sheet. The requirement to record our investment in the MGM Grand/Mandalay Bay JV at relative fair value under ASC 805 resulted in a difference in our acquired basis from that of the underlying records, or historical cost basis, of the MGM Grand/Mandalay Bay JV. Accordingly, we compared our proportionate share of the historical cost basis of the MGM Grand/Mandalay Bay JV as of April 29, 2022 to our proportionate share of the relative fair value, the difference of which was amortized through Income from unconsolidated affiliate over the life of the related asset or liability. As of December 31, 2022, the carrying value of our investment exceeded the underlying historical cost basis of our Investment in unconsolidated affiliate which resulted in a basis difference of \$640.0 million. Subsequent to year-end, on January 9, 2023, we acquired the remaining 49.9% interest from BREIT for cash consideration of approximately \$1.3 billion and, accordingly, will be required to consolidate the operations of the MGM Grand/Mandalay Bay JV starting in the first quarter of 2023. Refer to “*MGM Grand/Mandalay Bay JV Interest Acquisition*” above for further details.

Venetian Acquisition

On February 23, 2022, we closed on the previously announced transaction to acquire all of the land and real estate assets associated with the Venetian Resort from Las Vegas Sands Corp. (“LVS”) for \$4.0 billion in cash, and the Venetian Tenant acquired the operating assets of the Venetian Resort for \$2.25 billion, of which \$1.2 billion is in the form of a secured term loan from LVS and the remainder was paid in cash. We funded the Venetian Acquisition with (i) \$3.2 billion in net proceeds from the physical settlement of the March 2021 Forward Sale Agreements and the September 2021 Forward Sale Agreements, (ii) an initial draw on the Revolving Credit Facility of \$600.0 million (which was subsequently repaid in full using a portion of the proceeds from the April 2022 Notes offering), and (iii) cash on hand. Simultaneous with the closing of the Venetian Acquisition, we entered into the Venetian Lease with the Venetian Tenant. The Venetian Lease has an initial total annual rent of \$250.0 million and an initial term of 30 years, with two ten-year tenant renewal options. The annual rent will be subject to escalation equal to the greater of 2.0% and the increase in the CPI, capped at 3.0%, beginning in the earlier of (i) the beginning of the third lease year, and (ii) the month following the month in which the net revenue generated by the Venetian Resort returns to its 2019 level (the year immediately prior to the onset of the COVID-19 pandemic) on a trailing twelve-month basis. We determined that the land and building components of the Venetian Lease meet the definition of a sales-type lease and accordingly are recorded as an Investments in leases - sales-type on our Balance Sheet, net of an initial allowance for credit losses in the amount of \$65.6 million.

In connection with the Venetian Acquisition, we entered into a Partner Property Growth Fund Agreement (“Venetian PGF”) with the Venetian Tenant. Under the Venetian PGF we agreed to provide up to \$1.0 billion for various development and construction projects affecting the Venetian Resort to be identified by the Venetian Tenant and that satisfy certain criteria more particularly set forth in the Venetian PGF, in consideration of additional incremental rent to be paid by the Venetian Tenant under the Venetian Lease and calculated in accordance with a formula set forth in the Venetian PGF. Upon execution of the Venetian PGF, we were required to estimate a CECL allowance related to the contractual commitments to extend credit, which is based on our best estimates of funding such commitments. Accordingly, during the three months ended March 31, 2022, we recorded an initial CECL allowance in Other liabilities in the amount of \$8.3 million related to the estimate of our unfunded commitment under the Venetian PGF.

In addition, LVS agreed with the Venetian Tenant pursuant to an agreement (the “Contingent Lease Support Agreement”) entered into simultaneously with the closing of the Venetian Acquisition to provide lease payment support designed to guarantee the Venetian Tenant’s rent obligations under the Venetian Lease through 2023, subject to early termination if EBITDAR (as defined in such agreement) generated by the Venetian Resort in 2022 equals or exceeds \$550.0 million, or a tenant change of control occurs. We were a third-party beneficiary of the Contingent Lease Support Agreement and had certain enforcement rights pursuant thereto. The EBITDAR generated by the operations of the Venetian resort exceeded \$550.0 million for the year ended December 31, 2022 and, accordingly, the Contingent Lease Support Agreement early terminated in accordance with its terms.

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Recent Leasing Activity

Gold Strike Lease

Subsequent to year-end, on February 15, 2023, in connection with MGM's sale of the operations of Gold Strike, we entered into the Gold Strike Lease with CNB related to the land and real estate assets of Gold Strike, and entered into an amendment to the MGM Master Lease in order to account for the divestiture of the operations of Gold Strike. The Gold Strike Lease has initial annual base rent of \$40.0 million with other economic terms substantially similar to the MGM Master Lease, including a base term of 25 years with three 10-year tenant renewal options, escalation of 2.0% per annum (with escalation of the greater of 2.0% and CPI, capped at 3.0%, beginning in lease year 11) and minimum capital expenditure requirements of 1.0% of annual net revenue. Upon the closing of the sale of Gold Strike, the MGM Master Lease was amended to account for MGM's divestiture of the Gold Strike operations and resulted in a reduction of the annual base rent under the MGM Master Lease by \$40.0 million. The Gold Strike Lease is guaranteed by CNB.

Mirage Lease

On December 19, 2022, in connection with MGM's sale of the operations of the Mirage Hotel & Casino (the "Mirage") to Hard Rock, we entered into the Mirage Lease and entered into an amendment to the MGM Master Lease relating to the sale of the Mirage. The Mirage Lease has an initial annual base rent of \$90.0 million with other economic terms substantially similar to the MGM Master Lease, including a base term of 25 years with three 10-year tenant renewal options, escalation of 2.0% per annum (with escalation of the greater of 2.0% and CPI, capped at 3.0%, beginning in lease year 11) and minimum capital expenditure requirements of 1.0% of annual net revenue. Upon the closing of the sale of the Mirage, the MGM Master Lease was amended to account for MGM's divestiture of the Mirage operations and resulted in a reduction of the annual base rent under the MGM Master Lease by \$90.0 million. Additionally, subject to certain conditions, we may fund up to \$1.5 billion of Hard Rock's redevelopment plan for the Mirage through our Partner Property Growth Fund if Hard Rock elects to seek third-party financing for such redevelopment. The specific terms of the potential funding remain subject to ongoing discussion in connection with Hard Rock's broader planning of the potential redevelopment, as well as the negotiation of definitive documentation between us and Hard Rock, and there are no assurances that the redevelopment of the Hard Rock-Mirage will occur on the contemplated terms, including through our financing, or at all.

Century Casinos Expansion

On December 1, 2022, we amended the Century Master Lease to provide approximately \$51.9 million in capital in connection with our Partner Property Growth Fund for the construction of a land-based casino with an adjacent 38-room hotel tower at Century Casino Caruthersville. Pursuant to the amendment to the Century Master Lease, we will own the real estate improvements associated with these projects and annual rent under the Century Master Lease will increase by approximately \$4.2 million following completion of the projects. We determined that the amendments to the Century Master Lease represented lease modifications under ASC 842 under which we were required to reassess the lease classification. Upon reassessment, we determined that the Century Master Lease continues to meet the definition of a sales-type lease and, accordingly, since the classification remains unchanged, we modified the future minimum lease cash flows to reflect the amendment and prospectively adjusted the discount rate used to recognize income such that the carrying value of the lease remains unchanged immediately prior to, and subsequent to, modification.

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Loan Originations

The following table summarizes our 2022 development loan origination activity to date:

(\$ in thousands)

Loan Name	Maximum Loan Amount	Loan Type	Development Project
Fontainebleau Las Vegas	\$ 350,000	Mezzanine	Completion of 67-story hotel, gaming, meeting, and entertainment destination located on the north end of the Las Vegas Strip
Canyon Ranch Austin	200,000	Senior Secured	Canyon Ranch Austin wellness resort located in Austin, TX
Great Wolf Northeast	287,920	Senior Secured	549-room indoor water park resort project in Mashantucket, CT
Great Wolf Gulf Coast Texas	127,000	Mezzanine	532-room indoor water park resort located in Webster, TX
Great Wolf South Florida	59,000	Mezzanine	532-room indoor water park resort located in Collier County, FL
Cabot Citrus Farms	120,000	Senior Secured	Cabot Citrus Farms golf course and resort located in Brookdale, FL
BigShots	80,000	Senior Secured	BigShots Golf Facilities throughout the United States
Total	<u><u>\$ 1,223,920</u></u>		

Fontainebleau Las Vegas Loan

On December 23, 2022, we entered into definitive agreements pursuant to which we have agreed to provide up to \$350.0 million in mezzanine loan financing (the “Fontainebleau Las Vegas Loan”) to a partnership between Fontainebleau Development, LLC, a builder, owner, and operator of luxury hospitality, commercial and retail properties, and Koch Real Estate Investments, the real estate investment arm of Koch Industries, to complete the construction of Fontainebleau Las Vegas, a 67-story hotel, gaming, meeting, and entertainment destination coming to the north end of the Las Vegas Strip. The investment was, and will continue to be, funded by us in accordance with a construction draw schedule. Fontainebleau Las Vegas is expected to open in the fourth quarter of 2023.

Canyon Ranch Austin Loan

On October 7, 2022, we entered into a delayed draw term loan facility (the “Canyon Ranch Austin Loan”) with Canyon Ranch, a leading pioneer in global wellness, pursuant to which we agreed to provide up to \$200.0 million of secured financing to fund the development of Canyon Ranch Austin in Austin, Texas.

In addition, we entered into the following agreements with Canyon Ranch:

- A call right agreement pursuant to which we will have the right to acquire the real estate assets of Canyon Ranch Austin for up to 24 months following stabilization (with the loan balance being settled in connection with the exercise of such call right), which transaction will be structured as a sale leaseback (with the simultaneous entry into a triple-net lease with Canyon Ranch that has an initial term of 25 years, with eight 5-year tenant renewal options).
- A purchase option agreement, pursuant to which we have an option to acquire the real estate assets associated with the existing Canyon Ranch Tucson and Canyon Ranch Lenox properties, which transactions will be structured as sale leasebacks, in each case solely to the extent Canyon Ranch elects to sell either or both of such properties in a sale leaseback structure for a specific period of time, subject to certain conditions.
- A right of first offer agreement on future financing opportunities for Canyon Ranch and certain of its affiliates with respect to the funding of certain facilities (including Canyon Ranch Austin, Canyon Ranch Tucson and Canyon Ranch Lenox, and any other fee owned Canyon Ranch branded wellness resort), until the date that is the earlier of five years from commencement of the Canyon Ranch Austin lease (to the extent applicable) and the date that neither VICI nor any of its affiliates are landlord under such lease, subject to certain specified terms, conditions and exceptions.

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Great Wolf Loans

During 2022 we entered into the following loans with Great Wolf Resorts Inc. (“Great Wolf”):

- On December 30, 2022, we agreed to provide up to \$287.9 million of senior financing (the “Great Wolf Gulf Northeast Loan”), the proceeds of which will be used to fund the development of Great Wolf Lodge Northeast, a 549-room indoor water park resort project in Mashantucket, CT. The Great Wolf Northeast Loan has an initial term of three years with two 12-month extension options, subject to certain conditions.
- On August 30, 2022, we agreed to provide up to \$127.0 million of mezzanine financing (the “Great Wolf Gulf Coast Texas Loan”), the proceeds of which will be used to fund the development of Great Wolf Lodge Gulf Coast Texas, a more than \$200.0 million, 532-room indoor water park resort project in Webster, TX. The Great Wolf Gulf Coast Texas Loan has an initial term of three years with two 12-month extension options, subject to certain conditions.
- On July 1, 2022, we agreed to provide up to \$59.0 million of mezzanine financing (the “Great Wolf South Florida Loan”), the proceeds of which will be used to fund the development of Great Wolf Lodge South Florida, a more than \$250.0 million, 500-room indoor water park resort project in Collier County, FL. The Great Wolf South Florida Loan has an initial term of four years with one 12-month extension option, subject to certain conditions.

Cabot Citrus Farms Loan

On June 6, 2022, we entered into a \$120.0 million delayed draw term loan (the “Cabot Citrus Farms Loan”) with Cabot, a developer, owner and operator of world-class destination golf resorts and communities, the proceeds of which will be used to fund Cabot’s property-wide transformation of Cabot Citrus Farms in Brooksville, Florida, with the addition of a new clubhouse, luxury lodging, health and wellness facilities and a vibrant village center. We also entered into a Purchase and Sale Agreement, pursuant to which upon substantial completion of the asset we will convert a portion of the Cabot Citrus Farms Loan into the ownership of certain Cabot Citrus Farms real estate assets and simultaneously enter into a triple-net lease with Cabot that will have an initial term of 25 years, with five 5-year tenant renewal options.

BigShots Loan

On April 7, 2022, we entered into a loan with BigShots Golf (“BigShots Golf”), a subsidiary of ClubCorp Holdings, Inc. (“ClubCorp”), an Apollo fund portfolio company, to provide up to \$80.0 million of mortgage financing (the “BigShots Loan”) for the construction of certain new BigShots Golf facilities throughout the United States. In addition, we entered into a right of first offer and call right agreement, pursuant to which (i) we have a call right to acquire the real estate assets associated with any BigShots Golf facility financed by us, which transaction will be structured as a sale leaseback, and (ii) for so long as the BigShots Loan remains outstanding and we continue to hold a majority interest therein, subject to additional terms and conditions, we will have a right of first offer on any multi-site mortgage, mezzanine, preferred equity, or other similar financing that is treated as debt to be obtained by BigShots Golf (or any of its affiliates) in connection with the development of BigShots Golf facilities.

VICI PROPERTIES INC. AND VICI PROPERTIES L.P.
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

Note 4 — Real Estate Portfolio

As of December 31, 2022, our real estate portfolio consisted of the following:

- Investments in leases - sales-type, representing our investment in 23 casino assets leased on a triple-net basis to our tenants, Apollo, Caesars, Century Casinos, EBCI, Hard Rock and PENN Entertainment, under nine separate lease agreements;
- Investments in leases - financing receivables, representing our investment in 20 casino assets leased on a triple-net basis to our tenants, Caesars, Foundation, Hard Rock, JACK Entertainment and MGM, under five separate lease agreements;
- Investments in loans, representing our investments in 11 senior secured and mezzanine loans;
- Investment in unconsolidated affiliate, representing our 50.1% ownership in the MGM Grand/Mandalay Bay JV, which in turn owns two assets leased to MGM under the MGM Grand/Mandalay Bay Lease; and
- Land, representing our investment in certain underdeveloped or undeveloped land adjacent to the Las Vegas strip and non-operating, vacant land parcels.

The following is a summary of the balances of our real estate portfolio as of December 31, 2022 and 2021:

<i>(In thousands)</i>	December 31, 2022	December 31, 2021
Investments in leases - sales-type, net ⁽¹⁾	17,172,325	13,136,664
Investments in leases - financing receivables, net	16,740,770	2,644,824
Total investments in leases, net	33,913,095	15,781,488
Investments in loans, net	685,793	498,002
Investment in unconsolidated affiliate	1,460,775	—
Land	153,560	153,576
Total real estate portfolio	\$ 36,213,223	\$ 16,433,066

(1) At lease inception (or upon modification), we determine the estimated residual values of the leased property (not guaranteed) under the respective Lease Agreements, which has a material impact on the determination of the rate implicit in the lease and the lease classification. As of December 31, 2022 and 2021, the estimated residual values of the leased properties under our Lease Agreements were \$11.5 billion and \$3.8 billion, respectively.

VICI PROPERTIES INC. AND VICI PROPERTIES L.P.
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

Investments in Leases

The following table details the components of our income from sales-type leases and lease financing receivables:

<i>(In thousands)</i>	Year Ended December 31,		
	2022	2021	2020
Income from sales-type leases - fixed rent ⁽¹⁾	\$ 1,436,945	\$ 1,161,655	\$ 1,007,193
Income from sales-type leases - contingent rent ⁽¹⁾	27,300	6,317	315
Income from operating leases ⁽²⁾	—	—	25,464
Income from lease financing receivables - fixed rent ⁽¹⁾⁽³⁾	995,383	243,008	137,344
Income from lease financing receivables - contingent rent ⁽¹⁾⁽³⁾	1,673	—	—
Total lease revenue	2,461,301	1,410,980	1,170,316
Non-cash adjustment ⁽⁴⁾	(337,631)	(119,790)	(39,883)
Total contractual lease revenue	<u>\$ 2,123,670</u>	<u>\$ 1,291,190</u>	<u>\$ 1,130,433</u>

(1) At lease inception (or upon modification), we determine the minimum lease payments under ASC 842, which exclude amounts determined to be contingent rent. Contingent rent is generally amounts in excess of specified floors or the variable rent portion of our leases. The minimum lease payments are recognized on an effective interest basis at a constant rate of return over the life of the lease and the contingent rent portion of the lease payments are recognized as earned, both in accordance with ASC 842. As of December 31, 2022, we have recognized contingent rent from our Margaritaville Lease and Greektown Lease in relation to the variable rent portion of the respective leases and the Caesars Las Vegas Master Lease, Caesars Regional Master Lease and Joliet Lease in relation to the CPI portion of the annual escalator.

(2) Represents the portion of land separately classified and accounted for under the operating lease model associated with our investment in Caesars Palace Las Vegas and certain operating land parcels contained in the Regional Master Lease Agreement. Upon the consummation of the Caesars Transaction on July 20, 2020, the land component of Caesars Palace Las Vegas and certain operating land parcels were reassessed for lease classification and were determined to be a sales-type lease. Accordingly, subsequent to July 20, 2020, such income is recognized as Income from sales-type leases.

(3) Represents the MGM Master Lease, Harrah's Call Properties, JACK Master Lease and Foundation Master Lease, all of which were sale leaseback transactions. In accordance with ASC 842, since the lease agreements were determined to meet the definition of a sales-type lease and control of the asset is not considered to have been transferred to us, such lease agreements are accounted for as financings under ASC 310.

(4) Amounts represent the non-cash adjustment to the minimum lease payments from sales-type leases and lease financing receivables in order to recognize income on an effective interest basis at a constant rate of return over the term of the leases.

At December 31, 2022, minimum lease payments owed to us for each of the five succeeding years under sales-type leases and our leases accounted for as financing receivables, are as follows:

<i>(In thousands)</i>	Minimum Lease Payments ^{(1) (2)}		
	Investments in Leases		Total
	Sales-Type	Financing Receivables	
2023	\$ 1,344,189	\$ 1,126,837	\$ 2,471,026
2024	1,366,127	1,148,616	2,514,743
2025	1,389,500	1,169,998	2,559,498
2026	1,409,190	1,191,924	2,601,114
2027	1,429,526	1,214,331	2,643,857
Thereafter	56,743,837	87,539,154	144,282,991
Total	<u>\$ 63,682,369</u>	<u>\$ 93,390,860</u>	<u>\$ 157,073,229</u>
Weighted Average Lease Term ⁽²⁾	36.3 years	50.6 years	43.4 years

(1) Minimum lease payments do not include contingent rent, as discussed below, that may be received under the Lease Agreements.

(2) The minimum lease payments and weighted average remaining lease term assumes the exercise of all tenant renewal options, consistent with our conclusions under ASC 842 and ASC 310.

VICI PROPERTIES INC. AND VICI PROPERTIES L.P.
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

Lease Provisions

As of December 31, 2022 we owned 45 properties leased under 14 separate Lease Agreements with subsidiaries of, or entities managed by, Apollo, Caesars, Century Casinos, EBCI, Foundation Gaming, JACK Entertainment, MGM, PENN Entertainment and Seminole Hard Rock, certain of which are master lease agreements governing multiple properties and certain of which are for single assets. Our Lease Agreements are generally long-term in nature with initial terms ranging from 15 to 30 years and are structured with several tenant renewal options extending the term of the lease for another 5 to 30 years. All of our Lease Agreements provide for annual base rent escalations, which range from 1% in the earlier years to the greater of 2% or CPI in later years, with certain of our leases providing for a cap with respect to the maximum CPI-based increase. Additionally, certain of our Lease Agreements provide for a variable rent component in which a portion of the annual rent, generally 20%, are subject to adjustment based on the revenues of the underlying asset in specified periods.

The following is a summary of the material lease provisions of our Caesars Leases and leases with MGM, our two most significant tenants:

<i>(\$ In thousands)</i> Lease Provision	Caesars Regional Master Lease and Joliet Lease	Caesars Las Vegas Master Lease	MGM Master Lease	MGM Grand/Mandalay Bay Lease ⁽¹⁾
Initial term	18 years	18 years	25 years	30 years
Initial term maturity	7/31/2035	7/31/2035	4/30/2047	2/28/2050
Renewal terms	Four, five-year terms	Four, five-year terms	Three, 10-year terms	Two, 10-year terms
Current lease year ⁽²⁾	11/1/22 - 10/31/23 (Lease Year 6)	11/1/22 - 10/31/23 (Lease Year 6)	4/29/22-4/30/23 (Lease Year 1)	3/1/22 - 2/28/23 (Lease Year 3)
Current annualized rent	\$703,678 ⁽³⁾	\$454,478	730,000 ⁽⁴⁾	303,800
Annual escalator ⁽⁵⁾	Lease years 2-5 - 1.5% Lease years 6-end of term - CPI subject to 2.0% floor	> 2% / change in CPI	Lease years 2-10 - 2% Lease years 11-end of term - >2% / change in CPI (capped at 3%)	Lease years 2-15 - 2% Lease years 16-end of term - >2% / change in CPI (capped at 3%)
Variable rent adjustment ⁽⁶⁾	Year 8: 70% base rent / 30% variable rent Years 11 & 16: 80% base rent / 20% variable rent	Years 8, 11 & 16: 80% base rent / 20% variable rent	None	None
Variable rent adjustment calculation ⁽⁵⁾	<u>4% of revenue</u> <u>increase/decrease:</u> Year 8: Avg. of years 5-7 less avg. of years 0-2 Year 11: Avg. of years 8-10 less avg. of years 5-7 Year 16: Avg. of years 13-15 less avg. of years 8-10	<u>4% of revenue</u> <u>increase/decrease:</u> Year 8: Avg. of years 5-7 less avg. of years 0-2 Year 11: Avg. of years 8-10 less avg. of years 5-7 Year 16: Avg. of years 13-15 less avg. of years 8-10	None	None

(1) Subsequent to year-end, on January 9, 2023, we closed on the MGM Grand/Mandalay Bay JV Interest Acquisition and acquired the remaining 49.9% interest in the MGM Grand/Mandalay Bay JV and accordingly, the amounts set forth above reflect our consolidated interest.

(2) For the Venetian Lease, lease year two will begin on the earlier of (i) March 1, 2024 and (ii) the first day of the first month following the month in which the net revenue of the Venetian Resort for the trailing twelve months equals or exceeds 2019 net revenue, which date can be no earlier than the anniversary of the first lease year (March 1, 2023).

(3) Current annual rent with respect to the Joliet Lease is presented prior to accounting for the non-controlling interest, or rent payable, to the 20% third-party ownership of Harrah's Joliet LandCo LLC. After adjusting for the 20% non-controlling interest, combined current annualized rent under the Caesars Regional Master Lease and Joliet Lease is \$694.6 million.

(4) The total annual rent under the MGM Master Lease was reduced by \$90.0 million upon the close of MGM's sale of the operations of the Mirage to Hard Rock and entrance into the Mirage Lease on December 19, 2022, and further reduced by \$40.0 million upon the close of MGM's sale of the operations of Gold Strike on February 15, 2023 (which reduced the total annual rent under the MGM Master Lease to \$730.0 million).

(5) Any amounts representing rents in excess of the CPI floors specified above are considered contingent rent in accordance with GAAP.

(6) Variable rent is not subject to the Escalator.

VICI PROPERTIES INC. AND VICI PROPERTIES L.P.
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

Capital Expenditure Requirements

We manage our residual asset risk through protective covenants in our Lease Agreements, which require the tenant to, among other things, hold specific insurance coverage, engage in ongoing maintenance of the property and invest in capital improvements. With respect to the capital improvements, the Lease Agreements specify certain minimum amounts that our tenants must spend on capital expenditures that constitute installation, restoration and repair or other improvements of items with respect to the leased properties. The following table summarizes the capital expenditure requirements of our tenants under their respective Lease Agreements:

Provision	Caesars Regional Master Lease and Joliet Lease	Caesars Las Vegas Master Lease	MGM Grand/Mandalay Bay Lease	Venetian Lease	All Other Leases ⁽¹⁾
Yearly minimum expenditure	1% of net revenues ⁽²⁾	1% of net revenues ⁽²⁾	3.5% of net revenues based on 5-year rolling test, 1.5% monthly reserves	2% of net revenues based on rolling three-year basis	1% of net revenues
Rolling three-year minimum ⁽³⁾	\$286 million	\$84 million	N/A	N/A	N/A

(1) Represents the tenants under our other Lease Agreements not specifically outlined in the table, as specified in their respective Lease Agreements.

(2) The Caesars Leases require a \$107.5 million floor on annual capital expenditures for Caesars Palace Las Vegas, Joliet and the Regional Master Lease properties in the aggregate. Additionally, annual building & improvement capital improvements must be equal to or greater than 1% of prior year net revenues.

(3) Certain tenants under the Caesars Leases, as applicable, are required to spend \$380.3 million on capital expenditures (excluding gaming equipment) over a rolling three-year period, with \$286.0 million allocated to the regional assets, \$84.0 million allocated to Caesars Palace Las Vegas and the remaining balance of \$10.3 million to facilities (other than the Harrah's Las Vegas Facility) covered by any Caesars Lease in such proportion as such tenants may elect. Additionally, the tenants under the Regional Master Lease and Joliet Lease are required to expend a minimum of \$531.9 million on capital expenditures (including gaming equipment) across certain of its affiliates and other assets, together with the \$380.3 million requirement.

Investments in Loans

The following is a summary of our investments in loans as of December 31, 2022 and 2021:

(\$ In thousands)

Loan Type	December 31, 2022				
	Principal Balance	Carrying Value ⁽¹⁾	Future Funding Commitments ⁽²⁾	Weighted Average Interest Rate ⁽³⁾	Weighted Average Term ⁽⁴⁾
Senior Secured	\$ 495,901	\$ 492,895	\$ 584,049	7.8 %	3.2 years
Mezzanine	196,597	192,898	514,882	9.1 %	4.3 years
Total	\$ 692,498	\$ 685,793	\$ 1,098,931	8.2 %	3.5 years

(\$ In thousands)

Loan Type	December 31, 2021				
	Principal Balance	Carrying Value ⁽¹⁾	Future Funding Commitments ⁽²⁾	Weighted Average Interest Rate	Weighted Average Term ⁽³⁾
Senior Secured	\$ 465,000	\$ 465,034	\$ 15,000	7.8 %	3.5 years
Mezzanine	33,614	32,968	45,886	8.0 %	4.0 years
Total	\$ 498,614	\$ 498,002	\$ 60,886	7.8 %	3.5 years

(1) Carrying value includes unamortized loan origination costs and are net of allowance for credit losses.

(2) Our future funding commitments are subject to our borrowers' compliance with the financial covenants and other applicable provisions of each respective loan agreement.

(3) The weighted average interest rate is based on current outstanding principal balance and SOFR, as applicable for floating rate loans, as of December 31, 2022.

(4) Assumes all extension options are exercised; however, our loans may be repaid, subject to certain conditions, prior to such date.

VICI PROPERTIES INC. AND VICI PROPERTIES L.P.
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

Note 5 — Allowance for Credit Losses

Adoption of ASC 326

On January 1, 2020, we adopted ASC 326, and, as a result, we are required to estimate and record non-cash expected credit losses related to our historical and any future investments in sales-type leases, lease financing receivables and loans. Upon adoption we elected to use the modified retrospective approach, and recorded a \$309.4 million cumulative adjustment, representing a 2.88% CECL allowance. Such amount was recorded as a cumulative-effect adjustment to our opening balance sheet with a reduction in our Investments in leases - sales-type and a corresponding charge to retained earnings. Periods prior to the adoption date that are presented for comparative purposes are not adjusted.

Allowance for Credit Losses

During the year ended December 31, 2022, we recognized a \$834.5 million increase in our allowance for credit losses primarily driven by initial CECL allowances on our acquisition activity during such period in the amount of \$573.6 million, representing 68.7% of the total allowance. The initial CECL allowances were in relation to (i) the closing of the MGP Transactions on April 29, 2022, which included the (a) classification of the MGM Master Lease as a lease financing receivable and (b) the sales-type sub-lease agreements that we assumed in connection with the closing of the MGP Transactions, (ii) the closing of the Venetian Acquisition on February 23, 2022, which included (a) the classification of the Venetian Lease as a sales-type lease, (b) the estimated future funding commitments under the Venetian PGF and (c) the sales-type sub-lease agreements that we assumed in connection with the closing of the Venetian Acquisition, and (iii) the future funding commitments from the origination of the BigShots Loan, the Cabot Citrus Farms Loan, the Great Wolf South Florida Loan, the Great Wolf Gulf Coast Texas Loan, the Canyon Ranch Austin Loan, the Great Wolf Northeast Loan and the Fontainebleau Las Vegas Loan.

Additional increases were attributable to (i) changes in the macroeconomic model used to scenario condition our reasonable and supportable period, or R&S Period, probability of default, or PD, due to uncertain and potentially negative future market conditions, (ii) an increase in the R&S Period PD of our tenants and their parent guarantors (as applicable) as a result of market volatility during the quarter and (iii) an increase in the R&S Period PD and loss given default, or LGD, as a result of standard annual updates that were made to the inputs and assumptions in the model that we utilize to estimate our CECL allowance. These increases were partially offset by a decrease in the long-term reasonable and supportable period probability of default, or Long-Term Period PD, due to an upgrade of the credit rating of the senior secured debt used to determine the Long-Term Period PD for one of our tenants and as a result of standard annual updates that were made to the Long-Term Period PD default study we utilize to estimate our CECL allowance.

During the year ended December 31, 2021, we recognized a \$19.6 million decrease in our allowance for credit losses primarily driven by (i) the decrease in the short-term reasonable and supportable period probability of default, or R&S Period PD, of our tenants or borrowers and their parent guarantors as a result of an improvement in their economic outlook due to the reopening of all of their gaming operations and relative performance of such operations during 2021, (ii) the decrease in the Long-Term Period PD due to an upgrade of the credit rating of the senior secured debt used to determine the Long-Term Period PD for one of our tenants during 2021 and (iii) the decrease in the R&S Period PD and loss given default, or LGD, as a result of standard annual updates that were made to the inputs and assumptions in the model that we utilize to estimate our CECL allowance. This decrease was partially offset by an increase in the existing amortized cost balances subject to the CECL allowance.

During the year ended December 31, 2020, we recognized a \$244.5 million increase in our allowance for credit losses primarily driven by (i) the increase in investment balances resulting from the Caesars Transaction, (ii) the initial CECL allowance related to the JACK Master Lease, (iii) an increase in the R&S Period PD of our tenants or borrowers and their parent guarantors as a result the negative economic outlook associated with the COVID-19 pandemic and (iv) an increase in the Long-term Period PD of our tenants due to downgrades on certain of the credit ratings of our tenants' senior secured debt in connection with the COVID-19 pandemic.

VICI PROPERTIES INC. AND VICI PROPERTIES L.P.
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

As of December 31, 2022 and 2021, and since our formation date on October 6, 2017, all of our Lease Agreements and loan investments are current in payment of their obligations to us and no investments are on non-accrual status.

The following tables detail the allowance for credit losses as of December 31, 2022 and December 31, 2021:

<i>(In thousands)</i>	December 31, 2022			
	Amortized Cost	Allowance ⁽¹⁾	Net Investment	Allowance as a % of Amortized Cost
Investments in leases - sales-type	\$ 17,742,712	\$ (570,387)	\$ 17,172,325	3.21 %
Investments in leases - financing receivables	17,467,477	(726,707)	16,740,770	4.16 %
Investments in loans	692,658	(6,865)	685,793	0.99 %
Other assets - sales-type sub-leases	784,259	(19,750)	764,509	2.52 %
Totals	<u>\$ 36,687,106</u>	<u>\$ (1,323,709)</u>	<u>\$ 35,363,397</u>	<u>3.61 %</u>

<i>(In thousands)</i>	December 31, 2021			
	Amortized Cost	Allowance	Net Investment	Allowance as a % of Amortized Cost
Investments in leases - sales-type	\$ 13,571,516	\$ (434,852)	\$ 13,136,664	3.20 %
Investments in leases - financing receivables	2,735,948	(91,124)	2,644,824	3.33 %
Investments in loans	498,775	(773)	498,002	0.15 %
Other assets - sales-type sub-leases	280,510	(6,540)	273,970	2.33 %
Totals	<u>\$ 17,086,749</u>	<u>\$ (533,289)</u>	<u>\$ 16,553,460</u>	<u>3.12 %</u>

⁽¹⁾ The total allowance excludes the CECL allowance for unfunded loan commitments. As of December 31, 2022 and December 31, 2021, such allowance is \$45.1 million and \$1.0 million, respectively, and is recorded in Other liabilities.

The following chart reflects the roll-forward of the allowance for credit losses on our real estate portfolio for the years ended December 31, 2022, 2021 and 2020:

<i>(In thousands)</i>	Year Ended December 31,		
	2022	2021	2020
Beginning Balance January 1,	\$ 534,325	\$ 553,879	\$ —
Initial allowance upon adoption	—	—	309,362
Initial allowance from current period investments	573,624	1,725	90,368
Current period change in credit allowance	260,870	(21,279)	154,149
Charge-offs	—	—	—
Recoveries	—	—	—
Ending Balance December 31,	<u>\$ 1,368,819</u>	<u>\$ 534,325</u>	<u>\$ 553,879</u>

VICI PROPERTIES INC. AND VICI PROPERTIES L.P.
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

Credit Quality Indicators

We assess the credit quality of our investments through the credit ratings of the senior secured debt of the guarantors of our leases, as we believe that our Lease Agreements have a similar credit profile to a senior secured debt instrument. The credit quality indicators are reviewed by us on a quarterly basis as of quarter-end. In instances where the guarantor of one of our Lease Agreements does not have senior secured debt with a credit rating, we use either a comparable proxy company or the overall corporate credit rating, as applicable. We also use this credit rating to determine the Long-Term Period PD when estimating credit losses for each investment.

The following tables detail the amortized cost basis of our investments by the credit quality indicator we assigned to each lease or loan guarantor as of December 31, 2022, 2021 and 2020:

	December 31, 2022						
<i>(In thousands)</i>	Ba2	Ba3	B1	B2	B3	N/A ⁽²⁾	Total
Investments in leases - sales-type and financing receivable, Investments in loans and Other assets ⁽¹⁾	\$ 4,247,315	\$ 28,095,234	\$ 2,594,203	\$ 875,749	\$ 581,973	\$ 292,632	\$ 36,687,106
	December 31, 2021						
<i>(In thousands)</i>	Ba2	Ba3	B1	B2	B3	N/A ⁽²⁾	Total
Investments in leases - sales-type and financing receivable, Investments in loans and Other assets ⁽¹⁾	\$ —	\$ 951,033	\$ 14,888,770	\$ 868,629	\$ 279,579	\$ 98,739	\$ 17,086,749
	December 31, 2020						
<i>(In thousands)</i>	Ba2	Ba3	B1	B2	B3	N/A ⁽²⁾	Total
Investments in leases - sales-type and financing receivable, Investments in loans and Other assets ⁽¹⁾	\$ —	\$ —	\$ 15,733,402	\$ 934,628	\$ 281,246	\$ 65,012	\$ 17,014,288

(1) Excludes the CECL allowance for unfunded commitments recorded in Other liabilities as such commitments are not currently reflected on our Balance Sheet, rather the CECL allowance is based on our current best estimate of future funding commitments.

(2) We estimate the CECL allowance for our senior secured and mezzanine loans, excluding the Forum Convention Center Mortgage Loan, using a traditional commercial real estate model based on standardized credit metrics to estimate potential losses.

VICI PROPERTIES INC. AND VICI PROPERTIES L.P.
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

Note 6 — Other Assets and Other Liabilities

Other Assets

The following table details the components of our other assets as of December 31, 2022 and 2021:

<i>(In thousands)</i>	December 31, 2022	December 31, 2021
Sales-type sub-leases, net ⁽¹⁾	\$ 764,509	\$ 273,970
Property and equipment used in operations, net	67,209	68,515
Right of use assets and sub-lease right of use assets	45,008	16,811
Debt financing costs	18,646	24,928
Deferred acquisition costs	12,834	24,690
Prepaid expenses	7,348	3,660
Interest receivable	6,911	2,780
Other receivables	6,474	341
Tenant receivables	5,498	5,032
Forward-starting interest rate swaps	—	884
Other	1,891	3,082
Total other assets	\$ 936,328	\$ 424,693

⁽¹⁾ As of December 31, 2022 and December 31, 2021, sales-type sub-leases are net of \$19.8 million and \$6.5 million of Allowance for credit losses, respectively. Refer to [Note 5 - Allowance for Credit Losses](#) for further details.

Property and equipment used in operations, included within other assets, is primarily attributable to the land, building and improvements of our golf operations and consists of the following as of December 31, 2022 and 2021:

<i>(In thousands)</i>	December 31, 2022	December 31, 2021
Land and land improvements	\$ 60,332	\$ 59,250
Buildings and improvements	15,125	14,880
Furniture and equipment	9,563	9,014
Total property and equipment used in operations	85,020	83,144
Less: accumulated depreciation	(17,811)	(14,629)
Total property and equipment used in operations, net	\$ 67,209	\$ 68,515

	Year Ended December 31,		
<i>(In thousands)</i>	2022	2021	2020
Depreciation expense	\$ 3,182	\$ 3,091	\$ 3,731

Other Liabilities

The following table details the components of our other liabilities as of December 31, 2022 and 2021:

<i>(In thousands)</i>	December 31, 2022	December 31, 2021
Finance sub-lease liabilities	\$ 784,259	\$ 280,510
Deferred financing liabilities	73,600	73,600
Lease liabilities and sub-lease liabilities	45,039	16,811
CECL allowance for unfunded commitments	45,110	1,037
Deferred income taxes	4,339	3,879
Other	125	—
Total other liabilities	\$ 952,472	\$ 375,837

VICI PROPERTIES INC. AND VICI PROPERTIES L.P.
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

Note 7 — Debt

The following tables detail our debt obligations as of December 31, 2022 and 2021:

<i>(\$ In thousands)</i> Description of Debt ⁽¹⁾	December 31, 2022			
	Maturity	Interest Rate	Face Value	Carrying Value ⁽²⁾
Revolving Credit Facility ^{(3) (4)}	2026	SOFR + 1.050%	\$ —	\$ —
Delayed Draw Term Loan ⁽⁵⁾	2025	SOFR + 1.200%	—	—
November 2019 Notes ⁽⁶⁾				
2026 Maturity	2026	4.250%	1,250,000	1,238,825
2029 Maturity	2029	4.625%	1,000,000	988,931
February 2020 Notes ⁽⁶⁾				
2025 Maturity	2025	3.500%	750,000	745,020
2027 Maturity	2027	3.750%	750,000	743,086
2030 Maturity	2030	4.125%	1,000,000	988,626
April 2022 Notes ⁽⁶⁾				
2025 Maturity	2025	4.375%	500,000	496,314
2028 Maturity	2028	4.516% ⁽⁷⁾	1,250,000	1,237,082
2030 Maturity	2030	4.541% ⁽⁷⁾	1,000,000	987,618
2032 Maturity	2032	3.980% ⁽⁷⁾	1,500,000	1,480,799
2052 Maturity	2052	5.625%	750,000	735,360
Exchange Notes ⁽⁶⁾				
2024 Maturity	2024	5.625%	1,024,169	1,029,226
2025 Maturity	2025	4.625%	799,368	783,659
2026 Maturity	2026	4.500%	480,524	463,018
2027 Maturity	2027	5.750%	729,466	738,499
2028 Maturity	2028	4.500%	349,325	336,545
2029 Maturity	2029	3.875%	727,114	660,489
MGP OP Notes ⁽⁶⁾				
2024 Maturity	2024	5.625%	25,831	25,901
2025 Maturity	2025	4.625%	632	615
2026 Maturity	2026	4.500%	19,476	18,542
2027 Maturity	2027	5.750%	20,534	20,520
2028 Maturity	2028	4.500%	675	639
2029 Maturity	2029	3.875%	22,886	20,361
Total Debt		<u>4.496% ⁽⁸⁾</u>	<u>\$ 13,950,000</u>	<u>\$ 13,739,675</u>

VICI PROPERTIES INC. AND VICI PROPERTIES L.P.
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

(\$ In thousands)

Description of Debt	December 31, 2021			
	Maturity	Interest Rate	Face Value	Carrying Value ⁽¹⁾
Secured Revolving Credit Facility ⁽⁹⁾	2024	L + 2.00%	\$ —	\$ —
November 2019 Notes ⁽⁵⁾				
2026 Maturity	2026	4.250%	1,250,000	1,235,972
2029 Maturity	2029	4.625%	1,000,000	987,331
February 2020 Notes ⁽⁵⁾				
2025 Maturity	2025	3.500%	750,000	742,677
2027 Maturity	2027	3.750%	750,000	741,409
2030 Maturity	2030	4.125%	1,000,000	987,134
Total Debt		4.105%	\$ 4,750,000	\$ 4,694,523

- (1) Amounts exclude our \$1.5 billion pro-rata share of the \$3.0 billion of CMBS of the MGM Grand/Mandalay Bay JV, recorded as part of the balance of Investment in unconsolidated affiliate on our Balance Sheets. Subsequent to year-end, on January 9, 2023, upon closing of the MGM Grand/Mandalay Bay JV Acquisition and consolidating the operations in the first quarter of 2023 the balance of the \$3.0 billion debt, net of the fair value adjustment, will be presented in Debt, net on our Balance Sheets. The property-level debt has a principal balance of \$3.0 billion, bears interest at a fixed rate of 3.558% per annum through March 2030, and matures in 2032.
- (2) Carrying value is net of unamortized original issue discount and unamortized debt issuance costs incurred in conjunction with debt.
- (3) Interest on any outstanding balance is payable monthly. Borrowings under the Revolving Credit Facility bear interest at a rate based on a credit rating-based pricing grid with a range of 0.775% to 1.325% margin plus SOFR, depending on our credit ratings, with an additional 0.10% adjustment. Additionally, the commitment fees under the Revolving Credit Facility are calculated on a credit rating-based pricing grid with a range of 0.15% to 0.375%, for both instruments depending on our credit ratings. For the year ended December 31, 2022, the commitment fees for the Revolving Credit Facility was 0.375%.
- (4) Subsequent to year-end, on January 6, 2023, we drew on the Revolving Credit Facility in the amount of C\$140.0 million (approximately US\$103.4 million based on the exchange rate at the time of the acquisition) to fund a portion of the purchase price of the PURE Canadian Gaming Transaction.
- (5) The Delayed Draw Term Loan was available to be drawn up to 12 months following the effective date of February 8, 2022. On February 8, 2023, the Delayed Draw Term Loan facility expired undrawn in accordance with its terms.
- (6) Interest is payable semi-annually.
- (7) Interest rates represent the contractual interest rates adjusted to account for the impact of the forward-starting interest rate swaps and treasury locks (as further described in [Note 8 - Derivatives](#)). The contractual interest rates on the April 2022 Notes maturing 2028, 2030 and 2032 are 4.750%, 4.950% and 5.125%, respectively.
- (8) The interest rate represents the weighted average interest rates of the Senior Unsecured Notes adjusted to account for the impact of the forward-starting interest rate swaps and treasury locks (as further described in [Note 8 - Derivatives](#)), as applicable. The contractual weighted average interest rate as of December 31, 2022, which excludes the impact of the forward-starting interest rate swaps and treasury locks, is 4.67%.
- (9) On February 8, 2022, we terminated the Secured Revolving Credit Facility (including the first priority lien on substantially all of VICI PropCo's and its existing and subsequently acquired wholly owned material domestic restricted subsidiaries' material assets) and the 2017 Credit Agreement, as described below, and entered into the Credit Agreement providing for the Credit Facilities, as described below.

The following table is a schedule of future minimum payments of our debt obligations as of December 31, 2022:

(\$ In thousands)	Future Minimum Payments
2023	\$ —
2024	1,050,000
2025	2,050,000
2026	1,750,000
2027	1,500,000
Thereafter	7,600,000
Total minimum repayments	\$ 13,950,000

VICI PROPERTIES INC. AND VICI PROPERTIES L.P.
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

Senior Unsecured Notes

Exchange Notes

On April 29, 2022, the VICI Issuers issued (i) \$1,024.2 million in aggregate principal amount of 5.625% Senior Notes due May 1, 2024, (ii) \$799.4 million in aggregate principal amount of 4.625% Senior Notes due June 15, 2025, (iii) \$480.5 million in aggregate principal amount of 4.500% Senior Notes due September 1, 2026, (iv) \$729.5 million in aggregate principal amount of 5.750% Senior Notes due February 1, 2027, (v) \$349.3 million in aggregate principal amount of 4.500% Senior Notes due January 15, 2028 and (vi) \$727.1 million in aggregate principal amount of 3.875% Senior Notes due February 15, 2029 in exchange for the validly tendered and not validly withdrawn MGP OP Notes, originally issued by the MGP Issuers, pursuant to the settlement of the Exchange Offers and Consent Solicitations in connection with the closing of the MGP Transactions. The Exchange Notes were issued with the same interest rate, maturity date and redemption terms as the corresponding series of MGP OP Notes, in each case under a supplemental indenture dated as of April 29, 2022, between the VICI Issuers and UMB Bank, National Association, as trustee (the “Trustee”).

The Exchange Notes due 2025, 2026, 2027, 2028, and 2029 are redeemable at our option, in whole or in part, at any time on or after February 1, 2024, March 15, 2025, June 1, 2026, November 1, 2026, October 15, 2027 and November 15, 2028, respectively, at the redemption prices set forth in the respective indenture governing such Exchange Notes. We may redeem some or all of such notes prior to such respective dates at a price equal to 100% of the principal amount thereof plus a “make-whole” premium.

MGP OP Notes

Following the issuance of the Exchange Notes pursuant to the settlement of the Exchange Offers and Consent Solicitations, \$25.8 million in aggregate principal amount of MGP OP Notes due 2024, \$0.6 million in aggregate principal amount of MGP OP Notes due 2025, \$19.5 million in aggregate principal amount of MGP OP Notes due 2026, \$20.5 million in aggregate principal amount of MGP OP Notes due 2027, \$0.7 million in aggregate principal amount of MGP OP Notes due 2028 and \$22.9 million in aggregate principal amount of MGP OP Notes due 2029 remain outstanding.

Each series of the MGP OP Notes is redeemable at our option, in whole or in part, at any time on or after the same dates as set forth above with respect to the corresponding maturity series of the Exchange Notes. We may redeem some or all of such notes prior to such respective dates at a price equal to 100% of the principal amount thereof plus a “make-whole” premium.

April 2022 Notes

On April 29, 2022, VICI LP, our wholly owned subsidiary, issued (i) \$500.0 million in aggregate principal amount of 4.375% Senior Notes due 2025, which mature on May 15, 2025, (ii) \$1,250.0 million in aggregate principal amount of 4.750% Senior Notes due 2028, which mature on February 15, 2028, (iii) \$1,000.0 million in aggregate principal amount of 4.950% Senior Notes due 2030, which mature on February 15, 2030, (iv) \$1,500.0 million in aggregate principal amount of 5.125% Senior Notes due 2032, which mature on May 15, 2032, and (v) \$750.0 million in aggregate principal amount of 5.625% Senior Notes due 2052, which mature on May 15, 2052, (collectively, the “April 2022 Notes”) in each case under a supplemental indenture dated as of April 29, 2022, between VICI LP and the Trustee. We used the net proceeds of the offering to (i) fund the consideration for the redemption of a majority of the VICI OP Units received by MGM in the Partnership Merger for \$4,404.0 million in cash in connection with the closing of the MGP Transactions on April 29, 2022, and (ii) pay down the outstanding \$600.0 million balance on our Revolving Credit Facility.

Prior to their maturity date, in the case of the April 2022 Notes due 2025, and January 15, 2028 (one month prior to the maturity date of the April 2022 Notes due 2028), December 15, 2029 (two months prior to the maturity date of the April 2022 Notes due 2030), February 15, 2032 (three months prior to the maturity date of the April 2022 Notes due 2032) and November 15, 2051 (six months prior to the maturity date of the April 2022 Notes due 2052), respectively, in the case of the April 2022 Notes due 2028, 2030, 2032 and 2052, we may redeem the April 2022 Notes at our option, in whole or in part, at any time and from time to time, at a price equal to 100% of the principal amount thereof plus a “make-whole” premium. On or after January 15, 2028, December 15, 2029, February 15, 2032 and November 15, 2051, respectively, we may redeem the April 2022 Notes due 2028, 2030, 2032 and 2052 at a redemption price equal to 100% of the principal amount of such Notes to be redeemed, plus accrued and unpaid interest thereon to the redemption date.

VICI PROPERTIES INC. AND VICI PROPERTIES L.P.
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

February 2020 Notes

On February 5, 2020, the VICI Issuers issued (i) \$750.0 million in aggregate principal amount of 3.500% Senior Notes due 2025, which mature on February 15, 2025, (ii) \$750.0 million in aggregate principal amount of 3.750% Senior Notes due 2027, which mature on February 15, 2027, and (iii) \$1,000.0 million in aggregate principal amount of 4.125% Senior Notes due 2030, which mature on August 15, 2030 (collectively, the “February 2020 Notes”), under separate indentures, each dated as of February 5, 2020, among the VICI Issuers, the subsidiary guarantors party thereto and the Trustee.

The February 2020 Notes due 2025, 2027 and 2030 are redeemable at our option, in whole or in part, at any time on or after February 15, 2022, February 15, 2023, and February 15, 2025, respectively, at the redemption prices set forth in the respective indenture. We may redeem some or all of the February 2020 Notes due 2025, 2027 and 2030 prior to such respective dates at a price equal to 100% of the principal amount thereof plus a “make-whole” premium. Prior to February 15, 2022, with respect to the February 2020 Notes due 2025, and February 15, 2023, with respect to the February 2020 Notes due 2027 and 2030, we may redeem up to 40% of the aggregate principal amount of the February 2020 Notes due 2025, 2027 and 2030 using the proceeds of certain equity offerings at the redemption price set forth in the respective indenture.

November 2019 Notes

On November 26, 2019, the VICI Issuers issued (i) \$1,250.0 million in aggregate principal amount of 4.250% Senior Notes due 2026, which mature on December 1, 2026, and (ii) \$1,000.0 million in aggregate principal amount of 4.625% Senior Notes due 2029, which mature on December 1, 2029 (collectively, the “November 2019 Notes”), under separate indentures, each dated as of November 26, 2019, among the VICI Issuers, the subsidiary guarantors party thereto and the Trustee.

The November 2019 Notes due 2026 and 2029 are redeemable at our option, in whole or in part, at any time on or after December 1, 2022 and December 1, 2024, respectively, at the redemption prices set forth in the respective indenture. We may redeem some or all of the November 2019 Notes due 2026 or 2029 prior to such respective dates at a price equal to 100% of the principal amount thereof plus a “make-whole” premium. Prior to December 1, 2022, we may redeem up to 40% of the aggregate principal amount of the November 2019 Notes due 2026 or 2029 using the proceeds of certain equity offerings at the redemption price set forth in the respective indenture.

Guarantee and Financial Covenants

None of the Senior Unsecured Notes are guaranteed by any subsidiaries of VICI LP. The Exchange Notes, the MGP OP Notes and the April 2022 Notes benefit from a pledge of the limited partnership interests of VICI LP directly owned by VICI OP (the “Limited Equity Pledge”). The Limited Equity Pledge has also been granted in favor of (i) the administrative agent and the lenders under the Credit Agreement and (ii) the trustee under the indentures governing, and the holders of, the November 2019 Notes and the February 2020 Notes.

Until February 8, 2022, the November 2019 Notes and February 2020 Notes were fully and unconditionally guaranteed, jointly and severally, on a senior unsecured basis by each guaranteed indebtedness under the 2017 Credit Agreement (as defined below). All subsidiary guarantees were released upon the termination of the 2017 Credit Agreement concurrently with the execution of the Credit Agreement on February 8, 2022.

Pursuant to the terms of the respective indentures, in the event that the November 2019 Notes, February 2020 Notes and Exchange Notes (i) are rated investment grade by at least two of S&P, Moody’s and Fitch and (ii) no default or event of default has occurred and is continuing under the respective indentures, VICI LP and its restricted subsidiaries will no longer be subject to certain of the restrictive covenants under such indentures. On April 18, 2022, the November 2019 Notes, February 2020 Notes and Exchange Notes were rated investment grade by each of S&P and Fitch and VICI LP notified the Trustee of such Suspension Date (as defined in the indentures). Accordingly, VICI LP and its restricted subsidiaries are no longer subject to certain of the restrictive covenants under such indentures, but are subject to a maintenance covenant requiring VICI LP and its restricted subsidiaries to maintain a certain total unencumbered assets to unsecured debt ratio. In the event that the November 2019 Notes, February 2020 Notes and Exchange Notes are no longer rated investment grade by at least two of S&P, Moody’s and Fitch, then VICI LP and its restricted subsidiaries will again be subject to all of the covenants of the respective indentures, as applicable, but will no longer be subject to the maintenance covenant.

The indenture governing the April 2022 Notes contains certain covenants that limit the ability of VICI LP and its subsidiaries to incur secured and unsecured indebtedness and VICI LP to consummate a merger, consolidation or sale of all or substantially all

VICI PROPERTIES INC. AND VICI PROPERTIES L.P.
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

of its assets. In addition, VICI LP is required to maintain total unencumbered assets of at least 150% of total unsecured indebtedness. These covenants are subject to a number of important exceptions and qualifications.

Unsecured Credit Facilities

On February 8, 2022, VICI LP entered into the Credit Agreement providing for (i) the Revolving Credit Facility in the amount of \$2.5 billion scheduled to mature on March 31, 2026 and (ii) the Delayed Draw Term Loan in the amount of \$1.0 billion scheduled to mature on March 31, 2025. The Delayed Draw Term Loan was available to be drawn up to 12 months following the effective date of February 8, 2022. Subsequent to year-end, on February 8, 2023, the Delayed Draw Term Loan facility expired undrawn in accordance with its terms.

The Revolving Credit Facility includes two six-month maturity extension options the exercise of which is subject to customary conditions and the payment of an extension fee of 0.0625% on the extended commitments. Additionally, the Revolving Credit Facility includes the option to increase the revolving loan commitments by up to \$1.0 billion to the extent that any one or more lenders (from the syndicate or otherwise) agree to provide such additional credit extensions. On July 15, 2022, the Credit Agreement was amended pursuant to a First Amendment among VICI LP and the lenders party to the Credit Agreement, in order to permit borrowings under the Revolving Credit Facility in certain foreign currencies in an aggregate principal amount of up to the equivalent of \$1.25 billion

Borrowings under the Revolving Credit Facility will bear interest, at VICI LP's option, at a rate based on SOFR (including a credit spread adjustment) plus a margin ranging from 0.775% to 1.325% or a base rate plus a margin ranging from 0.00% to 0.325%, in each case, with the actual margin determined according to VICI LP's debt ratings. The base rate is the highest of (i) the prime rate of interest last quoted by the Wall Street Journal in the U.S. then in effect, (ii) the NYFRB rate from time to time plus 0.5% and (iii) the SOFR rate for a one-month interest period plus 1.0%, subject in each case to a floor of 1.0%. In addition, the Revolving Credit Facility requires the payment of a facility fee ranging from 0.15% to 0.375% (depending on VICI LP's debt rating) of total revolving commitments.

Pursuant to the terms of the Credit Agreement, VICI LP is subject to, among other things, customary covenants and the maintenance of various financial covenants. The Credit Agreement is consistent with certain tax-related requirements related to security for the Company's debt.

On February 18, 2022, we drew on the Revolving Credit Facility in the amount of \$600.0 million to fund a portion of the purchase price of the Venetian Acquisition. On April 29, 2022, we repaid the outstanding balance of the Revolving Credit Facility using the proceeds from the April 2022 Notes offering.

Subsequent to year-end, on January 3, 2023, we drew on the Revolving Credit Facility in the amount of C\$140.0 million (approximately US\$103.4 million based on the exchange rate at the time of the acquisition) to fund a portion of the purchase price of the PURE Canadian Gaming Transaction.

Senior Secured Credit Facilities

In December 2017, VICI PropCo entered into a credit agreement (as amended, amended and restated and otherwise modified, the "2017 Credit Agreement"), comprised of a \$2.2 billion Term Loan B Facility and a \$1.0 billion Secured Revolving Credit Facility (the Term Loan B Facility and the Secured Revolving Credit Facility, as amended, are referred to together as the "Senior Secured Credit Facilities"). On September 15, 2021, we used the proceeds from the settlement of the June 2020 Forward Sale Agreement (as defined in [Note 11- Stockholders' Equity](#)) and the proceeds from the issuance of 65,000,000 shares of common stock from the September 2021 equity offering to repay in full the Term Loan B Facility, including outstanding accrued interest. In connection with the full repayment, we recognized a loss on extinguishment of debt of \$15.6 million during the year ended December 31, 2021, representing the write-off of the remaining unamortized deferred financing costs.

Following the repayment in full of the Term Loan B Facility, the Secured Revolving Credit Facility remained in effect pursuant to the 2017 Credit Agreement. On February 8, 2022, we terminated the Secured Revolving Credit Facility (including the first priority lien on substantially all of VICI PropCo's material assets and those of its existing and subsequently acquired wholly owned material domestic restricted subsidiaries) and the 2017 Credit Agreement, and entered into the Credit Agreement providing for the Credit Facilities, as described above.

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NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

Second Lien Notes

On October 6, 2017, we issued \$766.9 million aggregate principal amount of 8.0% second priority senior secured notes due 2023 (the “Second Lien Notes”), pursuant to an indenture by and among VICI PropCo and its wholly owned subsidiary, VICI FC Inc., the subsidiary guarantors party thereto, and UMB Bank National Association, as trustee. On February 20, 2020, we used a portion of the proceeds from the issuance of the 2025 Notes, together with cash on hand, to redeem in full the Second Lien Notes at a redemption price of 100% of the principal amount of the Second Lien Notes then outstanding plus the Second Lien Notes Applicable Premium (as defined in the Second Lien Notes indenture), for a total redemption cost of \$537.5 million. In connection with the full redemption, we recognized a loss on extinguishment of debt of \$39.1 million during the year ended December 31, 2020.

Bridge Facilities

On August 4, 2021, in connection with the completion of the MGP Transactions, VICI PropCo entered into a Commitment Letter with certain lenders pursuant to which they provided commitments in an amount up to \$9.3 billion in the aggregate, consisting of a 364-day first lien secured bridge facility (the “MGP Transactions Bridge Facility”), for the purpose of providing a portion of the financing necessary in connection with the closing of the MGP Transactions, which was fully terminated on April 29, 2022 in connection with such closing.

On March 2, 2021, in connection with the Venetian Acquisition, VICI PropCo entered into a Commitment Letter with certain lenders pursuant to which they provided commitments in an amount up to \$4.0 billion in the aggregate, consisting of a 364-day first lien secured bridge facility (the “Venetian Acquisition Bridge Facility”), for the purpose of providing a portion of the financing necessary to fund the consideration in connection with the closing of the Venetian Acquisition, which was fully terminated on February 23, 2022 in connection with such closing.

On June 24, 2019, in connection with the Caesars Transaction, VICI PropCo entered into a Commitment Letter with certain lenders pursuant to which they provided (i) a 364-day first lien secured bridge facility of up to \$3.3 billion in the aggregate and (ii) a 364-day second lien secured bridge facility of up to \$1.5 billion in the aggregate (the “Caesars Transaction Bridge Facility”), for the purpose of providing a portion of the financing necessary to fund the consideration in connection with the closing of the Caesars Transaction, which was fully terminated in June 2020 in connection with such closing.

In each case the commitments were subject to a tiered commitment fee based on the period the respective commitment was outstanding and a structuring fee. The following table shows the amount of such fees recognized in Interest expense on our Statement of Operations for the years ended December 31, 2022, 2021 and 2020:

<i>(In thousands)</i>	Year Ended December 31,		
	2022	2021	2020
MGP Transactions Bridge Facility	\$ 15,338	\$ 38,762	\$ —
Venetian Acquisition Bridge Facility	968	16,387	—
Caesars Transaction Bridge Facility	—	—	3,068

Financial Covenants

As described above, our debt obligations are subject to certain customary financial and protective covenants that restrict VICI LP, VICI PropCo and its subsidiaries’ ability to incur additional debt, sell certain asset and restrict certain payments, among other things. These covenants are subject to a number of exceptions and qualifications, including the ability to make restricted payments to maintain our REIT status. At December 31, 2022, we are in compliance with all financial covenants under our debt obligations.

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NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

Note 8 — Derivatives

The following tables detail our outstanding interest rate derivatives that were designated as cash flow hedges of interest rate risk as of December 31, 2021. As of December 31, 2022, there were no derivative instruments outstanding.

<i>(\$ in thousands)</i>		December 31, 2021			
Instrument	Number of Instruments	Fixed Rate	Notional	Index	Maturity
Forward-starting interest rate swap	1	1.3465%	\$500,000	USD SOFR-COMPOUND	May 2, 2032

Forward-Starting Derivatives

From December 2021 through April 2022, we entered into five forward-starting interest rate swap agreements with an aggregate notional amount of \$2.5 billion and two U.S. Treasury Rate Lock agreements with an aggregate notional amount of \$500.0 million to hedge against changes in future cash flows resulting from changes in interest rates from the trade date through the forecasted issuance date of \$3.0 billion of long-term debt. The forward-starting interest rate swaps and treasury locks were designated as cash-flow hedges. In April 2022, in connection with the April 2022 Notes offering, we settled the outstanding forward-starting interest rate swaps for total net proceeds of \$202.3 million and the treasury locks for total net proceeds of \$4.5 million. Since the forward-starting swaps and treasury locks were hedging the interest rate risk on the April 2022 Notes, the unrealized gain in Accumulated other comprehensive income will be amortized over the term of the respective derivative instruments, which matches that of the underlying note, as a reduction in interest expense.

The following table presents the effect of our forward-starting derivative financial instruments on our Statement of Operations:

<i>(In thousands)</i>	Year Ended December 31,		
	2022	2021	2020
Unrealized gain recorded in other comprehensive income	\$ 200,550	\$ —	\$ —
Reduction in interest expense related to the amortization of the forward-starting interest rate swaps and treasury locks	(16,233)	—	—

Interest Rate Swaps

In April 2018 and January 2019, we entered into six interest rate swap agreements with third party financial institutions having an aggregate notional amount of \$2.0 billion. The interest rate swap transactions were designated as cash flow hedges that effectively fix the LIBOR component of the interest rate on a portion of the outstanding debt under the Term Loan B Facility at 2.8297%. On September 15, 2021, in connection with the full repayment of the Term Loan B Facility, we unwound and settled all of our outstanding interest rate swap agreements resulting in a cash payment of \$66.9 million, inclusive of accrued interest of \$2.7 million. As the Term Loan B Facility was repaid in full with proceeds from the issuance of 65,000,000 shares of common stock on September 14, 2021 and proceeds from the settlement of the June 2020 Forward Sale Agreement with no replacement debt, the full amount held in Other comprehensive income, \$64.2 million, was immediately reclassified to Interest expense.

The following table presents the effect of our interest rate swaps on our Statement of Operations:

<i>(In thousands)</i>	Year Ended December 31,		
	2022	2021	2020
Unrealized gain (loss) recorded in other comprehensive income	\$ —	\$ 29,166	\$ (27,443)
Interest from interest rate swaps recorded in interest expense	—	29,960	42,797
Interest rate swap settlement recorded in interest expense	—	64,239	—

VICI PROPERTIES INC. AND VICI PROPERTIES L.P.
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

Note 9 — Fair Value

The following tables summarize our assets and liabilities measured at fair value on a recurring basis as of December 31, 2022 and 2021:

(In thousands)	December 31, 2022			
	Carrying Amount	Fair Value		
		Level 1	Level 2	Level 3
Financial assets:				
Short-term investments ⁽¹⁾	\$ 217,342	\$ —	\$ 217,342	\$ —
(In thousands)	December 31, 2021			
	Carrying Amount	Fair Value		
		Level 1	Level 2	Level 3
Financial assets:				
Derivative instruments - forward-starting interest rate swap ⁽²⁾	\$ 884	\$ —	\$ 884	\$ —

(1) The carrying value of these investments is equal to their fair value due to the short-term nature of the investments as well as their credit quality.

(2) The fair values of our interest rate swap derivative instruments were estimated using advice from a third-party derivative specialist, based on contractual cash flows and observable inputs comprising interest rate curves and credit spreads, which are Level 2 measurements as defined under ASC 820.

The estimated fair values of our financial instruments at December 31, 2022 and 2021 for which fair value is only disclosed are as follows:

(In thousands)	December 31, 2022		December 31, 2021	
	Carrying Amount	Fair Value	Carrying Amount	Fair Value
Financial assets:				
Investments in leases - financing receivables ⁽¹⁾	\$ 16,740,770	\$ 17,871,771	\$ 2,644,824	\$ 3,104,337
Investments in loans ⁽²⁾	685,793	675,456	498,002	498,614
Cash and cash equivalents	208,933	208,933	739,614	739,614
Financial liabilities:				
Debt				
Revolving Credit Facility	\$ —	\$ —	\$ —	\$ —
Delayed Draw Term Loan	—	—	—	—
Senior Unsecured Notes ⁽³⁾	13,739,675	13,020,636	4,694,523	4,955,000

(1) These investments represent the JACK Master Lease, the Harrah's Call Properties, the MGM Master Lease and the Foundation Master Lease. In relation to the JACK Master Lease and the Harrah's Call Properties, the fair value of these assets are based on significant "unobservable" market inputs and, as such, these fair value measurements are considered Level 3 of the fair value hierarchy. In relation to the MGM Master Lease and Foundation Master Lease, given the proximity of the date of our investment to the date of the financial statements, we determined that the fair value materially approximates the purchase price of the acquisition of these financial assets.

(2) These investments represent our investments in 11 senior secured and mezzanine loans. The fair value of these assets are based on significant "unobservable" market inputs and, as such, these fair value measurements are considered Level 3 of the fair value hierarchy.

(3) The fair value of our debt instruments was estimated using quoted prices for identical or similar liabilities in markets that are not active and, as such, these fair value measurements are considered Level 2 of the fair value hierarchy.

Gain Upon Lease Modification in Connection with the Caesars Transaction

On July 20, 2020, in connection with the Caesars Transaction and as required under ASC 842, we reassessed the lease classifications of the Caesars Las Vegas Master Lease, Caesars Regional Master Lease and Joliet Lease and determined the leases meet the definition of a sales-type lease, including the land component of Caesars Palace Las Vegas. Prior to reassessment, such leases were classified as direct financing leases, with the exception of the land component of Caesars Palace Las Vegas, which was classified as an operating lease. As a result of the reclassifications of the Caesars Lease Agreements from

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direct financing and operating leases to sales-type leases, we recorded the investments at their estimated fair values as of the modification date and recognized a net gain equal to the difference in fair value of the asset and its carrying value immediately prior to the modification. As a result of the re-measurement of the Caesars Lease Agreements to fair value, we recognized a \$333.4 million gain upon lease modification in our Statement of Operations during the year ended December 31, 2020.

Note 10 — Commitments and Contingent Liabilities

Litigation

In the ordinary course of business, from time to time, we may be subject to legal claims and administrative proceedings. As of December 31, 2022, we are not subject to any litigation that we believe could have, individually or in the aggregate, a material adverse effect on our business, financial condition or results of operations, liquidity or cash flows.

Operating Lease Commitments

We are liable under various operating leases for: (i) land at the Cascata golf course, which expires in 2038 and has three 10-year extension options and (ii) certain corporate offices, the most material of which is our corporate headquarters in New York, NY, which expires in 2030 and has one five-year renewal option. The discount rates for the leases were determined based on the yield of our then current secured borrowings, adjusted to match borrowings of similar terms, and are between 5.3% and 5.5%. The weighted average remaining lease term as of December 31, 2022 under our operating leases was 13.6 years.

Total rental expense, included in golf operations and general and administrative expenses in our Statement of Operations and contractual rent expense under these agreements were as follows:

<i>(In thousands)</i>	Year Ended December 31,		
	2022	2021	2020
Rent expense	\$ 2,006	\$ 2,009	\$ 2,008
Contractual rent	\$ 1,901	\$ 1,881	\$ 1,600

The future minimum lease commitments relating to the base lease rent portion of noncancelable operating leases at December 31, 2022 are as follows:

<i>(In thousands)</i>	Lease Commitments
2023	\$ 1,937
2024	1,847
2025	1,908
2026	1,959
2027	1,979
Thereafter	15,138
Total minimum lease commitments	\$ 24,768
Discounting factor	8,682
Lease liability	\$ 16,086

Sub-Lease Commitments

Certain of our acquisitions necessitate that we assume, as the lessee, ground and use leases that are integral to the operations of the property, the cost of which is passed to our tenants through the Lease Agreements, which require the tenants to pay all costs associated with such ground and use leases and provide for their direct payment to the landlord.

We have determined we are the primary obligor of certain of such ground and use leases and, accordingly, have presented these leases on a gross basis on our Balance Sheet and Statement of Operations. The following is a summary of the leases, the lease classification of which has been determined to be either an operating sub-lease or finance sub-lease.

VICI PROPERTIES INC. AND VICI PROPERTIES L.P.
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

Operating Sub-Lease Commitments

With respect to the following information, we assessed the lease classification of certain of the sub-leases to our tenants through the Lease Agreements, and our obligation as primary obligor of the leases and determined that they meet the definition of an operating lease. Accordingly, we have recorded sub-lease right-of-use assets in Other assets and sub-lease liabilities in Other liabilities.

<i>(In thousands)</i>	December 31, 2022	December 31, 2021
Others assets (operating sub-leases)	\$ 28,953	\$ —
Other liabilities (operating sub-lease liabilities)	28,953	—

Total rental income and rental expense, included in Other income and Other expenses, respectively, in our Statement of Operations and contractual rent expense under these agreements were as follows:

<i>(In thousands)</i>	Year Ended December 31,		
	2022	2021	2020
Rental income and expense	\$ 5,707	\$ —	\$ —
Contractual rent	\$ 5,338	\$ —	\$ —

The future minimum lease commitments relating to the sub-leases at December 31, 2022 are as follows:

<i>(In thousands)</i>	Lease Commitments
2023	\$ 6,584
2024	6,553
2025	5,129
2026	3,934
2027	4,010
Thereafter	5,128
Total minimum lease commitments	\$ 31,338
Discounting factor	2,385
Finance sub-lease liability	\$ 28,953

The discount rate for the operating sub-leases were determined based on the yield of our secured borrowings at the time of assumption of the leases, adjusted to match borrowings of similar terms, and are between 2.6% and 2.9%. The weighted average remaining lease term as of December 31, 2022 under our finance leases was 6.9 years.

Finance Sub-Lease Commitments

With respect to the following information, we assessed the lease classification of certain of the sub-leases to our tenants through the Lease Agreements, and our obligation as primary obligor of the ground and use leases and determined that they meet the definition of a sales-type lease and finance lease. Accordingly, we have recorded a sales-type sub-lease in Other assets and finance sub-lease liability in Other liabilities.

The following table details the balance and location in our Balance Sheet of the ground and use sub-leases as of December 31, 2022 and December 31, 2021:

<i>(In thousands)</i>	December 31, 2022	December 31, 2021
Others assets (sales-type sub-leases, net)	\$ 764,509	\$ 273,970
Other liabilities (finance sub-lease liabilities)	784,259	280,510

Total rental income and rental expense, included in Other income and Other expenses, respectively, in our Statement of Operations and contractual rent expense under these agreements were as follows:

VICI PROPERTIES INC. AND VICI PROPERTIES L.P.
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

<i>(In thousands)</i>	Year Ended December 31,		
	2022	2021	2020
Rental income and expense	\$ 47,819	\$ 22,484	\$ 11,632
Contractual rent	\$ 52,191	\$ 26,350	\$ 17,983

The future minimum lease commitments relating to the ground and use sub-leases at December 31, 2022 are as follows:

<i>(In thousands)</i>	Lease Commitments
2023	\$ 58,769
2024	59,039
2025	59,174
2026	59,174
2027	59,174
Thereafter	2,555,535
Total minimum lease commitments	\$ 2,850,866
Discounting factor	2,066,607
Finance sub-lease liability	\$ 784,259

The discount rates for the finance ground and use sub-leases were determined based on the yield of our secured borrowings at the time of assumption of the leases, adjusted to match borrowings of similar terms, and are between 6% and 8%. The weighted average remaining lease term as of December 31, 2022 under our finance sub-leases was 54.7 years.

Note 11 — Stockholders' Equity

Stock

Authorized

As of December 31, 2022, we had the authority to issue 1,400,000,000 shares of stock, consisting of 1,350,000,000 shares of Common Stock, \$0.01 par value per share and 50,000,000 shares of Preferred Stock, \$0.01 par value per share.

Public Offerings

September 2021 Offering

On September 14, 2021, we completed a primary follow-on offering of 115,000,000 shares of common stock consisting of (i) 65,000,000 shares of common stock (including 15,000,000 shares sold pursuant to the exercise in full of the underwriters' option to purchase additional common stock) and (ii) 50,000,000 shares of common stock that were subject to forward sale agreements (as detailed in the table below), which required settlement by September 9, 2022, in each case at a public offering price of \$29.50 per share for an aggregate offering value of \$3.4 billion, resulting in net proceeds, after deduction of the underwriting discount and expenses, of \$1,859.0 million from the sale of the 65,000,000 shares (including 15,000,000 shares sold pursuant to the exercise in full of the underwriters' option to purchase additional common stock). We did not initially receive any proceeds from the sale of the 50,000,000 shares subject to the forward sale agreements, which were sold to the underwriters by the forward purchasers or their respective affiliates.

VICI PROPERTIES INC. AND VICI PROPERTIES L.P.
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

Forward Offerings

The following table summarizes our public offering activity subject to forward sale agreements during the years ended December 31, 2022 and 2021:

<i>(In thousands, except share and per share data)</i>	Effective Date ⁽¹⁾	Total Shares Sold ⁽²⁾	Public Offering Price Per Share	Aggregate Offering Value	Initial Forward Sale Price Per Share	Initial Net Value
January 2023 Offering	January 18, 2023	30,302,500	\$ 33.00	\$ 1,000,000	\$ 31.85	\$ 964,400
November 2022 Offering	November 8, 2022	18,975,000	30.90	580,000	30.57	579,600
September 2021 Offering	September 14, 2021	50,000,000	29.50	1,475,000	28.62	1,431,000
March 2021 Offering	March 8, 2021	69,000,000	29.00	2,001,000	28.06	1,935,000
Total		168,277,500	\$ 30.08	\$ 5,056,000	\$ 29.19	\$ 4,910,000

(1) The forward sale agreements generally require settlement within one-year of the trade date, which is January 16, 2024 with respect to the January 2023 Offering, and was (i) November 3, 2023 with respect to the November 2022 Offering, (ii) September 9, 2022 with respect to the September 2021 Offering and (iii) March 4, 2022 with respect to the March 2021 Offering (all three of which have since settled).

(2) The amounts are inclusive of shares sold pursuant to the exercise in full of the underwriters' option to purchase additional common stock, which includes (i) 3,952,500 shares with respect to the January 2023 Offering, (ii) 2,475,000 shares with respect to the November 2022 Offering and (iii) 9,000,000 shares with respect to the March 2021 Offering.

We did not receive any proceeds from the sale of shares at the time we entered into each of the respective forward sale agreements. We determined that the forward sale agreements meet the criteria for equity classification and, therefore, are exempt from derivative accounting. We recorded the forward sale agreements at fair value at inception, which we determined to be zero. Subsequent changes to fair value are not required under equity classification.

The following table summarizes settlement activity of the outstanding forward shares during the years ended December 31, 2022 and 2021:

<i>(In thousands, except share and per share data)</i>	Settlement Date	Settlement Type	Number of Shares Settled	Forward Share Price Upon Settlement	Total Net Proceeds
November 2022 Forward Sale Agreements	January 6, 2023	Physical	18,975,000	\$ 30.34	\$ 575,600
September 2021 Forward Sale Agreements	February 18, 2022	Physical	50,000,000	27.81	1,390,600
March 2021 Forward Sale Agreements	February 18, 2022	Physical	69,000,000	26.50	1,828,600
June 2020 Forward Sale Agreement	September 9, 2021	Physical	26,900,000	19.59	526,900
June 2020 Forward Sale Agreement	September 28, 2020	Physical	3,000,000	21.04	63,000
Total			167,875,000	\$ 26.12	\$ 4,384,700

At-the-Market Offering Program

In May 2021, we entered into an equity distribution agreement (the "ATM Agreement"), subsequently amended in November 2021, pursuant to which we may sell, from time to time, up to an aggregate sales price of \$1,000.0 million of our common stock (the "ATM Program"). Sales of common stock, if any, made pursuant to the ATM Program may be sold in negotiated transactions or transactions that are deemed to be "at the market" offerings, as defined in Rule 415 of the Securities Act. The ATM Program also provides that the Company may sell shares of its common stock under the ATM Program through forward sale contracts. Actual sales under the ATM Program will depend on a variety of factors including market conditions, the trading price of our common stock, our capital needs, and our determination of the appropriate sources of funding to meet such needs.

VICI PROPERTIES INC. AND VICI PROPERTIES L.P.
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

The following table summarizes our activity under the ATM Program during the year ended December 31, 2022, all of which were sold subject to a forward sale agreement (collectively, the “ATM Forward Sale Agreements”). During the year ended December 31, 2021, we did not sell any shares under the ATM Program.

<i>(In thousands, except share and per share data)</i>	Number of Shares	Weighted Average Share Price	Aggregate Value	Forward Sales Price Per Share	Aggregate Net Value
December 2022 ATM Forward Sale Agreement	6,317,805	\$ 33.62	\$ 212,400	\$ 32.96	\$ 208,300
August 2022 ATM Forward Sale Agreement	3,918,807	34.73	136,080	34.40	134,800
June 2022 ATM Forward Sale Agreement	11,380,980	32.28	367,400	31.64	360,000
Total	21,617,592	\$ 33.12	\$ 715,880	\$ 32.53	\$ 703,100

We did not receive any proceeds from the sale of shares at the time we entered into the ATM Forward Sale Agreements. We determined that the ATM Forward Sale Agreements meet the criteria for equity classification and, therefore, are exempt from derivative accounting. We recorded the ATM Forward Sale Agreements at fair value at inception, which we determined to be zero. Subsequent changes to fair value are not required under equity classification.

The following table summarizes our settlement activity of the outstanding forward shares under the ATM Program, all of which were settled subsequent to the year ended December 31, 2022.

<i>(In thousands, except share and per share data)</i>	Settlement Date	Settlement Type	Number of Shares Settled	Forward Share Price Upon Settlement	Total Net Proceeds
December 2022 ATM Forward Sale Agreement	January 6, 2023	Physical	6,317,805	\$ 32.99	\$ 208,402
August 2022 ATM Forward Sale Agreement	January 6, 2023	Physical	3,918,807	33.96	133,073
June 2022 ATM Forward Sale Agreement	January 3, 2023	Physical	11,380,980	31.20	355,168
Total			21,617,592	\$ 32.22	\$ 696,643

Common Stock Outstanding

The following table details the issuance of outstanding shares of common stock, including restricted common stock:

Common Stock Outstanding	2022	2021	2020
Beginning Balance January 1	628,942,092	536,669,722	461,004,742
Issuance of common stock in primary follow-on offerings	—	65,000,000	—
Issuance of common stock upon physical settlement of forward sale agreements ⁽¹⁾	119,000,000	26,900,000	68,000,000
Issuance of common stock in connection with the Merger	214,552,532	—	—
Issuance of common stock under the at-the-market offering program	—	—	7,500,000
Issuance of restricted and unrestricted common stock under the stock incentive program, net of forfeitures	601,939	372,370	164,980
Ending Balance December 31	963,096,563	628,942,092	536,669,722

⁽¹⁾ Excludes the 40,592,592 shares subject to the November 2022 Forward Sale Agreement and the ATM Forward Sale Agreements as such shares were not yet settled as of December 31, 2022.

VICI PROPERTIES INC. AND VICI PROPERTIES L.P.
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

Distributions

Dividends declared (on a per share basis) during the years ended December 31, 2022 and 2021 were as follows:

Year Ended December 31, 2022				
Declaration Date	Record Date	Payment Date	Period	Dividend
March 10, 2022	March 24, 2022	April 7, 2022	January 1, 2022 - March 31, 2022	\$ 0.3600
June 9, 2022	June 23, 2022	July 7, 2022	April 1, 2022 - June 30, 2022	\$ 0.3600
September 8, 2022	September 22, 2022	October 6, 2023	July 1, 2022 - September 30, 2022	\$ 0.3900
December 8, 2022	December 22, 2022	January 5, 2022	October 1, 2022 - December 31, 2022	\$ 0.3900

Year Ended December 31, 2021				
Declaration Date	Record Date	Payment Date	Period	Dividend
March 11, 2021	March 25, 2021	April 8, 2021	January 1, 2021 - March 31, 2021	\$ 0.3300
June 10, 2021	June 24, 2021	July 8, 2021	April 1, 2021 - June 30, 2021	\$ 0.3300
August 4, 2021	September 24, 2021	October 7, 2021	July 1, 2021 - September 30, 2021	\$ 0.3600
December 9, 2021	December 23, 2021	January 6, 2022	October 1, 2021 - December 31, 2021	\$ 0.3600

Note 12 — Earnings Per Share and Earning Per Unit

Earnings Per Share

Basic earnings per share is computed by dividing net income attributable to common stockholders by the weighted-average number of shares of common stock outstanding during the period, excluding net income attributable to participating securities (unvested restricted stock awards). Diluted earnings per share reflects the additional dilution for all potentially dilutive securities such as stock options, unvested restricted shares, unvested performance-based restricted shares and the shares to be issued by us upon settlement of any outstanding forward sale agreements for the period such dilutive security is outstanding. The shares issuable upon settlement of any outstanding forward sale agreements, as described in [Note 11 - Stockholders' Equity](#), are reflected in the diluted earnings per share calculations using the treasury stock method for the period outstanding prior to settlement. Under this method, the number of shares of our common stock used in calculating diluted earnings per share is deemed to be increased by the excess, if any, of the number of shares of common stock that would be issued upon full physical settlement of the shares under any outstanding forward sale agreements for the period prior to settlement over the number of shares of common stock that could be purchased by us in the market (based on the average market price during the period prior to settlement) using the proceeds receivable upon full physical settlement (based on the adjusted forward sales price immediately prior to settlement).

The following tables reconcile the weighted-average shares of common stock outstanding used in the calculation of basic earnings per share to the weighted-average shares of common stock outstanding used in the calculation of diluted earnings per share:

(In thousands)	Year Ended December 31,		
	2022	2021	2020
Determination of shares:			
Weighted-average shares of common stock outstanding	877,508	564,467	506,141
Assumed conversion of restricted stock	955	924	412
Assumed settlement of forward sale agreements	1,213	11,675	4,356
Diluted weighted-average shares of common stock outstanding	879,676	577,066	510,909

VICI PROPERTIES INC. AND VICI PROPERTIES L.P.
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

	Year Ended December 31,		
	2022	2021	2020
<i>(In thousands, except per share data)</i>			
Basic:			
Net income attributable to common stockholders	\$ 1,117,635	\$ 1,013,851	\$ 891,674
Weighted-average shares of common stock outstanding	877,508	564,467	506,141
Basic EPS	\$ 1.27	\$ 1.80	\$ 1.76
Diluted:			
Net income attributable to common stockholders	\$ 1,117,635	\$ 1,013,851	\$ 891,674
Diluted weighted-average shares of common stock outstanding	879,676	577,066	510,909
Diluted EPS	\$ 1.27	\$ 1.76	\$ 1.75

Earnings Per Unit

The following section presents the basic earnings per unit (“EPU”) and diluted EPU of VICI OP, our operating partnership and the direct parent and 100% interest holder in VICI LP. VICI LP’s interests are not expressed in units. However, given that VICI OP has a unit ownership structure and the financial information of VICI OP is substantially identical with that of VICI LP, we have elected to present the EPU of VICI OP. Basic EPU is computed by dividing net income attributable to partners’ capital by the weighted-average number of units outstanding during the period. In accordance with the VICI OP limited liability company agreement, for each share of common stock issued at VICI, a corresponding unit is issued by VICI OP. Accordingly, diluted EPU reflects the additional dilution for all potentially dilutive units resulting from potentially dilutive VICI stock issuances, such as options, unvested restricted stock awards, unvested performance-based restricted stock unit awards and the units to be issued by us upon settlement of any outstanding forward sale agreements of VICI for the period such dilutive security is outstanding. The units issuable upon settlement of any outstanding forward sale agreements of VICI are reflected in the diluted EPU calculations using the treasury stock method for the period outstanding prior to settlement. Under this method, the number of units used in calculating diluted EPU is deemed to be increased by the excess, if any, of the number of units that would be issued upon full physical settlement of the units under any outstanding forward sale agreements for the period prior to settlement over the number of shares of VICI common stock that could be purchased by us in the market (based on the average market price during the period prior to settlement) using the proceeds receivable upon full physical settlement (based on the adjusted forward sales price immediately prior to settlement). Upon VICI’s physical settlement of the shares of VICI common stock under the outstanding forward sale agreement, the delivery of shares of VICI common stock resulted in an increase in the number of VICI OP units outstanding and resulting dilution to EPU.

The following tables reconcile the weighted-average units outstanding used in the calculation of basic EPU to the weighted-average units outstanding used in the calculation of diluted EPU:

	Year Ended December 31,		
	2022	2021	2020
<i>(In thousands)</i>			
Determination of units:			
Weighted-average units outstanding	885,786	564,467	506,141
Assumed conversion of VICI restricted stock	955	924	412
Assumed settlement of VIC forward sale agreements	1,213	11,675	4,356
Diluted weighted-average units outstanding	887,953	577,066	510,909

VICI PROPERTIES INC. AND VICI PROPERTIES L.P.
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

<i>(In thousands, except per share data)</i>	Year Ended December 31,		
	2022	2021	2020
Basic:			
Net income attributable to partners	\$ 1,118,471	\$ 1,008,534	\$ 889,608
Weighted-average units outstanding	885,786	564,467	506,141
Basic EPU	\$ 1.26	\$ 1.79	\$ 1.76
Diluted:			
Net income attributable to partners	\$ 1,118,471	\$ 1,008,534	\$ 889,608
Diluted weighted-average units outstanding	887,953	577,066	510,909
Diluted EPU	\$ 1.26	\$ 1.75	\$ 1.74

Note 13 — Stock-Based Compensation

The 2017 Stock Incentive Plan (the “Plan”) is designed to provide long-term equity-based compensation to our directors and employees. It is administered by the Compensation Committee of the Board of Directors. Awards under the Plan may be granted with respect to an aggregate of 12,750,000 shares of common stock and may be issued in the form of: (a) incentive stock options, (b) non-qualified stock options, (c) stock appreciation rights, (d) dividend equivalent rights, (e) restricted stock, (f) restricted stock units or (g) unrestricted stock. In addition, the Plan limits the total number of shares of common stock with respect to which awards may be granted to any employee or director during any one calendar year. At December 31, 2022, 10,890,794 shares of common stock remained available for issuance by us as equity awards under the Plan.

Time-Based Restricted Stock

During the years ended December 31, 2022, 2021 and 2020, the Company granted approximately 384,000, 172,000, and 179,000 shares of restricted stock, respectively, under the Plan, respectively, subject to vesting restrictions based on service. Such restricted time-based stock awards vest ratably on an annual basis over a service period of one to three years. The number of shares granted was determined based on the 10-day volume weighted average price using the 10 trading days immediately preceding the grant date.

Performance-Based Restricted Stock Units

During the years ended December 31, 2022, 2021 and 2020 the Company granted approximately 336,000, 188,000, and 239,000 restricted stock units, respectively, at target level of performance under the Plan subject to vesting restrictions based on specified absolute and relative total stockholder return goals measured over a three-year performance period. We used a Monte Carlo Simulation (risk-neutral approach) to determine the number of shares that may be earned and vested pursuant to the award as these awards were deemed to have a market condition. The risk-free interest rate assumptions used in the Monte Carlo Simulation were determined based on the zero-coupon risk-free rate of 0.2% - 2.4% and an expected price volatility of 13.8% - 35.0%. The expected price volatility was calculated based on both historical and implied volatility.

The following table details the stock-based compensation expense recorded as General and administrative expense in the Statement of Operations:

<i>(In thousands)</i>	Year Ended December 31,		
	2022	2021	2020
Stock-based compensation expense	\$ 12,986	\$ 9,371	\$ 7,388

VICI PROPERTIES INC. AND VICI PROPERTIES L.P.
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

The following table details the activity of our incentive stock and time-based restricted stock and performance-based restricted stock units:

<i>(In thousands, except for per share data)</i>	Incentive and Time-Based Restricted Stock		Performance-Based Restricted Stock Units	
	Stock	Weighted Average Grant Date Fair Value	Stock Units	Weighted Average Grant Date Fair Value
Outstanding as of December 31, 2019	310,470	\$ 21.58	291,003	\$ 20.71
Granted	183,744	23.56	239,437	19.90
Vested	(144,694)	20.21	—	—
Forfeited	(24,655)	21.21	—	—
Canceled	—	—	—	—
Outstanding as of December 31, 2020	324,865	23.34	530,440	20.35
Granted	176,023	18.79	318,312	16.85
Vested	(177,120)	19.19	(220,084)	18.39
Forfeited	(23,737)	19.58	(40,534)	18.39
Canceled	—	—	—	—
Outstanding as of December 31, 2021	300,031	24.72	588,134	19.32
Granted	389,715	28.84	489,207	27.03
Vested	(167,465)	25.91	(227,166)	22.68
Forfeited	(14,942)	25.46	(80,586)	22.68
Canceled	—	—	—	—
Outstanding as of December 31, 2022	507,339	\$ 27.47	769,589	\$ 22.88

As of December 31, 2022, there was \$17.8 million of unrecognized compensation cost related to non-vested stock-based compensation arrangements under the Plan. This cost is expected to be recognized over a weighted average period of 1.9 years.

Note 14 — Income Taxes

We conduct our operations as a REIT for U.S. federal income tax purposes. U.S. federal income tax law generally requires that a REIT distribute annually at least 90% of its REIT taxable income, without regard to the deduction for dividends paid and excluding net capital gains, and that it pays taxes at regular corporate income tax rates to the extent that it annually distributes less than 100% of its taxable income. We intend to meet those requirements and as a result, we generally will not be subject to federal income tax except for the TRS operations.

The TRS operations (represented by the four golf course businesses) are able to engage in activities resulting in income that would not be qualifying income for a REIT. As a result, certain of our activities which occur within our TRS operations are subject to federal and state income taxes. Accordingly, our tax provision and deferred tax analysis are primarily from the results of TRS activities.

The composition of our income tax expense (benefit) was as follows:

<i>(In thousands)</i>	Year Ended December 31,								
	2022			2021			2020		
	Current	Deferred	Total	Current	Deferred	Total	Current	Deferred	Total
Federal	\$ 1,758	\$ 469	\$ 2,227	\$ 1,066	\$ 358	\$ 1,424	\$ 381	\$ 148	\$ 529
State	658	(9)	649	1,475	(12)	1,463	299	3	302
Income tax expense	\$ 2,416	\$ 460	\$ 2,876	\$ 2,541	\$ 346	\$ 2,887	\$ 680	\$ 151	\$ 831

VICI PROPERTIES INC. AND VICI PROPERTIES L.P.
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

At December 31, 2022 and 2021, the net effects of temporary differences that gave rise to significant portions of the deferred tax assets and deferred tax liabilities were:

<i>(In thousands)</i>	December 31, 2022	December 31, 2021
Deferred tax assets:		
Lease liability	\$ 2,310	\$ 2,375
Accruals, reserves and other	221	32
Total deferred tax assets	2,531	2,407
Deferred tax liabilities:		
Land, buildings and equipment, net	(4,560)	(3,911)
Right of use asset	(2,310)	(2,375)
Total deferred tax liabilities	(6,870)	(6,286)
Net deferred tax liability	\$ (4,339)	\$ (3,879)

The following table reconciles our effective income tax rate to the historical federal statutory rate of 21% for the years ended December 31, 2022, 2021 and 2020:

<i>(\$ in thousands)</i>	Year Ended December 31,					
	2022		2021		2020	
	Amount	Percent	Amount	Percent	Amount	Percent
Federal income tax expense at statutory rate	\$ 239,220	21.0 %	\$ 215,469	21.0 %	\$ 188,378	21.0 %
REIT income not subject to federal income tax	(237,069)	(20.8)	(214,037)	(20.9)	(187,839)	(20.9)
Pre-tax gain attributable to taxable subsidiaries	2,151	0.2	1,432	0.1	539	0.1
State income taxes, net of federal benefits	648	0.1	1,444	0.1	296	—
Non-deductible expenses and other	77	—	11	—	(4)	—
Income tax expense	\$ 2,876	0.3 %	\$ 2,887	0.2 %	\$ 831	0.1 %

We declared dividends of \$1.500, \$1.380 and \$1.255 per common share during the years ended December 31, 2022, 2021 and 2020, respectively. For U.S. federal income tax purposes, the portion of the dividends allocated to stockholders for the years ended December 31, 2022, 2021 and 2020 are characterized as follows:

<i>(\$ per share)</i>	Year Ended December 31,			
	2022	2021	2020	
Ordinary dividends	\$ 1.5787	\$ 0.7108	\$ 1.2225	
Section 199A dividends ⁽¹⁾	\$ 1.5787	\$ 0.7108	\$ 1.2225	
Non-dividend distribution	\$ —	\$ 0.6392	\$ —	

⁽¹⁾ These amounts are a subset of, and are included in, the ordinary dividend amounts.

As of December 31, 2022, we had NOLs of \$151.6 million, generated by our REIT, that will expire in 2029, unless they are utilized by us prior to expiration.

As of December 31, 2022, the 2019, 2020, and 2021 tax years remain subject to examination by federal, state and local tax authorities. The tax filings for tax year 2022 have not yet been filed, and once made, will be subject to examination by taxing authorities for a period of three years.

VICI PROPERTIES INC.
AMENDED AND RESTATED BYLAWS

ARTICLE I

OFFICES

Section 1. PRINCIPAL OFFICE. The principal office of VICI Properties Inc. (the “Company”) in the State of Maryland shall be located at such place as the board of directors of the Company (the “Board of Directors”) may designate.

Section 2. ADDITIONAL OFFICES. The Company may have additional offices, including a principal executive office, at such places as the Board of Directors may from time to time determine or the business of the Company may require.

ARTICLE II

MEETINGS OF STOCKHOLDERS

Section 1. PLACE. All meetings of stockholders shall be held at the principal executive office of the Company or at such other place as shall be set in accordance with these Bylaws and stated in the notice of the meeting.

Section 2. ANNUAL MEETING. An annual meeting of stockholders for the election of directors and the transaction of any business within the powers of the Company shall be held on the date and at the time and place set by the Board of Directors.

Section 3. SPECIAL MEETINGS.

(a) General. Each of the chair of the board, chief executive officer, president and Board of Directors may call a special meeting of stockholders. Except as provided in Section 3(b)(4) of this Article II, a special meeting of stockholders shall be held on the date and at the time and place set by the chair of the board, chief executive officer, president or Board of Directors, whoever has called the meeting. Subject to Section 3(b) of this Article II, a special meeting of stockholders shall also be called by the secretary of the Company to act on any matter that may properly be considered at a meeting of stockholders upon the written request of stockholders entitled to cast not less than a majority of all the votes entitled to be cast on such matter at such meeting.

(b) Stockholder-Requested Special Meetings. (1) Any stockholder of record seeking to have stockholders request a special meeting shall, by sending written notice to the secretary (the “Record Date Request Notice”) by registered mail, return receipt requested, request the Board of Directors to fix a record date to determine the stockholders entitled to request a special meeting (the “Request Record Date”). The Record Date Request Notice shall set forth the purpose of the meeting and the matters proposed to be acted on at it, shall be signed by one or more stockholders of record as of the date of signature (or their agents duly authorized in a writing accompanying the Record Date Request Notice), shall bear the date of signature of each such stockholder (or such agent) and shall set forth all information relating to each such stockholder and each matter proposed to be acted on at the meeting that would be required to be disclosed in connection with the solicitation of proxies for the election of directors or the election of each such individual, as applicable, in an election contest (even if an election contest is not involved), or would otherwise be required in connection with such a solicitation, in each case

pursuant to Regulation 14A (or any successor provision) under the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder (the “Exchange Act”). Upon receiving the Record Date Request Notice, the Board of Directors may fix a Request Record Date. The Request Record Date shall not precede and shall not be more than ten days after the close of business on the date on which the resolution fixing the Request Record Date is adopted by the Board of Directors. If the Board of Directors, within ten days after the date on which a valid Record Date Request Notice is received, fails to adopt a resolution fixing the Request Record Date, the Request Record Date shall be the close of business on the tenth day after the first date on which a Record Date Request Notice is received by the secretary.

(2) In order for any stockholder to request a special meeting to act on any matter that may properly be considered at a meeting of stockholders, one or more written requests for a special meeting (collectively, the “Special Meeting Request”) signed by stockholders of record (or their agents duly authorized in a writing accompanying the request) as of the Request Record Date entitled to cast not less than a majority of all of the votes entitled to be cast on such matter at such meeting (the “Special Meeting Percentage”) shall be delivered to the secretary. In addition, the Special Meeting Request shall (a) set forth the purpose of the meeting and the matters proposed to be acted on at it (which shall be limited to those lawful matters set forth in the Record Date Request Notice received by the secretary), (b) bear the date of signature of each such stockholder (or such agent) signing the Special Meeting Request, (c) set forth (i) the name and address, as they appear in the Company’s books, of each stockholder signing such request (or on whose behalf the Special Meeting Request is signed), (ii) the class, series and number of all shares of stock of the Company which are owned (beneficially or of record) by each such stockholder and (iii) the nominee holder for, and number of, shares of stock of the Company owned beneficially but not of record by such stockholder, (d) be sent to the secretary by registered mail, return receipt requested, and (e) be received by the secretary within 60 days after the Request Record Date. Any requesting stockholder (or agent duly authorized in a writing accompanying the revocation of the Special Meeting Request) may revoke his, her or its request for a special meeting at any time by written revocation delivered to the secretary.

(3) The secretary shall inform the requesting stockholders of the reasonably estimated cost of preparing and mailing or delivering the notice of the requested special meeting (including the Company’s proxy materials). The secretary shall not be required to call a special meeting upon stockholder request and such meeting shall not be held unless, in addition to the documents required by Section 3(b)(2) of this Article II, the secretary receives payment of such reasonably estimated cost prior to the preparation and mailing or delivery of such notice of the meeting.

(4) In the case of any special meeting called by the secretary upon the request of stockholders (a “Stockholder-Requested Meeting”), such meeting shall be held on such date and at such place and time as may be designated by the Board of Directors; *provided*, however, that the date of any Stockholder-Requested Meeting shall be not more than 90 days after the record date for such meeting (the “Meeting Record Date”); and *provided further* that if the Board of Directors fails to designate, within ten days after the date that a valid Special Meeting Request is deemed to have been received, in accordance with Section 3(b)(6) of this Article II, by the secretary (the “Delivery Date”), a date and time for a Stockholder-Requested Meeting, then such meeting shall be held at 2:00 p.m., local time, on the 90th day after the Meeting Record Date or, if such 90th day is not a Business Day (as defined below), on the first preceding Business Day; and *provided further* that in the event that the Board of Directors fails to designate a place for a Stockholder-Requested Meeting within ten days after the Delivery Date, then such meeting shall be held at the principal executive office of the Company. In fixing a date for a Stockholder-Requested Meeting, the Board of Directors may consider such factors as it deems relevant, including, without limitation, the nature of the matters to be considered, the facts and circumstances surrounding any request for the meeting and any plan of the Board of

Directors to call an annual meeting or a special meeting. In the case of any Stockholder-Requested Meeting, if the Board of Directors fails to fix a Meeting Record Date that is a date within 30 days after the Delivery Date, then the close of business on the 30th day after the Delivery Date shall be the Meeting Record Date. Notwithstanding anything to the contrary herein, the Board of Directors may revoke the notice for any Stockholder-Requested Meeting in the event that the requesting stockholders fail to comply with the provisions of Section 3(b)(3) of this Article II.

(5) If written revocations of the Special Meeting Request have been delivered to the secretary and the result is that stockholders of record (or their agents duly authorized in writing), as of the Request Record Date, entitled to cast less than the Special Meeting Percentage have delivered, and not revoked, requests for a special meeting on the matter to the secretary: (i) if the notice of meeting has not already been delivered, the secretary shall refrain from delivering the notice of the meeting and send to all requesting stockholders who have not revoked such requests written notice of any revocation of a request for a special meeting on the matter, or (ii) if the notice of meeting has been delivered and if the secretary first sends to all requesting stockholders who have not revoked requests for a special meeting on the matter written notice of any revocation of a request for the special meeting and written notice of the Company's intention to revoke the notice of the meeting or for the chair of the meeting to adjourn the meeting without action on the matter, (A) the secretary may revoke the notice of the meeting at any time before ten days before the commencement of the meeting or (B) the chair of the meeting may call the meeting to order and adjourn the meeting without acting on the matter. Any request for a special meeting received after a revocation by the secretary of a notice of a meeting shall be considered a request for a new special meeting.

(6) The chair of the board, chief executive officer, president or Board of Directors may appoint regionally or nationally recognized independent inspectors of elections to act as the agent of the Company for the purpose of promptly performing a ministerial review of the validity of any purported Special Meeting Request received by the secretary. For the purpose of permitting the inspectors to perform such review, no such purported Special Meeting Request shall be deemed to have been received by the secretary until the earlier of (i) five (5) Business Days after actual receipt by the secretary of such purported request and (ii) such date as the independent inspectors certify to the Company that the valid requests received by the secretary represent, as of the Request Record Date, stockholders of record entitled to cast not less than the Special Meeting Percentage. Nothing contained in this paragraph (6) shall in any way be construed to suggest or imply that the Company or any stockholder shall not be entitled to contest the validity of any request, whether during or after such five (5) Business Day period, or to take any other action (including, without limitation, the commencement, prosecution or defense of any litigation with respect thereto, and the seeking of injunctive relief in such litigation).

(7) Only such business shall be conducted at a Stockholder-Requested Meeting as shall have been set forth in and brought before the meeting pursuant to the Special Meeting Request with respect to such meeting.

(8) The chair of a special meeting shall, if the facts warrant, determine and declare to the meeting that business was not properly brought before the meeting in accordance with the provisions of this Section 3 and, if the chair should so determine, any such business not properly brought before the meeting shall not be transacted.

(9) For purposes of these Bylaws, "Business Day" shall mean any day other than a Saturday, a Sunday or a day on which banking institutions in New York City are authorized or obligated by law, regulation or executive order to close.

Section 4. NOTICE. Not less than ten nor more than 90 days before each meeting of stockholders, the secretary shall give to each stockholder entitled to vote at such meeting and to each stockholder not entitled to vote who is entitled to notice of the meeting notice in writing or by electronic transmission stating the time and place of the meeting and, in the case of a special meeting or as otherwise may be required by any statute, the purpose for which the meeting is called, by mail, by presenting it to such stockholder personally, by leaving it at the stockholder's residence or usual place of business, by electronic transmission or by any other means permitted by Maryland law. If mailed, such notice shall be deemed to be given when deposited in the United States mail addressed to the stockholder at the stockholder's address as it appears on the records of the Company, with postage thereon prepaid. If transmitted electronically, such notice shall be deemed to be given when transmitted to the stockholder by an electronic transmission to any address or number of the stockholder at which the stockholder receives electronic transmissions. The Company may give a single notice to all stockholders who share an address, which single notice shall be effective as to any stockholder at such address, unless such stockholder objects to receiving such single notice or revokes a prior consent to receiving such single notice. Failure to give notice of any meeting to one or more stockholders, or any irregularity in such notice, shall not affect the validity of any meeting fixed in accordance with this Article II or the validity of any proceedings at any such meetings.

Subject to Section 11(a) of this Article II, no business may be transacted at an annual meeting of the stockholders, other than business that is either specified in the notice of meeting (or any supplement thereto) given by or at the direction of the Board of Directors (or any duly authorized committee thereof) or any business not specified in the notice of meeting but otherwise properly brought before the annual meeting by or at the direction of the Board of Directors (or any duly authorized committee thereof). No business shall be transacted at a special meeting of stockholders except as specifically designated in the notice of meeting. The Company may postpone or cancel a meeting of stockholders by making a public announcement (as defined in Section 11(c)(3) of this Article II) of such postponement or cancellation prior to the meeting. Notice of the date, time and place to which the meeting is postponed shall be given not less than ten days prior to such date and otherwise in the manner set forth in this Section 4.

Whenever written notice is required to be given to any stockholder under the provisions of the Maryland General Corporation Law, or any successor statute (the "MGCL"), the charter of the Company (the "Charter") or these Bylaws, the Company shall also provide such written notice to holders of limited liability company interests of VICI Properties OP LLC, a Delaware limited liability company.

Section 5. ORGANIZATION AND CONDUCT. Every meeting of stockholders shall be conducted by an individual appointed by the Board of Directors to be chair of the meeting or, in the absence of such appointment or appointed individual, by the chair of the board or, in the case of a vacancy in the office or absence of the chair of the board, by one of the following officers present at the meeting in the following order: the vice chair of the board, if there is one, the chief executive officer, if there is one, the president, the vice presidents in their order of rank and seniority, the secretary, or, in the absence of such officers, a chair chosen by the stockholders by the vote of a majority of the votes cast by stockholders present in person or by proxy. The secretary, or, in the secretary's absence, an assistant secretary, or, in the absence of both the secretary and assistant secretaries, an individual appointed by the Board of Directors or, in the absence of such appointment, an individual appointed by the chair of the meeting shall act as secretary. In the event that the secretary presides at a meeting of stockholders, an assistant secretary, or, in the absence of all assistant secretaries, an individual appointed by the Board of Directors or the chair of the meeting, shall record the minutes of the meeting. The order of business and all other matters of procedure at any meeting of stockholders shall be determined by the chair of the meeting. The chair of the meeting may prescribe such rules, regulations and procedures and take such action as, in the discretion of the chair and without any action by the

stockholders, are appropriate for the proper conduct of the meeting, including, without limitation, (a) restricting admission to the time set for the commencement of the meeting, (b) limiting attendance at the meeting to stockholders of record of the Company, their duly authorized proxies and such other individuals as the chair of the meeting may determine, (c) limiting participation at the meeting on any matter to stockholders of record of the Company entitled to vote on such matter, their duly authorized proxies and such other individuals as the chair of the meeting may determine, (d) limiting the time allotted to questions or comments, (e) determining when and for how long the polls should be opened and when the polls should be closed, (f) maintaining order and security at the meeting, (g) removing any stockholder or any other individual who refuses to comply with meeting procedures, rules or guidelines as set forth by the chair of the meeting, (h) concluding the meeting or recessing or adjourning the meeting, whether or not a quorum is present, to a later date and time and at a place announced at the meeting, and (i) complying with any state and local laws and regulations concerning safety and security. Unless otherwise determined by the chair of the meeting, meetings of stockholders shall not be required to be held in accordance with the rules of parliamentary procedure.

Section 6. QUORUM. A meeting of stockholders of the Company shall not be organized for the transaction of business unless a quorum is present. At any meeting of stockholders, the presence in person or by proxy of stockholders entitled to cast a majority of all the votes entitled to be cast at such meeting on any matter shall constitute a quorum; but this Section 6 shall not affect any requirement under any statute or the Charter for the vote necessary for the approval of any matter. If such quorum is not established at any meeting of the stockholders, the chair of the meeting may adjourn the meeting *sine die* or from time to time to a date not more than 120 days after the original record date without notice other than announcement at the meeting. At such adjourned meeting at which a quorum shall be present, any business may be transacted which might have been transacted at the meeting as originally notified.

The stockholders present either in person or by proxy, at a meeting which has been duly called and at which a quorum has been established, may continue to transact business until adjournment, notwithstanding the withdrawal from the meeting of enough stockholders to leave fewer than would be required to establish a quorum.

Section 7. VOTING. Except as otherwise provided in the Charter with respect to directors to be elected by the holders of any class or series of preferred stock of the Company and in these Bylaws with respect to the filling of vacancies on the Board of Directors, each director to be elected by the stockholders of the Company shall be elected by the affirmative vote of the majority of the votes cast with respect to that director's election at any meeting for the election of directors at which a quorum is present; provided, however, that if the number of director nominees exceeds the number of directors to be elected at such meeting (a "contested election"), each of the directors to be elected at such meeting shall be elected by a plurality of all votes cast at such meeting. For purposes hereof, a majority of the votes cast means the number of votes cast "for" a director nominee must exceed the number of votes cast "against" that director nominee, with abstentions and broker non-votes not counted as a vote cast either "for" or "against" that director nominee. A director nominee who is not already serving as a director and who does not receive a majority vote in an uncontested election shall not be elected. A nominee who is already serving as a director and who does not receive a majority vote in an uncontested election, shall resign from the Board of Directors. Any such resignation shall take effect immediately upon its receipt and the acceptance of such resignation shall not be necessary to make it effective. Any vacancy resulting from the resignation of a director under this Section 7 may be filled by the Board of Directors in accordance with Section 12 of Article III of these Bylaws. The Nominating and Governance Committee will consider promptly whether to fill the office of a nominee who has tendered a resignation and make a recommendation to the Board of Directors about filling the office. The Board of Directors will act on the Nominating and

Governance Committee's recommendation within 90 days after the certification of the stockholder vote and will disclose publicly its decision. Each share entitles the holder thereof to vote for as many individuals as there are directors to be elected and for whose election the holder is entitled to vote. A majority of the votes cast at a meeting of stockholders duly called and at which a quorum is present shall be sufficient to approve any other matter which may properly come before the meeting, unless more than a majority of the votes cast is required by statute or by the Charter. Unless otherwise provided by statute or by the Charter, each outstanding share of stock, regardless of class, entitles the holder thereof to cast one vote on each matter submitted to a vote at a meeting of stockholders. Voting on any question or in any election may be *viva voce* unless the chair of the meeting shall order that voting be by ballot or otherwise.

Section 8. PROXIES. A holder of record of shares of stock of the Company may cast votes in person or by proxy executed by the stockholder or by the stockholder's duly authorized agent in any manner permitted by law. The presence of, or vote or other action at a meeting of stockholders by a proxy of, a stockholder entitled to vote shall constitute the presence of, or vote or action by, the stockholder. Such proxy or evidence of authorization of such proxy shall be filed with the secretary of the Company before or at the meeting. A stockholder or the stockholder's duly authorized agent may execute or authenticate a writing or transmit an electronic message authorizing another person to act for the stockholder by proxy. An electronic transmission from a stockholder or duly authorized agent, or a photographic, facsimile or similar reproduction of a writing executed by a stockholder or the stockholder's duly authorized agent, may be treated as properly executed or authenticated for purposes of this Section 8 and shall be so treated if it sets forth or utilizes a confidential and unique identification number or other mark furnished by the Company to the stockholder for the purposes of a particular meeting. No proxy shall be valid more than eleven months after its date unless otherwise provided in the proxy. Where a stockholder entitled to vote has named two or more proxies and such proxies are present, the Company shall, unless otherwise expressly provided in the proxy, accept as the vote of all shares represented thereby the vote cast by a majority of them and, if a majority of the proxies cannot agree whether the shares represented shall be voted or upon the manner of voting the shares, the voting of the shares shall be divided equally among those proxies.

A proxy, unless the proxy states that it is irrevocable and the proxy is coupled with an interest, shall be revocable at will, notwithstanding any other agreement or any provision in the proxy to the contrary, but the revocation of a proxy shall not be effective until notice thereof has been given to the secretary of the Company in writing or by electronic transmission. A proxy shall not be revoked by the death or incapacity of the maker unless, before the vote is counted or the authority is exercised pursuant to such proxy, written notice of the death or incapacity is given to the secretary of the Company.

The Company shall pay the reasonable expenses of solicitation of votes or proxies of stockholders by or on behalf of the Board of Directors or its nominees for election to the Board of Directors, including, without limitation, solicitation by professional proxy solicitors and otherwise.

Any stockholder directly or indirectly soliciting proxies from other stockholders must use a proxy card color other than white, which shall be reserved for exclusive use by the Board of Directors.

Section 9. VOTING OF STOCK BY CERTAIN HOLDERS. Stock of the Company registered in the name of a corporation, limited liability company, partnership, joint venture, trust or other entity, if entitled to be voted, may be voted by the president or a vice president, managing member, manager, general partner or trustee thereof, as the case may be, or a proxy appointed by any of the foregoing individuals, unless some other person who has been appointed to vote such stock pursuant to a bylaw or a resolution of the governing body of such

corporation or other entity or agreement of the partners of a partnership presents a certified copy of such bylaw, resolution or agreement, in which case such person may vote such stock. Any trustee or fiduciary, in such capacity, may vote stock registered in such trustee's or fiduciary's name, either in person or by proxy.

Shares of stock of the Company directly or indirectly owned by it shall not be voted at any meeting and shall not be counted in determining the total number of outstanding shares entitled to be voted at any given time, unless they are held by it in a fiduciary capacity, in which case they may be voted and shall be counted in determining the total number of outstanding shares at any given time.

The Board of Directors may adopt by resolution a procedure by which a stockholder may certify in writing to the Company that any shares of stock registered in the name of the stockholder are held for the account of a specified person other than the stockholder. The resolution shall set forth the class of stockholders who may make the certification, the purpose for which the certification may be made, the form of certification and the information to be contained in it; if the certification is with respect to a record date, the time after the record date within which the certification must be received by the Company; and any other provisions with respect to the procedure which the Board of Directors considers necessary or desirable. On receipt by the Company of such certification, the person specified in the certification shall be regarded as, for the purposes set forth in the certification, the holder of record of the specified stock in place of the stockholder who makes the certification.

Section 10. INSPECTORS. The Board of Directors or the chair of the meeting may appoint, before or at the meeting, one or more inspectors, who need not be stockholders of the Company, for the meeting and any successor to the inspector. A person who is a candidate for an office to be filled at a meeting may not serve as an inspector. Except as otherwise provided by the chair of the meeting, the inspectors, if any, shall (i) determine the number of shares of stock represented at the meeting, in person or by proxy, and the validity and effect of proxies, (ii) receive and tabulate all votes, ballots or consents, (iii) report such tabulation to the chair of the meeting, (iv) hear and determine all challenges and questions arising in connection with the right to vote, and (v) do such acts as are proper to fairly conduct the election or vote. The inspectors of election shall perform their duties impartially, in good faith, to the best of their ability and as expeditiously as is practical. Each such report shall be in writing and signed by the inspector or by a majority of them if there is more than one inspector acting at such meeting. On request of the chair of the meeting or of any stockholder, the inspectors shall make a report in writing of any challenge or question or matter determined by them, and execute a certificate of any fact found by them. Any report made or certificate executed by them shall be prima facie evidence of the facts stated therein. If there is more than one inspector, the report of a majority shall be the report of the inspectors. The report of the inspector or inspectors on the number of shares represented at the meeting and the results of the voting shall be *prima facie* evidence thereof.

Section 11. ADVANCE NOTICE OF STOCKHOLDER NOMINEES FOR DIRECTOR AND OTHER STOCKHOLDER PROPOSALS.

(a) Annual Meetings of Stockholders. (1) Nominations of individuals for election to the Board of Directors and the proposal of other business to be considered by the stockholders may be made at an annual meeting of stockholders (i) pursuant to the Company's notice of meeting, (ii) by or at the direction of the Board of Directors, (iii) by any stockholder of the Company present in person or by proxy who (A) was a stockholder of record both at the time of giving of notice by the stockholder as provided for in this Section 11(a) and at the time of the annual meeting (and any postponement or adjournment thereof), (B) is entitled to vote at the meeting in the election of each individual so nominated or on any such other business, (C) is not an Unsuitable Person (as defined in the Charter) and (D) who has complied with this Section

11(a) or (iv) solely with respect to the nomination of a director for election pursuant to and in compliance with Section 14 of this Article II of these Bylaws, by an Eligible Stockholder (as defined in Section 14 of this Article II).

(2) For any nomination or other business to be properly brought before an annual meeting by a stockholder pursuant to Section 11(a)(1)(iii) of this Article II, the stockholder must have (i) given timely notice thereof in writing to the secretary of the Company and any such other business must otherwise be a proper matter for action by the stockholders and (ii) complied in all respects with the requirements of Section 14 of the Exchange Act, including, without limitation, and to the extent applicable, the requirements of Rule 14a-19 (as such rule and regulations may be amended from time to time by the Securities and Exchange Commission (“SEC”), including any SEC staff interpretations related thereto). To be timely, a stockholder’s notice shall set forth all information required under this Section 11 and shall be delivered to the secretary at the principal executive office of the Company not earlier than the 150th day nor later than 5:00 p.m., Eastern Time, on the 120th day prior to the first anniversary of the date of the preceding year’s proxy statement; provided, however, that if the date of the annual meeting is advanced or delayed by more than 30 days from the first anniversary of the date of the preceding year’s annual meeting or if no annual meeting was held in the preceding year, then in order for notice by the stockholder to be timely, such notice must be so delivered not earlier than the 120th day prior to the date of such annual meeting and not later than 5:00 p.m., Eastern Time, on the later of the 90th day prior to the date of such annual meeting, as originally noticed, or the tenth day following the day on which public announcement of the date of such meeting is first made. The public announcement of a postponement or adjournment of an annual meeting shall not commence a new time period (or extend any time period) for the giving of a stockholder’s notice as described above. The number of nominees a stockholder may nominate for election at the annual meeting shall not exceed the number of directors to be elected at such annual meeting, and for the avoidance of doubt, no stockholder shall be entitled to make additional or substitute nominations following the expiration of the time periods set forth in this Section 11(a)(2).

(3) Such stockholder’s notice shall set forth:

(i) as to each individual whom the stockholder proposes to nominate for election or reelection as a director (each, a “Proposed Nominee”), all information relating to the Proposed Nominee that would be required to be disclosed in connection with the solicitation of proxies for the election of the Proposed Nominee as a director in an election contest (even if an election contest is not involved), or would otherwise be required in connection with such solicitation, in each case pursuant to Regulation 14A (or any successor provision) under the Exchange Act;

(ii) as to any other business that the stockholder proposes to bring before the meeting, a description of such business, the stockholder’s reasons for proposing such business at the meeting and any material interest in such business of such stockholder or any Stockholder Associated Person (as defined below), individually or in the aggregate, including any anticipated benefit to the stockholder or the Stockholder Associated Person therefrom;

(iii) as to the stockholder giving the notice, any Proposed Nominee and any Stockholder Associated Person,

(A) the class, series and number of all shares of stock or other securities of the Company or any affiliate thereof (collectively, the “Company Securities”), if any, which are owned (beneficially or of record) by such stockholder, Proposed Nominee or Stockholder Associated Person, the date on which each such Company Security was acquired and the investment intent of such acquisition, and any short interest (including, without

limitation, any opportunity to profit or share in any benefit from any decrease in the price of such stock or other security) in any Company Securities of any such person,

(B) the nominee holder for, and number of, any Company Securities owned beneficially but not of record by such stockholder, Proposed Nominee or Stockholder Associated Person,

(C) whether and the extent to which such stockholder, Proposed Nominee or Stockholder Associated Person, directly or indirectly (through brokers, nominees or otherwise), is subject to or during the last six months has engaged in any hedging, derivative or other transaction or series of transactions or entered into any other agreement, arrangement or understanding (including, without limitation, any short interest, any borrowing or lending of securities or any proxy or voting agreement), the effect or intent of which is to (I) manage risk or benefit of changes in the price of Company Securities for such stockholder, Proposed Nominee or Stockholder Associated Person or (II) increase or decrease the voting power of such stockholder, Proposed Nominee or Stockholder Associated Person in the Company or any affiliate thereof disproportionately to such person's economic interest in the Company Securities, and

(D) any substantial interest, direct or indirect (including, without limitation, any existing or prospective commercial, business or contractual relationship with the Company or any affiliate thereof), by security holdings or otherwise, of such stockholder, Proposed Nominee or Stockholder Associated Person, in the Company or any affiliate thereof, other than an interest arising from the ownership of Company Securities where such stockholder, Proposed Nominee or Stockholder Associated Person receives no extra or special benefit not shared on a *pro rata* basis by all other holders of the same class or series;

(iv) as to the stockholder giving the notice, any Stockholder Associated Person with an interest or ownership referred to in Section 11(a)(3)(ii) or Section 11(a)(3)(iii) of this Article II and any Proposed Nominee,

(A) the name and address of such stockholder, as they appear on the Company's stock ledger, and the current name and business address, if different, of each such Stockholder Associated Person and any Proposed Nominee, and

(B) the investment strategy or objective, if any, of such stockholder and each such Stockholder Associated Person who is not an individual and a copy of the prospectus, offering memorandum or similar document, if any, provided to investors or potential investors in such stockholder and each such Stockholder Associated Person;

(v) the name and address of any person who contacted or was contacted by the stockholder giving the notice or any Stockholder Associated Person about the Proposed Nominee or other business proposal prior to the date of such stockholder's notice;

(vi) to the extent known by the stockholder giving the notice, the name and address of any other stockholder supporting the Proposed Nominee for election or reelection as a director or the proposal of other business on the date of such stockholder's notice; and

(vii) a representation as to whether such stockholder or Stockholder Associated Person intends, or is part of a group (whether at, below or above 5% in beneficial ownership) that intends, to (i) deliver a proxy statement and/or form of proxy to holders (including any beneficial owners pursuant to Rule 14b-1 and Rule 14b-2 promulgated under the Exchange Act) of, in the case of a nomination, at least the percentage of the voting power of

stock issued and outstanding that is reasonably believed by such stockholder to be sufficient to elect each such nominee, or, in the case of a business proposal, at least the percentage of the voting power of stock issued and outstanding that is required to approve or adopt the proposal, (ii) otherwise solicit proxies from stockholders in support of such nomination or proposal, and/or (iii) solicit the holders of shares representing at least the percentage of the voting power of shares entitled to vote on the election of directors in support of director nominees other than the Company's nominees required pursuant to Rule 14a-19 promulgated under the Exchange Act.

(4) Such stockholder's notice shall, with respect to any Proposed Nominee, be accompanied by:

(i) a written questionnaire, completed and signed by the Proposed Nominee, with respect to the background and qualification of such Proposed Nominee and the background of any other person or entity on whose behalf the nomination is being made, which shall in any event include all information relating to the Proposed Nominee that would be required to be disclosed in connection with the solicitation of proxies for the election of the Proposed Nominee as a director in an election contest (even if an election contest is not involved), or would otherwise be required in connection with such solicitation, in each case pursuant to Regulation 14A (or any successor provision) under the Exchange Act and the rules thereunder, or would be required pursuant to the rules of any national securities exchange on which any securities of the Company are listed or over-the-counter market on which any securities of the Company are traded (the form of which questionnaire shall be provided by the Company upon written request of any stockholder of record identified by name within ten days after receiving such request);

(ii) the multi-jurisdictional personal disclosure form for the Proposed Nominee, completed and signed by such Proposed Nominee, together with all required exhibits and attachments thereto, in the form customarily required by Gaming Authorities (as defined in the Charter);

(iii) the written consent and agreement of each Proposed Nominee to (1) provide, within such time period specified by the Company, (A) all completed and signed applications for the Proposed Nominee together with all required exhibits thereto and in the form customarily required by Gaming Authorities and such additional information and authorizations necessary to enable the Company to comply with all applicable regulatory requirements and to respond fully to any suitability inquiry conducted under the executive, administrative, judicial and/or legislative rules, regulations, laws and orders of any jurisdiction to which the Company is then subject, and (B) such additional information concerning the Proposed Nominee as may reasonably be required by the Board of Directors to determine the eligibility of such Proposed Nominee to serve as an independent director of the Company, that could be material to a reasonable stockholder's understanding of the independence, or lack thereof, of such Proposed Nominee, and to evaluate whether the Proposed Nominee is an Unsuitable Person, (2) a background check to confirm the qualifications and character of the Proposed Nominee, to evaluate whether the Proposed Nominee is an Unsuitable Person, and to make such other determinations as the Board of Directors may deem appropriate or necessary and (3) being named in a proxy statement relating to the applicable meeting as a nominee and to serve as a director if elected; and

(iv) the written representation and agreement (in the form provided by the Company upon written request) of the Proposed Nominee that he or she (1) is not and will not become a party to (A) any agreement, arrangement or understanding with, and has not given any commitment or assurance to, any person or entity as to how such person, if elected as a director of the Company, will act or vote on any issue or question (a "Voting Commitment") that has not been disclosed to the Company, or (B) any Voting Commitment that

could limit or interfere with such person's ability to comply, if elected as a director of the Company, with such person's duties under applicable law, (2) is not and will not become a party to any agreement, arrangement or understanding with any person or entity other than the Company with respect to any direct or indirect compensation, reimbursement or indemnification (a "Compensation Arrangement") in connection with service or action as a director that has not been disclosed therein, and (3) in such person's individual capacity and on behalf of any person or entity on whose behalf the nomination is being made, would be in compliance, if elected as a director of the Company, and will comply, with all applicable publicly disclosed corporate governance, conflict of interest, confidentiality and stock ownership and trading policies and guidelines of the Company.

(5) Notwithstanding anything in this Section 11(a) to the contrary, in the event that the number of directors to be elected to the Board of Directors is increased, and there is no public announcement of such action at least 100 days prior to the first anniversary of the date of the proxy statement for the preceding year's annual meeting, a stockholder's notice required by this Section 11(a) shall also be considered timely, but only with respect to nominees for any new positions created by such increase, if it shall be delivered to the secretary at the principal executive office of the Company not later than 5:00 p.m., Eastern Time, on the tenth day following the day on which such public announcement is first made by the Company.

(6) If information submitted pursuant to this Section 11 by any stockholder proposing a nominee for election as a director or any proposal for other business at a meeting of stockholders shall be inaccurate in any material respect, such information may be deemed by the Company not to have been provided in accordance with this Section 11. Any such stockholder shall notify the Company of any inaccuracy or change (within two Business Days of becoming aware of such inaccuracy or change) in any such information. Upon written request by the secretary or the Board of Directors, any such stockholder shall provide, within five (5) Business Days of delivery of such request (or such other period as may be specified in such request), (A) written verification, satisfactory, in the discretion of the Board of Directors or any authorized officer of the Company, to demonstrate the accuracy of any information submitted by the stockholder pursuant to this Section 11, and (B) a written update of any information (including, if requested by the Company, written confirmation by such stockholder that it continues to intend to bring such nomination or other business proposal before the meeting) submitted by the stockholder pursuant to this Section 11 as of an earlier date. If a stockholder fails to provide such written verification or written update within such period, the information as to which written verification or a written update was requested may be deemed not to have been provided in accordance with this Section 11.

(7) For purposes of this Section 11, "Stockholder Associated Person" of any stockholder shall mean (i) any person acting in concert with such stockholder, (ii) any beneficial owner of shares of stock of the Company owned of record or beneficially by such stockholder (other than a stockholder that is a depository) and (iii) any person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, such stockholder or such Stockholder Associated Person.

(b) Special Meetings of Stockholders. Only such business shall be conducted at a special meeting of stockholders as shall have been brought before the meeting pursuant to the Company's notice of meeting. Nominations of individuals for election to the Board of Directors may be made at a special meeting of stockholders at which directors are to be elected only (i) by or at the direction of the Board of Directors or (ii) provided that the special meeting has been called in accordance with Section 3(a) of this Article II for the purpose of electing directors, by any stockholder of the Company who is a stockholder of record both at the time of giving of notice provided for in this Section 11 and at the time of the special meeting (and any postponement or adjournment thereof), who is entitled to vote at the meeting in the election of

each individual so nominated and who has complied with the notice procedures set forth in this Section 11. In the event the Company calls a special meeting of stockholders for the purpose of electing one or more individuals to the Board of Directors, any stockholder may nominate an individual or individuals (as the case may be) for election as a director as specified in the Company's notice of meeting, if (i) the stockholder's notice, containing the information required by Section 11(a)(3) and Section 11(a)(4) of this Article II, is delivered to the secretary at the principal executive office of the Company not earlier than the 120th day prior to such special meeting and not later than 5:00 p.m., Eastern Time, on the later of the 90th day prior to such special meeting or the tenth day following the day on which public announcement is first made of the date of the special meeting and of the nominees proposed by the Board of Directors to be elected at such meeting and (ii) the stockholder otherwise complied in all respects with the requirements of Section 14 of the Exchange Act, including, without limitation, the requirements of Rule 14a-19 (as such rule and regulations may be amended from time to time by the SEC, including any SEC staff interpretations related thereto). The public announcement of a postponement or adjournment of a special meeting shall not commence a new time period (or extend any time period) for the giving of a stockholder's notice as described above. The number of nominees a stockholder may nominate for election at the special meeting shall not exceed the number of directors to be elected at such special meeting, and for the avoidance of doubt, no stockholder shall be entitled to make additional or substitute nominations following the expiration of the time periods set forth in this Section 11(b).

(c) General. (1) A stockholder shall further update and supplement its notice of any nominee for election as a director or any proposal for other business at a meeting of stockholders to be brought before a meeting, if necessary, so that the information provided or required to be provided in such notice pursuant to this Section 11 shall be true and correct (i) as of the record date for the meeting and (ii) as of the date that is ten (10) Business Days prior to the meeting or any adjournment, recess, rescheduling or postponement thereof. Such update and supplement shall be delivered to the secretary not later than three (3) Business Days after the later of the record date or the date notice of the record date is first publicly announced (in the case of the update and supplement required to be made as of the record date for the meeting) and not later than seven (7) Business Days prior to the date for the meeting, if practicable (or, if not practicable, on the first practicable date prior to the meeting), or any adjournment, recess, rescheduling or postponement thereof (in the case of the update and supplement required to be made as of ten (10) Business Days prior to the meeting or any adjournment, recess, rescheduling or postponement thereof). If information submitted pursuant to this Section 11 by any stockholder proposing a nominee for election as a director or any proposal for other business at a meeting of stockholders shall be inaccurate in any material respect, such information may be deemed not to have been provided in accordance with this Section 11. Any such stockholder shall notify the Company of any inaccuracy or change (within two (2) Business Days of becoming aware of such inaccuracy or change) in any such information. Upon written request by the secretary or the Board of Directors, any such stockholder shall provide, within five (5) Business Days of delivery of such request (or such other period as may be specified in such request), (A) written verification, satisfactory, in the discretion of the Board of Directors or any authorized officer of the Company, to demonstrate the accuracy of any information submitted by the stockholder pursuant to this Section 11, and (B) a written update of any information (including, if requested by the Company, written confirmation by such stockholder that it continues to intend to bring such nomination or other business proposal before the meeting) submitted by the stockholder pursuant to this Section 11 as of an earlier date. If a stockholder fails to provide such written verification or written update within such period, the information as to which written verification or a written update was requested may be deemed not to have been provided in accordance with this Section 11.

(2) Only such individuals who are nominated in accordance with this Section 11 and Section 14 of this Article II shall be eligible for election by stockholders as

directors, and only such business shall be conducted at a meeting of stockholders as shall have been brought before the meeting in accordance with this Section 11. The chair of the meeting shall have the power to determine whether a nomination or any other business proposed to be brought before the meeting was made or proposed, as the case may be, in accordance with this Section 11.

(3) For purposes of this Section 11 and Section 14 of this Article II, “the date of the proxy statement” shall have the same meaning as “the date of the company’s proxy statement released to shareholders” as used in Rule 14a-8(e) promulgated under the Exchange Act, as interpreted by the SEC from time to time; and “public announcement” shall mean disclosure (A) in a press release reported by the Dow Jones News Service, Associated Press, Business Wire, PR Newswire or other widely circulated news or wire service or (B) in a document publicly filed by the Company with the SEC pursuant to the Exchange Act.

(4) Notwithstanding the foregoing provisions of this Section 11, a stockholder shall also comply with all applicable requirements of state law and of the Exchange Act and the rules and regulations thereunder with respect to the matters set forth in this Section 11. Nothing in this Section 11 shall be deemed to affect any right of (i) a stockholder to request inclusion of a proposal in, or the right of the Company to omit a proposal from, any proxy statement filed by the Company with the SEC pursuant to Rule 14a-8 (or any successor provision) under the Exchange Act, or (ii) a holder of preferred stock if and to the extent provided for under law, the Charter or these Bylaws. Nothing in this Section 11 shall require disclosure of revocable proxies received by the stockholder or Stockholder Associated Person pursuant to a solicitation of proxies after the filing of an effective Schedule 14A by such stockholder or Stockholder Associated Person under Section 14(a) of the Exchange Act.

(5) Without limiting the other provisions and requirements of this Section 11, unless otherwise required by law, if any stockholder (a) provides notice pursuant to Rule 14a-19(b) under the Exchange Act and (b) subsequently fails to comply with the requirements of Rule 14a-19(a)(2) and Rule 14a-19(a)(3) under the Exchange Act, then the Company shall disregard any proxies or votes solicited for such stockholder’s nominees. Upon request by the Company, if any stockholder provides notice pursuant to Rule 14a-19(b) under the Exchange Act, such stockholder shall deliver to the Company, no later than five (5) Business Days prior to the applicable meeting, reasonable evidence that it has met the requirements of Rule 14a-19(a)(3) under the Exchange Act.

(6) The Board of Directors may, in its sole discretion, waive any condition or requirement of any provision of this Section 11 in one or more instances.

Section 12. STOCKHOLDERS’ CONSENT IN LIEU OF MEETING. Any action required or permitted to be taken at any meeting of the holders of common stock entitled to vote generally in the election of directors may be taken without a meeting (a) if a unanimous consent setting forth the action is given in writing or by electronic transmission by each stockholder entitled to vote on the matter and filed with the minutes of proceedings of the stockholders or (b) if the action is advised, and submitted to the stockholders for approval, by the Board of Directors and a consent in writing or by electronic transmission of stockholders entitled to cast not less than the minimum number of votes that would be necessary to authorize or take the action at a meeting of stockholders is delivered to the Company in accordance with the MGCL. The Company shall give notice of any action taken by less than unanimous consent to each stockholder as required by the MGCL.

Section 13. CONTROL SHARE ACQUISITION ACT. Notwithstanding any other provision of the Charter or these Bylaws, Title 3, Subtitle 7 of the MGCL, shall not apply to any acquisition by any person of shares of stock of the Company. This Section 13 may be

repealed, in whole or in part, at any time, as provided in Article XVII, whether before or after an acquisition of control shares and, upon such repeal, may, to the extent provided by any successor bylaw, apply to any prior or subsequent control share acquisition.

Section 14. PROXY ACCESS.

(a) Inclusion of Eligible Nominee in Proxy Statement. Subject to the provisions of this Section 14, if expressly requested in the relevant Eligible Nominee Notice (as defined below), the Company shall include in its proxy statement (including its form of proxy and ballot) for an annual meeting of stockholders the names of any person or persons nominated for election to the Board of Directors submitted pursuant to this Section 14 (each, an “Eligible Nominee”), provided that (1) timely written notice of such Eligible Nominee satisfying the requirements of this Section 14 (an “Eligible Nominee Notice”) is delivered to the Company by or on behalf of a stockholder or stockholders that, at the time the Eligible Nominee Notice is delivered, satisfy the ownership and other requirements of this Section 14 (such stockholder or stockholders, and any person on whose behalf they are acting, the “Eligible Stockholder”), (2) the Eligible Stockholder expressly elects in writing at the time of providing the Eligible Nominee Notice to have its nominee included in the Company’s proxy statement pursuant to this Section 14, and (3) the Eligible Stockholder and the Eligible Nominee otherwise satisfy the requirements of this Section 14 and the director qualification requirements set forth in the Company’s corporate governance guidelines (as may be amended from time to time) and any other document(s) setting forth qualifications for directors.

(b) Timely Notice. To be timely, an Eligible Nominee Notice shall be delivered to the secretary at the principal executive office of the Company not earlier than the 150th day nor later than 5:00 p.m., Eastern Time, on the 120th day prior to the first anniversary of the date of the proxy statement for the preceding year’s annual meeting; provided, however, that if the date of the annual meeting is advanced or delayed by more than 30 days from the first anniversary of the date of the preceding year’s annual meeting, or if no annual meeting was held in the preceding year, the Eligible Nominee Notice shall be timely if it is delivered not earlier than the 150th day prior to such annual meeting and not later than the close of business on the later of the 120th day prior to such annual meeting or the tenth day following the day on which public announcement of the date of such meeting is first made. The public announcement of a postponement or adjournment of an annual meeting shall not commence a new time period (or extend any time period) for the giving of an Eligible Nominee Notice as described above.

(c) Information to be Included in Proxy Statement. In addition to including the name of the Eligible Nominee in the Company’s proxy statement for the annual meeting, the Company also shall include (the “Required Information”) (1) the information concerning the Eligible Nominee and the Eligible Stockholder that is required to be disclosed in the Company’s proxy statement pursuant to Section 14 of the Exchange Act and (2) if the Eligible Stockholder so elects, an Eligible Nominee Statement (as defined below). Nothing in this Section 14 shall limit the Company’s ability to solicit against and include in its proxy statement its own statements, any of the information provided pursuant to this Section 14 and any solicitation materials or related information with respect to any Eligible Nominee.

(d) Eligible Nominee Limits. The maximum number of Eligible Nominees submitted by all Eligible Stockholders appearing in the Company’s proxy statement with respect to an annual meeting of stockholders pursuant to this Section 14 (the “Permitted Number”) shall not exceed the greater of (1) two and (2) 20% of the total number of directors in office as of the last day on which notice of a nomination may be received pursuant to this Section 14 with respect to the annual meeting (the “Final Proxy Access Nomination Date”) or, if such amount is not a whole number, the closest whole number (rounding down) representing a percentage of

directors not more than 20%; provided, however, that the Permitted Number shall be reduced (but only to the extent the Permitted Number after such reduction equals or exceeds one) by:

(1) any Eligible Nominee whose name was submitted for inclusion in the Company's proxy materials pursuant to this Section 14 but who was subsequently withdrawn or whom the Board of Directors decides to nominate (a "Board Nominee");

(2) any directors in office or director nominees that in either case shall be included in the Company's proxy materials with respect to the annual meeting as an unopposed (by the Company) nominee pursuant to an agreement, arrangement or other understanding between the Company and a stockholder or group of stockholders (other than any such agreement, arrangement or understanding entered into in connection with an acquisition of stock of the Company, by the stockholders or group of stockholders, from the Company); and

(3) any director in office as of the nomination deadline who was included in the Company's proxy statement as an Eligible Nominee for any of the two preceding annual meetings and whom the Board of Directors decides to nominate for election to the Board of Directors.

In the event that one or more vacancies for any reason occurs on the Board of Directors at any time after the Final Proxy Access Nomination Date and before the date of the applicable annual meeting of stockholders and the Board of Directors resolves to reduce the size of the Board of Directors in connection therewith, the Permitted Number shall be calculated based on the number of directors in office as so reduced. In the event that the number of Eligible Nominees submitted by Eligible Stockholders pursuant to this Section 14 exceeds the Permitted Number, each Eligible Stockholder shall select one Eligible Nominee for inclusion in the Company's proxy statement until the Permitted Number is reached, going in order of the amount (greatest to least) of stock of the Company entitled to vote on the election of directors as disclosed in the Eligible Nominee Notice. If the Permitted Number is not reached after each Eligible Stockholder has selected one Eligible Nominee, this selection process shall continue as many times as necessary, following the same order each time, until the Permitted Number is reached.

(e) Eligibility of Eligible Stockholder; Stockholder Groups. An Eligible Stockholder must have owned (as defined below) continuously for at least three years as of the date of the Eligible Nominee Notice a number of shares that represents 3% or more of the Company's outstanding shares of stock entitled to vote in the election of directors (the "Required Shares") as of both the date the Eligible Nominee Notice is received by the Company in accordance with this Section 14 and the record date for determining stockholders entitled to vote at the annual meeting and must continue to own the Required Shares through the annual meeting date. For purposes of satisfying the ownership requirement under this Section 14, the voting power represented by the shares of stock of the Company owned by one or more stockholders, or by the person or persons who own shares of stock of the Company and on whose behalf any stockholder is acting, may be aggregated, provided that:

(1) the number of stockholders and other persons whose ownership of shares is aggregated for such purpose shall not exceed twenty (20);

(2) each stockholder or other person whose shares are aggregated for purposes of this Section 14 shall have held such shares continuously for at least three years as of the date of the Eligible Nominee Notice; and

(3) a group of two or more funds that are (a) under common management and investment control, (b) under common management and funded primarily by the same employer (or by a group of related employers that are under common control), or (c) a

“group of investment companies,” as such term is defined in Section 12(d)(1)(G)(ii) of the Investment Company Act of 1940, as amended, shall be treated as one stockholder or person for this purpose.

Whenever an Eligible Stockholder consists of a group of stockholders and/or other persons, any and all requirements and obligations for an Eligible Stockholder set forth in this Section 14 must be satisfied by and as to each such stockholder or other person, except that shares may be aggregated to meet the Required Shares as provided in this Section 14(e). With respect to any one particular annual meeting, no stockholder or other person may be a member of more than one group of persons constituting an Eligible Stockholder under this Section 14.

(f) Ownership. For purposes of this Section 14, an Eligible Stockholder shall be deemed to “own” only those outstanding shares of stock of the Company as to which the Eligible Stockholder possesses both:

(1) the full voting and investment rights pertaining to the shares; and

(2) the full economic interest in (including the opportunity for profit and risk of loss on) such shares; provided that the number of shares calculated in accordance with clauses (1) and (2) shall not include any shares:

(a) sold by such Eligible Stockholder or any of its affiliates in any transaction that has not been settled or closed;

(b) borrowed by such Eligible Stockholder or any of its affiliates for any purpose or purchased by such Eligible Stockholder or any of its affiliates pursuant to an agreement to resell; or

(c) subject to any option, warrant, forward contract, swap, contract of sale, other derivative or similar agreement entered into by such Eligible Stockholder or any of its affiliates, whether any such instrument or agreement is to be settled with shares or with cash based on the notional amount or value of outstanding shares of stock of the Company, in any such case which instrument or agreement has, or is intended to have, the purpose or effect of (i) reducing in any manner, to any extent or at any time in the future, such Eligible Stockholder’s or its affiliates’ full right to vote or direct the voting of any such shares, and/or (ii) hedging, offsetting or altering to any degree gain or loss arising from the full economic ownership of such shares by such Eligible Stockholder or any of its affiliate.

An Eligible Stockholder shall “own” shares held in the name of a nominee or other intermediary so long as the Eligible Stockholder retains the right to instruct how the shares are voted with respect to the election of directors and possesses the full economic interest in the shares. An Eligible Stockholder’s ownership of shares shall be deemed to continue during any period in which (1) the Eligible Stockholder has loaned such shares, provided that the Eligible Stockholder has the power to recall such loaned shares on five (5) Business Days’ notice and provides a representation that it will promptly recall, and promptly recalls, such loaned shares upon being notified that any of its Eligible Nominees will be included in the Company’s proxy statement, or (2) the Eligible Stockholder has delegated any voting power by means of a proxy, power of attorney or other similar instrument or arrangement that is revocable at any time by the Eligible Stockholder. The terms “owned,” “owning” and other variations of the word “own” shall have correlative meanings. For purposes of this Section 14, the term “affiliate” shall have the meaning ascribed thereto in the regulations promulgated under the Exchange Act.

(g) Eligible Nominee Notice and Other Eligible Stockholder Deliverables. An Eligible Stockholder must provide with its Eligible Nominee Notice the following in writing to the secretary:

(1) one or more written statements from the record holder of the shares (and from each intermediary through which the shares are or have been held during the requisite three-year holding period) verifying that, as of a date within seven calendar days prior to the date the Eligible Nominee Notice is received by the Company, the Eligible Stockholder owns, and has owned continuously for the preceding three years, the Required Shares, and the Eligible Stockholder's agreement to provide (a) within five (5) Business Days after the record date for the annual meeting, written statements from the record holder and intermediaries verifying the Eligible Stockholder's continuous ownership of the Required Shares through the record date and (b) immediate notice if the Eligible Stockholder ceases to own any of the Required Shares prior to the date of the applicable annual meeting of stockholders;

(2) documentation satisfactory to the Company demonstrating that a group of funds qualifies to be treated as one stockholder or person for purposes of this Section 14, if applicable;

(3) a representation and agreement that the Eligible Stockholder (including each member of any group of stockholders and/or persons that together is an Eligible Stockholder hereunder) (a) intends to continue to satisfy the eligibility requirements described in this Section 14 through the date of the annual meeting, (b) acquired the Required Shares in the ordinary course of business and not with the intent to change or influence control of the Company, and does not presently have such intent, (c) has not nominated and will not nominate for election to the Board of Directors at the meeting any person other than the Eligible Nominee(s) being nominated pursuant to this Section 14, (d) will not distribute to any stockholder any form of proxy for the annual meeting other than the form distributed by the Company, (e) has not engaged and will not engage in, and has not and will not be a "participant" in, another person's "solicitation" within the meaning of Rule 14a-1(l) under the Exchange Act in support of the election of any individual as a director at the annual meeting other than its Eligible Nominee or a nominee of the Board of Directors, (f) intends to appear in person or by proxy at the annual meeting to present the nomination, and (g) has provided and will provide facts, statements and other information in all communications with the Company and its stockholders that are or will be true and correct in all material respects and does not and will not omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading;

(4) the written consent of each Eligible Nominee to be named in a proxy statement relating to the applicable meeting as a nominee and to serve as a director if elected;

(5) a copy of the Schedule 14N (or any successor form) that has been filed with the SEC as required by Rule 14a-18 under the Exchange Act;

(6) the multi-jurisdictional personal disclosure form for the Eligible Nominee, completed and signed by such Eligible Nominee, together with all required exhibits and attachments thereto, in the form customarily required by Gaming Authorities;

(7) the written consent and agreement of each Eligible Nominee to (i) provide, within such time period specified by the Company, (A) all completed and signed applications for the Eligible Nominee together with all required exhibits thereto and in the form customarily required by Gaming Authorities and such additional information, documentation and authorizations necessary to enable the Company to comply with all applicable regulatory

requirements and to respond fully to any suitability inquiry conducted under the executive, administrative, judicial and/or legislative rules, regulations, laws and orders of any jurisdiction to which the Company is then subject, and (B) such additional information concerning the Eligible Nominee as may reasonably be required by the Board of Directors to determine the eligibility of such Eligible Nominee to serve as an independent director of the Company, that could be material to a reasonable stockholder's understanding of the independence, or lack thereof, of such Eligible Nominee, and to evaluate whether the Eligible Nominee is an Unsuitable Person and (ii) a background check to confirm the qualifications and character of the Eligible Nominee, to evaluate whether the Eligible Nominee is an Unsuitable Person;

(8) the information required to be provided by Section 11(a)(2) and Section 11(a)(3) of this Article II of these Bylaws, as applicable;

(9) in the case of a nomination by a group of stockholders that together is an Eligible Stockholder, the designation by all group members of one group member that is authorized to act on behalf of all members of the nominating stockholder group with respect to the nomination and matters related thereto, including withdrawal of the nomination;

(10) an undertaking that the Eligible Stockholder agrees to (i) assume all liability stemming from any legal or regulatory violation arising out of the Eligible Stockholder's communications with the Company's stockholders or out of the information that the Eligible Stockholder provides to the Company, (ii) indemnify and hold harmless the Company and each of its directors, officers and employees individually against any liability, loss or damages in connection with any threatened or pending action, suit or proceeding, whether legal, administrative or investigative, against the Company or any of its directors, officers or employees in connection with the Eligible Stockholder's nomination and/or efforts to elect its Eligible Nominee(s) pursuant to this Section 14, (iii) file with the SEC any solicitation materials relating to the annual meeting at which the Eligible Nominee will be nominated, regardless of whether any such filing is required under Section 14 of the Exchange Act and the rules and regulations promulgated thereunder or whether any exemption from filing is available for such solicitation under Section 14 of the Exchange Act and the rules and regulations promulgated thereunder, and any other communication with the Company's stockholders that is required to be filed under applicable law, and (iv) comply with all other applicable laws, rules, regulations and listing standards with respect to any solicitation in connection with the annual meeting; and

(11) if desired, a statement for inclusion in the Company's proxy statement for the annual meeting, not to exceed 500 words per Eligible Nominee, in support of each Eligible Nominee's candidacy (an "Eligible Nominee Statement"). Notwithstanding anything to the contrary contained in this Section 14, the Company may omit from its proxy statement any information or Eligible Nominee Statement that it, in good faith, believes is untrue in any material respect (or omits a material fact necessary in order to make the statements made, in light of the circumstances under which they are made, not misleading) or believes would violate any applicable law, rule, regulation or listing standard.

(h) Stockholder Nominee Agreement. Each Eligible Nominee must:

(1) provide within five (5) Business Days of the Company's request an executed agreement, in a form deemed satisfactory to the Company, that:

(a) the Eligible Nominee has read and agrees to adhere to the Company's corporate governance, conflict of interest, confidentiality and stock ownership and trading policies and guidelines;

(b) the Eligible Nominee is not and will not become a party to any Voting Commitment that (i) has not been disclosed to the Company or (ii) could limit or interfere with such person's ability to comply, if elected as a director of the Company, with such person's fiduciary duties under applicable law;

(c) the Eligible Nominee is not and will not become a party to any agreement, arrangement or understanding with any person or entity other than the Company with respect to any Compensation Arrangement in connection with such person's nomination or candidacy for director and/or service as a director that has not been disclosed to the Company; and

(2) comply with all of the Company's corporate governance, conflict of interest, confidentiality and stock ownership and trading policies and guidelines, and any other corporation policies and guidelines applicable to directors, as well as any applicable law, rule or regulation or listing requirement (including the requirement set forth in Article III, Section 7 of these Bylaws to have agreed to resign from the Board of Directors upon failing to receive a majority of votes cast in an election that is not a contested election, contingent on acceptance of that proffered resignation by the Board of Directors in accordance with the policies and procedures adopted by the Board of Directors for such purpose);

(3) complete, sign and submit all questionnaires required of the Board of Directors within five (5) Business Days of receipt of each such questionnaire from the Company; and

(4) provide within five (5) Business Days of the Company's request such additional information as the Company determines may be necessary to permit the Board of Directors to determine whether such Eligible Nominee meets the requirements of this Section 14 and/or the Company's requirements with regard to director qualifications and policies and guidelines applicable to directors, including whether (a) such Eligible Nominee is independent under the independence requirements set forth in the listing standards of any U.S. exchange upon which stock of the Company is listed, any applicable rules of the SEC, and any publicly disclosed standards used by the Board of Directors in determining and disclosing the independence of the directors, including with regard to audit committee and compensation committee members in particular (collectively, the "Independence Standards"), (b) such Eligible Nominee has any direct or indirect relationship with the Company, (c) such Eligible Nominee is an Unsuitable Person, and (d) such Eligible Nominee has been subject to (i) any event specified in Item 401(f) of Regulation S-K under the Securities Act of 1933, as amended (the "Securities Act") or (ii) any order of the type specified in Rule 506(d) of Regulation D under the Securities Act.

(i) Eligible Stockholder/Eligible Nominee Undertaking. In the event that any information or communications provided by the Eligible Stockholder or Eligible Nominee to the Company or its stockholders ceases to be true and correct in any respect or omits a fact necessary to make the statements made, in light of the circumstances under which they were made, not misleading, each Eligible Stockholder or Eligible Nominee, as the case may be, shall promptly notify the secretary in writing of any such inaccuracy or omission in such previously provided information and of the information that is required to make such information or communication true and correct; it being understood that providing any such notification shall not be deemed to cure any defect or limit the Company's right to omit an Eligible Nominee from its proxy materials as provided in this Section 14.

(j) Exceptions Permitting Exclusion of Eligible Nominee. The Company shall not be required to include, pursuant to this Section 14, an Eligible Nominee in its proxy statement (or, if the proxy statement has already been filed, to allow the nomination of an

Eligible Nominee, notwithstanding that proxies in respect of such vote may have been received by the Company):

(1) for any meeting for which the secretary receives a notice that any stockholder has nominated a person for election to the Board of Directors pursuant to Section 11(a)(2) of this Article II of these Bylaws;

(2) who is not independent under the Independence Standards;

(3) who is an Unsuitable Person;

(4) whose election as a member of the Board of Directors would violate or cause the Company to be in violation of these Bylaws, the Charter, the Company's corporate governance guidelines or other document setting forth qualifications for directors, the listing standards of any U.S. exchange upon which stock of the Company is listed, or any applicable state or federal law, rule or regulation;

(5) if the Eligible Nominee is or becomes a party to any prohibited or undisclosed Voting Commitment;

(6) if the Eligible Nominee is or becomes a party to any undisclosed Compensation Arrangement;

(7) who is or has been, within the past three years, an officer or director of a competitor, as defined in Section 8 of the Clayton Antitrust Act of 1914;

(8) whose then-current or prior business or personal interests place such Eligible Nominee in a conflict of interest with the Company or any of its subsidiaries that would cause such Eligible Nominee to violate any duties of directors under applicable law;

(9) who is a named subject of a pending criminal proceeding (excluding traffic violations and other minor offenses) or has been convicted in such a criminal proceeding within the past ten years;

(10) who is subject to any order of the type specified in Rule 506(d) of Regulation D under the Securities Act;

(11) if such Eligible Nominee or the applicable Eligible Stockholder shall have provided information to the Company in respect of such nomination that was untrue in any material respect or omitted to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading or shall have breached any of its or their agreements, representations, undertakings and/or obligations pursuant to this Section 14; or

(12) if the Eligible Stockholder who has nominated such Eligible Nominee has engaged in or is currently engaged in, or has been or is a "participant" in another person's, "solicitation" within the meaning of Rule 14a-1(l) under the Exchange Act in support of the election of any individual as a director at the meeting other than its Eligible Nominee(s) or a nominee of the Board of Directors.

(k) Invalidity.

(1) Notwithstanding anything to the contrary set forth herein, if an Eligible Nominee and/or an applicable Eligible Stockholder shall have breached or failed to

perform any of its or their agreements, representations, undertakings and/or obligations pursuant to this Section 14, as determined by the Board of Directors or the person presiding at the annual meeting, (a) the Board of Directors or the person presiding at the annual meeting shall be entitled to declare a nomination by an Eligible Stockholder to be invalid, and such nomination shall be disregarded notwithstanding that proxies in respect of such vote may have been received by the Company and (b) the Company shall not be required to include in its proxy statement any successor or replacement nominee proposed by the applicable Eligible Stockholder.

(2) Any Eligible Nominee who is included in the Company's proxy statement for a particular annual meeting of stockholders but either (a) withdraws from or becomes ineligible or unavailable for election at the annual meeting or (b) does not receive at least 25% of the votes cast "for" the Eligible Nominee's election, shall be ineligible to be included in the Company's proxy statement as an Eligible Nominee pursuant to this Section 14 for the next two annual meetings of stockholders following the annual meeting for which the Eligible Nominee has been nominated for election.

ARTICLE III

DIRECTORS

Section 1. GENERAL POWERS. Unless otherwise provided by applicable law, all powers vested by law in the Company shall be exercised by or under the authority of, and the business and affairs of the Company shall be managed under the direction of, its Board of Directors.

Section 2. NUMBER, TENURE, QUALIFICATIONS AND RESIGNATION. Each director of the Company shall be a natural person of at least eighteen years of age who need not be a resident of the State of Maryland or a stockholder of the Company, and shall not be an Unsuitable Person (as defined in the Charter). Except as otherwise fixed by or pursuant to the provisions of the Charter relating to the rights of the holders of any class or series of stock having a preference over the common stock as to dividends or upon liquidation to elect additional directors under specified circumstances, at any regular meeting or at any special meeting called for that purpose, a majority of the entire Board of Directors may establish, increase or decrease the number of directors, provided that the number thereof shall never be less than the minimum number required by the MGCL, nor more than 15, and further provided that the tenure of office of a director shall not be affected by any decrease in the number of directors. A director shall hold office for a one-year term or until his or her earlier death, resignation, removal or a determination by the Board of Directors that such director no longer has the qualifications that were required by the Charter and these Bylaws at the time the director was elected, and each director shall continue in office until the expiration of the term for which he or she was elected and until his or her successor has been duly elected and qualified. Any director of the Company may resign at any time by delivering his or her resignation to the Board of Directors, the chair of the board or the secretary. Subject to Section 7 of Article II, any such resignation shall take effect immediately upon its receipt or at such later time specified in the resignation. Subject to Section 7 of Article II, the acceptance of a resignation shall not be necessary to make it effective unless otherwise stated in the resignation. When one or more directors resign from the Board of Directors effective at a future date, the directors then in office, including those who have so resigned, shall have power by the applicable vote to fill the vacancy or vacancies created by such resignation.

Section 3. ANNUAL AND REGULAR MEETINGS. An annual meeting of the Board of Directors shall be held immediately after and at the same place as the annual meeting of stockholders, no notice other than this Bylaw being necessary. In the event such meeting is not so held, the meeting may be held at such time and place as shall be specified in a notice given as

hereinafter provided for special meetings of the Board of Directors. The Board of Directors may provide, by resolution, the time and place of regular meetings of the Board of Directors without other notice than such resolution.

Section 4. SPECIAL MEETINGS. Special meetings of the Board of Directors may be called by or at the request of the chair of the board, the chief executive officer, the president or a majority of the directors then in office. The person or persons authorized to call special meetings of the Board of Directors may fix the time and place of any special meeting of the Board of Directors called by them.

Section 5. NOTICE. Notice of any special meeting of the Board of Directors shall be delivered personally or by telephone, electronic mail, facsimile transmission, courier or United States mail to each director at his or her business or residence address. Notice by personal delivery, telephone, electronic mail or facsimile transmission shall be given at least 24 hours prior to the meeting. Notice by United States mail shall be given at least three days prior to the meeting. Notice by courier shall be given at least two days prior to the meeting. Telephone notice shall be deemed to be given when the director or his or her agent is personally given such notice in a telephone call to which the director or his or her agent is a party. Electronic mail notice shall be deemed to be given upon transmission of the message to the electronic mail address given to the Company by the director. Facsimile transmission notice shall be deemed to be given upon completion of the transmission of the message to the number given to the Company by the director and receipt of a completed answer-back indicating receipt. Notice by United States mail shall be deemed to be given when deposited in the United States mail properly addressed, with postage thereon prepaid. Notice by courier shall be deemed to be given when deposited with or delivered to a courier properly addressed. Neither the business to be transacted at, nor the purpose of, any annual, regular or special meeting of the Board of Directors need be stated in the notice, unless specifically required by statute, the Charter or these Bylaws.

Section 6. QUORUM. A majority of the directors then in office shall constitute a quorum for transaction of business at any meeting of the Board of Directors. If a quorum shall fail to attend any meeting, a majority of the directors present may adjourn the meeting to another place, if any, date or time, without further notice or waiver thereof. The directors present at a meeting which has been duly called and at which a quorum has been established may continue to transact business until adjournment, notwithstanding the withdrawal from the meeting of enough directors to leave fewer than required to establish a quorum.

Section 7. VOTING. The action of a majority of the directors present at a meeting at which a quorum is present shall be the action of the Board of Directors, unless the concurrence of a greater proportion is required for such action by applicable law, the Charter or these Bylaws. If enough directors have withdrawn from a meeting to leave fewer than required to establish a quorum, but the meeting is not adjourned, the action of the majority of that number of directors necessary to constitute a quorum, in accordance with Section 6 of this Article III, at such meeting shall be the action of the Board of Directors, unless the concurrence of a greater proportion is required for such action by applicable law, the Charter or these Bylaws.

Section 8. NOTATION OF DISSENT. A director who is present at a meeting of the Board of Directors, or of a committee thereof, at which action on any corporate matter is taken shall be presumed to have assented to the action taken unless he or she announces his or her dissent at the meeting and (i) his or her dissent is entered in the minutes of the meeting, (ii) the director files a written dissent to the action with the secretary of the meeting before the adjournment thereof or (iii) he or she transmits the dissent in writing to the secretary of the Company within 24 hours after the adjournment of the meeting. The right of dissent shall not apply to a director who voted in favor of the action. Nothing in this Section 8 shall bar a director from asserting that minutes of the meeting incorrectly omitted his or her dissent if, promptly

upon receipt of a copy of such minutes, the director notifies the secretary of the meeting, in writing, of the asserted omission or inaccuracy.

Section 9. ORGANIZATION. At each meeting of the Board of Directors, the chair of the board or, in the absence of the chair, the vice chair of the board, if any, shall act as chair of the meeting. In the absence of both the chair and vice chair of the board, the chief executive officer or, in the absence of the chief executive officer, the president or, in the absence of the president, a director chosen by a majority of the directors present, shall act as chair of the meeting. The secretary or, in his or her absence, an assistant secretary of the Company, or, in the absence of the secretary and all assistant secretaries, an individual appointed by the chair of the meeting, shall act as secretary of the meeting.

Section 10. TELEPHONE MEETINGS. Directors may participate in a meeting by means of a conference telephone or other communications equipment if all persons participating in the meeting can hear each other at the same time. Participation in a meeting by these means shall constitute presence in person at the meeting.

Section 11. CONSENT BY DIRECTORS WITHOUT A MEETING. Any action required or permitted to be taken at any meeting of the Board of Directors may be taken without a meeting, if a consent in writing or by electronic transmission to such action is given by each director and is filed with the minutes of proceedings of the Board of Directors.

Section 12. VACANCIES. If for any reason any or all of the directors cease to be directors, such event shall not terminate the Company or affect these Bylaws or the powers of the remaining directors hereunder. Except as otherwise provided for or fixed by or pursuant to the provisions of the Charter relating to the rights of the holders of any class or series of stock having a preference over the common stock as to dividends or upon liquidation to elect additional directors under specified circumstances, newly created directorships resulting from any increase in the number of directors and any vacancies on the Board of Directors resulting from death, resignation, disqualification, removal or other cause, may be filled by the affirmative vote of a majority of the remaining directors then in office, even if such majority is less than a quorum, except that a vacancy created by the removal of a director by the vote or written consent of the stockholders may also be filled by the stockholders, by the affirmative vote of a majority of the votes cast at a duly held meeting at which quorum is present, or by written consent in accordance with Section 12 of Article II of these Bylaws. Any directors elected in accordance with the preceding sentence shall hold office for the remainder of the full term in which the new directorship was created or the vacancy occurred and until such director's successor shall have been duly elected and qualified. No decrease in the number of directors constituting the Board of Directors shall shorten the term of any incumbent director.

Section 13. COMPENSATION. The Board of Directors shall have the authority to fix the compensation of directors for their services as directors and a director may be a salaried officer of the Company. Directors, by resolution of the Board of Directors, may also receive compensation per year and/or per meeting and/or per visit to real property or other facilities owned or leased by the Company and for any service or activity they performed or engaged in as directors. Directors may be reimbursed for expenses of attendance, if any, at each annual, regular or special meeting of the Board of Directors or of any committee thereof and for their expenses, if any, in connection with each property visit and any other service or activity they perform or engage in as directors; but nothing herein contained shall be construed to preclude any directors from serving the Company in any other capacity and receiving compensation therefor.

Section 14. RELIANCE. Each director and officer of the Company shall, in the performance of his or her duties with respect to the Company, be entitled to rely on any information, opinion, report or statement, including any financial statement or other financial

data, prepared or presented by an officer or employee of the Company whom the director or officer reasonably believes to be reliable and competent in the matters presented, by a lawyer, certified public accountant or other person, as to a matter which the director or officer reasonably believes to be within the person's professional or expert competence, or, with respect to a director, by a committee of the Board of Directors on which the director does not serve, as to a matter within its designated authority, if the director reasonably believes the committee to merit confidence.

Section 15. RATIFICATION. The Board of Directors or the stockholders may ratify any action or inaction by the Company or its officers to the extent that the Board of Directors or the stockholders could have originally authorized the matter, and if so ratified, shall have the same force and effect as if originally duly authorized, and such ratification shall be binding upon the Company and its stockholders. Any action or inaction questioned in any stockholders' derivative proceeding or any other proceeding on the ground of lack of authority, defective or irregular execution, adverse interest of a director, officer or stockholder, non-disclosure, miscomputation, the application of improper principles or practices of accounting or otherwise, may be ratified, before or after judgment, by the Board of Directors or by the stockholders, and such ratification shall be binding upon the Company and shall constitute a bar to any claim or execution of any judgment in respect of such questioned action or inaction.

Section 16. CERTAIN RIGHTS OF DIRECTORS AND OFFICERS. Any director, in his or her personal capacity or in a capacity as an affiliate, employee, or agent of any other person, or otherwise, may have business interests and engage in business activities similar to, in addition to or in competition with those of or relating to the Company.

ARTICLE IV

COMMITTEES

Section 1. NUMBER, TENURE AND QUALIFICATIONS. The Board of Directors may appoint from among its members an Audit Committee, a Compensation Committee, a Nominating and Corporate Governance Committee and any other committees, composed of one or more directors, to serve at the pleasure of the Board of Directors. The Board of Directors may designate one or more directors as alternate members of any committee who may replace any absent or disqualified member at any meeting of the committee or for the purposes of any written action by the committee. In the absence or disqualification of a member and alternate member or members of a committee, the member or members thereof present at any meeting and not disqualified from voting, whether or not constituting a quorum, may unanimously appoint another director to act at the meeting in the place of the absent or disqualified member. Each committee of the Board of Directors shall serve at the pleasure of the Board of Directors.

Section 2. POWERS. The Board of Directors may delegate to committees appointed under Section 1 of this Article IV any of the powers of the Board of Directors, except as prohibited by law. Any committee, to the extent provided by the Board of Directors, shall have and may exercise all of the powers and authority of the Board of Directors and may adopt such charter or governing provisions as are consistent with the resolution forming such committee, except as may be limited by statute, the Charter or these Bylaws. Except as may be otherwise provided by the Board of Directors, any committee may delegate some or all of its power and authority to one or more subcommittees, composed of one or more directors who are members of such committee, as the committee deems appropriate in its sole and absolute discretion.

Section 3. MEETINGS. Notice of committee meetings shall be given in the same manner as notice for special meetings of the Board of Directors. A majority of the members of the committee shall constitute a quorum for the transaction of business at any meeting of the committee. The act of a majority of the committee members present at a meeting shall be the act of such committee. The Board of Directors may designate a chair of any committee, and such chair or, in the absence of a chair, any two members of any committee (if there are at least two members of the committee) may fix the time and place of its meeting unless the Board of Directors shall otherwise provide.

Section 4. TELEPHONE MEETINGS. Members of a committee of the Board of Directors may participate in a meeting by means of a conference telephone or other communications equipment if all persons participating in the meeting can hear each other at the same time. Participation in a meeting by these means shall constitute presence in person at the meeting.

Section 5. CONSENT BY COMMITTEES WITHOUT A MEETING. Any action required or permitted to be taken at any meeting of a committee of the Board of Directors may be taken without a meeting, if a consent in writing or by electronic transmission to such action is given by each member of the committee and is filed with the minutes of proceedings of such committee.

Section 6. VACANCIES. Subject to the provisions hereof, the Board of Directors shall have the power at any time to change the membership of any committee, to fill any vacancy, to designate an alternate member to replace any absent or disqualified member or to dissolve any such committee.

ARTICLE V

OFFICERS

Section 1. GENERAL PROVISIONS. The officers of the Company shall include a president, a secretary and a treasurer and may include a chair of the Board of Directors, a vice chair of the Board of Directors, a chief executive officer, one or more vice presidents, a chief operating officer, a chief financial officer, one or more assistant secretaries and one or more assistant treasurers. In addition, the Board of Directors may from time to time elect such other officers with such powers and duties as it shall deem necessary or desirable. Officers may but need not be directors or stockholders of the Company. The officers of the Company shall be natural persons of at least eighteen years of age. The officers of the Company shall be elected annually by the Board of Directors, except that the chief executive officer or president may from time to time appoint one or more vice presidents, assistant secretaries and assistant treasurers or other officers. Each officer shall serve until his or her successor is duly elected and qualifies or until his or her death, or his or her resignation or removal in the manner hereinafter provided. Any two or more offices except president and vice president may be held by the same person. Election of an officer or agent shall not of itself create contract rights between the Company and such officer or agent. The Company may secure the fidelity of any or all of its officers by bond or otherwise.

Section 2. REMOVAL AND RESIGNATION. Any officer or agent of the Company may be removed, with or without cause, by the Board of Directors if in its judgment the best interests of the Company would be served thereby, but such removal shall be without prejudice to the contract rights, if any, of the person so removed. Any officer of the Company may resign at any time by delivering his or her resignation to the Board of Directors, the chair of the board, the chief executive officer, the president or the secretary. Any resignation shall take effect immediately upon its receipt or at such later time specified in the resignation. The

acceptance of a resignation shall not be necessary to make it effective unless otherwise stated in the resignation. Such resignation shall be without prejudice to the contract rights, if any, of the Company.

Section 3. VACANCIES. A vacancy in any office may be filled by the Board of Directors for the balance of the term.

Section 4. CHAIR OF THE BOARD. The Board of Directors may designate from among its members a chair of the Board of Directors, who shall not, solely by reason of these Bylaws, be an officer of the Company. The Board of Directors may designate the chair of the Board of Directors as an executive or non-executive chair. The chair of the Board of Directors shall preside over the meetings of the Board of Directors, and if he or she is permitted pursuant to the listing requirements of any securities exchange on which the securities of the Company are listed or by an exception therefrom, shall be a member, ex officio, of all standing committees of the Board of Directors. If the chair of the Board of Directors is not permitted pursuant to the listing requirements of such securities exchange or by an exception therefrom to be an ex officio member of a particular standing committee, the chair shall be permitted to attend the meetings of such committee, except to the extent prohibited by the listing requirements of such securities exchange. The chair of the Board of Directors shall perform such other duties as may be assigned to him or her by these Bylaws or the Board of Directors. The Board of Directors may appoint a co-chair of the Board of Directors.

Section 5. CHIEF EXECUTIVE OFFICER. The Board of Directors may designate a chief executive officer. In the absence of such designation, the chair of the board shall be the chief executive officer of the Company. The chief executive officer shall have general responsibility for implementation of the policies of the Company, as determined by the Board of Directors, and for the management of the business and affairs of the Company. He or she may execute any deed, mortgage, bond, contract or other instrument, except in cases where the execution thereof shall be expressly delegated by the Board of Directors or by these Bylaws to some other officer or agent of the Company or shall be required by law to be otherwise executed; and in general shall perform all duties incident to the office of chief executive officer and such other duties as may be prescribed by the Board of Directors from time to time.

Section 6. CHIEF OPERATING OFFICER. The Board of Directors may designate a chief operating officer. The chief operating officer shall have the responsibilities and duties as determined by the Board of Directors or the chief executive officer.

Section 7. CHIEF FINANCIAL OFFICER. The Board of Directors may designate a chief financial officer. The chief financial officer shall have the responsibilities and duties as determined by the Board of Directors or the chief executive officer.

Section 8. PRESIDENT. In the absence of a chief executive officer, the president shall in general supervise and control all of the business and affairs of the Company. In the absence of a designation of a chief operating officer by the Board of Directors, the president shall be the chief operating officer. He or she may execute any deed, mortgage, bond, contract or other instrument, except in cases where the execution thereof shall be expressly delegated by the Board of Directors or by these Bylaws to some other officer or agent of the Company or shall be required by law to be otherwise executed; and in general shall perform all duties incident to the office of president and such other duties as may be prescribed by the Board of Directors from time to time.

Section 9. VICE PRESIDENTS. In the absence of the president or in the event of a vacancy in such office, the vice president (or in the event there be more than one vice president, the vice presidents in the order designated at the time of their election or, in the

absence of any designation, then in the order of their election) shall perform the duties of the president and when so acting shall have all the powers of and be subject to all the restrictions upon the president; and shall perform such other duties as from time to time may be assigned to such vice president by the chief executive officer, the president or the Board of Directors. The Board of Directors may designate one or more vice presidents as executive vice president, senior vice president, or vice president for particular areas of responsibility.

Section 10. SECRETARY. The secretary shall (a) keep the minutes and record the votes of the proceedings of the stockholders, the Board of Directors and committees of the Board of Directors in one or more books provided for that purpose, (b) see that all notices are duly given in accordance with the provisions of these Bylaws or as required by law, (c) see that records and reports are properly kept and filed by the Company as required by law, (d) be custodian of the corporate records and of the seal of the Company, (e) keep a register of the post office address of each stockholder which shall be furnished to the secretary by such stockholder, (f) have general charge of the stock ledger of the Company, and (g) in general perform such other duties as from time to time may be assigned to him or her by the chief executive officer, the president or the Board of Directors.

Section 11. TREASURER. The treasurer shall have the custody of the funds, securities and other property of the Company, shall keep full and accurate accounts of receipts and disbursements in books belonging to the Company, shall collect and receive or provide for the collection and receipt of moneys earned by or in any manner due to or received by the Company, shall deposit all moneys and other valuable effects in the name and to the credit of the Company in such depositories as may be designated by the Board of Directors and in general perform such other duties as from time to time may be assigned to him or her by the chief executive officer, the president or the Board of Directors. In the absence of a designation of a chief financial officer by the Board of Directors, the treasurer shall be the chief financial officer of the Company.

The treasurer shall disburse the funds of the Company as may be ordered by the Board of Directors, taking proper vouchers for such disbursements, and shall render to the president and Board of Directors, at the regular meetings of the Board of Directors or whenever it may so require, an account of all his or her transactions as treasurer and of the financial condition of the Company.

Section 12. ASSISTANT SECRETARIES AND ASSISTANT TREASURERS. The assistant secretaries and assistant treasurers, in general, shall perform such duties as shall be assigned to them by the secretary or treasurer, respectively, or by the chief executive officer, the president or the Board of Directors.

Section 13. COMPENSATION. The compensation of the officers shall be fixed from time to time by or under the authority of the Board of Directors and no officer shall be prevented from receiving such compensation by reason of the fact that he or she is also a director.

ARTICLE VI

CONTRACTS, CHECKS AND DEPOSITS

Section 1. CONTRACTS. The Board of Directors may authorize any officer or agent to enter into any contract or to execute and deliver any instrument in the name of and on behalf of the Company and such authority may be general or confined to specific instances. Any agreement, deed, mortgage, lease or other document shall be valid and binding upon the

Company when duly authorized or ratified by action of the Board of Directors and executed by an authorized person.

Section 2. CHECKS AND DRAFTS. All checks, drafts or other orders for the payment of money, notes or other evidences of indebtedness issued in the name of the Company shall be signed by such officer or agent of the Company in such manner as shall from time to time be determined by the Board of Directors.

Section 3. DEPOSITS. All funds of the Company not otherwise employed shall be deposited or invested from time to time to the credit of the Company as the Board of Directors, the chief executive officer, the president, the chief financial officer, or any other officer designated by the Board of Directors may determine.

ARTICLE VII

STOCK

Section 1. CERTIFICATES. Except as may be otherwise provided by the Board of Directors, stockholders of the Company are not entitled to certificates representing the shares of stock held by them. In the event that the Company issues shares of stock represented by certificates, such certificates shall be in such form as prescribed by the Board of Directors or a duly authorized officer, shall contain the statements and information required by the MGCL and shall be signed by one or more officers of the Company in any manner permitted by the MGCL. In the event that the Company issues shares of stock without certificates, to the extent then required by the MGCL, the Company shall provide to the record holders of such shares a written statement of the information required by the MGCL to be included on stock certificates. There shall be no differences in the rights and obligations of stockholders based on whether or not their shares are represented by certificates.

Section 2. TRANSFERS. All transfers of shares of stock shall be made in the stock ledger of the Company, by the holder of the shares, in person or by his or her duly authorized agent, in such manner as the Board of Directors or any officer of the Company may prescribe and, if such shares are certificated, upon surrender of the certificates representing such shares duly endorsed. The issuance of a new certificate upon the transfer of certificated shares is subject to the determination of the Board of Directors that such shares shall no longer be represented by certificates. Upon the transfer of any uncertificated shares, the Company shall provide to the record holders of such shares, to the extent then required by the MGCL, a written statement of the information required by the MGCL to be included on stock certificates.

The Company shall be entitled to treat the holder of record of any share of stock as the holder in fact thereof and, accordingly, shall not be bound to recognize any equitable or other claim to or interest in such share or on the part of any other person, whether or not it shall have express or other notice thereof, except as otherwise expressly provided by the laws of the State of Maryland.

Notwithstanding the foregoing, transfers of shares of any class or series of stock will be subject in all respects to the Charter and all of the terms and conditions contained therein.

Section 3. REPLACEMENT CERTIFICATE. Any officer of the Company may direct a new certificate or certificates to be issued in place of any certificate or certificates theretofore issued by the Company alleged to have been lost, destroyed, stolen or mutilated, upon the making of an affidavit of that fact by the person claiming the certificate to be lost, destroyed, stolen or mutilated; provided, that the Company receives notice from such person of such fact prior to notice that the certificate at issue has been acquired by a protected purchaser (as defined

in Article 8 of the Maryland Uniform Commercial Code); and provided further, however, if such shares have ceased to be certificated, no new certificate shall be issued unless requested in writing by such stockholder and the Board of Directors has determined that such certificates may be issued. Unless otherwise determined by an officer of the Company, the owner of such lost, destroyed, stolen or mutilated certificate or certificates, or his or her legal representative, shall be required, as a condition precedent to the issuance of a new certificate or certificates, to give the Company a bond in such sums as it may direct as indemnity against any claim that may be made against the Company.

Section 4. FIXING OF RECORD DATE. The Board of Directors may set, in advance, a record date for the purpose of determining stockholders entitled to notice of or to vote at any meeting of stockholders or determining stockholders entitled to receive payment of any dividend or the allotment of any other rights, or in order to make a determination of stockholders for any other proper purpose. Such date, in any case, shall not be prior to the close of business on the day the record date is fixed and shall be not more than 90 days and, in the case of a meeting of stockholders, not less than ten days, before the date on which the meeting or particular action requiring such determination of stockholders of record is to be held or taken.

When a record date for the determination of stockholders entitled to notice of and to vote at any meeting of stockholders has been set as provided in this Section 4, such record date shall continue to apply to the meeting if adjourned or postponed, except if the meeting is adjourned or postponed to a date more than 120 days after the record date originally fixed for the meeting, in which case a new record date for such meeting shall be determined as set forth herein.

Except as set forth in Section 1 of Article II, if a record date is not fixed, (i) the record date for determining stockholders entitled to notice of or to vote at a meeting of stockholders shall be 5:00 p.m., Eastern Time, on the day on which notice of the meeting is given, or the 30th day before the meeting, whichever is the closer date to the meeting and (ii) the record date for determining stockholders for any other purpose shall be 5:00 p.m., Eastern Time, on the day on which the Board of Directors adopts the resolution relating thereto.

Section 5. STOCK LEDGER. The Company shall maintain at its principal office or at the office of its counsel, accountants or transfer agent, an original or duplicate stock ledger containing the name and address of each stockholder and the number of shares of each class held by such stockholder.

Section 6. FRACTIONAL STOCK; ISSUANCE OF UNITS. The Board of Directors may authorize the Company to issue fractional shares of stock or authorize the issuance of scrip, all on such terms and under such conditions as it may determine. Notwithstanding any other provision of the Charter or these Bylaws, the Board of Directors may authorize the issuance of units consisting of different securities of the Company. Any security issued in a unit shall have the same characteristics as any identical securities issued by the Company, except that the Board of Directors may provide that for a specified period securities of the Company issued in such unit may be transferred in the stock ledger of the Company only in such unit.

ARTICLE VIII

ACCOUNTING YEAR

The Board of Directors shall have the power, from time to time, to fix the fiscal year of the Company by a duly adopted resolution.

ARTICLE IX

DISTRIBUTIONS

Section 1. AUTHORIZATION. Dividends and other distributions upon the stock of the Company may be authorized by the Board of Directors, subject to the provisions of law and the Charter. Dividends and other distributions may be paid in cash, property or stock of the Company, subject to the provisions of law and the Charter.

Section 2. CONTINGENCIES. Before payment of any dividends or other distributions, there may be set aside out of any assets of the Company available for dividends or other distributions such sum or sums as the Board of Directors may from time to time, in its absolute discretion, think proper as a reserve fund for contingencies, for equalizing dividends, for repairing or maintaining any property of the Company or for such other purpose as the Board of Directors shall determine, and the Board of Directors may modify or abolish any such reserve.

ARTICLE X

INVESTMENT POLICY

Subject to the provisions of the Charter, the Board of Directors may from time to time adopt, amend, revise or terminate any policy or policies with respect to investments by the Company as it shall deem appropriate in its sole discretion.

ARTICLE XI

SEAL

Section 1. SEAL. The Board of Directors may authorize the adoption of a seal by the Company. The seal shall contain the name of the Company and the year of its incorporation and the words "Incorporated Maryland." The Board of Directors may authorize one or more duplicate seals and provide for the custody thereof. The affixation of the Company's seal shall not be necessary to the valid execution, assignment or endorsement by the Company of any instrument or other document unless otherwise required by law.

Section 2. AFFIXING SEAL. Whenever the Company is permitted or required to affix its seal to a document, it shall be sufficient to meet the requirements of any law, rule or regulation relating to a seal to place the word "(SEAL)" adjacent to the signature of the person authorized to execute the document on behalf of the Company.

ARTICLE XII

INDEMNIFICATION AND ADVANCE OF EXPENSES

To the maximum extent permitted by Maryland law in effect from time to time, the Company shall indemnify and, without requiring a preliminary determination of the ultimate entitlement to indemnification, shall pay or reimburse reasonable expenses in advance of final disposition of a proceeding to (a) any individual who is a present or former director or officer of the Company and who is made or threatened to be made a party to, or witness in, the proceeding by reason of his or her service in that capacity or (b) any individual, who while a director or officer of the Company and at the request of the Company, serves or has served as a director, officer, employee, agent, fiduciary or trustee, member, manager or partner of another corporation, real estate investment trust, limited liability company, partnership, joint venture, trust, employee benefit plan (including, without limitation, service with respect to its participants

or beneficiaries) or any other entity or enterprise, whether or not for profit, whether domestic or foreign, and who is made or threatened to be made a party to, or witness in, the proceeding by reason of his or her service in that capacity. The Company may, with the approval of its Board of Directors, provide such indemnification and advance for expenses to an individual who served a predecessor of the Company in any of the capacities described in (a) or (b) above and to any employee or agent of the Company or a predecessor of the Company. The indemnification and payment or reimbursement of expenses provided in these Bylaws shall not be deemed exclusive of or limit in any way other rights to which any person seeking indemnification or payment or reimbursement of expenses may be or may become entitled under any bylaw, resolution, insurance, agreement or otherwise.

Neither the amendment nor repeal of this Article, nor the adoption or amendment of any other provision of the Charter or these Bylaws inconsistent with this Article, shall apply to or affect in any respect the applicability of this Article XII with respect to any act or failure to act which occurred prior to such amendment, repeal or adoption.

ARTICLE XIII

WAIVER OF NOTICE

Whenever any notice of a meeting is required to be given pursuant to the Charter or these Bylaws or pursuant to applicable law, a waiver thereof in writing or by electronic transmission, given by the person or persons entitled to such notice, whether before or after the time stated therein, shall be deemed equivalent to the giving of such notice. Neither the business to be transacted at nor the purpose of any meeting need be set forth in the waiver of notice of such meeting, unless specifically required by statute. The attendance of any person at any meeting shall constitute a waiver of notice of such meeting, except where such person attends a meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting has not been lawfully called or convened.

ARTICLE XIV

EXCLUSIVE FORUM FOR CERTAIN LITIGATION

Unless the Company consents in writing to the selection of an alternative forum, the Circuit Court for Baltimore City, Maryland, or, if that Court does not have jurisdiction, the United States District Court for the District of Maryland, Baltimore Division, shall be the sole and exclusive forum for (a) any derivative action or proceeding brought on behalf of the Company, (b) any action asserting a claim of breach of any duty owed by any present or former director or officer or other employee or stockholder of the Company to the Company or to the stockholders of the Company or any standard of conduct applicable to the directors of the Company, (c) any action asserting a claim against the Company or any present or former director or officer or other employee of the Company arising pursuant to any provision of the MGCL, the Charter or these Bylaws, or (d) any action asserting a claim against the Company or any present or former director or officer or other employee of the Company that is governed by the internal affairs doctrine, in all cases subject to the court's having personal jurisdiction over the indispensable parties named as defendants. Any person or entity purchasing or otherwise acquiring any interest in shares of stock of the Company shall be deemed to have had notice of and consented to the provisions of this Article XIV.

ARTICLE XV

REQUIRED RECORDS

To the extent required by the MGCL, the Company shall keep complete and accurate books and records of account and minutes of the proceedings of the incorporators, stockholders and directors. Any books, minutes or other records may be in written form or any other form capable of being converted into written form within a reasonable time.

ARTICLE XVI

VOTING

Unless otherwise ordered by the Board of Directors, the Company may cast (by consent or at a meeting) the votes which the Company may be entitled to cast as a stockholder, member, partner or otherwise in any other corporation, limited liability company, partnership or other entity any of whose shares or other securities are held by or for the Company, by any of its officers or agents, or by proxy appointed by any such officer or agent, unless some other person, by resolution of the Board of Directors or a provision of the other entity's organizational documents, is appointed the Company's general or special proxy, in which case that person shall be entitled to vote the shares or other securities.

ARTICLE XVII

AMENDMENT OF BYLAWS

These Bylaws may be altered, amended or repealed or new bylaws may be adopted by the Board of Directors, or by the stockholders by the affirmative vote of a majority of all the votes entitled to be cast on the matter. No bylaw adopted, altered, amended or repealed by the stockholders shall be repealed, altered, amended or readopted by the Board of Directors.

ARTICLE XVIII

STOCKHOLDER RIGHTS PLAN

The Company shall seek stockholder approval prior to its adoption or subsequent amendment, extension or renewal of a Rights Plan (as defined below), unless the Board of Directors, in the exercise of its duties as directors, determines that, under the circumstances existing at the time, it is in the best interests of the Company to adopt or amend, extend or renew such Rights Plan without delay. If a Rights Plan is adopted or amended, extended or renewed by the Board of Directors without prior stockholder approval in the exercise of such duties, such Rights Plan must provide that it will expire within 12 months of such action by the Board of Directors unless such Rights Plan shall have been ratified prior to the end of such 12 month period by the stockholders by the affirmative vote of a majority of the votes cast on the matter by stockholders entitled to vote on such matter. For purposes of this Bylaw, the term "Rights Plan" refers generally to any plan or arrangement providing for the distribution of preferred shares, rights, warrants, options or debt instruments to the stockholders of the Company, designed to assist the Board of Directors in responding to unsolicited takeover proposals and significant share accumulations by conferring certain rights on the stockholders upon the occurrence of a "triggering event" such as a tender offer or third party acquisition of a specified percentage of shares. Notwithstanding anything contained in this Article XVIII, in no event shall the issuance of shares of preferred stock pursuant to the terms of such preferred stock, or the conversion of preferred stock into common stock pursuant to the terms of such preferred stock, in each case, to the extent any shares of the series or class of such preferred stock were outstanding prior to the

adoption of a Rights Plan, result in the distribution of preferred shares, rights, warrants, options or debt instruments to the stockholders of the Company pursuant to any such Rights Plan.

**DESCRIPTION OF REGISTRANT'S SECURITIES
REGISTERED PURSUANT TO SECTION 12 OF THE
SECURITIES EXCHANGE ACT OF 1934**

The following is a summary of the rights and preferences of our common stock. This summary does not purport to be complete and is subject to and is qualified in its entirety by reference to our charter and bylaws and applicable provisions of the Maryland General Corporation Law ("MGCL"). While we believe the following summary covers the material terms of our common stock, the description may not include all of the information that is important to you. We encourage you to read carefully our charter and bylaws and the applicable provisions of the MGCL for a more complete understanding of our common stock. Each of our charter and bylaws is attached as an exhibit to the Annual Report on Form 10-K.

General

Our charter authorizes us to issue up to 1,350,000,000 shares of common stock, \$0.01 par value per share, and up to 50,000,000 shares of preferred stock, \$0.01 par value per share, of which 12,000,000 shares are classified as Series A preferred stock, \$0.01 par value per share. Our charter authorizes our board of directors, without stockholder approval, to amend our charter to increase or decrease the aggregate number of shares of stock that we are authorized to issue or the number of authorized shares of any class or series, subject to the terms of any outstanding preferred stock.

As of December 31, 2022, 963,096,563 shares of our common stock are issued and outstanding, and no shares of preferred stock of any class (including Series A preferred stock) are issued or outstanding.

Under Maryland law, a stockholder generally is not liable for a corporation's debts or obligations solely as a result of the stockholder's status as a stockholder.

Common Stock

Subject to the restrictions on ownership and transfer of our stock discussed below under the caption "Restrictions on Ownership and Transfer" and the voting rights of holders of outstanding shares of any other class or series of our stock, holders of our common stock will be entitled to one vote for each share held of record on all matters on which stockholders are entitled to vote generally, including the election or removal of directors. The holders of our common stock will not have cumulative voting rights in the election of directors.

Holders of our common stock will be entitled to receive dividends if, as and when authorized by our board of directors and declared by us out of assets legally available for the payment of dividends. Upon our liquidation, dissolution or winding up and after payment in full of all amounts required to be paid to creditors and to the holders of outstanding shares of any class or series of our stock having liquidation preferences, if any, the holders of our common stock will be entitled to receive pro rata our remaining assets available for distribution. Holders of our common stock will not have preemptive, subscription, redemption, preference, exchange, conversion or appraisal rights. There will be no sinking fund provisions applicable to the common stock. All issued and outstanding shares of our common stock will be fully paid and nonassessable and will have equal dividend and liquidation rights. The rights, powers, preferences and privileges of holders of our common stock will be subject to those of the holders of any shares of our preferred stock or any other class or series of stock we may authorize and issue in the future.

Under Maryland law, a Maryland corporation generally may not amend its charter (with limited exceptions), consolidate, merge, convert, sell all or substantially all of its assets, engage in a statutory share exchange or dissolve unless the action is advised by its board of directors and approved by the affirmative vote of stockholders entitled to cast at least two-thirds of the votes entitled to be cast on the matter. As permitted by Maryland law, our charter provides that any of these actions, once advised by our board of directors, may be approved by the affirmative vote of stockholders entitled to cast a majority of all of the votes entitled to be cast on the matter, except for amendments to the charter provisions relating to indemnification and limitation of liability of directors and officers and certain amendments to our charter affecting these provisions, which require the affirmative vote of stockholders entitled to cast 75% of all of the votes entitled to be cast generally in the election of directors. See "Certain Provisions of Maryland Law and Our Charter and Bylaws." Maryland law also permits a corporation to transfer all or substantially all of its assets without the approval of its stockholders to an entity owned, directly or indirectly, by the corporation. In addition, because many of our operating assets are held by our subsidiaries, these subsidiaries will be able to merge or sell all or substantially all of their assets without the approval of our stockholders.

Power to Reclassify and Issue Stock

Subject to the rights of holders of any outstanding shares of our preferred stock, our board of directors will be able to, without approval of holders of our common stock, classify and reclassify any unissued shares of our stock into other classes or series of stock, including one or more classes or series of stock that have preference over our common stock with respect to dividends or upon liquidation, or have voting rights and other rights that differ from the rights of the common stock, and authorize us to issue the newly-classified shares. Before authorizing the issuance of shares of any new class or series, our board of directors will be required to set, subject to the provisions in our charter relating to the restrictions on ownership and transfer of our stock, the preferences, conversion or other rights, voting powers, restrictions, limitations as to dividends or other distributions, qualifications and terms or conditions of redemption for each class or series of stock. In addition, our charter authorizes our board of directors, with the approval of a majority of our board of directors and without stockholder approval, to amend our charter to increase or decrease the aggregate number of shares of stock, or the number of shares of any class or series of stock, that we are authorized to issue, subject to the rights of holders of our preferred stock. These actions will be able to be taken without the approval of holders of our common stock unless such approval is required by applicable law, the terms of any other class or series of our stock or the rules of any stock exchange or automated quotation system on which any of our stock is listed or traded.

Preferred Stock

Prior to issuance of shares of each class or series of preferred stock having terms not already established pursuant to our charter, our board of directors is required by the MGCL and our charter to set the preferences, conversion and other rights, voting powers, restrictions, limitations as to dividends and other distributions, qualifications and terms and conditions of redemption for each such class or series. Our board of directors could authorize the issuance of shares of preferred stock that have priority over our common stock with respect to dividends or rights upon liquidation or with terms and conditions which could have the effect of delaying, deferring or preventing a transaction or a change of control of our company that might involve a premium price for holders of our common stock or that holders of our common stock otherwise view to be in their best interests.

Series A Preferred Stock

Of the 50,000,000 shares of preferred stock authorized for issuance under our charter, 12,000,000 shares are classified as Series A preferred stock, \$0.01 par value per share, all of which automatically converted on November 6, 2017 in accordance with the terms of the Series A preferred stock into shares of our common stock. As a result of this conversion, none of the authorized shares of Series A preferred stock are currently issued or outstanding. Our board of directors has no plans to issue any shares of Series A preferred stock as currently constituted, and given the terms applicable to the Series A preferred stock and the circumstances in which originally issued, any such additional issuance would be impractical. Our board of directors could, however, without stockholder approval, reclassify the authorized but unissued shares of Series A preferred stock as preferred stock without further designation, or into one or more other or additional series or classes of our capital stock, pursuant to its power to reclassify stock, as described above, and cause us to issue the newly-classified shares, subject, however, to the rights of holders of any then outstanding shares of our preferred stock. For detail regarding these and other terms applicable to our authorized Series A preferred stock, we encourage you to read carefully the terms thereof, as set forth in our charter.

Restrictions on Ownership and Transfer

In order for us to qualify as a REIT for U.S. Federal income tax purposes, our stock must be beneficially owned by 100 or more persons during at least 335 days of a taxable year of 12 months or during a proportionate part of a shorter taxable year. Also, not more than 50% of the value of the outstanding shares of our stock may be owned, directly or indirectly, by five or fewer individuals (as defined in the Internal Revenue Code of 1986, as amended from time to time (the “Code”)) to include certain entities such as qualified pension plans) during the last half of a taxable year.

Our charter contains restrictions on the ownership and transfer of our stock. Subject to the exceptions described below, our charter provides that no person or entity will be able to beneficially own, or be deemed to own by virtue of the applicable constructive ownership provisions of the Code, with respect to any class or series of our capital stock (including our common stock), more than 9.8% (in value or by number of shares, whichever is more restrictive) of the aggregate of the outstanding shares of such class or series of our capital stock.

The constructive ownership rules under the Code are complex and may cause stock owned actually or constructively by a group of related individuals and/or entities to be owned constructively by one individual or entity. As a result, the acquisition of 9.8% or less of a class or series of our capital stock, or the acquisition of an interest in an entity that owns our stock, could, nevertheless, cause the acquirer or another individual or entity to own our stock in excess of the ownership limit.

An exemption from the 9.8% ownership limit was granted to certain stockholders, and our board may in the future provide exceptions to the ownership limit for other stockholders, subject to certain initial and ongoing conditions designed to protect our status as a REIT. In addition, our charter provides that our board of directors will have the power to, upon receipt of certain representations and agreements and in its sole discretion, prospectively or retroactively, exempt a person from the ownership limit or establish a different limit on ownership for a particular stockholder if the stockholder's ownership in excess of the ownership limit would not result in our being "closely held" under Section 856(h) of the Code (without regard to whether the ownership interest is held during the last half of a taxable year) or otherwise failing to qualify as a REIT. As a condition to granting a waiver of the ownership limit or creating an excepted holder limit, our board of directors will be able, but will not be required, to require an opinion of counsel or IRS ruling satisfactory to our board of directors as it may deem necessary or advisable to determine or ensure our status as a REIT and may impose such other conditions or restrictions as it deems appropriate.

In connection with granting a waiver of the ownership limit or creating or modifying an excepted holder limit, or at any other time, our charter provides that our board of directors will be able to increase or decrease the ownership limit unless, after giving effect to any increased or decreased ownership limit, five or fewer individuals (as defined in the Code to include certain entities such as qualified pension plans) could beneficially own or constructively own, in the aggregate, more than 50% in value of the shares of our stock then outstanding or we would otherwise fail to qualify as a REIT. A decreased ownership limit will not apply to any person or entity whose percentage ownership of our stock is in excess of the decreased ownership limit until the person or entity's ownership of our stock equals or falls below the decreased ownership limit, but any further acquisition of our stock will be subject to the decreased ownership limit.

Our charter also provides that:

- any person is prohibited from owning shares of our stock that, if effective, would cause us to constructively own more than 10% of the ownership interests, assets or net profits in (i) any of our tenants or (ii) any tenant of one of our direct or indirect subsidiaries, to the extent such ownership would cause us to fail to qualify as a REIT;
- any person is prohibited from beneficially or constructively owning shares of our stock that would result in our being "closely held" under Section 856(h) of the Code (without regard to whether the ownership interest is held during the last half of a taxable year) or otherwise cause us to fail to qualify as a REIT; and
- any person is prohibited from transferring shares of our stock if the transfer would result in shares of our stock being beneficially owned by fewer than 100 persons.

Our charter provides that any person who acquires or attempts or intends to acquire beneficial or constructive ownership of shares of our stock that will or may violate the ownership limit or any other restrictions on ownership and transfer of our stock discussed above, and any person who owned or would have owned shares of our stock that are transferred to a trust for the benefit of one or more charitable beneficiaries described below, will be required to give immediate written notice of such an event or, in the case of a proposed or attempted transfer, give at least five days' prior written notice to us and provide us with such other information as we may request in order to determine the effect of the transfer on our status as a REIT. The provisions of our charter relating to the restrictions on ownership and transfer of our stock will not apply if our board of directors determines that it is no longer in our best interests to attempt to qualify, or to continue to qualify, as a REIT, or that compliance is no longer required in order for us to qualify as a REIT.

Our charter provides that any attempted transfer of our stock that, if effective, would result in our stock being beneficially owned by fewer than 100 persons will be void ab initio and the intended transferee will acquire no rights in such shares of stock. Our charter provides that any attempted transfer of our stock that, if effective, would result in a violation of the ownership limit (or other limit established by our charter or our board of directors), any person owning shares of our stock that, if effective, would cause us to constructively own more than 10% of the ownership interests, assets or net profits in (i) any of our tenants or (ii) any tenant of one of our direct or indirect subsidiaries, to the extent such ownership would cause us to fail to qualify as a REIT, or our being "closely held" under Section 856(h) of the Code or our otherwise failing to qualify as a REIT, will be void ab initio and the intended transferee will acquire no rights in such shares of stock and, if such voidness is not effective, the number of shares causing the violation (rounded up to the nearest whole share) will be

transferred automatically to a trust for the exclusive benefit of one or more charitable beneficiaries, and the intended transferee will not acquire any rights in the shares. The automatic transfer will be effective as of the close of business on the business day before the date of the attempted transfer or other event that resulted in a transfer to the trust. Our charter provides that if the transfer to the trust as described above does not occur or is not automatically effective, for any reason, to prevent a violation of the applicable restrictions on ownership and transfer of our stock, then the attempted transfer which, if effective, would have resulted in a violation on the restrictions of ownership and transfer of our stock, will be void ab initio and the intended transferee will acquire no rights in such shares of stock.

Our charter provides that shares of our stock held in the trust will be issued and outstanding shares. The intended transferee may not benefit economically from ownership of any shares of our stock held in the trust and will have no rights to dividends and no rights to vote or other rights attributable to the shares of our stock held in the trust. The trustee of the trust will exercise all voting rights and receive all dividends and other distributions with respect to shares held in the trust for the exclusive benefit of the charitable beneficiary of the trust. Our charter provides that any dividend or other distribution paid before we discover that the shares have been transferred to a trust as described above must be repaid by the recipient to the trustee upon demand by us. Pursuant to our charter, subject to Maryland law, effective as of the date that the shares have been transferred to the trust, the trustee will have the authority to rescind as void any vote cast by an intended transferee before our discovery that the shares have been transferred to the trustee and to recast the vote in accordance with the direction of the trustee acting for the benefit of the charitable beneficiary of the trust.

Pursuant to our charter, within 20 days of receiving notice from us of a transfer of shares to the trust, the trustee must sell the shares to a person, designated by the trustee, that would be permitted to own the shares without violating the ownership limit or the other restrictions on ownership and transfer of our stock in our charter. After such sale of the shares, the interest of the charitable beneficiary in the shares sold will terminate and the trustee must distribute to the intended transferee, an amount equal to the lesser of:

- the price paid by the intended transferee for the shares or, if the intended transferee did not give value for the shares in connection with the event that resulted in the transfer to the trust at the market price of the shares on the day of the event that resulted in the transfer of such shares to the trust; and
- the sales proceeds received by the trustee for the shares.

Any net sales proceeds in excess of the amount payable to the intended transferee shall be paid to the charitable beneficiary.

Our charter provides that shares of our stock held in the trust will be deemed to be offered for sale to us, or our designee, at a price per share equal to the lesser of:

- the price per share in the transaction that resulted in the transfer to the trust or, in the case of a gift, devise or other such transaction, at market price, at the time of such gift, devise or other such transaction; and
- the market price on the date we accept, or our designee accepts, such offer.

The amount payable to the transferee may be reduced by the amount of any dividends or other distributions that we paid to the intended transferee before we discovered that the shares had been transferred to the trust and that is owed by the intended transferee to the trustee as described above. We may accept the offer until the trustee has otherwise sold the shares of our stock held in the trust. Pursuant to our charter, upon a sale to us, the interest of the charitable beneficiary in the shares sold will terminate and the trustee must distribute the net proceeds of the sale to the intended transferee and distribute any dividends or other distributions held by the trustee with respect to the shares to the charitable beneficiary.

Every owner of 5% or more (or such lower percentage as required by the Code or the regulations promulgated thereunder) of the outstanding shares of our stock, within 30 days after the end of each taxable year, must give us written notice stating the person's name and address, the number of shares of each class and series of our stock that the person beneficially owns and a description of the manner in which the shares are held. Each such owner also must provide us with any additional information that we request in order to determine the effect, if any, of the person's beneficial ownership on our status as a REIT and to ensure compliance with the ownership limit. In addition, any person or entity that is a beneficial owner or constructive owner of shares of our stock and any person or entity (including the stockholder of record) who is holding shares of our stock for a beneficial owner or constructive owner will be required to, on request, disclose to us such information as we may request in order to determine our status as a REIT or to comply, or determine our compliance, with the requirements of any governmental or taxing authority.

If our board of directors authorizes any of our shares to be represented by certificates, the certificates will bear a legend referring to the restrictions described above.

These restrictions on ownership and transfer of our stock could delay, defer or prevent a transaction or a change of control of us that might involve a premium price for our common stock or otherwise be in the best interests of our stockholders.

Redemption of Securities Owned or Controlled by an Unsuitable Person or Affiliate

In addition to the restrictions set forth above, all of our outstanding shares of capital stock will be held subject to applicable gaming laws. Any person owning or controlling at least 5% of the outstanding shares of any class of our capital stock will be required to promptly notify us of such person's identity. Our charter provides that any shares of our capital stock that are owned or controlled by an unsuitable person or an affiliate of an unsuitable person are redeemable by us, out of funds legally available for that redemption, to the extent required by the gaming authorities making the determination of unsuitability or to the extent determined to be necessary or advisable by our board of directors. From and after the redemption date, the securities will not be considered outstanding and all rights of the unsuitable person or affiliate will cease, other than the right to receive the redemption price. The redemption price with respect to any securities to be redeemed will be the price, if any, required to be paid by the gaming authority making the finding of unsuitability or if the gaming authority does not require a price to be paid (including if the finding of unsuitability is made by our board of directors alone), an amount that in no event exceeds (1) the market price of such securities as reported on a securities exchange, a generally recognized reporting system or domestic over-the-counter market, as applicable, or (2) if such securities are not quoted by any recognized reporting system, then the fair market value thereof, as determined in good faith and in the reasonable discretion of the board of directors. The redemption price may be paid in cash, by promissory note, or both, as required by the applicable gaming authority and, if not, as determined by us. If all or a portion of the redemption price is paid with a promissory note, such note shall have a ten year term, bear interest at 3% and amortize in 120 equal monthly installments and contain such other terms determined by our board.

Our charter provides that the redemption right is not exclusive and that our capital stock that is owned or controlled by an unsuitable person or an affiliate of an unsuitable person may also be transferred to a trust for the benefit of a designated charitable beneficiary, and that any such unsuitable person or affiliate will not be entitled to any dividends on the shares or be entitled to vote the shares or receive any proceeds from the subsequent sale of the shares in excess of the lesser of the price paid by the unsuitable person or affiliate for the shares or the amount realized from the sale, in each case less a discount in a percentage (up to 100%) to be determined by our board of directors in its sole and absolute discretion.

Our charter requires any unsuitable person and any affiliate of an unsuitable person to indemnify us and our affiliated companies for any and all losses, costs and expenses, including attorneys' fees, incurred by us and our affiliated companies as a result of the unsuitable person's ownership or control or failure to promptly divest itself of any securities of our securities when and in the specific manner required by a gaming authority or by our charter.

Under our charter, an unsuitable person will be defined as one who (i) fails or refuses to file an application, or has withdrawn or requested the withdrawal of a pending application, to be found suitable by any gaming authority or for any gaming license, (ii) is denied or disqualified from eligibility for any gaming license by any gaming authority, (iii) is determined by any gaming authority to be unsuitable or disqualified to own or control any of our capital stock or the capital stock or any other equity securities of any of our affiliates, (iv) is determined by any gaming authority to be unsuitable to be affiliated, associated or involved with a person engaged in gaming activities or holding a gaming license in any gaming jurisdiction, (v) causes any gaming license of our company or any of our affiliates to be lost, rejected, rescinded, suspended, revoked or not renewed, or causes our company or any of our affiliates to be threatened by any gaming authority with the loss, rejection, rescission, suspension, revocation or non-renewal of any gaming license, or (vi) is deemed likely, in the sole and absolute discretion of our board, to preclude or materially delay, impede, impair, threaten or jeopardize any gaming license, cause or otherwise result in, the disapproval, cancellation, termination, material adverse modification or non-renewal of any material contract with a gaming authority to which our company or our affiliates is a party, or cause or otherwise result in the imposition of any materially burdensome or unacceptable terms or conditions on any gaming license of our company or any of our affiliates.

Certain Provisions of Maryland Law and Our Charter and Bylaws

The following summary of certain provisions of Maryland law and of our charter and bylaws is only a summary, and is subject to, and qualified in its entirety by reference to, our charter and bylaws and the applicable provisions of the MGCL.

Election and Removal of Directors

Our charter and bylaws provide that the number of our directors may be established only by our board of directors but may not be more than fifteen or fewer than the minimum number permitted by the MGCL, which is one. Our bylaws provide for the election of directors, in uncontested elections, by a majority of the votes cast. In contested elections, the election of directors shall be by a plurality of the votes cast. Our bylaws provide that a director may not be an “unsuitable person” as defined in our charter, and that the term of office of any director determined by our board of directors to be an unsuitable person will end upon that determination.

Our bylaws provide that any vacancy on our board of directors may be filled only by the affirmative vote of a majority of the remaining directors in office, even if the remaining directors do not constitute a quorum of the board of directors except that a vacancy created by the removal of a director by stockholders may also be filled by the requisite vote or consent of stockholders set forth in our bylaws.

Our charter also provides that, subject to the rights of holders of one or more classes or series of preferred stock to elect one or more directors, a director may be removed, with or without cause, by the affirmative vote of stockholders holding a majority of all of the shares of our stock entitled to vote generally in the election of directors.

Amendment to Charter and Bylaws

Except as provided in our charter with respect to indemnification and limitation of liability of directors and officers and certain amendments to our charter affecting these provisions, which must each be advised by our board of directors and receive the affirmative vote of stockholders entitled to cast 75% of all the votes entitled to be cast generally in the election of directors, amendments to our charter must be advised by our board of directors and, with limited exceptions, approved by the affirmative vote of our stockholders entitled to cast a majority of all of the votes entitled to be cast on the matter. Each of our board of directors and our stockholders, by the affirmative vote of not less than a majority of all shares then outstanding and entitled to be cast on the matter, have the power to amend our bylaws.

Business Combinations

Under the MGCL, certain “business combinations” between a Maryland corporation and an interested stockholder or an affiliate of an interested stockholder are prohibited for five years after the most recent date on which the interested stockholder becomes an interested stockholder. These business combinations include a merger, consolidation, share exchange, and, in circumstances specified in the statute, an asset transfer or issuance or reclassification of equity securities. An interested stockholder is defined as:

- any person who beneficially, directly or indirectly, owns 10% or more of the voting power of the corporation’s outstanding voting stock; or
- an affiliate or associate of the corporation who, at any time within the two-year period before the date in question, was the beneficial owner, directly or indirectly, of 10% or more of the voting power of the corporation’s then outstanding voting stock.

A person is not an interested stockholder under the MGCL if the corporation’s board of directors approves in advance the transaction by which the person otherwise would have become an interested stockholder. In approving the transaction, the board of directors may provide that its approval is subject to compliance, at or after the time of approval, with any terms and conditions determined by the board.

After the five-year prohibition, any business combination between the Maryland corporation and the interested stockholder generally must be recommended by the corporation’s board of directors and approved by the affirmative vote of at least:

- 80% of the votes entitled to be cast by holders of outstanding shares of voting stock of the corporation; and
- two-thirds of the votes entitled to be cast by holders of outstanding shares of voting stock of the corporation other than shares held by the interested stockholder with whom or with whose affiliate the business combination is to be effected or held by an affiliate or associate of the interested stockholder.

These super-majority vote requirements do not apply if the corporation’s common stockholders receive a minimum price, as defined under the MGCL, for their shares in the form of cash or other consideration in the same form as previously paid by the interested stockholder for its shares.

The foregoing provisions of the MGCL do not apply, however, to business combinations that are exempted by the board of directors before the time that the interested stockholder becomes an interested stockholder. In addition, our charter provides that, notwithstanding any other provision of our charter or our bylaws, these provisions, known as the Maryland Business Combination Act (Title 3, Subtitle 6 of the MGCL), will not apply to any business combination between us and any interested stockholder of ours and that we expressly elect not to be governed by the operative provisions of the Maryland Business Combination Act in whole or in part. Any amendment to such provision of our charter must be advised by our board of directors and approved by the affirmative vote of stockholders entitled to cast a majority of all votes entitled to be cast on the matter. Consequently, the five-year prohibition and the supermajority vote requirements will not apply to a business combination between us and any other person. As a result, any person described in the preceding sentence may be able to enter into a business combination with us that our stockholders may view not be in their best interests, without compliance with the supermajority vote requirements and other provisions of the statute. We cannot assure you that this provision of our charter will not be amended or repealed in the future. In that event, business combinations between us and an interested stockholder or an affiliate of an interested stockholder would be subject to the five-year prohibition and the super-majority vote requirements.

Control Share Acquisitions

The Maryland Control Share Acquisition Act provides that a holder of control shares of a Maryland corporation acquired in a control share acquisition has no voting rights with respect to the control shares except to the extent approved by a vote of two-thirds of the votes entitled to be cast on the matter. Shares owned by the acquirer, by officers or by employees who are directors of the corporation are excluded from shares entitled to vote on the matter. Control shares are voting shares of stock that, if aggregated with all other shares of stock owned by the acquirer or in respect of which the acquirer is able to exercise or direct the exercise of voting power (except solely by virtue of a revocable proxy), would entitle the acquirer to exercise or direct voting power in electing directors within one of the following ranges of voting power:

- one-tenth or more but less than one-third;
- one-third or more but less than a majority; or
- a majority or more of all voting power.

Control shares do not include shares the acquirer is then entitled to vote as a result of having previously obtained stockholder approval or shares acquired directly from us. A control share acquisition means the acquisition of issued and outstanding control shares, subject to certain exceptions.

A person who has made or proposes to make a control share acquisition may compel the board of directors of the corporation to call a special meeting of stockholders to be held within 50 days of demand to consider the voting rights of the shares. The right to compel the calling of a special meeting is subject to the satisfaction of certain conditions, including an undertaking to pay the expenses of the meeting. If no request for a meeting is made, the corporation may itself present the question at any stockholders meeting.

If voting rights are not approved at the meeting or if the acquirer does not deliver an acquiring person statement as required by the statute, then the corporation may, subject to certain limitations and conditions, redeem for fair value any or all of the control shares, except those for which voting rights have previously been approved. Fair value is determined, without regard to the absence of voting rights for the control shares, as of the date of the last acquisition of control shares by the acquiring person in a control share acquisition; or, if a meeting of stockholders is held at which the voting rights of the shares are considered and not approved, then as of the date of the meeting. If voting rights for control shares are approved at a stockholders meeting and the acquirer becomes entitled to exercise or direct the exercise of a majority of the voting power, all other stockholders may exercise appraisal rights. The fair value of the shares as determined for purposes of appraisal rights may not be less than the highest price per share paid by the acquirer in the control share acquisition.

The Maryland Control Share Acquisition Act does not apply (a) to shares acquired in a merger, consolidation or share exchange if the corporation is a party to the transaction or (b) to acquisitions approved or exempted by the charter or bylaws of the corporation.

Our bylaws contain a provision exempting any acquisition of our stock by any person from the foregoing provisions on control shares. In the event that our bylaws are amended by our directors or our stockholders to modify or eliminate this

provision, acquisitions of our common stock may constitute a control share acquisition and may be subject to the Maryland Control Share Acquisition Act.

Subtitle 8

Subtitle 8 of Title 3 of the MGCL (“Subtitle 8”) permits a Maryland corporation with a class of equity securities registered under the Exchange Act and at least three independent directors to elect, by provision in its charter or bylaws or a resolution of its board of directors and without the need for stockholder approval, and notwithstanding any contrary provision in the charter or bylaws, unless the charter or a resolution adopted by the board of directors prohibits such election, to be subject to any or all of five provisions, including:

- a classified board of directors;
- a two-thirds vote requirement for removing a director;
- a requirement that the number of directors be fixed only by vote of the board of directors;
- a requirement that a vacancy on the board of directors be filled only by the affirmative vote of a majority of the remaining directors and for the remainder of the full term of the class of directors in which the vacancy occurred and until a successor is elected and qualifies; and
- a provision that a special meeting of stockholders must be called upon stockholder request only on the written request of stockholders entitled to cast a majority of the votes entitled to be cast at the meeting.

We do not currently have a classified board. Our charter provides that we are prohibited from electing to be subject to any or all of the provisions of Subtitle 8 unless such election is first approved by the affirmative vote of stockholders of not less than a majority of all shares of ours then outstanding and entitled to be cast on the matter.

Through provisions in our charter and bylaws unrelated to Subtitle 8, we already (1) vest in our board of directors the exclusive power to fix the number of directors, and (2) require the request of stockholders entitled to cast a majority of the votes entitled to be cast at the meeting to call a special meeting (unless the special meeting is called by our board of directors, the chairman of our board of directors, our president or chief executive officer as described below under “Special Meetings of Stockholders”).

Special Meetings of Stockholders

Our board of directors, the chairman of our board of directors, our president or our chief executive officer may call a special meeting of our stockholders. Our bylaws provide that a special meeting of our stockholders to act on any matter that may properly be considered at a meeting of our stockholders must also be called by our secretary upon the written request of stockholders entitled to cast a majority of all the votes entitled to be cast on such matter at the meeting and containing the information required by our bylaws.

Stockholder Action by Written Consent

The MGCL generally provides that, unless the charter of the corporation authorizes stockholder action by less than unanimous consent, stockholder action may be taken by consent in lieu of a meeting only if it is given by all stockholders entitled to vote on the matter. Our charter permits stockholder action by consent in lieu of a meeting to the extent permitted by our bylaws. Our bylaws provide that any action required or permitted to be taken at any meeting of the holders of common stock entitled to vote generally in the election of directors may be taken without a meeting (a) if a unanimous consent setting forth the action is given in writing or by electronic transmission by each stockholder entitled to vote on the matter and filed with the minutes of proceedings of the stockholders or (b) if the action is advised, and submitted to the stockholders for approval, by our board and a consent in writing or by electronic transmission of stockholders entitled to cast not less than the minimum number of votes that would be necessary to authorize or take the action at a meeting of stockholders is delivered to us in accordance with the MGCL. We will be required to give notice of any action taken by less than unanimous consent to each stockholder not later than ten days after the effective time of such action.

Competing Interests and Activities of Our Directors or Officers

Our charter provides that we have the power to renounce, by resolution of the board of directors, any interest or expectancy in, or in being offered an opportunity to participate in, business opportunities or classes or categories of business opportunities that are (i) presented to us or (ii) developed by or presented to one or more of our directors or officers.

Advance Notice of Director Nomination and New Business

Our bylaws provide that nominations of individuals for election as directors and proposals of business to be considered by stockholders at any annual meeting may be made only (1) pursuant to our notice of the meeting, (2) by or at the direction of our board of directors or any duly authorized committee of our board of directors or (3) by any stockholder present in person or by proxy who was a stockholder of record at the time of provision of notice by the stockholders and at the time of the meeting, who is entitled to vote at the meeting in the election of the individuals so nominated or on such other proposed business, who is not an “unsuitable person” as defined in our charter, and who has complied with the advance notice procedures of our bylaws. Stockholders generally must provide notice to our secretary not earlier than the 150th day or later than the close of business on the 120th day before the first anniversary of the date of our proxy statement for the preceding year’s annual meeting.

Only the business specified in the notice of the meeting may be brought before a special meeting of our stockholders. Nominations of individuals for election as directors at a special meeting of stockholders may be made only (1) by or at the direction of our board of directors or any duly authorized committee of our board of directors or (2) if the special meeting has been called in accordance with our bylaws for the purpose of electing directors, by a stockholder who is a stockholder of record both at the time of provision of notice and at the time of the special meeting, who is entitled to vote at the meeting in the election of each individual so nominated and who has complied with the advance notice procedures of our bylaws. Stockholders generally must provide notice to our secretary not earlier than the 120th day before such special meeting or later than the later of the close of business on the 90th day before such special meeting or the tenth day after the first public announcement of the date of the special meeting and the nominees of our board of directors to be elected at the meeting.

A stockholder’s notice must contain certain information specified by our bylaws about the stockholder, its affiliates and any proposed business or nominee for election as a director, including information about the economic interest of the stockholder, its affiliates and any proposed nominee in us.

Proxy Access Nominations

Our bylaws permit an eligible stockholder, or group of up to 20 stockholders, who have owned 3% or more of our common stock continuously for at least three years to nominate and include in our proxy statement director candidates to occupy up to the greater of two directors or 20% of the board of directors, provided that the stockholder or group has satisfied the procedural, eligibility and disclosure requirements set forth in our bylaws.

Effect of Certain Provisions of Maryland Law and our Charter and Bylaws

The restrictions on ownership and transfer of our stock discussed under the caption “Restrictions on Ownership and Transfer of our Common Stock” prohibit any person from acquiring, with respect to any class or series of our capital stock, more than 9.8% (in value or by number of shares, whichever is more restrictive) of the aggregate of the outstanding shares of such class or series of our capital stock, including our common stock, without the approval of our board of directors. These provisions may delay, defer or prevent a change in control of us. Further, subject to the rights of holders of preferred stock, our board of directors has the power to increase the aggregate number of authorized shares, or the number of authorized shares of any class or series, and to classify and reclassify any unissued shares of our stock into other classes or series of stock, and to authorize us to issue the newly-classified shares, as discussed above under the captions “Common Stock” and “Power to Reclassify and Issue Stock,” and could authorize the issuance of shares of common stock or another class or series of stock, including a class or series of preferred stock, that could have the effect of delaying, deferring or preventing a change in control of us. We believe that the power to increase the aggregate number of authorized shares and to classify or reclassify unissued shares of common or preferred stock, without approval of holders of our common stock, provides us with increased flexibility in structuring possible future financings and acquisitions and in meeting other needs that might arise.

Our charter and bylaws also provide that the number of directors may be established only by our board of directors, which prevents our stockholders from increasing the number of our directors and filling any vacancies created by such increase with their own nominees. The provisions of our bylaws discussed above under the captions “Special Meetings of Stockholders” and “Advance Notice of Director Nomination and New Business” require stockholders seeking to call a special meeting, nominate an individual for election as a director or propose other business at an annual meeting to comply with certain notice and information requirements. We believe that these provisions will help to assure the continuity and stability of our business strategies and policies as determined by our board of directors and promote good corporate governance by providing us with clear procedures for calling special meetings, information about a stockholder proponent’s interest in us and adequate time to consider stockholder nominees and other business proposals. However, these provisions, alone or in combination, could make

it more difficult for our stockholders to remove incumbent directors or fill vacancies on our board of directors with their own nominees and could delay, defer or prevent a change in control, including a proxy contest or tender offer that might involve a premium price for our common stockholders or otherwise be in the best interest of our stockholders.

Exclusive Forum

Our bylaws provide that, unless we consent in writing to the selection of an alternative forum, the Circuit Court for Baltimore City, Maryland, or, if that court does not have jurisdiction, the United States District Court for the District of Maryland, Baltimore Division, will be the sole and exclusive forum for (a) any derivative action or proceeding brought on our behalf, (b) any action asserting a claim of breach of any duty owed by any of our present or former directors or officers or other employees or stockholders to us or to our stockholders, as applicable, or any standard of conduct applicable to our directors, (c) any action asserting a claim against us or any of our present or former directors or officers or other employees arising pursuant to any provision of the MGCL or our charter or bylaws or (d) any action asserting a claim against us or any of our present or former directors or officers or other employees that is governed by the internal affairs doctrine.

Limitation of Liability and Indemnification of Directors and Officers

Maryland law permits us to include a provision in our charter eliminating the liability of our directors and officers to us and our stockholders for money damages, except for liability resulting from (a) actual receipt of an improper benefit or profit in money, property or services or (b) a final judgment based upon a finding that his or her action or failure to act was the result of active and deliberate dishonesty by the director or officer and was material to the cause of action adjudicated. Our charter contains a provision that eliminates our directors' and officers' liability to us and our stockholders for money damages to the maximum extent permitted by Maryland law.

The MGCL requires us (unless our charter were to provide otherwise, which our charter does not) to indemnify a director or officer who has been successful, on the merits or otherwise, in the defense of any proceeding to which he or she is made or threatened to be made a party by reason of his or her service in that capacity. The MGCL permits us to indemnify our present and former directors and officers, among others, against judgments, penalties, fines, settlements and reasonable expenses actually incurred by them in connection with any proceeding to which they may be made or threatened to be made a part to, or witness in, by reason of their service in those or certain other capacities unless it is established that:

- the act or omission of the director or officer was material to the matter giving rise to the proceeding and (a) was committed in bad faith or (b) was the result of active and deliberate dishonesty;
- the director or officer actually received an improper personal benefit in money, property or services; or
- in the case of any criminal proceeding, the director or officer had reasonable cause to believe that the act or omission was unlawful.

However, the MGCL prohibits us from indemnifying a director or officer who has been adjudged liable in a suit by us or on our behalf or in which the director or officer was adjudged liable on the basis that a personal benefit was improperly received. A court may order indemnification if it determines that the director or officer is fairly and reasonably entitled to indemnification, even though the director or officer did not meet the standard of conduct for indemnification set forth above or was adjudged liable on the basis that personal benefit was improperly received. However, indemnification for an adverse judgment in a suit by us or on our behalf, or for a judgment of liability on the basis that personal benefit was improperly received, is limited to expenses.

In addition, the MGCL permits us to advance reasonable expenses to a director or officer upon our receipt of (a) a written affirmation by the director or officer of his or her good faith belief that he or she has met the standard of conduct necessary for indemnification and (b) a written undertaking by him or her or on his or her behalf to repay the amount paid or reimbursed if it is ultimately determined that the standard of conduct was not met.

Our charter provides that we will have the power to obligate ourselves, and our bylaws obligate us, to the maximum extent permitted by Maryland law in effect from time to time, to indemnify and, without requiring a preliminary determination of the ultimate entitlement to indemnification, pay or reimburse reasonable expenses in advance of final disposition of a proceeding to:

- any present or former director or officer who is made or threatened to be made a party to, or witness in, a proceeding by reason of his or her service in that capacity; or

- any individual who, while a director or officer of our company and at our request, serves or has served as a director, officer, partner, trustee, member or manager of another corporation, REIT, limited liability company, partnership, joint venture, trust, employee benefit plan or any other enterprise and who is made or threatened to be made a party to, or witness in, the proceeding by reason of his or her service in that capacity.

Our charter and bylaws provide that we have the power, with approval of our board, to provide such indemnification and advance of expenses to a person who served a predecessor of us in any such capacity described above and to any employee or agent of us or a predecessor of us.

Indemnification Agreements

We have entered into an indemnification agreement with each of our directors and executive officers. Insofar as indemnification for liabilities arising under the Securities Act may be permitted to directors or executive officers, we have been informed that in the opinion of the SEC such indemnification is against public policy and is therefore unenforceable.

We have purchased and maintain insurance on behalf of all of our directors and executive officers against liability asserted against or incurred by them in their official capacities, whether or not we are required to have the power to indemnify them against the same liability.

SECOND AMENDMENT TO AMENDED AND RESTATED MASTER LEASE

THIS SECOND AMENDMENT TO AMENDED AND RESTATED MASTER LEASE (this “**Amendment**”) is dated as of February 15, 2023 (the “**Effective Date**”), by and between MGP Lessor, LLC, a Delaware limited liability company (together with its permitted successors and assigns, “**Landlord**”), and MGM Lessee, LLC, a Delaware limited liability company (together with its permitted successors and assigns, “**Tenant**”), and acknowledged and agreed to by MGM Resorts International, a Delaware corporation (“**Guarantor**”), as set forth on the Consent and Ratification attached to this Amendment.

RECITALS

A. Landlord and Tenant are parties to that certain Amended and Restated Master Lease entered into as of April 29, 2022 (“**A&R Master Lease**”), as amended by that certain First Amendment to Amended and Restated Master Lease, dated as of December 19, 2022 (the “**First Amendment**,” and together with the A&R Master Lease, collectively, the “**Master Lease**”);

B. On the date hereof, Mandalay Resort Group, LLC, a Nevada limited liability company, and CNE Gaming Holdings, LLC, a Cherokee Nation limited liability company (the “**Purchaser**”) are closing a purchase and sale transaction under that certain Purchase Agreement, dated as of June 9, 2022, as amended, restated, modified or supplemented from time to time in accordance with its terms, with respect to the outstanding equity interests in MGM Resorts Mississippi, LLC (the “**Company**”), which subleases, operates and manages the hotel, gaming, and entertainment facility known as Gold Strike Hotel and Casino located at 1010 Casino Center Drive, Robinsonville, Tunica County, Mississippi (the “**Gold Strike Facility**”), which facility is (prior to the effectiveness of this Amendment) subject to the Master Lease (the “**Gold Strike Transaction**”);

C. In connection with the Gold Strike Transaction, on the Effective Date (x) the Gold Strike Facility will be removed from the Master Lease and (y) Landlord will enter into a new lease with the Company, which, on the Effective Date, shall be a wholly-owned Subsidiary of Purchaser, in respect of the Gold Strike Facility; and

D. In connection with the Gold Strike Transaction, Landlord and Tenant desire to amend the Master Lease as set forth herein.

NOW THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound hereby, agree as follows:

1. **Definitions.** Except as otherwise defined herein, all capitalized terms used herein without definition shall have the meanings applicable to such terms, respectively, as set forth in the Master Lease.

2. **Termination of the Master Lease as to Gold Strike Facility.** Effective as of the Effective Date, the Master Lease is hereby terminated solely with respect to the Gold Strike Facility, and each of Landlord, Tenant and Guarantor shall have no further obligations or liabilities under the Master Lease or Guaranty, as applicable, with respect to the Gold Strike Facility from and after the Effective Date; it being understood, however, that any claims against, and any liabilities, obligations and indemnities of, Guarantor, Tenant or Landlord in respect of the Gold Strike Facility, to the extent arising out of or accruing in respect of any period prior to

the Effective Date, shall survive such termination and shall not be terminated, limited, impaired or affected by or upon entry into this Amendment.

3. **Amendments to Master Lease.** Effective as of the Effective Date, the Master Lease is hereby amended in its entirety to read as set forth in Exhibit A hereto, it being understood, for the avoidance of doubt, that during the period from (i) the Commencement Date of the Master Lease until December 19, 2022, the terms of the Master Lease applied to the fourteen (14) original Facilities and all matters then arising under the Master Lease, without regard to the First Amendment and the termination of the Master Lease with respect to the Mirage Facility, and (ii) December 19, 2022 until the Effective Date of this Amendment, the terms of the Master Lease applied to the remaining thirteen (13) Facilities after giving effect to the removal of the Mirage Facility pursuant to the First Amendment and all matters then arising under the Master Lease, without regard to this Amendment and the termination of the Master Lease with respect to the Gold Strike Facility. Solely for purposes of clarity, changes effectuated by the (x) First Amendment to the text of the Master Lease from the form of the Master Lease that was in effect immediately prior to December 19, 2022 are set forth in the changed “redlined” pages attached as Exhibit B-1 hereto and (y) this Amendment to the text of the Master Lease from the form of the Master Lease that was in effect immediately prior to the Effective Date are set forth in the changed “redlined” pages attached as Exhibit B-2 hereto.

4. **No Waiver.** Except to the extent expressly set forth in this Amendment, Landlord is not waiving any obligations of Tenant under the Master Lease or any rights of Landlord under the Master Lease or at law, nor is Landlord waiving or consenting to any other events that may have occurred under or in relation to the Master Lease.

5. **Incorporation into the Master Lease.** The provisions of this Amendment are hereby incorporated into the Master Lease and made an integrated, non-severable part thereof.

6. **Other Documents.** Any and all agreements entered into in connection with the Master Lease which make reference therein to “the Master Lease” shall be intended to, and are deemed hereby, to refer to the Master Lease as amended by this Amendment.

7. **Miscellaneous.**

(a) This Amendment shall be construed according to and governed by the laws of the jurisdictions which are specified by the Master Lease without regard to its conflicts of law principles. The parties hereto hereby irrevocably submit to the jurisdiction of any court of competent jurisdiction located in such applicable jurisdiction in connection with any proceeding arising out of or relating to this Amendment.

(b) If any provision of this Amendment is adjudicated to be invalid, illegal or unenforceable, in whole or in part, it will be deemed omitted to that extent and all other provisions of this Amendment will remain in full force and effect.

(c) Neither this Amendment nor any provision hereof may be changed, modified, waived, discharged or terminated orally, but only by an instrument in writing signed by the party against whom enforcement of such change, modification, waiver, discharge or termination is sought.

(d) The paragraph headings and captions contained in this Amendment are for convenience of reference only and in no event define, describe or limit the scope or intent of this Amendment or any of the provisions or terms hereof.

(e) This Amendment shall be binding upon and inure to the benefit of the parties and their respective heirs, legal representatives, successors and permitted assigns.

(f) This Amendment may be executed in any number of counterparts with the same effect as if all parties hereto had signed the same document. All such counterparts shall be construed together and shall constitute one instrument, but in making proof hereof it shall only be necessary to produce one such counterpart. Facsimile and/or .pdf signatures shall be deemed as originals for all purposes.

(g) Except as specifically modified in this Amendment, all of the provisions of the Master Lease remain unchanged and continue in full force and effect.

(h) Tenant represents and warrants to Landlord that there are no gaming regulatory approvals, notices and/or waiting periods necessary or advisable to be obtained or fulfilled in connection with the effectiveness of this Amendment other than such approvals, notices, and/or waiting periods that have already been obtained or fulfilled.

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IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be duly executed by their duly authorized representatives, all as of the Effective Date.

LANDLORD:

MGP LESSOR, LLC,
a Delaware limited liability company

By: /s/ David A. Kieske
Name: David A. Kieske
Title: Treasurer

TENANT:

MGM LESSEE, LLC,
a Delaware limited liability company

By: /s/ Jonathan S. Halkyard
Name: Jonathan S. Halkyard
Title: Chief Financial Officer & Treasurer

[Signature Page to Second Amendment to Amended and Restated Master Lease]

CONSENT AND RATIFICATION

By executing this Amendment in the space provided below, the undersigned Guarantor hereby: (i) consents to the execution and delivery of this Amendment, (ii) ratifies and confirms Guarantor's obligations, as modified by this Amendment, under that certain Amended and Restated Guaranty of Master Lease dated as of April 29, 2022 executed by Guarantor (the "**Guaranty**"), (iii) acknowledges and agrees that the Guaranty is in full force and effect and is valid, binding and enforceable in accordance with its terms, as modified by this Amendment and (iv) acknowledges and agrees that nothing in this Amendment in any way impairs or lessens Guarantor's obligations under the Guaranty except to the extent of Obligations (as defined in the Guaranty) pertaining to the Gold Strike Facility as and to the extent arising from and after the Effective Date for which Guarantor is hereby released (it being understood, for the avoidance of doubt, that any Obligations in respect of the Gold Strike Facility, as and to the extent arising out of or accruing in respect of any period prior to the Effective Date, shall continue to comprise Obligations, and shall survive and shall not be terminated, limited, impaired or affected by or upon entry into this Amendment).

MGM RESORTS INTERNATIONAL,
a Delaware corporation

By: /s/ Jonathan S. Halkyard
Name: Jonathan S. Halkyard
Title: Chief Financial Officer & Treasurer

[Consent and Ratification to Second Amendment to Amended and Restated Master Lease]

Exhibit A

CONFORMED AMENDED AND RESTATED MASTER LEASE
Conformed through Second Amendment

AMENDED AND RESTATED MASTER LEASE

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AMENDED AND RESTATED MASTER LEASE

This **AMENDED AND RESTATED MASTER LEASE** (the “**Master Lease**”) is entered into as of the 29th day of April, 2022 (the “**Commencement Date**”), by and between **MGP Lessor, LLC**, a Delaware limited liability company (together with its permitted successors and assigns, “**Landlord**”), and **MGM Lessee, LLC**, a Delaware limited liability company (together with its permitted successors and assigns, “**Tenant**”).

RECITALS

- A. Capitalized terms used in this Master Lease and not otherwise defined herein are defined in **Article II** hereof.
- B. Landlord and Tenant entered into that certain Master Lease, dated as of April 25, 2016, as amended by that certain (i) First Amendment to Master Lease dated as of August 1, 2016, (ii) Second Amendment to Master Lease dated as of October 5, 2017, (iii) Third Amendment to Master Lease dated as of January 29, 2019, (iv) Fourth Amendment to Master Lease dated as of March 7, 2019, (v) Fifth Amendment to Master Lease dated as of April 1, 2019, (vi) Sixth Amendment to Master Lease dated as of February 14, 2020 and (vii) Seventh Amendment to Master Lease dated as of October 29, 2021 (collectively, the “**Original Master Lease**”) pursuant to which each of the Facilities has been demised since the respective Original Commencement Date (as hereinafter defined) for each Facility.
- C. Landlord and Tenant thereafter amended and restated the Original Master Lease in its entirety on the terms set forth in the Amended and Restated Master Lease dated as of the Commencement Date (the “**Original Amended and Restated Master Lease**”).
- D. Landlord and Tenant thereafter amended the Original Amended and Restated Master Lease by entry into that certain First Amendment to Amended and Restated Master Lease, dated as of December 19, 2022 (the “**First Amendment**”) (the Original Amended and Restated Master Lease as amended by the First Amendment, the “**First Amended and Restated Master Lease**”).
- E. Landlord and Tenant desire to amend the First Amended and Restated Master Lease to be in its entirety as set forth herein.
- F. The twelve (12) facilities covered by this Master Lease after giving effect to the Second Amendment are described on **Exhibit A** attached hereto (each a “**Facility**,” and collectively, the “**Facilities**”). Each of the Facilities will continue to be subleased by Tenant to Operating Subtenants pursuant to subleases (the “**Operating Subleases**”) between Tenant and each Operating Subtenant.
- G. Tenant and Landlord intend this Master Lease to constitute one indivisible lease of the Facilities and not separate leases governed by similar terms. The Facilities constitute one economic unit, and the Rent and all other provisions of this Master Lease have been negotiated and agreed to based on a demise of all of the Facilities to Tenant as a single,

composite, inseparable transaction and would have been substantially different had separate leases or a divisible lease been intended.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree that the Original Master Lease shall be amended and restated in its entirety as follows:

ARTICLE I

LEASED PROPERTY

1.1 Leased Property. Upon and subject to the terms and conditions hereinafter set forth, Landlord leases to Tenant and Tenant leases from Landlord all of Landlord's rights and interests in and to the following with respect to each of the Facilities (collectively, the "**Leased Property**"):

(a) the real property or properties described in **Part I of Exhibit B** attached hereto together with the leasehold estates described in **Part II of Exhibit B** (as to which this Master Lease will constitute a sublease) (collectively, the "**Land**");

(b) all buildings, structures, barges, and other improvements of every kind now or hereafter located on the Land or connected thereto including, but not limited to, alleyways and connecting tunnels, sidewalks, utility pipes, conduits and lines (on-site and off-site to the extent Landlord has obtained any interest in the same), parking areas and roadways appurtenant to such buildings and structures of each such Facility (collectively, the "**Leased Improvements**"); provided, however, that the foregoing shall not affect or contradict the provisions of this Master Lease which specify that Tenant shall be entitled to certain benefits of or rights with respect to the Tenant Capital Improvements;

(c) all easements, rights and appurtenances relating to the Land and the Leased Improvements;

(d) all equipment, machinery, fixtures, and other items of property, including all components thereof, that are now or hereafter located in, on or used in connection with and permanently affixed to or otherwise incorporated into the Leased Improvements, together with all replacements, modifications, alterations and additions thereto (collectively, the "**Fixtures**"); provided, however, that the foregoing shall not affect or contradict the provisions of this Master Lease which specify that Tenant shall be entitled to certain benefits of or rights with respect to the Tenant Capital Improvements; and

(e) all other properties or rights, real, personal or otherwise of Landlord or Landlord's Subsidiaries relating to the Leased Property;

in each case, with respect to clauses (b), (d) and (e) above, to the extent constituting "real property" as that term is defined in Treasury Regulation §1.856-3(d).

The Leased Property shall not, for any purposes under this Master Lease, include those assets described on **Schedule 1** attached hereto (collectively, “**Excluded Assets**”).

The Leased Property is leased subject to all covenants, conditions, restrictions, easements and other matters affecting the Leased Property as of the Commencement Date and such subsequent covenants, conditions, restrictions, easements and other matters permitted by this Master Lease or as may be agreed to by Landlord or Tenant in accordance with the terms of this Master Lease, whether or not of record, including any matters which would be disclosed by an inspection or accurate survey of the Leased Property as of the Commencement Date.

Notwithstanding the foregoing, following (a) the removal of any Facility from this Master Lease pursuant to **Section 1.5**, (b) the assignment by Tenant of its Leasehold Estate with respect to any Facility pursuant to **Section 22.2(iii)**, (c) the termination of this Master Lease with respect to any Facility pursuant to **Section 14.2**, or (d) the termination of the Master Lease with respect to any Facility pursuant to **Section 15.1**, such Facility shall no longer constitute Leased Property hereunder.

1.2 Single, Indivisible Lease. (a) This Master Lease constitutes one indivisible lease of the Leased Property and not separate leases governed by similar terms. The Leased Property constitutes one economic unit, and the Rent and all other provisions have been negotiated and agreed to based on a demise of all of the Leased Property to Tenant as a single, composite, inseparable transaction and would have been substantially different had separate leases or a divisible lease been intended. Except as expressly provided in this Master Lease for specific, isolated purposes (and then only to the extent expressly otherwise stated), all provisions of this Master Lease apply equally and uniformly to all of the Leased Property as one unit. An Event of Default with respect to any portion of the Leased Property is an Event of Default as to all of the Leased Property. Upon the occurrence and during the continuance of any Event of Default, Landlord shall be entitled to exercise any applicable remedies under **Article XVI** with respect to all of the Leased Property regardless of the portion of the Leased Property to which such Event of Default relates. The parties intend that the provisions of this Master Lease shall at all times be construed, interpreted and applied so as to carry out their mutual objective to create an indivisible lease of all of the Leased Property and, in particular but without limitation, that, for purposes of any assumption, rejection or assignment of this Master Lease under 11 U.S.C. Section 365, or any successor or replacement thereof or any analogous state law, this is one indivisible and non-severable lease and executory contract dealing with one legal and economic unit and that this Master Lease must be assumed, rejected or assigned as a whole with respect to all (and only as to all) of the Leased Property. The parties may amend this Master Lease from time to time to add or remove one or more additional Facilities as part of the Leased Property and such future addition to, or removal from, the Leased Property shall not in any way change the indivisible and nonseverable nature of this Master Lease and all of the foregoing provisions shall continue to apply in full force. Each party agrees that it shall not assert that this Master Lease is not, and shall not challenge the characterization of this Master Lease as, a single indivisible lease of all of the Leased Property. Each party hereby waives any claim or defense based on a recharacterization of this Master Lease as any agreement other than a single indivisible lease of all of the Leased Property.

(b) Without limiting the generality of the foregoing, Landlord and Tenant acknowledge and agree that (x) none of (1) Landlord's ability to remove one or more Facilities from this Master Lease pursuant to **Section 1.5**, (2) Tenant's ability to assign its Leasehold Estate with respect to one or more individual Facilities pursuant to **Section 22.2(iii)**, (3) Tenant's or Landlord's ability to terminate this Master Lease with respect to an affected Facility following certain Casualty Events pursuant to **Section 14.2** or (4) Tenant's or Landlord's ability to terminate this Master Lease with respect to an affected Facility following certain Condemnations pursuant to **Section 15.1** shall in any way change the indivisible and nonseverable nature of this Master Lease (as set forth in this **Section 1.2**) and (y) following any such removal, assignment or termination, this Master Lease shall continue as a single indivisible lease with respect to the remaining Leased Property.

1.3 Term. The "**Term**" of this Master Lease is the Initial Term *plus* all Renewal Terms, to the extent exercised. The initial term of this Master Lease (the "**Initial Term**") shall commence on the Commencement Date and shall end on April 30, 2047, subject to renewal as set forth in **Section 1.4** below.

1.4 Renewal Terms.

(a) The term of this Master Lease may be extended for three (3) separate "**Renewal Terms**" of ten (10) years each if: (i) at least twelve (12), but not more than eighteen (18) months prior to the end of the then current Term, Tenant delivers to Landlord a "**Renewal Notice**" that Tenant desires to exercise its right to extend this Master Lease for one (1) Renewal Term; and (ii) no Event of Default shall have occurred and be continuing on the date Landlord receives the Renewal Notice (the "**Exercise Date**") or on the last day of the then current Term; provided, however, that if Tenant fails to deliver to Landlord a Renewal Notice prior to the date that is twelve (12) months prior to the then current expiration date of the Term that Tenant does not intend to renew in accordance with this **Section 1.4**, then it shall automatically and without further action be deemed for all purposes that Tenant has delivered the Renewal Notice required by this **Section 1.4(a)(i)**. During any such Renewal Term, except as otherwise specifically provided for herein, all of the terms and conditions of this Master Lease shall remain in full force and effect.

(b) Tenant may exercise such options to renew with respect to all (and no fewer than all) of the Facilities which are subject to this Master Lease as of the Exercise Date.

(c) During each Renewal Term, Rent shall continue to be determined pursuant to the definition of such term set forth in this Master Lease.

1.5 Separation of Leases. (a) From time to time, at the election of Landlord, but only in connection with the sale of a Facility in accordance with **Article XVIII**, Landlord may remove one or more Facilities in accordance with **Article XVIII** (individually, "**Removal Facility**," and collectively, "**Removal Facilities**") from this Master Lease and place such Removal Facilities in one (1) or more separate leases on terms and conditions substantially similar to, and in any case no less favorable to Tenant than, those set forth in this Master Lease

and as otherwise provided in this **Section 1.5** (individually, “**Separate Lease**,” and collectively, “**Separate Leases**”), to facilitate the sale of such Removal Facilities.

(b) If Landlord elects to remove a Removal Facility, Landlord shall give Tenant not less than thirty (30) days’ Notice thereof (a “**Removal Notice**”), and Tenant shall thereafter, within said thirty (30) day period (or such other period of time as Landlord may reasonably require; it being understood that Landlord may delay removal or cancel the Removal Notice in the event that the underlying sale of a Removal Facility is delayed or cancelled for any reason), execute, acknowledge and deliver to the new owner of the Removal Facilities, as designated by Landlord at no cost or expense to Tenant, one (1) or more Separate Leases with respect to the relevant Removal Facilities effective as of the date set forth in the Removal Notice (“**Removal Date**”) for the remaining Term and on substantially the same terms and conditions as, and in any case no less favorable to Tenant than the terms and conditions of, this Master Lease, except for appropriate adjustments (including to Exhibits and Schedules), including as follows:

(i) Rent. The initial Rent for each Removal Facility shall be equal to the Allocable Rent Amount in respect of such Removal Facility and thereafter shall be adjusted on the same basis as provided in this Master Lease; it being understood that the specification in this **Section 1.5(b)(i)** of the methodology for determining the initial Rent for a Removal Facility shall not in any way change the indivisible and nonseverable nature of this Master Lease (as set forth in **Section 1.2**).

(ii) Liabilities and Obligations. The Separate Lease shall provide that Landlord and Tenant shall be responsible for the payment, performance and satisfaction of all of the duties, obligations and liabilities of Landlord and Tenant, respectively, arising under this Master Lease, with respect to the Removal Facility, that were not paid, performed and satisfied in full prior to the commencement date of the Separate Lease, and shall further provide that (x) landlord and tenant under the Separate Lease shall not be responsible for the payment, performance or satisfaction of any duties, obligations or liabilities of Landlord or Tenant under this Master Lease first arising after the Removal Date and (y) Landlord and Tenant and Guarantor shall not be responsible for the payment, performance or satisfaction of any duties, obligations or liabilities of the landlord or tenant under the Separate Lease, except to the extent they are a party to such Separate Lease. Except as provided in clause (iv) below, Landlord and Tenant’s obligations under this Master Lease with respect to the remainder of the Facilities not removed in accordance with this **Section 1.5** shall remain unaffected and shall continue in accordance with the terms of this Master Lease.

(iii) Deletion of REIT Provisions. At the election of Landlord or any new landlord, any one or more of the provisions of the Separate Lease pertaining to the REIT status of any member of Landlord (or any Affiliate of any member of Landlord) shall be deleted.

(iv) Amendments to this Master Lease. Upon execution of such Separate Lease, and effective as of the effective date of such Separate Lease, this Master Lease shall be deemed to be amended as follows: (i) the Removal Facilities shall be excluded from the Leased Property hereunder and (ii) Rent hereunder shall be reduced by the amount of the Allocable Rent Amount with respect to the Removal Facilities. Such amendments shall occur

automatically and without the necessity of any further action by Landlord or Tenant, but, at Landlord's or Tenant's election, the same shall be reflected in a formal amendment to this Master Lease, which amendment shall be promptly executed by Landlord and Tenant.

(v) Other Undertakings. Landlord and Tenant shall each take such actions and execute and deliver such documents, including, without limitation, the Separate Lease and new or amended Memorandum(s) of Lease and, if requested by the other, an amendment to this Master Lease, as are reasonably necessary and appropriate to effectuate fully the provisions and intent of this **Section 1.5**, and as otherwise are appropriate or as Landlord, Tenant or any title insurer may reasonably request to evidence such removal and new leasing of the Removal Facilities, including memoranda of lease with respect to such Separate Leases and amendments of all existing memoranda of lease with respect to this Master Lease and an amendment of this Master Lease.

(c) No Cross Default. No default under any Separate Lease shall be a default under this Master Lease and no default or Event of Default under this Master Lease shall be a default under any Separate Lease. In all cases, so long as any Facility Mortgage shall apply to any Removal Facility or Separate Lease, such Removal Facility and/or Separate Lease shall continue to be subject either to any existing subordination, nondisturbance and attornment agreement with respect to the Master Lease, or subject to a new subordination, nondisturbance and attornment agreement to be delivered by Facility Mortgagee, the landlord under the Separate Lease and Tenant on substantially the same terms and conditions as the existing subordination, nondisturbance and attornment agreement (having regard to the terms and conditions of the Separate Lease).

(d) Guaranty. Upon the execution of a Separate Lease, Guarantor shall execute and deliver to the new owner of the Removal Facility a new Guaranty of Tenant's obligations with respect to the Removal Facility. The original Guaranty delivered to Landlord shall be of no further force or effect with respect to any obligations related to the Removal Facilities.

(e) Costs and Expenses. All costs and expenses relating to a Separate Lease (including reasonable attorneys' fees and other reasonable, documented out-of-pocket costs incurred by Tenant or Guarantor for outside counsel, if any) shall be borne by Landlord and not Tenant.

(f) Cooperation. Landlord and Tenant shall cooperate with Gaming Authorities in all reasonable respects to facilitate all necessary regulatory reviews, approvals and/or authorization of the Separate Lease in accordance with applicable Gaming Regulations.

ARTICLE II

DEFINITIONS

2.1 Definitions. For all purposes of this Master Lease, except as otherwise expressly provided or unless the context otherwise requires, (i) the terms defined in this **Article II** have the meanings assigned to them in this Article and include the plural as well as the singular; all

accounting terms not otherwise defined herein have the meanings assigned to them in accordance with GAAP; (ii) all references in this Master Lease to designated “Articles,” “Sections” and other subdivisions are to the designated Articles, Sections and other subdivisions of this Master Lease; (iii) the word “including” shall have the same meaning as the phrase “including, without limitation,” and other similar phrases; (iv) the words “herein,” “hereof” and “hereunder” and other words of similar import refer to this Master Lease as a whole and not to any particular Article, Section or other subdivision; and (v) for the calculation of any financial ratios or tests referenced in this Master Lease (including the EBITDAR to Rent Ratio, and the Indebtedness to EBITDA Ratio), this Master Lease, and any similar lease, regardless of its treatment under GAAP, shall be deemed to be an operating lease and the Rent payable hereunder, or under a similar lease, shall be treated as an operating expense and shall not constitute Indebtedness or interest expense.

“10 Year Treasury Yield”: The yield published in The Wall Street Journal from time to time for the “U.S. 10 Year Treasury Note.” If The Wall Street Journal ceases to publish the “U.S. 10 Year Treasury Note,” Landlord shall select an equivalent publication that publishes such “U.S. 10 Year Treasury Note,” and if such “U.S. 10 Year Treasury Note” is no longer generally published or is limited, regulated or administered by a governmental or quasi-governmental body, then Landlord shall select a comparable yield index.

“121A Entity”: MGM Springfield ReDevelopment, LLC, a Massachusetts 121A limited liability company.

“Accounts”: All accounts, including deposit accounts, all rents, profits, income, revenues or rights to payment or reimbursement derived from the use of any space within the Leased Property and/or from goods sold or leased or services rendered from the Leased Property (including, without limitation, from goods sold or leased or services rendered from the Leased Property by any subtenant) and all accounts receivable, in each case whether or not evidenced by a contract, document, instrument or chattel paper and whether or not earned by performance, including without limitation, the right to payment of management fees and all proceeds of the foregoing.

“Act”: As defined in **Section 41.14(a)(i)**.

“Additional Charges”: All Impositions and all other amounts, liabilities and obligations which Tenant assumes or agrees to pay under this Master Lease and, in the event of any failure on the part of Tenant to pay or cause to be paid any of those items, except where such failure is due to the wrongful or negligent acts or omissions of Landlord, every fine, penalty, interest and cost which may be added for non-payment or late payment of such items.

“Additional Empire Facility”: As defined in **Section 7.4**.

“Additional Facility”: As defined in the definition of Allocable Rent Amount.

“Affiliate”: When used with respect to any corporation, limited liability company, partnership or any other Person, the term “**Affiliate**” shall mean any Person which, directly or indirectly, controls or is controlled by or is under common control with such other Person. For the purposes of this definition, “**control**” (including the correlative meanings of the

terms “controlled by” and “under common control with”), as used with respect to any person, shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such person, through the ownership of voting securities, partnership interests or other equity interests.

“Allocable Percentage Share”: For any Facility, the fraction converted to a percentage determined by dividing the EBITDAR for such Facility by the EBITDAR for all Facilities then subject to the Master Lease, with each such EBITDAR being based on the most recent Fiscal Year required to be reported by Tenant to Landlord under **Section 23.1(b)** of this Master Lease.

“Allocable Rent Amount”: As of any date of determination, with respect to one or more Facilities, and with respect to any amount of Rent in question, the amount determined by multiplying the then current total amount of Rent in question by the Allocable Percentage Share of such Facility(ies). To the extent the Additional Empire Facility is purchased by Landlord and made subject to this Master Lease as a Leased Property in accordance with **Section 7.4** or any other facility is purchased by Landlord and made subject to this Master Lease as a Leased Property (an “**Additional Facility**”), but has not been subject to this Master Lease as Leased Property for the entirety of the applicable 12 month period prior to the date of determination of Allocable Rent Amount, the Allocable Rent Amount calculation for all purposes of this Master Lease that includes the Additional Empire Facility and/or Additional Facility shall reflect, with respect to the Additional Empire Facility and/or the Additional Facility, the stabilized EBITDAR projections prepared by the Tenant and reasonably approved by the Landlord. In the event that Landlord and Tenant are unable to agree on such stabilized EBITDAR projections of the Additional Empire Facility and/or the Additional Facility, either party may elect to have the same determined by an Expert in accordance with **Section 34.1**.

“Appraiser”: As defined in **Section 3.5**.

“Assumed Rate”: The 10 Year Treasury Yield plus six percent (6%).

“Award”: All compensation, sums or anything of value awarded, paid or received on a total or partial Condemnation.

“Blue Tarp”: As defined in **Section 41.14(c)(ii)**.

“Borgata”: As defined in **Section 41.14(a)(i)**.

“Borgata Fair Market Value”: As defined in **Section 41.14(a)(vii)**.

“Borgata Purchase Notice”: As defined in **Section 41.14(a)(vi)**.

“Business Day”: Each Monday, Tuesday, Wednesday, Thursday and Friday which is not a day on which national banks in the City of New York, New York are authorized, or obligated, by law or executive order, to close.

“Capital Improvements”: With respect to any Facility, any improvements or alterations or modifications of the Leased Improvements, including without limitation capital

improvements and structural alterations, modifications or improvements, or one or more additional structures annexed to any portion of any of the Leased Improvements of such Facility, or the expansion of existing improvements, which are constructed on any parcel or portion of the Land of such Facility, during the Term, including construction of a new wing or new story, in each case which are permanently affixed to the Leased Property such that they constitute real property under applicable Legal Requirements.

“Cash”: Cash and cash equivalents and all instruments evidencing the same or any right thereto and all proceeds thereof.

“Casualty Event”: Any loss of title or any loss of or damage to or destruction of, or any Condemnation or other taking (including by any governmental authority) of, any portion of the Leased Property for which Landlord, Tenant or any Operating Subtenant or any of their respective Subsidiaries receives cash insurance proceeds or proceeds of a Condemnation award or other similar compensation (excluding proceeds of business interruption insurance). “**Casualty Event**” shall include, but not be limited to, any taking of all or any portion of the Leased Property, in or by Condemnation or other eminent domain proceedings pursuant to any applicable law, or by reason of the temporary requisition of the use or occupancy of all or any part of any real property of or any part thereof by any governmental authority, civil or military.

“Casualty Shortfall”: As defined in **Section 14.2(g)**.

“Code”: The Internal Revenue Code of 1986 as amended from time to time.

“Commencement Date”: As defined in the Preamble.

“Commission”: As defined in **Section 41.14(a)(ii)**.

“Condemnation”: A taking by the exercise of any governmental power, whether by legal proceedings or otherwise, by a Condemnor or a voluntary sale or transfer by Landlord to any Condemnor, either under threat of condemnation or while legal proceedings for condemnation are pending.

“Condemnor”: Any public or quasi-public authority, or private corporation or individual, having the power of Condemnation.

“Confidential Information”: Any and all financial, technical, proprietary, confidential, and other information, including data, reports, interpretations, forecasts, analyses, compilations, studies, summaries, extracts, records, know-how, statements (written or oral) or other documents of any kind, that contain information concerning the business and affairs of Landlord or Tenant or their respective Related Persons, whether furnished before or after the date of this Master Lease, and regardless of the manner in which it was furnished, and any material prepared by either Landlord or Tenant or their respective Related Persons, in whatever form maintained, containing, reflecting or based upon, in whole or in part, any such information; provided, however, that “**Confidential Information**” shall not include information which: (i) was or becomes generally available to the public other than as a result of a disclosure by either Landlord or Tenant or their respective Related Persons in breach of this Master Lease; (ii) was or becomes available to either Landlord or Tenant or their respective Related Persons on a non-

confidential basis prior to its disclosure hereunder as evidenced by the written records of Landlord or Tenant or their Related Persons, provided, that the source of the information is not bound by a confidentiality agreement or otherwise prohibited from transmitting such information by a contractual, legal or fiduciary duty; or (iii) was independently developed by the other without the use of any Confidential Information, as evidenced by its written records.

“Control”: The ability, directly or indirectly, whether through the ownership of voting securities, by contract, or otherwise (including by being the managing member or general partner of the Person in question), to (i) direct or cause the direction of the management and policies of a Person or (ii) conduct the day-to-day business operations of a Person.

“Corporate Shared Services Property”: The Property used in the provision of services by an Affiliate of Tenant (including, by way of example and not limitation, aircraft, limos, certain information technology equipment and K-9 units) to a Facility (and to other facilities owned or operated by direct or indirect Subsidiaries of Tenant’s Parent) in the ordinary course and in a Non-Discriminatory manner.

“Covenant Failure Period”: The period (x) beginning upon the failure of Tenant to satisfy the Financial Covenant for two (2) consecutive Test Periods as determined on the last day of two (2) consecutive fiscal quarters (e.g., if Tenant fails to satisfy the Financial Covenant for the Test Periods ending on September 30, 2022 and December 31, 2022, the Covenant Failure Period would begin on December 31, 2022) and (y) ending upon a Covenant Security Coverage Cure with respect to such failure.

“Covenant Failure (Unavoidable Delay)”: A failure to satisfy the Financial Covenant substantially caused by an Unavoidable Delay, which Unavoidable Delay affects a substantial portion of the Leased Property (i.e., a substantial number of Facilities) for more than thirty (30) consecutive days (e.g., the COVID – 19 Pandemic) (it being understood that an Unavoidable Delay that has a duration that exceeds thirty (30) consecutive days does not by itself indicate that a Covenant Failure (Unavoidable Delay) has occurred).

“Covenant Security Coverage Cure”: Following the commencement of a Covenant Failure Period, as of the last day of the most recent Test Period and the last day of the Test Period immediately preceding the most recent Test Period (each of such Test Periods ending as of the last day of two (2) consecutive fiscal quarters), the Tenant’s Parent EBITDA to Rent ratio described in **Section 23.3(a)** shall have been equal to or greater than the Coverage Ratio (e.g., if, following the commencement of a Covenant Failure Period for the Test Periods ending September 30, 2023 and December 31, 2023, Tenant satisfies the Financial Covenant for the Test Periods ending March 31, 2024 and June 30, 2024, then the Covenant Security Coverage Cure will be deemed to have occurred on June 30, 2024).

“Covenant Security Escrow Account”: An escrow account established by Tenant with a reputable, nationally recognized title insurance company selected by Tenant and approved by Landlord (such approval not to be unreasonably withheld, conditioned or delayed) with an office located in Las Vegas, Nevada. Fidelity Title Insurance Company is hereby preapproved by Landlord and Tenant.

“Coverage Ratio”: As defined in **Section 23.3**.

“**CPI**”: The United States Department of Labor, Bureau of Labor Statistics Revised Consumer Price Index for All Urban Consumers (1982-84=100), U.S. City Average, All Items, or, if that index is not available at the time in question, the index designated by such Department as the successor to such index, and if there is no index so designated, an index for an area in the United States that most closely corresponds to the entire United States, published by such Department, or if none, by any other instrumentality of the United States as reasonably determined by Landlord and Tenant.

“**CPI Increase**”: The quotient of (i) the CPI most recently published as of the beginning of each Lease Year, divided by (ii) the CPI most recently published as of the Commencement Date (except that in connection with determining the Escalation, the preceding clause (ii) will be replaced with “the CPI as of the date which is one year prior to the date described in the preceding clause (i)”). If the quotient is less than one, the CPI Increase shall be equal to one.

“**Date of Taking**”: The date the Condemnor has the right to possession of the property being condemned.

“**Debt Agreement**”: If designated by Tenant to Landlord in writing to be included in the definition of “**Debt Agreement**,” one or more (A) debt facilities or commercial paper facilities, providing for revolving credit loans, term loans, receivables financing (including through the sale of receivables to lenders or to special purpose entities formed to borrow from lenders against such receivables) or letters of credit, (B) debt securities, indentures or other forms of debt financing (including convertible or exchangeable debt instruments or bank guarantees or bankers’ acceptances), or (C) instruments or agreements evidencing any other indebtedness, in each case, with the same or different borrowers or issuers and, in each case, (i) entered into from time to time by Tenant, any Operating Subtenant and/or their respective Subsidiaries, (ii) as amended, supplemented, modified, extended, restructured, renewed, refinanced, restated, replaced or refunded in whole or in part from time to time, (iii) which may be secured by assets of Tenant, any Operating Subtenant and/or their respective Subsidiaries, including, but not limited to, their Cash, Accounts, Tenant’s Property, real property and leasehold estates in real property (including this Master Lease) and (iv) which shall provide Landlord, in accordance with **Section 17.3** hereof, the right to receive copies of notices of Specified Debt Agreement Defaults thereunder.

“**Defaulting Operating Subtenants**”: Operating Subtenants operating forty-one and one-half percent (41.5%) or more (by number) of the Facilities.

“**Discretionary Transferee**”: A transferee that meets all of the following requirements:

(a) such transferee has:

(1) (i) except as provided in (a)(1)(ii) or (iii) below, at least five (5) years of experience (directly or through one or more of its Subsidiaries) operating or managing casino properties with revenues in the immediately preceding fiscal year of at least (x) Five Hundred Million Dollars (\$500,000,000) in the case of a transfer of any Facility located in Las Vegas, Nevada, (y) Two Hundred Fifty Million Dollars (\$250,000,000) in the case of a transfer

of any Facility not located in Las Vegas, Nevada or (z) Seven Hundred Fifty Million Dollars (\$750,000,000) in the case of a transfer of all Facilities then under the Master Lease (or, in any case, retains a manager with such qualifications, which manager shall not be replaced other than by another manager meeting the foregoing requirements) and as to which the primary business of such Person and its Affiliates taken as a whole is not the leasing of properties to gaming operators, or

(ii) in the case of a Permitted Leasehold Mortgagee Foreclosing Party at least five (5) years of experience (directly or through one or more of its Subsidiaries) operating or managing casino properties (or, in any case, retains a manager with such qualifications, which manager shall not be replaced other than by another manager meeting the foregoing requirements), or

(iii) in the case of a transfer of any Facility of which no material portion is a Gaming Facility, at least five (5) years of experience (directly or through one or more of its Subsidiaries) operating or managing properties similar to the Facility being transferred (or retains a manager with such qualifications, which manager shall not be replaced other than by another manager meeting the foregoing requirements); or

(2) agreement(s) in place in a form reasonably satisfactory to Landlord to retain for a period of eighteen (18) months (or more) after the effective time of the transfer at least

(i) eighty percent (80%) of Tenant Parties and their respective Subsidiaries personnel employed at the Facilities who have employment contracts as of the date of the relevant agreement to transfer, and

(ii) eighty percent (80%) of Tenant Parties and Tenant's Parent's ten most highly compensated corporate employees as of the date of the relevant agreement to transfer based on total compensation determined in accordance with Item 402 of Regulation S-K of the Exchange Act, as amended;

(b) such transferee (directly or through one or more of its Subsidiaries), and all persons or entities associated with such transferee who are deemed relevant by the applicable Gaming Authority(ies) with jurisdiction over any portion of the Leased Property have the requisite Gaming Licenses required by such Gaming Authority(ies) for the applicable transfer to be consummated;

(c) such transferee is Solvent, and, other than in the case of a Permitted Leasehold Mortgagee Foreclosing Party, if such transferee has a Parent Company, the Parent Company of such transferee is Solvent, and

(d) (i) except in the case of clause (ii) below, (x) the Parent Company of such transferee or, if such transferee does not have a Parent Company, such transferee, has sufficient assets so that, after giving effect to its assumption of Tenant's obligations hereunder or the applicable assignment or other transaction, its Indebtedness to EBITDA Ratio on a consolidated basis in accordance with GAAP is less than 6:1 on a pro forma basis based on projected earnings and after giving effect to the proposed transaction, or (y) an entity that has an investment grade

credit rating from a nationally recognized rating agency with respect to such entity's long term, unsecured debt has provided a Guaranty, or

(ii) in the case of a Permitted Leasehold Mortgagee Foreclosing Party, (x) Tenant has an Indebtedness to EBITDA Ratio of less than 6:1 on a pro forma based on projected earnings and after giving effect to the proposed transaction, (y) an entity that has an investment grade credit rating from a nationally recognized rating agency with respect to such entity's long term, unsecured debt has provided a Guaranty, or (z) such entity is an entity whose only asset is or will be ownership of the leasehold estate created by this Master Lease and related assets reasonably necessary for conduct of the Primary Intended Use with respect to the Facilities and who, after giving effect to such entity becoming Tenant hereunder, has no Indebtedness.

"Division": As defined in **Section 41.14(a)(ii)**.

"Dollars" and **"\$"**: The lawful money of the United States.

"EBITDA": For any Test Period and with respect to any Person or Facility (as applicable), the sum of Net Income of such Person or Facility for that period, (I) plus or minus the following to the extent reflected in Net Income for that period, plus (a) any extraordinary loss, and, without duplication, any loss associated with the early retirement of Indebtedness and with any disposition not in the ordinary course of business, minus (b) any extraordinary gain, and, without duplication, any gains associated with the early retirement of Indebtedness and with any disposition not in the ordinary course of business, plus (c) interest expenses of such Person or Facility for that period, plus (d) the aggregate amount of expense for federal, foreign, state and local taxes on or measured by income of such Person or Facility for that period (whether or not payable during that period), minus (e) the aggregate amount of benefit for federal, foreign, state and local taxes on or measured by income of such Person or Facility for that period (whether or not receivable during that period), plus (f) depreciation, amortization and all non-recurring and/or other non-cash expenses to the extent deducted in arriving at Net Income for that period, plus (g) loss on sale or disposal of an asset, and write downs and impairments of an asset; minus (h) all non-recurring and/or other non-cash income in connection with an acquisition or disposition, and gain on sale of an asset; plus (i) expenses classified as "preopening and start-up expenses" on the applicable financial statements of that Person or Facility for that fiscal period; plus (j) any non-cash expense realized or resulting from stock option plans, employee benefit plans or post-employment benefit plans of the Company or grants or sales of stock, stock appreciation or similar rights, stock options, restricted stock, preferred stock or other rights; minus (k) any income from an equity investment in an unconsolidated affiliate; plus (l) any loss from an equity investment in an unconsolidated affiliate; plus (II) (a) cash dividends or distributions received from equity investments; in each case as determined in accordance with GAAP to the extent applicable. The expenses associated with this Master Lease or any Ground Lease shall be treated as rent, and not interest expense for purposes of determining EBITDA hereunder, regardless of its treatment under GAAP.

"EBITDAR": For any Test Period, with respect to any Person or Facility, EBITDA plus, without duplication, any rent expense associated with any ground leases forming part of the Leased Property and this Master Lease (as may be amended from time to time).

“EBITDAR to Rent Ratio”: As at any date of determination, the ratio for any period of EBITDAR derived from the Facilities by Tenant or its Affiliates (without duplication) to Rent. For purposes of calculating the EBITDAR to Rent Ratio, EBITDAR and Rent shall be calculated on a pro forma basis to give effect to any increase or decrease in Rent as a result of the addition or removal of Leased Property to this Master Lease during any Test Period as if such increase or decrease had been effected on the first day of such Test Period.

“Eligible Institution”: Either (a) a depository institution or trust company insured by the Federal Deposit Insurance Corporation, the short-term unsecured debt obligations or commercial paper of which are rated at least “A-1+” by S&P and “P-1” by Moody’s in the case of accounts in which funds are held for thirty (30) days or less (or, in the case of letters of credit and accounts in which funds are held for more than thirty (30) days, the long-term unsecured debt obligations of which are rated at least “A+” by S&P and “Aa3” by Moody’s), or (b) Wells Fargo Bank, National Association, JPMorgan Chase Bank, N.A. or Bank of America, N.A. or any of their affiliates or successors provided that the rating by S&P and Moody’s for the short term unsecured debt obligations or commercial paper and long term unsecured debt obligations of the same does not decrease below the ratings set forth in clause (a) hereof.

“Empire Adjacent Property”: As defined in **Section 7.3(b)**.

“Empire Facility”: The Empire City Casino and Yonkers Raceway, Yonkers, New York.

“Encumbrance”: Any mortgage, deed of trust, lien, encumbrance or other matter affecting title to any of the Leased Property, or any portion thereof or interest therein.

“End of Term Asset Transfer Notice”: As defined in **Section 36.1**.

“Environmental Costs”: As defined in **Section 32.4**.

“Environmental Laws”: Any and all federal, state, municipal and local laws, statutes, ordinances, rules, regulations, guidances, policies, orders, decrees or judgments, whether statutory or common law, as amended from time to time, now or hereafter in effect, or promulgated, pertaining to the environment, public health and safety and industrial hygiene, including the use, generation, manufacture, production, storage, release, discharge, disposal, handling, treatment, removal, decontamination, cleanup, transportation or regulation of any Hazardous Substance, including the Industrial Site Recovery Act, the Clean Air Act, the Clean Water Act, the Toxic Substances Control Act, the Comprehensive Environmental Response Compensation and Liability Act, the Resource Conservation and Recovery Act, the Federal Insecticide, Fungicide, Rodenticide Act, the Safe Drinking Water Act and the Occupational Safety and Health Act.

“Equity Interests”: With respect to any Person, any and all shares, interests, participations or other equivalents, including membership interests (however designated, whether voting or non-voting), of equity of such Person, including, if such Person is a partnership, partnership interests (whether general or limited) and any other interest or participation that confers on a Person the right to receive a share of the profits and losses of, or distributions of assets of, such partnership.

“Escalated Rent”: For the first Lease Year (except as otherwise provided in the definition of Rent contained in this **Section 2.1**) the amount of Seven Hundred Thirty Million Dollars (\$730,000,000.00). Thereafter, “Escalated Rent” (i) for each Lease Year until and including the tenth (10th) Lease Year shall mean an amount equal to one hundred and two percent (102%) of the Rent as of the end of the immediately preceding Lease Year, and (ii) for each Lease Year commencing with the eleventh (11th) Lease Year and continuing through the end of the Term, an amount equal to the Rent as of the end of the immediately preceding Lease Year multiplied by the greater of (x) one hundred and two percent (102%) and (y) the CPI Increase; provided, however, that commencing with the eleventh (11th) Lease Year and continuing through the end of the Term, in no event shall the Escalated Rent for any Lease Year equal more than one hundred and three percent (103%) of the Rent payable as of the end of the immediately preceding Lease Year.

“Escalation”: For any Lease Year (other than the first Lease Year), an amount equal to the difference between (i) the Escalated Rent for such Lease Year and (ii) the Rent for the immediately preceding Lease Year as in effect as of the end of such immediately preceding Lease Year. Notwithstanding the foregoing, in the event that an Unavoidable Delay directly causes Tenant to cease to operate seventy-five percent (75%) or more (by number) of the Facilities for a period of ninety (90) consecutive days or more at any time, then the Escalation shall not apply to the Lease Year immediately following the end of such ninety (90) day period and instead the Rent will continue to be the same for such following Lease Year as in effect at the end of the Lease Year in which the end of such ninety (90) day period occurred; provided, however, that the foregoing provision regarding the impact of an Unavoidable Delay on Escalation shall be applicable no more than two (2) times during the Initial Term and no more than three (3) times during the entire Term including Renewals.

“Event of Default”: As defined in **Article XVI**.

“Event of Default Notice”: As defined in **Section 16.2(b)**.

“Exchange Act”: The U.S. Securities Exchange Act of 1934 and any statute successor thereto, in each case as amended from time to time.

“Excluded Assets”: As defined in **Section 1.1**.

“Exercise Date”: As defined in **Section 1.4**.

“Expert”: An independent third party professional, with expertise in respect of a matter at issue, appointed by the agreement of Landlord and Tenant or otherwise in accordance with **Article XXXIV** hereof.

“Facilit(y)(ies)”: As defined in the Recitals, but excluding, from time to time, any Removal Facilities or Facilities otherwise removed from this Master Lease in accordance with the terms of this Master Lease, and including, from time to time, the Additional Empire Facility or other facilities otherwise added to this Master Lease in accordance with the terms hereof. Facilit(y)(ies) shall also exclude any off-track betting facilities located off-site or other offsite gaming facilities.

“Facility Mortgage”: As defined in **Section 13.1**.

“Facility Mortgage Documents”: With respect to each Facility Mortgage and Facility Mortgagee, the applicable Facility Mortgage, loan agreement, debt agreement, credit agreement or indenture, lease, note, collateral assignment instruments, guarantees, indemnity agreements and other documents or instruments evidencing, securing or otherwise relating to the loan made, credit extended, or lease or other financing vehicle entered into pursuant thereto.

“Facility Mortgagee”: As defined in **Section 13.1**.

“Facility Tax Action”: Any action or decision Landlord has the right to take or make, as applicable, under any Facility Tax Agreement to reduce taxes pursuant to the applicable Facility Tax Agreement that would otherwise be payable with respect to such Facility Tax Agreement if such action or decision is not taken or made, as applicable.

“Facility Tax Agreement”: Any tax agreement (i) related to a Facility and (ii) the substance of which pertains to property taxes, PILOT programs, or any similar state or local taxes, which agreement is being entered into or amended in order to reduce such taxes that would otherwise be payable with respect to such Facility if such agreement(s) were not entered into.

“Fair Market Rent”: With respect to the Leased Property or any Facility, at any time in question, the prevailing fair market Rent which would be determined in an arm’s-length negotiation by Landlord and Tenant if neither party were under any compulsion to enter into a lease, taking into account all of the material terms and conditions of this Master Lease (including the obligation to pay Rent and Additional Charges and the presence of any remaining Renewal Terms) and, taking into account the fact that Landlord will not be entitled to the benefit of any of Tenant’s Property other than its rights with respect to Tenant’s Property pursuant to **Article XXXVI**, for a five-year term beginning as of the commencement of the applicable Renewal Term, such Fair Market Rent to be determined by mutual agreement by the parties or in accordance with **Section 3.5**.

“Fair Market Rent Assumptions”: The Expert shall assume the following (1) neither the tenant nor landlord is under any compulsion to lease and that both have reasonable knowledge of all relevant facts, are acting prudently and knowledgeably in a competitive and open market, and assuming price is not affected by undue stimulus, (2) such lease contains terms and conditions identical to the terms and conditions of this Master Lease as in effect as of such time that the Fair Market Rent is determined, other than with respect to the amount of Rent that is due, (3) neither party is paying any broker a commission in connection with the transaction, (4) that the tenant thereunder will pay such Fair Market Rent for the entire term of such demise (i.e., no early termination)) subject to any provisions in this Master Lease for adjustment to the Rent during such term, (5) the Leased Property to be valued pursuant hereto (as improved by all then existing Leased Improvements, and all Capital Improvements thereto), shall be valued as (or as part of) a fully-permitted Facility operated in accordance with the provisions of this Master Lease for the Primary Intended Use, free and clear of any lien or encumbrance evidencing a debt (including any Permitted Leasehold Mortgage) or judgment (including any mortgage, security interest, tax lien, or judgment lien), (6) in determining the Fair Market Rent with respect to damaged or destroyed Leased Property, such value shall be determined as if such Leased Property had not been so damaged or destroyed, (7) in determining the Fair Market Rent with

respect to any portion of the Leased Property for which Tenant has temporarily ceased operations, such value shall be determined as if such operations had not been ceased, (8) the Fair Market Rent shall represent the normal rent for the Leased Property unaffected by sales (or leasing) concessions granted by anyone associated with the transaction, (9) the following specific matters shall be factored in or out, as appropriate, in determining Fair Market Rent as the case may be: (i) the negative value of (x) any deferred maintenance or other items of repair or replacement of the Leased Property to the extent arising from breach or failure of Tenant to perform or observe its obligations hereunder, (y) any then current or prior Gaming or other licensure violations by Tenant, Guarantor or any of their Affiliates, and (z) any breach or failure of Tenant to perform or observe its obligations hereunder (in each case with respect to the foregoing clauses (x), (y) and (z), without giving effect to any applicable cure periods hereunder), shall not be taken into account; rather, the Leased Property and every part thereof shall be deemed to be in the condition required by this Master Lease and Tenant shall at all times be deemed to have operated the Facilities in compliance with and to have performed all obligations of Tenant under this Master Lease, and (ii) such determination shall be without reference to any savings Landlord may realize as a result of any extension of the Term of this Master Lease, such as savings in free rent and tenant concessions, and without reference to any “start-up” costs a new tenant would incur were it to replace the existing Tenant for any Renewal Term or otherwise, and (10) the Leased Property will be leased as a whole or substantially as a whole to a single user.

“Finance Lease”: As applied to any Person, any lease of any Property by that Person as lessee that, in conformity with GAAP, is required to be classified and accounted for as a finance lease on the balance sheet of that Person (provided, that any lease that is accounted for by any Person as an operating lease as of the Commencement Date and any similar lease entered into after the Commencement Date by any Person may, in the sole discretion of Tenant, be treated as an operating lease and not as a Finance Lease).

“Finance Lease Obligations”: For any Person, all obligations of such Person to pay rent or other amounts under a Finance Lease as determined in accordance with GAAP.

“Financial Covenant”: As defined in **Section 23.3**.

“Financial Statements”: (i) For a Fiscal Year, consolidated statements of Tenant’s Parent and its consolidated subsidiaries of operations, shareholders’ equity and cash flows for such Fiscal Year and the related consolidated balance sheet as at the end of such Fiscal Year, prepared in accordance with GAAP as at such date and audited by a “big four” or other independent public accountants of recognized standing, and (ii) for each fiscal quarter (other than the fourth fiscal quarter in any Fiscal Year), the consolidated statement of operations of Tenant’s Parent and its Subsidiaries for such fiscal quarter, the consolidated statement of cash flows for the portion of the Fiscal Year ended with such fiscal quarter and the related consolidated balance sheet as at the end of such fiscal quarter, prepared in accordance with GAAP.

“First Amendment”: As defined in the Recitals.

“First Amendment Date”: December 19, 2022.

“Fiscal Year”: The annual period commencing January 1 and terminating December 31 of each year.

“Fixtures”: As defined in **Section 1.1(d)**.

“Foreclosure Assignment”: As defined in **Section 22.2(ii)**.

“Foreclosure COC”: As defined in **Section 22.2(ii)**.

“Foreclosure Purchaser”: As defined in **Section 31.1**.

“GAAP”: Generally accepted accounting principles in the United States set forth in the Financial Accounting Standards Board (FASB) Accounting Standards Codification® and rules and interpretive releases of the Securities and Exchange Commission under authority of federal securities laws, that are applicable to the circumstances as of the date of determination, consistently applied; provided, that, after the Commencement Date, if any change in accounting principles is required by the promulgation of any rule, regulation, pronouncement or opinion by the FASB or the Securities and Exchange Commission and such change results in a change in the method of calculation of any financial ratio or term in this Master Lease, then Tenant and Landlord shall negotiate in good faith in order to amend such provision so as to equitably reflect such change with the desired result that the criteria for evaluation the relevant Person’s financial condition shall be the same after such change as if such change had not occurred; provided further that until such time as an amendment shall have been executed, all such financial covenants and terms in this Master Lease shall continue to be calculated or construed as if such change had not occurred.

“Gaming Authority”: As defined in the definition of Gaming License.

“Gaming Corridor”: The greater Las Vegas Strip area bounded on the south by St. Rose Parkway (but, for the avoidance of doubt, including the M Resort), on the north by US 95, on the east by Paradise Road or Maryland Parkway, as applicable, and on the west by Decatur Boulevard.

“Gaming Equipment”: All equipment, software systems and/or gaming devices used to conduct gambling games authorized by applicable Gaming Regulations at a Gaming Facility including without limitation, all slot machines, video lottery terminals, table games, gaming kiosks, pari-mutuel wagering systems, and/or other software systems and devices used now or in the future (including any variation or derivative of any of the foregoing, or any newly created equipment, software system or gaming device) for the purposes of conducting gambling games.

“Gaming Facility”: The portion of any property upon which Gaming Equipment is utilized to generate gaming revenues in accordance with a required Gaming License.

“Gaming License”: Any license, permit, approval, finding of suitability, finding of qualification or other authorization issued by a United States federal, state or local licensing or regulatory agency, commission, board or other governmental body (each a “**Gaming Authority**”) to operate, carry on or conduct any gambling game, race book or sports pool, pari-

mutuel wagering and/or offer for play any Gaming Equipment on the Leased Property, as required by any Gaming Regulation, including each of the licenses, permits or other authorizations set forth on **Exhibit D**, as amended from time to time, and those related to any Facilities that are added to this Master Lease after the Commencement Date.

“Gaming Regulation(s)”: Any and all United States federal, state, or local laws, statutes, ordinances, rules, regulations, policies, orders, resolutions, codes, decrees or judgments, and Gaming License conditions or restrictions, and requirements of any agreement with a local municipality, as amended from time to time, now or hereafter in effect or promulgated, pertaining to the operation, control, maintenance or Capital Improvement of a Gaming Facility or the conduct of a Person holding a Gaming License, including, without limitation, any contractual requirements or requirements imposed by a regulatory agency, commission, board, municipality, county, parish or other governmental body (including any Gaming Authority) pursuant to the jurisdiction and authority granted to it under applicable law.

“Gold Strike Facility”: As defined in the Second Amendment.

“Ground Leased Property”: The real property leased pursuant to the Ground Leases.

“Ground Leases”: Those certain leases with respect to real property that is a portion of the Leased Property, pursuant to which Landlord is a tenant and which leases have either been approved by Tenant or are in existence as of the Commencement Date and listed on **Part II** of **Exhibit B** hereto.

“Ground Lessor”: As defined in **Section 8.4(a)**.

“GRT Payment”: As defined in **Section 4.1(g)**.

“Guarantor”: Tenant’s Parent or any replacement guarantor pursuant to a replacement guaranty given in accordance with this Master Lease or consented to by Landlord.

“Guaranty”: That certain Amended and Restated Guaranty of Master Lease dated as of the Commencement Date, a form of which is attached as **Exhibit E** hereto, as the same may be amended, supplemented or replaced from time to time, by and between Tenant’s Parent and Landlord, and any other form of guaranty in form and substance reasonably satisfactory to Landlord executed by a Guarantor in favor of Landlord (as the same may be amended, supplemented or replaced from time to time) pursuant to which such Guarantor agrees to guaranty all of the obligations of Tenant hereunder.

“Handling”: As defined in **Section 32.4**.

“Hazardous Substances”: Collectively, any petroleum, petroleum product or by product or any substance, material or waste that is defined, regulated or classified pursuant to any applicable Environmental Law as “hazardous,” “toxic,” a “pollutant,” a “contaminant,” or words of similar meaning and regulatory effect.

“Impositions”: All taxes, special and general assessments, including assessments for public improvements or benefits, whether or not commenced or completed prior to the Commencement Date and whether or not to be completed within the Term, rents or other amounts payable under any Ground Leases, water rents, rates and charges, commercial rent taxes, sewer and other utility rents, rates and charges, excise tax levies, gross receipts tax (including, without limitation, the Nevada Commerce Tax (it being understood Tenant’s obligation to pay such gross receipts tax shall be subject to **Section 4.1(g)** hereof), fees including license, permit, inspection, authorization and similar fees, and other governmental impositions, levies and charges of every kind and nature whatsoever, that may be assessed, levied, confirmed, imposed or become a lien on the Leased Property or any part thereof or any rent therefor or any estate, right, title or interest therein or any occupancy, operation, use or possession of, or sales from or activity conducted on or in connection with the Leased Property or the leasing or use of the Leased Property or any part thereof prior to, during or with respect to any period during the Term hereof through the expiration or earlier termination of this Master Lease together with (i) any taxes and assessments that may be levied, assessed or imposed upon the gross income arising from any Rent or in lieu of or as a substitute, in whole or in part, for any Imposition and (ii) all interest and penalties on the foregoing attributable to any failure in payment by Tenant (other than failures arising from the wrongful or negligent acts of Landlord; provided, however, the foregoing shall not vitiate Landlord’s obligations set forth in clause (b) below). Except as described in clause (ii) above, the term “Impositions” shall, however, not include any of the following, all of which shall be the responsibility of (and paid, before any fine, penalty, interest or cost may be added for non-payment, by) Landlord: (a) any franchise, income, excess profits, estate, inheritance, succession, transfer, gift, corporation, business, capital levy or profits of Landlord, (b) (x) any tax imposed or an increased amount with respect to the sale, exchange or other disposition by Landlord of the fee estate in the Leased Property or Landlord Change of Control and (y) the incremental portion of any of the items in this paragraph that would not have been levied, imposed or assessed but for any sale of the fee estate in the Leased Property or Landlord Change of Control, in each case during the period from the date of this Master Lease through the expiration or earlier termination of the Master Lease, and (c) interest, penalties and other charges with respect to the foregoing items “a” and “b”.

“Indebtedness”: Of any Person, without duplication, (a) all obligations of such Person for borrowed money; (b) all obligations of such Person evidenced by bonds, debentures, notes, loan agreements 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 accounts payable and accrued obligations incurred in the ordinary course of business); (e) all Indebtedness of others to the extent secured by any Lien on property owned or acquired by such Person, whether or not the obligations secured thereby have been assumed; provided, that if such obligations have not been assumed, the amount of such Indebtedness included for the purposes of this definition will be the amount equal to the lesser of the fair market value of such property and the amount of the Indebtedness secured; (f) all Finance Lease Obligations of such Person; (g) the net amount of the obligations of such Person in respect of interest rate protection agreements, foreign currency exchange agreements or other interest or exchange rate hedging arrangements (including swap contracts); (h) all obligations of such Person as an account party in respect of letters of credit and bankers’ acceptances, except obligations in respect of letters of credit issued in support of obligations not otherwise

constituting Indebtedness shall not constitute Indebtedness except to the extent such letter of credit is drawn and not reimbursed within ten Business Days; and (i) all guaranty obligations of such Person in respect of Indebtedness of others of the kinds referred to in clauses (a) through (h) above; provided, that for purposes of this definition, deferred purchase price obligations shall be calculated based on the net present value thereof. The Indebtedness of any Person shall include the Indebtedness of any partnership in which such Person is a general partner unless recourse is limited, in which case the amount of such Indebtedness shall be the amount such Person is liable therefor (except to the extent the terms of such Indebtedness expressly provide that such Person is not liable therefor). The amount of Indebtedness of the type referred to in clause (g) above of any Person shall be zero unless and until such Indebtedness becomes due, in which case the amount of such Indebtedness shall be the amount due that is payable by such Person. The amount of Indebtedness of the type described in clause (d) shall be determined in accordance with GAAP. Notwithstanding anything to the contrary contained in this Lease, none of this Master Lease, the Ground Leases or any other gaming lease shall be treated as Indebtedness, regardless of how they are treated under GAAP.

“Indebtedness to EBITDA Ratio”: As at any date of determination and with respect to any transferee, the ratio of (a) Indebtedness of the transferee and its subsidiaries on a consolidated basis (excluding (i) Indebtedness of the type referenced in clauses (g) or (h) of the definition of Indebtedness or Indebtedness referred to in clauses (e) or (j) of the definition of Indebtedness to the extent relating to Indebtedness of the type referenced in clauses (g) or (h) of the definition of Indebtedness), to (b) EBITDA of the transferee and its consolidated subsidiaries for the Test Period most recently ended prior to such date for which financial statements are available. For purposes of calculating the Indebtedness to EBITDA Ratio, EBITDA shall be calculated on a pro forma basis (and shall be calculated, except for pro forma adjustments reasonably contemplated by the potential transferee which may be included in such calculations, otherwise in accordance with Regulation S-X under the Securities Act) to give effect to any material acquisitions and material asset sales consummated by the transferee or any such subsidiary since the beginning of such Test Period as if each such material acquisition had been effected on the first day of such Test Period and as if each such material asset sale had been consummated on the day prior to the first day of such Test Period. In addition, for the avoidance of doubt, (i) if the transferee or any such subsidiary has incurred any Indebtedness or repaid, repurchased, acquired, defeased or otherwise discharged any Indebtedness since the end of the applicable Test Period, Indebtedness shall be calculated (for purposes of this definition) after giving effect on a pro forma basis to such incurrence, repayment, repurchase, acquisition, defeasance or discharge and the applications of any proceeds thereof as if it had occurred prior to the first day of such Test Period and (ii) the Indebtedness to EBITDA Ratio shall give pro forma effect to the transactions whereby the applicable transferee becomes party to the Master Lease permitted under **Section 22.2**.

“Initial Term”: As defined in **Section 1.3**.

“Instruments”: As defined in the definition of Property Documents.

“Insurance Requirements”: The terms of any insurance policy required by this Master Lease and all requirements of the issuer of any such policy and of any insurance board, association, organization or company necessary for the maintenance of any such policy.

“Item Subject to Deemed Consent”: As defined in **Section 35.2**.

“Intellectual Property License Agreement”: That certain Trademark License Agreement between Tenant’s Parent and Landlord, dated as of the Commencement Date, as amended, in the form of **Exhibit I** attached hereto.

“Investment Fund”: A bona fide private equity fund or bona fide investment vehicle arranged by and managed by or controlled by, or under common control with, a private equity fund (excluding any private equity fund investment vehicle the primary assets of which are Tenant and its Subsidiaries and/or this Master Lease and assets related thereto) that is engaged in making, purchasing, funding or otherwise investing in a diversified portfolio of businesses and companies and is organized primarily for the purpose of making equity investments in companies.

“Land”: As defined in **Section 1.1(a)**.

“Landlord”: As defined in the preamble.

“Landlord Approved Capital Improvements”: As defined in **Section 10.1(b)**.

“Landlord Approved Construction/Closure Project”: A Landlord Approved Capital Improvement or such other Capital Improvement in respect of any Facility, in each case, (i) for which Landlord’s prior written approval shall have been obtained in accordance with **Section 10.1(b)**, and (ii) which will require ceasing operations at the applicable Facility for more than twelve consecutive (12) months.

“Landlord Change of Control”: (i) Any Person or “group” (within the meaning of Rules 13d-3 and 13d-5 under the Exchange Act, as amended from time to time, and any successor statute) other than Landlord’s Parent and its Affiliates, shall have acquired direct or indirect beneficial ownership or control of thirty-five percent (35%) or more on a fully diluted basis of the direct or indirect voting power in the Equity Interests of Landlord entitled to vote in an election of directors of Landlord or Landlord’s Parent, (ii) except as permitted or required hereunder, the direct or indirect sale by Landlord or Landlord’s Parent of all or substantially all of Landlord’s assets, whether held directly or through Subsidiaries of Landlord, relating to the Facilities in one transaction or in a series of related transactions (excluding sales to Landlord or its Subsidiaries), (iii) Landlord ceasing to be Controlled (directly or indirectly) by Landlord’s Parent, or (iv) Landlord or Landlord’s Parent consolidates with, or merges with or into, any Person, or any Person consolidates with, or merges with or into, Landlord or Landlord’s Parent, in any such event pursuant to a transaction in which any of the outstanding Equity Interests of Landlord or Landlord’s Parent ordinarily entitled to vote in an election of directors of Landlord or Landlord’s Parent or such other Person is converted into or exchanged for cash, securities or other property, other than any such transaction where the Equity Interests of Landlord or Landlord’s Parent ordinarily entitled to vote in an election of directors of Landlord or Landlord’s Parent outstanding immediately prior to such transaction constitute or are converted into or exchanged into or exchanged for a majority (determined by voting power in an election of directors) of the outstanding Equity Interests ordinarily entitled to vote in an election of directors of such surviving or transferee Person (immediately after giving effect to such transaction). Notwithstanding the foregoing, no transfer or acquisition of Equity Interests in Landlord’s Parent

or any direct or indirect owner thereof in one or more transactions shall result in a Landlord Change of Control.

“Landlord Tax Agreement Refusal Conditions”: As defined in **Section 8.5**.

“Landlord’s Parent”: VICI Properties Inc., a Maryland corporation and its successors or assigns from time to time.

“Landlord REIT Affiliate”: VICI Properties Inc., a Maryland corporation and its successors or assigns, or Affiliates of Landlord that are treated as real estate investment trusts for U.S. federal income tax purposes.

“Landlord Representatives”: As defined in **Section 23.4**.

“Landlord Tax Returns”: As defined in **Section 4.1(b)**.

“Landlord’s Termination Right”: As defined in **Section 7.2(d)**.

“Lease Year”: The first Lease Year shall be the period commencing on the Commencement Date and ending on the last day of the calendar month in which the first anniversary of the Commencement Date occurs, and each subsequent Lease Year shall be each period of twelve (12) full calendar months thereafter.

“Leased Improvements”: As defined in **Section 1.1(b)**.

“Leased Property”: As defined in **Section 1.1**.

“Leased Property Rent Adjustment Event”: As defined in **Section 14.6**.

“Leasehold Estate”: As defined in **Section 17.1(a)**.

“Legal Requirements”: All applicable United States federal, state, county, municipal and other governmental statutes, laws, rules, policies, guidance, codes, orders, regulations, ordinances, permits, licenses, covenants, conditions, restrictions, judgments, decrees and injunctions (including common law, Gaming Regulations and Environmental Laws) affecting any of the parties to this Lease, the Guaranty, Leased Property, Tenant’s Property or Capital Improvements or the construction, use or alteration thereof, whether now or hereafter enacted and in force, including any which may (i) require repairs, modifications or alterations in or to the Leased Property and Tenant’s Property, (ii) in any way adversely affect the use and enjoyment thereof, or (iii) regulate the transport, handling, use, storage or disposal or require the cleanup or other treatment of any Hazardous Substance.

“Lessor Lien”: Any lien, encumbrance, attachment, title retention agreement or claim (other than any of the foregoing that arise as a result of a Facility Mortgage (or other security interest filing in relationship to a Facility Mortgage), or directly result from the transactions contemplated by this Master Lease) encumbering the Leased Property and that arises after the Commencement Date solely as a result of (a) any act or omission of Landlord or any of its Affiliates which is in violation of any of the terms of this Master Lease after notice from Tenant and failure to cure within all applicable cure periods, (b) any third-party claim against

Landlord or its Affiliates that is unrelated to the use, ownership, operation or maintenance of the Leased Property and (i) for which Tenant is not required to indemnify Landlord pursuant to this Master Lease, and (ii) that is unrelated to the acts or omissions of Tenant, Tenant's Subsidiaries or any of their respective Affiliates, or (c) any third-party claim against Landlord arising out of any transfer, sale, assignment, encumbrance or disposition by Landlord of all or any portion of the interest of Landlord in the Leased Property or any portion thereof (or any Landlord Change of Control) in violation of this Master Lease.

"Letter of Credit": An irrevocable, unconditional, clean sight draft letter of credit reasonably acceptable to Landlord in favor of Landlord and entitling Landlord to draw thereon based solely on a statement executed by an officer of Landlord stating that it has the right to draw thereon under this Lease in a location in the United States reasonably acceptable to Landlord, issued by one or more domestic Eligible Institutions or the U.S. agency or branch of a foreign Eligible Institution, and upon which letter of credit Landlord shall have the right to draw in full: (a) if Landlord has not received at least thirty (30) days prior to the date on which the then outstanding letter of credit is scheduled to expire, a notice from the issuing financial institution that it has renewed the applicable letter of credit; (b) thirty (30) days or less prior to the date of termination following receipt of notice from the issuing financial institution that the applicable letter of credit will be terminated; and/or (c) thirty (30) days after Landlord has given a proper notice to Tenant that any of the financial institutions issuing the applicable letter of credit ceases to either be an Eligible Institution or meet the rating requirement set forth above.

"Lien": As defined in **Section 11.1**.

"Liquor Authority": As defined in **Section 41.13(a)**.

"Liquor Laws": As defined in **Section 41.13(a)**.

"Master Lease": As defined in the preamble.

"Material Indebtedness": Any Indebtedness of the type referenced in clauses (a) or (b) of the definition of Indebtedness of Tenant or the Operating Subtenants the outstanding principal amount of which is in excess of Two Hundred Fifty Million Dollars (\$250,000,000).

"Material Portion": More than 40% of the gross floor area of casino space (but not any hotel, convention or other space that is not casino space) of any Facility; provided, however, with respect to any Facility that is not located in Las Vegas, Nevada and the Excalibur Hotel and Casino, Tenant may sublease or enter into management agreements covering more than 40% of the gross floor area of the casino space of any such Facility without Landlord's consent as would not reasonably be expected to result in a material adverse effect on the applicable Facility.

"Mirage Facility": As defined in the First Amendment.

"MGP REIT": MGM Growth Properties LLC.

"National Harbor Ground Lease": The description of the National Harbor ground lease described in **Part II** of

Exhibit B.

“Net Income”: With respect to any fiscal period and with respect to any Person, the net income (or net loss) of that Person, determined in accordance with GAAP, consistently applied.

“Net Revenue”: With respect to any fiscal period, the net revenue derived from the Facilities by Tenant or its Affiliates (without duplication) for that period, determined in accordance with GAAP existing from time to time, consistently applied, adjusted as necessary such that any Rent will constitute “rents from real property” within the meaning of Section 856(d) of the Code and Treasury Regulation Section 1.856-4. For the avoidance of doubt, Net Revenues will not be reduced by any expenses whatsoever, unless such expense is a component of net revenue as determined in accordance with GAAP, except that in Tenant's sole discretion, Net Revenues may, but shall not be required to, be reduced by any component thereof representing expense reimbursements by third parties at no profit to Tenant or its Affiliates or subtenants.

“New Lease”: As defined in **Section 17.1(f)**.

“NH Release”: As defined in **Section 8.4(f)**.

“Non-Discriminatory”: Consistent, commercially reasonable treatment of all Persons regardless of the ownership, control or affiliations of any such Persons (i) subject to the same or substantially similar policies and procedures, including policies and procedures related to the standards of service and quality required to be provided by such Persons or (ii) participating jointly in the same transactions or relationships or participating in separate, but substantially similar, transactions or relationships for the procurement of goods or services (and whether such goods are purchased or leased), in each case, including, without limitation, the unbiased and consistent allocation of costs, expenses, savings and benefits of any such policies, procedures, relationships or transactions on the basis of a reasonable methodology; provided, however, that goods and services shall not be required to be provided in a manner that exceeds the standard of service required to be provided at the Leased Property under the terms of this Master Lease to be deemed “Non-Discriminatory” nor shall the standard of service and quality provided at the facilities owned or operated by each such Person be required to be similar so long as, in each case, both (x) a commercially reasonable business justification (without giving effect to Lease economics) that is not discriminatory to Landlord or the Leased Property exists for the manner in which such goods and services are provided, as reasonably determined by Tenant in good faith, and (y) the manner in which such goods and services are provided is not intended or designed to frustrate, vitiate or reduce the rights of Landlord under this Master Lease, as reasonably determined by Tenant in good faith.

“Notice”: A notice given in accordance with **Article XXXV**.

“Notice of Termination”: As defined in **Section 17.1(f)**.

“NRS”: As defined in **Section 41.15**.

“OFAC”: As defined in **Section 39.1**.

“Operating Partnership”: MGM Growth Properties Operating Partnership LP

“Operating Standard”: Operation of the Leased Property for the Primary Intended Use (x) consistent with the standards of operations, maintenance and repair that a reasonable and prudent operator would reasonably be expected to undertake and follow for the operation, maintenance and repair of a comparable facility in the geographic location in which the applicable Facility is located, (y) at least substantially consistent with the standard of operations of each Facility, as applicable, on the Commencement Date, with due regard to reasonable wear and tear, and (z) which shall be performed (i) with respect to Facilities located in Las Vegas, Nevada, in a Non-Discriminatory manner with other similar assets owned, leased, managed or operated by Tenant’s Parent and/or its Subsidiaries, including without limitation, with respect to the usage and allocation of proprietary information and systems related to the operating of gaming, hotel and related businesses, centralized services, purchasing programs, insurance programs, Tenant’s Intellectual Property, complimentaries, room rates and cross-marketing and cross-promotional activities with other similar properties owned, leased or operated by Tenant’s Parent and/or its Subsidiaries in Las Vegas, Nevada (it being understood that Aria, Vdara, Bellagio, Mandalay Bay and MGM Grand shall be excluded for the purpose of the foregoing analysis), and (ii) with respect to Facilities not located in Las Vegas, Nevada, in a Non-Discriminatory manner with other similar assets owned, leased, managed or operated by Tenant’s Parent and/or its Subsidiaries, including without limitation, with respect to the usage and allocation of proprietary information and systems related to the operating of gaming, hotel and related businesses, centralized services, purchasing programs, insurance programs, Tenant’s Intellectual Property, complimentaries, room rates and cross-marketing and cross-promotional activities with other similar properties owned, leased or operated by Tenant’s Parent and/or its Subsidiaries outside of Las Vegas, Nevada (taking into account the quality of the operations and level of services provided at each of the applicable Facilities not located in Las Vegas, Nevada).

“Operating Subleases”: As defined in the Recitals.

“Operating Subtenant”: Each of the Persons listed as an Operating Subtenant in **Exhibit D** together with any other Person that is an Affiliate of Tenant to whom all or any portion of a Facility is sublet by Tenant pursuant to an Operating Sublease.

“Original Commencement Date”: The applicable Commencement Date for each Facility pursuant to the Original Master Lease, as set forth on **Schedule 3** attached hereto.

“Overdue Rate”: On any date, a rate equal to five (5) percentage points above the Prime Rate, but in no event greater than the maximum rate then permitted under Legal Requirements.

“Pandemic”: Any disaster or public health issue of any form as determined by public health officials whether it has an overriding effect on the general public or its effect is limited to the Leased Property, including without limitation, a mass influenza outbreak or any other illness or health issue, or any pandemic, epidemic, or widespread contagion or threat to human health, including but not limited to COVID-19, and any event or situation that a governmental authority has labelled a pandemic or similar term or as to which any governmental or quasi-governmental authority has issued a mandate, directive or recommendation to close, limit or restrict any of the operations or occupancy at any of the Facilities.

“Parent Company”: With respect to any Person in question, any other Person (other than an Investment Fund) (x) as to which such Person in question is a Subsidiary; and (y) which other Person is not a Subsidiary of any other Person (other than an Investment Fund, which shall be deemed not to have any Parent Company and, in the case of a Discretionary Transferee that is an Investment Fund, therefore shall not be required to provide a Parent Guaranty pursuant to **Section 22.2**, if applicable).

“Park MGM Tenant Capital Improvements”: The Tenant Capital Improvements set forth on **Schedule 2** attached hereto.

“Payment Date”: Any due date for the payment of the installments of Rent or any other sums payable under this Master Lease.

“Permitted Capital Improvements”: As defined in **Section 10.1(a)**.

“Permitted Encumbrance”:

(i) inchoate Liens incident to construction on or maintenance of Property; or Liens incident to construction on or maintenance of Property now or hereafter filed of record for which adequate reserves have been established in accordance with GAAP (or deposits made pursuant to applicable law) and which are being contested in good faith by appropriate proceedings in accordance with **Article XII** and have not proceeded to judgment, provided, that, by reason of nonpayment of the obligations secured by such Liens, no such Property is subject to a material risk of loss or forfeiture;

(ii) Liens for taxes and assessments on Property which are not yet past due; or Liens for taxes and assessments on Property for which adequate reserves have been set aside and are being contested in good faith by appropriate proceedings in accordance with **Article XII** and have not proceeded to judgment, provided, that, by reason of nonpayment of the obligations secured by such Liens, no such Property is subject to a material risk of loss or forfeiture;

(iii) minor defects and irregularities in title to any Property which individually or in the aggregate do not materially impair or burden the fair market value or use of the Property for the purposes for which it is or may reasonably be expected to be held;

(iv) easements, exceptions, reservations, or other agreements for the purpose of pipelines, conduits, cables, wire communication lines, power lines and substations, streets, trails, walkways, drainage, irrigation, water, and sewerage purposes, dikes, canals, ditches, the removal of oil, gas, coal, or other minerals, and other like purposes affecting Property, or facilities or equipment, which individually or in the aggregate do not materially burden or impair the fair market value or use of such Property for the purposes for which it is or may reasonably be expected to be held;

(v) easements, exceptions, reservations, or other agreements for the purpose of facilitating the joint or common use of Property in or adjacent to a shopping center, utility company, public facility or other projects affecting Property which individually or in the aggregate do not materially burden or impair the fair market value or use of such Property for the purposes for which it is or may reasonably be expected to be held;

(vi) rights reserved to or vested in any governmental authority to control or regulate, or obligations or duties to any governmental authority with respect to, the use of any Property;

(vii) rights reserved to or vested in any governmental authority to control or regulate, or obligations or duties to any governmental authority with respect to, any right, power, franchise, grant, license, or permit;

(viii) present or future zoning laws and ordinances or other laws and ordinances restricting the occupancy, use, or enjoyment of Property;

(ix) statutory Liens, other than those described in clauses (i) or (ii) above, arising in the ordinary course of business with respect to obligations which are not delinquent or are being contested in good faith in accordance with **Article XII**, provided, that, if delinquent, adequate reserves have been set aside with respect thereto and, by reason of nonpayment, no Property is subject to a material risk of loss or forfeiture;

(x) covenants, conditions, and restrictions affecting the use of Property which individually or in the aggregate do not materially impair or burden the fair market value or use of the Property for the purposes for which it is or may reasonably be expected to be held;

(xi) rights of tenants under leases and rental agreements covering Property entered into in the ordinary course of business of the Person owning such Property;

(xii) Liens consisting of pledges or deposits to secure obligations under workers' compensation laws or similar legislation, including Liens of judgments thereunder which are not currently dischargeable;

(xiii) Liens consisting of pledges or deposits of Property to secure performance in connection with operating leases made in the ordinary course of business to which Tenant or its Subsidiaries are a party as lessee, provided, the aggregate value of all such pledges and deposits in connection with any such lease does not at any time exceed twenty percent (20%) of the annual fixed rentals payable under such lease;

(xiv) Liens consisting of deposits of Property to secure bids made with respect to, or performance of, contracts (other than contracts creating or evidencing an extension of credit to the depositor);

(xv) Liens consisting of any right of offset, or statutory bankers' lien, on bank deposit accounts maintained in the ordinary course of business so long as such bank deposit accounts are not established or maintained for the purpose of providing such right of offset or bankers' lien;

(xvi) Liens consisting of deposits of Property to secure statutory obligations of Tenant or any of its Subsidiaries;

(xvii) Liens consisting of deposits of Property to secure (or in lieu of) surety, appeal or customs bonds in proceedings to which Tenant or any of its Subsidiaries is a party;

(xviii) Liens created by or resulting from any litigation or legal proceeding involving Tenant or its Subsidiaries in the ordinary course of its business which is currently being contested in good faith by appropriate proceedings in accordance with **Article XII**, provided, that adequate reserves have been set aside by Tenant or the relevant Subsidiary and no material Property is subject to a material risk of loss or forfeiture;

(xix) non-consensual Liens incurred in the ordinary course of business but not in connection with an extension of credit, which do not in the aggregate, when taken together with all other Liens, materially impair the value or use of the Property of Tenant and its Subsidiaries, taken as a whole;

(xx) Liens arising under applicable Gaming Regulations;

(xxi) Liens arising out of conditional sale, title retention, consignment or similar arrangements for the sale of goods entered into by Tenant or its Subsidiaries in the ordinary course of business;

(xxii) Liens arising from precautionary UCC financing statements filings regarding operating leases or consignment of goods entered into in the ordinary course of business; and

(xxiii) Liens on cash and cash equivalents deposited to discharge, redeem or defease Indebtedness.

“Permitted Leasehold Mortgage”: A document creating or evidencing an encumbrance on Tenant’s leasehold interest (or a subtenant’s subleasehold interest) in the Leased Property, granted to or for the benefit of a Permitted Leasehold Mortgagee as security for the obligations under a Debt Agreement.

“Permitted Leasehold Mortgagee”: The lender or agent or trustee or similar representative on behalf of one or more lenders or noteholders or other investors under a Debt Agreement, in each case as and to the extent such Person has the power to act on behalf of all lenders under such Debt Agreement pursuant to the terms thereof; provided, such lender, agent or trustee or similar representative (but not necessarily the lenders, noteholders or other investors which it represents) is a banking or other institution in the business of generally acting as a lender, agent or trustee or similar representative (in each case, on behalf of a group of lenders) in respect of real estate financings generally or corporate credit facilities generally; and provided, further, that, in all events, (i) no agent, trustee or similar representative shall be Tenant, Tenant’s Parent, Guarantor or any of their Affiliates, respectively (each, a **“Prohibited Leasehold Agent”**), and (ii) no (A) Prohibited Leasehold Agent (excluding any Person that is a Prohibited Leasehold Agent as a result of its ownership of publicly-traded shares in any Person), or (B) entity that owns, directly or indirectly higher than the lesser of (1) ten percent (10%) of the Equity Interests in Tenant or (2) a Controlling legal or beneficial interest in Tenant, may collectively hold an amount of the indebtedness secured by a Permitted Leasehold Mortgagee higher than the lesser of (x) twenty-five percent (25%) thereof and (y) the principal amount thereof required to satisfy the threshold for requisite consenting lenders to amend the terms of such indebtedness that affect all lenders thereunder.

“Permitted Leasehold Mortgagee Designee”: An entity designated by a Permitted Leasehold Mortgagee and acting for the benefit of the Permitted Leasehold Mortgagee, or the lenders, noteholders or investors represented by the Permitted Leasehold Mortgagee.

“Permitted Leasehold Mortgagee Foreclosing Party”: A Permitted Leasehold Mortgagee or Permitted Leasehold Mortgagee Designee that forecloses on this Master Lease and assumes this Master Lease or a Subsidiary of a Permitted Leasehold Mortgagee or Permitted Leasehold Mortgagee Designee that assumes this Master Lease in connection with a foreclosure on this Master Lease by a Permitted Leasehold Mortgagee.

“Person” or **“person”**: Any individual, corporation, limited liability company, partnership, joint venture, association, joint stock company, trust, unincorporated organization, government or any agency or political subdivision thereof or any other form of entity.

“Primary Impositions”: Real estate taxes (if not publicly available), insurance premiums and ground lease rents.

“Primary Intended Use”: Hospitality, entertainment, entertainment venues, gaming and/or pari-mutuel use generally consistent with prevailing hospitality, entertainment or gaming industry use at any time, together with all ancillary or complementary uses consistent with such use and operations (including hotels, resorts, convention centers, retail facilities, restaurants, clubs, bars, etc.), together with any other uses in effect on the Commencement Date and together with any other uses otherwise generally consistent with uses of property in the immediate vicinity of the Facilities and the Operating Standard.

“Prime Rate”: On any date, a rate equal to the annual rate on such date publicly announced by JPMorgan Chase Bank, N.A. (provided, that if JPMorgan Chase Bank, N.A. ceases to publish such rate, the Prime Rate shall be determined according to the Prime Rate of another nationally known money center bank reasonably selected by Landlord), to be its prime rate for ninety (90)-day unsecured loans to its corporate borrowers of the highest credit standing, but in no event greater than the maximum rate then permitted under applicable law.

“Proceeding”: As defined in **Section 23.1(b)(vi)**.

“Prohibited Leasehold Agent”: As defined in the definition of Permitted Leasehold Mortgagee.

“Prohibited Persons”: As defined in **Section 39.1**.

“Property”: any right, title or interest in or to property or assets of any kind whatsoever, whether real, Personal (as defined in the UCC) or mixed and whether tangible or intangible and including all contract rights, income or revenue rights, real property interests, trademarks, trade names, equipment and proceeds of the foregoing and, with respect to any Person, equity interests or other ownership interests of any other Person owned by the first Person.

“Property Documents”: Any (a) declarations, reciprocal easements and/or easements, covenants, exceptions, conditions, restrictions and other encumbrances in each case

affecting the Leased Property or any portion thereof (collectively, “Instruments”) that are filed of public record, or (b) Instruments that are not filed of public record and (i) have been entered into or assumed by Tenant, any Operating Subtenant or any of their respective Affiliates and (ii) with respect to which Tenant’s, Operating Subtenant’s or their Affiliate’s failure to comply would result in a material adverse effect on the applicable Facility or Landlord’s interest therein, and, with respect to any of the Instruments described in clauses (a) and (b), (x) only such Instruments that are in effect on the Commencement Date or made after the Commencement Date in accordance with the terms of this Master Lease or otherwise made or agreed to in writing by Tenant, any Operating Subtenant or any of their respective Affiliates (and with respect to any Instruments entered into by Landlord, provided that Tenant or the applicable Operating Subtenant has actual knowledge thereof) and (y) excluding all Facility Mortgage Documents.

“Related Persons”: With respect to a party, such party’s Affiliates and Subsidiaries and the directors, officers, employees, agents, partners, managers, members, advisors and controlling persons of such party and its Affiliates and Subsidiaries.

“Removal Date”: As defined in **Section 1.5(b)**.

“Removal Facility”: As defined in **Section 1.5**.

“Removal Notice”: As defined in **Section 1.5**.

“Renewal Notice”: As defined in **Section 1.4**.

“Renewal Term”: A period for which the Term is renewed in accordance with **Section 1.4**.

“Rent”: An annual amount equal to Seven Hundred Thirty Million Dollars (\$730,000,000) per annum; provided, however, that (a) commencing on the first day of the second Lease Year and continuing at the beginning of each Lease Year thereafter during the Initial Term and continuing through the first Renewal Term, the Rent shall increase to an annual amount equal to the sum of (i) the Rent per annum as of the end of the immediately preceding Lease Year, and (ii) the Escalation, and (b) it is understood that immediately prior to (i) the First Amendment Date and the related removal of the Mirage Facility from this Lease, the Rent was equal to Eight Hundred Sixty Million Dollars (\$860,000,000) per annum and (ii) the Second Amendment Date and the related removal of the Gold Strike Facility from this Lease, the Rent was equal to Seven Hundred Seventy Million Dollars (\$770,000,000) per annum.

At the commencement of each of the second and third Renewal Terms, the Rent shall be reset to be equal to the greater of (i) the sum of (x) the Rent as of the end of the immediately preceding Lease Year, and (y) the Escalation, and (ii) the Fair Market Rent as of the first day of the applicable Renewal Term as determined pursuant to **Section 3.5** hereof. The Rent determined in accordance with the preceding sentence shall be payable throughout the remainder of the second or third, as applicable, Renewal Term except that the Rent shall increase on the first day of each Lease Year to an amount equal to the sum of (x) the Rent as of the end of the immediately preceding Lease Year, and (y) the Escalation.

Rent shall be subject to further adjustment as and to the extent provided in **Sections 7.4 and 14.6**.

“Replacement Lease”: As defined in **Section 7.2(d)**.

“Replacement Lease Closing Period”: As defined in **Section 7.2(d)**.

“Replacement Tenant”: As defined in **Section 7.2(d)**.

“Representative”: With respect to the lenders or holders under a Debt Agreement, a Person designated as agent or trustee or a Person acting in a similar capacity or as representative for such lenders or holders.

“Responsible Officer”: Tenant’s Parent’s chief executive officer, chief operating officer, treasurer, assistant treasurer, secretary, assistant secretary, executive vice presidents and senior vice presidents and, regardless of designation, the chief financial officer of the Tenant’s Parent, provided, that the Tenant’s Parent may designate one or more other officers as Responsible Officers.

“Restricted Information”: As defined in **Section 23.1(c)**.

“Re-tenanting Period”: As defined in **Section 7.2(d)**.

“Sale Offer”: As defined in **Section 7.4(a)**.

“Sale Offer Notice”: As defined in **Section 7.4(a)**.

“Sanctions Authority”: As defined in **Section 39.1(a)**.

“SEC”: The United States Securities and Exchange Commission.

“SEC Filing Deadline”: As defined in **Section 23.1(b)(i)**.

“SEC Reports”: All quarterly and annual reports required under the Exchange Act and related rules and regulations to be filed with the SEC on Forms 10-Q and 10-K.

“Second Amendment”: That certain Second Amendment to Amended and Restated Master Lease dated as of the Second Amendment Date.

“Second Amendment Date”: February 15, 2023.

“Secondary Impositions”: Impositions that are not Primary Impositions.

“Securities Act”: The Securities Act of 1933, as amended, or any successor statute, and the rules and regulations promulgated thereunder.

“Separate Lease”: As defined in **Section 1.5**.

“Solvent”: With respect to any Person on a particular date, that on such date (a) the fair value of the property of such Person, on a going-concern basis, is greater than the total amount of liabilities (including contingent liabilities) of such Person, (b) the present fair salable value of the assets of such Person, on a going-concern basis, is not less than the amount that will be required to pay the probable liability of such Person on its debts (including contingent liabilities) as they become absolute and matured, (c) such Person has not incurred, and does not intend to, and does not believe that it will, incur, debts or liabilities beyond such Person’s ability to pay such debts and liabilities as they mature, (d) such Person is not engaged in business or a transaction, and is not about to engage in business or a transaction, for which such Person’s property would constitute an unreasonably small capital and (e) such Person is “solvent” within the meaning given that term and similar terms under applicable laws relating to fraudulent transfers and conveyances. For purposes of this definition, the amount of any contingent liability shall be computed as the amount that, in light of all the facts and circumstances existing at such time, represents the amount that can reasonably be expected to become an actual or matured liability (irrespective of whether such contingent liabilities meet the criteria for accrual under Accounting Standards Codification No. 450).

“Specified Debt Agreement Default”: Any event or occurrence under any Material Indebtedness that enables or permits the lenders or holders (or Representatives of such lenders or holders) to accelerate the maturity of the Indebtedness outstanding under any Material Indebtedness.

“Specified Communications”: Each of the following items to the extent required to be delivered to Landlord in accordance with the indicated provisions of this Master Lease:

- (a) Any certificates and related backup required to be delivered pursuant to **Section 4.1**;
- (b) Any Financial Statements, together with a report from the accounting firm (for annual statements) or certificate from a Responsible Officer (for quarterly statements), required to be delivered pursuant to **Section 23.1(b)(i)**;
- (c) Any “no default” certificate required to be delivered pursuant to **Section 23.1(b)(i)**;
- (d) Any budget and projection information required to be delivered pursuant to **Section 23.1(b)(ii)**; and
- (e) Any notices required to be delivered pursuant to **Section 32.2**.

“Springfield”: MGM Springfield.

“Springfield Ground Lease”: The description of Springfield ground lease described in **Part II of Exhibit B**.

“Springfield MTA”: As defined in **Section 41.14(c)(ii)**.

“State”: With respect to each Facility, the state or commonwealth in which such Facility is located.

“Subsidiary”: As to any Person, (i) any corporation more than fifty percent (50%) of whose stock of any class or classes having by the terms thereof ordinary voting power to elect a majority of the directors of such corporation (irrespective of whether or not at the time stock of any class or classes of such corporation shall have or might have voting power by reason of the happening of any contingency) is at the time of determination owned by such Person and/or one or more Subsidiaries of such Person, and (ii) any partnership, limited liability company, association, joint venture or other entity in which such person and/or one or more Subsidiaries of such Person has more than a fifty percent (50%) equity interest at the time of determination. Unless otherwise qualified, all references to a “**Subsidiary**” or to “**Subsidiaries**” in this Master Lease shall refer to a Subsidiary or Subsidiaries of Tenant.

“Tenant”: As defined in the preamble.

“Tenant Capital Improvement”: A Capital Improvement constructed by or at the direction of Tenant or any applicable Operating Subtenant at a Facility.

“Tenant Change of Control”: (i) Any Person or “group” (within the meaning of Rules 13d-3 and 13d-5 under the Exchange Act, as amended from time to time, and any successor statute) other than Tenant’s Parent and its Affiliates, shall have acquired direct or indirect beneficial ownership or control of thirty-five percent (35%) or more on a fully diluted basis of the direct or indirect voting power in the Equity Interests of Tenant entitled to vote in an election of directors of Tenant or its direct or indirect parent, (ii) except as permitted or required hereunder, the direct or indirect sale by Tenant or Tenant’s Parent of all or substantially all of Tenant’s assets, whether held directly or through Subsidiaries, relating to the Facilities in one transaction or in a series of related transactions (excluding sales to Tenant or its Subsidiaries) to a Person that is not wholly owned and controlled (directly or indirectly) by Tenant’s Parent, (iii) Tenant ceasing to be a wholly-owned and controlled Subsidiary (directly or indirectly) of Tenant’s Parent, or (iv) any Operating Subtenant ceasing to be a controlled Subsidiary (directly or indirectly) of Tenant’s Parent. Notwithstanding the foregoing, no acquisition of shares of or transfer of any interest in Tenant’s Parent or any other publicly traded Person in one or more transactions shall result in a Tenant Change of Control, provided that after giving effect to such Tenant Change of Control, Tenant would be able to make the representations in **Section 39.1** of this Master Lease without qualification.

“Tenant Competitor”: A Person or Affiliate of any Person (other than an Affiliate of Tenant) which is (i) among the top 25 global gaming companies by annual revenues, or (ii) any Person that has or is proposing to build, own or operate a casino resort located in the Gaming Corridor, or (iii) any Person identified in a letter of even date herewith from Tenant to Landlord, or their Affiliates; provided, that the foregoing shall not include commercial or corporate banks, pension funds, mutual funds and any other funds that are managed or controlled by a commercial or corporate banks which funds principally invest in commercial loans or debt securities and shall not apply to any holder or purchaser of only unsecured Indebtedness, provided; further, that clauses (i) and (ii) above shall not include any Person that has elected to be treated as a real estate investment trust and whose primary business activity is limited to acting as a landlord of properties under long-term triple-net leases that may include Gaming Facilities.

“Tenant Competitor Notice”: As defined in **Section 18.3**.

“Tenant NH Guarantor”: As defined in **Section 8.4(f)**.

“Tenant NH Guaranty”: As defined in **Section 8.4(f)**.

“Tenant Parties”: Collectively, Tenant and each of the Operating Subtenants.

“Tenant Representatives”: As defined in **Section 23.4**.

“Tenant’s GRT Payment Share”: As defined in **Section 4.1(g)**.

“Tenant’s Intellectual Property”: As defined in **Section 6.3**.

“Tenant’s Notice of Intent”: As defined in **Section 7.2(d)**.

“Tenant’s Parent”: MGM Resorts International and its successor by merger, consolidation or other transaction pursuant to which any such successor acquires all or substantially all of the assets of MGM Resorts International.

“Tenant’s Portion of a Casualty Shortfall”: As defined in **Section 14.2(g)**.

“Tenant’s Property”: With respect to each Facility, all assets, including the Gaming Equipment (other than the Leased Property and Excluded Assets) that are (i) owned by Tenant or any Operating Subtenant or any of their Subsidiaries, respectively, and (ii)(x) located at the Leased Property, or (y) primarily related to or primarily used in connection with the operation of the business conducted on or about the Leased Property or any portion thereof, together with all replacements, modifications, additions, alterations and substitutes therefor.

“Tenant’s Property FMV”: As defined in **Section 36.1**.

“Tenant’s Recommencement Period”: As defined in **Section 7.2(d)**.

“Term”: As defined in **Section 1.3**.

“Termination Notice”: As defined in **Section 17.1(d)**.

“Test Period”: With respect to any Person, for any date of determination, the period of the four (4) most recently ended consecutive fiscal quarters of such Person for which financial statements are available or are required to have been delivered hereunder.

“Title Insurance Proceeds”: As defined in **Section 5.1**.

“Treasury Regulations”: The regulations promulgated under the Code, as such regulations may be amended from time to time.

“UCC”: Uniform Commercial Code as in effect in the State of New York; provided, that, if perfection or the effect of perfection or non-perfection or the priority of any security interest in any collateral is governed by the Uniform Commercial Code as in effect in a

jurisdiction other than the State of New York, “UCC” means the Uniform Commercial Code as in effect from time to time in such other jurisdiction for purposes of the provisions hereof relating to such perfection, effect of perfection or non-perfection or priority.

“Unavoidable Delay”: Delays due to strikes, lock-outs, inability to procure materials, power failure, acts of God, governmental or quasi-governmental restrictions, enemy action, civil commotion, fire, unavoidable casualty, governmental mandates, directives or recommendations, Pandemic, environmental or other causes beyond the reasonable control of the party responsible for performing an obligation hereunder, including any situation in which other similar businesses are generally closed; provided, that lack of funds shall not be deemed a cause beyond the reasonable control of a party.

“Unsuitable for Its Primary Intended Use”: A state or condition of any Facility such that by reason of damage or destruction, or a partial Condemnation, such Facility cannot, following restoration thereof (to the extent commercially practical), be operated on a commercially practicable basis for its Primary Intended Use, taking into account, among other relevant factors, the amount of square footage and the estimated revenue affected by such damage or destruction.

“Voluntarily Closed Facility”: As defined in **Section 22.2(iii)**.

“Voluntary Cessation”: As defined in **Section 7.2(d)**.

“Voluntary Termination Notice”: As defined in **Section 7.2(d)**.

ARTICLE III

RENT

3.1 Rent. During the Term, Tenant will pay to Landlord the Rent and Additional Charges in lawful money of the United States of America and legal tender for the payment of public and private debts, in the manner provided in **Section 3.3**. The Rent during any Lease Year is payable in advance in consecutive monthly installments on the fifth (5th) Business Day of each calendar month during that Lease Year. Unless otherwise agreed by the parties, Rent and Additional Charges shall be prorated as to any partial months at the beginning and end of the Term. Rent payable during any Lease Year or portion thereof consisting of more or less than twelve (12) calendar months shall be prorated on a monthly basis such that the Rent for each calendar month is equal to the annual Rent divided by twelve (12).

3.2 Late Payment of Rent or Additional Charges. Tenant hereby acknowledges that late payment by Tenant to Landlord of Rent or Additional Charges will cause Landlord to incur costs not contemplated hereunder, the exact amount of which is presently anticipated to be extremely difficult to ascertain. Accordingly, if any installment of Rent or Additional Charges (other than Additional Charges payable to a Person other than Landlord) shall not be paid within five (5) days after its due date, Tenant will pay Landlord on demand a late charge equal to the lesser of (a) five percent (5%) of the amount of such installment or (b) the maximum amount permitted by law. The parties agree that this late charge represents a fair and reasonable estimate of the costs that Landlord will incur by reason of late payment by Tenant. The parties further agree that such late charge is Rent and not interest and such assessment does not constitute a lender or borrower/creditor relationship between Landlord and Tenant. Thereafter, if any installment of Rent or Additional Charges (other than Additional Charges payable to a Person other than Landlord) shall not be paid within ten (10) days after its due date, the amount unpaid, including any late charges previously accrued, shall bear interest at the Overdue Rate from the due date of such installment to the date of payment thereof, and Tenant shall pay such interest to Landlord on demand. The payment of such late charge or such interest shall not constitute waiver of, nor excuse or cure, any default under this Master Lease, nor prevent Landlord from exercising any other rights and remedies available to Landlord.

3.3 Method of Payment of Rent. Rent and Additional Charges to be paid to Landlord shall be paid by electronic funds transfer debit transactions through wire transfer of immediately available funds and shall be initiated by Tenant for settlement on or before the Payment Date; provided, however, if the Payment Date is not a Business Day, then settlement shall be made on the next succeeding day which is a Business Day. Landlord shall provide Tenant with appropriate wire transfer information in a Notice from Landlord to Tenant. If Landlord directs Tenant to pay any Rent to any party other than Landlord, Tenant shall send to Landlord, simultaneously with such payment, a copy of the transmittal letter or invoice and a check whereby such payment is made or such other evidence of payment as Landlord may reasonably require.

3.4 Net Lease. Landlord and Tenant acknowledge and agree that (i) this Master Lease is and is intended to be what is commonly referred to as a “net, net, net” or “triple net” lease, and (ii) the Rent shall be paid absolutely net to Landlord, so that this Master Lease shall yield to Landlord the full amount or benefit of the installments of Rent and Additional Charges throughout the Term with respect to each Facility, all as more fully set forth in **Article IV** and subject to any other provisions of this Master Lease which expressly provide for adjustment or abatement of Rent or other charges. If Landlord commences any proceedings for non-payment of Rent, Tenant will not interpose any counterclaim or cross complaint or similar pleading of any nature or description in such proceedings unless Tenant would lose or waive such claim by the failure to assert it. This shall not, however, be construed as a waiver of Tenant’s right to assert such claims in a separate action brought by Tenant. The covenants to pay Rent and other amounts hereunder are independent covenants, and Tenant shall have no right to hold back, offset or fail to pay any such amounts for default by Landlord or for any other reason whatsoever.

3.5 Fair Market Rent. In the event that it becomes necessary to determine the Fair Market Rent of any Facility for any purpose of this Master Lease, and the parties cannot agree among themselves on such Fair Market Rent within twenty (20) days after the first request made by one of the parties to do so, then either party may notify the other of a person selected to act as appraiser (such person, and each other person selected as provided herein, an “**Appraiser**”) on its behalf. Within fifteen (15) days after receipt of any such Notice, the other party shall by notice to the first party appoint a second person as Appraiser on its behalf. The Appraisers thus appointed, each of whom must be a member of The Appraisal Institute/American Institute of Real Estate Appraisers (or any successor organization thereto, or, if no such organization exists, a similarly nationally recognized real estate appraisal organization) with at least ten (10) years of experience appraising properties similar to the Facilities, shall, within forty-five (45) days after the date of the notice appointing the first appraiser, proceed to appraise the applicable Facility to determine the Fair Market Rent thereof as of the relevant date; provided, that if one Appraiser shall have been so appointed, or if two Appraisers shall have been so appointed but only one such Appraiser shall have made such determination within fifty (50) days after the making of the initial appointment, then the determination of such Appraiser shall be final and binding upon the parties. If two (2) Appraisers shall have been appointed and shall have made their determinations within the respective requisite periods set forth above and if the difference between the amounts so determined shall not exceed ten percent (10%) of the lesser of such amounts, then the Fair Market Rent shall be an amount equal to fifty percent (50%) of the sum of the amounts so determined. If the difference between the amounts so determined shall exceed ten percent (10%) of the lesser of such amounts, either party may request the appointment of Experts pursuant to **Article XXXIV**.

ARTICLE IV

IMPOSITIONS

4.1 Impositions. (a) Subject to **Article XII** relating to permitted contests, Tenant shall pay, or cause to be paid, all Impositions before any fine, penalty, interest or cost may be added for non-payment. Tenant shall make, or cause to be made, such payments directly to the taxing authorities (or any such other party imposing the same) and (i) with respect to Primary Impositions, furnish to Landlord once per calendar quarter, a listing of such payments, together, upon the reasonable request of Landlord, with copies of official invoices or receipts or other reasonably satisfactory proof evidencing such payments, and (ii) with respect to Secondary Impositions, furnish to Landlord once per calendar year upon request, provided that Landlord has reasonable justification for any such request in this clause (ii) and includes the same in its request to Tenant, a listing of such material payments, and, upon the reasonable request of Landlord, copies of official invoices or receipts or other reasonably satisfactory proof evidencing such payments. If Tenant is not permitted to, or it is otherwise not feasible for Tenant to, make (or cause to be made) such payments directly to the taxing authorities or other applicable party, then Tenant shall make (or cause to be made) such payments to Landlord at least ten (10) Business Days prior to the due date, and Landlord shall make such payments to the taxing authorities or other applicable party prior to the due date. Tenant’s obligation to pay (or cause to be paid) Impositions shall be absolutely fixed upon the date such Impositions become a lien upon the Leased Property or any part thereof subject to **Article XII**. If any Imposition may, at the option of the taxpayer, lawfully be paid in installments, whether or not interest shall accrue on the

unpaid balance of such Imposition, Tenant may pay the same, and any accrued interest on the unpaid balance of such Imposition, in installments as the same respectively become due and before any fine, penalty, premium, further interest or cost may be added thereto.

(b) Landlord or Landlord's Parent shall prepare and file all tax returns and reports as may be required by Legal Requirements with respect to Landlord's net income, gross receipts, franchise taxes and taxes on its capital stock and any other returns required to be filed by or in the name of Landlord (the "**Landlord Tax Returns**"), and Tenant or Tenant's Parent shall prepare and file all other tax returns and reports as may be required by Legal Requirements with respect to or relating to the Leased Property (including all Capital Improvements), and Tenant's Property.

(c) Any refund due from any taxing authority in respect of any Imposition paid by or on behalf of Tenant shall be paid over to or retained by Tenant.

(d) Landlord and Tenant shall, upon request of the other, provide such data as is maintained by the party to whom the request is made with respect to the Leased Property as may be necessary to prepare any required returns and reports. If any property covered by this Master Lease is classified as personal property for tax purposes, Tenant shall file all personal property tax returns in such jurisdictions where it must legally so file. Landlord, to the extent it possesses the same, and Tenant, to the extent it or any Operating Subtenant possesses the same, shall provide the other party, upon request, with cost and depreciation records necessary for filing returns for any property so classified as personal property. Where Landlord is legally required to file personal property tax returns, Tenant shall be provided with copies of assessment notices indicating a value in excess of the reported value in sufficient time for Tenant to file a protest.

(e) Billings for reimbursement by Tenant to Landlord of personal property or real property taxes and any taxes due under Landlord Tax Returns, if and to the extent Tenant is responsible for such taxes under the terms of this **Section 4.1**, shall be accompanied by copies of a bill therefor and payments thereof which identify the personal property or real property or other tax obligations of Landlord with respect to which such payments are made.

(f) Impositions imposed or assessed in respect of the tax-fiscal period during which the Term terminates shall be adjusted and prorated between Landlord and Tenant, whether or not such Imposition is imposed or assessed before or after such termination, and Tenant's obligation to pay its prorated share thereof in respect of a tax-fiscal period during the Term shall survive such termination. Landlord will not voluntarily enter into agreements that will result in additional Impositions without Tenant's consent, which shall not be unreasonably withheld, conditioned or delayed (it being understood that it shall not be reasonable to withhold consent to customary additional Impositions that other property owners of properties similar to the Leased Property customarily consent to in the ordinary course of business); provided, Tenant is given reasonable opportunity to participate in the process leading to such agreement. Impositions imposed or assessed in respect of any tax fiscal period occurring (in whole or in part) prior to the Commencement Date shall be Tenant's obligation to pay or cause to be paid.

(g) Notwithstanding anything to the contrary in this Master Lease, Tenant's obligation to reimburse Landlord in respect of gross receipts tax (including the Nevada Commerce Tax) shall not exceed fifty percent (50%) ("**Tenant's GRT Payment Share**") of any such gross receipts tax to the extent that such tax is actually paid by Landlord as a result of the payment of Rent and Additional Charges (each, an "**GRT Payment**"). As a condition to Tenant's obligation to reimburse Landlord for Tenant's GRT Payment Share, Landlord shall provide Tenant with Landlord's computation of the GRT Payment paid by Landlord together with such information as Tenant may reasonably request to evidence or substantiate such GRT Payment and Tenant shall pay the amount of Tenant's GRT Payment Share to Landlord within ten (10) Business Days following Tenant's receipt of such computation and information; provided, that, Tenant shall have the right to dispute Landlord's computation of any GRT Payment and any such dispute will be resolved by Experts pursuant to **Section 34.1**.

4.2 Utilities, Encumbrances and Other Matters. (a) Tenant shall pay or cause to be paid all charges for electricity, power, gas, oil, water and other utilities used in the Leased Property (including all Capital Improvements). Tenant shall also pay or reimburse Landlord for, all costs and expenses of any kind whatsoever which at any time with respect to the Term hereof with respect to any Facility may be imposed against Landlord by reason of any covenants, conditions and/or restrictions affecting the Leased Property or any portion thereof, or with respect to easements, licenses or other rights over, across or with respect to any adjacent or other property which benefits the Leased Property or any Capital Improvement, including any and all costs and expenses associated with any utility, drainage and parking easements. Landlord will not enter into agreements that will encumber the Leased Property (other than a Facility Mortgage) without Tenant's consent, which shall not be unreasonably withheld (it being understood that it shall not be reasonable to withhold consent to Instruments that do not adversely affect in any material respect the use or future development of the Facility as a Gaming Facility or any other use consistent with the Primary Intended Use or increase Additional Charges payable under this Master Lease); provided, Tenant is given reasonable opportunity to participate in the process leading to such Instrument. Tenant will not enter into Instruments that will encumber Landlord's interest in the Leased Property or which require Landlord's signature without Landlord's consent, which shall not be unreasonably withheld, conditioned or delayed (it being understood that it shall not be reasonable to withhold consent to Instruments that do not adversely affect the value or use of the Leased Property or the Facility (other than a de minimis effect)) unless such Instrument benefits a Tenant Competitor or an Affiliate of Tenant at the expense or to the detriment of such Facility or inappropriately or unfairly discriminates, in Landlord's reasonable discretion, against the Facility to which such Instrument relates in favor of another Facility or other property which is not a Facility or Leased Property; provided, Landlord is given reasonable opportunity to participate in the process leading to such Instrument, and with respect to any Instruments which do not require Landlord's consent, provided that they (x) expressly provide that they do not affect Landlord's interest in the Leased Property and (y) do not result in any physical structures or other matters which may need to be removed or restored after the expiration of this Master Lease unless the same are minor in nature and Tenant agrees to remove and/or restore the same at no cost to Landlord (which is not otherwise reimbursed by Tenant).

(b) Without limitation of the final sentence of **Section 4.2(a)**, (i) Landlord shall reasonably cooperate with Tenant, as may be reasonably requested by Tenant, at Tenant's sole cost and expense, in connection with the consummation or completion of the projects or other matters more particularly described on **Schedule 6**, and (ii) Landlord acknowledges that the Facilities located in Las Vegas may be participating in the Vegas Loop Project. Nothing contained in this **Section 4.2(b)** shall be deemed to vitiate or supersede or otherwise reduce any of Landlord's rights under this Master Lease, including **Section 4.2(a)** and **Section 8.3** hereof.

(c) Landlord agrees not to withhold its consent to the easements and other agreements listed on **Schedule 7**, to the extent not yet finalized before the Commencement Date, provided such easements and agreements are substantially in the form previously disclosed to Landlord's Parent or its representatives pursuant to that certain Master Transaction Agreement by and among Landlord's Parent, Tenant's Parent and certain of their respective Affiliates dated August 4, 2021, or to the extent not provided to Landlord's Parent or its representatives, in a form reasonably acceptable to Landlord.

4.3 Impound Account. At Landlord's option following the occurrence and during the continuation of an Event of Default (to be exercised by thirty (30) days' Notice to Tenant); Tenant shall be required to deposit, at the time of any payment of Rent, an amount equal to one-twelfth of the sum of (i) Tenant's estimated annual rent and personal property taxes required pursuant to **Section 4.1** hereof (as reasonably determined by Landlord), and (ii) Tenant's estimated annual maintenance expenses and insurance premium costs pursuant to **Articles IX** and **XIII** hereof (as reasonably determined by Landlord). Such amounts shall be applied to the payment of the obligations in respect of which said amounts were deposited in such order of priority as Landlord shall reasonably determine, on or before the respective dates on which the same or any of them would become delinquent. The reasonable cost of administering such impound account shall be paid by Tenant. Nothing in this **Section 4.3** shall be deemed to affect any right or remedy of Landlord hereunder.

4.4 Sustainability. Tenant acknowledges that Landlord values and supports environmental sustainability initiatives and practices at the Leased Property to, among other things, reduce the environmental impact of operations thereat, which may include energy efficiency and carbon emissions reduction, water usage reduction, recycling and waste reduction, environmental stewardship and conservation, and other sustainability efforts, as well as those related to Capital Improvements, interior design, operations, and maintenance.

ARTICLE V

NO ABATEMENT

5.1 No Termination, Abatement, etc. Except as otherwise specifically provided in this Master Lease, Tenant shall remain bound by this Master Lease in accordance with its terms and shall not seek or be entitled to any abatement, deduction, deferment or reduction of Rent, or set-off against the Rent. Except as may be otherwise specifically provided in this Master Lease, the respective obligations of Landlord and Tenant shall not be affected by reason of (i) any damage to or destruction of the Leased Property or any portion thereof from whatever cause or any Condemnation of the Leased Property, any Capital Improvement or any portion thereof; (ii) other than as a result of Landlord's willful misconduct or gross negligence, the lawful or

unlawful prohibition of, or restriction upon, Tenant's use of the Leased Property, any Capital Improvement or any portion thereof, the interference with such use by any Person or by reason of eviction by paramount title; (iii) any claim that Tenant has or might have against Landlord by reason of any default or breach of any warranty by Landlord hereunder or under any other agreement between Landlord and Tenant or to which Landlord and Tenant are parties; (iv) any bankruptcy, insolvency, reorganization, consolidation, readjustment, liquidation, dissolution, winding up or other proceedings affecting Landlord or any assignee or transferee of Landlord; or (v) for any other cause, whether similar or dissimilar to any of the foregoing, other than a discharge of Tenant from any such obligations as a matter of law. Tenant hereby specifically waives all rights arising from any occurrence whatsoever which may now or hereafter be conferred upon it by law (a) to modify, surrender or terminate this Master Lease or quit or surrender the Leased Property or any portion thereof, or (b) which may entitle Tenant to any abatement, deduction, reduction, suspension or deferment of or defense, counterclaim, claim or set-off against the Rent or other sums payable by Tenant hereunder except in each case as may be otherwise specifically provided in this Master Lease. Notwithstanding the foregoing, nothing in this **Article V** shall preclude Tenant from bringing a separate action against Landlord for any matter described in the foregoing clauses (ii), (iii) or (v) and Tenant is not waiving other rights and remedies not expressly waived herein. The obligations of Landlord and Tenant hereunder shall be separate and independent covenants and agreements and the Rent and all other sums payable by Tenant hereunder shall continue to be payable in all events unless the obligations to pay the same shall be terminated pursuant to the express provisions of this Master Lease or by termination of this Master Lease as to all or any portion of the Leased Property other than by reason of an Event of Default. Tenant's agreement that, except as may be otherwise specifically provided in this Master Lease, any eviction by paramount title as described in item (ii) above shall not affect Tenant's obligations under this Master Lease, shall not in any way discharge or diminish any obligation of any insurer under any policy of title or other insurance and, to the extent the recovery thereof is not necessary to compensate Landlord for any damages incurred by any such eviction, Tenant shall be entitled to a credit for any sums recovered by Landlord under any such policy of title or other insurance up to the maximum amount paid by Tenant to Landlord under this **Section 5.1**, and Landlord, upon request by Tenant, shall assign Landlord's rights under such policies to Tenant; provided, that such assignment does not adversely affect Landlord's rights under any such policy and provided, further, that Tenant shall indemnify, defend, protect and save Landlord harmless from and against any liability, cost or expense of any kind that may be imposed upon Landlord in connection with any such assignment except to the extent such liability, cost or expense arises from the gross negligence or willful misconduct of Landlord. In furtherance of the foregoing, in the event that Landlord receives proceeds ("**Title Insurance Proceeds**") from any policy of title or similar insurance maintained by Landlord, any such Title Insurance Proceeds shall be shared between Landlord and Tenant as follows: Tenant shall be entitled to the portion of such Title Insurance Proceeds that is attributable to the damage to the leasehold estate incurred by Tenant during the Term of this Master Lease (assuming that all Renewal Terms are exercised by Tenant) and Landlord shall be entitled to the portion of such Title Insurance Proceeds that is attributable to the damage to the residual estate remaining after the expiration of the Term (assuming that all Renewal Terms are exercised) provided that, if Tenant subsequently does not exercise one or more Renewal Terms, Tenant shall pay to Landlord the portion of such Title Insurance Proceeds received by or paid to Tenant pursuant to this **Section 5.1** that is allocable to the Renewal Terms that are not exercised. Landlord agrees for the benefit of Tenant that in the event that Tenant desires to cause to be asserted a claim

against any title insurer providing coverage under any policy of title or similar insurance maintained by Landlord, Landlord will reasonably cooperate with Tenant in asserting such claim and use commercially reasonable efforts to enforce such policy so that all available Title Insurance Proceeds are received, provided that Tenant bears all costs and expenses of such enforcement. In the event that Landlord and Tenant are unable, within thirty (30) days of receipt of any such Title Insurance Proceeds, to agree on the allocation between Landlord and Tenant of such Title Insurance Proceeds, either Landlord or Tenant may request that such allocation be determined by an Expert in accordance with **Section 34.1**. Landlord shall pay any amount owing pursuant to this **Section 5.1** to Tenant within thirty (30) days after agreement upon, or determination by the Expert of, such amount. For the avoidance of doubt, Landlord and Tenant hereby agree that the references to title insurance and Title Insurance Proceeds in this **Section 5.1** shall include any title insurance and Title Insurance Proceeds of Landlord and any Affiliates of Landlord and that Landlord shall cause its Affiliates to comply with the provisions of this **Section 5.1** with respect to the provisions concerning title insurance and Title Insurance Proceeds.

ARTICLE VI

OWNERSHIP OF LEASED PROPERTY

6.1 Ownership of the Leased Property. (a) Landlord and Tenant acknowledge and agree that they have executed and delivered this Master Lease with the understanding that (i) the Leased Property (including any Tenant Capital Improvements) is the property of Landlord, (ii) Tenant has only the right to the possession and use of the Leased Property upon the terms and conditions of this Master Lease, (iii) this Master Lease is a “true lease,” for all applicable legal and federal, state and local tax purposes and is not a mortgage, equitable mortgage, deed of trust, trust agreement, security agreement or other financing or trust arrangement, and the economic realities of this Master Lease are those of a true lease, (iv) the business relationship created by this Master Lease and any related documents is and at all times shall remain that of landlord and tenant, (v) this Master Lease has been entered into by each party in reliance upon the mutual covenants, conditions and agreements contained herein, and (vi) none of the agreements contained herein is intended, nor shall the same be deemed or construed, to create a partnership between Landlord and Tenant, to make them joint venturers, to make Tenant an agent, legal representative, partner, subsidiary or employee of Landlord, or to make Landlord in any way responsible for the debts, obligations or losses of Tenant.

(b) Each of the parties hereto covenants and agrees, subject to **Section 6.1(c)**, not to (i) file any income tax return or other associated documents; (ii) file any other document with or submit any document to any governmental body or authority; (iii) enter into any written contractual arrangement with any Person; or (iv) release any financial statements of Tenant, in each case that takes a position other than that this Master Lease is a “true lease” with Landlord as owner of the Leased Property and Tenant as the tenant of the Leased Property (other than for GAAP purposes), including (x) treating Landlord as the owner of such Leased Property eligible to claim depreciation deductions under Sections 167 or 168 of the Code with respect to such Leased Property (except as otherwise provided in **Section 11.1(b)**), (y) Tenant reporting its Rent payments as rent expense under Section 162 of the Code, and (z) Landlord reporting the Rent payments as rental income under Section 61 of the Code.

(c) The Rent is the fair market rent for the use of the Leased Property and was agreed to by Landlord and Tenant on that basis, and the execution and delivery of, and the performance by Tenant of its obligations under, this Master Lease does not constitute a transfer of all or any part of the Leased Property.

(d) Tenant waives any claim or defense based upon the characterization of this Master Lease as anything other than a true lease and as a master lease of all of the Leased Property. Tenant stipulates and agrees (1) not to challenge the validity, enforceability or characterization of the lease of the Leased Property as a true lease and/or as a single, unseverable instrument pertaining to the lease of all, but not less than all, of the Leased Property, and (2) not to assert or take or omit to take any action inconsistent with the agreements and understandings set forth in **Section 3.4** or this **Section 6.1**.

6.2 Tenant's Property. Tenant and each Operating Subtenant shall maintain sufficient Tenant's Property (or personal property leased by Tenant or any Operating Subtenant or Corporate Shared Services Property) with respect to each Facility as may be necessary to comply with the Operating Standard. Tenant and its Subsidiaries may sell, transfer, convey or otherwise dispose of Tenant's Property in their sole discretion in a manner that does not impair any Facility's compliance with the Operating Standard and Landlord shall have no rights to such disposed Tenant's Property. Subject to **Section 36.1** and **Section 9.1(d)**, Tenant shall remove or cause to be removed all of Tenant's Property from the Leased Property at the end of the Term at Tenant's sole cost and expense. Subject to **Section 36.1**, any Tenant's Property left on the Leased Property at the end of the Term whose ownership was not transferred to a successor tenant or landlord shall be deemed abandoned by Tenant and shall become the property of Landlord. Notwithstanding anything in the foregoing to the contrary, any transfer, conveyance or other disposition by Landlord or Tenant of any Gaming Equipment will be subject to the approval, to the extent required, of any applicable Gaming Authority. Notwithstanding the foregoing, Tenant shall not be required to maintain, and there shall be no restriction on Tenant's or its Subsidiaries' right to sell, transfer, convey or otherwise dispose of, Tenant's Property with respect to any Voluntarily Closed Facility which has been deemed to have been assigned (i.e., counts as an assignment of the applicable Facility for the purposes of clause (5) of **Section 22.2(iii)**) but only for so long as such Facility remains a Facility which has been deemed to have been assigned (i.e., counts as an assignment of the applicable Facility for the purposes of clause (5) of **Section 22.2(iii)**).

6.3 Tenant's Intellectual Property. Subject to the terms of the Intellectual Property License Agreement, (a) Landlord and Tenant acknowledge and agree that all trademarks, trade names and trade dress used in connection with the Leased Property and all other forms of Tenant's intellectual property (collectively, "**Tenant's Intellectual Property**") shall be the sole and exclusive property of Tenant, Tenant's Parent and their respective Affiliates, (b) Tenant, Tenant's Parent and their respective Affiliates may sell, transfer, convey or otherwise dispose of, modify, use or discontinue use of Tenant's Intellectual Property in their sole discretion, (c) Landlord and its Affiliates shall have no rights in or to Tenant's Intellectual Property, (d) Landlord and its Affiliates shall not claim any rights in or to, or challenge, contest or otherwise interfere with Tenant's, Tenant's Parent's or their respective Affiliates', as applicable, sole and exclusive ownership of, Tenant's Intellectual Property and (e) Tenant may remove or otherwise dispose of Tenant's Intellectual Property from the Leased Property at the end of the Term, or

may modify the Leased Property at the end of the Term such that Landlord's or any successor tenant's use of the Leased Property does not infringe upon, dilute or adversely effect Tenant's, Tenant's Parent's or their respective Affiliates' ownership of Tenant's Intellectual Property. For the avoidance of doubt, (i) no Tenant's Intellectual Property shall be included in the provisions of **Section 36.1** and (ii) nothing in this **Section 6.3** shall vitiate the obligations of Tenant set forth in **Section 7.2(a)**.

ARTICLE VII

CONDITION AND USE OF LEASED PROPERTY

7.1 Condition of the Leased Property. Tenant acknowledges receipt and delivery of possession of the Leased Property and confirms that Tenant has examined and otherwise has knowledge of the condition of the Leased Property prior to the execution and delivery of this Master Lease and has found the same to be in good order and repair and, to the best of Tenant's knowledge, free from Hazardous Substances not in compliance with Legal Requirements and satisfactory for its purposes hereunder. Regardless, however, of any examination or inspection made by Tenant and whether or not any patent or latent defect or condition was revealed or discovered thereby, Tenant is leasing the Leased Property "as is" in its present condition. Tenant waives any claim or action against Landlord in respect of the condition of the Leased Property including any defects or adverse conditions not discovered or otherwise known by Tenant as of the Commencement Date. **LANDLORD MAKES NO WARRANTY OR REPRESENTATION, EXPRESS OR IMPLIED, IN RESPECT OF THE LEASED PROPERTY OR ANY PART THEREOF, INCLUDING AS TO ITS FITNESS FOR USE, DESIGN OR CONDITION FOR ANY PARTICULAR USE OR PURPOSE OR OTHERWISE, OR AS TO THE NATURE OR QUALITY OF THE MATERIAL OR WORKMANSHIP THEREIN, OR THE EXISTENCE OF ANY HAZARDOUS SUBSTANCE, IT BEING AGREED THAT ALL SUCH RISKS, LATENT OR PATENT, ARE TO BE BORNE SOLELY BY TENANT INCLUDING ALL RESPONSIBILITY AND LIABILITY FOR ANY ENVIRONMENTAL REMEDIATION AND COMPLIANCE WITH ALL ENVIRONMENTAL LAWS.**

7.2 Use of the Leased Property. (a) Tenant shall use or cause to be used the Leased Property and the improvements thereon of each Facility for its Primary Intended Use in accordance with the Operating Standard. Tenant shall not use or permit the use of the Leased Property or any portion thereof or any Capital Improvement thereto for any other use without the prior written consent of Landlord, which consent Landlord may not unreasonably withhold, condition or delay. Landlord acknowledges that operation of each Gaming Facility for its Primary Intended Use generally requires a Gaming License under applicable Gaming Regulations and that without such a license neither Landlord nor any Affiliate of Landlord may operate, control or participate in the conduct of a Gaming Facility.

(b) Tenant shall not commit or suffer to be committed any waste on the Leased Property (including any Capital Improvement thereto) or cause or permit any nuisance thereon or to, except as required by law, take or suffer any action or condition that will diminish the ability of the Leased Property to be used as a Gaming Facility (except in connection with any use, or change of use, permitted pursuant to **Section 7.2(a)** above or in connection with a Facility

(or any portion thereof) that is not and has not been operated as a Gaming Facility) after the expiration or earlier termination of the Term.

(c) Tenant shall neither suffer nor permit the Leased Property or any portion thereof to be used in such a manner as (i) would reasonably be expected to impair Landlord's title thereto or to any portion thereof or (ii) would reasonably be expected to result in a claim of adverse use or possession, or an implied dedication of the Leased Property or any portion thereof.

(d) Except as a result of a Casualty Event or for the duration of an Unavoidable Delay or, with respect to a Facility undergoing a Landlord Approved Construction/Closure Project, for the duration of the period in which Tenant is prosecuting such Landlord Approved Construction/Closure Project, Tenant shall continuously operate each of the Facilities for the Primary Intended Use in accordance with the Operating Standard. Notwithstanding the foregoing, Tenant in its discretion may elect to permanently or temporarily cease operations at any of the Facilities if (i) in Tenant's reasonable discretion, such cessation would not reasonably be expected to have a material adverse effect on Tenant, the Facilities, or on the Leased Property, taken as a whole, or (ii) at the time of such Voluntary Cessation, the EBITDAR to Rent Ratio, calculated on a pro forma basis as if the Facility(ies) for which operations are to be terminated were not included in EBITDAR, for the trailing twelve (12) month period is not less than 1.9:1 (any cessation of operations under clause (i) above or this clause (ii), a "**Voluntary Cessation**"); provided, however, that to the extent any Voluntary Cessation exceeds and is continuing for more than a period of twelve (12) consecutive months, Landlord may provide written notice to Tenant (the "**Voluntary Termination Notice**") of Landlord's intent to exercise Landlord's right to terminate Tenant's Leasehold Interest in this Master Lease as set forth below with respect to only the Facility for which the Voluntary Cessation has occurred and, as a condition to any such termination, contemporaneously therewith enter into a new lease for such facility (a "**Replacement Lease**") with a bona fide third party (a "**Replacement Tenant**") at a commercially reasonable rent (giving due consideration to the fact that such Facility has been closed and is not operational) ("**Landlord's Termination Right**"); provided further, that effective upon such termination, Rent under this Master Lease will be reduced by the amount of Rent required to be paid by such third party to the Landlord pursuant to such Replacement Lease. Notwithstanding the foregoing, Rent under this Master Lease will remain unchanged except as specifically set forth in the proviso of the preceding sentence (and, for the avoidance of doubt, solely in the event of a Replacement Lease). Notwithstanding the foregoing, if Landlord delivers a Voluntary Termination Notice to Tenant in accordance with the above, Tenant may within thirty (30) days after receipt of the Voluntary Termination Notice, provide notice to Landlord that Tenant intends to again operate the Facility in question ("**Tenant's Notice of Intent**") and (x) if Tenant does thereafter commence operation of the Facility in question prior to the date that is sixty (60) days after the delivery to Landlord of Tenant's Notice of Intent ("**Tenant's Recommencement Period**"), and continues to operate such Facility for at least ninety (90) consecutive days in accordance with the terms of this Master Lease, then Landlord's Termination Right shall not apply and (y) if Tenant does not thereafter commence operation of the Facility in question prior to the expiration of Tenant's Recommencement Period, or does commence operation during Tenant's Recommencement Period but does not continue to operate for such 90-day period, then Landlord shall have the right to exercise Landlord's Termination Right provided that Landlord and Replacement Tenant enter into a binding agreement for the execution

and delivery by Landlord and Replacement Tenant of a Replacement Lease within four (4) years following the expiration of Tenant's Recommencement Period (such 4-year period, the "**Re-tenanting Period**") and thereafter consummate the closing and enter into the Replacement Lease no later than one (1) year after execution and delivery of such binding agreement (such 1-year period, the "**Replacement Lease Closing Period**"), failing which, Landlord shall no longer be permitted to exercise Landlord's Termination Right with respect to the Voluntary Cessation in question without first delivering a Voluntary Termination Notice to Tenant and providing Tenant with the rights set forth above in connection therewith. For purposes of clarity, (1) under no circumstances shall any termination of this Master Lease with respect to a Facility pursuant to this **Section 7.2(d)** become effective unless a Replacement Lease is executed and delivered contemporaneously therewith, and (2) if Tenant reopens a Facility as described in clause (x) of this **Section 7.2(d)** and continues to operate such Facility for at least ninety (90) consecutive days in accordance with the terms of this Master Lease, but thereafter, ceases operations at such Facility for more than a period of twelve (12) consecutive months, then, Landlord may provide another Voluntary Termination Notice to Tenant pursuant to this **Section 7.2(d)**.

(e) Without limitation of any other provisions of this Lease, Tenant shall comply in all material respects with all Property Documents and Landlord shall reasonably cooperate with Tenant (at Tenant's sole cost and expense) to the extent necessary for Tenant to so comply.

(f) Upon Landlord's reasonable request from time to time, but not more frequently than once each year, Tenant shall provide Landlord with copies of any final third-party surveys, environmental, engineering, zoning, seismic or property condition reports (other than any which are subject to privilege) obtained by Tenant or any Operating Subtenant with respect to the Leased Property.

7.3 Other Facilities.

(a) Subject to compliance with the provisions of **Section 7.4**, nothing contained in this Master Lease shall restrict Tenant's or any Tenant's Affiliates' ability to develop, acquire, operate or sell any new Gaming Facilities (or any other property) which are not owned or operated by Tenant as of the Commencement Date and not subject to this Master Lease.

(b) Landlord and Tenant acknowledge and agree that any Operating Subtenant or other affiliate of Tenant's Parent may in the future develop the property adjacent to the Empire Facility (the "**Empire Adjacent Property**") such that the Empire Adjacent Property is integrated with the Empire Facility, and Landlord agrees to reasonably cooperate, upon request by Tenant and at no out-of-pocket expense to Landlord, in any such development, including remapping of the Empire Facility, entering into restricted declarations and easements and approving any applications and site plans necessary in connection therewith.

7.4 Landlord ROFO.

(a) **Landlord's Right to Purchase Additional Empire Facility.** Tenant agrees that during the Term, neither Tenant nor any of its Affiliates shall sell any portion of the Empire Adjacent Property on which Tenant shall have constructed gaming facilities (the

“**Additional Empire Facility**”) unless Tenant shall first offer Landlord the opportunity to purchase the Additional Empire Facility to be sold and, if consistent with the Sale Offer (as defined below), include the Additional Empire Facility as a Leased Property under this Master Lease, on the terms described herein below. In the event that Tenant intends to sell the Additional Empire Facility, Tenant shall deliver a notice to Landlord (a “**Sale Offer Notice**”) indicating the price and other material terms under which Tenant would agree to sell the Additional Empire Facility (including, if applicable, as determined by Tenant in its sole discretion, the terms under which Tenant would agree to lease the Additional Empire Facility from a purchaser) (a “**Sale Offer**”). Within thirty (30) days of Landlord’s receipt of a Sale Offer Notice, Landlord shall notify Tenant as to whether Landlord intends to offer to purchase the Additional Empire Facility and on what terms. If Landlord shall offer to purchase the Additional Empire Facility subject to the Sale Offer for at least one hundred and five percent (105%) of the purchase price contained in the Sale Offer on an all cash basis (and, if applicable, on the same rental terms and other lease terms as the Sale Offer), Tenant shall sell the Additional Empire Facility subject to the Sale Offer to Landlord for such cash price and subject to the remaining terms set forth in the Sale Offer within sixty (60) days of Landlord’s receipt of the Sale Offer Notice, or such longer period of time as may reasonably be required to the extent necessary to comply with **Section 41.13** or as otherwise necessary to comply with Gaming Regulations. If Landlord shall indicate its willingness to purchase the Additional Empire Facility but shall offer less than one hundred and five percent (105%) of the purchase price stated in the Sale Offer (or shall otherwise not agree to any of the remaining material terms contained in the Sale Offer), the parties shall attempt to negotiate, in each party’s sole discretion, the terms and conditions upon which such sale would be effected. Should Landlord notify Tenant that Landlord does not intend to purchase the Additional Empire Facility subject to the Sale Offer (or should Landlord decline to notify Tenant of its affirmative response within such thirty (30) day period), or if the parties fail for any reason to reach agreement on the terms under which Landlord would acquire the Additional Empire Facility subject to the Sale Offer, in any event, within thirty (30) days after Landlord’s receipt of the Sale Offer Notice, then Tenant shall have no further obligation to sell or offer to sell the Additional Empire Facility subject to the Sale Offer to Landlord and Tenant may freely sell the Additional Empire Facility subject to the Sale Offer to any third-party for no less than the purchase price contained in, and otherwise on terms not substantially more favorable to such third-party than the terms contained in, the Sale Offer. If Landlord purchases the Additional Empire Facility from Tenant and the Sale Offer or other terms agreed between Landlord and Tenant provide for Tenant to lease, from Landlord, the Additional Empire Facility, then the Additional Empire Facility shall become part of the Empire Facility hereunder, and this Master Lease shall be amended, including amending the Rent, in accordance with such terms set forth in the Sale Offer or as otherwise agreed between Landlord and Tenant; provided that such amendments shall be consistent with the parties’ intent that this Master Lease shall be treated as a “true lease” as further described in **Section 6.1(a)(iii)**. In no event shall Landlord’s rights under this **Section 7.4(a)** be assignable to any other Person and such rights may only be exercised by Landlord.

(b) **No Other Restrictions.** Notwithstanding anything to the contrary in this **Section 7.4**, Landlord shall not have any right to purchase, nor shall Tenant have any obligation to make any offer to Landlord pursuant to this **Section 7.4** in connection with, any Property other than the Additional Empire Facility and in accordance with the terms of **Article X**). Further, neither Landlord nor Tenant shall be restricted from participating in opportunities, including,

without limitation, developing, building, purchasing or operating Gaming Facilities or any other property or asset, at any time; provided, however, that in no event shall Landlord at any time during the Term own or operate any Gaming Facility (other than holding the lessor's interest pursuant to a triple net lease, or otherwise with the consent of Tenant, which consent Tenant may withhold in Tenant's sole discretion).

ARTICLE VIII

COMPLIANCE WITH LAW; GROUND LEASES

8.1 Representations and Warranties. Each party represents and warrants to the other that: (i) this Master Lease and all other documents executed or to be executed by it in connection herewith have been duly authorized and shall be binding upon it; (ii) it is duly organized, validly existing and in good standing under the laws of the state of its formation and is duly authorized and qualified to perform this Master Lease within the State(s) where any portion of the Leased Property is located; and (iii) neither this Master Lease nor any other document executed or to be executed in connection herewith violates the terms of any other agreement of such party.

8.2 Compliance with Legal and Insurance Requirements, etc.

(a) Subject to **Article XII** regarding permitted contests, Tenant, at its expense, shall promptly (a) comply in all material respects with all Legal Requirements and Insurance Requirements regarding the use, operation, maintenance, repair and restoration of the Leased Property (including all Capital Improvements thereto) and Tenant's Property whether or not compliance therewith may require structural changes in any of the Leased Improvements or interfere with the use and enjoyment of the Leased Property, and (b) procure, maintain and comply in all material respects with all Gaming Regulations and Gaming Licenses, and other authorizations required for the use of the Leased Property (including all Capital Improvements) and Tenant's Property for the applicable Primary Intended Use and any other use of the Leased Property (including Capital Improvements then being made) and Tenant's Property, and for the proper erection, installation, operation and maintenance of the Leased Property and Tenant's Property. In an emergency which is not being reasonably addressed by Tenant or in the event of a breach by Tenant of its obligations under this **Section 8.2** which is not cured within any applicable cure period, Landlord or its representatives may, but shall not be obligated to, subject to all Legal Requirements and the rights of subtenants, enter upon the Leased Property and take such reasonable actions and incur such reasonable costs and expenses to effect such compliance as it reasonably deems advisable to protect its interest in the Leased Property, and Tenant shall reimburse Landlord for all such reasonable costs and expenses incurred by Landlord in connection with such actions. Tenant covenants and agrees that the Leased Property and Tenant's Property shall not be used for any unlawful purpose. In the event that a Gaming Authority notifies Tenant or an Operating Subtenant that Tenant or such Operating Subtenant is in jeopardy of either failing to comply with any such Gaming Regulation or failing to maintain a Gaming License and such failure is material to this Master Lease or the continued operation of a Facility for its Primary Intended Use, and, assuming no Event of Default has occurred and is continuing, Tenant shall be given reasonable time to address (or cause such Operating Subtenant to address) the regulatory issue (in all events, no less than the amount of time provided by the

applicable Gaming Authority to address the regulatory issue), after which period (but in all events prior to an actual revocation of such Gaming License or the actual cessation of the use of the Facility for its Primary Intended Use), Tenant shall take (or shall cause such Operating Subtenant to take) reasonable steps to avoid the loss of such Gaming License or the actual cessation of the use of the Facility for its Primary Intended Use (subject to the provisions of **Section 7.2(d)**).

(b) Landlord shall comply in all material respects with any Gaming Regulations required of it as landlord (under this Master Lease) of the Facilities taking into account their Primary Intended Use (except to the extent Tenant fulfills or is required to fulfill any such requirements hereunder). In the event that a Gaming Authority notifies Landlord that it is in jeopardy of failing to comply with any such Gaming Regulation material to the continued operation of a Facility for its Primary Intended Use, Landlord shall be given reasonable time to address the regulatory issue (in all events, no less than the amount of time provided by the applicable Gaming Authority to address the regulatory issue), after which period (but in all events prior to an actual cessation of the use of any Facility for its Primary Intended Use as a result of the failure by Landlord to comply with such Gaming Regulation) Landlord shall be required to sell the Leased Property relating to such Facility in a manner permitted by **Section 18.1**. In the event during the period in which Landlord is complying with the preceding sentence, such regulatory agency notifies Landlord and Tenant that Tenant may not pay any portion of the Rent to Landlord, Tenant shall be entitled to fund such amount into an escrow account, to be released to Landlord or the party legally entitled thereto at or upon resolution of such regulatory issues and otherwise on terms reasonably satisfactory to the parties. Notwithstanding anything in the foregoing to the contrary, no transfer of Tenant's Property used in the conduct of gaming (including the purported or attempted transfer of a Gaming License) or the operation of a Gaming Facility shall be effected or permitted without receipt of all necessary approvals and/or Gaming Licenses in accordance with applicable Gaming Regulations.

8.3 Zoning and Uses. Tenant shall not, without the prior written consent of Landlord, (i) initiate or support any limiting change in the permitted uses of the Leased Property (or to the extent applicable, limiting zoning reclassification of the Leased Property); (ii) seek any variance, material waiver or material deviation under existing land use restrictions, laws, rules or regulations (or, to the extent applicable, zoning ordinances) applicable to the Leased Property; (iii) execute or file any subdivision plat affecting the Leased Property, or institute, or permit the institution of, proceedings to alter any tax lot comprising the Leased Property; or (iv) knowingly permit or suffer the Leased Property to be used by the public or any Person in such a manner as might make possible a claim of adverse usage or possession or of any implied dedication or easement; provided, however, that Landlord's approval with respect to any matter described in the preceding clauses (i) – (iii) shall not be unreasonably withheld, conditioned or delayed unless the same is reasonably likely to materially adversely affect the Primary Intended Use of the Leased Property in which event Landlord may withhold its consent in Landlord's sole discretion, and further; provided, that Tenant or any Operating Subtenant may enter into any matter described in clause (i)-(ii) above if the same and any effect on the Facility is limited in duration to the Term (including all Renewal Terms) or earlier termination of this Master Lease. In addition, Landlord agrees to, at Tenant's sole cost and expense, reasonably cooperate with Tenant (or any Operating Subtenant) and all applicable authorities in connection with the foregoing clauses (i)-(iv), including the provision and execution of such documents and other

information as may be reasonably requested by Tenant or such authorities relating to the Leased Property and which are within Landlord's reasonable control to obtain and provide.

8.4 Compliance with Ground Leases.

(a) This Master Lease, to the extent affecting and solely with respect to any Ground Leased Property, is and shall be subject and subordinate to all of the terms and conditions of the Ground Leases. Tenant hereby acknowledges that Tenant has reviewed and agreed to all of the terms and conditions of the Ground Leases. Tenant hereby agrees that Tenant shall not do, or fail to do, anything that would cause any violation of the Ground Leases. Without limiting the foregoing, (i) Tenant shall pay Landlord on demand as an Additional Charge hereunder all rent required to be paid by, and other monetary obligations of, Landlord as tenant under the Ground Leases (and, at Landlord's or Tenant's option, Tenant shall make such payments directly to the Ground Lessors); provided, however, such Additional Charges payable by Tenant shall exclude any additional costs under the Ground Leases which are caused solely by Landlord after the Commencement Date without consent or fault of or omission by Tenant, (ii) to the extent Landlord is required to obtain the written consent of the lessor under any Ground Lease (a "**Ground Lessor**") to alterations of or the subleasing of all or any portion of the Ground Leased Property pursuant to a Ground Lease, Tenant shall likewise obtain such Ground Lessor's written consent to alterations of or the subleasing of all or any portion of the Ground Leased Property, and (iii) Tenant shall carry and maintain general liability, automobile liability, property and casualty, worker's compensation and employer's liability insurance in amounts and with policy provisions, coverages and certificates as required of Landlord as tenant under the Ground Leases. Without limitation of the preceding sentence or of any other rights or remedies of Landlord hereunder, in the event Tenant fails to comply with its obligations hereunder with respect to Ground Leases (without giving effect to any notice or cure periods thereunder), Landlord shall have the right (but without any obligation to Tenant or any liability for failure to exercise such right), following written notice to Tenant and the passage of a reasonable period of time (except to the extent the failure is of a nature such that it is not practicable for Landlord to provide such prior written notice, in which event Landlord shall provide written notice as soon as practicable) to cure such failure, in which event Tenant shall reimburse Landlord for Landlord's reasonable costs and expenses incurred in connection with curing such failure.

(b) In the event of cancellation or termination of a Ground Lease for any reason whatsoever whether voluntary or involuntary (by operation of law or otherwise) prior to the expiration date of this Master Lease, including extensions and renewals granted thereunder, then, at the applicable Ground Lessor's option, Tenant shall make full and complete attornment to such Ground Lessor with respect to the obligations of Landlord to such Ground Lessor in connection with the applicable Ground Leased Property for the balance of the term of such Ground Lease (notwithstanding that this Master Lease shall have expired with respect to such Ground Leased Property as a result of the cancellation or termination of such Ground Lease). Tenant's attornment shall be evidenced by a written agreement which shall provide that Tenant is in direct privity of contract with such Ground Lessor (i.e., that all obligations previously owed to Landlord under this Master Lease with respect to such Ground Lease or such Ground Leased Property shall be obligations owed to such Ground Lessor for the balance of the term of this Master Lease, notwithstanding that this Master Lease shall have expired with respect to such Ground Leased Property as a result of the cancellation or termination of such Ground Lease) and

which shall otherwise be in form and substance reasonably satisfactory to such Ground Lessor. Tenant shall execute and deliver such written attornment within thirty (30) days after request by such Ground Lessor. Unless and until such time as an attornment agreement is executed by Tenant pursuant to this **Section 8.4(b)**, nothing contained in this Master Lease shall create, or be construed as creating, any privity of contract or privity of estate between any Ground Lessor and Tenant.

(c) For so long as the property leased under any Ground Lease is part of the Leased Property, Landlord and Tenant each agree to cooperate and take any actions reasonably necessary to extend the term of any such Ground Lease so that such Ground Lease does not expire prior to the expiration of the Term. In addition, to the extent requested by Landlord, and at no cost or expense to Tenant, Tenant shall cooperate with Landlord and take any actions reasonably necessary to extend the term of such Ground Lease beyond such period set forth in the preceding sentence. Landlord shall (a) not amend or modify any of the terms of any Ground Lease without the prior written consent of Tenant and (b) at the request of Tenant, Landlord shall enter into any amendments to any Ground Lease requested by Tenant so long as such amendments would not reasonably be expected to materially increase Landlord's monetary obligations under such Ground Lease or materially affect Landlord's rights or remedies under this Master Lease or such Ground Lease.

(d) Nothing contained in this Master Lease amends, or shall be construed to amend, any provision of the Ground Leases.

(e) (i) Tenant shall have the right to take any and all actions and make all decisions which Lessee (as such term is defined in the Springfield Ground Lease) has the right to take or do under the Springfield Ground Lease; provided, that Tenant shall not take any action or make any decision to the extent Tenant is prohibited from taking such action or decision pursuant to the terms of this Master Lease. Landlord shall reasonably cooperate with Tenant with respect to all such actions and decisions.

(ii) Landlord (which, for the avoidance of doubt, includes its successors and assigns) agrees that, subject to its rights and the limitations in clause (iv) below and **Section 1.5** above, it shall at all times continue to own and control one hundred percent (100%) of the ownership interests in MGM Springfield ReDevelopment, LLC, a Massachusetts 121A limited liability company (the "**121A Entity**").

(iii) Upon a cancellation, expiration or termination of the Springfield Ground Lease for any reason whatsoever, Landlord shall and shall cause the 121A Entity, and Tenant shall have the right to require Landlord and the 121A Entity, to lease to Tenant all of Landlord's right, title, and interest in and to Springfield, including, without limitation, the fee simple interest in Springfield pursuant to all of the same terms and conditions of this Master Lease and without any adjustment to the Rent or other terms of this Master Lease or other consideration. Upon any such event, Landlord and Tenant will reasonably enter into an amendment to this Master Lease to reflect the foregoing and the addition of Springfield fee interest to this Master Lease. Such amendment shall be effective as of the date of cancellation, expiration or termination of the Springfield Ground Lease.

(iv) Landlord agrees that it shall not sell, assign or transfer (a) all or any portion of its leasehold interest in the Springfield Ground Lease to any party without simultaneously selling, assigning or transferring its interest in the 121A Entity (i.e., its indirect fee interests in Springfield) to such party or (b) all or any portion of its interest in the 121A Entity (i.e., its indirect fee interests in Springfield) to any party without simultaneously selling, assigning or transferring its leasehold interest in the Springfield Ground Lease to such party, both of which shall be transferred together as a unit. The provisions of this subsection (iv) shall be binding on any assignee or transferee of the Springfield Property and Landlord further agrees that it shall be a condition to any such assignment or transfer that any such assignee or transferee agrees to be bound by the provisions of this **Section 8.4(e)**.

(f) If, at the expiration of the Term of this Master Lease (but not in the event of any earlier termination of this Master Lease), Tenant's Parent or any other Affiliate of Tenant is then a guarantor under any guaranty of the obligations of Landlord under the National Harbor Ground Lease (such guarantor being referred to as a "**Tenant NH Guarantor**" and any such guaranty being referred to as a "**Tenant NH Guaranty**"), Landlord shall use commercially reasonable efforts to cause the Tenant NH Guarantor to be fully and unconditionally released, in connection with the expiration of this Master Lease with respect to the National Harbor Facility and pursuant to a release agreement, in form and substance reasonably acceptable to Tenant NH Guarantor, from all future liabilities and obligations arising under or in connection with the Tenant NH Guaranty from and after the date of expiration of the Term of this Master Lease. Until such release (the "**NH Release**") is delivered to Tenant NH Guarantor, Landlord shall indemnify and hold Tenant NH Guarantor harmless from and against any and claims, losses, damages and expenses (including reasonable attorneys' fees and expenses) incurred by Tenant NH Guarantor under or pursuant to the Tenant NH Guaranty; provided, however, that such claims, losses, damages or expenses are not as a result of the actions of Tenant NH Guarantor, Tenant, Tenant's Parent or any other Affiliate of Tenant, and such claims, losses, damages or expenses first accrue following the date of expiration of the Term of this Master Lease. Tenant NH Guarantor shall be a third party beneficiary of the provisions of this **Section 8.4(f)**. This **Section 8.4(f)** shall survive the expiration (but not any termination) of this Master Lease and shall not survive beyond the date of delivery to Tenant NH Guarantor of the NH Release.

8.5 Tax Agreements

(a) Tenant shall have the right to cause Landlord to take any Facility Tax Action reasonably requested by Tenant, so long as such Facility Tax Action (i) would not reasonably be expected to increase (x) Landlord's monetary obligations by more than a de minimis amount (which obligations are not otherwise Tenant's obligations under this Master Lease) or (y) Landlord's non-monetary obligations in any material respect, or adversely affect Landlord's rights or remedies under this Master Lease in any material respect, (ii) is not intended or designed to (1) provide a benefit to an Affiliate of Tenant at the expense or to the detriment of the Facility or (subject to clause (3) below) without otherwise providing any substantially equivalent benefit to the Facility that is subject to such Facility Tax Action, (2) shift any obligation of Tenant to Landlord or any successor of Landlord or any successor of Tenant, or (3) inappropriately or unfairly, in Landlord's reasonable discretion, discriminate against one or more Facilities, or (iii) would not reasonably be expected to result in an unfair increase in the

obligations of Landlord or any successor of Landlord or any successor of Tenant with respect thereto (collectively, the “**Landlord Tax Agreement Refusal Conditions**”).

(b) Landlord shall enter into any Facility Tax Agreement(s) and/or any amendment(s) to a Facility Tax Agreement, in each case, reasonably requested by Tenant, so long as no Landlord Tax Agreement Refusal Condition exists.

ARTICLE IX

MAINTENANCE AND REPAIR

9.1 Maintenance and Repair. (a) Tenant, at its expense and without the prior consent of Landlord, shall maintain the Leased Property and every portion thereof, and all private roadways, sidewalks and curbs appurtenant to the Leased Property, and which are under Tenant’s or any subtenant’s control in reasonably good order and repair whether or not the need for such repairs occurs as a result of Tenant’s or any subtenant’s use, any prior use, the elements or the age of the Leased Property, and, with reasonable promptness, make all reasonably necessary and appropriate repairs thereto of every kind and nature, including those necessary to ensure continuing compliance with all Legal Requirements, whether interior or exterior, structural or non-structural, ordinary or extraordinary, foreseen or unforeseen or arising by reason of a condition existing prior to the Commencement Date. Tenant shall maintain Tenant’s Property (except Intellectual Property which is subject to **Section 6.3**) as Tenant reasonably determines is necessary or desirable for conduct of the Primary Intended Use at the Facilities. Landlord acknowledges that the condition of the Facilities and the other matters described in the first sentence of this **Section 9.1** on the Commencement Date satisfies the requirements of this **Article IX**.

(b) Landlord shall not under any circumstances be required to (i) build or rebuild any improvements on the Leased Property; (ii) make any repairs, replacements, alterations, restorations or renewals of any nature to the Leased Property, whether ordinary or extraordinary, structural or non-structural, foreseen or unforeseen, or to make any expenditure whatsoever with respect thereto; or (iii) maintain the Leased Property in any way. Tenant hereby waives, to the extent permitted by law, the right to make repairs at the expense of Landlord pursuant to any law in effect at the time of the execution of this Master Lease or hereafter enacted.

(c) Subject to the specific provisions of **Section 41.15**, nothing contained in this Master Lease and no action or inaction by Landlord shall be construed as (i) constituting the consent or request of Landlord, expressed or implied, to any contractor, subcontractor, laborer, materialman or vendor to or for the performance of any labor or services or the furnishing of any materials or other property for the construction, alteration, addition, repair or demolition of or to the Leased Property or any part thereof or any Capital Improvement thereto; or (ii) giving Tenant any right, power or permission to contract for or permit the performance of any labor or services or the furnishing of any materials or other property in such fashion as would permit the making of any claim against Landlord in respect thereof or to make any agreement that may create, or in any way be the basis for, any right, title, interest, lien, claim or other encumbrance upon the estate of Landlord in the Leased Property, or any portion thereof or upon the estate of Landlord in any Capital Improvement thereto.

(d) Tenant shall, upon the expiration or earlier termination of the Term, vacate and surrender the Leased Property (including all Capital Improvements, subject to the provisions of **Article X**), in each case with respect to such Facility, to Landlord in the condition in which such Leased Property was originally received from Landlord and Capital Improvements were originally introduced to such Facility, except as repaired, rebuilt, restored, altered or added to as permitted or required by the provisions of this Master Lease and except for ordinary wear and tear, subject to casualty and Condemnation as provided in **Article XIV** and **XV**.

(e) Without limiting Tenant's obligations to maintain the Leased Property and Tenant's Property under this Master Lease, within sixty (60) days after the end of each calendar year (commencing with the calendar year ending December 31, 2022), Tenant shall provide Landlord with evidence satisfactory to Landlord in the reasonable exercise of Landlord's discretion that Tenant has in such calendar year spent, with respect to the Leased Property and Tenant's Property, an aggregate amount equal to at least one percent (1%) of the actual Net Revenue of Tenant Parties (without duplication) from the Facilities for such calendar year on installation or restoration and repair or other improvement of items, which installations, restorations and repairs and other improvements are capitalized in accordance with GAAP with an expected life of not less than three (3) years. If Tenant fails to make at least the above amount of expenditures and fails within sixty (60) days after receipt of a Notice from Landlord to either (i) cure such deficiency or (ii) obtain Landlord's written approval, in its reasonable discretion, of a repair and maintenance program satisfactory to cure such deficiency, then the same shall be deemed a default hereunder. Net Revenue and expenditures satisfying the requirements of this **Section 9.1(e)** attributable to a removed Facility shall be included for purposes of the respective calculations under this section in respect of any period prior to the removal date of such removed Facility.

9.2 Encroachments, Restrictions, Mineral Leases, etc. If any of the Leased Improvements shall, at any time, encroach upon any property, street or right-of-way, or shall violate any restrictive covenant or other agreement affecting the Leased Property, or any part thereof or any Capital Improvement thereto, or shall impair the rights of others under any easement or right-of-way to which the Leased Property is subject, or the use of the Leased Property or any Capital Improvement thereto is impaired, limited or interfered with by reason of the exercise of the right of surface entry or any other provision of a lease or reservation of any oil, gas, water or other minerals, subject to Tenant's right to contest the existence of any such encroachment, violation or impairment, promptly upon the request of Landlord or any Person affected by any such encroachment, violation or impairment, Tenant shall protect, indemnify, save harmless and defend Landlord from and against all losses, liabilities, obligations, claims, damages, penalties, causes of action, costs and expenses (including reasonable attorneys', consultants' and experts' fees and expenses) based on or arising by reason of any such encroachment, violation or impairment. In the event of an adverse final determination with respect to any such encroachment, violation or impairment, either (a) each of Tenant and Landlord shall be entitled to obtain valid and effective waivers or settlements of all claims, liabilities and damages resulting from each such encroachment, violation or impairment, whether the same shall affect Landlord or Tenant or (b) Tenant shall make such changes in the Leased Improvements, and take such other actions, as Tenant in the good faith exercise of its judgment deems reasonably practicable, to remove such encroachment or to end such violation or impairment, including, if necessary, the alteration of any of the Leased Improvements, and in any

event take all such actions as may be necessary in order to be able to continue the operation of the Leased Improvements for the Primary Intended Use substantially in the manner and to the extent the Leased Improvements were operated prior to the assertion of such encroachment, violation or impairment. Tenant's obligations under this **Section 9.2** shall be in addition to and shall in no way discharge or diminish any obligation of any insurer under any policy of title or other insurance and, to the extent the recovery thereof is not necessary to compensate Landlord for any damages incurred by any such encroachment, violation or impairment. Tenant shall be entitled to sums recovered by Landlord under any such policy of title or other insurance up to the maximum amount paid by Tenant under this **Section 9.2** and Landlord, upon request by Tenant, shall assign Landlord's rights under such policies to Tenant; provided, such assignment does not adversely affect Landlord's rights under any such policy. Landlord agrees to use reasonable efforts to seek recovery under any policy of title or other insurance under which Landlord is an insured party for all losses, liabilities, obligations, claims, damages, penalties, causes of action, costs and expenses (including reasonable attorneys', consultants' and experts' fees and expenses) based on or arising by reason of any such encroachment, violation or impairment as set forth in this **Section 9.2**; provided, however, that in no event shall Landlord be obligated to institute any litigation, arbitration or other legal proceedings in connection therewith unless Landlord is reasonably satisfied that Tenant has the financial resources needed to fund such litigation and Tenant and Landlord have agreed upon the terms and conditions on which such funding will be made available by Tenant, including, but not limited to, the mutual approval of a litigation budget.

ARTICLE X

CAPITAL IMPROVEMENTS

10.1 Construction of Capital Improvements to the Leased Property.

(a) Tenant and each Operating Subtenant shall, with respect to any Facility, have the right to make Capital Improvements, including, without limitation, any Capital Improvement required by **Section 8.2** or **9.1(a)**, without the consent of, or any notice to, Landlord if the Capital Improvement (i) does not involve the removal of any material existing structures (unless Tenant reasonably promptly proceeds to replace such removed structures with structures of at least reasonably comparable value or utility), (ii) does not have a material adverse effect on the structural integrity of any remaining Leased Improvements (other than as contemplated to be maintained or improved in connection with such Capital Improvement), (iii) is not reasonably likely to reduce the value of the Facility when completed, and (iv) is consistent with the Primary Intended Use; each of the foregoing (i)-(iv) as reasonably determined by Tenant. Any Capital Improvements described in the preceding sentence are referred to as, "**Permitted Capital Improvements**".

(b) If Tenant or any subtenant desires to make a Capital Improvement that is not a Permitted Capital Improvement (a "**Landlord Approved Capital Improvement**"), Tenant shall submit to Landlord in reasonable detail a general description of the proposal, the projected cost of construction and such plans and specifications, permits, licenses, contracts and other information concerning the proposal as Landlord may reasonably request. Such description shall indicate the use or uses to which such Capital Improvement will be put and the impact, if any, on

current and forecasted gross revenues and operating income attributable thereto. All proposed Landlord Approved Capital Improvements shall be subject to Landlord's review and approval, which approval shall not be unreasonably withheld, conditioned or delayed. It shall be reasonable for Landlord to condition its approval of any Capital Improvement upon, among other things, any or all of the following terms and conditions:

(i) Such construction shall be effected pursuant to detailed plans and specifications approved by Landlord, which approval shall not be unreasonably withheld, conditioned or delayed; and

(ii) No Capital Improvement will result in the Leased Property becoming a "limited use" property for purposes of United States federal income taxes as of the date such Capital Improvement is placed in service.

(iii) All Capital Improvements will become Landlord's property when made; provided, however, that the foregoing shall not affect the provisions of **Section 11.1(b)**.

(iv) Landlord's receipt of reasonable evidence of Tenant's or Tenant's Parent's ability to complete and pay the cost of such Capital Improvement, pay Rent and Additional Charges and otherwise comply with this Master Lease.

Without limitation of the foregoing, in connection with any Landlord Approved Construction/Closure Project, it shall be reasonable for Landlord to consider the effect that any ceasing of operations in connection therewith may have upon Tenant, the applicable Facility, the Facilities and the Leased Property.

10.2 Construction Requirements for Capital Improvements. Tenant's or any subtenant's construction of Capital Improvements shall be performed in compliance with the following requirements which shall be applicable to Permitted Capital Improvements and Landlord Approved Capital Improvements except as indicated below:

(a) Such construction shall not be commenced until Tenant shall have procured and paid for all municipal and other governmental permits and authorizations required to be obtained prior to such commencement, including those permits and authorizations required pursuant to any Gaming Regulations, and Landlord shall join in the application for such permits or authorizations whenever such action is necessary; provided, however, that (i) any such joinder shall be at no cost or expense to Landlord; and (ii) any plans required to be filed in connection with any such application in respect of any Landlord Approved Capital Improvements shall have been so approved by Landlord;

(b) Such construction shall not impair the structural strength of any component of the applicable Facility or overburden the electrical, water, plumbing, HVAC or other building systems of any such component in a manner that would violate applicable building codes or prudent industry practices;

(c) During and following completion of such construction, the parking and other amenities which are located in the applicable Facility or on the Land of such Facility shall

remain adequate for the operation of such Facility for its Primary Intended Use and in no event shall such parking be less than that which is required by law (including any variances with respect thereto); provided, however, that to the extent additional parking is not already a part of a Capital Improvement, Tenant may construct additional parking on the Land in accordance with **Section 10.1(a)**; or Tenant may acquire off-site parking to serve such Facility as long as such parking shall be reasonably proximate to, and dedicated to, or otherwise made available to serve, such Facility;

(d) All work done in connection with such construction shall be done as soon as reasonably practicable and using materials and resulting in work that is at least as good product and condition as the remaining areas of the applicable Facility and in conformity with all Legal Requirements, including, without limitation, any applicable non-discrimination laws; and

(e) Promptly following the completion of any Landlord Approved Capital Improvements only, Tenant shall deliver to Landlord “as built” drawings of such addition (or written confirmation from the relevant general contractor or architect that such Capital Improvement has been built in accordance with the plans and specifications), certified as accurate by the licensed architect or engineer selected by Tenant, and copies of any new or revised certificates of occupancy.

10.3 Intentionally Omitted.

10.4 Ownership of Tenant Capital Improvements at end of Term. Upon the expiration or earlier termination of this Master Lease, all Tenant Capital Improvements shall remain the property of Landlord.

10.5 Funding of Tenant Capital Improvements. Landlord shall have the right, following a request from Tenant, to fund the cost of any proposed Tenant Capital Improvements on such arms-length terms and conditions as may be agreed to by Landlord and Tenant. In connection with any such funding, Landlord and Tenant may make agreed upon modifications to the Rent to reflect Landlord’s funding of the cost of such Tenant Capital Improvements.

ARTICLE XI

NO LIENS

11.1 Liens. (a) Subject to the provisions of **Article XII** relating to permitted contests, Tenant will not directly or indirectly create and will promptly discharge at its expense any lien, encumbrance, attachment, title retention agreement or claim (“**Lien**”) upon the Leased Property or any Capital Improvement thereto or upon the Gaming Licenses (including indirectly through a pledge of shares in the direct or indirect entity owning an interest in the Gaming Licenses except as permitted by **Article XVII**) or any attachment, levy, claim or encumbrance in respect of the Rent, excluding, however, (1) this Master Lease; (2) the matters that existed as of the Commencement Date (and any renewals of such existing matters that do not materially increase the scope of or amount secured by such Lien); (3) restrictions, liens and other encumbrances which are consented to in writing by Landlord (such consent not to be unreasonably withheld); (4) liens for Impositions which Tenant is not required to pay hereunder (if any); (5) subleases permitted by **Article XXII**; (6) liens for Impositions not yet delinquent or being contested in

accordance with **Article XII**, provided, that no foreclosure or similar remedies with respect to such Impositions have been instituted and no notice as to the institution or commencement thereof has been issued except to the extent such institution or commencement is stayed no later than twenty (20) days after such notice is issued; (7) liens of mechanics, laborers, materialmen, suppliers or vendors for sums either disputed or not yet due; provided, any such liens are in the process of being contested as permitted by **Article XII**; (8) any liens created by Landlord; (9) liens related to equipment leases or equipment financing for Tenant's Property which are used or useful in Tenant's business on the Leased Property; (10) liens granted as security for the obligations of Tenant under a Debt Agreement or completion guarantee; provided, however, in no event shall the foregoing be deemed or construed to permit Tenant to encumber its leasehold interest (or a subtenant to encumber its subleasehold interest) in the Leased Property or its direct or indirect interest (or the interest of any of its Subsidiaries or subtenants) in the Gaming Licenses (other than, in each case, to a Permitted Leasehold Mortgagee), without the prior written consent of Landlord, which consent may be granted or withheld in Landlord's sole discretion; (11) easements, rights-of-way, restrictions (including zoning restrictions), covenants, encroachments, protrusions and other similar charges or encumbrances, and minor title deficiencies on or with respect to any Leased Property, in each case whether now or hereafter in existence, not individually or in the aggregate materially interfering with the conduct of the business on the Leased Property with respect to any Facility, taken as a whole; (12) any Permitted Encumbrance not made in violation of this Lease; (13) licenses of patents, trademarks and other intellectual property rights granted by Tenant or any of its Subsidiaries in the ordinary course of business (14) other Liens securing Indebtedness outstanding in an aggregate principal amount of no more than Twenty-Five Million Dollars (\$25,000,000) and (15) any matters which would not survive the Term or which may be terminated by Landlord (without cost to Landlord unless otherwise reimbursed by Tenant) upon termination of this Master Lease either pursuant to their terms or by operation of law. For the avoidance of doubt, the parties acknowledge and agree that Tenant has not granted any liens in favor of Landlord as security for its obligations hereunder and nothing contained herein shall be deemed or construed to prohibit the issuance of a lien on the Equity Interests in Tenant (it being agreed that any foreclosure by a lien holder on such interests in Tenant shall be subject to the restriction on Tenant Change of Control set forth in **Article XXII**) or to prohibit Tenant from pledging its Accounts and other Tenant's Property and other property of Tenant (other than Tenant's leasehold estate in the Leased Property to a Permitted Leasehold Mortgagee in accordance herewith), including fixtures and personal property installed by Tenant at the Facilities, as collateral in connection with financings from equipment lenders (or to Permitted Leasehold Mortgagees); provided, that Tenant shall in no event pledge to any Person that is not a Permitted Leasehold Mortgagee hereunder any of the Gaming Licenses or other of Tenant's Property to the extent that such Tenant's Property cannot be removed from the Leased Property without damaging or impairing the Leased Property (other than in a de minimis manner). For the further avoidance of doubt, by way of example, Tenant shall not grant to any lender (other than a Permitted Leasehold Mortgagee) a lien on, and any and all lien holders (including a Permitted Leasehold Mortgagee) shall not have the right to remove, carpeting, internal wiring, elevators, or escalators at the Leased Property, but lien holders may have the right to remove (and Tenant shall have the right to grant a lien on) Gaming Equipment even if the removal thereof from the Leased Property could result in de minimis damage; provided, any such damage is repaired by the lien holder or Tenant in accordance with the terms of this Master Lease.

(b) Landlord and Tenant intend that this Master Lease be an indivisible true lease that affords the parties hereto the rights and remedies of landlord and tenant hereunder and does not represent a financing arrangement. This Master Lease is not an attempt by Landlord or Tenant to evade the operation of any aspect of the law applicable to any of the Leased Property. Except as otherwise required by applicable law or any accounting rules or regulations, Landlord and Tenant hereby acknowledge and agree that this Master Lease is intended to constitute a “true lease” for all other purposes, including federal, state and local tax purposes, commercial purposes, and bankruptcy purposes and that Landlord shall be entitled to all the benefits of ownership of the Leased Property, including depreciation with respect to the Leased Property (but not with respect to any Tenant Capital Improvements, except as provided in the next sentence) for all federal, state and local tax purposes. Without prejudice to **Sections 10.1(b)(iii) or 10.4**, Tenant shall be entitled to all benefits of ownership of any Tenant Capital Improvements during the Term, including depreciation for all federal, state and local tax purposes, except to the extent of any Tenant Capital Improvements that are actually paid for by Landlord (it being understood that Landlord has no right or obligation to pay for any Tenant Capital Improvements). For the avoidance of doubt, the parties hereto acknowledge and agree that for all federal, state and local income tax purposes, the Park MGM Tenant Capital Improvements shall be deemed to be the property of the Landlord and Landlord shall be entitled to all benefits of ownership of the Park MGM Tenant Capital Improvements, including depreciation.

(c) At any time and from time to time upon the request of Landlord or Tenant, and at the expense of the requesting party, Tenant or Landlord, as applicable, shall promptly execute, acknowledge and deliver such further documents and do such other acts as the requesting party may reasonably request in order to effect fully this Master Lease or to more fully perfect or renew the rights of the requesting party with respect to the Leased Property. Upon the exercise by Landlord or Tenant of any power, right, privilege or remedy pursuant to this Master Lease which requires any consent, approval, recording, qualification or authorization of any governmental authority, Tenant or Landlord, as applicable, will execute and deliver, or will cause the execution and delivery of, all applications, certifications, instruments and other documents and papers that the exercising party may be required to obtain from such other party for such consent, approval, recording, qualification or authorization.

11.2 Landlord Encumbrance Obligations. Landlord agrees that Landlord shall not voluntarily create or cause any Affiliate of Landlord to voluntarily create at any time any Lessor Lien. Landlord shall, at its own cost and expense, promptly take such action as may be reasonably necessary duly to discharge, or to cause to be discharged, all Lessor Liens attributable to it or any of its Affiliates whether or not the same were voluntarily created by Landlord or any Affiliate of Landlord (and Tenant shall not be responsible for any monetary or other obligations under or in connection with any Lessor Lien); provided, however, that Landlord shall not be required to so discharge any such Lessor Lien(s) (i) while the same is being contested in good faith by appropriate proceedings diligently prosecuted (so long as neither the Leased Property, nor any Capital Improvement thereto, nor any part or interest in either thereof, would be in any imminent danger of being sold, forfeited, attached or lost pending the outcome of such proceedings and provided that Tenant would not be in any imminent danger of civil or criminal liability on account thereof pending the outcome of such proceedings) or (ii) if such Lessor’s Lien(s) would not be reasonably expected to materially adversely affect the rights of Tenant under this Master Lease, impair in any material respect Tenant’s ability to perform its obligations

under this Master Lease or impose additional obligations on Tenant under this Master Lease or result in the termination of this Master Lease. Landlord shall indemnify and hold harmless Tenant from and against any actual loss, cost or expense (including reasonable legal fees and expenses) which may be suffered or incurred by Tenant, any Operating Subtenant or their respective Affiliates as the result of Landlord's failure to discharge and satisfy any such Lessor Lien to the extent Landlord is required to do so in accordance with the terms hereof.

ARTICLE XII

PERMITTED CONTESTS

12.1 Permitted Contests. Tenant, upon prior Notice to Landlord, on its own or in Landlord's name, at Tenant's expense, may contest, by appropriate legal proceedings conducted in good faith and with due diligence, the amount, validity or application, in whole or in part, of any licensure or certification decision (including pursuant to any Gaming Regulation), Imposition, Legal Requirement, Insurance Requirement, or Lien; provided, however, that (a) in the case of an unpaid Imposition or Lien, the commencement and continuation of such proceedings shall suspend the collection thereof from Landlord and from the Leased Property or any Capital Improvement thereto; (b) neither the Leased Property or any Capital Improvement thereto, the Rent therefrom nor any part or interest in either thereof would be in any imminent danger of being sold, forfeited, attached or lost pending the outcome of such proceedings; (c) in the case of a Legal Requirement, neither Landlord nor Tenant would be in any imminent danger of civil or criminal liability for failure to comply therewith pending the outcome of such proceedings; (d) in the case of a Legal Requirement, Imposition or Lien, Tenant shall give such reasonable security as may be required by Landlord to insure ultimate payment of the same and to prevent any sale or forfeiture of the Leased Property or any Capital Improvement thereto or the Rent by reason of such non-payment or noncompliance; (e) in the case of an Insurance Requirement, the coverage required by **Article XIII** shall be maintained; (f) Tenant shall keep Landlord reasonably informed as to the status of the proceedings; and (g) if such contest be finally resolved against Landlord or Tenant, Tenant shall promptly pay the amount required to be paid, together with all interest and penalties accrued thereon, or comply with the applicable Legal Requirement or Insurance Requirement. Landlord, at Tenant's expense, shall execute and deliver to Tenant such authorizations and other documents as may reasonably be required in any such contest, and, if reasonably requested by Tenant or if Landlord so desires, Landlord shall join as a party therein. The provisions of this **Article XII** shall not be construed to permit Tenant to contest the payment of Rent or any other amount (other than Impositions or Additional Charges which Tenant may from time to time be required to impound with Landlord) payable by Tenant to Landlord hereunder. Tenant shall indemnify, defend, protect and save Landlord harmless from and against any liability, cost or expense of any kind that may be imposed upon Landlord in connection with any such contest and any loss resulting therefrom, except in any instance where Landlord opted to join and joined as a party in the proceeding despite Tenant's having sent Notice to Landlord of Tenant's preference that Landlord not join in such proceeding.

ARTICLE XIII

INSURANCE

13.1 General Insurance Requirements. During the Term, Tenant or a Tenant Party shall at all times keep the Leased Property, and all property located in or on the Leased Property, including Capital Improvements, the Fixtures and Tenant's Property, insured with the kinds and amounts of insurance described below. Each element of insurance described in this **Article XIII** shall be maintained with respect to the Leased Property of each Facility and Tenant's Property and operations thereon. Such insurance shall be written by companies permitted to conduct business in the applicable State. All policies required under this Master Lease must name Landlord as an "additional named insured" or "additional insured" as appropriate. All business interruption policies shall name Landlord as "loss payee" with respect to Rent only. Property losses shall be payable to Landlord and/or Tenant as provided in **Article XIV**. In addition, the policies, as appropriate, shall name as an "additional named insured" or "additional insured" as appropriate, and "mortgagee/loss payee", as their interest may appear, each Permitted Leasehold Mortgagee and as an "additional insured" and/or "mortgagee/loss payee" as their interest may appear, the holder of any mortgage, deed of trust or other security agreement ("**Facility Mortgage**") securing any indebtedness or any other Encumbrance placed on the Leased Property in accordance with the provisions of **Article XXXI** ("**Facility Mortgage**") by way of 438BFU or other standard form of mortgagee's loss payable endorsement. Except as otherwise set forth herein, any property insurance loss adjustment settlement shall require the written consent of Landlord, Tenant, and each Facility Mortgagee (to the extent required under the applicable Facility Mortgage Documents) unless the amount of the loss net of the applicable deductible is less than One Hundred Million Dollars (\$100,000,000) in which event no such consent shall be required. Evidence of insurance shall be deposited with Landlord and, if requested, with any Facility Mortgagee(s). The insurance policies required to be carried by Tenant or a Tenant Party hereunder shall insure against all the following risks with respect to the Facilities:

(a) Loss or damage by fire, vandalism and malicious mischief, extended coverage perils commonly known as "All Risk," and all physical loss perils normally included in such All Risk insurance, including, but not limited to, sprinkler leakage, collapse, windstorm and terrorism in an amount not less than One Billion Dollars (\$1,000,000,000) and including a building ordinance coverage endorsement, provided, that Tenant shall have the right (i) to limit maximum insurance coverage for loss or damage by earthquake (including earth movement) to a minimum amount of Four Hundred Million Dollars (\$400,000,000) or as may be reasonably requested by Landlord and commercially available, and (ii) to limit maximum insurance coverage for loss or damage by windstorm (including but not limited to named windstorms) to a minimum amount of Four Hundred Million Dollars (\$400,000,000) or as may be reasonably requested by Landlord and commercially available; provided, further, that in the event the premium cost of any earthquake, flood, windstorm (including named windstorm) or terrorism peril coverages are available only for a premium that is more than 2.5 times the average premium paid by Tenant (or prior operator of Facilities) over the three years preceding the date of determination for the insurance policy contemplated by this **Section 13.1(a)**, then Tenant shall be entitled and required to purchase the maximum amount of insurance coverage it reasonably deems most efficient and prudent to purchase for such peril and Tenant shall not be required to

spend additional funds to purchase additional coverages insuring against such risks; and provided, further, that certain property coverages other than earthquake, flood and windstorm may be sub-limited as long as each sub-limit (x) is commercially reasonable and prudent as determined by Tenant and (y) to the extent that the amount of such sub-limit is less than the amount of such sub-limit in effect as of the Commencement Date, such sub-limit is approved by Landlord, such approval not to be unreasonably withheld;

(b) Loss or damage by explosion of steam boilers, pressure vessels or similar apparatus, now or hereafter installed in each Facility, in such limits with respect to any one accident as may be reasonably requested by Landlord from time to time;

(c) Flood (when any of the improvements comprising the Leased Property of a Facility is located in whole or in part within a designated 100-year flood plain area) in an amount not less than the greater of (i) the probable maximum loss of a 250 year event (as determined by a qualified engineer), and (ii) Two Hundred Million Dollars (\$200,000,000), or such amount as may reasonably be requested by Landlord and commercially available;

(d) Loss of rental value in an amount not less than twelve (12) months' Rent payable hereunder or business interruption in an amount not less than twelve (12) months of income and normal operating expenses including 90-days ordinary payroll and Rent payable hereunder with an extended period of indemnity coverage of at least ninety (90) days necessitated by the occurrence of any of the hazards described in **Sections 13.1(a), 13.1(b) or 13.1(c)**;

(e) Claims for injury to persons or property damage under a policy of commercial general liability insurance including but not limited to coverage for premises/operations, blanket contractual liability, liquor liability, special events or activities to the extent insurable, independent contractors and personal injury with limits not less than Two Hundred Fifty Million Dollars (\$250,000,000) each occurrence and Two Hundred Fifty Million Dollars (\$250,000,000) in the annual aggregate, provided, that such requirements may be satisfied through the purchase of a primary general liability policy and excess liability policies;

(f) Claims for bodily injury and property damage under a policy of business automobile liability including garage and garagekeepers liability and containing provisions and endorsements in accordance with state legal requirements, with primary limits not less than One Million Dollars (\$1,000,000) per accident and excess limits provided in the excess liability policies referred to above;

(g) During such time as Tenant or any subtenant is constructing any improvements at any Facility, Tenant, at its sole cost and expense, shall carry, or cause to be carried (a) workers' compensation insurance and employers' liability insurance covering all persons employed in connection with the improvements in statutory limits, (b) a completed operations endorsement to the commercial general liability insurance policy referred to above, (c) builder's risk insurance, completed value form (or its equivalent), covering all physical loss, in an amount and subject to policy conditions satisfactory to Landlord, and (d) such other insurance, in such amounts, as Landlord deems reasonably necessary to protect Landlord's interest in the Leased Property from any act or omission of Tenant's or such subtenant's contractors or subcontractors; and

(h) If any operations of Tenant or any subtenant require the use of any aircraft or watercraft that is owned, leased or chartered by Tenant or any subtenant with respect to the Leased Property, Tenant shall maintain or cause to be maintained aircraft or watercraft liability insurance, as appropriate, with limits not less than Twenty-Five Million Dollars (\$25,000,000) per occurrence for bodily injury and property damage including passengers and crew.

(i) Tenant may provide or cause to be provided self-insured retentions for portions of the insurance contemplated under this **Section 13.1** in commercially reasonable amounts, it being agreed that the amounts of the self-insured retentions in effect as of the Commencement Date are commercially reasonable. Tenant may elect to increase Tenant's self-insured retentions subject to the approval of Landlord, such approval not to be unreasonably withheld. Upon (i) the termination of this Master Lease with respect to any Facility pursuant to **Section 14.2**, (ii) the election of any Facility Mortgagee pursuant to **Section 14.1** to apply any proceeds payable under any property policy of insurance in accordance with the applicable Facility Mortgage, or (iii) any proceeds payable under any property policy of insurance being retained by Landlord pursuant to **Section 14.2(f)**, Tenant shall pay to Landlord the amount of any self-insured retentions.

13.2 Additional Insurance. In addition to the insurance described above, Tenant shall at all times maintain or cause to be maintained adequate workers' compensation coverage and any other coverage required by Legal Requirements for all Persons employed by Tenant or any Operating Subtenant on the Leased Property in accordance with Legal Requirements.

13.3 Waiver of Subrogation. All insurance policies carried by either party covering the Leased Property or Tenant's Property, including, without limitation, contents, fire and liability insurance, shall expressly waive any right of subrogation on the part of the insurer against the other party. Each party, respectively, shall pay any additional costs or charges for obtaining such waiver.

13.4 Policy Requirements. All of the policies of insurance referred to in this **Article XIII** shall be written in form reasonably satisfactory to Landlord and any Facility Mortgagee and issued by insurance companies with a minimum Financial Strength Rating of "A-" and a Financial Size Rating of "VIII" or higher in the most recent version of Best's Key Rating Guide, or a minimum rating of "A-" from Standard & Poor's or equivalent. If Tenant obtains and maintains the general liability insurance described in **Section 13.1(e)** above on a "claims made" basis, Tenant shall provide continuous liability coverage for claims arising during the Term. In the event such "claims made" basis policy is canceled or not renewed for any reason whatsoever (or converted to an "occurrence" basis policy), Tenant shall either obtain (a) "tail" insurance coverage converting the policies to "occurrence" basis policies providing coverage for a period of at least three (3) years beyond the expiration of the Term, or (b) an extended reporting period of at least three (3) years beyond the expiration of the Term. Tenant shall pay all of the premiums therefor, and deliver certificates thereof to Landlord prior to their effective date (and with respect to any renewal policy, prior to the expiration of the existing policy), and in the event of the failure of Tenant either to effect such insurance in the names herein called for or to pay the premiums therefor, or to deliver such certificates thereof to Landlord, at the times required, Landlord shall be entitled, but shall have no obligation, to effect such insurance and pay the premiums therefor, in which event the cost thereof, together with interest thereon at the Overdue

Rate, shall be repayable to Landlord upon demand therefor. Tenant shall obtain, to the extent available on commercially reasonable terms, the agreement of each insurer, by endorsement on the policy or policies issued by it, or by independent instrument furnished to Landlord, that it will give to Landlord thirty (30) days' (or ten (10) days' in the case of non-payment of premium) Notice before the policy or policies in question shall be altered, allowed to expire or cancelled. Notwithstanding any provision of this **Article XIII** to the contrary, Landlord acknowledges and agrees that the coverage required to be maintained by Tenant may be provided under one or more policies with various deductibles or self-insurance retentions by Tenant or its Affiliates, subject to Landlord's approval not to be unreasonably withheld. Upon written request by Landlord, Tenant shall provide Landlord copies of the property and liability insurance policies when issued by the insurers providing such coverage. Notwithstanding the foregoing, Tenant may procure any of the policies required under this **Article XIII** from MGMM Insurance Company or any other captive insurance company that is an Affiliate of Tenant's Parent regardless of the fact that such insurer is not "rated" as otherwise required under this **Section 13.4**; provided, that (i) Landlord has been provided (and continues to be provided annually and as otherwise reasonably requested by Landlord) with the applicable captive insurance company's most recent financial statements and actuarial report, a list of such captive insurance company's reinsurers and their subscribed amounts and such other information regarding the applicable captive insurance company as is reasonably requested by Landlord, (ii) Landlord has approved the use of such captive insurer, such approval not to be unreasonably withheld; provided, however, that Landlord's consent shall not be required to the extent that such captive insurance company reinsures all of its exposures (including, for the avoidance of doubt, any such exposures that relate to properties other than the Facilities), other than with respect to terrorism risks (which shall be subject to the final two sentences of this **Section 13.4**), with insurers meeting the requirements of this **Section 13.4**. Notwithstanding the foregoing, Landlord shall be deemed to have approved the use of a captive insurance company for terrorism risk coverage that is not reinsured by other insurance companies to the extent consistent with Tenant's terrorism risk insurance program in effect as of the Commencement Date. Any material increase in the level of un-reinsured terrorism risk shall require the consent of Landlord, which consent shall not be unreasonably withheld.

13.5 Increase in Limits. If, from time to time after the Commencement Date, but not more than once in any twenty-four (24) month period, Landlord determines in the exercise of its reasonable business judgment that the limits of the personal injury or property damage-public liability insurance then carried pursuant to **Section 13.1(e)** hereof are insufficient, Landlord may give Tenant Notice of acceptable limits for the insurance to be carried; provided, that in no event will Tenant be required to carry insurance in an amount which exceeds the product of (i) the amounts set forth in **Section 13.1(e)** hereof and (ii) the CPI Increase; and subject to the foregoing limitation, within ninety (90) days after the receipt of such Notice, the insurance shall thereafter be carried with limits as prescribed by Landlord until further increase pursuant to the provisions of this **Section 13.5**.

13.6 Blanket Policy. Notwithstanding anything to the contrary contained in this **Article XIII**, Tenant's obligations to carry the insurance provided for herein may be brought within the coverage of a so-called blanket policy or policies of insurance carried and maintained by Tenant with respect to the Facilities as well as other properties or assets owned or leased by Tenant and/or its Affiliates that are not subject to this Master Lease; provided, that (i) the

requirements of this **Article XIII** (including satisfaction of the Facility Mortgagee's requirements and the approval of the Facility Mortgagee) are otherwise satisfied, (ii) Tenant maintains specific allocations acceptable to Landlord, (iii) limits reduced below amounts required in **Section 13.1** due to reduction or exhaustion of aggregate limits from loss at properties or assets not subject to this Master Lease are replaced or reinstated as respects the Master Lease within sixty (60) days, and (iv) Landlord is otherwise reasonably satisfied that any such blanket policy affords Tenant and Landlord substantially the same protection that would be obtained from one or more policies of insurance that are not blanket policies. Landlord acknowledges that Tenant's insurance as in effect on the Commencement Date satisfies each of the foregoing items (i), (ii) and (iv). For the avoidance of doubt, neither Landlord, nor any Facility Mortgagee shall have any rights whatsoever with respect to proceeds of such blanket policy to the extent such proceeds relate to properties or assets other than the Facilities.

13.7 No Separate Insurance. Tenant shall not, on Tenant's own initiative or pursuant to the request or requirement of any third party, (i) take out separate insurance concurrent in form or contributing in the event of loss with that required in this **Article XIII** to be furnished by, or which may reasonably be required to be furnished by, Tenant or (ii) increase the amounts of any then existing insurance by securing an additional policy or additional policies, unless all parties having an insurable interest in the subject matter of the insurance, including in all cases Landlord and all Facility Mortgagees, are included therein as additional named insureds or additional insureds, as appropriate, and the loss is payable under such insurance in the same manner as losses are payable under this Master Lease. Notwithstanding the foregoing, nothing herein shall prohibit Tenant from insuring against risks not required to be insured hereby, and as to such insurance, Landlord and any Facility Mortgagee need not be included therein as additional insureds, nor must the loss thereunder be payable in the same manner as losses are payable hereunder except to the extent required to avoid a default under the Facility Mortgage. In addition, nothing contained herein shall limit Tenant's ability to procure policies of insurance with limits in excess of the requirements set forth in this **Article XIII**.

ARTICLE XIV

CASUALTY

14.1 Property Insurance Proceeds. All proceeds (except business interruption insurance proceeds not allocated to rent expenses which shall be payable to and retained by Tenant) payable by reason of any property loss or damage to the Leased Property, or any portion thereof, under any property policy of insurance required to be carried hereunder shall be paid to Facility Mortgagee or to an escrow account held by a third party depository reasonably acceptable to Landlord and Tenant (pursuant to an escrow agreement acceptable to the parties and intended to implement the terms hereof) and made available to Tenant upon request for the reasonable costs of preservation, stabilization, emergency restoration, business interruption, reconstruction and repair, as the case may be, of any damage to or destruction of the Leased Property, or any portion thereof; provided, however, that the portion of such proceeds that are attributable to Tenant's obligation to pay Rent shall be applied against Rent due by Tenant hereunder as Rent becomes due; and provided, further, that if the total amount of proceeds payable net of the applicable deductibles is One Hundred Million Dollars (\$100,000,000) or less, and, if no Event of Default has occurred and is continuing, the proceeds shall notwithstanding the

foregoing provisions be paid to Tenant and, subject to the limitations set forth in this **Article XIV** used for the repair of any damage to the Leased Property, it being understood and agreed that Tenant shall have no obligation to rebuild any Tenant Capital Improvement (other than any Tenant Capital Improvement which Landlord has funded pursuant to **Section 10.5**); provided, further, that, in each case, the Leased Property and such Tenant Capital Improvements for which Landlord has paid are rebuilt in a manner at least substantially equivalent to either that existing on the date of this Master Lease or existing immediately prior to the casualty or as otherwise reasonably satisfactory to Landlord. Any excess proceeds of insurance remaining after the completion of the restoration or reconstruction of the Leased Property to substantially the condition described in the preceding sentence shall be paid to Tenant. All salvage resulting from any risk covered by insurance for damage or loss to the Leased Property shall belong to Landlord. Tenant shall have the right to prosecute and settle insurance claims, provided that Tenant shall consult with and involve Landlord in the process of adjusting any insurance claims under this **Article XIV** and any final settlement with the insurance company shall be subject to Landlord's consent, such consent not to be unreasonably withheld.

14.2 Tenant's Obligations Following Casualty. (a) Subject to paragraphs (b), (c), (d), (e), (f) and (g) below, if a Facility and/or any Tenant Capital Improvements to a Facility are damaged, whether or not from a risk covered by insurance carried by Tenant, except as otherwise provided herein, (i) Tenant shall restore such Leased Property (excluding any Tenant Capital Improvement (other than any Tenant Capital Improvement which Landlord has funded pursuant to **Section 10.5**)), to substantially the condition required by **Section 14.1**, (ii) such damage shall not terminate this Master Lease and (iii) subject to **Section 14.5**, Landlord shall cause the Facility Mortgagee to make the proceeds of any insurance held in accordance with **Section 14.1** available to Tenant for such restoration in accordance with **Section 14.1**.

(b) Notwithstanding the foregoing, in the event that any Facility is damaged and Tenant reasonably determines that the cost to restore such damage will exceed fifty percent (50%) of the then fair market value of such Facility immediately prior to such Casualty Event, Tenant may elect within one (1) year after the date of such Casualty Event to terminate this Master Lease as to such Facility (but not as to any other Facility) as of the date on which Notice of such determination is delivered to Landlord in which event, Rent will abate in accordance with **Section 14.6** and all proceeds of insurance with respect to such Casualty Event (except business interruption not allocated to rent expenses which shall be payable to and retained by Tenant) shall be paid to Landlord.

(c) In addition to the rights provided in paragraph (b) above, in the event that any Facility is damaged during the final two years of the then-current Term (after giving effect to any Renewal Notice that has been delivered or is delivered pursuant to the proviso below) and the cost to restore such damage will exceed ten percent (10%) of the then fair market value of such Facility immediately prior to such Casualty Event, either Landlord or Tenant may terminate this Master Lease as to such Facility (but not as to any other Facility) as of the date of such damage, which termination right may be exercised by written notice to the other party no later than sixty (60) days following the determination of the cost reasonably expected to restore. If so terminated, Rent will continue unabated for the remainder of the Term and all proceeds of insurance with respect to such Casualty Event (except business interruption not allocated to rent expenses which shall be payable to and retained by Tenant) shall be paid to Landlord (including,

for the avoidance of doubt, any proceeds paid to Tenant pursuant to the second proviso in **Section 14.1**); provided, however, such termination by Landlord shall not be effective in the event that Tenant elects, within sixty (60) days of Landlord's election to terminate, to exercise Tenant's next arising option for a Renewal Term. Any dispute between Landlord and Tenant with respect to fair market value or the costs of restoration will be determined by Experts pursuant to **Section 34.1**. If Tenant elects to terminate this Master Lease with respect to a Facility during the final two years of the then-current Term in accordance with this **Section 14.2**, Tenant shall be deemed to have forfeited Tenant's right to exercise any further Renewal Terms.

(d) If Tenant is required, or elects to, restore the affected Facility and the reasonably anticipated cost of the repair or restoration exceeds the amount of proceeds received from the insurance required to be carried hereunder, Tenant shall provide Landlord with evidence reasonably acceptable to Landlord that Tenant has available to it any excess amounts needed to restore such Facility. Such excess amounts necessary to restore such Facility shall be paid by Tenant. If Tenant elects, but is not required, to restore the affected Facility, Landlord shall only be required to make insurance proceeds available to Tenant for such restoration in accordance with **Section 14.1** if Tenant reasonably demonstrates that such restoration can be completed within four (4) years of the date on which Tenant can reasonably access the Facility for the purpose of commencing restoration.

(e) If Tenant has not restored the affected Leased Property and the Primary Intended Use has not recommenced by the date that is the fourth (4th) anniversary of the date on which Tenant can reasonably access the Facility for the purpose of commencing restoration, all remaining insurance proceeds shall be paid to and retained by Landlord free and clear of any claim by or through Tenant unless Tenant is continuing to prosecute the rebuilding or restoration with reasonable diligence.

(f) In the event that Tenant is neither required nor elects to repair and restore the Leased Property, all property insurance proceeds, other than proceeds reasonably attributed to any Tenant Capital Improvements (other than any Tenant Capital Improvement which Landlord has funded pursuant to **Section 10.5**) (and, subject to no Event of Default having occurred and being continuing, any business interruption proceeds in excess of Tenant's Rent obligations hereunder), which proceeds shall be and remain the property of Tenant, shall be paid to and retained by Landlord free and clear of any claim by or through Tenant except as otherwise specifically provided below in this **Article XIV**.

(g) In the event that (i) following a Casualty Event Tenant elects in accordance with **Section 14.2(b)** to terminate this Master Lease with respect to the affected Facility(ies) and (ii) the insurance proceeds payable to Landlord in accordance with **Section 14.2(f)** above with respect to such Casualty Event are less than the reasonable estimate of the cost to repair and restore the Leased Property (excluding any Tenant Capital Improvement (other than any Tenant Capital Improvement which Landlord has funded pursuant to **Section 10.5**)) to substantially the same condition as existed immediately prior to the relevant Casualty Event (such difference being a "**Casualty Shortfall**"), (x) Tenant shall have no responsibility for the first Twenty-Five Million Dollars (\$25,000,000) of Casualty Shortfall with respect to any Casualty Event with respect to any individual Facility, and (y) with respect to any Casualty Shortfall with respect to any Casualty Event with respect to any individual Facility in excess of

Twenty-Five Million Dollars (\$25,000,000), Tenant shall pay to Landlord with respect to each such Facility an amount (the aggregate of such amounts for all affected Facilities, “**Tenant’s Portion of a Casualty Shortfall**”) equal to the product of (x) one-half multiplied by (y) the difference between the amount of the Casualty Shortfall for such Casualty Event for such Facility less Twenty-Five Million Dollars (\$25,000,000), and upon such payment of Tenant’s Portion of a Casualty Shortfall, Tenant shall have no further responsibility for such Casualty Shortfall and the same shall be borne by Landlord. Tenant may elect to pay to Landlord Tenant’s Portion of a Casualty Shortfall either (i) as a lump sum in cash due and payable within ninety (90) days following the later to occur of (x) the date of final determination of the amount of the Casualty Shortfall and (y) the date Tenant elects to terminate the Master Lease with respect to the affected Facility, or (ii) as additional Rent over the remaining Term. If Tenant elects to pay Tenant’s Portion of a Casualty Shortfall over the remaining Term in accordance with the preceding clause (ii) the following shall apply. The amount necessary to fully amortize Tenant’s Portion of a Casualty Shortfall over the remaining Term (assuming all Renewal Terms are exercised) based on equal monthly payments with interest at the Assumed Rate shall be payable each month on each Payment Date as Additional Charges. If Tenant fails to exercise all remaining Renewal Terms or this Master Lease is terminated prior to its expiration, then the outstanding principal balance of the remaining Tenant’s Portion of a Casualty Shortfall as of the expiration of the Term based on the foregoing amortization calculation shall be payable by Tenant to Landlord as Additional Charges upon the expiration or termination of this Master Lease. For the avoidance of doubt, the provisions of this **Section 14.2(g)** shall not apply to any Casualty Event as to which **Section 14.2(c)** is applicable and Tenant shall have no responsibility for any Casualty Shortfall with respect to any Casualty Event as to which **Section 14.2(c)** is applicable. Notwithstanding the foregoing, Tenant may, following the determination of the amount of any Casualty Shortfall, in Tenant’s sole discretion, elect to continue to pay Rent through the remaining Term of this Master Lease (including extensions) without any abatement of Rent that would otherwise be applicable pursuant to **Section 14.6** below as a result of a termination of this Master Lease with respect to the affected Facility(ies), in which case Tenant shall not be responsible for any portion of such Casualty Shortfall. In the event that Landlord and Tenant are unable to agree on the amount of any Casualty Shortfall, either Landlord or Tenant may elect to have such amount determined by an Expert in accordance with **Section 34.1**.

14.3 No Abatement of Rent. This Master Lease shall remain in full force and effect and Tenant’s obligation to pay the Rent, Additional Charges and all other charges required by this Master Lease shall remain unabated during the period required for adjusting insurance, satisfying Legal Requirements, repair and restoration.

14.4 Waiver. Tenant waives any statutory rights of termination which may arise by reason of any damage or destruction of the Leased Property but such waiver shall not affect any contractual rights granted to Tenant under this **Article XIV**.

14.5 Insurance Proceeds Paid to Facility Mortgagee. Notwithstanding anything herein to the contrary, in the event that any Facility Mortgagee is entitled to any insurance proceeds, or any portion thereof, under the terms of any Facility Mortgage, such proceeds (except business interruption not allocated to rent expenses which shall be payable to and retained by Tenant) shall be applied, held and/or disbursed in accordance with the terms of the Facility Mortgage but in all events subject to Tenant’s right to such insurance proceeds

(including Tenant's right to receive all insurance proceeds for a Casualty Event less than One Hundred Million Dollars (\$100,000,000) in accordance with **Section 14.1**) and provided, that, (i) in the event of a Casualty Event involving proceeds of One Hundred Million Dollars (\$100,000,000) or more where Tenant elects within twelve (12) months of the date of the relevant Casualty Event to restore the affected Facility and Tenant reasonably demonstrates that such restoration can be completed within four (4) years of the date on which Tenant can reasonably access the Facility for the purpose of commencing restoration (after the date of such Casualty Event but without regard to the date on which Tenant elects to restore the affected Facility), or (ii) in the event of a Casualty Event involving proceeds of One Hundred Million Dollars (\$100,000,000) or more where Tenant is required by this Master Lease to restore the affected Facility, Landlord will cause, subject to **Section 14.2(e)**, any Facility Mortgagee that has received, or thereafter does receive, insurance proceeds to make such proceeds available to Tenant for the reasonable costs of preservation, stabilization, emergency restoration, reconstruction and repair for the affected Facility.

14.6 Termination of Master Lease; Abatement of Rent. In the event this Master Lease is terminated as to an affected Facility pursuant to **Section 8.2** (in respect of Landlord being in jeopardy of failing to comply with a regulatory requirement material to the continued operation of a Facility), **Section 14.2 (b)** (in the event that Landlord or Tenant elect to terminate the Master Lease with respect to a Facility following a Casualty Event), **Article XV**, or any other provision of this Master Lease which provides for termination of this Master Lease with respect to a Facility (a "**Leased Property Rent Adjustment Event**"), then:

(i) the Rent due hereunder from and after the effective date of any such Leased Property Rent Adjustment Event shall be reduced by an amount equal to the Allocable Rent Amount with respect to any such affected Facility; and

(ii) Landlord shall retain any claim which Landlord may have against Tenant for failure to insure such Leased Property as required by **Article XIII**, except that any portion of Tenant's Portion of a Casualty Shortfall that was paid as a result of Tenant's failure to comply with **Article XIII** shall reduce any such liability on a dollar for dollar basis.

14.7 Multiple Facility Mortgagees. In any provisions of this **Article XIV**, **Article XV** or any other provision of this Master Lease providing for any determination, decision or election by a Facility Mortgagee, the determination, decision or election of the Facility Mortgagee of the highest priority with respect to the Facility in question shall be controlling.

ARTICLE XV

CONDEMNATION

15.1 Condemnation.

(a) **Total Taking.** If there is a permanent Condemnation of Leased Property with respect to all or substantially all of any Facility, this Master Lease shall terminate with respect to such Facility (but no other portion of the Leased Property) as of the day before the Date of Taking for such Facility and Rent will abate in accordance with **Section 14.6**.

(b) Partial Taking.

(i) If there is a Condemnation of a portion of a Facility, this Master Lease shall remain in effect if the affected Facility is not thereby rendered, in the reasonable determination of Tenant, Unsuitable for Its Primary Intended Use, but if such Facility is thereby rendered Unsuitable for Its Primary Intended Use, this Master Lease shall at Tenant's option terminate with respect to such Facility as of the date on which Notice of such determination is delivered to Landlord and Rent will abate in accordance with **Section 14.6**.

(ii) Notwithstanding the foregoing, in the event of a Condemnation of a portion of a Facility representing fifty (50%) or more of the fair market value of such Facility, Tenant may terminate this Master Lease as to such Facility (but not as to any other Facility) as of the date on which Notice of such termination is delivered to Landlord in which event, Rent will abate in accordance with **Section 14.6**.

(iii) In the event of a Condemnation of a portion of a Facility representing ten percent (10%) or more of the fair market value of such Facility during the final two years of the then-current Term (after giving effect to any Renewal Notice that has been delivered or is delivered pursuant to the proviso below), either Landlord or Tenant may terminate this Master Lease as to such Facility (but not as to any other Facility) as of the day before the Date of Taking and Rent will continue unabated for the remainder of the Term; provided, however, such termination by Landlord shall not be effective in the event that Tenant elects, within sixty (60) days of Landlord's election to terminate, to exercise Tenant's next arising option for a Renewal Term. Any dispute between Landlord and Tenant with respect to the extent of a Condemnation will be determined by Experts pursuant to **Section 34.1**. If Tenant elects to terminate this Master Lease with respect to a Facility during the final two years of the then-current Term in accordance with this **Section 15.1**, Tenant shall be deemed to have forfeited Tenant's right to exercise any further Renewal Terms.

(c) Restoration. If there is a partial Condemnation of a Facility and this Master Lease remains in full force and effect with respect to such Facility, Landlord shall make available to Tenant the portion of the Award applicable to restoration of the Leased Property, and Tenant shall accomplish all necessary restoration whether or not the amount provided by the Condemnor for restoration is sufficient and the Rent shall be reduced by such amount as may be agreed upon by Landlord and Tenant or, if they are unable to reach such an agreement within a period of ninety (90) days after the occurrence of the Condemnation, then the Rent for such Facility shall be proportionately reduced based on the relative values of the property taken by condemnation and the portion of the affected Facility remaining subject to the Master Lease. In the event that Landlord and Tenant are unable to agree on such relative values within such ninety (90) day period, either Landlord or Tenant may request that such relative values be determined by an Expert in accordance with **Section 34.1**. Tenant shall restore such Leased Property (as nearly as possible under the circumstances) to a complete architectural unit of the same general character and condition as such Leased Property existing immediately prior to such Condemnation. If Tenant has not so restored the affected Leased Property and the Primary Intended Use has not recommenced by the date that is the fourth (4th) anniversary of the date on which Tenant can reasonably access the Facility for the purpose of commencing restoration, any remaining Award shall be paid to and retained by Landlord free and clear of any claim by or

through Tenant unless Tenant is continuing to prosecute the rebuilding or restoration with reasonable diligence.

15.2 Award Distribution. Except as set forth below, the entire Award shall belong to and be paid to Landlord. Tenant shall, however, be entitled to pursue its own claim with respect to the Condemnation for Tenant's lost profits value and moving expenses and, the portion of the Award, if any, allocated to any Tenant Capital Improvements (other than any Tenant Capital Improvement which Landlord has funded pursuant to **Section 10.5**, including the Park MGM Tenant Capital Improvements) and Tenant's Property shall be and remain the property of Tenant free of any claim thereto by Landlord. For the avoidance of doubt, the portion of any Award allocated to the Park MGM Tenant Capital Improvements shall belong and be paid to Landlord.

15.3 Temporary Taking. The taking of the Leased Property, or any part thereof, shall constitute a Condemnation only when the use and occupancy by the taking authority is reasonably expected to exceed 180 consecutive days (any such taking that does not constitute a Condemnation shall be referred to as a "**Temporary Taking**"). During any Temporary Taking, all the provisions of this Master Lease shall remain in full force and effect and the Award allocable to the Term shall be paid to Tenant. Notwithstanding the foregoing or anything to the contrary contained herein and without prejudice to any of Tenant's other rights under this Article XV, Tenant shall be entitled to (a) receive all Awards up to Ten Million Dollars (\$10,000,000) in the aggregate with respect to the Condemnation by the Nevada Department of Transportation of a portion of the Leased Property as more particularly described on **Schedule 4** which, by its nature, is not reasonably expected to have a material adverse effect on the Leased Property or extend beyond the Term; provided, that to the extent that the foregoing Award exceeds Ten Million Dollars (\$10,000,000) in the aggregate, Landlord and Tenant shall discuss, in good faith, whether it is reasonable under the circumstances for such amount to be paid to Tenant, taking into account the adverse effects of any such Condemnation on Tenant's operations at the Leased Property, and if so, such Award shall be paid to Tenant, and (b) receive all Awards with respect to any other Condemnation which is not reasonably expected to exceed the earlier of (x) three (3) consecutive years and (y) the expiration of the then-current Term (e.g., a construction easement), and which, by its nature, is not reasonably expected to have a material adverse effect on the Leased Property or any applicable Facility.

15.4 No Abatement of Rent. This Master Lease shall remain in full force and effect and Tenant's obligation to pay the Rent, Additional Charges and all other charges required by this Master Lease shall remain unabated during the period required for claiming an Award, satisfying Legal Requirements and restoration.

15.5 Waiver. Tenant waives any statutory rights of termination which may arise by reason of any Condemnation of the Leased Property but such waiver shall not affect any contractual rights granted to Tenant under this **Article XV**.

15.6 Award Paid to Facility Mortgagee. Notwithstanding anything herein to the contrary, in the event that any Facility Mortgagee is entitled to any Award, or any portion thereof, under the terms of any Facility Mortgage, such Award shall be applied, held and/or disbursed in accordance with the terms of the Facility Mortgage; provided, that, (i) in the event of a Condemnation where Tenant elects within twelve (12) months of the date of the relevant Condemnation to restore the affected Facility and Tenant reasonably demonstrates that such

restoration can be completed within four (4) years of the date on which Tenant can reasonably access the Facility for the purpose of commencing restoration (after the date of such Condemnation but without regard to the date on which Tenant elects to restore the affected Facility), or (ii) in the event of a Condemnation where Tenant is required by this Master Lease to restore the affected Facility, Landlord will cause, subject to the final sentence of **Section 15.1(c)**, any Facility Mortgagee that has received, or thereafter does receive, any Award to make such Award available to Tenant for the reasonable costs of preservation, stabilization, emergency restoration, reconstruction and repair for the affected Facility.

15.7 Termination of Master Lease; Abatement of Rent. In the event this Master Lease is terminated with respect to the affected portion of the Leased Property as a result of a Condemnation pursuant to **Section 15.1(a), (b)(i) or (b)(ii)**, the Rent due hereunder from and after the effective date of such termination shall be reduced by an amount determined in the same manner as set forth in **Section 14.6** hereof.

ARTICLE XVI

DEFAULT; REMEDIES

16.1 Events of Default. (a) Any one or more of the following shall constitute an “**Event of Default**”:

(i) Tenant shall fail to pay any installment of Rent within five (5) Business Days of when due and such failure is not cured within three (3) Business Days after Notice from Landlord of Tenant’s failure to pay such amount when due; provided, that Tenant shall be entitled to only one (1) such notice and additional three (3) Business Day cure period in any Lease Year;

(ii) Tenant shall fail to pay any Additional Charge when due and such failure is not cured within five (5) Business Days after Notice from Landlord of Tenant’s failure to pay such amount when due;

(iii) a default shall occur under the Guaranty which is not cured within thirty (30) days after Notice from Landlord to Guarantor;

(iv) Tenant, Defaulting Operating Subtenants or Guarantor shall:

- (1) admit in writing its inability to pay its debts generally as they become due;
- (2) file a petition in bankruptcy or a petition to take advantage of any insolvency act;
- (3) make an assignment for the benefit of its creditors;
- (4) consent to the appointment of a receiver of itself or of the whole or any substantial part of its property; or

(5) file a petition or answer seeking reorganization or arrangement under the United States bankruptcy laws or any other applicable law or statute of the United States of America or any state thereof;

(v) Tenant, Defaulting Operating Subtenants or Guarantor shall be adjudicated as bankrupt or a court of competent jurisdiction shall enter an order or decree appointing, without the consent of Tenant, Defaulting Operating Subtenants or Guarantor, a receiver of Tenant or Guarantor or of the whole or substantially all of Tenant's, Defaulting Operating Subtenants' or Guarantor's property, or approving a petition filed against Tenant, Defaulting Operating Subtenants or Guarantor seeking reorganization or arrangement of Tenant, Defaulting Operating Subtenants or Guarantor under the United States bankruptcy laws or any other applicable law or statute of the United States of America or any state thereof, and such judgment, order or decree shall not be vacated or set aside or stayed within sixty (60) days from the date of the entry thereof;

(vi) Tenant, Defaulting Operating Subtenants or Guarantor shall be liquidated or dissolved (except that Guarantor may be liquidated or dissolved into Tenant or any other Person so long as its assets are distributed following such liquidation or dissolution to Tenant or such other Person);

(vii) the estate or interest of Tenant or any Operating Subtenant in the Leased Property or any part thereof shall be levied upon or attached as a result of a final, non-appealable judgment in any proceeding relating to more than Ten Million Dollars (\$10,000,000) and the same shall not be vacated, discharged (or bonded or otherwise similarly secured) within the later of ninety (90) days after such final, non-appealable judgment is entered or thirty (30) days after receipt by Tenant of notice thereof from Landlord; provided, however, that such notice shall be in lieu of and not in addition to any notice required under applicable law;

(viii) except as permitted in accordance with **Section 7.2(d)**, Tenant voluntarily ceases operations for its Primary Intended Use at a Facility;

(ix) any representation made by Tenant pursuant to **Section 8.1** proves to be untrue when made in any material respect and the same materially and adversely affects Landlord;

(x) any applicable license (including Gaming Licenses) material to a Facility's operation for its Primary Intended Use is at any time terminated or revoked or suspended for more than thirty (30) days (and causes cessation of gaming activity at a Facility) and such termination, revocation or suspension is not stayed pending appeal and would reasonably be expected to have a material adverse effect on Tenant, the Facilities, or on the Leased Property, taken as a whole; provided, that the foregoing shall not constitute an Event of Default if Tenant would then be permitted to cease operating such Facility pursuant to **Section 7.2(d)**;

(xi) except to a permitted assignee pursuant to **Section 22.2** or a permitted subtenant, or with respect to the granting of a permitted pledge hereunder to a

Permitted Leasehold Mortgagee, the sale or transfer, without Landlord's consent, of all or any portion of any Gaming License or similar certificate or license relating to the Leased Property;

(xii) (1) a transfer of Tenant's interest in this Lease (including pursuant to a Tenant Change of Control) shall have occurred without the consent of Landlord to the extent such consent is required under **Article XXII** or Tenant is otherwise in default of the provisions set forth in **Section 22.1** below and in either case the same is not cured within thirty (30) days after written notice from Landlord to Tenant, or (2) a transfer of Operating Subtenant's interest in the Operating Sublease shall have occurred without the consent of Landlord to the extent such consent is required under **Article XXII** and the same is not cured within thirty (30) days after written notice from Landlord to Tenant or Operating Subtenant;

(xiii) if Tenant shall fail to observe or perform any other term, covenant or condition of this Master Lease in any material respect and such failure is not cured by Tenant within thirty (30) days after Notice thereof from Landlord, unless such failure cannot with due diligence be cured within a period of thirty (30) days, in which case such failure shall not be deemed to be an Event of Default if Tenant proceeds promptly and with due diligence to cure the failure and diligently completes the curing thereof within one hundred twenty (120) days after such notice from Landlord; provided, however, that such notice shall be in lieu of and not in addition to any notice required under applicable law; and

(xiv) breach by Tenant of the Financial Covenant set forth in **Section 23.3** hereof for two consecutive Test Periods ending on the last day of two consecutive fiscal quarters, commencing with the two consecutive Test Periods ending on September 30, 2022 and December 31, 2022 or, if the Commencement Date occurs after June 30, 2022, the two consecutive Test Periods ending on the last day of the first two full consecutive fiscal quarters occurring after the Commencement Date (e.g., if the Commencement Date is July 15, 2022, the Test Periods ending on December 31, 2022 and March 31, 2023), and failure of Tenant to deposit the required amount (which may be provided through cash, one or more Letters of Credit or combination thereof or such other form of credit support reasonably acceptable to Landlord) into the Covenant Security Escrow Account pursuant to the terms of **Section 23.3(b)**. For the avoidance of doubt, so long as Tenant complies with the requirement to deposit the required amount into the Covenant Security Escrow Account within the time period specified in **Section 23.3**, then breach of the Financial Covenant shall not constitute a Default or an Event of Default.

(b) No Event of Default (other than a failure to make payment of money) shall be deemed to exist under **Section 16.1** during any time the curing thereof is prevented by an Unavoidable Delay, provided, that upon the cessation of the Unavoidable Delay, Tenant remedies the default without further delay.

(c) Notwithstanding the foregoing, in the event that Landlord believes that there has been a breach that would constitute an Event of Default under **Section 16.1(a) (ii), (iii), subclause (1) of (iv), (viii), (ix), (x), (xi), (xii), (xiii) or (xiv)**, above, Landlord shall notify Tenant of such breach and, if Tenant disagrees as to the existence of such breach or that such breach would constitute an Event of Default, Landlord and Tenant shall submit the determination of whether or not there exists an Event of Default to Experts pursuant to **Section 34.1**. If the Expert determines that the matter in question is or would give rise to an Event of Default, Tenant shall have an additional thirty (30) day period to cure such breach before such breach constitutes

an Event of Default, unless such breach cannot with due diligence be cured within a period of thirty (30) days, in which case such breach shall not be deemed to be an Event of Default if Tenant proceeds promptly and with due diligence to cure the breach and diligently completes the curing thereof within one hundred twenty (120) days after such determination.

16.2 Certain Remedies.

(a) If an Event of Default shall have occurred and be continuing, Landlord may (i) terminate this Master Lease by giving Tenant no less than ten (10) days' Notice of such termination (and Tenant shall have the right to cure the event giving rise to the Event of Default during such ten (10) day period) and the Term shall terminate and all rights of Tenant under this Master Lease shall cease, (ii) seek damages as provided in **Section 16.3** hereof, and/or (iii) exercise any other right or remedy at law or in equity available to Landlord as a result of any Event of Default. Tenant shall pay as Additional Charges all costs and expenses incurred by or on behalf of Landlord, including reasonable attorneys' fees and expenses, as a result of any Event of Default hereunder. If an Event of Default shall have occurred and be continuing, whether or not this Master Lease has been terminated pursuant to the first sentence of this **Section 16.2**, Tenant shall, to the extent permitted by law (including applicable Gaming Regulations), if required by Landlord to do so, immediately surrender to Landlord possession of all or any portion of the Leased Property (including any Tenant Capital Improvements) as to which Landlord has so demanded and quit the same and Landlord may, to the extent permitted by law (including applicable Gaming Regulations), enter upon and repossess such Leased Property and any Capital Improvement thereto by reasonable force, summary proceedings, ejectment or otherwise, and, to the extent permitted by law (including applicable Gaming Regulations), may remove Tenant and all other Persons and any of Tenant's Property from such Leased Property.

(b) Notwithstanding anything contained herein to the contrary, Landlord shall not be entitled to terminate this Master Lease by reason of an Event of Default (but Landlord may exercise all other rights and remedies), unless and until Landlord has, following the occurrence of an Event of Default, delivered a notice ("**Event of Default Notice**") to Tenant stating the Event of Default, and containing the following caption (in bold 16 point type):

"THIS IS AN EVENT OF DEFAULT NOTICE. FAILURE TO TAKE IMMEDIATE ACTION AND TO CURE THE EVENT(S) OF DEFAULT AS SPECIFIED BELOW WITHIN TEN (10) DAYS OF RECEIPT OF THIS NOTICE MAY LEAD TO LANDLORD'S TERMINATION OF THE MASTER LEASE AND/OR THE EXERCISE OF OTHER REMEDIES THEREUNDER."

16.3 Damages. None of (i) the termination of this Master Lease, (ii) the repossession of the Leased Property (including any Capital Improvements to any Facility), (iii) the failure of Landlord to relet the Leased Property or any portion thereof, (iv) the reletting of all or any portion of the Leased Property, or (v) the inability of Landlord to collect or receive any rentals due upon any such reletting, shall relieve Tenant of its liabilities and obligations hereunder, all of which shall survive any such termination, repossession or reletting. Landlord and Tenant agree that Landlord shall have no obligation to mitigate Landlord's damages under this Master Lease. If any such termination of this Master Lease occurs (whether or not Landlord terminates Tenant's right to possession of the Leased Property), Tenant shall forthwith pay to Landlord all

Rent due and payable under this Master Lease to and including the date of such termination. Thereafter:

Tenant shall forthwith pay to Landlord, at Landlord's option, as and for liquidated and agreed current damages, as Landlord's sole monetary remedy (without prejudice to any rights of Landlord pursuant to **Article XXI**, the indemnity in the final proviso of **Section 5.1**, the indemnity in the last sentence of **Section 12.1**, **Section 16.2(a)**, **Section 32.4** or **Section 37.1**), for the occurrence of an Event of Default, either:

(A) the sum of:

(i) the worth at the time of award of the unpaid Rent which had been earned at the time of termination to the extent not previously paid by Tenant under this **Section 16.3**;

(ii) the worth at the time of award of the amount by which the unpaid Rent which would have been earned after termination until the time of award exceeds the amount of such rental loss that Tenant proves could have been reasonably avoided;

(iii) the worth at the time of award of the amount by which the unpaid Rent for the balance of the Term after the time of award exceeds the amount of such rental loss that Tenant proves could be reasonably avoided; *plus*

(iv) any other amount reasonably necessary to compensate Landlord for all the detriment proximately caused by Tenant's failure to perform its obligations under this Master Lease or which in the ordinary course of things would be likely to result therefrom.

As used in clauses (i) and (ii) above, the "worth at the time of award" shall be computed by allowing interest at the Overdue Rate. As used in clause (iii) above, the "worth at the time of award" shall be computed by discounting such amount at the discount rate of the Federal Reserve Bank of New York at the time of award plus one percent (1%) and reducing such amount by the portion of the unpaid Rent that Tenant proves could be reasonably avoided.

or

(B) if Landlord chooses not to terminate Tenant's right to possession of the Leased Property (whether or not Landlord terminates the Master Lease), each installment of said Rent and other sums payable by Tenant to Landlord under this Master Lease as the same becomes due and payable, together with interest at the Overdue Rate from the date when due until paid, and Landlord may enforce, by action or otherwise, any other term or covenant of this Master Lease (and Landlord may at any time thereafter terminate Tenant's right to possession of the Leased Property and seek damages under subparagraph (A) hereof, to the extent not already paid for by Tenant under this subparagraph (B)).

16.4 Receiver. Upon the occurrence and continuance of an Event of Default, and upon commencement of proceedings to enforce the rights of Landlord hereunder, but subject to any

limitations of applicable law, Landlord shall be entitled, as a matter of right, to the appointment of a receiver or receivers acceptable to Landlord of the Leased Property and of the revenues, earnings, income, products and profits thereof, pending the outcome of such proceedings, with such powers as the court making such appointment shall confer.

16.5 Waiver. If Landlord initiates judicial proceedings or if this Master Lease is terminated by Landlord pursuant to this **Article XVI**, Tenant waives, to the extent permitted by applicable law, (i) any right of redemption, re-entry or repossession; and (ii) the benefit of any laws now or hereafter in force exempting property from liability for rent or for debt.

16.6 Application of Funds. Any payments received by Landlord under any of the provisions of this Master Lease during the existence or continuance of any Event of Default which are made to Landlord rather than Tenant due to the existence of an Event of Default shall be applied to Tenant's obligations in the order which Landlord may reasonably determine or as may be prescribed by the laws of the State.

ARTICLE XVII

TENANT'S FINANCING

17.1 Permitted Leasehold Mortgagees.

(a) On one or more occasions without Landlord's prior consent, Tenant may mortgage or otherwise encumber Tenant's estate in and to the Leased Property (the "**Leasehold Estate**") to one or more Permitted Leasehold Mortgagees under one or more Permitted Leasehold Mortgages and pledge its right, title and interest under this Master Lease as security for such Permitted Leasehold Mortgages or any Debt Agreement secured thereby; provided, that no Person shall be considered a Permitted Leasehold Mortgagee unless (1) such Person delivers to Landlord a written agreement providing (i) that (unless this Master Lease has been terminated as to a particular Facility) such Permitted Leasehold Mortgagee and any lenders for whom it acts as representative, agent or trustee, will not use or dispose of any Gaming License for use at a location other than at the Facility to which such Gaming License relates as of the date such Person becomes a Permitted Leasehold Mortgagee (or, in the case of any Facility added to the Master Lease after such date, as of the date that such Facility is added to the Master Lease), and (ii) an express acknowledgement that, in the event of the exercise by the Permitted Leasehold Mortgagee of its rights under the Permitted Leasehold Mortgage, the Permitted Leasehold Mortgagee shall be required to (except for a transfer that meets the requirements of **Section 22.2(ii)**) secure the approval of Landlord for the replacement of Tenant with respect to the affected portion of the Leased Property and contain the Permitted Leasehold Mortgagee's acknowledgment that such approval may be granted or withheld by Landlord in accordance with the provisions of **Article XXII** of this Master Lease, and (2) the underlying Permitted Leasehold Mortgage includes an express acknowledgement that any exercise of remedies thereunder that would affect the Leasehold Estate shall be subject to the terms of the Master Lease. Any Facility Mortgagee and its successors and assigns, by accepting any Facility Mortgage, shall be deemed without executing any further document or instrument, to have also agreed to recognize the rights of any Permitted Leasehold Mortgagee as provided in this **Article XVII** and to have agreed not to disturb such rights in any way except through the exercise of the rights expressly granted to

Landlord in this Master Lease or available at law or in equity to Landlord by reason of the default by Tenant under this Master Lease.

(b) Notice to Landlord.

(i) (1) If Tenant shall, on one or more occasions, mortgage Tenant's Leasehold Estate and if the holder of such Permitted Leasehold Mortgage shall provide Landlord with Notice of such Permitted Leasehold Mortgage together with a true copy of such Permitted Leasehold Mortgage and the name and address of the Permitted Leasehold Mortgagee, Landlord and Tenant agree that, following receipt of such Notice by Landlord, the provisions of this **Section 17.1** shall apply in respect to each such Permitted Leasehold Mortgage.

(2) In the event of any assignment of a Permitted Leasehold Mortgage or in the event of a change of address of a Permitted Leasehold Mortgagee or of an assignee of such Mortgage, Notice of the new name and address shall be provided to Landlord.

(ii) Landlord shall promptly upon receipt of a communication purporting to constitute the notice provided for by subsection (b)(i) above acknowledge by an executed and notarized instrument receipt of such communication as constituting the notice provided for by subsection (b)(i) above and confirming the status of the Permitted Leasehold Mortgagee as such or, in the alternative, notify Tenant and the Permitted Leasehold Mortgagee of the rejection of such communication as not conforming with the provisions of this **Section 17.1** and specify the specific basis of such rejection.

(iii) After Landlord has received the notice provided for by subsection (b)(i) above, Tenant, upon being requested to do so by Landlord, shall with reasonable promptness provide Landlord with copies of the note or other obligation secured by such Permitted Leasehold Mortgage and of any other documents pertinent to the Permitted Leasehold Mortgage as specified by Landlord. If requested to do so by Landlord, Tenant shall thereafter also provide Landlord from time to time with a copy of each amendment or other modification or supplement to such instruments. All recorded documents shall be accompanied by the appropriate recording stamp or other certification of the custodian of the relevant recording office as to their authenticity as true and correct copies of official records and all nonrecorded documents shall be accompanied by a certification by Tenant that such documents are true and correct copies of the originals. From time to time upon being requested to do so by Landlord, Tenant shall also notify Landlord of the date and place of recording and other pertinent recording data with respect to such instruments as have been recorded.

(c) Default Notice. Landlord, upon providing Tenant any notice of: (i) default under this Master Lease or (ii) a termination of this Master Lease, shall at the same time provide a copy of such notice to every Permitted Leasehold Mortgagee for which notice has been properly provided to Landlord pursuant to **Section 17.1(b)** hereof. No such notice by Landlord to Tenant shall be deemed to have been duly given unless and until a copy thereof has been sent, in the manner prescribed in **Section 35.1** of this Master Lease, to every Permitted Leasehold Mortgagee for which notice has been properly provided to Landlord pursuant to **Section 17.1(b)** hereof. From and after such notice has been sent to a Permitted Leasehold Mortgagee, such Permitted Leasehold Mortgagee shall have the same period, after the giving of such notice upon its remedying any default or acts or omissions which are the subject matter of

such notice or causing the same to be remedied, as is given Tenant after the giving of such notice to Tenant, plus in each instance, the additional periods of time specified in subsections (d) and (e) of this **Section 17.1** to remedy, commence remedying or cause to be remedied the defaults or acts or omissions which are the subject matter of such notice specified in any such notice. Landlord shall accept such performance by or at the instigation of such Permitted Leasehold Mortgagee as if the same had been done by Tenant. Tenant authorizes each Permitted Leasehold Mortgagee (to the extent such action is authorized under the applicable Debt Agreement) to take any such action at such Permitted Leasehold Mortgagee's option and does hereby authorize entry upon the premises by the Permitted Leasehold Mortgagee for such purpose.

(d) Notice to Permitted Leasehold Mortgagee. Anything contained in this Master Lease to the contrary notwithstanding, if any default shall occur which entitles Landlord to terminate this Master Lease, Landlord shall have no right to terminate this Master Lease on account of such default unless, following the expiration of the period of time given Tenant to cure such default or the act or omission which gave rise to such default, Landlord shall notify every Permitted Leasehold Mortgagee for which notice has been properly provided to Landlord pursuant to **Section 17.1(b)** hereof of Landlord's intent to so terminate at least thirty (30) days in advance of the proposed effective date of such termination if such default is capable of being cured by the payment of money, and at least ninety (90) days in advance of the proposed effective date of such termination if such default is not capable of being cured by the payment of money ("**Termination Notice**"). The provisions of subsection (e) below of this **Section 17.1** shall apply if, during such thirty (30) or ninety (90) days (as the case may be) Termination Notice period, any Permitted Leasehold Mortgagee shall:

(i) notify Landlord of such Permitted Leasehold Mortgagee's desire to nullify such Termination Notice; and

(ii) pay or cause to be paid all Rent, Additional Charges, and other payments (i) then due and in arrears as specified in the Termination Notice to such Permitted Leasehold Mortgagee and (ii) which may become due during such thirty (30) or ninety (90) day (as the case may be) period (as the same may become due); and

(iii) comply or in good faith, with reasonable diligence and continuity, commence to comply with all nonmonetary requirements of this Master Lease then in default and reasonably susceptible of being complied with by such Permitted Leasehold Mortgagee, provided, however, that such Permitted Leasehold Mortgagee shall not be required during such ninety (90) day period to cure or commence to cure any default consisting of Tenant's failure to satisfy and discharge any lien, charge or encumbrance against Tenant's interest in this Master Lease or the Leased Property, or any of Tenant's other assets junior in priority to the lien of the mortgage or other security documents held by such Permitted Leasehold Mortgagee or any matter which Permitted Leasehold Mortgagee is prevented from performing because of any injunction or stay applicable during any bankruptcy or other judicial proceeding; and

(iv) during such thirty (30) or ninety (90) day period, the Permitted Leasehold Mortgagee shall respond, with reasonable diligence, to requests for information from Landlord as to the Permitted Leasehold Mortgagee's (and related lenders') intent to pay such Rent and other charges and comply with this Master Lease.

(e) Procedure on Default.

(i) If Landlord shall elect to terminate this Master Lease by reason of any Event of Default of Tenant that has occurred and is continuing, and a Permitted Leasehold Mortgagee shall have proceeded in the manner provided for by subsection (d) of this **Section 17.1**, the specified date for the termination of this Master Lease as fixed by Landlord in its Termination Notice shall be extended for a period of six (6) months; provided, that such Permitted Leasehold Mortgagee shall, during such six-month period (and during the period of any continuance referred to in subsection (e)(ii) below):

(1) pay or cause to be paid the Rent, Additional Charges and other monetary obligations of Tenant under this Master Lease as the same become due, and continue its good faith efforts to perform or cause to be performed all of Tenant's other obligations under this Master Lease, excepting (A) obligations of Tenant to satisfy or otherwise discharge any lien, charge or encumbrance against Tenant's interest in this Master Lease or the Leased Property or any of Tenant's other assets junior in priority to the lien of the mortgage or other security documents held by such Permitted Leasehold Mortgagee and (B) past nonmonetary obligations then in default and not reasonably susceptible of being cured by such Permitted Leasehold Mortgagee; and

(2) if not enjoined or stayed pursuant to a bankruptcy or insolvency proceeding or other judicial order, diligently continue to pursue acquiring or selling Tenant's interest in this Master Lease and the Leased Property by foreclosure of the Permitted Leasehold Mortgage or other appropriate means and diligently prosecute the same to completion.

(ii) If at the end of such six (6) month period such Permitted Leasehold Mortgagee is complying with subsection (e)(i) above, this Master Lease shall not then terminate, and the time for completion by such Permitted Leasehold Mortgagee of its proceedings shall continue (provided that for the time of such continuance, such Permitted Leasehold Mortgagee is in compliance with subsection (e)(i) above) (x) so long as such Permitted Leasehold Mortgagee is enjoined or stayed pursuant to a bankruptcy or insolvency proceeding or other judicial order and if so enjoined or stayed, thereafter for so long as such Permitted Leasehold Mortgagee proceeds to complete steps to acquire or sell Tenant's interest in this Master Lease by foreclosure of the Permitted Leasehold Mortgage or by other appropriate means with reasonable diligence and continuity but not to exceed twelve (12) months after the Permitted Leasehold Mortgagee is no longer so enjoined or stayed from prosecuting the same and in no event longer than twenty-four (24) months from the date of Landlord's initial notification to Permitted Leasehold Mortgagee pursuant to **Section 17.1(d)** hereof, and (y) if such Permitted Leasehold Mortgagee is not so enjoined or stayed, thereafter for so long as such Permitted Leasehold Mortgagee proceeds to complete steps to acquire or sell Tenant's interests in this Master Lease by foreclosure of the Permitted Leasehold Mortgage or by other appropriate means with reasonable diligence and continuity but not to exceed twelve (12) months from the date of Landlord's initial notification to Permitted Leasehold Mortgagee pursuant to **Section 17.1(d)** hereof. Nothing in this subsection (e) of this **Section 17.1**, however, shall be construed to extend this Master Lease beyond the original term thereof as extended by any options to extend the Term of this Master Lease properly exercised by Tenant or a Permitted Leasehold Mortgagee in accordance with **Section**

1.4, nor to require a Permitted Leasehold Mortgagee to continue such foreclosure proceeding after the default has been cured. If the default shall be cured pursuant to the terms and within the time periods allowed in subsections (d) and (e) of this **Section 17.1** and the Permitted Leasehold Mortgagee shall discontinue such foreclosure proceedings, this Master Lease shall continue in full force and effect as if Tenant had not defaulted under this Master Lease.

(iii) If a Permitted Leasehold Mortgagee is complying with subsection (e)(i) of this **Section 17.1**, upon the acquisition of Tenant's Leasehold Estate herein by a Discretionary Transferee this Master Lease shall continue in full force and effect as if Tenant had not defaulted under this Master Lease, provided, that such Discretionary Transferee cures all outstanding defaults that can be cured through the payment of money and all other defaults that are reasonably susceptible of being cured.

(iv) For the purposes of this **Section 17.1**, the making of a Permitted Leasehold Mortgage shall not be deemed to constitute an assignment or transfer of this Master Lease nor of the Leasehold Estate hereby created, nor shall any Permitted Leasehold Mortgagee, as such, be deemed to be an assignee or transferee of this Master Lease or of the Leasehold Estate hereby created so as to require such Permitted Leasehold Mortgagee, as such, to assume the performance of any of the terms, covenants or conditions on the part of Tenant to be performed hereunder; but the purchaser at any sale of this Master Lease (including a Permitted Leasehold Mortgagee if it is the purchaser at foreclosure) and of the Leasehold Estate hereby created in any proceedings for the foreclosure of any Permitted Leasehold Mortgage, or the assignee or transferee of this Master Lease and of the Leasehold Estate hereby created under any instrument of assignment or transfer in lieu of the foreclosure of any Permitted Leasehold Mortgage, shall be subject to **Article XXII** hereof (including the requirement that such purchaser assume the performance of the terms, covenants or conditions on the part of Tenant to be performed hereunder and meet the qualifications of **Section 22.2** or be reasonably consented to by Landlord in accordance with **Section 22.1** hereof).

(v) Any Permitted Leasehold Mortgagee or other acquirer of the Leasehold Estate of Tenant pursuant to foreclosure, assignment in lieu of foreclosure or other proceedings in accordance with the requirements of **Section 22.2(ii)** of this Master Lease may, upon acquiring Tenant's Leasehold Estate, without further consent of Landlord, sell and assign the Leasehold Estate in accordance with the requirements of **Article XXII** of this Master Lease and enter into Permitted Leasehold Mortgages in the same manner as the original Tenant, subject to the terms hereof.

(vi) Notwithstanding any other provisions of this Master Lease, any sale of this Master Lease and of the Leasehold Estate hereby created in any proceedings for the foreclosure of any Permitted Leasehold Mortgage, or the assignment or transfer of this Master Lease and of the Leasehold Estate hereby created in lieu of the foreclosure of any Permitted Leasehold Mortgage, shall be deemed to be a permitted sale, transfer or assignment of this Master Lease and of the Leasehold Estate hereby created to the extent that the successor tenant under this Master Lease is a Discretionary Transferee and the transfer otherwise complies with the requirements of **Section 22.2(ii)** of this Master Lease or the transferee is reasonably consented to by Landlord in accordance with **Section 22.1** hereof.

(f) New Lease. In the event of the termination of this Master Lease other than due to a default as to which the Permitted Leasehold Mortgagee had the opportunity to, but did not, cure the default as set forth in **Sections 17.1(d)** and **17.1(e)** above, Landlord shall provide each Permitted Leasehold Mortgagee with Notice that this Master Lease has been terminated (“**Notice of Termination**”), together with a statement of all sums which would at that time be due under this Master Lease but for such termination, and of all other defaults, if any, then known to Landlord. Landlord agrees to enter into a new lease (“**New Lease**”) of the Leased Property with such Permitted Leasehold Mortgagee or its Permitted Leasehold Mortgagee Designee (in each case if a Discretionary Transferee) for the remainder of the Term (including any Renewal Terms) of this Master Lease, effective as of the date of termination, at the rent and additional rent, and upon the terms, covenants and conditions (including all options to renew but excluding requirements which have already been fulfilled) of this Master Lease, provided:

(i) Such Permitted Leasehold Mortgagee or its Permitted Leasehold Mortgagee Designee shall make a binding, written, irrevocable commitment to Landlord for such New Lease within thirty (30) days after the date such Permitted Leasehold Mortgagee receives Landlord’s Notice of Termination of this Master Lease given pursuant to this **Section 17.1(f)**;

(ii) Such Permitted Leasehold Mortgagee or its Permitted Leasehold Mortgagee Designee shall pay or cause to be paid to Landlord at the time of the execution and delivery of such New Lease, any and all sums which would at the time of execution and delivery thereof be due pursuant to this Master Lease but for such termination and, in addition thereto, all reasonable expenses, including reasonable attorney’s fees, which Landlord shall have incurred by reason of such termination and the execution and delivery of the New Lease and which have not otherwise been received by Landlord from Tenant or other party in interest under Tenant; and

(iii) Such Permitted Leasehold Mortgagee or its Permitted Leasehold Mortgagee Designee shall agree to remedy any of Tenant’s defaults of which said Permitted Leasehold Mortgagee was notified by Landlord’s Notice of Termination (or in any subsequent notice) and which can be cured through the payment of money or are reasonably susceptible of being cured by Permitted Leasehold Mortgagee or its Permitted Leasehold Mortgagee Designee.

(g) New Lease Priorities. It is the intention of the parties that such New Lease shall continue to maintain the same priority as this Master Lease with regard to any Facility Mortgage or any other lien, charge or encumbrance created by the acts of Landlord on the Leased Property or any part thereof or this Master Lease (but Landlord shall not be deemed to make any representation or warranty to that effect). If more than one Permitted Leasehold Mortgagee shall request a New Lease pursuant to subsection (f)(i) of this **Section 17.1**, Landlord shall enter into such New Lease with the Permitted Leasehold Mortgagee whose mortgage is senior in lien, or with its Permitted Leasehold Mortgagee Designee acting for the benefit of such Permitted Leasehold Mortgagee prior in lien foreclosing on Tenant’s interest in this Master Lease. Landlord, without liability to Tenant or any Permitted Leasehold Mortgagee with an adverse claim, may rely upon a title insurance policy issued by a reputable title insurance company as the basis for determining the appropriate Permitted Leasehold Mortgagee who is entitled to such New Lease.

(h) Permitted Leasehold Mortgagee Need Not Cure Specified Defaults. Nothing herein contained shall require any Permitted Leasehold Mortgagee as a condition to its

exercise of the right hereunder to cure any default of Tenant not reasonably susceptible of being cured by such Permitted Leasehold Mortgagee or its Permitted Leasehold Mortgagee Designee (including but not limited to the default referred to in **Section 16.1(a)(iii), (iv), (v), (vi), (vii)** (if the levy or attachment is in favor of such Permitted Leasehold Mortgagee (provided, such levy is extinguished upon foreclosure or similar proceeding or in a transfer in lieu of any such foreclosure) or is junior to the lien of such Permitted Leasehold Mortgagee and would be extinguished by the foreclosure of the Permitted Leasehold Mortgage that is held by such Permitted Leasehold Mortgagee) **or (ix)** and any other sections of this Master Lease which may impose conditions of default not susceptible to being cured by a Permitted Leasehold Mortgagee or a subsequent owner of the Leasehold Estate through foreclosure hereof), in order to comply with the provisions of **Sections 17.1(d)** and **17.1(e)**, or as a condition of entering into the New Lease provided for by **Section 17.1(f)**.

(i) Contest of Event of Default. Notwithstanding anything to the contrary contained in this Master Lease, any Permitted Leasehold Mortgagee (and if more than one, the Permitted Leasehold Mortgagee whose lien is most senior) may, in good faith, contest through appropriate proceedings whether an alleged non-monetary default in fact constitutes an Event of Default, and the cure period available under the terms hereof to such Permitted Leasehold Mortgagee shall be extended so long as such Permitted Leasehold Mortgagee shall be diligently pursuing such contest, provided, that: (i) such Permitted Leasehold Mortgagee shall have commenced such contest prior to the expiration of the applicable notice and cure period herein for such alleged non-monetary Event of Default; (ii) Tenant shall not be, or shall not have, separately contested such alleged non-monetary Event of Default; (iii) pending the outcome of such contest, such Permitted Leasehold Mortgagee shall make payment of all Rent due and payable hereunder, as and when due and payable, and shall make payment and shall otherwise cure all non-monetary Events of Default which are not being contested by such Permitted Leasehold Mortgagee within applicable cure periods provided herein for such non-monetary Events of Default; and (iv) such Permitted Leasehold Mortgagee shall make payment to Landlord of all reasonable attorneys' fees and costs incurred by Landlord in connection with such contest in the event that such Permitted Leasehold Mortgagee is not successful in such contest.

(j) Casualty Loss. A standard mortgagee clause naming each Permitted Leasehold Mortgagee for which notice has been properly provided to Landlord pursuant to **Section 17.1(b)** hereof may be added to any and all insurance policies required to be carried by Tenant hereunder on condition that the insurance proceeds are to be applied in the manner specified in this Master Lease and the Permitted Leasehold Mortgage shall so provide; except that the Permitted Leasehold Mortgage may provide a manner for the disposition of such proceeds, if any, otherwise payable directly to Tenant (but not such proceeds, if any, payable jointly to Landlord and Tenant or to Landlord, to the Facility Mortgagee or to a third-party escrowee) pursuant to the provisions of this Master Lease.

(k) Arbitration; Legal Proceedings. Landlord shall give prompt notice to each Permitted Leasehold Mortgagee (for which notice has been properly provided to Landlord pursuant to **Section 17.1(b)** hereof) of any arbitration or legal proceedings between Landlord and Tenant involving obligations under this Master Lease.

(l) No Merger. So long as any Permitted Leasehold Mortgage is in existence, unless all Permitted Leasehold Mortgagees for which notice has been properly provided to Landlord pursuant to **Section 17.1(b)** hereof shall otherwise expressly consent in writing, the fee title to the Leased Property and the Leasehold Estate of Tenant therein created by this Master Lease shall not merge but shall remain separate and distinct, notwithstanding the acquisition of said fee title and said Leasehold Estate by Landlord or by Tenant or by a third party, by purchase or otherwise.

(m) Notices. Notices from Landlord to the Permitted Leasehold Mortgagee for which notice has been properly provided to Landlord pursuant to **Section 17.1(b)** hereof shall be provided in the method provided in **Section 35.1** hereof to the address or fax number furnished Landlord pursuant to subsection (b) of this **Section 17.1**, and those from the Permitted Leasehold Mortgagee to Landlord shall be mailed to the address designated pursuant to the provisions of **Section 35.1** hereof. Such notices, demands and requests shall be given in the manner described in this **Section 17.1** and in **Section 35.1** and shall in all respects be governed by the provisions of those sections.

(n) Limitation of Liability. Notwithstanding any other provision hereof to the contrary, (i) Landlord agrees that any Permitted Leasehold Mortgagee's liability to Landlord in its capacity as Permitted Leasehold Mortgagee hereunder howsoever arising shall be limited to and enforceable only against such Permitted Leasehold Mortgagee's interest in the Leasehold Estate and the other collateral granted to such Permitted Leasehold Mortgagee to secure the obligations under its Debt Agreement, and (ii) each Permitted Leasehold Mortgagee agrees that Landlord's liability to such Permitted Leasehold Mortgagee hereunder howsoever arising shall be limited to and enforceable only against Landlord's interest in the Leased Property subject to the applicable Permitted Leasehold Mortgage, and no recourse against Landlord shall be had against any other assets of Landlord whatsoever.

(o) Sale Procedure. If an Event of Default shall have occurred and be continuing, the Permitted Leasehold Mortgagee for which notice has been properly provided to Landlord pursuant to **Section 17.1(b)** hereof with the most senior lien on the Leasehold Estate shall have the right to make all determinations and agreements on behalf of Tenant under **Article XXXVI** (including, without limitation, requesting that the process described in **Article XXXVI** be commenced, the determination and agreement of the Tenant's Property FMV and negotiation with Landlord with respect thereto), in each case, in accordance with and subject to the terms and provisions of **Article XXXVI**.

(p) Third Party Beneficiary. Each Permitted Leasehold Mortgagee (for so long as such Permitted Leasehold Mortgagee holds a Permitted Leasehold Mortgage) is an intended third-party beneficiary of this **Article XVII** entitled to enforce the same as if a party to this Master Lease.

17.2 Landlord's Right to Cure Tenant's Default. If Tenant shall fail to make any payment or to perform any act required to be made or performed hereunder or takes any action prohibited hereunder and Tenant fails to cure the same within any cure period provided for herein, Landlord, without waiving or releasing any obligation or default, may, but shall be under no obligation to, make such payment or perform such act or remediate or cure such action for the account and at the expense of Tenant, and may, to the extent permitted by law, enter upon the

Leased Property for such purpose and take all such action thereon as, in Landlord's opinion, may be necessary or appropriate therefor. No such entry shall be deemed an eviction of Tenant. All sums so paid by Landlord and all costs and expenses, including reasonable attorneys' fees and expenses, so incurred, together with interest thereon at the Overdue Rate from the date on which such sums or expenses are paid or incurred by Landlord, shall be paid by Tenant to Landlord on demand as an Additional Charge.

17.3 Tenant's Debt Agreements. Tenant agrees that each and any agreement related to Material Indebtedness (or the principal or controlling agreement relating to such Material Indebtedness) in each case entered into after the Commencement Date will include a provision requiring the lender or lenders thereunder (or the Representative of such lenders) to provide a copy to Landlord of any notices issued by such lenders or the Representative of such lenders to Tenant of a Specified Debt Agreement Default.

17.4 Landlord Cooperation. If, in connection with granting any Permitted Leasehold Mortgage or entering into a Debt Agreement, Tenant shall reasonably request reasonable cooperation from Landlord, Landlord shall provide the same at no cost or expense to Landlord, it being understood and agreed that Tenant shall be required to reimburse Landlord for all such costs and expenses so incurred by Landlord, including, but not limited to, its reasonable attorneys' fees.

ARTICLE XVIII

SALE OF LEASED PROPERTY

18.1 Sale of the Leased Property. Except solely as provided in the last sentence of this **Section 18.1**, Landlord shall not be restricted from selling all or any portion of the Leased Property (including by entering into a merger or other transaction or by any Landlord Change of Control or any other transaction at any tier of ownership). Any sale or other transfer by Landlord of all or any portion of the Leased Property shall be subject in each instance to all of the rights of Tenant under this Master Lease, and Landlord and Landlord's successor or purchaser must comply with the provisions of **Section 8.2** applicable to Landlord and, to the extent necessary, any purchaser or successor Landlord and/or other Related Person of purchaser or successor Landlord (or other Landlord Change of Control) must be approved by all applicable Gaming Authorities to ensure that there is not reasonably likely to be any material impact on the validity of any of the Gaming Licenses or the ability of Tenant to continue to use the Gaming Facilities for gaming activities in substantially the same manner as immediately prior to Landlord's sale or other transfer.

18.2 Transfers to Tenant Competitors. In the event that, and so long as, Landlord is a Tenant Competitor, then, notwithstanding anything herein to the contrary, the following shall apply:

(a) Without limitation of **Section 23.1(c)** of this Master Lease, Tenant shall not be required (1) to deliver the information required to be delivered to Landlord pursuant to **Section 23.1(b)** hereof to the extent the same would give Landlord a "competitive" advantage with respect to markets in which Landlord and Tenant or Tenant's Parent might be competing at any time (it being understood that Landlord shall retain audit rights with respect to such

information to the extent required to confirm Tenant's compliance with the terms of this Master Lease (and Landlord shall be permitted to comply with Securities Exchange Commission, Internal Revenue Service and other legal and regulatory requirements with regard to such information) and provided that appropriate measures are in place to ensure that only Landlord's auditors (which for this purpose shall be a "big four" firm designated by Landlord) and attorneys (as reasonably approved by Tenant) (and not Landlord or any Affiliates of Landlord or any direct or indirect parent company of Landlord or any Affiliate of Landlord) are provided access to such information) or (2) to provide information that is subject to the quality assurance immunity or is subject to attorney-client privilege or the attorney work product doctrine.

(b) With respect to all consent, approval and decision-making rights granted to Landlord under this Master Lease relating to any competitively sensitive matters pertaining to the use and operation of the Leased Property and Tenant's or any Operating Subtenant's business conducted thereat (other than any right of Landlord to grant waivers and amend or modify any of the terms of this Master Lease), Landlord shall establish an independent committee to evaluate, negotiate and approve such matters, independent from and without interference from Landlord's management or Board of Directors. Any dispute over whether a particular decision should be determined by such independent committee shall be submitted for resolution by an Expert pursuant to **Section 34.1** hereof.

18.3 Identity of Tenant Competitors. From time to time (but not earlier than the fifth (5th) anniversary of the Commencement Date and not more than once in any five (5) year period thereafter), each of Landlord and Tenant may provide written notice to the other (a "**Tenant Competitor Notice**") which identifies one or more Person(s) which such notifying party reasonably determines (a) is engaged in online gaming, sports betting or the operation of Gaming Facilities and is a competitor of Tenant, in which event such Person(s) would be deemed to be Tenant Competitors, or (b) no longer is engaged in online gaming, sports betting or the operation of Gaming Facilities or is no longer a competitor of Tenant, in which event such Person(s) would no longer be deemed to be Tenant Competitors. If the party receiving such Tenant Competitor Notice disagrees with the determination of whether a Person referenced in such Tenant Competitor Notice should, or should not, be deemed to be a Tenant Competitor, then any such dispute will be resolved by Experts pursuant to **Section 34.1**.

ARTICLE XIX

HOLDING OVER

19.1 Holding Over. If Tenant shall for any reason remain in possession of the Leased Property of a Facility after the expiration or earlier termination of the Term without the consent, or other than at the request, of Landlord, such possession shall be as a month-to-month tenant during which time Tenant shall pay as Rent each month twice the monthly Rent applicable to the prior Lease Year for such Facility, together with any Additional Charges and all other sums payable by Tenant pursuant to this Master Lease. During such period of month-to-month tenancy, Tenant shall be obligated to perform and observe all of the terms, covenants and conditions of this Master Lease, but shall have no rights hereunder other than the right, to the extent given by law to month-to-month tenancies, to continue its occupancy and use of the Leased Property of, and/or any Tenant Capital Improvements to, such Facility. Nothing

contained herein shall constitute the consent, express or implied, of Landlord to the holding over of Tenant after the expiration or earlier termination of this Master Lease.

ARTICLE XX

RISK OF LOSS

20.1 Risk of Loss. The risk of loss or of decrease in the enjoyment and beneficial use of the Leased Property as a consequence of the damage or destruction thereof by fire, the elements, casualties, thefts, riots, wars or otherwise, or in consequence of foreclosures, attachments, levies or executions (other than by Landlord and Persons claiming from, through or under Landlord) is assumed by Tenant, and except as otherwise provided herein no such event shall entitle Tenant to any abatement of Rent.

ARTICLE XXI

INDEMNIFICATION

21.1 General Indemnification. In addition to the other indemnities contained herein, and notwithstanding the existence of any insurance carried by or for the benefit of Landlord or Tenant, and without regard to the policy limits of any such insurance, Tenant shall protect, indemnify, save harmless and defend Landlord from and against all liabilities, obligations, claims, damages, penalties, causes of action, costs and expenses, including reasonable attorneys', consultants' and experts' fees and expenses, imposed upon or incurred by or asserted against Landlord by reason of: (i) any accident, injury to or death of Persons or loss of or damage to property occurring on or about the Leased Property or adjoining sidewalks under the control of Tenant or any subtenant; (ii) any use, misuse, non-use, condition, maintenance or repair by Tenant or any subtenant of the Leased Property; (iii) any failure on the part of Tenant to perform or comply with any of the terms of this Master Lease; (iv) the non-performance of any of the terms and provisions of any and all existing and future subleases of the Leased Property to be performed by any party thereunder; (v) any claim for malpractice, negligence or misconduct committed by any Person on or working from the Leased Property; (vi) the violation by Tenant or any subtenant of any Legal Requirement; and (vii) any matter arising out of Tenant's (or any Operating Subtenant's or any other subtenant's or any manager's) management, operation, use or possession of any Facility (or any part thereof) or any business or other activity carried on, at, from or in relation to any Facility (or any part thereof) (including any litigation, suit, proceeding or claim asserted against Landlord). Any amounts which become payable by Tenant to Landlord under this **Article XXI** shall be paid within ten (10) Business Days after receipt of Notice from Landlord requesting payment of the same, which notice may not be given until liability therefor has been determined by a final non appealable judgment or settlement or other agreement of the parties, and if not timely paid shall bear interest at the Overdue Rate from the date of such determination to the date of payment. Tenant, at its sole cost and expense, shall contest, resist and defend any such claim, action or proceeding asserted or instituted against Landlord. For purposes of this **Article XXI**, any acts or omissions of Tenant or any subtenant, or by their respective employees, agents, assignees, contractors, subcontractors or others acting for or on behalf of Tenant or any subtenant (whether or not they are negligent, intentional, willful or unlawful), shall be strictly attributable to Tenant.

ARTICLE XXII

SUBLETTING AND ASSIGNMENT

22.1 Subletting and Assignment. Tenant shall not, except as otherwise permitted pursuant to this Master Lease, without Landlord's prior written consent, which shall not be unreasonably withheld, voluntarily or by operation of law assign (which term includes any transfer, sale, encumbering, pledge or other transfer or hypothecation and undergoing any Tenant Change of Control) in whole or in part this Master Lease or Tenant's Leasehold Estate (or any Operating Subtenant's subleasehold interest therein) with respect to any Facility or sublet all or any portion of any Facility. Tenant acknowledges that Landlord is relying upon the expertise of Tenant in the operation of the Facilities and that Landlord entered into this Master Lease with the expectation that Tenant would remain in and operate such Facilities during the entire Term. Any Tenant Change of Control (other than a Tenant Change of Control pursuant to clause (ii) of the definition thereof) or transfer of any direct or indirect ownership interests in Tenant shall not constitute an assignment of Tenant's interest in this Master Lease within the meaning of this **Article XXII** and shall not be prohibited, and the provisions requiring consent of Landlord contained herein shall not apply thereto, if and for so long as, Tenant remains wholly owned and Controlled, directly or indirectly, by Tenant's Parent (it being understood, however, that a Tenant Change of Control pursuant to clause (ii) of the definition thereof shall be prohibited except as, and to the extent, provided in **Section 22.2(i)** below).

22.2 Permitted Assignments. Notwithstanding the foregoing, and subject to **Section 40.1** and subject to compliance with all applicable Gaming Regulations, Tenant may, without Landlord's prior written consent:

(i) assign this Master Lease to a Discretionary Transferee in conjunction with a sale by Tenant of all or substantially all of Tenant's assets relating to the Facilities; provided, that (1) such Discretionary Transferee becomes party to and bound by this Master Lease and agrees in writing to assume the obligations of Tenant under this Master Lease without amendment or modification other than as provided below; (2) the Parent Company of such Discretionary Transferee, if any, has become a Guarantor and provides a Guaranty; (3) the use of the Leased Property continues to comply with the requirements of this Master Lease; and (4) Landlord shall have received executed copies of all documents for such assignment;

(ii) (x) assign this Master Lease by way of foreclosure of the Leasehold Estate or an assignment-in-lieu of foreclosure to any Person (any such foreclosure or assignment, a "**Foreclosure Assignment**") or (y) undergo a Tenant Change of Control whereby a Person acquires beneficial ownership and control of one hundred percent (100%) of the Equity Interests in Tenant as a result of the purchase at a foreclosure of a permitted pledge of the Equity Interests in Tenant or an assignment in lieu of such foreclosure (a "**Foreclosure COC**") or (z) effect the first subsequent sale or assignment of the Leasehold Estate or Tenant Change of Control after a Foreclosure Assignment or a Foreclosure COC whereby a Person so acquires the Leasehold Estate or beneficial ownership and control of one hundred percent (100%) of the Equity Interests in Tenant or the Person who acquired the Leasehold Estate in connection with the Foreclosure Assignment, in each case, effected by a Permitted Leasehold Mortgagee or a Permitted Leasehold Mortgagee Foreclosing Party, in each case if (1) such Person is a

Discretionary Transferee, (2) such Discretionary Transferee agrees in writing to assume the obligations of Tenant under this Master Lease without amendment or modification other than as provided below (which written assumption may be made by a Subsidiary of a Permitted Leasehold Mortgagee or a Permitted Leasehold Mortgagee Designee after a Foreclosure Assignment or Foreclosure COC) and (3) except in the case of a Permitted Leasehold Mortgagee Foreclosing Party, the Parent Company of (x) Tenant (after giving effect to the transfer or assignment) or (y) the entity that succeeds to the assets of Tenant, if any, has become a Guarantor and provided a Guaranty or, if such Discretionary Transferee does not have a Parent Company and such Discretionary Transferee has not assumed the obligations of Tenant under this Master Lease, such Discretionary Transferee has become a Guarantor and provided a Guaranty;

(iii) assign Tenant's Leasehold Estate in this Master Lease with respect to one or more individual Facilities to a Discretionary Transferee; provided, that (1) such Discretionary Transferee enters into a Separate Lease in accordance with **Section 1.5** *mutatis mutandis* (and in such event Landlord will also enter into such Separate Lease and appropriate documentation to delete the assigned Facility from this Master Lease); (2) the Parent Company of such Discretionary Transferee, if any, has become a Guarantor and provided a Guaranty, (3) the use of each Facility continues to comply with the requirements of this Master Lease; (4) Landlord shall have received executed copies of all documents for such assignment; and (5) in no event shall Tenant be permitted to assign its Leasehold Estate pursuant to this clause (iii) with respect to more than one (1) Facility which is located in Las Vegas, Nevada and (A) during the first fifteen (15) Lease Years, more than two (2) Facilities that are not located in Las Vegas, Nevada and (B) during any Lease Year after the fifteenth (15th) Lease Year in addition to the rights set forth in the preceding clause (A) Tenant may assign Tenant's Leasehold Estate with respect to one (1) additional Facility not located in Las Vegas, Nevada (for a total of three (3) such Facilities not located in Las Vegas, Nevada during the Term). Any termination of this Master Lease with respect to a Facility pursuant to the provisions of **Section 7.2(d)** shall count as an assignment of the applicable Facility for the purposes of clause (5) of this **Section 22.2(iii)**. In addition to the foregoing, the following provisions shall apply with respect to any Facility closed pursuant to the provisions of **Section 7.2(d)** (a "**Voluntarily Closed Facility**"): (a) a Voluntarily Closed Facility shall be deemed to have been assigned (i.e., shall count as an assignment of the applicable Facility for the purposes of clause (5) of this **Section 22.2(iii)**) only if Tenant (x) does not timely deliver to Landlord Tenant's Notice of Intent pursuant to **Section 7.2(d)**, stating that Tenant intends to again operate the Voluntarily Closed Facility or (y) timely delivers to Landlord Tenant's Notice of Intent pursuant to **Section 7.2(d)**, stating that Tenant intends to again operate the Voluntarily Closed Facility, but does not thereafter (i) commence operation of the Voluntarily Closed Facility prior to the expiration of Tenant's Recommencement Period, and (ii) continue to operate such Facility for at least ninety (90) consecutive days in accordance with the terms of this Master Lease; (b) if, during the Re-Tenancing Period (plus the Replacement Lease Closing Period, if applicable), (x) Landlord does not terminate this Master Lease with respect to the Voluntarily Closed Facility pursuant to the provisions of **Section 7.2(d)** or (y) (i) Tenant seeks approval from Landlord to reopen the Voluntarily Closed Facility (which approval Landlord may grant or withhold in its sole and absolute discretion), (ii) Landlord approves such reopening, (iii) Tenant commences operation of the Voluntarily Closed Facility prior to the date that is sixty (60) days after the date of Landlord's approval of the reopening of the Voluntarily Closed Facility, and (iv) Tenant continues to operate such Facility for ninety (90) consecutive

days in accordance with the terms of this Master Lease, then, in the case of either clause (x) or (y) of this clause (b), the applicable Voluntarily Closed Facility shall no longer be deemed to have been assigned (i.e., shall no longer count as an assignment of the applicable Facility for the purposes of clause (5) of this **Section 22.2(iii)**). For the avoidance of doubt, if (I) during the Re-Tenancing Period (plus the Replacement Lease Closing Period, if applicable), Landlord does not terminate this Master Lease with respect to the Voluntarily Closed Facility pursuant to the provisions of **Section 7.2(d)**, and thereafter, Landlord elects to provide to Tenant another Voluntary Termination Notice, or (II) Tenant reopened the applicable Facility as provided in clause (b)(y) above, then, in each case, the applicable provisions of **Section 7.2(d)** and the applicable provisions of this **Section 22.2(iii)** shall again be applicable;

(iv) assign this Master Lease, or Tenant's Leasehold Estate in this Master Lease with respect to all, but not less than all, of the Facilities, to Tenant's Parent, a wholly-owned Subsidiary of Tenant's Parent or a wholly-owned Subsidiary of Tenant; provided, (1) such assignee becomes party to and bound by this Master Lease and agrees in writing to assume the obligations of Tenant under this Master Lease without amendment or modification other than as provided below; (2) Tenant remains fully liable hereunder; (3) the use of the Leased Property continues to comply with the requirements of this Master Lease; and (4) Landlord shall have received executed copies of all documents for such assignment; and

(v) pledge or mortgage its Leasehold Estate to a Permitted Leasehold Mortgagee and/or pledge the direct or indirect Equity Interests in Tenant to a Permitted Leasehold Mortgagee.

Upon the effectiveness of any assignment permitted pursuant to this **Section 22.2**, such Discretionary Transferee or Permitted Leasehold Mortgagee Foreclosing Party (and, if applicable, its Parent Company) and Landlord and Tenant shall make such amendments and other modifications to this Master Lease as are reasonably requested by either party to give effect to such assignment and such technical amendments as may be necessary or appropriate in the reasonable opinion of such requesting party in connection with such assignment. After giving effect to any such assignment, unless the context otherwise requires, references to Tenant and Tenant's Parent hereunder shall be deemed to refer to the Discretionary Transferee (or Permitted Leasehold Mortgagee Foreclosing Party) or its Parent Company, as applicable.

22.3 Permitted Sublease Agreements. Notwithstanding the provisions of **Section 22.1**, but subject to compliance with the provisions of this **Section 22.3** and of **Section 40.1** and compliance with all applicable Gaming Regulations, (a) Tenant or any Operating Subtenant may, without Landlord's prior written consent:

(i) sublease the Leased Property or any Facility, or portion thereof to Tenant's Parent, a wholly-owned Subsidiary of Tenant's Parent, a wholly-owned Subsidiary of Tenant or any Operating Subtenant;

(ii) sublease any portion of any Facility (but not an entire Facility) to any Person; provided, that Tenant or any applicable Operating Subtenant does not sublet a Material Portion of any such Facility; and

(iii) sublet a Facility in order to comply with **Section 8.2** hereof.

(b) After an Event of Default has occurred and while it is continuing, Landlord may collect rents from any subtenant and apply the net amount collected to the Rent, but no such collection shall be deemed (i) a waiver by Landlord of any of the provisions of this Master Lease, (ii) the acceptance by Landlord of such subtenant as a tenant or (iii) a release of Tenant from the future performance of its obligations hereunder.

(c) If reasonably requested by Tenant in connection with a sublease permitted under this **Section 22.3** with a subtenant that is not an Affiliate of Tenant or in connection with a management agreement which is permitted under **Section 22.8** with a manager that is not an Affiliate of Tenant, Landlord and such sublessee or manager, as applicable, shall enter into a nondisturbance and attornment agreement with respect to any sublease or management agreement, as applicable, which is entered into by Tenant in good faith with a subtenant or manager that is not an Affiliate of Tenant, such non-disturbance and attornment agreement to be substantially in the form attached hereto as **Exhibit F-1** (and if a Facility Mortgage is then in effect, Landlord shall use reasonable efforts to cause the Facility Mortgagee to enter into such non-disturbance and attornment agreement) whereby the subtenant or manager, as applicable, agrees to attorn to Landlord (or a Facility Mortgagee) and Landlord (and the Facility Mortgagee) agree to recognize such subtenant rights under its sublease or manager rights under its management agreement, as applicable.

(d) Tenant shall have the right, without the consent of Landlord, to enter into subleases with terms, including extensions thereof, that do not exceed the then-existing Term with subtenants which will occupy space primarily for purposes such as, including without limitation, hotel use, meetings and conferences, e-sports, entertainment and experiences venues, show room, night/day clubs, retail sales, bars, food and beverage sales, race and gaming operations, sportsbooks, and other such uses within the Primary Intended Use (and provided Tenant or any applicable Operating Subtenant does not enter into a sublease with respect to a Material Portion of any such Facility). In addition, Tenant shall have the right to enter into subleases for purposes described in the preceding sentence with terms, including extensions thereof, that exceed the then-existing Term with Landlord's consent, which consent Landlord shall not be unreasonably withheld, conditioned or delayed. Any sublease entered into pursuant to this **Section 22.3(d)** shall be entitled to the foregoing provisions of **Section 22.3(c)** regarding the right of such subtenant to a non-disturbance and attornment agreement. Landlord's withholding of consent to any of the foregoing shall be deemed unreasonable if such sublease is on commercially reasonable terms at the time in question taking into consideration, among other things, the identity of the sublessee, the extent of sublessee's investment in the subleased space, the term of such sublease and Landlord's interest in the applicable Facility (including the resulting impact on Landlord's ability to lease such Facility on commercially reasonable terms after the Term of this Master Lease).

(e) The portion of any Facility that Tenant or any applicable Operating Subtenant does not sublease in order to comply with the requirement that Tenant or any applicable Operating Subtenant not sublet a Material Portion of such Facility shall also be the portion of such Facility with respect to which Tenant or any applicable Operating Subtenant does not enter into management agreements in order to comply with the similar requirement contained in **Section 22.8**.

22.4 Required Assignment and Subletting Provisions. Any assignment and/or sublease must provide that:

- (i) in the case of a sublease, it shall be subject and subordinate to all of the terms and conditions of this Master Lease;
- (ii) the use of the applicable Facility (or portion thereof) shall not conflict with any Legal Requirement or any other provision of this Master Lease and any restrictions on Tenant's activities at the relevant Facility shall also similarly apply to any sublessee's activities at the relevant Facility;
- (iii) except as otherwise provided herein, no subtenant or assignee shall be permitted to further sublet all or any part of the applicable Facility or assign this Master Lease or its sublease except insofar as the same would be permitted if it were a sublease by Tenant under this Master Lease (it being understood that any subtenant may pledge and mortgage its subleasehold estate (or allow the pledge of its Equity Interests) to a Permitted Leasehold Mortgagee);
- (iv) in the case of a sublease, in the event of cancellation or termination of this Master Lease for any reason whatsoever or of the surrender of this Master Lease (whether voluntary, involuntary or by operation of law) prior to the expiration date of such sublease, including extensions and renewals granted thereunder, then, at Landlord's option, the subtenant shall make full and complete attornment to Landlord for the balance of the term of the sublease, which the subtenant shall execute and deliver within thirty (30) days after request by Landlord and the subtenant shall waive the provisions of any law now or hereafter in effect which may give the subtenant any right of election to terminate the sublease or to surrender possession in the event any proceeding is brought by Landlord to terminate this Master Lease; and
- (v) in the event the subtenant receives a Notice from Landlord stating that this Master Lease has been cancelled, surrendered or terminated, then, the subtenant shall thereafter be obligated to pay all rentals accruing under said sublease directly to Landlord (or as Landlord shall so direct); all rentals received from the subtenant by Landlord shall be credited against the amounts owing by Tenant under this Master Lease.

Without limitation of the foregoing, (x) any sublease or other agreement or arrangement (including any Operating Sublease) allowing for occupancy or management with respect to a Facility entered into by and between any Tenant Party(ies) and any Affiliate(s) thereof on, prior to, or after the Commencement Date shall be subject and subordinate to all of the terms and conditions of this Master Lease, and each such agreement or arrangement hereafter made shall expressly so provide, and (y) no Operating Subtenant shall be permitted to assign its Operating Sublease other than to a Subsidiary of Tenant's Parent and any such Operating Subtenant shall at all times remain a Subsidiary of Tenant's Parent (it being understood that nothing in this clause (y) shall vitiate Tenant's rights under **Section 22** hereof)

22.5 Costs. Tenant shall reimburse Landlord for Landlord's reasonable costs and expenses incurred in conjunction with the processing and documentation of any assignment or subletting or management agreement (including any request for a subordination, non-disturbance and attornment agreement), including reasonable attorneys', architects', engineers' or other consultants' fees whether or not such sublease or assignment agreement is actually consummated.

22.6 No Release of Tenant's Obligations; Exception. No assignment (other than a permitted transfer pursuant to this **Article XXII**, in connection with a sale or assignment of the entire Leasehold Estate), subletting or management agreement shall relieve Tenant of its obligation to pay the Rent and to perform all of the other obligations to be performed by Tenant hereunder or reduce any such obligations. All obligations and other terms of this Master Lease applicable to Tenant and Tenant's activities and properties shall also apply to each assignee of this Master Lease. The liability of Tenant and any immediate and remote successor in interest of Tenant (by assignment or otherwise), and the due performance of the obligations of this Master Lease on Tenant's part to be performed or observed, shall not in any way be discharged, released or impaired by any (i) stipulation which extends the time within which an obligation under this Master Lease is to be performed, (ii) waiver of the performance of an obligation required under this Master Lease that is not entered into for the benefit of Tenant or such successor, or (iii) failure to enforce any of the obligations set forth in this Master Lease, provided, that Tenant shall not be responsible for any additional obligations or liability arising as the result of any modification or amendment of this Master Lease by Landlord and any assignee of Tenant that is not an Affiliate of Tenant. Notwithstanding the foregoing, in the event of an assignment permitted under **Section 22.2(iii)**, Landlord will agree, with respect only to those Facilities so assigned, to release Tenant and Guarantor from their respective obligations solely pertaining to those Facilities so assigned under this Master Lease and any Guaranty, provided; that the assignment is to a Discretionary Transferee and the Parent Company of the Discretionary Transferee, if any, executes a Guaranty as required by **Section 22.2(iii)**. As a condition precedent to Landlord's release of Tenant and/or Guarantor, the successor guarantor shall execute and deliver a Guaranty in substantially the same form and substance as the Guaranty being released and Landlord and such Discretionary Transferee, as the successor tenant, shall execute a new master lease with respect to the assigned Facilities in substantially the same form and substance as this Master Lease as provided in **Section 1.5 mutatis mutandis**.

22.7 Separate Lease; Rent Allocated. If reasonably requested by Tenant in connection with an assignment of Tenant's Leasehold Estate with respect to one or more Facilities permitted under **Section 22.2(iii)**, Landlord will agree to enter into a replacement master lease with respect to the relevant Facility(ies) with the assignee thereof in form and substance substantially identical to this Master Lease (subject to such reasonable modifications as are reasonably agreed to by the parties in order to reflect a single asset gaming REIT lease transaction), with Rent equal to (or, if applicable, apportioned between such new master lease and this Master Lease based on) the Allocable Rent Amount and to remove such Leased Property from this Master Lease, all in accordance with the procedure set forth in **Section 1.5 mutatis mutandis**. In such case, the Parent Company of the Discretionary Transferee, if any, shall deliver a Guaranty to Landlord with respect to all obligations under the Separate Lease, and Tenant and Guarantor shall have no further obligations under this Master Lease or the Guaranty with respect to the applicable Facility(ies). Notwithstanding **Section 1.5(e)**, any costs and expenses relating to

a Separate Lease entered into pursuant to **Section 22.2** shall be borne by Tenant and not by Landlord.

22.8 Management Agreements. Tenant represents and warrants that **Schedule 5** contains a true, correct and complete list of all material management agreements or similar arrangements in effect with respect to the Leased Property on the Commencement Date. Nothing contained herein shall prohibit or restrict Tenant's ability to hereafter enter into management agreements or similar arrangements (including any amendments thereto) with third parties or amend or modify existing management agreements or similar arrangements so long as the same are limited in duration to the then-existing Term provided that they do not relate to the entirety of any Facility and are expressly subordinate to this Master Lease (and provided Tenant or any applicable Operating Subtenant does not enter into management agreements or similar arrangements with respect to a Material Portion of any Facility). In addition, Tenant shall have the right to enter into management agreements or similar arrangements (including any amendments thereto) or amend or modify existing management agreements or similar arrangements that exceed the then-existing Term with third parties with Landlord's consent, which consent shall not be unreasonably withheld, conditioned or delayed (it being understood, Landlord's withholding of consent to any of the foregoing shall be deemed unreasonable if such management agreement is on commercially reasonable terms at the time in question taking into consideration, among other things, the identity of the manager, the term of such management agreement and Landlord's interest in the applicable Facility (including the resulting impact on Landlord's ability to lease such Facility on commercially reasonable terms after the Term of this Master Lease)). Any management agreement entered into pursuant to this **Section 22.8** shall be entitled to the provisions of **Section 22.3(c)** regarding the right of such manager to a non-disturbance and attornment agreement. The portion of any Facility with respect to which Tenant or any applicable Operating Subtenant does not enter into management agreements in order to comply with the requirement that it not enter into management agreements with respect to a Material Portion of such Facility shall also be the portion of such Facility that Tenant or any applicable Operating Subtenant does not sublease in order to comply with the similar requirement contained in **Section 22.3**. For the avoidance of doubt, all management agreements made or amended pursuant to this **Section 22.8** shall be subject to **Section 40.1** and in compliance with all applicable Gaming Regulations.

ARTICLE XXIII

REPORTING; CONFIDENTIALITY

23.1 Officer's Certificate and Financial Statements.

(a) Officer's Certificate. Each of Landlord and Tenant shall, at any time and from time to time, but no more frequently than once per Lease Year, upon receipt of not less than ten (10) Business Days' prior written request from the other party hereto, furnish a certificate executed by an appropriate officer with knowledge of the matters set forth therein in the form attached hereto as **Exhibit C**. Any such certificate furnished pursuant to this **Article XXIII** may be relied upon by the receiving party and any current or prospective Facility Mortgagee, Permitted Leasehold Mortgagee, ground or underlying landlord or purchaser of the Leased Property.

(b) Statements. Tenant shall furnish the following statements to Landlord:

(i) (I) In the event that Tenant's Parent is a reporting company under the Exchange Act, on the earlier of five (5) Business Days following (x) each date specified in the Exchange Act and the SEC's related rules and regulations (including any additional time permitted under Rule 12b-25 or any successor provision thereof) that the Tenant's Parent is required to file SEC Reports (each a "**SEC Filing Deadline**") and (y) the date the Tenant's Parent files its SEC Reports with the SEC or (II) in the event that Tenant's Parent is not a reporting company under the Exchange Act, no later than five (5) Business Days prior to Landlord REIT's applicable SEC requirements, if any, to file, or include in any of Landlord REIT's SEC Reports, Tenant Parent's Financial Statements: (A) Tenant's Parent's Financial Statements required to be included in such SEC Report or the SEC Report containing such Financial Statements; (B) a certificate, executed by a Responsible Officer of the Tenant or Tenant's Parent certifying that no default has occurred under this Master Lease or, if such a default has occurred, specifying the nature and status of such default; and (C) (1) with respect to annual Financial Statements, a report with respect to Tenant's Parent's Financial Statements from Tenant's Parent's independent registered public accounting firm, which report shall not be subject to any qualification or exception expressing substantial doubt about the ability of the Tenant's Parent and its subsidiaries to continue as a "going concern" or any exception as to the scope of such audit (excluding any qualification as to going concern relating to any debt maturities in the twelve month period following the date such report is delivered or any projected financial performance or covenant default in any Indebtedness or this Master Lease in such twelve month period) and that such Financial Statements have been prepared in accordance with GAAP and Tenant's Parent's accountants have examined such Financial Statements in accordance with the standards of the PCAOB (or generally accepted auditing standards, if not required to file SEC Reports at such time) and (2) with respect to quarterly Financial Statements, a certificate, executed by a Responsible Officer of the Tenant's Parent, certifying that such Financial Statements fairly present, in all material respects, the financial position and results of operations of Tenant's Parent and its Subsidiaries on a consolidated basis in accordance with GAAP as at such date and for such period (subject to normal year-end audit adjustments, the absence of footnotes and other informational disclosures customarily omitted from interim financial statements). Financial statements required to be delivered pursuant to this **Section 23.1(b)(i)** will be deemed delivered to the extent such documents are included in materials filed with the SEC and shall be deemed to have been delivered on the date such documents are publicly available on the SEC's website;

(ii) Within seventy-five (75) days after the end of each of the Tenant's Fiscal Years (commencing with the Fiscal Year ending December 31, 2022), (a) a budget and projection by fiscal month for the Fiscal Year in which the budget is delivered, including projected Net Revenue and EBITDAR with respect to each Facility, (b) a budget and projection by fiscal year for the second and third subsequent Fiscal Years, including projected Net Revenue and EBITDAR with respect to each Facility, and (c) a capital budget for each Facility for the Fiscal Year in which the budget is delivered and for the following Fiscal Year;

(iii) Within thirty (30) days after the end of each calendar month, the following items as they pertain to each Facility: occupancy percentages, including average daily rate and revenue per available room for the subject month, the monthly and year-to-date

operating statements prepared for each calendar period, noting net revenue, operating expenses and operating income, and other information reasonably necessary and sufficient to fairly represent the financial position and results of operations of each Facility and its respective Operating Subtenant during such calendar period;

(iv) Within sixty (60) days after the expiration of any calendar quarter, Tenant shall deliver to Landlord a Financial Covenant compliance report, which report shall include an Officer's Certificate in substantially the form attached hereto as **Exhibit H**, certifying that the Financial Covenant is in compliance under **Section 23.3** together with reasonable detail evidencing such compliance;

(v) (a) commercially reasonable efforts to deliver such additional financial information and projections as may be reasonably requested by Landlord, so long as any reasonable out-of-pocket cost of Tenant or its Related Persons is borne by Landlord, in connection with syndications, private placements or public offerings by Landlord of debt securities or loans or equity or hybrid securities and (b) such additional information, Tenant's Parent Financial Statements if not otherwise provided pursuant to **Section 23.1(b)(i)**, and unaudited quarterly financial information concerning the Leased Property, Tenant, and Tenant's Parent as Landlord or its Affiliates may require for their filings with the SEC under both the Securities Act and the Exchange Act, including, but not limited to SEC Reports and registration statements to be filed by Landlord or its Affiliates during the Term of this Master Lease, the Internal Revenue Service and any other federal, state or local regulatory agency with jurisdiction over Landlord or its Subsidiaries;

(vi) Prompt Notice to Landlord of any action, proposal or investigation by any agency or entity, or complaint to such agency or entity, (any of which is called a "**Proceeding**"), known to Tenant, the result of which Proceeding would reasonably be expected to be to revoke or suspend or terminate or modify in a way materially adverse to Tenant, or fail to renew or fully continue in effect, any license or certificate or operating authority pursuant to which Tenant carries on any material part of the Primary Intended Use of all or any portion of the Leased Property;

(vii) Upon request, not to be made more than once per fiscal quarter, an updated rent roll for each Facility; and

(viii) Tenant further agrees to provide the financial and operational reports to be delivered to Landlord under this Master Lease in such electronic format(s) as may reasonably be required by Landlord from time to time in order to (i) facilitate Landlord's internal financial and reporting database, and (ii) permit Landlord to calculate any rent, fee or other payments due under Ground Leases. Tenant also agrees that Landlord shall have audit rights with respect to such information to the extent required to confirm Tenant's compliance with the terms of this Master Lease (including, without limitation, calculation of Net Revenues).

(c) Notwithstanding the foregoing provisions of this **Section 23.1** or any other provision under this Master Lease, Tenant shall not be obligated under any circumstances (1) to provide information that is subject to (i) a bona fide confidentiality agreement, (ii) the quality assurance immunity, or (iii) attorney-client privilege or the attorney work product doctrine or (2) to provide information or assistance that could reasonably be expected to give Landlord or its

Affiliates a “competitive” advantage with respect to markets in which Landlord or any of Landlord’s Affiliates and Tenant, Tenant’s Parent or any of Tenant’s Affiliates might be competing at any time (“**Restricted Information**”) it being understood that Restricted Information shall not include revenue and expense information relevant to Landlord’s calculation and verification of (i) the Escalation amount and (ii) Tenant’s compliance with **Section 9.1(e)** and **Section 23.3** hereof, provided that, the foregoing information shall be provided on a portfolio-wide (as opposed to Facility-by-Facility) basis, except where required by Landlord to be able to make submissions to, or otherwise to comply with requirements of, gaming and other regulatory authorities, in which case such additional information (including Facility-by-Facility performance information) will be provided by Tenant to Landlord to the extent so required (provided, that Landlord shall in such instance first execute a nondisclosure agreement in a form reasonably satisfactory to Tenant with respect to such information). Landlord shall retain audit rights with respect to Restricted Information to the extent required to confirm Tenant’s compliance with the terms of this Master Lease (and Landlord’s or its Affiliates compliance with SEC, Internal Revenue Service and other legal and regulatory requirements) and provided, that appropriate measures are in place to ensure that only Landlord’s auditors and attorneys (and not Landlord or any of Landlord’s other Affiliates) are provided access to such information. In addition, Landlord shall not disclose any Restricted Information to any Person or any employee, officer or director of any Person (other than Landlord or a Subsidiary of Landlord, in each case, on a “need to know” basis) that directly or indirectly owns or operates any gaming business or is a Tenant Competitor; provided, further, that in no event shall Landlord disclose any Restricted Information or any other information that is Confidential Information (except as permitted by **Section 23.2(b)**) provided pursuant to this Master Lease to any Person involved in the ownership (directly or indirectly), management or operation of any Tenant Competitor.

(d) In each case so long as the following does not place an unreasonable burden on Tenant and so long as any out-of-pocket cost of Tenant or its Related Persons is borne by Landlord, Tenant shall, and shall cause Tenant’s Parent and its direct and indirect Subsidiaries to, afford Landlord, Landlord’s Parent and their Related Persons reasonable access, within a reasonable period after request, during normal business hours to (A) the books and records pertaining to the original tax basis of the assets of Tenant’s Parent and its direct and indirect Subsidiaries related to the Leased Properties, including, without limitation: (i) the date each asset was placed in service, (ii) accumulated depreciation, (iii) depreciable lives and depreciation methods and conventions, (iv) information to determine depreciation under both MACRS and ADS, (v) detailed 704(c) schedules, reflecting the 704(c) layers for each asset by partner at the applicable subsidiary level and (vi) any other information as is reasonably requested to assist Landlord, Landlord’s Parent and their Related Persons in determining tax basis and tax depreciation and tax allocations post transaction, and (B) (i) by December 31 of each calendar year, a schedule listing the adjusted tax bases of assets retired or disposed during such year that was part of the initial Leased Property as of the Commencement Date and (ii) a final schedule listing the adjusted tax bases of assets retired or disposed during such year by June 30 of the following year. To the extent that Tenant or Tenant’s Parent requires the services of a cost segregation provider in order to prepare the reports described in clause (B)(i) or (B)(ii) above, such costs will be borne by the Landlord, subject to Landlord’s prior approval of such services and costs. Landlord and Tenant agree to cooperate to identify assets that will be subject to the reporting in this clause (B). Upon request by Landlord, the information described in this paragraph shall be provided promptly in Microsoft Excel or such other reasonable format as

determined by Tenant. In addition, each of Tenant's Parent and its direct and indirect Subsidiaries shall use their respective reasonable efforts to cause their respective appropriate Related Persons to participate in meetings and telephone conferences with Landlord, Landlord's Parent and/or their Related Persons at such times as may be reasonably requested during regular business hours.

23.2 Confidentiality; Public Offering Information.

(a) The parties recognize and acknowledge that they may receive certain Confidential Information of the other party. Each party agrees that neither such party nor any of its Representatives acting on its behalf shall, during or within five (5) years after the termination or expiration of this Master Lease, directly or indirectly use any Confidential Information of the other party or disclose Confidential Information of the other party to any person for any reason or purpose whatsoever, except as reasonably required in order to comply with the obligations and otherwise as permitted under the provisions of this Master Lease. Notwithstanding the foregoing, in the event that a party or any of its Representatives is requested or becomes legally compelled (pursuant to any legal, governmental, administrative or regulatory order, authority or process) to disclose any Confidential Information of the other party, it will, to the extent reasonably practicable and not prohibited by law, provide the party to whom such Confidential Information belongs prompt Notice of the existence, terms or circumstances of such event so that the party to whom such Confidential Information belongs may seek a protective order or other appropriate remedy or waive compliance with the provisions of this **Section 23.2(a)**. In the event that such protective order or other remedy is not obtained or the party to whom such Confidential Information belongs waives compliance with this **Section 23.2(a)**, the party compelled to disclose such Confidential Information will furnish only that portion of the Confidential Information or take only such action as, based upon the advice of your legal counsel, is legally required and will use commercially reasonable efforts to obtain reliable assurance that confidential treatment will be accorded any Confidential Information so furnished. The party compelled to disclose the Confidential Information shall cooperate with any action reasonably requested by the party to whom such Confidential Information belongs to obtain a protective order or other reliable assurance that confidential treatment will be accorded to the Confidential Information.

(b) Notwithstanding anything to the contrary in **Section 23.2(a)**, Tenant specifically agrees that Landlord may include financial information and such information concerning the operation of the Facilities (1) which is approved by Tenant in its sole discretion, (2) which is publicly available, (3) the EBITDAR to Rent Ratio of the Tenant Parties, or (4) the inclusion of which is approved by Tenant in writing, which approval may not be unreasonably withheld, in offering memoranda or prospectuses or confidential information memoranda, or similar publications or marketing materials, rating agency presentations, investor presentations or disclosure documents in connection with syndications, private placements or public offerings of Landlord's securities or loans or securities or loans of any direct or indirect parent entity of Landlord, and any other reporting requirements under applicable federal and state laws, including those of any successor to Landlord, provided, that, with respect to matters permitted to be disclosed solely under clauses (1) and (4), the recipients thereof shall be obligated to maintain the confidentiality thereof pursuant to **Section 23.2(a)** or pursuant to confidentiality provisions substantially similar thereto and to comply with all federal, state and other securities laws

applicable with respect to such information. Unless otherwise agreed by Tenant, neither Landlord nor Landlord's Parent shall revise or change the wording of information previously publicly disclosed by Tenant and furnished to Landlord or Landlord's Parent pursuant to **Section 23.1** or this **Section 23.2** and Landlord's Form 10-Q or Form 10-K (or supplemental information filed or furnished in connection therewith) shall not disclose the operational results of the Facilities prior to Tenant's Parent's, Tenant's or their respective Affiliate's public disclosure thereof so long as Tenant's Parent, Tenant or such Affiliate reports such information in a timely manner consistent with historical practices and SEC disclosure requirements. Tenant agrees to provide such other reasonable information and, if necessary, reasonable participation in road shows and other presentations at Landlord's or Landlord's Parent's sole cost and expense, with respect to Tenant and its Leased Property to facilitate a public or private debt or equity offering or syndication by Landlord or Landlord's Parent or to satisfy Landlord's or Landlord's Parent's SEC disclosure requirements. In this regard, Landlord shall provide to Tenant a copy of any information prepared by Landlord to be published, and Tenant shall have a reasonable period of time (not to exceed three (3) Business Days) after receipt of such information to notify Landlord of any corrections.

(c) Except as provided in clause (a) or (b) above, nothing herein shall permit the disclosure of Confidential Information regarding Tenant, Tenant's Parent or their Affiliates to any Tenant Competitor.

(d) Each of Landlord and/or Landlord's Parent, on the one hand, and Tenant and/or Tenant's Parent, on the other hand, shall cooperate with such other parties to provide such information and documentation as may be reasonably requested by such other parties in connection with or in furtherance of the accounting considerations for the classification of this Lease and any subsequent modifications thereto, including, without limitation, the implicit rate in this Master Lease, as determined in accordance with GAAP, and the corresponding supporting documentation necessary to satisfy accounting and audit requirements, including without limitation, residual value assumptions, valuation reports obtained from a qualified "Big 4" accounting firm, Grant Thornton or equivalent appraiser providing for the fair value of the Facilities and their economic useful lives, and other inputs into the implicit rate.

23.3 Financial Covenants.

(a) Tenant's Parent on a consolidated basis with Tenant shall maintain a ratio of (x) EBITDA (plus, without duplication, any rent expense associated with any ground leases pursuant to which Tenant's Parent or any of its Subsidiaries leases real property, and rent expense under this Master Lease (as may be amended from time to time) or any similar lease) plus rent expense under any similar lease to (y) Rent plus cash rent paid under any similar lease, determined on the last day of any fiscal quarter on a cumulative basis for the preceding Test Period (commencing with the Test Period ending on the later of September 30, 2022 and the last day of the first full calendar quarter commencing immediately following the Commencement Date (the "**First Test Period**")) of at least 1.1:1 (the foregoing required Tenant's Parent EBITDA to Rent ratio being referred to as the "**Coverage Ratio**," and the test being referred to as the "**Financial Covenant**"). In the event that Tenant's interest in this Master Lease is assigned, the foregoing Financial Covenant shall apply on a consolidated basis to such successor Tenant and any parent entity(ies) of any successor Tenant that has provided a Guaranty.

(b) If (commencing with the First Test Period or for any Test Period thereafter) Tenant fails to meet the Financial Covenant, then Tenant may, at Tenant's option, within thirty (30) days after the earlier of the date Tenant delivers to Landlord the Officer's Certificate required to be delivered pursuant to **Section 23.1(b)(iv)** of this Master Lease or the date by which the same is required to be delivered, that evidences the commencement of a Covenant Failure Period, cause an amount (which may be provided through cash, one or more Letters of Credit or combination thereof or such other form of credit support reasonably acceptable to Landlord) equal to (x) the Rent that would be payable for the period of one (1) calendar year or (y) solely in the event that Tenant's failure to meet the Financial Covenant with respect to the applicable Test Periods precipitating such Covenant Failure Period was a Covenant Failure (Unavoidable Delay), the Rent that would be payable for the period of six (6) months, in each case commencing immediately subsequent to the date of such determination (taking into account the Escalation) to be deposited into a Covenant Security Escrow Account in accordance with irrevocable escrow instructions consistent with this paragraph and reasonably satisfactory to Landlord and Tenant. At all times until the Covenant Security Coverage Cure has occurred, the amount of the Covenant Security Escrow Account (or the amount of the Letters of Credit, or both) shall equal the Rent that would be payable for the next calendar year (or next six (6) months, as applicable) (taking into account the Escalation, as applicable), and Tenant shall increase the funds in the Covenant Security Escrow Account (or the amount of the Letters of Credit, or both) in order to satisfy any deficiency within five (5) Business Days' notice from Landlord. In the event that Tenant has delivered a Renewal Notice and a Covenant Security Coverage Cure has not occurred, then Tenant shall be required to increase the funds in the Covenant Security Escrow Account (or the amount of the Letters of Credit, or both) in order to reflect the increase in the Rent (and any Escalation) for the next one year period or six (6) month period, as applicable. The amounts held in a Covenant Security Escrow Account shall remain in such account except to the extent that they are required to be released to Landlord or Tenant in accordance with this paragraph. Upon the date that Tenant delivers to Landlord and Officer's Certificate pursuant to **Section 23.1(b)(iv)** of this Master Lease that evidences a Covenant Security Coverage Cure or the expiration or earlier termination of this Master Lease (other than a termination as a result of an Event of Default by Tenant), if Tenant has deposited funds or Letters of Credit pursuant to the provisions of this **Section 23.3**, such funds or Letters of Credit (in each case, to the extent remaining) shall promptly be returned to Tenant by the escrow agent. If an Event of Default has occurred and is continuing, Landlord shall be entitled to receive the amount in the Covenant Security Escrow Account and such amount shall be applied to Landlord's damages, pursuant to **Article XVI**. The irrevocable escrow instructions will provide for escrow agent to release funds to Landlord to Tenant only upon written demand to the escrow agent and the other party and failure of such other party to object to such release within five (5) Business Days thereafter. For the avoidance of doubt, the process described in this **Section 23.3** is not limited to one occurrence and could repeat multiple times during the Term.

23.4 Landlord Obligations. Landlord acknowledges and agrees that certain of the information contained in the Financial Statements or any other information provided by Tenant may be non-public financial or operational Confidential Information with respect to Tenant and/or its Affiliates, including with respect to Tenant's or any Operating Subtenant's operation of the Leased Property. Landlord further agrees (i) to maintain the confidentiality of such non-public Confidential Information; provided, however, that notwithstanding the foregoing and notwithstanding anything to the contrary in **Section 23.2(a)** hereof or otherwise herein, Landlord

shall have the right to share such information in compliance with **Section 23.2(b)** hereof and with Landlord's officers, employees, directors, Facility Mortgagee, agents and lenders party to material debt instruments entered into by Landlord, actual or prospective arrangers, underwriters, investors or lenders with respect to Indebtedness or Equity Interests that may be issued by Landlord, rating agencies, accountants, attorneys and other consultants (the "**Landlord Representatives**"), provided, that (x) such Landlord Representative is advised of the confidential nature of such Confidential Information and agrees to maintain the confidentiality thereof pursuant to **Section 23.2(a)** or pursuant to confidentiality provisions substantially similar thereto (or in accordance with the standard syndication process or customary market standards for dissemination of such type of information, including "click through" or other affirmative actions on the part of the recipient to receive such information) and to comply with all federal, state and other securities laws applicable with respect to such information and (y) such information shall not be disclosed to any Tenant Competitor and (ii) that neither it nor any Landlord Representative shall be permitted to engage in any transactions with respect to the stock or other equity or debt securities or syndicated loans of Tenant or Tenant's Parent based on any such Confidential Information provided by or on behalf of Landlord or Landlord's Parent (provided, that this provision shall not govern the provision of information by Tenant or Tenant's Parent). In addition to the foregoing, Landlord agrees that, upon request of Tenant, it shall from time to time provide such information as may be reasonably requested by Tenant with respect to Landlord's capital structure and/or any financing secured by this Master Lease or the Leased Property in connection with Tenant's review of the treatment of this Master Lease under GAAP. In connection therewith, Tenant agrees to maintain the confidentiality of any such Confidential Information; provided, however, Tenant shall have the right to share such information with Tenant's Parent and Tenant and Tenant's Parent's respective officers, employees, directors, Permitted Leasehold Mortgagees, agents and lenders party to material debt instruments entered into by Tenant or Tenant's Parent, actual or prospective arrangers, underwriters, investors or lenders with respect to Indebtedness or Equity Interests that may be issued by Tenant or Tenant's Parent, rating agencies, accountants, attorneys and other consultants (the "**Tenant Representatives**") so long as such Tenant Representative is advised of the confidential nature of such Confidential Information and agrees (i) to maintain the confidentiality thereof pursuant to **Section 23.2(a)** or pursuant to confidentiality provisions substantially similar thereto (or in accordance with the standard syndication process or customary market standards for dissemination of such type of information, including "click through" or other affirmative actions on the part of the recipient to receive such information) and to comply with all federal, state and other securities laws applicable with respect to such information and (ii) not to engage in any transactions with respect to the stock or other equity or debt securities or syndicated loans of Landlord or Landlord's Parent based on any such Confidential Information provided by or on behalf of Tenant or Tenant's Parent (provided, that this provision shall not govern the provision of information by Landlord or Landlord's Parent).

ARTICLE XXIV

LANDLORD'S RIGHT TO INSPECT

24.1 Landlord's Right to Inspect. Subject to any restrictions imposed by any Gaming Regulations or Gaming Authorities, upon reasonable advance notice to Tenant, Tenant shall permit Landlord and its authorized representatives to inspect its Leased Property during usual business hours. Landlord shall take care to minimize disturbance of the operations on the Leased Property, except in the case of emergency. Landlord shall indemnify and hold Tenant harmless from and against any claims, losses, costs or expenses arising as a result of Landlord's or its representative's entry onto the Leased Property.

ARTICLE XXV

NO WAIVER

25.1 No Waiver. No delay, omission or failure by Landlord or Tenant to insist upon the strict performance of any term hereof or to exercise any right, power or remedy hereunder and no acceptance of full or partial payment of Rent during the continuance of any default or Event of Default shall impair any such right or constitute a waiver of any such breach or of any such term. No waiver of any breach shall affect or alter this Master Lease, which shall continue in full force and effect with respect to any other then existing or subsequent breach.

ARTICLE XXVI

REMEDIES CUMULATIVE

26.1 Remedies Cumulative. Unless otherwise provided herein and to the extent permitted by law, each legal, equitable or contractual right, power and remedy of Landlord now or hereafter provided either in this Master Lease or by statute or otherwise shall be cumulative and concurrent and shall be in addition to every other right, power and remedy and the exercise or beginning of the exercise by Landlord of any one or more of such rights, powers and remedies shall not preclude the simultaneous or subsequent exercise by Landlord of any or all of such other rights, powers and remedies.

ARTICLE XXVII

ACCEPTANCE OF SURRENDER

27.1 Acceptance of Surrender. No surrender to Landlord of this Master Lease or of any Leased Property or any part thereof, or of any interest therein, shall be valid or effective unless agreed to and accepted in writing by Landlord, and no act by Landlord or any representative or agent of Landlord, other than such a written acceptance by Landlord, shall constitute an acceptance of any such surrender.

ARTICLE XXVIII

NO MERGER

28.1 No Merger. There shall be no merger of this Master Lease or of the Leasehold Estate created hereby by reason of the fact that the same Person may acquire, own or hold, directly or indirectly, (i) this Master Lease or the Leasehold Estate created hereby or any interest in this Master Lease or such Leasehold Estate and (ii) the fee estate in the Leased Property.

ARTICLE XXIX

CONVEYANCE BY LANDLORD

29.1 Conveyance by Landlord. If Landlord or any successor owner of the Leased Property shall convey the Leased Property in accordance with **Section 18.1** and the other terms of this Master Lease other than as security for a debt, and the grantee or transferee expressly assumes all obligations of Landlord arising after the date of the conveyance, Landlord or such successor owner, as the case may be, shall thereupon be released from all future liabilities and obligations of Landlord under this Master Lease arising or accruing from and after the date of such conveyance or other transfer and all such future liabilities and obligations shall thereupon be binding upon the new owner.

ARTICLE XXX

QUIET ENJOYMENT

30.1 Quiet Enjoyment. So long as Tenant shall pay the Rent as the same becomes due and shall fully comply with all of the terms of this Master Lease and fully perform its obligations hereunder, Tenant shall peaceably and quietly have, hold and enjoy the Leased Property for the Term, free of any claim or other action by Landlord or anyone claiming by, through or under Landlord, but subject to all liens and encumbrances of record as of the Commencement Date or specifically provided for in this Master Lease or consented to by Tenant in writing. No failure by Landlord to comply with the foregoing covenant shall give Tenant any right to cancel or terminate this Master Lease or abate, reduce or make a deduction from or offset against the Rent or any other sum payable under this Master Lease, or to fail to perform any other obligation of Tenant hereunder. Notwithstanding the foregoing, Tenant shall have the right, by separate and independent action to pursue any claim it may have against Landlord as a result of a breach by Landlord of the covenant of quiet enjoyment contained in this **Article XXX**.

ARTICLE XXXI

LANDLORD'S FINANCING

31.1 Landlord's Financing. Without the consent of Tenant, Landlord may from time to time, directly or indirectly, create or otherwise cause to exist any Facility Mortgage upon the Leased Property or any portion thereof or interest therein. This Master Lease is and at all times shall be subject and subordinate to any such Facility Mortgage which may now or hereafter affect the Leased Property or any portion thereof or interest therein and to all renewals,

modifications, consolidations, replacements, restatements and extensions thereof or any parts or portions thereof; provided, however, that the subjection and subordination of this Master Lease and Tenant's leasehold interest hereunder to any Facility Mortgage or any Foreclosure Purchaser (as defined below) including any Facility Mortgage in place at the time of execution of this Master Lease or contemporaneously herewith shall be conditioned upon the execution by the holder of each Facility Mortgage and delivery to Tenant of a subordination, nondisturbance and attornment agreement substantially in the form attached hereto as **Exhibit F-2** or as otherwise satisfactory to Tenant and the Facility Mortgagee. Landlord shall deliver such a subordination, non-disturbance and attornment agreement to Tenant contemporaneously with the execution of this Master Lease with respect to any Facility Mortgage existing at the time of execution of this Master Lease. With respect to any Facility Mortgage on any vessel or barge, Landlord shall be required to deliver such subordination, nondisturbance and attornment agreement to Tenant from each holder of a Facility Mortgage on such vessel or barge prior to the recording or registration of such Facility Mortgage on such vessel or barge in a manner that would not, or the enforcement of remedies thereunder would not, affect or disturb the rights of Tenant under this Master Lease or the provisions of **Article XVII** which benefit any Permitted Leasehold Mortgagee, in the case of any Permitted Leasehold Mortgagee; provided, that upon the request of Landlord, such subordination, nondisturbance and attornment agreement shall be executed by Tenant as well as Landlord and be in substantially the form attached hereto as **Exhibit F-2** or as otherwise satisfactory to Tenant and the Facility Mortgagee. Each such subordination, nondisturbance and attornment agreement shall bind such holder of such Facility Mortgage and its successors and assigns as well as any person who acquires any portion of the Leased Property by assignment or in a foreclosure or similar proceeding or in a transfer in lieu of any such foreclosure or a successor owner of the Leased Property as well as their respective successors and assigns (each, a "**Foreclosure Purchaser**") and which shall provide that the holder of such Facility Mortgage, and any Foreclosure Purchaser shall not disturb Tenant's leasehold interest or possession of the Leased Property in accordance with the terms hereof, or any of Tenant's rights, privileges and options, and shall give effect to this Master Lease, including the provisions of **Article XVII** which benefit any Permitted Leasehold Mortgagee (as if such Facility Mortgagee or Foreclosure Purchaser were the landlord under this Master Lease (it being understood that if an Event of Default has occurred and is continuing at such time such parties shall be subject to the terms and provisions hereof concerning the exercise of rights and remedies upon such Event of Default including the provisions of **Articles XVI** and **XXXVI**)). In connection with the foregoing and at the request of Landlord, Tenant shall promptly execute a subordination, nondisturbance and attornment agreement, in form and substance substantially in the form of **Exhibit F-2** or otherwise reasonably satisfactory to Tenant, and the Facility Mortgagee or prospective Facility Mortgagee, as the case may be, which will incorporate the terms set forth in the preceding sentence. Except for the documents described in the preceding sentences, this provision shall be self-operative and no further instrument of subordination shall be required to give it full force and effect. If, in connection with obtaining any Facility Mortgage for the Leased Property or any portion thereof or interest therein, a Facility Mortgagee or prospective Facility Mortgagee shall request reasonable cooperation from Tenant, Tenant shall provide the same at no cost or expense to Tenant, it being understood and agreed that Landlord shall be required to reimburse Tenant for all such costs and expenses so incurred by Tenant, including, but not limited to, its reasonable attorneys' fees.

31.2 Attornment. If Landlord's interest in the Leased Property or any portion thereof or interest therein is sold, conveyed or terminated upon the exercise of any remedy provided for in any Facility Mortgage Documents (or in lieu of such exercise), or otherwise by operation of law: (a) at the request and option of the new owner or superior lessor, as the case may be, Tenant shall attorn to and recognize the new owner or superior lessor as Tenant's "landlord" under this Master Lease or enter into a new lease substantially in the form of this Master Lease with the new owner or superior lessor, and Tenant shall take such actions to confirm the foregoing within ten (10) Business Days after request; and (b) the new owner or superior lessor shall not be (i) liable for any act or omission of Landlord under this Master Lease occurring prior to such sale, conveyance or termination; (ii) subject to any offset, abatement or reduction of rent because of any default of Landlord under this Master Lease occurring prior to such sale, conveyance or termination; (iii) bound by any previous material modification or amendment to this Master Lease or any previous prepayment of more than one month's rent, unless such material modification, amendment or prepayment shall have been approved in writing by such Facility Mortgagee (to the extent such approval was required at the time of such amendment or modification or prepayment under the terms of the applicable Facility Mortgage Documents) or, in the case of such prepayment, such prepayment of rent has actually been delivered to such new owner or superior lessor or in either case, such modification, amendment or prepayment occurred before Landlord provided Tenant with notice of the Facility Mortgage and the identity and address of the Facility Mortgagee; or (iv) liable for any security deposit or other collateral deposited or delivered to Landlord pursuant to this Master Lease unless such security deposit or other collateral has actually been delivered to such new owner or superior lessor.

ARTICLE XXXII

HAZARDOUS SUBSTANCES

32.1 Hazardous Substances. Tenant shall not allow any Hazardous Substance to be located in, on, under or about the Leased Property or incorporated in any Facility; provided, however, that Hazardous Substances may be brought, kept, used or disposed of in, on or about the Leased Property in quantities and for purposes similar to those brought, kept, used or disposed of in, on or about similar facilities used for purposes similar to the Primary Intended Use or in connection with the construction of facilities similar to the applicable Facility or to the extent in existence at any Facility and which are brought, kept, used and disposed of in strict compliance with Legal Requirements. Tenant shall not allow the Leased Property to be used as a waste disposal site or for the manufacturing, handling, storage, distribution or disposal of any Hazardous Substance other than in the ordinary course of the business conducted at the Leased Property and in compliance with applicable Legal Requirements.

32.2 Notices. Tenant shall provide to Landlord, within ten (10) Business Days after Tenant's receipt thereof, a copy of any written notice or written notification with respect to, (i) any violation of a Legal Requirement relating to Hazardous Substances located in, on, or under the Leased Property or any adjacent property; (ii) any enforcement or other governmental or regulatory action instituted, completed or threatened with respect to the Leased Property relating to Hazardous Substances located in, on, or under the Leased Property; (iii) any claim made or threatened by any Person against Tenant or the Leased Property relating to damage, contribution, cost recovery, compensation, loss, or injury resulting from or claimed to result from any

Hazardous Substance or violation of Environmental Law; and (iv) any reports which Tenant is aware of made to any federal, state or local environmental agency arising out of or in connection with the release of any Hazardous Substance in, on, under or removed from the Leased Property.

32.3 Remediation. If Tenant becomes aware of a violation of any Legal Requirement relating to any Hazardous Substance in, on, under or about the Leased Property or any adjacent property, or if Tenant, Landlord or the Leased Property becomes subject to any order of any federal, state or local agency to repair, close, detoxify, decontaminate or otherwise remediate Hazardous Substance in, on, under or about the Leased Property, Tenant shall immediately notify Landlord of such event and, at its sole cost and expense, cure such violation or effect such repair, closure, detoxification, decontamination or other remediation. If Tenant fails to implement and diligently pursue any such cure, repair, closure, detoxification, decontamination or other remediation, Landlord shall have the right, but not the obligation, to carry out such action and to recover from Tenant all of Landlord's costs and expenses incurred in connection therewith.

32.4 Indemnity. Tenant shall indemnify, defend, protect, save, hold harmless, and reimburse Landlord for, from and against any and all costs, losses (including, losses of use or economic benefit or diminution in value), liabilities, damages, assessments, lawsuits, deficiencies, demands, claims and expenses (collectively, "**Environmental Costs**") (whether or not arising out of third-party claims and regardless of whether liability without fault is imposed, or sought to be imposed, on Landlord) incurred in connection with, arising out of or resulting from, directly or indirectly, the following, but only to the extent such occurs before or during (but not after) the Term and is not caused solely by the actions of Landlord: (i) the production, use, generation, storage, treatment, transporting, disposal, discharge, release or other handling or disposition of any Hazardous Substances from, in, on or about the Leased Property (collectively, "**Handling**"), including the effects of such Handling of any Hazardous Substances on any Person or property within or outside the boundaries of the Leased Property, (ii) the presence of any Hazardous Substances in, on, under or about the Leased Property and (iii) the violation of any Environmental Law. "Environmental Costs" include interest, costs of response, removal, remedial action, containment, cleanup, investigation, design, engineering and construction, damages (including actual and consequential damages) for personal injuries and for injury to, destruction of or loss of property or natural resources, relocation or replacement costs, penalties, fines, charges or expenses, attorney's fees, expert fees, consultation fees, and court costs, and all amounts paid in investigating, defending or settling any of the foregoing.

Without limiting the scope or generality of the foregoing, Tenant expressly agrees that, in the event of a breach by Tenant in its obligations under this **Section 32.4** that is not cured within any applicable cure period, Tenant shall reimburse Landlord for any and all reasonable costs and expenses incurred by Landlord in connection with, arising out of, resulting from or incident to, directly or indirectly, before (with respect to any period of time in which Tenant or its Affiliate was in possession and control of the applicable Leased Property) or during (but not after) the Term or such portion thereof during which the Leased Property is leased to Tenant of the following:

(a) in investigating any and all matters relating to the Handling of any Hazardous Substances, in, on, from, under or about the Leased Property;

(b) in bringing the Leased Property into compliance with all Legal Requirements; and

(c) in removing, treating, storing, transporting, cleaning-up and/or disposing of any Hazardous Substances used, stored, generated, released or disposed of in, on, from, under or about the Leased Property or off-site other than in the ordinary course of the business conducted at the Leased Property and in compliance with applicable Legal Requirements.

If any claim is made by Landlord for reimbursement for Environmental Costs incurred by it hereunder, Tenant agrees to pay such claim promptly, and in any event to pay such claim within sixty (60) calendar days after receipt by Tenant of Notice thereof and any amount not so paid within such sixty (60) calendar day period shall bear interest at the Overdue Rate from the date due to the date paid in full.

32.5 Environmental Inspections. In the event Landlord has a reasonable basis to believe that Tenant is in breach of its obligations under this **Article XXXII**, Landlord shall have the right, from time to time, during normal business hours and upon not less than five (5) days' Notice to Tenant, except in the case of an emergency in which event no notice shall be required, to conduct an inspection of the Leased Property to determine the existence or presence of Hazardous Substances on or about the Leased Property. Landlord shall have the right to enter and inspect the Leased Property, conduct any testing, sampling and analyses it deems necessary and shall have the right to inspect materials brought into the Leased Property. Landlord may, in its discretion, retain such experts to conduct the inspection, perform the tests referred to herein, and to prepare a written report in connection therewith. All reasonable costs and expenses incurred by Landlord under this **Section 32.5** shall be paid on demand as Additional Charges by Tenant to Landlord. Failure to conduct an environmental inspection or to detect unfavorable conditions if such inspection is conducted shall in no fashion be intended as a release of any liability for environmental conditions subsequently determined to be associated with or to have occurred during Tenant's tenancy. Tenant shall remain liable for any environmental condition related to or having occurred during its tenancy regardless of when such conditions are discovered and regardless of whether or not Landlord conducts an environmental inspection at the termination of this Master Lease. The obligations set forth in this **Article XXXII** shall survive the expiration or earlier termination of this Master Lease.

ARTICLE XXXIII

MEMORANDUM OF LEASE

33.1 Memorandum of Lease. Either party may request that the other party enter into one or more short form memoranda of this Master Lease, in the form attached hereto as **Exhibit G**. The party requesting the recordation of such memoranda shall be responsible for all costs and expenses of recording any such memorandum, and Tenant shall fully cooperate with Landlord in removing from record any such memorandum upon the expiration or earlier termination of the Term with respect to the applicable Facility.

ARTICLE XXXIV

APPOINTING EXPERTS

34.1 Expert Dispute Resolution Process.

(a) In the event that the opinion of “Experts” is required under this Master Lease, Landlord and Tenant shall negotiate in good faith for no longer than ten (10) Business Days to appoint a single Expert. If Landlord and Tenant have not been able to reach agreement on such Person after such ten (10) Business Days of good faith negotiations, then Landlord and Tenant shall each within ten (10) Business Days after either party notifying the other of the need to appoint Experts and the subject matter of the dispute, appoint an Expert and Landlord’s and Tenant’s Experts shall, within ten (10) Business Days of their appointment, jointly appoint a third Expert (such three Experts, or such single Expert agreed upon by Landlord and Tenant, as applicable, shall be referred to herein as the “**Experts**”). The three Experts so appointed, if applicable, shall make all decisions by majority vote of such Experts. If the two Experts so appointed are unable to appoint a third Expert within such ten (10) Business Day period, then either Landlord or Tenant may ask any court of competent jurisdiction to appoint the third Expert. If either Landlord or Tenant fails to timely appoint an Expert, the Expert appointed by the other party shall be the sole Expert in determining the relevant matter. Each Expert appointed hereunder shall have at least ten (10) years of experience valuing commercial real estate and/or in leasing or with respect to the matters to be determined, as applicable with respect to any of the matters to be determined by the Experts.

(b) Once the Expert or Experts are selected, either by agreement of the parties or by selection of separate Experts followed by the appointment of a third Expert, the Experts will determine the matter in question, by proceeding as follows:

(i) In the case of Experts required for the purposes of the definition of Allocable Rent Amount, Landlord and Tenant shall submit to the Experts their respective determinations of the relative fair value of each Facility in accordance with GAAP. The Experts will determine which determination of relative fair value most closely approximates the relative fair value of such Facility and may not select any other amount or make any other determination (and the Experts shall be so instructed). The Experts shall notify the parties within thirty (30) days of the submission of the matter to the Experts in writing of their decision as the conclusive determination of relative fair value.

(ii) In the case of Experts required for the purposes of **Section 3.5** hereof, Landlord and Tenant shall submit to the Experts their respective determinations of Fair Market Rent of each Appraiser. The Experts (applying the Fair Market Rent Assumptions) will determine which determination of Fair Market Rent most closely approximates Fair Market Rent and may not select any other amount or make any other determination (and the Experts shall be so instructed). The Experts shall notify the parties within thirty (30) days of the submission of the matter to the Experts in writing of their decision as the conclusive determination of Fair Market Rent.

(iii) In the case of Experts required for the purposes of **Section 4.1(g)** hereof, Landlord and Tenant shall submit to the Experts their respective determinations of the

GRT Payment. The Experts will determine which determination of such GRT Payment is most appropriate and may not select any other determination of such GRT Payment or make any other determination (and the Experts shall be so instructed). The Experts shall notify the parties within thirty (30) days of the submission of the matter to the Experts in writing of their decision as the conclusive determination of the GRT Payment.

(iv) In the case of Experts required for the purposes of **Section 5.1** hereof, Landlord and Tenant shall submit to the Experts their respective determinations of the allocation of Title Insurance Proceeds. The Experts will determine which determination of such allocation is most appropriate and may not select any other allocation or make any other determination (and the Experts shall be so instructed). The Experts shall notify the parties within thirty (30) days of the submission of the matter to the Experts in writing of their decision as the conclusive determination of the allocation of Title Insurance Proceeds.

(v) In the case of Experts required for the purpose of **Section 14.2(b) or (c)**, Landlord and Tenant shall submit to the Experts their respective determinations for fair market value of the relevant Facility. The Experts may only select either the fair market value set forth by Landlord or by Tenant and may not select any other amount or make any other determination (and the Experts shall be so instructed). The Experts shall notify the parties in writing within thirty (30) days of the submission of the matter to the Experts of their selection of either Tenant's or Landlord's determination of fair market value as the conclusive determination of the fair market value.

(vi) In the case of Experts required for the purpose of **Section 14.2(g)**, Landlord and Tenant shall submit to the Experts their respective determinations of the amount of the relevant Casualty Shortfall. The Experts may only select either the amount of the Casualty Shortfall set forth by Landlord or by Tenant and may not select any other amount or make any other determination (and the Experts shall be so instructed). The Experts shall notify the parties in writing within thirty (30) days of the submission of the matter to the Experts of their selection of either Tenant's or Landlord's determination of the amount of the Casualty Shortfall as the conclusive determination of the Casualty Shortfall.

(vii) In the case of Experts required for the purpose of **Section 15.1**, Landlord and Tenant shall submit to the Experts their respective determinations of the percentage of a Facility taken by Condemnation and/or the fair market value of the relevant Facility. The Experts may only select either the percentage of a Facility and/or the fair market value set forth by Landlord or Tenant and may not select any other amount or make any other determination (and the Experts shall be so instructed). The Experts shall notify the parties in writing within thirty (30) days of the submission of the matter to the Experts of their selection of either Tenant's or Landlord's determination of the percentage of a Facility and/or the fair market value as the conclusive determination of such percentage and/or fair market value.

(viii) In the case of Experts required for the purpose of **Section 15.1(c)**, Landlord and Tenant shall submit to the Experts their respective determinations of the relative values of the property taken by Condemnation and the portion of the affected Facility remaining subject to the Master Lease. The Experts may only select either such relative values set forth by Landlord or Tenant and may not select any other amount or make any other determination (and the Experts shall be so instructed). The Experts shall notify the parties in writing within thirty

(30) days of the submission of the matter to the Experts of their selection of either Tenant's or Landlord's determination of such relative values as the conclusive determination of such relative values.

(ix) In the case of Experts required for the purpose of **Section 16.1**, Landlord and Tenant shall submit to the Experts their respective written descriptions of the events giving rise to Landlord's belief that an Event of Default exists. The Experts may only determine whether or not the Event of Default alleged by Landlord has occurred and may not make any other determination (and the Experts shall be so instructed). The Experts shall notify the parties in writing within thirty (30) days of the submission of the matter to the Experts of their determination as to whether or not such an Event of Default has occurred as the conclusive determination of such matter.

(x) In the case of Experts required for the purpose of **Section 18.2(b)**, Landlord and Tenant shall submit to the Experts their respective written descriptions of the events giving rise to whether a particular decision should be determined by an independent committee. The Experts may only determine whether or not such particular decision should be determined by an independent committee and may not make any other determination (and the Experts shall be so instructed). The Experts shall notify the parties in writing within thirty (30) days of the submission of the matter to the Experts of their determination as to whether or not such particular decision should be determined by an independent committee as the conclusive determination of such matter.

(xi) In the case of Experts required for the purpose of **Section 18.3**, Landlord and Tenant shall submit to the Experts their respective determinations of whether a Person referenced in a Tenant Competitor Notice should, or should not, be deemed to be a Tenant Competitor. The Experts may only determine whether or not a Person referenced in a Tenant Competitor Notice should, or should not, be deemed to be a Tenant Competitor, and may not make any other determination (and the Experts shall be so instructed). The Experts shall notify the parties in writing within thirty (30) days of the submission of the matter to the Experts of their determination as to whether or not a Person referenced in a Tenant Competitor Notice should, or should not, be deemed to be a Tenant Competitor as the conclusive determination of such matter.

(xii) In the case of Experts required for the purpose of **Section 36.1**, Landlord and Tenant shall submit to the Experts their respective determinations of the Tenant's Property FMV. The Experts may only select either the Tenant's Property FMV set forth by Landlord or Tenant and may not select any other amount or make any other determination (and the Experts shall be so instructed). The Experts shall notify the parties in writing within thirty (30) days of the submission of the matter to the Experts of their determination of the Tenant's Property FMV as the conclusive determination of such matter.

(c) In each case, the Experts will make the relevant determination by a "baseball arbitration" proceeding with the Experts limited to awarding only one or the other of the two positions submitted (and not any position in between or other compromise or ruling not consistent with one of the two positions submitted), which shall then be final and binding on the parties and not subject to appeal or court review. Either party may seek an order of a court of competent jurisdiction to enforce such determination. The Experts, in their sole discretion, shall

consider any and all materials that they deem relevant, except that there shall be no live hearings and the parties shall not be permitted to take discovery. The Experts may submit written questions or information requests to the parties, and the parties may respond with written materials within a time frame set by the Experts to allow the Experts to make the relevant determination in the time allowed pursuant to this **Section 34.1**.

(d) All communications between a party and the Experts shall also be copied to the other party. The parties shall cooperate in good faith to facilitate the valuation or other determination by the Experts.

(e) Each of Landlord and Tenant shall pay the cost of the Expert appointed by it. The costs of the third Expert engaged with respect to any issue under **Section 34.1** of this Master Lease shall be borne by the party against whom the Experts rule on such issue. If Landlord pays such Expert and is the prevailing party, such costs shall be Additional Charges hereunder and if Tenant pays such Expert and is the prevailing party, such costs shall be a credit against the next Rent payment hereunder.

ARTICLE XXXV

NOTICES

35.1 Notices. Except as permitted in **Section 35.2** below, any notice, request or other communication to be given by any party hereunder shall be in writing and shall be sent by registered or certified mail, postage prepaid and return receipt requested, by hand delivery or nationally recognized express courier service to the following address:

To Tenant:	MGM Lessee, LLC 6385 S. Rainbow Boulevard, Suite 500 Las Vegas, NV 89118 Attention: Corporate Legal
With a copy to: (that shall not constitute notice)	Email: legalnotices@mgmresorts.com
With a copy to: (that shall not constitute notice)	Weil, Gotshal & Manges, LLP 767 Fifth Avenue New York, NY 10153 Attention: Michael Aiello Jannelle Seales Email: michael.aiello@weil.com jannelle.seales@weil.com
To Landlord:	MGP Lessor, LLC c/o VICI Properties Inc. 535 Madison Avenue, 20 th Floor New York, New York 10022 Attention: General Counsel Email: corplaw@viciproperties.com
And with copy to (which shall not constitute notice):	Kramer Levin Naftalis & Frankel LLP 1177 Avenue of the Americas New York, New York 10036 Attention: Tzvi Rokeach Email: trokeach@kramerlevin.com

or to such other address as either party may hereafter designate. Notice shall be deemed to have been given on the date of delivery if such delivery is made on a Business Day, or if not, on the first Business Day after delivery. If delivery is refused, Notice shall be deemed to have been given on the date delivery was first attempted. A confirmatory copy of any such notice shall also be sent by email. Notwithstanding the foregoing or anything to the contrary contained in this Master Lease, Landlord shall accept delivery of any Specified Communications solely via email transmission to Landlord at corplaw@viciproperties.com with copies to VICILeaseAdmin@viciproperties.com; and further waives for all purposes any other delivery method prescribed in this Master Lease and any delivery of the same to any other Person.

35.2 Deemed Approval Period with respect to certain Items Requiring Consent. Any request for consent to or approval of any plan, document, transaction, action, election, notification or similar matter set forth in this Master Lease that requires the consent or approval of Landlord, excluding **Articles XIV, XV and XVI** (each, an “**Item Subject to Deemed Consent**”) shall be subject to the terms set forth in this **Section 35.2**. Tenant shall submit its request for such approval through a written notice in accordance with this Agreement. That notice shall include a reasonably detailed description of the applicable Item Subject to Deemed

Consent, a copy of all material documents reflecting the terms and conditions of the applicable Item Subject to Deemed Consent, including the documentation required to be delivered under this Master Lease in connection with such request, and such additional information or documentation relating to the Item Subject to Deemed Consent as may be reasonably available to Tenant and that is reasonably necessary for the evaluation of the applicable Item Subject to Deemed Consent. Such request shall include in bold lettering the following statement: “FIRST NOTICE – THIS IS A REQUEST FOR LANDLORD’S CONSENT AND LANDLORD’S RESPONSE IS REQUESTED WITHIN TEN (10) BUSINESS DAYS OF RECEIPT OF THIS NOTICE PURSUANT TO THE TERMS OF THE LEASE BETWEEN THE UNDERSIGNED TENANT AND LANDLORD.” If Landlord does not respond to that first request within ten (10) Business Days following its receipt thereof (which response may be by e-mail and may consist of, among other things, a request for additional information reasonably available to Tenant or a qualified approval of the Item Subject to Deemed Consent subject to the satisfaction of specified reasonable conditions), Tenant may send an additional written request to Landlord with respect to the Item Subject to Deemed Consent which shall include in bold lettering the following statement “SECOND NOTICE – THIS IS A SECOND REQUEST FOR LANDLORD’S CONSENT AND LANDLORD’S RESPONSE IS REQUESTED WITHIN FIVE (5) BUSINESS DAYS OF RECEIPT OF THIS SECOND NOTICE PURSUANT TO THE TERMS OF THE LEASE BETWEEN THE UNDERSIGNED TENANT AND LANDLORD.” If Landlord does not respond to that second request within five (5) Business Days following its receipt thereof (which response may be by e-mail and may consist of, among other things, a request for additional information reasonably available to Tenant or a qualified approval of the Item Subject to Deemed Consent subject to the satisfaction of specified reasonable conditions), Tenant may send an additional written request to Landlord with respect to the Item Subject to Deemed Consent which shall include in bold lettering the following statement “THIS IS A THIRD AND FINAL REQUEST FOR LANDLORD’S CONSENT AND FAILURE TO RESPOND TO THIS THIRD REQUEST WITHIN THREE (3) BUSINESS DAYS WILL RESULT IN THE DEEMED APPROVAL OF THE REQUEST.” If Landlord does not respond to that third request within three (3) Business Days following its receipt thereof (which response may be by e-mail), then Landlord shall be deemed to have approved the applicable Item Subject to Deemed Consent as of the end of such three (3) Business Day period. Notwithstanding anything to the contrary contained herein, with respect to a request for consent under **Section 8.3**, Tenant shall only be required to provide a first notice and second notice and a third notice shall not be required.

35.3 Unavoidable Delays. Tenant shall notify Landlord promptly upon the occurrence of an event which constitutes an Unavoidable Delay, and shall keep Landlord apprised of the status of such Unavoidable Delay and the expiration thereof. Upon any Unavoidable Delay which Tenant can anticipate or otherwise mitigate the effect of on a commercially reasonable basis, Tenant shall undertake commercially reasonable actions to mitigate, or which are intended to mitigate, the effect of any such Unavoidable Delay.

ARTICLE XXXVI

TRANSITION UPON EXPIRATION OR TERMINATION

36.1 Transfer of Tenant's Assets at the Facilities. Upon the written notice (an “**End of Term Asset Transfer Notice**”) of (i) upon expiration or earlier termination of the Term, Landlord or (ii) upon expiration of the Term at the end of all applicable Renewal Terms, Tenant, in each case at least six months prior to the expiration (or, if applicable, within ten (10) days following the earlier termination) of the Term, in the case of clause (i), Landlord may require that Tenant sell, or, in the case of clause (ii), Tenant may require that Landlord buy, as applicable, all tangible personal property constituting Tenant's Property (including Gaming Equipment and hotel furniture, fixtures and equipment, but excluding, for the avoidance of doubt, Tenant's business operations, Tenant's Intellectual Property, Gaming Licenses, Excluded Assets, customer lists and other proprietary information used by Tenant in connection with its business operations and any Tenant Capital Improvements) (but including Corporate Shared Services Property to the extent transferable and necessary to satisfy the Operating Standard, and to the extent not transferable, Tenant will reasonably cooperate to transition such services provided with Corporate Shared Services Property to Landlord or Landlord's designee in a manner that minimizes disruptions in operations at the Facilities) for consideration to be received by Tenant (or its Subsidiaries) from Landlord in an amount equal to the fair market value of such Tenant's Property (the “**Tenant's Property FMV**”). Within ten (10) Business Days of Landlord's delivery or receipt of an End of Term Asset Transfer Notice, Landlord shall notify Tenant in writing of Landlord's good faith determination of the Tenant's Property FMV. If Tenant disagrees with Landlord's determination of the Tenant's Property FMV, Tenant shall, within ten (10) Business Days of receipt of Landlord's determination, notify Landlord in writing of Tenant's determination of Tenant's Property FMV. Landlord and Tenant shall negotiate in good faith to agree upon the Tenant's Property FMV for an additional thirty (30) day period and if Landlord and Tenant are unable to agree during such 30 day period, the Tenant's Property FMV will be determined by Experts in accordance with **Section 34.1**. Following the determination of the Tenant's Property FMV, Landlord shall, on the later of ten (10) Business Days following such determination and the expiration of the Term, pay to Tenant or Tenant's designee an amount equal to the Tenant's Property FMV and Tenant shall sell, transfer and assign (subject to compliance with any applicable Gaming Regulations) all of Tenant's right, title and interest in such Tenant's Property to Landlord or Landlord's designee free and clear of any liens or encumbrances but on an “as-is” basis with no representations or warranties whatsoever. For the avoidance of doubt, it shall be a condition precedent to Tenant's obligation to transfer any of Tenant's Property pursuant to this **Article XXXVI** that the transferee shall comply with all Legal Requirements, including any Gaming Regulations with respect to the ownership of such property.

ARTICLE XXXVII

ATTORNEY'S FEES

37.1 Attorneys' Fees. If Landlord or Tenant brings an action or other proceeding against the other to enforce or interpret any of the terms, covenants or conditions hereof or any instrument executed pursuant to this Master Lease, or by reason of any breach or default

hereunder or thereunder, the party prevailing in any such action or proceeding and any appeal thereupon shall be paid all of its costs and reasonable outside attorneys' fees incurred therein. In addition to the foregoing and other provisions of this Master Lease that specifically require Tenant to reimburse, pay or indemnify against Landlord's attorneys' fees, Tenant shall pay, as Additional Charges, all of Landlord's reasonable outside attorneys' fees incurred in connection with the enforcement of this Master Lease (except to the extent provided above), including reasonable attorneys' fees incurred in connection with the review, negotiation or documentation of any subletting, assignment, or management arrangement or any consent requested in connection therewith, and the collection of past due Rent.

ARTICLE XXXVIII

BROKERS

38.1 Brokers. Tenant warrants that it has not had any contact or dealings with any Person or real estate broker which would give rise to the payment of any fee or brokerage commission in connection with this Master Lease, and Tenant shall indemnify, protect, hold harmless and defend Landlord from and against any liability with respect to any fee or brokerage commission arising out of any act or omission of Tenant. Landlord warrants that it has not had any contact or dealings with any Person or real estate broker which would give rise to the payment of any fee or brokerage commission in connection with this Master Lease, and Landlord shall indemnify, protect, hold harmless and defend Tenant from and against any liability with respect to any fee or brokerage commission arising out of any act or omission of Landlord.

ARTICLE XXXIX

OFAC

39.1 Sanctions Representations.

(a) Landlord and Tenant each hereby represent and warrant that neither they, nor, to their knowledge, any person that owns, directly or indirectly, any interest in Landlord or Tenant or any of Tenant's affiliates as applicable, is (i) in material violation of any sanctions program that is administered by the Office of Foreign Assets Control, U.S. Department of the Treasury ("**OFAC**"), the U.S. Department of State, or any other agency of any government whose law applies to Landlord or Tenant (collectively, "**Sanctions Authority**"); (ii) in material violation of the Trading with the Enemy Act, 50 U.S.C. App. § 5, the International Emergency Economic Powers Act, 50 U.S.C. §§ 1701-06, the U.S.A. Patriot Act, Public Law 107-56, Executive Order 13224 (September 23, 2001), if applicable, or any Executive Order of the President issued pursuant to such statutes; (iii) subject to any sanctions administered by any Sanctions Authority (collectively, "**Prohibited Persons**"); or (iv) located in, or established under the laws of, any jurisdiction that is subject to an embargo administered by any Sanctions Authority.

(b) Neither Landlord nor Tenant will, during the Term of this Master Lease, knowingly engage in any transactions or dealings with, or otherwise knowingly be associated with, any Prohibited Persons in connection with the ownership, or use or occupancy of, the Leased Property, as applicable. Tenant also shall not cause Landlord to violate any sanctions

administered by any Sanctions Authority, including, but not limited to, OFAC. A breach of the representations (being untrue at any time during the Term) or covenants contained in this **Section 39.1** by Landlord or Tenant shall constitute a material breach of this Master Lease and shall entitle the other party to any and all remedies available hereunder, or at law or in equity.

ARTICLE XL

REIT REQUIREMENTS

40.1 REIT Protection.

(a) The parties hereto intend that Rent and other amounts paid by Tenant hereunder will qualify as “rents from real property” within the meaning of Section 856(d) of the Code, or any similar or successor provision thereto and this Master Lease shall be interpreted consistent with this intent.

(b) Anything contained in this Master Lease to the contrary notwithstanding, Tenant shall not without Landlord’s advance written consent (which consent shall not be unreasonably withheld, conditioned or delayed) (i) sublet, assign or enter into a management arrangement for the Leased Property that is treated as an amount received for the use of or the right to use the Leased Property for purposes of Section 856(d) of the Code (as determined in the sole and absolute discretion of Landlord) to or with any Person in which Landlord REIT Affiliate owns an interest, directly or indirectly (by applying constructive ownership rules set forth in Section 856(d)(5) of the Code); or (ii) assign all or a portion of the Leasehold Estate in any other manner which could cause any portion of the amounts received by Landlord pursuant to this Master Lease or any sublease to fail to qualify as “rents from real property” within the meaning of Section 856(d) of the Code, or any similar or successor provision thereto, or which could cause any other income of Landlord to fail to qualify as income described in Section 856(c)(2) of the Code. Landlord shall make reasonable best efforts to respond to any such request by Tenant (which request may be made solely through email transmission to Landlord at the email address set forth in **Section 35.1** notwithstanding anything to the contrary set forth in such section) for consent to any arrangement described in this **Section 40.1(b)** within ten (10) Business Days. If Tenant fails to obtain Landlord’s consent as required pursuant to this **Section 40.1(b)**, then Tenant shall have the opportunity to cure such failure as provided by **Section 16.1(a)(xiii)**; provided, however, that Landlord shall waive the requirement for Tenant to cure such failure if (i) Tenant has acted in good faith and notifies Landlord of such failure promptly after becoming aware of such failure, and (ii) such failure, taken together with all other failures (including those waived pursuant to this sentence) and nonqualifying income items previously consented to by Landlord pursuant to this Section 40.1(b)) would not result in more than 0.5% of the Rent under this Master Lease (or any replacement lease contemplated by **Section 22.2(iii)**) failing to qualify as “rents from real property” within the meaning of Section 856(d) of the Code during any taxable year of Landlord. The requirements of this **Section 40.1(b)** shall apply, *mutatis mutandis* to any further sublease, assignment, or management contract by any subtenant, assignee, or manager.

(c) Anything contained in this Master Lease to the contrary notwithstanding (except as provided in **Section 18.1**), the parties acknowledge and agree that Landlord, in its sole discretion, may assign this Master Lease or any interest herein to another Person (including

without limitation, a “taxable REIT subsidiary” (within the meaning of Section 856(l) of the Code)) in order to maintain Landlord REIT Affiliate’s status as a “real estate investment trust” (within the meaning of Section 856(a) of the Code); provided, however, Landlord shall be required to (i) comply with any applicable legal requirements related to such transfer and (ii) give Tenant notice of any such assignment; and provided, further, that any such assignment shall be subject to all of the rights of Tenant hereunder.

(d) Anything contained in this Master Lease to the contrary notwithstanding, upon request of Landlord, Tenant shall cooperate with Landlord in good faith and at no cost or expense (other than de minimis cost) to Tenant, and provide such documentation and/or information as may be in Tenant’s possession or under Tenant’s control and otherwise readily available to Tenant as shall be reasonably requested by Landlord in connection with verification of Landlord REIT Affiliate’s “real estate investment trust” (within the meaning of Section 856(a) of the Code) compliance requirements. Upon the request of Landlord, but no more frequently than one (1) time per Fiscal Quarter, Tenant shall use reasonable best efforts to respond to inquiries by Landlord regarding REIT compliance and confirm to Landlord that Tenant has reviewed its transactions during the most recent fiscal quarter and is in compliance with the provisions set forth in **Section 40.1(a)**. If any Rent hereunder shall fail to qualify as “rent from real property” within the meaning of Section 856(d) of the Code (including by reason of any personal property in excess of the fifteen percent (15%) limit in Section 856(d)(2)(A)), the parties will cooperate in good faith to amend this Master Lease such that (or take such other action as reasonably required to ensure that) no such Rent fails to so qualify, provided that such amendment or action does not (i) increase Tenant’s monetary obligations under this Master Lease or (ii) materially and adversely increase Tenant’s nonmonetary obligations under this Master Lease or (iii) materially diminish Tenant’s rights under this Master Lease.

ARTICLE XLI

MISCELLANEOUS

41.1 Survival. Anything contained in this Master Lease to the contrary notwithstanding, all claims against, and liabilities and indemnities of Tenant or Landlord arising prior to the expiration or earlier termination of the Term shall survive such expiration or termination.

41.2 Severability. If any term or provision of this Master Lease or any application thereof shall be held invalid or unenforceable, the remainder of this Master Lease and any other application of such term or provision shall not be affected thereby.

41.3 Non-Recourse. Tenant specifically agrees to look solely to the Leased Property for recovery of any judgment from Landlord (and Landlord’s liability hereunder shall be limited solely to its interest in the Leased Property, and no recourse under or in respect of this Master Lease shall be had against any other assets of Landlord whatsoever). It is specifically agreed that no constituent partner in Landlord or officer or employee of Landlord shall ever be personally liable for any such judgment or for the payment of any monetary obligation to Tenant. The provision contained in the foregoing sentence is not intended to, and shall not, limit any right that Tenant might otherwise have to obtain injunctive relief against Landlord, or any action not involving the personal liability of Landlord. Furthermore, except as otherwise expressly

provided herein, in no event shall Landlord ever be liable to Tenant for any indirect or consequential damages suffered by Tenant from whatever cause. Neither Landlord nor Tenant shall be liable to the other, nor shall either make any claim against the other, for punitive damages.

41.4 Successors and Assigns. This Master Lease shall be binding upon Landlord and its successors and assigns and, subject to the provisions of **Article XXII**, upon Tenant and its successors and assigns.

41.5 Governing Law. THIS MASTER LEASE WAS NEGOTIATED IN THE STATE OF NEW YORK, WHICH STATE THE PARTIES AGREE HAS A SUBSTANTIAL RELATIONSHIP TO THE PARTIES AND TO THE UNDERLYING TRANSACTION EMBODIED HEREBY. ACCORDINGLY, IN ALL RESPECTS THIS MASTER LEASE (AND ANY AGREEMENT FORMED PURSUANT TO THE TERMS HEREOF) SHALL BE GOVERNED BY, AND CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE INTERNAL LAWS OF THE STATE OF NEW YORK (WITHOUT REGARD TO PRINCIPLES OR CONFLICTS OF LAW) AND ANY APPLICABLE LAWS OF THE UNITED STATES OF AMERICA, EXCEPT THAT ALL PROVISIONS HEREOF RELATING TO THE CREATION OF THE LEASEHOLD ESTATE AND ALL REMEDIES SET FORTH IN **ARTICLE XVI** RELATING TO RECOVERY OF POSSESSION OF THE LEASED PROPERTY OF ANY FACILITY (SUCH AS AN ACTION FOR UNLAWFUL DETAINER, IN REM ACTION OR OTHER SIMILAR ACTION) SHALL BE CONSTRUED AND ENFORCED ACCORDING TO, AND GOVERNED BY, THE LAWS OF THE STATE IN WHICH THE LEASED PROPERTY IS LOCATED.

41.6 Waiver of Trial by Jury. EACH OF LANDLORD AND TENANT ACKNOWLEDGES THAT IT HAS HAD THE ADVICE OF COUNSEL OF ITS CHOICE WITH RESPECT TO ITS RIGHTS TO TRIAL BY JURY UNDER THE CONSTITUTION OF THE UNITED STATES AND THE STATE. EACH OF LANDLORD AND TENANT HEREBY EXPRESSLY WAIVES ANY RIGHT TO TRIAL BY JURY OF ANY CLAIM, DEMAND, ACTION OR CAUSE OF ACTION (i) ARISING UNDER THIS MASTER LEASE (OR ANY AGREEMENT FORMED PURSUANT TO THE TERMS HEREOF) OR (ii) IN ANY MANNER CONNECTED WITH OR RELATED OR INCIDENTAL TO THE DEALINGS OF LANDLORD AND TENANT WITH RESPECT TO THIS MASTER LEASE (OR ANY AGREEMENT FORMED PURSUANT TO THE TERMS HEREOF) OR ANY OTHER INSTRUMENT, DOCUMENT OR AGREEMENT EXECUTED OR DELIVERED IN CONNECTION HERewith, OR THE TRANSACTIONS RELATED HERETO OR THERETO, IN EACH CASE WHETHER NOW EXISTING OR HEREINAFTER ARISING, AND WHETHER SOUNDING IN CONTRACT OR TORT OR OTHERWISE; EACH OF LANDLORD AND TENANT HEREBY AGREES AND CONSENTS THAT ANY SUCH CLAIM, DEMAND, ACTION OR CAUSE OF ACTION SHALL BE DECIDED BY A COURT TRIAL WITHOUT A JURY, AND THAT EITHER PARTY MAY FILE A COPY OF THIS SECTION WITH ANY COURT AS CONCLUSIVE EVIDENCE OF THE CONSENT OF EACH SUCH PARTY TO THE WAIVER OF ITS RIGHT TO TRIAL BY JURY.

41.7 Entire Agreement. This Master Lease and the Exhibits and Schedules hereto constitute the entire and final agreement of the parties with respect to the subject matter hereof,

and may not be changed or modified except by an agreement in writing signed by the parties and, with respect to the provisions set forth in **Section 40.1**, no such change or modification shall be effective without the explicit reference to such section by number and paragraph. Landlord and Tenant hereby agree that all prior or contemporaneous oral understandings, agreements or negotiations relative to the leasing of the Leased Property are merged into and revoked by this Master Lease.

41.8 Headings; Consent. All titles and headings to sections, subsections, paragraphs or other divisions of this Master Lease are only for the convenience of the parties and shall not be construed to have any effect or meaning with respect to the other contents of such sections, subsections, paragraphs or other divisions, such other content being controlling as to the agreement among the parties hereto. When the consent of any party hereunder may not be unreasonably withheld, such consent also may not be unreasonably conditioned or delayed.

41.9 Counterparts. This Master Lease may be executed in any number of counterparts and by facsimile or electronic signatures, each of which shall be a valid and binding original, but all of which together shall constitute one and the same instrument.

41.10 Interpretation. Both Landlord and Tenant have been represented by counsel and this Master Lease and every provision hereof has been freely and fairly negotiated. Consequently, all provisions of this Master Lease shall be interpreted according to their fair meaning and shall not be strictly construed against any party.

41.11 Time of Essence. TIME IS OF THE ESSENCE OF THIS MASTER LEASE AND EACH PROVISION HEREOF IN WHICH TIME OF PERFORMANCE IS ESTABLISHED.

41.12 Further Assurances. The parties agree to promptly sign all documents reasonably requested to give effect to the provisions of this Master Lease.

41.13 Gaming Regulations. (a) Notwithstanding anything to the contrary in this Master Lease, this Master Lease and any agreement formed pursuant to the terms hereof are subject to the Gaming Regulations and the laws involving the sale, distribution and possession of alcoholic beverages (the “**Liquor Laws**”). Without limiting the foregoing, Landlord, and its respective Related Persons, successors and assigns acknowledges that (i) it is subject to being called forward by the Gaming Authority or governmental authority enforcing the Liquor Laws (the “**Liquor Authority**”), in each of their discretion, for licensing or a finding of suitability or to file or provide other information, and (ii) all rights, remedies and powers under this Master Lease and any agreement formed pursuant to the terms hereof, including with respect to the entry into and ownership and operation of the Gaming Facilities, and Landlord’s right to possession or control of Gaming Equipment, alcoholic beverages or a Gaming License or liquor license, may be exercised only to the extent that the exercise thereof does not violate any applicable provisions of the Gaming Regulations and Liquor Laws and only to the extent that required approvals (including prior approvals) are obtained from the requisite Gaming Authority and/or Liquor Authority.

(b) Notwithstanding anything to the contrary in this Master Lease or any agreement formed pursuant to the terms hereof, each of Tenant, Landlord, and each of Tenant’s

or Landlord's successors and assigns agrees to cooperate with each Gaming Authority and each Liquor Authority in connection with the administration of their regulatory jurisdiction over the parties hereto and/or the Facilities, including, without limitation, the provision of such documents or other information as may be requested by any such Gaming Authorities and/or Liquor Authorities relating to Tenant, Landlord, Tenant's or Landlord's successors and assigns or to this Master Lease or any agreement formed pursuant to the terms hereof.

41.14 Regulatory Requirements.

(a) New Jersey Approval by Casino Control Commission.

(i) This Master Lease and the parties, in each case as it relates to Borgata Hotel Casino & Spa, Atlantic City, New Jersey ("**Borgata**") only, are subject to compliance with the requirements of the New Jersey Casino Control Act, N.J.S.A. 5:12-1 et seq., (the "**Act**"), and the regulations promulgated thereunder.

(ii) In accordance with the requirements of N.J.S.A. 5:12-82c, this Master Lease and any further amendments thereto must be filed with the New Jersey Casino Control Commission ("**Commission**") and the New Jersey Division of Gaming Enforcement ("**Division**") and, to the extent that this Master Lease and any further amendment thereto relates to Borgata, the same is effective as to Borgata only if approved by the Commission.

(iii) In accordance with the requirements of N.J.S.A. 5:12-82c(10), with respect to Borgata only, each party to this Master Lease is jointly and severally liable for all acts, omissions and violations of the Act by any party, regardless of actual knowledge of such act, omission or violation. Notwithstanding the foregoing, the party violating the Act shall indemnify the non-violating party for any liability incurred by the non-violating party as a result of any such violation in a manner consistent with Article XXI of this Master Lease; provided, however, that neither party shall be required to indemnify the other party for any liabilities relating to, arising out of or resulting from any required sale of Borgata pursuant to paragraphs (vi-ix) of this **Section 41.14(a)** below (including, without limitation, the payment of the Borgata Fair Market Value, as finally determined in accordance with this **Section 41.14(a)**, or any closing costs associated therewith).

(iv) In accordance with the requirements of N.J.S.A. 5:12-104b, this Master Lease, as it relates to Borgata only, may be reviewed by the Division on the basis of the reasonableness of the terms of this Master Lease, including the terms of compensation, and of the qualifications of the owners, officers, employees, and directors of Landlord, which qualifications shall be reviewed according to the standards enumerated in N.J.S.A. 5:12-86. If the Division disapproves of this Master Lease as it relates to Borgata only, or the owners, officers, employees, and directors of Sublandlord, the Division may require the termination of this Master Lease with respect to Borgata only; provided, that any such termination shall not apply or effect in any way any of the Leased Property other than Borgata. In the event of any such termination, the Master Lease shall no longer apply to Borgata.

(v) In accordance with the requirements of N.J.S.A. 5:12-104b, the Master Lease as it relates to Borgata only may be terminated by the Commission without liability on the part of Tenant or Landlord if the Commission disapproves of the Master Lease, as it

relates to the Borgata only, pursuant to the Commission's authority under the Act; provided, that any such termination shall not apply or effect in any way any of the Leased Property other than Borgata. In the event of any such termination, this Master Lease shall no longer apply to Borgata.

(vi) In accordance with the requirements of N.J.S.A. 5:12-82c(5), if at any time during the term of this Master Lease (so long as Borgata remains a Facility under this Master Lease), the Landlord or any person associated with Landlord (other than Tenant or any Operating Subtenant), is found by the Commission or the Director of the Division to be unsuitable to be associated with a casino enterprise in New Jersey, and is not removed from such association in a manner acceptable to the Commission or the Director of the Division, as applicable, then upon written notice delivered by Tenant to Landlord (the "**Borgata Purchase Notice**"), following such final unstayed decision of the Commission or the Director of the Division, as applicable, which provides that a purchase of Landlord's fee and leasehold interest in Borgata is required, Tenant may elect either (a) to require Landlord to sell all (but not less than all) of Landlord's fee and leasehold interest in Borgata (but no other Facility under this Master Lease) to a third party in the manner provided in, and subject to, **Section 1.5** of this Master Lease (except that such sale shall be required, and not at the election, of Landlord); provided, that the Commission or the Director of the Division, as applicable, does not object, or (b) to purchase all (but not less than all) of Landlord's fee and leasehold interest in Borgata (but no other Facility under this Master Lease) for an amount equal to 100% of the Borgata Fair Market Value (as finally determined in accordance with paragraph (vii) of this **Section 41.14(a)** below), which amount shall be payable in cash.

(vii) The "**Borgata Fair Market Value**" shall be an amount equal to the fair market value of Borgata based on the amount that would be paid by a willing purchaser to a willing seller if neither were under any compulsion to buy or sell. If the parties are unable to mutually agree upon the Borgata Fair Market Value within thirty (30) days after delivery of the Borgata Purchase Notice, the Borgata Fair Market Value will be determined by Experts appointed in accordance with **Section 34.1** in which case Landlord and Tenant shall each submit to the Experts their respective determinations of the Borgata Fair Market Value. The Experts may only select either the Borgata Fair Market Value set forth by Landlord or by Tenant and may not select any other amount or make any other determination (and the Experts shall be so instructed). The Experts shall notify the parties in writing within thirty (30) days of the submission of the matter to the Experts of their selection of either Tenant's or Landlord's determination of the Borgata Fair Market Value as the conclusive determination of the Borgata Fair Market Value.

(viii) In the event that Tenant has elected to purchase Borgata, the closing of the purchase and sale of Borgata shall occur not later than ninety (90) days after determination of the Borgata Fair Market Value, or such other time as may be directed by the New Jersey Gaming Authorities. At such closing, the Landlord shall deliver to the Tenant all fee and leasehold title to Borgata, free and clear of any liens, claims or other encumbrances other than (A) any liens and encumbrances that were created or in place as of the Commencement Date and (B) any liens and encumbrances caused by Tenant or as permitted by the Master Lease. Landlord shall use all its commercially reasonable efforts to deliver title to Borgata in the condition required in this **Section 41.14(a)(viii)**. All closing costs and expenses, including any applicable real property transfer taxes or fees, of conveying Borgata to Tenant shall be allocated

between Landlord and Tenant in the manner the same are customarily allocated between a seller and buyer of similar real property located in the State of New Jersey. Upon such closing the Master Lease, as it relates to Borgata only, shall automatically terminate and be of no further force and effect, and Rent under the Master Lease from and after the date of such closing shall be reduced in the manner set forth in **Section 14.6** of this Master Lease. Nothing in this **Section 41.14(a)** shall be deemed to supersede any provision of this Master Lease which expressly survives the termination of this Master Lease, and nothing contained in this **Section 41.14(a)** shall be deemed to release either party from any obligation or liability relating to any Facility other than Borgata or any obligation or liability relating to Borgata which shall have arisen under this Master Lease prior to the effective date of the sale to Tenant of Borgata.

(ix) In the event that Tenant has elected to require Landlord to sell Borgata to a third-party, in connection with the closing of the purchase and sale of Borgata from Landlord to such third-party, Tenant and such third-party shall enter into a Separate Lease and the Master Lease shall be amended in accordance with **Section 1.5** of this Master Lease to reflect the removal of Borgata from this Master Lease.

(b) **Maryland Regulatory Requirements.** This Master Lease does not (i) create any property right in the video lottery operation license awarded or issued to MGM National Harbor, LLC and/or any other license awarded or issued under MD Code, State Government, §9-1A-01 et seq.; (ii) accrue any monetary value to the privilege of participation in video lottery; or transfer any license issued under MD Code, State Government, §9-1A-01 et seq., including, for the avoidance of doubt, the video lottery operation license and/or the sports wagering facility license awarded and/or issued to MGM National Harbor, LLC. Notwithstanding anything to the contrary in this Master Lease, the participation in video lottery and/or sports wagering operations shall be conditioned solely on the continuing individual qualifications of the person who seeks the privilege.

(c) **Massachusetts Regulatory Requirements.**

(i) Springfield's inclusion as a Leased Property of this Master Lease required certain Massachusetts regulatory filings and approvals including applications to determine suitability of MGP and each of its subsidiaries and controlled affiliates as determined by the Massachusetts Gaming Commission ("**Commission**") pursuant to 205 CMR 115 and Interim Authorization pursuant to 205 CMR 116.10. Springfield's Interim Authorization as Leased Property of this Master Lease is subject to the Commission's right to order that Springfield be transferred to the Amended and Restated Springfield Nominee Trust if the Commission has reasonable cause to believe that MGP or any of its subsidiaries or controlled affiliates may be found unsuitable. Landlord and Tenant agree to cooperate with the Commission's ongoing final determination of MGP's suitability and follow all lawful directives from the Commission.

(ii) Landlord and Tenant acknowledge and agree to the provisions of Section 2.7 of the Master Transaction Agreement dated as of May 11, 2021 by and among Landlord, Tenant, Blue Tarp reDevelopment, LLC ("**Blue Tarp**"), MGP Lessor Holdings, LLC, the Operating Partnership, Tenant's Parent and MGP REIT (the "**Springfield MTA**"). In the event that Springfield is at any time required, for regulatory requirements, to be transferred to Blue Tarp or the Trust (as defined in the Springfield MTA), Landlord agrees to be

bound by such requirements and to convey Springfield in accordance with the Springfield MTA. Upon such conveyance, Springfield shall cease to be demised pursuant to the Master Lease and the provisions of **Section 1.5** of the Master Lease with respect to a Removal Facility will apply thereto. Notwithstanding **Section 1.5(e)**, any costs and expenses relating to a Separate Lease entered into pursuant to this **Section 41.14(c)** shall be borne by Tenant and not by Landlord.

41.15 Certain Provisions of Nevada Law. Promptly upon Tenant's request, Landlord shall, pursuant to Section 108.2405(1)(b) of the Nevada Revised Statutes ("**NRS**"), record an additional or amended written notice of waiver of Landlord's rights set forth in NRS 108.234 with respect to all works of improvement with the office of the recorder of Clark County, Nevada. Pursuant to NRS 108.2405(2), Landlord shall serve such notice and any previously recorded notice by certified mail, return receipt requested, upon the prime contractor of each work of improvement and all other lien claimants who may give the owner a notice of right to lien pursuant to NRS 108.245, within ten (10) days after Landlord's receipt of a notice of right to lien or ten (10) days after the date on which the notice of waiver is recorded, whichever is later.

41.16 Sale/Leaseback Accounting. Landlord and Tenant agree to enter into any modifications to this Master Lease or such other agreements reasonably necessary, in the opinion of a "Big Four" accounting firm, to achieve "sale/leaseback accounting treatment" for Tenant; provided, that such modifications do not materially increase either party's obligations, or materially diminish either parties rights, under the Master Lease or affect the other party's tax or accounting treatment of the transactions contemplated by this Master Lease.

SIGNATURES ON FOLLOWING PAGE

EXHIBIT A
LIST OF FACILITIES

Name of Facility	Address of Facility
Beau Rivage	875 Beach Blvd., Biloxi, Harrison County, MS 39530
Borgata Hotel Casino & Spa	1 Borgata Way, Atlantic City, Atlantic County, NJ 08401
Empire City Casino and Yonkers Raceway, Yonkers, New York	810 Yonkers Ave, Yonkers, Westchester County, NY 10704
Excalibur Hotel and Casino	3850 and 3858 Las Vegas Blvd. South, Las Vegas, Clark County, NV 89109
Luxor Hotel and Casino	3900 Las Vegas Blvd. South, Las Vegas, Clark County, NV 89119
MGM Grand Detroit Hotel and Casino	1777 Third Street, Detroit, Wayne County, MI 48226
MGM National Harbor Resort & Casino	101 MGM National Ave., Forest Heights, Prince George's County, MD 20745
MGM Northfield Park	10777 and 10705 Northfield Road, Northfield, Summit County, OH 44067
MGM Springfield	One MGM Way, Springfield, Hampden County, MA 01103
New York-New York Hotel and Casino	3790 Las Vegas Blvd. South, Las Vegas, Clark County, NV 89109
Park MGM	3770 Las Vegas Blvd. South, Las Vegas, Clark County, NV 89109
The Park	3778 Las Vegas Blvd. South, Las Vegas, Clark County, NV 89109

MASTER LEASE

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MASTER LEASE

This **MASTER LEASE** (the “**Lease**”) is entered into as of February 14, 2020 by and among **Mandalay PropCo, LLC**, a Delaware limited liability company, (together with its permitted successors and assigns, “**MB Landlord**”), **MGM Grand PropCo, LLC**, a Delaware limited liability company (together with its permitted successors and assigns, “**Grand Landlord**” and, individually or together with the MB Landlord, as the context may require, “**Landlord**”), and **MGM Lessee II, LLC**, a Delaware limited liability company (together with its permitted successors and assigns, “**Tenant**”).

RECITALS

A. Capitalized terms used in this Lease and not otherwise defined herein are defined in **Article II** hereof.

B. Pursuant to that certain Master Transaction Agreement, dated as of January 14, 2020 among MGM Growth Properties Operating Partnership LP, MGM Resorts International, and BCORE Windmill Parent LLC and certain other parties (the “**Master Transaction Agreement**”), (a) MB Landlord desires to lease the MB Leased Property to Tenant and Tenant desires to lease the MB Leased Property from MB Landlord, and (b) Grand Landlord desires to lease the Grand Leased Property to Tenant and Tenant desires to lease the Grand Leased Property from Grand Landlord, in each case, upon the terms set forth in this Lease.

C. The two (2) facilities covered by this Lease as of the date hereof are described on **Exhibit A** attached hereto (each a “**Facility**,” and collectively, the “**Facilities**”). Each of the Facilities (and if determined by Tenant, a portion of either Facility) may be subleased by Tenant to Operating Subtenants pursuant to certain subleases (the “**Operating Subleases**”) between Tenant and each Operating Subtenant.

D. Tenant and Landlord intend this Lease to constitute one indivisible lease of the Facilities and not separate leases governed by similar terms. The Facilities constitute one economic unit, and the Rent and all other provisions of this Lease have been negotiated and agreed to based on a demise of the Facilities to the respective Tenants as a single, composite, inseparable transaction and would have been substantially different had separate leases or a divisible lease been intended.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

ARTICLE I LEASED PROPERTY

1.1 Leased Property. (a) Upon and subject to the terms and conditions hereinafter set forth, MB Landlord leases to Tenant and Tenant accepts and leases from MB Landlord all of MB Landlord’s rights and interests in and to the following with respect to the MB Facility (collectively, the “**MB Leased Property**”):

(i) the real property or properties described in Part I of **Exhibit B** attached hereto (collectively, the “**MB Land**”);

(ii) all buildings, structures, and other improvements of every kind now or hereafter located on the MB Land or connected thereto including, but not limited to, alleyways and connecting tunnels, sidewalks, utility pipes, conduits and lines (on-site and off-site to the extent MB Landlord has obtained any interest in the same), parking areas and roadways appurtenant to such buildings and structures of the MB Facility (collectively, the “**MB Leased Improvements**”); provided, however, that the foregoing shall not affect or contradict the provisions of this Lease which specify that Tenant shall be entitled to certain benefits of and rights with respect to the Tenant Capital Improvements;

(iii) all easements, rights and appurtenances, covenants, development rights, mineral, gas and oil rights, conveyed pursuant to the Master Transaction Agreement and other rights appurtenant to the MB Land and the MB Leased Improvements, all right, title and interest of MB Landlord, if any, in and to any land lying in the bed of any street, road, avenue or alley, open or closed, relating to, in front of or adjoining the MB Land and the MB Leased Improvements and to the center line thereof;

(iv) all equipment, machinery, fixtures, and other items of property, including all components thereof, that are now or hereafter located in, on or used in connection with and permanently affixed to or otherwise incorporated into the MB Leased Improvements, together with all replacements, modifications, alterations and additions thereto (collectively, the “**MB Fixtures**”); provided, however, that the foregoing shall not affect Tenant’s rights with respect to Tenant Capital Improvements pursuant to **Section 11.1(b)**;

(v) all other properties or rights, real, personal or otherwise, conveyed to MB Landlord or MB Landlord’s Subsidiaries pursuant to the Master Transaction Agreement; and

(vi) all rights in and related to the beneficial use of the water rights (collectively, the “**MB Water Rights**”) pursuant to the permits issued by the Nevada State Engineer described on **Exhibit I** attached hereto and incorporated herein by this reference (collectively, the “**MB Water Permits**”), which consist of approximately 5.3 acre-feet annually of underground water, together with all existing water related infrastructure, facilities, equipment and fixtures, including, without limitation, pumps, pump stations, pipes, reservoirs and vaults used to extract the water rights from their permitted points of diversion and to place the Water Rights appropriated under the Water Permits to beneficial use at their permitted places of use (collectively, the “**MB Water Infrastructure**”).

The MB Leased Property shall not, for any purposes under this Lease, include those assets described on **Schedule 1** attached hereto (collectively, “**MB Excluded Assets**”).

(b) Upon and subject to the terms and conditions hereinafter set forth, Grand Landlord leases to Tenant and Tenant accepts and leases from Grand Landlord all of Grand Landlord’s rights and interests in and to the following with respect to the Grand Facility (collectively, the “**Grand Leased Property**” and, together with the MB Leased Property, collectively, the “**Leased Property**”):

(i) the real property or properties described in Part II of **Exhibit B** attached hereto (collectively, the **“Grand Land”** and, together with the MB Land, collectively, the **“Land”**);

(ii) all buildings, structures, and other improvements of every kind now or hereafter located on the Grand Land or connected thereto including, but not limited to, alleyways and connecting tunnels, sidewalks, utility pipes, conduits and lines (on-site and off-site to the extent Grand Landlord has obtained any interest in the same), parking areas and roadways appurtenant to such buildings and structures of the Grand Facility (collectively, the **“Grand Leased Improvements”** and, together with the MB Leased Improvements, collectively, the **“Leased Improvements”**); provided, however, that the foregoing shall not affect or contradict the provisions of this Lease which specify that Tenant shall be entitled to certain benefits of and rights with respect to the Tenant Capital Improvements;

(iii) all easements, rights and appurtenances, covenants, development rights, mineral, gas and oil rights, conveyed pursuant to the Master Transaction Agreement and other rights appurtenant to the Grand Land and the Grand Leased Improvements, all right, title and interest of Grand Landlord, if any, in and to any land lying in the bed of any street, road, avenue or alley, open or closed, relating to, in front of or adjoining the Grand Land and the Grand Leased Improvements and to the center line thereof;

(iv) all equipment, machinery, fixtures, and other items of property, including all components thereof, that are now or hereafter located in, on or used in connection with and permanently affixed to or otherwise incorporated into the Grand Leased Improvements, together with all replacements, modifications, alterations and additions thereto (collectively, the **“Grand Fixtures”** and, together with the MB Fixtures, collectively, the **“Fixtures”**); provided, however, that the foregoing shall not affect Tenant’s rights with respect to Tenant Capital Improvements pursuant to **Section 11.1(b)**;

(v) all other properties or rights, real, personal or otherwise, conveyed to Grand Landlord or Grand Landlord’s Subsidiaries pursuant to the Master Transaction Agreement; and

(vi) all rights in and related to the beneficial use of the water rights (collectively, the **“Grand Water Rights”** and, together with the MB Water Rights, the **“Water Rights”**) pursuant to the permits issued by the Nevada State Engineer described on Exhibit I attached hereto and incorporated herein by this reference (collectively, the **“Grand Water Permits”** and, together with the MB Water Permits, the **“Water Permits”**), which consist of approximately 366.10 acre-feet annually of underground water, together with all existing water related infrastructure, facilities, equipment and fixtures, including, without limitation, pumps, pump stations, pipes, reservoirs and vaults used to extract the water rights from their permitted points of diversion and to place the Water Rights appropriated under the Water Permits to beneficial use at their permitted places of use (collectively, the **“Grand Water Infrastructure”** and, together with the MB Water Infrastructure, the **“Water Infrastructure”**).

The Grand Leased Property shall not, for any purposes under this Lease, include those assets described on **Schedule 1** attached hereto (collectively, “**Grand Excluded Assets**” and, together with the MB Excluded Assets, collectively, the “**Excluded Assets**”).

The Leased Property is leased subject to all covenants, conditions, restrictions, easements and other matters affecting the Leased Property as of the Commencement Date and such subsequent covenants, conditions, restrictions, easements and other matters permitted by this Lease or as may be agreed to by Landlord or Tenant in accordance with the terms of this Lease, whether or not of record, including any matters which would be disclosed by an inspection or accurate survey of the Leased Property.

Notwithstanding the foregoing, following (a) the removal of any Facility from this Lease pursuant to **Section 1.5**, (b) the termination of this Lease with respect to any Facility pursuant to **Section 14.2**, or (c) the termination of this Lease with respect to any Facility pursuant to **Section 15.1**, such Facility shall no longer constitute Leased Property hereunder, and the Lease shall otherwise remain in full force and effect.

1.2 Single, Indivisible Lease. (a) This Lease constitutes one indivisible lease of the Leased Property and not separate leases governed by similar terms. The Leased Property constitutes one economic unit, and the Rent and all other provisions have been negotiated and agreed to based on a demise of all of the Leased Property to the respective Tenants as a single, composite, inseparable transaction and would have been substantially different had separate leases or a divisible lease been intended. Except as expressly provided in this Lease for specific, isolated purposes (and then only to the extent expressly otherwise stated), all provisions of this Lease apply equally and uniformly to all components of the Leased Property collectively as one unit. The parties intend that the provisions of this Lease shall at all times be construed, interpreted and applied so as to carry out their mutual objective to create an indivisible lease of all of the Leased Property and, in particular but without limitation, that, for purposes of any assumption, rejection or assignment of this Lease under 11 U.S.C. Section 365, or any successor or replacement thereof or any analogous state law, this is one indivisible and non-severable lease and executory contract dealing with one legal and economic unit and that this Lease must be assumed, rejected or assigned as a whole with respect to all (and only as to all) of the Leased Property. The parties may elect to amend this Lease from time to time to modify the boundaries of the Land and/or to exclude one or more components or portions thereof, and/or to include one or more additional components as part of the Leased Property, and any such future addition to the Leased Property shall not in any way change the indivisible and nonseverable nature of this Lease and all of the foregoing provisions shall continue to apply in full force. For the avoidance of doubt, the parties acknowledge and agree that this **Section 1.2** is not intended to and shall not be deemed to limit, vitiate or supersede anything contained in **Section 41.15** hereof.

(b) Without limiting the generality of the foregoing, Landlord and Tenant acknowledge and agree that (x) neither (1) Tenant’s or Landlord’s ability to terminate this Lease with respect to an affected Facility following certain Casualty Events pursuant to **Section 14.2** nor (2) Tenant’s or Landlord’s ability to terminate this Lease with respect to an affected Facility following certain Condemnation events pursuant to **Section 15.1** shall in any way change the indivisible and nonseverable nature of this Lease (as set forth in this **Section 1.2**) and (y)

following any such removal, assignment or termination, this Lease shall continue as a single indivisible lease with respect to the remaining Leased Property.

1.3 Term. The “**Term**” of this Lease is the Initial Term *plus* all Renewal Terms, to the extent exercised. The initial term of this Lease (the “**Initial Term**”) shall commence on the date of execution of this Lease (the “**Commencement Date**”) and end on the last day of the calendar month in which the thirtieth (30th) anniversary of the Commencement Date occurs, subject to renewal as set forth in **Section 1.4** below.

1.4 Renewal Terms. (a) The term of this Lease may be extended for two (2) separate terms (each a “**Renewal Term**”) of ten (10) years each if: (i) at least thirty six (36) months prior to the end of the then current Term, Tenant delivers to Landlord an irrevocable written notice that Tenant is exercising its right to extend this Lease for one (1) Renewal Term (a “**Renewal Notice**”); and (ii) no Event of Default shall have occurred and be continuing on the date Landlord receives the Renewal Notice (the “**Exercise Date**”) or on the last day of the then current Term; provided, however, that if Tenant fails to deliver to Landlord a Renewal Notice prior to the date that is thirty six (36) months prior to the then current expiration date of the Term that Tenant does not intend to renew in accordance with this **Section 1.4**, then it shall automatically and without further action be deemed for all purposes that Tenant has delivered the Renewal Notice required by this **Section 1.4(a)(i)**. During any such Renewal Term, except as otherwise specifically provided for herein, all of the terms and conditions of this Lease shall remain in full force and effect. After the last Renewal Term, Tenant shall have no further right to renew or extend the Term.

(b) Tenant may exercise such options to renew with respect to all (and in no event fewer than all) of the Facilities which are subject to this Lease as of such Exercise Date.

(c) During each Renewal Term, Base Rent shall continue to be determined pursuant to the definition of such term set forth in this Lease.

1.5 Separation of Leases.

(a) From time to time, at the election of Landlord, but only (i) in connection with the sale of a Facility that is permitted under this Lease or (ii) as required by one or more Fee Mortgagees (either in a single or separate financing), Landlord may remove such Facility (a “**Removal Facility**”) from this Lease and place such Removal Facility in a separate lease on terms and conditions substantially similar to, and in any case no less favorable to Tenant than, those set forth in this Lease and as otherwise provided in this **Section 1.5** (a “**Separate Lease**”) to facilitate the sale of such Removal Facility.

(b) If Landlord elects to remove a Removal Facility, Landlord shall give Tenant not less than thirty (30) days’ Notice thereof (a “**Removal Notice**”), and Tenant shall thereafter, within said thirty (30) day period (or such other period of time as Landlord may reasonably require; it being understood that Landlord may delay removal or cancel the Removal Notice in the event that the underlying sale of a Removal Facility is delayed or cancelled for any reason), execute, acknowledge and deliver to the new owner of the Removal Facility (“**Separate Lease Landlord**”), as designated by Landlord, at no cost or expense to Tenant, a Separate Lease with respect to the Removal Facility effective as of the date the Separate Lease is fully executed

and delivered by the parties thereto (“**Removal Date**”) for the remaining Term and on substantially the same terms and conditions as, and in any case no less favorable to Tenant than the terms and conditions of, this Lease, except for appropriate adjustments (including to Exhibits and Schedules), including as follows:

(i) Rent. The initial Base Rent for the Removal Facility shall be equal to the Base Rent amount in respect of such Removal Facility at the time of the Removal Date and thereafter shall be adjusted on the same basis as provided in this Lease; it being understood that the specification in this **Section 1.5(b)(i)** of the methodology for determining the initial Base Rent for a Removal Facility shall not in any way change the indivisible and nonseverable nature of this Lease (as set forth in **Section 1.2**).

(ii) Liabilities and Obligations. The Separate Lease shall provide that the applicable Landlord and Tenant shall be responsible for the payment, performance and satisfaction of all of the duties, obligations and liabilities of such Landlord and Tenant, respectively, arising under this Lease, with respect to the Removal Facility, that were not paid, performed and satisfied in full prior to the commencement date of the Separate Lease, and shall further provide that (x) Separate Lease Landlord and tenant under the Separate Lease shall not be responsible for the payment, performance or satisfaction of any duties, obligations or liabilities of the applicable Landlord or Tenant under this Lease first arising after the Removal Date and (y) none of the applicable Landlord, Tenant, any Operating Subtenant, or Guarantor shall be responsible for the payment, performance or satisfaction of any duties, obligations or liabilities of the Separate Lease Landlord or tenant under the Separate Lease, except to the extent it is a party to or as set forth in such Separate Lease. Except as provided in clause (iv) below, the applicable Landlord and Tenant’s obligations under this Lease with respect to the remaining Facility shall remain unaffected and shall continue in accordance with the terms of this Lease.

(iii) Deletion of REIT Provisions. At the election of Landlord or any Separate Lease Landlord, any one or more of the provisions of the Separate Lease pertaining to the REIT status of any member of Landlord (or any Affiliate of any member of Landlord) shall be deleted.

(iv) Amendment to this Lease. Upon execution of a Separate Lease, and effective as of the effective date of such Separate Lease, this Lease shall be deemed to be amended as follows: (i) the Removal Facility shall be excluded from the Leased Property hereunder and (ii) Base Rent hereunder shall be reduced by the Base Rent amount in respect of such Removal Facility at the time of the Removal Date. Such amendment shall occur automatically and without the necessity of any further action by Landlord or Tenant, but, at Landlord’s or Tenant’s election, the same shall be reflected in a formal amendment to this Lease, which amendment shall be promptly executed by Landlord and Tenant.

(v) Other Undertakings. Landlord and Tenant shall each take such actions and execute and deliver such documents, including, without limitation, a Separate Lease and a new or amended memorandum of lease and, if requested by the other, an amendment to this Lease, as are reasonably necessary and appropriate to effectuate fully the provisions and intent of this **Section 1.5**, and as otherwise are appropriate or as Landlord, Tenant or any title insurer may reasonably request to evidence such removal and new leasing of the Removal

Facility, including a memorandum of lease with respect to such Separate Lease and an amendment of the existing memorandum of lease with respect to this Lease and an amendment of this Lease.

(c) Cross Default. If this Lease is severed in accordance with this Lease, no default under a Separate Lease shall be a default under this Lease and no default or Event of Default under this Lease shall be a default under a Separate Lease; provided however, if this Lease is severed in accordance with one or more Fee Mortgages pursuant to **Section 1.5(a)(ii)**, for as long as the Landlord and the Separate Lease Landlord are Affiliates of each other, a default under such Separate Lease shall be a default under this Lease and an Event of Default under this Lease shall be a default under such Separate Lease. In all cases, so long as any Facility Mortgage shall apply to the Removal Facility or Separate Lease, the Removal Facility and/or Separate Lease shall continue to be subject either to any existing subordination, nondisturbance and attornment agreement (“**SNDA**”) with respect to this Lease, or subject to a new SNDA to be delivered by Facility Mortgagee, any Separate Lease Landlord and Tenant on substantially the same terms and conditions as the existing SNDA (having regard for the terms and conditions of the Separate Lease).

(d) Guaranty. Upon execution of a Separate Lease, Guarantor and the applicable Operating Subtenant(s) shall each execute and deliver to Separate Lease Landlord a new guaranty and operating subtenant guaranty, respectively, of Tenant’s obligations with respect to the Removal Facility, which guaranty shall be in the form of guaranty attached as **Exhibit E** hereto (the “**Separate Lease Guaranty**”) and which operating subtenant guaranty shall be in the form of the Operating Subtenant Guaranty (the “**Separate Lease Operating Sublease Guaranty**”). Upon execution and delivery of the Separate Lease Guaranty and the Separate Lease Operating Sublease Guaranty, the Guaranty and Operating Subtenant Guaranty delivered to Landlord in connection with the execution of this Lease shall be of no further force or effect with respect to any future obligations of Guarantor and the applicable Operating Subtenant(s), respectively, related to the Removal Facility; provided that the Guaranty and Operating Subtenant Guaranty shall remain in full force and effect with respect to any existing or pending obligations of Guarantor and the applicable Operating Subtenant(s), respectively, related to the Removal Facility arising or accruing prior to the execution and delivery of the Separate Lease.

(e) Costs and Expenses. All costs and expenses relating to a Separate Lease (including reasonable attorneys’ fees and other reasonable, documented out-of-pocket costs incurred by Tenant, any Operating Subtenant or Guarantor for outside counsel, if any) shall be borne by Landlord and not Tenant.

(f) Cooperation. Landlord and Tenant shall cooperate with Gaming Authorities in all reasonable respects to facilitate all necessary regulatory reviews, approvals and/or authorization of the Separate Lease in accordance with applicable Gaming Regulations.

(g) Calculation of Required CapEx. If this Lease is severed in accordance with one or more Fee Mortgages pursuant to **Section 1.5(a)(ii)**, for as long as the Landlord and the Separate Lease Landlord are Affiliates of each other, the calculation of Required CapEx shall be computed on an aggregate basis for both of the Facilities combined.

ARTICLE II

DEFINITIONS

2.1 Definitions. For all purposes of this Lease, except as otherwise expressly provided or unless the context otherwise requires, (i) the terms defined in this **Article II** have the meanings assigned to them in this Article and include the plural as well as the singular; all accounting terms not otherwise defined herein have the meanings assigned to them in accordance with GAAP; (ii) all references in this Lease to designated “Articles,” “Sections” and other subdivisions are to the designated Articles, Sections and other subdivisions of this Lease; (iii) the word “including” shall have the same meaning as the phrase “including, without limitation,” and other similar phrases; (iv) the words “herein,” “hereof” and “hereunder” and other words of similar import refer to this Lease as a whole and not to any particular Article, Section or other subdivision; (v) for the calculation of any financial ratios or tests referenced in this Lease (including the EBITDAR to Rent Ratio), this Lease, regardless of its treatment under GAAP, shall be deemed to be an operating lease and the Rent and Additional Charges payable hereunder shall be treated as Operating Expenses; (vi) all uses of the term “EBITDA” herein shall have the meaning of the definition of “EBITDA” in this Lease; (vii) all references herein to items to be prepared or determined “in accordance with GAAP” are intended to mean “in accordance with GAAP and the Existing Accounting Guidelines”; and (viii) all Exhibits, Schedules and other attachments annexed to the body of this Lease are hereby deemed to be incorporated into and made an integral part of this Lease.

“Accounts”: All accounts, including deposit accounts, all rents, profits, income, revenues or rights to payment or reimbursement derived from the use of any space within the Leased Property and/or from goods sold or leased or services rendered from the Leased Property (including, without limitation, from goods sold or leased or services rendered from the Leased Property by any subtenant) and all accounts receivable, in each case whether or not evidenced by a contract, document, instrument or chattel paper and whether or not earned by performance, including without limitation, the right to payment of management fees and all proceeds of the foregoing.

“Additional Charges”: All Impositions and all other amounts, liabilities and obligations which Tenant assumes or agrees to pay under this Lease and, in the event of any failure on the part of Tenant to pay (or cause to be paid) any of those items (except (i) where such failure is due to the wrongful or negligent acts or omissions of Landlord and (ii) where Tenant shall have furnished Landlord with no less than ten (10) days’ notice of such act or omission of which Tenant is aware), every fine, penalty, interest and cost which may be added for non-payment or late payment of such items pursuant to the terms hereof, applicable law or otherwise.

“Affiliate”: When used with respect to any corporation, limited liability company, partnership or any other Person, the term “**Affiliate**” shall mean any Person which, directly or indirectly, controls or is controlled by or is under common control with such other Person. For the purposes of this definition, “**control**” (including the correlative meanings of the terms “controlled by” and “under common control with”), as used with respect to any person, shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the

management and policies of such Person, through the ownership of voting securities, partnership interests or other Equity Interests.

“Affiliate Agreements”: Any contract between Affiliates of Tenant’s Parent with respect to any Facility.

“Affiliate SNDA”: As defined in **Section 22.10**.

“Ancillary Space”: Those portions of a Facility that are not Primary Space.

“ANI”: As defined in **Section 13.1(j)**.

“Annual Certificate”: A certificate of Tenant, signed by an authorized officer of Tenant, certifying to Tenant’s knowledge in all material respects as to the matters described in **Sections 8.5** and **22.3(d)** to be included in such certificate.

“Applicable Coverage Ratio”: As defined in **Section 23.3**.

“Applicable CPI Adjustment Factor”: For any Lease Year beginning with the sixteenth Lease Year, the quotient of (A) the CPI as of the date which is thirty (30) days prior to the commencement of such Lease Year divided by (B) the CPI as of the date which is one year prior to the date described in the preceding clause (A).

“Appraiser”: As defined in **Section 3.5**.

“Approved Accounting Firm”: (1) Any “big four” accounting firm designated by Tenant or (2) one of the other largest independent public accounting firms in the United States selected by Tenant’s Parent or Tenant and reasonably approved by Landlord.

“Architect”: As defined in **Section 10.1(b)(iii)**.

“Award”: All compensation, sums or anything of value awarded, paid or received with respect to a total or partial Condemnation.

“Bank Secrecy Act”: As defined in **Section 8.2(c)**.

“Base Rent”: An annual amount equal to Two Hundred Ninety-Two Million Dollars (\$292,000,000) allocated between the Grand Leased Property and the MB Leased Property as follows: \$159,000,000 shall be allocated to the Grand Leased Property (the “**Initial Grand Base Rent**”) and \$133,000,000 shall be allocated to the MB Leased Property (the “**Initial MB Base Rent**”); provided, however, that commencing on the first day of the calendar month immediately following the first anniversary of the Commencement Date and continuing at the beginning of each Lease Year thereafter during the Term, the Base Rent shall increase to an annual amount equal to the sum of (i) the Base Rent for the immediately preceding Lease Year, and (ii) the Escalation. The Base Rent shall continue to be allocated to each Facility, as illustrated on **Schedule 12** hereto.

At the commencement of each Renewal Term, Base Rent of each Facility shall be reset to be equal to the greater of (i) the amount determined pursuant to the immediately

preceding paragraph, and (ii) the Fair Market Rent of each Facility as determined pursuant to **Section 3.5** hereof. The Base Rent determined in accordance with the preceding sentence shall be payable throughout the remainder of the Renewal Term except that the Base Rent shall increase on the first day of each Lease Year to an amount equal to the sum of (x) the Base Rent for the immediately preceding Lease Year, and (y) the Escalation.

“**Blackstone REIT**”: BREIT and any Subsidiary of BREIT that is a “real estate investment trust” (within the meaning of Section 856(a) of the Code) through which BREIT holds an interest in Landlord.

“**Bookings**”: Reservations, bookings, exhibitions or other short-term arrangements with conventions, conferences, hotel guests, tours, vendors and other groups or individuals (it being understood that whether or not such arrangements or agreements are short-term or temporary shall be determined without regard to how long in advance such arrangements or agreements are entered into).

“**BREIT**”: Blackstone Real Estate Income Trust Inc., a Delaware corporation.

“**BREIT OP**”: BREIT Operating Partnership L.P., a Delaware limited partnership.

“**Business Day**”: Each Monday, Tuesday, Wednesday, Thursday and Friday which, in each case, is not a day on which national banks in the City of New York, New York are authorized, or obligated, by law or executive order, to close.

“**CapEx Certification Date**”: As defined in **Section 9.1(e)(i)**.

“**CapEx Disbursement Request**”: As defined in **Section 9.1(e)(v)**.

“**CapEx Grace Period**”: As defined in **Section 9.1(e)(iii)**.

“**CapEx Reserve**”: As defined in **Section 9.1(e)(iv)**.

“**CapEx Reserve Funds**”: As defined in **Section 9.1(e)(iv)**.

“**CapEx Testing Period**”: Each five (5) year period (on a rolling basis) through the Term, with the first period commencing on January 1, 2020 and expiring on December 31, 2024 and the second period commencing on January 1, 2021 and expiring on December 31, 2025.

“**CapEx Testing Period Certificate**”: As defined in **Section 9.1(e)(i)**.

“**CapEx Testing Period Net Revenues**”: As defined in **Section 9.1(e)(i)**.

“**Capital Improvement Notice**”: As defined in **Section 10.5(a)**.

“**Capital Improvements**”: With respect to any Facility, any improvements or alterations or modifications of the Leased Improvements, including without limitation capital improvements and structural alterations, modifications or improvements, or one or more additional structures annexed to any portion of any of the Leased Improvements of such Facility or the expansion of existing improvements, which are constructed on any parcel or portion of the

Land of such Facility, during the Term, including construction of a new wing or new story, in each case which are permanently affixed to the Leased Property such that they constitute real property under applicable Legal Requirements.

“Capital Improvements Threshold”: As defined in **Section 10.1(b)(vi)**.

“Cash”: Cash and cash equivalents and all instruments evidencing the same or any right thereto and all proceeds thereof.

“Casualty Event”: Any loss of title or any loss of or damage to or destruction of, or any Condemnation or other taking (including by any governmental authority) of, any portion of the Leased Property. “**Casualty Event**” shall include, but not be limited to, any taking of all or any portion of the Leased Property, in or by Condemnation or other eminent domain proceedings pursuant to any applicable law, or by reason of the temporary requisition of the use or occupancy of all or any part of any real property of or any part thereof by any governmental authority, civil or military.

“Code”: The Internal Revenue Code of 1986 as amended from time to time.

“Commencement Date”: As defined in **Section 1.3**.

“Competitor Restriction Open Date”: As defined in **Section 18.1**.

“Competitor Restriction Termination Date”: The earlier to occur of (x) the Competitor Restriction Open Date and (y) an Event of Default.

“Condemnation”: A taking by the exercise of any governmental power, whether by legal proceedings or otherwise, by a Condemnor or a voluntary sale or transfer by Landlord to any Condemnor, either under threat of condemnation or while legal proceedings for condemnation are pending.

“Condemnor”: Any public or quasi-public authority, or private corporation or individual, having the power of Condemnation.

“Confidential Information”: Any and all financial, technical, proprietary, confidential, and other information, including data, reports, interpretations, forecasts, analyses, compilations, studies, summaries, extracts, records, know-how, statements (written or oral) or other documents of any kind, that contain information concerning the business and affairs of Landlord or Tenant or their respective Related Persons, whether furnished before or after the date of this Lease, and regardless of the manner in which it was furnished, and any material prepared by either Landlord or Tenant or their respective Related Persons, in whatever form maintained, containing, reflecting or based upon, in whole or in part, any such information; provided, however, that “**Confidential Information**” shall not include information which: (i) was or becomes generally available to the public other than as a result of a disclosure by either Landlord or Tenant or their respective Related Persons in breach of this Lease; (ii) was or becomes available to either Landlord or Tenant or their respective Related Persons on a non-confidential basis prior to its disclosure hereunder as evidenced by the written records of Landlord or Tenant or their Related Persons, provided, that the source of the information is not bound by a confidentiality agreement with respect to such information or otherwise prohibited from

transmitting such information by a contractual, legal or fiduciary duty; or (iii) was independently developed by the other without the use of any Confidential Information, as evidenced by its written records.

“Construction Security”: (A) cash, (B) cash equivalents, (C) a Letter of Credit or (D) an alternative security reasonably acceptable to Landlord (or a combination thereof), in an amount equal to (x) in the case of Capital Improvements, the cost by which the budgeted cost of such Capital Improvements exceeds the Capital Improvements Threshold, and (y) in the case of a Restoration Deficiency, the amount of such deficiency.

“Construction Security Escrow Account”: As defined in **Section 10.1(c)**.

“Control”: The ability, directly or indirectly, whether through the ownership of voting securities or other Equity Interests, by contract, or otherwise (including by being the managing member or general partner of the Person in question), to direct or cause the direction of the management and policies of a Person.

“Covenant Failure Period”: The period beginning upon the failure of the Financial Covenant or the Listing Covenant and ending upon a Covenant Security Coverage Cure with respect to such failure.

“Covenant Security Coverage Cure”: (1) Following the failure of the Financial Covenant, (A) (i) as of the last day of the most recent Test Period and the last day of the Test Period immediately preceding the most recent Test Period, the EBITDAR to Rent Ratio shall have been equal to or greater than the Applicable Coverage Ratio or (ii) Tenant’s Parent’s Market Capitalization, on the last day of the most recent Test Period and the last day of the Test Period immediately preceding the most recent Test Period, shall exceed \$6,000,000,000; and (B) Tenant’s satisfaction of the Listing Covenant; or (2) following the failure of the Listing Covenant, as of the last day of the most recent Test Period and the last day of the Test Period immediately preceding the most recent Test Period, the EBITDAR to Rent Ratio shall have been greater than 2:1.

“Covenant Security Escrow Account”: An escrow account established by Tenant with a reputable, nationally recognized title insurance company selected by Tenant and approved by Landlord (such approval not to be unreasonably withheld, conditioned or delayed) with an office located in Las Vegas, Nevada. Fidelity Title Insurance Company is hereby preapproved by Landlord and Tenant.

“Covenant Security Escrow Instructions”: Whenever Tenant has deposited sums as required hereunder into a Covenant Security Escrow Account, irrevocable escrow instructions (reasonably satisfactory to Tenant and Landlord) to the title company holding the Covenant Security Escrow Account to hold such funds in escrow, and to release them directly to Landlord promptly upon written demand by Landlord certifying that an Event of Default exists hereunder, without any further instructions, action or approval from Tenant, or to release them to Tenant upon the joint written instructions of Tenant and Landlord (which, upon Tenant’s request, Landlord shall execute and deliver when a Covenant Security Coverage Cure shall have occurred or following the expiration of this Lease).

“CPI”: The United States Department of Labor, Bureau of Labor Statistics Revised Consumer Price Index for All Urban Consumers (1982-84=100), U.S. City Average, All Items, or, if that index is not available at the time in question, the index designated by such Department as the successor to such index, and if there is no index so designated, an index for an area in the United States that most closely corresponds to the entire United States, published by such Department, or if none, by any other instrumentality of the United States, all as reasonably determined by Landlord and Tenant.

“Customary Hotel Art”: All art, artwork, paintings, sculptures or other artistic installments or displays which are (x) generally affixed to the walls of guest rooms, hallways, convention rooms, casino areas and ancillary spaces which are consistent with the Operating Standard or (y) otherwise located at any Facility, and, in each case, not costing in excess of \$10,000 for any individual item.

“Data”: As defined in the definition of Intellectual Property.

“Date of Taking”: The date the Condemnor has the right to possession of the property being condemned.

“Debt Agreement”: If designated by Tenant to Landlord in writing to be included in the definition of “Debt Agreement,” one or more (A) debt facilities or commercial paper facilities, providing for revolving credit loans, term loans, receivables financing (including through the sale of receivables to lenders or to special purpose entities formed to borrow from lenders against such receivables) or letters of credit, (B) debt securities, indentures or other forms of debt financing (including convertible or exchangeable debt instruments or bank guarantees or bankers’ acceptances), or (C) instruments or agreements evidencing any other indebtedness, in each case, with the same or different borrowers or issuers and, in each case, (i) entered into from time to time by Tenant, any Operating Subtenant and/or their respective Subsidiaries, (ii) as amended, supplemented, modified, extended, restructured, renewed, refinanced, restated, replaced or refunded in whole or in part from time to time, (iii) which are secured by assets of Tenant, any Operating Subtenant and/or their respective Subsidiaries, including, but not limited to, their Cash, Accounts, Tenant’s Property, real property and leasehold estates in real property (including this Lease) and (iv) which shall provide Landlord, (x), the right to receive copies of notices of Specified Debt Agreement Defaults thereunder in accordance with **Section 17.3** hereof and (y) the right to cure such defaults in accordance with **Section 17.2** hereof.

“Debt Facilities”: One or more (A) debt facilities or commercial paper facilities, providing for revolving credit loans, term loans, receivables financing (including through the sale of receivables to lenders or to special purpose entities formed to borrow from lenders against such receivables) or letters of credit, (B) debt securities, indentures or other forms of debt financing (including convertible or exchangeable debt instruments or bank guarantees or bankers’ acceptances), or (C) instruments or agreements evidencing any other indebtedness, in each case, with the same or different borrowers or issuers.

“Delano Agreement”: License Agreement dated August 8, 2012 by and between Morgans Hotel Group Management LLC and Mandalay Corp. d/b/a Mandalay Bay Resort and Casino, as modified or amended as of the date hereof or from time to time in accordance with this Agreement.

“Designated Tenant’s Property”: As defined in **Section 36.1**.

“Disclosure Documents”: Collectively, any written materials used or provided to any prospective investors and/or the rating agencies in connection with any public offering or private placement in connection with a securitization (including, without limitation, a prospectus, prospectus supplement, private placement memorandum, offering memorandum, offering circular, term sheet, road show presentation materials or other offering documents, marketing materials or information provided to prospective investors), in each case in preliminary or final form and including any amendments, supplements, exhibits, annexes and other attachments thereto.

“Dispute Notice”: As defined in **Section 16.1(b)**.

“Dollars” and **“\$”**: The lawful money of the United States.

“EBITDA”: For any Test Period and with respect to any Person or Facility (as applicable), the sum of (a) Net Income of such Person or Facility for that period, plus or minus the following (without duplication in each case) to the extent reflected in Net Income for that period, plus (b) any extraordinary loss, and, without duplication, any loss associated with the early retirement of Indebtedness and with any disposition not in the ordinary course of business, minus (c) any extraordinary gain, and, without duplication, any gains associated with the early retirement of Indebtedness and with any disposition not in the ordinary course of business, plus (d) interest charges of such Person or Facility for that period, less (e) interest income of such Person or Facility for that period, plus (f) the aggregate amount of expense for federal, foreign, state and local taxes on or measured by income of such Person or Facility for that period excluding Gaming taxes (whether or not payable during that period), minus (g) the aggregate amount of benefit for federal, foreign, state and local taxes on or measured by income of such Person or Facility for that period excluding Gaming taxes (whether or not receivable during that period), plus (h) depreciation, amortization, plus (i) all non-recurring and/or other non-cash expenses which shall be limited to third party expenses in connection with an acquisition or disposition of an asset, plus (j) loss on sale or disposal of an asset, and write downs and impairments of an asset, minus (k) all non-recurring and/or other non-cash income in connection with an acquisition or disposition, and gain on sale of an asset, plus (l) expenses classified as “pre-opening and start-up expenses” on the applicable financial statements of that Person or Facility for that fiscal period which shall be limited to costs related directly to such Facility’s Primary Intended Use, minus (m) non-cash reversal of an accrual or reserve not recorded in the ordinary course, plus or minus (n) the impact of any foreign currency gains or losses and related swaps, plus (o) all long-term non-cash expenses realized in connection with or resulting from equity or equity-linked compensation plans, employee benefit plans or agreements or post-employment benefit plans or agreements, stock appreciation or similar rights, stock options, restricted stock, preferred stock, stock appreciation or other similar rights, plus or minus (p) any equity income from the earnings of an equity method investee and plus (q) any equity loss from the earnings of an equity method investee, in each case as determined in accordance with GAAP, consistently applied using the Existing Accounting Guidelines. For the avoidance of doubt, (x) the revenues and expenses of the Signature Entities arising out of the Signature Hotel Units (including from any Signature Rental Management Operations) shall be included for purposes of calculating the EBITDA of the Grand Facility (or Grand Operating Subtenant (or Tenant with respect to any portion of the Grand Facility that is not subject to an Operating Sublease)) and (y)

other than as set forth in the immediately preceding clause (x), no revenues and expenses of Tenant or any Operating Subtenant other than those derived from the Facilities shall be included for purposes of calculating EBITDA.

“EBITDAR”: For any Test Period, with respect to any Person or Facility, EBITDA plus, without duplication, any rent associated with this Lease (as may be amended from time to time) reflected in Net Income, and, without duplication, in each case as determined in accordance with GAAP, consistently applied using the Existing Accounting Guidelines.

“EBITDAR to Rent Ratio”: For any date, the ratio of (i) EBITDAR derived from the Facilities by Tenant, any Operating Subtenant or their Affiliates (without duplication) for the Test Period most recently ended prior to such date to (ii) Rent for the Test Period most recently ended prior to such date. For purposes of the calculation of Rent in clause (ii) above for the first year following the Commencement Date, Rent shall be \$292,000,000.

“EIL”: As defined in **Section 13.1(j)**.

“Eligible Account”: A separate and identifiable account from all other funds held by the holding institution that is either (a) an account or accounts maintained with a federal or state-chartered depository institution or trust company which complies with the definition of Eligible Institution or (b) a segregated trust account or accounts maintained with a federal or state chartered depository institution or trust company acting in its fiduciary capacity that has a Moody’s rating of at least “Baa2” and which, in the case of a state chartered depository institution or trust company, is subject to regulations substantially similar to 12 C.F.R. §9.10(b), having in either case a combined capital and surplus of at least Fifty Million and No/100 Dollars (\$50,000,000.00) and subject to supervision or examination by federal and state authority. An Eligible Account will not be evidenced by a certificate of deposit, passbook or other instrument.

“Eligible Institution”: Either (a) a depository institution or trust company insured by the Federal Deposit Insurance Corporation, the short-term unsecured debt obligations or commercial paper of which are rated at least “A-1+” by S&P and “P-1” by Moody’s in the case of accounts in which funds are held for thirty (30) days or less (or, in the case of letters of credit and accounts in which funds are held for more than thirty (30) days, the long-term unsecured debt obligations of which are rated at least “A+” by S&P and “Aa3” by Moody’s), or (b) Wells Fargo Bank, National Association, JPMorgan Chase Bank, N.A. or Bank of America, N.A. or any of their affiliates or successors provided that the rating by S&P and Moody’s for the short term unsecured debt obligations or commercial paper and long term unsecured debt obligations of the same does not decrease below the ratings set forth in clause (a) hereof.

“Encumbrance”: Any mortgage, deed of trust, lien, encumbrance or other matter affecting title to the Leased Property, or any portion thereof or interest therein.

“End of Term Asset Transfer Notice”: As defined in **Section 36.1**.

“Environmental Costs”: As defined in **Section 32.4**.

“Environmental Laws”: Any and all federal, state, municipal and local laws, statutes, ordinances, rules, regulations, guidances, policies, orders, decrees or judgments, whether statutory or common law, as amended from time to time, now or hereafter in effect, or promulgated, pertaining to the environment, public health and safety and industrial hygiene, including the use, generation, manufacture, production, storage, release, discharge, disposal, handling, treatment, removal, decontamination, cleanup, transportation or regulation of any Hazardous Substance, including the Industrial Site Recovery Act, the Clean Air Act, the Clean Water Act, the Toxic Substances Control Act, the Comprehensive Environmental Response Compensation and Liability Act, the Resource Conservation and Recovery Act, the Federal Insecticide, Fungicide, Rodenticide Act, the Safe Drinking Water Act and the Occupational Safety and Health Act, NRS Chapters 444, 445A, 445B, 445C, 445D, 459, 590 and NRS Sections 618.750 to 618.850.

“Equity Interests”: With respect to any Person, any and all shares, interests, participations or other equivalents, including ownership or membership interests (however designated, whether voting or non-voting), of equity of such Person, including, if such Person is a partnership, partnership interests (whether general or limited) and any other interest or participation that confers on a Person the right to receive a share of the profits and losses of, or distributions of assets of, such partnership.

“ERISA Affiliate”: Any entity which, together with another entity, would be treated as a single employer under Section 414(b), (c), (m) or (o) of the Code or Section 4001 of the Employee Retirement Income Security Act of 1974, as amended from time to time.

“Escalated Base Rent”: For each of the first fifteen (15) Lease Years (other than the first Lease Year), an amount equal to one hundred and two percent (102%) of the Base Rent as of the end of the immediately preceding Lease Year, as set forth on **Schedule 12** hereto. Thereafter, **“Escalated Base Rent”** for each Lease Year shall mean (A) the greater of (1) an amount equal to one hundred and two percent (102%) of the Base Rent as of the end of the immediately preceding Lease Year, and (2) the Applicable CPI Adjustment Factor multiplied by the Base Rent as of the end of the immediately preceding Lease Year; provided, however, that in no event shall the Escalated Base Rent for any Lease Year increase by more than three percent (3%) of the Base Rent payable for the immediately preceding Lease Year (the **“Escalation Cap”**), as shown in the Theoretical Example of Year 16 Rent Calculation attached hereto in **Schedule 12**.

“Escalation”: For any Lease Year (other than the first Lease Year), an amount equal to the difference between (i) the Escalated Base Rent for such Lease Year and (ii) the Base Rent for the immediately preceding Lease Year. For purposes of determining the Escalations pursuant to **Section 23.3**, the Escalated Base Rent during the 16th Lease Year until the expiration of the Term shall be calculated using the Escalation Cap.

“Escalation Cap”: As defined in the definition of “Escalated Base Rent.”

“Essential Property Charges”: As defined in **Section 4.3**.

“Estoppel Certificate”: As defined in **Section 23.1(a)**.

“Event of Default”: As defined in **Section 16.1(a)**.

“Event of Default Notice”: As defined in **Section 16.2(b)**.

“Exchange Act”: The U.S. Securities Exchange Act of 1934 and any statute successor thereto, in each case as amended from time to time.

“Excluded Assets”: As defined in **Section 1.1(b)**.

“Exercise Date”: As defined in **Section 1.4**.

“Existing Accounting Guidelines”: Tenant’s accounting guidelines and policies in effect as of the Commencement Date, as more particularly set forth on **Schedule 4** hereto and which shall be subject to change to the extent not material or to the extent needed to reflect changes in GAAP.

“Existing Management Agreement”: Any management agreement with a third party not affiliated with Tenant with respect to a portion of a Facility in effect as of the date of this Lease and described on **Schedule 11** hereto.

“Existing Sublease”: Any sublease with respect to a portion of a Facility in effect as of the date of this Lease and described on **Schedule 10** hereto.

“Expert”: An independent third party professional, with expertise in respect of a matter at issue, appointed by the agreement of Landlord and Tenant or otherwise in accordance with **Article XXXIV** hereof.

“Expert Fair Market Rent”: As defined in **Section 34.1(b)(i)**.

“Facilit(y)(ies)”: As defined in the Recitals. “**Facility**” shall not include any off-track betting facilities located off-site or other offsite Gaming facilities.

“Facility Mortgage”: As defined in **Section 13.1**.

“Facility Mortgage Documents”: With respect to each Facility Mortgage and Facility Mortgagee, the applicable Facility Mortgage, loan agreement, debt agreement, credit agreement or indenture, lease, note, collateral assignment instruments, guarantees, indemnity agreements and other documents or instruments evidencing, securing or otherwise relating to the loan made, credit extended, or lease or other financing vehicle entered into pursuant thereto.

“Facility Mortgagee”: As defined in **Section 13.1**.

“Fair Market Rent”: With respect to the Leased Property or any Facility, at any time in question and as the context may require, the prevailing fair market Base Rent which would be determined in an arm’s-length negotiation by Landlord and Tenant if neither party were under any compulsion to enter into a lease, taking into account all of the material terms and conditions of this Lease (including the obligation to pay Additional Charges and the presence of any remaining Renewal Terms) and, taking into account the fact that Landlord will not be entitled to the benefit of any of Tenant’s Property other than its rights with respect to Tenant’s

Property pursuant to **Section 6.4** and **Article XXXVI** for a ten (10) year term beginning as of the commencement of the applicable Renewal Term, such Fair Market Rent to be determined by mutual agreement by the parties or in accordance with **Section 3.5**.

“Fair Market Rent Assumptions”: The Expert shall assume the following (1) neither the tenant nor landlord is under any compulsion to lease and that both have reasonable knowledge of all relevant facts, are acting prudently and knowledgeably in a competitive and open market, and assuming price is not affected by undue stimulus, (2) such lease contains terms and conditions identical to the terms and conditions of this Lease, other than with respect to the length of term and payment of Rent, (3) neither party is paying any broker a commission in connection with the transaction, (4) that the tenant thereunder will pay such Fair Market Rent for the entire term of such demise (*i.e.*, no early termination)), (5) the Leased Property to be valued pursuant hereto (as improved by all then existing Leased Improvements, and all Capital Improvements thereto), shall be valued as (or as part of) a fully-permitted Facility operated in accordance with the provisions of this Lease for the Primary Intended Use, free and clear of any lien or encumbrance evidencing a debt (including any Permitted Leasehold Mortgage) or judgment (including any mortgage, security interest, tax lien, or judgment lien), (6) in determining the Fair Market Rent with respect to damaged or destroyed Leased Property, such value shall be determined as if such Leased Property had not been so damaged or destroyed, (7) the Fair Market Rent shall represent the normal rent for the Leased Property unaffected by sales (or leasing) concessions granted by anyone associated with the transaction, (8) the following specific matters shall be factored in or out, as appropriate, in determining Fair Market Rent as the case may be: (i) the negative value of (x) any deferred maintenance or other items of repair or replacement of the Leased Property to the extent arising from breach or failure of Tenant to perform or observe its obligations hereunder, (y) any then current or prior Gaming or other licensure violations by Tenant, Guarantor or any of their Affiliates, and (z) any breach or failure of Tenant to perform or observe its obligations hereunder (in each case with respect to the foregoing clauses (x), (y) and (z), without giving effect to any applicable cure periods hereunder), shall not be taken into account; rather, the Leased Property and every part thereof shall be deemed to be in the condition required by this Lease and Tenant shall at all times be deemed to have operated the Facilities in compliance with and to have performed all obligations of Tenant under this Lease, and (ii) such determination shall be without reference to any savings Landlord may realize as a result of any extension of the Term of this Lease, such as savings in free rent and tenant concessions, and without reference to any “start-up” costs a new tenant would incur were it to replace the existing Tenant for any Renewal Term or otherwise, and (9) the Leased Property will be leased as a whole or substantially as a whole to a single user.

“FASB”: As defined in the definition of GAAP.

“Fee Mortgage”: Any mortgage, pledge agreement, security agreement, assignment of leases and rents, fixture filing or similar document creating or evidencing a lien on Landlord’s interest in the Leased Property or any portion thereof (or an indirect interest therein, including without limitation, a lien on direct or indirect interests in Landlord pursuant to a mezzanine loan or otherwise) in accordance with the provisions of **Article XXXI** hereof.

“Fee Mortgage Documents”: With respect to each Fee Mortgage and Fee Mortgagee, the applicable Fee Mortgage, loan agreement, debt agreement, credit agreement or indenture, lease, note, collateral assignment instruments, guarantees, indemnity agreements and

other documents or instruments evidencing, securing or otherwise relating to the loan made, credit extended, or lease or other financing vehicle entered into pursuant thereto.

“Fee Mortgage”: The holder(s) or lender(s) under any Fee Mortgage (which for the avoidance of doubt may include the holder(s) or lender(s) under any mezzanine loan secured by a direct or indirect interest in Landlord’s interest in the Leased Property) or the agent or trustee acting on behalf of any such holder(s) or lender(s).

“Fee Mortgagee Securitization”: Any sale or financing by a Fee Mortgagee (including, without limitation, issuing one or more participations) of all or a portion of the loan secured by a Fee Mortgage, including, without limitation, a public or private securitization of rated single- or multi-class securities secured by or evidencing ownership interests in all or any portion of the loan secured by a Fee Mortgage or a pool of assets that includes such loan.

“Fee Mortgagee Securitization Indemnitor”: Any Fee Mortgagee, any Affiliate of a Fee Mortgagee that has filed any registration statement relating to a Fee Mortgagee Securitization or has acted as the sponsor or depositor in connection with a Fee Mortgagee Securitization, any Affiliate of a Fee Mortgagee that acts as an underwriter, placement agent or initial purchaser of securities issued in a Fee Mortgagee Securitization, any other co-underwriters, co-placement agents or co-initial purchasers of securities issued in a Fee Mortgagee Securitization, in each case under or relating to the Fee Mortgage, and each of their respective officers, directors and Affiliates and each Person or entity who “controls” any such Person within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act.

“FF&E”: Collectively, furnishings, fixtures, inventory, and equipment located in the guest rooms, hallways, lobbies, restaurants, lounges, meeting and banquet rooms, parking facilities, public areas or otherwise in any portion of any Facility, including (without limitation) all beds, chairs, bookcases, tables, carpeting, drapes, couches, luggage carts, luggage racks, bars, bar fixtures, radios, television sets, intercom and paging equipment, electric and electronic equipment, heating, lighting and plumbing fixtures, fire prevention and extinguishing apparatus, cooling and air-conditioning systems, elevators, escalators, stoves, ranges, refrigerators, laundry machines, tools, machinery, boilers, incinerators, switchboards, conduits, compressors, vacuum cleaning systems, floor cleaning, waxing and polishing equipment, cabinets, lockers, shelving, dishwashers, garbage disposals, washer and dryers, Gaming Equipment and other casino equipment and all other hotel and casino resort equipment, supplies and other tangible property owned by Tenant or any Operating Subtenant, or in which Tenant or any Operating Subtenant has or shall have an interest, now or hereafter located at the Leased Property or used or held for use in connection with the present or future operation and occupancy of any Facility; provided, however, that FF&E shall not include Excluded Assets or items owned by subtenants that are neither Tenant or Operating Subtenants nor Affiliates of Tenant or Operating Subtenants, by guests or by other third parties.

“FF&E Disbursement Request”: As defined in **Section 9.1(f)**.

“FF&E Reserve”: As defined in **Section 9.1(f)**.

“FF&E Reserve Funds”: As defined in **Section 9.1(f)**.

“Final Financial Covenant Compliance Report”: As defined in **Section 23.1(b)(iv)**.

“Finance Lease”: As applied to any Person, any lease of any Property by that Person as lessee that is required to be classified and accounted for as a finance lease in conformity with GAAP; and provided, that, for the avoidance of doubt, this Lease will not be deemed to be a Finance Lease.

“Financial Covenant”: As defined in **Section 23.3**.

“Financial Statements”: (i) For a Fiscal Year, consolidated statements of operations, shareholders’ equity and cash flows of Tenant’s Parent and its Subsidiaries for such Fiscal Year and the related consolidated balance sheet as at the end of such Fiscal Year, prepared in accordance with GAAP as at such date and audited by an Approved Accounting Firm, and (ii) for each fiscal quarter (other than the fourth fiscal quarter in any Fiscal Year), the consolidated statements of operations and cash flows of Tenant’s Parent and its Subsidiaries for such fiscal quarter and for the portion of the Fiscal Year ended with such fiscal quarter, and the related consolidated balance sheet as at the end of such fiscal quarter, prepared in accordance with GAAP and Existing Accounting Guidelines.

“Fiscal Year”: The annual period commencing January 1 and terminating December 31 of each year.

“Fixtures”: As defined in **Section 1.1(b)(iv)**.

“Four Seasons Agreement”: Hotel Management Agreement dated March 10, 1998 by and among Four Seasons Hotels Limited, Mandalay Corp. and Circus Circus Enterprises, Inc., as modified or amended as of the date hereof or from time to time in accordance with this Agreement.

“Foreclosure Assignment”: As defined in **Section 22.2(a)(i)**.

“Foreclosure COC”: As defined in **Section 22.2(a)(i)**.

“Foreclosure Purchaser”: As defined in **Section 31.1**.

“Foreclosure Transferee”: A transferee that meets all of the following requirements:

(a) such transferee is or has engaged or is otherwise Controlled by a Qualified Operator with respect to the operation of the Facilities;

(b) such transferee (directly or through one or more of its Subsidiaries) is licensed or certified by each Gaming Authority with jurisdiction over any portion of the Leased Property as of the date of any proposed assignment or transfer to such entity (or will be so licensed upon its assumption of this Lease);

(c) such transferee is Solvent, and, other than in the case of a Permitted Leasehold Mortgagee Foreclosing Party or a Permitted Credit Facility Lender,

if such transferee has a Parent Company, the Parent Company of such transferee is Solvent, and

(d) such transferee is, or is Controlled by, a Qualified Transferee and such Qualified Transferee has executed and delivered a Guaranty.

“GAAP”: Generally accepted accounting principles in the United States set forth in the Financial Accounting Standards Board (“**FASB**”) Accounting Standards Codification® and rules and interpretive releases of the SEC under authority of federal securities laws, that are applicable to the circumstances as of the date of determination, consistently applied; provided, that if any change in accounting principles is required by the promulgation of any rule, regulation, pronouncement or opinion by the FASB or the SEC and such change results in a change in the method of calculation of any financial ratio or term in this Lease, then Tenant and Landlord shall negotiate in good faith in order to amend such provision so as to equitably reflect such change with the desired result that the criteria for evaluation of the relevant Person’s financial condition shall be the same after such change as if such change had not occurred; provided further that until such time as an amendment shall have been executed, all such financial covenants and terms in this Lease shall continue to be calculated or construed as if such change had not occurred.

“Gaming”: Casino, racetrack racing, video lottery terminal or other gaming activities, including, but not limited to, the operation of slot machines, video lottery terminals, table games, pari-mutuel wagering or other applicable types of wagering (including, but not limited to, sports wagering). For avoidance of doubt, the terms “gaming” and “gambling” as used in this Lease are intended to include the meanings of such terms under NRS Section 463.0153.

“Gaming Authorities”: Any of the Nevada Gaming Commission, the Nevada Gaming Control Board, the Clark County Liquor and Gaming Licensing Board, and any other gaming regulatory body or any agency or governmental authority which has, or may at any time after the Commencement Date have, jurisdiction over the gaming activities at the Leased Property or any successor to such authority.

“Gaming Corridor”: The greater Las Vegas Strip area bounded on the south by St. Rose Parkway (but, for the avoidance of doubt, including the M Resort), the north by US 95, on the east by Paradise Road or Maryland Parkway, as applicable, and on the west by Decatur Boulevard.

“Gaming Equipment”: All equipment, software systems and/or gaming devices, gaming devices parts inventory and other related gaming equipment and supplies used to conduct gambling games authorized by applicable Gaming Regulations at a Gaming Facility including without limitation, all slot machines, video lottery terminals, table games, cards, dice, chips, tables, player tracking systems, cashless wagering systems, electronic betting systems, mobile gaming systems, gaming kiosks, pari-mutuel wagering systems, and/or other software systems and devices used now or in the future (including any variation or derivative of any of the foregoing, or any newly created equipment, software system or gaming device) for the purposes of conducting gambling games, slot machines, gaming devices and live games.

“Gaming Facility”: The portion of any property upon which Gaming Equipment is utilized to generate Gaming revenues in accordance with a required Gaming License.

“Gaming License”: Any license, permit, approval, finding of suitability, finding of qualification or other authorization issued by Gaming Authorities to operate, carry on or conduct any gambling game, race book or sports pool, pari-mutuel wagering and/or offer to play any Gaming Equipment on the Leased Property, as required by any Gaming Regulation, including each of the licenses, permits or other authorizations set forth on **Exhibit D**, as amended from time to time, and those related to any Facility that are added to this Lease after the date hereof.

“Gaming Regulation(s)”: Any and all laws, statutes, ordinances, rules, regulations, policies, orders, resolutions, codes, decrees or judgments, and Gaming License conditions or restrictions, and requirements of any agreement with a local municipality, as amended from time to time, now or hereafter in effect or promulgated, pertaining to the operation, control, maintenance or Capital Improvement of a Gaming Facility or the conduct of a Person holding a Gaming License, including, without limitation, any contractual requirements or requirements imposed by a regulatory agency, commission, board, municipality, county, parish or other governmental body (including any Gaming Authority) pursuant to the jurisdiction and authority granted to it under applicable law.

“Government List”: (1) any list or annex to Presidential Executive Order 13224 issued on September 24, 2001 (“EO13224”), including any list of Persons who are determined to be subject to the provisions of EO13224 or any other similar prohibitions contained in the rules and regulations of OFAC (as defined below) or in any enabling legislation or other Presidential Executive Orders in respect thereof, (2) the Specially Designated Nationals and Blocked Persons Lists maintained by OFAC, (3) any other list of terrorists, terrorist organizations or narcotics traffickers maintained pursuant to any of the Rules and Regulations of OFAC, or (4) any similar lists maintained by the United States Department of State, the United States Department of Commerce or any other governmental authority or pursuant to any Executive Order of the President of the United States of America.

“Grand Excluded Assets”: As defined in **Section 1.1(b)**.

“Grand Facility”: As defined in **Exhibit A** attached hereto.

“Grand Fixtures”: As defined in **Section 1.1(b)(iv)**.

“Grand Land”: As defined in **Section 1.1(b)(i)**.

“Grand Landlord”: As defined in the preamble.

“Grand Landlord Collateral Assignment of Management Agreement”: That certain Collateral Assignment of Management Agreement dated of even date herewith, between MGM Grand Hotel and Grand Landlord and joined for limited purposes by Signature Owner, pursuant to which MGM Grand Hotel has collaterally assigned its right, title and interest under the Signature Management Agreement to Grand Landlord.

“Grand Leased Improvements”: As defined in **Section 1.1(b)(ii)**.

“Grand Leased Property”: As defined in **Section 1.1(b)**.

“Grand Operating Subtenant”: MGM Grand Hotel, or any successor Operating Subtenant of the Grand Leased Property in accordance with this Lease (including, without limitation pursuant to **Section 41.17**).

“Grand Trademarks”: (i) The “MGM Grand” and “Grand Garden” (or any Trademark that replaces “MGM Grand” or “Grand Garden” as the primary brand name used to identify the Grand Facility) brands and Trademarks containing “MGM Grand”, “Grand Garden” and the MGM lion logo and all variations and derivations thereof, in any format, font, style or design, whether alone or in combination with any other terms, phrases, symbols, logos, styles or designs, including all registrations and applications therefor, and (ii) associated copyrights.

“Grand Water Infrastructure”: As defined in **Section 1.1(b)(vi)**.

“Grand Water Permits”: As defined in **Section 1.1(b)(vi)**.

“Grand Water Rights”: As defined in **Section 1.1(b)(vi)**.

“Guarantor”: Tenant’s Parent or any Qualified Transferee which delivers a Guaranty in accordance with this Lease or consented to by Landlord.

“Guaranty”: That certain Guaranty of Lease dated as of the date hereof by and between Guarantor and Landlord, a form of which is attached as **Exhibit E** hereto, as the same may be amended or supplemented or restated from time to time in accordance with the terms of this Lease and the Guaranty, and any other form of guaranty in form and substance satisfactory to Landlord in its sole discretion (it being acknowledged by Landlord that a Guaranty in the form of **Exhibit E** attached hereto is satisfactory) executed by a Guarantor in favor of Landlord (as the same may be amended or supplemented or restated from time to time in accordance with this Lease and the Guaranty) pursuant to which such Guarantor agrees to guaranty all of the obligations of Tenant hereunder.

“Guest Data”: Any and all information and data identifying, describing, concerning or generated by website visitors or prospective, actual or past guests or customers of casinos, hotels, retail locations, restaurants, bars, spas, entertainment venues, or other facilities or services, including without limitation any and all guest or customer profiles, contact information (e.g., addresses, phone numbers, facsimile numbers and email addresses), histories, preferences, game play and patronage patterns, experiences, results and demographic information, whether or not any of the foregoing constitutes personally identifiable information, together with any and all other guest or customer information in any database of Tenant, Tenant’s Parent or their respective Affiliates, regardless of the source or location thereof, and including without limitation such information obtained or derived by Tenant, Tenant’s Parent or any of their respective Affiliates from (i) guests or customers of the Facilities (for the avoidance of doubt, including Property Specific Guest Data); or (ii) any other sources and databases, including websites, central reservations databases, operational data bases (ODS) and any player loyalty programs (e.g., the Tenant Rewards Program).

“Handling”: As defined in **Section 32.4**.

“Hazardous Substances”: Collectively, any petroleum, petroleum product or by product or any substance, material or waste that is defined, regulated or classified pursuant to any applicable Environmental Law as “hazardous,” “toxic,” a “pollutant,” a “contaminant,” or words of similar meaning and regulatory effect.

“Hotel Trademarks”: Collectively, the MB Trademarks and the Grand Trademarks.

“Impositions”: All taxes, special and general assessments, including assessments for public improvements or benefits, whether or not commenced or completed prior to the date hereof and whether or not to be completed within the Term, rents or other amounts payable under any Property Documents, water rents, rates and charges, commercial rent taxes, sewer and other utility rents, rates and charges, excise tax levies, fees including license, permit, inspection, authorization and similar fees, and other governmental impositions, levies and charges of every kind and nature whatsoever, that may be assessed, levied, confirmed, imposed or become a lien on the Leased Property or any part thereof or any rent therefor or any estate, right, title or interest therein or any occupancy, operation, use or possession of, or sales from or activity conducted on or in connection with the Leased Property or the leasing or use of the Leased Property or any part thereof prior to, during or with respect to any period during the Term hereof through the expiration or earlier termination of this Lease together with (i) any taxes and assessments that may be levied, assessed or imposed upon the gross income arising from any Rent or in lieu of or as a substitute, in whole or in part, for any Imposition and (ii) all interest and penalties on the foregoing attributable to any failure in payment by Tenant (other than failures arising from the wrongful or negligent acts of Landlord where Tenant shall have furnished Landlord with no less than ten (10) days’ notice of such act which Tenant is aware). Except as described in clause (ii) above, the term “Impositions” shall, however, not include any of the following, all of which the parties agree shall be the responsibility of (and paid, before any fine, penalty, interest or cost may be added for non-payment, by) Landlord: (a) any franchise, income, excess profits, estate, inheritance, succession, transfer, gift, corporation, business, capital levy, or profits tax of Landlord, (b) any tax imposed with respect to the sale, exchange or other disposition by Landlord of the fee estate in the Leased Property or Landlord Change of Control, and (c) interest, penalties and other charges with respect to the foregoing items (a) and (b).

“Indebtedness”: Of any Person, without duplication, (a) all obligations of such Person for borrowed money; (b) all obligations of such Person evidenced by bonds, debentures, notes, loan agreements 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 (x) trade accounts payable and accrued obligations incurred in the ordinary course of business or other accounts payable in the ordinary course of business in accordance with ordinary trade terms, (y) financing of insurance premiums and (z) any earn-out obligation or purchase price adjustment until such obligation becomes a liability on the balance sheet (excluding the footnotes thereto) in accordance with GAAP); (e) all Indebtedness of others to the extent secured by any Lien on property owned or acquired by such Person, whether or not the obligations secured thereby have been assumed; provided, that if such obligations have not been assumed, the amount of such Indebtedness included for the purposes of this definition will be the amount equal to the lesser of the fair market value of such property and the amount of the Indebtedness secured; (f) with respect to any Finance Lease of such Person, the amount thereof

that would appear on a balance sheet of such Person prepared as of such date in accordance with GAAP; (g) the net amount of the obligations of such Person in respect of interest rate protection agreements, foreign currency exchange agreements or other interest or exchange rate hedging arrangements (including swap contracts); (h) all obligations of such Person as an account party in respect of letters of credit and bankers' acceptances, except obligations in respect of letters of credit issued in support of obligations not otherwise constituting Indebtedness shall not constitute Indebtedness except to the extent such letter of credit is drawn and not reimbursed within ten (10) Business Days; and (i) all guaranty obligations of such Person in respect of Indebtedness of others of the kinds referred to in clauses (a) through (h) above (other than, for the avoidance of doubt, in connection with any completion guarantee); provided, that for purposes of this definition, deferred purchase price obligations shall be calculated based on the net present value thereof. The Indebtedness of any Person shall include the Indebtedness of any partnership in which such Person is a general partner unless recourse is limited, in which case the amount of such Indebtedness shall be the amount such Person is liable therefor (except to the extent the terms of such Indebtedness expressly provide that such Person is not liable therefor). The amount of Indebtedness of the type described in clause (d) shall be calculated based on the net present value thereof. The amount of Indebtedness of the type referred to in clause (g) above of any Person shall be zero unless and until such Indebtedness becomes due, in which case the amount of such Indebtedness shall be the amount due that is payable by such Person. For the avoidance of doubt, it is understood and agreed that (x) unredeemed casino chips and tokens and gaming winnings of customers, (y) any obligations of such Person in respect of cash management agreements and (z) any obligations of such Person in respect of employee deferred compensation and benefit plans shall not constitute Indebtedness. For all purposes hereof, the Indebtedness of the Tenant shall exclude (i) any obligations under this Lease and any similar lease and (ii) intercompany liabilities arising from the Tenant's cash management, tax, and accounting operations and intercompany loan advances.

"Initial Grand Base Rent": As defined in the definition of Base Rent.

"Initial MB Base Rent": As defined in the definition of Base Rent.

"Initial Term": As defined in **Section 1.3**.

"Insurance Requirements": The terms of any insurance policy required by this Lease and all requirements of the issuer of any such policy and of any insurance board, association, organization or company necessary for the maintenance of any such policy.

"Intellectual Property" or "IP": All rights, title and interests in, to and under any intellectual property, as they exist anywhere in the world, whether registered or unregistered, including: (i) all patents and applications therefor and all reissues, divisions, divisionals, renewals, extensions, provisionals, continuations and continuations-in-part thereof, (ii) all inventions (whether or not patentable), invention disclosures, improvements, business information, know-how, trade secrets, Confidential Information, designs, plans, blueprints, formulas, drawings, research and development, business and marketing plans, proposals and surveys, customer lists, tangible and intangible proprietary information, and all documentation relating to any of the foregoing, (iii) all copyrights, works of authorship, copyrightable works, copyright registrations and applications therefor, and all other rights corresponding thereto, (iv) all industrial designs and any registrations and applications therefor, (v) all trademarks, service

marks, trade dress, trade styles, logos, trade names, brand names, assumed names, corporate names, Internet domain names and other indicia of commercial source or origin (whether registered, arising under common law or statutory law, or otherwise) and general intangibles of like nature, together with all translations, adaptations, derivations and combinations thereof and including all goodwill associated therewith, and all applications, registrations and renewals in connection therewith (collectively, “**Trademarks**”), (vi) all databases and data collections (including all Guest Data) and all rights therein (collectively, “**Data**”), (vii) all moral and economic rights of authors and inventors, however denominated, (viii) all social media user names and accounts, (ix) all computer software, firmware, microcode, operating systems, embedded applications or other programs, including all source code, object code, specifications, databases, designs and documentation related thereto (collectively, “**Software**”), (x) all Internet addresses, electronic addresses, uniform resource locators and alphanumeric designations associated therewith and all registrations for any of the foregoing, (xi) all rights of privacy and publicity, (xii) any other similar intellectual property and proprietary rights of any kind, nature or description and (xiii) any copies of tangible embodiments therefrom (in whatever form or medium).

“Intercreditor Agreement”: As defined in **Section 17.1(a)**.

“Investment Fund”: A bona fide private equity fund or bona fide investment vehicle arranged by and managed by or controlled by, or under common control with, a private equity fund (excluding any private equity fund investment vehicle the primary assets of which are Tenant and its Subsidiaries and/or this Lease and assets related thereto) that is engaged in making, purchasing, funding or otherwise investing in a diversified portfolio of businesses and companies and is organized primarily for the purpose of making equity investments in companies.

“IP Licenses”: Collectively, any agreements or arrangements pursuant to which Tenant, any Operating Subtenant or any of their respective Subsidiaries is granted a license to use any System-wide IP other than readily available off-the-shelf software.

“Item Subject to Deemed Consent”: As defined in **Section 35.2**.

“Land”: As defined in **Section 1.1(b)(i)**.

“Landlord”: As defined in the preamble.

“Landlord Approved Capital Improvements”: As defined in **Section 10.1(b)**.

“Landlord Change of Control”: If any Person other than MGP OP or BREIT OP shall Control or hold any direct or indirect beneficial ownership of fifty percent (50%) or more on a fully diluted basis of the direct or indirect voting power in the Equity Interests of Landlord entitled to vote in an election of directors of Landlord; provided, however, any change in the direct or indirect ownership in Landlord’s Parents, MGP REIT, MGP OP, BREIT OP or BREIT or any other publicly reporting Person in one or more transactions shall not constitute a Landlord Change of Control.

“Landlord Indemnified Party”: As defined in **Section 21.1**.

“Landlord’s Parents”: MGP OP and BREIT OP, and their respective successors from time to time.

“Landlord Party”: As defined in the definition of Licensing Event.

“Landlord Representatives”: As defined in **Section 23.4**.

“Landlord Tax Returns”: As defined in **Section 4.1(b)**.

“Landlord Work”: As defined in **Section 10.6**.

“Lease”: As defined in the preamble.

“Lease Year”: The first Lease Year shall be the period commencing on the Commencement Date and ending on the last day of the twelfth (12th) full calendar month following the Commencement Date, and each subsequent Lease Year shall be each period of twelve (12) full calendar months thereafter.

“Leased Improvements”: As defined in **Section 1.1(b)(ii)**.

“Leased Property”: As defined in **Section 1.1(b)**.

“Leased Property Rent Adjustment Event”: As defined in **Section 14.6**.

“Leasehold Estate”: As defined in **Section 17.1(a)**.

“Legal Requirements”: All applicable federal, state, county, municipal and other governmental statutes, laws, rules, policies, guidance, codes, orders, regulations, ordinances, permits, licenses, covenants, conditions, restrictions, judgments, decrees and injunctions (including common law, Gaming Regulations and Environmental Laws) affecting any parties to this Lease (or the Guaranty), the Leased Property, Tenant’s Property or Capital Improvements or the construction, use or alteration thereof, whether now or hereafter enacted and in force, including any which may (i) require repairs, modifications or alterations in or to the Leased Property and Tenant’s Property, (ii) in any way adversely affect the use and enjoyment thereof, or (iii) regulate the transport, handling, use, storage or disposal or require the cleanup or other treatment of any Hazardous Substance.

“Lessor Lien”: Any lien, encumbrance, attachment, title retention agreement or claim (other than any of the foregoing that arise as a result of a Facility Mortgage (or other security interest filing in relationship to a Facility Mortgage), or result from the transactions contemplated by this Lease, or that consist of liens and encumbrances of record or based on facts or occurrences affecting or relating to the any of the Facilities as of the Commencement Date or liens or encumbrances which are consented to by Tenant in writing, which consent shall not be unreasonably withheld, conditioned or delayed as provided in **Section 7.2(c)**) encumbering the Leased Property and that arises after the Commencement Date solely as a result of (a) any act or omission of Landlord or any of its Affiliates which is in violation of any of the terms of this Lease after notice from Tenant and failure to cure within all applicable cure periods, (b) any third-party claim against Landlord or its Affiliates that is unrelated to the use, ownership, operation or maintenance of the Leased Property and (i) for which Tenant is not required to

indemnify Landlord pursuant to this Lease, and (ii) that is unrelated to the acts or omissions of Tenant, Tenant's Subsidiaries or any of their respective Affiliates, or (c) any third-party claim against Landlord arising out of any transfer, sale, assignment, encumbrance or disposition by Landlord of all or any portion of the interest of Landlord in the Leased Property or any portion thereof (or any Landlord Change of Control) in violation of this Lease.

"Letter of Credit": An irrevocable, unconditional, clean sight draft letter of credit reasonably acceptable to Landlord and Fee Mortgagee (as applicable) in favor of Landlord or, at Landlord's direction, Fee Mortgagee and entitling Landlord or Fee Mortgagee (as applicable) to draw thereon based solely on a statement executed by an officer of Landlord or Fee Mortgagee (as applicable) stating that it has the right to draw thereon under this Lease in a location in the United States reasonably acceptable to Landlord or Fee Mortgagee (as applicable), issued by one or more domestic Eligible Institutions or the U.S. agency or branch of a foreign Eligible Institution, and upon which letter of credit Landlord or Fee Mortgagee (as applicable) shall have the right to draw in full: (a) if Landlord or Fee Mortgagee (as applicable) has not received at least thirty (30) days prior to the date on which the then outstanding letter of credit is scheduled to expire, a notice from the issuing financial institution that it has renewed the applicable letter of credit; (b) thirty (30) days or less prior to the date of termination following receipt of notice from the issuing financial institution that the applicable letter of credit will be terminated; and/or (c) thirty (30) days after Landlord or Fee Mortgagee (as applicable) has given a proper notice to Tenant that any of the financial institutions issuing the applicable letter of credit ceases to either be an Eligible Institution or meet the rating requirement set forth above.

"Licensing Event": A communication (whether oral or in writing) by or from any Gaming Authority to Tenant or any of its Affiliates (each, a **"Tenant Party"**) or to a Landlord Party (as defined below) or other action by any Gaming Authority that indicates that (i) such Gaming Authority has found that the association of a Tenant Party with Landlord is likely to (A) result in a disciplinary action relating to, or the loss of, inability to reinstate or failure to obtain, any Gaming License or any other rights or entitlements held or required to be held by Landlord or any of its Affiliates (each, a **"Landlord Party"**) under any Gaming Regulations or (B) violate any Gaming Regulations to which a Landlord Party is subject; or (ii) a Tenant Party is required to be licensed, registered, qualified or found suitable under any Gaming Regulations, and such Tenant Party does not remain so licensed, registered, qualified or found suitable or, after becoming so licensed, registered, qualified or found suitable, fails to remain so, and, solely for purposes of determining whether an Event of Default has occurred under **Section 16.1(a)(xii)**, the same causes cessation of Gaming activity at any Facility and would reasonably be expected to have a material adverse effect on any Facility.

"Lien": As defined in **Section 11.1(a)**.

"Liquor Authority": As defined in **Section 41.13(a)**.

"Liquor Laws": As defined in **Section 41.13(a)**.

"Listing Covenant": As defined in **Section 23.3**.

“Market Capitalization”: With respect to a Person, the number of shares outstanding as reflected on the balance sheet included in such Person’s Financial Statements for the applicable fiscal quarter multiplied by the closing price of such Person’s shares on the applicable stock exchange on the last trading day of the applicable fiscal quarter.

“Master Transaction Agreement”: As defined in the Recitals.

“Material Indebtedness”: Any Indebtedness of the type referenced in clauses (a), (b), or (e) of the definition of Indebtedness of Tenant or the Operating Subtenants, the outstanding principal amount of which is in excess of One Hundred Million Dollars (\$100,000,000).

“MB Excluded Assets”: As defined in **Section 1.1(a)**.

“MB Facility”: As defined in **Exhibit A** attached hereto.

“MB Fixtures”: As defined in **Section 1.1(a)(iii)**.

“MB Hotel Facility”: Means that portion of the MB Facility subleased to Mandalay Bay, LLC as of the date hereof.

“MB Land”: As defined in **Section 1.1(a)(i)**.

“MB Landlord”: As defined in the preamble.

“MB Leased Improvements”: As defined in **Section 1.1(a)(ii)**.

“MB Leased Property”: As defined in **Section 1.1(a)**.

“MB Place Facility”: Means that portion of the MB Facility subleased to Mandalay Place, LLC as of the date hereof.

“MB Trademarks”: (i) The “Mandalay Bay” and “Mandalay Place” (or any Trademark that replaces “Mandalay Bay” or “Mandalay Place” as the primary brand name used to identify the MB Facility) brands and Trademarks containing “Mandalay Bay” and “Mandalay Place” and all variations and derivations thereof, in any format, font, style or design, whether alone or in combination with any other terms, phrases, symbols, logos, styles or designs, including all registrations and applications therefor, and (ii) associated copyrights.

“MB Water Infrastructure”: As defined in **Section 1.1(a)(vi)**.

“MB Water Permits”: As defined in **Section 1.1(a)(vi)**.

“MB Water Rights”: As defined in **Section 1.1(a)(vi)**.

“MGM Grand Hotel”: MGM Grand Hotel, LLC, a Nevada limited liability company.

“MGP OP”: MGM Growth Properties Operating Partnership LP, a Delaware limited partnership.

“MGP REIT”: MGM Growth Properties LLC, a Delaware limited liability company.

“Net Income”: With respect to any fiscal period and with respect to any Person, the net income (or net loss) of that Person, determined in accordance with GAAP, consistently applied using the Existing Accounting Guidelines.

“Net Revenue”: With respect to any fiscal period, the net revenue derived from the Facilities and/or the Signature Hotel Units (including any net revenue derived from any Signature Rental Management Operations) (or, if expressly stated, from a particular Facility) by any Operating Subtenant (or Tenant with respect to any portion of the Facility that is not subject to an Operating Sublease) or its Affiliates (without duplication) for that period, determined in accordance with GAAP, consistently applied using the Existing Accounting Guidelines; provided that with respect to the space operated as a sports book and the MGM Grand Garden Arena, “Net Revenue” shall only include the net revenue derived from such space by Operating Subtenant (or Tenant with respect to any portion of such space that is not subject to an Operating Sublease) or its Subsidiaries.

“Net Worth”: (i) An entity’s equity as its total assets (including any available uncalled or unfunded capital commitments of investors) minus its total actual liabilities including the capitalization of any operating lease rent obligations at ten times (10x) the rent amount but excluding any operating lease liability recorded in total actual liabilities, in each case calculated in accordance with GAAP, and (ii) as it relates to an entity publicly traded and listed on the New York Stock Exchange, AMEX or NASDAQ, its Market Capitalization.

“New Lease”: As defined in **Section 17.1(f)**.

“Non-Discriminatory”: Consistent, commercially reasonable treatment of all Persons regardless of the ownership, control or affiliations of any such Persons (i) subject to the same or substantially similar policies and procedures, including policies and procedures related to the standards of service and quality required to be provided by such Persons or (ii) participating jointly in the same transactions or relationships or participating in separate, but substantially similar, transactions or relationships for the procurement of goods or services (and whether such goods are purchased or leased), in each case, including, without limitation, the unbiased and consistent allocation of costs, expenses, savings and benefits of any such policies, procedures, relationships or transactions on the basis of a reasonable methodology; provided, however, that goods and services shall not be required to be provided in a manner that exceeds the standard of service required to be provided at the Leased Property under the terms of this Agreement to be deemed “Non-Discriminatory” nor shall the standard of service and quality provided at the facilities owned or operated by each such Person be required to be similar so long as, in each case, both (x) a commercially reasonable business justification (without giving effect to Lease economics) that is not discriminatory to Landlord or the Leased Property exists for the manner in which such goods and services are provided, as reasonably determined by Tenant in good faith, and (y) the manner in which such goods and services are provided is not intended or

designed to frustrate, vitiate or reduce the rights of Landlord under this Lease, as reasonably determined by Tenant in good faith.

“Notice”: A notice given in accordance with **Section 35.1**.

“Notice of Termination”: As defined in **Section 17.1(f)**.

“NRS”: As defined in **Section 41.14**.

“OFAC”: As defined in **Section 8.2(c)**.

“Officer’s Certificate”: A certificate of Tenant or Landlord, as the case may be, signed by an authorized officer of such party.

“Operating Expenses”: With respect to any fiscal period, the operating expenses of the Facilities (without duplication) for that period, determined in accordance with GAAP, consistently applied using the Existing Accounting Guidelines.

“Operating Standard”: Operation of the Leased Property for the Primary Intended Use in a first class manner and at least substantially consistent with the standard of operations of the Facilities on the date hereof and which shall be performed in a Non-Discriminatory manner with other assets owned, leased, managed or operated by Tenant’s Parent or its Subsidiaries, including without limitation, with respect to the usage and allocation of proprietary information and systems related to the operating of Gaming, hotel and related businesses, Tenant Rewards Program, centralized services, purchasing programs, insurance programs, Intellectual Property, Guest Data, complimentaries, room rates and cross-marketing and cross-promotional activities with other properties owned, leased or operated by Tenant’s Parent and its Subsidiaries.

“Operating Subleased Property”: Means the Grand Facility and, with respect to the MB Facility, each of the MB Hotel Facility and MB Place Facility.

“Operating Subleases”: As defined in the Recitals.

“Operating Subtenant”: Initially, individually or collectively as the context may require, each entity listed on **Schedule 2** attached hereto, each of which is and shall continue to be a Subsidiary of Tenant’s Parent, and any other Subsidiary of Tenant’s Parent that subleases any Operating Subleased Property in accordance with **Section 41.17**.

“Operating Subtenant Attornment Agreement”: As defined in **Section 41.17(a)**.

“Operating Subtenant Guaranty”: That certain Subtenant Guaranty dated as of the date hereof by and among the Operating Subtenants, jointly and severally, and Landlord, delivered to Landlord in connection with the execution of this Lease, as the same may be amended or supplemented or restated from time to time in accordance with the terms of this Lease and the Operating Subtenant Guaranty.

“Overdue Rate”: On any date, a rate equal to five (5) percentage points above the Prime Rate, but in no event greater than the maximum rate then permitted under Legal Requirements.

“Parent Company”: With respect to any Person in question, any other Person (other than an Investment Fund) (x) as to which such Person in question is a Subsidiary; and (y) which other Person is not a Subsidiary of any other Person (other than an Investment Fund, which shall be deemed not to have any Parent Company and, in the case of a Foreclosure Transferee that is an Investment Fund, no parent of such Investment Fund shall be required to provide a Guaranty pursuant to **Section 22.2**, if applicable).

“Patriot Act Offense”: Any violation of the criminal laws of the United States of America or of any of the several states, or that would be a criminal violation if committed within the jurisdiction of the United States of America or any of the several states, relating to terrorism or the laundering of monetary instruments, including any offense under (A) the criminal laws against terrorism, (B) the criminal laws against money laundering, (C) the Bank Secrecy Act, as amended, (D) the Money Laundering Control Act of 1986, as amended, or (E) the U.S.A. Patriot Act. “Patriot Act Offense” also includes the crimes of conspiracy to commit, or aiding and abetting another to commit, a Patriot Act Offense.

“Payment Date”: Any due date for the payment of the installments of Rent or any other sums payable under this Lease.

“PCAOB”: The Public Company Accounting Oversight Board.

“Permitted Affiliate Agreement”: Any Affiliate Agreement entered into prior to the date of this Lease or after the date hereof, in each case which (i) is for a bona fide purpose consistent with the Operating Standard and not used by Tenant to evade or avoid the Financial Covenant or the Listing Covenant or to distort the economic performance of any Facility in any material respect, (ii) does not subject Landlord to any obligations or liabilities with respect thereto, (iii) will not bind Landlord upon expiration or earlier termination of this Lease, (iv) is not otherwise designed to frustrate Landlord’s ability to enter into a new lease or management agreement at the expiration of this Lease and (v) will not result in a violation of Legal Requirements.

“Permitted Capital Improvements”: As defined in **Section 10.1(a)**.

“Permitted Credit Facility Lender”: The lender or agent or trustee or similar representative on behalf of one or more lenders or noteholders or other investors under a Debt Agreement secured in part by a Permitted Credit Facility Pledge, in each case as and to the extent such Person has the power to act on behalf of all lenders under such Debt Agreement pursuant to the terms thereof; provided, such lender, agent or trustee or similar representative (but not necessarily the lenders, noteholders or other investors which it represents) is a banking institution or other eligible indenture trustee under the Trust Indenture Act of 1940, as amended, in each case, in the business of generally acting as a lender, agent or trustee or similar representative (in each case, on behalf of a group of lenders) under debt agreements or instruments similar to the Debt Agreement.

“Permitted Credit Facility Pledge”: A pledge or similar agreement creating a security interest in the direct or indirect interests in Tenant (or any Operating Subtenant), granted to or for the benefit of a Permitted Credit Facility Lender as collateral for the obligations under a

Debt Agreement; provided, however, such Debt Agreement must be a bona fide corporate credit facility of Tenant's Parent which is recourse to Tenant's Parent.

"Permitted FF&E Expenditures": As defined in **Section 9.1(f)**.

"Permitted Leasehold Mortgage": A document creating or evidencing an encumbrance on Tenant's leasehold interest (or an Operating Subtenant's subleasehold interest) in the Leased Property, granted to or for the benefit of a Permitted Leasehold Mortgagee as security for the obligations under a Debt Agreement; provided, however, so long as, at the time of entering into such Permitted Leasehold Mortgage, (i) such Debt Agreement is, or will be pursuant to the terms thereof, secured by assets of Tenant's Parent and any subsidiaries thereof acting as borrowers and guarantors of such Debt Agreement and (ii) the fair market value (as reasonably determined by Tenant's Parent in good faith and after giving effect to the terms of this Lease) of Tenant's interest (or an Operating Subtenant's subleasehold interest) in the Leased Property does not exceed one-third of the fair market value (as reasonably determined by Tenant's Parent in good faith) of all of the assets of Tenant's Parent, the borrowers and guarantors, taken as a whole, providing collateral for such Debt Agreement at the time such Debt Agreement is executed.

"Permitted Leasehold Mortgage Excluded Collateral": As defined in **Section 17.1(n)**.

"Permitted Leasehold Mortgage": The lender or agent or trustee or similar representative on behalf of one or more lenders or noteholders or other investors under a Permitted Leasehold Mortgage, in each case as and to the extent such Person has the power to act on behalf of all lenders under such Permitted Leasehold Mortgage pursuant to the terms thereof; provided, such lender, agent or trustee or similar representative (but not necessarily the lenders, noteholders or other investors which it represents) is a banking institution or other eligible indenture trustee under the Trust Indenture Act of 1940, as amended, in each case, in the business of generally acting as a lender, agent or trustee or similar representative (in each case, on behalf of a group of lenders) under debt agreements or instruments similar to the Debt Agreement.

"Permitted Leasehold Mortgagee Designee": An entity designated by a Permitted Leasehold Mortgagee and acting for the benefit of the Permitted Leasehold Mortgagee, or the lenders, noteholders or investors represented by the Permitted Leasehold Mortgagee.

"Permitted Leasehold Mortgagee Foreclosing Party": A Permitted Leasehold Mortgagee or Permitted Leasehold Mortgagee Designee that forecloses on this Lease and assumes this Lease or a Subsidiary of a Permitted Leasehold Mortgagee or Permitted Leasehold Mortgagee Designee that assumes this Lease in connection with a foreclosure on this Lease by a Permitted Leasehold Mortgagee.

"Permitted Management Agreement": Any (x) Existing Management Agreement or (y) new management agreement or amendment or modification of an Existing Management Agreement which is entered into after the date of this Lease and which (i) is for a bona fide purpose consistent with the Operating Standard, (ii) in the event of any new management agreement or an amendment or renewal which could extend the term of an Existing Management

Agreement (including any grants of additional renewal or extension options), is expressly subject and subordinate to this Lease (with Landlord having no obligations or liabilities with respect thereto and such manager having no rights after expiration or termination of this Lease, except to the extent provided by any subordination, non-disturbance and attornment agreement delivered by Landlord in accordance with this Lease), (iii) is not otherwise designed to frustrate Landlord's ability to enter into a new lease or management agreement at the expiration or earlier termination of this Lease, (iv) does not grant any right to purchase, right of first offer or right of first refusal with respect to the purchase of any portion of the Leased Property, and (v) does not result in a violation of any Legal Requirements.

"Permitted Sublease": Any (x) Existing Sublease or (y) any new sublease or amendment or renewal of an Existing Sublease which is entered into after the date of this Lease and which, (i) if the sublessee is not an Affiliate of Tenant, is on commercially reasonable, arms' length terms and with respect to Primary Space only, with market rent as determined by Tenant in good faith, (ii) is for a bona fide purpose consistent with the Operating Standard, (iii) in the event of any new sublease or an amendment or renewal which could extend the term of an Existing Sublease (including any grants of additional renewal or extension options), is expressly subject and subordinate to this Lease (with Landlord having no obligations or liabilities with respect thereto and such subtenant having no rights after expiration or termination of this Lease, except to the extent provided by any subordination, non-disturbance and attornment agreement delivered by Landlord in accordance with this Lease), (iv) is not otherwise designed to frustrate Landlord's ability to enter into a new lease or management agreement at the expiration of this Lease, (v) does not grant any right to purchase, right of first offer or right of first refusal with respect to the purchase of any portion of the Leased Property, and (vi) does not result in a violation of any Legal Requirements.

"Person" or "person": Any individual, corporation, limited liability company, partnership, joint venture, association, joint stock company, trust, unincorporated organization, government or any agency or political subdivision thereof or any other form of entity.

"PLL": As defined in **Section 13.1(j)**.

"Preliminary Financial Covenant Compliance Report": As defined in **Section 23.1(b)(iii)**.

"Primary Intended Use": Hospitality, entertainment, entertainment venues, Gaming and/or pari-mutuel use generally consistent with prevailing hospitality, entertainment or Gaming industry use at any time, together with all ancillary or complementary uses consistent with such use and operations (including hotels, resorts, convention centers, retail facilities, restaurants, spas, clubs, bars, etc.), together with any other uses in effect on the date hereof and together with any other uses otherwise generally consistent with the Operating Standard.

"Primary Space": Those portions of a Facility that are used primarily for hotel, casino or convention purposes as of the Commencement Date (as may be reasonably adjusted from time to time in accordance with the Primary Intended Use).

"Prime Rate": On any date, a rate equal to the annual rate on such date publicly announced by JPMorgan Chase Bank, N.A. (provided, that if JPMorgan Chase Bank, N.A.

ceases to publish such rate, the Prime Rate shall be determined according to the Prime Rate of another nationally known money center bank reasonably selected by Landlord), to be its prime rate for ninety (90)-day unsecured loans to its corporate borrowers of the highest credit standing, but in no event greater than the maximum rate then permitted under applicable law.

“Proceeding”: As defined in **Section 23.1(b)(ix)**.

“Prohibited Persons”: As defined in **Section 39.1(a)**.

“Property”: Any right, title or interest in or to property or assets of any kind whatsoever, whether real, Personal (as defined in the UCC) or mixed and whether tangible or intangible and including all contract rights, income or revenue rights, real property interests, trademarks, trade names, equipment and proceeds of the foregoing and, with respect to any Person, equity interests or other ownership interests of any other Person owned by the first Person.

“Property Charges”: As defined in **Section 4.3**.

“Property Documents”: Reciprocal easement and/or operating agreements, easements, covenants, exceptions, conditions and restrictions in each case affecting the Leased Property or any portion thereof (i) that are listed on the title policies obtained on or about the Commencement Date, or (ii) made after the date hereof in accordance with the terms of this Lease, but excluding, in any event, all Fee Mortgage Documents.

“Property Specific Guest Data”: Any and all Guest Data, to the extent owned by or under the possession or control of Tenant, Tenant’s Parent or their respective Affiliates, identifying, describing, concerning or generated by website visitors or prospective, actual or past guests and/or customers, in each case, of the Facilities and which is used with respect to the Facilities, including retail locations, restaurants, bars, casino and Gaming Facilities, spas and entertainment venues therein, but excluding, in all cases, (i) Guest Data that has been integrated into analytics, reports, or other similar forms, including in connection with the Tenant Rewards Program (it being understood that this exception shall not apply to such Guest Data itself, *i.e.*, in its original form prior to integration into such analytics, reports, or other similar forms in connection with the Tenant Rewards Program), (ii) Guest Data that concerns facilities other than the Facilities and (iii) Guest Data that concerns proprietary information and systems related to the operation of Gaming, hotel and related businesses and is not related to any of the Facilities.

“Property Specific IP”: All Intellectual Property (other than Data) that is both (i) exclusively related to any Facility and (ii) currently or hereafter owned by Tenant, Tenant’s Parent or any of their respective Affiliates, including the Intellectual Property set forth on **Schedule 3-A** and **Schedule 3-B** attached hereto, but excluding the Hotel Trademarks.

“Qualified Operator”: A Person that (A) has revenues derived from hotels or facilities for gaming (or both), in accordance with GAAP, of not less than One Billion and No/100 Dollars (\$1,000,000,000.00) per year for each of the preceding three (3) years as of the date of determination and (B) leases, operates or manages resorts with at least 2,500 rooms and casino operations of at least 100,000 square feet of gaming area, 1,300 slots and 100 gaming tables. At the time of appointment, such Person (a) shall not be subject to a bankruptcy,

insolvency or similar proceeding, (b) shall have never been convicted of, or pled guilty or no contest to, a Patriot Act Offense and shall not be on any Government List, (c) shall not be, and shall not be controlled by, a Prohibited Person or a person that has been found “unsuitable,” for any reason, by any applicable Gaming Authority, (d) shall have not been the subject of a material governmental or regulatory investigation which resulted in a conviction for criminal activity involving moral turpitude, (e) shall have not been found liable pursuant to a non-appealable judgment in a civil proceeding for attempting to hinder, delay or defraud creditors, and (f) shall have all required licenses and approvals required under applicable law (including Gaming Regulations), including all required Gaming Licenses for itself, its officers, directors, and Affiliates (including officers and directors of its Affiliates) to manage the Facilities or the applicable Facility.

“Qualified Transferee”: A Person that satisfies each of the following requirements: (a) a Net Worth (exclusive of the Leased Property) of no less than Five Billion Dollars (\$5,000,000,000.00) of which at least Two Billion Dollars (\$2,000,000,000.00) relates to assets located in the United States (exclusive of the Leased Property), (b) such transferee and all of its applicable officers, directors and Affiliates (including the officers and directors of its Affiliates), to the extent required under applicable Gaming Regulations or other Legal Requirements, are licensed by the Gaming Authority or otherwise found suitable to lease the Leased Property in accordance herewith, (c) such transferee has not been the subject of a material governmental or regulatory investigation which resulted in a conviction for criminal activity involving moral turpitude and has not been found liable pursuant to a non-appealable judgment in a civil proceeding for attempting to hinder, delay or defraud creditors, (d) such transferee has never been convicted of, or pled guilty or no contest to, a Patriot Act Offense and is not on any Government List; (e) such transferee has not been the subject of a voluntary or involuntary (to the extent the same has not been discharged) bankruptcy proceeding during the prior five (5) years from the applicable date of determination; (f) such transferee is not, and is not Controlled by a Prohibited Person or a person that has been found “unsuitable” for any reason or has had any application for a Gaming License withdrawn “with prejudice” by any applicable Gaming Authority; (g) such transferee complies with any Fee Mortgagee’s customary “know your customer” requirements applicable to such transferee and its equity holders; and (h) such transferee is not associated with a person who has been found “unsuitable”, denied a Gaming License or otherwise precluded from participation in the Gaming industry by any Gaming Authority where such association would reasonably be expected to adversely affect any of Landlord’s or its Affiliates’ Gaming Licenses or Landlord’s or its Affiliates’ then-current standing with any Gaming Authority.

“Qualifying CapEx”: Expenditures relating to the installation or restoration of Capital Improvements or FF&E with respect to the Leased Property or Signature Hotel Units, which shall (x) exclude any costs incurred that (A) are related to ordinary course maintenance and repairs and not capitalized in accordance with GAAP, (B) are included in Operating Expenses, determined in accordance with GAAP, consistently applied using the Existing Accounting Guidelines, (C) relate to Permitted Leasehold Mortgages, purchase money financing, equipment financing, equipment lease, or financing secured by liens on Capital Improvements or FF&E (but excluding any Permitted Credit Facility Pledge), or (D) would constitute capitalized interest, and (y) be limited to costs which are with third parties dealing at arms’ length or with Affiliates dealing on arms’ length terms (with any costs paid to Affiliates not exceeding market rates) and capitalized in accordance with GAAP, consistently applied using the Existing

Accounting Guidelines. Notwithstanding anything to the contrary contained herein, with respect to the Signature Hotel Units, only Qualifying CapEx in an amount not to exceed 2.5% of the actual Net Revenue derived from the Signature Hotel Units (including from any Signature Rental Management Operations) during any CapEx Testing Period shall be applied toward the minimum Required CapEx for such CapEx Testing Period under **Section 9.1(e)**.

“Radius”: As defined in **Section 13.6**.

“Recharacterization”: As defined in **Section 11.1(c)**.

“Recharacterization Deed of Trust”: As defined in **Section 11.1(c)**.

“Related Persons”: With respect to a party, such party’s Affiliates and Subsidiaries and the directors, officers, employees, agents, partners, managers, members, advisors and controlling persons of such party and its Affiliates and Subsidiaries.

“Removal Date”: As defined in **Section 1.5(b)**.

“Removal Facility”: As defined in **Section 1.5(a)**.

“Removal Notice”: As defined in **Section 1.5(b)**.

“Renewal Notice”: As defined in **Section 1.4**.

“Renewal Term”: As defined in **Section 1.4(a)**.

“Rent”: The Base Rent.

“Representative”: With respect to the lenders or holders under a Debt Agreement, a Person designated as agent or trustee or a Person acting in a similar capacity or as representative for such lenders or holders.

“Required CapEx”: An aggregate amount of Qualifying CapEx spent during the applicable CapEx Testing Period equal to 3.5% of the actual Net Revenue during such CapEx Testing Period; provided, however, the Required CapEx for any Facility (and, with respect to the Grand Facility, together with the Signature Hotel Units) during any CapEx Testing Period on an aggregate basis shall not be less than 2.5% of the actual Net Revenue of such Facility (and, with respect to the Grand Facility, together with the Signature Hotel Units), during such CapEx Testing Period.

“Required CapEx Funding Deadline”: As defined in **Section 9.1(e)(i)**.

“Reserve Control Trigger Period”: (A) Any Covenant Failure Period, or (B) any period during which an Event of Default exists (provided that, with respect to **Sections 16.1(a)(v)** and **(vi)**, for purposes of this definition only, the cure periods provided in **Sections 16.1(a)(v)** and **(vi)**, respectively, shall not be taken into account).

“Reserve Disbursement Requirements”: The requirements for disbursements of CapEx Reserve Funds and FF&E Reserve Funds identified on **Schedule 9**.

“Responsible Officer”: Tenant’s or Tenant’s Parent’s, as applicable, chief executive officer, chief operating officer, treasurer, assistant treasurer, secretary, assistant secretary, executive vice presidents and senior vice presidents and, regardless of designation, the chief financial officer of Tenant’s Parent, provided, that Tenant’s Parent may designate one or more other officers as Responsible Officers.

“Restricted Information”: As defined in **Section 23.1(c)**.

“Restricted Reserve Accounts”: As defined in **Section 9.1(g)**.

“Restoration Deficiency”: As defined in **Section 14.2(c)**.

“Schedule 8 Capital Improvements”: As defined in **Section 10.1(a)**.

“SEC”: The United States Securities and Exchange Commission.

“SEC Filing Deadline”: As defined in **Section 23.1(b)(i)**.

“SEC Reports”: All quarterly and annual reports required under the Exchange Act and related rules and regulations to be filed with the SEC on Forms 10-Q and 10-K.

“Section 4.3 Certification”: As defined in **Section 4.3**.

“Section 4.3 Waiver”: As defined in **Section 4.3**.

“Securities Act”: The Securities Act of 1933, as amended, or any successor statute, and the rules and regulations promulgated thereunder.

“Separate Lease”: As defined in **Section 1.5(a)**.

“Separate Lease Guaranty”: As defined in **Section 1.5(d)**.

“Separate Lease Operating Sublease Guaranty”: As defined in **Section 1.5(d)**.

“Signature Entities”: Signature Owner, Signature Tower I, LLC, Signature Tower 2, LLC, and Signature Tower 3, LLC.

“Signature Hotel Units”: The units at the Signature Property described as the Hotel Units under the Signature Management Agreement.

“Signature Management Agreement”: That certain Management Agreement dated of even date herewith by and between Signature Owner and MGM Grand Hotel, as the same may be modified from time to time.

“Signature Owner”: The Signature Condominiums, LLC, a Nevada limited liability company.

“Signature Property”: That certain residential condominium project commonly known as “The Signature at MGM Grand”.

“Signature Rental Management Operations”: The operations at the Signature Property pursuant to which any owners of residential units at the Signature Property participate in the periodic renting of their respective units to third parties whether by entering into a rental management agreement or other agreement with Signature Owner (or its affiliates or agents).

“SNDA”: As defined in **Section 1.5(c)**.

“Software”: As defined in the definition of Intellectual Property.

“Solvent”: With respect to any Person on a particular date, that on such date (a) the fair value of the property of such Person, on a going-concern basis, is greater than the total amount of liabilities (including contingent liabilities) of such Person, (b) the present fair salable value of the assets of such Person, on a going-concern basis, is not less than the amount that will be required to pay the probable liability of such Person on its debts (including contingent liabilities) as they become absolute and matured, (c) such Person has not incurred, and does not intend to, and does not believe that it will, incur, debts or liabilities beyond such Person’s ability to pay such debts and liabilities as they mature, (d) such Person is not engaged in business or a transaction, and is not about to engage in business or a transaction, for which such Person’s property would constitute an unreasonably small capital and (e) such Person is “solvent” within the meaning given that term and similar terms under applicable laws relating to fraudulent transfers and conveyances. For purposes of this definition, the amount of any contingent liability shall be computed as the amount that, in light of all the facts and circumstances existing at such time, represents the amount that can reasonably be expected to become an actual or matured liability (irrespective of whether such contingent liabilities meet the criteria for accrual under Accounting Standards Codification No. 450).

“Specified Debt Agreement Default”: Any event or occurrence under a Debt Agreement that enables or permits the lenders or holders (or Representatives of such lenders or holders) to accelerate the maturity of the Indebtedness outstanding under a Debt Agreement.

“Specified Tenant Securitization Matters”: Those portions of the Disclosure Documents for a Fee Mortgage which specifically describe (i) Tenant, (ii) Tenant’s Parent or (iii) historical financial performance of the Facilities (including occupancy, ADR, Revpar, revenues by department, departmental expenses, operating expenses and fixed expenses), (iv) the gaming overview of the Facilities (including slot units, table units and historical hold percentage) and (v) historical capital expenditures at the Facilities.

“State”: Nevada.

“Subsidiary”: As to any Person, (i) any corporation at least fifty percent (50%) of whose stock of any class or classes having by the terms thereof ordinary voting power to elect a majority of the directors of such corporation (irrespective of whether or not at the time stock of any class or classes of such corporation shall have or might have voting power by reason of the happening of any contingency) is at the time of determination owned by such Person and/or one or more Subsidiaries of such Person, and (ii) any partnership, limited liability company, association, joint venture or other entity in which such Person and/or one or more Subsidiaries of such Person has at least a fifty percent (50%) equity interest at the time of determination. Unless otherwise qualified, all references to a **“Subsidiary”** or to **“Subsidiaries”** in this Lease shall

refer to a Subsidiary or Subsidiaries of Tenant, except to the extent expressly stated to be with respect to a Subsidiary or Subsidiaries of Landlord.

“System-wide IP”: All of the Intellectual Property (in each case, excluding Property Specific IP, Property Specific Guest Data and Hotel Trademarks) that (i) Tenant’s Parent or any of its Affiliates (other than Tenant or its Subsidiaries) currently license or otherwise provide to Tenant or its Subsidiaries pursuant to a written agreement or otherwise in order to provide services to any Facility or (ii) is otherwise licensed to, but not owned by, Tenant or its Subsidiaries for their respective properties, including any and all such Intellectual Property comprising and/or related to the Tenant Rewards Program.

“Tenant”: As defined in the preamble.

“Tenant Capital Improvement”: A Capital Improvement constructed by or at the direction of Tenant or any applicable Operating Subtenant at any Facility after the date hereof.

“Tenant Change of Control”: (i) Any Person or “group” (within the meaning of Rules 13d-3 and 13d-5 under the Exchange Act) other than Tenant’s Parent and its Affiliates, shall have acquired direct or indirect beneficial ownership or control of thirty-five percent (35%) or more on a fully diluted basis of the direct or indirect voting power in the Equity Interests of Tenant entitled to vote in an election of directors of Tenant or Tenant’s Parent, (ii) the direct or indirect sale by Tenant or Tenant’s Parent of all or substantially all of Tenant’s assets, whether held directly or through Subsidiaries, relating to the Facilities in one transaction or in a series of related transactions (excluding sales to Tenant or its Subsidiaries) to a Person that is not wholly owned and controlled (directly or indirectly) by Tenant’s Parent, or (iii) Tenant ceasing to be a wholly-owned and Controlled Subsidiary (directly or indirectly) of Tenant’s Parent. Notwithstanding the foregoing, no acquisition of shares of or transfer of any interest in Tenant’s Parent or any other publicly traded Person in one or more transactions shall result in a Tenant Change of Control, provided that after giving effect to such Tenant Change of Control, Tenant would be able to make the representations in **Section 39.1** of this Lease without qualification.

“Tenant Competitor”: A Person or Affiliate of any Person (other than an Affiliate of Tenant) which (i) is among the top 10 global gaming companies by annual revenues or (ii) operates, leases or manages resorts with at least 1,000 rooms in the Gaming Corridor; provided, that notwithstanding anything to the contrary contained herein, “Tenant Competitor” shall not include (x) commercial or corporate banks, pension funds, mutual funds and any other funds that are managed or controlled by a commercial or corporate bank which funds principally invest in commercial loans or debt securities or (y) any Person that has elected to be treated as a real estate investment trust and whose primary business activity is limited to acting as a landlord of properties under long-term triple-net leases that may include Gaming Facilities.

“Tenant Information”: Information concerning Tenant, Tenant’s Parent or their respective Affiliates, or any of their respective assets or businesses, including, without limitation, the operation of the Leased Property.

“Tenant Party”: As defined in the definition of Licensing Event.

“Tenant Representatives”: As defined in **Section 23.4**.

“Tenant Rewards Program”: The “M-Life Rewards” program or any other customer loyalty program of Tenant’s Parent and its Affiliates to the extent used at, or in connection with the marketing, advertising or promotion of, the Leased Property.

“Tenant’s Parent”: (i) MGM Resorts International, (ii) any successor by operation of law (whether through a merger, consolidation or similar transaction) to the obligations of MGM Resorts International under the Guaranty, (iii) any other entity that acquires all or substantially all of the assets of MGM Resorts International and delivers a Guaranty to Landlord (with any such entity being required hereunder to deliver a Guaranty to Landlord), or (iv) in connection with any Foreclosure Assignment or Foreclosure COC, the Qualified Transferee that delivers a Guaranty to Landlord (with any such Qualified Transferee being required hereunder to deliver a Guaranty to Landlord).

“Tenant’s Pledged Property”: Tenant’s Property but excluding (a) any cash, securities or investments, (b) all products and proceeds of Tenant’s Pledged Property, (c) all Intellectual Property, and (d) any Gaming Licenses. Notwithstanding the foregoing, in no event shall Tenant’s Pledged Property include (i) any asset or property to the extent the grant of a security interest is prohibited by any Legal Requirements or requires a consent not obtained by any governmental authority pursuant to any Legal Requirements; (ii) any asset or property subject to shared services on a Non-Discriminatory basis consistent with past practice and in accordance with the Operating Standard; and (iii) any lease, license or other agreement or contract (including joint venture agreements) or any property subject to a purchase money security interest or similar arrangement (including equipment financing) entered into in the ordinary course of business consistent with the Operating Standard and does not impair in any material respect Landlord’s rights under **Section 36.1**. For the avoidance of doubt, Tenant’s Pledged Property shall include, among other things, all rights of MGM Grand Hotel under the Signature Management Agreement and such other collateral collaterally assigned or pledged by MGM Grand Hotel to Grand Landlord under the Grand Landlord Collateral Assignment of Management Agreement.

“Tenant’s Property”: All assets which, in each case are (i) owned by Tenant or any Operating Subtenant, (ii) located at the Leased Property and (iii) primarily related to or used in connection with the operation of the business conducted on or about the Leased Property, together with all replacements, modifications, additions, alterations and substitutes therefor, but specifically excluding the Excluded Assets.

“Tenant’s Property FMV”: As defined in **Section 36.1**.

“Term”: As defined in **Section 1.3**.

“Termination Notice”: As defined in **Section 17.1(d)**.

“Test Period”: With respect to any Person or Facility, for any date of determination, the period of the four (4) most recently ended consecutive fiscal quarters of such Person or Facility for which financial statements are available or are required to have been delivered hereunder. By way of example, with respect to the Preliminary Financial Covenant Compliance Report and the Final Financial Covenant Compliance Report to be delivered on

April 15, 2020 and May 30, 2020, the Test Period shall be April 1, 2019 through March 31, 2020.

“Trademarks”: As defined in the definition of Intellectual Property.

“Transition Services Agreement”: That certain Transition Services Agreement, dated as of the date hereof, by and among Tenant, Landlord and MGM Resorts International, Mandalay Bay, LLC and Mandalay Resort Group.

“Treasury Regulations”: The regulations promulgated under the Code, as such regulations may be amended from time to time.

“UCC”: Uniform Commercial Code as in effect in the State of New York; provided, that, if perfection or the effect of perfection or non-perfection or the priority of any security interest in any collateral is governed by the Uniform Commercial Code as in effect in a jurisdiction other than the State of New York, “UCC” means the Uniform Commercial Code as in effect from time to time in such other jurisdiction for purposes of the provisions hereof relating to such perfection, effect of perfection or non-perfection or priority.

“Unavoidable Delay”: Delays due to strikes, lock-outs, inability to procure materials, power failure, acts of God, governmental restrictions, enemy action, civil commotion, fire, unavoidable casualty or other causes beyond the reasonable control of the party responsible for performing an obligation hereunder; provided, that lack of funds shall not be deemed a cause beyond the reasonable control of a party.

“Unsuitable for Its Primary Intended Use”: A state or condition of a Facility such that by reason of damage or destruction, or a partial Condemnation, a Facility cannot, following restoration thereof (to the extent commercially practical), be operated on a commercially practicable basis for its Primary Intended Use, taking into account, among other relevant factors, the amount of square footage and the estimated revenue affected by such damage or destruction.

“U.S.A. Patriot Act”: As defined in **Section 8.2(c)**.

“Water Assets”: As defined in **Section 41.16**.

“Water Infrastructure”: As defined in **Section 1.1(b)(vi)**.

“Water Permits”: As defined in **Section 1.1(b)(vi)**.

“Water Rights”: As defined in **Section 1.1(b)(vi)**.

ARTICLE III

RENT

3.1 Rent. During the Term, Tenant will pay to Landlord the Rent and Additional Charges in lawful money of the United States of America and legal tender for the payment of public and private debts, in the manner provided in **Section 3.3**. The Base Rent during any Lease Year is payable in advance in consecutive equal monthly installments on the first (1st) Business

Day of each calendar month during that Lease Year. Unless otherwise agreed by the parties, Rent and Additional Charges shall be prorated as to any partial months at the beginning and end of the Term. Rent payable during any Lease Year consisting of more or less than twelve (12) calendar months shall be adjusted such that the portion of the Rent for each calendar month in any such Lease Year is equal to the Rent divided by twelve (12).

3.2 Late Payment of Rent. Tenant hereby acknowledges that late payment by Tenant to Landlord of Rent or Additional Charges will cause Landlord to incur costs not contemplated hereunder, the exact amount of which is presently anticipated to be extremely difficult to ascertain. Accordingly, if any installment of Rent or Additional Charges (other than Additional Charges payable to a Person other than Landlord) shall not be paid within five (5) days after its due date, Tenant will pay Landlord on demand a late charge equal to the lesser of (a) five percent (5%) of the amount of such installment or (b) the maximum amount permitted by law. The parties agree that this late charge represents a fair and reasonable estimate of the costs that Landlord will incur by reason of late payment by Tenant. The parties further agree that such late charge is Rent and not interest and such assessment does not constitute a lender or borrower/creditor relationship between Landlord and Tenant. Thereafter, if any installment of Rent or Additional Charges shall not be paid within ten (10) days after its due date, the amount unpaid, including any late charges previously accrued, shall bear interest at the Overdue Rate from the due date of such installment to the date of payment thereof, and Tenant shall pay such interest to Landlord on demand. The payment of such late charge or such interest shall not constitute waiver of, nor excuse or cure, any default under this Lease, nor prevent Landlord from exercising any other rights and remedies available to Landlord.

3.3 Method of Payment of Rent. Rent and Additional Charges to be paid to Landlord shall be paid by electronic funds transfer debit transactions through wire transfer of immediately available funds and shall be initiated by Tenant for settlement on or before the Payment Date; provided, however, if the Payment Date is not a Business Day, then settlement shall be made on the next succeeding day which is a Business Day. Landlord shall provide Tenant with appropriate wire transfer information in a Notice from Landlord to Tenant. If Landlord directs Tenant to pay any Rent to any party other than Landlord, Tenant shall send to Landlord, simultaneously with such payment, a copy of the transmittal letter or invoice and a check whereby such payment is made or such other evidence of payment as Landlord may reasonably require.

3.4 Net Lease. Landlord and Tenant acknowledge and agree that (i) this Lease is and is intended to be what is commonly referred to as a “net, net, net” or “triple net” lease, and (ii) the Rent shall be paid absolutely net to Landlord, so that this Lease shall yield to Landlord the full amount or benefit of the installments of Rent and Additional Charges throughout the Term with respect to each Facility, all as more fully set forth in **Article IV** and subject to any other provisions of this Lease which expressly provide for adjustment or abatement of Rent or other charges. If Landlord commences any proceedings for non-payment of Rent, Tenant will not interpose any counterclaim or cross complaint or similar pleading of any nature or description in such proceedings unless Tenant would lose or waive such claim by the failure to assert it. This shall not, however, be construed as a waiver of Tenant’s right to assert such claims in a separate action brought by Tenant. The covenants to pay Rent and other amounts hereunder are independent covenants, and Tenant shall have no right to hold back, offset or fail to pay any such amounts for default by Landlord or for any other reason whatsoever.

3.5 Fair Market Rent. In the event that it becomes necessary to determine the Fair Market Rent of a Facility for any purpose of this Lease, and the parties cannot agree among themselves on such Fair Market Rent within twenty (20) days after the first request made by one of the parties to do so, then either party may notify the other of a Person selected to act as appraiser (such Person, and each other Person selected as provided herein, an “**Appraiser**”) on its behalf. Within fifteen (15) days after receipt of any such Notice, the other party shall, by notice to the first party, appoint a second Person as Appraiser on its behalf. The Appraisers thus appointed, each of whom must be a member of The Appraisal Institute/American Institute of Real Estate Appraisers (or any successor organization thereto, or, if no such organization exists, a similarly nationally recognized real estate appraisal organization) with at least ten (10) years of experience appraising properties similar to such Facility, shall, within forty-five (45) days after the date of the notice appointing the first Appraiser, proceed to appraise the applicable Facility to determine the Fair Market Rent thereof as of the relevant date; provided, that if one Appraiser shall have been so appointed, or if two Appraisers shall have been so appointed but only one such Appraiser shall have made such determination within fifty (50) days after the making of the initial appointment, then the determination of such Appraiser shall be final and binding upon the parties. If two (2) Appraisers shall have been appointed and shall have made their determinations within the respective requisite periods set forth above and if the difference between the amounts so determined shall not exceed five percent (5%) of the lesser of such amounts, then the Fair Market Rent shall be an amount equal to fifty percent (50%) of the sum of the amounts so determined. If the difference between the amounts so determined shall exceed five percent (5%) of the lesser of such amounts, either party may request the appointment of Experts pursuant to **Article XXXIV** to determine Fair Market Rent.

ARTICLE IV

IMPOSITIONS

4.1 Impositions. (a) Subject to **Article XII** relating to permitted contests, Tenant shall pay, or cause to be paid, all Impositions as and when due before any fine, penalty, interest or cost may be added for non-payment. Tenant shall make, or cause to be made, such payments directly to the taxing authorities (or such other party imposing the same), and, on a quarterly basis, as part of the certification required under **Section 4.3** of this Lease, shall promptly, where feasible, furnish to Landlord copies of official receipts or other satisfactory proof evidencing such payments. If Tenant is not permitted to, or it is otherwise not feasible for Tenant to, make (or cause to be made) such payments directly to the taxing authorities or other applicable party, then Tenant shall make (or cause to be made) such payments to Landlord at least ten (10) Business Days prior to the due date, and Landlord shall make such payments to the taxing authorities or other applicable party prior to the due date. Tenant’s obligation to pay (or cause to be paid) Impositions shall be absolutely fixed upon the date such Impositions become a lien upon the Leased Property or any part thereof subject to **Article XII**. If any Imposition may, at the option of the taxpayer, lawfully be paid in installments, whether or not interest shall accrue on the unpaid balance of such Imposition, Tenant may pay (or cause to be paid) the same, and any accrued interest on the unpaid balance of such Imposition, in installments as the same respectively become due and before any fine, penalty, premium, further interest or cost may be added thereto.

(b) Landlord or Landlord's Parents shall prepare and file all tax returns and reports as may be required by Legal Requirements with respect to Landlord's net income, gross receipts, franchise taxes and taxes on its capital stock and any other returns required to be filed by or in the name of Landlord with respect to or relating to the Leased Property (the "**Landlord Tax Returns**"), and Tenant or Tenant's Parent shall prepare and file all other tax returns and reports as may be required by Legal Requirements with respect to or relating to the Leased Property (including all Capital Improvements) and Tenant's Property.

(c) Any refund due from any taxing authority in respect of any Imposition paid by or on behalf of Tenant or any Operating Subtenant shall be paid over to or retained by Tenant or such Operating Subtenant (and any refund due from any taxing authority in respect of any Imposition paid by or on behalf of Landlord, if any, shall be paid over to or retained by Landlord (unless Tenant has subsequently reimbursed Landlord therefor)) if no Event of Default has occurred and is continuing. If an Event of Default shall have been declared by Landlord and be continuing, any such refund shall be paid over to or retained by Landlord.

(d) Landlord and Tenant shall, upon request of the other, provide such data as is maintained by the party to whom the request is made with respect to the Leased Property as may be necessary to prepare any required returns and reports. If any property covered by this Lease is classified as personal property for tax purposes, Tenant shall file, or cause to be filed, all personal property tax returns in such jurisdictions where it must legally so file. Landlord, to the extent it possesses the same, and Tenant, to the extent it possesses the same, shall provide the other party, upon request, with cost and depreciation records necessary for filing returns for any property so classified as personal property. Where Landlord is legally required to file personal property tax returns, Tenant shall be provided with copies of assessment notices indicating a value in excess of the reported value in sufficient time for Tenant to file a protest.

(e) Billings for reimbursement by Tenant to Landlord of personal property or real property taxes and any taxes due under Landlord Tax Returns, if and to the extent Tenant is responsible for such taxes under the terms of this **Section 4.1**, shall be accompanied by copies of a bill therefor and payments thereof which identify the personal property or real property or other tax obligations of Landlord with respect to which such payments are made.

(f) Impositions imposed or assessed in respect of the tax-fiscal period during which the Term terminates shall be adjusted and prorated between Landlord and Tenant, whether or not such Imposition is imposed or assessed before or after such termination, and Tenant's obligation to pay its prorated share thereof in respect of a tax-fiscal period during the Term shall survive such termination. Landlord will not voluntarily enter into agreements that will result in additional Impositions without Tenant's consent, which shall not be unreasonably withheld, conditioned or delayed (it being understood that it shall not be reasonable to withhold consent to customary additional Impositions that other property owners of properties similar to the Leased Property customarily consent to in the ordinary course of business); provided, Tenant is given reasonable opportunity to participate in the process leading to such agreement. Impositions imposed or assessed in respect of any tax fiscal period occurring (in whole or in part) prior to the Commencement Date shall be Tenant's obligation to pay or cause to be paid.

4.2 Utilities and other Matters. Tenant shall pay or cause to be paid when due and payable all charges for electricity, power, gas, oil, water and other utilities used in the Leased Property (including all Capital Improvements). Tenant shall also pay or caused to be paid when due and payable, or promptly reimburse Landlord for, all costs and expenses of any kind whatsoever with respect to any Facility and with respect to the Term hereof which at any time may be imposed against Landlord by reason of any of the Property Documents, including any and all costs and expenses associated with any utility, drainage and parking easements.

4.3 Compliance Certificate. Landlord shall deliver to Tenant, promptly following Landlord's receipt thereof, any bills received by Landlord for items required to be paid by Tenant hereunder, including, without limitation, Impositions, utilities and insurance. Tenant shall furnish to Landlord on a quarterly basis (at the time of the quarterly reporting contemplated to be delivered pursuant to **Section 23.1(b)(iii)**), a certification (together with reasonable evidence of payment) stating that in all material respects all or a specified portion of Impositions, utilities, insurance premiums or, to the extent specified by Landlord, any other amounts payable by Tenant hereunder that have, in each case, come due prior to the date of such certification (collectively, "**Property Charges**") have been paid (or that such payments are being contested in good faith by Tenant in accordance with **Article XII** hereof) (each, a "**Section 4.3 Certification**"). Notwithstanding the foregoing or anything to the contrary contained in this Lease, Landlord hereby waives any obligation of Tenant to provide evidence of payment of any Property Charges (including any Property Charges otherwise constituting Impositions) other than (a) real property taxes and assessments, (b) water and sewer rents, (c) insurance premiums, and (d) ground lease rents (collectively, the "**Essential Property Charges**"), and confirms that evidence of payment during the applicable calendar quarter of any Essential Property Charges shall be the only evidence of payment required to be provided with any Section 4.3 Certification furnished to Landlord pursuant to the terms of this Lease (the "**Section 4.3 Waiver**"). Tenant acknowledges and agrees that the Section 4.3 Waiver may be modified or revoked, in whole or in part, by Landlord for any reason on at least three (3) months' prior written notice to Tenant, provided that, (i) if the Section 4.3 Waiver is so modified or revoked, Landlord will specify in any such written notice to Tenant those additional Property Charges for which evidence of payment should thereafter be provided to Landlord, and (ii) evidence of payment for Property Charges other than Essential Property Charges will initially be required to be provided with the first Section 4.3 Certification that is furnished to Landlord after the expiration of such 3-month notice period.

4.4 Impound Account. At Landlord's option following the occurrence and during the continuation of an Event of Default (to be exercised by thirty (30) days' Notice to Tenant), Tenant shall be required to deposit with Landlord (or its Fee Mortgagee), at the time of any payment of Base Rent, an amount equal to one-twelfth of the sum of (i) Tenant's estimated annual Impositions required pursuant to **Section 4.1** hereof (as reasonably determined by Landlord), and (ii) Tenant's estimated annual maintenance expenses and insurance premium costs pursuant to **Articles IX** and **XIII** hereof (as reasonably determined by Landlord). Such amounts shall be applied to the payment of the obligations in respect of which said amounts were deposited in such order of priority as Landlord shall reasonably determine on or before the respective dates on which the same or any of them would become delinquent. The reasonable cost of administering such impound account shall be paid by Tenant. Nothing in this **Section 4.4** shall be deemed to affect any right or remedy of Landlord hereunder.

ARTICLE V

NO ABATEMENT

5.1 No Termination, Abatement, etc. Except as specifically provided in **Article XIV** and **Article XV** in this Lease, Tenant shall remain bound by this Lease in accordance with its terms and shall not seek or be entitled to any abatement, deduction, deferment or reduction of Rent, or set-off against the Rent. Except as expressly provided in **Article XIV** and **Article XV** in this Lease, the respective obligations of Landlord and Tenant shall not be affected by reason of (i) any damage to or destruction of the Leased Property or any portion thereof from whatever cause or any Condemnation of the Leased Property or any portion thereof, or any Capital Improvement or any portion thereof; (ii) other than to the extent arising as a result of Landlord's willful misconduct or gross negligence (which Landlord does not cure after notice from Tenant), the lawful or unlawful prohibition of, or restriction upon, Tenant's use of the Leased Property, any Capital Improvement or any portion thereof, or the interference with such use by any Person or by reason of eviction by paramount title; (iii) any claim that Tenant has or might have against Landlord by reason of any default or breach of any warranty by Landlord hereunder or under any other agreement between Landlord and Tenant or to which Landlord and Tenant are parties; (iv) any bankruptcy, insolvency, reorganization, consolidation, readjustment, liquidation, dissolution, winding up or other proceedings affecting Landlord or any assignee or transferee of Landlord; or (v) for any other cause, whether similar or dissimilar to any of the foregoing. Tenant hereby specifically waives all rights arising from any occurrence whatsoever which may now or hereafter be conferred upon it by law (a) to modify, surrender or terminate this Lease or quit or surrender the Leased Property or any portion thereof, or (b) which may entitle Tenant to any abatement, deduction, reduction, suspension or deferment of or defense, counterclaim, claim or set-off against the Rent or other sums payable by Tenant hereunder except in each case as may be otherwise specifically provided in **Article XIV** and **Article XV** in this Lease. Notwithstanding the foregoing, nothing in this **Article V** shall preclude Tenant from bringing a separate action against Landlord for any matter described in the foregoing clauses (ii), (iii) or (v) and Tenant is not waiving other rights and remedies not expressly waived herein, subject to Tenant's indemnification obligations in this Lease and **Section 41.3** of this Lease. The obligations of Landlord and Tenant hereunder shall be separate and independent covenants and agreements, and the Rent and all other sums payable by Tenant hereunder shall continue to be payable in all events unless the obligations to pay the same shall be terminated pursuant to the express provisions of this Lease or by termination of this Lease as to all or any portion of the Leased Property other than by reason of an Event of Default. Tenant's agreement that, except as may be otherwise specifically provided in this Lease, any eviction by paramount title as described in item (ii) above shall not affect Tenant's obligations under this Lease, shall not in any way discharge or diminish any obligation of any insurer under any policy of title or other insurance and, to the extent the recovery thereof is not necessary to compensate Landlord for any damages incurred by any such eviction, Tenant shall be entitled to a credit for any sums recovered by Landlord under any such policy of title or other insurance up to the maximum amount paid by Tenant to Landlord under this **Section 5.1**.

ARTICLE VI

OWNERSHIP OF LEASED PROPERTY

6.1 Ownership of the Leased Property. (a) Landlord and Tenant acknowledge and agree that they have executed and delivered this Lease with the understanding that (1) the Leased Property (including any Tenant Capital Improvements) is the property of Landlord, (2) Tenant has only the right to the possession and use of the Leased Property upon the terms and conditions of this Lease, (3) this Lease is intended to be a “true lease” for all applicable legal and federal state and local tax purposes and is not a financing lease, finance lease, mortgage, equitable mortgage, deed of trust, trust agreement, security agreement or other financing or trust arrangement, and the economic realities of this Lease are those of a “true lease”, (4) the business relationship created by this Lease and any related documents is and at all times shall remain that of landlord and tenant, (5) this Lease has been entered into by each party in reliance upon the mutual covenants, conditions and agreements contained herein, and (6) none of the agreements contained herein is intended, nor shall the same be deemed or construed, to create a partnership between Landlord and Tenant, to make them joint venturers, to make Tenant an agent, legal representative, partner, subsidiary or employee of Landlord, or to make Landlord in any way responsible for the debts, obligations or losses of Tenant. Notwithstanding anything to the contrary herein, Landlord is the fee and record owner of the Leased Property.

(b) Each of the parties hereto covenants and agrees not to (1) file any income tax return or other associated documents; (2) file any other document with or submit any document to any governmental body or authority; (3) enter into any written contractual arrangement with any Person; or (iv) release any financial statements of Tenant, in each case that takes a position other than that this Lease is a “true lease” for federal, state and local tax purposes with Landlord as owner of the Leased Property and Tenant as the tenant of the Leased Property unless otherwise required by a final “determination” within the meaning of Section 1313 of the Code. The parties agree that the foregoing includes the agreement of the parties that (x) Landlord will be treated as the owner of such Leased Property eligible to claim depreciation deductions under Sections 167 or 168 of the Code with respect to such Leased Property (except as otherwise provided in **Section 11.1(b)**), (y) Tenant will report its Rent payments as rent expense under Section 162 of the Code, and (z) Landlord will report the Rent payments as rental income under Section 61 of the Code.

(c) Landlord and Tenant acknowledge and agree that the Rent is the fair market rent for the use of the Leased Property and was agreed to by Landlord and Tenant on that basis, and the execution and delivery of, and the performance by Tenant of its obligations under, this Lease does not constitute a transfer of all or any part of the Leased Property but rather the creation of the Leasehold Estate subject to the terms and conditions of this Lease.

(d) Tenant waives any claim or defense based upon the characterization of this Lease as anything other than a “true lease” for all applicable legal and federal, state and local tax purposes and as a lease of all of the Leased Property. Tenant stipulates and agrees (1) not to challenge the validity, enforceability or characterization of the lease of the Leased Property as a “true lease” and/or a single, unseverable instrument pertaining to the lease of all, but not less than all, of the Leased Property, and (2) not to assert or take or omit to take any action inconsistent with the agreements and understandings set forth in **Section 3.4** or this **Section 6.1**.

The expressions of intent, the waivers, the representations and warranties, the covenants, the agreements and the stipulations set forth in this **Section 6.1** are a material inducement to Landlord and Tenant entering into this Lease.

6.2 Tenant's Property. Tenant, any Operating Subtenant and their respective Subsidiaries may sell, transfer, convey or otherwise dispose of Tenant's Property (including in connection with selling, replacing or disposing of Tenant's Property as it becomes surplus, worn or obsolete or as a part of a refurbishment or renovation of any Facility or portion thereof that contemplates replacement of certain items of Tenant's Property with newly purchased Tenant's Property, or if the same is no longer used, useful or economically practicable) in their discretion in the ordinary course of business in a manner that does not impair the compliance of any Facility with the Operating Standard and Landlord shall have no rights to such disposed Tenant's Property except as set forth herein (including in **Section 6.4**, **Section 36.1** and **Section 41.17**, and Landlord's lien with respect to such property will be automatically released as set forth in **Section 6.4(f)**). In the event that any Tenant's Property is owned by an Operating Subtenant, such Operating Subtenant shall be required to transfer such Tenant's Property to Tenant (or its successor Operating Subtenant) upon the expiration or earlier termination of its Operating Sublease. Pursuant to **Section 36.1**, at the end of the Term, Tenant (i) shall (or shall cause any Operating Subtenant to) transfer and assign to Landlord certain portions of Tenant's Property (as and only to the extent provided for in, and in accordance with the terms of, **Section 36.1**) and (ii) shall remove, or cause to be removed, the remaining portion of Tenant's Property from the Leased Property at the end of the Term at Tenant's sole cost and expense to the extent it may be removed without damaging the Leased Property or to the extent Tenant repairs such damage. Subject to **Section 36.1**, any Tenant's Property left on the Leased Property at the end of the Term whose ownership was not transferred to a successor tenant or landlord shall be deemed abandoned by Tenant and shall become the property of Landlord. Notwithstanding anything in the foregoing to the contrary, any transfer, conveyance or other disposition by Landlord or Tenant of any Gaming Equipment will be subject to the approval, to the extent required, of any applicable Gaming Authority. For the avoidance of doubt, all references to Tenant's Property in this **Section 6.2** shall exclude Intellectual Property. Notwithstanding anything to the contrary contained herein, during the Initial Term (x) the Signature Entities shall remain direct or indirect wholly owned Subsidiaries of Grand Operating Subtenant, and (y) the Signature Hotel Units (and the right to receive all revenues generated thereby, including from or with respect to any Signature Rental Management Operations) shall remain owned and controlled by Signature Owner, unless the same are transferred with Landlord's consent to a Successor Owner (as such term is defined in the Signature Management Agreement) in accordance with the terms of the Signature Management Agreement. Landlord's consent shall be required in connection with any transfer or action which would result in a breach of the immediately preceding sentence.

6.3 Tenant's Intellectual Property. Except as otherwise specifically provided in this Lease or in the Transition Services Agreement, Landlord and Tenant acknowledge and agree that (a) as between Tenant, Tenant's Parent and their respective Affiliates, and the Landlord and its Affiliates, Tenant, Tenant's Parent and their respective Affiliates, as applicable, shall be the sole and exclusive owners of all Property Specific IP, the Hotel Trademarks and their respective rights to the System-wide IP, (b) Tenant, Tenant's Parent and their respective Affiliates may sell, transfer, convey or otherwise dispose of, modify, use or discontinue use of, Property Specific IP, the Hotel Trademarks and System-wide IP in their sole discretion in the ordinary course of business in a manner that does not materially adversely affect any Facility's compliance with the

Operating Standard, (c) Landlord shall have no rights in or to the Property Specific IP, Hotel Trademarks or System-wide IP, (d) Landlord shall not claim any rights in or to, or challenge, contest or otherwise interfere with Tenant's, Tenant's Parent's or their respective Affiliates', as applicable, sole and exclusive ownership of the Property Specific IP, Hotel Trademarks or their respective rights to the System-wide IP and (e) Tenant may remove or otherwise dispose of Property Specific IP, Hotel Trademarks and System-wide IP from the Leased Property at the end of the Term, or may modify the Leased Property at the end of the Term such that Landlord's or any successor tenant's use of the Leased Property does not infringe upon, dilute, or adversely affect Tenant's, Tenant's Parent's or their respective Affiliates' rights in the Property Specific IP, Hotel Trademarks or System-wide IP. Notwithstanding the foregoing, Tenant shall, during the entire Term, undertake commercially reasonable efforts to abide by (or cause its Subsidiaries, if any, to abide by) the terms and conditions of any IP Licenses. For the avoidance of doubt, no Intellectual Property shall be included in the provisions of **Section 36.1**. Notwithstanding the foregoing, Landlord's prior written consent (not to be unreasonably withheld, conditioned or delayed) shall be required in order for Tenant to take any action that would, or could reasonably be expected to, result in the Grand Leased Property no longer being identified as "MGM Grand" or the MB Leased Property no longer being identified as "Mandalay Bay".

6.4 Landlord's Security Interest in Tenant's Pledged Property.

(a) Tenant represents and warrants that as of the date hereof, substantially all of Tenant's Pledged Property (except Tenant's Pledged Property used in providing shared services and/or Tenant's Pledged Property owned by an Affiliate not wholly-owned by Tenant) that is primarily related to the Leased Property and reasonably necessary to operate the Leased Property in accordance with the Operating Standard is owned by Tenant or any Operating Subtenant. Following the date hereof, Tenant shall use commercially reasonable efforts to cause to be transferred to Tenant or any Operating Subtenant any Tenant's Pledged Property that is not owned by Tenant or any Operating Subtenant as of the date hereof but is primarily related to the Leased Property and reasonably necessary to operate the Leased Property in accordance with the Operating Standard on a Non-Discriminatory basis consistent with past practice as soon as reasonably practical, but in no event later than one (1) year after the date hereof.

(b) Tenant covenants and agrees that any replacements, substitutions and additions of FF&E and all personal property (including all Gaming Equipment), licenses, permits, subleases, concessions, and contracts, in each case, to be located at the Leased Property and primarily used or held for use in connection with the operation of the business conducted by Tenant or any Operating Subtenant on or about the Leased Property as then being operated (excluding property used in providing shared services to other assets of Affiliates of Tenant's Parent on a Non-Discriminatory basis and specifically excluding any Intellectual Property) shall be acquired by and owned by Tenant or any Operating Subtenant (and not by any other Affiliate of Tenant) and all such items shall be included in Tenant's Pledged Property (except, for the avoidance of doubt, to the extent excluded in the definition of Tenant's Pledged Property).

(c) To secure the performance of Tenant's obligations under this Lease, including, without limitation, Tenant's obligation to pay Rent hereunder, Tenant and Operating Subtenant, each as debtor, hereby grant to Landlord, as secured party, a first priority security interest in all of Tenant's and Operating Subtenant's right, title and interest in and to Tenant's Pledged Property now owned or in which Tenant or Operating Subtenant hereafter acquires an

interest or right. This Lease constitutes a security agreement covering all such Tenant's Pledged Property. Tenant and Operating Subtenant shall grant no other security interest in Tenant's Pledged Property except pursuant to a Permitted Leasehold Mortgage. The Parties acknowledge that any security interest granted pursuant to a Permitted Leasehold Mortgage shall be a subordinate lien and subject to the terms of any Intercreditor Agreement.

(d) Tenant shall pay all filing fees and record search fees and other reasonable costs for such additional security agreements, financing statements, fixture filings, and other documents as Landlord may reasonably require to perfect or to continue the perfection of Landlord's security interest in Tenant's Pledged Property. Landlord shall have the right to collaterally assign such security interest granted to Landlord in Tenant's Pledged Property to any Fee Mortgagee.

(e) Notwithstanding anything herein to the contrary, the lien and security interest granted to Landlord pursuant to this Lease in the Tenant's Pledged Property and the exercise of any right or remedy by Landlord hereunder against the Tenant's Pledged Property are subject to the provisions of any Intercreditor Agreement and Tenant's right to operate the Property in the ordinary course of business consistent with the Operating Standard. In the event of any conflict between the terms of the Intercreditor Agreement and this Lease, the terms of the Intercreditor Agreement shall govern and control.

(f) Any Tenant's Pledged Property that is sold, transferred, conveyed or otherwise disposed of in accordance with **Section 6.2** or **Section 6.3** or in a manner not otherwise prohibited by this Lease shall be automatically released from the security interest granted to Landlord in Tenant's Pledged Property and Landlord shall, at Tenant's request, execute such documents and instruments to evidence, acknowledge and/or confirm such release. Landlord acknowledges that a Permitted Leasehold Mortgagee may have a subordinate lien on Tenant's Pledged Property, provided that such lien in favor of a Permitted Leasehold Mortgagee is subject and subordinate to the first-priority lien thereon in favor of Landlord on the terms and conditions set forth in any Intercreditor Agreement.

(g) The security interest granted to Landlord in Tenant's Pledged Property shall not apply to any Tenant's Pledged Property which is subject to a bona fide purchase money financing with respect thereto (including equipment leases or equipment financing) permitted pursuant to **Section 11.1(a)(i)**. Any funds spent by Tenant from purchase money financing (including equipment leases or equipment financing) permitted pursuant to **Section 11.1(a)(i)**, which is superior to the security interest granted to Landlord in Tenant's Pledged Property, shall not be applied toward the minimum Required CapEx set forth in **Section 9.1(e)**.

(h) Notwithstanding the foregoing or anything herein to the contrary, Landlord shall have no right to foreclose upon (or commence any foreclosure proceedings) or exercise any remedies against or in respect of Landlord's security interest in Tenant's Pledged Property at any time prior to the effective date of termination of this Lease pursuant to **Section 16.2(a)(i)**.

ARTICLE VII

CONDITION AND USE OF LEASED PROPERTY

7.1 Condition of the Leased Property. Tenant acknowledges receipt and delivery of possession of the Leased Property and confirms that Tenant has examined and otherwise has knowledge of the condition of the Leased Property prior to the execution and delivery of this Lease and has found the same to be in good order and repair and, to the best of Tenant's knowledge, free from Hazardous Substances not in compliance with Legal Requirements and satisfactory for its purposes hereunder, it being understood and acknowledged by Tenant that, immediately prior to the applicable Landlord's acquisition of the applicable Leased Property and contemporaneous entry into this Lease, Tenant (or its Affiliates) was the owner of all of the applicable Landlord's interest in and to the applicable Leased Property and, accordingly, Tenant is charged with, and deemed to have, full and complete knowledge of all aspects of the condition and state of the Leased Property as of the Commencement Date. Regardless, however, of any examination or inspection made by Tenant and whether or not any patent or latent defect or condition was revealed or discovered thereby, Tenant is leasing the Leased Property "as is" in its present condition. Tenant waives any claim or action against Landlord in respect of the condition of the Leased Property including any defects or adverse conditions not discovered or otherwise known by Tenant as of the Commencement Date. **LANDLORD MAKES NO WARRANTY OR REPRESENTATION OF ANY KIND, EXPRESS OR IMPLIED, IN RESPECT OF THE LEASED PROPERTY OR ANY PART THEREOF, INCLUDING AS TO ITS FITNESS FOR USE, DESIGN OR CONDITION FOR ANY PARTICULAR USE OR PURPOSE OR OTHERWISE, OR AS TO THE NATURE OR QUALITY OF THE MATERIAL OR WORKMANSHIP THEREIN, OR THE STATUS OF TITLE TO THE LEASED PROPERTY OR THE PHYSICAL CONDITION OR STATE OF REPAIR THEREOF, OR THE ZONING OR OTHER LAWS, ORDINANCES, BUILDING CODES, REGULATIONS, RULES AND ORDERS APPLICABLE THERETO OR TO ANY CAPITAL IMPROVEMENTS WHICH MAY BE NOW OR HEREAFTER CONTEMPLATED, THE IMPOSITIONS LEVIED IN RESPECT OF THE LEASED PROPERTY OR ANY PART THEREOF, OR THE USE THAT MAY BE MADE OF THE LEASED PROPERTY OR ANY PART THEREOF, THE INCOME TO BE DERIVED FROM THE FACILITIES OR THE EXPENSE OF OPERATING THE SAME, OR THE EXISTENCE OF ANY HAZARDOUS SUBSTANCE, IT BEING AGREED THAT ALL SUCH RISKS, LATENT OR PATENT, ARE TO BE BORNE SOLELY BY TENANT INCLUDING ALL RESPONSIBILITY AND LIABILITY FOR ANY ENVIRONMENTAL REMEDIATION AND COMPLIANCE WITH ALL ENVIRONMENTAL LAWS.**

7.2 Use of the Leased Property. (a) Tenant shall use or cause to be used the Leased Property and the improvements thereon for its Primary Intended Use in accordance with the Operating Standard. Tenant shall not use or permit the use of the Leased Property or any portion thereof or any Capital Improvement thereto for any other use without the prior written consent of Landlord, which consent Landlord may withhold in its sole discretion. Landlord acknowledges that operation of each Gaming Facility for its Primary Intended Use generally requires a Gaming License under applicable Gaming Regulations and that without such a license neither Landlord nor any Affiliate of Landlord may operate, control or participate in the conduct of a Gaming Facility. Tenant acknowledges that operation of each Facility for its Primary Intended Use generally may require a Gaming License under applicable Gaming Regulations and that without

such a license, if applicable, Tenant may not operate, control or participate in the conduct of the gaming operations at the Facilities.

(b) Tenant shall not commit or suffer to be committed any waste on the Leased Property (including any Capital Improvement thereto) or cause or permit any nuisance thereon or to, except as required by law, take or suffer any action or condition that will diminish the ability of the Leased Property to be used as a Gaming Facility or otherwise for the Primary Intended Use (except in connection with any use, or change of use, permitted pursuant to **Section 7.2(a)** above) during the Term or after the expiration or earlier termination of the Term.

(c) Tenant shall neither suffer nor permit the Leased Property or any portion thereof to be used in such a manner as (i) would reasonably be expected to impair Landlord's title thereto or to any portion thereof or (ii) would reasonably be expected to result in a claim of adverse use or possession, or an implied dedication of the Leased Property or any portion thereof. Without the prior written consent of Landlord, Tenant may not impose or permit the imposition of any restrictive covenants, easements or other encumbrances which would encumber Landlord's interest in the Leased Property. Landlord shall have the right to approve any restrictive covenant, easement or other encumbrance on the Leased Property if such matter would survive the expiration or termination of this Lease or requires any signature or other action by Landlord, such approval not to be unreasonably withheld, conditioned or delayed unless in Landlord's good faith judgment (x) there is more than a de minimis effect on the value or use of the Leased Property or (y) such matter benefits a Tenant Competitor or Affiliate of Tenant or Tenant's Parent. Tenant may impose or permit the imposition of any restrictive covenants, easements or other similar encumbrances (excluding, for the avoidance of doubt, any mortgages unless such mortgage is a Permitted Leasehold Mortgage) which would encumber Tenant's leasehold estate and shall (x) expressly provide that they do not affect Landlord's interest in the Leased Property and (y) not result in any physical structures or other matters which may need to be removed or restored after the expiration of the Lease. Other than any liens or other encumbrances granted to a Fee Mortgagee, Landlord will not enter into agreements that will encumber the Leased Property without Tenant's consent, which shall not be unreasonably withheld, conditioned or delayed if the proposed matter would not reasonably be expected to interfere with Tenant's conduct of its business on the Leased Property or with the use of the Leased Property for its Primary Intended Use (it being agreed and understood that any proposed encumbrance related to, or for the benefit of, any Tenant Competitor, would require Tenant's consent, which Tenant may grant or withhold in its sole discretion), provided, that, Tenant is given reasonable opportunity to participate in the process leading to such agreement. Nothing in the foregoing is intended to vitiate or supersede Tenant's right to enter into Permitted Leasehold Mortgages or Landlord's right to enter into Fee Mortgages in each case as and to the extent provided herein. In addition, each of Landlord and Tenant agrees to, at the sole cost and expense of the other, reasonably cooperate with the other party and all applicable authorities in connection with the foregoing, including the provision and execution of such documents and other information as may be requested by such other party or such authorities relating to the Leased Property and which are within such party's reasonable control to obtain and provide. Landlord further agrees to use commercially reasonable efforts (at Tenant's sole cost and expense) to obtain the consent of the Fee Mortgagee should Fee Mortgagee's consent be required in connection with any restrictive covenant, easement or other encumbrance.

(d) Except as a result of a Casualty Event or other Unavoidable Delay, Tenant shall continuously operate the Facilities for the Primary Intended Use in accordance with the Operating Standard.

(e) Subject to **Article XII** regarding permitted contests, Tenant, at its sole cost and expense, shall promptly (i) comply in all material respects with all Legal Requirements and Insurance Requirements affecting the Facilities and the business conducted thereat (taking into account any “grandfather” rights with respect to any applicable Legal Requirements), including those regarding the use, operation, maintenance, repair and restoration of the Leased Property or any portion thereof (including all Capital Improvements) and Tenant’s Property whether or not compliance therewith may require structural changes in any of the Leased Improvements or interfere with the use and enjoyment of the Leased Property or any portion thereof (taking into account any “grandfather” rights with respect to any applicable Legal Requirements), and (ii) procure, maintain and comply in all material respects with all Gaming Regulations and Gaming Licenses, and other authorizations required for the use of the Leased Property (including all Capital Improvements) and Tenant’s Property for the applicable Primary Intended Use and any other use of the Leased Property (and Capital Improvements then being made) and Tenant’s Property, and for the proper erection, installation, operation and maintenance of the Leased Property and Tenant’s Property.

(f) Notwithstanding anything to the contrary contained herein, Landlord’s prior written consent (not to be unreasonably withheld, conditioned or delayed) shall be required in order for Tenant to take any action that would, or could reasonably be expected to, result in the Grand Leased Property no longer being identified as “MGM Grand” or the MB Leased Property no longer being identified as “Mandalay Bay”.

(g) Without limitation of any of the other provisions of this Lease, Tenant shall comply in all material respects with all Property Documents and Landlord shall reasonably cooperate with Tenant (at Tenant’s sole cost and expense) to the extent necessary for Tenant to so comply.

(h) Any Affiliate Agreements relating to the Leased Property between Tenant and its Affiliates (or between any Facility and Tenant’s Affiliates) must be Permitted Affiliate Agreements. Any other Affiliate Agreements entered into after the date of this Lease shall require Landlord’s consent, such consent not to be unreasonably withheld, conditioned or delayed.

7.3 Additional Facilities.

Nothing contained in this Lease shall restrict Tenant’s or Tenant’s Affiliates’ ability to develop, acquire, operate or sell any new Gaming Facilities (or any other property) which are not owned or operated by Tenant as of the date hereof and not subject to this Lease, provided that (x) Tenant and Tenant’s Affiliates’ are not permitted to brand another Gaming Facility in Nevada as “Mandalay Bay” or “MGM Grand” (or any Trademark confusingly similar thereto or any Trademark that replaces such brand name as the primary brand name for any Facility) until the expiration of the Term and (y) except as provided in **Section 7.2(d)**, at all times Tenant shall operate the Facilities in accordance with the Operating Standard. Notwithstanding anything to the contrary contained herein, Landlord shall not have any right to purchase, nor shall Tenant

have any obligation to make any offer to Landlord, in connection with any such other property or asset referenced in the preceding sentence. Further, neither Landlord nor any Affiliates of Landlord shall be restricted from participating in opportunities, including, without limitation, developing, building, purchasing or operating Gaming Facilities or any other property or asset, at any time; provided, however, that in no event shall Landlord at any time during the Term own or operate any Gaming Facility. For the avoidance of doubt, Affiliates of Landlord shall not be restricted from developing, building, purchasing, owning or opening Gaming Facilities.

ARTICLE VIII

REPRESENTATIONS AND WARRANTIES; COMPLIANCE WITH LAW

8.1 Representations and Warranties. Each party represents and warrants to the other that: (i) this Lease and all other documents executed or to be executed by it in connection herewith have been duly authorized and shall be binding upon it; (ii) it is duly organized, validly existing and in good standing under the laws of the state of its formation and is duly authorized and qualified to perform this Lease within the State; and (iii) neither this Lease nor any other document executed or to be executed in connection herewith violates the terms of any other agreement of such party.

8.2 Compliance with Legal and Insurance Requirements, etc.

(a) Subject to **Article XII** regarding permitted contests, Tenant, at its expense, shall promptly (a) comply in all material respects with all Legal Requirements and Insurance Requirements affecting each Facility and the business conducted therein, including those regarding the use, operation, maintenance, repair and restoration of the Leased Property (including all Capital Improvements thereto) and Tenant's Property whether or not compliance therewith may require structural changes in any of the Leased Improvements or interfere with the use and enjoyment of the Leased Property, and (b) procure, maintain and comply in all material respects with all Gaming Regulations and Gaming Licenses, and other authorizations required for the use of the Leased Property (including all Capital Improvements) and Tenant's Property for the applicable Primary Intended Use and any other use of the Leased Property (including Capital Improvements then being made) and Tenant's Property, and for the proper erection, installation, operation and maintenance of the Leased Property and Tenant's Property. In an emergency which Landlord determines is not being reasonably addressed by Tenant or in the event of a breach by Tenant of its obligations under this **Section 8.2** which is not cured within any applicable cure period, Landlord or its representatives (and any Fee Mortgagee) may, but shall not be obligated to, subject to all Legal Requirements, applicable Gaming Regulations and the rights of subtenants, enter upon the Leased Property and take such reasonable actions and incur such reasonable costs and expenses to effect such compliance as it reasonably deems advisable to protect its interest in the Leased Property, and Tenant shall reimburse Landlord for all such reasonable costs and expenses incurred by Landlord in connection with such actions. Tenant covenants and agrees that the Leased Property and Tenant's Property shall not be used for any unlawful purpose. Tenant (or any applicable Operating Subtenant) shall comply with any Gaming Regulations or other regulatory requirements required of it in all material respects as a tenant of each of the Facilities taking into account their Primary Intended Use. In the event that a Gaming Authority notifies Tenant (or any Operating Subtenant) that Tenant (or such Operating Subtenant) is in jeopardy of losing a Gaming License material to this Lease or the continued

operation of the Facilities, Tenant shall immediately notify Landlord and, assuming no Event of Default has occurred and is continuing, Tenant shall be given reasonable time to address (or cause such Operating Subtenant to address) the regulatory issue, after which period (but in all events prior to an actual revocation of such Gaming License), Tenant shall take (or cause such Operating Subtenant to take) reasonable steps to avoid the loss of such Gaming License (subject to the provisions of **Section 7.2(d)**).

(b) Landlord shall comply with any Gaming Regulations or other regulatory requirements required of it as owner of the Facilities taking into account their Primary Intended Use (except to the extent Tenant fulfills or is required to fulfill any such requirements hereunder). In the event that a Gaming Authority notifies Landlord that Landlord is in jeopardy of failing to comply with any such Gaming Regulation or other regulatory requirements material to the continued operation of the Facilities for their Primary Intended Use, Landlord shall be given reasonable time to address the regulatory issue, after which period (but in all events prior to an actual cessation of the use of any Facility for its Primary Intended Use as a result of the failure by Landlord to comply with such regulatory requirements) Landlord shall be required to sell the Leased Property relating to such Facility to a buyer that is in compliance with all Gaming Regulations and subject to this Lease. In the event during the period in which Landlord is complying with the preceding sentence, such regulatory agency notifies Landlord and Tenant that Tenant may not pay any portion of the Rent to Landlord, Tenant shall be entitled to fund such amount into an escrow account, to be released to Landlord or the party legally entitled thereto at or upon resolution of such regulatory issues and otherwise on terms reasonably satisfactory to the parties. Notwithstanding anything in the foregoing to the contrary, no transfer of Tenant's Property used in the conduct of Gaming (including the purported or attempted transfer of a Gaming License) or the operation of a Gaming Facility shall be effected or permitted without receipt of all necessary approvals and/or Gaming Licenses in accordance with applicable Gaming Regulations.

(c) In connection with this Agreement, Tenant shall not take any action, directly or indirectly, that would result in a violation of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (the "**U.S.A. Patriot Act**"), the Bank Secrecy Act of 1970 (the "**Bank Secrecy Act**"), the regulations or orders issued by the Office of Foreign Assets Control of the United States Department of the Treasury ("**OFAC**"), or any other law that is designed to prevent bribery, terrorism, drug trafficking or money laundering.

8.3 Zoning and Uses. Tenant shall not, without the prior written consent of Landlord (i) initiate or support any limiting change in the permitted uses of the Leased Property (or to the extent applicable, limiting zoning reclassification of the Leased Property); (ii) seek any variance under existing land use restrictions, laws, rules or regulations (or, to the extent applicable, zoning ordinances) applicable to the Leased Property; (iii) execute or file any subdivision plat affecting the Leased Property, or institute, or permit the institution of, proceedings to alter any tax lot comprising the Leased Property; or (iv) knowingly permit or suffer the Leased Property or any portion thereof to be used by the public or any Person in such manner as might make possible a claim of adverse usage or possession or of any implied dedication or easement; provided, however, such consent shall not be unreasonably withheld, conditioned or delayed with respect to clauses (i)-(iv) provided that there is no more than a de minimis effect on the value or use of the Leased Property; and, provided, further, that Tenant may take, or cause to be taken by any

Operating Subtenant, an action described in the foregoing clauses (i) and (ii) if the same and any effect on a Facility and the Leased Property is de minimis and limited in the duration such that it would expressly not survive the expiration or earlier termination of this Lease. In the event any matter expressly permitted or consented to by Landlord requires any signature or other action by Landlord, Landlord agrees to, at Tenant's sole cost and expense, reasonably cooperate with Tenant (or any Operating Subtenant) and all applicable authorities in connection with the foregoing clauses (i)-(iv), including the provision and execution of such customary documents and other information as may be requested by Tenant (or any Operating Subtenant) or such authorities relating to the Leased Property and which are within Landlord's reasonable control to obtain and provide, provided that Tenant acknowledges and agrees that any third-party claims arising under such documents are expressly covered by Tenant's indemnification obligations under **Section 21.1**. Landlord further agrees to use commercially reasonable efforts (at Tenant's sole cost and expense) to obtain the consent of the Fee Mortgagee should Fee Mortgagee's consent be required in connection with the foregoing clauses (i)-(iv). Notwithstanding the foregoing or anything to the contrary contained herein, no Landlord approval shall be required in connection with the matters listed on **Schedule 13**.

8.4 Intentionally Omitted.

8.5 Third-Party Reports. Upon Landlord's reasonable request from time to time, but not more frequently than once each year in connection with the Annual Certificate, Tenant shall provide Landlord with copies of any final third-party surveys, environmental, engineering, zoning, seismic or property condition reports (other than any which are subject to privilege) obtained by Tenant or any Operating Subtenant with respect to the Leased Property.

ARTICLE IX

MAINTENANCE AND REPAIR

9.1 Maintenance and Repair. (a) Subject to Landlord's right to approve certain Capital Improvements in **Section 10.1**, Tenant, at its expense and without the prior consent of Landlord, shall maintain, or cause to be maintained, the Leased Property and every portion thereof, and all private roadways, sidewalks and curbs appurtenant to the Leased Property, and which are under Tenant's or any subtenant's control in reasonably good order and repair whether or not the need for such repairs occurs as a result of Tenant's or any subtenant's use, any prior use, the elements or the age of the Leased Property, and, with reasonable promptness, make all reasonably necessary and appropriate repairs thereto of every kind and nature, including those necessary to ensure continuing compliance in all material respects with all Legal Requirements, (including, without limitation, all Gaming Regulations and Environmental Laws) (to the extent required hereunder), Insurance Requirements and Property Documents whether now or hereafter in effect, whether interior or exterior, structural or non-structural, ordinary or extraordinary, foreseen or unforeseen or arising by reason of a condition existing prior or after the Commencement Date. All repairs shall be at least equivalent in quality to the original work in the aggregate. Tenant will not take or omit to take any action the taking or omission of which would reasonably be expected to materially impair the value or the usefulness of the Leased Property or any part thereof or any Capital Improvement thereto for its Primary Intended Use. Tenant shall (i) maintain, or cause to be maintained, Tenant's Property (except Intellectual Property, which is subject to **Section 6.3**) (x) in a manner consistent with the Operating Standard throughout the

Term, and (y) as necessary for conduct of the Primary Intended Use at the Facilities throughout the Term and (ii) not take any action which is intended or designed to materially frustrate, vitiate or reduce the rights of Landlord under **Section 36.1** of this Lease. Landlord acknowledges that the condition of the Facilities and the other matters described in the first sentence of this **Section 9.1** on the date hereof satisfies the requirements of this **Article IX**.

(b) Landlord shall not under any circumstances be required to (i) build or rebuild any improvements on the Leased Property; (ii) make any repairs, replacements, alterations, restorations or renewals of any nature to the Leased Property, whether ordinary or extraordinary, structural or non-structural, foreseen or unforeseen, or to make any expenditure whatsoever with respect thereto; or (iii) maintain the Leased Property in any way. Tenant hereby waives, to the extent permitted by law, the right to make repairs at the expense of Landlord pursuant to any law in effect at the time of the execution of this Lease or hereafter enacted.

(c) Subject to the specific provisions of **Section 41.14**, nothing contained in this Lease and no action or inaction by Landlord shall be construed as (i) constituting the consent or request of Landlord, expressed or implied, to any contractor, subcontractor, laborer, materialman or vendor to or for the performance of any labor or services or the furnishing of any materials or other property for the construction, alteration, addition, repair or demolition of or to the Leased Property or any part thereof or any Capital Improvement thereto; or (ii) giving Tenant any right, power or permission to contract for or permit the performance of any labor or services or the furnishing of any materials or other property in such fashion as would permit the making of any claim against Landlord in respect thereof or to make any agreement that may create, or in any way be the basis for, any right, title, interest, lien, claim or other encumbrance upon the estate of Landlord in the Leased Property, or any portion thereof or upon the estate of Landlord in any Capital Improvement thereto.

(d) Tenant shall, upon the expiration or earlier termination of the Term, vacate and surrender and relinquish in favor of Landlord all rights to the Leased Property (including all Capital Improvements) in each case with respect to such Facility, to Landlord in the condition in which such Leased Property was originally received from Landlord and Capital Improvements were originally introduced to such Facility, except as repaired, rebuilt, restored, altered or added to as permitted or required by the provisions of this Lease and except for ordinary wear and tear, subject to casualty and Condemnation as provided in **Article XIV** and **Article XV**.

(e) (i) Without limiting Tenant's obligations to maintain the Leased Property and Tenant's Property under this Lease, Tenant is required to expend or cause any Operating Subtenant to expend the Required CapEx during each CapEx Testing Period. To enable Landlord to monitor and confirm compliance with the foregoing within thirty (30) days after the end of each calendar year (the "**CapEx Certification Date**"), commencing with the calendar year ending December 31, 2024, Tenant shall provide Landlord with an Officer's Certificate (a "**CapEx Testing Period Certificate**") certifying in reasonable detail to (A) the aggregate amount expended by Tenant and/or any Operating Subtenant on Qualifying CapEx during the immediately preceding CapEx Testing Period and (B) the actual Net Revenue (collectively and with respect to each Facility (and, with respect to the Grand Facility, together with the Signature Hotel Units)) during such CapEx Testing Period (the "**CapEx Testing Period Net Revenues**"), including a certification of the information delivered to Landlord substantially in the form attached hereto as **Exhibit K**, together with evidence satisfactory to Landlord in the reasonable

exercise of Landlord's discretion documenting the amount of the Qualifying CapEx during the CapEx Testing Period. Commencing on January 1, 2025, Tenant shall be required to deposit, or cause to be deposited, additional funds into the CapEx Reserve in an amount equal to the deficiency between the Required CapEx for a CapEx Testing Period and the aggregate amount expended on Qualifying CapEx during such CapEx Testing Period, with such deposit to occur no later than the date (the "**Required CapEx Funding Deadline**") which is the earliest to occur of (x) the date that Tenant delivers a CapEx Testing Period Certificate indicating a deficiency, (y) the CapEx Certification Date if Tenant fails to timely deliver the CapEx Testing Period Certificate, in which event, until a CapEx Testing Period Certificate is actually delivered, Landlord shall determine the deficiency (and the Qualifying CapEx for any period for which a CapEx Testing Period Certificate has not previously been delivered shall be deemed to equal zero), and (z) after delivery of a CapEx Testing Period Certificate, the date that it is reasonably determined by the parties that a CapEx Testing Period Certificate inaccurately reflected that a deficiency did not exist (and in the event of any dispute regarding an alleged deficiency, either party shall be entitled to submit such dispute to the Experts for determination).

(ii) The Parties acknowledge that Tenant's agreement to satisfy the Required CapEx during the CapEx Testing Period as required in this Lease is a material inducement to Landlord's agreement to enter into this Lease, and, accordingly, if Tenant and/or any Operating Subtenant fails to expend Qualifying CapEx (or deposit the required funds into the CapEx Reserve) as and when required by this Lease (including for the avoidance of doubt, any failure to expend funds in the CapEx Reserve on Qualifying CapEx by the CapEx Grace Period as provided in **Section 9.1(e)(iii)**), then the same shall constitute an Event of Default hereunder subject to the notice and cure rights specified in **Section 16.1(a)(xv)**, and without limitation of any of Landlord's other rights and remedies, Landlord shall have the right in its discretion to exercise its rights and remedies under this Lease, including without limitation, (x) seek the remedy of specific performance to require Tenant to expend or cause any Operating Subtenant to expend the Required CapEx (or to deposit funds into the CapEx Reserve and to utilize funds in the CapEx Reserve on Qualifying CapEx) and (y) withdraw funds from the CapEx Reserve and retain such funds after an Event of Default. Furthermore, for the avoidance of doubt, and without limitation of Guarantor's obligations under the Guaranty, Tenant acknowledges and agrees that the obligation of Tenant to expend (or cause any Operating Subtenant to expend) the Required CapEx (or deposit, or cause to be deposited, funds into the CapEx Reserve) as provided in this Lease in each case constitutes a part of the monetary obligations of Tenant under this Lease and shall be guaranteed by the Guarantor under the Guaranty (together with all other obligations of Tenant under this Lease).

(iii) Notwithstanding anything to the contrary set forth in this Lease, if Tenant and the Operating Subtenants collectively fail to make at least the amount of expenditures required by this **Section 9.1(e)**, then, so long as, as of the Required CapEx Funding Deadline, there are CapEx Reserve Funds on deposit in the CapEx Reserve in an aggregate amount at least equal to such deficiency, then Tenant shall not be deemed to be in breach or default of its obligations hereunder to satisfy the Required CapEx, provided that Tenant and the Operating Subtenants shall collectively spend such amounts so deposited in the CapEx Reserve on Qualifying CapEx within six (6) months after the Required CapEx Funding Deadline (subject to extension in the event of an Unavoidable Delay during such six (6) month period, on a day-for-day basis, for the same amount of time that such Unavoidable Delay affects Tenant's ability to perform (or cause any Operating Subtenant to perform) the required Qualifying CapEx) (the

“CapEx Grace Period”). For the avoidance of doubt, any funds disbursed from the CapEx Reserve and spent on required Qualifying CapEx as described in this Section shall be applied to the Required CapEx for the period for which such funds were deposited (and shall be deemed to be the funds that have been in the CapEx Reserve for the longest period of time) and shall not be applied to the Required CapEx for the subsequent period in which they are actually spent.

(iv) Tenant (x) shall, if required by this **Section 9.1(e)** and (y) may, at its election, at any other time, deposit, or cause to be deposited, funds (the **“CapEx Reserve Funds”**) into a segregated Eligible Account held by an Eligible Institution (the **“CapEx Reserve”**). All interest on CapEx Reserve Funds shall be for the benefit of Tenant (or any Operating Subtenant) and added to and become a part of the CapEx Reserve and shall be disbursed in the same manner as other monies deposited in the CapEx Reserve. Tenant shall be responsible for payment of any federal, state or local income or other tax applicable to the interest earned on the CapEx Reserve Funds credited or paid to Tenant.

(v) Tenant shall be entitled to use CapEx Reserve Funds solely for the purpose of paying for (or reimbursing Tenant or any Operating Subtenant for) the cost of Qualifying CapEx. So long as no Event of Default exists, Tenant shall be entitled to receive within ten (10) days of submitting a request in writing directly to Landlord and the Eligible Institution a disbursement of CapEx Reserve Funds from the CapEx Reserve to pay for Qualifying CapEx or a reimbursement for Qualifying CapEx, and any such request shall specify the amount of the requested disbursement and a general description of the type of Qualifying CapEx to be paid or reimbursed using such CapEx Reserve Funds (a **“CapEx Disbursement Request”**). So long as no Event of Default exists, any CapEx Reserve Funds remaining in the CapEx Reserve following the satisfaction of the Required CapEx for which such CapEx Reserve Funds were deposited shall be returned by Landlord or the Eligible Institution to Tenant. In the event that as of the expiration or earlier termination of the Lease the Required CapEx for which such CapEx Reserve Funds were deposited has not been satisfied, then Landlord shall be entitled to receive and retain such CapEx Reserve Funds to the extent not satisfied and any remainder shall be released to and retained by Tenant.

(f) Tenant shall deposit, or cause to be deposited by one or more Operating Subtenant, monthly, in arrears, on the first (1st) Business Day of each calendar month, with an Eligible Institution an aggregate amount equal to one and one-half percent (1.5%) of the Net Revenue during the second preceding calendar month (*e.g.*, the FF&E Reserve Funds to be deposited on April 1, 2020 shall be calculated using Net Revenue for February 2020) (the **“FF&E Reserve Funds”**) into one or more segregated Eligible Accounts held by an Eligible Institution (collectively, the **“FF&E Reserve”**). All interest on FF&E Reserve Funds shall be for the benefit of Tenant (or any Operating Subtenant) and added to and become a part of the FF&E Reserve and shall be disbursed in the same manner as other monies deposited in the FF&E Reserve. Tenant (or an Operating Subtenant) shall be responsible for payment of any federal, state or local income or other tax applicable to the interest earned on the FF&E Reserve Funds credited or paid to Tenant (or any such Operating Subtenant). Tenant (or any Operating Subtenant) shall be entitled to use FF&E Reserve Funds solely for the purpose of paying for (or reimbursing Tenant or any Operating Subtenant for) the cost of any Qualifying CapEx and FF&E (the **“Permitted FF&E Expenditures”**). So long as no Event of Default exists, Tenant (or any Operating Subtenant) shall be entitled to receive within ten (10) days of Tenant (or the applicable Operating Subtenant) submitting a request in writing directly to Landlord and the Eligible

Institution a disbursement of FF&E Reserve Funds from the FF&E Reserve to pay for Permitted FF&E Expenditures or a reimbursement for Permitted FF&E Expenditures, and any such request shall specify the amount of the requested disbursement and a general description of the type of Permitted FF&E Expenditures to be paid or reimbursed using such FF&E Reserve Funds (an “**FF&E Disbursement Request**”). For the avoidance of doubt, any funds disbursed from the FF&E Reserve and spent on and/or as reimbursement for the costs of Permitted FF&E Expenditures shall be applied toward the minimum Required CapEx set forth in **Section 9.1(e)**. So long as no Event of Default exists and Tenant has satisfied the Required CapEx, any FF&E Reserve Funds remaining in the FF&E Reserve on the expiration or earlier termination of this Lease shall be released to Tenant (or any Operating Subtenant) and Tenant (or any Operating Subtenant) shall be entitled to retain such funds.

(g) Tenant (and each Operating Subtenant) grants to Landlord a first-priority security interest in the CapEx Reserve and all CapEx Reserve Funds and the FF&E Reserve and all FF&E Reserve Funds in each case as additional security for performance of Tenant’s obligations under this Lease during the existence of an Event of Default. Landlord shall have the right to collaterally assign the security interest granted to Landlord in the CapEx Reserve and CapEx Reserve Funds and FF&E Reserve and FF&E Reserve Funds to any Fee Mortgagee. Notwithstanding anything to the contrary contained in **Section 9.1(e)** and **Section 9.1(f)**, following the execution of this Lease, Landlord, Tenant (or any Operating Subtenant) and the applicable Eligible Institution shall promptly enter into a customary and reasonable deposit account control agreement with respect to the FF&E Reserve and the CapEx Reserve (the “**Restricted Reserve Accounts**”) which shall provide that (x) Landlord has “control” over the account within the meaning of Section 9-104 of the New York Uniform Commercial Code, (y) the Eligible Institution shall disburse funds to Tenant (or the applicable Operating Subtenant) pursuant to a CapEx Disbursement Request or FF&E Disbursement Request (as applicable) in accordance with **Section 9.1(e)** and **Section 9.1(f)** (as applicable) except during a Reserve Control Trigger Period and (z) during the Reserve Control Trigger Period, Eligible Institution shall only make disbursements from the account upon written direction from Landlord. During the Reserve Control Trigger Period, so long as no Event of Default has occurred Landlord shall request disbursements of funds from the Restricted Reserve Accounts to Tenant (or the applicable Operating Subtenant) within five (5) Business Days of (i) Tenant’s (or any Operating Subtenant’s) delivery of a CapEx Disbursement Request or FF&E Disbursement Request (as applicable) in connection with **Section 9.1(e)** and **Section 9.1(f)** (as applicable) and (ii) Tenant’s (or any applicable Operating Subtenant’s) satisfaction of the Reserve Disbursement Requirements.

9.2 Encroachments, Restrictions, Mineral Leases, etc. If any of the Leased Improvements shall, at any time, encroach upon any property, street or right-of-way, or shall violate any restrictive covenant or other agreement affecting the Leased Property, or any part thereof or any Capital Improvement thereto, or shall impair the rights of others under any easement or right-of-way to which the Leased Property is subject, or the use of the Leased Property or any Capital Improvement thereto is impaired, limited or interfered with by reason of the exercise of the right of surface entry or any other provision of a lease or reservation of any oil, gas, water or other minerals, then promptly upon the request of Landlord or any Person affected by any such encroachment, violation or impairment, Tenant shall, subject to its right to contest the existence of any such encroachment, violation or impairment, protect, indemnify, save harmless and defend Landlord from and against, all losses, liabilities, obligations, claims,

damages, penalties, causes of action, costs and expenses (including reasonable attorneys', consultants' and experts' fees and expenses) based on or arising by reason of any such encroachment, violation or impairment. In the event of an adverse final determination with respect to any such encroachment, violation or impairment, either (a) each of Tenant and Landlord shall be entitled to obtain valid and effective waivers or settlements of all claims, liabilities and damages resulting from each such encroachment, violation or impairment, whether the same shall affect Landlord or Tenant or (b) Tenant shall (i) make, or cause to be made, such changes in the Leased Improvements, and take such other actions, as Tenant in the good faith exercise of its judgment deems reasonably practicable, to remove such encroachment or to end such violation or impairment, including, if necessary, the alteration of any of the Leased Improvements, and (ii) in any event take all such actions as may be necessary in order to be able to continue the operation of the Leased Improvements for the Primary Intended Use substantially in the manner and to the extent the Leased Improvements were operated prior to the assertion of such encroachment, violation or impairment. Tenant's obligations under this **Section 9.2** shall be in addition to and shall in no way discharge or diminish any obligation of any insurer under any policy of title or other insurance and, to the extent the recovery thereof is not necessary to compensate Landlord for any damages incurred by any such encroachment, violation or impairment. Landlord agrees to use reasonable efforts to seek recovery under any policy of title or other insurance under which Landlord is an insured party for all losses, liabilities, obligations, claims, damages, penalties, causes of action, costs and expenses (including reasonable attorneys', consultants' and experts' fees and expenses) based on or arising by reason of any such encroachment, violation or impairment as set forth in this **Section 9.2**; provided, however, that in no event shall Landlord be obligated to institute any litigation, arbitration or other legal proceedings in connection therewith unless Landlord is reasonably satisfied that Tenant has the financial resources needed to fund such litigation and Tenant and Landlord have agreed upon the terms and conditions on which such funding will be made available by Tenant, including, but not limited to, the mutual approval of a litigation budget.

ARTICLE X

CAPITAL IMPROVEMENTS

10.1 Construction of Capital Improvements to the Leased Property.

(a) Tenant or any subtenant shall, with respect to the Facilities, have the right to make Capital Improvements, including, without limitation, any Capital Improvement required by **Section 8.2** or **9.1(a)**, without the consent of, or any notice to, Landlord if the Capital Improvement (i) does not involve the removal of any material existing structures (unless Tenant reasonably promptly proceeds to replace such removed structures with structures of at least reasonably comparable value or utility), (ii) does not have a material adverse effect on the structural integrity of any remaining Leased Improvements (other than as contemplated to be maintained or improved in connection with such Capital Improvement), (iii) is not reasonably likely to reduce the value of the applicable Facility when completed, (iv) is consistent with the Primary Intended Use, and (v) does not involve a total budgeted cost in excess of One Hundred Fifty Million and No/100 Dollars (\$150,000,000); each of the foregoing (i)-(v) as reasonably determined by Tenant, subject to Landlord's reasonable review and approval of such determination. Any Capital Improvements (1) described in the preceding sentence and/or (2)

which are described on **Schedule 8** (for purposes of clarity or otherwise) (the “**Schedule 8 Capital Improvements**”) are referred to as, “**Permitted Capital Improvements**”.

(b) If Tenant or any subtenant desires to make a Capital Improvement that is not a Permitted Capital Improvement (a “**Landlord Approved Capital Improvement**”), Tenant shall submit to Landlord in reasonable detail a general description of the proposal, the projected cost of construction and such plans and specifications, permits, licenses, contracts and other information concerning the proposal as Landlord may reasonably request. Such description shall indicate the use or uses to which such Capital Improvement will be put and the impact, if any, on current and forecasted Net Revenue and EBITDA for the applicable Facility attributable thereto. All proposed Landlord Approved Capital Improvements shall be subject to Landlord’s review and approval, which approval shall not be unreasonably withheld, conditioned or delayed. It shall be reasonable for Landlord to condition its approval of any Capital Improvement upon any or all of the following terms and conditions:

(i) Such construction shall be effected substantially in accordance with detailed plans and specifications approved by Landlord, which approval shall not be unreasonably withheld, conditioned or delayed;

(ii) No Capital Improvement will result in the Leased Property becoming a “limited use” property for purposes of United States federal income taxes as of the date such Capital Improvement is placed in service;

(iii) the work shall be conducted under the supervision of a licensed architect or engineer selected by Tenant (the “**Architect**”) and, for purposes of this **Section 10.1** only, approved by Landlord, which approval shall not be unreasonably withheld, conditioned or delayed;

(iv) Landlord’s receipt of reasonable evidence of Tenant’s or Tenant’s Parent’s financial ability to complete the work without materially and adversely affecting Tenant’s cash flow position or financial viability;

(v) All Capital Improvements will become Landlord’s property when made; provided, however, that the foregoing shall not affect the provisions of **Section 11.1(b)**; and

(vi) Any Capital Improvement which exceeds a total budgeted cost in excess of One Hundred Fifty Million and No/100 Dollars (\$150,000,000.00) (the “**Capital Improvements Threshold**”) (x) may be subject to the approval of Fee Mortgagee, which Landlord agrees it will use commercially reasonable efforts to obtain and (y) shall require that Tenant deliver Construction Security to Landlord, provided no Construction Security shall be required in connection with the Schedule 8 Capital Improvements.

(c) If the Construction Security is in the form of cash, if required by Fee Mortgagee, such security may be deposited into the FF&E Reserve or an Eligible Account of Landlord (or Fee Mortgagee) (a “**Construction Security Escrow Account**”). On a monthly basis during the construction of any such Capital Improvement for which Construction Security has been deposited, Tenant shall be entitled (either pursuant to a separate agreement to be

entered into directly between Tenant and Fee Mortgagee, in form and substance reasonably acceptable to Tenant, or, if no such agreement is entered into, then as an obligation of Landlord hereunder) to receive a portion of such Construction Security, to be disbursed to Tenant (in the case of cash or cash equivalents) or reduced (in the case of a Letter of Credit), as applicable, on a dollar-for-dollar basis, in the amount required to reimburse Tenant (or any Operating Subtenant) for (or to enable Tenant (or any Operating Subtenant) to pay) the cost of such Capital Improvement in amounts equal to the actual costs incurred by Tenant (or any Operating Subtenant) for such Capital Improvement, subject to delivery by Tenant to Landlord of the Reserve Disbursement Requirements related to the work performed, and subject: (a) to compliance by Tenant with the applicable provisions of any Fee Mortgage Documents then in effect to the extent and only to the extent Tenant is required to comply therewith pursuant to **Article XXXI** hereof, and (b) in the event no Fee Mortgage then exists and Landlord is holding the Construction Security, to the condition that no Event of Default exist at the time of determination and subject to the other applicable provisions of this **Article X**. To the extent a construction consultant is required by any Fee Mortgagee, Landlord shall have the right (in addition to any construction consultant engaged by Tenant or any Operating Subtenant) to also select and engage (subject to any Fee Mortgagee requirements), at Landlord's cost and expense, construction consultants to conduct inspections of the Leased Property during the construction of any Capital Improvements, provided that (x) such inspections shall be conducted in a manner as to not unreasonably interfere with such construction or the operation of the applicable Facility and Tenant (or any Operating Subtenant) may have Tenant's (or such Operating Subtenant's) representative escort such consultant at all times, (y) prior to entering the Leased Property, such consultants shall deliver to Tenant evidence of insurance reasonably satisfactory to Tenant and (z) (irrespective of whether the consultant was engaged by Landlord, Tenant or otherwise) Landlord and Tenant shall be entitled to receive copies of such consultants' work product and shall have direct access to and communication with such consultants.

10.2 Construction Requirements for Capital Improvements. Tenant's or any subtenant's construction of Capital Improvements shall be performed in compliance with the following requirements which shall be applicable to Permitted Capital Improvements and Landlord Approved Capital Improvements except as indicated below:

(a) Such construction shall not be commenced until Tenant (or any Operating Subtenant) shall have procured and paid for all municipal and other governmental permits and authorizations required to be obtained prior to such commencement, including those permits and authorizations required pursuant to any Gaming Regulations, and Landlord shall join in the application for such permits or authorizations whenever such action is necessary; provided, however, that (i) any such joinder shall be at no cost or expense to Landlord; and (ii) any plans required to be filed in connection with any such application in respect of any Landlord Approved Capital Improvements shall have been so approved by Landlord;

(b) Such construction shall not and, if an Architect has been engaged for such work, the Architect shall certify to Landlord that such construction shall not, impair the structural strength of any component of the applicable Facility or overburden the electrical, water, plumbing, HVAC or other building systems of any such component in a manner that would violate applicable building codes or prudent industry practices;

(c) If an Architect has been engaged for such work and if plans and specifications have been obtained in connection with such work, the Architect shall certify to Landlord that the plans and specifications conform to, and comply with, in all material respects all applicable building, subdivision and zoning codes, laws, ordinances and regulations imposed by all governmental authorities having jurisdiction over the Leased Property;

(d) During and following completion of such construction, the parking and other amenities which are located in the applicable Facility or on the Land of such Facility shall remain adequate for the operation of such Facility for its Primary Intended Use and in no event shall such parking be less than that which is required by law (including any variances with respect thereto); provided, however, that to the extent additional parking is not already a part of a Capital Improvement, Tenant (or any Operating Subtenant) may construct additional parking on the applicable Land in accordance with **Section 10.1(a)**; or Tenant (or any Operating Subtenant) may acquire off-site parking to serve such Facility as long as such parking shall be reasonably proximate to, and dedicated to, or otherwise made available to serve, such Facility;

(e) All work done in connection with such construction shall be done as soon as reasonably practicable and using materials and resulting in work that is at least as good product and condition as the remaining areas of the applicable Facility and in conformity with all Legal Requirements, including, without limitation, any applicable non-discrimination laws; and

(f) Promptly following the completion of any Landlord Approved Capital Improvements only, Tenant shall deliver to Landlord “as built” drawings of such addition (or written confirmation from the relevant general contractor or architect that such Capital Improvement has been built in accordance with the plans and specifications), certified as accurate by the licensed architect or engineer selected by Tenant, and copies of any new or revised certificates of occupancy.

10.3 Intentionally Omitted.

10.4 Ownership of Tenant Capital Improvements. Subject to **Section 11.1(b)**, all Tenant Capital Improvements shall be the property of Landlord upon completion and upon the expiration or earlier termination of this Lease, all Tenant Capital Improvements shall remain the property of Landlord (without any obligation to reimburse Tenant for the costs thereof).

10.5 Funding of Tenant Capital Improvements.

(a) Tenant shall notify Landlord of any proposed Tenant Capital Improvements for which Landlord’s prior approval is required, which notice (the “**Capital Improvement Notice**”) shall be accompanied by (i) a reasonably detailed description of the proposed Tenant Capital Improvements, (ii) the then-projected cost of construction of the proposed Tenant Capital Improvements, (iii) copies of the plans and specifications, permits, licenses, contracts and preliminary studies concerning the proposed Tenant Capital Improvements, to the extent then-available, (iv) reasonable evidence that such proposed Tenant Capital Improvements will, upon completion, comply with all applicable Legal Requirements, and (v) reasonably detailed information regarding the terms upon which Tenant is considering seeking financing therefor, if any. To the extent in Tenant’s possession or control, Tenant shall provide to Landlord any additional information about such proposed Tenant Capital

Improvements which Landlord may reasonably request. Landlord (or Landlord's Affiliate) shall have the right (but not the obligation) to fund the cost of any proposed Tenant Capital Improvements on such arms-length terms and conditions as may be agreed to by Landlord and Tenant.

(b) Within thirty (30) days of receipt of a Capital Improvement Notice pursuant to this **Section 10.5**, Landlord shall have the right to notify Tenant as to whether it would be willing to fund all or a portion of such proposed Capital Improvement and, if so, the terms and conditions upon which it would do so. Any waiver of the right to fund or any failure to fund with respect to a specific Tenant Capital Improvements shall not affect Landlord's rights under this Lease, including, without limitation, any continued rights under this **Section 10.5**. If Landlord proposes to fund such proposed Capital Improvements, Tenant shall have ten (10) Business Days to accept or reject Landlord's funding proposal.

(c) In connection with any funding of Capital Improvements by Landlord, Landlord and Tenant may make agreed upon modifications to the Rent to reflect Landlord's funding of the cost of such Tenant Capital Improvements.

10.6 Self Help. In order to facilitate Landlord's completion of any work, repairs or restoration of any nature that are required to be performed by Tenant in accordance with any provisions hereof, upon the occurrence of the earlier of (i) an Event of Default by Tenant hereunder and (ii) any default by Tenant in the performance of such work under this Lease (so long as in the case of this clause (ii) Landlord has provided Tenant thirty (30) days' prior written notice thereof and Tenant has not cured such default within such thirty day period), Landlord shall have the right, from and after such occurrence, to enter onto the Leased Property in compliance with all applicable laws and perform any and all such work and labor necessary as reasonably determined by Landlord to complete any work required by Tenant hereunder or expend any sums therefor and/or employ watchmen to protect the Leased Property from damage (collectively, the "**Landlord Work**"). In connection with the foregoing, Landlord shall have the right, in each case, in its reasonable discretion: (i) to use any funds in the FF&E Reserve, CapEx Reserve, or the Construction Security (as applicable) for the purpose of making or completing such Landlord Work; (ii) to employ such contractors, subcontractors, agents, architects and inspectors as shall be required for such purposes; (iii) to pay, settle or compromise all existing bills and claims which are or may become Liens against the Leased Property, or as may be necessary or desirable for the completion of such Landlord Work, or for clearance of title; (iv) to execute all applications and certificates in the name of Tenant which may be required by any of the contract documents; (v) to prosecute and defend all actions or proceedings in connection with the Leased Property or the rehabilitation and repair of the Leased Property; (vi) to do any and every act which Tenant might do in its own behalf to complete the Landlord Work; and (vii) charge Tenant with any costs incurred in connection with such Landlord Work and the exercise of Landlord's rights under this **Section 10.6** as Additional Charges. Nothing in this Lease shall: (1) make Landlord responsible for making or completing any Landlord Work; (2) require Landlord to expend funds from or in addition to the FF&E Reserve, CapEx Reserve, or Construction Reserve (as applicable) to make or complete any Landlord Work; (3) obligate Landlord to proceed with any Landlord Work; or (4) obligate Landlord to demand from Tenant additional sums to make or complete any Landlord Work (but nothing herein shall prevent Landlord from demanding such amounts from Tenant as Additional Charges).

ARTICLE XI

NO LIENS

11.1 Liens. (a) Subject to the provisions of **Article XII** relating to permitted contests and **Article XVII** with respect to Tenant's financing, Tenant will not directly or indirectly create and will promptly discharge at its expense any lien, encumbrance, attachment, title retention agreement or claim ("**Lien**") upon the Leased Property or any Capital Improvement thereto or upon the Gaming Licenses or upon Tenant's Property (other than Intellectual Property, which is governed by **Section 6.3**) to be transferred and assigned to Landlord pursuant to **Section 6.4** and **Section 36.1** or any attachment, levy, claim or encumbrance in respect of the Rent, excluding, however, (i) this Lease and the Liens granted to Landlord pursuant hereto; (ii) the Property Documents; (iii) restrictions, liens and other encumbrances which are expressly permitted by this Lease or consented to in writing by Landlord (such consent not to be unreasonably withheld unless otherwise provided herein); (iv) [reserved]; (v) Permitted Subleases and Permitted Management Agreements and related matters permitted by **Article XXII**; (vi) liens for Impositions not yet delinquent or being contested in accordance with **Article XII**, provided that Tenant has provided appropriate reserves as required under GAAP and any foreclosure or similar remedies with respect to such Impositions have not been instituted and no notice as to the institution or commencement thereof has been issued except to the extent such institution or commencement is stayed no later than sixty (60) days after such notice is issued; (vii) liens of mechanics, laborers, materialmen, suppliers or vendors for sums either not yet due or being contested in accordance with **Article XII**; (viii) any Lessor Liens or other liens created by Landlord; (i) liens related to purchase money financing and equipment leases or equipment financing for Tenant's Property which are used or useful in Tenant's (or any Operating Subtenant's) business on the Leased Property and consistent with the Operating Standard, and do not impair in any material respect Landlord's rights under **Section 36.1**; (j) liens of any Permitted Leasehold Mortgage or Permitted Credit Facility Pledge; provided, however, in no event shall the foregoing be deemed or construed to permit Tenant to encumber its leasehold interest (or any Operating Subtenant to encumber its subleasehold interest) in the Leased Property or its direct or indirect interest (or the interest of any of its Subsidiaries or subtenants) in the Gaming Licenses (other than, in each case, to a Permitted Leasehold Mortgagee or a Permitted Credit Facility Pledge), without the prior written consent of Landlord, which consent may be granted or withheld in Landlord's sole discretion; and provided, further, that Tenant shall be required to provide Landlord with fully executed copies of any and all Permitted Leasehold Mortgages, Permitted Credit Facility Pledges, and related principal Debt Agreements; (k) provisions of any easement agreements, street dedications or vacations, entitlements, public and/or private utility easements, licenses, declarations of covenants, conditions and restrictions, and other similar provisions, in each case expressly permitted or consented to pursuant to this Lease; and (l) non-exclusive licenses or sublicenses of patents, patent applications, trademarks, trademark applications, service marks, service mark applications, trade names, URLs, copyrights, computer software, trade secrets, know-how and processes granted by Tenant, any Operating Subtenant or any of their respective Subsidiaries in the ordinary course of business or on terms that, taken together with all related transactions, are commercially reasonable. For the avoidance of doubt, the parties acknowledge and agree that, (A) except as expressly set forth herein, Tenant has not granted any liens in favor of Landlord as security for its obligations hereunder and (B) nothing contained herein shall be deemed or construed (i) to prohibit the issuance of a lien on the Equity Interests in Tenant or any Operating Subtenant (or direct or

indirect interests in Tenant or any Operating Subtenant) or any direct or indirect parent of Tenant or any Operating Subtenant owning an interest in the Gaming Licenses pursuant to a Permitted Credit Facility Pledge (it being agreed that any foreclosure by a lien holder on such direct or indirect interests in Tenant or any Operating Subtenant shall be subject to the restriction on Tenant Change of Control set forth in **Article XXII**) or (ii) to prohibit Tenant (or any Operating Subtenant) from pledging its Accounts (other than, for the avoidance of doubt, the CapEx Reserve, the FF&E Reserve, the Covenant Security Escrow Account, and any Construction Security or Construction Security Escrow Account) and other Tenant's Property and other property of Tenant (or any Operating Subtenant) to the extent it does not constitute Tenant's Pledged Property.

(b) Landlord and Tenant intend that this Lease be an indivisible true lease that affords the parties hereto the rights and remedies of landlord and tenant hereunder and does not represent a financing arrangement. This Lease is not an attempt by Landlord or Tenant to evade the operation of any aspect of the law applicable to any of the Leased Property. Except as otherwise required by applicable law or any accounting rules or regulations, Landlord and Tenant hereby acknowledge and agree that this Lease is intended to constitute a "true lease" for all other purposes, including federal, state and local tax purposes, commercial purposes, and bankruptcy purposes and that Landlord shall be entitled to all the benefits of ownership of the Leased Property, including depreciation with respect to the Leased Property (but not with respect to any Tenant Capital Improvements, except as provided in the next sentence) for all federal, state and local tax purposes. Without prejudice to **Sections 10.1(b)(v)** or **10.4**, Tenant shall be entitled to all benefits of ownership of any Tenant Capital Improvements during the Term, including depreciation for all federal, state and local tax purposes, except to the extent of any Tenant Capital Improvements that are actually paid for by Landlord (it being understood that Landlord has no right or obligation to pay for any Tenant Capital Improvements except in accordance with **Section 10.5**).

(c) If, notwithstanding (x) the form and substance of this Lease and (y) the intent of the parties, and the language contained herein providing that this Lease shall at all times be construed, interpreted and applied to create an indivisible lease of all of the Leased Property, any court of competent jurisdiction orders that this Lease is a financing arrangement, this Lease shall be considered a secured financing agreement (a "**Recharacterization**"), then (subject to the parties' rights to appeal such Recharacterization order) this Lease shall be considered a secured financing agreement and Landlord's rights to the Leased Property shall be the holder of a perfected first priority deed of trust, assignment of rents and security agreement naming Tenant as grantor, Landlord as beneficiary, and Fidelity National Title Agency of Nevada, Inc., a Nevada corporation, as "Trustee" (a "**Recharacterization Deed of Trust**") encumbering the Leased Property to secure the payment and performance of all the obligations of Tenant hereunder and, to that end, in the event of a Recharacterization, but only in event of a Recharacterization and not any time prior thereto, the following shall apply:

(i) Tenant grants, assigns, transfers, conveys and confirms unto Trustee, IN TRUST, WITH POWER OF SALE, for the benefit of Landlord as beneficiary, as security to secure the payment and performance of all the obligations of Tenant under the Lease all Tenant's right, title and interest in and to the Leased Property. Without limiting the foregoing, there is assigned by Tenant to Landlord all "Rents" as defined in NRS 107A.140 (2019), of the Leased Property, and this instrument shall be an "Assignment of Rents," as defined in NRS

107A.040 (2019), under the Nevada Uniform Assignment of Rents Act, NRS Chapter 107A (2019), or successor statute then in effect. Where not inconsistent with this Lease, the following covenants, Nos. 1; 2 (but solely to the extent that the court described above has held that the obligations under **Article XIII** of the Lease are no longer in effect, in which case the insurance coverages, amounts and requirements set forth in **Article XIII** of the Lease shall be the coverages, amounts and requirements for purposes of this No. 2); 3; 4 (default rate under the Lease); 5; 6; 7 (attorneys' fees as required under the Lease); 8 and 9 of NRS 107.030 (2019) or successor statute then in effect are hereby adopted and made a part of any Recharacterized Deed of Trust.

(ii) If, notwithstanding (a) the form and substance of the Lease and (b) the intent of the parties, and the language contained herein providing that this Lease shall at all times be construed, interpreted and applied to create an indivisible lease of all of the Leased Property, a Recharacterization occurs, Tenant (and each Permitted Leasehold Mortgagee) has (A) authorized Landlord, at the expense of Tenant, to make any filings or take other actions as Landlord reasonably determines are necessary or advisable in order to effect fully this Lease or to more fully perfect or renew the rights of the Landlord, including, without limitation, irrevocably authorizing Landlord to file in any UCC jurisdiction any initial financing statements and amendments thereto that indicate collateral as being the Leased Property and the Tenant's Pledged Property, and (B) to subordinate to the Landlord the lien of any Permitted Leasehold Mortgagee with respect to the Leased Property (it being understood that nothing herein shall affect the rights of a Permitted Leasehold Mortgagee under this Lease).

(iii) Landlord and Tenant acknowledge and agree that, in the event of a Recharacterization, Landlord's rights under a Recharacterized Deed of Trust shall automatically be collaterally assigned to the Fee Mortgagee pursuant to the terms of the Fee Mortgage with the most senior priority as additional security for the indebtedness secured thereby.

(d) At any time and from time to time upon the request of Landlord or Tenant, and at the expense of the requesting party, Tenant or Landlord, as applicable, shall promptly execute, acknowledge and deliver such further documents and do such other acts as the requesting party may reasonably request in order to effectuate fully this Lease or to more fully perfect or renew the rights of the requesting party with respect to the Leased Property. Upon the exercise by Landlord or Tenant of any power, right, privilege or remedy pursuant to this Lease which requires any consent, approval, recording, qualification or authorization of any governmental authority, Tenant or Landlord, as applicable, will execute and deliver, or will cause the execution and delivery of, all applications, certifications, instruments and other documents and papers that the exercising party may be required to obtain from such other party for such consent, approval, recording, qualification or authorization.

11.2 Landlord Encumbrance Obligations. Landlord agrees that Landlord shall not create or permit to exist at any time any Lessor Lien and Landlord shall, at its own cost and expense, promptly take such action as may be reasonably necessary duly to discharge, or to cause to be discharged, all Lessor Liens attributable to it or any of its Affiliates (and Tenant shall not be responsible for any monetary or other obligations under or in connection with any Lessor Lien); provided, however, that Landlord shall not be required to so discharge any such Lessor Lien(s) (i) while the same is being contested in good faith by appropriate proceedings diligently prosecuted (so long as neither the Leased Property, nor any Capital Improvement thereto, nor

any part or interest in either thereof, would be in any imminent danger of being sold, forfeited, attached or lost pending the outcome of such proceedings and provided that Tenant would not be in any imminent danger of civil or criminal liability on account thereof pending the outcome of such proceedings) or (ii) if such Lessor's Lien(s) would not be reasonably expected to materially adversely affect the rights of Tenant under this Lease, impair in any material respect Tenant's ability to perform its obligations under this Lease or impose additional obligations on Tenant under this Lease or result in the termination of this Lease. Landlord shall indemnify and hold harmless Tenant from and against any actual loss, cost or expense (including reasonable legal fees and expenses) which may be suffered or incurred by Tenant, any Operating Subtenant or their respective Affiliates as the result of Landlord's failure to discharge and satisfy any such Lessor Lien to the extent Landlord is required to do so in accordance with the terms hereof.

ARTICLE XII

PERMITTED CONTESTS

12.1 Permitted Contests. Tenant, upon prior Notice to Landlord, on its own, in any Operating Subtenant's or in Landlord's name, at Tenant's expense, may contest, by appropriate legal proceedings conducted in good faith and with due diligence, the amount, validity or application, in whole or in part, of any licensure or certification decision (including pursuant to any Gaming Regulation), Imposition, Legal Requirement, Insurance Requirement, or Lien (but not Liens granted to Landlord pursuant to this Lease); provided, however, that (i) in the case of an unpaid Imposition or Lien, the commencement and continuation of such proceedings shall suspend the collection thereof from Landlord and from the Leased Property or any Capital Improvement thereto; (ii) neither the Leased Property or any Capital Improvement thereto, the Rent therefrom nor any part or interest in either thereof would be in any danger of being sold, forfeited, attached or lost pending the outcome of such proceedings; (iii) in the case of a Legal Requirement, neither Landlord nor Tenant would be in any imminent danger of civil or criminal liability for failure to comply therewith pending the outcome of such proceedings; (iv) in the case of a Legal Requirement, Imposition or Lien, Tenant shall give such reasonable security as may be required by Landlord to insure ultimate payment of the same and to prevent any sale or forfeiture of the Leased Property or any Capital Improvement thereto or the Rent by reason of such non-payment or noncompliance; (v) in the case of an Insurance Requirement, the coverage required by **Article XIII** shall be maintained; (vi) Tenant shall keep Landlord reasonably informed as to the status of the proceedings; (vii) if such contest be finally resolved against Landlord or Tenant, Tenant shall promptly pay any applicable amount required to be paid, together with all interest and penalties accrued thereon, and comply with any applicable Legal Requirement or Insurance Requirement; and (h) in the case of any Lien, no foreclosure of similar remedies shall have been instituted and no notice as to the institution or commencement thereof have been issued except to the extent such institution is stayed no later than ten (10) Business Days after such notice is issued. Notwithstanding anything to the contrary contained herein (but without limiting Landlord's obligations under **Section 41.14** of this Lease), with respect to any Liens under **clause (g)** of **Section 11.1**, such Lien must be discharged or bonded over within sixty (60) days of the filing of such Lien. Landlord, at Tenant's expense, shall execute and deliver to Tenant such authorizations and other documents as may reasonably be required in any such contest, and, if reasonably requested by Tenant or if Landlord so desires, Landlord shall join as a party therein. The provisions of this **Article XII** shall not be construed to permit Tenant to contest the payment of Rent or any other amount (other than Impositions or Additional

Charges which Tenant may from time to time be required to impound with Landlord) payable by Tenant to Landlord hereunder. Tenant shall indemnify, defend, protect and save Landlord harmless from and against any liability, cost or expense of any kind that may be imposed upon Landlord in connection with any such contest and any loss resulting therefrom, except in any instance where Landlord opted to join and joined as a party in the proceeding despite Tenant's having sent Notice to Landlord of Tenant's preference that Landlord not join in such proceeding.

ARTICLE XIII

INSURANCE

13.1 Property Insurance Requirements. During the Term, Tenant or a Tenant Party shall at all times keep the Leased Property, and all property located in or on the Leased Property, including Capital Improvements, the Fixtures and Tenant's Property, insured with the kinds and amounts of insurance described below. Each element of insurance described in this **Article XIII** shall be maintained with respect to the Leased Property and Tenant's Property and operations thereon. Such insurance shall be written by companies permitted to conduct business in the State. All policies required under this Lease must name Landlord as an "additional named insured" or "additional insured" as appropriate. All business interruption policies shall name Landlord as "loss payee" with respect to Rent only. Property losses shall be payable to Landlord and/or Tenant as provided in **Article XIV**. In addition, the policies, as appropriate, shall name as an "additional named insured" or "additional insured" as appropriate and "mortgagee/loss payee", as their interest may appear, each Permitted Leasehold Mortgagee and as an "additional insured" and/or "mortgagee/loss payee" as their interest may appear, the holder of any mortgage, deed of trust or other security agreement ("**Facility Mortgage**") securing any indebtedness or any other Encumbrance placed on the Leased Property in accordance with the provisions of **Article XXXI ("Facility Mortgage")** by way of a standard form of mortgagee's loss payable endorsement. Except as otherwise set forth herein, any property insurance loss adjustment settlement shall require the written consent of Landlord, Tenant, and each Facility Mortgagee (to the extent required under the applicable Facility Mortgage Documents) unless the amount of the loss net of the applicable deductible is less than Fifty Million Dollars (\$50,000,000) in which event no such consent shall be required. Evidence of insurance shall be deposited with Landlord and, if requested, with any Facility Mortgagee(s). The insurance policies required to be carried by Tenant or a Tenant Party hereunder shall insure against all the following risks with respect to the Facilities:

(a) Loss or damage by fire, vandalism and malicious mischief, extended coverage perils commonly known as "All Risk," and all physical loss perils normally included in such All Risk insurance, including, but not limited to, sprinkler leakage, collapse, windstorm (including named storm) and terrorism in an amount not less than the full replacement of the Improvements (but in no event less than a minimum amount of Four Billion Dollars (\$4,000,000,000.00) and including a building ordinance coverage endorsement, coverage for loss to the undamaged portion in an amount equal to the full replacement cost for the undamaged portion and for coverage for demolition costs and coverage for increased costs of construction in amounts acceptable to Landlord, provided, that Tenant shall have the right (i) to limit maximum insurance coverage for loss or damage by earthquake (including earth movement) in an amount not less than the annual aggregate gross loss estimates for a 475 year event as indicated in a seismic risk analysis (such analysis to be approved by Landlord and secured by the Tenant

utilizing the most current RMS software, or its equivalent), including loss amplification, at the expense of the Tenant and, to the extent the Leased Property is covered under a blanket policy, such seismic risk analysis shall include all high risk locations covered by the earthquake limit or as may be requested by Landlord and commercially available; provided, further, with respect to the terrorism coverage required herein, in the event TRIPRA is no longer in effect, Tenant shall be required to carry terrorism insurance as required herein, provided that in the event the premium cost of any terrorism peril coverages are available only for a premium that is more than 2 times the current premium paid by Tenant, then Tenant shall be entitled and required to purchase the maximum amount of insurance coverage it reasonably deems most efficient and prudent to purchase for such peril and Tenant shall not be required to spend additional funds to purchase additional coverages insuring against such risks; and provided, further, that certain property coverages other than earthquake, flood and windstorm may be sub-limited as long as each sub-limit (x) is commercially available and prudent as determined by Tenant and (y) to the extent that the amount of such sub-limit is less than the amount of such sub-limit in effect as of the Commencement Date, such sub-limit is approved by Landlord, such approval not to be unreasonably withheld;

(b) Loss or damage by explosion of steam boilers, pressure vessels or similar apparatus, now or hereafter installed in any Facility, in such limits with respect to any one accident as may be reasonably requested by Landlord from time to time;

(c) Flood, if any portion of the Improvements is currently or at any time in the future located in a federally designated "special flood hazard area," flood hazard insurance in an amount equal to the maximum amount of such insurance available under the National Flood Insurance Act of 1968, the Flood Disaster Protection Act of 1973 or the National Flood Insurance Reform Act of 1994, as each may be amended plus such greater amount as may be requested by Landlord and commercially available;

(d) Loss of rental value, on an actual loss sustained basis, covering the twenty four (24) month period from the date of any Casualty Event, in an amount not less than 100% of the rent payable hereunder and normal Operating Expenses (including ninety (90) days ordinary payroll) for a period of twenty four (24) months with an extended period of indemnity coverage of at least three hundred sixty five (365) days necessitated by the occurrence of any of the hazards described in **Sections 13.1(a), 13.1(b) or 13.1(c)**;

(e) Claims for injury to persons or property damage under a policy of commercial general liability insurance including but not limited to coverage for terrorism, premises/operations, blanket contractual liability, liquor liability, special events or activities to the extent insurable, independent contractors and personal injury with limits not less than Four Hundred Million Dollars (\$400,000,000) each occurrence and Four Hundred Million Dollars (\$400,000,000) in the annual aggregate, provided, that such requirements may be satisfied through the purchase of a primary general liability policy and excess liability policies;

(f) Claims for bodily injury and property damage under a policy of business automobile liability including garage and garagekeepers liability and containing provisions and endorsements in accordance with state legal requirements, with primary limits not less than One Million Dollars (\$1,000,000) per accident and excess limits provided in the excess liability policies referred to above;

(g) During such time as Tenant or any subtenant is constructing any improvements at any Facility, Tenant, at its sole cost and expense, shall carry, or cause to be carried (i) workers' compensation insurance and employers' liability insurance covering all persons employed in connection with the improvements in statutory limits, (ii) a completed operations endorsement to the commercial general liability insurance policy referred to above, (iii) builder's risk insurance, completed value form (or its equivalent), covering all physical loss, in an amount and subject to policy conditions satisfactory to Landlord, and (iv) such other insurance, in such amounts, as Landlord deems reasonably necessary to protect Landlord's interest in the Leased Property from any act or omission of Tenant's or such subtenant's contractors or subcontractors;

(h) If any operations of Tenant or any subtenant require the use of any aircraft or watercraft that is owned, leased or chartered by Tenant or any subtenant with respect to the Leased Property, Tenant shall maintain or cause to be maintained aircraft liability insurance, as appropriate, with limits not less than One Hundred Million Dollars (\$100,000,000) combined single limit for bodily injury and property damage including passengers and crew and watercraft liability insurance, as appropriate, with limits not less than Ten Million Dollars (\$10,000,000) combined single limit for bodily injury and property damage including passengers and crew;

(i) Tenant may provide or cause to be provided self-insured retentions for portions of the insurance contemplated under this **Section 13.1** in commercially reasonable amounts, it being agreed that the amounts of the self-insured retentions in effect as of the Commencement Date are commercially reasonable. Upon (i) the termination of this Lease with respect to the Facilities pursuant to **Section 14.2**, (ii) the election of any Facility Mortgagee pursuant to **Section 14.1** to apply any proceeds payable under any property policy of insurance in accordance with the applicable Facility Mortgage, or (iii) any proceeds payable under any property policy of insurance being retained by Landlord pursuant to **Section 14.2(f)**, Tenant shall pay to Landlord the amount of any self-insured retentions;

(j) During the Term, Tenant shall maintain or cause to be maintained environmental impairment liability ("**EIL**") pollution liability insurance on the Leased Property in the form of a pollution legal liability or pollution and remedial legal liability (or similar product) ("**PLL**") insurance policy. Such PLL insurance shall cover the Facilities and provide coverage for on and off site cleanup costs for new and historical pollution conditions, and shall include coverage for first- and third- party bodily injury and property damage claims related to pollution conditions. The PLL policy in effect on the date hereof shall run to expiration and shall be renewed (or replaced with a policy of the same or superior terms and conditions as the existing policy) in five (5) year policy period intervals. The PLL policy will have a per claim limit of no less than Twenty-Five Million Dollars (\$25,000,000) and an aggregate policy limit of no less than Twenty-Five Million Dollars (\$25,000,000), with a self-insured retention or deductible of no greater than Fifty Thousand Dollars (\$50,000). Such policy shall include coverage for claims for microbial matter and legionella, with the same combined single limits as referenced above, with a self-insured retention or deductible of no greater than One Million Dollars (\$1,000,000), although for the Fee Mortgagee it shall be no greater than One Hundred Thousand Dollars (\$100,000). The PLL policy shall have the Tenant as First Named Insured and Landlord, with its successors, assigns and/or affiliates (as their interests may appear) as Additional Named Insureds ("**ANI**") (with the Fee Mortgagee as ANI as may be required). The PLL policy (i) shall not be permitted to cover any additional locations during the policy terms,

(ii) shall name the Fee Mortgagee as ANI with an automatic right of assignment to the Fee Mortgagee in the event of default throughout the policy term, (iii) in the event the policy is cancelled by the insurers, a copy of such cancellation notice shall also be mailed to the Fee Mortgagee, (iv) shall not be cancelled or materially modified by Tenant without the prior written consent of the Fee Mortgagee, (v) shall, during the Term, include the same coverages, terms, conditions and endorsements (and shall not be amended in any way without the prior written consent of the Fee Mortgagee) as the PLL policy approved as of the date hereof. Any Underground Storage Tanks (USTs) located on the Leased Property shall be covered on the PLL policy, or be covered as a separate UST policy that shall be maintained during the Term. Notwithstanding the foregoing or anything to the contrary set forth herein, the parties agree that Landlord shall take the lead role in procuring, on Tenant's behalf, the initial PLL policy to be in effect as of the date hereof and Tenant shall pay or otherwise reimburse Landlord for the cost of such initial PLL policy; and

(k) During the Term, Tenant shall maintain or cause to be maintained cyber liability insurance, with limits not less than \$75,000,000 per claim. Coverage shall be sufficiently broad to respond to the duties and obligations undertaken by Tenant in this Lease, and shall include, but not be limited to, claims involving network security and privacy liability. If the Tenant maintains broader coverage and/or higher limits than the minimum shown above, the Landlord requires and shall be entitled to the broader coverage and/or the higher limits maintained by the contractor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the Landlord.

13.2 Workers' Compensation. In addition to the insurance described above, Tenant shall at all times maintain or cause to be maintained adequate workers' compensation coverage and any other coverage required by Legal Requirements for all Persons employed by Tenant or any Operating Subtenant on the Leased Property in accordance with Legal Requirements.

13.3 Waiver of Subrogation. All insurance policies carried by either party covering the Leased Property or Tenant's Property, including, without limitation, contents, fire and liability insurance, shall expressly waive any right of subrogation on the part of the insurer against the other party. Each party, respectively, shall pay any additional costs or charges for obtaining such waiver.

13.4 Policy Requirements. All of the policies of insurance referred to in this **Article XIII** shall be written in form reasonably satisfactory to Landlord and any Facility Mortgagee and issued by insurance companies with (1) a financial strength and claims paying ability rating of (x) "A" or better by S&P and (y) "A2" or better by Moody's, to the extent Moody's rates the applicable insurance company, and (z) "A" or better by Fitch, to the extent Fitch rates the applicable insurance company, (provided, however for multi-layered policies, (A) if four (4) or fewer insurance companies issue the Policies, then at least 75% of the insurance coverage represented by the Policies must be provided by insurance companies with a rating of "A" or better by S&P and "A2" or better by Moody's, to the extent Moody's rates the applicable insurance company, and "A" or better by Fitch, to the extent Fitch rates the applicable insurance company, with no remaining carrier below "BBB" by S&P and "Baa2" or better by Moody's, to the extent Moody's rates the applicable insurance company, and "BBB" or better by Fitch, to the extent Fitch rates the applicable insurance company, or (B) if five (5) or more insurance companies issue the Policies, then at least sixty percent (60%) of the insurance coverage

represented by the Policies must be provided by insurance companies with a rating of “A” or better by S&P and “A2” or better by Moody’s, to the extent Moody’s rates the applicable insurance company, and “A” or better by Fitch, to the extent Fitch rates the applicable insurance company, with no remaining carrier below “BBB” by S&P and “Baa2” or better by Moody’s, to the extent Moody’s rates the applicable insurance company, and “BBB” or better by Fitch, to the extent Fitch rates the applicable insurance company, and (2) a rating of A:VIII or better in the current Best’s Insurance Reports If Tenant obtains and maintains the general liability insurance described in **Section 13.1(e)** above on a “claims made” basis, Tenant shall provide continuous liability coverage for claims arising during the Term. In the event such “claims made” basis policy is canceled or not renewed for any reason whatsoever (or converted to an “occurrence” basis policy), Tenant shall either obtain (a) “tail” insurance coverage converting the policies to “occurrence” basis policies providing coverage for a period of at least three (3) years beyond the expiration of the Term, or (b) an extended reporting period of at least three (3) years beyond the expiration of the Term. Tenant shall pay all of the premiums therefor, and deliver certificates thereof to Landlord prior to their effective date (and with respect to any renewal policy, deliver certificates thereof to Landlord within ten (10) days of binding insurance), and in the event of the failure of Tenant either to effect such insurance in the names herein called for or to pay the premiums therefor, or to deliver such certificates thereof to Landlord, at the times required, Landlord shall be entitled, but shall have no obligation, to effect such insurance and pay the premiums therefor, in which event the cost thereof, together with interest thereon at the Overdue Rate, shall be repayable to Landlord upon demand therefor. Tenant shall obtain, to the extent available on commercially reasonable terms, the agreement of each insurer, by endorsement on the policy or policies issued by it, or by independent instrument furnished to Landlord, that it will give to Landlord thirty (30) days’ (or ten (10) days’ in the case of non-payment of premium) Notice before the policy or policies in question shall be altered, allowed to expire or cancelled.

13.5 Increase in Limits. If, from time to time after the Commencement Date, but not more than once in any 12-month period, Landlord determines in the exercise of its reasonable business judgment that the limits of the personal injury or property damage-public liability insurance then carried pursuant to **Section 13.1(e)** hereof are insufficient, Landlord may give Tenant Notice of acceptable limits for the insurance to be carried, provided that such limits are then available and commercially reasonable, and within one hundred eighty (180) days after the receipt of such Tenant Notice, the insurance shall thereafter be carried with limits as prescribed by Landlord until further increase pursuant to the provisions of this **Section 13.5**.

13.6 Blanket Policy. Any blanket insurance policy shall specifically allocate to the Leased Property the amount of coverage from time to time required hereunder or shall otherwise provide the same protection as would a separate policy insuring only the Leased Property hereof, subject to review and approval by Landlord based on the schedule of locations and values, and such other documentation required by Landlord. Further, to the extent the policies are maintained pursuant to a blanket insurance policy that covers more than one location within a one thousand foot radius of the Leased Property (the “**Radius**”), the limits of such blanket insurance policy must be sufficient to maintain property and terrorism coverage as set forth in this Section for the Leased Property and any and all other locations combined within the Radius that are covered by such blanket insurance policy calculated on a total insured value basis.

13.7 No Separate Insurance. Tenant shall not, on Tenant's own initiative or pursuant to the request or requirement of any third party, (i) take out separate insurance concurrent in form or contributing in the event of loss with that required in this **Article XIII** to be furnished by, or which may reasonably be required to be furnished by, Tenant or (ii) increase the amounts of any then existing insurance by securing an additional policy or additional policies, unless all parties having an insurable interest in the subject matter of the insurance, including in all cases Landlord and all Facility Mortgagees, are included therein as additional insureds or additional named insureds, as appropriate, and the loss is payable under such insurance in the same manner as losses are payable under this Lease. Notwithstanding the foregoing, nothing herein shall prohibit Tenant from insuring against risks not required to be insured hereby, and as to such insurance, Landlord and any Facility Mortgagee need not be included therein as additional insureds, nor must the loss thereunder be payable in the same manner as losses are payable hereunder except to the extent required to avoid a default under the Facility Mortgage. In addition, nothing contained herein shall limit Tenant's ability to procure policies of insurance with limits in excess of the requirements set forth in this **Article XIII**.

13.8 Captive Insurance Company Requirements. With respect to any captive insurance company providing the terrorism insurance required pursuant to **Section 13.1** above, such captive insurance company must meet the requirements set forth on **Exhibit N** attached hereto.

13.9 Insurance Side Letter. The parties hereby acknowledge that they have executed and delivered that certain letter agreement dated as of the date hereof which sets forth additional agreements between the parties with respect to Tenant's insurance requirements under this Lease.

ARTICLE XIV

CASUALTY

14.1 Property Insurance Proceeds. All proceeds (except business interruption insurance proceeds not allocated to rent expenses which shall be payable to and retained by Tenant) payable by reason of any property loss or damage to the Leased Property, or any portion thereof, under any property policy of insurance required to be carried hereunder shall be paid to Fee Mortgagee or to an escrow account held by a third party depository reasonably acceptable to Landlord and Tenant (pursuant to an escrow agreement acceptable to the parties and intended to implement the terms hereof) and made available to Tenant upon request for the reasonable costs of preservation, stabilization, emergency restoration, business interruption, reconstruction and repair, as the case may be, of any damage to or destruction of the Leased Property, or any portion thereof; provided, however, that the portion of such proceeds that are attributable to Tenant's obligation to pay Rent and Additional Charges shall be applied against Rent and Additional Charges due by Tenant hereunder as Rent and Additional Charges become due; and provided, further, that if the total amount of proceeds payable net of the applicable deductibles is Fifty Million Dollars (\$50,000,000) or less, and, if no Event of Default has occurred and is continuing, the proceeds shall notwithstanding the foregoing provisions be paid to Tenant and, subject to the limitations set forth in this **Article XIV** used for the repair of any damage to the Leased Property; provided, further, that, in each case, the Leased Property is rebuilt in a manner at least substantially equivalent to the condition of the Leased Property that existed immediately prior to the casualty and with materials and workmanship of like kind and quality and as otherwise

reasonably satisfactory to Landlord. Any excess proceeds of insurance remaining after the completion of the restoration or reconstruction of the Leased Property to substantially the condition described in the preceding sentence shall be paid to Tenant. All salvage resulting from any risk covered by insurance for damage or loss to the Leased Property shall belong to Landlord. Tenant shall have the right to prosecute and settle insurance claims, provided that Tenant shall consult with and involve Landlord in the process of adjusting any insurance claims under this **Article XIV** and any final settlement with the insurance company shall be subject to Landlord's consent, such consent not to be unreasonably withheld.

14.2 Tenant's Obligations Following Casualty. (a) If any Facility and/or any Tenant Capital Improvements to such Facility are damaged, whether or not from a risk covered by insurance carried by Tenant, except as otherwise provided herein, (i) Tenant shall restore such Leased Property (including any Tenant Capital Improvements and all Required CapEx), to substantially the condition required by **Section 14.1**, (ii) such damage shall not terminate this Lease and (iii) subject to **Section 14.5**, Landlord shall cause the Fee Mortgagee to make the proceeds of any insurance held in accordance with **Section 14.1** available to Tenant for such restoration in accordance with **Section 14.1**.

(b) In the event that any Facility is damaged during the final two years of the then-current Term (after giving effect to any Renewal Notice that has been delivered) and Tenant reasonably determines that the cost to restore such damage will exceed twenty percent (20%) of the fair market value of such Facility immediately prior to such Casualty Event, either Landlord or Tenant may terminate this Lease as to such Facility (but not as to the unaffected Facility) as of the date of such damage (and all obligations of Tenant to pay Rent and Additional Charges with respect to such Facility shall cease as of the day before the date of such termination), which may be exercised by written notice to the other party no later than thirty (30) days following the determination of the cost reasonably expected to restore. If so terminated, all proceeds of insurance with respect to such Casualty Event (except business interruption not allocated to rent expenses which shall be payable to and retained by Tenant) shall be paid to Landlord (including, for the avoidance of doubt, any proceeds paid to Tenant pursuant to the second proviso in **Section 14.1**). Any dispute between Landlord and Tenant with respect to fair market value or the costs of restoration will be determined by Experts pursuant to **Section 34.1**.

(c) If Tenant is required, or elects to, restore the affected Facility and the reasonably anticipated cost of the repair or restoration exceeds the amount of proceeds reasonably expected to be received from the insurance required to be carried hereunder, Tenant shall provide Landlord with evidence reasonably acceptable to Landlord that Tenant has available to it any excess amounts needed to restore such Facility (a "**Restoration Deficiency**"). Such excess amounts necessary to restore such Facility shall be paid by Tenant and, if required by Landlord, Tenant shall deposit, or caused to be deposited, Construction Security for such excess amounts (in the same manner as described in **Section 10.1(c)**). If Tenant elects or is required, to restore the affected Facility, Landlord shall only be required to make insurance proceeds available to Tenant for such restoration in accordance with **Section 14.1** if Tenant reasonably demonstrates that such restoration can be completed within four (4) years of the date on which Tenant can reasonably access the affected Facility for the purpose of commencing restoration.

(d) If Tenant has not restored the affected Leased Property and the Primary Intended Use has not recommenced by the date that is the fourth (4th) anniversary of the date on which Tenant can reasonably access the affected Facility for the purpose of commencing restoration, all remaining insurance proceeds and the Construction Security shall be paid to and retained by Landlord free and clear of any claim by or through Tenant unless Tenant is continuing to prosecute the rebuilding or restoration with reasonable diligence.

(e) In the event that Tenant is neither required nor elects to repair and restore the affected Leased Property, all property insurance proceeds (except for, subject to no Event of Default having occurred and being continuing, any business interruption proceeds in excess of Tenant's Rent and Additional Charges obligations hereunder which shall be retained by Tenant), shall be paid to and retained by Landlord free and clear of any claim by or through Tenant except as otherwise specifically provided below in this **Article XIV**.

14.3 No Abatement of Rent. This Lease shall remain in full force and effect and Tenant's obligation to pay the Rent, Additional Charges and all other charges required by this Lease shall remain unabated during the period required for adjusting insurance, satisfying Legal Requirements, repair and restoration.

14.4 Waiver. Tenant waives any statutory rights of termination which may arise by reason of any damage or destruction of the Leased Property but such waiver shall not affect any contractual rights granted to Tenant under this **Article XIV**.

14.5 Insurance Proceeds Paid to Fee Mortgagee. Notwithstanding anything herein to the contrary, in the event that any Fee Mortgagee is entitled to any insurance proceeds, or any portion thereof, under the terms of any Fee Mortgage, such proceeds (except business interruption not allocated to rent expenses which shall be payable to and retained by Tenant) shall be applied, held and/or disbursed in accordance with the terms of the Fee Mortgage but in all events subject to Tenant's right to such insurance proceeds (including Tenant's right to receive all insurance proceeds for a Casualty Event less than Fifty Million Dollars (\$50,000,000) in accordance with **Section 14.1**) and provided, that, (i) in the event of a Casualty Event involving proceeds of Fifty Million Dollars (\$50,000,000) or more where Tenant elects to restore the affected Facility in accordance with this **Article XIV** and Tenant reasonably demonstrates that such restoration can be completed within four (4) years of the date on which Tenant can reasonably access the affected Facility for the purpose of commencing restoration (after the date of such Casualty Event but without regard to the date on which Tenant elects to restore the affected Facility), or (ii) in the event of a Casualty Event involving proceeds of Fifty Million Dollars (\$50,000,000) or more where Tenant is required by this Lease to restore the affected Facility, Landlord will cause, subject to **Section 14.2(e)**, any Fee Mortgagee that has received, or thereafter does receive, insurance proceeds to make such proceeds available to Tenant for the reasonable costs of preservation, stabilization, emergency restoration, reconstruction and repair for the affected Facility.

14.6 Termination of Lease; Abatement of Rent. In the event this Lease is terminated as to an affected Facility (such affected Facility, a "**Terminated Facility**") pursuant to (A) **Section 8.2** (in respect of Landlord being in jeopardy of failing to comply with a regulatory requirement material to the continued operation of a Facility), (B) **Section 14.2(b)** (in the event that Landlord or Tenant elects to terminate the Lease with respect to a Facility following a

Casualty Event), (C) **Article XV**, or (D) any other provision of this Lease which provides for termination of this Lease with respect to a Facility (a “**Leased Property Rent Adjustment Event**”), then (i) the Rent due hereunder from and after the effective date of any such Leased Property Rent Adjustment Event shall be reduced by the portion of the Base Rent amount allocated to such Terminated Facility at the time of termination; (ii) Landlord and Tenant shall enter into a formal amendment to this Lease whereby such Terminated Facility shall be excluded from the Leased Property hereunder and Base Rent hereunder shall be adjusted in accordance with **Section 14.6(i)**; and (iii) Landlord shall retain any claim which Landlord may have against Tenant for failure to insure such Leased Property as required by **Article XIII**.

14.7 Multiple Fee Mortgagees. In any provisions of this **Article XIV**, **Article XV** or any other provision of this Lease providing for any determination, decision or election by a Fee Mortgagee, the determination, decision or election of the Fee Mortgagee of the highest priority with respect to the Facility in question shall be controlling.

ARTICLE XV

CONDEMNATION

15.1 Condemnation.

(a) **Total Taking.** If there is a permanent Condemnation of Leased Property with respect to all or substantially all of a Facility, this Lease shall terminate with respect to such Facility (but no other portion of the Leased Property) as of the day before the Date of Taking for such Facility, and Landlord and Tenant shall enter into a formal amendment to this Lease whereby such affected Facility shall be excluded from the Leased Property hereunder and Base Rent hereunder shall be adjusted in accordance with **Section 14.6(i)**.

(b) **Partial Taking.**

(i) If there is a Condemnation of a portion of a Facility, this Lease shall remain in effect if the affected Facility is not thereby rendered, in the reasonable determination of Tenant, Unsuitable for Its Primary Intended Use, but if such Facility is thereby rendered Unsuitable for Its Primary Intended Use, this Lease shall at Tenant’s option terminate with respect to such Facility as of the date on which Notice of such determination is delivered to Landlord, and if Tenant so elects to terminate the provisions of **Section 14.6** shall apply.

(ii) In the event of a Condemnation of a portion of a Facility representing twenty percent (20%) or more of the fair market value of such Facility during the final two years of the then-current Term (after giving effect to any Renewal Notice that has been delivered), either Landlord or Tenant may terminate this Lease as to such Facility (but not as to any other Facility) as of the day before the Date of Taking, and if Landlord or Tenant so elect to terminate the provisions of **Section 14.6** shall apply. Any dispute between Landlord and Tenant with respect to the extent of a Condemnation will be determined by Experts pursuant to **Section 34.1**.

(c) **Restoration**. If there is a partial Condemnation of a Facility and this Lease remains in full force and effect with respect to such Facility, Landlord shall make available to Tenant the portion of the Award applicable to restoration of the Leased Property, and Tenant shall accomplish all necessary restoration whether or not the amount provided by the Condemnor for restoration is sufficient and, if such restoration is not capable of being completed and such Condemnation results in a material adverse effect on the operations of such Facility, the Base Rent shall be reduced by such amount as may be agreed upon by Landlord and Tenant or, if they are unable to reach such an agreement within a period of ninety (90) days after the occurrence of the Condemnation, then the Base Rent for such Facility shall be proportionately reduced based on the relative values of the property taken by condemnation and the portion of the affected Facility remaining subject to the Lease. In the event that Landlord and Tenant are unable to agree on such relative values within such ninety (90) day period, either Landlord or Tenant may request that such relative values be determined by Experts in accordance with **Section 34.1**. Tenant shall restore such Leased Property (as nearly as possible under the circumstances) to a complete architectural unit of the same general character and condition as such Leased Property existing immediately prior to such Condemnation. If Tenant has not so restored the affected Leased Property and the Primary Intended Use has not recommenced by the date that is the fourth (4th) anniversary of the date on which Tenant can reasonably access such Facility for the purpose of commencing restoration, any remaining Award shall be paid to and retained by Landlord free and clear of any claim by or through Tenant unless Tenant is continuing to prosecute the rebuilding or restoration with reasonable diligence.

15.2 Award Distribution. The entire Award shall belong to and be paid to Landlord. Tenant shall, however, be entitled to pursue its own claim with respect to the Condemnation for Tenant's lost profits value and moving expenses and Excluded Assets and, the portion of the Award, if any, allocated to any Tenant's Property not required to be transferred at the end of the Term.

15.3 Temporary Taking. The taking of the Leased Property, or any part thereof, shall constitute a Condemnation only when the use and occupancy by the taking authority is reasonably expected to exceed 180 consecutive days. During any shorter period, which shall be a temporary taking, all the provisions of this Lease shall remain in full force and effect and the Award allocable to the Term shall be paid to Tenant.

15.4 No Abatement of Rent. This Lease shall remain in full force and effect and Tenant's obligation to pay the Rent, Additional Charges and all other charges required by this Lease shall remain unabated during the period required for claiming an Award, satisfying Legal Requirements and restoration.

15.5 Waiver. Tenant waives any statutory rights of termination which may arise by reason of any Condemnation of the Leased Property but such waiver shall not affect any contractual rights granted to Tenant under this **Article XV**.

15.6 Award Paid to Fee Mortgagee. Notwithstanding anything herein to the contrary, in the event that any Fee Mortgagee is entitled to any Award, or any portion thereof, under the terms of any Fee Mortgage, such Award shall be applied, held and/or disbursed in accordance with the commercially reasonable terms of the Fee Mortgage; provided, that, (i) in the event of a Condemnation where Tenant elects to restore the affected Facility in accordance with this **Article XV** and Tenant reasonably demonstrates that such restoration can be completed within four (4) years of the date on which Tenant can reasonably access such Facility for the purpose of commencing restoration (after the date of such Condemnation but without regard to the date on which Tenant elects to restore the affected Facility), or (ii) in the event of a Condemnation where Tenant is required by this Lease to restore the affected Facility, Landlord will cause, subject to the final sentence of **Section 15.1(c)**, the Fee Mortgagee that has received, or thereafter does receive, any Award to make such Award available to Tenant for the reasonable costs of preservation, stabilization, emergency restoration, reconstruction and repair for the affected Facility.

ARTICLE XVI

DEFAULT; REMEDIES

16.1 Events of Default. (a) Any one or more of the following shall constitute an “**Event of Default**”:

(i) Tenant shall fail to pay any installment of Rent within five (5) Business Days of when due and such failure is not cured within three (3) Business Days after Notice from Landlord of Tenant’s failure to pay such amount when due; provided, that Tenant shall be entitled to only one (1) such notice and additional three (3) Business Day cure period in any Lease Year;

(ii) Tenant shall fail to pay any Additional Charge when due and such failure is not cured within five (5) Business Days after Notice from Landlord of Tenant’s failure to pay such amount when due;

(iii) a default shall occur under the Guaranty or Operating Subtenant Guaranty which is not cured within fifteen (15) days after Notice from Landlord to Guarantor or Operating Subtenant, as applicable;

(iv) Tenant, Operating Subtenant or Guarantor shall:

- (1) admit in writing its inability to pay its debts generally as they become due;
- (2) file a petition in bankruptcy or a petition to take advantage of any insolvency law or act or otherwise commences any proceeding under such law or act;
- (3) make an assignment for the benefit of its creditors;
- (4) consent to the appointment of a receiver of itself or of the whole or any substantial part of its property; or

(5) file a petition or answer seeking reorganization or arrangement under the United States bankruptcy laws or any other applicable law or statute of the United States of America or any state thereof or of any applicable foreign jurisdiction;

(v) Tenant, Operating Subtenant or Guarantor shall be adjudicated as bankrupt or a court of competent jurisdiction shall enter an order or decree appointing, without the consent of Tenant, Operating Subtenant or Guarantor, a receiver of Tenant or Guarantor or of the whole or substantially all of Tenant's, Operating Subtenant's or Guarantor's property, or approving a petition filed against Tenant, Operating Subtenant or Guarantor seeking reorganization or arrangement of Tenant, Operating Subtenant or Guarantor under the United States bankruptcy laws or any other applicable law or statute of the United States of America or any state thereof or of any applicable foreign jurisdiction, and such judgment, order or decree shall not be vacated or set aside within sixty (60) days from the date of the entry thereof;

(vi) Tenant, Operating Subtenant or Guarantor shall be liquidated or dissolved (except that Guarantor may be liquidated or dissolved into Tenant or any other Person so long as its assets are distributed following such liquidation or dissolution to Tenant or such other Person), or entry of a judgment, order or decree liquidating or dissolving Tenant or Guarantor and such judgment, order or decree shall not be vacated or set aside within sixty (60) days from the date of the entry thereof;

(vii) the estate or interest of Tenant, Operating Subtenant in the Leased Property or any part thereof shall be levied upon or attached as a result of a judgment in any proceeding relating to more than Ten Million Dollars (\$10,000,000.00) and the same shall not be vacated, discharged or stayed pending appeal (or bonded or otherwise similarly secured) within the later of ninety (90) days after such judgment is entered or thirty (30) days after receipt by Tenant of notice thereof from Landlord; provided, however, that such notice shall be in lieu of and not in addition to any notice required under applicable law;

(viii) if Tenant, Operating Subtenant or Guarantor shall fail to pay, bond, escrow or otherwise similarly secure payment of one or more final judgments aggregating in excess of the amount of Seventy-Five Million and No/100 Dollars (\$75,000,000.00), which judgments are not discharged or effectively waived or stayed for a period of forty-five (45) consecutive days;

(ix) except as permitted in accordance with **Section 7.2(d)**, Tenant voluntarily ceases operations at a Facility for its Primary Intended Use; and

(x) any representation made by Tenant hereunder or by Guarantor under the Guaranty, or Operating Subtenant under the Operating Subtenant Guaranty proves to be untrue when made in any material respect and the same materially and adversely affects Landlord;

(xi) any applicable license material to a Facility's operation for its Primary Intended Use is at any time terminated or revoked or suspended or placed under a trusteeship for more than thirty (30) days (and causes cessation of Gaming activity at such Facility) and such termination, revocation or suspension is not stayed pending appeal and would

reasonably be expected to have a material adverse effect on Tenant, the Facilities, or on the Leased Property, taken as a whole;

(xii) if a Licensing Event with respect to the Tenant shall occur and is not cured within the period prescribed by the applicable Gaming Authority or, if no such period is prescribed by the applicable Gaming Authority, then within 90 days;

(xiii) except to a permitted assignee pursuant to **Section 22.2** or a permitted subtenant, or with respect to the granting of a permitted pledge hereunder to a Permitted Leasehold Mortgagee or a Permitted Credit Facility Lender, the sale or transfer, without Landlord's consent, of all or any portion of any Gaming License or similar certificate or license relating to the Leased Property;

(xiv) (1) a transfer of Tenant's interest in this Lease (including pursuant to a Tenant Change of Control) shall have occurred without the consent of Landlord to the extent such consent is required under **Article XXII** or Tenant is otherwise in default of the provisions set forth in **Section 22.1** below and in either case the same is not cured within 30 days after written notice from Landlord to Tenant, (2) a transfer of Operating Subtenant's interest in the Operating Sublease (including any breach of **Section 41.17(b)**) shall have occurred without the consent of Landlord to the extent such consent is required under **Article XXII** or **Section 41.17** or Tenant is otherwise in default of the provisions set forth in **Section 41.17** below and in either case the same is not cured within 30 days after written notice from Landlord to Tenant or Operating Subtenant or (3) a transfer of Grand Operating Subtenant's direct or indirect interest in the Signature Entities or Signature Owner's direct or indirect interest in the Signature Hotel Units or the rights to all revenues generated thereby (including from or with respect to any Signature Rental Management Operations) (including any breach of **Section 6.2**) shall have occurred without the consent of Landlord to the extent such consent is required under **Section 6.2**, and the same is not cured within 30 days after written notice from Landlord to Tenant or MGM Grand Hotel;

(xv) the occurrence of an Event of Default pursuant to **Section 9.1(e)** which continues for 30 days after written notice from Landlord to Tenant; and

(xvi) if Tenant shall fail to observe or perform any other term, covenant or condition of this Lease in any material respect and such failure is not cured by Tenant within thirty (30) days after Notice thereof from Landlord, unless such failure cannot with due diligence be cured within a period of thirty (30) days, in which case such failure shall not be deemed to be an Event of Default if Tenant proceeds promptly and with due diligence to cure the failure and diligently completes the curing thereof within one hundred twenty (120) days after such notice from Landlord; provided, however, that such notice shall be in lieu of and not in addition to any notice required under applicable law. No Event of Default shall be deemed to exist under this clause (xvi) during any time the curing thereof is prevented by an Unavoidable Delay, provided, that, upon the cessation of the Unavoidable Delay, Tenant remedies the default without further delay.

(b) Notwithstanding the foregoing, in the event that Landlord believes that there has been a breach that would constitute an Event of Default under **Section 16.1(a)**, (iii), **subclause (1)** of (iv), (x), (xi), (xii), (xiii), (xiv), (xv) or (xvi) above, Landlord shall notify

Tenant of such breach and, if Tenant disagrees as to the existence of such breach or that such breach would constitute an Event of Default, Tenant may, provide prompt written notice of such dispute to Landlord (a “**Dispute Notice**”). The time period during which Tenant may cure any default shall be tolled from the date of the Dispute Notice until the date of final resolution of the dispute by the Experts. Each of Landlord and Tenant shall be entitled to promptly submit the determination of whether or not there exists an Event of Default to Experts pursuant to **Section 34.1**. If the Expert determines that the matter in question is or would give rise to an Event of Default, Tenant shall have the remaining portion of the applicable cure period in which to cure such breach before such breach constitutes an Event of Default.

16.2 Certain Remedies.

(a) If an Event of Default shall have occurred and be continuing, Landlord may (i) terminate this Lease by giving Tenant no less than ten (10) days’ Notice of such termination and the Term shall terminate and all rights of Tenant under this Lease shall cease, (ii) seek damages as provided in **Section 16.3** hereof, and/or (iii) exercise any other right or remedy at law or in equity available to Landlord as a result of any Event of Default. Tenant shall pay as Additional Charges all costs and expenses incurred by or on behalf of Landlord, including reasonable attorneys’ fees and expenses, as a result of any Event of Default hereunder. If an Event of Default shall have occurred and be continuing, whether or not this Lease has been terminated pursuant to the first sentence of this **Section 16.2**, Tenant shall, to the extent permitted by law (including applicable Gaming Regulations), if required by Landlord to do so, immediately surrender to Landlord possession of all or any portion of the Leased Property (including any Tenant Capital Improvements) as to which Landlord has so demanded and quit the same and Landlord may, to the extent permitted by law (including applicable Gaming Regulations), enter upon and repossess such Leased Property and any Capital Improvement thereto by reasonable force, summary proceedings, ejectment or otherwise, and, to the extent permitted by law (including applicable Gaming Regulations), may remove Tenant and all other Persons and any of Tenant’s Property from such Leased Property.

(b) Notwithstanding anything contained herein to the contrary, Landlord shall not be entitled to terminate this Lease by reason of an Event of Default (but Landlord may exercise all other rights and remedies), unless and until Landlord has, following the occurrence of an Event of Default, delivered a notice (“**Event of Default Notice**”) to Tenant stating the Event of Default, and containing the following caption (in bold 16 point type), and Tenant has failed to cure such Event(s) of Default within ten (10) days of its receipt of the Event of Default Notice:

“THIS IS AN EVENT OF DEFAULT NOTICE. FAILURE TO TAKE IMMEDIATE ACTION AND TO CURE THE EVENT(S) OF DEFAULT AS SPECIFIED BELOW WITHIN TEN (10) DAYS OF RECEIPT OF THIS NOTICE MAY LEAD TO LANDLORD’S TERMINATION OF THE LEASE AND/OR THE EXERCISE OF OTHER REMEDIES THEREUNDER.”

16.3 Damages.

(a) None of (i) the termination of this Lease, (ii) the repossession of the Leased Property (including any Capital Improvements to any Facility), (iii) the failure of

Landlord to relet the Leased Property or any portion thereof, (iv) the reletting of all or any portion of the Leased Property, or (v) the inability of Landlord to collect or receive any rentals due upon any such reletting, shall relieve Tenant of its liabilities and obligations hereunder, all of which shall survive any such termination, repossession or reletting. Landlord and Tenant agree that Landlord shall have no obligation to mitigate Landlord's damages under this Lease, and Tenant hereby waives any duty of Landlord to mitigate damages under any Legal Requirements to the full extent that such duty may be waived. If any such termination of this Lease occurs (whether or not Landlord terminates Tenant's right to possession of the Leased Property), Tenant shall forthwith pay to Landlord (x) all Rent due and payable under this Lease to and including the date of such termination (together with interest thereon at the Overdue Rate from the date the applicable amount was due) and (y) pay on demand all damages to which Landlord shall be entitled at law or in equity; provided, however, with respect to unpaid Rent from and after the date of termination, at Landlord's option, Tenant shall forthwith pay to Landlord as and for liquidated and agreed current damages, for the occurrence of an Event of Default, either:

(A) the sum of:

(i) the worth at the time of award of the unpaid Rent (and Additional Charges) which had been earned at the time of termination to the extent not previously paid by Tenant under this **Section 16.3**;

(ii) the worth at the time of award of the amount by which the unpaid Rent which would have been earned after termination until the time of award exceeds the amount of such rental loss that Tenant proves could have been reasonably avoided;

(iii) the worth at the time of award of the amount by which the unpaid Rent for the balance of the Term after the time of award exceeds the amount of such rental loss that Tenant proves could be reasonably avoided; *plus*

(iv) any other amount necessary to compensate Landlord for all the detriment proximately caused by Tenant's failure to perform its obligations under this Lease or which in the ordinary course of things would be likely to result therefrom.

As used in clauses (i) and (ii) above, the "worth at the time of award" shall be computed by allowing interest at the Overdue Rate. As used in clause (iii) above, the "worth at the time of award" shall be computed by discounting such amount at the discount rate of the Federal Reserve Bank of New York at the time of award plus one percent (1%) and reducing such amount by the portion of the unpaid Rent that Tenant proves could be reasonably avoided.

or

(B) if Landlord chooses not to terminate Tenant's right to possession of the Leased Property (whether or not Landlord terminates the Lease), each installment of said Rent and other sums payable by Tenant to Landlord under this Lease as the same becomes due and payable, together with interest at the Overdue Rate from the date when due until paid, and Landlord may enforce, by action or otherwise, any other term or covenant of this Lease (and Landlord may at any time thereafter terminate Tenant's right to possession of the Leased

Property and seek damages under subparagraph (A) hereof, to the extent not already paid for by Tenant under this subparagraph (B)).

(b) If, as of the date of any termination of this Lease pursuant to **Section 16.2**, the Leased Property shall not be in the condition in which Tenant has agreed to surrender the same to Landlord at the expiration or earlier termination of this Lease pursuant to **Section 9.1(d)**, then Tenant, shall pay, as damages therefor, the cost (as estimated by an independent contractor reasonably selected by Landlord) of placing the Leased Property in the condition in which Tenant is required to surrender the same hereunder.

16.4 Receiver. Upon the occurrence and during the continuance of an Event of Default, and upon commencement of proceedings to enforce the rights of Landlord hereunder, but subject to any limitations of applicable law, Landlord shall be entitled, as a matter of right, to the appointment of a receiver or receivers acceptable to Landlord of the Leased Property and of the revenues, earnings, income, products and profits thereof, pending the outcome of such proceedings, with such powers as the court making such appointment shall confer.

16.5 Waiver. If Landlord initiates judicial proceedings or if this Lease is terminated by Landlord pursuant to this **Article XVI**, Tenant waives, to the extent permitted by applicable law, (i) any right of redemption, re-entry or repossession; (ii) the benefit of any laws now or hereafter in force exempting property from liability for rent or for debt; and (iii) any duty of Landlord to mitigate damages to the extent such duty may legally be waived.

16.6 Application of Funds. Any payments received by Landlord under any of the provisions of this Lease during the existence or continuance of any Event of Default which are made to Landlord rather than Tenant due to the existence of an Event of Default shall be applied to Tenant's obligations in the order which Landlord may reasonably determine or as may be prescribed by the laws of the State.

16.7 Landlord's Right to Cure Tenant's Default. If Tenant shall fail to make any payment or to perform any act required to be made or performed hereunder when due including, without limitation, if Tenant fails to expend (or cause the Operating Subtenants to expend) any Required CapEx as required hereunder or fails to complete or cause to be completed any work or restoration or replacement of any nature as required hereunder, or if Tenant shall take any action prohibited hereunder, and such failure shall have resulted in an Event of Default, Landlord and/or its Affiliates, without waiving or releasing any obligation or default, may, but shall be under no obligation to, make such payment or perform such act (or reimburse any Fee Mortgagee for making such payment or performing such act) for the account and at the expense of Tenant (including, in the event of a breach of any such representation or warranty, taking actions to cause such representation or warranty to be true), and may, to the extent permitted by law, after an Event of Default, enter upon the Leased Property for such purpose and take all such action thereon as, in Landlord's reasonable opinion, may be necessary or appropriate therefor provided same is undertaken in accordance with the applicable law. All sums so paid (or reimbursed) by Landlord and/or any of its Affiliates and all costs and expenses, including reasonable attorneys' fees and expenses, so incurred, together with interest thereon at the Overdue Rate from the date on which such sums or expenses are paid or incurred by Landlord and/or any of its Affiliates, shall be paid by Tenant to Landlord on demand as an Additional Charge.

16.8 Miscellaneous.

(a) Suit or suits for the recovery of damages, or for any other sums payable by Tenant to Landlord pursuant to this Lease, may be brought by Landlord from time to time at Landlord's election, and nothing herein contained shall be deemed to require Landlord to await the date whereon this Lease and the Term would have expired by limitation had there been no Event of Default, reentry or termination.

(b) No failure by either party to insist upon the strict performance of any agreement, term, covenant or condition of this Lease or to exercise any right or remedy consequent upon a breach thereof, and no acceptance by Landlord of full or partial Rent during the continuance of any such breach, shall constitute a waiver of any such breach or of such agreement, term, covenant or condition. No agreement, term, covenant or condition of this Lease to be performed or complied with by either party, and no breach thereof, shall be or be deemed to be waived, altered or modified except by a written instrument executed by the parties. No waiver of any breach shall affect or alter this Lease, but each and every agreement, term, covenant and condition of this Lease shall continue in full force and effect with respect to any other then existing or subsequent breach thereof. If an Event of Default is continuing. Landlord shall be entitled to seek to enjoin such breach or threatened breach and shall have the right to invoke any rights and remedies allowed at law or in equity or by statute or otherwise as though reentry, summary proceedings or other remedies were not provided for in this Lease.

(c) Except to the extent otherwise expressly provided in this Lease, each right and remedy of a party provided for in this Lease shall be cumulative and shall be in addition to every other right or remedy provided for in this Lease.

(d) Nothing contained in this **Article XVI** or otherwise shall vitiate or limit Tenant's obligation to pay Landlord's attorneys' fees as and to the extent provided in **Article XXXVII** hereof, or any indemnification obligations under any express indemnity made by Tenant of Landlord or of any Landlord Indemnified Parties as contained in this Lease.

ARTICLE XVII

TENANT'S FINANCING

17.1 Permitted Leasehold Mortgagees.

(a) On one or more occasions without Landlord's prior consent Tenant may mortgage or otherwise encumber Tenant's estate in and to the Leased Property (the "**Leasehold Estate**") to one or more Permitted Leasehold Mortgagees under one or more Permitted Leasehold Mortgages and pledge its right, title and interest under this Lease as security for such Permitted Leasehold Mortgages or any Debt Agreement secured thereby; provided, that no Person shall be considered a Permitted Leasehold Mortgagee unless (1) such Person delivers to Landlord a written agreement providing (i) that (unless this Lease has been terminated as to a particular Facility) such Permitted Leasehold Mortgagee and any lenders for whom it acts as representative, agent or trustee, will not use or dispose of any Gaming License for use at a location other than at the Facility to which such Gaming License relates, (ii) an express acknowledgement that, in the event of the exercise by the Permitted Leasehold Mortgagee of its

rights under the Permitted Leasehold Mortgage, the Permitted Leasehold Mortgagee shall be required to (except for a transfer that meets the requirements of **Section 22.2(a)(i)**) secure the approval of Landlord for the replacement of Tenant with respect to the affected portion of the Leased Property and contain the Permitted Leasehold Mortgagee's acknowledgment that such approval may be granted or withheld by Landlord in accordance with the provisions of **Article XXII** of this Lease, and (iii) an express acknowledgment, on behalf of itself, its successors and assigns and all beneficiaries of the Permitted Leasehold Mortgage of the priorities and waivers described in **Section 17.1(n)**, (2) the underlying Permitted Leasehold Mortgage includes an express acknowledgement that (A) any exercise of remedies thereunder that would affect the Leasehold Estate shall be subject and subordinate to the terms of the Lease, and (B) that any foreclosure or realization by any Permitted Leasehold Mortgagee pursuant to a Permitted Leasehold Mortgage or upon Tenant's interest under this Lease or that would result in a transfer of all or any portion of Tenant's interest in the Leased Property or this Lease shall in any case be subject to the applicable provisions, terms and conditions of **Article XXII** hereof, and (3) such Person executes a joinder to any existing intercreditor agreement between any Permitted Leasehold Mortgagee and any Facility Mortgagee ("**Intercreditor Agreement**"). Any Facility Mortgagee and its successors and assigns, by accepting any Facility Mortgage, shall be deemed without executing any further document or instrument, to have also agreed to recognize the rights of any Permitted Leasehold Mortgagee as provided in this **Article XVII** and to have agreed not to disturb such rights in any way except through the exercise of the rights expressly granted to Landlord in this Lease or available at law or in equity to Landlord by reason of the default by Tenant under this Lease. Notwithstanding anything to the contrary, any Permitted Leasehold Mortgage or Permitted Credit Facility Pledge shall be required to cover both Facilities, and Tenant shall not have the right to encumber its (or any Operating Subtenant's) interest in the MB Leased Property or the Grand Leased Property separately from the other.

(b) Notice to Landlord.

(i) (1) If Tenant shall, on one or more occasions, mortgage Tenant's Leasehold Estate pursuant to a Permitted Leasehold Mortgage and if the holder of such Permitted Leasehold Mortgage shall provide Landlord with Notice of such Permitted Leasehold Mortgage together with a true copy of such Permitted Leasehold Mortgage and the name and address of the Permitted Leasehold Mortgagee, Landlord and Tenant agree that, following receipt of such Notice by Landlord, the provisions of this **Section 17.1** shall apply in respect of each such Permitted Leasehold Mortgage and the Permitted Leasehold Mortgagee with respect thereto.

(2) In the event of any assignment of a Permitted Leasehold Mortgage or in the event of a change of address of a Permitted Leasehold Mortgagee or of an assignee of such Permitted Leasehold Mortgage, Notice of the new name and address shall be provided to Landlord.

(ii) Landlord shall promptly upon receipt of a communication purporting to constitute the notice provided for by **subsection (b)(i)** above acknowledge by an executed and notarized instrument receipt of such communication as constituting the notice provided for by **subsection (b)(i)** above and confirming the status of the Permitted Leasehold Mortgagee as such or, in the alternative, notify Tenant and the Permitted Leasehold Mortgagee of the rejection of such communication as not conforming with the provisions of this **Section 17.1** and specify the specific basis of such rejection.

(iii) After Landlord has received the notice provided for by **subsection (b)(i)** above, Tenant, upon reasonable request to do so by Landlord, shall with reasonable promptness provide Landlord with copies of the material definitive documentation for the loans, notes or other debt obligations secured by such Permitted Leasehold Mortgage. If requested to do so by Landlord, Tenant shall thereafter also provide, with reasonable promptness, Landlord from time to time with a copy of each material amendment, modification or supplement to such documentation. From time to time upon reasonable request by Landlord, Tenant shall also notify Landlord, with reasonable promptness, of the date and place of recording and other pertinent recording data with respect to such instruments as have been recorded.

(c) Default Notice. Landlord, upon providing Tenant any notice of (i) default under this Lease or (ii) a termination of this Lease, shall at the same time provide a copy of such notice to every Permitted Leasehold Mortgagee for which notice has been properly provided to Landlord pursuant to **Section 17.1(b)** hereof. No such notice by Landlord to Tenant shall be deemed to have been duly given unless and until a copy thereof has been sent, in the manner prescribed in **Section 17.1(m)** of this Lease, to every Permitted Leasehold Mortgagee for which notice has been properly provided to Landlord pursuant to **Section 17.1(b)** hereof. From and after such notice has been sent to a Permitted Leasehold Mortgagee, such Permitted Leasehold Mortgagee shall have the same period, after the giving of such notice upon its remedying any default or acts or omissions which are the subject matter of such notice or causing the same to be remedied, as is given Tenant after the giving of such notice to Tenant, plus in each instance, the additional periods of time specified in **subsections (d) and (e)** of this **Section 17.1** to remedy, commence remedying or cause to be remedied the defaults or acts or omissions which are the subject matter of such notice specified in any such notice. Landlord shall accept such performance by or at the instigation of such Permitted Leasehold Mortgagee as if the same had been done by Tenant. Tenant authorizes each Permitted Leasehold Mortgagee (to the extent such action is authorized under the applicable Debt Agreement) to take any such action at such Permitted Leasehold Mortgagee's option and does hereby authorize entry upon the premises by the Permitted Leasehold Mortgagee for such purpose.

(d) Notice to Permitted Leasehold Mortgagee. Anything contained in this Lease to the contrary notwithstanding, if any default shall occur which entitles Landlord to terminate this Lease, Landlord shall have no right to terminate this Lease on account of such default unless, following the expiration of the period of time given Tenant to cure such default or the act or omission which gave rise to such default, Landlord shall notify every Permitted Leasehold Mortgagee for which notice has been properly provided to Landlord pursuant to **Section 17.1(b)** hereof of Landlord's intent to so terminate at least thirty (30) days in advance of the proposed effective date of such termination if such default is capable of being cured by the payment of money, and at least ninety (90) days in advance of the proposed effective date of such termination if such default is not capable of being cured by the payment of money ("**Termination Notice**"). The provisions of **subsection (e)** below of this **Section 17.1** shall apply if, during such thirty (30) or ninety (90) day (as the case may be) Termination Notice period, any Permitted Leasehold Mortgagee shall:

and

(i) notify Landlord of such Permitted Leasehold Mortgagee's desire to nullify such Termination Notice;

(ii) pay or cause to be paid all Rent, Additional Charges, and other payments (i) then due and in arrears as specified in the Termination Notice to such Permitted Leasehold Mortgagee and (ii) which may become due during such thirty (30) or ninety (90) day (as the case may be) period (as the same may become due) (in each case, regardless of whether such amount is allowed under any insolvency or bankruptcy law); and

(iii) comply or in good faith, with reasonable diligence and continuity, commence to comply with all nonmonetary requirements of this Lease then in default and reasonably susceptible of being complied with by such Permitted Leasehold Mortgagee, provided, however, that such Permitted Leasehold Mortgagee shall not be required during such ninety (90) day period to cure or commence to cure any default consisting of Tenant's failure to satisfy and discharge any lien, charge or encumbrance against Tenant's interest in this Lease or the Leased Property, or any of Tenant's other assets junior in priority to the lien of the mortgage or other security documents held by such Permitted Leasehold Mortgagee or any matter which Permitted Leasehold Mortgagee is prevented from performing because of any injunction or stay applicable during any bankruptcy or other judicial proceeding; and

(iv) during such thirty (30) or ninety (90) day (as the case may be) period, the Permitted Leasehold Mortgagee shall respond, with reasonable diligence, to requests for information from Landlord as to the Permitted Leasehold Mortgagee's (and related lenders') intent to pay such Rent and other charges and comply with this Lease.

(e) Procedure on Default.

(i) If Landlord shall elect to terminate this Lease by reason of any Event of Default of Tenant that has occurred and is continuing, and a Permitted Leasehold Mortgagee shall have proceeded in the manner provided for by **subsection (d)** of this **Section 17.1**, the specified date for the termination of this Lease as fixed by Landlord in its Termination Notice shall be extended for a period not to exceed three (3) months; provided, that such Permitted Leasehold Mortgagee shall, during such extension period:

(1) pay or cause to be paid the Rent, Additional Charges and other monetary obligations of Tenant under this Lease as the same become due (in each case, regardless of whether such amount is allowed under any insolvency or bankruptcy law), and continue its good faith efforts to perform or cause to be performed all of Tenant's other obligations under this Lease, excepting (A) obligations of Tenant to satisfy or otherwise discharge any lien, charge or encumbrance against Tenant's interest in this Lease or the Leased Property or any of Tenant's other assets junior in priority to the lien of the mortgage or other security documents held by such Permitted Leasehold Mortgagee and (B) past nonmonetary obligations then in default and not reasonably susceptible of being cured by such Permitted Leasehold Mortgagee; and

(2) if not enjoined or stayed pursuant to a bankruptcy or insolvency proceeding or other judicial order, diligently continue to pursue acquiring or selling Tenant's interest in this Lease and the Leased Property by foreclosure of the Permitted Leasehold Mortgage or other appropriate means and diligently prosecute the same to completion.

(ii) If at the end of such three (3) month period such Permitted Leasehold Mortgagee is complying with **subsection (e)(i)** above, this Lease shall not then terminate, and the time for completion by such Permitted Leasehold Mortgagee of its proceedings shall continue (provided that for the time of such continuance, such Permitted Leasehold Mortgagee is in compliance with **subsection (e)(i)** above) (x) so long as such Permitted Leasehold Mortgagee is enjoined or stayed pursuant to a bankruptcy or insolvency proceeding or other judicial order and if so enjoined or stayed, thereafter for so long as such Permitted Leasehold Mortgagee proceeds to complete steps to acquire or sell Tenant's interest in this Lease by foreclosure of the Permitted Leasehold Mortgage or by other appropriate means with reasonable diligence and continuity but not to exceed twelve (12) months after the Permitted Leasehold Mortgagee is no longer so enjoined or stayed from prosecuting the same and in no event longer than twenty-four (24) months from the date of Landlord's initial notification to Permitted Leasehold Mortgagee pursuant to **Section 17.1(d)** hereof, and (y) if such Permitted Leasehold Mortgagee is not so enjoined or stayed, thereafter for so long as such Permitted Leasehold Mortgagee proceeds to complete steps to acquire or sell Tenant's interests in this Lease by foreclosure of the Permitted Leasehold Mortgage or by other appropriate means with reasonable diligence and continuity but not to exceed twelve (12) months from the date of Landlord's initial notification to Permitted Leasehold Mortgagee pursuant to **Section 17.1(d)** hereof. Nothing in this **subsection (e)** of this **Section 17.1**, however, shall be construed to extend this Lease beyond the original term hereof as extended by any options to extend the Term of this Lease properly exercised by Tenant or a Permitted Leasehold Mortgagee in accordance with **Section 1.4**, nor to require a Permitted Leasehold Mortgagee to continue such foreclosure proceeding after the default has been cured. If the default shall be cured pursuant to the terms and within the time periods allowed in **subsections (d)** and **(e)** of this **Section 17.1** and the Permitted Leasehold Mortgagee shall discontinue such foreclosure proceedings, this Lease shall continue in full force and effect as if Tenant had not defaulted under this Lease.

(iii) If a Permitted Leasehold Mortgagee is complying with **subsection (e)(i)** of this **Section 17.1**, upon the acquisition of Tenant's Leasehold Estate herein by a Foreclosure Transferee, this Lease shall continue in full force and effect as if Tenant had not defaulted under this Lease, provided, that such Foreclosure Transferee cures all outstanding defaults that can be cured through the payment of money and all other defaults that are reasonably susceptible of being cured.

(iv) For the purposes of this **Section 17.1**, the making of a Permitted Leasehold Mortgage shall not be deemed to constitute an assignment or transfer of this Lease nor of the Leasehold Estate hereby created, nor shall any Permitted Leasehold Mortgagee, as such, be deemed to be an assignee or transferee of this Lease or of the Leasehold Estate hereby created so as to require such Permitted Leasehold Mortgagee, as such, to assume the performance of any of the terms, covenants or conditions on the part of Tenant to be performed hereunder; but the purchaser at any sale of this Lease (including a Permitted Leasehold Mortgagee if it is the purchaser at foreclosure) and of the Leasehold Estate hereby created in any proceedings for the

foreclosure of any Permitted Leasehold Mortgage, or the assignee or transferee of this Lease and of the Leasehold Estate hereby created under any instrument of assignment or transfer in lieu of the foreclosure of any Permitted Leasehold Mortgage, shall be subject to **Article XXII** hereof (including the requirement that such purchaser assume the performance of the terms, covenants or conditions on the part of Tenant to be performed hereunder and meet the qualifications of **Section 22.2** or be reasonably consented to by Landlord in accordance with **Section 22.1** hereof).

(v) Any Permitted Leasehold Mortgagee or other acquirer of the Leasehold Estate of Tenant pursuant to foreclosure, assignment in lieu of foreclosure or other proceedings in accordance with the requirements of **Section 22.2(a)(i)** of this Lease may, upon acquiring Tenant's Leasehold Estate, sell and assign the Leasehold Estate solely in accordance with the requirements of **Article XXII** of this Lease and enter into Permitted Leasehold Mortgages in the same manner as the original Tenant, subject to the terms hereof.

(vi) Notwithstanding any other provisions of this Lease, any sale of this Lease and of the Leasehold Estate hereby created in any proceedings for the foreclosure of any Permitted Leasehold Mortgage, or the assignment or transfer of this Lease and of the Leasehold Estate hereby created in lieu of the foreclosure of any Permitted Leasehold Mortgage, shall be deemed to be a permitted sale, transfer or assignment of this Lease and of the Leasehold Estate hereby created solely to the extent the successor tenant under this Lease is a Foreclosure Transferee and the transfer otherwise complies with the requirements of **Section 22.2(a)(i)** of this Lease or the transferee is consented to by Landlord (in its sole discretion) in accordance with **Section 22.1** hereof.

(f) New Lease. In the event of the termination of this Lease other than due to a default as to which the Permitted Leasehold Mortgagee had the opportunity to, but did not, cure the default as set forth in **Sections 17.1(d)** and **17.1(e)** above, Landlord shall provide each Permitted Leasehold Mortgagee with Notice that this Lease has been terminated ("**Notice of Termination**"), together with a statement of all sums which would at that time be due under this Lease but for such termination, and of all other defaults, if any, then known to Landlord. Landlord agrees to enter into a new lease ("**New Lease**") of the Leased Property with such Permitted Leasehold Mortgagee or its Permitted Leasehold Mortgagee Designee (in each case only if such entity is a Foreclosure Transferee) for the remainder of the Term (including any Renewal Terms) of this Lease, effective as of the date of termination, at the rent and additional rent, and upon the terms, covenants and conditions (including all options to renew but excluding requirements which have already been fulfilled) of this Lease, provided:

(i) Such Permitted Leasehold Mortgagee or its Permitted Leasehold Mortgagee Designee shall make a binding, written, irrevocable commitment to Landlord for such New Lease within thirty (30) days after the date such Permitted Leasehold Mortgagee receives Landlord's Notice of Termination of this Lease given pursuant to this **Section 17.1(f)**;

(ii) Such Permitted Leasehold Mortgagee or its Permitted Leasehold Mortgagee Designee shall pay or cause to be paid to Landlord, at the time of the execution and delivery of such New Lease, any and all sums which would at the time of execution and delivery thereof be due pursuant to this Lease but for such termination and, in addition thereto, all reasonable expenses, including reasonable attorney's fees, which Landlord shall have incurred by

reason of such termination and the execution and delivery of the New Lease and which have not otherwise been received by Landlord from Tenant or other party in interest under Tenant; and

(iii) Such Permitted Leasehold Mortgagee or its Permitted Leasehold Mortgagee Designee shall agree to remedy any of Tenant's defaults of which said Permitted Leasehold Mortgagee was notified by Landlord's Notice of Termination (or in any subsequent notice) and which can be cured through the payment of money or are reasonably susceptible of being cured by such Permitted Leasehold Mortgagee or its Permitted Leasehold Mortgagee Designee.

(g) New Lease Priorities. It is the intention of the parties that such New Lease shall continue to maintain the same priority as this Lease with regard to any Facility Mortgage or any other lien, charge or encumbrance created by the acts of Landlord on the Leased Property or any part thereof or this Lease (but Landlord shall not be deemed to make any representation or warranty to that effect). If more than one Permitted Leasehold Mortgagee shall request a New Lease pursuant to **subsection (f) (i)** of this **Section 17.1**, Landlord shall enter into such New Lease with the Permitted Leasehold Mortgagee whose mortgage is senior in lien, or with its Permitted Leasehold Mortgagee Designee acting for the benefit of such Permitted Leasehold Mortgagee prior in lien foreclosing on Tenant's interest in this Lease. Landlord, without liability to Tenant or any Permitted Leasehold Mortgagee with an adverse claim, may rely upon a title insurance policy issued by a reputable title insurance company as the basis for determining the appropriate Permitted Leasehold Mortgagee who is entitled to such New Lease.

(h) Permitted Leasehold Mortgagee Need Not Cure Specified Defaults. Nothing herein contained shall require any Permitted Leasehold Mortgagee as a condition to its exercise of its rights hereunder to cure any default of Tenant not reasonably susceptible of being cured by such Permitted Leasehold Mortgagee or its Permitted Leasehold Mortgagee Designee (including but not limited to the defaults referred to in **Subsections 16.1(a)(iii), (iv), (v), (vi), (vii)**, (if the levy or attachment is in favor of such Permitted Leasehold Mortgagee (provided, such levy is extinguished upon foreclosure or similar proceeding or in a transfer in lieu of any such foreclosure) or is junior to the lien of such Permitted Leasehold Mortgagee and would be extinguished by the foreclosure of the Permitted Leasehold Mortgage that is held by such Permitted Leasehold Mortgagee), **(viii), (x), (xii), and (xiv)** and any other sections of this Lease which may impose conditions of default not susceptible to being cured by a Permitted Leasehold Mortgagee or a subsequent owner of the Leasehold Estate through foreclosure hereof), in order to comply with the provisions of **Sections 17.1(d) and 17.1(e)**, or as a condition of entering into the New Lease provided for by **Section 17.1(f)**.

(i) Contest of Event of Default. Notwithstanding anything to the contrary contained in this Lease, any Permitted Leasehold Mortgagee (and if more than one, the Permitted Leasehold Mortgagee whose lien is most senior) may, in good faith, contest through appropriate proceedings whether an alleged non-monetary default in fact constitutes an Event of Default, and the cure period available under the terms hereof to such Permitted Leasehold Mortgagee shall be extended so long as such Permitted Leasehold Mortgagee shall be diligently pursuing such contest, provided, that: (i) such Permitted Leasehold Mortgagee shall have commenced such contest prior to the expiration of the applicable notice and cure period herein for such alleged non-monetary Event of Default; (ii) Tenant shall not be, or shall not have, separately contested such alleged non-monetary Event of Default; (iii) pending the outcome of such contest, such

Permitted Leasehold Mortgagee shall make payment of all Rent due and payable hereunder, as and when due and payable, and shall make payment and shall otherwise cure all non-monetary Events of Default which are not being contested by such Permitted Leasehold Mortgagee within applicable cure periods provided herein for such non-monetary Events of Default; and (iv) such Permitted Leasehold Mortgagee shall make payment to Landlord of all reasonable attorneys' fees and costs incurred by Landlord in connection with such contest in the event that such Permitted Leasehold Mortgagee is not successful in such contest.

(j) Casualty Loss. A standard mortgagee clause naming each Permitted Leasehold Mortgagee for which notice has been properly provided to Landlord pursuant to **Section 17.1(b)** hereof may be added to any and all insurance policies required to be carried by Tenant hereunder on condition that the insurance proceeds are to be applied in the manner specified in this Lease and the Permitted Leasehold Mortgage shall so provide; except that the Permitted Leasehold Mortgage may provide a manner for the disposition of such proceeds, if any, otherwise payable directly to Tenant (but not such proceeds, if any, payable jointly to Landlord and Tenant or to Landlord, to the Fee Mortgagee or to a third-party escrowee) pursuant to the provisions of this Lease.

(k) Arbitration; Legal Proceedings. Landlord shall give prompt notice to each Permitted Leasehold Mortgagee (for which notice has been properly provided to Landlord pursuant to **Section 17.1(b)** hereof) of any arbitration or legal proceedings between Landlord and Tenant involving obligations under this Lease.

(l) No Merger. So long as any Permitted Leasehold Mortgage is in existence, unless all Permitted Leasehold Mortgagees for which notice has been properly provided to Landlord pursuant to **Section 17.1(b)** hereof shall otherwise expressly consent in writing, the fee title to the Leased Property and the Leasehold Estate of Tenant therein created by this Lease shall not merge but shall remain separate and distinct, notwithstanding the acquisition of said fee title and said Leasehold Estate by Landlord or by Tenant or by a third party, by purchase or otherwise.

(m) Notices. Notices from Landlord to the Permitted Leasehold Mortgagee for which notice has been properly provided to Landlord pursuant to **Section 17.1(b)** hereof shall be provided in the method provided in **Section 35.1** hereof to the address furnished Landlord pursuant to **subsection (b)** of this **Section 17.1**, and those from the Permitted Leasehold Mortgagee to Landlord shall be mailed to the address designated pursuant to the provisions of **Section 35.1** hereof. Such notices, demands and requests shall be given in the manner described in this **Section 17.1** and in **Section 35.1** and shall in all respects be governed by the provisions of those sections.

(n) Limitation of Liability; Rights as to Collateral. Notwithstanding any other provision hereof to the contrary, (i) Landlord agrees that any Permitted Leasehold Mortgagee's liability to Landlord in its capacity as Permitted Leasehold Mortgagee hereunder howsoever arising shall be limited to and enforceable only against such Permitted Leasehold Mortgagee's interest in the Leasehold Estate and the other collateral granted to such Permitted Leasehold Mortgagee to secure the obligations under its Debt Agreement, and (ii) each Permitted Leasehold Mortgagee agrees that (1) Landlord's liability to such Permitted Leasehold Mortgagee hereunder, howsoever arising, shall be limited to and enforceable only against Landlord's interest in the

Leased Property and the other collateral granted to Landlord under this Lease, and (2) (A) the Permitted Leasehold Mortgagee does not have a Lien on, and the applicable Permitted Leasehold Mortgage does not encumber, the CapEx Reserve, FF&E Reserve, the Covenant Security Escrow Account or the Construction Security (the “**Permitted Leasehold Mortgage Excluded Collateral**”) and (2) (B) the Permitted Leasehold Mortgage include an express exclusion of the Permitted Leasehold Mortgage Excluded Collateral from the assets on which Liens are granted thereunder.

(o) Transfer Procedure. If an Event of Default shall have occurred and be continuing, the Permitted Leasehold Mortgagee for which notice has been properly provided to Landlord pursuant to **Section 17.1(b)** hereof with the most senior lien on the Leasehold Estate shall release any security interests it may have with respect to Tenant’s Property that is to be transferred to Landlord under **Article XXXVI** (and this **Section 17.1(o)** shall expressly authorize Tenant (or Landlord on Tenant’s behalf) to file any UCC-3 termination statements with respect to any such assets to be transferred to Landlord) but such Permitted Leasehold Mortgagee shall have the right to make any determinations and agreements on behalf of Tenant under **Article XXXVI** (including, without limitation, requesting that the process described in **Article XXXVI** be commenced, the determination and agreement of the Tenant’s Property FMV and negotiation with Landlord with respect thereto), in each case, in accordance with and subject to the terms and provisions of **Article XXXVI**; provided, however, in no event shall the foregoing diminish the obligations of Tenant or rights of Landlord under **Section XXXVI**.

(p) Third Party Beneficiary. Each Permitted Leasehold Mortgagee (for so long as such Permitted Leasehold Mortgagee holds a Permitted Leasehold Mortgage) is an intended third-party beneficiary of this **Article XVII** entitled to enforce the same as if a party to this Lease.

17.2 Landlord’s Right to Cure Tenant’s Default. If Tenant shall fail to make any payment or to perform any act required to be made or performed hereunder when due or within any cure period provided for herein, Landlord, without waiving or releasing any obligation or default, may, but shall be under no obligation to, make such payment or perform such act for the account and at the expense of Tenant, and may, to the extent permitted by law, enter upon the Leased Property for such purpose and take all such action thereon as, in Landlord’s opinion, may be necessary or appropriate therefor. No such entry shall be deemed an eviction of Tenant. All sums so paid by Landlord and all costs and expenses, including reasonable attorneys’ fees and expenses, so incurred, together with interest thereon at the Overdue Rate from the date on which such sums or expenses are paid or incurred by Landlord, shall be paid by Tenant to Landlord on demand as an Additional Charge.

17.3 Tenant’s Debt Agreements. Tenant agrees that the principal or controlling agreement relating to any Material Indebtedness or series of related Debt Agreements related to Material Indebtedness in each case entered into after the date hereof will include a provision requiring the lender or lenders thereunder (or the Representative of such lenders) to provide a copy to Landlord of any notices issued by such lenders or the Representative of such lenders to Tenant of a Specified Debt Agreement Default.

17.4 Landlord Cooperation. If, in connection with granting any Permitted Leasehold Mortgage or entering into any Debt Agreement, Tenant shall reasonably request reasonable cooperation from Landlord, Landlord shall provide the same at no cost or expense to Landlord, it being understood and agreed that Tenant shall be required to reimburse Landlord for all such reasonable and documented out of pocket costs and expenses so incurred by Landlord, including, but not limited to, its reasonable and documented out of pocket attorneys' fees.

ARTICLE XVIII

SALE OF LEASED PROPERTY

18.1 Sale of the Leased Property. So long as no Event of Default has occurred, Landlord shall not sell or otherwise transfer all or any portion of the Leased Property (including by entering into a merger or similar transaction or by any Landlord Change of Control) during the Term to a Tenant Competitor without the prior written consent of Tenant, which consent may be given or withheld in Tenant's sole discretion; provided, however, that, in the event this Lease is not renewed in accordance with **Section 1.4** prior to the date that is thirty six (36) months prior to the then current expiration date of the Term (or as of the date that is thirty six (36) months prior to the final expiration date of this Lease after all renewal options have been exercised), then at any time following the date that is thirty six (36) months prior to the then current expiration date of the Term (the "**Competitor Restriction Open Date**"), Landlord shall have the ability to sell or otherwise transfer all or any portion of the Leased Property (including by entering into a merger or similar transaction or by any Landlord Change of Control) to a Tenant Competitor without the prior written consent of Tenant. In no event shall Landlord cause or allow any Tenant Competitor to own a controlling interest in Landlord (whether directly or indirectly) during the period Landlord is restricted from selling or otherwise transferring to a Tenant Competitor as provided herein, except for interests in Landlord's Parents, MGP REIT, BREIT or a publicly traded Person. Except as provided above and except as provided in the last sentence of this **Section 18.1**, Landlord shall not be limited or restricted in any manner whatsoever from selling all or any portion of the Leased Property (including by entering into a merger or similar transaction or by any Landlord Change of Control). In connection with any sale or other transfer by Landlord of all or any portion of the Leased Property, Landlord shall be subject in each instance to all of the rights of Tenant under this Lease, and Landlord and Landlord's successor or purchaser must comply with the provisions of **Section 8.2** to the extent applicable to Landlord and, to the extent necessary, any purchaser or successor Landlord and/or other Related Person of purchaser or successor Landlord (or other Landlord Change of Control) shall comply with all applicable Gaming Regulations with respect to such sale or transfer to ensure that there is not reasonably likely to be any material impact on the validity of any of the Gaming Licenses or the ability of Tenant (or any Operating Subtenant) to continue to use the Gaming Facilities for Gaming activities in substantially the same manner as immediately prior to Landlord's sale or other transfer.

ARTICLE XIX

HOLDING OVER

19.1 Holding Over. If Tenant shall for any reason remain in possession of the Leased Property relating to a Facility after the expiration or earlier termination of the Term without the

consent, or other than at the request, of Landlord, such possession shall be as a month-to-month tenant during which time Tenant shall pay as Base Rent each month twice the monthly Base Rent applicable to the prior Lease Year for such Facility, together with all Additional Charges and all other sums payable by Tenant pursuant to this Lease. During such period of month-to-month tenancy, Tenant shall be obligated to perform and observe all of the terms, covenants and conditions of this Lease, but shall have no rights hereunder other than the right, to the extent given by law to month-to-month tenancies, to continue its occupancy and use of the Leased Property of, and/or any Tenant Capital Improvements to, such Facility. Nothing contained herein shall constitute the consent, express or implied, of Landlord to the holding over of Tenant after the expiration or earlier termination of this Lease.

ARTICLE XX

RISK OF LOSS

20.1 Risk of Loss. The risk of loss or of decrease in the enjoyment and beneficial use of the Leased Property as a consequence of the damage or destruction thereof by fire, the elements, casualties, thefts, riots, wars or otherwise, or in consequence of foreclosures, attachments, levies or executions (other than by Landlord and Persons claiming from, through or under Landlord) is assumed by Tenant, and except as otherwise provided herein no such event shall entitle Tenant to any abatement of Rent.

ARTICLE XXI

INDEMNIFICATION

21.1 General Indemnification. In addition to the other indemnities contained herein, and notwithstanding the existence of any insurance carried by or for the benefit of Landlord or Tenant, and without regard to the policy limits of any such insurance, Tenant shall protect, indemnify, save harmless and defend Landlord and its principals, partners, officers, members, directors, shareholders, employees, managers, agents and servants and their respective successors and assigns, (collectively, the “**Landlord Indemnified Parties**”; each individually, a “**Landlord Indemnified Party**”) from and against all liabilities, obligations, claims, damages, penalties, causes of action, costs and expenses, including reasonable attorneys’, consultants’ and experts’ fees and expenses, imposed upon or incurred by or asserted against Landlord by reason of: (i) any accident, injury to or death of Persons or loss of or damage to property occurring on or about the Leased Property or adjoining sidewalks under the control of Tenant or any subtenant; (ii) any use, misuse, non-use, condition, maintenance or repair by Tenant or any subtenant of the Leased Property; (iii) any failure on the part of Tenant to perform or comply with any of the terms of this Lease; (iv) the non-performance of any of the terms and provisions of any Property Document and all existing and future subleases or management agreements of the Leased Property to be performed by any party thereunder; (v) any claim for malpractice, negligence or misconduct committed by any Person on or working from the Leased Property; (vi) the violation by Tenant or any subtenant of any Legal Requirement or Insurance Requirement; (vii) the non-performance of any contractual obligation, express or implied, assumed or undertaken by Tenant with respect to the Facilities (or any part thereof) or any business or other activity carried on in relation to the Facilities (or any part thereof) by Tenant, including contractual obligations arising from any collective bargaining agreement; (viii) any lien or claim that may be asserted against the

Facilities (or any part thereof) arising from the acts or omissions of Tenant, including without limitation Liens (A) being contested by Tenant pursuant to **Article XII** or (B) arising out of any failure by Tenant to perform its obligations hereunder or under any instrument or agreement affecting the Facilities (or any part thereof); (ix) all amounts actually payable by a Landlord Indemnified Party to any Fee Mortgagee Securitization Indemnatee under any Fee Mortgage Document as in effect as of the date hereof in the nature of indemnification as a result of any material misrepresentations made by Tenant as to a Specified Tenant Securitization Matter; and (x) arising under any collective bargaining agreements affecting the Leased Property or the employees of Tenant or its ERISA Affiliates, including all amounts of withdrawal liability, in each case, whether incurred prior to, at, or following the Commencement Date. Any amounts which become payable by Tenant to Landlord under this **Article XXI** shall be paid within ten (10) Business Days after receipt of Notice from Landlord requesting payment of the same, which notice may not be given until liability therefor has been determined by a final non appealable judgment or settlement or other agreement of the parties, (except with respect to amounts payable by Tenant under the foregoing clause (ix), or withdrawal liability amounts under clause (x) for which notice can be given when such amounts become payable under the applicable Fee Mortgage Document or when such amounts are demanded by a multiemployer pension plan) and if not timely paid within such ten (10) Business Day period, shall bear interest at the Overdue Rate from the date of such determination to the date of payment. Tenant, at its sole cost and expense, shall contest, resist and defend any such claim, action or proceeding asserted or instituted against Landlord. For purposes of this **Article XXI**, any acts or omissions of Tenant or any subtenant, or by their respective employees, agents, assignees, contractors, subcontractors or others acting for or on behalf of Tenant or any subtenant (whether or not they are negligent, intentional, willful or unlawful), shall be strictly attributable to Tenant.

ARTICLE XXII

SUBLETTING AND ASSIGNMENT

22.1 Subletting and Assignment. Tenant shall not, except as otherwise permitted pursuant to this Lease, without Landlord's prior written consent, voluntarily or by operation of law assign (which term includes any transfer, sale, encumbering, pledge or other transfer or hypothecation and undergoing any Tenant Change of Control) this Lease or Tenant's Leasehold Estate with respect to any Facility or sublet all or any portion of any Facility. Tenant acknowledges that Landlord is relying upon the expertise of Tenant in the operation of the Facilities and that Landlord entered into this Lease with the expectation that Tenant would remain in and operate the Facilities during the entire Term. Any Tenant Change of Control or transfer of any direct or indirect ownership interests in Tenant shall not constitute an assignment of Tenant's interest in this Lease within the meaning of this **Article XXII** and shall not be prohibited, and the provisions requiring consent of Landlord contained herein shall not apply thereto, solely to the extent that (x) Tenant remains and is thereafter wholly owned and Controlled, directly or indirectly, by Tenant's Parent, and (y) the representations and warranties in **Section 39.1** remain true and correct giving effect to such transfer.

22.2 Permitted Assignments. (a) Notwithstanding the foregoing, Tenant may, without Landlord's prior written consent:

(i) (x) assign this Lease by way of foreclosure of the Leasehold Estate or an assignment-in-lieu of foreclosure to any Person pursuant to a Permitted Leasehold Mortgage (any such foreclosure or assignment, a “**Foreclosure Assignment**”) or (y) undergo a Tenant Change of Control whereby a Person directly or indirectly acquires beneficial ownership and control of one hundred percent (100%) of the Equity Interests in Tenant (or the direct or indirect interests in Tenant) as a result of the purchase at a foreclosure of a Permitted Credit Facility Pledge or an assignment in lieu of such foreclosure pursuant to a Permitted Credit Facility Pledge (a “**Foreclosure COC**”) in each case, effected by a Permitted Leasehold Mortgagee or a Permitted Leasehold Mortgagee Foreclosing Party or Permitted Credit Facility Lender (as applicable), in each case only if (1) such Person is a Foreclosure Transferee, (2) such Foreclosure Transferee agrees in writing to assume the obligations of Tenant under this Lease without amendment or modification other than as provided below, and (3) a Qualified Transferee has become a Guarantor and provided a Guaranty;

(ii) assign this Lease, or Tenant’s Leasehold Estate in this Lease to Tenant’s Parent, a wholly-owned and controlled Subsidiary of Tenant’s Parent or a wholly-owned and controlled Subsidiary of Tenant; provided, (1) such assignee becomes party to and bound by this Lease and agrees in writing to assume the obligations of Tenant under this Lease without amendment or modification other than as provided below; (2) Tenant remains fully liable hereunder; (3) the use of the Leased Property continues to comply with the requirements of this Lease; (4) Landlord shall have received executed copies of all documents for such assignment and (5) if requested by Landlord, Tenant’s Parent shall execute a reaffirmation of the Guaranty; and

(iii) pledge or mortgage its Leasehold Estate to a Permitted Leasehold Mortgagee and/or pledge the direct Equity Interests in Tenant (or the direct or indirect interests in Tenant) to a Permitted Leasehold Mortgagee or a Permitted Credit Facility Lender.

Upon the effectiveness of any assignment permitted pursuant to clause (i) of this **Section 22.2**, such Foreclosure Transferee or Permitted Leasehold Mortgagee Foreclosing Party (and, if applicable, its Parent Company) Landlord shall (x) make such amendments and other modifications to this Lease as are reasonably required in order to effectuate such assignment and (y) not unreasonably withhold its consent to other technical amendments which are reasonably necessary in connection with such assignment (which for the avoidance of doubt, shall in no event increase the obligations of Landlord or the rights of Tenant or decrease the rights of Landlord or the obligations of Tenant in any respect). After giving effect to any such assignment, unless the context otherwise requires, references to Tenant and Tenant’s Parent hereunder shall be deemed to refer to the Foreclosure Transferee and its Parent Company (which must be a Qualified Transferee and deliver a Guaranty to Landlord prior to effectuating such Foreclosure Assignment or Foreclosure COC), as applicable.

22.3 Permitted Sublease Agreements. (a) Notwithstanding the provisions of **Section 22.1**, but subject to compliance with the provisions of this **Section 22.3**, Tenant or any Operating Subtenant may:

(i) enter into a Permitted Sublease of any Facility or portion thereof with Tenant’s Parent, a wholly-owned Subsidiary of Tenant’s Parent, a wholly-owned Subsidiary of Tenant or any Affiliate of Tenant’s Parent, without Landlord’s prior written consent;

(ii) enter into a Permitted Sublease for a term (inclusive of any renewal or extension options under such Permitted Sublease) that does not extend beyond the Term (excluding any Renewal Terms that have not been exercised) with any Person that is not an Affiliate of Tenant or Tenant's Parent with respect to any Ancillary Space at a Facility or any portion thereof, without Landlord's prior written consent;

(iii) subject to obtaining Landlord's prior written consent, such consent not to be unreasonably withheld, conditioned or delayed, enter into a Permitted Sublease for a term (inclusive of any renewal or extension options under such Permitted Sublease) that extends beyond the Term (excluding any Renewal Terms that have not been exercised) with any Person that is not an Affiliate of Tenant or Tenant's Parent with respect to any Ancillary Space at a Facility;

(iv) without Landlord's prior written consent, enter into a Permitted Sublease for a term (inclusive of any renewal or extension options under such Permitted Sublease) that does not extend beyond the Term (excluding any Renewal Terms that have not been exercised) with any Person that is not an Affiliate of Tenant or Tenant's Parent with respect to any Primary Space at a Facility and provided that Tenant (and/or any applicable Operating Subtenant) retains at least 75% of the gross area (and has not sublet or entered into management agreements for such gross area) (provided that, the space operated as the "Delano" or the "Four Seasons" shall be treated as retained by Tenant for any period during which such space is operated as the "Delano" or the "Four Seasons" and not otherwise subleased to a Person that is not an Affiliate of Tenant or Tenant's Parent) in each individual case, of each of the hotel, casino and convention space of such Facility (other than pursuant to the preceding clause (i) or pursuant to **Section 22.8(a)**);

(v) subject to obtaining Landlord's prior written consent, enter into a Permitted Sublease for a term (inclusive of any renewal or extension options under such Permitted Sublease) that extends beyond the Term (excluding any Renewal Terms that have not been exercised) with any Person that is not an Affiliate of Tenant or Tenant's Parent with respect to any Primary Space at a Facility and provided that Tenant (and/or any applicable Operating Subtenant) retains at least 75% of the gross area (and has not sublet or entered into management agreements for such gross area) (provided that the space operated as the Delano and the Four Seasons shall be treated as retained by Tenant for any period during which such space is operated as the "Delano" or the "Four Seasons" and not otherwise subleased to a Person that is not an Affiliate of Tenant or Tenant's Parent) in each individual case, of each of the hotel, casino and convention space of such Facility (other than pursuant to the preceding clause (i) or pursuant to **Section 22.8(a)**);

(vi) sublet a portion of a Facility in order to comply with **Section 8.2** hereof; and

(vii) enter into, allow to continue or renew any Operating Sublease, so long as such Operating Sublease is in compliance with **Section 41.17**.

(b) After an Event of Default has occurred and while it is continuing, Landlord may collect rents from any subtenant and apply the net amount collected to the Rent, but no such collection shall be deemed (i) a waiver by Landlord of any of the provisions of this

Lease, (ii) the acceptance by Landlord of such subtenant as a tenant or (iii) a release of Tenant from the future performance of its obligations hereunder.

(c) If reasonably requested by Tenant in connection with a Permitted Sublease which is permitted under this **Section 22.3** with respect to Ancillary Space with a subtenant that is not an Affiliate of Tenant or Tenant's Parent or in connection with a Permitted Management Agreement which is permitted under **Section 22.8** with respect to Ancillary Space with a manager that is not an Affiliate of Tenant or Tenant's Parent, Landlord and such sublessee or manager, as applicable, shall enter into an SNDA with respect to any such sublease or management agreement, as applicable, such SNDA to be substantially in the form attached hereto as **Exhibit F-1**, provided Landlord will not unreasonably withhold, condition or delay its consent to commercially reasonable modifications that may be requested by the subtenant (and if a Fee Mortgage is then in effect, Landlord shall use commercially reasonable efforts to seek to cause the Fee Mortgagee to enter into such subordination, non-disturbance and attornment agreement) whereby the subtenant or manager, as applicable, agrees to attorn to Landlord (or a Fee Mortgagee) and Landlord (and the Fee Mortgagee) agrees to recognize such subtenant rights under its sublease or manager rights under its management agreement, as applicable. For the avoidance of doubt, Landlord shall have no obligation to deliver a subordination, non-disturbance and attornment agreement with respect to any sublease or management agreement (x) for Primary Space or (y) with a tenant or manager that is an Affiliate of Tenant or Tenant's Parent.

(d) Tenant shall furnish Landlord in connection with the delivery of each Annual Certificate with a copy of each sublease and management agreement that Tenant has entered into since delivery of the last Annual Certificate (irrespective of whether Landlord's prior approval was required therefor).

(e) To the extent Landlord has an approval right pursuant to **Section 22.3(a)** or **Section 22.8**, with respect to Ancillary Space (but not Primary Space) Landlord shall base, if requested by Tenant, its approval (or disapproval) on a term sheet or letter of intent containing the material terms (including, without limitation, the identity of the tenant or manager, the term, the demised area, rent obligations, security deposit, any renewal or extension options, intended use, any exclusive use rights or improvement allowance and construction obligations) of a sublease or management agreement, as applicable, between Tenant and such subtenant or manager, as applicable, and if Landlord approves such term sheet or letter of intent no further approval of Landlord shall be required provided that the final sublease or management agreement, as applicable, between Tenant and such subtenant or manager, as applicable, is not on terms that are materially inconsistent with the term sheet or letter of intent approved by Landlord.

22.4 Required Assignment and Subletting Provisions. Any assignment and/or sublease must provide that:

(i) in the case of a sublease, it shall be subject and subordinate to all of the terms and conditions of this Lease;

(ii) the use of the applicable Facility (or portion thereof) shall not conflict with any Legal Requirement or any other provision of this Lease and any restrictions on

Tenant's activities at the relevant Facility shall also similarly apply to any sublessee's activities at the relevant Facility;

(iii) except as otherwise provided herein, no subtenant or assignee shall be permitted to further sublet all or any part of the applicable Facility or assign its sublease except to a party that is not an Affiliate of Tenant and insofar as the same would be permitted if it were a sublease by Tenant under this Lease;

(iv) in the case of a sublease, in the event of cancellation or termination of this Lease for any reason whatsoever or of the surrender of this Lease (whether voluntary, involuntary or by operation of law) prior to the expiration date of such sublease, including extensions and renewals granted thereunder, then, at Landlord's option and subject to subtenant's right of non-disturbance pursuant to **Section 22.3(c)** above, the subtenant shall make full and complete attornment to Landlord for the balance of the term of the sublease, which the subtenant shall execute and deliver within twenty (20) days after request by Landlord and the subtenant shall waive the provisions of any law now or hereafter in effect which may give the subtenant any right of election to terminate the sublease or to surrender possession in the event any proceeding is brought by Landlord to terminate this Lease; and

(v) in the event the subtenant receives a Notice from Landlord stating that this Lease has been cancelled, surrendered or terminated, then, the subtenant shall thereafter be obligated to pay all rentals accruing under said sublease directly to Landlord (or as Landlord shall so direct); all rentals received from the subtenant by Landlord shall be credited against the amounts owing by Tenant under this Lease.

For the avoidance of doubt, nothing in this **Article XXII** shall limit the rights of subtenants to non-disturbance as specifically provided in **Section 22.3(c)** of this Lease.

22.5 Costs. Tenant shall reimburse Landlord for Landlord's reasonable costs and expenses incurred in conjunction with the processing and documentation of any assignment or subletting (including any request for a subordination, non-disturbance and attornment agreement), including reasonable attorneys', architects', engineers' or other consultants' fees whether or not such sublease or assignment agreement is actually consummated.

22.6 No Release of Tenant's Obligations. No assignment (other than a permitted transfer pursuant to this **Article XXII**, in connection with a sale or assignment of the entire Leasehold Estate), subletting or management agreement shall relieve Tenant of its obligation to pay the Rent and to perform all of the other obligations to be performed by Tenant hereunder or reduce any such obligations. All obligations and other terms of this Lease applicable to Tenant and Tenant's activities and properties shall also apply to each assignee of this Lease. The liability of Tenant and any immediate and remote successor in interest of Tenant (by assignment or otherwise), and the due performance of the obligations of this Lease on Tenant's part to be performed or observed, shall not in any way be discharged, released or impaired by any (i) stipulation which extends the time within which an obligation under this Lease is to be performed, (ii) waiver of the performance of an obligation required under this Lease that is not entered into for the benefit of Tenant or such successor, or (iii) failure to enforce any of the obligations set forth in this Lease, provided, that Tenant shall not be responsible for any

additional obligations or liability arising as the result of any modification or amendment of this Lease by Landlord and any permitted assignee of Tenant that is not an Affiliate of Tenant.

22.7 Intentionally Omitted.

22.8 Management Agreements. Tenant or any Operating Subtenant shall be permitted to:

(a) enter in a Permitted Management Agreement with respect to any Facility or portion thereof with Tenant's Parent, a wholly-owned Subsidiary of Tenant's Parent, a wholly-owned Subsidiary of Tenant or any Affiliate of Tenant's Parent, without Landlord's prior written consent;

(b) enter into a Permitted Management Agreement for a term (inclusive of any renewal or extension options under such Permitted Management Agreement) that does not extend beyond the Term (excluding any Renewal Terms that have not been exercised) with any Person that is not an Affiliate of Tenant or Tenant's Parent with respect to any Ancillary Space at a Facility, without Landlord's prior written consent;

(c) subject to obtaining Landlord's prior written consent, such consent not to be unreasonably withheld conditioned or delayed, enter into a Permitted Management Agreement for a term (inclusive of any renewal or extension options under such Permitted Management Agreement) that extends beyond the Term (excluding any Renewal Terms that have not been exercised) with any Person that is not an Affiliate of Tenant or Tenant's Parent with respect to any Ancillary Space at a Facility;

(d) without Landlord's prior written consent, enter into a Permitted Management Agreement for a term (inclusive of any renewal or extension options under such Permitted Management Agreement) that does not extend beyond the Term (excluding any Renewal Terms that have not been exercised) with any Person that is not an Affiliate of Tenant or Tenant's Parent with respect to Primary Space at a Facility and provided that Tenant (and/or any applicable Operating Subtenant) has retained at least 75% of the gross area (and has not sublet or entered into management agreements with respect to such gross area) (provided that, the space operated as the "Delano" or the "Four Seasons" shall be treated as retained by Tenant for any period during which such space is operated as the "Delano" or the "Four Seasons" and not otherwise subleased to a Person that is not an Affiliate of Tenant or Tenant's Parent) (other than pursuant to the preceding clause (a) and **Section 22.3(a)(i)**), in each individual case, of each of the hotel, casino and convention space of such Facility;

(e) subject to obtaining Landlord's prior written consent, enter into a Permitted Management Agreement for a term (inclusive of any renewal or extension options under such Permitted Management Agreement) that extends beyond the Term (excluding any Renewal Terms that have not been exercised) with any Person that is not an Affiliate of Tenant or Tenant's Parent with respect to Primary Space at a Facility and provided that Tenant (and/or any applicable Operating Subtenant) has retained at least 75% of the gross area (and has not sublet or entered into management agreements with respect to such gross area) (provided that, the space operated as the "Delano" or the "Four Seasons" shall be treated as retained by Tenant for any period during which such space is operated as the "Delano" or the "Four Seasons" and

not otherwise subleased to a Person that is not an Affiliate of Tenant or Tenant's Parent) (other than pursuant to the preceding clause (a) and **Section 22.3(a)(i)**), in each individual case, of each of the hotel, casino and convention space of such Facility; and

(f) enter into a Permitted Management Agreement in order to comply with **Section 8.2** hereof.

Notwithstanding anything to the contrary contained herein, Tenant (or any Operating Subtenant) shall have the right to amend, extend or renew the Four Seasons Agreement and the Delano Agreement without Landlord's consent, to the extent that Landlord's consent would otherwise be required, as long as such amendment, extension, or renewal (x) would not (after taking into account any further extension rights under such agreement) extend beyond the then current term of the Lease (without regard to Renewal Options) and (y) does not provide for less favorable economic terms as the existing Delano Agreement or Four Seasons Agreement, as applicable, and is otherwise on commercially reasonable terms.

22.9 Bookings. Tenant (or any Operating Subtenant) may enter into any Bookings that do not cover periods after the expiration of the term of this Lease without the consent of Landlord in accordance with the Operating Standard in all material respects, and Bookings shall not be considered an assignment, sublease or management agreement. Tenant (or any Operating Subtenant) may enter into any Bookings that cover periods after the expiration of the term of this Lease without the consent of Landlord, provided, that, (i) such transaction is in each case made for bona fide business purposes in the normal course of the Primary Intended Use; (ii) such transaction shall not result in a violation of any Legal Requirements (including Gaming Regulations) relating to the operation of any Facility, including any Gaming Facilities, (iii) such Bookings are on commercially reasonable terms or made for a commercially reasonable purpose at the time entered into; and (iv) such transaction is not designed with the intent to frustrate Landlord's ability to enter into a new lease of the Leased Property or any portion thereof with a third person following the Expiration Date; provided, further, that, notwithstanding anything otherwise set forth herein, any such Bookings in effect as of the Commencement Date are expressly permitted without such consent. Landlord hereby agrees that in the event of a termination or expiration of this Lease, Landlord hereby recognizes and shall keep in effect such Booking on the terms agreed to by Tenant (or any Operating Subtenant) with such Person and shall not disturb such Person's rights to occupy the applicable Facility in accordance with the terms of such Booking.

22.10 Termination of Affiliate Agreements. Notwithstanding anything to the contrary contained herein and subject to the terms of any SNDA provided by Landlord directly to any party actually known by Landlord to be an Affiliate of Tenant at the time such SNDA was delivered by Landlord (an "**Affiliate SNDA**"), at the expiration or earlier termination of the Lease, other than the Guaranty, the IP Licenses, the Transition Services Agreement, the Property Documents (to the extent entered into in accordance with this Lease), all Affiliate Agreements may be terminated by Landlord at Tenant's sole cost and expense. For the avoidance of doubt (i) if at the time of the expiration or earlier termination of this Lease any Operating Sublease, Permitted Sublease and any Permitted Management Agreement together with any sub-agreements, assignments, licenses, and non-disturbance agreements (other than any Affiliate SNDA) with respect to the foregoing are directly or indirectly held by an Affiliate of Tenant's Parent, Landlord shall have the right to terminate such agreements at Tenant's sole expense and

(ii) Landlord hereby acknowledges and agrees that Grand Garden Tenant, LLC is an Affiliate of Tenant.

ARTICLE XXIII

REPORTING; CONFIDENTIALITY

23.1 Estoppel Certificates and Financial Statements.

(a) Estoppel Certificate. Each of Landlord and Tenant shall, at any time and from time to time, but no more frequently than twice per Lease Year, upon receipt of not less than ten (10) Business Days' prior written request from the other party hereto, furnish an estoppel certificate executed by an appropriate officer with knowledge of the matters set forth therein (an "**Estoppel Certificate**") certifying (i) that this Lease is unmodified and in full force and effect, or that this Lease is in full force and effect as modified and setting forth the modifications; (ii) the Rent and Additional Charges payable hereunder and the dates to which the Rent and Additional Charges payable have been paid; (iii) that the address for notices to be sent to the party furnishing such Estoppel Certificate is as set forth in this Lease (or, if such address for notices has changed, the correct address for notices to such party); (iv) whether or not, to its actual knowledge, such party or the other party hereto is in default in the performance of any covenant, agreement or condition contained in this Lease (together with, back-up calculation and information reasonably necessary to support the determination and calculation of the financial calculations required under this Lease, including, without limitation, the calculation of the Escalation amount and Tenant's compliance with **Section 23.3**) and, if so, specifying each such default of which such party may have knowledge; (v) that Tenant is in possession of the Leased Property; and (vi) responses to such other questions or statements of fact as such other party, any ground or underlying landlord, any purchaser or any current or prospective Fee Mortgagee or Permitted Leasehold Mortgagee or Permitted Credit Facility Lender shall reasonably request. Landlord's or Tenant's failure to deliver such statement within such time shall constitute an acknowledgement by such failing party that, to such party's knowledge, (x) this Lease is unmodified and in full force and effect except as may be represented to the contrary by the other party; (y) the other party is not in default in the performance of any covenant, agreement or condition contained in this Lease; and (z) the other matters set forth in such request, if any, are true and correct. Any such certificate furnished pursuant to this **Article XXIII** may be relied upon by the receiving party and any current or prospective Fee Mortgagee, Permitted Leasehold Mortgagee, Permitted Credit Facility Lender, ground or underlying landlord or purchaser of the Leased Property. Each Guarantor or Tenant, as the case may be, shall deliver a written notice within ten (10) Business Days of obtaining knowledge of the occurrence of a default hereunder. Such notice shall include a detailed description of the default and the actions such Guarantor or Tenant has taken or shall take, if any, to remedy such default.

(b) Statements. Tenant shall furnish the following statements to Landlord (which Tenant acknowledges and agrees may be provided by Landlord to any Landlord's Parent, MGP REIT and BREIT):

(i) On the earlier of five (5) Business Days following (x) each date specified in the Exchange Act and the SEC's related rules and regulations (including any additional time permitted under Rule 12b-25 or any successor provision thereof) that the

Tenant's Parent is (or would be, as a large accelerated filer, if not required to file SEC Reports at that time) required to file SEC Reports (each a "**SEC Filing Deadline**") and (y) the date the Tenant's Parent files its SEC Reports with the SEC: (A) Tenant's Parent's Financial Statements required to be included in such SEC Report (or which would be, if not required to file SEC Reports at that time) or the SEC Report containing such Financial Statements; (B) a certificate, executed by a Responsible Officer of Tenant certifying that no default has occurred under this Lease or, if such a default has occurred, specifying the nature and status of such default; and (C) (1) with respect to annual Financial Statements, a report with respect to Tenant's Parent's Financial Statements from Tenant's Parent's independent registered public accounting firm, which report shall not be subject to any qualification or exception expressing substantial doubt about the ability of the Tenant's Parent and its Subsidiaries to continue as a "going concern" or any exception as to the scope of such audit (excluding any qualification as to going concern relating to any debt maturities in the twelve month period following the date such report is delivered or any projected financial performance or covenant default in any Indebtedness or this Lease in such twelve month period) and that such Financial Statements have been prepared in accordance with GAAP and Tenant's Parent's accountants have examined such Financial Statements in accordance with the standards of the PCAOB (or generally accepted auditing standards, if not required to file SEC Reports at such time) and (2) with respect to quarterly Financial Statements, a certificate, executed by a Responsible Officer of the Tenant's Parent, certifying that such Financial Statements fairly present, in all material respects, the financial position and results of operations of Tenant's Parent and its Subsidiaries on a consolidated basis in accordance with GAAP as at such date and for such period (subject to normal year-end audit adjustments, the absence of footnotes and other informational disclosures customarily omitted from interim financial statements). Financial statements required to be delivered pursuant to this **Section 23.1(b)(i)** will be deemed delivered to the extent such documents are included in materials filed with the SEC and shall be deemed to have been delivered on the date such documents are publicly available on the SEC's website;

(ii) Within sixty (60) days after the end of each of the Tenant's Fiscal Years (commencing with the Fiscal Year ending December 31, 2020), (a) a budget and projection by fiscal quarter for the Fiscal Year in which the budget is delivered, including projected Net Revenue, Net Income, EBITDA, EBITDAR, Net Revenue by division, and Operating Expenses by division with respect to each Operating Subtenant (or Tenant with respect to any portion of a Facility that is not subject to an Operating Sublease), (b) a budget and projection by fiscal year for the second and third subsequent Fiscal Years, including projected Net Revenue, EBITDA, EBITDAR with respect to each Operating Subtenant (or Tenant with respect to any portion of a Facility that is not subject to an Operating Sublease), (c) a capital budget for each Operating Subtenant for the following Fiscal Year. EBITDA shall be calculated in accordance with **Exhibit L**.

(iii) Within twenty (20) days after the expiration of any calendar quarter, Tenant shall deliver to Landlord a Financial Covenant compliance report in substantially in the form attached hereto as **Exhibit J**, which shall include a calculation of the Financial Covenant and Listing Covenant under **Section 23.3** as of the relevant date as applicable, based upon the preliminary statements for such Test Period (the "**Preliminary Financial Covenant Compliance Report**").

(iv) Within sixty (60) days after the expiration of any calendar quarter, Tenant shall deliver to Landlord a Financial Covenant compliance report in substantially in the form attached hereto as **Exhibit J**, which report shall include an Officer's Certificate certifying (1) that the Financial Covenant and Listing Covenant are in compliance under **Section 23.3** together with reasonable detail evidencing such compliance, and (2) that such items are true, correct, accurate, and complete and fairly present the financial condition and results of the operations of the Operating Subtenants (or Tenant with respect to any portion of a Facility that is not subject to an Operating Sublease) (subject to normal year-end adjustments) as of the relevant date as applicable (the "**Final Financial Covenant Compliance Report**").

(v) Within sixty (60) days after the expiration of any calendar quarter, Tenant shall deliver to Landlord a quarterly operating report in substantially the form attached hereto as **Exhibit M**, accompanied by an Officer's Certificate stating that such items in such quarterly operating report are true, correct, accurate, and complete and fairly present the financial condition and results of the operations of the Operating Subtenants (or Tenant with respect to any portion of a Facility that is not subject to an Operating Sublease) (subject to normal year-end adjustments) as of the relevant date as applicable, which reports shall include: (a) an occupancy report including the average daily rate and Net Revenue per available room and (b) quarterly, year to date and trailing twelve months operating statements noting Net Revenue, Net Income, EBITDA, EBITDAR, Net Revenue by division, Operating Expenses by division.

(vi) Commencing with the year ended December 31, 2020, Tenant will furnish to Landlord annually within one hundred twenty (120) days following the end of such Fiscal Year, a complete copy of the Tenant's and Operating Subtenants' combined audited annual financial report with statements in accordance with GAAP covering the Facilities, which shall be accompanied by a report from an Approved Accounting Firm, which report shall indicate that such financial statements are prepared in accordance with GAAP as of such date and shall not be subject to any qualification or exception expressing substantial doubt about the ability of Tenant and Operating Subtenants, collectively, to continue as a "going concern" or any exception as to the scope of such audit (excluding any qualification as to going concern relating to any debt maturities in the twelve month period following the date such report is delivered or any projected financial performance or covenant default in any Indebtedness or this Lease in such twelve month period). Promptly following receipt by Landlord of each audited annual financial report, together with reasonable evidence of the third-party costs and expenses incurred by Tenant or its Affiliates in connection with such report, Landlord shall be required to reimburse Tenant or its Affiliates for one-half of all such third-party costs and expenses incurred by Tenant or its Affiliates.

(vii) Tenant will furnish to Landlord annually within ninety (90) days following the end of such Fiscal Year, the Annual Certificate.

(viii) (a) Such additional financial information and projections as may be reasonably requested by Landlord in connection with syndications, private placements or public offerings by or on behalf of Landlord of debt securities or loans or equity or hybrid securities and (b) such additional information and unaudited quarterly financial information concerning the Leased Property and Tenant as Landlord or its Affiliates may require for their filings with the SEC under both the Securities Act and the Exchange Act, including, but not limited to SEC Reports and registration statements to be filed by Landlord or its Affiliates during the Term of

this Lease, the Internal Revenue Service and any other federal, state or local regulatory agency with jurisdiction over Landlord or its Subsidiaries or Affiliates; provided, however, that if the SEC requires Landlord or its Affiliates to include Tenant's Parent's Financial Statements in its SEC Reports, Tenant shall use its commercially reasonable efforts to furnish substantially complete drafts of Tenant's Parent's annual Financial Statements to Landlord no later than fifty-five (55) calendar days after the end of such year and Tenant Parent's quarterly Financial Statements to Landlord no later than thirty-five (35) calendar days after the end of such quarter.

(ix) Prompt Notice to Landlord of any action, proposal or investigation by any agency or entity, or complaint to such agency or entity, (any of which is called a "**Proceeding**"), known to Tenant, the result of which Proceeding would reasonably be expected to revoke or suspend or terminate or modify in a way materially adverse to Tenant, or fail to renew or fully continue in effect, any license or certificate or operating authority pursuant to which Tenant carries on any material part of the Primary Intended Use of all or any portion of the Leased Property.

(x) Tenant further agrees to provide the financial and operational reports to be delivered to Landlord under this Lease in such electronic format(s) as may reasonably be required by Landlord from time to time in order to facilitate Landlord's internal financial and reporting database. Tenant also agrees that Landlord shall have audit rights with respect to such information to the extent required to confirm Tenant's compliance with the terms of this Lease (including, without limitation, calculation of EBITDAR and expenditures with respect to Required CapEx). Tenant shall not change the accounting practices or policies described in this Lease for the purpose of calculating EBITDAR and expenditures with respect to Required CapEx, which the parties agree is based on Tenant's Existing Accounting Guidelines. Furthermore, Tenant will not enter into any "off balance sheet arrangement" outside the normal course of operations as determined in accordance with GAAP as in effect on the date of this Lease.

(c) Notwithstanding the foregoing provisions of this **Section 23.1**, Tenant shall not be obligated (1) to provide information that is subject to (i) a bona fide confidentiality agreement, (ii) the quality assurance immunity, (iii) attorney-client privilege or the attorney work product doctrine or (iv) in the case of **Section 23.1(b)(x)** only, creates an unreasonably excessive expense or burden on Tenant or any of its Subsidiaries to produce or otherwise disclose or (2) to provide information or assistance that could reasonably be expected to give Landlord or its Affiliates a "competitive" advantage in more than a de minimis respect with respect to markets in which Landlord or any of Landlord's Affiliates and Tenant, Tenant's Parent or any of Tenant's Affiliates might be competing at any time ("**Restricted Information**"), it being understood that Restricted Information shall not include (1) budget and other reporting information which Landlord is obligated to deliver pursuant to a Fee Mortgage, (2) financial information concerning the Leased Property and Tenant as Landlord or its Affiliates may require for ongoing filings with the SEC under both the Securities Act and the Exchange Act, including, but not limited to SEC Reports and registration statements to be filed by Landlord or its Affiliates during the Term of this Lease, the Internal Revenue Service and any other federal, state or local regulatory agency with jurisdiction over Landlord or its Subsidiaries or Affiliates or (3) revenue and expense information relevant to Landlord's calculation and verification of (x) EBITDA and Net Revenue hereunder or (y) Tenant's compliance with **Section 23.3** hereof (provided, that Landlord shall in such instance first execute a nondisclosure agreement in a form reasonably satisfactory to Tenant

with respect to such information). Landlord shall retain audit rights with respect to Restricted Information to the extent required to confirm Tenant's compliance with the terms of this Lease (and Landlord's or its Affiliates compliance with SEC, Internal Revenue Service and other legal and regulatory requirements) and provided, that appropriate measures are in place to ensure that only Landlord's or its Affiliates' auditors and attorneys (and not Landlord or any of Landlord's other Affiliates) are provided access to such information. In addition, Landlord shall not disclose any Restricted Information to any Person or any employee, officer or director of any Person (other than Landlord, Landlord's Parents or a Subsidiary of Landlord, in each case, on a "need to know" basis) that directly or indirectly owns or operates any Gaming business or is a Tenant Competitor; provided, however, that in no event shall Landlord knowingly disclose any Restricted Information or any other information that is Confidential Information (except as permitted by **Section 23.2(b)**) provided pursuant to this Lease to any Person involved in the ownership (directly or indirectly), management or operation of any Tenant Competitor. Notwithstanding anything to the contrary contained herein, Tenant acknowledges that Blackstone Real Estate Partners VII indirectly owns the Cosmopolitan of Las Vegas and such ownership shall not result in Tenant being entitled to withhold delivery to Landlord of the information required to be delivered to Landlord pursuant to the foregoing provisions of **Section 23.1** or to otherwise prohibit any employees of The Blackstone Group from receiving such information provided that Landlord takes reasonable measures and precautions to ensure that no Restricted Information is made available to those persons employed by portfolio companies of The Blackstone Group involved with the day-to-day management or operation of any Tenant Competitor which is Controlled by Landlord's Affiliates.

(d) Notwithstanding anything to the contrary contained herein, for purposes of all calculations under this Lease, Tenant and Tenant's Parent shall not materially change Tenant's or Tenant's Parent's corporate and shared services expense allocation practices or policies in existence on the date of this Lease outlined in **Schedule 7**, which practices and policies provide that Tenant will continue to receive allocations in a Non-Discriminatory manner for corporate and shared services consistent with the allocation of costs to Tenant's Parent's other operating resorts; provided, however, that Tenant and Tenant's Parent may change the allocation practices and policies to add newly provided services and change allocation methodologies so long as such changes would not materially alter the allocation amounts. Further, notwithstanding anything to the contrary contained herein, all provisions in this Lease with respect to the financial calculations under this Lease shall only apply to the computation of the items specified in this Lease and shall in no way restrict the way such items are calculated or otherwise treated by Tenant in Tenant's financial reporting to other Persons, in Tenant's public filings or for any other purpose.

(e) In connection with the incurrence of any Fee Mortgage and any Fee Mortgagee Securitization or entry into other Debt Agreements or Debt Facilities relating to the Leased Property, Tenant shall, upon the written request of Landlord:

(A) at the sole cost and expense of Landlord, reasonably cooperate with Landlord in providing information with respect to the Property, Tenant or its Affiliates, to the extent reasonably requested by such Fee Mortgagee in order to satisfy the market standards to which such Fee Mortgagee customarily adheres or which may be reasonably required by prospective arrangers, underwriters, investors, lenders and/or rating agencies;

(B) use commercially reasonable efforts to review, re-review and, to the extent accurate, approve (and to the extent inaccurate, identify the same with particularity) portions of any Disclosure Document (or any other similar material required to be reviewed by Landlord under a Fee Mortgage) identified by Landlord to be reviewed by Tenant, which portions shall be limited to any portions relating solely to Tenant Information; provided, however, that, except as expressly provided in **Section 21.1**, in no event will Tenant have any liability with respect to any of the matters described in this **Section 23.1(e)**;

(C) make appropriate officers of Tenant available for a reasonable number of due diligence meetings and for participation in a reasonable number of meetings, presentations, road shows and sessions with rating agencies and prospective Fee Mortgagees all at times to be mutually agreed by Tenant, Landlord and such prospective Fee Mortgagees, and provide timely and reasonable access during normal business hours to diligence materials and the Leased Property to allow sources of financing and their representatives to complete all customary due diligence;

(D) providing reasonable assistance with respect to the review and granting of mortgages and security interests as collateral for any debt financing; and

(E) reasonably cooperate with the marketing efforts of Landlord and any Fee Mortgagee or prospective Fee Mortgagee of any Fee Mortgage or any proposed Fee Mortgage.

23.2 Confidentiality; Public Offering Information.

(a) The parties recognize and acknowledge that they may receive certain Confidential Information of the other party. Each party agrees that neither such party nor any of its Representatives acting on its behalf shall, during or within five (5) years after the termination or expiration of this Lease, directly or indirectly use any Confidential Information of the other party or disclose Confidential Information of the other party to any Person for any reason or purpose whatsoever, except as reasonably required in order to comply with the obligations and otherwise as permitted under the provisions of this Lease. Notwithstanding the foregoing, (1) in the event that a party or any of its Representatives is requested or becomes legally compelled (pursuant to any legal, governmental, administrative or regulatory order, authority, process, examination or request) to disclose any Confidential Information of the other party, it will, to the extent reasonably practicable and not prohibited by law, provide the party to whom such Confidential Information belongs prompt Notice of the existence, terms or circumstances of such event so that the party to whom such Confidential Information belongs may seek a protective order or other appropriate remedy or waive compliance with the provisions of this **Section 23.2(a)**, (2) each party may disclose Confidential Information to its Affiliates (so long as such Affiliates are not Tenant Competitors) and to its and its Affiliates' respective partners, directors, officers, employees, agents, trustees, advisors and 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), (3) each party may disclose Confidential Information to any other party hereto, (4) in connection with the exercise of any

remedies hereunder or any action or proceeding relating to this Lease or the enforcement of rights hereunder or (5) on a confidential basis to any rating agency in connection with rating any party hereto or their respective subsidiaries. In the event that such protective order or other remedy is not obtained or the party to whom such Confidential Information belongs waives compliance with this **Section 23.2(a)**, the party compelled to disclose such Confidential Information will furnish only that portion of the Confidential Information or take only such action as, based upon the advice of your legal counsel, is legally required and will use commercially reasonable efforts to obtain reliable assurance that confidential treatment will be accorded any Confidential Information so furnished. The party compelled to disclose the Confidential Information shall cooperate with any action reasonably requested by the party to whom such Confidential Information belongs to obtain a protective order or other reliable assurance that confidential treatment will be accorded to the Confidential Information.

(b) Notwithstanding anything to the contrary in this **Article XXIII**, Tenant specifically agrees that Landlord may disclose (A) information permitted to be disclosed under the Master Transaction Agreement, (B) information about the Facilities themselves (not concerning the operation of the Facilities), (C) this Lease and its terms, (D) the EBITDAR to Rent Ratio of the Tenant Parties and (E) financial information and other information concerning the operation of the Facilities (1) which is publicly available, (2) that Landlord, Landlord's Parents or their respective Affiliates are, in Landlord's, Landlord's Parents' or their respective Affiliates' reasonable judgment, required to disclose (x) to any Fee Mortgagee (and any agents and lenders party to material debt instruments entered into by Landlord), a Landlord's Parent (or its Affiliates) (which may include the deliveries in **Section 23.1(b)(i)-(viii)**) or (y) in ongoing filings with the SEC under either the Securities Act and the Exchange Act, or (3) the disclosure of which is approved by Tenant in writing, which approval may not be unreasonably withheld, in each case, in offering memoranda or prospectuses or confidential information memoranda, or similar publications or marketing materials, rating agency presentations, investor presentations or Disclosure Documents in connection with syndications, private placements or public offerings of securities or loans by or on behalf of the Landlord or its Affiliates, and SEC Reports and any other reporting requirements under applicable federal and state laws, including those of any successor to or Affiliate of Landlord, provided, that, with respect to matters permitted to be disclosed solely under **clause (E)(3)**, the recipients thereof are advised that they shall be obligated to use commercially reasonable efforts to maintain the confidentiality thereof pursuant to **Section 23.2(a)** or pursuant to confidentiality provisions substantially similar thereto and (or in accordance with the standard securitization or syndication process or customary market standards for dissemination of such type of information, including "click through" or other affirmative actions or deemed acknowledgements or representations on the part of the recipient to receive such information) to comply with all federal, state and other securities laws applicable with respect to such information. Unless otherwise agreed by Tenant, Landlord shall not materially revise or change the wording of information previously publicly disclosed by Tenant and furnished to Landlord pursuant to **Section 23.1** or this **Section 23.2** and Landlord's Form 10-Q or Form 10-K (or supplemental information filed or furnished in connection therewith) shall not disclose the operational results of the Facilities prior to Tenant's Parent's, Tenant's or their respective Affiliate's public disclosure thereof so long as Tenant's Parent, Tenant or such Affiliate reports such information in a timely manner consistent with historical practices and SEC disclosure requirements. Tenant agrees to provide such other reasonable information and, if necessary, reasonable participation in road shows and other presentations at Landlord's sole cost and expense, with respect to Tenant and its Leased Property to facilitate a public or private debt

or equity offering or syndication by or on behalf of Landlord or any direct or indirect parent entity of Landlord or to satisfy Landlord's or any direct or indirect parent entity of Landlord's SEC disclosure requirements. In this regard, Landlord shall provide to Tenant a copy of any information prepared by Landlord that includes Confidential Information regarding Tenant to be published, and Tenant shall have a reasonable period of time (not to exceed three (3) Business Days) after receipt of such information to notify Landlord of any corrections. Notwithstanding anything to the contrary in this **Section 23.2**, neither the Tenant, any Operating Subtenant nor any of their respective Subsidiaries shall be required to (A) take any action that unreasonably interferes with the ongoing operations of the Tenant (or any Operating Subtenant), (B) take any action contingent upon any debt or equity offering or syndication or enter into or execute any agreement or document unless the effectiveness thereof shall be conditioned upon, or become operative after, the occurrence of such debt or equity offering or syndication, (C) take any action that would result in any officer, director or other representative of the Tenant or any of its Subsidiaries incurring any personal liability with respect to any matters relating to such debt or equity offering or syndication, (D) deliver or cause the delivery of any legal opinions or any certificate as to solvency or any other certificate necessary for such debt or equity offering or syndication that is effective prior thereto, (E) deliver or cause the delivery of any pro forma financial information of Tenant or any financial information of Tenant that differs materially in form or substance from that prepared by the Tenant with respect to such period or (F) take any action that would conflict with, violate or result in a material breach of or material default under this Lease, any organizational documents of the Tenant or any of its Subsidiaries or any applicable law binding on the Tenant or any of its Subsidiaries.

(c) Except as provided in **clause (a)** or **(b)** above or **Section 23.4**, nothing herein shall permit the disclosure of Confidential Information regarding Tenant, Tenant's Parent or their Affiliates to any Tenant Competitor.

23.3 Financial Covenants. If (commencing with the first full fiscal quarter ended after the Commencement Date) either (a) (x) the EBITDAR to Rent Ratio determined on the last day of the most recent Test Period is less than 1.6:1 and (y) Tenant's Parent's Market Capitalization determined on the last day of the most recent Test Period is less than \$6,000,000,000; or (b) Tenant's Parent is no longer publicly traded and listed on the New York Stock Exchange, AMEX or NASDAQ (or any reasonably comparable successor exchange in nature to such exchanges as of the date hereof) and the EBITDAR to Rent Ratio determined on the last day of the most recent Test Period is less than 2:1 (the required EBITDAR to Rent Ratio in **clause (a)** being referred to as the "**Applicable Coverage Ratio**," the test in **clause (a)** being referred to as the "**Financial Covenant**" and the test in **clause (b)** being referred to as the "**Listing Covenant**"), then, in addition to Tenant's obligation to pay Rent as provided herein, Tenant shall use commercially reasonable efforts to, within fifteen (15) days, but in any event shall, within thirty (30) days after the delivery of the Preliminary Financial Covenant Compliance Report (or the date such report is due or the commencement date of a Covenant Failure Period), either or a combination of (at its option) (1) cause an amount equal to the Rent that would be payable for the period of one (1) calendar year commencing immediately subsequent to the date of such determination (taking into account the Escalations) to be deposited into a Covenant Security Escrow Account in accordance with Covenant Security Escrow Instructions, or (2) provide one or more Letters of Credit in an aggregate amount equal to the Rent that would be payable for the period of one (1) calendar year commencing immediately subsequent to the date of such determination (taking into account the Escalations). At all times until the Covenant Security

Coverage Cure has occurred, the amount of the Covenant Security Escrow Account (or the amount of the Letters of Credit) shall equal the Rent that would be payable for the next one (1) calendar years on any such date (taking into account the Escalations), and Tenant shall increase the funds in the Covenant Security Escrow Account (or the amount of the Letters of Credit) in order to satisfy any deficiency within five (5) Business Days' notice from Landlord. In the event that Tenant has delivered a Renewal Notice and a Covenant Security Coverage Cure has not occurred, then within five (5) Business Days of the Fair Market Rent being conclusively determined in accordance with this Lease, Tenant shall be required to increase the funds in the Covenant Security Escrow Account (or the amount of the Letters of Credit) in order to reflect the increase in the Base Rent (and any Escalations for the next one year period). The amounts held in a Covenant Security Escrow Account shall remain in such account except to the extent that they are required to be released to Landlord or Tenant in accordance with the Covenant Security Escrow Instructions. Upon the occurrence of a Covenant Security Coverage Cure or the expiration or earlier termination of this Lease (other than a termination as a result of an Event of Default by Tenant), if Tenant has deposited funds or Letters of Credit pursuant to **clauses (1) or (2)** of the first sentence in this **Section 23.3**, such funds or Letters of Credit (in each case, to the extent remaining) shall be returned to Tenant as soon as reasonably practical. For purposes of calculating the Financial Covenant and the Listing Covenant during the First Lease Year, such calculations will be computed on a pro forma basis as if this Lease had been in effect during the entirety of such period. Landlord shall be entitled to collaterally assign its rights with respect to the Covenant Security Escrow Account to Fee Mortgagee. Notwithstanding anything to the contrary contained herein, the failure to timely deliver a Preliminary Financial Covenant Compliance Report or Final Financial Covenant Compliance Report shall commence a Covenant Failure Period.

23.4 Landlord Obligations. Landlord acknowledges and agrees that certain of the information contained in the Financial Statements or any other information provided by Tenant may be non-public financial or operational Confidential Information with respect to Tenant or its Affiliates, including with respect to Tenant's or any Operating Subtenant's operation of the Leased Property. Landlord further agrees to maintain the confidentiality of such non-public Confidential Information; provided, however, that notwithstanding the foregoing and notwithstanding anything to the contrary in **Section 23.2(a)** hereof or otherwise herein, Landlord shall have the right to share such information in compliance with **Section 23.2(b)** and with MGP REIT, MGP OP, BREIT, BREIT OP and their respective officers, employees, directors, Fee Mortgagee, agents and lenders party to material debt instruments entered into by MGP REIT, MGP OP, BREIT, BREIT OP or Landlord or any direct or indirect parent entity of Landlord, actual or prospective arrangers, underwriters, investors, lenders, servicers or trustees with respect to Indebtedness or Equity Interests that may be issued by MGP REIT, MGP OP, BREIT or Landlord, rating agencies, accountants, attorneys and other consultants of Landlord, MGP REIT, MGP OP, BREIT, or BREIT OP (all of the foregoing, collectively, the "**Landlord Representatives**"), provided, that such Landlord Representative is advised (x) of the confidential nature of such Confidential Information, to the extent such information is not publicly available, to use commercially reasonable efforts to maintain the confidentiality thereof pursuant to **Section 23.2(a)** or pursuant to confidentiality provisions substantially similar thereto (or in accordance with the standard securitization or syndication process or customary market standards for dissemination of such type of information, including "click through" or other affirmative actions and/or deemed acknowledgements or representations on the part of the recipient to receive such information) and to comply with all federal, state and other securities laws applicable with

respect to such information, (y) that such information is not permitted to be disclosed to any Tenant Competitor, provided that this **clause (y)** shall not be applicable to any Fee Mortgage or Fee Mortgage Securitization, and (z) neither Landlord nor any Landlord Representative shall be permitted to engage in any transactions with respect to the stock or other equity or debt securities or syndicated loans of Tenant or Tenant's Parent based on any such Confidential Information provided to or by or on behalf of Landlord (provided, that this provision shall not govern the provision of information by Tenant or Tenant's Parent). In addition to the foregoing, Landlord agrees that, upon request of Tenant, Landlord shall from time to time provide such information as may be reasonably requested by Tenant with respect to Landlord's capital structure and/or any financing secured by this Lease or the Leased Property in connection with Tenant's review of the treatment of this Lease under GAAP. In connection therewith, Tenant agrees to maintain the confidentiality of any such Confidential Information; provided, however, Tenant shall have the right to share such information with Tenant's Parent and Tenant and Tenant's Parent's respective officers, employees, directors, Permitted Leasehold Mortgagees, Permitted Credit Facility Lenders, agents and lenders party to material debt instruments entered into by Tenant or Tenant's Parent, actual or prospective arrangers, underwriters, investors or lenders with respect to Indebtedness or Equity Interests that may be issued by Tenant or Tenant's Parent, rating agencies, accountants, attorneys and other consultants (the "**Tenant Representatives**") so long as such Tenant Representative is advised of the confidential nature of such information and agrees, to the extent such information is not publicly available, (i) to maintain the confidentiality thereof pursuant to **Section 23.2(a)** or pursuant to confidentiality provisions substantially similar thereto (or in accordance with the standard syndication process or customary market standards for dissemination of such type of information, including "click through" or other affirmative actions on the part of the recipient to receive such information) and to comply with all federal, state and other securities laws applicable with respect to such information and (ii) not to engage in any transactions with respect to the stock or other equity or debt securities or syndicated loans of MGP REIT, MGM OP, BREIT, BREIT OP or Landlord or their respective Affiliates based on any such Confidential Information provided to, by or on behalf of Tenant or Tenant's Parent (provided, that this provision shall not govern the provision of information by Landlord).

ARTICLE XXIV

LANDLORD'S RIGHT TO INSPECT

24.1 Landlord's Right to Inspect. Subject to any restrictions imposed by any Gaming Regulations or Gaming Authorities, upon reasonable advance notice to Tenant, Tenant shall permit Landlord and its authorized representatives (including any Fee Mortgagee and its representatives) to inspect the Leased Property during usual business hours. Landlord shall take care to minimize disturbance of the operations on the Leased Property, except in the case of emergency. Landlord shall indemnify and hold Tenant and any Operating Subtenant harmless from and against any claims, losses, costs or expenses arising as a result of Landlord's or its representative's entry onto the Leased Property.

ARTICLE XXV

NO WAIVER

25.1 No Waiver. No delay, omission or failure by Landlord or Tenant to insist upon the strict performance of any term hereof or to exercise any right, power or remedy hereunder

and no acceptance of full or partial payment of Rent during the continuance of any default or Event of Default shall impair any such right or constitute a waiver of any such breach or of any such term. No waiver of any breach shall affect or alter this Lease, which shall continue in full force and effect with respect to any other then existing or subsequent breach.

ARTICLE XXVI

REMEDIES CUMULATIVE

26.1 Remedies Cumulative. Unless otherwise provided herein and to the extent permitted by law, each legal, equitable or contractual right, power and remedy of Landlord now or hereafter provided either in this Lease or by statute or otherwise shall be cumulative and concurrent and shall be in addition to every other right, power and remedy and the exercise or beginning of the exercise by Landlord of any one or more of such rights, powers and remedies shall not preclude the simultaneous or subsequent exercise by Landlord of any or all of such other rights, powers and remedies.

ARTICLE XXVII

ACCEPTANCE OF SURRENDER

27.1 Acceptance of Surrender. No surrender to Landlord of this Lease or of the Leased Property or any part thereof, or of any interest therein, shall be valid or effective unless agreed to and accepted in writing by Landlord, and no act by Landlord or any representative or agent of Landlord, other than such a written acceptance by Landlord, shall constitute an acceptance of any such surrender.

ARTICLE XXVIII

NO MERGER

28.1 No Merger. There shall be no merger of this Lease or of the Leasehold Estate created hereby by reason of the fact that the same Person may acquire, own or hold, directly or indirectly, (i) this Lease or the Leasehold Estate created hereby or any interest in this Lease or such Leasehold Estate and (ii) the fee estate in the Leased Property.

ARTICLE XXIX

CONVEYANCE BY LANDLORD

29.1 Conveyance by Landlord. If Landlord or any successor owner of the Leased Property shall convey the Leased Property in accordance with **Section 18.1** and the other terms of this Lease other than as security for a debt, and the grantee or transferee expressly assumes all obligations of Landlord arising after the date of the conveyance, Landlord or such successor owner, as the case may be, shall thereupon be released from all future liabilities and obligations of Landlord under this Lease arising or accruing from and after the date of such conveyance or other transfer and all such future liabilities and obligations shall thereupon be binding upon the new owner.

ARTICLE XXX

QUIET ENJOYMENT

30.1 Quiet Enjoyment. So long as Tenant shall pay the Rent as the same becomes due and shall fully comply with all of the terms of this Lease and fully perform its obligations hereunder, Tenant shall peaceably and quietly have, hold and enjoy the Leased Property for the Term, free of any claim or other action by Landlord or anyone claiming by, through or under Landlord, but subject to all liens and encumbrances of record as of the Commencement Date or specifically provided for or permitted in this Lease or consented to by Tenant in writing. No failure by Landlord to comply with the foregoing covenant shall give Tenant any right to cancel or terminate this Lease or abate, reduce or make a deduction from or offset against the Rent or any other sum payable under this Lease, or to fail to perform any other obligation of Tenant hereunder. Notwithstanding the foregoing, Tenant shall have the right, by separate and independent action to pursue any claim it may have against Landlord as a result of a breach by Landlord of the covenant of quiet enjoyment contained in this **Article XXX**.

ARTICLE XXXI

LANDLORD'S FINANCING

31.1 Landlord's Financing. Without the consent of Tenant, Landlord may from time to time, directly or indirectly, create or otherwise cause to exist one or more Facility Mortgage upon the Leased Property or any portion thereof or interest therein. This Lease is and at all times shall be subject and subordinate to any such Facility Mortgage which may now or hereafter affect the Leased Property or any portion thereof or interest therein and to all renewals, modifications, consolidations, replacements, restatements and extensions thereof or any parts or portions thereof; provided, however, that the subjection and subordination of this Lease and Tenant's leasehold interest hereunder to a Facility Mortgage or any Foreclosure Purchaser (as defined below) shall be conditioned upon the execution by the holder of each Facility Mortgage and delivery to Tenant of an SNDA substantially in the form attached hereto as **Exhibit F-2**; provided, that upon the request of Landlord, such SNDA shall be executed by Tenant as well as Landlord and be in substantially the form attached hereto as **Exhibit F-2**. Each such SNDA shall bind such holder of such Facility Mortgage and its successors and assigns as well as any person who acquires any portion of the Leased Property by assignment or in a foreclosure or similar proceeding or in a transfer in lieu of any such foreclosure or a successor owner of the Leased Property as well as their respective successors and assigns (each, a "**Foreclosure Purchaser**"), and which shall provide that the holder of such Facility Mortgage, and any Foreclosure Purchaser shall not disturb Tenant's leasehold interest or possession of the Leased Property in accordance with the terms hereof, or any of Tenant's rights, privileges and options, and shall give effect to this Lease, including the provisions of **Article XVII** which benefit any Permitted Leasehold Mortgagee (as if such Facility Mortgagee or Foreclosure Purchaser were the landlord under this Lease (it being understood that if an Event of Default has occurred and is continuing, at such time such parties shall be subject to the terms and provisions hereof concerning the exercise of rights and remedies upon such Event of Default, including the provisions of **Articles XVI** and **XXXVI**)). In connection with the foregoing and at the request of Landlord, Tenant shall promptly execute an SNDA, in form and substance substantially in the form of **Exhibit F-2** or otherwise reasonably satisfactory to Tenant, and the Facility Mortgagee or prospective Facility

Mortgagee, as the case may be, which will incorporate the terms set forth in the preceding sentence. Except for the documents described in the preceding sentences, this provision shall be self-operative and no further instrument of subordination shall be required to give it full force and effect. If, in connection with obtaining any Facility Mortgage for the Leased Property or any portion thereof or interest therein, a Facility Mortgagee or prospective Facility Mortgagee shall request (A) reasonable cooperation from Tenant, Tenant shall provide the same at no cost or expense to Tenant, it being understood and agreed that Landlord shall be required to reimburse Tenant for all such costs and expenses so incurred by Tenant, including, but not limited to, its reasonable attorneys' fees, or (B) reasonable amendments or modifications to this Lease as a condition thereto, Tenant hereby agrees to execute and deliver the same so long as any such amendments or modifications do not (i) increase Tenant's monetary obligations under this Lease, (ii) adversely increase Tenant's non-monetary obligations under this Lease in any material respect or decrease Landlord's obligations in any material respect, (iii) diminish Tenant's rights under this Lease in any material respect, (iv) adversely impact the value of the Leased Property by more than a de minimis extent or otherwise have more than a de minimis effect on the Leased Property, Tenant or Landlord, (v) result in this Lease not constituting a "true lease" or (vi) result in a default under any Permitted Leasehold Mortgage. The foregoing is not intended to vitiate or supersede the provisions, terms and conditions of **Section 31.1** hereof.

31.2 Attornment. If Landlord's interest in the Leased Property or any portion thereof or interest therein is sold, conveyed or terminated upon the exercise of any remedy provided for in any Facility Mortgage Documents (or in lieu of such exercise), or otherwise by operation of law: (a) at the request and option of the new owner or superior lessor, as the case may be, Tenant shall attorn to and recognize the new owner or superior lessor as Tenant's "landlord" under this Lease or enter into a new lease substantially in the form of this Lease with the new owner or superior lessor, and Tenant shall take such actions to confirm the foregoing within ten (10) Business Days after request; and (b) the new owner or superior lessor shall not be (i) liable for any act or omission of Landlord under this Lease occurring prior to such sale, conveyance or termination; (ii) subject to any offset, abatement or reduction of rent because of any default of Landlord under this Lease occurring prior to such sale, conveyance or termination; (iii) bound by any previous material modification or amendment to this Lease or any previous prepayment of more than one month's rent, unless such material modification, amendment or prepayment shall have been approved in writing by the applicable Facility Mortgagee (to the extent such approval was required at the time of such amendment or modification or prepayment under the terms of the applicable Facility Mortgage Documents) or, in the case of such prepayment, such prepayment of rent has actually been delivered to such new owner or superior lessor or in either case, such modification, amendment or prepayment occurred before Landlord provided Tenant with notice of the Facility Mortgage and the identity and address of the Facility Mortgagee; or (iv) liable for any security deposit or other collateral deposited or delivered to Landlord pursuant to this Lease unless such security deposit or other collateral has actually been delivered to such new owner or superior lessor.

31.3 Compliance with Fee Mortgage Documents.

(a) If requested by Landlord and the Fee Mortgagee, Tenant shall make Rent payments into “lockbox accounts” maintained for the benefit of Fee Mortgagee.

(b) Tenant shall perform or cause to be performed by Operating Subtenant the repairs at the Facilities relating to material life safety issues which have been identified by the Fee Mortgagee based upon the property condition reports commissioned in connection with the Fee Mortgage, as described on **Schedule 6** attached hereto (the “Initial Fee Mortgagee Required Repairs”). Tenant shall complete or cause to be completed by Operating Subtenant the Initial Fee Mortgagee Required Repairs on or before the date that is eighteen (18) months after the date hereof. Any funds spent by Tenant and/or any Operating Subtenant on the Initial Fee Mortgagee Required Repairs shall, to the extent such amounts satisfy the requirements of Qualifying CapEx, be applied toward the minimum Required CapEx set forth in **Section 9.1(e)**.

ARTICLE XXXII

HAZARDOUS SUBSTANCES

32.1 Hazardous Substances. Tenant shall not allow any Hazardous Substance to be located in, on, under or about the Leased Property or incorporated in any Facility; provided, however, that Hazardous Substances may be brought, kept, used or disposed of in, on or about the Leased Property in quantities and for purposes similar to those brought, kept, used or disposed of in, on or about similar facilities used for purposes similar to the Primary Intended Use or in connection with the construction of facilities similar to the Facilities or to the extent in existence at the Facilities and which are brought, kept, used and disposed of in strict compliance with Legal Requirements. Tenant shall not allow the Leased Property to be used as a waste disposal site or for the manufacturing, handling, storage, distribution or disposal of any Hazardous Substance other than in the ordinary course of the business conducted at the Leased Property and in compliance with applicable Legal Requirements.

32.2 Notices. Tenant shall provide to Landlord, within five (5) Business Days after Tenant’s receipt thereof, a copy of any notice, or notification with respect to, (i) any violation of a Legal Requirement relating to Hazardous Substances located in, on, or under the Leased Property or any adjacent property; (ii) any enforcement or other governmental or regulatory action instituted, completed or threatened with respect to the Leased Property; (iii) any claim made or threatened by any Person against Tenant or the Leased Property relating to damage, contribution, cost recovery, compensation, loss, or injury resulting from or claimed to result from any Hazardous Substance; and (iv) any reports made to any federal, state or local environmental agency arising out of or in connection with the release of any Hazardous Substance in, on, under or removed from the Leased Property, including any complaints, notices, warnings or assertions of violations in connection therewith.

32.3 Remediation. If Tenant becomes aware of a violation of any Legal Requirement relating to any Hazardous Substance in, on, under or about the Leased Property or any adjacent property, or if Tenant, Landlord or the Leased Property becomes subject to any order of any federal, state or local agency to repair, close, detoxify, decontaminate or otherwise remediate Hazardous Substance in, on, under or about the Leased Property, Tenant shall immediately notify

Landlord of such event and, at its sole cost and expense, cure such violation or effect such repair, closure, detoxification, decontamination or other remediation. If Tenant fails to implement and diligently pursue any such cure, repair, closure, detoxification, decontamination or other remediation, Landlord shall have the right, but not the obligation, to carry out such action and to recover from Tenant all of Landlord's costs and expenses incurred in connection therewith.

32.4 Indemnity. Tenant shall indemnify, defend, protect, save, hold harmless, and reimburse Landlord for, from and against any and all costs, losses (including, losses of use or economic benefit or diminution in value), liabilities, damages, assessments, lawsuits, deficiencies, demands, claims and expenses (collectively, "**Environmental Costs**") (whether or not arising out of third-party claims and regardless of whether liability without fault is imposed, or sought to be imposed, on Landlord) incurred in connection with, arising out of or resulting from, directly or indirectly, the following, but only to the extent such occurs before or during (but not after) the Term and is not caused solely by the actions of Landlord: (i) the production, use, generation, storage, treatment, transporting, disposal, discharge, release or other handling or disposition of any Hazardous Substances from, in, on or about the Leased Property (collectively, "**Handling**"), including the effects of such Handling of any Hazardous Substances on any Person or property within or outside the boundaries of the Leased Property, (ii) the presence of any Hazardous Substances in, on, under or about the Leased Property and (iii) the violation of any Environmental Law. "**Environmental Costs**" include interest, costs of response, removal, remedial action, containment, cleanup, investigation, design, engineering and construction, damages (including actual and consequential damages) for personal injuries and for injury to, destruction of or loss of property or natural resources, relocation or replacement costs, penalties, fines, charges or expenses, attorney's fees, expert fees, consultation fees, and court costs, and all amounts paid in investigating, defending or settling any of the foregoing.

Without limiting the scope or generality of the foregoing, Tenant expressly agrees that, in the event of a breach by Tenant in its obligations under this **Section 32.4** that is not cured within any applicable cure period, Tenant shall reimburse Landlord for any and all reasonable costs and expenses incurred by Landlord in connection with, arising out of, resulting from or incident to, directly or indirectly, before (with respect to any period of time in which Tenant or its Affiliate was in possession and control of the applicable Leased Property) or during (but not after) the Term or such portion thereof during which the Leased Property is leased to Tenant of the following:

- (a) in investigating any and all matters relating to the Handling of any Hazardous Substances, in, on, from, under or about the Leased Property;
- (b) in bringing the Leased Property into compliance with all Legal Requirements; and
- (c) in removing, treating, storing, transporting, cleaning-up and/or disposing of any Hazardous Substances used, stored, generated, released or disposed of in, on, from, under or about the Leased Property or off-site other than in the ordinary course of the business conducted at the Leased Property and in compliance with applicable Legal Requirements.

If any claim is made by Landlord for reimbursement for Environmental Costs incurred by it hereunder, Tenant agrees to pay such claim promptly, and in any event to pay such claim within sixty (60) calendar days after receipt by Tenant of Notice thereof and any amount not so paid within such sixty (60) calendar day period shall bear interest at the Overdue Rate from the date due to the date paid in full.

32.5 Environmental Inspections. In the event Landlord has a reasonable basis to believe that Tenant is in breach of its obligations under this **Article XXXII**, Landlord shall have the right, from time to time, during normal business hours and upon not less than five (5) days' Notice to Tenant, except in the case of an emergency in which event no notice shall be required, to conduct an inspection of the Leased Property to determine the existence or presence of Hazardous Substances on or about the Leased Property. Landlord shall have the right to enter and inspect the Leased Property, conduct any testing, sampling and analyses it deems necessary and shall have the right to inspect materials brought into the Leased Property. Landlord may, in its discretion, retain such experts to conduct the inspection, perform the tests referred to herein, and to prepare a written report in connection therewith. All reasonable costs and expenses incurred by Landlord under this **Section 32.5** shall be paid on demand as Additional Charges by Tenant to Landlord. Failure to conduct an environmental inspection or to detect unfavorable conditions if such inspection is conducted shall in no fashion be intended as a release of any liability for environmental conditions subsequently determined to be associated with or to have occurred during Tenant's tenancy. Tenant shall remain liable for any environmental condition related to or having occurred during its tenancy regardless of when such conditions are discovered and regardless of whether or not Landlord conducts an environmental inspection at the termination of this Lease other than a condition caused solely by the actions of the Landlord. The obligations set forth in this **Article XXXII** shall survive the expiration or earlier termination of this Lease.

ARTICLE XXXIII

MEMORANDUM OF LEASE

33.1 Memorandum of Lease. Landlord and Tenant shall enter into a short form memorandum of this Lease, in the form attached hereto as **Exhibit G**. Tenant shall pay all costs and expenses of recording any such memorandum and shall fully cooperate with Landlord in removing from record such memorandum upon the expiration or earlier termination of the Term. To the extent of any conflict between the Memorandum of Lease and this Lease, the provisions of this Lease shall prevail and control.

ARTICLE XXXIV

APPOINTING EXPERTS

34.1 Expert Dispute Resolution Process.

(a) In the event that the opinion of "Experts" is required under this Lease, Landlord and Tenant shall negotiate in good faith for no longer than ten (10) Business Days to appoint a single Expert. If Landlord and Tenant have not been able to reach agreement on such Person after such ten (10) Business Days of good faith negotiations, then Landlord and Tenant

shall each within ten (10) Business Days after either party notifying the other of the need to appoint Experts and the subject matter of the dispute, appoint an Expert and Landlord's and Tenant's Experts shall, within ten (10) Business Days of their appointment, jointly appoint a third Expert (such three Experts, or such single Expert agreed upon by Landlord and Tenant, as applicable, shall be referred to herein as the "**Experts**"). The three Experts so appointed, if applicable, shall make all decisions by majority vote of such Experts. If the two Experts so appointed are unable to appoint a third Expert within such ten (10) Business Day period, then either Landlord or Tenant may ask any court of competent jurisdiction to appoint the third Expert. If either Landlord or Tenant fails to timely appoint an Expert, the Expert appointed by the other party shall be the sole Expert in determining the relevant matter. Each Expert appointed hereunder shall have at least ten (10) years of experience valuing commercial real estate and/or in leasing or with respect to the matters to be determined, as applicable with respect to any of the matters to be determined by the Experts.

(b) Once the Expert or Experts are selected, either by agreement of the parties or by selection of separate Experts followed by the appointment of a third Expert, the Experts will determine the matter in question, by proceeding as follows:

(i) In the case of Experts required for the purposes of **Section 3.5**, Landlord and Tenant shall submit to the Experts their respective determinations of Fair Market Rent of each Appraiser. The Experts will be instructed to (x) make a determination as to the Fair Market Rent (the "**Expert Fair Market Rent**") applying the Fair Market Rent Assumptions, and (y) determine the conclusive Fair Market Rent by calculating (1) in the case of three Experts, the arithmetic mean of the Expert Fair Market Rent calculation of the two Experts whose calculation of Expert Fair Market Rent is closest to each other and (2) in the case of one Expert, the arithmetic mean of the Expert Fair Market Rent calculation and the Fair Market Rent of the Appraiser closest to such Expert. The Experts shall notify the parties within thirty (30) days of the submission of the matter to the Experts in writing of their decision as the conclusive determination of Fair Market Rent.

(ii) In the case of Experts required for the purpose of **Section 9.1(e)**, Landlord and Tenant shall submit to the Experts their respective determinations of the Qualifying CapEx and the amount of any deficiency. The Experts may only determine whether or not a deficiency exists and the amount of such deficiency. The Experts shall notify the parties in writing within fifteen (15) Business Days of the submission of the matter to the Experts of their determination as to whether or not a deficiency exists and the amount of such deficiency as the conclusive determination such matter.

(iii) In the case of Experts required for the purpose of **Section 14.2(b)**, Landlord and Tenant shall submit to the Experts their respective determinations for fair market value and/or the costs of restoration (as applicable) of the relevant Facility. The Experts may only select either the fair market value and/or the costs of restoration (as applicable) set forth by Landlord or by Tenant and may not select any other amount or make any other determination (and the Experts shall be so instructed). The Experts shall notify the parties in writing within thirty (30) days of the submission of the matter to the Experts of their selection of either Tenant's or Landlord's determination of fair market value as the conclusive determination of the fair market value and/or the costs of restoration (as applicable).

(iv) In the case of Experts required for the purpose of **Section 15.1(b)(ii)**, Landlord and Tenant shall submit to the Experts their respective determinations of the percentage of the relevant Facility taken by Condemnation and/or the fair market value of such Facility. The Experts may only select either the percentage of the relevant Facility and/or the fair market value set forth by Landlord or Tenant and may not select any other amount or make any other determination (and the Experts shall be so instructed). The Experts shall notify the parties in writing within thirty (30) days of the submission of the matter to the Experts of their selection of either Tenant's or Landlord's determination of the percentage of such Facility, the fair market value and/or the costs of restoration (as applicable) as the conclusive determination of such percentage, fair market value and/or costs of restoration (as applicable).

(v) In the case of Experts required for the purpose of **Section 15.1(c)**, Landlord and Tenant shall submit to the Experts their respective determinations of the relative values of the property taken by Condemnation and the portion of the affected Facility remaining subject to the Lease. The Experts may only select either such relative values set forth by Landlord or Tenant and may not select any other amount or make any other determination (and the Experts shall be so instructed). The Experts shall notify the parties in writing within thirty (30) days of the submission of the matter to the Experts of their selection of either Tenant's or Landlord's determination of such relative values as the conclusive determination of such relative values.

(vi) In the case of Experts required for the purpose of **Section 16.1(b)**, Landlord and Tenant shall submit to the Experts their respective written descriptions of the events giving rise to Landlord's belief that an Event of Default exists. The Experts may only determine whether or not the Event of Default alleged by Landlord has occurred and may not make any other determination (and the Experts shall be so instructed). The Experts shall notify the parties in writing within fifteen (15) Business Days of the submission of the matter to the Experts of their determination as to whether or not such an Event of Default has occurred as the conclusive determination such matter.

(vii) In the case of Experts required for the purpose of **Section 36.1**, Landlord and Tenant shall submit to the Experts their respective determinations of the Tenant's Property FMV. The Experts may only select either the Tenant's Property FMV set forth by Landlord or Tenant and may not select any other amount or make any other determination (and the Experts shall be so instructed). The Experts shall notify the parties in writing within thirty (30) days of the submission of the matter to the Experts of their determination of the Tenant's Property FMV as the conclusive determination of such matter.

(c) In each case, except in the case of Experts determining the Fair Market Rent which shall be determined pursuant to **Section 34.1(b)(i)** above or whether or not a Qualifying CapEx deficiency exists and the amount of such Qualifying CapEx deficiency which shall be determined pursuant to **Section 34.1(b)(ii)** above, the Experts (comprised of a majority of the Experts) will make the relevant determination by a "baseball arbitration" proceeding with the Experts limited to awarding only one or the other of the two positions submitted (and not any position in between or other compromise or ruling not consistent with one of the two positions submitted), which shall then be final and binding on the parties and not subject to appeal or court review. Either party may seek an order of a court of competent jurisdiction to enforce such determination. The Experts, in their sole discretion, shall consider any and all materials that they

deem relevant, except that there shall be no live hearings and the parties shall not be permitted to take discovery. The Experts may submit written questions or information requests to the parties, and the parties may respond with written materials within a time frame set by the Experts to allow the Experts to make the relevant determination in the time allowed pursuant to this **Section 34.1**.

(d) All communications between a party and the Experts shall also be copied to the other party. The parties shall cooperate in good faith to facilitate the valuation or other determination by the Experts.

(e) Each of Landlord and Tenant shall pay the cost of the Expert appointed by it. The costs of the third Expert engaged with respect to any issue under **Section 34.1** of this Lease shall be borne by the party against whom the Experts rule on such issue. If Landlord pays such Expert and is the prevailing party, such costs shall be Additional Charges hereunder and if Tenant pays such Expert and is the prevailing party, such costs shall be a credit against the next Rent payment hereunder.

ARTICLE XXXV

NOTICES

35.1 Notices. Except as permitted in **Section 35.2** below, any notice, request or other communication to be given by any party hereunder shall be in writing and shall be sent by registered or certified mail, postage prepaid and return receipt requested, by hand delivery or nationally recognized express courier service to the following address:

To Tenant: MGM Lessee II, LLC
c/o MGM Resorts International
6385 South Rainbow Boulevard
Suite 500
Las Vegas, NV 89118
Attention: Corporate Legal

With a copy to:
(that shall not constitute notice) Email: legalnotices@mgmresorts.com

With a copy to:
(that shall not constitute notice) Weil, Gotshal & Manges, LLP
767 Fifth Avenue
New York, NY 10153
Attention: Michael Aiello
W. Michael Bond
Email: michael.aiello@weil.com
michael.bond@weil.com

To Landlord: MGP Growth Properties LLC
1980 Festival Plaza Drive, Suite 750
Las Vegas, Nevada 89135
Attention: James C. Stewart
Email: JStewart@mgpreit.com

With a copy to
(which shall not constitute notice): BCORE Windmill Parent LLC
c/o Blackstone Real Estate Advisors L.P.
345 Park Avenue
New York, New York 10154
Attention: Head, U.S. Asset Management
Email: realestatenotices@blackstone.com

and

c/o Blackstone Real Estate Advisors L.P.
345 Park Avenue
New York, New York 10154
Attention: General Counsel
Email: realestatenotices@blackstone.com

and

Simpson Thacher & Bartlett LLP
425 Lexington Avenue
New York, New York 10017
Attention: Gregory Ressa
Email: gressa@stblaw.com

and

Simpson Thacher & Bartlett LLP
425 Lexington Avenue
New York, New York 10017
Attention: Erik Quarfordt
Email: equarfordt@stblaw.com

and

Hogan Lovells
Columbia Square
555 Thirteenth Street, NW
Washington, D.C. 20004
Attention: Matt N. Thomson
Email: matt.thomson@hoganlovells.com

or to such other address as either party may hereafter designate. Notice shall be deemed to have been given on the date of delivery if such delivery is made on a Business Day, or if not, on the first Business Day after delivery. If delivery is refused, Notice shall be deemed to have been given on the date delivery was first attempted. A confirmatory copy of any such notice shall also be sent by email.

35.2 Deemed Approval Period with respect to certain Items Requiring Consent. Any request for consent to or approval of any plan, document, transaction, action, election, notification or similar matter set forth in this Lease that requires the consent or approval of Landlord, excluding **Articles XIV, XV and XVI** (each, an “**Item Subject to Deemed Consent**”) shall be subject to the terms set forth in this **Section 35.2**. Tenant shall submit its request for such approval through a written notice in accordance with this Agreement. That notice shall include a reasonably detailed description of the applicable Item Subject to Deemed Consent, a copy of all material documents reflecting the terms and conditions of the applicable Item Subject to Deemed Consent, including the documentation required to be delivered under this Lease in connection with such request, and such additional information or documentation relating to the Item Subject to Deemed Consent as may be reasonably available to Tenant and that is reasonably necessary to evaluation of the applicable Item Subject to Deemed Consent. Such request shall include in bold lettering the following statement: “FIRST NOTICE – THIS IS A REQUEST FOR LANDLORD’S CONSENT AND LANDLORD’S RESPONSE IS REQUESTED WITHIN TEN (10) BUSINESS DAYS OF RECEIPT OF THIS NOTICE PURSUANT TO THE TERMS OF THE LEASE BETWEEN THE UNDERSIGNED TENANT AND LANDLORD.” If Landlord does not respond to that request within ten (10) Business Days following its receipt thereof (which response may be by e-mail and may consist of, among other things, a request for additional information reasonably available to Tenant or a qualified approval of the Item Subject to Deemed Consent subject to the satisfaction of specified reasonable conditions), Tenant may send an additional written request to Landlord with respect to the Item Subject to Deemed Consent which shall include in bold lettering the following statement: SECOND NOTICE – THIS IS A SECOND REQUEST FOR LANDLORD’S CONSENT AND LANDLORD’S RESPONSE IS REQUESTED WITHIN TEN (10) BUSINESS DAYS OF RECEIPT OF THIS NOTICE PURSUANT TO THE TERMS OF THE LEASE BETWEEN THE UNDERSIGNED TENANT AND LANDLORD. If Landlord does not respond to that second request within ten (10) Business Days following its receipt thereof (which response may be by e-mail and may consist of, among other things, a request for additional information reasonably available to Tenant or a qualified approval of the Item Subject to Deemed Consent subject to the satisfaction of specified reasonable conditions), Tenant may send an additional written request to Landlord with respect to the Item Subject to Deemed Consent which shall include in bold lettering the following statement “THIS IS A THIRD AND FINAL REQUEST FOR LANDLORD’S CONSENT AND FAILURE TO RESPOND TO THIS REQUEST WITHIN FIVE (5) BUSINESS DAYS WILL RESULT IN THE DEEMED APPROVAL OF THE REQUEST.” If Landlord does not respond to that third request within five (5) Business Days following its receipt thereof (which response may be by e-mail), then Landlord shall be deemed to have approved the applicable Item Subject to Deemed Consent as of the end of such five (5) Business Day period. Notwithstanding the foregoing, in the event Landlord’s consent is required pursuant to **Section 22.3(a)** or **Section 22.7** with respect to Ancillary Space for a portion thereof that is less than 50,000 square feet, Tenant shall only be required to provide two (2) notices the first being in the format of the first notice described above (including that Landlord’s response is required in ten (10) Business Days) and the second being in the format of the third notice

described above, except that such notice would reference it being a second and final request (and Landlord's response is required in five (5) Business Days).

35.3 Unavoidable Delays. Tenant shall notify Landlord promptly upon the occurrence of an event which constitutes an Unavoidable Delay, and shall keep Landlord apprised of the status of such Unavoidable Delay and the expiration thereof. Upon any Unavoidable Delay which Tenant can anticipate or otherwise mitigate the effect of on a commercially reasonable basis, Tenant shall undertake commercially reasonable actions to mitigate, or which are intended to mitigate, the effect of any such Unavoidable Delay.

ARTICLE XXXVI

TRANSITION UPON EXPIRATION OR TERMINATION

36.1 Transfer of Tenant's Property at the Facilities. Upon Landlord's written notice (an "**End of Term Asset Transfer Notice**") to Tenant delivered at least six (6) months prior to the expiration of the Term or, if applicable, within ten (10) days following the earlier termination of the Lease with respect to any Facility, Landlord may require, in its sole discretion, that the Tenant transfer and assign or cause to be transferred and assigned (subject to compliance with any applicable Gaming Regulations) to the applicable Landlord all of the Tenant's (or any Operating Subtenant's) right, title and interest in and to all or any portion of the tangible personal property constituting the applicable Tenant's Property (including any Gaming Equipment and FF&E), but excluding, for the avoidance of doubt, Tenant's or any Operating Subtenant's business operations, the rights of Tenant, Tenant's Parent and their respective Affiliates in any Hotel Trademarks and other Intellectual Property, Gaming Licenses, Excluded Assets, customer lists and other proprietary information used by Tenant or any Operating Subtenant in connection with its overall business operations, as specified by Landlord in the End of Term Asset Transfer Notice (the "**Designated Tenant's Property**") for consideration to be received by Tenant (or its Subsidiaries or Affiliates) from Landlord in an amount equal to the going concern fair market value of such Tenant's Property assuming the continued use thereof in connection with the operation of the Leased Property (the "**Tenant's Property FMV**"); provided, that, if an End of Term Asset Transfer Notice is being delivered in connection with the termination of this Lease as a result of the occurrence of an Event of Default, then the Designated Tenant's Property shall be transferred and assigned to Landlord for no additional consideration. Within ten (10) Business Days after Landlord's delivery of an End of Term Asset Transfer Notice, Landlord shall notify Tenant in writing of Landlord's good faith determination of the Tenant's Property FMV. If Tenant disagrees with Landlord's determination of the Tenant's Property FMV, Tenant shall, within ten (10) Business Days of receipt of Landlord's determination, notify Landlord in writing of Tenant's determination of Tenant's Property FMV. Landlord and Tenant shall negotiate in good faith to agree upon the Tenant's Property FMV for an additional thirty (30) day period and if Landlord and Tenant are unable to agree during such 30 day period, the Tenant's Property FMV will be determined by Experts in accordance with **Section 34.1**. Following the determination of the Tenant's Property FMV, Landlord shall, on the later of ten (10) Business Days following such determination and the expiration of the Term (or termination of the Lease with respect to any Facility), pay to Tenant or Tenant's designee an amount equal to the Tenant's Property FMV and Tenant shall sell, transfer and assign or cause to be sold, transferred and assigned (subject to compliance with any applicable Gaming Regulations) all of Tenant's (or any Operating Subtenant's) right, title and interest in such Designated Tenant's Property to Landlord

or Landlord's designee free and clear of any liens or encumbrances but on an "as-is" basis with no representations or warranties whatsoever. For the avoidance of doubt, it shall be a condition precedent to Tenant's obligation to transfer or cause to be transferred any of the Designated Tenant's Property pursuant to this **Article XXXVI** that the transferee shall comply with all applicable Legal Requirements, including any Gaming Regulations with respect to such property. Notwithstanding anything contained in this Lease to the contrary, (x) all Excluded Assets shall in all events remain the sole property of Tenant (or any Operating Subtenant or Affiliate thereof) and there shall be no restrictions or limitations on Tenant's (or any Operating Subtenant's or its Affiliate's) use or rights with respect to the Excluded Assets and (y) all fixtures constituting FF&E which are Tenant's Property (other than, for the avoidance of doubt, any fixtures constituting Excluded Assets) shall in all events remain at the Leased Property at the expiration or earlier termination of the Lease and shall remain the property of Landlord without any obligation to pay Tenant any amount (and shall not be included in the calculation of Tenant's Property FMV).

36.2 Transition Services. The parties have entered into the Transition Services Agreement with respect to the provision of certain transition services to Landlord and/or Landlord's designee (which may include a successor tenant) after the expiration or earlier termination of the Lease.

36.3 Replacement of Certain Excluded Assets. Upon expiration or earlier termination of the Lease, all art, artwork, paintings, sculptures or other artistic installments or displays to the extent removed from any Facility by Tenant as Excluded Assets shall be replaced by Tenant at its sole cost and expense with Customary Hotel Art of similar size.

ARTICLE XXXVII

ATTORNEY'S FEES

37.1 Attorneys' Fees. If Landlord or Tenant brings an action or other proceeding against the other to enforce or interpret any of the terms, covenants or conditions hereof or any instrument executed pursuant to this Lease, or by reason of any breach or default hereunder or thereunder, the party prevailing in any such action or proceeding and any appeal thereupon shall be paid all of its costs and reasonable outside attorneys' fees incurred therein. In addition to the foregoing and other provisions of this Lease that specifically require Tenant to reimburse, pay or indemnify against Landlord's attorneys' fees, Tenant shall pay, as Additional Charges, all of Landlord's reasonable outside attorneys' fees incurred in connection with the enforcement of this Lease (except to the extent provided above), including reasonable attorneys' fees incurred in connection with the review, negotiation or documentation of any subletting, assignment, or management arrangement or any consent requested in connection therewith, and the collection of past due Rent.

ARTICLE XXXVIII

BROKERS

38.1 Brokers. Tenant warrants that it has not had any contact or dealings with any Person or real estate broker which would give rise to the payment of any fee or brokerage commission in connection with this Lease, and Tenant shall indemnify, protect, hold harmless and defend Landlord from and against any liability with respect to any fee or brokerage commission arising out of any act or omission of Tenant. Landlord warrants that it has not had any contact or dealings with any Person or real estate broker which would give rise to the payment of any fee or brokerage commission in connection with this Lease, and Landlord shall indemnify, protect, hold harmless and defend Tenant from and against any liability with respect to any fee or brokerage commission arising out of any act or omission of Landlord.

ARTICLE XXXIX

OFAC

39.1 Anti-Terrorism Representations.

(a) Landlord and Tenant each hereby represent and warrant that neither they, nor, to their knowledge, Landlord's Parents (in the case of Landlord) or Tenant's Parent (in the case of Tenant), as applicable, is (i) in material violation of any sanctions program that is established by Executive Order of the President or published by OFAC; (ii) in material violation of the Trading with the Enemy Act, 50 U.S.C. App. § 5, the International Emergency Economic Powers Act, 50 U.S.C. §§ 1701-06, the U.S.A. Patriot Act, Public Law 107-56, Executive Order 13224 (September 23, 2001) or any Executive Order of the President issued pursuant to such statutes or any other applicable Legal Requirements relating to anti-corruption, anti-bribery, terrorism, or money-laundering; or (iii) named on the following list that is published by OFAC: "List of Specially Designated Nationals and Blocked Persons" (collectively, "**Prohibited Persons**").

(b) Neither Landlord nor Tenant will, during the Term of this Lease, knowingly engage in any transactions or dealings, or knowingly be otherwise associated with, any Prohibited Persons in connection with the ownership, or use or occupancy of, the Leased Property, as applicable. A breach of the representations (being untrue at any time during the Term) or covenants contained in this **Section 39.1** by Landlord or Tenant as a result of which the other party suffers actual damages shall constitute a material breach of this Lease and shall entitle the other party to any and all remedies available hereunder, or at law or in equity.

ARTICLE XL

REIT REQUIREMENTS

40.1 REIT Protection. (a) The parties hereto intend that Rent and other amounts paid by Tenant hereunder will qualify as "rents from real property" within the meaning of Section 856(d) of the Code, or any similar or successor provision thereto and this Lease shall be interpreted consistent with this intent.

(b) Anything contained in this Lease to the contrary notwithstanding, the parties acknowledge and agree that Landlord, in its sole discretion, may assign this Lease or any interest herein to another Person (including without limitation, a “taxable REIT subsidiary” (within the meaning of Section 856(l) of the Code)) in order to maintain MGP REIT’s or any Blackstone REIT’s status as a “real estate investment trust” (within the meaning of Section 856(a) of the Code); provided, however, Landlord shall be required to (i) comply with any applicable legal requirements related to such transfer and (ii) give Tenant notice of any such assignment; and provided, further, that any such assignment shall be subject to all of the rights of Tenant hereunder.

(c) Tenant acknowledges that MGP REIT and any Blackstone REIT each intends to qualify as a real estate investment trust under the Code. Tenant agrees that it will not knowingly or intentionally take or omit to take any action, or permit any status or condition to exist at the Leased Property, which Tenant actually knows (acting in good faith) would or could result in the Rent payable under this Lease not qualifying as “rents from real property” within the meaning of Section 856(d) of the Code.

(d) Anything contained in this Lease to the contrary notwithstanding, upon request of Landlord, Tenant shall cooperate with Landlord in good faith and at no cost or expense to Tenant, and provide such documentation and/or information as may be in Tenant’s possession or under Tenant’s control and otherwise readily available to Tenant as shall be reasonably requested by Landlord in connection with verification of MGP REIT’s and Blackstone REIT’s “real estate investment trust” (within the meaning of Section 856(a) of the Code) compliance requirements. Anything contained in this Lease to the contrary notwithstanding, Tenant shall take such reasonable action as may be requested by Landlord from time to time in order to ensure compliance with the Internal Revenue Service requirement that Rent allocable for purposes of Section 856 of the Code to personal property, if any, at the beginning and end of a calendar year does not exceed fifteen percent (15%) of the total Rent due hereunder as long as such compliance does not (i) increase Tenant’s monetary obligations under this Lease or (ii) materially and adversely increase Tenant’s nonmonetary obligations under this Lease or (iii) materially diminish Tenant’s rights under this Lease.

ARTICLE XLI

MISCELLANEOUS

41.1 Survival. Anything contained in this Lease to the contrary notwithstanding, all claims against, and liabilities and indemnities of Tenant or Landlord arising prior to the expiration or earlier termination of the Term shall survive such expiration or termination.

41.2 Severability. If any term or provision of this Lease or any application thereof shall be held invalid or unenforceable, the remainder of this Lease and any other application of such term or provision shall not be affected thereby.

41.3 Non-Recourse. Tenant specifically agrees to look solely to the Leased Property for recovery of any judgment from Landlord (and Landlord's liability hereunder shall be limited solely to its interest in the Leased Property, and no recourse under or in respect of this Lease shall be had against any other assets of Landlord whatsoever). It is specifically agreed that no constituent partner in Landlord or officer or employee of Landlord shall ever be personally liable for any such judgment or for the payment of any monetary obligation to Tenant. The provision contained in the foregoing sentence is not intended to, and shall not, limit any right that Tenant might otherwise have to obtain injunctive relief against Landlord, or any action not involving the personal liability of Landlord. Furthermore, except as otherwise expressly provided herein, in no event shall Landlord ever be liable to Tenant for any indirect or consequential damages suffered by Tenant from whatever cause. Neither Landlord nor Tenant shall be liable to the other, nor shall either make any claim against the other, for punitive damages.

41.4 Successors and Assigns. This Lease shall be binding upon Landlord and its successors and assigns and, subject to the provisions of **Article XXII**, upon Tenant and its successors and assigns.

41.5 Governing Law. THIS LEASE WAS NEGOTIATED IN THE STATE OF NEW YORK, WHICH STATE THE PARTIES AGREE HAS A SUBSTANTIAL RELATIONSHIP TO THE PARTIES AND TO THE UNDERLYING TRANSACTION EMBODIED HEREBY. ACCORDINGLY, IN ALL RESPECTS THIS LEASE (AND ANY AGREEMENT FORMED PURSUANT TO THE TERMS HEREOF AND ANY ACTION OR DISPUTE RELATED TO THE NATURE OF THIS LEASE AS A "TRUE LEASE") SHALL BE GOVERNED BY, AND CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE INTERNAL LAWS OF THE STATE OF NEW YORK (WITHOUT REGARD TO PRINCIPLES OR CONFLICTS OF LAW) AND ANY APPLICABLE LAWS OF THE UNITED STATES OF AMERICA, EXCEPT THAT ALL PROVISIONS HEREOF RELATING TO THE CREATION OF THE LEASEHOLD ESTATE, THE RECHARACTERIZED DEED OF TRUST AND THE CREATION, PERFECTION AND ENFORCEMENT OF THE LIEN HEREIN GRANTED UPON A RECHARACTERIZATION, AND ALL REMEDIES SET FORTH IN **ARTICLE XVI** RELATING TO RECOVERY OF POSSESSION OF THE LEASED PROPERTY (SUCH AS AN ACTION FOR UNLAWFUL DETAINER, IN REM ACTION OR OTHER SIMILAR ACTION), SHALL BE CONSTRUED AND ENFORCED ACCORDING TO, AND GOVERNED BY, THE LAWS OF THE STATE. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, ANY AGREEMENT, ACTION OR DISPUTE RELATED TO THE NATURE OF THIS LEASE AS A "TRUE LEASE" SHALL BE GOVERNED BY, AND CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE INTERNAL LAWS OF THE STATE OF NEW YORK (WITHOUT REGARD TO PRINCIPLES OR CONFLICTS OF LAW).

41.6 Waiver of Trial by Jury. EACH OF LANDLORD AND TENANT ACKNOWLEDGES THAT IT HAS HAD THE ADVICE OF COUNSEL OF ITS CHOICE WITH RESPECT TO ITS RIGHTS TO TRIAL BY JURY UNDER THE CONSTITUTION OF THE UNITED STATES AND THE STATE. EACH OF LANDLORD AND TENANT HEREBY EXPRESSLY WAIVES ANY RIGHT TO TRIAL BY JURY OF ANY CLAIM, DEMAND, ACTION OR CAUSE OF ACTION (i) ARISING UNDER THIS LEASE (OR ANY AGREEMENT FORMED PURSUANT TO THE TERMS HEREOF) OR (ii) IN ANY MANNER CONNECTED WITH OR RELATED OR INCIDENTAL TO THE DEALINGS OF

LANDLORD AND TENANT WITH RESPECT TO THIS LEASE (OR ANY AGREEMENT FORMED PURSUANT TO THE TERMS HEREOF) OR ANY OTHER INSTRUMENT, DOCUMENT OR AGREEMENT EXECUTED OR DELIVERED IN CONNECTION HERewith, OR THE TRANSACTIONS RELATED HERETO OR THERETO, IN EACH CASE WHETHER NOW EXISTING OR HEREINAFTER ARISING, AND WHETHER SOUNDING IN CONTRACT OR TORT OR OTHERWISE; EACH OF LANDLORD AND TENANT HEREBY AGREES AND CONSENTS THAT ANY SUCH CLAIM, DEMAND, ACTION OR CAUSE OF ACTION SHALL BE DECIDED BY A COURT TRIAL WITHOUT A JURY, AND THAT EITHER PARTY MAY FILE A COPY OF THIS SECTION WITH ANY COURT AS CONCLUSIVE EVIDENCE OF THE CONSENT OF EACH SUCH PARTY TO THE WAIVER OF ITS RIGHT TO TRIAL BY JURY.

41.7 Entire Agreement. This Lease and the Exhibits and Schedules hereto constitute the entire and final agreement of the parties with respect to the subject matter hereof, and may not be changed or modified except by an agreement in writing signed by the parties and, with respect to the provisions set forth in **Section 40.1**, no such change or modification shall be effective without the explicit reference to such section by number and paragraph. Landlord and Tenant hereby agree that all prior or contemporaneous oral understandings, agreements or negotiations relative to the leasing of the Leased Property are merged into and revoked by this Lease. Notwithstanding anything to the contrary herein, the parties hereto acknowledge and agree that this Lease is integral to, and forms part of the single integrated transaction effected through, this Lease, the Transition Services Agreement and any and all other instruments or agreements entered into substantially contemporaneously herewith by any of the parties hereto or any of their Subsidiaries and/or Affiliates in connection with this Lease.

41.8 Headings; Consent. All titles and headings to sections, subsections, paragraphs or other divisions of this Lease are only for the convenience of the parties and shall not be construed to have any effect or meaning with respect to the other contents of such sections, subsections, paragraphs or other divisions, such other content being controlling as to the agreement among the parties hereto. When the consent of any party hereunder may not be unreasonably withheld, such consent also may not be unreasonably conditioned or delayed.

41.9 Counterparts. This Lease may be executed in any number of counterparts and by facsimile or electronic signatures, each of which shall be a valid and binding original, but all of which together shall constitute one and the same instrument.

41.10 Interpretation. Both Landlord and Tenant have been represented by counsel and this Lease and every provision hereof has been freely and fairly negotiated. Consequently, all provisions of this Lease shall be interpreted according to their fair meaning and shall not be strictly construed against any party.

41.11 Time of Essence. TIME IS OF THE ESSENCE OF THIS LEASE AND EACH PROVISION HEREOF IN WHICH TIME OF PERFORMANCE IS ESTABLISHED. In addition, with respect to any provision herein that requires an action by Landlord (*e.g.*, **Section 12.1**, which requires Landlord to execute and deliver to Tenant certain authorizations and documents), unless a time is otherwise specified, such action shall be taken promptly by Landlord.

41.12 Further Assurances. The parties agree to promptly sign all documents reasonably requested to give effect to the provisions of this Lease.

41.13 Gaming Regulations. (a) Notwithstanding anything to the contrary in this Lease, this Lease and any agreement formed pursuant to the terms hereof are subject to the Gaming Regulations and the laws involving the sale, distribution and possession of alcoholic beverages (the “**Liquor Laws**”). Without limiting the foregoing, Landlord, and its respective Related Persons, successors and assigns acknowledges that (i) it is subject to being called forward by the Gaming Authority or governmental authority enforcing the Liquor Laws (the “**Liquor Authority**”), in each of their discretion, for licensing or a finding of suitability or to file or provide other information, and (ii) all rights, remedies and powers under this Lease and any agreement formed pursuant to the terms hereof, including with respect to the entry into and ownership and operation of the Gaming Facility, and Landlord’s right to possession or control of Gaming Equipment, alcoholic beverages or a Gaming License or liquor license, may be exercised only to the extent that the exercise thereof does not violate any applicable provisions of the Gaming Regulations and Liquor Laws and only to the extent that required approvals (including prior approvals) are obtained from the requisite Gaming Authority and/or Liquor Authority.

(b) Notwithstanding anything to the contrary in this Lease or any agreement formed pursuant to the terms hereof, each of Tenant, Landlord, and each of Tenant’s or Landlord’s successors and assigns agrees to cooperate with each Gaming Authority and each Liquor Authority in connection with the administration of their regulatory jurisdiction over the parties hereto and/or the Facilities, including, without limitation, the provision of such documents or other information as may be requested by any such Gaming Authorities and/or Liquor Authorities relating to Tenant, Landlord, Tenant’s or Landlord’s successors and assigns or to this Lease or any agreement formed pursuant to the terms hereof.

41.14 Certain Provisions of Nevada Law. Landlord shall, pursuant to Section 108.2405(1)(b) of the Nevada Revised Statutes (“**NRS**”), record a written notice of waiver of Landlord’s rights set forth in NRS 108.234 in the form attached hereto as **Exhibit H** with the office of the recorder of Clark County, Nevada on the date hereof. Pursuant to NRS 108.2405(2), Landlord shall serve such notice by certified mail, return receipt requested, upon the prime contractor of such work of improvement and all other lien claimants who may give the owner a notice of right to lien pursuant to NRS 108.245, within ten (10) days after Landlord’s receipt of a notice of right to lien or ten (10) days after the date on which the notice of waiver is recorded.

41.15 Savings Clause. If for any reason this Lease is determined by a court of competent jurisdiction to be invalid as to any space that would otherwise be a part of the Leased Property and that is subject to a pre-existing lease as of the date hereof (between Tenant’s predecessor in interest prior to the date hereof, as landlord, and a third party as tenant), then Landlord shall be deemed to be the landlord under such pre-existing lease, and the Parties agree that Tenant shall be deemed to be the collection agent for Landlord for purposes of collecting rent and other amounts payable by the tenant under such pre-existing lease and shall remit the applicable collected amounts to Landlord. In such event, the Rent payable hereunder shall be deemed to be reduced by any amounts so collected by Tenant and remitted to Landlord with respect to any such pre-existing lease.

41.16 Agency Relationship with respect to Water Rights. Landlord hereby appoints Tenant as its exclusive agent until the expiration or earlier termination of this Lease in, to and with respect to the Water Rights, Water Permits and Water Infrastructure (collectively, “**Water Assets**”). It is the intention of Landlord to maintain a binding arrangement until the expiration or earlier termination of the Lease whereby Tenant is authorized as the exclusive agent of Landlord, (a) to use and exercise (or cause to be used and exercised) the Water Assets for reasonable and beneficial use at the Facilities, (b) to protect the Water Assets from forfeiture or cancellation by placing them (or causing them to be placed) to beneficial use as necessary or by making appropriate filings with the Nevada State Engineer to extend any usage deadlines, (c) to change temporarily the manner of use, place of use or point of diversion of the Water Assets, or any portion of them in a Non-Discriminatory manner and which does not impair the ability of the Facilities to have sufficient benefit of the Water Assets necessary for the continued operation of all features and associated uses of Water Assets existing as of the Commencement Date through the Term (including any Renewal Terms) and the remaining useful life of such features thereafter, (d) to enter into licenses or leases or other similar temporary arrangements with Tenant’s Affiliates with respect to the Water Assets, or any portion of them, in each case, not (1) extending past the expiration or earlier termination of the Lease or (2) impairing the ability of the Facilities to have sufficient benefit of the Water Assets necessary for the continued operation of all features and uses of Water Assets existing as of the Commencement Date through the Term (including any Renewal Terms) and the remaining useful life of such features thereafter, (e) to make customary applications, filings, notices and reports with the Nevada State Engineer with respect to the foregoing, all at Tenant’s expense, (f) at the good faith and reasonable discretion of Tenant, to represent Landlord (at Tenant’s sole cost and expense) in any court adjudication, administrative proceeding, groundwater management plan, or other determination or management of the Water Assets, (g) pay, or cause to be paid, any and all fees and assessments charged to or levied against the Water Assets by the Nevada State Engineer or any other governmental entity, including but not limited to, fees charged to support the Las Vegas Valley Groundwater Program, and, (h) upon written approval of Landlord, to exercise any other rights on behalf of Landlord with respect to the Water Assets, or any portion of them. This agency shall be effective and irrevocable until the expiration or earlier termination of the Lease and the same is intended to be and shall be deemed an agency coupled with an interest. Promptly following the Commencement Date, Landlord shall complete, execute and deliver to the Nevada State Engineer all reasonable and customary documents that Tenant may reasonably require (i) to notify the Nevada State Engineer that Tenant is leasing the Water Assets and Tenant is Landlord’s exclusive agent with respect to the Water Assets during the Term, and (ii) to ensure that the Nevada State Engineer sends Tenant notice of all actions, meetings, hearings, and copies of all documents pertaining to the Water Assets. Tenant shall maintain a record with respect to its actions taken as agent and shall provide Landlord with (x) notice of any events which could reasonably expected to give rise to the forfeiture or cancellation of any of the Water Assets, (y) upon Landlord’s reasonable request, details regarding any leases or licenses or similar arrangements made by Tenant with respect to any Water Assets and (z) upon expiration or earlier termination of the Lease, all information and documentation regarding the Water Assets reasonably necessary for Landlord to maintain the continued benefit and ownership of the Water Assets. In the event that Landlord determines in its reasonable and good faith discretion that Tenant is not performing its functions with respect to the Water Assets or taking actions with respect to the Water Assets in a manner that could reasonably be expected to result in the forfeiture, cancellation or depletion of any Water Assets, Landlord shall have the right to take

such actions as Landlord deems reasonably necessary to preserve such Water Assets in the event that Tenant does not cure such deficiencies within thirty (30) days' prior written notice thereof.

41.17 Operating Subleases.

(a) Any Operating Sublease shall be expressly subordinate to this Lease and any Operating Subtenant shall (x) enter into an attornment agreement substantially in the form entered into by each of the Operating Subtenants on the date hereof (as each may be modified, supplemented and/or modified from time to time, "Operating Subtenant Attornment Agreement"), (y) enter into a joinder to this Lease in substantially the form entered into by the each of the Operating Subtenants on the date hereof, and (z) enter into the Operating Subtenant Guaranty, jointly and severally with the other Operating Subtenants.

(b) No Operating Subtenant shall be permitted to assign its Operating Sublease other than to an Affiliate of Tenant's Parent, and any such Operating Subtenant shall at all times remain a Subsidiary of Tenant's Parent.

(c) The Operating Sublease is subject to the terms and conditions of this Lease and any act, omission, event or condition with respect to any Operating Subtenant or any Operating Subleased Property which would require Landlord's approval or consent or result in a breach by Tenant under **Sections 6.2, 6.4, 7.2, 8.2, 8.3, 9.1(a), 9.1(d), 9.2, 10.1, 10.2, 11.1, 12.1, 36.1** or **Article XXII** of this Lease if such act, omission, event or condition occurred with respect to Tenant or the Leased Property shall require Landlord's approval or consent and be deemed to be a breach by Tenant under this Lease.

SIGNATURES ON FOLLOWING PAGE

IN WITNESS WHEREOF, this Lease has been executed by Landlord and Tenant as of the date first written above.

MB LANDLORD:

MANDALAY PROPCO, LLC

By: /s/ Andy Chien
Name: Andy Chien
Title: Chief Financial Officer and Treasurer

GRAND LANDLORD:

MGM GRAND PROPCO, LLC

By: /s/ Andy Chien
Name: Andy Chien
Title: Chief Financial Officer and Treasurer

TENANT:

MGM LESSEE II, LLC

By: /s/ Andrew Hagopian III
Name: Andrew Hagopian III
Title: Assistant Secretary

JOINDER

The undersigned, each a Nevada limited liability company, hereby join in the foregoing Master Lease by and among Mandalay PropCo, LLC, a Delaware limited liability company, and MGM Grand PropCo, LLC, collectively, as Landlord, and MGM Lessee II, LLC, a Delaware limited liability company, as Tenant (the “**Lease**”), for the sole purpose of (x) agreeing to be bound by the provisions of **Section 6.2** and **6.4** of the Lease as applied to the undersigned, *mutatis mutandis* from and after the date of execution of the Lease until the expiration or earlier termination of the Operating Sublease to which the undersigned is a party and (y) granting the security interests contemplated by **Section 6.4(c)** and **Section 9.1(g)** of the Lease.

MGM GRAND HOTEL, LLC

By: /s/ Laura Norton
Name: Laura Norton
Title: Authorized Signatory

MANDALAY BAY, LLC

By: /s/ Laura Norton
Name: Laura Norton
Title: Authorized Signatory

MANDALAY PLACE, LLC

By: /s/ Laura Norton
Name: Laura Norton
Title: Authorized Signatory

EXHIBIT E

FORM OF GUARANTY

This **GUARANTY OF LEASE DOCUMENTS** (this “**Guaranty**”), is made and entered into as of the day of February, 2020 by and among **MGM RESORTS INTERNATIONAL**, a Delaware corporation (“**Guarantor**”), **Mandalay PropCo, LLC**, a Delaware limited liability company (“**MB Landlord**”) and **MGM Grand PropCo, LLC**, a Delaware limited liability company (“**Grand Landlord**” and, together with the MB Landlord, collectively, “**Landlord**”).

RECITALS

A. Landlord and certain subsidiaries of Guarantor, including MGM Lessee II, LLC, a Delaware limited liability company (“**Tenant**”), have entered into that certain Master Lease dated of even date herewith (as the same may be amended, restated, supplemented, waived or otherwise modified from time to time, the “**Lease**”), (ii) that certain Transition Services Agreement dated of even date herewith (as the same may be amended, restated, supplemented, waived or otherwise modified from time to time, the “**TSA**”), (iii) that certain Operating Sublease dated of even date herewith by and between Tenant and MGM Grand Hotel, LLC (the “**MGM Grand Operating Sublease**”), (iv) that certain Operating Sublease dated of even date herewith by and between Tenant and Mandalay Bay, LLC (the “**Mandalay Bay Operating Sublease**”), and (v) dated of even date herewith by and between Tenant and Mandalay Place, LLC (the “**Mandalay Place Operating Sublease**”, and together with the Lease, TSA, MGM Grand Operating Sublease and Mandalay Bay Operating Sublease, the “**Lease Documents**”). All capitalized terms used and not otherwise defined herein shall have the same meanings given such terms in the Lease.

B. Guarantor is an affiliate of Tenant, will derive substantial benefits from the Lease Documents and acknowledges and agrees that this Guaranty is given in accordance with the requirements of the Lease and that Landlord would not have been willing to enter into the Lease Documents unless Guarantor was willing to execute and deliver this Guaranty.

AGREEMENTS

NOW, THEREFORE, in consideration of Landlord entering into the Lease Documents with Tenant, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Guarantor agrees as follows:

1. Guaranty. In consideration of the benefit derived or to be derived by it therefrom, as to the Lease Documents, from and after the Commencement Date thereof, Guarantor hereby unconditionally and irrevocably guarantees, as a primary obligor and not merely as a surety, (i) the payment when due of all Rent and all other sums payable by Tenant under the Lease, and (ii) the faithful and prompt performance when due of each and every one of the terms, conditions and covenants of any nature to be kept and performed by the applicable non-Landlord counterparty or counterparties under and as set forth in each Lease Document, including, without limitation, all indemnification obligations, insurance obligations, all obligations to operate, rebuild, restore or replace any facilities or improvements now or hereafter located on the Leased Property covered by the Lease, all obligations to perform the Required CapEx, all obligations to fund amounts or security under the Lease (including without limitation, funding any required amounts (or delivering a Letter of Credit, to the extent applicable) to the CapEx Reserve, the FF&E Reserve, the Covenant Security Escrow Account, the Construction Security Escrow Account and any impound account), all obligations to operate the Leased Property under the “Mandalay Bay” or “MGM Grand” brands, and all obligations under Article XXXVI under the

Lease (together with Guarantor's obligations under Section 13 hereof, collectively, the "**Obligations**"). In the event of the failure of Tenant to pay any such Rent or other sums, or to render any other performance required of the applicable non-Landlord counterparty under the Lease Documents, when due or within any applicable cure period, Guarantor shall forthwith perform or cause to be performed all provisions of the applicable Lease Document to be performed by the applicable non-Landlord counterparty thereunder, and pay all reasonable costs of collection or enforcement and other damages that may result from the non-performance thereof to the full extent provided under the applicable Lease Document. As to the Obligations, Guarantor's liability under this Guaranty is without limit except as provided in Section 12 hereof. Guarantor agrees that its guarantee provided herein constitutes an absolute, direct, immediate, continuing and unconditional guaranty of guarantee of payment and performance when due and not of collection.

2. Survival of Obligations. The obligations of Guarantor under this Guaranty shall survive and continue in full force and effect notwithstanding:

- (a) any amendment, modification, or extension of any of the Lease Documents;
- (b) any compromise, release, consent, extension, indulgence or other action or inaction in respect of any terms of any Lease Document or any other guarantor;
- (c) any substitution or release, in whole or in part, of any security for this Guaranty which Landlord may hold at any time;
- (d) any exercise or non-exercise by Landlord of any right, power or remedy under or in respect of any Lease Document or any security held by Landlord with respect thereto, or any waiver of any such right, power or remedy;
- (e) any bankruptcy, insolvency, reorganization, arrangement, adjustment, composition, liquidation, or the like of Tenant or any other guarantor;
- (f) any limitation of Tenant's liability under any Lease Document, (ii) any limitation of Tenant's liability under any Lease Document which may now or hereafter be imposed by any statute, regulation or rule of law, or (iii) any illegality, irregularity, invalidity or unenforceability, in whole or in part, of any Lease Document or any term thereof;
- (g) any sale, lease, or transfer of all or any part of any interest in the Facilities or any or all of the assets of Tenant to any Person other than to Landlord;
- (h) any act or omission by Landlord with respect to any security instrument or any failure to file, record or otherwise perfect the same;
- (i) any extensions of time for performance under any Lease Document;
- (j) the release of Tenant from performance or observation of any of the agreements, covenants, terms or conditions contained in any Lease Document by operation of law or otherwise;
- (k) the fact that Tenant may or may not be personally liable, in whole or in part, under the terms of the Lease Documents to pay any money judgment;
- (l) the failure to give Guarantor any notice of acceptance, default or otherwise;

(m) any other guaranty now or hereafter executed by Guarantor or anyone else in connection with any of the Lease Documents;

(n) any rights, powers or privileges Landlord may now or hereafter have against any other Person; or

(o) any other circumstances, whether or not Guarantor had notice or knowledge thereof.

3. Primary Liability. The liability of Guarantor with respect to the Lease Documents shall be primary, direct and immediate, and Landlord may proceed against Guarantor: (a) prior to or in lieu of proceeding against Tenant, its assets, any security deposit, or any other guarantor; and (b) prior to or in lieu of pursuing any other rights or remedies available to Landlord. All rights and remedies afforded to Landlord by reason of this Guaranty or by law are separate, independent and cumulative, and the exercise of any rights or remedies shall not in any way limit, restrict or prejudice the exercise of any other rights or remedies.

In the event of any default under any Lease Document, a separate action or actions may be brought and prosecuted against Guarantor whether or not Tenant is joined therein or a separate action or actions are brought against Tenant. Landlord may maintain successive actions for other defaults. Landlord's rights hereunder shall not be exhausted by its exercise of any of its rights or remedies or by any such action or by any number of successive actions until and unless all Obligations the payment and performance of which are hereby guaranteed have been paid and fully performed.

4. Obligations Not Affected. In such manner, upon such terms and at such times as Landlord in its sole discretion deems necessary or expedient, and without notice to Guarantor, Landlord may: (a) amend, alter, compromise, accelerate, extend or change the time or manner for the payment or the performance of any Obligation hereby guaranteed; (b) extend, amend or terminate the Lease Documents; or (c) release Tenant by consent to any assignment (or otherwise) as to all or any portion of the Obligations hereby guaranteed, in each case pursuant to the terms of the Lease Documents. Any exercise or non-exercise by Landlord of any right hereby given Landlord, dealing by Landlord with Guarantor or any other guarantor, Tenant or any other Person, or change, impairment, release or suspension of any right or remedy of Landlord against any Person including Tenant and any other guarantor will not affect any of the Obligations of Guarantor hereunder or give Guarantor any recourse or offset against Landlord.

5. Waiver. With respect to the Lease Documents, Guarantor hereby waives and relinquishes all rights and remedies accorded by applicable law to sureties and/or guarantors or any other accommodation parties, under any statutory provisions, common law or any other provision of law, custom or practice, and agrees not to assert or take advantage of any such rights or remedies including, but not limited to:

(a) any right to require Landlord to proceed against Tenant or any other Person or to proceed against or exhaust any security held by Landlord at any time or to pursue any other remedy in Landlord's power before proceeding against Guarantor or to require that Landlord cause a marshaling of Tenant's assets or any assets given as collateral for this Guaranty, or to proceed against Tenant and/or any collateral, including collateral, if any, given to secure such Guarantor's obligation under this Guaranty, held by Landlord at any time or in any particular order;

(b) any defense that may arise by reason of the incapacity or lack of authority of any other Person or Persons;

(c) notice of the existence, creation or incurring of any new or additional indebtedness or obligation or of any action or non-action on the part of Tenant, Landlord, any creditor of Tenant or Guarantor or on the part of any other Person whomsoever under this or any other instrument in connection with any obligation or evidence of indebtedness held by Landlord or in connection with any obligation hereby guaranteed;

(d) any defense based upon an election of remedies by Landlord which destroys or otherwise impairs the subrogation rights of Guarantor or the right of Guarantor to proceed against Tenant for reimbursement, or both;

(e) any defense based upon any statute or rule of law which provides that the obligation of a surety must be neither larger in amount nor in other respects more burdensome than that of the principal;

(f) any duty on the part of Landlord to disclose to Guarantor any facts Landlord may now or hereafter know about Tenant, regardless of whether Landlord has reason to believe that any such facts materially increase the risk beyond that which Guarantor intends to assume or has reason to believe that such facts are unknown to Guarantor or has a reasonable opportunity to communicate such facts to Guarantor, it being understood and agreed that Guarantor is fully responsible for being and keeping informed of the financial condition of Tenant and of all circumstances bearing on the risk of non-payment or non-performance of any Obligations hereby guaranteed;

(g) any defense arising because of Landlord's election, in any proceeding instituted under the federal Bankruptcy Code, of the application of Section 1111(b)(2) of the federal Bankruptcy Code;

(h) any defense based on any borrowing or grant of a security interest under Section 364 of the federal Bankruptcy Code;

(i) any defense relating to the exercise by Landlord of its rights under Section 365(n) of the federal Bankruptcy Code; and

(j) any defense relating to the application of 502(b)(6) of the federal Bankruptcy Code; and

(k) all rights and remedies accorded by applicable law to guarantors, including without limitation, any extension of time conferred by any law now or hereafter in effect and any requirement or notice of acceptance of this Guaranty or any other notice to which the undersigned may now or hereafter be entitled to the extent such waiver of notice is permitted by applicable law.

6. Information. Guarantor assumes all responsibility for being and keeping itself informed of the financial condition and assets of Tenant and of all other circumstances bearing upon the risk of nonpayment of the Obligations and the nature, scope and extent of the risks that Guarantor assumes and incurs hereunder and agrees that Landlord will not have any duty to advise Guarantor of information regarding such circumstances or risks.

7. No Subrogation. Until all Obligations of Tenant under the Lease Documents have been satisfied and discharged in full, Guarantor shall have no right of subrogation and waives any right to enforce any remedy which Guarantor now has or may hereafter have against Tenant

(including any such remedy of Landlord) and any benefit of, and any right to participate in, any security now or hereafter held by Landlord with respect to the Lease Documents.

8. Agreement to Comply with terms of the Lease Documents. Guarantor hereby agrees (a) to comply with all terms of the Lease Documents applicable to it, (b) that it shall take no action, and that it shall not omit to take any action, which action or omission, as applicable, would cause a breach of the terms of any Lease Document and (c) that it shall not commence an involuntary proceeding or file an involuntary petition in any court of competent jurisdiction seeking (i) relief in respect of Tenant or any of Tenant's Significant Subsidiaries, or of a substantial part of the property or assets of Tenant or any of Tenant's Significant Subsidiaries, under Title 11 of the United States Code, as now constituted or hereafter amended, or any other federal, state or foreign bankruptcy, insolvency, receivership or similar law or (ii) the appointment of a receiver, trustee, custodian, sequestrator, conservator or similar official for Tenant or any of Tenant's Significant Subsidiaries or for a substantial part of the property or assets of Tenant or any of Tenant's Significant Subsidiaries. As used herein, the term "**Significant Subsidiary**" shall mean, with respect to any Person, any Subsidiary of that Person that would be a "significant subsidiary" as defined in Article I, Rule 1 02 of Regulation S-X, promulgated pursuant to the Securities Act as such Regulation is in effect on the date hereof.

9. Agreement to Pay; Contribution; Subordination. Without limitation of any other right of Landlord at law or in equity, upon the failure of Tenant to pay any Obligation when and as the same shall become due, Guarantor hereby promises to and will forthwith pay, or cause to be paid, to Landlord in cash the amount of such unpaid Obligation. Upon payment by Guarantor of any sums to Landlord as provided above, all rights of Guarantor against Tenant arising as a result thereof by way of subrogation, contribution, reimbursement, indemnity or otherwise shall be subject to the limitations set forth in this Section 9. If for any reason whatsoever Tenant now or hereafter becomes indebted to Guarantor or any Affiliate of Guarantor, such indebtedness and all interest thereon shall at all times be subordinate to Tenant's obligation to Landlord to pay as and when due in accordance with the terms of any Lease Document the guaranteed Obligations, it being understood that Guarantor and each Affiliate of Guarantor shall be permitted to receive payments from Tenant on account of such obligations except during the continuance of an Event of Default under any Lease Document relating to failure to pay amounts due under such Lease Document. During any time in which an Event of Default relating to failure to pay amounts due under a Lease Document has occurred and is continuing under such Lease Document (and provided that Guarantor has received written notice thereof), Guarantor agrees to make no claim for such indebtedness that does not recite that such claim is expressly subordinate to Landlord's rights and remedies under the Lease Documents.

10. Application of Payments. With respect to the Lease Documents, and with or without notice to Guarantor, Landlord, in Landlord's sole discretion and at any time and from time to time and in such manner and upon such terms as Landlord deems appropriate, may (a) apply any or all payments or recoveries following the occurrence and during the continuance of an Event of Default from Tenant or from any other guarantor under any other instrument or realized from any security, in such manner and order of priority as Landlord may determine, to any indebtedness or other obligation of Tenant with respect to the Lease Documents and whether or not such indebtedness or other obligation is guaranteed hereby or is otherwise secured, and (b) refund to Tenant any payment received by Landlord under any Lease Document.

11. Guaranty Default. Upon the failure of Guarantor to pay the amounts required to be paid hereunder when due following the occurrence and during the continuance of an Event of Default under any Lease Document, Landlord shall have the right to bring such actions at law or in equity, including appropriate injunctive relief, as it deems appropriate to compel compliance,

payment or deposit, and among other remedies to recover its reasonable attorneys' fees in any proceeding, including any appeal therefrom and any post judgment proceedings.

12. Maximum Liability. Guarantor and, by its acceptance of the guarantees provided herein, Landlord, hereby confirms that it is the intention of all such Persons that the guarantees provided herein and the obligations of Guarantor hereunder not constitute a fraudulent transfer or conveyance for purposes of the United States Bankruptcy Code or any other federal, state or foreign bankruptcy, insolvency, receivership or similar law, the Uniform Fraudulent Conveyance Act, the Uniform Fraudulent Transfer Act or any similar foreign, federal or state law to the extent applicable to the guarantees provided herein and the obligations of Guarantor hereunder. To effectuate the foregoing intention, Landlord hereby irrevocably agrees that the obligations of Guarantor under this Guaranty shall be limited to the maximum amount as will result in such obligations not constituting a fraudulent transfer or conveyance.

13. Financial Covenant Obligations. In the event of a bankruptcy of Tenant, Guarantor will perform, or will cause the performance of, the Tenant's obligations set forth under Section 23.3 of the Lease even if such obligations are subject to a stay by the bankruptcy court.

14. Material Guarantor Acknowledgements. Without limitation of any of the other provisions, terms, and conditions hereof, Guarantor expressly acknowledges and agrees that:

(a) in connection with the implementation of a Foreclosure Assignment or Foreclosure COC, this Guaranty shall remain in full force and effect and Guarantor shall be obligated in all respects under the Guaranty without any termination, reduction, impairment or reduction whatsoever, irrespective of whether any of the following shall have occurred (whether or not notice thereof is given to Guarantor) (in each and any such case, irrespective of whether Guarantor shall execute an affirmation or reaffirmation of its obligations under the Lease Guaranty, or otherwise affirm or reaffirm its obligations hereunder in connection therewith): (i) any foreclosure or such other termination of Tenant's interest in the Lease or of any or all of the equity in Tenant, (ii) any other exercise of remedies by the applicable Permitted Leasehold Mortgagee, (iii) any changes in the nature of the relationship between Tenant, on the one hand, and Guarantor, on the other hand, including by reason of the replacement of Tenant with a Foreclosure Transferee and the delivery of a guaranty by a Qualified Transferee (as defined in the Lease)) that is unrelated to Guarantor, or (iv) any changes or modifications with respect to the Lease of any nature in connection with such Foreclosure Assignment or Foreclosure COC pursuant to and contemplated by paragraph of Section 22.2 of the Lease;

(b) if a New Lease is successfully entered into in accordance with Section 17.1(f) of the Lease, then, in any such event, this Guaranty shall remain in full force and effect and Guarantor shall be obligated in all respects under this Guaranty without any termination, reduction, impairment or reduction whatsoever, irrespective of whether any of the following shall have occurred (whether or not notice thereof is given to Guarantor) (in each and any such case, irrespective of whether Guarantor shall execute an affirmation or reaffirmation of its obligations under the Guaranty, or otherwise affirm or reaffirm its obligations hereunder in connection therewith): (i) any foreclosure or such other termination of Tenant's interest in the Lease or of any or all of the equity in Tenant or any other exercise of remedies by the applicable Permitted Leasehold Mortgagee, (ii) any termination of the Lease, (iii) any changes in the nature of the relationship between Tenant, on the one hand, and Guarantor, on the other hand, including by reason of the replacement of Tenant with a Foreclosure Transferee and the delivery of a guaranty by a Qualified Transferee (as defined in the Lease)) that is unrelated to Guarantor, or (iv) the entry into the New Lease on the terms and conditions contemplated under Section 17.1(f) of the Lease.

(c) Guarantor expressly acknowledges and agrees that Guarantor shall, at the request of Landlord, affirm or reaffirm in writing all of its obligations under this Guaranty in respect of the Lease Documents or any New Lease, as applicable, upon the occurrence of any of the following: (i) at the request of Landlord in connection with any prospective Fee Mortgage or conveyance of the Leased Property by Landlord, (ii) any Foreclosure Assignment or Foreclosure COC in accordance with Section 22.2(i) of the Lease; (iii) the assumption by any Person (including a Person that is unrelated to Guarantor) of Tenant's rights and obligations under the Lease in connection with any such Foreclosure Assignment; or (iv) the execution of any New Lease by any Person (including a Person that is unrelated to Guarantor) in accordance with Section 17.1(f) of the Lease. Guarantor expressly acknowledges and agrees that Guarantor's failure to so reaffirm in a writing reasonably acceptable to Landlord all of its obligations under this Agreement within ten (10) days of a request from Landlord shall be an immediate default by Guarantor. In addition, and without limitation of anything otherwise contained in this Agreement, Guarantor acknowledges it hereby appoints Landlord as its attorney-in-fact with full power in Guarantor's name and behalf to execute and deliver at any time an affirmation or reaffirmation of this Agreement, including as to the Guaranty.

(d) in connection with Guarantor no longer being Tenant's Parent, this Guaranty shall remain in full force and effect and Guarantor shall be obligated in all respects under the Guaranty without any termination, reduction, impairment or reduction whatsoever, irrespective of whether Guarantor shall execute an affirmation or reaffirmation of its obligations under the Guaranty, or otherwise affirm or reaffirm its obligations hereunder in connection therewith.

(e) GUARANTOR HEREBY IRREVOCABLY WAIVES ANY CONTENTION THAT ITS OBLIGATIONS UNDER THIS GUARANTY ARE UNENFORCEABLE, AND HEREBY ACKNOWLEDGES THAT IT IS ESTOPPED TO ASSERT TO THE CONTRARY.

15. Notices. Any notice, request or other communication ("Notice") to be given by any party hereunder shall be in writing and shall be sent by registered or certified mail, postage prepaid and return receipt requested, by hand delivery or express courier service, by facsimile transmission or by an overnight express service to the following address:

To Guarantor:

MGM Resorts International
6385 South Rainbow Boulevard
Suite 500
Las Vegas, NV 89118
Attention: Corporate Legal

With a copy to
(that shall not constitute notice):

Email: legalnotices@mgmresorts.com

With a copy to
(that shall not constitute notice):

Weil, Gotshal & Manges, LLP
767 Fifth Avenue
New York, NY 10153
Attention: Michael Aiello

W. Michael Bond
Email: michael.aiello@weil.com
michael.bond@weil.com

To Landlord:

MGP Growth Properties LLC
1980 Festival Plaza Drive, Suite 750
Las Vegas, Nevada 89135
Attention: James C. Stewart
Email: JStewart@mgpreit.com

With a copy to
(that shall not constitute notice):

c/o BREIT Operating Partnership L.P.
345 Park Avenue
New York, New York 10154
Attention: Head, U.S. Asset Management
Email: realestatenotices@blackstone.com

and

c/o BREIT Operating Partnership L.P.
345 Park Avenue
New York, New York 10154
Attention: General Counsel
Email: realestatenotices@blackstone.com

and

Simpson Thacher & Bartlett LLP
425 Lexington Avenue
New York, New York 10017
Attention: Gregory Ressa
Email: gressa@stblaw.com

and

Simpson Thacher & Bartlett LLP
425 Lexington Avenue
New York, New York 10017
Attention: Erik Quarfordt
Email: equarfordt@stblaw.com

and

Hogan Lovells
Columbia Square
555 Thirteenth Street, NW
Washington, D.C. 20004
Attention: Matt N. Thomson
Email: matt.thomson@hoganlovells.com

or to such other address as either party may hereafter designate. Notice shall be deemed to have been given on the date of delivery if such delivery is made on a Business Day, or if not, on the first Business Day after delivery. If delivery is refused, Notice shall be deemed to have been given on the date delivery was first attempted. Notice sent by facsimile transmission shall be deemed given upon confirmation that such Notice was received at the number specified above or in a Notice to the sender.

16. Miscellaneous.

(a) No term, condition or provision of this Guaranty may be waived except by an express written instrument to that effect signed by Landlord. No waiver of any term, condition or provision of this Guaranty will be deemed a waiver of any other term, condition or provision, irrespective of similarity, or constitute a continuing waiver of the same term, condition or provision, unless otherwise expressly provided. No term, condition or provision of this Guaranty may be amended or modified with respect to Guarantor except by an express written instrument to that effect signed by Landlord and Guarantor.

(b) If any one or more of the terms, conditions or provisions contained in this Guaranty is found in a final award or judgment rendered by any court of competent jurisdiction to be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining terms, conditions and provisions of this Guaranty shall not in any way be affected or impaired thereby, and this Guaranty shall be interpreted and construed as if the invalid, illegal, or unenforceable term, condition or provision had never been contained in this Guaranty.

(c) THIS GUARANTY SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, EXCEPT THAT THE LAWS OF THE STATE OF NEVADA SHALL GOVERN THIS AGREEMENT TO THE EXTENT NECESSARY (I) TO OBTAIN THE BENEFIT OF THE RIGHTS AND REMEDIES SET FORTH HEREIN WITH RESPECT TO ANY OF THE LEASED PROPERTY AND (II) FOR PROCEDURAL REQUIREMENTS WHICH MUST BE GOVERNED BY THE LAWS OF THE STATE. GUARANTOR CONSENTS TO IN PERSONAM JURISDICTION BEFORE THE STATE AND FEDERAL COURTS OF NEW YORK AND AGREES THAT ALL DISPUTES CONCERNING THIS GUARANTY SHALL BE HEARD IN THE STATE AND FEDERAL COURTS LOCATED IN THE STATE OF NEW YORK. GUARANTOR FURTHER CONSENTS TO IN PERSONAM JURISDICTION BEFORE THE STATE AND FEDERAL COURTS OF EACH STATE WITH RESPECT TO ANY ACTION COMMENCED BY LANDLORD SEEKING TO RETAKE POSSESSION OF ANY OR ALL OF THE LEASED PROPERTY IN WHICH GUARANTOR IS REQUIRED TO BE NAMED AS A NECESSARY PARTY. GUARANTOR AGREES THAT SERVICE OF PROCESS MAY BE EFFECTED UPON IT UNDER ANY METHOD PERMISSIBLE UNDER THE LAWS OF THE STATE OF NEW YORK AND IRREVOCABLY WAIVES ANY OBJECTION TO VENUE IN THE STATE AND FEDERAL COURTS LOCATED IN THE STATE OF NEW YORK OR, TO THE EXTENT APPLICABLE IN ACCORDANCE WITH THE TERMS HEREOF, LOCATED IN CLARK COUNTY IN THE STATE OF NEVADA.

(d) GUARANTOR, BY ITS EXECUTION OF THIS GUARANTY, AND LANDLORD, BY ITS EXECUTION AND ACCEPTANCE OF THIS GUARANTY, EACH HEREBY WAIVE TRIAL BY JURY AND THE RIGHT THERETO IN ANY ACTION OR PROCEEDING OF ANY KIND ARISING ON, UNDER, OUT OF, BY REASON OF OR RELATING IN ANY WAY TO THIS GUARANTY OR THE INTERPRETATION, BREACH OR ENFORCEMENT THEREOF.

(e) In the event of any suit, action, arbitration or other proceeding to interpret this Guaranty, or to determine or enforce any right or obligation created hereby, the prevailing

party in the action shall recover such party's reasonable costs and expenses incurred in connection therewith, including, but not limited to, reasonable attorneys' fees and costs of appeal, post judgment enforcement proceedings (if any) and bankruptcy proceedings (if any). Any court, arbitrator or panel of arbitrators shall, in entering any judgment or making any award in any such suit, action, arbitration or other proceeding, in addition to any and all other relief awarded to such prevailing party, include in such judgment or award such party's reasonable costs and expenses as provided in this Section 16(e).

(f) Guarantor (i) represents that it has been represented and advised by counsel in connection with the execution of this Guaranty; (ii) acknowledges receipt of a copy of the Lease Documents; and (iii) further represents that Guarantor has been advised by counsel with respect thereto. This Guaranty shall be construed and interpreted in accordance with the plain meaning of its language, and not for or against Guarantor or Landlord, and as a whole, giving effect to all of the terms, conditions and provisions hereof.

(g) Except as provided in any other written agreement now or at any time hereafter in force between Landlord and Guarantor, this Guaranty shall constitute the entire agreement of Guarantor with Landlord with respect to the subject matter hereof, and no representation, understanding, promise or condition concerning the subject matter hereof will be binding upon Landlord or Guarantor unless expressed herein.

(h) All stipulations, obligations, liabilities and undertakings under this Guaranty shall be binding upon Guarantor and its successors and assigns and shall inure to the benefit of Landlord and to the benefit of Landlord's successors and assigns.

(i) Whenever the singular shall be used hereunder, it shall be deemed to include the plural (and vice-versa) and reference to one gender shall be construed to include all other genders, including neuter, whenever the context of this Guaranty so requires. Section captions or headings used in the Guaranty are for convenience and reference only, and shall not affect the construction thereof.

(j) This Guaranty may be executed in any number of counterparts, each of which shall be a valid and binding original, but all of which together shall constitute one and the same instrument.

17. No Third Party Beneficiaries. Landlord and its successors and assigns are the beneficiaries of this Guaranty. No other Person shall be a third-party beneficiary hereof. Without limiting the foregoing, no other creditor or equity holder of Landlord, any parent company or its Subsidiaries shall have any rights or be entitled to any benefits hereunder. For the avoidance of doubt, Guarantor hereby consents to the collateral assignment of this Guaranty to any Fee Mortgagee and agrees that any Person who succeeds to Landlord's interest under any of the Lease Documents in accordance with the terms thereof (or enters into a new lease with Tenant in accordance with Section 31.2 of the Lease) shall constitute a permitted successor and/or assignee and intended beneficiary hereof (and shall become, be recognized by Guarantor as, and have all of the rights of "Landlord" hereunder).

[Signature Page to Follow]

EXECUTED as of the date first set forth above.

GUARANTOR:

MGM RESORTS INTERNATIONAL, a Delaware corporation

By:
Name:
Title:

MB LANDLORD:

MANDALAY PROPCO, LLC, a Delaware limited liability company

By:
Name:
Title:

GRAND LANDLORD:

By:
Name:
Title:

GUARANTY

This **GUARANTY OF LEASE DOCUMENTS** (this “**Guaranty**”), is made and entered into as of the 14th day of February, 2020 by and among **MGM RESORTS INTERNATIONAL**, a Delaware corporation (“**Guarantor**”), **Mandalay PropCo, LLC**, a Delaware limited liability company (“**MB Landlord**”) and **MGM Grand PropCo, LLC**, a Delaware limited liability company (“**Grand Landlord**” and, together with the MB Landlord, collectively, “**Landlord**”).

RECITALS

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AGREEMENTS

NOW, THEREFORE, in consideration of Landlord entering into the Lease Documents with Tenant, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Guarantor agrees as follows:

1. Guaranty. In consideration of the benefit derived or to be derived by it therefrom, as to the Lease Documents, from and after the Commencement Date thereof, Guarantor hereby unconditionally and irrevocably guarantees, as a primary obligor and not merely as a surety, (i) the payment when due of all Rent and all other sums payable by Tenant under the Lease, and (ii) the faithful and prompt performance when due of each and every one of the terms, conditions and covenants of any nature to be kept and performed by the applicable non-Landlord counterparty or counterparties under and as set forth in each Lease Document, including, without limitation, all indemnification obligations, insurance obligations, all obligations to operate, rebuild, restore or replace any facilities or improvements now or hereafter located on the Leased Property covered by the Lease, all obligations to perform the Required CapEx, all obligations to fund amounts or security under the Lease (including without limitation, funding any required

amounts (or delivering a Letter of Credit, to the extent applicable) to the CapEx Reserve, the FF&E Reserve, the Covenant Security Escrow Account, the Construction Security Escrow Account and any impound account), all obligations to operate the Leased Property under the “Mandalay Bay” or “MGM Grand” brands, and all obligations under Article XXXVI under the Lease (together with Guarantor’s obligations under Section 13 hereof, collectively, the “**Obligations**”). In the event of the failure of Tenant to pay any such Rent or other sums, or to render any other performance required of the applicable non-Landlord counterparty under the Lease Documents, when due or within any applicable cure period, Guarantor shall forthwith perform or cause to be performed all provisions of the applicable Lease Document to be performed by the applicable non-Landlord counterparty thereunder, and pay all reasonable costs of collection or enforcement and other damages that may result from the non-performance thereof to the full extent provided under the applicable Lease Document. As to the Obligations, Guarantor’s liability under this Guaranty is without limit except as provided in Section 12 hereof. Guarantor agrees that its guarantee provided herein constitutes an absolute, direct, immediate, continuing and unconditional guaranty of guarantee of payment and performance when due and not of collection.

2. Survival of Obligations. The obligations of Guarantor under this Guaranty shall survive and continue in full force and effect notwithstanding:

- (a) any amendment, modification, or extension of any of the Lease Documents;
- (b) any compromise, release, consent, extension, indulgence or other action or inaction in respect of any terms of any Lease Document or any other guarantor;
- (c) any substitution or release, in whole or in part, of any security for this Guaranty which Landlord may hold at any time;
- (d) any exercise or non-exercise by Landlord of any right, power or remedy under or in respect of any Lease Document or any security held by Landlord with respect thereto, or any waiver of any such right, power or remedy;
- (e) any bankruptcy, insolvency, reorganization, arrangement, adjustment, composition, liquidation, or the like of Tenant or any other guarantor;
- (f) (i) any limitation of Tenant’s liability under any Lease Document, (ii) any limitation of Tenant’s liability under any Lease Document which may now or hereafter be imposed by any statute, regulation or rule of law, or (iii) any illegality, irregularity, invalidity or unenforceability, in whole or in part, of any Lease Document or any term thereof;
- (g) any sale, lease, or transfer of all or any part of any interest in the Facilities or any or all of the assets of Tenant to any Person other than to Landlord;
- (h) any act or omission by Landlord with respect to any security instrument or any failure to file, record or otherwise perfect the same;

- (i) any extensions of time for performance under any Lease Document;
- (j) the release of Tenant from performance or observation of any of the agreements, covenants, terms or conditions contained in any Lease Document by operation of law or otherwise;
- (k) the fact that Tenant may or may not be personally liable, in whole or in part, under the terms of the Lease Documents to pay any money judgment;
- (l) the failure to give Guarantor any notice of acceptance, default or otherwise;
- (m) any other guaranty now or hereafter executed by Guarantor or anyone else in connection with any of the Lease Documents;
- (n) any rights, powers or privileges Landlord may now or hereafter have against any other Person; or
- (o) any other circumstances, whether or not Guarantor had notice or knowledge thereof.

3. Primary Liability. The liability of Guarantor with respect to the Lease Documents shall be primary, direct and immediate, and Landlord may proceed against Guarantor: (a) prior to or in lieu of proceeding against Tenant, its assets, any security deposit, or any other guarantor; and (b) prior to or in lieu of pursuing any other rights or remedies available to Landlord. All rights and remedies afforded to Landlord by reason of this Guaranty or by law are separate, independent and cumulative, and the exercise of any rights or remedies shall not in any way limit, restrict or prejudice the exercise of any other rights or remedies.

In the event of any default under any Lease Document, a separate action or actions may be brought and prosecuted against Guarantor whether or not Tenant is joined therein or a separate action or actions are brought against Tenant. Landlord may maintain successive actions for other defaults. Landlord's rights hereunder shall not be exhausted by its exercise of any of its rights or remedies or by any such action or by any number of successive actions until and unless all Obligations the payment and performance of which are hereby guaranteed have been paid and fully performed.

4. Obligations Not Affected. In such manner, upon such terms and at such times as Landlord in its sole discretion deems necessary or expedient, and without notice to Guarantor, Landlord may: (a) amend, alter, compromise, accelerate, extend or change the time or manner for the payment or the performance of any Obligation hereby guaranteed; (b) extend, amend or terminate the Lease Documents; or (c) release Tenant by consent to any assignment (or otherwise) as to all or any portion of the Obligations hereby guaranteed, in each case pursuant to the terms of the Lease Documents. Any exercise or non-exercise by Landlord of any right hereby given Landlord, dealing by Landlord with Guarantor or any other guarantor, Tenant or any other Person, or change, impairment, release or suspension of any right or remedy of Landlord against any Person including Tenant and any other guarantor will not affect any of the Obligations of Guarantor hereunder or give Guarantor any recourse or offset against Landlord.

5. Waiver. With respect to the Lease Documents, Guarantor hereby waives and relinquishes all rights and remedies accorded by applicable law to sureties and/or guarantors or any other accommodation parties, under any statutory provisions, common law or any other provision of law, custom or practice, and agrees not to assert or take advantage of any such rights or remedies including, but not limited to:

- (a) any right to require Landlord to proceed against Tenant or any other Person or to proceed against or exhaust any security held by Landlord at any time or to pursue any other remedy in Landlord's power before proceeding against Guarantor or to require that Landlord cause a marshaling of Tenant's assets or any assets given as collateral for this Guaranty, or to proceed against Tenant and/or any collateral, including collateral, if any, given to secure such Guarantor's obligation under this Guaranty, held by Landlord at any time or in any particular order;
- (b) any defense that may arise by reason of the incapacity or lack of authority of any other Person or Persons;
- (c) notice of the existence, creation or incurring of any new or additional indebtedness or obligation or of any action or non-action on the part of Tenant, Landlord, any creditor of Tenant or Guarantor or on the part of any other Person whomsoever under this or any other instrument in connection with any obligation or evidence of indebtedness held by Landlord or in connection with any obligation hereby guaranteed;
- (d) any defense based upon an election of remedies by Landlord which destroys or otherwise impairs the subrogation rights of Guarantor or the right of Guarantor to proceed against Tenant for reimbursement, or both;
- (e) any defense based upon any statute or rule of law which provides that the obligation of a surety must be neither larger in amount nor in other respects more burdensome than that of the principal;
- (f) any duty on the part of Landlord to disclose to Guarantor any facts Landlord may now or hereafter know about Tenant, regardless of whether Landlord has reason to believe that any such facts materially increase the risk beyond that which Guarantor intends to assume or has reason to believe that such facts are unknown to Guarantor or has a reasonable opportunity to communicate such facts to Guarantor, it being understood and agreed that Guarantor is fully responsible for being and keeping informed of the financial condition of Tenant and of all circumstances bearing on the risk of non-payment or non-performance of any Obligations hereby guaranteed;
- (g) any defense arising because of Landlord's election, in any proceeding instituted under the federal Bankruptcy Code, of the application of Section 1111(b)(2) of the federal Bankruptcy Code;
- (h) any defense based on any borrowing or grant of a security interest under Section 364 of the federal Bankruptcy Code;

(i) any defense relating to the exercise by Landlord of its rights under Section 365(n) of the federal Bankruptcy Code; and

(j) any defense relating to the application of 502(b)(6) of the federal Bankruptcy Code; and

(k) all rights and remedies accorded by applicable law to guarantors, including without limitation, any extension of time conferred by any law now or hereafter in effect and any requirement or notice of acceptance of this Guaranty or any other notice to which the undersigned may now or hereafter be entitled to the extent such waiver of notice is permitted by applicable law.

6. Information. Guarantor assumes all responsibility for being and keeping itself informed of the financial condition and assets of Tenant and of all other circumstances bearing upon the risk of nonpayment of the Obligations and the nature, scope and extent of the risks that Guarantor assumes and incurs hereunder and agrees that Landlord will not have any duty to advise Guarantor of information regarding such circumstances or risks.

7. No Subrogation. Until all Obligations of Tenant under the Lease Documents have been satisfied and discharged in full, Guarantor shall have no right of subrogation and waives any right to enforce any remedy which Guarantor now has or may hereafter have against Tenant (including any such remedy of Landlord) and any benefit of, and any right to participate in, any security now or hereafter held by Landlord with respect to the Lease Documents.

8. Agreement to Comply with terms of the Lease Documents. Guarantor hereby agrees (a) to comply with all terms of the Lease Documents applicable to it, (b) that it shall take no action, and that it shall not omit to take any action, which action or omission, as applicable, would cause a breach of the terms of any Lease Document and (c) that it shall not commence an involuntary proceeding or file an involuntary petition in any court of competent jurisdiction seeking (i) relief in respect of Tenant or any of Tenant's Significant Subsidiaries, or of a substantial part of the property or assets of Tenant or any of Tenant's Significant Subsidiaries, under Title 11 of the United States Code, as now constituted or hereafter amended, or any other federal, state or foreign bankruptcy, insolvency, receivership or similar law or (ii) the appointment of a receiver, trustee, custodian, sequestrator, conservator or similar official for Tenant or any of Tenant's Significant Subsidiaries or for a substantial part of the property or assets of Tenant or any of Tenant's Significant Subsidiaries. As used herein, the term "**Significant Subsidiary**" shall mean, with respect to any Person, any Subsidiary of that Person that would be a "significant subsidiary" as defined in Article I, Rule 1 02 of Regulation S-X, promulgated pursuant to the Securities Act as such Regulation is in effect on the date hereof.

9. Agreement to Pay; Contribution; Subordination. Without limitation of any other right of Landlord at law or in equity, upon the failure of Tenant to pay any Obligation when and as the same shall become due, Guarantor hereby promises to and will forthwith pay, or cause to be paid, to Landlord in cash the amount of such unpaid Obligation. Upon payment by Guarantor of any sums to Landlord as provided above, all rights of Guarantor against Tenant arising as a result thereof by way of subrogation, contribution, reimbursement, indemnity or otherwise shall be subject to the limitations set forth in this Section 9. If for any reason whatsoever Tenant now

or hereafter becomes indebted to Guarantor or any Affiliate of Guarantor, such indebtedness and all interest thereon shall at all times be subordinate to Tenant's obligation to Landlord to pay as and when due in accordance with the terms of any Lease Document the guaranteed Obligations, it being understood that Guarantor and each Affiliate of Guarantor shall be permitted to receive payments from Tenant on account of such obligations except during the continuance of an Event of Default under any Lease Document relating to failure to pay amounts due under such Lease Document. During any time in which an Event of Default relating to failure to pay amounts due under a Lease Document has occurred and is continuing under such Lease Document (and provided that Guarantor has received written notice thereof), Guarantor agrees to make no claim for such indebtedness that does not recite that such claim is expressly subordinate to Landlord's rights and remedies under the Lease Documents.

10. Application of Payments. With respect to the Lease Documents, and with or without notice to Guarantor, Landlord, in Landlord's sole discretion and at any time and from time to time and in such manner and upon such terms as Landlord deems appropriate, may (a) apply any or all payments or recoveries following the occurrence and during the continuance of an Event of Default from Tenant or from any other guarantor under any other instrument or realized from any security, in such manner and order of priority as Landlord may determine, to any indebtedness or other obligation of Tenant with respect to the Lease Documents and whether or not such indebtedness or other obligation is guaranteed hereby or is otherwise secured, and (b) refund to Tenant any payment received by Landlord under any Lease Document.

11. Guaranty Default. Upon the failure of Guarantor to pay the amounts required to be paid hereunder when due following the occurrence and during the continuance of an Event of Default under any Lease Document, Landlord shall have the right to bring such actions at law or in equity, including appropriate injunctive relief, as it deems appropriate to compel compliance, payment or deposit, and among other remedies to recover its reasonable attorneys' fees in any proceeding, including any appeal therefrom and any post judgment proceedings.

12. Maximum Liability. Guarantor and, by its acceptance of the guarantees provided herein, Landlord, hereby confirms that it is the intention of all such Persons that the guarantees provided herein and the obligations of Guarantor hereunder not constitute a fraudulent transfer or conveyance for purposes of the United States Bankruptcy Code or any other federal, state or foreign bankruptcy, insolvency, receivership or similar law, the Uniform Fraudulent Conveyance Act, the Uniform Fraudulent Transfer Act or any similar foreign, federal or state law to the extent applicable to the guarantees provided herein and the obligations of Guarantor hereunder. To effectuate the foregoing intention, Landlord hereby irrevocably agrees that the obligations of Guarantor under this Guaranty shall be limited to the maximum amount as will result in such obligations not constituting a fraudulent transfer or conveyance.

13. Financial Covenant Obligations. In the event of a bankruptcy of Tenant, Guarantor will perform, or will cause the performance of, the Tenant's obligations set forth under Section 23.3 of the Lease even if such obligations are subject to a stay by the bankruptcy court.

14. Material Guarantor Acknowledgements. Without limitation of any of the other provisions, terms, and conditions hereof, Guarantor expressly acknowledges and agrees that:

(a) in connection with the implementation of a Foreclosure Assignment or Foreclosure COC, this Guaranty shall remain in full force and effect and Guarantor shall be obligated in all respects under the Guaranty without any termination, reduction, impairment or reduction whatsoever, irrespective of whether any of the following shall have occurred (whether or not notice thereof is given to Guarantor) (in each and any such case, irrespective of whether Guarantor shall execute an affirmation or reaffirmation of its obligations under the Lease Guaranty, or otherwise affirm or reaffirm its obligations hereunder in connection therewith): (i) any foreclosure or such other termination of Tenant's interest in the Lease or of any or all of the equity in Tenant, (ii) any other exercise of remedies by the applicable Permitted Leasehold Mortgagee, (iii) any changes in the nature of the relationship between Tenant, on the one hand, and Guarantor, on the other hand, including by reason of the replacement of Tenant with a Foreclosure Transferee and the delivery of a guaranty by a Qualified Transferee (as defined in the Lease)) that is unrelated to Guarantor, or (iv) any changes or modifications with respect to the Lease of any nature in connection with such Foreclosure Assignment or Foreclosure COC pursuant to and contemplated by paragraph of Section 22.2 of the Lease;

(b) if a New Lease is successfully entered into in accordance with Section 17.1(f) of the Lease, then, in any such event, this Guaranty shall remain in full force and effect and Guarantor shall be obligated in all respects under this Guaranty without any termination, reduction, impairment or reduction whatsoever, irrespective of whether any of the following shall have occurred (whether or not notice thereof is given to Guarantor) (in each and any such case, irrespective of whether Guarantor shall execute an affirmation or reaffirmation of its obligations under the Guaranty, or otherwise affirm or reaffirm its obligations hereunder in connection therewith): (i) any foreclosure or such other termination of Tenant's interest in the Lease or of any or all of the equity in Tenant or any other exercise of remedies by the applicable Permitted Leasehold Mortgagee, (ii) any termination of the Lease, (iii) any changes in the nature of the relationship between Tenant, on the one hand, and Guarantor, on the other hand, including by reason of the replacement of Tenant with a Foreclosure Transferee and the delivery of a guaranty by a Qualified Transferee (as defined in the Lease)) that is unrelated to Guarantor, or (iv) the entry into the New Lease on the terms and conditions contemplated under Section 17.1(f) of the Lease.

(c) Guarantor expressly acknowledges and agrees that Guarantor shall, at the request of Landlord, affirm or reaffirm in writing all of its obligations under this Guaranty in respect of the Lease Documents or any New Lease, as applicable, upon the occurrence of any of the following: (i) at the request of Landlord in connection with any prospective Fee Mortgage or conveyance of the Leased Property by Landlord, (ii) any Foreclosure Assignment or Foreclosure COC in accordance with Section 22.2(i) of the Lease; (iii) the assumption by any Person (including a Person that is unrelated to Guarantor) of Tenant's rights and obligations under the Lease in connection with any such Foreclosure Assignment; or (iv) the execution of any New Lease by any Person (including a Person that is unrelated to Guarantor) in accordance with Section 17.1(f) of the Lease. Guarantor expressly acknowledges and agrees that Guarantor's failure to so reaffirm in a writing reasonably acceptable to Landlord all of its obligations under this

Agreement within ten (10) days of a request from Landlord shall be an immediate default by Guarantor. In addition, and without limitation of anything otherwise contained in this Agreement, Guarantor acknowledges it hereby appoints Landlord as its attorney-in-fact with full power in Guarantor's name and behalf to execute and deliver at any time an affirmation or reaffirmation of this Agreement, including as to the Guaranty.

(d) in connection with Guarantor no longer being Tenant's Parent, this Guaranty shall remain in full force and effect and Guarantor shall be obligated in all respects under the Guaranty without any termination, reduction, impairment or reduction whatsoever, irrespective of whether Guarantor shall execute an affirmation or reaffirmation of its obligations under the Guaranty, or otherwise affirm or reaffirm its obligations hereunder in connection therewith.

(e) GUARANTOR HEREBY IRREVOCABLY WAIVES ANY CONTENTION THAT ITS OBLIGATIONS UNDER THIS GUARANTY ARE UNENFORCEABLE, AND HEREBY ACKNOWLEDGES THAT IT IS ESTOPPED TO ASSERT TO THE CONTRARY.

15. Notices. Any notice, request or other communication ("**Notice**") to be given by any party hereunder shall be in writing and shall be sent by registered or certified mail, postage prepaid and return receipt requested, by hand delivery or express courier service, by facsimile transmission or by an overnight express service to the following address:

To Guarantor:

MGM Resorts International
6385 South Rainbow Boulevard
Suite 500
Las Vegas, NV 89118
Attention: Corporate Legal

With a copy to
(that shall not constitute notice):

Email: legalnotices@mgmresorts.com

With a copy to
(that shall not constitute notice):

Weil, Gotshal & Manges, LLP
767 Fifth Avenue
New York, NY 10153
Attention: Michael Aiello
W. Michael Bond

Email: michael.aiello@weil.com
michael.bond@weil.com

To Landlord:

MGP Growth Properties LLC
1980 Festival Plaza Drive, Suite 750
Las Vegas, Nevada 89135
Attention: James C. Stewart
Email: JStewart@mgpreit.com

With a copy to
(that shall not constitute notice):

c/o BREIT Operating Partnership L.P.
345 Park Avenue
New York, New York 10154
Attention: Head, U.S. Asset Management
Email: realestatenotices@blackstone.com

and

c/o BREIT Operating Partnership L.P.
345 Park Avenue
New York, New York 10154
Attention: General Counsel
Email: realestatenotices@blackstone.com

and

Simpson Thacher & Bartlett LLP
425 Lexington Avenue
New York, New York 10017
Attention: Gregory Ressa
Email: gressa@stblaw.com

and

Simpson Thacher & Bartlett LLP
425 Lexington Avenue
New York, New York 10017
Attention: Erik Quarfordt
Email: equarfordt@stblaw.com

and

Hogan Lovells
Columbia Square
555 Thirteenth Street, NW
Washington, D.C. 20004

Attention: Matt N. Thomson
Email: matt.thomson@hoganlovells.com

or to such other address as either party may hereafter designate. Notice shall be deemed to have been given on the date of delivery if such delivery is made on a Business Day, or if not, on the first Business Day after delivery. If delivery is refused, Notice shall be deemed to have been given on the date delivery was first attempted. Notice sent by facsimile transmission shall be deemed given upon confirmation that such Notice was received at the number specified above or in a Notice to the sender.

16. Miscellaneous.

(a) No term, condition or provision of this Guaranty may be waived except by an express written instrument to that effect signed by Landlord. No waiver of any term, condition or provision of this Guaranty will be deemed a waiver of any other term, condition or provision, irrespective of similarity, or constitute a continuing waiver of the same term, condition or provision, unless otherwise expressly provided. No term, condition or provision of this Guaranty may be amended or modified with respect to Guarantor except by an express written instrument to that effect signed by Landlord and Guarantor.

(b) If any one or more of the terms, conditions or provisions contained in this Guaranty is found in a final award or judgment rendered by any court of competent jurisdiction to be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining terms, conditions and provisions of this Guaranty shall not in any way be affected or impaired thereby, and this Guaranty shall be interpreted and construed as if the invalid, illegal, or unenforceable term, condition or provision had never been contained in this Guaranty.

(c) THIS GUARANTY SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, EXCEPT THAT THE LAWS OF THE STATE OF NEVADA SHALL GOVERN THIS AGREEMENT TO THE EXTENT NECESSARY (I) TO OBTAIN THE BENEFIT OF THE RIGHTS AND REMEDIES SET FORTH HEREIN WITH RESPECT TO ANY OF THE LEASED PROPERTY AND (II) FOR PROCEDURAL REQUIREMENTS WHICH MUST BE GOVERNED BY THE LAWS OF THE STATE. GUARANTOR CONSENTS TO IN PERSONAM JURISDICTION BEFORE THE STATE AND FEDERAL COURTS OF NEW YORK AND AGREES THAT ALL DISPUTES CONCERNING THIS GUARANTY SHALL BE HEARD IN THE STATE AND FEDERAL COURTS LOCATED IN THE STATE OF NEW YORK. GUARANTOR FURTHER CONSENTS TO IN PERSONAM JURISDICTION BEFORE THE STATE AND FEDERAL COURTS OF EACH STATE WITH RESPECT TO ANY ACTION COMMENCED BY LANDLORD SEEKING TO RETAKE POSSESSION OF ANY OR ALL OF THE LEASED PROPERTY IN WHICH GUARANTOR IS REQUIRED TO BE NAMED AS A NECESSARY PARTY. GUARANTOR AGREES THAT SERVICE OF PROCESS MAY BE EFFECTED UPON IT UNDER ANY METHOD PERMISSIBLE UNDER THE LAWS OF THE STATE OF NEW YORK AND

IRREVOCABLY WAIVES ANY OBJECTION TO VENUE IN THE STATE AND FEDERAL COURTS LOCATED IN THE STATE OF NEW YORK OR, TO THE EXTENT APPLICABLE IN ACCORDANCE WITH THE TERMS HEREOF, LOCATED IN CLARK COUNTY IN THE STATE OF NEVADA.

(d) GUARANTOR, BY ITS EXECUTION OF THIS GUARANTY, AND LANDLORD, BY ITS EXECUTION AND ACCEPTANCE OF THIS GUARANTY, EACH HEREBY WAIVE TRIAL BY JURY AND THE RIGHT THERETO IN ANY ACTION OR PROCEEDING OF ANY KIND ARISING ON, UNDER, OUT OF, BY REASON OF OR RELATING IN ANY WAY TO THIS GUARANTY OR THE INTERPRETATION, BREACH OR ENFORCEMENT THEREOF.

(e) In the event of any suit, action, arbitration or other proceeding to interpret this Guaranty, or to determine or enforce any right or obligation created hereby, the prevailing party in the action shall recover such party's reasonable costs and expenses incurred in connection therewith, including, but not limited to, reasonable attorneys' fees and costs of appeal, post judgment enforcement proceedings (if any) and bankruptcy proceedings (if any). Any court, arbitrator or panel of arbitrators shall, in entering any judgment or making any award in any such suit, action, arbitration or other proceeding, in addition to any and all other relief awarded to such prevailing party, include in such judgment or award such party's reasonable costs and expenses as provided in this Section 16(e).

(f) Guarantor (i) represents that it has been represented and advised by counsel in connection with the execution of this Guaranty; (ii) acknowledges receipt of a copy of the Lease Documents; and (iii) further represents that Guarantor has been advised by counsel with respect thereto. This Guaranty shall be construed and interpreted in accordance with the plain meaning of its language, and not for or against Guarantor or Landlord, and as a whole, giving effect to all of the terms, conditions and provisions hereof.

(g) Except as provided in any other written agreement now or at any time hereafter in force between Landlord and Guarantor, this Guaranty shall constitute the entire agreement of Guarantor with Landlord with respect to the subject matter hereof, and no representation, understanding, promise or condition concerning the subject matter hereof will be binding upon Landlord or Guarantor unless expressed herein.

(h) All stipulations, obligations, liabilities and undertakings under this Guaranty shall be binding upon Guarantor and its successors and assigns and shall inure to the benefit of Landlord and to the benefit of Landlord's successors and assigns.

(i) Whenever the singular shall be used hereunder, it shall be deemed to include the plural (and vice-versa) and reference to one gender shall be construed to include all other genders, including neuter, whenever the context of this Guaranty so requires. Section captions or headings used in the Guaranty are for convenience and reference only, and shall not affect the construction thereof.

(j) This Guaranty may be executed in any number of counterparts, each of which shall be a valid and binding original, but all of which together shall constitute one and the same instrument.

17. No Third Party Beneficiaries. Landlord and its successors and assigns are the beneficiaries of this Guaranty. No other Person shall be a third-party beneficiary hereof. Without limiting the foregoing, no other creditor or equity holder of Landlord, any parent company or its Subsidiaries shall have any rights or be entitled to any benefits hereunder. For the avoidance of doubt, Guarantor hereby consents to the collateral assignment of this Guaranty to any Fee Mortgagee and agrees that any Person who succeeds to Landlord's interest under any of the Lease Documents in accordance with the terms thereof (or enters into a new lease with Tenant in accordance with Section 31.2 of the Lease) shall constitute a permitted successor and/or assignee and intended beneficiary hereof (and shall become, be recognized by Guarantor as, and have all of the rights of "Landlord" hereunder).

[Signature Page to Follow]

EXECUTED as of the date first set forth above.

GUARANTOR:

MGM RESORTS INTERNATIONAL,
a Delaware corporation

By: /s/ Andrew Hagopian III
Name: Andrew Hagopian III
Title: Chief Corporate Counsel & Assistant Secretary

MB LANDLORD:

MANDALAY PROPCO, LLC,
a Delaware limited liability company

By: /s/ Andy Chien
Name: Andy Chien
Title: Chief Financial Officer and Treasurer

GRAND LANDLORD:

MGM GRAND PROPCO, LLC,
a Delaware limited liability company

By: /s/ Andy Chien
Name: Andy Chien
Title: Chief Financial Officer and Treasurer

LOAN AGREEMENT

Dated as of February 14, 2020

By and Among

MANDALAY PROPCO, LLC and MGM GRAND PROPCO, LLC,
collectively, as Borrower

and

**CITI REAL ESTATE FUNDING INC.,
BARCLAYS CAPITAL REAL ESTATE INC.,
DEUTSCHE BANK AG, NEW YORK BRANCH and
SOCIETE GENERALE FINANCIAL CORPORATION,**
collectively, as Lender

and

CITI REAL ESTATE FUNDING INC.,
as Administrative Agent

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LOAN AGREEMENT

This **LOAN AGREEMENT**, dated as of February 14, 2020 (as amended, restated, replaced, supplemented or otherwise modified from time to time, this “**Agreement**”), among **CITI REAL ESTATE FUNDING INC.**, having an address at 388-390 Greenwich Street, Tower Floor 8, New York, New York 10013 (together with its successors and/or assigns, “**Citi**”), **BARCLAYS CAPITAL REAL ESTATE INC.**, a Delaware corporation, having an address at 745 Seventh Avenue, New York, New York 10019 (together with its successors and/or assigns, “**Barclays**”), **DEUTSCHE BANK AG, NEW YORK BRANCH**, a branch of Deutsche Bank AG, a German Bank, authorized by the New York Department of Financial Services, having an address at 60 Wall Street, 10th Floor, New York, New York 10005 (together with its successors, assigns and/or alternate branches, “**DB**”), **SOCIÉTÉ GÉNÉRALE FINANCIAL CORPORATION**, having an address at 245 Park Avenue, New York, New York 10167 (together with its successors and/or assigns, “**SocGen**” and, collectively with Citi, Barclays, DB and any lawful holder of any portion of the Indebtedness, as hereinafter defined, “**Lender**”), **CITI REAL ESTATE FUNDING INC.**, having an address at 388-390 Greenwich Street, Tower Floor 8, New York, New York 10013, as agent for Lender (in such capacity, together with its successors and/or assigns, “**Administrative Agent**”) and **MANDALAY PROPCO, LLC**, a Delaware limited liability company (“**Mandalay Bay Borrower**”) and **MGM GRAND PROPCO, LLC**, a Delaware limited liability company (“**MGM Grand Borrower**”), each having its principal place of business at 1980 Festival Plaza Drive, Suite 750, Las Vegas, NV 89135 (each an “**Individual Borrower**” and collectively and/or individually, as the context may require, “**Borrower**”) with respect to each Individual Property set forth on Schedule 1.1(a) attached hereto.

WITNESSETH:

WHEREAS, Borrower desires to obtain the Loan (as hereinafter defined) from Lender; and

WHEREAS, Lender is willing to make the Loan to Borrower, subject to and in accordance with the terms of this Agreement and the other Loan Documents (as hereinafter defined).

NOW THEREFORE, in consideration of the making of the Loan by Lender and the covenants, agreements, representations and warranties set forth in this Agreement, the parties hereto hereby covenant, agree, represent and warrant as follows:

ARTICLE I.

DEFINITIONS; PRINCIPLES OF CONSTRUCTION

Section 1.1. Definitions. For all purposes of this Agreement, except as otherwise expressly required or unless the context clearly indicates a contrary intent:

“**40% Gap**” shall have the meaning set forth in Section 6.1(b) hereof.

“**40% Standard**” shall have the meaning set forth in Section 6.1(b) hereof.

“**60% Gap**” shall have the meaning set forth in Section 6.1(b) hereof.

“**60% Standard**” shall have the meaning set forth in Section 6.1(b) hereof.

“**Acceptable Blanket Policy**” shall have the meaning set forth in Section 6.1(c) hereof.

“**Accor Hotel Manager**” shall mean, individually and/or collectively as the context may require, any subsidiary of Accor S.A., and any Successor Brand Manager that assumes the rights and obligations of an Accor Hotel Manager under, and in accordance with the terms of, such Accor Hotel Manager’s Brand Management Agreement (as opposed to entering into a new Management Agreement).

“**Accrued Interest**” shall have the meaning set forth in Section 2.3.1(b) hereof.

“**Additional Insolvency Opinion**” shall mean a non-consolidation opinion letter delivered in connection with the Loan subsequent to the Closing Date and (a) prior to a rated Securitization, reasonably satisfactory in form and substance to Lender and from (i) Berger Harris LLP or (ii) counsel otherwise acceptable to Lender, and (b) following a rated Securitization, satisfactory in form and substance to the Approved Rating Agencies, and from (x) Berger Harris LLP or (y) counsel otherwise acceptable to the Approved Rating Agencies.

“**Additional Interest**” shall have the meaning set forth in Section 2.4.1 hereof.

“**Adjusted Interest Rate**” shall mean, with respect to each Note, a rate per annum equal to from and including the first day of the Interest Period commencing on the day after the Anticipated Repayment Date through and including the last day of the Interest Period relating to the Maturity Date, the sum of (i) two hundred basis points (2.00%) plus (ii) the greater of (A) the sum of (I) the ARD Treasury Note Rate in effect as of 1:00 p.m., New York City time, on the Anticipated Repayment Date (or, if such day is not a Business Day, the first Business Day immediately preceding the Anticipated Repayment Date), as determined by Lender plus (II) (x) with respect to Note A, 1.52% or (y) with respect to Note B, 1.52%, and (B) the applicable Initial Interest Rate for such Note.

“**Administrative Agent**” means Citi Real Estate Funding Inc. or any successor thereof in accordance with Section 10.24(d) hereof.

“**Administrative Agent Decisions**” shall have the meaning set forth in Section 10.24(a) hereof.

“**Advisor**” shall mean either (a) BX REIT Advisors L.L.C. or (b) another Affiliate of The Blackstone Group Inc. that is at least fifty and one-tenth percent (50.10%) owned, directly or indirectly, by The Blackstone Group Inc. and Controlled by The Blackstone Group Inc.

“**Affiliate**” shall mean, as to any Person, any other Person that, directly or indirectly, is in Control of, is Controlled by or is under common Control with such Person or is a director or officer of such Person or of an Affiliate of such Person, provided that, neither MGM/Mandalay Lease Guarantor nor its Affiliates (including, without limitation, MGM/Mandalay Tenant and/or MGM/Mandalay Operating Subtenant) shall be deemed an Affiliate of Borrower

or Advisor for any purpose under the Loan Documents so long as such Person does not Control Borrower. For the avoidance of doubt, Lender and Borrower acknowledge and agree that, as of the Closing Date, neither MGM/Mandalay Lease Guarantor nor its Affiliates (including, without limitation, MGM/Mandalay Tenant and/or MGM/Mandalay Operating Subtenant) Control Borrower.

“**Affiliate Lease**” shall mean a lease between an Affiliate of Borrower and an Affiliate of MGM/Mandalay Tenant.

“**Affiliate Lease Cross Default**” shall have the meaning set forth in Section 5.3.2(i) hereof.

“**Affiliated Manager**” shall mean any Manager which Borrower, Principal, BREIT, MGP or Guarantor Controls or has, directly or indirectly, fifty-one percent (51.0%) or more of the legal, beneficial or economic interest therein.

“**Affiliated Mezzanine Lender**” shall have the meaning set forth in Section 5.2.10(n).

“**Agent**” shall mean any Eligible Institution then acting as Agent under the Cash Management Agreement.

“**Aggregate LTV Ratio**” shall mean the ratio of (a) (i) the outstanding principal balance of the Loan as of the date of the closing of the Mezzanine Loan, plus (ii) the initial principal amount of the Mezzanine Loan to (b) the aggregate value of the Properties as determined pursuant to Appraisals ordered by Lender in connection with the closing of the Mezzanine Loan.

“**Agreement**” shall have the meaning set forth in the introductory paragraph hereto.

“**Allocated Loan Amount**” shall mean, with respect to each Individual Property, the amount set forth opposite such Individual Property on Schedule 1.1(a) hereof.

“**ALTA**” shall mean American Land Title Association, or any successor thereto.

“**Alterations Deposit**” shall have the meaning set forth in Section 5.1.19(b) hereof.

“**Annual Budget**” shall mean the operating budget, including all planned Capital Expenditures, for the Properties prepared by or on behalf of MGM/Mandalay Operating Subtenant, MGM/Mandalay Tenant or Borrower, as applicable, in accordance with Section 5.1.11(e) hereof, as applicable, for the applicable Fiscal Year or other period.

“**Anticipated Repayment Date**” shall mean the Payment Date occurring in March, 2030.

“**Applicable Similar Law**” shall have the meaning set forth in Section 5.2.8(c) hereof.

“Appraisal” shall mean an appraisal prepared in accordance with the requirements of FIRREA and USPAP, prepared by an independent third-party appraiser holding an MAI designation, who is State licensed or State certified if required under the laws of the State where the Properties are located, who meets the requirements of FIRREA and USPAP and who is otherwise reasonably satisfactory to Lender.

“Approved Alterations” shall have the meaning set forth in Section 5.1.19(b) hereof.

“Approved Annual Budget” shall have the meaning set forth in Section 5.1.11(e) hereof.

“Approved Bank” shall mean an Eligible Institution.

“Approved Rating Agencies” shall mean each of S&P, Moody’s, Fitch, and Morningstar or any other nationally recognized statistical rating agency in each case, which has been approved by Lender and designated by Lender to assign a rating to the Securities and which has assigned a rating to the Securities.

“ARD Failure Event” shall mean Borrower’s failure to repay the Loan in full in accordance with the terms, covenants and provisions of this Agreement on or before the Anticipated Repayment Date.

“ARD Treasury Note Rate” shall mean the rate of interest per annum calculated by the linear interpolation of the yields, as reported in Federal Reserve Statistical Release H.15 Selected Interest Rates under the heading “U.S. Government Securities/Treasury Constant Maturities” for the Business Day ending immediately prior to the Anticipated Repayment Date, of “U.S. Government Securities/Treasury Constant Maturities” with maturity dates (one longer and one shorter) most nearly approximating the Maturity Date. In the event Federal Reserve Statistical Release H.15 Selected Interest Rates is no longer published or in the event Federal Reserve Statistical Release H.15 Selected Interest Rates no longer publishes “U.S. Government Securities/Treasury Constant Maturities”, Lender shall select a comparable publication to determine such “U.S. Government Securities/Treasury Constant Maturities” and the applicable ARD Treasury Note Rate. Lender’s determination of the ARD Treasury Note Rate shall be final absent manifest error.

“Assignment of Agreements” shall mean that certain Assignment of Agreements Affecting Real Estate, dated as of the date hereof, by and among Borrower and Lender, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

“Assignment of Security Interests” shall mean that certain Collateral Assignment of Security Interests, dated as of the date hereof, by and among Borrower and Lender, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time, relating to Borrower’s interest in all of the Collateral (as defined therein).

“Assignment of Signature Management Agreement” shall mean that certain Collateral Assignment of Management Agreement, dated as of the date hereof, by MGM Grand Hotel, LLC for the benefit of Lender and acknowledged by The Signature Condominiums, LLC,

as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

“**Award**” shall mean any compensation paid by any Governmental Authority to Borrower or any of its Affiliates in connection with a Condemnation in respect of all or any part of any Individual Property.

“**Bankruptcy Action**” shall mean with respect to any Person (a) such Person filing a voluntary petition under the Bankruptcy Code; (b) the filing of an involuntary petition against such Person under the Bankruptcy Code or soliciting or causing to be solicited petitioning creditors for any involuntary petition against such Person under the Bankruptcy Code; (c) such Person filing an answer consenting to or otherwise acquiescing in or joining in any involuntary petition filed against it, by any other Person under the Bankruptcy Code; (d) such Person consenting to or acquiescing in or joining in an application for the appointment of a custodian, receiver, trustee, or examiner for such Person or any portion of any Individual Property; or (e) such Person making an assignment for the benefit of creditors.

“**Bankruptcy Code**” shall mean Title 11 of the United States Code, 11 U.S.C. § 101, et seq., as the same may be amended from time to time, and any successor statute or statutes and all rules and regulations from time to time promulgated thereunder, and any comparable foreign laws relating to bankruptcy, insolvency or creditors’ rights or any other Federal, state, local or foreign bankruptcy or insolvency law.

“**Barclays**” shall have the meaning set forth in the introductory paragraph hereto.

“**Basic Carrying Costs**” shall mean, with respect to each Individual Property, for any period, the sum of the following costs associated with such Individual Property: (a) Taxes, (b) Other Charges and (c) Insurance Premiums.

“**Borrower**” shall have the meaning set forth in the introductory paragraph hereto, together with its successors and permitted assigns.

“**Borrower’s Knowledge**” or “**Knowledge**” (and words of similar import) shall mean the current actual knowledge, as opposed to constructive or imputed knowledge, of each of (a) Andy Chien and (b) Tyler Henritze and Qahir Madhany, respectively, which individuals constitute the primary individuals tasked with the day to day management of each of MGP OP’s and BREIT OP’s interest in the Borrower, respectively, and shall include any other employees of Borrower or its Affiliates which shall succeed to such positions or perform comparable responsibilities of such individuals. For the avoidance of doubt, in no event shall any of such individuals have any personal liability by virtue of being named in this definition or certifying to matters on behalf of Borrower.

“**Brand Management Agreement**” shall mean, a Management Agreement with a Brand Manager.

“**Brand Manager**” shall mean each of Hilton Manager, Hyatt Manager, Marriott Manager, Four Seasons Manager, Accor Hotel Manager, SBE Entertainment Group Manager and any Qualified Casino Operator.

“Brand Mandated Work” shall mean any property improvements that the applicable Brand Manager requires to be performed at an Individual Property.

“BREIT” shall mean **Blackstone** Real Estate Income Trust, Inc.

“BREIT Affiliate” means an Affiliate of Borrower other than BREIT or BREIT OP which (i) is Controlled by BREIT or BREIT OP and (ii) satisfies the Guarantor Financial Covenants.

“BREIT Holdings” shall mean BREIT Prime Lease Holdings LLC.

“BREIT OP” shall mean BREIT Operating Partnership L.P.

“BREIT Parent” shall mean BREIT RE Parent LLC.

“BREIT Parent Contribution” shall mean the contribution from BREIT OP to BREIT Parent of the limited liability company interests in BREIT Holdings.

“Broad Affiliate” means, as to any particular Person, any Person, directly or indirectly through one or more intermediaries, Controlling, Controlled by or under common Control with, the Person in question. As used solely in this definition of “Broad Affiliate,” “Control” means (a) the ownership, directly or indirectly, in the aggregate of twenty percent (20%) or more of the beneficial ownership interests of an entity, or (b) the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of an entity, whether through the ability to exercise voting power, by contract or otherwise (other than possession of voting or control rights granted to Mezzanine Lender pursuant to the Mezzanine Loan Documents, the exercise of which is contingent upon the occurrence and continuance of an Mezzanine Loan Event of Default, unless and until so exercised by Mezzanine Lender). “Controlled by”, “Controlling” and “under common Control with” shall have the respective correlative meanings thereto.

“Business Day” shall mean any day other than a Saturday, Sunday or any other day on which any of (a) national banks in New York, New York, or (b) the place of business of the trustee under a Securitization (or, if no Securitization has occurred, Lender), or (c) the place of business of any Servicer or the financial institution that maintains any collection account for or on behalf of any Servicer or any Reserve Funds or (d) the New York Stock Exchange or the Federal Reserve Bank of New York is not open for business.

“Calculation Date” shall mean the last day of each calendar quarter during the term of the Loan and any day on which there is a prepayment of any portion of the outstanding principal amount of the Loan pursuant to Section 2.4.1 hereof.

“Capital Expenditures” shall mean, for any period, the amount expended for items capitalized under GAAP (including expenditures for building improvements or major repairs and replacements).

“Captive Insurance Company Requirements” shall mean the Captive Insurance Company Requirements as set forth on Exhibit N to the Initial MGM/Mandalay Lease.

“Cash Management Account” shall have the meaning set forth in Section 2.6.2(a) hereof.

“Cash Management Agreement” shall mean that certain Cash Management Agreement, dated as of the date hereof, by and among Borrower, Lender and any Agent which may become a party to such agreement, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

“Cash Trap Event” shall mean the occurrence of any one or more of the following events: (a) an Event of Default, (b) a DSCR Trigger Event, (c) a MGM/Mandalay Tenant Bankruptcy Event, (d) an OpCo Trigger Event, or (e) an ARD Failure Event.

“Cash Trap Event Cure” shall mean (a) no Event of Default shall be continuing, and in the event that the related Cash Trap Event occurred solely as a result of an Event of Default, Lender (in its sole and absolute discretion) shall have accepted a cure by Borrower of such Event of Default, (b) in the event that the related Cash Trap Event occurred as a result of a DSCR Trigger Event, the achievement of a DSCR Cure, (c) in the event that the related Cash Trap Event occurred as a result of a MGM/Mandalay Tenant Bankruptcy Event, the achievement of a MGM/Mandalay Tenant Bankruptcy Event Cure or (d) in the event that the related Cash Trap Event occurred as a result of an OpCo Trigger Event, the achievement of a OpCo Trigger Event Cure. Notwithstanding the foregoing, in no instance shall (x) a Cash Trap Event caused by an ARD Failure Event be capable of being cured or be deemed to expire and (y) a Cash Trap Event be deemed to expire in the event that any other Cash Trap Event then exists.

“Cash Trap Period” shall mean the period commencing on the occurrence of a Cash Trap Event and terminating on the date of a Cash Trap Event Cure. For the avoidance of doubt, a Cash Trap Period occurring due to an ARD Failure Event shall not expire and shall continue until the Debt is indefeasibly paid in full.

“Cash Trap Sweep Instructions” shall have the meaning set forth in Section 2.6.1(f) hereof.

“Casino Components” shall mean those portions of each Individual Property devoted to the operation of casino gaming operations and shall include those areas devoted to the conduct of games of chance, facilities associated directly with gaming operations including, without limitation, casino support areas such as surveillance and security areas, cash cages, counting and accounting areas and gaming back-of-the-house areas, in each case, to the extent the operation thereof requires a gaming or similar license under applicable Legal Requirements.

“Casino Management Agreement” means any lease or management agreement relating to the management and operation of the Casino Components that may be entered into by Borrower which is (a) either (i) a lease or management agreement with a Casino Operator, which lease or management agreement shall (A) have been entered into by Borrower and such Casino Operator on an arm’s length basis and otherwise on commercially reasonable terms and (B) contain economic terms and management fees comparable to existing local market rates, or (ii) a lease or management agreement with a Casino Operator, which lease or management agreement shall be reasonably acceptable to Lender in form and substance, provided, with respect to this subclause (ii), following a rated Securitization, Lender, at its option, may require that Borrower

shall have obtained a Rating Agency Confirmation with respect to such lease or management agreement and (b) together with an assignment of casino management agreement and subordination of management fees pursuant to a subordination and non-disturbance agreement substantially in form and substance reasonably acceptable to Lender, provided, that in the event such Manager is an Affiliated Manager (other than a manager that is affiliated with a nationally recognized brand), any replacement casino lease or management agreement shall include a subordination of management fees pursuant to a subordination and non-disturbance agreement in form and substance reasonably acceptable to Lender, as the same may be amended or modified from time to time in accordance with the terms and provisions of this Agreement.

“Casino Management Default Election Notice” shall have the meaning set forth in Section 8.1(a)(xv) hereof.

“Casino Operator” shall mean any Qualified Casino Operator in its capacity as manager under any Casino Management Agreement and/or Brand Management Agreement, as applicable, entered into in accordance with the terms and conditions of the Loan Documents.

“Casualty” shall have the meaning set forth in Section 6.2 hereof.

“Casualty Consultant” shall have the meaning set forth in Section 6.4(b)(iii) hereof.

“Casualty Retainage” shall have the meaning set forth in Section 6.4(b)(iv) hereof.

“Casualty/Condemnation Prepayment” shall have the meaning set forth in Section 6.4(f) hereof.

“Casualty/Condemnation Threshold Amount” shall mean five percent (5.00%) of the original Allocated Loan Amount for the applicable Individual Property.

“Cause” shall mean, with respect to an Independent Director, (a) acts or omissions by such Independent Director that constitute systematic and persistent or willful disregard of such Independent Director’s duties, (b) such Independent Director has been indicted or convicted for any crime or crimes of moral turpitude or dishonesty or for any violation of any Legal Requirements, (c) such Independent Director no longer satisfies the requirements set forth in the definition of “Independent Director”, (d) the fees charged for the services of such Independent Director are materially in excess of the fees charged by the other providers of Independent Directors listed in the definition of “Independent Director”, (e) the death or incapacity of such Independent Director or (f) any other reason for which the prior written consent of Lender shall have been obtained.

“CBA” shall have the meaning set forth in Section 5.1.20(e) hereof.

“CBA Multiemployer Plans” shall have the meaning set forth in Section 5.1.20(f) hereof.

“Citi” shall have the meaning set forth in the introductory paragraph hereto.

“Closing Date” shall mean the date of the funding of the Loan.

“Closing Date Debt Service Coverage Ratio” shall mean 5.17x.

“Closing Date Delano License Agreement” shall mean that certain License Agreement dated August 8, 2012 by and between Morgans Hotel Group Management LLC and Mandalay Corp. d/b/a Mandalay Bay Resort and Casino, as amended by the First Amendment thereto, dated March 11, 2015, as further modified, amended and/or supplemented as of the date hereof or from time to time in accordance with the terms and conditions of this Agreement and the MGM/Mandalay Lease.

“Closing Date Four Seasons Management Agreement” shall mean, collectively, (i) that certain Hotel Management Agreement dated March 10, 1998 by and among Four Seasons Hotels Limited, Mandalay Corp. and Circus Circus Enterprises, Inc. and (ii) that certain Hotel License Agreement between Four Seasons Hotels Limited and Mandalay Corp., in each case, as modified, amended and/or supplemented as of the date hereof or from time to time in accordance with the terms and conditions of this Agreement and the MGM/Mandalay Lease.

“Co-Lender” shall mean, at any time when the Loan is held by more than one Lender, each such Lender together with its respective successors and/or assigns.

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

“Collateral” shall mean, collectively, whether now or hereafter acquired, (a) each Individual Property, (b) Borrower’s interest in the MGM/Mandalay Lease and the other MGM/Mandalay Lease Documents, (c) Borrower’s interest in all of the Tenant’s Pledged Property (as defined in the MGM/Mandalay Lease), including any security interest therein, (d) Borrower’s interest in the MGM/Mandalay Restricted Reserve Accounts and MGM/Mandalay Restricted Reserve Funds, including any security interest therein and (e) any other asset or property subject to the Lien of a Mortgage or the Assignment of Agreements.

“Componentization Event” shall mean any Securitization or syndication of the Loan involving an A/B or senior/subordinate structure (including any Securitization involving a Securitization Vehicle or the sale of so-called “B” Note or subordinate participation interest).

“Componentization Notice” shall have the meaning set forth in Section 2.1.5 hereof.

“Components” shall have the meaning set forth in Section 2.1.5 hereof.

“Condemnation” shall mean a temporary or permanent taking by any Governmental Authority as the result or in lieu or in anticipation of the exercise of the right of condemnation or eminent domain, of all or any part of any Individual Property, or any interest therein or right accruing thereto, including any right of access thereto or any change of grade affecting such Individual Property or any part thereof.

“Condemnation Proceeds” shall have the meaning set forth in Section 6.4(b) hereof.

“**Consent Request Date**” shall have the meaning set forth in Section 10.24(e) hereof.

“**Consumer Price Index**” shall mean the Consumer Price Index as published by the United States Department of Labor, Bureau of Labor Statistics or any substitute index hereafter adopted by the Department of Labor.

“**Contribution Agreement**” shall mean that certain Contribution Agreement, dated as of the date hereof, by and among each Individual Borrower and Lender, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

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

“**Covered Disclosure Information**” shall have the meaning set forth in Section 9.2(b) hereof.

“**Covered Rating Agency Information**” shall have the meaning set forth in Section 9.2(e) hereof.

“**Custodial Funds**” shall mean the following funds collected by Borrower on a third-party’s behalf that must be paid or remitted to a third-party and so are not properly considered “revenue” of Borrower: (i) tips, gratuities or service charges with respect to food, beverage, banquet or other guest services paid in cash or check or received via credit card and owed to employees working at the Property; (ii) payments or fees received from or on behalf of hotel guests and patrons and paid or reimbursed to tenants or other vendors or service providers of the hotels, (iii) amounts paid out to hotel guests or patrons for checks cashed or (iv) per diem expense allowances paid.

“**DB**” shall have the meaning set forth in the introductory paragraph hereto.

“**Debt**” shall mean the outstanding principal amount set forth in, and evidenced by, this Agreement and the Note together with all interest accrued and unpaid thereon (including, after a Securitization, any interest that would accrue on the outstanding principal amount of the Loan through and including the end of any Interest Period, prepayment date or the Maturity Date), the Defeasance Payment Amount, Yield Maintenance Premium that becomes due pursuant to Section 2.4 hereof, and all other sums due to Lender in respect of the Loan under the Note, this Agreement, the Mortgage or any other Loan Document.

“**Debt Service**” shall mean, with respect to any particular period of time, the scheduled interest payments due under this Agreement and the Note.

“**Debt Service Coverage Ratio**” shall mean a ratio for the applicable period in which:

(a) the numerator is the sum of EBITDAR for (x) so long as the MGM/Mandalay Lease is in effect: (i) to the extent there are one or more MGM/

Mandalay Operating Subtenants for an Individual Property, each applicable MGM/Mandalay Operating Subtenant and (ii) if there is no MGM/Mandalay Operating Subtenant at an Individual Property (or portion thereof), the MGM/Mandalay Tenant (with respect to such Individual Property or portion thereof) or (y) if the MGM/Mandalay Lease is not in effect, each Individual Property, in each case, for such period; and

(b) the denominator is the sum of the aggregate amount of Debt Service for each of the Notes for such period.

For reference purposes only, a sample calculation of the Debt Service Coverage Ratio is attached as Exhibit C to this Agreement.

“Deemed Approval Requirements” means, with respect to a request by Borrower for Lender’s approval or consent, that:

(i) if the first correspondence from Borrower to Lender requesting such approval or consent contains a bold faced, conspicuous legend at the top of the first page thereof stating **“FIRST NOTICE: THIS IS A REQUEST FOR CONSENT UNDER THE 2020 MGM GRAND LAS VEGAS-MANDALAY BAY LOAN. FAILURE TO RESPOND TO THIS REQUEST WITHIN 10 BUSINESS DAYS MAY RESULT IN THE REQUEST BEING DEEMED GRANTED,”** and is accompanied by such information and documents as is reasonably required for Lender to adequately evaluate such request and as reasonably requested by Lender in writing prior to the expiration of such ten (10) Business Day period; and

(ii) if Lender fails to grant or withhold its approval to such request within such ten (10) Business Day period, a second notice requesting approval is delivered to Lender from Borrower containing a bold faced, conspicuous legend at the top of the first page thereof stating that **“SECOND AND FINAL NOTICE: THIS IS A REQUEST FOR CONSENT UNDER THE 2020 MGM GRAND LAS VEGAS-MANDALAY BAY LOAN. FAILURE TO RESPOND TO THIS REQUEST IN WRITING WITHIN 5 BUSINESS DAYS WILL RESULT IN YOUR APPROVAL BEING DEEMED GRANTED,”** and is accompanied by such information and documents as is reasonably required for Lender to adequately evaluate such request and as reasonably requested by Lender in writing prior to the expiration of such five (5) Business Day period, and if Lender fails to grant or withhold its approval to such request (or denies such request without stating the grounds for such denial in reasonable detail) prior to the expiration of such five (5) Business Day period.

“Default” shall mean the occurrence of any event hereunder or under any other Loan Document which, but for the giving of notice or passage of time, or both, would be an Event of Default.

“Default Rate” shall mean, with respect to any Note, a rate per annum equal to the lesser of (a) the Maximum Legal Rate or (b) three percent (3%) above the Interest Rate otherwise applicable to such Note.

“Defeasance Date” shall have the meaning set forth in Section 2.8.1(a)(i) hereof.

“Defeasance Event” shall have the meaning set forth in Section 2.8.1(a) hereof.

“Defeasance Payment Amount” shall mean the amount which, when added to the remaining principal amount of the Note, will be sufficient to purchase U.S. Obligations providing the required Scheduled Defeasance Payments.

“Defeasance Security Agreement” shall have the meaning set forth in Section 2.8.1(a)(v) hereof.

“Defeased Note” shall have the meaning set forth in Section 2.8.1 hereof.

“Disclosure Document” shall mean a prospectus, prospectus supplement (including any amendment or supplement to either thereof), private placement memorandum, or similar offering memorandum, offering circular, structural and collateral term sheet or other similar offering documents provided to prospective investors, in each case in preliminary or final form and including all exhibits and annexes thereto, used in connection with a Securitization and designated as a **“Disclosure Document”** by Lender in its reasonable discretion.

“Discounted Payoff” shall have the meaning set forth in Section 5.2.10(k) hereof.

“DSCR Cure” shall mean (a) no Event of Default shall be continuing and (b) the achievement of a Debt Service Coverage Ratio equal to or exceeding the Required DSCR Ratio for the two (2) consecutive calendar quarters immediately preceding the Calculation Date based upon the trailing twelve (12) month period immediately preceding such Calculation Date (which Required DSCR Ratio may be achieved, at Borrower’s sole discretion, by making voluntary prepayments in accordance with the terms of this Agreement in amounts necessary to achieve a Debt Service Coverage Ratio equal to or exceeding the Required DSCR Ratio; provided that in the event the Required DSCR Ratio is achieved by such prepayment, the DSCR Trigger Period shall terminate immediately upon such prepayment without the obligation to wait two (2) consecutive calendar quarters).

“DSCR Trigger Event” shall mean a Debt Service Coverage Ratio, as determined by Lender, of less than the Required DSCR Ratio on any Calculation Date for the two (2) consecutive calendar quarters immediately preceding the Calculation Date, based upon the trailing twelve (12) month period immediately preceding such Calculation Date.

“DSCR Trigger Period” shall mean the period commencing on the occurrence of a DSCR Trigger Event and continuing until the occurrence of a DSCR Cure.

“EBITDA” shall mean, for an applicable period, and with respect to any Person or each Individual Property (as applicable), the sum of (a) Net Income of such Person or Individual Property for that period, plus or minus the following (without duplication in each case) to the extent reflected in Net Income for that period, plus (b) any extraordinary loss, and,

without duplication, any loss associated with the early retirement of Indebtedness and with any disposition not in the ordinary course of business, minus (c) any extraordinary gain, and, without duplication, any gains associated with the early retirement of Indebtedness and with any disposition not in the ordinary course of business, plus (d) interest charges of such Person or Individual Property for that period, less (e) interest income of such Person or Individual Property for that period, plus (f) the aggregate amount of expense for federal, foreign, state and local taxes on or measured by income of such Person or Individual Property for that period excluding gaming taxes (whether or not payable during that period), minus (g) the aggregate amount of benefit for federal, foreign, state and local taxes on or measured by income of such Person or Individual Property for that period excluding gaming taxes (whether or not receivable during that period), plus (h) depreciation, amortization, plus (i) all non-recurring and/or other non-cash expenses which shall be limited to third-party expenses in connection with an acquisition or disposition of an asset, plus (j) loss on sale or disposal of an asset, and write downs and impairments of an asset, minus (k) all non-recurring and/or other non-cash income in connection with an acquisition or disposition, and gain on sale of an asset, plus (l) expenses classified as “pre-opening and start-up expenses” on the applicable financial statements of that Person or Individual Property for that fiscal period which shall be limited to costs related directly to the Individual Property’s Primary Intended Use (as defined in the MGM/Mandalay Lease), minus (m) non-cash reversal of an accrual or reserve not recorded in the ordinary course, plus or minus (n) the impact of any foreign currency gains or losses and related swaps, plus (o) all long-term non-cash expenses realized in connection with or resulting from equity or equity-linked compensation plans, employee benefit plans or agreements or post-employment benefit plans or agreements, stock appreciation or similar rights, stock options, restricted stock, preferred stock, stock appreciation or other similar rights, plus or minus (p) any equity income from the earnings of an equity method investee and plus (q) any equity loss from the earnings of an equity method investee, in each case, as determined in accordance with the MGM/Mandalay Lease and GAAP, consistently applied using the Existing Accounting Guidelines (as defined in the MGM/Mandalay Lease). For the avoidance of doubt, (x) the revenues and expenses of the Signature Entities (as defined in the Initial MGM/Mandalay Lease) arising out of the Signature Hotel Units (as defined in the Initial MGM/Mandalay Lease) (including from any Signature Rental Management Operations (as defined in the Initial MGM/Mandalay Lease)) shall be included for purposes of calculating the EBITDA of the MGM Grand Property (or any MGM/Mandalay Operating Subtenant of the MGM Grand Property (or MGM/Mandalay Tenant with respect to any portion of the MGM Grand Property that is not subject to an MGM/Mandalay Operating Sublease)) and (y) other than as set forth in the immediately preceding clause (x), no revenues and expenses of MGM/Mandalay Tenant or any MGM/Mandalay Operating Subtenant other than those derived from the applicable Individual Property shall be included for purposes of calculating EBITDA.

“**EBITDAR**” shall mean, for the applicable period, with respect to any Person or Individual Property (as applicable), EBITDA plus, without duplication, any MGM/Mandalay Lease Rent reflected in Net Income, and, without duplication, in each case as determined in accordance with the MGM/Mandalay Lease and GAAP, consistently applied using the Existing Accounting Guidelines (as defined in the MGM/Mandalay Lease).

“**EEA Bail In Action**” means the exercise of any EEA Write Down and Conversion Powers by the applicable EEA Resolution Authority in respect of any liability of an EEA Financial Institution.

“EEA Bail In Legislation” means, with respect to any EEA Member Country implementing Article 55 of Directive 2014/59/EU of the European Parliament and of the Council of the European Union, the implementing law for such EEA Member Country from time to time which is described in the EEA Bail In Legislation Schedule.

“EEA Bail In Legislation Schedule” means the EU Bail In Legislation Schedule published by the Loan Market Association (or any successor person), as in effect from time to time.

“EEA Financial Institution” means (a) any credit institution or investment firm established in any EEA Member Country which is subject to the supervision of an EEA Resolution Authority, (b) any entity established in an EEA Member Country which is a parent of an institution described in clause (a) of this definition, or (c) any financial institution established in an EEA Member Country which is a subsidiary of an institution described in clauses (a) or (b) of this definition and is subject to consolidated supervision with its parent.

“EEA Member Country” means any of the member states of the European Union, the United Kingdom, Iceland, Liechtenstein and Norway.

“EEA Resolution Authority” means any public administrative authority or any person entrusted with public administrative authority of any EEA Member Country (including any delegatee) having responsibility for the resolution of any EEA Financial Institution.

“EEA Write Down and Conversion Powers” means, with respect to any EEA Resolution Authority, the write down and conversion powers of such EEA Resolution Authority from time to time under the EEA Bail In Legislation for the applicable EEA Member Country, which write down and conversion powers are described in the EEA Bail In Legislation Schedule.

“Eligibility Requirements” means, with respect to any Person, that such Person together with its Affiliates (i) is regularly engaged in the business of making, originating or owning commercial mortgage real estate loans or interests in such commercial mortgage loans and holds at least Seven Hundred Fifty Million and No/100 Dollars (\$750,000,000.00) of such commercial real estate loans (except with respect to a pension advisory firm, asset manager or similar fiduciary, provided, such Person’s account manager satisfies the requirements of this clause (i)), (ii) has not been and is not an Embargoed Person and has never been convicted of, or pled guilty or no contest to, any unlawful activity, including money laundering, terrorism or terrorism activities, (iii) has not been a debtor in any bankruptcy proceedings, voluntary or involuntary, made an assignment for the benefit of creditors or taken advantage of any insolvency act, or any act for the benefit of debtors or the subject of any material governmental or regulatory investigation which resulted in a final, non-appealable conviction for criminal activity involving moral turpitude or a civil proceeding in which such Person has been found liable in a final non appealable judgment for attempting to hinder, delay or defraud creditors, each within seven (7) years prior to the date of determination and (iv) if such Person is not a bank or an insurance company, has no material then outstanding and unpaid judgments against such Person.

“Eligible Account” shall mean either a separate and identifiable account from all other funds held by the holding institution that is either (a) an account or accounts maintained

with a federal or state chartered depository institution or trust company which complies with the definition of Eligible Institution or (b) a segregated trust account or accounts maintained with a federal or state chartered depository institution or trust company that complies with the definition of Eligible Institution acting in its fiduciary capacity and which, in the case of a state chartered depository institution or trust company, is subject to regulations substantially similar to 12 C.F.R. § 9.10(b), having in either case a combined capital and surplus of at least \$50,000,000.00 and subject to supervision or examination by federal and state authority. An Eligible Account will not be evidenced by a certificate of deposit, passbook or other instrument.

“**Eligible Assignee**” shall mean (A) during the continuance of an Event of Default, any Person and (B) so long as no Event of Default has occurred and is continuing, any Person (other than a natural person) that is any of the following, provided that any such Person shall at the time it acquires its interest in the Loan satisfy the Eligibility Requirements: (a) a commercial bank or investment bank organized under the laws of the United States, or any state thereof which regularly invests in or makes commercial real estate loans; (b) a commercial bank or investment bank organized under the laws of any other country that is a member of the Organization for Economic Cooperation and Development (the “**OECD**”), or a political subdivision of any such country which regularly invests in or makes commercial real estate loans (provided that such bank is acting through a branch or agency located in the country in which it is organized or another country which is also a member of the OECD); (c) a Person that is engaged in the business of commercial real estate banking and that is: (1) an affiliate of a Lender, or (2) a Person of which a Lender is a subsidiary; (d) an insurance company, mutual fund or other financial institution organized under the laws of the United States, any state thereof, any other country which is a member of the OECD or a political subdivision of any such country which regularly invests in or makes commercial real estate loans; (e) a fund (other than a mutual fund) which regularly invests in or makes commercial real estate loans, or (f) any Lender (other than a Lender that is a defaulting lender under any Lender Document). “Eligible Assignee” shall not include (x) any Lender that is a defaulting lender under any Lender Document or (y) any direct competitor of BREIT, Advisor, MGP or any Affiliate thereof that primarily engaged in the business of owning or operating commercial real estate in the ordinary course but not including any Affiliates of such competitors that are in the business of commercial real estate lending including Affiliates whose investment guidelines permit investments in both debt, equity and securities or any of the foregoing.

“**Eligible Institution**” shall mean (i) a depository institution or trust company insured by the Federal Deposit Insurance Corporation, the short term unsecured debt obligations or commercial paper of which are rated at least “A 1+” by S&P (to the extent S&P is an Approved Rating Agency), “P 1” by Moody’s (to the extent Moody’s is an Approved Rating Agency) and “F 1+” by Fitch (to the extent Fitch is an Approved Rating Agency) in the case of accounts in which funds are held for thirty (30) days or less (or, in the case of Letters of Credit and accounts in which funds are held for more than thirty (30) days, the long term unsecured debt obligations of which are rated at least “A+” by S&P (to the extent S&P is an Approved Rating Agency), “Aa3” by Moody’s (to the extent Moody’s is an Approved Rating Agency) and “A+” by Fitch (to the extent Fitch is an Approved Rating Agency)) and (ii) Chase Bank, N.A., Capital One N.A., PNC Bank, N.A., US Bank, National Association, Wells Fargo Bank, National Association and Bank of America, N.A.; provided that, with respect to clause (ii), the ratings by each of the Approved Rating Agencies for the short term unsecured debt obligations or

commercial paper and long term unsecured debt obligations of such institution is at least equal to the lower of the ratings in effect as of the date hereof or as set forth in clause (i).

“**Embargoed Person**” shall have the meaning set forth in Section 4.1.35 hereof.

“**Enforcement Action**” shall have the meaning set forth in Section 8.3 hereof.

“**Environmental Indemnity**” shall mean that certain Environmental Indemnity Agreement, dated as of the date hereof, executed by Borrower in connection with the Loan for the benefit of Lender, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

“**Equipment**” shall mean, with respect to each Individual Property, any equipment now owned or hereafter acquired by Borrower, which is used at or in connection with the Improvements or such Individual Property or is located thereon or therein, including (without limitation) all machinery, equipment, furnishings, and electronic data processing and other office equipment now owned or hereafter acquired by Borrower and any and all additions, substitutions and replacements of any of the foregoing, together with all attachments, components, parts, equipment and accessories installed thereon or affixed thereto.

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

“**ERISA Affiliate**” shall mean any Person that for purposes of Title W of ERISA is a member of the Borrower’s or Guarantor’s controlled group, or under common control with the Borrower or Guarantor within the meaning of Section 414(b) or (c) of the Code.

“**Event of Default**” shall have the meaning set forth in Section 8.1(a) hereof.

“**Excess Cash Flow**” shall mean all remaining amounts on deposit in the Cash Management Account (other than any required minimum balance) after the payment or disbursement of all amounts which are required to be paid or disbursed pursuant to Sections 3.4(a) through 3(g) of the Cash Management Agreement.

“**Excess Cash Flow Guarantor**” shall mean any of (a) (x) BREIT OP or a BREIT Affiliate and (y) MGP OP or an MGP Affiliate, on a several basis consistent with the terms set forth in Section 1.2(d) of the Guaranty executed as of the Closing Date (provided, the Liability Percentages (as defined in the Excess Cash Flow Guaranty) of BREIT OP or such BREIT Affiliate, as applicable, and MGP OP or such MGP Affiliate, as applicable, shall be adjusted to reflect the applicable Liability Percentage (as defined in the Excess Cash Flow Guaranty) of BREIT OP and MGP OP as of the date the applicable Excess Cash Flow Guaranty is entered into), (b) BREIT OP or (c) a BREIT Affiliate.

“**Excess Cash Flow Guaranty**” shall mean an Excess Cash Flow Guaranty entered into by an Excess Cash Flow Guarantor for the benefit of Lender in the form of the Excess Cash Flow Guaranty attached hereto as Exhibit A and entered into, as permitted by, and in accordance with Section 7.5.2(c) hereof, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

“Excess Cash Flow Reserve Account” shall have the meaning set forth in Section 7.5.1 hereof.

“Excess Cash Flow Reserve Funds” shall have the meaning set forth in Section 7.5.1 hereof.

“Excess Net Proceeds” shall have the meaning set forth in Section 6.4(b)(vii) hereof.

“Exchange Act” shall have the meaning set forth in Section 9.1.1(h) hereof.

“Exchange Act Filing” shall mean a filing pursuant to the Exchange Act in connection with or relating to a securitization.

“Excluded Entity” shall mean (i) BREIT, (ii) BREIT OP; provided that BREIT OP is owned, managed or Controlled by BREIT, a Qualified Advisor, a Qualified Transferee or a Public Vehicle, (iii) any Public Vehicle, (iv) any direct or indirect legal or beneficial owner of BREIT, BREIT OP (to the extent clause (ii) is satisfied), a Public Vehicle, including, without limitation, any shareholder, partner, member and/or non-member manager of the foregoing, (v) Windmill REIT solely with respect to the Series A Members (as defined in the Windmill REIT LLCA) and solely with respect to any direct or indirect legal or beneficial owner of any Series A Member, (vi) MGP and (vii) MGP OP, provided that MGP OP is managed and Controlled by MGP, a Qualified Transferee or a Public Vehicle. For the avoidance of doubt, the parties hereto acknowledge and agree that MGM, MGM/Mandalay Tenant, MGM/Mandalay Lease Guarantor, Replacement MGM/Mandalay Lease Guarantor, Replacement MGM/Mandalay Tenant and each of their respective direct or indirect legal or beneficial owners and any Affiliates of such entities which are also not subsidiaries of MGP OP and/or BREIT OP are Excluded Entities (other than any MGM/Mandalay Operating Subtenant, which is required to be a subsidiary of MGM, subject to the terms and conditions of the MGM/Mandalay Lease).

“Excluded Taxes” shall mean any of the following Section 2.7 Taxes imposed on or with respect to a Lender or Agent or required to be withheld or deducted from a payment to a Lender or Agent: (a) Section 2.7 Taxes imposed on (or measured by) net income (however denominated), franchise Section 2.7 Taxes, and branch profits Section 2.7 Taxes, in each case, (i) imposed as a result of such Lender or Agent being organized under the laws of, or having its principal office or, in the case of any Lender, applicable lending office located in, the jurisdiction imposing such Section 2.7 Tax, or (ii) that are Other Connection Taxes, (b) in the case of a Lender, U.S. federal withholding Section 2.7 Taxes with respect to an applicable interest in a Loan or commitment resulting from any law in effect on the date such Lender acquires such interest in a Loan or commitment pursuant to this Agreement or designates a new lending office, except to the extent that such Lender (or its assignor, if any) was entitled, at the time of designation of a new lending office (or assignment), to receive additional amounts from Borrower with respect to such Section 2.7 Taxes pursuant to Section 2.7, (c) any Section 2.7 Taxes attributable to such Lender’s failure to comply with Section 2.7(e), and (d) any Section 2.7 Taxes imposed under FATCA.

“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 substantially comparable and not

materially more onerous to comply with), any current or future regulations issued thereunder or official interpretations thereof, any agreements entered into pursuant to Section 1471(b)(1) of the Code, and any law, regulation, rule, promulgation, guidance notes, practices or official agreement implementing an official government agreement with respect to the foregoing.

“FF&E” shall mean, collectively, with respect to each Individual Property, furnishings, Fixtures and Equipment located in the guest rooms, hallways, lobbies, restaurants, lounges, meeting and banquet rooms, parking facilities, public areas or otherwise in any portion of the Property, including (without limitation) all beds, chairs, bookcases, tables, carpeting, drapes, couches, luggage carts, luggage racks, bars, bar fixtures, radios, television sets, intercom and paging equipment, electric and electronic equipment, heating, lighting and plumbing fixtures, fire prevention and extinguishing apparatus, cooling and air conditioning systems, elevators, escalators, stoves, ranges, refrigerators, laundry machines, tools, machinery, boilers, incinerators, switchboards, conduits, compressors, vacuum cleaning systems, floor cleaning, waxing and polishing equipment, cabinets, lockers, shelving, dishwashers, garbage disposals, washer and dryers, Gaming Equipment and all other customary hotel and casino resort equipment and other tangible property owned by (a) so long as the MGM/Mandalay Lease is in effect: (i) to the extent there are one or more MGM/Mandalay Operating Subtenants for such Individual Property, each applicable MGM/Mandalay Operating Subtenant and (ii) if there is no MGM/Mandalay Operating Subtenant at such Individual Property (or any portion thereof), the MGM/Mandalay Tenant or (b) if the MGM/Mandalay Lease is not in effect, the applicable Individual Borrower, or in which MGM/Mandalay Tenant, MGM/Mandalay Operating Subtenant or the applicable Individual Borrower, as applicable, has or shall have an interest, now or hereafter located at each Individual Property and useable in connection with the present or future operation and occupancy of each Individual Property; provided, however, that FF&E shall not include (a) fixed asset supplies, including, but not limited to, linen, china, glassware, tableware, uniforms, other hotel inventory and similar items, whether used in connection with public space or guest rooms, (b) items owned by tenants, guests or by third-party operators or (c) such items which constitute “Excluded Assets” under the MGM/Mandalay Lease.

“Fiscal Year” shall mean each twelve (12) month period commencing on January 1 and ending on December 31 during each year of the term of the Loan.

“Fitch” shall mean Fitch, Inc.

“Fixtures” shall mean, with respect to each Individual Property, all Equipment now owned, or the ownership of which is hereafter acquired by (a) so long as the MGM/Mandalay Lease is in effect: (i) to the extent there are one or more MGM/Mandalay Operating Subtenants for such Individual Property, each applicable MGM/Mandalay Operating Subtenant and (ii) if there is no MGM/Mandalay Operating Subtenant at such Individual Property (or any portion thereof), the MGM/Mandalay Tenant or (b) if the MGM/Mandalay Lease is not in effect, the applicable Individual Borrower, in each case, that is related to the Land and the Improvements forming part of the Individual Property that it is deemed fixtures or real property under applicable Legal Requirements, including, without limitation, all building or construction materials intended for construction, reconstruction, alteration, decoration or repair of or installation on the applicable Individual Property, construction equipment, appliances, machinery, plant equipment, fittings, apparatuses, fixtures and other items now or hereafter attached to, installed in or used in connection with (temporarily or permanently) any of the

Improvements or the Land, including, but not limited to, engines, devices for the operation of pumps, pipes, plumbing, call and sprinkler systems, fire extinguishing apparatuses and equipment, heating, ventilating, incinerating, electrical, air conditioning and air cooling equipment and systems, gas and electric machinery, appurtenances and equipment, pollution control equipment, security systems, disposals, dishwashers, refrigerators and ranges, recreational equipment and facilities of all kinds, and water, electrical, storm and sanitary sewer facilities, utility lines and equipment (whether owned individually or jointly with others, and, if owned jointly, to the extent of Borrower's interest therein) and all other utilities whether or not situated in easements, all water tanks, water supply, water power sites, fuel stations, fuel tanks, fuel supply, and all other structures, together with all accessions, appurtenances, additions, replacements, betterments and substitutions or any of the foregoing and the proceeds thereof, provided, however, that Fixtures shall not include such items which constitute "Excluded Assets" under the MGM/Mandalay Lease.

"Foreclosure" shall have the meaning set forth in Section 9.3(b)(viii) hereof.

"Foreign Lender" means a Lender that is not a U.S. Person.

"Four Seasons Manager" shall mean, individually and/or collectively as the context may require, any subsidiary of Four Seasons Hotels Limited, and any Successor Brand Manager that assumes the rights and obligations of a Four Seasons Manager under, and in accordance with the terms of, such Four Seasons Manager's Brand Management Agreement (as opposed to entering into a new Management Agreement).

"Franchise/License Agreement" shall mean any one or more of: (i) any franchise, trademark and/or license agreement relating to the operation of the Hotel Components that may be entered into by Borrower which is (a) a franchise, trademark and/or license agreement with a Franchisor/Licensor, which franchise, trademark and/or license agreement shall have been entered into by Borrower and such Franchisor/Licensor on an arm's-length basis and otherwise on commercially reasonable terms, with economic terms and franchise, trademark and/or license fees, as applicable, comparable to existing local market rates or (b) a franchise, trademark and/or license agreement with a Franchisor/Licensor, which franchise, trademark and/or license agreement shall be reasonably acceptable to Lender in form and substance, provided, with respect to this subclause (b), following a rated Securitization, Lender, at its option, may require that Borrower shall have obtained a Rating Agency Confirmation with respect to such franchise, trademark and/or license agreement; and (ii) together with a replacement comfort letter or new comfort letter in form and substance reasonably acceptable to Lender executed and delivered to Lender by Borrower and such Franchisor/Licensor at Borrower's expense, as the same may be amended or modified from time to time in accordance with the terms and provisions of this Agreement.

"Franchise/License Default Election Notice" shall have the meaning set forth in Section 8.1(a)(xvii) hereof.

"Franchisor/Licensor" shall mean a Qualified Franchisor/Licensor.

"Full Replacement Cost" shall have the meaning set forth in Section 6.1(a)(i) hereof.

“GAAP” shall mean generally accepted accounting principles in the United States of America as of the date of the applicable financial report.

“Gaming Authorities” shall mean any of the Nevada Gaming Commission, the Nevada Gaming Control Board, the Clark County Liquor and Gaming Licensing Board, and any other gaming board, commission, or other governmental gaming regulatory body or agency which has, or may at any time after the Closing Date have, jurisdiction over the gaming activities at any Individual Property or any successor to such authority or is, or may at any time after the Closing Date be, responsible for interpreting, administering and enforcing the Gaming Laws.

“Gaming Equipment” shall mean all equipment and supplies used in the gaming operations of a casino, including, without limitation, slot machines, gaming tables, cards, dice, gaming chips, player tracking systems, mobile gaming systems, and all other gaming devices (as defined in NRS 463.0155), cashless wagering systems (as defined in NRS 463.014) and associated equipment (as defined in NRS 463.0136) which are (a) owned or leased by Borrower, MGM/Mandalay Tenant, MGM/Mandalay Operating Subtenant or a Casino Operator and (b) used or useable exclusively in the present or future operation of slot machines, gaming devices, gambling games and live games at any Individual Property, together with all improvements and/or additions thereto and mobile gaming systems.

“Gaming Laws” shall mean the provisions of the Nevada Gaming Control Act, as amended from time to time, all regulations of the Nevada Gaming Commission promulgated thereunder, as amended from time to time, the provisions of the Clark County Code applicable to the gaming activities at any Individual Property as amended from time to time, and all other rules, regulations, orders, ordinances, regulations and Legal Requirements of any Gaming Authority applicable to gaming activities at any Individual Property.

“Gaming License” shall mean any license, qualification, franchise, accreditation, approval, registration, permit, finding of suitability or other authorization of a Gaming Authority relating to gaming, the gaming business, the ownership of Gaming Equipment, or the operation of a casino under the Gaming Laws or required by the Gaming Authorities, in each case, which are necessary or appropriate for the ownership and/or operation of the casino gaming operations at each Individual Property, including the lease of each Individual Property to MGM/Mandalay Tenant for the gaming activities at each Individual Property (and any sublease of such Individual Property by MGM/Mandalay Tenant to MGM/Mandalay Operating Subtenant in accordance with the terms and conditions of the MGM/Mandalay Lease) and any Casino Management Agreement, as applicable.

“Governmental Authority” shall mean any court, board, agency, commission, office or other authority of any nature whatsoever for any governmental unit (foreign, federal, state, county, district, municipal, city or otherwise) whether now or hereafter in existence, including, without limitation, all Gaming Authorities, having jurisdiction over any Individual Property (and any operations conducted thereat) or Borrower.

“Guaranteed Excess Cash Flow” shall mean, in the event any Excess Cash Flow Guaranty is outstanding, (x) the aggregate amount of Excess Cash Flow that is disbursed to Borrower in lieu of being deposited into the Excess Cash Flow Reserve Account on account of the delivery of an Excess Cash Flow Guaranty less (y) the aggregate amount of such Excess

Cash Flow that Borrower would have been permitted to withdraw from the Excess Cash Flow Reserve Account, and that Borrower or an Affiliate thereof actually spends, for the items listed in Section 7.5.2 hereof. The Guaranteed Excess Cash Flow will be recalculated as of the first day of each month, and certified to Lender, pursuant to Section 5.1.11(j).

“Guarantor” shall mean, Initial Guarantor and any (i) Replacement Guarantor, (ii) Substitute Guarantor or (iii) other replacement guarantor, in each case, delivering a Substitute Guaranty pursuant to the express terms and conditions hereof and the Guaranty, it being understood that the definition of Guarantor shall not include the Shortfall Collection Guarantor.

“Guarantor Bankruptcy Event” shall mean if Guarantor or any guarantor or indemnitor (other than Shortfall Collection Guarantor) under any guaranty or indemnity issued in connection with the Loan (other than the Shortfall Collection Guaranty) shall make an assignment for the benefit of creditors or if a receiver, liquidator or trustee shall be appointed for Guarantor or any guarantor or indemnitor under any guaranty or indemnity issued in connection with the Loan (other than the Shortfall Collection Guaranty) or if Guarantor or such other guarantor or indemnitor (other than the Shortfall Collection Guarantor) shall be adjudicated as bankrupt or insolvent, or if any petition for bankruptcy, reorganization or arrangement pursuant to federal bankruptcy law, or any similar federal or state law, shall be filed by or against, consented to, or acquiesced in by, Guarantor or such other guarantor or indemnitor (other than the Shortfall Collection Guarantor), or if any proceeding for the dissolution or liquidation of Guarantor or such other guarantor or indemnitor (other than the Shortfall Collection Guarantor) shall be instituted; provided, however, if such appointment, adjudication, petition or proceeding was involuntary and not consented to by Guarantor or such other guarantor or indemnitor (other than the Shortfall Collection Guarantor), upon the same not being discharged, stayed or dismissed within ninety (90) days.

“Guarantor Financial Covenants” shall mean those covenants set forth in Section 5.2 of the Guaranty.

“Guaranty” shall mean that certain Guaranty Agreement, dated as of the date hereof, executed and delivered by Guarantor in connection with the Loan to and for the benefit of Lender, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

“Hilton Manager” shall mean, individually and/or collectively as the context may require, any subsidiary of Hilton Worldwide Inc., and any Successor Brand Manager that assumes the rights and obligations of a Hilton Manager under, and in accordance with the terms of, such Hilton Manager’s Brand Management Agreement (as opposed to entering into a new Management Agreement).

“Hotel Components” shall mean, collectively, those portions of each Individual Property devoted to the operation of a hotel and related facilities, excluding the applicable Casino Component, but including (without limitation) (a) all guest rooms and suites, hotel amenities, restaurants, bars, night clubs, conference centers, meeting, banquet and other public rooms, retail space, spa, parking spaces and other facilities of the hotel portion of each Individual Property, and (b) any arenas, theaters or performing arts spaces in each Individual Property.

“Hotel Taxes” shall mean all sales and occupancy taxes collected by Borrower that are required to be paid to a state or local taxing authority or similar taxing authority (including, without limitation, sales taxes, use taxes, occupancy taxes, business license taxes and special assessments by any municipality or government).

“Hyatt Manager” shall mean, individually and/or collectively as the context may require, Hyatt Corporation or any subsidiary of Hyatt Corporation, and any Successor Brand Manager that assumes the rights and obligations of a Hyatt Manager under, and in accordance with the terms of, such Hyatt Manager’s Brand Management Agreement (as opposed to entering into a new Management Agreement).

“Improvements” shall have the meaning set forth in the granting clause of the related Mortgage with respect to each Individual Property.

“Indebtedness” of a Person, at a particular date, shall mean the sum (without duplication) at such date of (a) all indebtedness or liability of such Person (including, without limitation, amounts for borrowed money and indebtedness in the form of mezzanine debt or preferred equity); (b) obligations evidenced by bonds, debentures, notes, or other similar instruments; (c) obligations for the deferred purchase price of property or services (including trade obligations); (d) obligations under letters of credit; (e) obligations under acceptance facilities; (f) all guaranties, endorsements (other than for collection or deposit in the ordinary course of business) and other contingent obligations to purchase, to provide funds for payment, to supply funds, to invest in any Person or entity, or otherwise to assure a creditor against loss; and (g) obligations secured by any Liens, whether or not the obligations have been assumed (other than the Permitted Encumbrances).

“Indemnified Liabilities” shall have the meaning set forth in Section 10.13(b) hereof.

“Indemnified Person” shall mean Lender, any Affiliate of Lender and its designee (whether or not it is Lender) that has filed any registration statement relating to the Securitization or has acted as the sponsor or depositor in connection with the Securitization, any Affiliate of Lender that acts as an underwriter, placement agent or initial purchaser of Securities issued in the Securitization, any other co-underwriters, co placement agents or co initial purchasers of Securities issued in the Securitization, and each of their respective officers, directors, partners, employees, representatives, agents and Affiliates and each Person or entity who Controls any such Person within the meaning of Section 15 of the Securities Act of 1933, as amended, or Section 20 of the Securities Exchange Act of 1934, as amended, any Person who is or will have been involved in the origination of the Loan on behalf of Lender, any Person who is or will have been involved in the servicing of the Loan on behalf of Lender secured hereby, any Person in whose name the encumbrances created by the Mortgages are or will have been recorded, any Person who may hold or acquire or will have held or acquired a full or partial interest in the Loan secured hereby (including, but not limited to, investors or prospective investors in the Securities, as well as custodians, trustees and other fiduciaries who hold or have held a full or partial interest in the Loan secured hereby for the benefit of third-parties) as well as the respective directors, officers, shareholders, partners, employees, agents, servants, representatives, contractors, subcontractors, affiliates, subsidiaries, participants, successors and assigns of any and all of the foregoing (including, but not limited to, any other Person who holds

or acquires or will have held a participation or other full or partial interest in the Loan, whether during the term of the Loan or as a part of or following a foreclosure of the Loan and including, but not limited to any successors by merger, consolidation or acquisition of all or a substantial portion of Lender's assets and business).

"Indemnified Taxes" shall mean (a) Section 2.7 Taxes, other than Excluded Taxes, imposed on or with respect to any payment made by Borrower under any Loan Document and (b) to the extent not otherwise described in clause (a) above, Other Taxes.

"Indemnifying Person" shall mean Borrower.

"Independent Director" or **"Independent Manager"** shall mean an individual who has prior experience as an independent director, independent manager or independent member with at least three years of employment experience and who is provided by CT Corporation, Corporation Service Company, National Registered Agents, Inc., Wilmington Trust Company, Stewart Management Company, Lord Securities Corporation or, if none of those companies is then providing professional Independent Directors, another nationally recognized company reasonably approved by Lender, in each case that is not an Affiliate of Borrower or Principal, and that provides professional Independent Directors and other corporate services in the ordinary course of its business, and which individual is duly appointed as an Independent Director or Independent Manager, as applicable, and is not, and has never been, and will not while serving as an Independent Director or Independent Manager, as applicable, be, any of the following:

(a) a member, partner, equityholder, manager, director, officer or employee of Borrower, Principal or any of their respective equityholders or Affiliates (other than serving as an Independent Director and/or Independent Manager of Borrower, Principal or an Affiliate of Borrower or Principal that is not in the direct chain of ownership of Borrower or Principal (provided that Independent Directors and/or Independent Managers of a Principal shall be permitted to serve as a springing limited partner of its direct subsidiary) and that is required by a creditor to be a single purpose bankruptcy remote entity, provided that such Independent Director or Independent Manager is employed by a company that routinely provides professional Independent Directors or Independent Managers in the ordinary course of its business);

(b) a creditor, supplier or service provider (including provider of professional services) to Borrower, Principal or any of their respective equityholders or Affiliates (other than a nationally recognized company that routinely provides professional Independent Directors or Independent Managers and other corporate services to Borrower, Principal or any of their respective Affiliates in the ordinary course of its business);

(c) a family member of any such member, partner, equityholder, manager, director, officer, employee, creditor, supplier or service provider; or

(d) a Person that controls (whether directly, indirectly or otherwise) any of sub-clauses (a), (b) or (c) above.

A natural person who otherwise satisfies the foregoing definition and satisfies subparagraph (a) by reason of being the Independent Director or Independent Manager of a “single purpose bankruptcy remote entity” affiliated with Borrower or Principal shall be qualified to serve as an Independent Director of the Borrower or Principal, provided that the fees that such individual earns from serving as an Independent Director of Affiliates of Borrower or Principal in any given year constitute in the aggregate less than five percent (5%) of such individual’s annual income for that year. For purposes of this paragraph, a “single purpose bankruptcy remote entity” is an entity, whose organizational documents contain restrictions on its activities and impose requirements intended to preserve such entity’s separateness that are substantially similar to those contained in the definition of “Special Purpose Entity” in this Agreement.

“**Individual Borrower**” shall have the meaning set forth in the introductory paragraph hereto, together with each such Person’s successors and permitted assigns.

“**Individual Property**” shall mean each parcel or parcels of real property listed on Schedule 1.1(a), the Improvements thereon and all personal property owned by the applicable Individual Borrower and encumbered by a Mortgage, together with all rights pertaining to such property and Improvements, as more particularly described in the granting clauses of each Mortgage and referred to therein as the “Property”.

“**Initial Guarantor**” shall mean, severally but not jointly in accordance with the terms and conditions of the Guaranty, (a) MGP OP and (b) BREIT OP, together with each of their respective successors and permitted assigns.

“**Initial Interest Rate**” shall mean, (i) with respect to each Note A, the Note A Interest Rate; and (ii) with respect to each Note B, the Note B Interest Rate.

“**Initial MGM/Mandalay Lease**” shall mean that certain Master Lease, dated as of the date hereof, by and among Borrower, collectively, as lessor, and Initial MGM/Mandalay Tenant, as tenant, as the same may be amended, restated, replaced, supplemented or otherwise modified in accordance with the terms and provisions hereof.

“**Initial MGM/Mandalay Lease Guarantor**” shall mean MGM Resorts International and any successor Tenant’s Parent (as defined in the Initial MGM/Mandalay Lease) delivering a MGM/Mandalay Lease Guaranty under the MGM/Mandalay Lease.

“**Initial MGM/Mandalay Lease Guaranty**” shall mean that certain Guaranty of Lease Documents, dated as of the date hereof, by and among Initial MGM/Mandalay Lease Guarantor, as guarantor, and Borrower, collectively, as landlord, as the same may be amended, restated, replaced, supplemented or otherwise modified in accordance with the terms and provisions hereof.

“**Initial MGM/Mandalay Tenant**” shall mean MGM Lessee II, LLC, together with its successors and assigns.

“**Insolvency Opinion**” shall mean that certain non-consolidation opinion letter dated the date hereof delivered by Berger Harris LLP in connection with the Loan.

“Insurance Premiums” shall have the meaning set forth in Section 6.1(b) hereof.

“Insurance Proceeds” shall have the meaning set forth in Section 6.4(b) hereof.

“Interest Period” shall mean, with respect to each Note, (a) the period commencing on (and including) the Closing Date and ending on (and including) March 5, 2020 and (b) thereafter, the period commencing on (and including) the sixth (6th) day of each calendar month and ending on (and including) the fifth (5th) day of the following calendar month. Each Interest Period set forth in clause (b) above shall be a full month and shall not be shortened by reason of any payment of the Loan prior to the expiration of such Interest Period.

“Interest Rate” shall mean, with respect to each Note, (a) from the Closing Date through and including the last day of the Interest Period in which the Anticipated Repayment Date occurs, the applicable Initial Interest Rate (or, when applicable pursuant to this Agreement or any other Loan Document, the Default Rate) and (b) from and after the first day of the Interest Period commencing on the day after the Anticipated Repayment Date, the Adjusted Interest Rate (or, when applicable pursuant to this Agreement or any other Loan Document, the Default Rate).

“Joint Venture Lease Document Major Decision” shall mean each “Lease Document Major Decision” as defined, and set forth, in the Windmill Joint Venture Agreement as of the Closing Date.

“KBRA” shall mean Kroll Bond Rating Agency, Inc.

“Land” shall have the meaning set forth in the granting clause of the related Mortgage with respect to each Individual Property.

“Lease” shall mean any lease, sublease (including Permitted Subleases (as defined in the MGM/Mandalay Lease)) or subsublease, letting, license, concession or other occupancy agreement (whether written or oral and whether now or hereafter in effect), pursuant to which any Person is granted a possessory interest in, or right to use or occupy all or any portion of any space in any Individual Property by or on behalf of any Individual Borrower or MGM/Mandalay Tenant (other than ordinary course (i) short-term occupancy rights of hotel guests which are not the subject of a written agreement, (ii) occupancy agreements for groups of hotel guests for transitory periods of time, (iii) agreements for catering, business and similar special events or functions at any Individual Property, (iv) any lease agreement or concession agreement between any Individual Borrower or MGM/Mandalay Tenant, as applicable, and a Franchisor/Licensor, Manager, Casino Operator or their respective Affiliates with respect to sale of liquor (including, without limitation, any liquor lease and liquor management agreement), (v) space license agreements for solar panels, telecommunications equipment and antennas and (vi) de minimis billboard leases, and every modification, amendment or other agreement relating to such lease, sublease, subsublease, or other agreement entered into in connection with such lease, sublease, subsublease, or other agreement and every guarantee of the performance and observance of the covenants, conditions and agreements to be performed and observed by the other party thereto); provided that in no event shall the MGM/Mandalay Lease or any MGM/Mandalay Operating Sublease constitute a Lease and excluding any Permitted Equipment and Vehicle Leases.

“Legal Requirements” shall mean, with respect to each Individual Property, all federal, state, county, municipal and other governmental statutes, laws, rules, orders, regulations, ordinances, judgments, decrees and injunctions of Governmental Authorities affecting Borrower, such Individual Property or any part thereof, or the construction, use, alteration or operation thereof, or any part thereof, whether now or hereafter enacted and in force, and all permits, licenses and authorizations and regulations relating thereto, and all covenants, agreements, restrictions and encumbrances contained in any instruments, either of record or known to Borrower at any time in force affecting Borrower, such Individual Property or any part thereof, including, without limitation, any which may (a) require repairs, modifications or alterations in or to such Individual Property or any part thereof, or (b) in any way limit the use and enjoyment thereof. For the avoidance of doubt, the term “Legal Requirements” shall include, and be deemed to include, all applicable Gaming Laws and Liquor Laws.

“Lender” shall have the meaning set forth in the introductory paragraph hereto, together with its successors and assigns.

“Lender Documents” shall mean any agreement among Lender, the Mezzanine Lender and/or any participant or any fractional owner of a beneficial interest in the Loan or the Mezzanine Loan relating to the administration of the Loan, the Mezzanine Loan, the Loan Documents or the Mezzanine Loan Documents, including without limitation any intercreditor agreements, co-lender agreements and participation agreements.

“Letter of Credit” shall mean an irrevocable, unconditional, transferable, clean sight draft letter of credit in favor of Lender and (i) entitling Lender to draw thereon based solely on a statement executed by an officer of Lender stating that it has the right to draw thereon under this Agreement, and issued by a domestic Approved Bank or the U.S. agency or branch of a foreign Approved Bank, and upon which letter of credit Lender shall have the right to draw in full: (a) if Lender has not received at least thirty (30) days prior to the date on which the then outstanding letter of credit is scheduled to expire, a notice from the issuing financial institution that it has renewed the applicable letter of credit; (b) thirty (30) days prior to the date of termination following receipt of notice from the issuing financial institution that the applicable letter of credit will be terminated; (c) thirty (30) days after Lender has given notice to Borrower that the financial institution issuing the applicable letter of credit ceases to be an Approved Bank; or (d) during the continuance of an Event of Default and (ii) for which (A) Borrower shall have delivered an Additional Insolvency Opinion in respect of such Letter of Credit in form and substance reasonably satisfactory to Lender if the applicant under such Letter of Credit is (x) BREIT OP or a subsidiary of BREIT OP that directly or indirectly owns 49% or more of the equity interests in Borrower, (y) MGP OP or a subsidiary of MGP OP that directly or indirectly owns 49% or more of the equity interests in Borrower and/or (z) a subsidiary of each of BREIT OP and/or MGP OP that in the aggregate directly or indirectly owns 49% or more of the equity interests in Borrower and (B) such Letter of Credit, when taken in the aggregate with any outstanding amount under any other Letter of Credit and the amount guaranteed under the Excess Cash Flow Guaranty (if any), would exceed fifteen percent (15.00%) of the then outstanding principal balance of the Loan. In no event shall Borrower be an account party to, or have or incur any reimbursement obligations in connection with, any Letter of Credit.

“Liabilities” shall have the meaning set forth in Section 9.2(b) hereof.

“**Licenses**” shall have the meaning set forth in Section 4.1.22 hereof.

“**Lien**” shall mean, with respect to each Individual Property, any mortgage, deed of trust, deed to secure debt, indemnity deed of trust, lien, pledge, hypothecation, assignment, security interest, or any other encumbrance or charge on or affecting the applicable Individual Borrower, the related Individual Property, any portion thereof or any interest therein, including, without limitation, any conditional sale or other title retention agreement, any financing lease having substantially the same economic effect as any of the foregoing, the filing of any financing statement, and mechanic’s, materialmen’s and other similar liens and encumbrances.

“**Liquor Authority**” shall mean any Governmental Authority, whether now or hereafter in existence, or any officer or official thereof, but only to the extent that such Governmental Authority, or any officer or official thereof, possesses the authority to regulate the sale, distribution and possession of alcoholic beverages at any Individual Property.

“**Liquor Laws**” shall mean all applicable federal, state and local statutes, laws, rules and regulations pursuant to which Liquor Authorities possess regulatory, licensing or permit authority over the sale, distribution and possession of alcoholic beverages.

“**Loan**” shall mean the loan made by Lender to Borrower pursuant to this Agreement.

“**Loan Amount**” shall mean Three Billion and No/100 Dollars (\$3,000,000,000.00).

“**Loan Documents**” shall mean, collectively, this Agreement, the Note, each Mortgage, the Environmental Indemnity, the Assignment of Agreements, the MGM/Mandalay Lease SNDA, the Guaranty, the Cash Management Agreement, the Lockbox Agreement, the Contribution Agreement, the Assignment of Security Interests, the Assignment of Signature Management Agreement, the Excess Cash Flow Guaranty, if applicable, and all other documents executed and delivered to Lender by Borrower, Guarantor, Excess Cash Flow Guarantor or any Loan Party in connection with the Loan (excluding, for the avoidance of doubt, the Shortfall Collection Guaranty).

“**Loan Party**” shall mean, collectively, Borrower and Principal.

“**Loan to Value Ratio**” shall mean, as of the date of its calculation, the ratio (expressed as a percentage) of (a) the then current outstanding principal balance of the Loan (or such portion of the Loan as is included in a REMIC Trust) as of the date of such calculation to (b) the fair market value of all Individual Properties (for purposes of the REMIC provisions, based solely on real property and excluding any personal property or going concern value) as proposed by Borrower and determined by Lender in its reasonable discretion using any commercially reasonable method permitted to a REMIC Trust (which may include an existing or updated appraisal, a broker’s price opinion or other written determination of value using a commercially reasonable valuation method, in each case satisfactory to Lender, but shall be based solely on the value of real property and shall exclude personal property and going-concern value).

“**Lockbox Account**” shall have the meaning set forth in Section 2.6.1(a) hereof.

“Lockbox Agreement” shall mean a Deposit Account Control Agreement (Account — With Activation) (or other similarly named agreement) by and among Borrower, Lender and Lockbox Bank, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time, relating to funds deposited in the Lockbox Account.

“Lockbox Bank” shall mean the bank which establishes, maintains and holds the Lockbox Account, which shall be an Eligible Institution.

“Majority Equity Transfer” shall have the meaning given thereto in Section 5.2.9(f).

“Management Agreement” means any one or more management agreements relating to the management and operation of the Hotel Components that may be entered into by Borrower which is (a) either (i) a management agreement with a Manager, which management agreement shall (A) have been entered into by Borrower and such Manager on an arm’s length basis and otherwise on commercially reasonable terms and (B) with economic terms and management fees comparable to existing local market rates, or (ii) a management agreement with a Manager, which management agreement shall be reasonably acceptable to Lender in form and substance, provided, with respect to this subclause (ii), following a rated Securitization, Lender, at its option, may require that Borrower shall have obtained a Rating Agency Confirmation with respect to such management agreement and (b) together with (i) if such Management Agreement is a Brand Management Agreement, an assignment of management agreement and subordination of management fees substantially in form and substance reasonably acceptable to Lender and (ii) if such Management Agreement is not a Brand Management Agreement, an assignment of management agreement and subordination of management fees in form and substance reasonably acceptable to Lender, in each instance, executed and delivered to Lender by Borrower and such Manager at Borrower’s expense, provided, that in the event such Manager is an Affiliated Manager (other than a Brand Manager or any other manager that is affiliated with a nationally recognized brand), any replacement management agreement shall include a subordination of management fees in form and substance reasonably acceptable to Lender, as the same may be amended or modified from time to time in accordance with the terms and provisions of this Agreement.

“Manager” shall mean, if the context requires, a Qualified Manager or Qualified Casino Operator, as applicable, who is managing the Hotel Components in accordance with the terms and provisions of this Agreement pursuant to a Management Agreement.

“Manager Accounts” shall mean with respect to any (x) Brand Management Agreement, the bank accounts maintained by the Brand Manager in the name of the Borrower in accordance with the terms and conditions of such Brand Management Agreement and (y) Casino Management Agreement, the bank accounts maintained by the Casino Operator in the name of the Borrower in accordance with the terms and conditions of such Casino Management Agreement.

“Mandalay Bay Borrower” shall have the meaning set forth in the introductory paragraph hereto, together with its successors and permitted assigns.

“Mandalay Bay Property” shall mean that certain Individual Property located at 3950 South Las Vegas Boulevard, Las Vegas, Nevada and commonly referred to as The Mandalay Bay Resort and Casino.

“Marriott Manager” shall mean, individually and/or collectively as the context may require, any subsidiary of Marriott International Inc., and any Successor Brand Manager that assumes the rights and obligations of a Marriott Manager under, and in accordance with the terms of, such Marriott Manager’s Brand Management Agreement (as opposed to entering into a new Management Agreement).

“Material Lease” shall mean any Lease (other than any lease of Venue Space and, for the avoidance of doubt, excluding the MGM/Mandalay Lease) which either individually or when taken together with any other Lease at the Property with the same Tenant or an Affiliate of such Tenant covers more than 50,000 rentable square feet (which, for the avoidance of doubt, shall not include any lease of Venue Space, even if the demised premises under such Lease shall cover more than 50,000 rentable square feet).

“Maturity Date” shall mean the Payment Date occurring in March, 2032, or such other date on which the outstanding principal balance of the Loan becomes due and payable as therein or herein provided, whether at such stated maturity date, by declaration of acceleration, or otherwise.

“Maximum Legal Rate” shall mean the maximum nonusurious interest rate, if any, that at any time or from time to time may be contracted for, taken, reserved, charged or received on the indebtedness evidenced by the Note and as provided for herein or the other Loan Documents, under the laws of such state or states whose laws are held by any court of competent jurisdiction to govern the interest rate provisions of the Loan.

“Mezzanine Borrower” shall mean a newly-formed special purpose vehicle that serves as borrower under the Mezzanine Loan and owns the limited liability company interests of Borrower.

“Mezzanine Default Rate” shall mean “Default Rate” under the Mezzanine Loan Documents.

“Mezzanine Lender” shall mean any holder of the Mezzanine Loan, together with their respective successors and/or assigns.

“Mezzanine Loan” shall have the meaning set forth in Section 5.2.9 hereof.

“Mezzanine Loan Agreement” shall mean the loan agreement entered into in connection with the Mezzanine Loan, as the same may be amended, restated, replaced, supplemented or modified, from time to time.

“Mezzanine Loan Debt Service” shall mean “Debt Service” under the Mezzanine Loan Documents.

“Mezzanine Loan Documents” shall mean the “Loan Documents” under the Mezzanine Loan Agreement.

“Mezzanine Loan Event of Default” shall mean “Event of Default” under the Mezzanine Loan Documents.

“MGM” shall mean MGM Resorts International and its subsidiaries (and any successor entities thereto).

“MGM Grand Borrower” shall have the meaning set forth in the introductory paragraph hereto, together with its successors and permitted assigns.

“MGM Grand Property” shall mean that certain Individual Property located at 3799 South Las Vegas Boulevard, Las Vegas, Nevada and commonly referred to as The MGM Grand Las Vegas Hotel & Casino.

“MGM/Mandalay Brand Names” shall mean (i) with respect to the MGM Grand Property, “MGM Grand” and/or “Grand Garden” or (ii) with respect to the Mandalay Bay Property, “Mandalay Bay” and/or “Mandalay Place” (or any other brand name that replaces “Mandalay Bay” and/or “Mandalay Place” as the primary brand name used to identify the Mandalay Bay Property).

“MGM/Mandalay Lease” shall mean (i) the Initial MGM/Mandalay Lease, (ii) any Replacement MGM/Mandalay Lease or (iii) any Separate Lease, as each may be amended, restated, replaced, supplemented or otherwise modified from time to time in accordance with the terms hereof.

“MGM/Mandalay Lease Default” shall have the meaning set forth in Section 8.3 hereof.

“MGM/Mandalay Lease Documents” shall mean, collectively, the MGM/Mandalay Lease and MGM/Mandalay Lease Guaranty.

“MGM/Mandalay Lease Guarantor” shall mean, as the context may require, (i) Initial MGM/Mandalay Lease Guarantor, or (ii) Replacement MGM/Mandalay Lease Guarantor.

“MGM/Mandalay Lease Guaranty” shall mean, as the context may require, (i) Initial MGM/Mandalay Lease Guaranty, or (ii) Replacement MGM/Mandalay Lease Guaranty.

“MGM/Mandalay Lease Guaranty Claim” shall have the meant set forth in Section 5.3.2(d) hereof.

“MGM/Mandalay Lease Opinion Delivery Requirements” shall mean delivery to Lender of (a) a true lease opinion letter with respect to New York law delivered subsequent to the Closing Date and (i) prior to a rated Securitization, reasonably satisfactory in form and substance to Administrative Agent and from (I) Locke Lord LLP or (II) counsel otherwise reasonably acceptable to Administrative Agent and (ii) following a rated Securitization, satisfactory in form and substance to the Approved Rating Agencies, and from (I) Locke Lord LLP or (II) counsel otherwise acceptable to the Approved Rating Agencies and (b) a true lease opinion letter with respect to Nevada law delivered subsequent to the Closing Date and (i) prior to a rated Securitization, reasonably satisfactory in form and substance to Administrative Agent and from (I) Bailey Kennedy, LLP or (II) counsel otherwise reasonably acceptable to

Administrative Agent and (ii) following a rated Securitization, satisfactory in form and substance to the Approved Rating Agencies and from (I) Bailey Kennedy, LLP or (II) counsel otherwise acceptable to the Approved Rating Agencies.

“MGM/Mandalay Lease Rent” shall mean all rent and other amounts due to Borrower under the MGM/Mandalay Lease but excluding any amounts that are paid to Borrower to reimburse Borrower for amounts that were (x) paid by Borrower or its Affiliates on behalf of MGM/Mandalay Tenant under the MGM/Mandalay Lease, provided that upon request by Lender, Borrower shall provide evidence of payment of such amounts by Borrower on behalf of MGM/Mandalay Tenant, or (y) paid by Borrower or its Affiliates to Lender or the Mezzanine Lender or any other Person indemnified by Borrower or its Affiliates under the Loan Documents.

“MGM/Mandalay Lease SNDA” shall mean that certain Subordination, Non-Disturbance and Attornment Agreement, dated as of the Closing Date, by and among Borrower, Lender and Initial MGM/Mandalay Tenant, as the same may be amended, restated, replaced, supplemented or otherwise modified in accordance with the terms and provisions hereof.

“MGM/Mandalay Operating Sublease” shall mean each “Operating Sublease” (as defined in the MGM/Mandalay Lease).

“MGM/Mandalay Operating Subtenant” shall mean, collectively, each Person to whom all or any portion of an Individual Property is sublet by MGM/Mandalay Tenant pursuant to an MGM/Mandalay Operating Sublease pursuant to the express terms and conditions of the MGM/Mandalay Lease.

“MGM/Mandalay Policies” shall have the meaning set forth in Section 6.1(h) hereof.

“MGM/Mandalay Restricted Reserve Accounts” shall mean, collectively, the “FF&E Reserve” and when established, the “CapEx Reserve”, as each is defined in the MGM/Mandalay Lease.

“MGM/Mandalay Restricted Reserve Funds” shall mean, collectively, the “CapEx Reserve Funds” and “FF&E Reserve Funds”, as each is defined in the MGM/Mandalay Lease.

“MGM/Mandalay Tenant” shall mean, as the context may require, (i) Initial MGM/Mandalay Tenant or (ii) a Replacement MGM/Mandalay Tenant.

“MGM/Mandalay Tenant Annual Budget” each operating and capital budget for each MGM/Mandalay Operating Subtenant prepared by or on behalf of MGM/Mandalay Tenant and delivered to Borrower pursuant to the express terms and conditions of the MGM/Mandalay Lease (including, without limitation, each budget required to be prepared by MGM/Mandalay Tenant and delivered to Borrower pursuant to Section 23.1 of the MGM/Mandalay Lease).

“MGM/Mandalay Tenant Bankruptcy Event” shall mean if MGM/Mandalay Tenant shall make an assignment for the benefit of creditors or if a receiver, liquidator or trustee shall be appointed for MGM/Mandalay Tenant or if MGM/Mandalay Tenant shall be adjudicated

as bankrupt or insolvent, or if any petition for bankruptcy, reorganization or arrangement pursuant to federal bankruptcy law, or any similar federal or state law, shall be filed by or against, consented to, or acquiesced in by, MGM/Mandalay Tenant, or if any proceeding for the dissolution or liquidation of MGM/Mandalay Tenant shall be instituted; provided, however, if such appointment, adjudication, petition or proceeding was involuntary and not consented to by MGM/Mandalay Tenant, upon the same not being discharged, stayed or dismissed within ninety (90) days.

“MGM/Mandalay Tenant Bankruptcy Event Cure” shall mean the occurrence of any of the following events:

(i) MGM/Mandalay Tenant, as debtor in possession, or by a trustee for MGM/Mandalay Tenant, has assumed the MGM/Mandalay Lease pursuant to Section 365 of the Bankruptcy Code, and an order authorizing the assumption of the MGM/Mandalay Lease has been granted by the applicable court and MGM/Mandalay Tenant has satisfied its obligations under Section 365(d)(3) of the Bankruptcy Code; or (ii) a MGM/Mandalay Tenant has entered into a MGM/Mandalay Lease in accordance with the terms and provisions hereof, provided that if the MGM/Mandalay Lease is terminated and not otherwise replaced in accordance with the terms and provisions hereof, a MGM/Mandalay Tenant Bankruptcy Event Cure shall be deemed to have occurred if either (x) the Debt Service Coverage Ratio equals or exceeds the Required DSCR Ratio for two (2) consecutive calendar quarters following the occurrence of the related MGM/Mandalay Tenant Bankruptcy Event or (y) Borrower makes voluntary prepayments in accordance with the terms of this Agreement in amounts necessary to achieve a Debt Service Coverage Ratio equal to or exceeding the Required DSCR Ratio; provided that in the event the Required DSCR Ratio is achieved by such prepayment, the MGM/Mandalay Tenant Bankruptcy Event shall terminate immediately upon such prepayment without the obligation to wait two (2) consecutive calendar quarters.

“MGM/Mandalay Tenant Insurance Conditions” shall have the meaning set forth in Section 6.1(h) hereof.

“MGM/Mandalay Tenant Lender” shall have the meaning set forth in Section 5.3.2(1)(ii) hereof.

“MGM/Mandalay Tenant Loan” shall have the meaning set forth in Section 5.3.2(1)(ii) hereof.

“MGM/Mandalay Tenant Loan Intercreditor Agreement” shall have the meaning set forth in Section 5.3.2(1)(ii) hereof.

“MGP” shall mean MGM Growth Properties LLC, a Delaware limited liability company.

“MGP Affiliate” means an Affiliate of Borrower other than MGP or MGP OP which (i) is Controlled by MGP or MGP OP and (ii) satisfies the Guarantor Financial Covenants.

“MGP OP” shall mean MGM Growth Properties Operating Partnership LP, a Delaware limited partnership.

“Monthly Additional Interest Amount” shall mean, with respect to each Note, on each Payment Date after the Anticipated Repayment Date, the amount equal to (a) interest

which accrues on such Note for the Interest Period in which the Payment Date occurs, calculated at the Adjusted Interest Rate, minus (b) the Monthly Debt Service Payment Amount for such Payment Date.

“**Monthly Debt Service Payment Amount**” shall mean, with respect to each Note, on each Payment Date, the amount equal to interest at the applicable Initial Interest Rate (or, when applicable pursuant to this Agreement or any other Loan Document, the Default Rate) which accrues on the outstanding principal balance of such Note for the Interest Period in which the Payment Date occurs. For the avoidance of doubt, in no event shall the Monthly Debt Service Payment Amount be calculated using the Adjusted Interest Rate.

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

“**Morningstar**” shall mean Morningstar Credit Ratings, LLC, or any of its successors in interest, assigns, and/or changed entity name or designation resulting from any acquisition by Morningstar, Inc. or other similar entity of Morningstar Credit Ratings, LLC.

“**Mortgage**” or “**Mortgages**” shall mean, with respect to each Individual Property, that certain first-priority Deed of Trust, Assignment of Leases and Rents, Fixture Filing and Security Agreement, dated as of the date hereof, executed and delivered by the related Individual Borrower to Administrative Agent for the benefit of Lender as security for the Loan and encumbering such Individual Property, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

“**Mortgage Mandatory Prepayment Amount**” shall have the meaning set forth in Section 2.4.2 hereof.

“**Net Income**” shall mean, with respect to any fiscal period and with respect to any Person, the net income (or net loss) of that Person, determined in accordance with the MGM/Mandalay Lease and GAAP, consistently applied using the Existing Accounting Guidelines (as defined in the MGM/Mandalay Lease).

“**Net Proceeds**” shall have the meaning set forth in Section 6.4(b) hereof.

“**Net Proceeds Deficiency**” shall have the meaning set forth in Section 6.4(b)(vi) hereof.

“**Net Proceeds Prepayment**” shall have the meaning set forth in Section 6.4(c)(c) hereof.

“**Net Revenue**” shall mean, collectively, with respect to any fiscal period, the net revenue derived from each Individual Property (in each case broken out for each Individual Property by (i) “Casino Division”, “Hotel Division”, “Food & Beverage Division”, “Retail Division”, “Entertainment Division” and “Other Operations Division” in accordance with the terms of the Initial MGM/Mandalay Lease and (ii) substantially similar divisions pursuant to the terms of a Replacement MGM/Mandalay Lease) for that period, determined in accordance with the MGM/Mandalay Lease and GAAP, consistently applied using the Existing Accounting Guidelines (as defined in the MGM/Mandalay Lease).

“Net Sales Proceeds” shall mean one hundred percent (100%) of the gross proceeds from the sale of an Individual Property to be received by or on behalf of the applicable Individual Borrower in respect of such sale, less and except: any reasonable and customary brokerage fees and sales commissions payable to third parties, transfer, stamp and/or intangible taxes, reasonable, customary and market closing costs and any other reasonable and customary third party costs and expenses actually incurred by such Borrower in connection with such sale, as evidenced by a settlement statement or customary invoice.

“Net Worth” shall mean an entity’s equity as its total assets minus its total liabilities (in each case exclusive of such entity’s interests in and liabilities related to the Property), in each case in accordance with GAAP.

“New TRS Borrower” shall have the meaning set forth in Section 5.2.9(1) hereof.

“Non-Consenting Lender” shall have the meaning set forth in Section 10.24(e) hereof.

“Note” shall mean, collectively, Note A and Note B.

“Note A” shall mean, collectively, Note A-1, Note A-2, Note A-3 and Note A-4.

“Note A Defeased Note” shall have the meaning set forth in Section 2.8.1(a)(xii) hereof.

“Note A Interest Rate” means, with respect to each Note A, a rate equal to 3.308% per annum (or, when applicable pursuant to this Agreement or any other Loan Document, the Default Rate).

“Note A Undefeased Note” shall have the meaning set forth in Section 2.8.1(a)(xii) hereof.

“Note A-1” shall mean that certain Promissory Note A-1, dated as of the Closing Date, in the principal amount of SEVEN HUNDRED FIFTY-FOUR MILLION SIX HUNDRED THOUSAND AND 00/100 DOLLARS (\$754,600,000.00), made by Borrower in favor of Citi and any replacement or split notes made by Borrower in favor of Citi, as each of the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

“Note A-2” shall mean that certain Promissory Note A-2, dated as of the Closing Date, in the principal amount of THREE HUNDRED SEVENTY SEVEN MILLION THREE HUNDRED THOUSAND AND 00/100 DOLLARS (\$377,300,000.00), made by Borrower in favor of Barclays and any replacement or split notes made by Borrower in favor of Barclays, as each of the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

“Note A-3” shall mean that certain Promissory Note A-3, dated as of the Closing Date, in the principal amount of THREE HUNDRED SEVENTY SEVEN MILLION THREE HUNDRED THOUSAND AND 00/100 DOLLARS (\$377,300,000.00), made by Borrower in favor of DB and any replacement or split notes made by Borrower in favor of DB, as each of the

same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

“**Note A-4**” shall mean that certain Promissory Note A-4, dated as of the Closing Date, in the principal amount of THREE HUNDRED SEVENTY SEVEN MILLION THREE HUNDRED THOUSAND AND 00/100 DOLLARS (\$377,300,000.00), made by Borrower in favor of SocGen and any replacement or split notes made by Borrower in favor of SocGen, as each of the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

“**Note B**” shall mean, collectively, Note B-1, Note B-2, Note B-3 and Note B-4.

“**Note B Defeased Note**” shall have the meaning set forth in Section 2.8.1(a)(xii) hereof.

“**Note B Interest Rate**” means, with respect to each Note B, a rate equal to 3.308% per annum (or, when applicable pursuant to this Agreement or any other Loan Document, the Default Rate).

“**Note B Undefeased Note**” shall have the meaning set forth in Section 2.8.1(a)(xii) hereof.

“**Note B-1**” shall mean that certain Promissory Note B-1, dated as of the Closing Date, in the principal amount of FOUR HUNDRED FORTY-FIVE MILLION FOUR HUNDRED THOUSAND AND 00/100 DOLLARS (\$445,400,000.00), made by Borrower in favor of Citi and any replacement or split notes made by Borrower in favor of Citi, as each of the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

“**Note B-2**” shall mean that certain Promissory Note B-2, dated as of the Closing Date, in the principal amount of TWO HUNDRED TWENTY-TWO MILLION SEVEN HUNDRED THOUSAND AND 00/100 DOLLARS (\$222,700,000.00), made by Borrower in favor of Barclays and any replacement or split notes made by Borrower in favor of Barclays, as each of the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

“**Note B-3**” shall mean that certain Promissory Note B-3, dated as of the Closing Date, in the principal amount of TWO HUNDRED TWENTY-TWO MILLION SEVEN HUNDRED THOUSAND AND 00/100 DOLLARS (\$222,700,000.00), made by Borrower in favor of DB and any replacement or split notes made by Borrower in favor of DB, as each of the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

“**Note B-4**” shall mean that certain Promissory Note B-4, dated as of the Closing Date, in the principal amount of TWO HUNDRED TWENTY-TWO MILLION SEVEN HUNDRED THOUSAND AND 00/100 DOLLARS (\$222,700,000.00), made by Borrower in favor of SocGen and any replacement or split notes made by Borrower in favor of SocGen, as each of the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

“Officer’s Certificate” shall mean a certificate delivered to Lender by Borrower, which is signed by an authorized officer of Borrower, or the general partner, managing member or sole member of Borrower.

“OpCo Event of Default” shall mean an Event of Default (as defined in the MGM/Mandalay Lease) under the MGM/Mandalay Lease.

“OpCo Trigger Event” shall mean the occurrence and continuance of all of the following conditions simultaneously: (i) an OpCo Event of Default has occurred and is continuing, (ii) (x) the Managing Member (as defined in the Windmill Joint Venture Agreement) of the Windmill Joint Venture is an MGP Affiliate and (y) MGP OP is Controlled by MGM and (iii) such Managing Member is permitted under the terms of the Windmill Joint Venture Agreement to take any action constituting a Joint Venture Lease Document Major Decision without the consent of (x) Windmill REIT or (y) if applicable, a Qualified Transferee that is not an Affiliate of MGM/Mandalay Tenant which owns a fifteen percent (15%) or greater direct and/or indirect interest in Borrower.

“OpCo Trigger Event Cure” shall mean, as applicable, (i) Borrower shall have provided evidence to Lender of the cure of the OpCo Event of Default, (ii) Borrower shall have waived such OpCo Event of Default, provided that such waiver is approved by Lender, such approval not to be unreasonably withheld, conditioned or delayed or (iii) in the event that the OpCo Event of Default has resulted in a termination of the MGM/Mandalay Lease in accordance with the terms and conditions of this Agreement, either (a) (I) Borrower and MGM/Mandalay Tenant have entered into a new lease on terms and conditions substantially similar or reasonably equivalent to those contained in the MGM/Mandalay Lease as of the Closing Date and (II) the MGM/Mandalay Lease Opinion Delivery Requirements have been satisfied or (b) after giving effect to the termination of the MGM/Mandalay Lease, the Required DSCR Ratio shall be satisfied, which for the avoidance of doubt, may be achieved, at Borrower’s sole discretion, by making voluntary prepayments in accordance with the terms of this Agreement in amounts necessary to achieve a Debt Service Coverage Ratio equal to or exceeding the Required DSCR Ratio.

“Operating Expenses” shall mean, without duplication, the sum of all ordinary costs and expenses of operating, maintaining, directing, managing and supervising each Individual Property (excluding, (i) depreciation and amortization, (ii) any Debt Service and Mezzanine Loan Debt Service, (iii) any Capital Expenditures in connection with the Property, (iv) any deposits made to the Reserve Funds, (v) leasing commissions, (vi) non-recurring items, and (vii) the costs of any other things specified to be done or provided at Borrower’s sole expense), incurred by Borrower, a Casino Operator pursuant to any Casino Management Agreement or a Manager pursuant to any Management Agreement, or as otherwise specifically provided therein, which are properly attributable to the period under consideration under Borrower’s system of accounting, including without limitation: (a) the cost of all food and beverages sold or consumed and of all necessary chinaware, glassware, linens, flatware, uniforms, utensils and other items of a similar nature, including such items bearing the name or identifying characteristics of the hotels as Borrower shall reasonably consider appropriate (**“Operating Equipment”**) and paper supplies, cleaning materials and similar consumable items (**“Operating Supplies”**) placed in use (other than reserve stocks thereof in storerooms). Operating Equipment and Operating Supplies shall be considered to have been placed in use

when they are transferred from the storerooms of the Property to the appropriate operating departments; (b) salaries and wages of personnel of the Property, including costs of payroll taxes and employee benefits (which benefits may include, without limitation, a pension plan, medical insurance, life insurance, travel accident insurance and an executive bonus program), and all other expenses not otherwise specifically referred to in this definition which are referred to as “Administrative and General Expenses” pursuant to GAAP; (c) the cost of all other goods and services obtained by Borrower, a Casino Operator or a Manager in connection with its operation of the Property including, without limitation, heat and utilities, office supplies and all services performed by third-parties, including leasing expenses in connection with telephone and data processing equipment, and all existing and any future installations necessary for the operation of the Improvements for hotel purposes (including, without limitation, heating, lighting, sanitary equipment, air conditioning, laundry, refrigerating, built in kitchen equipment, telephone equipment, communications systems, computer equipment and elevators), Operating Equipment and existing and any future furniture, furnishings, wall coverings, fixtures and hotel equipment necessary for the operation of the building for hotel purposes which shall include all equipment required for the operation of kitchens, bars, laundries, (if any) and dry cleaning facilities (if any), office equipment, cleaning and engineering equipment and vehicles; (d) the cost of repairs to and maintenance of the Property (other than of a capital nature); (e) insurance premiums for general liability insurance, workers’ compensation insurance or insurance required by similar employee benefits acts and such business interruption or other insurance as may be provided for protection against claims, liabilities and losses arising from the operation of the Property (as distinguished from any property damage insurance on the Property building or its contents) and losses incurred on any self-insured risks of the foregoing types, provided that Borrower has specifically approved in advance such self-insurance or insurance is unavailable to cover such risks (premiums on policies for more than one year will be prorated over the period of insurance and premiums under blanket policies will be allocated among properties covered); (f) all Taxes and Other Charges (other than federal, state or local income taxes and franchise taxes or the equivalent) payable by or assessed against Borrower with respect to the operation of the Property; provided that the same shall be adjusted for any change in Taxes and Other Charges or Insurance Premiums over the next twelve (12) months known as of the time of determination; (g) legal fees and fees of any firm of independent certified public accounts designated from time to time by Borrower (the “**Independent CPA**”) for services directly related to the operation of the Property, reasonably acceptable to Lender; (h) the costs and expenses of technical consultants and specialized operational experts for specialized services in connection with non-recurring work on operational, legal, functional, decorating, design or construction problems and activities, including the reasonable fees of Guarantor or any subsidiary of Guarantor in connection therewith, provided that such employment of Guarantor or any such subsidiary of Guarantor is reasonably approved in advance by Lender; provided, further, however, that if such costs and expenses have not been included in an Approved Annual Budget, then during a DSCR Trigger Period, if such costs exceed \$50,000 in any one instance the same shall be subject to the reasonable approval by Lender; (i) all expenses for advertising for the Property and all expenses of sales promotion and public relations activities; (j) all out-of-pocket expenses and disbursements determined by the Independent CPA to have been reasonably, properly and specifically incurred by Borrower, a Casino Operator, a Manager, Guarantor or any of their Affiliates pursuant to, in the course of and directly related to, the management and operation of Individual Property under a Casino Management Agreement or Management Agreement (without limiting the generality of the foregoing, such charges may include all reasonable travel, telephone, telegram, radiogram, cablegram, air express and other incidental expenses, but, shall

exclude costs relating to the offices maintained by Borrower, a Casino Operator, a Manager, Guarantor or any of their Affiliates other than the offices maintained at the Property for the management of the Property and excluding transportation costs of Borrower, any Casino Operator which is an Affiliate of Borrower, any Affiliated Manager, Guarantor or any of their Affiliates related to meetings between Borrower, a Casino Operator, a Manager, Guarantor or any of their Affiliates with respect to administration of a Casino Management Agreement, a Management Agreement or of the Property involving travel away from such party's principal executive offices); (k) the cost of any reservations system, any accounting services or other group benefits, programs or services from time to time made available to properties in the Borrower's system, including, without limitation, any provided by a Casino Operator, Manager or Franchisor/Licensor; (l) the cost associated with any retail Leases; (m) any management fees, basic and incentive fees or other fees and reimbursables paid or payable to a Manager under a Management Agreement; (n) any franchise fees or other fees and reimbursables paid or payable to a Franchisor/Licensor under a Franchise/License Agreement; (o) any management fees, basic and incentive fees or other fees and reimbursables paid or payable to a Casino Operator under a Casino Management Agreement; and (p) all costs and expenses of owning, maintaining, conducting and supervising the operation of the Property to the extent such costs and expenses are not included above.

“Organizational Documents” means as to any Person, the certificate of organization or certificate of formation and operating agreement with respect to a limited liability company; the certificate of limited partnership and partnership agreement with respect to a limited partnership, or any other organizational or governing documents of such Person.

“Other Charges” shall mean all ground rents, maintenance charges, impositions other than Taxes, and any other charges, including, without limitation, vault charges and license fees for the use of vaults, chutes and similar areas adjoining any Individual Property, now or hereafter levied or assessed or imposed against such Individual Property or any part thereof.

“Other Connection Taxes” shall mean, with respect to any Lender or Agent, Section 2.7 Taxes imposed as a result of a present or former connection between such Lender or Agent and the jurisdiction imposing such Section 2.7 Tax (other than connections arising from such Lender or Agent having executed, delivered, become a party to, performed its obligations under, received payments under, received or perfected a security interest under, engaged in any other transaction pursuant to or enforced any Loan Document, or sold or assigned an interest in any Loan or Loan Document).

“Other Obligations” shall have the meaning as set forth in the Mortgage.

“Other Taxes” shall mean any present or future stamp, court, documentary, intangible, recording, filing or similar excise, or property Section 2.7 Taxes that arise from any payment made under, from the execution, delivery, performance, enforcement or registration of, or from the registration, receipt or perfection of a security interest under, or otherwise with respect to, any Loan Document, except (i) any such Section 2.7 Taxes that are Other Connection Taxes imposed with respect to an assignment and (ii) any “prohibited transaction” excise tax arising from any Lender's use of “plan assets” of any “benefit plan investor” within the meaning of the Plan Asset Regulations.

“Otherwise Rated Insurers” shall have the meaning set forth in Section 6.1(h) hereof.

“PACE Debt” means any amounts owed by Borrower in respect of energy retrofit lending programs, commonly known as **“PACE Loans”**. For avoidance of doubt, PACE Debt is not Permitted Indebtedness and Liens securing PACE Debt are not Permitted Encumbrances.

“Partial Defeasance Collateral” shall mean U.S. Obligations, which provide for interest payments (and on the Permitted Par Prepayment Date, interest payments and principal prepayments) (i) on or prior to, but as close as possible to, the Business Day immediately preceding all scheduled Payment Dates under each Defeased Note after the Partial Defeasance Date and up to and including the Permitted Par Prepayment Date (assuming such Defeased Note is required to be prepaid in full as of such Permitted Par Prepayment Date), and (ii) in amounts equal to or greater than the Scheduled Defeasance Payments relating to such Payment Dates.

“Partial Defeasance Date” shall have the meaning set forth in Section 2.8.1 hereof.

“Partial Defeasance Event” shall have the meaning set forth in Section 2.8.1 hereof.

“Participant Register” shall have the meaning set forth in Section 9.7(a) hereof.

“Payment Date” shall mean, with respect to any Note, the fifth (5th) day of each calendar month during the term of the Loan, or if such date is not a Business Day, the immediately preceding Business Day and the first Payment Date for purposes of this Agreement shall be April 5, 2020.

“Permitted Assumption” shall have the meaning given thereto in Section 5.2.9(f).

“Permitted Defeasance Date” shall mean the earlier of (i) date that is two (2) years from the “startup day” within the meaning of Section 860G(a)(9) of the Code for the REMIC Trust which holds the portion of the Note last to be securitized and (ii) the third (3rd) anniversary of the Closing Date.

“Permitted Encumbrances” shall mean (a) the Liens and security interests created by the Loan Documents, (b) all Liens, encumbrances and other matters disclosed in the Title Insurance Policy related to such Individual Property or any part thereof (including liens disclosed in the title commitments for which Lender has either received affirmative coverage or for which the title insurance company has received adequate protections to remove such items as exceptions from the applicable Title Insurance Policy and such items were so removed), (c) Liens, if any, for Section 2.7 Taxes, Taxes and Other Charges imposed by any Governmental Authority not yet due or delinquent or which are contested in good faith by appropriate proceedings and for which Borrower has set aside adequate reserves on its books, (d) such other title and survey exceptions as Lender has approved or may approve in writing in Lender’s sole discretion, (e) all easements, rights of way, restrictions and other similar non-monetary encumbrances recorded against and affecting the Property and that do not materially and adversely affect (i) the ability of Borrower to pay any of its obligations to any Person as and

when due, (ii) the marketability of title to the Property, (iii) the fair market value of the Property, or (iv) the use or operation of the Property, (f) rights of Tenants as Tenants only, (g) mechanics', materialmen's or similar Liens, in each case only if such liens are discharged or bonded over within sixty (60) days of their filing and do not materially and adversely affect the value or use of the Property or Borrower's ability to repay the Loan, (h) Liens relating to Permitted Equipment and Vehicle Leases and customary purchase money security interests of sellers of goods that satisfy the conditions set forth in the definition of "Permitted Indebtedness", (i) intentionally omitted and (j) all Liens, encumbrances and other matters that are permitted with respect to the Property (including, without limitation, with respect to any Personal Property and FF&E) under the MGM/Mandalay Lease (including, without limitation, pursuant to Sections 6.2, 7.2(c), 8.3 and 11.1 thereof).

"Permitted Equipment and Vehicle Leases" means equipment or personal property financing or vehicle financing (a) that is entered into on arm's length terms and conditions in the ordinary course of Borrower's business, (b) that relate to Personal Property or vehicles which will be (i) used in connection with the operation and maintenance of any Individual Property in the ordinary course of Borrower's business and (ii) readily replaceable without material interference or interruption to the operation of the applicable Individual Property and (c) which is secured only by the financed equipment or Personal Property or vehicle.

"Permitted Equipment Transfer" shall mean the removal or Transfer of FF&E and/or Personal Property that is either being replaced or that is no longer necessary in connection with the operation of an Individual Property, provided (x) no Event of Default is continuing and (y) such Transfer will not materially and adversely affect the value, use or operation of such Individual Property.

"Permitted Indebtedness" shall mean, collectively (a) the Note and the Other Obligations, indebtedness and liabilities specifically provided for in any Loan Document and secured by the Mortgage and the other Loan Documents, (b) key money provided to Borrower by a Franchisor/Licenser as provided for in a Franchise/License Agreement, Manager as provided for in a Management Agreement, or Casino Operator as provided for in a Casino Management Agreement, (c) Permitted Equipment and Vehicle Leases, (d) trade payables incurred in the ordinary course of Borrower's business, not secured by Liens on any Individual Property (other than Liens being properly contested in accordance with the provisions of this Agreement) and customary purchase money security interests of sellers of goods, provided that such trade payables and other amounts in clauses (b) through (d) of this definition (excluding Capital Expenditures and Basic Carrying Costs) (i) do not exceed, with respect to any Individual Property at any one time, in the aggregate four percent (4.00%) of the original Allocated Loan Amount related to such Individual Property, (ii) are normal and reasonable under the circumstances, (iii) are payable by or on behalf of Borrower for or in respect of the operation of such Individual Property in the ordinary course of the operation of Borrower's business or the routine administration of such Borrower's business, (iv) are paid within sixty (60) days following the later of (A) the date on which such amount is incurred or (B) the date invoiced and (v) are not evidenced by a note, (e) obligations pursuant to the express terms and conditions of the MGM/Mandalay Lease, (f) Taxes, Insurance Premiums and Other Charges, (g) Capital Expenditures incurred in accordance with the Loan Documents, (h) for so long as the MGM/Mandalay Lease is not in effect, trade payables due (but not yet delinquent, subject to the right to contest in

accordance with the provisions of this Agreement) in connection with utility or HVAC services provided to any Individual Property, (i) for so long as the MGM/Mandalay Lease is not in effect, usual and customary gaming deposits accepted in the ordinary course of business (including slot club point liability, customer deposits, unpaid tickets and progressive reserves) and (j) customary and ordinary course indemnification of Manager and any liquor license holders in connection with the operation of any Individual Property. Nothing contained herein shall be deemed to require Borrower to pay any trade payable, so long as Borrower is in good faith at its own expense, and by proper legal proceedings, diligently contesting the validity, amount or application thereof, provided that in each case, at the time of the commencement of any such action or proceeding, and during the pendency of such action or proceeding (w) no Event of Default shall exist and be continuing hereunder, (x) no Individual Property nor any part thereof or interest therein will be in material danger of being sold or forfeited, (y) with respect to any amounts of Permitted Indebtedness then being contested by Borrower, Borrower shall furnish such security as may be required in the proceeding or (A) cash, (B) U.S. Obligations, (C) other securities having a rating reasonably acceptable to Lender and, after a rated Securitization, that, at Lender's option, the applicable Approved Rating Agencies have provided a Rating Agency Confirmation with respect to such securities, (D) a Letter of Credit, (E) cash equivalents or (F) an alternative security reasonably acceptable to Lender (or a combination thereof), to insure the payment of any amounts contested, together with all interest and penalties thereon to the extent that the aggregate amount at issue exceeds Fifteen Million and No/100 Dollars (\$15,000,000.00), and (z) such contest operates to suspend collection or enforcement, as the case may be, of the contested amount.

"Permitted Investments" shall mean any one or more of the following obligations or securities acquired at a purchase price of not greater than par, including those issued by Servicer, or any trustee under any Securitization or any of their respective Affiliates, payable on demand or having a maturity date not later than the Business Day immediately prior to the first Payment Date following the date of acquiring such investment and meeting one of the appropriate standards set forth below:

(a) the following obligations of, or the following obligations directly and unconditionally guaranteed as to principal and interest by, the U.S. government or any agency or instrumentality thereof, when such obligations are backed by the full faith and credit of the United States of America and have maturities not in excess of one year:

- (i) U.S. Treasury obligations (all direct or fully guaranteed obligations);
- (ii) U.S. Department of Housing and Urban Development public housing agency bonds (previously referred to as local authority bonds);
- (iii) Federal Housing Administration debentures;
- (iv) Government National Mortgage Association (GNMA) guaranteed mortgage bank securities or participation certificates;
- (v) RefCorp debt obligations;

(vi) SBA guaranteed participation certificates and guaranteed pool certificates;

(b) federal funds, unsecured certificates of deposit, time deposits, banker's acceptances, and repurchase agreements having maturities of not more than 90 days of any commercial bank organized under the laws of the United States of America or any state thereof or the District of Columbia, the short term debt obligations of which are rated (a) "A 1+" (or the equivalent) by S&P and, if it has a term in excess of three months, the long term debt obligations of which are rated "AAA" (or the equivalent) by S&P, and that (1) is at least "adequately capitalized" (as defined in the regulations of its primary Federal banking regulator) and (2) has Tier 1 capital (as defined in such regulations) of not less than \$1,000,000,000, (b) in one of the following Moody's rating categories: (1) for maturities less than one month, a long term rating of "A2" or a short term rating of "P 1", (2) for maturities between one and three months, a long term rating of "A1" and a short term rating of "P 1", (3) for maturities between three months to six months, a long term rating of "Aa3" and a short term rating of "P 1" and (4) for maturities over six months, a long term rating of "Aaa" and a short term rating of "P 1", or following a rated Securitization, such other ratings as confirmed in a Rating Agency Confirmation and (c) in one of the following Fitch rating categories: (1) for maturities less than three months, a long term rating of "A" and a short term rating of "F 1" and (2) for maturities greater than three months, a long term rating of "AA" and a short term rating of "F 1+";

(c) deposits that are fully insured by the Federal Deposit Insurance Corp.;

(d) commercial paper rated (a) "A 1+" (or the equivalent) by S&P and having a maturity of not more than 90 days, (b) in one of the following Moody's rating categories: (i) for maturities less than one month, a long term rating of "A2" or a short term rating of "P 1", (ii) for maturities between one and three months, a long term rating of "A1" and a short term rating of "P 1", (iii) for maturities between three months to six months, a long term rating of "Aa3" and a short term rating of "P 1" and (iv) for maturities over six months, a long term rating of "Aaa" and a short term rating of "P 1" and (c) in one of the following Fitch rating categories: (1) for maturities less than three months, a long term rating of "A" and a short term rating of "F-1" and (2) for maturities greater than three months, a long term rating of "AA" and a short term rating of "F 1+"; and

(e) following a rated Securitization, such other investments as to which each Approved Rating Agency shall have delivered a Rating Agency Confirmation.

Notwithstanding the foregoing, "Permitted Investments" (i) shall exclude any security with the S&P's "r" symbol (or any other Approved Rating Agency's corresponding symbol) attached to the rating (indicating high volatility or dramatic fluctuations in their expected returns because of market risk), as well as any mortgage backed securities and any security of the type commonly known as "strips"; (ii) shall be limited to those instruments that have a predetermined fixed dollar of principal due at maturity that cannot vary or change; (iii)

shall only include instruments that qualify as “cash flow investments” (within the meaning of Section 860G(a)(6) of the Code); and (iv) shall exclude any investment where the right to receive principal and interest derived from the underlying investment provides a yield to maturity in excess of 120% of the yield to maturity at par of such underlying investment. Interest may either be fixed or variable, and any variable interest must be tied to a single interest rate index plus a single fixed spread (if any), and move proportionately with that index. No investment shall be made which requires a payment above par for an obligation if the obligation may be prepaid at the option of the issuer thereof prior to its maturity. All investments shall mature or be redeemable upon the option of the holder thereof on or prior to the earlier of (x) three months from the date of their purchase and (y) the Business Day preceding the day before the date such amounts are required to be applied hereunder.

“**Permitted Par Prepayment Date**” shall mean the Payment Date occurring in September, 2029.

“**Permitted REIT Distributions**” means disbursements from the Excess Cash Flow Reserve Funds from time to time to fund Required REIT Distributions, provided such disbursements in the aggregate shall not exceed ten percent (10%) of all deposits made into the Excess Cash Flow Reserve Account through any date of determination.

“**Permitted Transfer**” shall mean any of the following: (a) any transfer, directly as a result of the death of a natural person, of stock, membership interests, partnership interests or other ownership interests previously held by the decedent in question to the Person or Persons lawfully entitled thereto, (b) any transfer, directly as a result of the legal incapacity of a natural person, of stock, membership interests, partnership interests or other ownership interests previously held by such natural person to the Person or Persons lawfully entitled thereto, (c) any Transfer permitted without the consent of Lender pursuant to the provisions of Section 5.2.9 hereof, (d) any Lease of space in any of the Improvements to Tenants in accordance with the provisions of Section 5.1.18, (e) Permitted Encumbrances, (f) Permitted Equipment Transfers, (g) the release of any Individual Property (and an Unencumbered Borrower) in connection with a release in accordance with Section 2.4.2, Section 2.4, Section 2.5, Section 2.8 or Section 6.4 hereof, (h) any Sale or Pledge of an Excluded Entity, (i) any Transfer of any interest in an Affiliated Manager, if such Transfer does not otherwise result in a Transfer of an interest in Borrower that is not permitted hereunder, (j) any Sale or Pledge of the direct interests in any Guarantor so long as after giving effect to such Sale or Pledge, (A) (x) Borrower is indirectly Controlled and at least 50.1% owned by BREIT OP and/or MGP OP, provided, that, (I) BREIT OP is owned, managed or Controlled by BREIT, a Qualified Advisor, a Qualified Transferee or a Public Vehicle and (II) MGP OP is managed and Controlled by MGP, a Public Vehicle or a Qualified Transferee, or (B) a Public Vehicle or Qualified Transferee continues to Control and own at least 51% of the indirect interests in Borrower and Guarantor, (k) any Transfer of Publicly Traded Shares in a Public Vehicle or of any direct or indirect equity interest of any Person whose only equity interest in Borrower consists of Publicly Traded Shares in a Public Vehicle, (l) any issuance of or Transfer of direct or indirect interests in BREIT and/or BREIT OP, provided that after giving effect to such Transfer, (A) BREIT OP is owned, managed or Controlled by BREIT, a Qualified Advisor, a Qualified Transferee or a Public Vehicle and (B) Borrower remains managed and Controlled, directly or indirectly, by a Qualified Advisor, (m) the contribution or assignment of the limited liability company interests in Borrower to Mezzanine Borrower, (n) any direct or indirect pledge (or any Transfer occurring upon the

foreclosure of, or other remedial action with respect to, the same or delivery of an assignment in lieu of foreclosure in respect of the same) by Mezzanine Borrower to the Mezzanine Lender of the direct or indirect ownership interests in Borrower, any Principal, any Principal (as defined under the Mezzanine Loan) and/or Mezzanine Borrower and other collateral pursuant to the Mezzanine Loan Agreement, (o) any issuance of or Transfer of direct or indirect interests in MGP and/or MGP OP, provided, that, MGP OP shall be managed and Controlled by MGP, a Public Vehicle or a Qualified Transferee or (p) so long as no Transfer pursuant to Section 5.2.9(f) shall have occurred, the BREIT Parent Contribution.

“**Person**” shall mean any individual, corporation, partnership, joint venture, limited liability company, estate, trust, unincorporated association, any federal, state, county or municipal government or any bureau, department or agency thereof and any fiduciary acting in such capacity on behalf of any of the foregoing.

“**Personal Property**” shall have the meaning set forth in the granting clause of the Mortgage with respect to each Individual Property.

“**PIP**” shall mean, collectively, any “PIP” or similar plan for alterations, repairs and maintenance of the Property with which Borrower is required to comply under a Franchise/License Agreement.

“**PIP Work**” shall mean all of the covenants and agreements required to be performed and observed by it under any PIP.

“**Plan Asset Regulations**” shall have the meaning set forth in Section 4.1.9 hereof.

“**Pledge Agreement**” shall mean the “Pledge Agreement” as defined in the Mezzanine Loan Agreement.

“**PLL Policy**” shall have the meaning set forth in Section 6.1(a)(xiii) hereof.

“**Policies**” shall have the meaning set forth in Section 6.1(b) hereof.

“**Policy**” shall have the meaning set forth in Section 6.1(b) hereof.

“**Pre-Approved Alterations**” shall have the meaning set forth in Section 5.1.19(b) hereof.

“**Prepayment Notice**” shall have the meaning set forth in Section 2.4.1 hereof.

“**Prepayment Rate**” shall mean the bond equivalent yield (in the secondary market) on the United States Treasury Security, that as of the Prepayment Rate Determination Date has a remaining term to maturity closest to, but not later than, the Permitted Par Prepayment Date as most recently published in “Statistical Release H.15 (519), Selected Interest Rates,” or any successor publication, published by the Board of Governors of the Federal Reserve System, or on the basis of such other publication or statistical guide as Lender may reasonably select. If there is no United States Treasury Security with a yield equal to the remaining term to the Permitted Par Prepayment Date, the Prepayment Rate will be calculated by taking the linear

interpolation of the yields with maturity dates (one longer and one shorter) most nearly approximating the remaining term to the Permitted Par Prepayment Date.

“Prepayment Rate Determination Date” shall mean the date which is five (5) Business Days prior to the date that such prepayment shall be applied in accordance with the terms and provisions of Section 2.4.1 hereof.

“Principal” shall mean the Special Purpose Entity that is the general partner of Borrower, if Borrower is a limited partnership, or managing member of Borrower, if such Borrower is a limited liability company other than a single member Delaware limited liability company. As of the date hereof, there is no Principal.

“Priority Payment Cessation Event” shall mean (a) the initiation of (x) judicial or non-judicial foreclosure proceedings, (y) proceedings for appointment of a receiver or (z) similar remedies permitted by this Agreement or the other Loan Documents relating to all or a material portion of the applicable Individual Property, and/or (b) the imposition of a stay, an injunction or a similar judicially imposed device that has the effect of preventing Lender from exercising its remedies under this Agreement or the other Loan Documents.

“Priority Waterfall Payments” shall mean the payments described in Section 3.4(a) through (c) of the Cash Management Agreement of Taxes, Other Charges, Insurance Premiums, Hotel Taxes, Custodial Funds and the fees and expenses of Agent under the Cash Management Agreement; provided, if the Property is subject to a Brand Management Agreement or Casino Management Agreement, that such amounts have not previously been paid or reserved for by the Brand Manager in accordance with the Brand Management Agreement or Casino Operator in accordance with the Casino Management Agreement.

“Property” or **“Properties”** shall mean, collectively, the Land, the Improvements thereon and all personal property owned by Borrower and encumbered by each Mortgage, together with all rights pertaining to such property and Improvements, as more particularly described in the granting clauses of each Mortgage and referred to therein as the “Property”. For the avoidance of doubt, MGM/Mandalay Tenant’s leasehold interest in the Land and the Improvements does not constitute part of the Property.

“Protective Advances” means all sums advanced for the purpose of payment of Taxes (including special assessments or payments in lieu of real estate taxes), Other Charges, maintenance costs, Insurance Premiums, or other items (including capital expenses and leasing costs) reasonably necessary to protect the Lien of a Mortgage on the Property or any portion thereof including, but not limited to, all reasonable attorneys’ fees, costs relating to the entry upon the Property or any portion thereof or any real property relating to the Property, to make repairs or to pay, purchase, contest or compromise any Lien which is or may reasonably be expected to be prior or superior to the Loan Documents, from forfeiture, casualty, loss or waste, the payment of any amounts to prevent the breach of any management, franchise, license or other agreement relating to the Property which may reasonably be expected to result in a termination of such agreement, or to protect, preserve or defend the Lien of the Loan Documents.

“Provided Information” shall mean any and all financial and other information provided to Lender at any time prepared by, or on behalf of, Borrower, Principal, Mezzanine Borrower, any Affiliated Manager, BREIT, MGP and/or Guarantor.

“Public Sale” shall mean (a) the Sale or Pledge in one or a series of transactions of all or any portion of the direct or indirect legal or beneficial interests in Borrower and Mezzanine Borrower to a Public Vehicle or (b) an event through which, in one or a series of transactions, any direct or indirect owner of a legal or beneficial interest in Borrower and/or Mezzanine Borrower becomes, or is merged with or into, a Public Vehicle.

“Public Vehicle” shall mean a Person with a market capitalization equal to or in excess of Seven Hundred Fifty Million and No/100 Dollars (\$750,000,000.00) (exclusive of its interests in and any liabilities relating to the collateral securing the Loan) whose securities are listed and traded on (i) the New York Stock Exchange, AMEX, NASDAQ, or another nationally recognized securities exchange or (ii) the Frankfurt Stock Exchange, the London Stock Exchange, Euronext, the Luxembourg Stock Exchange, the Hong Kong Stock Exchange, the Shanghai Stock Exchange, the Tokyo Stock Exchange or the Korea Exchange (KRX), and shall include a majority owned subsidiary of any such Person or any operating partnership through which such Person conducts all or substantially all of its business.

“Publicly Traded Shares” means securities that are listed and traded on the New York Stock Exchange, AMEX, NASDAQ, the Frankfurt Stock Exchange, the London Stock Exchange, Euronext or the Luxembourg Stock Exchange.

“Qualified Advisor” shall mean (a) Advisor, (b) any Person controlled by a nationally recognized manager of investment funds regularly engaged in investing in equity interests relating to commercial real estate, with total assets (in name or under management) in excess of Seven Hundred Fifty Million and No/100 Dollars (\$750,000,000.00) and having liquidity of not less than Twenty Million and No/100 Dollars (\$20,000,000.00) and that has either (1) at least ten (10) hotels (exclusive of the Individual Properties) in name or under management or (2) has engaged (A) a Qualified Casino Operator for the Property or (B) (x) a Casino Operator with respect to the Casino Components and (y) a Manager with respect to the Hotel Components, or (c) such other Person as may be approved by Lender.

“Qualified Casino Operator” shall mean (a) any of the entities set forth on Schedule 1.1(b) hereto; (b) any casino operator or owner Controlled by or under common Control with any casino operator or owner set forth on Schedule 1.1(b) hereto; or (c) a reputable and experienced casino operator or owner (which may be an Affiliate of Borrower) possessing experience in operating or owning casino properties similar in size, scope, use and value as the Property that is reasonably acceptable to Lender, provided, that (i) with respect to subclause (c) above, if required by Lender following a rated Securitization, Borrower shall have obtained a Rating Agency Confirmation with respect to the casino management by such Person, (ii) in the case of subclauses (a), (b), or (c) above, if such Person is an Affiliate of Borrower, if required by Lender, Borrower shall have obtained an Additional Insolvency Opinion, (iii) in all cases, is not subject to a Bankruptcy Action at the time of execution of the casino management agreement, (iv) in all cases, is duly licensed by the applicable Gaming Authorities and any other applicable Governmental Authorities and (v) with respect to subclause (c), at the time of execution of the

casino management agreement, any such casino operator or owner shall possess all applicable Gaming Licenses.

“Qualified Franchisor/Licensors” shall mean (a) a hotel franchisor or licensor that is flagging the hotel as in the “Luxury” category of hotels based on the annual chain scale published by Smith Travel Reports, (b) a reputable and experienced franchisor or licensor (which may be an Affiliate of Borrower) possessing experience in flagging hotel properties similar in size, scope, use and value as the Property that is reasonably acceptable to Lender, (c) Four Seasons Manager, (d) SBE Entertainment Group Manager and/or (e) Morgans Hotel Group Management LLC, provided, that (i) with respect to subclause (b) above, if required by Lender following a rated Securitization, Borrower shall have obtained a Rating Agency Confirmation with respect to the franchising or licensing of the Property by such Person, (ii) in the case of subclauses (a), (b), (c), (d) or (e) above, if such Person is an Affiliate of Borrower, if required by Lender, Borrower shall have obtained an Additional Insolvency Opinion and (iii) in all cases is not subject to a Bankruptcy Action at the time of execution of the applicable agreement.

“Qualified Manager” shall mean (a) any of the entities set forth on Schedule 1.2 hereto; (b) any management company Controlled by or under common Control with any management company set forth on Schedule 1.2 hereto; or (c) a reputable and experienced management organization (which may be an Affiliate of Borrower) possessing experience in managing properties similar in size, scope, use and value as the Property that is reasonably acceptable to Lender, provided, that (i) in the case of subclause (c) above if required by Lender following a rated Securitization, Borrower shall have obtained a Rating Agency Confirmation with respect to such Manager and its management of the Property, (ii) in the case of subclauses (a), (b) and (c) above, if such Person is an Affiliate of Borrower, if required by Lender, Borrower shall have obtained an Additional Insolvency Opinion and (iii) in all cases, such Person is not subject to a Bankruptcy Action at the time of execution of the management agreement.

“Qualified Transferee” shall mean (a) any entity Controlled by or under common Control with any of the entities set forth on Schedule 1.1(b) hereto or (b) a Person (i) (A) with a Net Worth equal to or in excess of Seven Hundred Fifty Million and No/100 Dollars (\$750,000,000.00) or (B) approved by Lender, such approval not to be unreasonably withheld, conditioned or delayed, (ii) that is not subject to a Bankruptcy Action or a material governmental or regulatory investigation which resulted in a final, non-appealable conviction for criminal activity involving moral turpitude or a civil proceeding in which such Person has been found liable in a final non appealable judgment to have attempted to hinder, delay or defraud creditors, in each case for the past seven (7) years and (iii) is able to remake Borrower’s representations set forth in Section 4.1.35 hereof and is able to comply with Borrower’s covenants set forth in Section 5.1.22 hereof.

“Ratable Share” shall mean, with respect to any Co-Lender, its share of the Loan based on the proportion of the outstanding principal of the Loan held by such Co-Lender to the total outstanding principal amount of the Loan.

“Rating Agencies” shall mean each of S&P, Moody’s, Fitch, Morningstar and KBRA or any other nationally recognized statistical rating agency, which has assigned a rating to the Securities.

“Rating Agency Confirmation” shall mean, collectively, in connection with or following a rated Securitization, a written affirmation from each of the Approved Rating Agencies that the credit rating of the Securities given by such Approved Rating Agency of such Securities immediately prior to the occurrence of the event with respect to which such Rating Agency Confirmation is sought will not be qualified, downgraded or withdrawn as a result of the occurrence of such event, which affirmation may be granted or withheld in such Approved Rating Agency’s sole and absolute discretion. In the event that, at any given time, any Approved Rating Agency elects not to consider whether to grant or withhold such an affirmation, then the term Rating Agency Confirmation by such Rating Agency shall be deemed instead to require the written reasonable approval of Lender. In no event shall Lender request a Rating Agency Confirmation with respect to any approval or consent to the extent the terms of the Loan Agreement do not explicitly contemplate the obtaining of a Rating Agency Confirmation.

“Register” shall have the meaning set forth in Section 9.7(a) hereof

“REIT” shall mean a real estate investment trust as defined by Sections 856 through 860 of the Code.

“REIT Restructuring” shall have the meaning set forth on Schedule 5.2.9 attached hereto.

“Related Entities” shall have the meaning set forth in Section 5.2.9(f)(v) hereof. For the avoidance of doubt, the parties hereto acknowledge and agree that MGM, MGM/Mandalay Tenant, MGM/Mandalay Operating Subtenant, MGM/Mandalay Lease Guarantor and their respective direct or indirect legal or beneficial owners are not Related Entities of any Affiliate of Borrower.

“Release Amount” shall mean, for an Individual Property, the lesser of:

(a) the Debt; or

(b) an amount equal to the Allocated Loan Amount for such Individual Property set forth on Schedule 1.1(a) multiplied by the following applicable percentage (the **“Release Percentage”**): (1) one hundred and five percent (105%) until such time that the outstanding principal balance of the Loan has been reduced to \$2,250,000,000 (the **“Release Percentage Threshold”**) and (2) thereafter, one hundred and ten percent (110%).

For the avoidance of doubt, in calculating the Release Amount for an Individual Property, the Release Percentage may initially be one hundred and five percent (105%) until the application of a portion of such prepayment would reach the Release Percentage Threshold and with respect to any remaining prepayment for such Individual Property, the Release Percentage would be one hundred and ten percent (110%).

“Release Percentage” shall have the meaning set forth in the definition of “Release Amount”.

“Release Percentage Threshold” shall have the meaning set forth in the definition of “Release Amount”.

“Release Property” shall have the meaning set forth in Section 2.5.1(a) hereof.

“REMIC Trust” shall mean a “real estate mortgage investment conduit” within the meaning of Section 860D of the Code that holds a Note or a portion thereof.

“Rents” shall mean, with respect to each Individual Property, rents, rent equivalents, moneys payable as damages or in lieu of rent or rent equivalents, royalties (including, without limitation, all oil and gas or other mineral royalties and bonuses), income, receivables, receipts, revenues, deposits (including, without limitation, security, utility and other deposits), accounts, cash, issues, profits, charges for services rendered, all other amounts payable as rent under any Lease or other agreement relating to such Individual Property, and other consideration of whatever form or nature received by or paid to or for the account of or benefit of Borrower or any of their respective agents or employees from any and all sources arising from or attributable to the such Individual Property, and proceeds, if any, from business interruption or other loss of income insurance, including, without limitation, all hotel receipts, revenues and credit card receipts collected from entertainment, gaming or other amenities, guest rooms, restaurants, bars, meeting rooms, banquet rooms and recreational facilities, all receivables, customer obligations, installment payment obligations and other obligations now existing or hereafter arising or created out of the sale, lease, sublease, license, concession or other grant of the right of the use and occupancy of property or rendering of services by Borrower or any operator or manager of the hotel or the commercial space located in the Improvements or acquired from others (including, without limitation, from the rental of any office space, retail space, guest rooms or other space, halls, stores, and offices, and deposits securing reservations of such space), license, lease, sublease and concession fees and rentals, health club membership fees, food and beverage wholesale and retail sales, service charges, vending machine sales and proceeds, if any, from business interruption or other loss of income insurance.

“Replacement Guarantor” shall have the meaning set forth in Section 5.2.9(f) hereof.

“Replacement MGM/Mandalay Lease” shall mean a lease with a Replacement MGM/Mandalay Tenant, as tenant, (i) on substantially the same terms as the Initial MGM/Mandalay Lease or (ii) is on an arms’-length basis and otherwise on commercially reasonable terms with economic terms and fees comparable to market rates, as the same may be amended, restated, supplemented or otherwise modified in accordance with the terms and provisions of this Agreement, provided, notwithstanding anything to the contrary contained in this clause (ii), any Replacement MGM/Mandalay Lease shall be required to include (i) insurance coverages (including, without limitation, types and amounts of coverages, deductibles and ratings of insurance carriers), (ii) restoration provisions, and (iii) required reserves and required expenditures with respect to Capital Expenditures and FF&E, in each case, substantially similar or reasonably equivalent to those contained in the Initial MGM/Mandalay Lease.

“Replacement MGM/Mandalay Lease Guarantor” shall mean, in connection with any entry into a Replacement MGM/Mandalay Lease or replacement of the MGM/Mandalay Tenant in accordance with the terms and provisions hereof, (a) if the related MGM/Mandalay Tenant is directly or indirectly owned by a Public Vehicle (other than a publicly-traded REIT), such Public Vehicle, (b) if the related MGM/Mandalay Tenant is directly or indirectly owned by a publicly-traded REIT, the operating partnership that owns substantially all

of the assets of such publicly-traded REIT, (c) if the related MGM/Mandalay Tenant is neither directly or indirectly owned by a Public Vehicle or a publicly-traded REIT, a creditworthy Person that directly or indirectly owns such MGM/Mandalay Tenant, provided that, with respect to clause (c) only, if, using commercially reasonable efforts Borrower is unable to obtain a Replacement MGM/Mandalay Lease Guaranty from a creditworthy Person, no such Replacement MGM/Mandalay Lease Guarantor or Replacement MGM/Mandalay Lease Guaranty shall be required in connection with the entry into the applicable Replacement MGM/Mandalay Lease, or (d) one or more entities that would be a Qualified Transferee (as defined in the Initial MGM/Mandalay Lease).

“Replacement MGM/Mandalay Lease Guaranty” shall mean a lease guaranty with a Replacement MGM/Mandalay Lease Guarantor, as guarantor, (i) on substantially the same terms as the MGM/Mandalay Lease Guaranty as in effect on the Closing Date or (ii) on an arms’-length basis and otherwise on commercially reasonable terms with economic terms, fees and obligations comparable to market terms, as the same may be amended, restated, supplemented or otherwise modified in accordance with the terms and provisions of this Agreement.

“Replacement MGM/Mandalay Tenant” shall mean, as the context requires, (a) a replacement tenant under the MGM/Mandalay Lease that satisfies the requirements as required hereunder that assumes all of the obligations, liabilities and rights of MGM/Mandalay Tenant under the MGM/Mandalay Lease and the MGM/Mandalay Lease Documents, or (b) a Qualified Casino Operator.

“Replacement Note” shall have the meaning set forth in Section 2.1.5 hereof.

“Replacement Reserve Account” shall have the meaning set forth in Section 7.3.1 hereof.

“Replacement Reserve Current Year Lookback Deficiency” shall mean an amount equal to (x) the aggregate amount of Replacement Reserve Monthly Deposits which would have been funded from the beginning of the then calendar year to the date of determination had a Cash Trap Period been in effect for the entirety of such period *less* (y) the sum of (1) the aggregate amount expended on Replacements, PIP Work and Brand Mandated Work during such calendar year to date and (2) the aggregate amount funded into the Replacement Reserve Fund during such calendar year to date; provided, if the foregoing calculation results in a negative number, the Replacement Reserve Current Year Lookback Deficiency shall be deemed to be zero.

“Replacement Reserve Five Year Lookback Deficiency” shall mean (i) zero, with respect to any period before December 31, 2024 and (ii) from and after January 1, 2025, an amount equal to (x) four percent (4.0%) of Net Revenue from guest rooms and Borrower-managed food and beverage operations and one half of one percent (0.5%) of all other Net Revenue (other than non-recurring items) during the Replacement Reserve Five Year Lookback Period *less* (y) the sum of (1) the aggregate amount expended on Replacements, PIP Work and Brand Mandated Work during the Replacement Reserve Five Year Lookback Period (including amounts expended by MGM/Mandalay Tenant pursuant to the express terms and conditions of the MGM/Mandalay Lease) and (2) the aggregate amounts funded into the Replacement Reserve

Fund during such Replacement Reserve Five Year Lookback Period; provided, if the foregoing calculation results in a negative number, the Replacement Reserve Five Year Lookback Deficiency shall be deemed to be zero.

“Replacement Reserve Five Year Lookback Period” shall mean each five (5) year period (on a rolling basis), with the first period commencing on January 1, 2020 and expiring on December 31, 2024 and the second period commencing on January 1, 2021 and expiring on December 31, 2025.

“Replacement Reserve Monthly Deposit” shall mean an amount equal to (i) four percent (4.0%) of Net Revenue from guest rooms and Borrower-managed food and beverage operations for the calendar month that is two (2) calendar months prior to the calendar month in which the applicable deposit to the Replacement Reserve Fund is to be made and (ii) one half of one percent (0.5%) of all other Net Revenue (other than non-recurring items) for the calendar month that is two (2) calendar months prior to the calendar month in which the applicable deposit to the Replacement Reserve Account is to be made.

“Replacement Reserve Quarterly Deposit” shall have the meaning set forth in Section 7.3.1 hereof.

“Replacement Substitute Guarantor” shall have the meaning set forth in Section 5.2.9(i) hereof.

“Replacements” shall mean FF&E, replacements and repairs required to be made to each Individual Property or the Improvements, but specifically excluding the PIP Work and Brand Mandated Work.

“Representative Borrower” shall have the meaning set forth in Section 10.6 hereof.

“Required DSCR Ratio” shall mean a Debt Service Coverage Ratio, as determined by Lender, equal to 2.50x.

“Required PLL Period” shall have the meaning set forth in Section 6.1(a)(xiii) hereof.

“Required REIT Distributions” shall mean distributions in the minimum cash amount necessary (as determined by Borrower in good faith and certified to Lender pursuant to an Officer’s Certificate) (1) to maintain the status of MGP, BREIT or Windmill REIT as a real estate investment trust and (2) to avoid payment or imposition of any entity level tax on MGP, BREIT or Windmill REIT (including pursuant to Section 4981 of the Code) that could be avoided by reason of a distribution or other action by Borrower.

“Reserve Accounts” shall mean, collectively, the Tax and Insurance Reserve Account, the Replacement Reserve Account, the Excess Cash Flow Reserve Account and any other escrow account established pursuant to the Loan Documents.

“Reserve Funds” shall mean, collectively, the Tax and Insurance Escrow Fund, the Replacement Reserve Fund, the Excess Cash Flow Reserve Funds and any other escrow fund established by the Loan Documents.

“Restoration” shall mean the repair and restoration of an Individual Property after a Casualty or Condemnation as nearly as possible to the condition the Individual Property was in immediately prior to such Casualty or Condemnation, with such alterations as may be reasonably approved by Lender.

“Restricted Party” shall mean collectively, (a) Borrower, Mezzanine Borrower or Principal and (b) any shareholder, partner, member, non-member manager, any direct or indirect legal or beneficial owner of, Borrower, Principal, or any non-member manager; provided that an Excluded Entity shall not be a Restricted Party and with respect to clause (b), excluding any shareholders or owners of stock or equity interest that are publicly traded on any nationally or internationally recognized stock exchange that are not Affiliates of Borrower, Mezzanine Borrower or Principal. For the avoidance of doubt, notwithstanding anything to the contrary contained in this Agreement, no notice to, or consent of Lender shall be required in connection with any Sale or Pledge of direct or indirect interests in any Excluded Entity.

“Restricted Pledge Party” shall mean, collectively, Borrower, Principal, Mezzanine Borrower, or any other direct or indirect equity holder in Borrower or Principal up to, but not including, the first direct or indirect equity holder that has substantial assets other than its direct or indirect interest in the Property, provided, that an Excluded Entity (and any Person owning a direct or indirect interest in any Excluded Entity) shall not be a Restricted Pledge Party.

“S&P” shall mean S&P Global Ratings, acting through Standard & Poor’s Financial Services LLC.

“Sale or Pledge” shall mean a voluntary or involuntary sale, conveyance, assignment, transfer, encumbrance, pledge, grant of option to purchase or other transfer or disposal of a legal or beneficial interest, whether direct or indirect.

“SBE Entertainment Group Manager” shall mean, individually and/or collectively as the context may require, any subsidiary SBE Entertainment Group, and any Successor Brand Manager that assumes the rights and obligations of a SBE Entertainment Group Manager under, and in accordance with the terms of, such SBE Entertainment Group Manager’s Brand Management Agreement (as opposed to entering into a new Management Agreement).

“Scheduled Defeasance Payments” shall mean scheduled payments of interest and principal hereunder (with respect to a Total Defeasance Event) and under the Defeased Note (with respect to a Partial Defeasance Event), in each case, for all Payment Dates occurring after the Total Defeasance Date or Partial Defeasance Date (as applicable) and up to and including the Permitted Par Prepayment Date (assuming the Note or the Defeased Note (as applicable) is prepaid in full as of such Permitted Par Prepayment Date and including the outstanding principal balance and accrued interest on the Note or Defeased Note (as applicable) as of such Permitted Par Prepayment Date).

“Section 2.7 Taxes” shall mean any present or future taxes, levies, imposts, duties, deductions, withholdings (including backup withholding), assessments, fees or other charges imposed by any Governmental Authority, including any interest, additions to tax or penalties applicable thereto.

“Securities” shall have the meaning set forth in Section 9.1.1 hereof.

“Securities Act” shall have the meaning set forth in Section 9.1.1(h) hereof.

“Securitization” shall have the meaning set forth in Section 9.1.1 hereof.

“Securitization Vehicle” means the issuer of certificates in a Securitization of the Loan.

“Separate Lease” shall have the meaning set forth in Section 2.5.1(a)(vii) hereof.

“Servicer” shall have the meaning set forth in Section 9.5 hereof.

“Servicing Agreement” shall have the meaning set forth in Section 9.5 hereof.

“Severed Loan Documents” shall have the meaning set forth in Section 8.2(c) hereof.

“Shortfall Collection Guarantor” shall mean Initial MGM/Mandalay Lease Guarantor, together with its successors and assigns.

“Shortfall Collection Guaranty” shall mean that certain Guaranty Agreement, dated as of the Closing Date and executed and delivered by Shortfall Collection Guarantor, and acknowledged and accepted by Lender, in connection with the Loan to and for the benefit of Lender, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

“SocGen” shall have the meaning set forth in the introductory paragraph hereto.

“Special Purpose Entity” shall mean a Delaware limited partnership or Delaware limited liability company that complies with the following requirements from and after the date hereof unless it has received prior written consent to do otherwise from Lender, or, while the Loan is securitized pursuant to a rated Securitization, a Rating Agency Confirmation, and an Additional Insolvency Opinion, in each case:

(i) is and shall be organized solely for the purpose of (A) in the case of Borrower, (I) acquiring, owning, development, constructing, renovating, improving, selling, leasing, transferring, exchanging, assigning, disposing of, operating, managing, financing, refinancing, holding an ownership interest or otherwise dealing with the applicable Individual Property and activities incidental thereto, (II) acquiring and owning a limited liability company interest in and managing and acting as the sole member of a New TRS Borrower (if Borrower is the member of such New TRS Borrower), as applicable, and (III) entering into and performing its obligations under the Loan Documents with

Lender, refinancing any Individual Property in connection with a permitted repayment of the Loan, and transacting lawful business that is incident, necessary and appropriate to accomplish the foregoing or (B) in the case of any Principal, acting as a general partner of the limited partnership that owns the applicable Individual Property or as member of the limited liability company that owns the applicable Individual Property and transacting lawful business that is incident, necessary and appropriate to accomplish the foregoing;

(ii) shall not engage in any business unrelated to the activities set forth in clause (i) of this definition of “Special Purpose Entity”;

(iii) shall not own any real property other than the applicable Individual Property;

(iv) does not have and shall not have assets other than (A) the applicable Individual Property and personal property and fixtures located therein or used in connection therewith necessary or incidental to its ownership and operation of the applicable Individual Property, (B) in the case of any Principal, owning the limited partnership or limited liability company interests in the applicable Individual Borrower and personal property necessary or incidental to its ownership of such interests, and (C) in the case of Borrower that is the sole member of a New TRS Borrower, owning the limited liability company interests or partnership interests in such New TRS Borrower, as applicable, and personal property necessary or incidental to its ownership of such interests;

(v) shall not engage in, seek, consent to or permit, to the fullest extent permitted by law, (A) any dissolution, winding up, liquidation, consolidation or merger, or the division of such Person into multiple entities or series pursuant to Section 18-217 of the Delaware Limited Liability Company Act, (B) any sale or other transfer of all or substantially all of its assets or any sale of assets outside the ordinary course of its business other than in connection with a sale of the applicable Individual Property or as otherwise permitted by the Loan Documents or (C) in the case of a Principal, any transfer of its partnership or membership interest, except as permitted by the Loan Documents;

(vi) shall not cause, consent to or permit any amendment of its limited partnership agreement, certificate of organization, certificate of formation, operating agreement or other formation document or organizational documents (as applicable) with respect to the matters set forth in this definition without the prior written consent of Lender except as otherwise permitted by the Loan Documents;

(vii) if such entity is a limited partnership, shall have at least one general partner and shall have, as its only general partners, Special Purpose Entities each of which (A) is a single member Delaware limited liability company, (B) has two (2) Independent Directors or Independent Managers, and (C) holds a direct interest as general partner in the limited partnership of not less than 0.1%;

(viii) if such entity is a limited liability company (other than a limited liability company meeting all of the requirements applicable to a single member limited liability company set forth in this definition of “**Special Purpose Entity**”), shall have at least one (1) member that is a Special Purpose Entity, that is a single member limited liability company, that has at least two (2) Independent Directors and that directly owns at least one half of one percent (0.5%) of the equity of the limited liability company;

(ix) if such entity is a single member limited liability company, (A) shall be a Delaware limited liability company, (B) shall have at least two (2) Independent Directors or Independent Managers serving as managers of such company, (C) shall not take any Bankruptcy Action with respect to itself, or any entity for which it is the Principal, as applicable, unless two (2) Independent Directors or Independent Managers then serving as managers of the company shall have consented in writing to such action, and (D) shall have two (2) natural persons or one entity that is not a member of the company, that has signed its limited liability company agreement and that, under the terms of such limited liability company agreement becomes a member of the company immediately prior to the withdrawal or dissolution of the last remaining member of the company;

(x) shall not (and, if such entity is (a) a limited liability company, shall have a limited liability agreement or an operating agreement, as applicable or (b) a limited partnership, has a limited partnership agreement, that, in each case, provides that such entity shall not) (1) dissolve, merge, become subject to a division of such Person into multiple entities or series pursuant to Section 18-217 of the Delaware Limited Liability Company Act, liquidate, consolidate; or (2) sell all or substantially all of its assets except as otherwise permitted by the Loan Documents;

(xi) shall at all times intend to remain solvent and shall pay its debts and liabilities (including, a fairly allocated portion of any personnel and overhead expenses that it shares with any Affiliate) from its assets as the same shall become due, and shall maintain adequate capital for the normal obligations reasonably foreseeable in a business of its size and character and in light of its contemplated business operations (in each case, to the extent there exists sufficient cash flow from the operations of the Property to do so); provided, that the foregoing shall not require any member, partner or shareholder of a Special Purpose Entity to make any additional capital contributions to a Special Purpose Entity;

(xii) shall not fail to correct any known misunderstanding regarding the separate identity of such entity;

(xiii) shall maintain its bank accounts (except as contemplated by the Loan Documents with respect to any other Loan Party), books of account, books and records separate from those of any other Person, shall not permit any Affiliate or constituent party independent access to its bank account and, to the

extent that it is required to file income tax returns under applicable law, shall file its own income tax returns, except to the extent that it is required by law to file consolidated tax returns and, if it is taxed as a corporation as a result of being a taxable REIT subsidiary for U.S. federal income tax purposes, shall not file a consolidated income tax return with any entity taxed as a corporation, except to the extent that it is required by law to file consolidated tax returns;

(xiv) except as contemplated by the Loan Documents with respect to each other Loan Party, shall not commingle its funds or assets with those of any other Person and shall not participate in any cash management system with any other Person;

(xv) other than pursuant to Permitted Equipment and Vehicle Leases executed by Manager in its capacity as agent of the applicable Loan Party, shall hold its assets in its own name;

(xvi) shall conduct its business as a separate and distinct entity under its own name or in a name franchised or licensed to it by a Casino Operator, Manager, Franchisor/Licensor or an entity other than an Affiliate, except for business conducted on behalf of itself by another Person under a business management services agreement that is on commercially reasonable terms, so long as the manager, or equivalent thereof, under such business management services agreement holds itself out as an agent of such Special Purpose Entity;

(xvii) (A) shall maintain its financial statements, accounting records and other entity documents separate from those of any other Person; (B) shall show, in its financial statements, its asset and liabilities separate and apart from those of any other Person; and (C) shall not permit its assets to be listed as assets on the financial statement of any of its Affiliates except as required by GAAP; provided, however, that any such consolidated financial statement contains a note indicating that the Special Purpose Entity's separate assets and credit are not available to pay the debts of such Affiliate and that the Special Purpose Entity's liabilities do not constitute obligations of the consolidated entity, except as provided herein with respect to each other Loan Party and such assets shall also be listed in such Loan Party's balance sheet, as applicable;

(xviii) except as contemplated by the Loan Documents with respect to each other Loan Party, shall pay its own liabilities and expenses, including the salaries of its own employees, out of its own funds and assets, provided there is sufficient cash flow to do so, and shall maintain a sufficient number of employees, if any, in light of its contemplated business operations;

(xix) shall observe all partnership or limited liability company formalities, as applicable, that are necessary to maintain its separate existence;

(xx) following the Closing Date, shall not incur Indebtedness other than (A) in the case of Borrower, (i) the Loan, (ii) Permitted Indebtedness and (iii) such other liabilities that such Special Purpose Entity is expressly

permitted to incur pursuant to this Agreement or as otherwise imposed by law; provided, however, that this covenant shall not require any shareholder, partner or member of Borrower to make additional capital contributions to any such entity; and (B) in the case of each Principal, (i) liabilities of Principal as a general partner of a limited partnership, in the capacity as such and (ii) liabilities incurred in the ordinary course of business relating to the ownership and operation of the Loan Party which it holds an interest in and routine administration of the Loan Party which it holds an interest in, provided that (x) the outstanding liabilities at any time shall not exceed \$25,000.00 and (y) such liabilities are normal and reasonable under the circumstances; provided, however, that this covenant shall not require any partner or member of Principal to make additional capital contributions to any such entity;

(xxi) shall not assume or guarantee or become obligated for the debts of any other Person, shall not hold out its credit as being available to satisfy the obligations of any other Person and shall not pledge its assets to secure the obligations of any other Person, in each case except as permitted pursuant to the Loan Documents with respect to each other Loan Party or as otherwise imposed by law;

(xxii) shall not acquire obligations or securities of its partners or members or any other owner or Affiliate, except (A) with respect to a member of a New TRS Borrower, such member's limited liability company interest or such partner's partnership interests in such New TRS Borrower, as applicable, and (B) with respect to each Principal, such Principal's membership or general partnership interest and obligations with respect to the Loan Party in which it owns an interest;

(xxiii) shall allocate fairly and reasonably any overhead expenses that are shared with any of its Affiliates, constituents, or owners, or any guarantors of any of their respective obligations, or any Affiliate of any of the foregoing, including, but not limited to, paying for shared office space and for services performed by any employee of an Affiliate;

(xxiv) shall maintain and use separate stationery, invoices and checks bearing its name and not bearing the name of any other entity unless such entity is clearly designated as being the Special Purpose Entity's agent;

(xxv) except as contemplated by the Loan Documents with respect to each other Loan Party, shall not pledge its assets to secure the obligations of any other Person;

(xxvi) shall maintain its assets in such a manner that it shall not be costly or difficult to segregate, ascertain or identify its individual assets from those of any other Person;

(xxvii) shall not make loans to any Person and shall not hold evidence of indebtedness issued by any other Person or entity (other than cash and

investment grade securities issued by an entity that is not an Affiliate of or subject to common ownership with such entity), except as is contemplated or provided for in the Loan Documents with respect to each other Loan Party;

(xxviii) shall not identify its partners, members or shareholders, or any Affiliate of any of them, as a division or department or part of it, and has not identified itself and shall not identify itself as a division or department of any other Person;

(xxix) other than capital contributions and distributions permitted under the terms of its organizational documents, shall not enter into or be a party to, any transaction with any of its partners, members, shareholders or Affiliates except in the ordinary course of its business and on terms which are commercially reasonable terms comparable to those of an arm's length transaction with an unrelated third-party;

(xxx) shall not have any obligation to, and shall not indemnify its partners, officers, directors or members, as the case may be, in each case unless such an obligation or indemnification is fully subordinated to the Debt and, to the fullest extent permitted by law, shall not constitute a claim against it in the event that its cash flow is insufficient to pay the Debt;

(xxxi) shall not have any of its obligations guaranteed by any Affiliate except (A) as provided by the Loan Documents with respect to (I) each other Loan Party and (II) the Guaranty, the Excess Cash Flow Guaranty, if applicable, and Environmental Indemnity, (B) in connection with a Franchise/License Agreement entered into in accordance with the terms and conditions hereof, including, without limitation, a guaranty of the Franchise/License Agreement, (C) in connection with a Management Agreement or Casino Management Agreement or (D) in connection with any Letter of Credit. For the avoidance of doubt, the Shortfall Collection Guaranty is expressly permitted hereunder;

(xxxii) shall not form, acquire or hold any subsidiary, except (A) any member of a New TRS Borrower's limited liability company interest in such New TRS Borrower, and (B) with respect to each Principal, such Principal's membership or general partnership interest and obligations with respect to the Loan Party in which it owns an interest;

(xxxiii) shall comply with all of the terms and provisions contained in its organizational documents;

(xxxiv) shall conduct its business so that each of the assumptions made about it and each of the facts stated about it in the Insolvency Opinion, or if applicable, any Additional Insolvency Opinion, are true; and

(xxxv) shall continue to be duly formed, validly existing, and in good standing in the state of its formation and in all other jurisdictions where it is qualified to do business.

“**State**” shall mean the State of Nevada.

“**Substitute Guarantor**” shall have the meaning set forth in Section 5.2.9(h) hereof.

“**Substitute Guaranty**” shall have the meaning set forth in Section 5.2.9(f) hereof.

“**Successor Brand Manager**” shall mean to the extent the applicable Loan Party (i) does not have the right under the Brand Management Agreement to consent to the applicable manager’s assignment of the Brand Management Agreement, any Person permitted under such Brand Management Agreement, (ii) has the right to consent to such assignment in its sole discretion, a Manager approved by Borrower and reasonably approved by Lender (provided that Lender’s consent shall not be required with respect to an assignment to a Brand Manager), and (iii) has the right to consent to such assignment subject to a standard set forth in such Brand Management Agreement, a Person approved by Borrower and Lender in accordance with, and subject to, the applicable standard set forth therein.

“**Survey**” shall mean a survey of the Individual Property in question prepared by a surveyor licensed in the State and satisfactory to Lender and the company or companies issuing the applicable Title Insurance Policy, and containing a certification of such surveyor satisfactory to Lender.

“**Tax and Insurance Escrow Fund**” shall have the meaning set forth in Section 7.2(a) hereof.

“**Tax and Insurance Reserve Account**” shall have the meaning set forth in Section 7.2(a) hereof.

“**Taxes**” shall mean all real estate and personal property taxes, payments in lieu of taxes, assessments, water rates or sewer rents, now or hereafter levied or assessed or imposed against any Individual Property or part thereof.

“**Tenant**” shall mean any Person with a possessory right to all or any part of an Individual Property pursuant to a Lease.

“**Third Party Waived DSCR Release**” shall have the meaning set forth in Section 2.5.1(a) hereof.

“**Third Party Waived DSCR Release Price**” shall have the meaning set forth in Section 2.5.1(a) hereof.

“**Threshold Amount**” shall have the meaning set forth in Section 5.1.19(b) hereof.

“Title Insurance Policy” shall mean, with respect to each Individual Property, an ALTA mortgagee title insurance policy in the form reasonably acceptable to Lender (or, if such Individual Property is in a State which does not permit the issuance of such ALTA policy, such form as shall be permitted in such State and reasonably acceptable to Lender) issued with respect to such Individual Property and insuring the lien of the Mortgage encumbering such Individual Property.

“Total Defeasance Collateral” shall mean U.S. Obligations, which provide for interest payments (and on the Permitted Par Prepayment Date, interest payments and principal prepayments) (i) on or prior to, but as close as possible to, the Business Day immediately preceding all scheduled Payment Dates hereunder after the Total Defeasance Date and up to and including the Permitted Par Prepayment Date (assuming the Note is required to be prepaid in full as of such Permitted Par Prepayment Date), and (ii) in amounts equal to or greater than the Scheduled Defeasance Payments relating to such Payment Dates.

“Total Defeasance Date” shall have the meaning set forth in Section 2.8.1 hereof.

“Total Defeasance Event” shall have the meaning set forth in Section 2.8.1 hereof.

“Transfer” shall have the meaning set forth in Section 5.2.9(b) hereof.

“Transferee Borrower” shall have the meaning set forth in Section 5.2.9(f) hereof.

“Transition Services Agreement” shall mean that certain Transition Services Agreement dated as of the date hereof among Borrower, Initial MGM/Mandalay Tenant, MGM Resorts International, Mandalay Bay, LLC and Mandalay Resort Group.

“TRIPRA” shall have the meaning set forth in Section 6.1(a)(ix) hereof.

“U.S. Obligations” shall mean non-redeemable securities evidencing an obligation to timely pay principal and/or interest in a full and timely manner that are (a) direct obligations of the United States of America for the payment of which its full faith and credit is pledged, or (b) to the extent acceptable to the Approved Rating Agencies, other “government securities” within the meaning of Section 2(a)(16) of the Investment Company Act of 1940, as amended.

“U.S. Person” means any Person that is a “United States Person” as defined in Section 7701(a)(30) of the Code.

“U.S. Tax Compliance Certificate” shall have the meaning set forth in Section 2.7(e)(ii)(B).

“UCC” or **“Uniform Commercial Code”** shall mean the Uniform Commercial Code as in effect in the State.

“Unanimous Decisions” shall have the meaning set forth in Section 10.24(b) hereof.

“Undeclared Note” shall have the meaning set forth in Section 2.8.1 hereof.

“Venue Space” shall mean any space set forth on the MGM Programming Exhibit or Mandalay Bay Programming Exhibit, each attached hereto as Schedule 1.3, other than spaces set forth in the descriptions of: (i) “Casino”, (ii) “Hotel Podium”, (iii) “Hotel Tower / Guest Rooms – Suites – Villas”, (iv) “Functioning Back of House” and (v) “Infrastructure”.

“Venue Space Management Agreement Exclusion Requirements” shall mean the satisfaction of any of the following with respect to any portion of the Venue Space: (a) the Individual Property containing the applicable portion of the Venue Space is subject to the MGM/Mandalay Lease; (b) either MGP OP or BREIT OP owns a direct and/or indirect equity interest in Borrower; (c) Borrower is directly or indirectly Controlled by, or under common Control with, a Qualified Casino Operator; (d) the applicable portion of the Venue Space is managed or licensed pursuant to a Casino Management Agreement, Brand Management Agreement, Management Agreement or Franchise/License Agreement; or (e) the applicable portion of the Venue Space is subject to a Lease.

“Votecco Entity” shall mean a newly formed Delaware limited liability company that would (i) Control Borrower (or, if applicable, Windmill REIT) and (ii) be one hundred percent (100%) owned and controlled by one or more senior management officers at (x) MGP, if MGP or MGP OP Controls the Borrower, (y) BREIT, if BREIT or BREIT OP Controls the Borrower (or, if applicable, Windmill REIT), or (z) if a Replacement Guarantor has executed and delivered a Substitute Guaranty in accordance with the terms and provisions of this Agreement, one or more senior management officers of the applicable Qualified Transferee, in each case, that satisfies applicable Gaming Laws.

“Windmill Joint Venture” shall mean MGP BREIT Venture 1 LLC.

“Windmill Joint Venture Agreement” shall mean that certain Amended and Restated Limited Liability Company Agreement of MGP BREIT Venture 1 LLC, dated as of the Closing Date, by and between MGP JV Investco 1 LLC, a Delaware limited liability company and Windmill REIT, as the same may be amended, restated, replaced and/or modified from time to time in accordance with the terms and conditions of this Agreement.

“Windmill REIT” shall mean BCORE Windmill Parent LLC, a Delaware limited liability company.

“Windmill REIT LLCA” shall mean that certain Limited Liability Company Agreement of Windmill REIT dated as of January 8, 2020 as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time, without the prior written consent of Lender, provided that Lender’s consent, which consent shall not be unreasonably withheld, conditioned or delayed, shall be required for any amendment to the Windmill REIT LLCA which grants the Series A Preferred Units Control of Borrower.

“Yield Maintenance Premium” shall mean, with respect to each Note, an amount equal to the greater of (a) one-half of one percent (0.50%) of the outstanding principal amount of such Note to be prepaid or satisfied and (b) the excess, if any, of (i) the sum of the present values of all then-scheduled payments of principal and interest in respect of the principal amount being prepaid under such Note assuming that all scheduled payments are made timely and that the remaining outstanding principal and interest on such Note is paid on the Permitted Par Prepayment Date (with each such payment and assumed payment discounted to its present value at the date of prepayment at the rate which, when compounded monthly, is equivalent to the Prepayment Rate when compounded semi-annually and deducting from the sum of such present values any short-term interest paid from the date of prepayment to the next succeeding Payment Date in the event such payment is not made on a Payment Date), over (ii) the principal amount being prepaid provided, with respect to any prepayment of any portion of the Loan that is subject to a rated Securitization and which is made after the Payment Date in August 2029 but prior to the Permitted Par Prepayment Date, the Yield Maintenance Premium shall be zero.

Section 1.2. Principles of Construction. All references to sections and schedules are to sections and schedules in or to this Agreement unless otherwise specified. All uses of the word “including” shall mean “including, without limitation” unless the context shall indicate otherwise. Unless otherwise specified, the words “hereof,” “herein” and “hereunder” and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement. Unless otherwise specified, all meanings attributed to defined terms herein shall be equally applicable to both the singular and plural forms of the terms so defined.

ARTICLE II.

GENERAL TERMS

Section 2.1. Loan Commitment; Disbursement to Borrower.

2.1.1. Agreement to Lend and Borrow. Subject to and upon the terms and conditions set forth herein, Lender hereby agrees to make and Borrower hereby agrees to accept the Loan on the Closing Date.

2.1.2. Single Disbursement to Borrower. Borrower may request and receive only one (1) borrowing hereunder in respect of the Loan and any amount borrowed and repaid hereunder in respect of the Loan may not be reborrowed. Borrower and Lender acknowledge and agree that the Loan shall be fully funded as of the Closing Date.

2.1.3. The Note, Mortgage and Loan Documents. The Loan shall be evidenced by the Note and secured by the Mortgage and the other Loan Documents.

2.1.4. Use of Proceeds. Borrower shall use the proceeds of the Loan to (a) pay and/or reimburse costs or borrowings incurred in connection with the acquisition of the Property, (b) make deposits into the Reserve Funds on the Closing Date in the amounts provided herein, (c) pay costs and expenses incurred in connection with the closing of the Loan and the operation of the Property and (d) distribute the balance, if any, to Borrower’s equity holders.

2.1.5. Components of the Loan. For the purpose of computing interest payable from time to time on the principal amount of the Loan and certain other computations set forth herein, upon written notice from Lender to Borrower (the “**Componentization Notice**”) in connection with any Componentization Event, the principal balance of the Loan shall be divided into multiple components (“**Components**”). Each Component shall have an initial principal amount as Lender shall specify in such Componentization Notice, provided that (i) the sum of the principal balances of all Components shall equal the then-current outstanding principal amount of the Loan and (ii) the weighted average of the Interest Rate of all Components shall equal the then-current weighted average Interest Rate. Borrower shall be treated as the obligor with respect to each of the Components, and Borrower acknowledges that each Component may be individually beneficially owned by a separate Person. The Components need not be represented by separate physical Notes, but if requested by Lender in writing, each Component shall be represented by a separate physical Note (each, a “**Replacement Note**”), in which case Borrowers shall execute and return to Lender each such Replacement Note, in the same form as the Note executed and delivered on the Closing Date, promptly following Borrower’s receipt of an execution copy thereof and upon return of any Note which evidences the indebtedness secured by such Replacement Note (which may be accomplished through mutually acceptable escrow arrangements). Notwithstanding anything to the contrary contained herein, any reallocation or creation of any Components pursuant to this Section 2.1.5 (i) shall not increase (x) any monetary obligation of Borrower or Guarantor (other than as set forth in Section 2.4.4 hereof), or (y) any other obligation or liability of Borrower under the Loan Documents in any material respect (other than as set forth in Section 2.4.4 hereof) or (z) any other obligation or liability of Guarantor in any respect, (ii) shall not change the dates of the Interest Period, the Maturity Date or the Payment Date (except as may be permitted pursuant to the definitions thereof), (iii) shall not affect the time periods during which Borrower or Guarantor is permitted to perform any obligations under the Loan Documents, (iv) shall not require amortization of the Loan and (v) shall not decrease any of Borrower’s or Guarantor’s rights or remedies under the Loan Documents in any respect.

Section 2.2. Interest Rate.

2.2.1. Interest Rate. Subject to the provisions of this Section 2.2, interest on the outstanding principal balance of each Note shall accrue from (and include) the Closing Date, through the end of the last Interest Period, at the applicable Interest Rate for such Note. The total interest accrued under the Loan shall be the sum of the interest accrued on each Note. Subject to the terms and conditions of Section 2.3, Borrower shall pay to Lender on each Payment Date the interest accrued (or to be accrued) on the outstanding principal balance of each Note for the related Interest Period.

2.2.2. Interest Calculation. Interest on the outstanding principal balance of each Note shall be calculated by multiplying (a) the actual number of days elapsed in the relevant Interest Period for which such calculation is being made by (b) a daily rate based on the Interest Rate applicable to such Note and a three hundred sixty (360) day year by (c) the outstanding principal balance of such Note.

2.2.3. Intentionally Omitted.

2.2.4. Intentionally Omitted.

2.2.5. Default Rate. In the event that, and for so long as, any Event of Default shall have occurred and be continuing, the outstanding principal balance of the Loan and, to the extent permitted by law, all accrued and unpaid interest in respect of the Loan and any other amounts due pursuant to the Loan Documents, shall accrue interest at the Default Rate, calculated from the date such payment was due without regard to any grace or cure periods contained herein.

2.2.6. Usury Savings. This Agreement, the Note and the other Loan Documents are subject to the express condition that at no time shall Borrower be obligated or required to pay interest on the principal balance of the Loan at a rate which could subject Lender to either civil or criminal liability as a result of being in excess of the Maximum Legal Rate. If, by the terms of this Agreement or the other Loan Documents, Borrower is at any time required or obligated to pay interest on the principal balance due hereunder at a rate in excess of the Maximum Legal Rate, the Interest Rate or the Default Rate, as the case may be, shall be deemed to be immediately reduced to the Maximum Legal Rate and all previous payments in excess of the Maximum Legal Rate shall be deemed to have been payments in reduction of principal and not on account of the interest due hereunder. All sums paid or agreed to be paid to Lender for the use, forbearance, or detention of the sums due under the Loan, shall, to the extent permitted by applicable law, be amortized, prorated, allocated, and spread throughout the full stated term of the Loan until payment in full so that the rate or amount of interest on account of the Loan does not exceed the Maximum Legal Rate of interest from time to time in effect and applicable to the Loan for so long as the Loan is outstanding.

Section 2.3. Loan Payment.

2.3.1. Monthly Debt Service Payments.

(a) Monthly Debt Service Payments Before the Anticipated Repayment Date. Borrower shall pay to Lender (i) on the Closing Date, an amount equal to interest only on the outstanding principal balance of each Note from and including the Closing Date up to and including March 5, 2020, which interest shall be calculated in accordance with the provisions of Section 2.3.2 and (ii) on each Payment Date commencing on the first Payment Date, to and including the Anticipated Repayment Date, an amount equal to the Monthly Debt Service Payment Amount. Payments pursuant to this Section 2.3.1(a) shall first be applied to interest due for the related Interest Period in which the Payment Date occurs and then to any other amounts due and unpaid pursuant to this Agreement and the other Loan Documents.

(b) Monthly Debt Service Payments After Anticipated Repayment Date. On each Payment Date after the Anticipated Repayment Date, interest shall accrue on the Loan at the Adjusted Interest Rate and Borrower shall continue to be obligated to make payments of interest in monthly installments as set forth in this Section 2.3.1(b). Following the Anticipated Repayment Date, on each Payment Date thereafter up to and including the Maturity Date, Borrower shall pay to Lender, (i) first, an amount equal to the Monthly Debt Service Payment Amount and (ii) second, to the extent of funds available in the Excess Cash Flow Reserve

Account, an amount equal to the Monthly Additional Interest Amount. The failure to make the payment in clause (i) immediately above as and when due shall constitute an Event of Default, but the failure to make the payment in clause (ii) immediately above (or the failure to have sufficient funds available in the Excess Cash Flow Reserve Account to make such payment) as and when due shall not constitute an Event of Default. If Borrower does not pay any Monthly Additional Interest Amount pursuant to the second sentence of this Section 2.3.1(b) (such amount not paid, together with interest accrued thereon at the Adjusted Interest Rate, the “**Accrued Interest**”), the Accrued Interest shall remain an obligation of Borrower but Borrower’s obligation to pay such Accrued Interest shall be deferred and such Accrued Interest shall be added to the principal balance of the Loan and shall be paid on the Maturity Date to the extent not sooner paid pursuant to this Agreement.

(c) Borrower shall pay to Lender on the Maturity Date the outstanding principal balance of the Loan, all interest which has accrued or would accrue through and including the last date of the Interest Period in which the Maturity Date occurs (including, without limitation, Accrued Interest) and all other amounts due hereunder and under the Note, each Mortgage and the other Loan Documents.

2.3.2. Payments Generally. The first Interest Period hereunder shall commence on and include the Closing Date and shall end on and include March 5, 2020. Thereafter during the term of the Loan, each Interest Period shall commence on the sixth (6th) day of the calendar month preceding the calendar month in which the related Payment Date occurs and shall end on and include the fifth (5th) day of the calendar month in which the related Payment Date occurs. For purposes of making payments hereunder, but not for purposes of calculating Interest Periods, if the day on which such payment is due is not a Business Day, then amounts due on such date shall be due on the immediately preceding Business Day and with respect to payments of principal of the Loan due on the Maturity Date, interest shall be payable at the Interest Rate or the Default Rate, as the case may be, through and including, (x) if such payment occurs prior to a rated Securitization, the Maturity Date or (y) if such payment occurs following a rated Securitization, the last day of the related Interest Period. All amounts due under this Agreement and the other Loan Documents shall be payable without setoff, counterclaim, defense or any other deduction whatsoever unless required by applicable law. For the avoidance of doubt, in the event a portion (but not all) of the Loan is subject to a rated Securitization, interest shall only be payable through and including the last day of the applicable Interest Period with respect to each Note that has been subject to a rated Securitization.

2.3.3. Payment on Maturity Date. Borrower shall pay to Lender on the Maturity Date the outstanding principal balance of the Loan, all accrued and unpaid interest and all other amounts due hereunder and under the Note, the Mortgage and the other Loan Documents.

2.3.4. Late Payment Charge. If any principal, interest or any other sums due under the Loan Documents are not paid by Borrower on or prior to the date on which it is due (other than the principal amount due on the Maturity Date), Borrower shall pay to Lender upon demand an amount equal to the lesser of three percent (3%) of such unpaid sum or the Maximum Legal Rate in order to defray the expense incurred by Lender in handling and processing such delinquent payment and to compensate Lender for the loss of the use of such delinquent payment. Any such amount shall be secured by the Mortgage and the other Loan Documents to the extent permitted by applicable law.

2.3.5. Method and Place of Payment. Except as otherwise specifically provided herein, all payments and prepayments under this Agreement and the Note shall be made to Lender not later than (a) 2:00 p.m., New York City time, for all payments other than the payment due on the Maturity Date and (b) 3:00 p.m., New York City time, for the payment due on the Maturity Date, on the date when due and shall be made in lawful money of the United States of America in immediately available funds at Lender's office or as otherwise directed by Lender, and any funds received by Lender after such time shall, for all purposes hereof, be deemed to have been paid on the next succeeding Business Day.

Section 2.4. Prepayments.

2.4.1. Voluntary Prepayments. Borrower may prepay the Loan in whole or in part, at any time and from time to time, provided, that (i) Borrower gives Lender not less than ten (10) days' prior written notice of the amount of the Loan that Borrower intends to prepay and the intended date of prepayment which notice shall be revocable or subject to modification (including extension of the intended prepayment date) by Borrower at any time (the "**Prepayment Notice**"); and (ii) Borrower pays Lender, in addition to the outstanding principal amount of the Loan to be prepaid, (A) all interest which would have accrued on the amount of the Loan to be paid through and including (x) if such prepayment occurs prior to a rated Securitization, then the date on which such prepayment is made or (y) if such prepayment occurs following a rated Securitization, (1) with respect to the portion of the Loan subject to a rated Securitization, the last day of the Interest Period related to the Payment Date next occurring following the date of such prepayment or, if such prepayment occurs on a Payment Date, interest which would have accrued on the prepayment amount through and including the last day of the Interest Period related to such Payment Date (all such interest payable under this clause (y), the "**Additional Interest**") and (2) with respect to the remainder portion of the loan not subject to a rated Securitization, the date on which such prepayment is made, (B) if such prepayment occurs prior to the Permitted Par Prepayment Date, the applicable Yield Maintenance Premium on the amount of the Loan which is being prepaid, and (C) all other sums then due and payable under this Agreement, the Note, and the other Loan Documents, all of Lender's reasonable, actual out-of-pocket costs and expenses (including reasonable attorneys' fees and disbursements) incurred by Lender in connection with such prepayment of the Loan and any actual out-of-pocket costs and expenses incurred in connection with a revoked or extended Prepayment Notice.

2.4.2. Mandatory Prepayments. In the event Lender actually receives any Net Proceeds, if Lender is not obligated to make such Net Proceeds available to Borrower for the Restoration of any Individual Property or otherwise remit such Net Proceeds to Borrower pursuant to Section 6.4 hereof, on the next occurring Payment Date following the date on which Lender receives such Net Proceeds to be applied in accordance with this Section 2.4.2, Borrower shall prepay or authorize Lender to apply such Net Proceeds Prepayment as a prepayment of all or a portion of the outstanding principal balance of the Loan in an amount equal to the aggregate of (a) the Net Proceeds Prepayment up to an amount equal to the Release Amount for the affected Individual Property, (b) following a rated Securitization, all Additional Interest and (c) the actual reasonable costs of Lender in connection with such prepayment to the extent such amounts are not paid to Lender in accordance with Article VI hereof (collectively, the "**Mortgage Mandatory Prepayment Amount**"). Amounts paid to or applied by Lender as a Mortgage Mandatory Prepayment Amount shall first be applied to amounts required to be paid by Borrower to Lender pursuant to clause (c) above and then to the amounts set forth in clauses

(a) and (b) simultaneously. Except during the continuance of an Event of Default, any Net Proceeds Prepayment to be applied pursuant to this Section 2.4.2 in excess of the Mortgage Mandatory Prepayment Amount shall be distributed to Borrower. After the occurrence of and during the continuance of an Event of Default, Lender may apply such Net Proceeds Prepayment to the Debt (until paid in full) in any order or priority in its sole discretion. No Yield Maintenance Premium or other premium, penalty or charge shall be due in connection with any prepayment made pursuant to this Section 2.4.2.

2.4.3. Prepayments After Default. If, during the continuance of an Event of Default, payment of all or any part of the Debt is tendered by Borrower or otherwise recovered by Lender (including, without limitation, through application of any Reserve Funds), such tender or recovery shall (a) include interest at the Default Rate on the outstanding principal amount of the Loan through the last calendar day of the Interest Period within which such tender or recovery occurs and (b) be deemed a voluntary prepayment by Borrower and shall in all instances include (i) an amount equal to the Yield Maintenance Premium if such tender or recovery occurs prior to the Permitted Par Prepayment Date, and (ii) following a rated Securitization, the Additional Interest. After the occurrence and during the continuance of an Event of Default, Lender may apply such payment to the Debt (until paid in full) in any order or priority in its sole discretion.

2.4.4. Application of Interest and Principal to Note A and Note B. Provided no Event of Default has occurred and is continuing, (A) payments of interest on the Loan shall be applied by Lender on a pro-rata basis between Note A and Note B and such payments of interest shall be applied (i) with respect to Note A, on a pro rata and pari passu basis among each of Note A-1, Note A-2, Note A-3 and Note A-4 and (ii) with respect to Note B, on a pro rata and pari passu basis among each of Note B-1, Note B-2, Note B-3 and Note B-4 and (B) payments of principal shall be applied (i) first, to the reduction of the outstanding principal balance of each Note comprising Note A, on a pro rata and pari passu basis, until each Note comprising Note A is reduced to zero, and (ii) second, to the reduction of the outstanding principal balance of each Note comprising Note B, until each Note comprising Note B is reduced to zero. Notwithstanding anything herein to the contrary, during the continuance of any Event of Default, any payment of interest and/or principal from whatever source may be applied by Lender among the Notes in Lender's sole discretion.

Section 2.5. Release. Except as set forth in Section 2.4.2, this Section 2.5 or Section 2.8, no repayment or prepayment or defeasance of all or any portion of the Loan shall cause, give rise to a right to require, or otherwise result in, the release of the Lien of any Mortgage on any Individual Property. For the avoidance of doubt, any prepayment of the Loan in connection with a Condemnation or Casualty, and the related release of any Lien of any Mortgage on such Property in connection with such Condemnation or Casualty, if applicable, shall be governed by and made in accordance with Section 2.4.2, Section 6.3 and Section 6.4 hereof.

2.5.1. Release of Individual Property. (a) At any time Borrower may obtain the release of an Individual Property from the Lien of the Mortgage thereon and related Loan Documents (each such Individual Property, a "**Release Property**") and the release of Borrower's obligations under the Loan Documents with respect to such Release Property (other than those expressly stated to survive), upon the satisfaction of each of the following conditions:

- (i) Borrower shall deliver notice to Lender of the proposed release of such Release Property;
- (ii) no Event of Default shall be continuing on the date that the Release Property is released from the Lien of the Mortgage thereon other than as expressly permitted below;
- (iii) Borrower shall have paid to Lender the applicable Release Amount together with any Yield Maintenance Premium then required (if any);
- (iv) Borrower shall submit to Lender, not less than ten (10) days prior to the date of such release, a release of Lien (and related Loan Documents) for such Release Property for execution by Lender. Such release shall be in a form appropriate in each jurisdiction in which such Release Property is located and that would be reasonably satisfactory to a prudent lender. In addition, Borrower shall provide all documentation Lender reasonably requires to be delivered by Borrower in connection with such release, together with an Officer's Certificate certifying that such documentation (A) will effect such release in accordance with the terms of this Agreement, and (B) will not impair or otherwise adversely affect the Liens, security interests and other rights of Lender under the Loan Documents not being released (or as to the parties to the Loan Documents and the Individual Property subject to the Loan Documents not being released);
- (v) After giving effect to such release, as of the date of such release, the Debt Service Coverage Ratio shall not be less than the Closing Date Debt Service Coverage Ratio; provided, however, that in order to satisfy the Debt Service Coverage Ratio requirement set forth in this clause (v), Borrower may make a prepayment of a portion of the Loan in accordance with Section 2.4.1 hereof or Borrower may deposit cash with Lender to be held in a Reserve Account as cash collateral for the Loan; provided, further that in the event the foregoing Debt Service Coverage Ratio requirement set forth in this clause (v) is not satisfied and the release of the Release Property is in connection with an arms-length transaction to a third party Person which is not an Affiliate of the Borrower (a **"Third Party Waived DSCR Release"**), Borrower shall be permitted to release such Release Property from the Lien of the Mortgage and the related Loan Documents upon the payment to Lender of an amount equal to the greater of (I) the applicable Release Amount for the Release Property together with any Yield Maintenance Premium then required (if any) and (II) the lesser of (x) one hundred percent (100%) of the Net Sales Proceeds derived from the sale of the Release Property and (y) an amount necessary to, after giving effect to such release, satisfy the Debt Service Coverage Ratio requirement set forth in this clause (v) (the greater of the immediately preceding clauses (I) and (II), the **"Third Party Waived DSCR Release Price"**), together with any Yield Maintenance Premium then required (if any);
- (vi) Borrower shall have paid or reimbursed Lender for all reasonable out-of-pocket costs and expenses actually incurred by Lender (including, without limitation, reasonable actually incurred attorneys' fees and disbursements);

provided such attorneys' fees and expenses shall not exceed \$10,000.00); provided, that Borrower shall have paid all third-party fees, costs and expenses actually incurred in connection with any such release, including but not limited to, (A) the current fee being assessed by such Servicer to effect such release, which fee shall not exceed \$2,000.00; and (B) any other charges incurred in connection with the release of any Liens, including the payment of all recording charges, filing fees, taxes or other similar expenses incurred in the reasonable judgment of the Lender or the Servicer in order to effectuate the release;

(vii) Borrower shall remove the Release Property from the MGM/Mandalay Lease and enter into a new lease with MGM/Mandalay Tenant with respect to the remaining Individual Property, such that the remaining Individual Property is subject to a "triple net" lease covering such Individual Property (a "**Separate Lease**"). Any Separate Lease shall (a) be on substantially the same terms and conditions as the MGM/Mandalay Lease in accordance with of the MGM/Mandalay Lease, including, without limitation, that (x) the base rent due under such Separate Lease shall equal the amount of the Base Rent (as defined in the MGM/Mandalay Lease) for the applicable Individual Property as set forth in the MGM/Mandalay Lease and (y) the MGM/Mandalay Lease Opinion Delivery Requirements shall have been satisfied with respect to the Separate Lease and (b) otherwise comply with all terms and conditions of the MGM/Mandalay Lease and the terms, conditions and restrictions on the MGM/Mandalay Lease as set forth herein as if such Separate Lease is the MGM/Mandalay Lease. For the avoidance of doubt and notwithstanding anything to the contrary herein, (x) the Release Property shall not be subject to the Lien of the Loan Documents or the Separate Lease, and (y) neither Lender's consent nor a Rating Agency Confirmation shall be required in connection with the entry into a Separate Lease in accordance with this Section 2.5.1(a)(vii); and

(viii) Subsequent to such release, the remaining Individual Borrower and each Principal, if any, shall continue to be a Special Purpose Entity pursuant to, and in accordance with, Section 4.1.30 hereof.

(b) Intentionally omitted.

(c) Notwithstanding anything to the contrary contained herein, Borrower shall have the right to cause the release of any Individual Property in order to cure a Default or Event of Default related to such Individual Property provided that (i) prior to releasing such Individual Property, Borrower uses commercially reasonable efforts to cure such Default or Event of Default (which efforts shall not require any capital contributions to be made to Borrower or include any obligations of Borrower or Guarantor to use any operating income or Rents from the Property other than the Individual Property that is the subject of the Default or Event of Default to effectuate such cure) and (ii) such Default or Event of Default was not caused by (or at the direction of) Borrower or an Affiliate thereof in bad faith to circumvent the requirements of this Section 2.5.1 (a "Default Release"). In connection with any Default Release, Borrower shall be required to satisfy the conditions set forth in this Section 2.5.1, except that (I) Borrower shall not be required to satisfy the condition set forth in Section 2.5.1(a)(ii) to the extent any such Event of Default relates to the Individual Property that is the subject of the Default Release and (II)

Borrower shall not be required to satisfy the condition set forth in Section 2.5.1(a)(v) and provided, further, that with respect to any transfer of the Individual Property related to such Default Release to an Affiliate of Borrower, Borrower provides an Additional Insolvency Opinion addressing such transfer to an Affiliate. Any prepayment of the Loan in connection with a Default Release shall be deemed a voluntary prepayment, and shall be subject to satisfaction of the conditions set forth in Section 2.4.1 (other than the requirement to provide ten (10) days prior written notice); provided, that no Yield Maintenance Premium or other premium, penalty or charge shall be due in connection with any prepayment made in connection with a Default Release.

(d) Intentionally omitted.

(e) Notwithstanding the foregoing provisions of this Section 2.5.1, including clauses (a) and (c) hereof, if the Loan or any portion thereof is included in a REMIC Trust and the Loan to Value Ratio exceeds or would exceed 125% immediately after giving effect to the release of the applicable Individual Property, no such release will be permitted unless the Borrower pays down the principal balance of the Loan (or such portion of the Loan as is included in the REMIC Trust) by an amount not less than the greater of (A) the Release Amount or (B) the least of one of the following amounts: (i) if the Individual Property is sold, the net proceeds of an arm's-length sale of the Release Property to an unrelated Person, (ii) the fair market value of the Release Property at the time of the release or (iii) an amount such that the Loan to Value Ratio as so determined by Lender after the release is not greater than the Loan to Value Ratio immediately prior to the release, unless the Lender receives an opinion of counsel that, if clause (B) is not followed, the Securitization will not fail to maintain its status as a REMIC Trust as a result of the release of the applicable Individual Property.

(f) In connection with any release or cancellation under this Section 2.5.1 or defeasance under Section 2.8, in the event that such release or defeasance would result in the release of the Individual Property owned by such Individual Borrower (each an "Unencumbered Borrower"), such Unencumbered Borrower shall be automatically released (provided so long as there is only one (1) Borrower hereunder, that the Debt has been paid in full) by Lender from the obligations of the Loan Documents, except with respect to those obligations and liabilities which expressly survive the repayment of the Loan pursuant to any Loan Document and shall no longer be a Borrower for the purposes of this Agreement, in each case, without the need for further action or the execution of any documents. In connection with a release or cancellation of an Unencumbered Borrower, Lender agrees to deliver (i) a UCC-3 financing statement termination or amendment releasing Lender's security interest in the collateral pledged to Lender relating to such Unencumbered Borrower, and (ii) instruments executed by Lender reasonably necessary to evidence the release or cancellation of such Unencumbered Borrower from its obligations under the Loan Documents. Without limiting the foregoing, in the event that the Cash Management Account is in the name of an Unencumbered Borrower, the release of such Unencumbered Borrower shall additionally be conditioned upon Lender's receipt of evidence reasonably acceptable to Lender that a remaining Borrower shall have assumed all of the obligations of such Unencumbered Borrower under the Cash Management Agreement. All reasonable costs and expenses incurred by Lender in connection with such release shall be paid by Borrower.

2.5.2. Release on Payment in Full.

(a) If Borrower has elected to prepay or defease the entire Loan and the requirements of Section 2.4 or Section 2.8, as applicable, and this Section 2.5.2 have been satisfied or the Loan is repaid in full on the Maturity Date, the Properties shall be released from the Lien of their Mortgage and the other Loan Documents, except those obligations expressly stated to survive repayment of the Loan. In lieu of a release of the Lien of the Mortgage, at Borrower's option, it may obtain an assignment thereto to one or more designees in accordance with this Section 2.5.2.

(b) Borrower shall submit to Lender, not less than five (5) Business Days prior to the date on which the prepayment or defeasance will be made, a release (or assignment) of Lien (and related Loan Documents) for each Individual Property for execution by Lender. The release (or assignment) shall be in a form appropriate in jurisdiction in which the Individual Property is located and that would be satisfactory to a prudent lender acting reasonably. In addition, Borrower shall provide all other documentation Lender reasonably requires to be delivered by Borrower in connection with such release (or assignment), together with an Officer's Certificate certifying that such documentation (i) is in compliance with all Legal Requirements and (ii) will effect such release (or assignment) in accordance with the terms of this Agreement. Borrower shall pay all reasonable third-party costs and expenses incurred by Lender in connection with such release (or assignment) and the then current reasonable and customary fee being assessed by Servicer, if any, to effect such release (or assignment).

Section 2.6. Cash Management.

2.6.1. Lockbox Account. (a) During the term of the Loan, Borrower shall establish and maintain an account (the "**Lockbox Account**") with Lockbox Bank in trust for the benefit of Administrative Agent for the benefit of Lender, which Lockbox Account shall be under the sole dominion and control of Administrative Agent. The Lockbox Account shall be titled as set forth in the Lockbox Agreement. Borrower hereby grants to Administrative Agent for the benefit of Lender a security interest in the Lockbox Account and all deposits at any time contained therein and the proceeds thereof and will take all actions necessary to maintain in favor of Administrative Agent a perfected security interest in the Lockbox Account, including, without limitation, filing UCC-1 financing statements and continuations thereof. Such financing statements may describe as the collateral covered thereby "all assets of the debtor, whether now owned or hereafter acquired" or words to that effect. Administrative Agent shall have the sole right to direct withdrawals from the Lockbox Account in accordance with and subject to the Lockbox Agreement and this Agreement and all costs and expenses for establishing and maintaining the Lockbox Account shall be paid by Borrower. All monies now or hereafter deposited into the Lockbox Account shall be deemed additional security for the Debt. The Lockbox Agreement and Lockbox Account shall remain in effect until the Loan has been repaid in full.

(b) Borrower shall, on or prior to the Closing Date, deliver written instructions to MGM/Mandalay Tenant to deliver all MGM/Mandalay Lease Rents payable under the Initial MGM/Mandalay Lease directly to the Lockbox Account (which written instructions may be included in the Initial MGM/Mandalay Lease). If a Replacement MGM/Mandalay Lease is entered into in accordance with the terms and provisions of this Agreement,

Borrower shall promptly deliver written instructions to any such Replacement MGM/Mandalay Tenant to deliver all MGM/Mandalay Lease Rents payable under any such Replacement MGM/Mandalay Lease directly to the Lockbox Account (which written instructions may be included in the Replacement MGM/Mandalay Lease). Borrower shall deposit all unrestricted funds received by Borrower or unrestricted funds readily available to Borrower pursuant to the express terms and provisions of the MGM/Mandalay Lease Documents into the Lockbox Account within one (1) Business Day after receipt thereof.

(c) If the Property is not subject to the MGM/Mandalay Lease and the Property is subject to a Brand Management Agreement, subject to Section 2.6.1(e), Borrower shall cause the Brand Manager pursuant to the Brand Management Agreement, and Brand Manager shall, deliver directly to the Lockbox Account all income and proceeds to which Borrower is entitled pursuant to the Brand Management Agreement within one (1) Business Day after Borrower is entitled to distributions thereto from Brand Manager pursuant to the Brand Management Agreement. If the Property is not subject to the MGM/Mandalay Lease and such Individual Property is not subject to a Brand Management Agreement, Borrower shall (i) cause the delivery of irrevocable written instructions to each of the credit card companies or credit card clearing banks with which Borrower or Manager has entered into merchant's agreements to deliver all receipts payable with respect to such Individual Property directly to the Lockbox Account and (ii) cause Manager to deposit all amounts received by Borrower or Manager constituting Rents into the Lockbox Account, not less than two (2) times per week during the term of the Loan.

(d) If the Property is not subject to the MGM/Mandalay Lease and the Property is subject to a Casino Management Agreement, so long as the Property is subject to a Casino Management Agreement with a Casino Operator, subject to Section 2.6.1(e), Borrower shall cause the Casino Operator pursuant to the Casino Management Agreement, and Casino Operator shall, deliver directly to the Lockbox Account all income and proceeds to which Borrower is entitled pursuant to the Casino Management Agreement within one (1) Business Day after Borrower is entitled to distributions thereto from Casino Operator pursuant to the Casino Management Agreement.

(e) If the Property is not subject to the MGM/Mandalay Lease, then in the event that any such amounts or any Rents in respect of the Property are paid directly to Borrower, Borrower shall deposit such amounts or such Rents into the Lockbox Account within two (2) Business Days following Borrower's receipt thereof or if the applicable Individual Property is being managed by a Brand Manager pursuant to a Brand Management Agreement or a Casino Operator pursuant to a Casino Management Agreement, to the applicable Manager Account. Borrower shall promptly direct any Person delivering any such amounts or such other Rents directly to Borrower, to deliver such amounts or such other Rents directly to the Lockbox Account or if the applicable Individual Property is being managed by a Brand Manager pursuant to a Brand Management Agreement or a Casino Operator pursuant to a Casino Management Agreement, to the applicable Manager Account. For the avoidance of doubt, capital contributions of the indirect owners of Borrower shall not constitute Rents.

(f) Borrower has obtained from Lockbox Bank, its agreement to transfer to the Cash Management Account (other than a reasonable peg balance and the reasonable fees of the Lockbox Bank as more particularly described in the Lockbox Agreement), during a Cash

Trap Period upon notice from Administrative Agent to Lockbox Bank of such Cash Trap Period, in immediately available funds by federal wire transfer or ACH transfers, all amounts on deposit in the Lockbox Account not less than two (2) times per week (the “**Cash Trap Sweep Instructions**”). In the event of a Cash Trap Event Cure, Administrative Agent shall, within three (3) Business Days of Borrower’s written request, provide notice of such Cash Trap Event Cure to the Lockbox Bank under the Lockbox Agreement that the Cash Trap Sweep Instructions are no longer in effect and that all amounts on deposit in the Lockbox Account shall be transferred by the Lockbox Bank to an account designated by Borrower. In the event a Cash Trap Period is not in effect, all amounts on deposit in the Lockbox Account shall be transferred by Lockbox Bank to an account designated by Borrower.

(g) Subject to Priority Waterfall Payments made pursuant to Section 3.5 of the Cash Management Agreement and Section 2.6.2(e) hereof, upon the occurrence and during the continuance of an Event of Default, Administrative Agent may, in addition to any and all other rights and remedies available to Administrative Agent, apply any sums then present in the Lockbox Account and the Cash Management Account to the payment of the Debt in any order in its sole discretion, subject to the terms of Section 7.6 of this Agreement.

(h) The Lockbox Account shall be an Eligible Account and shall not be commingled with other monies held by Borrower, Casino Operator, Manager or Lockbox Bank.

(i) Borrower shall not further pledge, assign or grant any security interest in the Lockbox Account or the monies deposited therein or permit any lien or encumbrance to attach thereto, or any levy to be made thereon, or any UCC-1 financing statements, except those naming Administrative Agent as the secured party, to be filed with respect thereto.

(j) Borrower shall indemnify Administrative Agent and Lender and hold Administrative Agent and Lender harmless from and against any and all actions, suits, claims, demands, liabilities, losses, damages, obligations and actual and out-of-pocket costs and expenses (including litigation costs and reasonable attorneys’ fees and expenses) arising from or in any way connected with the Lockbox Account and/or the Lockbox Agreement (unless arising from the gross negligence or willful misconduct of Administrative Agent or Lender) or the performance of the obligations for which the Lockbox Account was established.

(k) In the event that Borrower shall enter into a Brand Management Agreement or Casino Management Agreement, to the extent permitted by the terms of such Brand Management Agreement or Casino Management Agreement, and by any Gaming Laws, Borrower shall grant to Administrative Agent a security interest with respect to Borrower’s interest in each Manager Account maintained by such Brand Manager or Casino Operator and shall use commercially reasonable efforts to cause each Manager Account to be maintained as an Eligible Account. Borrower shall use commercially reasonable efforts to (i) cause such Brand Manager or Casino Operator to consent to such grant of security interest and (ii) cause the Eligible Institution holding such Manager Account to acknowledge such security interest, pursuant to a deposit account control agreement in form and substance reasonably acceptable to Lender, Eligible Institution, Borrower and such Brand Manager or Casino Operator.

2.6.2. Cash Management Account. (a) Upon the occurrence of a Cash Trap Period, Borrower shall establish and maintain a segregated Eligible Account (the “**Cash**

Management Account”) to be held by Agent in trust and for the benefit of Administrative Agent for the benefit of Lender, which Cash Management Account shall be under the sole dominion and control of Administrative Agent. The Cash Management Account shall be titled as set forth in the Cash Management Agreement. Borrower hereby grants to Administrative Agent for the benefit of Lender a security interest in the Cash Management Account and all deposits at any time contained therein and the proceeds thereof and will take all actions necessary to maintain in favor of Administrative Agent a perfected security interest in the Cash Management Account, including, without limitation, filing UCC-1 financing statements and continuations thereof. Borrower will not in any way alter or modify the Cash Management Account and will notify Administrative Agent of the account number thereof. Administrative Agent shall have the sole right to make withdrawals from the Cash Management Account and all costs and expenses for establishing and maintaining the Cash Management Account shall be paid by Borrower.

(b) The insufficiency of funds on deposit in the Cash Management Account shall not relieve Borrower from the obligation to make any payments, as and when due pursuant to this Agreement and the other Loan Documents, and such obligations shall be separate and independent, and not conditioned on any event or circumstance whatsoever.

(c) Subject to Section 2.6.2(d) hereof, all funds on deposit in the Cash Management Account following the occurrence and during the continuance of an Event of Default may be applied by Administrative Agent pursuant to the terms of any Loan Document in such order and priority as Administrative Agent shall determine, subject to the terms of Section 7.6 of this Agreement.

(d) Borrower hereby agrees that Administrative Agent may modify the Cash Management Agreement for the purpose of establishing additional sub accounts in connection with any payments otherwise required under this Agreement and the other Loan Documents and Administrative Agent shall provide prior written notice thereof to Borrower no less than five (5) Business Days prior to such modification.

(e) Notwithstanding anything contained herein or in the other Loan Documents to the contrary, Lender agrees that, notwithstanding the existence of an Event of Default, prior to a Priority Payment Cessation Event, Administrative Agent shall apply amounts on deposit in the Cash Management Account to payment of the Priority Waterfall Payments or, provided that all Priority Waterfall Payments have been made, for Protective Advances as reasonably determined by Administrative Agent. During the continuance of an Event of Default, any amounts remaining in the Cash Management Account after payment of the Priority Waterfall Payments and Protective Advances (to the extent a Priority Payment Cessation Event has not occurred) shall be applied by Administrative Agent in such order and priority as Administrative Agent shall determine, subject to the terms of Section 7.6 of this Agreement.

2.6.3. Payments Received Under the Cash Management Agreement. Notwithstanding anything to the contrary contained in this Agreement or the other Loan Documents, and provided no Event of Default has occurred and is continuing, Borrower’s obligations with respect to the payment of the Monthly Debt Service Payment Amount and amounts required to be deposited into the Reserve Funds, if any, shall be deemed satisfied to the extent sufficient amounts are deposited in the Cash Management Account to satisfy such

obligations pursuant to this Agreement and the Cash Management Agreement on the dates each such payment is required, regardless of whether any of such amounts are so applied by Lender.

2.6.4. Distributions to Mezzanine Borrower. All transfers of funds on deposit in the Cash Management Account to or for the benefit of the Mezzanine Lender, pursuant to this Agreement, the Cash Management Agreement or any of the other Loan Documents or the Mezzanine Loan Document are intended by Borrower, the Mezzanine Borrower and the Mezzanine Lender to constitute, and shall constitute, distributions from Borrower to the Mezzanine Borrower. No provision of the Loan Documents or the Mezzanine Loan Documents shall create a debtor-creditor relationship between Borrower and the Mezzanine Lender.

Section 2.7. Withholding Taxes.

(a) Payments Free of Taxes. Any and all payments by or on account of any obligation of Borrower under any Loan Document shall be made without deduction or withholding for any Section 2.7 Taxes, except as required by applicable law. If any applicable law (as determined in the good faith discretion of Borrower) requires the deduction or withholding of any Section 2.7 Tax from any such payment by Borrower, then Borrower shall be entitled to make such deduction or withholding and shall timely pay the full amount deducted or withheld to the relevant Governmental Authority in accordance with applicable law and, if such Section 2.7 Tax is an Indemnified Tax, then the sum payable by Borrower shall be increased as necessary so that after such deduction or withholding has been made (including such deductions and withholdings applicable to additional sums payable under this Section 2.7(a)) Lender receives an amount equal to the sum it would have received had no such deduction or withholding been made. For the purposes of this Section 2.7, the term “applicable law” shall include FATCA.

(b) Payment of Other Taxes by Borrower. Borrower shall timely pay to the relevant Governmental Authority in accordance with applicable law any Other Taxes.

(c) Indemnification by Borrower. Borrower shall indemnify Lender, within 10 days after demand therefor, for the full amount of any Indemnified Taxes (including Indemnified Taxes imposed or asserted on or attributable to amounts payable under this Section 2.7) payable or paid by such Lender or required to be withheld or deducted from a payment to such Lender and any reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to Borrower by a Lender shall be conclusive absent manifest error.

(d) Evidence of Payments. As soon as practicable after any payment of Section 2.7 Taxes by Borrower to a Governmental Authority pursuant to this Section 2.7, Borrower shall deliver to Lender 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 Lender.

(e) Status of Lenders. (i) Any Lender that is entitled to an exemption from or reduction of withholding Section 2.7 Tax with respect to payments made under any Loan Document shall deliver to Borrower, at the time or times reasonably requested by Borrower, such

properly completed and executed documentation reasonably requested by Borrower as will permit such payments to be made without withholding or at a reduced rate of withholding. In addition, any Lender, if reasonably requested by Borrower, shall deliver such other documentation prescribed by applicable law or reasonably requested by Borrower as will enable Borrower to determine whether or not such Lender is subject to backup withholding or information reporting requirements. Notwithstanding anything to the contrary in the preceding two sentences, the completion, execution and submission of such documentation (other than such documentation set forth in Section 2.7(e)(ii)(A), Section 2.7(e)(ii)(B), and Section 2.7(e)(ii)(D) below) shall not be required if in Lender's reasonable judgment such completion, execution or submission would subject such Lender to any material unreimbursed cost or expense or would materially prejudice the legal or commercial position of such Lender.

(ii) Without limiting the generality of the foregoing,

(A) any Lender that is a U.S. Person shall deliver to Borrower on or prior to the date on which such Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of Borrower), executed originals of IRS Form W-9 certifying that such Lender is exempt from U.S. federal backup withholding tax;

(B) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to Borrower (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of Borrower), whichever of the following is applicable:

(1) in the case of a Foreign Lender claiming the benefits of an income tax treaty to which the United States is a party (x) with respect to payments of interest under any Loan Document, executed originals of IRS Form W-8BEN or W-8BEN-E establishing an exemption from, or reduction of, U.S. federal withholding Section 2.7 Tax pursuant to the "interest" article of such tax treaty and (y) with respect to any other applicable payments under any Loan Document, IRS Form W-8BEN or W-8BEN-E establishing an exemption from, or reduction of, U.S. federal withholding Section 2.7 Tax pursuant to the "business profits" or "other income" article of such tax treaty;

(2) executed originals of IRS Form W-8ECI;

(3) in the case of a Foreign Lender claiming the benefits of the exemption for portfolio interest under Section 881(c) of the Code, (x) a certificate substantially in the form attached hereto as Exhibit B-1 to the effect that such Foreign Lender is not a "bank" within the meaning of Section 881(c)(3)(A) of the Code, a "10 -percent shareholder" of Borrower within the meaning of Section 881(c)(3)(B) of the Code, or a "controlled

foreign corporation” described in Section 881(c)(3)(C) of the Code (a “**U.S. Tax Compliance Certificate**”) and (y) executed originals of IRS Form W-8BEN or W-8BEN-E; or

(4) to the extent a Foreign Lender is not the beneficial owner, executed originals of IRS Form W-8IMY, accompanied by IRS Form W-8ECI, IRS Form W-8BEN or W-8BEN-E, a U.S. Tax Compliance Certificate substantially in the form attached hereto as Exhibit B-2 or Exhibit B-3, IRS Form W-9, and/or other certification documents from each beneficial owner, as applicable; provided that if the Foreign Lender is a partnership and one or more direct or indirect partners of such Foreign Lender are claiming the portfolio interest exemption, such Foreign Lender may provide a U.S. Tax Compliance Certificate substantially in the form attached hereto as Exhibit B-4 on behalf of each such direct and indirect partner;

(C) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to Borrower (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of Borrower), executed originals of any other form prescribed by applicable law as a basis for claiming exemption from or a reduction in U.S. federal withholding Section 2.7 Tax, duly completed, together with such supplementary documentation as may be prescribed by applicable law to permit Borrower to determine the withholding or deduction required to be made; and

(D) if a payment made to a Lender under any Loan Document would be subject to a withholding Section 2.7 Tax imposed by FATCA if such Lender were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Code, as applicable), such Lender shall deliver to Borrower at the time or times prescribed by law and at such time or times reasonably requested by Borrower such documentation prescribed by applicable law (including as prescribed by Section 1471(b)(3)(C)(i) of the Code) and such additional documentation reasonably requested by Borrower as may be necessary for Borrower to comply with its obligations under FATCA and to determine that such Lender has complied with such Lender’s obligations under FATCA or to determine the amount to deduct and withhold from such payment. Solely for purposes of this clause (D), “FATCA” shall include any amendments made to FATCA after the date of this Agreement.

Each Lender agrees that if any form or certification it previously delivered expires or becomes obsolete or inaccurate in any respect, it shall update such form or certification or promptly notify Borrower in writing of its legal inability to do so.

(f) Treatment of Certain Refunds. If any party determines, in its sole discretion exercised in good faith, that it has received a refund of any Section 2.7 Taxes as to which it has been indemnified pursuant to this Section 2.7 (including by the payment of additional amounts pursuant to this Section 2.7), it shall pay to the indemnifying party an amount equal to such refund (but only to the extent of indemnity payments made under this Section with respect to the Section 2.7 Taxes giving rise to such refund), net of all out-of-pocket expenses (including Section 2.7 Taxes) of such indemnified party and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund). Such indemnifying party, upon the request of such indemnified party, shall repay to such indemnified party the amount paid over pursuant to this paragraph (f) (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) in the event that such indemnified party is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this paragraph (f), in no event will the indemnified party be required to pay any amount to an indemnifying party pursuant to this paragraph (f) the payment of which would place the indemnified party in a less favorable net after tax position than the indemnified party would have been in if the Section 2.7 Tax subject to indemnification and giving rise to such refund had not been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts with respect to such Section 2.7 Tax had never been paid. This paragraph shall not be construed to require any indemnified party to make available its tax returns (or any other information relating to its Section 2.7 Taxes that it deems confidential) to the indemnifying party or any other Person.

(g) Survival. Each party's obligations under this Section 2.7 shall survive any assignment of rights by, or the replacement of, a Lender and the repayment, satisfaction or discharge of all obligations under any Loan Document. Notwithstanding the foregoing or anything to the contrary set forth in this Section 2.7, Borrower shall not be obligated to pay pursuant to this Section 2.7, and Lender shall not be entitled to claim compensation pursuant to this Section 2.7 for any amounts which were incurred or which accrued more than ninety (90) days before the date Lender notified Borrower of the circumstance on which such claim of compensation is based and delivered to Borrower a written statement setting forth in reasonable detail the basis for calculating the amounts payable by Borrower under this Section 2.7.

(h) Lender hereby agrees that, upon the occurrence of any circumstances entitling Lender to additional amounts pursuant to this Section 2.7, Lender shall use reasonable efforts (consistent with its internal policy and legal and regulatory restrictions) to designate a different applicable lending office for the receipt of payments with respect to, or the funding or booking of, its Loan hereunder, if, in the reasonable judgment of such Lender, such designation (i) would eliminate or reduce such additional amounts payable pursuant to Section 2.7 in the future, and (ii) would not subject such Lender to any material unreimbursed cost or expense and would not otherwise be materially disadvantageous to such Lender. Borrower hereby agrees to pay all reasonable costs and expenses incurred by any Lender in connection with such designation.

Section 2.8. Defeasance.

2.8.1. Voluntary Defeasance.

(a) Borrower shall have the right at any time after the Permitted Defeasance Date to voluntarily defease all of the remaining principal balance of the Loan, or a portion thereof solely in connection with a release of an Individual Property from the Lien of the applicable Mortgage pursuant to Section 2.5 hereof (except as otherwise provided in this Section 2.8.1(a)), by and upon satisfaction of the following conditions (such event being a “Total Defeasance Event” with respect to the defeasance of the entire Loan and a “Partial Defeasance Event” with respect to a defeasance of only a portion of the Loan in connection with the release of an Individual Property pursuant to Section 2.5 hereof, in either case, each, a “Defeasance Event”):

(i) Borrower shall provide not less than ten (10) days prior written notice to Lender specifying the Payment Date (with respect to a Total Defeasance Event such date being the “**Total Defeasance Date**” and with respect to a Partial Defeasance Event, such date being the “**Partial Defeasance Date**” in either case, each, a “**Defeasance Date**”) on which the applicable Defeasance Event is to occur (which notice shall be revocable and subject to modification so long as Borrower shall reimburse Lender for its actual out-of-pocket costs or expenses incurred as a result of such revocation or modification);

(ii) Borrower shall pay to Lender all accrued and unpaid interest on the outstanding principal amount of the Loan being defeased to and including the Defeasance Date. If for any reason the Defeasance Date is not a Payment Date, Borrower shall also pay interest that would have accrued on the Note in respect of the outstanding principal amount of the Loan being defeased through and including the next Payment Date, provided, however, if the applicable Partial Defeasance Collateral or Total Defeasance Collateral, as applicable, shall include (or if the U.S. Obligations purchased with such applicable Partial Defeasance Collateral or the Total Defeasance Collateral, as applicable, shall provide for payment of) all principal and interest computed from the Payment Date prior to the applicable Defeasance Date through the next succeeding Payment Date, Borrower shall not be required to pay such short term interest in respect of the amount of the Loan being defeased pursuant to this sentence;

(iii) Borrower shall pay to Lender all other sums, not including scheduled interest or principal payments, then due under the Note, this Agreement, each Mortgage and the other Loan Documents;

(iv) Borrower shall deliver the Partial Defeasance Collateral or the Total Defeasance Collateral, as applicable;

(v) Borrower shall execute and deliver a pledge and security agreement in favor of Lender, in form and substance that would be reasonably satisfactory to a prudent lender creating a first priority lien and security interest in the Partial Defeasance Collateral or the Total Defeasance Collateral, as applicable, in accordance with the provisions of this Section 2.8 (the “**Defeasance Security Agreement**”);

(vi) Borrower shall deliver an opinion of counsel for Borrower in form and substance that is standard in commercial mortgage backed securitization transactions and subject only to customary qualifications, stating, among other things, that (1) Lender has a perfected security interest in the Partial Defeasance Collateral or the Total Defeasance Collateral, as applicable, and that the Defeasance Security Agreement is enforceable against Borrower in accordance with its terms; and (2) if the Loan (or any portion thereof) is held in a REMIC Trust formed pursuant to a Securitization, such REMIC Trust will not fail to maintain its status as a “real estate mortgage investment conduit” within the meaning of Section 860D of the Code as a result of such defeasance;

(vii) Following a rated Securitization, Borrower shall deliver a Rating Agency Confirmation with respect to such Total Defeasance Event or Partial Defeasance Event, as applicable, to the effect that such release will not result in a downgrade, withdrawal or qualification of the respective ratings in effect immediately prior to such Defeasance Event for the Securities issued in connection with the Securitization which are then outstanding. If reasonably required by the applicable Approved Rating Agencies, Borrower shall also deliver or cause to be delivered an Additional Insolvency Opinion with respect to the Successor Borrower from counsel satisfactory to Lender in form and substance satisfactory to Lender and the applicable Approved Rating Agencies;

(viii) Borrower shall deliver to Lender an Officer’s Certificate certifying that the requirements set forth in this Section 2.8.1 have been satisfied;

(ix) Borrower shall deliver written confirmation from an independent certified public accountant certifying that the Total Defeasance Collateral or the Partial Defeasance Collateral, as applicable, is sufficient to result in payments satisfying the requirements of the definition of Total Defeasance Collateral or Partial Defeasance Collateral, as applicable;

(x) Borrower shall deliver such other certificates, documents or instruments as Lender may reasonably request in connection with such Total Defeasance Event or Partial Defeasance Event, as applicable;

(xi) Borrower shall pay all costs and expenses of Lender incurred in connection with the Defeasance Event, including (A) any costs and expenses associated with a release of the Lien of the applicable Mortgage as provided in Section 2.5.1(a)(vi) hereof (without duplication of any amounts owed pursuant to Section 2.8.1(a)(xiii)), (B) reasonable attorneys’ fees and expenses incurred in connection with the Defeasance Event, (C) the costs and expenses of the Approved Rating Agencies, (D) any revenue, documentary stamp or intangible taxes or any other tax or charge due in connection with the transfer of the Note, or otherwise required to accomplish the defeasance and (E) the costs and expenses of Servicer and any trustee, including reasonable attorneys’ fees and expenses;

(xii) In connection with a Partial Defeasance Event, (x) if no Componentization Notice has been delivered, the Notes shall be defeased

sequentially relative to Note A and Note B in accordance with Section 2.4.4 hereof (as if such Partial Defeasance Event is a prepayment hereunder) or (y) if a Componentization Notice has been delivered, the note components shall be defeased sequentially, starting with the most senior note component, or in such other sequence as may be specified in such Componentization Notice. Subject to the preceding sentence, Lender shall prepare and Borrower shall execute all necessary documents to modify this Agreement and to amend and restate (A) each Note A and issue two substitute notes for each Note A, one note having a principal balance equal to the pro rata portion of the Release Amount (or, in the event of a Third Party Waived DSCR Release, the Third Party Waived DSCR Release Price) (or, in each instance, applicable portion thereof) for the applicable Release Property relative to the principal amount of such Note A (each, a “**Note A Defeased Note**”), and the other note having a principal balance equal to the excess of (1) the principal amount of such Note A existing immediately prior to the applicable Partial Defeasance Event, over (2) the amount of the related Note A Defeased Note (each, a “**Note A Undefeased Note**”) and (B) each Note B and issue two substitute notes for each Note B, one note having a principal balance equal to the pro rata portion of the Release Amount (or, in the event of a Third Party Waived DSCR Release, the Third Party Waived DSCR Release Price) (or, in each instance, applicable portion thereof) for the applicable Release Property relative to the principal amount of such Note B (each, a “**Note B Defeased Note**” and together with the Note A Defeased Note, individually and/or collectively, as the context may require, the “**Defeased Note**”), and the other note having a principal balance equal to the excess of (1) the principal amount of such Note B existing immediately prior to the applicable Partial Defeasance Event, over (2) the amount of the related Note B Defeased Note (each, a “**Note B Undefeased Note**”, and together with the Note A Undefeased Note, individually and/or collectively, as the context may require, the “**Undefeased Note**”). Each Defeased Note and the related Undefeased Note shall have identical terms as the applicable original Note except for the principal balance. Notwithstanding anything to the contrary contained herein or in the other Loan Documents, the Defeased Note and the Undefeased Note shall not be cross-defaulted or cross-collateralized unless the Rating Agencies or Lender shall require otherwise. A Defeased Note may not be the subject of any further defeasance; and (xiii) In connection with a Partial Defeasance Event only, Borrower shall have satisfied all conditions for the release of an Individual Property in accordance with Section 2.5.1(a) hereof (or, if such Partial Defeasance Event is in connection with a Default Release, Borrower shall have satisfied all conditions for the release of an Individual Property in accordance with Section 2.5.1(c) hereof (provided, that, in either instance, Borrower shall not be required to satisfy the requirements set forth in Section 2.5.1(a)(iii))).

(b) Borrower, pursuant to the Defeasance Security Agreement or other appropriate document, shall authorize and direct that the payments received from the Total Defeasance Collateral or the Partial Defeasance Collateral, as applicable, may be made directly to Lender and applied to satisfy the Debt Service obligations of Borrower under this Agreement and the Note.

2.8.2. Defeasance Collateral. Each of the U.S. Obligations that are part of the Partial Defeasance Collateral or the Total Defeasance Collateral, as applicable, shall be duly endorsed by the holder thereof as directed by Lender or accompanied by a written instrument of transfer in form and substance that would be satisfactory to a prudent lender (including, without limitation, such instruments as may be required by the depository institution holding such securities or by the issuer thereof, as the case may be, to effectuate book-entry transfers and pledges through the book-entry facilities of such institution) in order to perfect upon the delivery of the Partial Defeasance Collateral or the Total Defeasance Collateral, as applicable, a first-priority security interest therein in favor of Lender in conformity with all applicable state and federal laws governing the granting of such security interests.

2.8.3. Successor Borrower. In connection with a Total Defeasance Event or Partial Defeasance Event under this Section 2.8, Borrower shall establish or designate a successor entity (the “**Successor Borrower**”) acceptable to Lender in its reasonable discretion, which shall be a Special Purpose Entity, which shall not own any assets or have any liabilities or operate any property other than the Total Defeasance Collateral or Partial Defeasance Collateral, as applicable (except in connection with other defeased loans held in the same securitized loan pool with the Loan). Borrower shall transfer and assign all obligations, rights and duties under and to the Note or Defeased Note (as applicable) and the Security Agreement, together with the Total Defeasance Collateral or Partial Defeasance Collateral (as applicable) to such Successor Borrower. Such Successor Borrower shall assume the obligations under the Note or Defeased Note (as applicable) and the Defeasance Security Agreement and Borrower shall be relieved of its obligations under such documents. Borrower shall pay \$1,000 to any such Successor Borrower as consideration for assuming the obligations under the Note and the Defeasance Security Agreement. Notwithstanding anything in this Agreement to the contrary, no other assumption fee shall be payable upon a transfer of the Note in accordance with this Section 2.8.3, but Borrower shall pay all costs and expenses incurred by Lender, including Lender’s attorneys’ fees and expenses and any fees and expenses of any Approved Rating Agencies, incurred in connection therewith.

ARTICLE III.

CONDITIONS PRECEDENT

Section 3.1. Conditions Precedent to Closing. The obligation of Lender to make the Loan hereunder is subject to the fulfillment by Borrower or waiver by Lender of all of the conditions precedent to closing set forth in the term sheet for the Loan.

ARTICLE IV.

REPRESENTATIONS AND WARRANTIES

Section 4.1. Borrower Representations. Borrower represents and warrants as of the Closing Date that:

4.1.1. Organization. Each Borrower and each Principal has been duly organized and is validly existing and in good standing with requisite power and authority to own or lease the applicable Individual Property and to transact the businesses in which it is now engaged.

Each Borrower is duly qualified to do business and is in good standing in each jurisdiction where it is required to be so qualified in connection with its businesses and operations. Each Borrower possesses all rights, licenses, permits and authorizations, governmental or otherwise, necessary to entitle it to own or lease the applicable Individual Property and to transact the businesses in which it is now engaged, except to the extent the failure to possess such rights, licenses and permits would not reasonably be expected to materially and adversely affect each Borrower or any Individual Property. The sole purpose of each Borrower is as set forth in subsection (i) of the definition of “Special Purpose Entity”. The ownership interests in each Borrower are as set forth on the organizational chart attached hereto as Schedule 4.1.1; provided, for the avoidance of doubt, Borrower makes no representation as to the organizational structure of MGM/Mandalay Tenant or MGM/Mandalay Lease Guarantor.

4.1.2. Proceedings. Borrower has taken all necessary action to authorize the execution, delivery and performance of this Agreement and the other Loan Documents to which it is a party. This Agreement and such other Loan Documents to which it is a party have been duly executed and delivered by or on behalf of Borrower and constitute legal, valid and binding obligations of Borrower, enforceable against Borrower in accordance with their respective terms, subject only to applicable bankruptcy, insolvency and similar laws affecting rights of creditors generally, and subject, as to enforceability, to general principles of equity (regardless of whether enforcement is sought in a proceeding in equity or at law).

4.1.3. No Conflicts. The execution, delivery and performance of this Agreement and the other Loan Documents by Borrower will not conflict with or result in a breach of any of the terms or provisions of, or constitute a default under, or result in the creation or imposition of any lien, charge or encumbrance (other than pursuant to the Loan Documents) upon any of the property or assets of Borrower pursuant to the terms of any indenture, mortgage, deed of trust, loan agreement, partnership agreement, management agreement or other agreement or instrument to which Borrower is a party or to Borrower’s Knowledge, by which any of Borrower’s property or assets are subject (unless consents from all applicable parties thereto have been obtained), nor will such action result in any violation of the provisions of any statute or any order, rule or regulation of any Governmental Authority having jurisdiction over Borrower or any of Borrower’s properties or assets, and any consent, approval, authorization, order, registration or qualification of or with any court or any such Governmental Authority required for the execution, delivery and performance by Borrower of this Agreement or any other Loan Documents (and the rights and remedies of Lender provided in the Loan Documents, subject to the limitations upon the exercise of such rights and remedies pursuant to applicable Gaming Laws) to which it is a party has been obtained and is in full force and effect.

4.1.4. Litigation. There are no actions, suits or proceedings at law or in equity by or before any Governmental Authority or other agency or any unpaid indemnification obligations for which a claim has been made now pending or to Borrower’s Knowledge, threatened against or affecting Borrower, Principal or Borrower’s interest in any Individual Property, which actions, suits, proceedings or any unpaid indemnification obligations, if determined against Borrower, Principal or Borrower’s interest in any Individual Property, would reasonably be expected to have a material adverse effect on the condition (financial or otherwise) or business of Borrower and Principal, taken as a whole, or the condition or ownership of any Individual Property. To Borrower’s Knowledge, except as disclosed in the public filings of MGM/Mandalay Lease Guarantor, there are no actions, suits or proceedings at

law or in equity by or before any Governmental Authority or other agency or any unpaid indemnification obligations for which a claim has been made now pending or threatened against or affecting MGM/Mandalay Tenant or MGM/Mandalay Lease Guarantor, which actions, suits, proceedings or any unpaid indemnification obligations, if determined against MGM/Mandalay Tenant or MGM/Mandalay Lease Guarantor, would reasonably be expected to have a material adverse effect on the condition (financial or otherwise) or business of Borrower and Principal, taken as a whole, or the condition or ownership of any Individual Property.

4.1.5. Agreements. Other than the MGM/Mandalay Lease, Borrower is not a party to any agreement or instrument or subject to any restriction which would reasonably be expected to materially and adversely affect Borrower or any Individual Property, or, Borrower's business, properties or assets, operations or condition, financial or otherwise. Borrower is not in default in any material respect in the performance, observance or fulfillment of any of the obligations, covenants or conditions contained in any agreement or instrument to which it is a party or by which Borrower or any Individual Property is bound, except to the extent such default would not reasonably be expected to materially and adversely affect Borrower or any Individual Property. Borrower has no material financial obligation under any indenture, mortgage, deed of trust, loan agreement or other agreement or instrument to which Borrower is a party or by which Borrower or any Individual Property is otherwise bound, other than (a) obligations incurred in the ordinary course of the operation of each Individual Property as permitted pursuant to clause (xx) of the definition of "Special Purpose Entity" set forth in Section 1.1 hereof and (b) Permitted Indebtedness or obligations under the Loan Documents. As of the Closing Date, other than with respect to any Leases, Casino Management Agreement, Management Agreement, Franchise/License Agreement, the CBA, the MGM/Mandalay Lease, a Letter of Credit, any documents disclosed in any Title Insurance Policy, Permitted Encumbrances and any other agreements permitted to be entered into pursuant to the terms of this Agreement, all agreements or other instruments to which Borrower is a party are (x) terminable upon no more than sixty (60) days' prior written notice without penalty or fee or (y) with respect to such agreement or instrument, require Borrower to make payments during each calendar year during the term of such agreement or instrument in an aggregate yearly amount with respect to any Individual Property that is less than or equal to \$250,000.

4.1.6. Title. Borrower has good, marketable and insurable fee simple title to the real property comprising part of each Individual Property and good title to the balance of such Individual Property, free and clear of all Liens whatsoever except the Permitted Encumbrances, such other Liens as are permitted pursuant to the Loan Documents and the Liens created by the Loan Documents. The Permitted Encumbrances in the aggregate do not materially and adversely affect the value, operation or use of any applicable Individual Property (as currently used) or Borrower's ability to repay the Loan. Each Mortgage, when properly recorded in the appropriate records, together with any Uniform Commercial Code financing statements required to be filed in connection therewith and the Assignment of Security Interests, will create (a) a perfected lien on Borrower's interests in the applicable Individual Property, subject only to Permitted Encumbrances and the Liens created by the Loan Documents and (b) perfected security interests in and to, and valid collateral assignments of, all personalty (including all of Borrower's interest in and to the MGM/Mandalay Lease) to the extent a security interest may be perfected therein by the recording of the Mortgage or the filing of a financing statement under the Uniform Commercial Code, all in accordance with the terms thereof, in each case subject only to any applicable Permitted Encumbrances, such other Liens as are permitted pursuant to the express

terms and conditions of the MGM/Mandalay Lease, the Loan Documents and the Liens created by the Loan Documents. Except as set forth in any Title Insurance Policy, to Borrower's Knowledge, there are no claims for payment for work, labor or materials affecting any Individual Property which are a Lien prior to, or of equal priority with, the Liens created by the Loan Documents and as to which Lender has not otherwise received affirmative insurance in the applicable Title Insurance Policy (in form and substance satisfactory to Lender in all respects).

4.1.7. Solvency. Borrower has not entered into this transaction or executed the Note, this Agreement or any other Loan Documents with the actual intent to hinder, delay or defraud any creditor and Borrower has received reasonably equivalent value in exchange for its obligations under such Loan Documents. After giving effect to the Loan, the fair saleable value of Borrower's assets exceeds and will, immediately following the making of the Loan, exceed Borrower's total liabilities, including, without limitation, subordinated, unliquidated, disputed and contingent liabilities. The fair saleable value of Borrower's assets is and will, immediately following the making of the Loan, be greater than Borrower's probable liabilities, including the maximum amount of its contingent liabilities on its debts as such debts become absolute and matured. Borrower's assets do not and, immediately following the making of the Loan will not, constitute unreasonably small capital to carry out its business as conducted or as proposed to be conducted. Borrower does not intend to, or believes that it will, incur debt and liabilities (including contingent liabilities and other commitments) beyond its ability to pay such debt and liabilities as they mature (taking into account the timing and amounts of cash to be received by Borrower and the amounts to be payable on or in respect of obligations of Borrower). No petition in bankruptcy has been filed against Borrower or Principal, or any of their respective constituent Persons in the last seven (7) years, and none of Borrower, Principal, or any constituent Person in the last seven (7) years has ever made an assignment for the benefit of creditors or taken advantage of any insolvency act for the benefit of debtors. None of Borrower or any of its constituent Persons are contemplating either the filing of a petition by it under any state or federal bankruptcy or insolvency laws or the liquidation of all or a major portion of Borrower's or Principal's assets or property, and Borrower does not have any Knowledge of any Person contemplating the filing of any such petition against it or such constituent Persons.

4.1.8. Full and Accurate Disclosure. No statement of fact made by Borrower in this Agreement or in any of the other Loan Documents contains any untrue statement of a material fact or omits to state any material fact necessary to make statements contained herein or therein not misleading. There is no material fact presently known to Borrower which has not been disclosed to Lender which adversely affects, nor as far as Borrower can reasonably foresee, would be reasonably likely to materially and adversely affect, any Individual Property or the business, operations or condition (financial or otherwise) of Borrower.

4.1.9. No Plan Assets. As of the date of this Agreement, Borrower is not an "employee benefit plan," as defined in Section 3(3) of ERISA, subject to Part 4, Subtitle B of Title I of ERISA, and none of the respective assets of Borrower or Guarantor constitute "plan assets" of any benefit plan investor within the meaning of 29 C.F.R. Section 2510.3 101, as modified by Section 3(42) of ERISA, as amended from time to time (the "**Plan Asset Regulations**"). Except as could not reasonably be expected, individually or in the aggregate to have a material adverse effect on Borrower or the Property, none of Borrower, Guarantor or any ERISA Affiliate is obligated to contribute to any employee benefit plan (as so defined) subject to Title IV of ERISA. Assuming compliance by Lender with paragraph (c) of Section

5.2.8 of this Agreement, transactions contemplated hereunder by or with Borrower or Guarantor are not subject to any state or other statute or regulation applicable to Borrower or Guarantor with respect to governmental plans within the meaning of Section 3(32) of ERISA which are substantially similar to the prohibited transaction provisions of Section 406 of ERISA or Section 4975 of the Code currently in effect and which prohibit the transactions contemplated by this Agreement, including, but not limited to the exercise by Lender of any of its rights under the Loan Documents. For the avoidance of doubt, the representations set forth in this Section 4.1.9 are not intended to cover MGM or its Affiliates.

4.1.10. Compliance. Except as set forth on the zoning report for each Individual Property delivered to Lender on or before the Closing Date, Borrower and each Individual Property and the use thereof comply in all material respects with all applicable Legal Requirements, including, without limitation, building and zoning ordinances and codes, except to the extent such failure to comply would not reasonably be expected to have a material adverse effect on the applicable Individual Property. Borrower is not in default or violation of any order, writ, injunction, decree or demand of any Governmental Authority. There has not been committed by Borrower or to the best of Borrower's Knowledge, any other Person in occupancy of or involved with the operation or use of any Individual Property any act or omission affording the federal government or any other Governmental Authority the right of forfeiture as against any Individual Property or any part thereof or any monies paid in performance of Borrower's obligations under any of the Loan Documents.

4.1.11. Financial Information. All financial data, including, without limitation, the statements of cash flow and income and operating expense, that have been delivered to Lender in connection with the Loan by or at the direction of Borrower (i) are true, complete and correct in all material respects (or to the extent that any such financial data was incorrect in any material respect when delivered, the same have been corrected by financial data subsequently delivered to Lender prior to the Closing Date in writing and containing an express reference to any and all such concerns), (ii) accurately represent the financial condition of Borrower and the Property, in each case, in all material respects, as applicable, as of the date of such reports, and (iii) to the extent prepared or audited by an independent certified public accounting firm and described therein as having been prepared in accordance with GAAP, have been prepared in accordance with GAAP throughout the periods covered, except as disclosed therein. The foregoing representation shall not apply to any such financial data that constitutes projections, provided that Borrower represents and warrants that such projections were made in good faith and that Borrower has no reason to believe that such projections are materially inaccurate. Except for Permitted Encumbrances, Borrower does not have any contingent liabilities, liabilities for taxes, unusual forward or long term commitments or unrealized or anticipated losses from any unfavorable commitments that are known to Borrower and are reasonably likely to have a material adverse effect on any Individual Property or the current operation thereof as an entertainment venue, arena, resort, restaurant, hotel and casino purposes and other appurtenant and related uses, except as referred to or reflected in said financial statements. Since the date of such financial statements, there has been no materially adverse change in the financial condition, operations or business of Borrower or to Borrower's Knowledge, MGM/Mandalay Tenant and MGM/Mandalay Lease Guarantor, from that set forth in said financial statements.

4.1.12. Condemnation. No Condemnation or other proceeding has been commenced or, to the best of Borrower's Knowledge, is threatened or, to Borrower's Knowledge, contemplated with respect to all or any portion of any Individual Property or for the relocation of roadways providing access to any Individual Property, other than to the extent the same would not reasonably be expected to have a material adverse effect on the Individual Property affected thereby.

4.1.13. Federal Reserve Regulations. No part of the proceeds of the Loan will be used for the purpose of purchasing or acquiring any "margin stock" within the meaning of Regulation U of the Board of Governors of the Federal Reserve System or for any other purpose which would be inconsistent with such Regulation U or any other Regulations of such Board of Governors, or for any purposes prohibited by Legal Requirements or by the terms and conditions of this Agreement or the other Loan Documents.

4.1.14. Utilities and Public Access. Except as set forth in the Initial MGM/Mandalay Lease, any Title Insurance Policy or any Survey or except to the extent that there is no material adverse effect on any Individual Property, (i) each Individual Property has rights of access to public ways and is served by water, sewer, sanitary sewer and storm drain facilities adequate to service such Individual Property for its intended uses; (ii) all public utilities necessary or convenient to the full use and enjoyment of each Individual Property are located either in the public right of way abutting such Individual Property (which are connected so as to serve such Individual Property without passing over other property) or in recorded easements serving such Individual Property and such easements are set forth in and insured by the applicable Title Insurance Policy; and (iii) all roads necessary for the use of each Individual Property for their current respective purposes have been completed and dedicated to public use and accepted by all Governmental Authorities.

4.1.15. Not a Foreign Person. Borrower (or if Borrower is a disregarded entity for U.S. federal income tax purposes, its regarded beneficial owner) is not a "foreign person" within the meaning of Section 1445(f)(3) of the Code.

4.1.16. Separate Lots. Except as set forth in any Title Insurance Policy, each Individual Property is comprised of one (1) or more parcels which constitute a separate tax lot or lots and does not constitute a portion of any other tax lot not a part of such Individual Property.

4.1.17. Assessments. Except as set forth in any Title Insurance Policy, to Borrower's Knowledge, (a) there are no pending or, to Borrower's Knowledge, proposed special or other assessments for public improvements or otherwise affecting any Individual Property and (b) there are not any contemplated improvements to any Individual Property that may result in such special or other assessments, except to the extent such assessment would not have a material adverse effect on the Individual Property.

4.1.18. Enforceability. The Loan Documents to which Borrower or Guarantor are a party are enforceable by Lender (or any subsequent holder thereof) in accordance with their respective terms, subject to principles of equity and bankruptcy, insolvency and other laws generally applicable to creditors' rights and the enforcement of debtors' obligations. The Loan Documents to which Borrower or Guarantor are a party are not subject to any right of rescission, set off, counterclaim or defense by Borrower or Guarantor, including the defense of usury, nor

would the operation of any of the terms of such Loan Documents, or the exercise of any right thereunder, render such Loan Documents unenforceable (subject to principles of equity and bankruptcy, insolvency and other laws generally affecting creditors' rights and the enforcement of debtors' obligations), and none of Borrower or Guarantor has asserted any right of rescission, set off, counterclaim or defense with respect thereto.

4.1.19. No Prior Assignment. There are no prior assignments, hypothecations or pledges of the MGM/Mandalay Lease or any portion of the MGM/Mandalay Lease Rent due and payable, except as permitted in accordance with the Loan Documents. There has been no prior assignments, hypothecations or pledges of any portion of the MGM/Mandalay Lease Rent to become due and payable which are presently outstanding, except as permitted in accordance with the Loan Documents.

4.1.20. Insurance. Borrower has obtained and has delivered to Lender a certificate of insurance for all Policies (or certified copies of any Policy, to the extent Lender shall have requested the same) reflecting the insurance coverages, amounts and other requirements set forth in this Agreement. To Borrower's Knowledge, no claims have been made or are currently pending, outstanding or otherwise remain unsatisfied under any such Policy and would reasonably be expected to have a material adverse effect with respect to any Individual Property, Borrower's ability to perform its obligations under the Loan Documents and/or Lender's security interest in such Individual Property, and none of Borrower, or, to Borrower's Knowledge, any other Person, has done, by act or omission, anything which would impair the coverage of any such Policy.

4.1.21. Use of Property. Each Individual Property is used exclusively for an entertainment venue, arena, resort, retail, restaurant, hotel, convention center and/or casino purposes and other appurtenant and related uses.

4.1.22. Certificate of Occupancy; Licenses. Except as set forth in the zoning reports delivered to Lender in connection with the closing of the Loan, all certifications, permits, licenses and approvals, including without limitation, certificates of completion and occupancy permits and any applicable hospitality licenses, liquor licenses and Gaming Licenses required for the legal use, occupancy and operation of each Individual Property as a hotel and casino (collectively, the "**Licenses**"), have been obtained and, to Borrower's Knowledge, are in full force and effect, except in each case, where the failure to obtain such certifications, permits, licenses or approvals or the failure of such certifications, permits, licenses or approvals to be in full force and effect does not have a material adverse effect on Borrower, taken as a whole, or any Individual Property. The use being made of each Individual Property is in conformity in all material respects with the certificate of occupancy, if any, issued for such Individual Property and, to Borrower's Knowledge, Gaming Licenses issued for such Individual Property.

4.1.23. Flood Zone. Except as set forth in the Surveys or the flood determinations obtained by Lender, none of the Improvements on any Individual Property are located in an area as identified by the Federal Emergency Management Agency as an area having special flood hazards and, if so located, the flood insurance required pursuant to Section 6.1(a)(i) is in full force and effect with respect to each such Individual Property.

4.1.24. Physical Condition. Except if the same do not, in the aggregate in respect of the Individual Property affected thereby, have a material adverse effect on such Individual Property, and except as disclosed in the property condition reports delivered to Lender in connection with the making of the Loan, to Borrower's Knowledge (i) each Individual Property, including, without limitation, all buildings, improvements, parking facilities, sidewalks, storm drainage systems, roofs, plumbing systems, HVAC systems, fire protection systems, electrical systems, equipment, elevators, exterior sidings and doors, landscaping, irrigation systems and all structural components, are in good condition, order and repair in all material respects; and (ii) there exists no structural or other material defects or damages in any Individual Property, whether latent or otherwise, and Borrower has not received notice from any insurance company or bonding company of any defects or inadequacies in any Individual Property, or any part thereof, which have not been remedied prior to the Closing Date and would adversely affect the insurability of the same or cause the imposition of extraordinary premiums or charges thereon or of any termination or threatened termination of any policy of insurance or bond.

4.1.25. Boundaries. Except as set forth in any Survey, all of the improvements which were included in determining the appraised value of each Individual Property lie wholly within the boundaries and building restriction lines of the such Individual Property, and, except as disclosed in any Survey, no improvements on adjoining properties encroach upon any Individual Property, and no easements or other encumbrances upon any Individual Property encroach upon any of the Improvements, so as to materially affect the value or marketability of the applicable Individual Property except those which are insured against by the applicable Title Insurance Policy.

4.1.26. Leases. As of the Closing Date, to Borrower's Knowledge, no Individual Property is subject to any Leases other than the MGM/Mandalay Lease, each MGM/Mandalay Operating Sublease and the Leases described on Schedule 10 to the Initial MGM/Mandalay Lease. To Borrower's Knowledge, except as set forth on Schedule 4.1.26, no Individual Property is subject to any Material Leases.

4.1.27. Survey. To Borrower's Knowledge, except as shown in any Title Insurance Policy, the Survey for each Individual Property delivered to Lender in connection with this Agreement does not fail to reflect any material matter affecting such Individual Property or the title thereto, except to the extent the same would not be reasonably be expected to have a material adverse effect on Borrower, taken as a whole, or an Individual Property.

4.1.28. Inventory. Borrower, MGM/Mandalay Tenant or MGM/Mandalay Operating Subtenant is the owner of or leases substantially all of the Equipment, Fixtures and Personal Property (as such terms are defined in the Mortgages) located on or at each Individual Property. All of the Equipment, Fixtures and Personal Property (including (x) any Personal Property owned by MGM/Mandalay Tenant that is subject to the MGM/Mandalay Lease and (y) any Personal Property owned by MGM/Mandalay Operating Subtenant) are sufficient to operate the Properties in the manner required hereunder and in the manner in which they are currently operated, except to the extent the same would not be reasonably expected to have a material adverse effect on Borrower or any Individual Property.

4.1.29. Filing and Recording Taxes. All mortgage, mortgage recording, stamp, intangible or other similar tax required to be paid by any Person under applicable Legal Requirements currently in effect in connection with the execution, delivery, recordation, filing, registration, perfection or enforcement of any of the Loan Documents, including, without limitation, the Mortgages, have been paid (or sufficient funds have been escrowed with the title company issuing the applicable Title Insurance Policy for such payment), and, under current Legal Requirements, each Mortgage is enforceable in accordance with its terms by Lender (or any subsequent holder thereof), subject to principles of equity and bankruptcy, insolvency and other laws generally applicable to creditors' rights and the enforcement of debtors' obligations.

4.1.30. Special Purpose Entity/Separateness.

(a) Except as set forth on Schedule 4.1.30, each Loan Party has at all times since its formation been and is a Special Purpose Entity.

(b) The representations and warranties set forth in this Section 4.1.30 shall survive for so long as any amount remains payable to Lender under this Agreement or any other Loan Document.

(c) Any and all of the stated facts and assumptions made in any Insolvency Opinion, including, but not limited to, any exhibits attached thereto, will have been true and correct in all respects, and each Loan Party will have complied with all of the stated facts and assumptions made with respect to it in any Insolvency Opinion, in each case as of the date of such Insolvency Opinion. To Borrower's Knowledge, each entity other than the Loan Parties with respect to which an assumption is made or a fact stated in any Insolvency Opinion will have complied with all of the assumptions made and facts stated with respect to it in any such Insolvency Opinion, in each case as of the date of such Insolvency Opinion.

(d) Each Loan Party hereby represents with respect to itself and each other Loan Party that any amendment or restatement of any organizational document of any Loan Party has been accomplished in accordance with, and was permitted by, the relevant provisions of such document prior to its amendment or restatement from time to time.

(e) Any amendment or restatement of any Loan Party's organizational documents was accomplished in accordance with, and was permitted by, the relevant provisions of applicable law and the relevant provisions of said document prior to its amendment or restatement from time to time.

(f) Each Loan Party that is a limited liability company and Principal has at all times had at least one member and each Loan Party that is a limited partnership has at all times had one general partner and one limited partner that were different Persons, as applicable.

(g) Any payments made pursuant to the Loan Documents to or for the benefit of Borrower or Mezzanine Borrower shall constitute distributions to or at the discretion of the applicable equity owner of such entity.

(h) The Organizational Documents for each Loan Party that is a Delaware limited liability company provide and shall at all times during the term of the Loan provide that (1) except for duties to any Loan Party as set forth in the Organizational Documents (including

duties to the member and any Loan Party's creditors solely to the extent of their respective economic interests in such Loan Party, but excluding (i) all other interests of the member, (ii) the interests of other Affiliates of a Loan Party, and (iii) the interests of any group of Affiliates of which a Loan Party is a part), the Independent Directors shall not have any fiduciary duties to the member, any officer or any other Person bound by the applicable Loan Party's Organizational Documents; provided, however, the foregoing shall not eliminate the implied contractual covenant of good faith and fair dealing; (2) to the fullest extent permitted by law, including Section 18-1101(e) of the Delaware Limited Liability Company Act, an Independent Director shall not be liable to Borrower, the member or any other Person bound by the applicable Loan Party's Organizational Documents for breach of contract or breach of duties (including fiduciary duties), unless the Independent Director acted in bad faith or engaged in willful misconduct; (3) all right, power and authority of the Independent Directors shall be limited to the extent necessary to exercise those rights and perform those duties specifically set forth in the applicable Loan Party's Organizational Documents; (4) notwithstanding any other provision of the applicable Loan Party's Organizational Documents to the contrary, each Independent Director, in its capacity as an Independent Director, may only act, vote or otherwise participate in those matters referred to in Section 9(j)(iii) of the applicable Loan Party's Organizational Documents or as otherwise specifically required by the applicable Organizational Documents, and such Independent Director's act, vote or other participation shall not be required for the validity of any action taken by the board of directors of such Borrower unless, pursuant to the provisions of Section 9(j)(iii) or as otherwise specifically provided in the applicable Organizational Documents, such action would be invalid in the absence of the affirmative vote or consent of such Independent Director; and (5) such Loan Party shall not divide into multiple entities or series pursuant to Section 18-217 of the Delaware Limited Liability Company Act. For avoidance of doubt, each Loan Party shall at all times be either a Delaware limited liability company or a Delaware limited partnership with a Principal that is a Delaware limited liability company.

(i) Without limiting the foregoing in this Section 4.1.30, each Loan Party (i) has since the date of its formation been duly formed, validly existing and in good standing in the state of its formation and in all other jurisdictions where it is qualified to do business, (ii) subject to its right to contest taxes in good faith by appropriate proceedings, is not involved in any dispute with any taxing authority which is reasonably likely to have a material adverse effect on any Individual Property or the Loan Parties (taken as a whole), (iii) is not now and has never been, party to any lawsuit, arbitration, summons or legal proceeding that resulted in a judgment against it that has not been paid in full, and (iv) has all times since the date of its formation been a single purpose, bankruptcy remote entity and complied with the separateness covenants set forth in its respective Organizational Documents.

(j) Each Loan Party has no judgments or Liens of any nature against it except for Section 2.7 Tax liens not yet due and the Permitted Encumbrances.

(k) Intentionally Omitted.

(1) Each Loan Party has no material contingent or actual obligations not related to the Properties, in each case other than with respect to each Principal, such Principal's general partnership interest and obligations with respect to the Loan Party in which it owns an interest.

4.1.31. Intentionally Omitted.

4.1.32. Illegal Activity. No portion of any Individual Property has been or will be purchased by Borrower with proceeds of any illegal activity.

4.1.33. No Change in Facts or Circumstances; Disclosure. To Borrower's Knowledge, all information submitted by and on behalf of Borrower to Lender and in all financial statements, rent rolls, reports, certificates and other documents submitted in connection with the Loan or in satisfaction of the terms thereof and all statements of fact made by Borrower in this Agreement or in any other Loan Document, are true, complete and correct in all material respects (or to the extent any such data was incorrect in any material respect when delivered, the same has been corrected by information subsequently delivered to Lender on or prior to the date hereof). The foregoing representation shall not apply to any such financial information that constitutes projections, provided that each of Borrower represents and warrants that it has no reason to believe that such projections are materially inaccurate. There has been no material adverse change in any condition, fact, circumstance or event that would make any such information inaccurate, incomplete or otherwise misleading in any material respect or that otherwise materially and adversely affects or would reasonably be expected to materially and adversely affect the use, operation or value of the Property or the business operations or the financial condition of Borrower, taken as a whole (except to the extent further disclosed in writing to Lender). Borrower has disclosed to Lender all material facts known to Borrower and has not failed to disclose any material fact known to Borrower that could cause any Provided Information or representation or warranty made herein to be materially misleading.

4.1.34. Investment Company Act. Borrower is not (a) an "investment company" or a company "controlled" by an "investment company", within the meaning of the Investment Company Act of 1940, as amended; (b) a "holding company" or a "subsidiary company" of a "holding company" or an "affiliate" of either a "holding company" or a "subsidiary company" within the meaning of the Public Utility Holding Company Act of 2005, as amended; or (c) subject to any other federal or state law or regulation which purports to restrict or regulate its ability to borrow money.

4.1.35. Embargoed Person. As of the date hereof, (a) none of the funds or other assets of Borrower or any other Loan Party constitute property of, or are beneficially owned, directly or indirectly, by any person, entity or government subject to trade restrictions under U.S. law, including but not limited to, the USA PATRIOT Act (including anti-terrorism provisions thereof), the International Emergency Economic Powers Act, 50 U.S.C. §§ 1701 et seq., The Trading with the Enemy Act, 50 U.S.C. App. 1 et seq., and any Executive Orders or regulations promulgated thereunder with the result that the investment in Borrower or any other Loan Party (whether directly or indirectly), is prohibited by law or the Loan made by Lender is in violation of law ("**Embargoed Person**"); (b) none of the funds or other assets of Borrower or any other Loan Party constitute property of, or are beneficially owned, directly or indirectly, by any Embargoed Person; (c) no Embargoed Person has any interest of any nature whatsoever in Borrower with the result that the investment in Borrower or any other Loan Party (whether directly or indirectly), is prohibited by law or the Loan is in violation of law; and (d) none of the funds of Borrower or any other Loan Party have been derived from or are the proceeds of, any unlawful activity with the result that the investment in Borrower or any other Loan Party (whether directly or indirectly), is prohibited by law or the Loan is in violation of law. For the

avoidance of doubt, the representations set forth in this Section 4.1.35 are not intended to cover MGM or its Affiliates or any Person merely on account of the fact that such Person is the holder of (i) Publicly Traded Shares or (ii) shares of an Excluded Entity.

4.1.36. Principal Place of Business; State of Organization. Borrower's principal place of business as of the date hereof is the address set forth in the introductory paragraph of this Agreement. Each Individual Borrower is organized under the laws of the State of Delaware and their organizational identification numbers are listed on Schedule 4.1.36 attached hereto.

4.1.37. Intentionally Omitted.

4.1.38. Cash Management Account.

(a) The Cash Management Agreement and the Lockbox Agreement and this Agreement create a perfected security interest (as defined in the Uniform Commercial Code of the State of New York) in Lockbox Account (to the extent the Lockbox Account is opened as of the date hereof) and the Cash Management Account (to the extent the Cash Management Account is opened as of the date hereof) in favor of Administrative Agent for the benefit of Lender, which perfected security interest is prior to all other Liens, other than Permitted Encumbrances, and is enforceable as such against creditors of and purchasers from Borrower. Other than in connection with prior financings that have been repaid or discharged or that will be repaid or discharged as of the closing of the Loan or in connection with the Loan Documents and except for Permitted Encumbrances, Borrower has not sold, pledged, transferred or otherwise conveyed the Lockbox Account or the Cash Management Account;

(b) The Lockbox Account (to the extent the Lockbox Account is opened as of the date hereof) constitutes a "deposit account" within the meaning of the Uniform Commercial Code of the State of New York and the Cash Management Account (to the extent the Cash Management Account is opened as of the date hereof) constitutes a "securities account" within the meaning of the Uniform Commercial Code of the State of New York;

(c) Pursuant and subject to the terms hereof, the Cash Management Agreement, and the Lockbox Agreement, the Lockbox Bank and Agent have agreed (or, to the extent the Lockbox Account is not opened as of the date hereof, will agree) to comply with all instructions originated by Administrative Agent, without further consent by Borrower, directing disposition of the Lockbox Account and the Cash Management Account and all sums at any time held, deposited or invested therein, together with any interest or other earnings thereon, and all proceeds thereof (including proceeds of sales and other dispositions), whether accounts, general intangibles, chattel paper, deposit accounts, instruments, documents or securities;

(d) The Lockbox Account (to the extent the Lockbox Account is opened as of the date hereof) Account and the Cash Management Account (to the extent the Cash Management Account is opened as of the date hereof) are not in the name of any Person other than Borrower, as pledgor, or Administrative Agent for the benefit of Lender, as pledgee. Other than as set forth in the Cash Management Agreement or the Lockbox Agreement, Borrower has not consented to the Lockbox Bank and/or Agent complying with instructions with respect to the Lockbox Account and/or the Cash Management Account (to the extent the Cash Management Account is opened as of the date hereof) from any Person other than Administrative Agent.

4.1.39. Management Agreement; Casino Management Agreement; Franchise/License Agreement. Borrower is not a party to any Management Agreement, Casino Management Agreement or Franchise/License Agreement as of the Closing Date.

4.1.40. Taxes. Borrower is treated as a partnership, a disregarded entity or a taxable REIT subsidiary for U.S. federal income tax purposes. Borrower has timely filed or caused to be filed all federal income and other material Section 2.7 Taxes, returns and reports required to have been filed by it and has paid or caused to be paid all federal income and other material Section 2.7 Taxes and related liabilities required to have been paid by it, except Section 2.7 Taxes that are being contested in good faith by appropriate proceedings and for which Borrower has set aside on its books adequate reserves. There are no Liens for Section 2.7 Taxes on or with respect to any of Borrower's income or assets, other than Liens for Section 2.7 Taxes not yet due or delinquent or which are contested in good faith by appropriate proceedings and for which Borrower has set aside on its books adequate reserves.

4.1.41. Labor. No work stoppage, labor strike, slowdown or lockout is pending or, to Borrower's Knowledge, threatened by employees or other laborers at the Property. Except as would not reasonably be expected to have a material adverse effect on Borrower or the Property, Borrower (i) is not involved in or, to the best of Borrower's Knowledge, threatened with any material labor dispute, material grievance or litigation relating to labor matters involving any employees or other laborers at the Property, including, without limitation, violation of any federal, state or local labor, safety or employment laws (domestic or foreign) and/or charges of unfair labor practices or discrimination complaints, (ii) has not engaged with respect to the Property, in any unfair labor practices within the meaning of the National Labor Relations Act or the Railway Labor Act and (iii) other than as set forth on Schedule 5.1.20, is not a party to, or bound by, any existing collective bargaining agreement or union contract with respect to employees or other laborers at the Property.

4.1.42. Intentionally Omitted.

4.1.43. Intentionally Omitted.

4.1.44. Use of Proceeds. The Loan is for commercial purposes only and is not for personal, family, household or agricultural purposes.

4.1.45. Intentionally Omitted.

4.1.46. Liquor Licenses. Any and all liquor licenses that exist in respect of the Property are held by Borrower, MGM/Mandalay Tenant, a MGM/Mandalay Operating Subtenant, a Manager or a Casino Operator.

4.1.47. Intentionally Omitted.

Section 4.2. MGM/Mandalay Lease Representations. Borrower represents and warrants as of the Closing Date that:

4.2.1. MGM/Mandalay Lease.

(a) The MGM/Mandalay Lease or a memorandum of thereof has been (or will be promptly after the date hereof) duly recorded. There have not been amendments or modifications to the terms of the MGM/Mandalay Lease since recordation of the MGM/Mandalay Lease (or a memorandum thereof). A true, correct and complete copy of the MGM/Mandalay Lease has been delivered to Lender.

(b) The MGM/Mandalay Lease is in full force and effect and no default has occurred on the part of the Borrower under the MGM/Mandalay Lease, nor to Borrower's Knowledge has any default occurred by the MGM/Mandalay Tenant (except, in each case, any such default that has been previously cured). There is no existing condition which, but for the passage of time or the giving of notice, could result in (i) a default by the Borrower under the terms of the MGM/Mandalay Lease or (ii) to Borrower's Knowledge, a default by the MGM/Mandalay Tenant under the terms of the MGM/Mandalay Lease.

(c) Except for the Permitted Encumbrances and other encumbrances of record, MGM/Mandalay Tenant's interest in the MGM/Mandalay Lease is not subject to any Liens or encumbrances superior to, or of equal priority with, each Mortgage, other than the Borrower's fee interest in the applicable Individual Property.

(d) No rent or other amounts due under the MGM/Mandalay Lease has been paid more than thirty (30) days in advance of its due date.

4.2.2. MGM/Mandalay Lease Guaranty. The MGM/Mandalay Lease Guaranty is in full force and effect and no default has occurred on the part of the Borrower under the MGM/Mandalay Lease Guaranty, nor to Borrower's Knowledge has any default occurred by the MGM/Mandalay Lease Guarantor (except in each case, any such default that has been previously cured). There is no existing condition which, but for the passage of time or the giving of notice, could result in (i) a default by the Borrower under the terms of the MGM/Mandalay Lease Guaranty or (ii) to Borrower's Knowledge, a default by the MGM/Mandalay Lease Guarantor under the terms of the MGM/Mandalay Lease Guaranty.

4.2.3. Gaming Licenses. To Borrower's Knowledge, MGM/Mandalay Tenant (or an Affiliate thereof) possesses all rights, licenses, permits and authorizations, governmental or otherwise, necessary to entitle it to own or lease the Property and to transact the businesses in which it is now engaged, except to the extent the failure to possess such rights, licenses and permits would not reasonably be expected to materially and adversely affect Borrower or any Individual Property. There is no proceeding, investigation or disciplinary action by or before any Governmental Authority, any Gaming Authority, under any Gaming Law or other Legal Requirement (other than any administrative proceedings or investigations in the ordinary course which are customarily performed by the Gaming Authorities on all Persons with Gaming Licenses that does not seek to refrain, enjoin, prevent or impair the operations of the Casino Component in the manner required hereunder), pending against Borrower, or to Borrower's Knowledge, against MGM/Mandalay Tenant with respect to any Individual Property or any

Gaming License, in each case, that would reasonably be expected to materially and adversely affect the Borrower or such Individual Property.

4.2.4. True Lease. Borrower represents and warrants that it is the express intent of Borrower that (i) the MGM/Mandalay Lease constitute a “true lease” for all purposes of the Bankruptcy Code (including Section 365(d) and 502(b)(6) thereof) and applicable Legal Requirements (and Borrower does not have Knowledge of any reason why the MGM/Mandalay Lease would not be such a “true lease”), (ii) the MGM/Mandalay Lease does not constitute a financing or convey any interest in any Individual Property other than the leasehold interest therein leased thereby and the security interest in favor of Borrower, as landlord, in the Tenant’s Pledged Property (as defined in the MGM/Mandalay Lease), and (iii) the sole interest of MGM/Mandalay Tenant in each Individual Property is that of a tenant under the MGM/Mandalay Lease.

Section 4.3. Survival of Representations. Borrower agrees that all of the representations and warranties of Borrower set forth in Section 4.1 and Section 4.2 hereof and elsewhere in this Agreement and in the other Loan Documents shall survive for so long as any amount remains owing to Lender under this Agreement or any of the other Loan Documents by Borrower (provided, however, such representations and warranties shall not be deemed remade as of any date after the Closing Date unless expressly required pursuant to the Loan Documents). All representations, warranties, covenants and agreements made in this Agreement or in the other Loan Documents by Borrower shall be deemed to have been relied upon by Lender notwithstanding any investigation heretofore or hereafter made by Lender or on its behalf.

Section 4.4. Equity Capital. As of and after the date hereof, each Loan Party is, and will be organized for the purpose set forth in subclause (i) of the definition of Special Purpose Entity herein and for the purpose of investing the equity capital that was contributed to the applicable Loan Party by the applicable sole member of such Loan Party in compliance with the provisions of this Agreement. No equity capital was raised by any Individual Borrower (which, for the avoidance of doubt, shall not include contributions to such Individual Borrower by or on behalf of its sole member, as applicable).

ARTICLE V.

COVENANTS

Section 5.1. Affirmative Covenants. From the date hereof and until payment and performance in full of all obligations of Borrower under the Loan Documents or the earlier release or assignment of the Liens of the Mortgages encumbering the Property (and all related obligations) in accordance with the terms of this Agreement and the other Loan Documents, Borrower hereby covenants and agrees with Lender to comply with the following covenants, and in connection therewith (provided that for so long as the Property is subject to the MGM/Mandalay Lease, such covenants shall be limited to (x) Borrower not directly taking such prohibited actions (or granting its consent under the MGM/Mandalay Lease to permit the MGM/Mandalay Tenant to take such a prohibited action to the extent such action is prohibited under the MGM/Mandalay Lease) and (y) Borrower using commercially reasonable efforts to exercise its rights under the MGM/Mandalay Lease to cause the MGM/Mandalay Tenant to satisfy its obligations under the MGM/Mandalay Lease):

5.1.1. Existence; Compliance with Legal Requirements. Borrower shall do or cause to be done all things necessary to preserve, renew and keep in full force and effect its existence, rights, licenses, permits and franchises and comply in all material respects with all Legal Requirements applicable to Borrower and each Individual Property, including, without limitation, building and zoning codes and certificates of occupancy and the procurement of all necessary and required hospitality, liquor, gaming or innkeeper's licenses. There shall never be committed by Borrower, and Borrower shall not permit any other Person in occupancy of or involved with the operation or use of any Individual Property to commit any act or omission affording the federal government or any state or local government the right of forfeiture against any Individual Property or any part thereof or any monies paid in performance of Borrower's obligations under any of the Loan Documents. Borrower hereby covenants and agrees not to commit, permit or suffer to exist any act or omission affording such right of forfeiture. Borrower shall at all times maintain, preserve and protect all of Borrower's franchises and trade names and preserve all the remainder of its property used or useful in the conduct of its business and shall keep each Individual Property in good working order and repair (normal wear and tear and casualty damage excepted), and from time to time make, or cause to be made, all reasonably necessary repairs, renewals, replacements, betterments and improvements thereto, all as more fully provided in the Loan Documents. Borrower shall (or, for so long as such Individual Property is subject to the MGM/Mandalay Lease, use commercially reasonable efforts to cause MGM/Mandalay Tenant to) keep such Individual Property insured at all times by financially sound and reputable insurers, to such extent and against such risks, and maintain liability and such other insurance, as is more fully provided in this Agreement. After prior written notice to Lender, Borrower at Borrower's own expense (or, for so long as such Individual Property is subject to the MGM/Mandalay Lease, may permit MGM/Mandalay Tenant, at MGM/Mandalay Tenant's own expense), may contest by appropriate legal proceeding promptly initiated and conducted in good faith and with due diligence, the validity of any Legal Requirement, the applicability of any Legal Requirement to Borrower or any Individual Property or any alleged violation of any Legal Requirement, provided that (i) no Event of Default has occurred and remains uncured; (ii) such proceeding shall be permitted under and be conducted in accordance with the provisions of any instrument to which Borrower or MGM/Mandalay Tenant is subject and shall not constitute a default thereunder and such proceeding shall be conducted in accordance with all applicable statutes, laws and ordinances; (iii) no Individual Property nor any part thereof or interest therein will be in danger of being sold, forfeited, terminated, cancelled or lost; (iv) Borrower shall or shall use commercially reasonable efforts to cause MGM/Mandalay Tenant to promptly upon final determination thereof comply with any such Legal Requirement determined to be valid or applicable or cure any violation of any Legal Requirement; (v) such proceeding shall suspend the enforcement of the contested Legal Requirement against Borrower or such Individual Property; and (vi) in the event the amount reasonably determined to be necessary to cause compliance with such Legal Requirements exceeds Fifteen Million and No/100 Dollars (\$15,000,000.00), Borrower shall furnish such security as may be required in the proceeding or (A) cash, (B) U.S. Obligations, (C) other securities having a rating reasonably acceptable to Lender and, after a rated Securitization, that, at Lender's option, the applicable Approved Rating Agencies have provided a Rating Agency Confirmation with respect to such securities, (D) a Letter of Credit, (E) cash equivalents or (F) an alternative security reasonably acceptable to Lender (or a combination thereof), to insure compliance with such Legal Requirement, together with all interest and penalties payable in connection therewith (except if the Property is subject to a Brand Management Agreement or Casino Management Agreement, if Borrower shall have provided Lender with evidence reasonably acceptable to Lender that a

Brand Manager or Casino Operator has reserved sufficient amounts therefor and shall be required to apply such amounts to cause such compliance in accordance with such Brand Management Agreement or Casino Management Agreement). Lender may apply any such security, as necessary to cause compliance with such Legal Requirement at any time when, in the reasonable judgment of Lender, the validity, applicability or violation of such Legal Requirement is finally established or any Individual Property (or any part thereof or interest therein) shall be in danger of being sold, forfeited, terminated, cancelled or lost. Notwithstanding anything to the contrary contained herein, MGM/Mandalay Tenant's exercise of its contest rights under the MGM/Mandalay Lease (including Article XII thereof) are not restricted or limited by this Section 5.1.1, and Borrower shall not be obligated to fund security or take other actions described in this Section 5.1.1 with respect to such MGM/Mandalay Tenant contest rights.

5.1.2. Taxes and Other Charges. Except as otherwise provided in this Section 5.1.2, Borrower shall pay or cause to be paid, all Taxes and Other Charges now or hereafter levied or assessed or imposed against each Individual Property or any part thereof prior to delinquency; provided, however, that Borrower's obligation to directly pay Taxes and Other Charges shall be suspended for so long as Borrower is making deposits into the Tax and Insurance Reserve Account and complies with the terms and provisions of Section 7.2 hereof. Except as otherwise provided in this Section 5.1.2 and subject to the terms of the MGM/Mandalay Lease, Borrower shall not later than five (5) Business Days after receipt of a written request from Lender, deliver to Lender receipts for payment or other evidence satisfactory to Lender that the Taxes and Other Charges then due and payable have been so paid in accordance with the terms of this Agreement (provided, however, (x) Borrower shall not be required to furnish such receipts for payment of such Taxes and Other Charges during any period that Taxes and Other Charges have been paid by Lender pursuant to Section 7.2 hereof or by a Manager pursuant to a Management Agreement or a Casino Operator pursuant to a Casino Management Agreement and (y) for so long as such Individual Property is subject to the MGM/Mandalay Lease, Borrower's delivery requirement shall be limited to providing copies of any certification delivered to Borrower by MGM/Mandalay Tenant under the MGM/Mandalay Lease with respect to such payment). Except as otherwise provided in the following sentence, Borrower shall not suffer and shall promptly cause to be paid and discharged any Lien (other than Permitted Encumbrances) or charge whatsoever which may be or become a Lien or charge against any Individual Property, and shall promptly pay for all utility services provided to each Individual Property (except those required to be paid directly by MGM/Mandalay Tenant or a Tenant under a Lease). Borrower, at Borrower's own expense, may contest by appropriate legal proceeding, promptly initiated and conducted in good faith and with due diligence, the amount or validity or application in whole or in part of any Taxes or Other Charges, provided that (i) no Default or Event of Default has occurred and remains uncured; (ii) such proceeding shall be permitted under and be conducted in accordance with the provisions of any other instrument to which Borrower is subject and shall not constitute a default thereunder and such proceeding shall be conducted in accordance with all applicable statutes, laws and ordinances; (iii) no Individual Property nor any part thereof or interest therein will be in danger of being sold, forfeited, terminated, cancelled or lost; (iv) Borrower shall promptly upon final determination thereof pay the amount of any such Taxes or Other Charges, together with all costs, interest and penalties which may be payable in connection therewith; (v) such proceeding shall suspend the collection of such contested Taxes or Other Charges from the applicable Individual Property; (vi) during a Cash Trap Period, in the event the amount of such Taxes or Other Charges shall reasonably be expected to exceed Fifteen Million and No/100 Dollars (\$15,000,000.00) or if such Individual

Property is subject to a Brand Management Agreement or Casino Management Agreement, if a Brand Manager or Casino Operator has reserved sufficient amounts for such Taxes or Other Charges and shall be required to apply such amounts therefor in accordance with a Brand Management Agreement or Casino Management Agreement (with reasonable evidence thereof provided to Lender), in each case, which are required to be used for payment of such Taxes or Other Charges, Borrower shall furnish such security as may be required in the proceeding or (A) cash, (B) U.S. Obligations, (C) other securities having a rating reasonably acceptable to Lender and, after a rated Securitization, that, at Lender's option, the applicable Approved Rating Agencies have provided a Rating Agency Confirmation with respect to such securities, (D) a Letter of Credit, (E) cash equivalents or (F) an alternative security reasonably acceptable to Lender (or a combination thereof), to insure payment of any such Taxes or Other Charges, together with all interest and penalties thereon. Lender may pay over any such cash deposit or part thereof held by Lender to the claimant entitled thereto at any time when, in the reasonable judgment of Lender, the entitlement of such claimant is established or any Individual Property (or part thereof or interest therein) shall be in imminent danger of being sold, forfeited, terminated, cancelled or lost or there shall be any danger of the Lien of the related Mortgage being primed by any related Lien; and (vii) Borrower shall deliver written notice of such contest to Lender.

5.1.3. Litigation. Borrower shall give prompt written notice to Lender of any litigation or governmental proceedings pending or threatened in writing against Borrower, or upon Borrower obtaining Knowledge or receipt of notice thereof against any Individual Property, MGM/Mandalay Tenant and/or MGM/Mandalay Lease Guarantor, which would reasonably be expected to materially adversely affect Borrower's condition (financial or otherwise) or business, taken as a whole, or any Individual Property.

5.1.4. Access to Properties. Subject to the rights of Tenants, the MGM/Mandalay Tenant, guests, patrons, applicable Gaming Laws, if the Property is subject to a Brand Management Agreement, Brand Manager under such Brand Management Agreement and if the Property is subject to a Casino Management Agreement, the Casino Operator under such Casino Management Agreement, Borrower shall permit agents, representatives and employees of Lender to inspect any Individual Property or any part thereof at reasonable hours upon reasonable advance notice.

5.1.5. Notice of Default. Borrower shall promptly advise Lender of any material adverse change in Borrower's, MGM/Mandalay Tenant's, MGM/Mandalay Lease Guarantor's or Guarantor's condition, financial or otherwise, or of the occurrence of any Default or Event of Default, in each case, of which Borrower has Knowledge.

5.1.6. Cooperate in Legal Proceedings. Borrower shall cooperate fully with Lender with respect to any proceedings before any court, board or other Governmental Authority which may in any way materially and adversely affect the rights of Lender hereunder or any rights obtained by Lender under any of the other Loan Documents and, in connection therewith, permit Lender, at its election, to participate in any such proceedings.

5.1.7. Perform Loan Documents. Borrower shall in a timely manner observe, perform and satisfy all the terms, provisions, covenants and conditions of, and shall pay when due all costs, fees and expenses to the extent required under the Loan Documents executed and delivered by, or applicable to, Borrower. Borrower shall not enter into or otherwise suffer or permit any amendment, waiver, supplement, termination or other modification of any Loan Document executed and delivered by, or applicable to, Borrower without the prior written consent of Lender.

5.1.8. Award and Insurance Benefits. Borrower shall cooperate with Lender in obtaining for Lender, in accordance with the relevant provisions of this Agreement the benefits of any Awards or Insurance Proceeds lawfully or equitably payable in connection with any Individual Property, and Lender shall be reimbursed for any reasonable, actual, out-of-pocket expenses incurred in connection therewith (including reasonable attorneys' fees and disbursements, and the payment by Borrower of the expense of an appraisal on behalf of Lender in case of Casualty or Condemnation affecting any Individual Property or any part thereof) out of such Award or Insurance Proceeds.

5.1.9. Further Assurances. Borrower shall, at Borrower's sole cost and expense:

(a) without limiting any other obligation of Borrower hereunder, upon the written request of Lender, furnish to Lender all certificates, appraisals, title and other insurance reports and agreements in Borrower's possession, and each and every other document, certificate, agreement and instrument required to be furnished by Borrower pursuant to the terms of the Loan Documents or which are reasonably requested by Lender in connection therewith, provided, that, so long as no Event of Default has occurred and is continuing, the foregoing shall not require Borrower to obtain updated appraisals after the Closing Date, unless specifically required by the terms of this Agreement;

(b) execute and deliver to Lender such documents, instruments, certificates, assignments and other writings, and do such other acts reasonably necessary, to evidence, preserve and/or protect the collateral at any time securing or intended to secure the obligations of Borrower under the Loan Documents, as Lender may reasonably require including, without limitation, the execution and delivery of all writings necessary to transfer any hospitality, liquor, gaming and other licenses held by Borrower or entities Controlled by Borrower required for the continued operation of each Individual Property into the name of Lender or its designee after the occurrence and during the continuance of an Event of Default to the extent such transfer is permitted by applicable law or, to the extent such transfer is not permitted by applicable law, reasonably cooperate with Lender in obtaining new hospitality, liquor, gaming or other licenses required for the continued operation of each Individual Property and terminating existing licenses, in each case solely at the direction of Lender; and

(c) do and execute all and such further lawful and reasonable acts, conveyances and assurances for the better and more effective carrying out of the intents and purposes of this Agreement and the other Loan Documents, as Lender shall reasonably require from time to time including, without limitation, the execution and delivery of all such writings necessary to transfer any liquor license and Gaming Licenses, if applicable, held by Borrower or entities Controlled by Borrower with respect to each Individual Property into the name of Lender or its designee after the occurrence and during the continuance of an Event of Default to the

extent such transfer is permitted by applicable law or, to the extent such transfer is not permitted by applicable law, reasonably cooperate with Lender in obtaining new hospitality, liquor, gaming or other licenses required for the continued operation of each Individual Property and terminating existing licenses, in each case solely at the direction of Lender.

5.1.10. Principal Place of Business, State of Organization. Borrower shall not cause or permit any change to be made in its name, identity (including its trade name or names), state of organization or formation (as set forth in Section 4.1.36 hereof) or, except as permitted pursuant to Section 5.2 hereof, Borrower's single member limited liability or partnership or other structure unless Borrower shall have first notified Lender in writing of such change at least thirty (30) days prior to the effective date of such change, and shall have first taken all action required by Lender for the purpose of perfecting or protecting the lien and security interests of Lender pursuant to this Agreement and the other Loan Documents and, in the case of a change in Borrower's structure, except as permitted pursuant to Section 5.2 hereof, without first obtaining the prior written consent of Lender; provided, however, that each Loan Party shall at all times remain a single-member Delaware limited liability company or a Delaware limited partnership with two partners, one limited partner that is a single-member Delaware limited liability company and one general partner that is a Delaware limited liability company that is wholly owned by the single-member Delaware limited liability company that is the limited partner. Upon Lender's request, Borrower shall, at Borrower's sole cost and expense, execute and deliver additional financing statements, security agreements and other instruments which may be necessary to effectively evidence or perfect Lender's security interest in each Individual Property as a result of such change of principal place of business or place of organization. Borrower's principal place of business and chief executive office, and the place where Borrower keeps its books and records, including recorded data of any kind or nature, regardless of the medium or recording, including software, writings, plans, specifications and schematics, has been for the preceding four months (or, if less, the entire period of the existence of Borrower) and will continue to be the address of Borrower set forth at the introductory paragraph of this Agreement (unless Borrower notifies Lender in writing at least thirty (30) days prior to the date of such change). Borrower shall promptly notify Lender of any change in their organizational identification numbers.

5.1.11. Financial Reporting. (a) Borrower will keep and maintain or will cause to be kept and maintained on a Fiscal Year basis, in accordance with GAAP, proper and accurate books, records and accounts reflecting all of the financial affairs of Borrower and all items of income and expense in connection with any operation of each Individual Property by Borrower. Lender shall have the right from time to time at all times during normal business hours upon reasonable notice (and, in any event, not more than two (2) times in any calendar year unless an Event of Default is continuing, in which case no such restriction shall apply) to examine Borrower's books, records and accounts at the office of Borrower or any other Person maintaining such books, records and accounts and to make such copies or extracts thereof as Lender shall desire. After the occurrence and during the continuance of an Event of Default, Borrower shall pay any reasonable and actual costs and expenses incurred by Lender to examine Borrower's accounting records with respect to the Property, as Lender shall reasonably determine to be necessary or appropriate in the protection of Lender's interest.

(b) For so long as the Property is subject to the MGM/Mandalay Lease, the following provisions shall apply:

(i) Commencing with the 2020 calendar year and annually thereafter, Borrower will furnish to Lender, within one hundred twenty (120) days following the end of each calendar year, a complete copy of MGM/Mandalay Tenant's and each MGM/Mandalay Operating Subtenant's annual financial statements, on a combined basis (and without duplication), audited by a "Big Four" accounting firm or other independent certified public accountant reasonably acceptable to Lender in accordance with GAAP (or such other accounting basis reasonably acceptable to Lender) covering the Property for such Fiscal Year and containing statements of profit and loss and a balance sheet for MGM/Mandalay Tenant and each MGM/Mandalay Operating Subtenant, on a combined basis (and without duplication) in the form delivered by MGM/Mandalay Operating Subtenant pursuant to Section 23.1(b)(vi) of the Initial MGM/Mandalay Lease (and with respect to any portion of any Individual Property that is not subject to an MGM/Mandalay Operating Sublease, such financial statements containing statements of profit and loss and a balance sheet for the operations of any such Individual Property combined, if and as applicable, with its MGM/Mandalay Tenant or Replacement MGM/Mandalay Tenant, in the form delivered by MGM/Mandalay Operating Subtenant pursuant to Section 23.1(b)(vi) of the Initial MGM/Mandalay Lease) and reasonably equivalent terms and provisions in any Replacement MGM/Mandalay Lease.

(ii) Borrower will furnish, or cause to be furnished, to Lender on or before sixty (60) days after the end of each calendar quarter after the first full calendar quarter following the date hereof, the following items: (i) an occupancy report for the subject month(s), including an average daily rate and revenue per available room for each Individual Property; (ii) trailing twelve month and year to date operating statements prepared for each calendar month, noting EBITDA, EBITDAR, Net Income, Net Revenue and Operating Expenses (as each of the foregoing are defined in the MGM/Mandalay Lease) in the form delivered by MGM/Mandalay Operating Subtenant pursuant to Section 23.1(b)(v) of the MGM/Mandalay Lease.

(iii) Commencing with the 2021 calendar year and annually thereafter, Borrower shall submit, or cause to be submitted, to Lender the MGM/Mandalay Tenant Annual Budget promptly after Borrower's receipt thereof. Such MGM/Mandalay Tenant Annual Budget shall be delivered to Lender for informational purposes only, and Lender shall have no approval rights with respect to any such MGM/Mandalay Tenant Annual Budget.

(c) For so long as the Property is not subject to the MGM/Mandalay Lease, commencing with the 2020 calendar year and annually thereafter, Borrower will furnish to Lender, (i) within one hundred twenty (120) days following the end of each calendar year, a copy of Borrower's unaudited annual financial statements and (ii) within one hundred twenty (120) days following the end of each calendar year, a complete copy of Borrower's (or any 100% direct or indirect owner of Borrower that owns no assets other than such ownership

interest and the ownership of any intermediate holding companies that own no assets other than such ownership interest in Borrower) annual financial statements audited by a “Big Four” accounting firm or other independent certified public accountant acceptable to Lender in accordance with GAAP (or such other accounting basis acceptable to Lender) covering the Properties on a combined basis (together with a detailed profit and loss statement/schedule with respect to each Individual Property) for such Fiscal Year and containing statements of profit and loss for Borrower and the Properties and a balance sheet for Borrower. Such statements shall set forth the financial condition and the results of operations for the Properties for such Fiscal Year, and shall be supplemented by, but not be limited to, amounts representing annual net cash flow, EBITDA, EBITDAR, Net Revenue and Operating Expenses. Borrower’s annual financial statements shall be accompanied by (i) a comparison of the budgeted income and expenses and the actual income and expenses for the prior Fiscal Year, (ii) an Officer’s Certificate stating that each such annual financial statement presents fairly the financial condition and the results of operations of Borrower and the Properties being reported upon as of such date and has been prepared in accordance with GAAP (or such other accounting basis acceptable to Lender), (iii) an unqualified opinion of a “Big Four” accounting firm or other independent certified public accountant reasonably acceptable to Lender, and (iv) occupancy statistics including revenue per available room and average daily rates for the Hotel Components of each Individual Property. Together with Borrower’s annual financial statements, Borrower shall furnish to Lender an Officer’s Certificate certifying as of the date thereof, to Borrower’s Knowledge, whether there exists an event or circumstance which constitutes a Default or Event of Default under the Loan Documents executed and delivered by, or applicable to, Borrower, and if such Default or Event of Default exists, the nature thereof, the period of time it has existed and the action then being taken to remedy the same.

(d) For so long as the Property is not subject to the MGM/Mandalay Lease, Borrower will furnish, or cause to be furnished, to Lender on or before sixty (60) days after the end of each calendar quarter after the first full calendar quarter following the date hereof, the following items, accompanied by an Officer’s Certificate stating that such items are true, correct, accurate, and complete and fairly present the financial condition and results of the operations of Borrower and the Properties on a combined basis as well as each Individual Property (subject to normal year-end adjustments) as of the relevant date as applicable: (i) an occupancy report for the subject month(s), including an average daily rate and revenue per available room; (ii) trailing twelve month and year to date operating statements prepared for each calendar month, noting EBITDA, EBITDAR, Net Revenue and Operating Expenses, and other information necessary and sufficient to fairly represent the financial position and results of operation of the Properties during such calendar month or quarter, as applicable, and containing a comparison of budgeted income and expenses and the actual income and expenses, all in form satisfactory to Lender and (iii) during a Cash Trap Period, upon the written request of Lender, a detailed explanation of any variances of ten percent (10%) or more between budgeted and actual amounts for such periods. In addition, such certificate shall also be accompanied by an Officer’s Certificate stating that the representations and warranties of Borrower set forth in subsection (xx) of the definition of “Special Purpose Entity” are true and correct as of the date of such certificate.

(e) For so long as the Property is not subject to the MGM/Mandalay Lease, Borrower shall submit to Lender an Annual Budget not later than thirty (30) days prior to the commencement of each Fiscal Year (which, subject to the immediately succeeding sentence

shall be for informational purposes only). If an Event of Default is continuing or a DSCR Trigger Period is continuing, the Annual Budget currently in place shall be deemed approved; provided, that the next Annual Budget shall be subject to Lender's reasonable written approval so long as an Event of Default is continuing or a DSCR Trigger Period is still in effect at such time, which approval shall not be unreasonably withheld, conditioned or delayed (each such Annual Budget, an "**Approved Annual Budget**"); provided, however, (i) Lender shall not withhold its consent with respect to expenditures necessary to comply with life, health or safety matters, (ii) for so long as the Property is subject to a Brand Management Agreement, (x) Lender shall not withhold its consent to any item contained in the Annual Budget for which Borrower shall not have the right to consent or approve pursuant to such Brand Management Agreement and (y) Lender shall respond to any request for consent subject to the standards for consent set forth in such Brand Management Agreement, and (iii) for so long as the Property is subject to a Casino Management Agreement, (x) Lender shall not withhold its consent to any item contained in the Annual Budget for which Borrower shall not have the right to consent or approve pursuant to such Casino Management Agreement and (y) Lender shall respond to any request for consent subject to the standards for consent set forth in such Casino Management Agreement, provided that, with respect to subclauses (ii) and (iii), any request for consent or approval shall either be (A) simultaneously sent to Lender by the Brand Manager or Casino Operator, as applicable, or (B) sent to Lender by Borrower within two (2) Business Days of Borrower's receipt of such request from the applicable Brand Manager or Casino Operator, as applicable. So long as neither a DSCR Trigger Period exists nor an Event of Default has occurred and is continuing, any Annual Budget, and any amendments or modifications thereto shall be deemed an Approved Annual Budget and Lender shall have no approval right with respect thereto. In the event that Borrower is required to submit an Annual Budget for approval pursuant to this Section 5.1.11(e), provided no Event of Default has occurred and is continuing, such Annual Budget shall be deemed approved by Lender if the Deemed Approval Requirements have been satisfied with respect to such Annual Budget. In the event that Lender timely disapproves a proposed Annual Budget in accordance with the foregoing, Borrower shall promptly revise such Annual Budget and resubmit the same to Lender and provided no Event of Default has occurred and is continuing, such resubmitted Annual Budget shall be deemed approved by Lender if the Deemed Approval Requirements have been satisfied with respect to such resubmitted Annual Budget. Borrower shall promptly revise each proposed Annual Budget and resubmit the same to Lender in accordance with the foregoing until Lender approves the proposed Annual Budget or the Deemed Approval Requirements are satisfied. Until such time that Lender approves (or is deemed to approve) a proposed Annual Budget, the most recently Approved Annual Budget shall apply; provided that, each line item of such Approved Annual Budget shall be increased by the amount of the increase, if any, in the Consumer Price Index for the immediately preceding calendar year (other than (i) the line items in respect of Taxes, Insurance Premiums, association fees or other expenses and charges, payments under the CBA, including without limitation, union wages, if any, utilities expenses and Other Charges, which line items shall be adjusted to reflect actual increases in such expenses, (ii) variable operating expenses that are directly related to increased revenues at the Properties (including, without limitation, Hotel Taxes) and (iii) life/safety or emergency repairs).

(f) For so long as the Property is not subject to the MGM/Mandalay Lease, during the continuance of a Cash Trap Period, Borrower shall not approve (to the extent Borrower is permitted to approve or reject such operating budget pursuant to the terms of a

Management Agreement) any operating budget pursuant to a Management Agreement without the prior written consent of Lender (such consent not to be unreasonably withheld, conditioned or delayed). Lender shall cooperate with Borrower to follow the procedures for budget approval set forth in such Management Agreement to the extent Borrower notifies Lender thereof. During the continuance of a Cash Trap Period, Borrower shall not approve (to the extent Borrower is permitted to approve or reject such operating budget pursuant to the terms of a Casino Management Agreement) any operating budget pursuant to a Casino Management Agreement without the prior written consent of Lender (such consent not to be unreasonably withheld, conditioned or delayed). Lender shall cooperate with Borrower to follow the procedures for budget approval set forth in such Casino Management Agreement to the extent Borrower notifies Lender thereof.

(g) Any reports, statements or other information required to be delivered under this Agreement may be delivered (i) via email, with report files in electronic form of Microsoft Word, Microsoft Excel or .pdf format, (ii) in paper form, (iii) on a diskette, or (iv) if requested by Lender and within the capabilities of Borrower's data systems without change or modification thereto, in electronic form and prepared using Microsoft Word for Windows files (which files may be prepared using a spreadsheet program and saved as word processing files). Borrower agrees that Lender may disclose information regarding the Properties, MGM/Mandalay Tenant and Borrower that is provided to Lender pursuant to this Section 5.1.11(g) in connection with the Securitization to such parties requesting such information in connection with such Securitization, provided that Lender acknowledges and agrees that certain information provided by Borrower from MGM/Mandalay Tenant may include material non-public information and Lender shall comply with the treatment of such information as required by Sections 23.2 and 23.4 of the Initial MGM/Mandalay Lease and reasonably equivalent terms and provisions in any Replacement MGM/Mandalay Lease.

(h) Intentionally omitted.

(i) Commencing with the 2020 calendar year and annually thereafter, Borrower will cause Guarantor to furnish to Lender annually, within one hundred twenty (120) days following the end of each Fiscal Year of Guarantor, Guarantor's (or any one hundred percent (100%) direct or indirect owner of Guarantor that owns no assets other than such ownership interest and the ownership of any intermediate holding companies that owns no assets other than such ownership interest in Guarantor) financial statements prepared in accordance with GAAP (or such other accounting basis acceptable to Lender) and certified by an authorized officer of Borrower, which shall include an annual balance sheet and profit and loss statement of Guarantor (or any one hundred percent (100%) direct or indirect owner of Guarantor that owns no assets other than such ownership interest and the ownership of any intermediate holding companies that owns no assets other than such ownership interest in Guarantor); provided, however, notwithstanding the foregoing, this Section 5.1.11(i) shall not apply with respect to any Guarantor which is (i) BREIT OP, (ii) BREIT, (iii) MGP or (iv) MGP OP.

(j) If an Excess Cash Flow Guaranty is delivered to Lender pursuant to Section 7.5.2(c) of this Agreement, Borrower shall furnish to Lender, within fifteen (15) Business Days after the end of each calendar month in which the Excess Cash Flow Guaranty remains in effect, an Officer's Certificate certifying to the amount of Guaranteed Excess Cash

Flow as of such date, together with any back up information with respect to the amount of Guaranteed Excess Cash Flow as may be reasonably requested by Lender.

5.1.12. Business and Operations. Borrower shall continue to engage in the businesses presently conducted by it as and to the extent the same are necessary for the ownership, maintenance, management, leasing and operation of the Properties. Borrower shall qualify to do business and will remain in good standing under the laws of each jurisdiction of its formation as and to the extent the same are required for the ownership, maintenance, management, leasing and operation of the Properties. Borrower shall at all times during the term of the Loan, continue to own or lease (or (x) Manager as agent for Borrower in accordance with a Management Agreement or (y) Casino Operator as agent for Borrower in accordance with a Casino Management Agreement shall lease) all Equipment, Fixtures and Personal Property which are necessary to operate the Properties in the manner required hereunder and in the manner in which it is currently operated, provided that the foregoing shall not be deemed to prohibit or restrict any Permitted Equipment Transfers.

5.1.13. Title to the Properties. Borrower shall warrant and defend (a) the title to each Individual Property and every part thereof, subject only to Liens permitted hereunder (including Permitted Encumbrances) and (b) the validity and priority of the Liens of the Mortgages on the Properties, subject only to Liens permitted hereunder (including Permitted Encumbrances), in each case against the claims of all Persons whomsoever. Borrower shall reimburse Lender for any losses, costs, damages or expenses (including reasonable attorneys' fees and court costs) incurred by Lender if an interest in any Individual Property, other than as permitted hereunder, is claimed by another Person.

5.1.14. Costs of Enforcement. In the event (a) that any Mortgage encumbering an Individual Property is foreclosed in whole or in part or that such Mortgage is put into the hands of an attorney for collection, suit, action or foreclosure, (b) of the foreclosure of any mortgage prior to or subsequent to the Mortgage encumbering any Individual Property in which proceeding Lender is made a party, or (c) of the bankruptcy, insolvency, rehabilitation or other similar proceeding in respect of Borrower or any of its constituent Persons or an assignment by Borrower or any of its constituent Persons for the benefit of its creditors, Borrower and its successors or assigns, shall be chargeable with and agrees to pay all out-of-pocket costs of collection and defense, including reasonable, third-party attorneys' fees and expenses, incurred by Lender or Borrower in connection therewith, but excluding regular servicing fees and in connection with any appellate proceeding or post judgment action involved therein, together with all required service or use taxes.

5.1.15. Estoppel Statement. (a) After written request by Lender, Borrower shall within ten (10) Business Days furnish Lender with a statement, duly acknowledged and certified, setting forth (i) the original principal amount of the Note, (ii) the unpaid principal amount of the Note, (iii) the Interest Rate of Loan (including Note A and Note B), (iv) the date installments of interest and/or principal were last paid, (v) any offsets or defenses to the payment of the Debt, if any, claimed by Borrower, and (vi) that the Note, this Agreement, each Mortgage and the other Loan Documents are valid, legal and binding obligations and have not been modified or if modified, giving particulars of such modification; provided, however, that so long as no Event of Default has occurred and is continuing, Borrower shall not be required to provide such statement more than one (1) time in any calendar year.

(b) For so long as the Property is subject to the MGM/Mandalay Lease, after written request by Lender, Borrower shall use commercially reasonable efforts to deliver to Lender an estoppel certificate from MGM/Mandalay Tenant certifying to the matters required under the MGM/Mandalay Lease; provided, however, that so long as no Event of Default has occurred and is continuing, Borrower shall not be required to seek such statement more than one (1) time in any calendar year and provided, further, Borrower (if applicable) shall use commercially reasonable efforts to provide that any such estoppel shall be addressed to Lender and Mezzanine Lender.

(c) For so long as the Property is not subject to the MGM/Mandalay Lease, after written request by Lender, Borrower shall (i) use commercially reasonable efforts to deliver to Lender upon request estoppel certificates from Manager and Casino Operator in form and substance reasonably satisfactory to Lender and (ii) use commercially reasonable efforts to deliver to Lender upon request, tenant estoppel certificates from each commercial Tenant party to a Material Lease at any Individual Property in form and substance reasonably satisfactory to Lender; provided, however, that so long as no Event of Default has occurred and is continuing, Borrower shall not be required to seek such statement more than one (1) time in any calendar year and provided, further, Borrower (if applicable) shall use commercially reasonable efforts to provide that any such estoppel shall be addressed to Lender and Mezzanine Lender.

5.1.16. Loan Proceeds. Borrower shall use the proceeds of the Loan received by it on the Closing Date only for the purposes set forth in Section 2.1.4 hereof.

5.1.17. Confirmation of Representations. If requested by Lender, Borrower shall deliver, in connection with any Securitization, (a) one (1) or more Officer's Certificates certifying as to the accuracy of all representations in all material respects made by Borrower in the Loan Documents as of the date of the closing of such Securitization or, if any such representations require qualification on such date, setting forth such qualifications in reasonable detail, and (b) certificates of the relevant Governmental Authorities in all relevant jurisdictions indicating the good standing and qualification of Borrower, Principal and Guarantor as of the date that is within thirty (30) days of the Securitization.

5.1.18. Leasing Matters.

(a) For so long as the Property is subject to the MGM/Mandalay Lease, Lender's prior written approval, not to be unreasonably withheld, conditioned or delayed, shall only be required for any Lease which both (x) requires Borrower's consent under the terms and provisions of the MGM/Mandalay Lease and (y) would otherwise require Lender's consent pursuant to Section 5.1.18(b) in the event that the Property was not subject to the MGM/Mandalay Lease. For the avoidance of doubt, for so long as the Property is subject to the MGM/Mandalay Lease, Lender's prior written approval shall not be required for any Lease which does not require Borrower's consent under the terms and provisions of the MGM/Mandalay Lease.

(b) For so long as the Property is not subject to the MGM/Mandalay Lease:

(i) Subject to subsections (ii), (iii) and (iv) below, Borrower may enter into any lease or other rental arrangement, exercise all extensions and renewals and enter into any modification, amendments and supplements to any Leases

without the prior approval of Lender, provided that, any new Lease entered into after the date hereof shall (A) have rental rates comparable to existing local market rates in all material respects, (B) be on commercially reasonable terms and shall not contain any terms which would materially adversely affect Lender's rights under the Loan Documents and (C) be subordinate to the Mortgage encumbering the applicable Individual Property and shall provide that the lessee agrees to attorn to Lender or any purchaser at a sale by foreclosure or power of sale.

(ii) Subject to the terms of Section 5.1.18(b)(iii), any Material Leases with respect to an Individual Property entered into after the date hereof shall be subject to the prior written approval of Lender, which approval shall not be unreasonably withheld, conditioned or delayed. Upon written request of Lender, Borrower shall furnish Lender with executed copies of all Leases; provided that so long as no Event of Default has occurred and is continuing, Borrower shall not be required to deliver copies of all Leases more frequently than two (2) times per calendar year. All renewals of Leases (other than with respect to renewal or extension rights set forth in the Leases in effect as of the Closing Date) and all proposed Leases shall provide for rental rates comparable to existing local market rates in all material respects. Borrower (A) shall observe and perform the obligations imposed upon the lessor under the Leases in a commercially reasonable manner; (B) shall enforce and may amend or terminate the terms, covenants and conditions contained in the Leases upon the part of the lessee thereunder to be observed or performed in a commercially reasonable manner and in a manner not to impair the value of the Individual Property involved except that no termination by Borrower or acceptance of surrender by a Tenant of any Material Leases (regardless of when any such Material Lease was entered into) shall be permitted unless (1) by reason of a tenant default and then only in a commercially reasonable manner to preserve and protect the Individual Property; or (2) the exercise by a Tenant of any termination right expressly provided in any existing Material Lease or any Material Lease hereafter entered into in compliance with the conditions set forth in this Section 5.1.18; (C) shall not collect any of the rents more than one (1) month in advance (other than security deposits, payments of first month's rent upon signing of the Lease and rent for providing rooms and banquet and meeting space and services in the ordinary course of business); (D) shall not execute any other assignment of lessor's interest in the Leases or the Rents (except as contemplated by the Loan Documents); (E) shall not alter, modify or change the terms of the Leases (other than Material Leases) in a manner inconsistent with the provisions of Section 5.1.18(b)(i); (F) shall not alter, modify or change the terms of any Material Lease (regardless of when any such Material Lease was entered into) without the prior written consent of Lender to the extent required by the provisions of the Loan Documents which approval shall not be unreasonably withheld, conditioned or delayed, which consent shall be subject to the deemed approval provisions set forth in this Section 5.1.18; and (G) shall execute and deliver at the request of Lender all such further assurances, confirmations and assignments in connection with the Leases as Lender shall from time to time reasonably require. Except in connection with a REIT Restructuring or any MGM/Mandalay Lease, Borrower shall not enter into

a lease of all or substantially all of any Individual Property without Lender's prior written consent. At any time that Lender's approval is required under this Section 5.1.18 (other than a lease of all or substantially all of any Individual Property), provided no Event of Default is continuing, Lender's approval shall be deemed granted if the Deemed Approval Requirements have been satisfied with respect thereto. Nothing contained in this Section 5.1.18(b)(ii) shall be deemed to limit Borrower's right to enter into a MGM/Mandalay Lease.

(iii) Notwithstanding the foregoing provisions of Section 5.1.18(b)(i) and Section 5.1.18(b)(ii), Lender's consent shall not be required in connection with (A) any Lease (or amendment, modification or termination thereof) of any Venue Space, (B) any Lease (or amendment, modification or termination thereof) that is not a Material Lease, (C) renewals, expansions (not to exceed 50,000 rentable square feet, other than with respect to Venue Space) or extensions of any Lease (including a Material Lease) by a tenant that is a party to such Lease as of the Closing Date so long as the rental terms are on market rental terms, (D) immaterial modifications (i.e., modifications that do not adversely change the economic terms or the expiration date, grant purchase options, materially reduce the obligations of a tenant or materially increase the obligations of Borrower) of any Material Lease, (E) a termination of any Material Lease arising from a default by the tenant or (F) a termination of any Material Lease based upon an express termination right contained in such Material Lease.

(iv) Notwithstanding any other provision of this Section 5.1.18(b) to the contrary, for so long as any Individual Property is subject to a Brand Management Agreement, Borrower shall not be required to obtain the consent of Lender to any Leases that are entered into by any Brand Manager which do not require or permit the consent of Borrower in accordance with the applicable Brand Management Agreement, provided that Lender's prior consent shall be required in connection with the entry into Leases that would otherwise constitute a Material Lease (as such term is defined as of the Closing Date). To the extent a Brand Management Agreement permits Borrower to consent or approve a Lease and Lender's consent is required hereunder, Lender shall respond to any request for consent subject to the standards for consent set forth in such Brand Management Agreement, provided that any request for consent or approval and the related documents shall either be sent (A) by the Brand Manager simultaneously to Lender or (B) by Borrower within two (2) Business Days following Borrower's receipt of such request for consent or approval from the applicable Brand Manager.

(v) Notwithstanding any other provision of this Section 5.1.18(b) to the contrary, for so long as any Individual Property is subject to a Casino Management Agreement, Borrower shall not be required to obtain the consent of Lender to any Leases that are entered into by a Casino Operator which do not require or permit the consent of Borrower in accordance with such Casino Management Agreement, provided that Lender's prior consent shall be required in connection with the entry into Leases that would otherwise constitute a Material Lease (as such term is defined as of the Closing Date). To the extent a Casino

Management Agreement permits Borrower to consent or approve a Lease and Lender's consent is required hereunder, Lender shall respond to any request for consent subject to the standards for consent set forth in such Casino Management Agreement, provided that any request for consent or approval and the related documents shall either be sent (A) by the Casino Operator simultaneously to Lender or (B) by Borrower within two (2) Business Days following Borrower's receipt of such request for consent or approval from the Casino Operator.

(c) Lender shall be required to deliver, upon Borrower's request and at Borrower's sole cost and expense, (i) with respect to any Material Lease, a subordination, non-disturbance and attornment agreement in the form required by the MGM/Mandalay Lease or the applicable Material Lease, as applicable, or if no specific form is required, the form attached hereto as Exhibit D or in such other form that is reasonably satisfactory to Administrative Agent and (ii) with respect to any Lease that is not a Material Lease, a subordination, non-disturbance and attornment agreement in any form approved by Borrower.

5.1.19. Alterations.

(a) For so long as the Property is subject to the MGM/Mandalay Lease, (i) Borrower shall provide Lender with written notice of any alterations to any Improvements proposed by MGM/Mandalay Tenant that require Borrower's prior consent under the MGM/Mandalay Lease (including, for the avoidance of doubt, any proposed Landlord Approved Capital Improvements (as defined in the Initial MGM/Mandalay Lease)) and (ii) Lender's prior written approval, not to be unreasonably withheld, conditioned or delayed, shall only be required for any alterations which both (x) require Borrower's consent under the terms and provisions of the MGM/Mandalay Lease and (y) would otherwise require Lender's consent pursuant to Section 5.1.19(b) in the event that the Property was not subject to the MGM/Mandalay Lease. For the avoidance of doubt, Lender's consent shall not be required in connection with any alterations set forth on Schedule 8 of the Initial MGM/Mandalay Lease in effect as of the Closing Date.

(b) For so long as the Property is not subject to the MGM/Mandalay Lease, Borrower shall obtain Lender's prior written consent to any alterations to any Improvements, which consent shall not be unreasonably withheld or delayed except with respect to alterations that would be reasonably likely to have a material adverse effect on Borrower's financial condition, taken as a whole, the value of the applicable Individual Property or EBITDAR. Notwithstanding the foregoing, Lender's consent shall not be required in connection with any alterations (i) intentionally omitted, (ii) that will not have a material adverse effect on Borrower's financial condition, taken as a whole, or the value of the applicable Individual Property upon completion of such alterations, and such alterations shall not exceed, with respect to each Individual Property, five percent (5.00%) of Allocated Loan Amount of such Individual Property as of the Closing Date (the "**Threshold Amount**"), (iii) that are specifically provided for in the Approved Annual Budget or otherwise consented to by Lender and shall be funded from the Reserve Funds in accordance with this Agreement or from amounts disbursed to Borrower in accordance with the Loan Documents, (iv) that are related to a tenant improvement, the cost of which is to be paid by the tenant pursuant to an existing Lease or a Lease entered into in accordance with the terms of this Agreement, (v) that are performed in connection with the Restoration of an Individual Property after the occurrence of a Casualty or Condemnation in

accordance with the terms and provisions of this Agreement, (vi) intentionally omitted, (vii) for PIP Work, Brand Mandated Work and/or required by a Franchise/License Agreement, (viii) that are made by a Brand Manager in accordance with the applicable Brand Management Agreement or Casino Operator in accordance with a Casino Management Agreement and which do not require the consent of the applicable Individual Borrower, (ix) that are for decorative work performed in the ordinary course of business, (x) that are alterations required for life/safety purposes or required by applicable law, or (xi) as preapproved and set forth on Schedule 5.1.19 (the “**Pre-Approved Alterations**” and the alterations described in clauses (i) through (xi), the “**Approved Alterations**”). For the avoidance of doubt, Approved Alterations pursuant to clauses (iii) through (xi) above shall not count towards the Threshold Amount. With respect to any alteration requested to be made by a Brand Manager or Casino Operator that is not a Pre-Approved Alteration, Lender shall respond to such request for consent subject to the standards for consent set forth in the applicable Brand Management Agreement or Casino Management Agreement, provided that such request shall either be sent (A) by the applicable Brand Manager or Casino Operator simultaneously to Lender or (B) by Borrower within two (2) Business Days following Borrower’s receipt of such request for consent or approval from the applicable Brand Manager or Casino Operator and such request delivered by Borrower shall include the applicable deadline for providing a response. If the total unpaid amounts due and payable with respect to alterations to the Improvements at an Individual Property (other than Approved Alterations) shall at any time exceed the Threshold Amount, Borrower shall promptly deliver to Lender as security for the payment of such amounts and as additional security for Borrower’s obligations under the Loan Documents any of the following with respect to such alterations exceeding the Threshold Amount (the “**Alterations Deposit**”): (A) cash, (B) U.S. Obligations, (C) other securities having a rating reasonably acceptable to Lender and, after a rated Securitization, that, at Lender’s option, the applicable Approved Rating Agencies have provided a Rating Agency Confirmation with respect to such securities, (D) a Letter of Credit, (E) cash equivalents or (F) an alternative security reasonably acceptable to Lender (or a combination thereof). Each such Alterations Deposit shall (i) be in an amount equal to the excess of the total unpaid amounts with respect to the alterations to the Improvements on the applicable Individual Property (other than such amounts to be paid or reimbursed by tenants under the Leases) over the Threshold Amount and (ii) be disbursed from time to time by Lender to Borrower for completion of the alterations at the applicable Individual Property upon the satisfaction of the following conditions: (1) Borrower shall submit a request for payment to Lender at least five (5) Business Days prior to the date on which Borrower requests that such payment be made, which request for payment shall specify the alterations for which payment is requested, (2) on the date such request is received by Lender and on the date such payment is to be made, no Event of Default shall be continuing, and (3) such request shall be accompanied by an Officer’s Certificate (x) stating that the applicable portion of the alterations at the applicable Individual Property to be funded by the requested disbursement have been completed in good and workmanlike manner and in accordance with all applicable Legal Requirements, such Officer’s Certificate to be accompanied by copies of paid invoices or copies of invoices to be paid, as applicable, in each case, with respect to any invoices in excess of \$500,000 and any licenses, permits or other approvals by any Governmental Authority required in connection with the applicable portion of the alterations, (y) identifying each contractor that supplied materials or labor in connection with the applicable portion of the alterations to be funded by the requested disbursement and (z) stating that each such contractor has been paid or will have been paid in full upon such disbursement. Each Alterations Deposit shall be held by Lender in an interest bearing account and, until disbursed in accordance with the provisions of this Section 5.1.19, shall constitute additional security for the Debt and Other

Obligations under the Loan Documents. Upon the completion of the alterations in respect of which any Alteration Deposit is being held, Lender shall promptly return to Borrower any remaining portion of the Alterations Deposit upon the request of Borrower, provided that (1) on the date such request is received by Lender and on the date such disbursement is to be made, no Event of Default shall be continuing and (2) such request shall be accompanied by an Officer's Certificate stating that the alterations have been fully completed in good and workmanlike manner and in accordance with all applicable Legal Requirements, such Officer's Certificate to be accompanied by copies of paid invoices or copies of invoices to be paid, as applicable, in each case, with respect to any invoices in excess of \$500,000 and any licenses, permits or other approvals by any Governmental Authority required in connection with alterations (to the extent not received by Lender in connection with prior disbursement requests) and stating that each contractor providing services in connection with the alterations has been paid in full or will have been paid in full upon such disbursement. At any time that Lender's approval is required under this Section 5.1.19, provided no Event of Default is continuing, Lender's approval shall be deemed granted if the Deemed Approval Requirements have been satisfied with respect thereto.

5.1.20. Operation of Property. For so long as the Property is not subject to the MGM/Mandalay Lease:

(a) Borrower shall, and shall cause Manager to cause the Hotel Components to be at all times open for business as a hotel and to be operated, in all material respects, in accordance with a Management Agreement and in accordance with all applicable Legal Requirements, except to the extent necessary to undertake any alterations or repairs (subject to the provisions of this Agreement with respect to the performance of any such alterations or repairs).

(b) Borrower shall, and shall cause Casino Operator to cause the Casino Components to be open for business as a casino and to be operated, in all material respects, in accordance with a Casino Management Agreement and in accordance with all applicable Legal Requirements, except to the extent necessary to undertake any alterations or repairs (subject to the provisions of this Agreement with respect to the performance of any such alterations or repairs). In the event that the Casino Management Agreement expires or is terminated (without limiting any obligation of Borrower to obtain Lender's consent to any termination or modification of the Casino Management Agreement in accordance with the terms and provisions of this Agreement), Borrower shall promptly enter into a new Casino Management Agreement.

(c) Borrower shall: (i) promptly perform and/or observe, in all material respects, all of the covenants and agreements required to be performed and observed by it under each Management Agreement, Casino Management Agreement and Franchise/License Agreement and do all things necessary to preserve and to keep unimpaired its material rights thereunder; (ii) promptly after they become aware, notify Lender of any material default under any Management Agreement, the Casino Management Agreement or the Franchise/License Agreement; (iii) promptly deliver to Lender a copy of each financial statement, business plan, capital expenditures plan, and written notice received by it under any Management Agreement or Casino Management Agreement; and (iv) enforce the performance and observance in all material respects of all of the covenants and agreements required to be performed and/or observed by Manager under the Management Agreement or Casino Operator under the Casino Management Agreement, in a commercially reasonable manner.

(d) At Borrower's sole cost and expense, Lender shall enter into a non-disturbance and attornment agreement with respect to (i) the Closing Date Four Seasons Management Agreement consistent with the requirements of the Closing Date Four Seasons Management Agreement, with such changes as are reasonably requested by Lender and/or (ii) the Closing Date Delano License Agreement consistent with the requirements of the Closing Date Delano License Agreement, with such changes as are reasonably requested by Lender.

(e) If Borrower enters into a Management Agreement, including following termination of the Management Agreement pursuant to Section 9.4, Borrower shall use commercially reasonable efforts to cause such Manager (and not Borrower or any Affiliate of Borrower) to assume all of the obligations and liabilities under those collective bargaining agreements set forth on Schedule 5.1.20 (the "CBA"), as agent for Borrower, MGM/Mandalay Tenant or MGM/Mandalay Operating Subtenant.

(f) Promptly upon Borrower's receipt of the same, Borrower shall provide Lender with copies of the following: (i) notices from any multiemployer pension plans to which an employer is obligated to contribute under the CBA (the "CBA Multiemployer Plans") to Borrower or Manager stating that such CBA Multiemployer Plan is determined to be in critical or endangered status, (ii) notices and demands from the CBA Multiemployer Plan to Borrower or Manager regarding actual withdrawal liability under such CBA Multiemployer Plan, and (iii) other than to the extent the same would not reasonably be expected to have a material adverse effect on the applicable Individual Property, written requests to the CBA Multiemployer Plan from Borrower or Manager for estimates of potential or actual withdrawal liability under the CBA Multiemployer Plan along with copies of the actual estimates when received by Borrower or Manager.

(g) Borrower shall use commercially reasonable efforts to cause Casino Operator to post all required bonds, if any, with any Gaming Authority as and in the amounts required under all applicable Legal Requirements (and shall, if Lender makes a request therefor, promptly provide Lender with copies of all such bonds).

(h) Borrower shall use commercially reasonable efforts to cause Casino Operator to make all filings required under the Gaming Laws. Borrower shall use commercially reasonable efforts to cause Casino Operator to pay all fees, investigative fees and costs required by the Gaming Authorities with respect to any such approvals and licenses with respect to the applicable Individual Property or the operations thereof. Borrower shall diligently and comprehensively respond to any inquiries and requests from the Gaming Authorities and promptly file or cause to be filed any additional information required in connection with any required filings as soon as practicable after receipt of requests therefor.

(i) Upon the written request of Lender, Borrower shall deliver to Lender such evidence of compliance (by Borrower) with all Gaming Laws as shall be reasonably requested by Lender (which evidence may be in the form of an Officer's Certificate). Borrower shall promptly deliver to Lender any notice of material non-compliance or material violation of any Legal Requirement, or of any material inquiry or investigation commenced by the Gaming Authorities in connection with the applicable Individual Property, in each case received by Borrower or its Affiliates. Borrower shall promptly notify Lender if has received notice (whether from any Gaming Authority or otherwise), that any Gaming License is being revoked or suspended or is

reasonably likely to be revoked, suspended or is in jeopardy of being lost, or that any action is pending or reasonably likely to be taken to revoke, suspend or is in jeopardy of being lost, any of Borrower's material licenses, including the Gaming Licenses, or to fine, penalize or impose remedies upon Borrower, or that any action is pending or reasonably likely to be taken to discontinue, suspend, deny, decrease or recoup any payments due, made or coming due to Borrower.

(j) In the event that Borrower does not have a license to use the MGM/Mandalay Brand Names in connection with the operation of the Hotel Components, any Management Agreement shall be with a Manager and shall either (i) include franchise and intellectual property rights reasonably acceptable to Lender or (ii) if a Franchise/License Agreement shall not be in place for the applicable Individual Property, Borrower shall enter into a Franchise/License Agreement.

(k) Notwithstanding the foregoing or anything to the contrary contained herein, Borrower shall not be required to engage a Manager or Casino Operator to manage any portion of the Venue Space and may engage any Person (including, without limitation, an Affiliate of Borrower) to do so in its sole discretion at any time that any of the Venue Space Management Agreement Exclusion Requirements are satisfied with respect to such portion of the Venue Space. In the event that no Venue Space Management Agreement Exclusion Requirements are met with respect to a portion of the Venue Space, then such portion of the Venue Space must be managed in accordance with clauses (a) through (j) of this Section 5.1.20 consistent with the requirements for management of the Hotel Components until such time as one or more of the Venue Space Management Agreement Exclusion Requirements are satisfied with respect to such portion of the Venue Space.

5.1.21. Intentionally Omitted.

5.1.22. Embargoed Person. Each of Borrower and any other Loan Party has performed and shall perform reasonable due diligence to insure that at all times throughout the term of the Loan, including after giving effect to any Transfers permitted pursuant to the Loan Documents, (a) none of the funds or other assets of Borrower, any other Loan Party and Guarantor constitute property of, or are beneficially owned, directly or indirectly, by any Embargoed Person; (b) no Embargoed Person has any interest of any nature whatsoever in Borrower, any other Loan Party or Guarantor, as applicable, with the result that the investment in Borrower, any other Loan Party or Guarantor, as applicable (whether directly or indirectly), is prohibited by law or the Loan is in violation of law; and (c) none of the funds of Borrower, any other Loan Party or Guarantor, as applicable, have been derived from, or are the proceeds of, any unlawful activity, including money laundering, terrorism or terrorism activities, with the result that the investment in Borrower, any other Loan Party or Guarantor, as applicable (whether directly or indirectly), is prohibited by law or the Loan is in violation of law, or may cause the Property to be subject to forfeiture or seizure. For the avoidance of doubt, the covenants set forth in this Section 5.1.22 are not intended to cover MGM or its Affiliates or any Person merely on account of the fact that such Person is the holder of either (i) Publicly Traded Shares or (ii) shares of an Excluded Entity.

5.1.23. Intentionally Omitted.

5.1.24. Payment of Obligations. Borrower will pay its obligations, including tax liabilities, that, if not paid, could result in a material adverse effect on the operation of the applicable Individual Property or Borrower's ability to pay the Debt as it comes due before the same shall become delinquent or in default, except where (a) the validity or amount thereof is being contested in good faith by appropriate proceedings, (b) Borrower has set aside on its books adequate reserves with respect thereto in accordance with GAAP, and (c) the failure to make payment pending such contest could not reasonably be expected to result in a material adverse effect on the operation of the applicable Individual Property or Borrower's ability to pay the Debt as it comes due, and provided that the foregoing shall not require any partners, members, shareholders or other owners of Borrower to make additional capital contributions to Borrower.

5.1.25. Special Purpose Entity Covenants. (a) Until the Debt has been paid in full, each Loan Party shall remain a Special Purpose Entity.

(b) Borrower shall not have any Indebtedness other than as set forth in clause (xx)(A) of the definition of "Special Purpose Entity". Principal shall not have any Indebtedness other than as set forth in clause (xx)(B) of the definition of "Special Purpose Entity".

(c) Other than with respect to another Loan Party, each Loan Party shall not assume or guarantee or become obligated for the debts of any other Person, shall not hold out its credit as being available to satisfy the obligations of any other Person and shall not pledge its assets for the benefit of any other Person, in each case except as expressly permitted pursuant to the Loan Documents.

(d) Each Loan Party will comply with all of the stated facts and assumptions made with respect to it in any Insolvency Opinion or any Additional Insolvency Opinion. Each Affiliate of a Loan Party with respect to which an assumption is made or a fact stated in any Insolvency Opinion will comply with all of the assumptions made and facts stated with respect to it in any such Insolvency Opinion. Each Loan Party covenants that in connection with any Additional Insolvency Opinion delivered in connection with this Agreement it shall provide an updated certification regarding compliance with the facts and assumptions made therein.

(e) Each Loan Party shall provide Lender with five (5) Business Days' written notice prior to the removal of an Independent Director of such Loan Party and no Independent Director shall be removed other than for Cause or as a result of such Independent Director's non collusive resignation.

5.1.26. Taxes. Borrower will be treated as a partnership, disregarded entity or taxable REIT subsidiary for U.S. federal income tax purposes. Borrower will each timely file or cause to be filed all federal income and other material Section 2.7 Tax returns and reports required to be filed by it and will pay or cause to be paid all federal income and other material Section 2.7 Taxes and related liabilities required to be paid by it, except Section 2.7 Taxes that are being contested in good faith by appropriate proceedings and for which the Borrower sets aside on its books adequate reserves in accordance with GAAP. Borrower will not permit any Liens for Section 2.7 Taxes to be imposed on or with respect to any of its income or assets, other than Liens for Section 2.7 Taxes not yet due or delinquent or which are contested in good faith by appropriate proceedings and for which Borrower sets aside on its books adequate reserves in accordance with GAAP.

5.1.27. Supplemental Mortgage Affidavits. If, during the continuance of an Event of Default, Lender reasonably determines, based on applicable law, that Lender is not being afforded the maximum amount of security available from any one or more of the Properties as a direct or indirect result of applicable taxes not having been paid with respect to any Individual Property, Borrower agrees that Borrower will execute, acknowledge and deliver to Lender, immediately upon Lender's request, supplemental affidavits increasing the amount of the Debt attributable to any such Individual Property for which all applicable taxes have been paid to an amount determined by Lender to be equal to the lesser of (a) the greater of the fair market value of the applicable Individual Property (i) as of the date hereof and (ii) as of the date such supplemental affidavits are to be delivered to Lender, and (b) the amount of the Debt attributable to any such Individual Property, and Borrower shall, on demand, pay any additional taxes.

Section 5.2. Negative Covenants. From the Closing Date until payment and performance in full of all Obligations of Borrower under the Loan Documents or the earlier release of the Liens of all Mortgages encumbering the Property and any other collateral in accordance with the terms of this Agreement and the other Loan Documents, Borrower hereby covenants and agrees with Lender that it will not do, or permit to be done, directly or indirectly, any of the following (provided that for so long as the Property is subject to the MGM/Mandalay Lease, such covenants shall be limited to (x) Borrower not directly taking such prohibited actions (or granting its consent under the MGM/Mandalay Lease to permit the MGM/Mandalay Tenant to take such a prohibited action to the extent such action is prohibited under the MGM/Mandalay Lease) and (y) Borrower using commercially reasonable efforts to exercise its rights under the MGM/Mandalay Lease to cause the MGM/Mandalay Tenant to satisfy its obligations under the MGM/Mandalay Lease):

5.2.1. Operation of Property. For so long as the Property is not subject to the MGM/Mandalay Lease, Borrower shall not, without Lender's prior written consent (which consent shall not be unreasonably withheld):

(a) to the extent the Property is subject to a Casino Management Agreement, surrender, terminate or cancel such Casino Management Agreement; provided, that Borrower may, without Lender's consent, replace the Casino Operator (x) so long as the replacement casino operator is a Casino Operator pursuant to a Casino Management Agreement; provided, further that if Borrower (or any Affiliate thereof) does not have all appropriate Licenses (including, without limitation, all appropriate Gaming Licenses), any Casino Operator shall have all the appropriate Licenses (including, without limitation, all appropriate Gaming Licenses) and be in compliance with all applicable Legal Requirements (including, without limitation, Gaming Laws) at or prior to the time such replacement Casino Management Agreement is entered into and (y) with a MGM/Mandalay Lease, and in each case any termination fees and other sums payable to the Casino Operator being replaced are paid in accordance with the terms of the Casino Management Agreement surrendered, terminated or canceled;

(b) to the extent the Property is subject to a Management Agreement, surrender, terminate or cancel such Management Agreement; provided, that Borrower may, without Lender's consent, replace the Manager (x) so long as the replacement manager is a Manager pursuant to a Management Agreement; provided, that if Borrower (or any Affiliate thereof) does not have all appropriate Licenses, any Manager shall have all the appropriate Licenses and be in compliance with all applicable Legal Requirements at or prior to the time

such Management Agreement is entered into (and, to the extent the Management Agreement being surrendered, terminated or cancelled is not a Brand Management Agreement and Borrower does not have a license to use the MGM/Mandalay Brand Names in connection with the operation of the Hotel Components, enter into a Franchise/License Agreement) (y) with a MGM/Mandalay Lease, and in each case any termination fees and other sums payable to the Manager being replaced are paid in accordance with the terms of the Management Agreement being surrendered, terminated or canceled;

(c) to the extent the Property is subject to a Franchise/License Agreement, surrender, terminate or cancel such Franchise/License Agreement; provided, that Borrower may, without Lender's consent, replace the Franchisor/Licensors so long as the Borrower enters into (w) a license to use the MGM/Mandalay Brand Names in connection with the operation of the Hotel Components, (x) a Franchise/License Agreement, (y) a Brand Management Agreement or (z) a MGM/Mandalay Lease, and any termination fees and other sums payable to the Franchisor/Licensors being replaced are paid in accordance with the terms of the Franchise/License Agreement being surrendered, terminated or canceled;

(d) reduce or consent to the reduction of the term of a Casino Management Agreement, Management Agreement or Franchise/License Agreement except in connection with the execution of a replacement Casino Management Agreement, Management Agreement, Franchise/License Agreement or MGM/Mandalay Lease;

(e) increase or consent to the increase of the amount of any charges or fees paid or reimbursable by Borrower under a Casino Management Agreement, Management Agreement or Franchise/License Agreement, except in connection with the execution of a replacement Casino Management Agreement, Management Agreement or Franchise/License Agreement;

(f) otherwise modify, change, supplement, alter or amend a Casino Management Agreement, Management Agreement or Franchise/License Agreement in any manner that would be materially adverse to Lender, Borrower, the Loan and/or the applicable Individual Property (provided that Borrower may modify, change, supplement, alter or amend a Casino Management Agreement, Management Agreement or Franchise/License Agreement to the extent such modification, change, supplement, alteration or modification (A) (x) does not place Lender or Borrower in a less favorable position than as set forth in such Casino Management Agreement, Management Agreement or Franchise/License Agreement, prior to such modification, change, supplement, alteration or modification, as applicable, and (y) does not impair Lender's rights and/or remedies under the Loan Documents or otherwise adversely affect the liens created by the Loan Documents; (B) would not cause the Casino Management Agreement, Management Agreement or Franchise/License Agreement to no longer be a Casino Management Agreement, or Franchise/License Agreement, as applicable; or (C) otherwise does not waive or release any of Borrower's rights and remedies under, the Casino Management Agreement, the Management Agreement or the Franchise/License Agreement in any material respect). To the extent Borrower has a right to consent to the same under a Casino Management Agreement or Management Agreement and Knowledge thereof, Borrower shall not, and, subject to the terms of such Casino Management Agreement or Management Agreement, as applicable, shall not permit the Casino Operator or Manager, as applicable, to subcontract any or all of its respective material management responsibilities under such Casino Management Agreement or

Management Agreement, as applicable, to a third-party without the prior written consent of Lender, which consent shall not be unreasonably withheld, conditioned or delayed. Following the occurrence and during the continuance of an Event of Default, Borrower shall not exercise any rights, make any decisions, grant any approvals or otherwise take any action under a Casino Management Agreement, the Management Agreement or the Franchise/License Agreement without the prior written consent of Lender, which consent may be granted, conditioned or withheld in Lender's sole discretion.

5.2.2. Liens. Borrower shall not create, incur, assume or suffer to exist any Lien on any portion of any Individual Property or permit any such action to be taken, except for (a) Permitted Encumbrances; (b) Liens created by or permitted pursuant to the Loan Documents; and (c) easements and other similar encumbrances entered into by Borrower in the ordinary course of business for use, maintenance, access, parking, water and sewer lines, telephones and telegraph lines, electric lines or other utilities or for other similar purposes, provided that no such easement or other similar encumbrance shall materially impair the utility and operation of any Individual Property or materially and adversely affect the value of any Individual Property or Borrower's condition (financial or otherwise) or business. Without limiting the foregoing, Borrower shall not incur any PACE Debt without the prior written consent of Lender in its sole discretion.

5.2.3. Dissolution. Except in each case to the extent permitted by the Loan Documents, Borrower shall not (a) engage in any dissolution, liquidation, division into separate and distinct entities, or consolidation or merger with or into any other business entity, (b) engage in any business activity not related to clause (i) of the definition of "Special Purpose Entity," (c) transfer, lease or sell, in one transaction or any combination of transactions, the assets or all or substantially all of the properties or assets of Borrower, (d) modify, amend, waive or terminate its Organizational Documents or its qualification and good standing in any jurisdiction where any Individual Property is located or (e) cause Principal to (i) dissolve, wind up or liquidate or take any action, or omit to take an action, as a result of which the Principal would be dissolved, wound up or liquidated in whole or in part, or (ii) amend, modify, waive or terminate the Organizational Documents of the Principal, in each case, without obtaining the prior written consent of Lender or Lender's designee.

5.2.4. Change in Business. Borrower shall not enter into any line of business other than as set forth in clause (i) of the definition of "Special Purpose Entity" or make any material change in the scope or nature of its business objectives, purposes or operations, or undertake or participate in activities other than the continuance of its present business. Nothing contained in this Section 5.2.4 is intended to expand the rights of Borrower contained in Section 5.2.9(c) hereof, and for the avoidance of doubt, the rights of Borrower to effectuate Transfers is governed solely by Section 5.2.9 hereof.

5.2.5. Debt Cancellation. Borrower shall not cancel or otherwise forgive or release any claim or debt owed to Borrower by any Person except (i) for adequate consideration and in the ordinary course of Borrower's business, (ii) termination of Leases in accordance herewith or the forgiveness in the ordinary course of Borrower's business, or Rent obligations in arrears in connection with a settlement with a Tenant under a Lease or, provided that in the case of a Material Lease, the amount of Rent so forgiven is less than the aggregate amount of two (2) months' basic Rent under such Material Lease, (iii) negotiated settlements or write offs of past due guest obligations of non-Affiliates in the ordinary course of business or (iv) the cancellation

or forgiveness of indebtedness of casino patrons that are non-Affiliates in the ordinary course of business in the operation of the Casino Components.

5.2.6. Zoning. Borrower shall not initiate or consent to any zoning reclassification of any portion of any Individual Property or seek any variance under any existing zoning ordinance or use or permit the use of any portion of any Individual Property in any manner that could result in such use becoming a non-conforming use under any zoning ordinance or any other applicable land use law, rule or regulation, without the prior written consent of Lender.

5.2.7. No Joint Assessment. Borrower shall not suffer, permit or initiate the joint assessment of any Individual Property (a) with any other real property constituting a tax lot separate from such Individual Property, and (b) which constitutes real property with any portion of such Individual Property which may be deemed to constitute personal property, or any other procedure whereby the lien of any taxes which may be levied against such personal property shall be assessed or levied or charged to such real property portion of such Individual Property.

5.2.8. ERISA.

(a) Assuming compliance by Lender with paragraph (c) of this Section 5.2.8, Borrower shall not engage in any transactions contemplated under this Agreement which would cause any obligation, or action taken or to be taken, hereunder (or the exercise by Lender of any of its rights under the Note, this Agreement or the other Loan Documents) to be a non-exempt prohibited transaction under Section 406(a) of ERISA or Section 4975(c)(1)(A)-(C) of the Code.

(b) Borrower covenants and agrees that it will use commercially reasonable efforts to provide notice to Lender in writing if, in the reasonable judgment of the Borrower, which may be based on consultation with counsel, the assets of the Borrower constitute plan assets of any “benefit plan investor” within the meaning of the Plan Asset Regulations or any plan subject to any Applicable Similar Law.

(c) Lender represents and warrants that, throughout the term of the Loan, no portion of the assets used by any Lender in connection with the transactions contemplated under this Agreement and the other Loan Documents constitutes assets of a (i) “benefit plan investor” within the meaning of the Plan Asset Regulations unless the applicable Lender is relying on an available prohibited transaction exemption, all of the conditions of which are and continue to be satisfied or (ii) governmental plan (as defined in Section 3(32) of ERISA) which is subject to any provision which is substantially similar to the prohibited transaction provisions of Section 406 of ERISA or Section 4975 of the Code (“Applicable Similar Law”), unless (in the case of this clause (ii)) the acquisition and holding of the Loan or any interest therein will not give rise to a violation of any such Applicable Similar Law. Lender covenants and agrees that it will notify the Borrower in the event that it is aware that it is in breach of any aspect of this representation and covenant or is aware that with the passing of time, giving of notice or expiry of any applicable grace period it will breach any aspect of this representation and covenant.

(d) For the avoidance of doubt, the covenants set forth in this Section 5.2.8 are not intended to cover MGM or its Affiliates.

5.2.9. Transfers. (a) Borrower acknowledges that Lender has examined and relied on the experience of Borrower and its stockholders, general partners, members, principals and (if Borrower is a trust) beneficial owners in owning and operating properties such as the Property in agreeing to make the Loan, and will continue to rely on Borrower's ownership of the Property as a means of maintaining the value of the Property as security for repayment of the Debt and the performance of the Other Obligations. Borrower acknowledges that Lender has a valid interest in maintaining the value of the Property so as to ensure that, should Borrower default in the repayment of the Debt or the performance of the Other Obligations, Lender can recover the Debt by a sale of the Property.

(b) Without the prior written consent of Lender and except to the extent otherwise set forth in this Section 5.2.9 or in connection with the release of any Individual Property in accordance with this Agreement, Borrower shall not and shall not permit any Restricted Party to do any of the following (collectively, a "**Transfer**"): (i) sell, convey, mortgage, grant, bargain, encumber, pledge, assign, grant options to purchase with respect to, or otherwise transfer or dispose of (directly or indirectly, voluntarily or involuntarily, by operation of law or otherwise, and whether or not for consideration or of record) the Property or any part thereof or any legal or beneficial interest therein, (ii) enter into, or permit the Property to be subject to, any PACE Debt, (iii) permit a Sale or Pledge of an interest in any Restricted Party, other than, in each case, (A) pursuant to Leases of space in the Improvements to Tenants in accordance with the provisions of Section 5.1.18 and customary occupancy agreements with short-term hotel guests, and (B) Permitted Transfers and Permitted Indebtedness, or (iv) Borrower dividing into two or more separate and distinct entities.

(c) A Transfer shall include, but not be limited to, (i) an installment sales agreement wherein Borrower agrees to sell any Individual Property or any part thereof for a price to be paid in installments; (ii) an agreement by Borrower leasing all or a substantial part of any Individual Property for other than actual occupancy by a space Tenant thereunder or a sale, assignment or other transfer of, or the grant of a security interest in, Borrower's right, title and interest in and to any Leases or any Rents; (iii) if a Restricted Party is a corporation, any merger, consolidation or Sale or Pledge of such corporation's stock or the creation or issuance of new stock; (iv) if a Restricted Party is a limited or general partnership or joint venture, any merger or consolidation or the change, removal, resignation or addition of a general partner or the Sale or Pledge of the partnership interest of any general partner or any profits or proceeds relating to such partnership interest, or the Sale or Pledge of limited partnership interests or any profits or proceeds relating to such limited partnership interest or the creation or issuance of new limited partnership interests; (v) if a Restricted Party is a limited liability company, any merger or consolidation or the change, removal, resignation or addition of a managing member or non-member manager (or if no managing member, any member) or the Sale or Pledge of the membership interest of a managing member (or if no managing member, any member) or any profits or proceeds relating to such membership interest, or the Sale or Pledge of non-managing membership interests or the creation or issuance of new non managing membership interests or (vi) if a Restricted Party is a trust or nominee trust, any merger, consolidation or the Sale or Pledge of the legal or beneficial interest in a Restricted Party or the creation or issuance of new legal or beneficial interests.

(d) Notwithstanding the provisions of this Section 5.2.9, the following Transfers shall not require the consent of Lender or the payment of any transfer fee:

(i) The Sale or Pledge, in one or a series of transactions, of the direct or indirect equity interests in Borrower or direct or indirect interests in any Restricted Party (excluding the direct interests in Borrower or Mezzanine Borrower, other than, for the avoidance of doubt, a Permitted Transfer set forth in clause (m) of the definition of “Permitted Transfer”); provided, that, (A) after giving effect to such Sale or Pledge (and in the case of a Sale or Pledge that is a pledge for security purposes, any subsequent foreclosure thereon), (x) (1) Borrower and Principal (on an unencumbered and look through basis) are indirectly Controlled and at least 50.1% owned by BREIT OP and/or MGP OP, provided that (I) with respect to BREIT OP, BREIT OP is owned, managed or Controlled by BREIT, a Qualified Advisor, a Qualified Transferee or a Public Vehicle and (II) with respect to MGP OP, MGP OP is managed and Controlled by MGP, a Public Vehicle or a Qualified Transferee, or (y) following a Public Sale, a Public Vehicle or, following a Permitted Assumption, the applicable Qualified Transferee (1) shall own not less than fifty-one percent (51%) of the economic and direct or indirect legal and beneficial interests in Borrower, Guarantor and Principal (on an unencumbered and look through basis) and (2) Control Borrower, Guarantor and Principal, (B) upon the written request of Lender, Borrower shall deliver to Lender notice of each sale described in this Section 5.2.9(d)(i) not less than ten (10) days following such request, (C) no Sale or Pledge of any direct interest in any Borrower, Mezzanine Borrower or Principal shall be permitted (other than, for the avoidance of doubt, a Permitted Transfer set forth in clause (m) of the definition of “Permitted Transfer”), (D) no Individual Borrower or Principal shall fail to be a Special Purpose Entity by reason of such Sale or Pledge, (E) for so long as the Loan shall remain outstanding (I) no pledge of any direct interests in any Restricted Pledge Party shall be permitted (other than pledges securing the Loan) and except that a pledge of the direct ownership interests in the most upper tier Restricted Pledge Party shall be permitted (other than pledges securing the Loan or Mezzanine Loan) if such pledge directly or indirectly secures indebtedness that is also directly or indirectly secured by substantial assets other than the Property and (II) no Restricted Pledge Party shall issue preferred equity that has the characteristics of mezzanine debt (such as a fixed maturity date, pledged ownership interests as security, regular payments of interest, a fixed rate of return and rights of the equity holder to demand repayment of its investment), and (F) with respect to any transferee that, as a result of such transfer, will hold a twenty percent (20%) or greater direct or indirect interest in, or control, Borrower and/or Principal (and such transferee owned less than twenty percent (20%) of the direct or indirect interest in Borrower and/or Principal or did not control Borrower and/or Principal on the Closing Date), Lender shall receive satisfactory “know your customer” compliance screening searches consisting of a search and evaluation of (x) OFAC sanctions and other government required sanctions lists, (y) negative news screening of such holders, if any, associated with material derogatory information that could reasonably result in anti-money laundering risk to Lender related to terrorist or other financial crimes and (z) such statutes and other information reasonably required by Lender to confirm that

Borrower and/or Principal, and such transferee is not an Embargoed Person (Lender agrees to use diligent and commercially reasonable efforts to complete such “know your customer” diligence in accordance with this clause (E) within fifteen (15) Business Days after Lender receives the requested information necessary to conduct such diligence). If after giving effect to any such Sale or Pledge, more than forty-nine percent (49%) in the aggregate of direct or indirect interests in a Restricted Party are owned by any Person and its Affiliates that owned less than forty-nine percent (49%) direct or indirect interest in such Restricted Party as of the Closing Date, Borrower shall deliver to Lender an Additional Insolvency Opinion reasonably acceptable to Lender and the Approved Rating Agencies. Notwithstanding anything to the contrary contained in this Agreement, (x) no notice to, or consent of, Lender shall be required in connection with any Sale or Pledge of direct or indirect interests in any Excluded Entity or by and among any Excluded Entity and (y) no Restricted Pledge Party (other than Borrower, Mezzanine Borrower or Principal) shall be restricted from any Sale or Pledge of its direct or indirect assets; provided such assets are not encumbered (or required to be encumbered) by the Loan or the Mezzanine Loan. In connection with a Sale or Pledge resulting in Guarantor no longer owning direct or indirect interests in Borrower, Principal or the Property, Guarantor shall be released as a guarantor under (I) the Guaranty for any acts occurring after such Sale or Pledge; provided that Borrower delivers a Substitute Guaranty from a Qualified Transferee that Controls Borrower or is under common Control with Borrower, which Substitute Guaranty shall include all liability for all such acts for which Guarantor was so released and (II) the Excess Cash Flow Guaranty, if any, provided that Borrower shall pay to Lender an amount equal to the Guaranteed Excess Cash Flow as of such date, which amounts shall be deposited by Lender into the Excess Cash Flow Reserve Account.

(ii) A Public Sale, provided, that (A) if after giving effect to any such Public Sale, more than forty-nine percent (49%) in the aggregate of the direct or indirect interests in any Restricted Party are owned by any Person and its Affiliates that owned less than forty-nine percent (49%) of the direct or indirect interest in such Restricted Party as of the Closing Date, Borrower shall deliver to Lender an Additional Insolvency Opinion reasonably acceptable to Lender and, to the extent a rated Securitization has occurred, the Approved Rating Agencies; (B) none of Borrower or Principal shall fail to be a Special Purpose Entity by reason of such sale, (C) no Transfer of any direct interest in Borrower or Principal, or for so long as the Mezzanine Loan remains outstanding, in the Mezzanine Borrower shall be permitted, (D) no Restricted Pledge Party shall issue preferred equity that has the characteristics of mezzanine debt (such as a fixed maturity date, pledged ownership interests as security, regular payments of interest, a fixed rate of return and rights of the equity holder to demand repayment of its investment), (E) with respect to any transferee that, as a result of such transfer, will hold a twenty percent (20%) or greater direct or indirect interest in, or control, Borrower and/or Principal, (and such transferee owned less than twenty percent (20%) of the direct or indirect interest in Borrower and/or Principal, or did not control Borrower and/or Principal, on the Closing Date), Lender shall receive satisfactory “know your customer” compliance screening searches consisting of a search and evaluation of

(x) OFAC sanctions and other government required sanctions lists, (y) negative news screening of such holders, if any, associated with material derogatory information that could reasonably result in anti-money laundering risk to Lender related to terrorist or other financial crimes and (z) such statutes and other information reasonably required by Lender to confirm that Borrower and/or Principal, and such transferee is not an Embargoed Person (Lender agrees to use diligent and commercially reasonable efforts to complete such “know your customer” diligence in accordance with this clause (E) within fifteen (15) Business Days after Lender receives the requested information necessary to conduct such diligence), and (F) for so long as the Property is subject to the MGM/Mandalay Lease, any such Transfer shall comply with the terms and conditions of the MGM/Mandalay Lease and, to the extent the consent of MGM/Mandalay Tenant is required thereunder, Lender shall have been provided evidence of such consent. Upon completion of any such Public Sale subject to and in accordance with the provisions of this Section 5.2.9(d)(ii), Guarantor shall be released as a guarantor under (I) the Guaranty for any acts occurring from and after such Public Sale; provided that Borrower delivers to Lender (x) a Substitute Guaranty for obligations and liabilities under the Guaranty occurring from and after such Public Sale from (1) a Replacement Guarantor or (2) a Public Vehicle that Controls Borrower or is under common Control with Borrower and (y) the organizational documents of such replacement guarantor, resolutions authorizing such replacement guarantor to enter into either the assumption of the Guaranty or the Substitute Guaranty and an enforceability and execution opinion covering the enforceability of such assumption of the Guaranty or the Substitute Guaranty against such replacement guarantor in the same form and substance as the enforceability opinion delivered to Lender on the Closing Date (or in such other form as reasonably approved by Lender) and (II) the Excess Cash Flow Guaranty, if any, provided that Borrower shall pay to Lender an amount equal to the Guaranteed Excess Cash Flow as of such date, which amounts shall be deposited by Lender into the Excess Cash Flow Reserve Fund. Following any Transfer in accordance with this Section 5.2.9(d)(ii), the Public Vehicle shall be deemed to be an Excluded Entity. For purposes of clarity, the provisions of Section 5.2.3 and this Section 5.2.9 shall not restrict the Public Vehicle (or any direct or indirect owner of the Public Vehicle, but excluding any Borrower and Mezzanine Borrower) from effectuating a restructuring and such Public Vehicle (or any direct or indirect owner of the Public Vehicle, but excluding any Borrower or Mezzanine Borrower) shall be permitted to effectuate a restructuring, including amending or modifying its organizational documents or commercial arrangements including any amendments or modifications reasonably determined by such Public Vehicle to be required to satisfy stock exchange, quotation system listing or trading requirements. Notwithstanding anything to the contrary contained herein, Lender’s receipt of a Rating Agency Confirmation shall not be required in connection with a Public Sale.

(iii) Any pledge made by Mezzanine Borrower to secure the Mezzanine Loan or any other mezzanine loan created in accordance with the terms of this Agreement, in accordance with the Mezzanine Loan Documents or any Foreclosure.

(e) In the event that any Gaming Authority requires Borrower or its direct or indirect owner to apply for a Gaming License in connection with its ownership of the Property, Borrower may, without Lender's consent, implement a "voteco" structure which would result in (A) one hundred percent of the voting membership interests in Borrower (or a direct or indirect owner of Borrower) being owned by a Voteco Entity, (B) Voteco Entity thereafter Controlling Borrower, and (C) the direct or indirect economic interests in Borrower continuing to be owned in accordance with the requirements of this Agreement and the other Loan Documents provided that the following conditions are satisfied:

(1) No Event of Default shall have occurred and be continuing;

(2) Borrower shall provide Lender with no less than thirty (30) days prior written notice of the implementation of such "voteco" structure, which notice shall include organizational charts that reflect the "voteco" structure of Borrower both prior to and subsequent to the implementation of such "voteco" structure;

(3) Borrower shall deliver to Lender copies of the organizational documents of the Voteco Entity filed with the appropriate office in the applicable state of formation, together with any authorizing resolutions and amendments to the organizational documents of Borrower or its direct or indirect owners to effectuate the "voteco" structure;

(4) Borrower shall deliver to Lender an Additional Insolvency Opinion and new enforceability and corporate opinions as Lender shall reasonably require from Borrower's counsel in connection with the implementation of the "voteco" structure;

(5) with respect to any transferee that, as a result of the implementation of the "voteco" structure, will hold a twenty percent (20%) or greater direct or indirect interest in, or control, Borrower and/or Principal, (and such transferee owned less than twenty percent (20%) of the direct or indirect interest in Borrower and/or Principal, or did not control Borrower and/or Principal, on the Closing Date), Lender shall receive satisfactory "know your customer" compliance screening searches consisting of (x) OFAC sanctions and other government required sanctions lists, (y) negative news screening of such holders, if any, associated with material derogatory information that could reasonably result in anti-money laundering risk to Lender related to terrorist or other financial crimes and (z) such statutes and other information reasonably required by Lender to confirm that Borrower and/or Principal, and such transferee is not an Embargoed Person (Lender agrees to use diligent and commercially reasonable efforts to complete such "know your customer" diligence in accordance with this clause (5) within fifteen (15) Business Days after Lender receives the requested information necessary to conduct such diligence); and

(6) Borrower shall reimburse Lender for any actual costs and expenses it reasonably incurs arising from the transactions contemplated by this Section 5.2.9(e) (including, without limitation, reasonable attorneys' fees and expenses),

(f) No Transfer and assumption of the Loan shall occur during the period that is forty-five (45) days prior to and sixty (60) days after a rated Securitization, so long as such rated Securitization occurs within three (3) months of the date hereof. Otherwise, in addition to Borrower's other rights expressly permitted under this Section 5.2.9, (X) a Transfer of all of the Property to a new borrower or borrowers (the "**Transferee Borrower**"), or (Y) a Transfer of more than forty-nine percent (49%) of the direct or indirect legal and beneficial interests in the Mezzanine Borrower or, if no Mezzanine Loan is then outstanding, Borrower, provided that, in each instance, the same does not otherwise constitute a Permitted Transfer or is not otherwise permitted by Section 5.2.9(c) (a "**Majority Equity Transfer**"), shall each be permitted without Lender's consent (each, a "**Permitted Assumption**"), provided that Lender receives thirty (30) days' prior written notice of such Permitted Assumption and no Event of Default has occurred and is continuing at the time such Permitted Assumption is consummated, and further provided that in connection with any Permitted Assumption pursuant to this Section 5.2.9(f) the following additional requirements are satisfied:

(i) Borrower shall pay Lender a transfer fee equal to \$250,000.00 at the time such Permitted Assumption is consummated;

(ii) Borrower shall pay any and all reasonable out-of-pocket costs incurred in connection with such Permitted Assumption (including, without limitation, Lender's reasonable counsel fees and disbursements and all recording fees, title insurance premiums and mortgage and intangible taxes and the fees and expenses of the Approved Rating Agencies pursuant to clause (vi) below);

(iii) Transferee Borrower or, in the case of a Majority Equity Transfer, Borrower, must be (A) a Qualified Transferee or (B) fifty-one percent (51%) or more owned (directly or indirectly) and Controlled by a Qualified Transferee;

(iv) With respect to a Transfer of the Property, if applicable, a Transferee Borrower shall assume all of the obligations of Borrower under the Loan Documents in a manner reasonably satisfactory to Lender in all material respects, including, without limitation, by entering into an assumption agreement in form and substance satisfactory to Lender;

(v) Transferee Borrower and any of Transferee Borrower's Principals ("**Related Entities**") must be able to satisfy all of the applicable representations and covenants set forth in Sections 4.1.30, 4.1.35, 5.1.22, 5.1.25 and 5.2.8 of this Agreement, and Transferee Borrower and the Related Entities shall deliver (A) all organizational documentation reasonably requested by Lender, which shall be reasonably satisfactory to Lender and, following a rated Securitization, satisfactory to the Approved Rating Agencies and (B) all certificates and agreements necessary to evidence the Permitted Assumption and an Additional

Insolvency Opinion and a due authority, execution and enforceability opinion reasonably required by Lender;

(vi) Borrower or Transferee Borrower, at its sole cost and expense, shall deliver to Lender an Additional Insolvency Opinion reflecting such Transfer reasonably satisfactory in form and substance to Lender;

(vii) If the Permitted Assumption is accomplished by the conveyance of the Property rather than by assignment of all of Guarantor's or a Restricted Party's interests in Borrower, Borrower shall deliver, at its sole cost and expense, an endorsement to the Title Insurance Policies, as modified by the assumption agreement, confirming the lien of the Mortgages as a valid first lien on the Property and naming the Transferee Borrower as owner of the Property, which endorsement shall insure that, as of the date of the recording of the assumption agreement, the Property shall not be subject to any additional exceptions or liens other than those contained in the relevant Title Insurance Policy issued on the date hereof and any other Permitted Encumbrances;

(viii) If the Property is subject to the MGM/Mandalay Lease at the time of the Permitted Assumption, (A) the Permitted Assumption shall be in compliance with the terms and provisions of the MGM/Mandalay Lease and the other MGM/Mandalay Lease Documents, (B) Lender shall receive evidence of any consent required under the MGM/Mandalay Lease and the other MGM/Mandalay Lease Documents (solely to the extent such consent is required thereunder) in connection with the Permitted Assumption, and (C) the Transferee Borrower shall assume all of Borrower's obligations, liabilities and rights under the MGM/Mandalay Lease, the MGM/Mandalay Lease Documents and the MGM/Mandalay Lease SNDA;

(ix) Intentionally omitted;

(x) If the Property is not subject to the MGM/Mandalay Lease at the time of the Permitted Assumption, (A) the Property shall be managed by a Casino Operator, (B) (1) the Casino Components shall be managed by Casino Operator pursuant to a Casino Management Agreement and (2) the Hotel Components shall be managed by Manager pursuant to a Management Agreement and licensed, flagged and branded (I) pursuant to a Franchise/License Agreement or (II) a Brand Management Agreement or (C) the Transferee Borrower shall enter into a MGM/Mandalay Lease;

(xi) Lender shall receive satisfactory "know your customer" compliance screening searches for Transferee Borrower and any Person that holds a twenty percent (20%) or greater direct or indirect interest in, or controls, Transferee Borrower or, in the case of a Majority Equity Transfer, Borrower (and such Person owned less than twenty percent (20%) of the direct or indirect interest in Borrower or did not control Borrower prior to the transfer), consisting of a search and evaluation of (x) OFAC sanctions and other government required sanctions lists, (y) negative news screening of such holders, if any, associated

with material derogatory information that could reasonably result in anti-money laundering risk to Lender related to terrorist or other financial crimes and (z) such statutes and other information reasonably required by Lender to confirm that such Transferee Borrower or, in the case of a Majority Equity Transfer, Borrower, is not an Embargoed Person. Lender agrees to use diligent and commercially reasonable efforts to complete such “know your customer” diligence in accordance with this clause (xi) within fifteen (15) Business Days after Lender receives the requested information from Borrower (or such Transferee Borrower) necessary to conduct such diligence with respect to any such proposed Transfer; and

(xii) To the extent the Mezzanine Loan is outstanding, Lender shall have received evidence that Mezzanine Borrower shall have complied with the applicable transfer requirements the Mezzanine Loan Agreement.

immediately upon the consummation of a Permitted Assumption pursuant to this Section 5.2.9(f), then (I) (X) each Borrower and (Y) Guarantor provided that either (1) a Qualified Transferee (other than a Casino Operator which does not otherwise satisfy clause (b) of the definition of “Qualified Transferee”) or (2) one or more substitute guarantors reasonably acceptable to Lender as of the date of such the Public Sale or such Permitted Assumption, as applicable (any such person that qualified with the requirements of subclauses (1) or (2), each a “**Replacement Guarantor**”) shall have executed and delivered a replacement guaranty substantially in the form of the Guaranty or otherwise in a form reasonably satisfactory to Lender (a “**Substitute Guaranty**”) or have assumed all of the liabilities and obligations of Guarantor under the Guaranty arising from and after the date of the Public Sale or Permitted Assumption, as applicable, shall be released from all liability under this Agreement, the Note, the Mortgage, the Guaranty and the other Loan Documents accruing from and after the date of such Substitute Guaranty and (II) so long as Borrower pays to Lender an amount equal to the Guaranteed Excess Cash Flow as of such date, which amounts shall be deposited by Lender into the Excess Cash Flow Reserve Fund, the Excess Cash Flow Guarantor under the Excess Cash Flow Guaranty shall be released from all liability under the Excess Cash Flow Guaranty. With respect to clause (I) immediately above, the foregoing release shall be effective automatically upon the date of such Substitute Guaranty, but Lender agrees to provide written evidence thereof if the same is reasonably requested by Borrower. For the avoidance of doubt, a Rating Agency Confirmation shall not be required in connection with a Permitted Assumption.

(g) Lender shall not be required to demonstrate any actual impairment of its security or any increased risk of default hereunder in order to declare the Debt immediately due and payable upon Borrower’s Transfer without Lender’s consent, if such consent is required hereunder. This provision shall apply to every Transfer regardless of whether voluntary or not, or whether or not Lender has consented to any previous Transfer.

(h) Notwithstanding anything to the contrary contained in this Agreement, at any time during the term of the Loan, Borrower shall have the right to cause (i) BREIT or BREIT OP, (ii) MGP or MGP OP, (iii) an MGP Affiliate, (iv) a BREIT Affiliate or (v) a Qualified Transferee (each a “**Substitute Guarantor**”) to execute and deliver a Substitute Guaranty with respect to either or all of the entities then comprising Guarantor. If a Substitute Guaranty is delivered in accordance with preceding sentence, Lender shall release Guarantor from its

obligations hereunder upon the execution and delivery by such Substitute Guarantor of a Substitute Guaranty. In the event that Borrower replaces Guarantor with a Substitute Guarantor (other than BREIT, BREIT OP, MGP or MGP OP), Borrower shall deliver the guarantor financial statements of the Substitute Guarantor as required pursuant to Section 5.1.11 of this Agreement with respect to the Substitute Guarantor. Further, in the event that Borrower replaces Guarantor with a Substitute Guarantor, Borrower shall deliver to Lender the organizational documents of such Substitute Guarantor, resolutions authorizing such Substitute Guarantor to enter into the Substitute Guaranty and an enforceability and execution opinion covering the enforceability of the Substitute Guaranty against such Substitute Guarantor, which opinion shall be in the same form and substance as the enforceability opinion delivered to Lender on the Closing Date (or in such other form as reasonably approved by Lender).

(i) Notwithstanding anything to the contrary contained in this Agreement, if at any time during the term of the Loan, Guarantor has been replaced with a Substitute Guarantor pursuant to Section 5.2.9(i) and thereafter such Substitute Guarantor (other than BREIT, BREIT OP, MGP or MGP OP) shall not be in compliance with Guarantor Financial Covenants of the applicable Substitute Guaranty, then Borrower shall have the right to cause (i) BREIT, (ii) BREIT OP, (iii) MGP, (iv) MGP OP, (v) (x) BREIT OP or a BREIT Affiliate and (y) MGP OP or an MGP Affiliate, on a several basis consistent with the terms set forth in Section 1.2(d) of the Guaranty executed as of the Closing Date (provided, the Liability Percentages of BREIT OP or such BREIT Affiliate, as applicable, and MGP OP or such MGP Affiliate, as applicable, shall be adjusted to reflect the applicable Liability Percentage of BREIT OP and MGP OP as of the date such replacement guaranty is entered into), (vi) another BREIT Affiliate, (vii) another MGP Affiliate or (viii) another Affiliate of Borrower that shall own a direct or indirect interest in Borrower and satisfy the Net Worth Threshold (as defined in the Guaranty), in each case, to execute and deliver a Substitute Guaranty (each, a "Replacement Substitute Guarantor"). If a Replacement Substitute Guarantor delivers a Substitute Guaranty in accordance with the preceding sentence within ten (10) Business Days of the failure of Substitute Guarantor to comply with the Guarantor Financial Covenants of the applicable Substitute Guaranty, then such failure by such Substitute Guarantor shall not be a default hereunder or under the other Loan Documents and Lender shall release such Substitute Guarantor from its obligations under the Substitute Guaranty (including, without limitation, its obligation to comply with the Guarantor Financial Covenants of the applicable Substitute Guaranty) upon the execution and delivery by such Replacement Substitute Guarantor of a Substitute Guaranty. In the event that Borrower replaces a Substitute Guarantor with a Replacement Substitute Guarantor pursuant to this Section 5.2.9(i), Borrower shall deliver an enforceability and execution opinion covering the enforceability of the Substitute Guaranty against such Replacement Substitute Guarantor which opinion shall in the same form and substance as the enforceability opinion delivered to Lender on the Closing Date (or in such other form as reasonably approved by Lender).

(j) In connection with the delivery of any Substitute Guaranty by a Substitute Guarantor (other than BREIT, BREIT OP, MGP or MGP OP), Borrower shall cause such Substitute Guarantor to deliver an Officer's Certificate (i) certifying that it satisfies the Guarantor Financial Covenants and (ii) attaching such Substitute Guarantor's unaudited financial statements demonstrating such satisfaction of the Guarantor Financial Covenants to Lender's reasonable satisfaction.

(k) In connection with any Transfer that is permitted pursuant to this Section 5.2.9 and which is made in accordance with and otherwise satisfies the applicable terms and conditions set forth in this Section 5.2.9, in the event that (A) any direct or indirect owner of Borrower including in connection with a Public Sale or (B) a corporation or other Person that is or elects to be a real estate investment trust for federal income tax purposes acquires all or a portion of the equity interests in Borrower, Borrower shall have the right to permit a REIT Restructuring in accordance with and subject to satisfaction of, the terms and conditions set forth on Schedule 5.2.9 hereof.

(l) At Borrower's option, without Lender's consent, Borrower may cause an Individual Property to be transferred from Borrower to a newly formed, wholly owned subsidiary of a Borrower or a member of a Borrower (the "New TRS Borrower") provided that the following conditions are satisfied:

(1) No Event of Default shall have occurred and be continuing;

(2) The New TRS Borrower shall have a limited liability company agreement or limited partnership agreement substantially the same as the limited liability company agreement or limited partnership agreement of the Borrower (or in such other form reasonably approved by Lender) and Borrower and New TRS Borrower shall otherwise comply with the provisions of Section 4.1.30 and Section 5.1.25;

(3) The New TRS Borrower shall execute and deliver such documents as are reasonably requested by Lender to evidence that the New TRS Borrower shall be bound by the Loan Documents and the Debt as a Borrower thereunder and shall have assumed the MGM/Mandalay Lease or the applicable Franchise/License Agreement, Management Agreement and/or Casino Management Agreement with respect to such Individual Property;

(4) The New TRS Borrower shall deliver to Lender an Additional Insolvency Opinion and new enforceability and corporate opinions as Lender shall reasonably require from Borrower's counsel with respect to the New TRS Borrower;

(5) Borrower shall have delivered to Lender, to the extent Lender requires, in its reasonable discretion, without any cost or expense to Lender, such endorsements to the applicable Title Insurance Policy or a new title policy (if such endorsements are not available) insuring that fee simple title to the applicable Individual Property being transferred is vested in the New TRS Borrower (subject to Permitted Encumbrances) pursuant to a mortgage, deed to secure debt or deed of trust in form and substance substantially similar to the Mortgage (which may be taken by assignment from Borrower) with respect to such Individual Property delivered as of the Closing Date, hazard insurance endorsements or insurance certificates as Lender may deem reasonably necessary at the time of the transfer, all in form and substance reasonably satisfactory to Lender;

(6) Borrower shall have furnished to Lender all appropriate evidence of the New TRS Borrower's organization and good standing and the authorization of the signatories to execute the assumption documents contemplated by this Section 5.2.9(1) along with an incumbency certificate with respect to such documents substantially in the form delivered by Borrower to Lender on the date hereof;

(7) Borrower, without any cost to Lender, shall furnish any information reasonably requested by Lender with respect to the New TRS Borrower for the preparation of, and shall authorize Lender to file, new financing statements and financing statement amendments and other documents to the fullest extent permitted by applicable Legal Requirements, and shall execute any additional documents reasonably requested by Lender in order to perfect Lender's interest in the collateral described therein; and

(8) Borrower shall reimburse Lender for any actual costs and expenses it reasonably incurs arising from the transactions contemplated by this Section 5.2.9(1) (including, without limitation, reasonable attorneys' fees and expenses).

5.2.10. Mezzanine Loan. Notwithstanding anything to the contrary set forth in this Agreement or the other Loan Documents, Borrower shall have a one-time right to cause Mezzanine Borrower to incur additional Indebtedness in the form of a mezzanine loan after the Securitization of the whole Loan (the "**Mezzanine Loan**"), subject to the satisfaction of all of the following conditions precedent:

(a) no Event of Default shall then be continuing;

(b) the principal amount of the Mezzanine Loan shall in no event be greater than an amount equal to the amount which shall yield (x) an Aggregate LTV Ratio of sixty-seven percent (67%), and (y) a Debt Service Coverage Ratio equal to the Closing Date Debt Service Coverage Ratio;

(c) the collateral for the Mezzanine Loan shall include only pledges of the direct or indirect equity interests in Borrower (which shall not include the Cash Management Account and shall not include any portion of the Property);

(d) the lender of the Mezzanine Loan shall be a Person who satisfies the Eligibility Requirements or such other Person approved by Lender (such approval not to be unreasonably withheld, conditioned or delayed);

(e) the lender of the Mezzanine Loan shall enter into an intercreditor agreement reasonably acceptable to such lender and Lender;

(f) Lender shall have received copies of such Mezzanine Loan Documents, together with such other certificates and legal opinions (including but not limited to an Additional Insolvency Opinion) as Lender shall reasonably request;

(g) the Mezzanine Borrower and any other pledgors of interests in Borrower shall be structured into the organizational structure of Borrower in a manner such as not to adversely affect the bankruptcy remote nature of Borrower, which structure shall be consistent with all current Rating Agency criteria, all as determined in the reasonable opinion of Lender, provided, for the avoidance of doubt, no Rating Agency Confirmation shall be required in connection with the incurrence of the Mezzanine Loan;

(h) all organizational documents of Borrower and all Loan Documents shall be revised and/or amended to the reasonable satisfaction of Lender to reflect such changes as are necessary for the Mezzanine Loan, including, without limitation, that a Mezzanine Loan Event of Default shall be a Cash Trap Event hereunder;

(i) Borrower shall pay all of Lender's reasonable out-of-pocket costs and expenses in connection with such Mezzanine Loan;

(j) at the option of Borrower and/or Mezzanine Borrower, any voluntary prepayments may be applied by the Mezzanine Borrower to the Mezzanine Loan until such Mezzanine Loan is paid in full in accordance with the Mezzanine Loan Documents without any obligation of Borrower to make a corresponding prepayment of the Loan; provided that the foregoing shall not apply to (i) prepayments made to achieve a DSCR Cure, which shall be made concurrently with a pro rata prepayment of the Loan (which portion of which prepayment applicable to the Loan shall be applied in accordance with Section 2.4.3 hereof) and the Mezzanine Loan and (ii) prepayments made from Excess Cash Flow Reserve Funds, which shall be made concurrently with a *pro rata* prepayment of the Loan under this Agreement and the Mezzanine Loan under the Mezzanine Loan Agreement;

(k) provided no Event of Default is continuing, nothing herein or in any Lender Document shall prohibit Mezzanine Borrower from prepaying at a discount all or any portion of the Mezzanine Loan (including any participations thereof) (each a "Discounted Payoff") pursuant to negotiated transactions with only the applicable Mezzanine Lender (or any participants thereof) which is accepting such Discounted Payoff consenting to such Discounted Payoff;

(l) notwithstanding anything to the contrary contained in the Loan Documents, provided that the conditions contained in this Section 5.2.9 are met, Borrower shall be permitted to (and no notice to or consent of Lender shall be required) cause or permit an affiliate of Borrower to become (whether through assignment, contribution or other method) the direct or indirect owner of Borrower to serve as Mezzanine Borrower;

(m) the Mezzanine Loan shall be co-terminus with the Loan; and

(n) (1) during a Cash Trap Period (and for so long as no Event of Default has occurred and is continuing), in the event that the Mezzanine Loan (or any portion thereof) is directly or indirectly or beneficially owned by any Person that is Borrower, Mezzanine Borrower or a Broad Affiliate of Borrower or Mezzanine Borrower (an "Affiliated Mezzanine Lender"), in no instance shall the Affiliated Mezzanine Lender be permitted to receive late charges, principal (other than the pro rata prepayment of the Mezzanine Loan upon the release of an Individual Property or prepayment of the Loan in accordance with the terms and conditions of this

Agreement and the Mezzanine Loan Agreement) or interest at the Mezzanine Default Rate, even if a Mezzanine Loan Event of Default has occurred and is continuing and such Affiliated Mezzanine Lender shall only be permitted to receive interest at the non-Mezzanine Default Rate on a monthly basis, (2) during a Cash Trap Period (and for so long as no Event of Default has occurred and is continuing), for so long as the Mezzanine Loan in its entirety is not directly or indirectly or beneficially owned by an Affiliated Mezzanine Lender, Mezzanine Lender shall be permitted to receive on a monthly basis interest at the non-Mezzanine Default Rate and, if a Mezzanine Loan Event of Default has occurred and is continuing, funds sufficient to pay any other amounts then due under the Mezzanine Loan and the Mezzanine Loan Documents (other than the payment of the outstanding principal amount of the Mezzanine Loan on the maturity date of the Mezzanine Loan whether on the scheduled date for such payment or earlier due to an acceleration of the Mezzanine Loan) and (3) after the Anticipated Repayment Date, in no instance shall any Mezzanine Lender be permitted to receive any payments whatsoever.

5.2.11. Windmill Joint Venture Agreement. Without the prior written consent of Lender (not to be unreasonably withheld, conditioned or delayed), for so long as (x) an MGP Affiliate is the Managing Member (as defined in the Windmill Joint Venture Agreement) of the Windmill Joint Venture and (y) MGP OP is Controlled by MGM, Borrower shall not cause or permit any termination or any modification or amendment of the Windmill Joint Venture Agreement which reduces the rights of Windmill REIT in any material respect with respect to the Joint Venture Lease Document Major Decision.

Section 5.3. MGM/Mandalay Lease Covenants. For so long as any Individual Property is subject to the MGM/Mandalay Lease, from the date hereof and until payment and performance in full of all obligations of Borrower under the Loan Documents or the earlier release or assignment of the Liens of the Mortgage encumbering the applicable Individual Property (and all related obligations) in accordance with the terms of this Agreement and the other Loan Documents, Borrower hereby covenants and agrees with Lender to (x) not directly take any actions prohibited by this Section 5.3 (or grant its consent under the MGM/Mandalay Lease to permit the MGM/Mandalay Tenant to take such a prohibited action to the extent such action is prohibited under the MGM/Mandalay Lease) and (y) use commercially reasonable efforts to exercise its rights under the MGM/Mandalay Lease to cause the MGM/Mandalay Tenant to satisfy its obligations under the MGM/Mandalay Lease.

5.3.1. Operation of Property. Borrower shall use commercially reasonable efforts to cause MGM/Mandalay Tenant to cause each Individual Property in all material respects to be at all times operated, managed and maintained in accordance with the Primary Intended Use (as defined in the Initial MGM/Mandalay Lease) in accordance with the Operating Standard (as defined in the Initial MGM/Mandalay Lease).

5.3.2. MGM/Mandalay Lease.

(a) Borrower shall (i) promptly perform and observe all of the covenants required to be performed and observed by it under the MGM/Mandalay Lease Documents in all material respects in accordance with the terms thereof and do all things necessary to preserve and to keep unimpaired its rights thereunder in all material respects; (ii) use commercially reasonable efforts to enforce the performance and observance of all of the covenants required to be performed and observed by MGM/Mandalay Tenant and MGM/Mandalay Operating Subtenant

under the MGM/Mandalay Lease Documents in all material respects; (iii) promptly deliver to Lender a copy of any written (1) notice of default, breach or other material notice under the MGM/Mandalay Lease delivered or received by Borrower (including, without limitation, any breach of the Financial Covenant or Listing Covenant (as each is defined in the MGM/Mandalay Lease) and any cure thereof); (2) notice that Borrower receives stating that MGM/Mandalay Tenant is terminating the MGM/Mandalay Lease or that MGM/Mandalay Tenant is otherwise discontinuing its operation of any Individual Property; (3) notice of violation of (or claims relating to) environmental laws and regulations, in each case, received by Borrower under the MGM/Mandalay Lease Documents, (4) notice relating to the potential loss or impairment of any Gaming Licenses (whether received from MGM/Mandalay Tenant or from any Gaming Authority) (including, without limitation, any notices given under Section 23.1(b), (ix) of the MGM/Mandalay Lease); and (5) material notice in connection with a MGM/Mandalay Tenant Loan delivered by Borrower or received by Borrower in connection with any such MGM/Mandalay Tenant Loan and (iv) promptly deliver to Lender a copy of any amendment or modification to the MGM/Mandalay Lease Documents.

(b) If, during the continuance of an Event of Default, Borrower shall default in the performance or observance of any term, covenant or condition of the MGM/Mandalay Lease to be performed or observed by Borrower, as landlord thereunder, if such default is not remedied within ten (10) Business Days of receipt of notice by Borrower from Lender, then, without limiting the generality of the other provisions of this Section 5.3.2, and without waiving or releasing Borrower from any of its obligations under this Agreement and the other Loan Documents, Lender shall have the right, but shall be under no obligation, to pay any sums and to perform any act or take any action as may be appropriate to cause all of the terms, covenants and conditions of the MGM/Mandalay Lease on the part of Borrower, as landlord thereunder, to be performed or observed or to be promptly performed or observed on behalf of Borrower, to the end that the rights of Borrower in, to and under the MGM/Mandalay Lease shall be kept unimpaired and free from default. If Lender shall make any payment or perform any act or take action in accordance with the preceding sentence, Lender will notify Borrower thereof. In any such event, subject to the rights of MGM/Mandalay Tenant under the MGM/Mandalay Lease, tenants, subtenants and other occupants under the Leases, Lender and any Person designated by Lender shall have, and are hereby granted, the right to enter upon the applicable Individual Property at any time and from time to time for the purpose of taking any such action. If MGM/Mandalay Tenant shall deliver to Lender a copy of any notice of default sent by MGM/Mandalay Tenant to Borrower, as landlord under the MGM/Mandalay Lease, such notice shall constitute full protection to Lender for any action taken or omitted to be taken by Lender, in good faith, in reliance thereon. Any sums expended by Lender pursuant to this paragraph shall bear interest at the Default Rate from the date such cost is incurred to the date of payment to Lender, shall be deemed to constitute a portion of the Debt, shall be secured by the lien of the applicable Mortgage and the other Loan Documents and shall be immediately due and payable upon demand by Lender therefor.

(c) In the event that it shall be determined that the MGM/Mandalay Lease is not a lease under applicable real property laws or under laws governing bankruptcy, insolvency and creditors' rights generally, and that the interest of MGM/Mandalay Tenant in each Individual Property is other than that of tenant under the MGM/Mandalay Lease, Borrower hereby covenants and agrees that it shall use commercially reasonable efforts to cause MGM/Mandalay Tenant's interest in each Individual Property, however characterized, to continue to be subject

and subordinate to the lien of the Mortgage, or Borrower's fee interest in the applicable Individual Property, on all the same terms and conditions as contained in the MGM/Mandalay Lease and the applicable Mortgage and subject to the terms of the MGM/Mandalay Lease, execute and record all such documents reasonably required by Lender and reasonably approved by Borrower and MGM/Mandalay Tenant to subordinate MGM/Mandalay Tenant's interest in the applicable Individual Property to the lien of the applicable Mortgage.

(d) In the event that Borrower shall exercise any remedy against MGM/Mandalay Lease Guarantor pursuant to the MGM/Mandalay Lease Guaranty, including, any claim or demand for payment thereunder ("MGM/Mandalay Lease Guaranty Claim"), and if Borrower shall obtain any proceeds from any judgment against MGM/Mandalay Lease Guarantor for any MGM/Mandalay Lease Guaranty Claim (except to the extent that the amount of such MGM/Mandalay Lease Guaranty Claim was previously paid by Borrower to Lender), Borrower deposit such amounts in the Lockbox Account.

(e) Borrower shall use commercially reasonable efforts to cause MGM/Mandalay Tenant to maintain the MGM/Mandalay Restricted Reserve Accounts in accordance with the terms and conditions of the MGM/Mandalay Lease. Borrower shall not terminate, amend or modify Borrower's security interest in the MGM/Mandalay Restricted Reserve Accounts without the prior written consent of Lender, not to be unreasonably withheld, conditioned or delayed, and Borrower shall use commercially reasonable efforts to cause MGM/Mandalay Tenant to deposit funds (or cause to be deposited) (and cause the withdrawal/disbursement of such funds) in the MGM/Mandalay Restricted Reserve Accounts pursuant to the MGM/Mandalay Lease.

(f) For so long as the Property is subject to the Initial MGM/Mandalay Lease (and solely to the extent the Initial MGM/Mandalay Lease expressly requires Borrower's consent for such actions) or a Separate Lease (and solely to the extent the Separate Lease expressly requires Borrower's consent for such actions), Borrower shall not consent to any of the following without Lender's prior written approval, not to be unreasonably withheld, conditioned or delayed: (A) the Mandalay Bay Property no longer being identified as "Mandalay Bay" and/or (B) the MGM Grand Property no longer being identified as "MGM Grand".

(g) If MGM/Mandalay Tenant elects to provide a letter of credit as security or in lieu of depositing cash in a reserve or impound account in accordance with the MGM/Mandalay Lease, Borrower shall provide Lender with prompt written notice thereof and, if required in writing by Lender, any such letter of credit shall be in favor of Lender, and Lender shall have the right to draw thereunder in accordance with the terms and provisions of the MGM/Mandalay Lease.

(h) In connection with any Securitization or other sale, assignment, transfer or participation of all or any portion of the Loan and otherwise no more often than one time per calendar year, Borrower shall use commercially reasonable efforts to cause MGM/Mandalay Tenant to satisfy its obligations under Section 23.1(e) of the MGM/Mandalay Lease.

(i) Borrower shall not, without Lender's prior written consent, which consent may be granted, conditioned or withheld in Lender's sole discretion: (i) surrender, terminate or cancel the MGM/Mandalay Lease Documents (other than in connection with the entry into a

Separate Lease in accordance with Section 2.5.1(a)(vii) or in connection with Borrower exercising its rights following a default by MGM/Mandalay Tenant under the MGM/Mandalay Lease Documents, which may be exercised without Lender's consent pursuant to Section 5.3.2(k) below); (ii) sell, assign or transfer the MGM/Mandalay Lease or any of the other MGM/Mandalay Lease Documents, or any of its rights thereunder (except in connection with a Transfer permitted under this Agreement); (iii) reduce or consent to the reduction of the term of the MGM/Mandalay Lease Documents; (iv) other than in connection with the entry into a Separate Lease in accordance with Section 2.5.1(a)(vii), reduce or consent to the reduction of the amount of the rent or other amounts payable to Borrower under the MGM/Mandalay Lease Documents, including, without limitation, by modifying the "triple net" nature of the MGM/Mandalay Lease; (v) other than in connection with the entry into a Separate Lease in accordance with Section 2.5.1(a)(vii), reduce or consent to the reduction of any of the liabilities or obligations of MGM/Mandalay Lease Guarantor under the MGM/Mandalay Lease Guaranty; (vi) grant a purchase option to the MGM/Mandalay Tenant; or (vii) reduce the insurance coverage required to be maintained by MGM/Mandalay Tenant under the MGM/Mandalay Lease, including, without limitation, any reduction in the required ratings of any insurance carrier, the reductions or elimination of any coverages and the material increase of any deductible, in each case, to the extent any such reduction shall be lower than the requirements otherwise applicable to Borrower hereunder in the event the MGM/Mandalay Lease shall not be in effect. In addition to any amendment or modification to the MGM/Mandalay Lease Documents which do not require the prior written consent of the Lender under Section 5.3.2(j) or Section 5.3.2(k), Borrower shall be permitted to amend the MGM/Mandalay Lease to include an additional MGM/Mandalay Tenant event of default under the MGM/Mandalay Lease (which shall require notice from Borrower) resulting from the modification, amendment, termination, or rejection of one or more Affiliate Leases without the applicable landlord's consent (an "**Affiliate Lease Cross Default**").

(j) Other than in connection with the entry into a Separate Lease in accordance with Section 2.5.1(a)(vii), Borrower shall not, without Lender's prior written consent (such consent not to be unreasonably withheld, conditioned or delayed), (i) to the extent not otherwise specified in Section 5.3.2(i) above, otherwise reduce the insurance coverage required to be maintained under the MGM/Mandalay Lease in any material respect, including, without limitation, any material reduction in the required ratings of any insurance carrier, any material reductions or elimination of any coverages and the material increase of any deductible or (ii) to the extent not otherwise specified in Section 5.3.2(i) above, otherwise increase the obligations of Borrower or decrease the rights of Borrower under the MGM/Mandalay Lease, in each case, in any material respect.

(k) So long as no Event of Default shall have occurred and be continuing, upon the occurrence of default, violation or event of default (howsoever defined) by MGM/Mandalay Tenant under the MGM/Mandalay Lease and in connection with the exercise of Borrower's rights and remedies thereunder, Borrower shall be entitled to terminate the MGM/Mandalay Lease without Lender consent (other than in connection with an Affiliate Lease Cross Default, for which any event of default notice and/or termination provided in connection therewith (x) shall require Lender's prior written consent, which consent may be granted, conditioned or withheld in Lender's sole discretion, and (y) following a rated Securitization, Borrower shall have obtained a Rating Agency Confirmation) and either:

(i) enter into a Replacement MGM/Mandalay Lease with a Qualified Casino Operator, together with a Replacement MGM/Mandalay Lease Guaranty with a Replacement MGM/Mandalay Lease Guarantor (as applicable). Borrower shall promptly deliver a copy of any such Replacement MGM/Mandalay Lease to Lender, or (ii) with respect to the Casino Component, enter into a Casino Management Agreement with a Qualified Casino Operator on an arms'-length basis and on commercially reasonable terms in form and substance reasonably acceptable to Lender, and with respect to the Hotel Component, enter into either:

(A) a Management Agreement with a Qualified Casino Operator on commercially reasonable terms in form and substance reasonably acceptable to Lender; or

(B) a Management Agreement with a Qualified Manager and, to the extent such Qualified Manager is not a Brand Manager and Borrower does not have a license to use the MGM/Mandalay Brand Names in connection with the operation of the Hotel Components, a Franchise/License Agreement with a Franchisor/Licensors, in each case, in form and substance reasonably acceptable to Lender,

provided that, in each case, (A) Borrower shall execute such amendments to the Loan Documents as Lender shall reasonably request in connection with the termination of any such MGM/Mandalay Lease and the entry into a Replacement MGM/Mandalay Lease, Casino Management Agreement, Management Agreement and/or Franchise/License Agreement, as applicable, (B) Borrower shall deliver an Officer's Certificate that all representations and warranties contained herein shall continue to be true, correct and complete in all material respects as of the date of any such termination and entry into a Replacement MGM/Mandalay Lease, Casino Management Agreement, Management Agreement and/or Franchise/License Agreement, as applicable (except (x) to the extent that any such representations and warranties are only made as of a specific date, and if the facts and circumstances upon which such representations and warranties are based are specific solely to a certain date, in which case confirmation as to truth, completeness and correctness shall be provided as of such specific date or (y) to the extent such representations are no longer true and correct as a result of subsequent events not caused by the actions and/or omissions of Borrower or Guarantor and such events did not separately result in a Default or Event of Default under the Loan Documents, in which case Borrower shall provide any updates to such representation or warranty and the delivery of such updated representations and warranties in accordance with the terms hereunder shall not constitute a Default or Event of Default, unless such updated representations and warranties shall disclose that a Default or an Event of Default has occurred hereunder or under the other Loan Documents which has not been cured and would reasonably be expected to have a material adverse effect on Borrower or the Property); (C) with respect to each Casino Management Agreement, Borrower shall execute and deliver to Lender an assignment of management agreement and subordination of management fees in form and substance reasonably acceptable to Lender, executed by Borrower and such Casino Operator; (D) with respect to each Management Agreement, Borrower shall execute and deliver to Lender an assignment of management agreement and subordination of management fees in form and substance reasonably acceptable to Lender, executed by Borrower and such Casino Operator or Manager, as applicable, (E) with respect to each Franchise/License Agreement, Borrower shall execute and

deliver to Lender a comfort letter and/or recognition agreement in form and substance reasonably acceptable to Lender executed by Borrower and such Franchisor/Licensors; (F) with respect to each Replacement MGM/Mandalay Lease, Lender shall be entitled to receive consent and approval rights, financial statements, notices and other deliverables reasonably equivalent to such items that Lender is entitled to receive under the Initial MGM/Mandalay Lease; (G) Borrower shall promptly deliver a copy of any such Casino Management Agreement, Management Agreement and Franchise/License Agreement, as applicable; (H) Borrower shall elect to have the FF&E owned by MGM/Mandalay Tenant and/or MGM/Mandalay Operating Subtenant transferred to Borrower (or to a Replacement MGM/Mandalay Tenant or Manager) subject to and in accordance with the terms of the MGM/Mandalay Lease and any MGM/Mandalay Operating Sublease; and (I) Borrower shall pay Lender's reasonable, out-of-pocket costs and expenses (including, without limitation, reasonable, out-of-pocket counsel fees) in connection with the foregoing.

(l) Without the prior written consent of Lender (not to be unreasonably withheld, condition or delayed), Borrower shall not consent to any Transfer (including any Sale or Pledge) of any interest of MGM/Mandalay Tenant in the MGM/Mandalay Lease or MGM/Mandalay Operating Subtenant in any MGM/Mandalay Operating Sublease, in each case, that requires the consent of Borrower under the MGM/Mandalay Lease and/or any MGM/Mandalay Operating Sublease, provided, however, for the avoidance of doubt Lender's consent shall not be required in connection with:

(i) any assignment of the MGM/Mandalay Lease or MGM/Mandalay Tenant's leasehold interest in the Property expressly permitted pursuant to Section 22 of the MGM/Mandalay Lease, or entry into a Permitted Sublease (as defined in the MGM/Mandalay Lease), provided that (A) to the extent Borrower has a consent or approval right over such Transfers, Borrower shall not grant any such consent or approval without first obtaining the prior written approval of Lender (such approval not to be unreasonably withheld, conditioned or delayed), (B) any such assignment or Permitted Sublease complies with the terms and provisions of the MGM/Mandalay Lease Documents, and (C) thereafter Borrower shall provide Lender with copies of all documents executed in connection with any such Transfer promptly after Borrower's receipt thereof;

(ii) one or more encumbrances of MGM/Mandalay Tenant's leasehold interest in the Property pursuant to one or more mortgages and/or pledges of the direct or indirect equity interests in MGM/Mandalay Tenant, to secure the indebtedness of MGM/Mandalay Tenant and/or its direct or indirect parent entities or Affiliates (each, a "**MGM/Mandalay Tenant Loan**"), and (A) Borrower shall provide Lender with written notice of such proposed MGM/Mandalay Tenant Loan to the extent delivered to Borrower and the name of such lender (a "**MGM/Mandalay Tenant Lender**") after receipt thereof from MGM/Mandalay Tenant, together with any copies of the definitive documentation entered into connection with such MGM/Mandalay Tenant Loan; (B) each such MGM/Mandalay Tenant Loan, together with the definitive documentation entered into in connection with such MGM/Mandalay Tenant Loan, is a Permitted Leasehold Mortgage or Permitted Credit Facility Pledge (each as defined in the MGM/Mandalay Lease) or otherwise complies with the terms and conditions of

the MGM/Mandalay Lease, (C) each such mortgage or pledge agreement shall provide that any security interest granted under such mortgage or pledge agreement with respect to Tenant's Pledged Property (as defined in the MGM/Mandalay Lease) shall, to the extent required by the MGM/Mandalay Lease, be subordinate to the lien granted in favor of Borrower and otherwise be in accordance with the terms and conditions hereunder, the MGM/Mandalay Lease SNDA and the MGM/Mandalay Tenant Loan Intercreditor Agreement (as defined below) and (D) any intercreditor agreement entered into with the MGM/Mandalay Tenant Lender shall be in form and substance reasonably acceptable to Lender (a "**MGM/Mandalay Tenant Loan Intercreditor Agreement**"); or

(iii) a Transfer of up to and including one hundred percent (100%) of the direct or indirect equity interests in MGM/Mandalay Tenant and/or the leasehold interest of MGM/Mandalay Tenant in the Properties (subject to exclusion with respect to items that are not capable of being mortgaged and that, in the aggregate, are *de minimis*) pursuant to or at any time after a foreclosure (or conveyance in lieu thereof or pursuant to any other exercise of remedies) of the MGM/Mandalay Tenant Loan by MGM/Mandalay Tenant Lender, with the proposed transferee assuming all of the obligations, liabilities and rights of MGM/Mandalay Tenant under the MGM/Mandalay Lease and MGM/Mandalay Lease Documents being a "Foreclosure Transferee" (as such term is defined in the MGM/Mandalay Lease) and a replacement lease guarantor that is a "Qualified Transferee" (as such term is defined in the MGM/Mandalay Lease) and executing a replacement guaranty in accordance with the terms and conditions of the MGM/Mandalay Lease.

(m) Without the prior written consent of Lender (not to be unreasonably withheld, conditioned or delayed), Borrower shall not grant its consent (to the extent required under the MGM/Mandalay Lease) to MGM/Mandalay Tenant to enter into any management agreement with respect to Ancillary Space (as defined in the Initial MGM/Mandalay Lease) or management agreements with respect to the Properties or a portion thereof, except in connection with MGM/Mandalay Tenant's entry into a Permitted Management Agreement (as defined in the Initial MGM/Mandalay Lease), provided that (i) to the extent Borrower has a consent or approval right over entry into any such management agreement, Borrower shall not grant any such consent or approval without first obtaining the prior written approval of Lender (such approval not to be unreasonably withheld, conditioned or delayed) and (ii) Borrower shall provide Lender with copies of all documents executed in connection with any such management agreement promptly after Borrower's receipt thereof.

(n) Without the prior written consent of Lender (not to be unreasonably withheld, conditioned or delayed), Borrower shall not grant its consent (to the extent required under the MGM/Mandalay Lease) to MGM/Mandalay Tenant entering into any Affiliate Agreements (as defined in the Initial MGM/Mandalay Lease) other than a Permitted Affiliate Agreement (as defined in the Initial MGM/Mandalay Lease).

(o) Following the occurrence and during the continuance of an Event of Default, Borrower shall not exercise any rights, make any decisions, grant any approvals or otherwise take any action under the MGM/Mandalay Lease or any of the other MGM/Mandalay

Lease Documents without the prior written consent of Lender, which consent may be granted, conditioned or withheld in Lender's sole discretion.

(p) Lender's prior written approval, not to be unreasonably withheld, conditioned or delayed, shall be required in connection with the MGM/Mandalay Tenant's creation, incurrence, assumption or suffering to exist any Lien on any portion of any Individual Property or permit any such action to be taken only to the extent such Lien both (x) requires Borrower's consent under the terms and provisions of the MGM/Mandalay Lease and (y) would otherwise require Lender's consent pursuant to Section 5.2.2 in the event that the Property was not subject to the MGM/Mandalay Lease.

(q) Without Lender's prior written approval (not to be unreasonably withheld, conditioned or delayed), Borrower shall not execute any amendment, modification, waiver or termination of any provision of the MGM/Mandalay Lease which results in the MGM/Mandalay Lease no longer requiring any MGM/Mandalay Operating Subtenant to be a Subsidiary of Tenant's Parent (each as defined in the Initial MGM/Mandalay Lease).

5.3.3. Transition Period. Borrower shall (i) promptly perform and observe all of the covenants required to be performed and observed by it under the Transition Services Agreement in all material respects in accordance with the terms thereof and do all things necessary to preserve and to keep unimpaired its rights thereunder in all material respects; (ii) use commercially reasonable efforts to enforce the performance and observance of all of the covenants required to be performed and observed by MGM/Mandalay Tenant under the Transition Services Agreement in all material respects; (iii) promptly deliver to Lender a copy of any written notice of default, breach or other material notice under the Transition Services Agreement delivered or received by Borrower and (iv) to the extent that the Lender is not a third-party beneficiary of such Transition Services Agreement, collaterally assign to Lender, all of its rights, title and interest, in and to any such Transition Services Agreement (if applicable).

5.3.4. Intentionally Omitted.

5.3.5. MGM/Mandalay Tenant Actions. Notwithstanding anything to the contrary contained herein, in the event that MGM/Mandalay Tenant or MGM/Mandalay Operating Subtenant is permitted to take an action under the MGM/Mandalay Lease or any MGM/Mandalay Operating Sublease, respectively, without Borrower's consent under the MGM/Mandalay Lease or any MGM/Mandalay Operating Sublease, respectively, then nothing contained herein shall restrict such action or require approval hereunder by Lender.

ARTICLE VI.

INSURANCE; CASUALTY; CONDEMNATION

Section 6.1. Insurance. (a) Borrower shall obtain and maintain, or cause to be maintained, insurance for Borrower and the Property providing at least the following coverages:

(i) comprehensive all risk “special form” insurance, including, but not limited to, loss caused by any type of windstorm or hail (including named storm and storm surge) on the Improvements and the Personal Property, including contingent liability from Operation of Building Laws, Demolition Costs and Increased Cost of Construction Endorsements, (A) in an amount equal to one hundred percent (100%) of the “**Full Replacement Cost**,” which for purposes of this Agreement shall mean actual replacement value (exclusive of costs of excavations, foundations, underground utilities and footings), but in no event less than a minimum amount of Four Billion Dollars (\$4,000,000,000), with a waiver of depreciation; (B) a building ordinance coverage endorsement, coverage for loss to the undamaged portion in an amount equal to the full replacement cost for the undamaged portion and for coverage for demolition costs and coverage for increased costs of construction in amounts acceptable to Borrower; (C) providing for no deductible in excess of \$250,000 for all such insurance coverage; provided, however, with respect to terrorism, providing for a deductible not to exceed \$500,000 and with respect to flood, windstorm and earthquake coverage, providing for a deductible not to exceed five percent (5%) of the total insurable value of the applicable Individual Property, subject to a \$5,000,000 minimum (provided that, if Guarantor provides a guaranty acceptable to Lender and the Approved Rating Agencies guaranteeing any failure by Borrower to pay its obligations actually incurred with respect to that portion of the deductible that exceeds five percent (5%) of the total insurable value of an Individual Property, the deductibles for windstorm and earthquake coverage may be up to fifteen percent (15%) of the total insurable value of the Individual Property); provided, further, that (1) Borrower may utilize a \$4,000,000 aggregate deductible subject to a \$100,000 per occurrence deductible and a \$100,000 maintenance deductible following the exhaustion of the aggregate (2) the aggregate does not apply to any losses arising from named windstorm, earthquake or flood and (D) if any of the Improvements or the use of the Individual Property shall at any time constitute legal non-conforming structures or uses, coverage for loss to the undamaged portion in an amount equal to the full Replacement Cost for the undamaged portion and for coverage for demolition costs and coverage for increased costs of construction in amounts acceptable to Lender. In addition, Borrower shall obtain: (y) if any portion of the Improvements is currently or at any time in the future located in a federally designated “special flood hazard area,” flood hazard insurance in an amount equal to (1) the maximum amount of such insurance available under the National Flood Insurance Act of 1968, the Flood Disaster Protection Act of 1973 or the National Flood Insurance Reform Act of 1994, as each may be amended plus (2) such greater amount as Lender shall require, and (z) earthquake insurance in an amount not less than the annual aggregate gross loss estimates for a 475 year event as indicated in a seismic risk analysis (such analysis to be approved by Lender and secured by the applicable Individual Borrower utilizing the most current RMS software, or its equivalent, including loss amplification, at the expense of the applicable Individual Borrower and, to the extent the Property is covered under a blanket policy, such seismic risk analysis shall include all high risk locations covered by the earthquake limit), provided that the insurance pursuant to clauses (y) and (z) hereof shall be on

terms consistent with the comprehensive all risk insurance policy required under this Subsection (i);

(ii) business income or rental loss insurance (A) with loss payable to Lender; (B) covering all risks required to be covered by the insurance provided for in subsection (i) above; (C) in an amount equal to one hundred percent (100%) of the projected gross revenues from the operation of the Property (as reduced to reflect expenses not incurred during a period of Restoration) for a period of at least twenty four (24) months; and (D) containing an extended period of indemnity endorsement which provides that after the physical loss to the Improvements and Personal Property has been repaired, the continued loss of income will be insured until such income either returns to the same level it was at prior to the loss, or the expiration of twelve (12) months from the date that the applicable Individual Property is repaired or replaced and operations are resumed, whichever first occurs, and notwithstanding that the policy may expire prior to the end of such period. The amount of such business income or rental loss insurance shall be determined prior to the date hereof and at least once each year thereafter based on Borrower's reasonable estimate of the gross revenues from each Individual Property (as reduced to reflect expenses not incurred during a period of Restoration) for the succeeding twelve (12) month period. Notwithstanding the provisions of Section 2.6 hereof, all proceeds payable to Lender pursuant to this subsection shall be held by Lender and shall be applied to the obligations secured by the Loan Documents from time to time due and payable hereunder and under the Note; provided, however, that nothing herein contained shall be deemed to relieve Borrower of its obligations to pay the obligations secured by the Loan Documents on the respective dates of payment provided for in this Agreement and the other Loan Documents except to the extent such amounts are actually paid out of the proceeds of such business income insurance;

(iii) at all times during which structural construction, repairs or alterations are being made with respect to the Improvements, and only if the Individual Property coverage form does not otherwise apply, (A) owner's contingent or protective liability insurance (or an equivalent) covering claims not covered by or under the terms or provisions of the below mentioned commercial general liability insurance policy and (B) the insurance provided for in subsection (1) above written in a so called builder's risk completed value form (1) on a non-reporting basis, (2) against all risks insured against pursuant to subsection (i) above, (3) including permission to occupy the Individual Property and (4) with an agreed amount endorsement waiving co insurance provisions;

(iv) comprehensive boiler and machinery insurance, if steam boilers or other pressure fixed vessels are in operation, in amounts as shall be reasonably required by Lender on terms consistent with the commercial property insurance policy required under subsection (i) above;

(v) commercial general liability insurance against claims for personal injury, bodily injury, death or property damage occurring upon, in or about the Individual Property, such insurance (A) to be on the so called "occurrence" form

with a combined limit of not less than \$2,000,000.00 in the aggregate and \$1,000,000.00 per occurrence; (B) to continue at not less than the aforesaid limit until required to be changed by Lender in writing by reason of changed economic conditions making such protection inadequate and (C) to cover at least the following hazards: (1) premises and operations; (2) products and completed operations on an “if any” basis; (3) independent contractors; (4) contractual liability for all insured contracts and (5) contractual liability covering the indemnities contained in Article 9 of each Mortgage to the extent the same is available;

(vi) if applicable, automobile liability coverage for all owned and non-owned vehicles, including rented and leased vehicles containing minimum limits per occurrence of \$1,000,000.00;

(vii) if applicable, worker’s compensation and employer’s liability subject to the worker’s compensation laws of the applicable state;

(viii) umbrella and excess liability insurance in an amount not less than \$100,000,000.00 per occurrence and in the aggregate on terms consistent with the commercial general liability insurance policy required under (v) above, including, but not limited to, supplemental coverage for employer’s liability, liquor liability and automobile liability, which umbrella liability coverage shall apply in excess of such supplemental coverage;

(ix) the insurance required under this Section 6.1(a)(i), (ii), (v) and (vii) above shall cover perils of terrorism and acts of terrorism and Borrower shall maintain insurance for loss resulting from perils and acts of terrorism on terms (including amounts) consistent with those required under Section 6.1(a)(i), (ii), (v) and (viii) above at all times during the term of the Loan. Notwithstanding anything to the contrary herein, (A) if the Terrorism Risk Insurance Program Reauthorization Act of 2015 or a similar or subsequent statute (“**TRIPRA**”) is not in effect, (B) TRIPRA or a similar or subsequent statute, extension or reauthorization is modified which results in a material increase in terrorism insurance premiums, or (C) there is a disruption in the terrorism insurance marketplace as the result of a terrorism event which results in a material increase in terrorism insurance premiums, provided that terrorism insurance is commercially available, Borrower shall be required to carry terrorism insurance throughout the term of the Loan as required by the preceding sentence, but, if any of the events in clauses (A)-(C) occur, Borrower shall not be required to spend on terrorism insurance coverage more than two times the amount of the insurance premium that is payable at such time in respect of the property and business interruption/rental loss insurance required hereunder (without giving effect to the cost of the terrorism, flood, earthquake and windstorm components of such casualty and business interruption/rental loss insurance), and if the cost of terrorism insurance exceeds such amount, Borrower shall purchase the maximum amount of terrorism insurance available with funds equal to such amount. For so long as TRIPRA or a subsequent statute, extension or reauthorization thereof, is in effect and continues to cover both foreign and domestic acts, Lender shall accept

terrorism insurance with coverage against acts which are “certified” within the meaning of TRIPRA;

(x) Employment Practices Liability, including third-party coverage, in an amount not less than \$1,000,000 (if applicable);

(xi) Crime coverage in amounts not less than \$1,000,000 (if applicable);

(xii) Liquor Liability in amounts not less than \$1,000,000 per occurrence;

(xiii) environmental insurance against claims for pollution and remediation legal liability related to each Individual Property (“**PLL Policy**”), such insurance: (A) shall be for term of at least two (2) years past the date of repayment (provided, that, in no event shall the PLL Policy be required to extend more than two (2) years beyond the Maturity Date) (the “**Required PLL Period**”); provided, however, Borrower may obtain such PLL Policy for an initial and/or renewal policy term less than the Required PLL Period so long as (x) at least ten (10) Business Days prior to the expiration thereof, Borrower renews or extends such PLL Policy for the shorter of three (3) years or a term not less than the Required PLL Period and (y) for any time during the Required PLL Period that Borrower does not have such PLL Policy satisfying the requirements of this Section 6.1(a)(xiii) in effect, the terms of Section 9.3(b)(ix) hereof shall apply; (B) with limits of liability of no less than \$25,000,000 per incident and \$25,000,000 in the aggregate for each pollution condition with a self-insured retention amount of no more than \$50,000 per pollution condition (except for clean-up claims for mold conditions and legionella, which may be One Million Dollars (\$1,000,000), except for Lender it shall be no greater than One Hundred Thousand Dollars (\$100,000)); (C) shall name Lender, with its successors, assigns and/or affiliates as an additional named insured and as a mortgagee insured per mortgagee assignment endorsements providing automatic rights of assignment in the event of defaults; (D) shall be dedicated solely to the Property and Borrower shall not be permitted to add any additional locations during the PLL Policy term; and (E) shall, throughout the PLL Policy term, include the same coverages, terms, conditions and endorsements (and shall not be amended in any way without the prior written consent of Lender) as the PLL Policy approved in place on the Closing Date; and

(xiv) upon sixty (60) days written notice, such other reasonable insurance, including, but not limited to land subsidence insurance, and in such reasonable amounts as Lender from time to time may reasonably request against such other insurable hazards which at the time are commonly insured against for property similar to the Individual Property located in or around the region in which the Individual Property is located.

(b) All insurance provided for in Section 6.1(a) hereof, shall be obtained under valid and enforceable policies (collectively, the “Policies” or in the singular, the “Policy”),

and shall be subject to the approval of Lender as to insurance companies, amounts, deductibles, loss payees and insureds. The Policies shall be issued by financially sound and responsible insurance companies authorized to do business in the State and having a rating of "A" or better by S&P and "A2" or better by Moody's (to the extent Moody's is an Approved Rating Agency and rates the applicable insurance carrier); provided, however, that if Borrower elects to have its insurance coverage provided by a syndicate of insurers, then, if such syndicate consists of five (5) or more members, (A) with respect to sixty percent (60%) of such insurance coverage (or seventy-five percent (75%) if such syndicate consists of four (4) or fewer members), Borrower shall use commercially reasonable efforts to have such insurance provided by insurance companies having a claims paying ability rating of "A" or better by S&P and "A2" or better by Moody's (to the extent Moody's is an Approved Rating Agency and rates the applicable insurance carrier) (the **"60% Standard"**); provided, if after using commercially reasonable efforts, Borrower is unable to obtain any or all of such sixty percent (60%) of insurance coverage from insurance companies meeting the 60% Standard (the amount of such insurance Borrower is unable to obtain, the **"60% Gap"**), the 60% Gap shall be provided by insurance companies having a claims paying ability rating of A:X or better in the current Best's Insurance Reports (provided, no such individual insurance company providing a portion of the 60% Gap may provide more than ten percent (10%) of the overall insurance coverage) and (B) with respect to the remaining forty percent (40%) of the insurance coverage (or the remaining twenty-five percent (25%) if such syndicate consists of four (4) or fewer members), Borrower shall use commercially reasonable efforts to have such insurance provided by insurance companies having a claims paying ability rating of "BBB+" or better by S&P and "Baa1" or better by Moody's (to the extent Moody's is an Approved Rating Agency and rates the applicable insurance carrier) (the **"40% Standard"**); provided, if after using commercially reasonable efforts, Borrower is unable to obtain any or all of such forty percent (40%) of insurance coverage from insurance companies meeting the 40% Standard (the amount of such insurance Borrower is unable to obtain, the **"40% Gap"**), the 40% Gap shall be provided by insurance companies having a claims paying ability rating of A-VIII or better in the current Best's Insurance Reports (provided, no such individual insurance company providing a portion of the 40% Gap may provide more than ten percent (10%) of the overall insurance coverage). The Policies described in this Section 6.1 (other than those strictly limited to liability protection) shall designate Lender as loss payee.

Prior to the expiration dates of the Policies theretofore furnished to Lender, certificates of insurance evidencing the Policies accompanied by evidence satisfactory to Lender of payment of the premiums due thereunder (the **"Insurance Premiums"**), shall be delivered by Borrower to Lender.

(c) Any blanket insurance Policy shall specifically allocate to the Individual Property the amount of coverage from time to time required hereunder or shall otherwise provide the same protection as would a separate Policy insuring only the Properties in compliance with the provisions of Section 6.1(a) hereof (any such blanket policy, an "Acceptable Blanket Policy"), subject to review and approval by Lender based on the schedule of locations and values, and such other documentation required by Lender. Further, to the extent the Policies are maintained pursuant to a blanket insurance Policy that covers more than one location within a one thousand foot radius of any Individual Property (the "Radius"), the limits of such blanket insurance Policy must be sufficient to maintain coverage as set forth in Section 6.1(a)(ix) for the Property and any and all other locations combined within the Radius that are covered by such blanket insurance policy calculated on a total insured value basis.

(d) All Policies provided for or contemplated by Section 6.1(a) hereof shall name Borrower as a named insured, or to the extent the coverage is provided by MGM/Mandalay Tenant, as an additional insured, and, in the case of liability policies, except for the Policy referenced in Section 6.1(a)(xiii) of this Agreement, shall name Lender as the additional insured, as its interests may appear, and in the case of property damage, including but not limited to terrorism, boiler and machinery, flood and earthquake insurance, shall contain a standard non-contributing mortgagee clause in favor of Lender providing that the loss thereunder shall be payable to Lender and guaranteeing thirty (30) days' notice of cancellation to Lender except ten (10) days' notice for non-payment of premium.

(e) All Policies shall contain clauses or endorsements to the effect that:

(i) no act or negligence of Borrower, or anyone acting for Borrower, or of any Tenant or other occupant, or failure to comply with the provisions of any Policy, which might otherwise result in a forfeiture of the insurance or any part thereof, shall in any way affect the validity or enforceability of the insurance insofar as Lender is concerned;

(ii) the Policy shall not be materially changed (other than to increase the coverage provided thereby) or canceled without at least thirty (30) days written notice to Lender and any other party named therein as an additional insured; provided, that ten (10) days' notice will be required for non-payment of premium or; if issuer will not or cannot provide the notices required herein, Borrower shall be obligated to provide such notice;

(iii) the issuers thereof shall give ten (10) days' written notice to Lender if the issuers of such Policy elect not to renew the Policy prior to its expiration or, if the issuers will not or cannot provide the notices required herein, Borrower shall be obligated to provide such notice; and

(iv) Lender shall not be liable for any Insurance Premiums thereon or subject to any assessments thereunder.

(f) If at any time Lender is not in receipt of written evidence that all insurance required hereunder is in full force and effect, Lender shall have the right, without notice to Borrower, to take such action as Lender deems necessary to protect its interest in the Properties, including, without limitation, the obtaining of such insurance coverage as Lender in its sole discretion deems appropriate after three (3) Business Days' notice to Borrower if prior to the date upon which any such coverage will lapse or at any time Lender deems necessary (regardless of prior notice to Borrower) to avoid the lapse of any such coverage. All premiums incurred by Lender in connection with such action or in obtaining such insurance and keeping it in effect shall be paid by Borrower to Lender upon demand and, until paid, shall be secured by the Mortgages and shall bear interest at the Default Rate.

(g) In the event of foreclosure of the Mortgage with respect to an Individual Property or other transfer of title of an Individual Property in extinguishment in whole or in part of the Debt all right, title and interest of Borrower in and to the Policies that are not blanket Policies then in force concerning such Individual Property and all proceeds payable thereunder

(regardless of whether the Policies are blanket Policies) shall thereupon vest in the purchaser at such foreclosure or Lender or other transferee in the event of such other transfer of title.

(h) Notwithstanding the foregoing provisions of this Section 6.1, Borrower shall not be required to maintain the coverages on the Property required in this Section 6.1 for so long as (A) the MGM/Mandalay Lease is in full force and effect, (B) no default by MGM/Mandalay Tenant beyond any applicable notice and cure period has occurred and is continuing under the MGM/Mandalay Lease and (C) MGM/Mandalay Tenant maintains insurance policies on each Individual Property that satisfies the requirements set forth in this Section 6.1 herein (the “MGM/Mandalay Policies”) (except it is acknowledged and agreed that the MGM/Mandalay Policies are permitted to vary from the requirements of this Section 6.1 with respect to (x) the named storm sublimit which shall be no less than \$700,000,000 per occurrence and (y) any property or terrorism deductible, which shall be no greater than \$5,000,000), including without limitation, naming the Lender as mortgagee/loss payee and additional insured, as applicable (collectively, conditions (A) through (C) are the “MGM/Mandalay Tenant Insurance Conditions”). To the extent any of the MGM/Mandalay Tenant Insurance Conditions are not satisfied or to the extent Lender has been informed that any of the MGM/Mandalay Tenant Insurance Conditions will result in an adverse impact to, a downgrade of or withdrawal of any rating then or to be assigned to any outstanding certificates issued or to be issued in conjunction with a Securitization of which this Loan is a part or otherwise adversely impacts the Securitization of the Loan, Borrower shall promptly, at its sole cost and expense, either (i) cause MGM/Mandalay Tenant to modify the MGM/Mandalay Policies, or to procure and maintain additional “primary” insurance coverage, as shall be necessary to bring the applicable insurance coverage into full compliance with all of the applicable terms and conditions of Section 6.1 or (ii) procure and maintain (or cause the MGM/Mandalay Tenant to procure and maintain) “excess and contingent” insurance coverage over and above any other valid and collectible coverage then in existence, as shall be necessary to bring the applicable insurance coverage into full compliance with all of the applicable terms and conditions of this Section 6.1. Notwithstanding the rating requirements set forth in Section 6.1(b), (1) MGM/Mandalay Tenant shall be permitted to maintain a portion of the coverage required hereunder with insurance companies which do not meet the foregoing requirements (“Otherwise Rated Insurers”) in their current participation amounts and positions within the syndicate provided that (A) MGM/Mandalay Tenant shall replace the Otherwise Rated Insurers at renewal with insurance companies meeting the rating requirements set forth hereinabove and (B) if, prior to renewal, the current AM Best rating of any such Otherwise Rated Insurer is withdrawn or downgraded, MGM/Mandalay Tenant shall replace any Otherwise Rated Insurer with an insurance company meeting the rating requirements set forth hereinabove and (2) the terrorism coverage required in Section 6.1(a)(ix), as it pertains to each Individual Property may be written by a “captive” insurance company, provided such “captive” insurance company satisfies the Captive Insurance Company Requirements.

Section 6.2. Casualty. Subject to Section 6.4(d), if any Individual Property shall be damaged or destroyed, in whole or in part, by fire or other casualty (a “**Casualty**”), and the estimated costs of completing the Restoration related to such Casualty is reasonably expected to be equal to or greater than \$5,000,000, Borrower shall give prompt written notice of such damage to Lender and shall promptly commence and diligently prosecute the completion of the Restoration of such Individual Property pursuant to Section 6.4 hereof as nearly as possible to the condition such Individual Property was in immediately prior to such Casualty, with such alterations as may be reasonably approved by Lender to the extent such approval is required

pursuant to the provisions of Section 5.1.19 hereof and otherwise in accordance with Section 6.4 hereof. Borrower shall pay all costs of such Restoration whether or not such costs are covered by insurance. Lender may, but shall not be obligated to make proof of loss if not made promptly by Borrower. In addition, Lender may participate in any settlement discussions with any insurance companies with respect to any Casualty in which the Net Proceeds or the costs of completing the Restoration are equal to or greater than the Casualty/Condemnation Threshold Amount and Borrower shall deliver to Lender all instruments required by Lender to permit such participation.

Section 6.3. Condemnation. Subject to Section 6.4(d), (a) Borrower shall promptly give Lender notice of the actual or threatened commencement of any proceeding for the Condemnation (other than an immaterial temporary taking) of all or any part of any Individual Property and shall deliver to Lender copies of any and all papers served in connection with such proceedings. Lender may participate in any such proceedings related to a Condemnation of a material portion of an Individual Property, and Borrower shall from time to time deliver to Lender all instruments reasonably requested by it to permit such participation. Borrower shall, at its expense, diligently prosecute any such proceedings (and, in the case of such proceedings that (i) relate to any improved portion of such Individual Property, (ii) relate to any portion of such Individual Property that, if taken, would cause such Individual Property not to comply with Legal Requirement, and/or (iii) relate to any material portion of such Individual Property, shall consult with Lender, its attorneys and experts, and cooperate with them in the carrying on or defense of any such proceedings). Notwithstanding any taking by any public or quasi-public authority through Condemnation or otherwise (including, but not limited to, any transfer made in lieu of or in anticipation of the exercise of such taking), Borrower shall continue to pay the Debt at the time and in the manner provided for its payment in the Note and in this Agreement and the Debt shall not be reduced until any Award shall have been actually received and applied by Lender, after the deduction of expenses of collection, to the reduction or discharge of the Debt. Lender shall not be limited to the interest paid on the Award by the condemning authority but shall be entitled to receive out of the Award interest at the rate or rates provided herein or in the Note. If any Individual Property or any portion thereof is taken by a condemning authority, (a) if Restoration of the applicable Individual Property would be deemed feasible by a prudent Lender acting reasonably based upon the nature of the Condemnation, Borrower shall promptly commence and diligently prosecute the Restoration of the applicable Individual Property pursuant to Section 6.4 hereof and otherwise comply with the provisions of Section 6.4 hereof; provided, that, Borrower shall not be obligated to pursue completion of the Restoration if Lender is obligated to disburse Net Proceeds pursuant to Section 6.4 hereof with respect thereto (and Borrower has satisfied all applicable conditions to such disbursement) and Lender fails to disburse such proceeds and (b) if Restoration of the applicable Individual Property is not considered feasible by a prudent Lender acting reasonably based upon the nature of the Condemnation, then Lender shall apply the Net Proceeds of such Condemnation to the principal of the Loan in accordance with Section 2.4.2 hereof. If any Individual Property is sold, through foreclosure or otherwise through the exercise of other remedies available to Lender under the Loan Documents, prior to the receipt by Lender of the Award, Lender shall have the right, whether or not a deficiency judgment on the Note shall have been sought, recovered or denied, to receive the Award, or a portion thereof sufficient to pay the Debt.

(b) Notwithstanding anything to the contrary contained herein or in any other Loan Document, if the Loan or any portion thereof is included in a REMIC Trust and, immediately following a release of any portion of the Lien of the Mortgage in connection with a Condemnation of an Individual Property (but taking into account any proposed Restoration on the remaining portion of such Individual Property), the Loan to Value Ratio is greater than one hundred twenty-five percent (125%), the principal balance of the Loan (or such portion of the Loan as is included in the REMIC Trust) must prepaid down by an amount not less than the least of the following amounts: (i) the Condemnation Proceeds, (ii) the fair market value of the released property at the time of the release, or (iii) an amount such that the Loan to Value Ratio does not increase after the release, unless Lender receives an opinion of counsel that if such amount is not paid, the Securitization will not fail to maintain its status as a REMIC Trust as a result of the related release of such portion of the Lien of the Mortgage. Any such prepayment shall be deemed a voluntary prepayment and shall be subject to Section 2.4.1 hereof (other than the requirements to provide ten (10) days' notice to Lender).

Section 6.4. Restoration. The following provisions shall apply in connection with the Restoration of any Individual Property, provided, that in the event that the MGM/Mandalay Lease is in effect with respect the applicable Individual Property, Section 6.4(d) shall govern and control in all respects:

(a) If the Net Proceeds shall be less than the Casualty/Condemnation Threshold Amount and the estimated costs of completing the Restoration shall be less than the Casualty/Condemnation Threshold Amount, the Net Proceeds (i) if the same are paid by the insurance company directly to Borrower, may be retained by Borrower or (ii) if the same are paid by the insurance company to Lender, will be disbursed by Lender to Borrower upon receipt or shall be directed by Lender to be disbursed directly to Borrower, provided that Borrower certifies to Lender (A) that no Event of Default shall have occurred and be continuing at the time of the disbursement and (B) Borrower provides an Officer's Certificate confirming Borrower will complete the Restoration in compliance with all of the conditions set forth in Section 6.4(b)(i)(C), (F), (G) and (H) hereof and agrees to expeditiously commence and to satisfactorily complete with due diligence the Restoration in accordance with the terms of this Agreement. Borrower shall thereafter commence and complete such Restoration with due diligence in accordance with the terms of this Agreement.

(b) If the Net Proceeds are equal to or greater than the Casualty/Condemnation Threshold Amount or the costs of completing the Restoration is equal to or greater than the Casualty/Condemnation Threshold Amount, Lender shall make the Net Proceeds available for the Restoration in accordance with the provisions of this Section 6.4. The term "Net Proceeds" for purposes of this Section 6.4 shall mean: (i) the net amount of all insurance proceeds received by Lender pursuant to Section 6.1(a)(i), Section 6.1(a)(iv), Section 6.1(a)(ix) and Section 6.1(a)(x) as a result of such damage or destruction, after deduction of Lender's and Borrower's reasonable costs and expenses (including, but not limited to, reasonable counsel fees), if any, in collecting same ("**Insurance Proceeds**"); provided, that such costs and expenses of Borrower shall only be reimbursed if Lender is reasonably certain that there will be sufficient Net Proceeds to complete the Restoration (it being understood that to the extent Net Proceeds exceed the Debt and such Net Proceeds are not being made available for Restoration, the foregoing proviso shall not apply), or (ii) the net amount of the Award, after deduction of Lender's and Borrower's reasonable costs and expenses (including, but not limited to, reasonable

counsel fees), if any, in collecting same (“**Condemnation Proceeds**”), whichever the case may be.

(i) The Net Proceeds shall be made available to Borrower for Restoration provided that each of the following conditions are met:

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

(B) (1) in the event the Net Proceeds are Insurance Proceeds, less than thirty percent (30%) of the total floor area of the Improvements on the applicable Individual Property has been damaged, destroyed or rendered unusable as a result of such Casualty or (2) in the event the Net Proceeds are Condemnation Proceeds, less than thirty percent (30%) of the land constituting the applicable Individual Property is taken, and such land is located along the perimeter or periphery of the applicable Individual Property, and no portion of the Improvements is located on such land;

(C) Borrower shall commence the Restoration as soon as reasonably practicable (but in no event later than one hundred twenty (120) days after such Casualty or Condemnation, whichever the case may be, occurs) and shall diligently pursue the same to satisfactory completion, provided, that for purposes of this clause the filing of an application for a building permit for the Restoration shall be deemed to be commencement of the Restoration provided Borrower promptly commences work thereafter and diligently proceeds to the completion of such Restoration;

(D) Lender shall be reasonably satisfied that any operating deficits, including all scheduled payments of principal and interest under the Note, which will be incurred with respect to the applicable Individual Property as a result of the occurrence of any such Casualty or Condemnation, whichever the case may be, will be covered out of (1) the Net Proceeds, (2) the insurance coverage referred to in Section 6.1(a)(ii) hereof, if applicable, or (3) by other funds of Borrower;

(E) Lender shall be reasonably satisfied, subject to a force majeure delay, that the Restoration will be completed on or before the earliest to occur of (1) the date that is four (4) years after the date Borrower (or MGM/Mandalay Tenant) can first reasonably access the applicable Individual Property for purposes of commencing restoration following such Casualty or Condemnation, subject to a force majeure delay, (2) such time as may be required under all applicable Legal Requirements to complete Restoration, as applicable, or (3) the expiration of the insurance coverage referred to in Section 6.1(a)(ii) hereof;

(F) the applicable Individual Property and the use thereof after the Restoration will be in compliance in all material respects with and permitted under all applicable Legal Requirements (including as a legal non-conforming use);

(G) such Casualty or Condemnation, as applicable, does not result in the loss of access to the applicable Individual Property or the related Improvements (other than to a de minimis extent);

(H) the pro forma Debt Service Coverage Ratio after giving effect to such Restoration and the stabilization of the applicable Individual Property shall be equal to or greater than the Required DSCR Ratio;

(I) Borrower shall deliver, or cause to be delivered, to Lender a signed detailed budget approved in writing by Borrower's architect or engineer stating the entire cost of completing the Restoration, which budget shall be approved by Lender in the same manner as each Annual Budget is to be approved by Lender during the continuance of a Cash Trap Period as provided in Section 5.1.11(e); and

(J) (x) the Net Proceeds together with any cash or cash equivalent deposited by Borrower with Lender or (y) a Letter of Credit reasonably satisfactory to Lender is delivered to Lender, and, in each case, are sufficient in Lender's reasonable discretion to cover the cost of the Restoration.

(ii) The Net Proceeds shall be held by Lender in an interest bearing Eligible Account and, until disbursed in accordance with the provisions of this Section 6.4(b), shall constitute additional security for the Debt and Other Obligations under the Loan Documents. The Net Proceeds shall be disbursed by Lender to, or as directed by, Borrower from time to time during the course of the Restoration, upon receipt of evidence reasonably satisfactory to Lender that (A) all materials installed and work and labor performed (except to the extent that they are to be paid for out of the requested disbursement) in connection with the Restoration have been paid for in full, and (B) there exist no notices of pendency, stop orders, mechanic's or materialman's liens or notices of intention to file same, or any other liens or encumbrances of any nature whatsoever on the applicable Individual Property which have not either been fully bonded to the reasonable satisfaction of Lender and discharged of record or in the alternative fully insured to the reasonable satisfaction of Lender by the title company issuing the applicable Title Insurance Policy.

(iii) All plans and specifications required in connection with the Restoration shall be subject to prior review and acceptance in all respects by Lender and by an independent consulting engineer selected by Lender (the "**Casualty Consultant**"). Lender shall have the use of the plans and specifications and all permits, licenses and approvals required or obtained in connection with the Restoration. The identity of the contractors, subcontractors and materialmen engaged in the Restoration, as well as the contracts under which they have been engaged, shall be subject to prior review and reasonable approval by Lender and the Casualty Consultant. All actual, reasonable, out-of-pocket costs and expenses incurred by Lender in connection with making the Net Proceeds available for the Restoration including, without limitation, reasonable counsel fees and

disbursements and the Casualty Consultant's fees, shall be paid by Borrower. At any time that Lender's approval is required under this clause (iii), provided no Event of Default is continuing, Lender's approval shall be deemed granted if the Deemed Approval Requirements have been satisfied with respect thereto.

(iv) In no event shall Lender be obligated to make disbursements of the Net Proceeds in excess of an amount equal to the costs actually incurred from time to time for work in place as part of the Restoration, as certified by the Casualty Consultant, minus the Casualty Retainage. The term "**Casualty Retainage**" shall mean an amount equal to (i) ten percent (10%) of the costs actually incurred for work in place as part of the Restoration, as certified by the Casualty Consultant, until the Restoration has been fifty percent (50%) completed and (ii) thereafter, five percent (5%) of the costs actually incurred for work in place as part of the Restoration, as certified by the Casualty Consultant, until the Restoration has been completed. The Casualty Retainage shall in no event, and notwithstanding anything to the contrary set forth above in this Section 6.4(b), be less than the amount actually held back by Borrower from contractors, subcontractors and materialmen engaged in the Restoration. The Casualty Retainage shall not be released until the Casualty Consultant certifies to Lender that the Restoration has been completed in accordance with the provisions of this Section 6.4(b)(iv) and that all approvals necessary for the re-occupancy and use of the applicable Individual Property have been obtained from all appropriate governmental and quasi-governmental authorities, and Lender receives evidence satisfactory to Lender that the costs of the Restoration have been paid in full or will be paid in full out of the Casualty Retainage; provided, however, that Lender will release the portion of the Casualty Retainage being held with respect to any contractor, subcontractor or materialman engaged in the Restoration as of the date upon which the Casualty Consultant certifies to Lender that the contractor, subcontractor or materialman has satisfactorily completed all work and has supplied all materials in accordance with the provisions of the contractor's, subcontractor's or materialman's contract, the contractor, subcontractor or materialman delivers the lien waivers (except that lien waivers from subcontractors who have performed work in the amount of \$500,000 or less shall not be required) and evidence of payment in full of all sums due to the contractor, subcontractor or materialman as may be reasonably requested by Lender or by the title company issuing the Title Insurance Policy, and Lender receives an endorsement to the Title Insurance Policy insuring the continued priority of the lien of the related Mortgage and evidence of payment of any premium payable for such endorsement. If reasonably required by Lender, the release of any such portion of the Casualty Retainage shall be approved by the surety company, if any, which has issued a payment or performance bond with respect to the contractor, subcontractor or materialman.

(v) Lender shall not be obligated to make disbursements of the Net Proceeds more frequently than once every calendar month.

(vi) If at any time the Net Proceeds or the undisbursed balance thereof shall not, in the reasonable opinion of Lender in consultation with the Casualty Consultant, be sufficient to pay in full the balance of the costs which are estimated by the Casualty Consultant to be incurred in connection with the completion of the Restoration, Borrower shall either (A) deposit the deficiency (the “**Net Proceeds Deficiency**”) with Lender or (B) deliver a Letter of Credit reasonably satisfactory to Lender in an amount equal to the Net Proceeds Deficiency before any further disbursement of the Net Proceeds shall be made. The Net Proceeds Deficiency deposited with Lender or Letter of Credit delivered to Lender, as applicable, shall be held by Lender and shall be disbursed or drawn upon, as applicable, for costs actually incurred in connection with the Restoration on the same conditions applicable to the disbursement of the Net Proceeds, and until so disbursed or drawn upon, as applicable, pursuant to this Section 6.4(b), shall constitute additional security for the Debt and Other Obligations under the Loan Documents.

(vii) The excess, if any, of the Net Proceeds (and the remaining balance, if any, of the Net Proceeds Deficiency) deposited with Lender after the Casualty Consultant certifies to Lender that the Restoration has been completed in accordance with the provisions of this Section 6.4(b) (the “**Excess Net Proceeds**”), and the receipt by Lender of evidence reasonably satisfactory to Lender that all costs incurred in connection with the Restoration have been paid in full, shall be remitted by Lender to Borrower, provided no Event of Default shall have occurred and shall be continuing under the Note, this Agreement or any of the other Loan Documents.

(c) Lender shall, with reasonable promptness following any Casualty or Condemnation, notify Borrower whether or not Net Proceeds are required to be made available to Borrower for a Restoration pursuant to this Section 6.4 (or, if the same are not required to be made available to Borrower for Restoration pursuant to this Section 6.4, whether Lender will nevertheless make the same available, which election Lender may make in its sole and absolute discretion). All Net Proceeds not required (i) to be made available for the Restoration in accordance with Section 6.4(a) or Section 6.4(b) or (ii) to be distributed in accordance with Section 6.4(b)(vii) hereof (as applicable, the “**Net Proceeds Prepayment**”) shall be applied by Lender toward the payment of the Debt in accordance with Section 2.4.2 hereof.

(d) For so long as the Property is subject to an MGM/Mandalay Lease with terms and provisions reasonably equivalent to the terms and provisions regarding the disbursement of Insurance Proceeds or Condemnation Proceeds as the Initial MGM/Mandalay Lease, notwithstanding anything to the contrary contained in the Loan Documents with respect to the disbursement of Insurance Proceeds or Condemnation Proceeds (including, without limitation, Section 6.4(b)(i)), the express provisions set forth in the MGM/Mandalay Lease shall govern, provided that (A) Borrower shall have demonstrated to Lender’s reasonable satisfaction that MGM/Mandalay Tenant has committed to complete its restoration obligations pursuant to, and in accordance with, the terms and conditions of the MGM/Mandalay Lease within four (4)

years of the date MGM/Mandalay Tenant can first reasonably access the applicable Individual Property for purposes of commencing restoration following such Casualty or Condemnation, subject to a force majeure delay as provided in the MGM/Mandalay Lease, and (B) Borrower or MGM/Mandalay Tenant has demonstrated to Lender's reasonable satisfaction that MGM/Mandalay Tenant has sufficient available funds to complete its restoration obligations under the MGM/Mandalay Lease in the event the amount of Insurance Proceeds or Condemnation Proceeds, as applicable, is insufficient to complete the restoration required pursuant to the terms and conditions of the MGM/Mandalay Lease. For the avoidance of doubt, the parties acknowledge and agree that to the extent the applicable provisions in this Agreement are in conflict with the provisions of the MGM/Mandalay Lease, then the provisions of the MGM/Mandalay Lease shall govern and control.

(e) Intentionally Omitted.

(f) In addition to the foregoing, in connection with any Casualty or Condemnation, if the estimated Net Proceeds with respect to any Individual Property shall be equal to or greater than (x) the Casualty/Condemnation Threshold Amount (after despite Borrower having used commercially reasonable efforts to satisfy each of the other conditions set forth in Section 6.4(b) (i), Borrower shall be unable to satisfy all such conditions and Lender does not disburse the Net Proceeds to Borrower for Restoration) or (y) twenty five percent (25.00%) of the Allocated Loan Amount of the applicable Individual Property, then Borrower shall have the right (but not the obligation), regardless of any restrictions contained in Section 2.4 hereof, to prepay the Release Amount of the applicable Individual Property (a "**Casualty/Condemnation Prepayment**") utilizing the Net Proceeds (together with other funds of the Borrower if such Net Proceeds are less than the Release Amount) and obtain the release of the applicable Individual Property from the Lien of the Mortgage thereon and related Loan Documents, provided that (i) Borrower shall have satisfied the requirements of Section 2.5.1(a)(i), (iv) and (vi), (vii) and (viii) and Section 2.5.1(e) hereof (if applicable), (ii) Borrower shall consummate the Casualty/Condemnation Prepayment on or before the second Payment Date occurring following the date the Net Proceeds shall be made available to Borrower for such intended Casualty/Condemnation Prepayment and (iii) Borrower pays to Lender, concurrently with making such Casualty/Condemnation Prepayment, the amounts required pursuant to Section 2.4.2 hereof (without duplication of any amounts payable pursuant to this Section 2.5.1(f)). Notwithstanding anything in Section 6.2, Section 6.3 or this Section 6.4 to the contrary, Borrower shall not have any obligation to commence Restoration of an Individual Property upon delivery of the written notice required pursuant to Section 2.5.1(a)(i) hereof unless Borrower shall subsequently fail to pay to Lender the amounts required to be paid pursuant to Section 2.4.2 hereof. For the avoidance of doubt, no Yield Maintenance Premium or other premium or penalty or charge shall be due with respect to a Casualty/Condemnation Prepayment.

(g) Notwithstanding the foregoing provisions of this Section 6.4, if the Loan or any portion thereof is included in a REMIC Trust and if immediately after giving effect to a release of any portion of the Lien (on an Individual Property or any portion of an Individual Property) following a Casualty or Condemnation (but taking into account any proposed Restoration on the remaining Individual Property), the Loan to Value Ratio is greater than 125%, the Borrower must pay down the principal balance of the Loan (or such portion of the Loan as is included in the REMIC Trust) by an amount not less than the least of one of the following amounts: (i) the Net Proceeds plus the net proceeds of any arm's length sale of the released

Individual Property to an unrelated Person, (ii) the fair market value of the released Individual Property at the time of the release, or (iii) an amount such that the Loan to Value Ratio as so determined by Lender does not increase after the release, unless the Lender receives an opinion of counsel that, if such amount is not paid, the Securitization will not fail to maintain its status as a REMIC Trust as a result of the related release of the Lien.

ARTICLE VII.

RESERVE FUNDS

Section 7.1. Intentionally Omitted.

Section 7.2. Tax and Insurance Escrow Fund. For so long as the Property is not subject to the MGM/Mandalay Lease, the following provisions shall apply:

(a) Borrower shall pay to Lender on each Payment Date during a Cash Trap Period, (i) one twelfth (1/12) of the Taxes that Lender reasonably estimates will be payable during the next ensuing twelve (12) months in order to accumulate with Lender sufficient funds to pay all such Taxes, at least thirty (30) days prior to their respective due dates, and (ii) one twelfth (1/12) of the Insurance Premiums that Lender estimates will be payable for the renewal of the coverage afforded by the Policies upon the expiration thereof in order to accumulate with Lender sufficient funds to pay all such Insurance Premiums at least thirty (30) days prior to the expiration of the Policies (said amounts in (i) and (ii) above hereinafter called the "Tax and Insurance Escrow Fund"); provided that, to the extent Taxes and/or Insurance Premiums for any Individual Property are reserved for in a Manager Account maintained by (x) a Brand Manager pursuant to a Brand Management Agreement or are previously paid for by a Brand Manager pursuant to a Brand Management Agreement or (y) a Casino Operator pursuant to a Casino Management Agreement or are previously paid for by a Casino Operator pursuant to a Casino Management Agreement and Borrower delivers to Lender the invoices or other evidence of payment or that a Brand Manager or Casino Operator is holding such funds required under Section 5.1.2 and Section 6.1 hereof, the required deposit to the Tax and Insurance Escrow Fund hereunder with respect to such Individual Property will be reduced on a dollar for dollar basis by such amount. The account in which the Tax and Insurance Escrow Funds are held shall hereinafter be referred to as the "Tax and Insurance Reserve Account". Lender will apply the Tax and Insurance Escrow Fund to payments of Taxes and Insurance Premiums required to be made by Borrower pursuant to Section 5.1.2 hereof and under the Mortgage. In making any payment relating to the Tax and Insurance Escrow Fund, Lender may do so according to any bill, statement or estimate procured from the appropriate public office (with respect to Taxes) or insurer or agent (with respect to Insurance Premiums), without inquiry into the accuracy of such bill, statement or estimate or into the validity of any tax, assessment, sale, forfeiture, tax lien or title or claim thereof. Provided that sufficient amounts are on deposit in the Tax and Insurance Escrow Fund and Borrower continues to be an Affiliate of BREIT, MGP or a Public Vehicle, Lender (or Servicer) shall within five (5) Business Days after receipt of Borrower's written request, disburse funds from the Tax and Insurance Escrow Fund to Borrower to timely pay all Taxes payable by Borrower, or to reimburse Borrower for Taxes actually paid by Borrower so long Borrower's written request is submitted prior to Lender (or Servicer) having already paid such Taxes. Any such request for disbursement shall include an Officer's Certificate setting forth the tax payments and jurisdictions in which such payments will be made by such disbursement.

Upon the written request of Lender, Borrower shall deliver to Lender receipts for payment or other evidence reasonably satisfactory to Lender that such Taxes have been paid. If the amount of the Tax and Insurance Escrow Fund shall exceed the amounts due for Taxes and Insurance Premiums pursuant to Section 5.1.2 hereof, Lender shall return any excess to Borrower or credit such excess against future payments to be made to the Tax and Insurance Escrow Fund. If at any time Lender reasonably determines that the Tax and Insurance Escrow Fund is not or will not be sufficient to pay Taxes and Insurance Premiums by the dates set forth in (i) and (ii) above, Lender shall provide written notice to Borrower of such determination and Borrower shall, commencing with the first Payment Date following Borrower's receipt of such written notice, increase its monthly payments to Lender by the amount that Lender estimates is sufficient to make up the deficiency at least thirty (30) days prior to the due date of the Taxes and Insurance Premiums and/or thirty (30) days prior to expiration of the Policies, as the case may be. Any amounts remaining in the Tax and Insurance Escrow Fund after the Debt has been paid in full shall be promptly returned to Borrower. In the event an Individual Property is released in accordance with the terms and provisions of this Agreement, (x) provided that no Event of Default has occurred and is continuing, Lender shall deposit into the Cash Management Account any amounts then held in the Tax and Insurance Escrow Fund and allocated to such Release Property, to be disbursed in accordance with the Cash Management Agreement and (y) effective upon the Payment Date immediately following the date of such release, Lender shall reduce the monthly deposit for Taxes by an amount equal to the Taxes attributable to such Release Property.

(b) Notwithstanding anything herein to the contrary, provided that no Event of Default has occurred and is continuing, to the extent that any of the insurance required to be maintained by Borrower under this Agreement and/or any other Loan Document is effected under a blanket policy reasonably acceptable to Lender (which blanket policy may also insure other real property owned directly or indirectly by Guarantor), Borrower shall not be required to make deposits pursuant to the foregoing with respect to Insurance Premiums.

(c) Upon the occurrence of a Cash Trap Event Cure, and provided that a Cash Trap Period is not in effect, amounts in the Tax and Insurance Reserve Account shall be deposited into the Cash Management Account to be disbursed in accordance with the Cash Management Agreement.

Section 7.3. Replacements and Replacement Reserve . For so long as the Property is not subject to the MGM/Mandalay Lease, the following provisions shall apply:

7.3.1. Replacement Reserve Fund. Borrower shall pay to Lender (i) on each Payment Date during a Cash Trap Period an amount equal to the Replacement Reserve Monthly Deposit and (ii) if a Cash Trap Period does not exist, on the first Payment Date of each calendar quarter, an amount equal to the lesser of (x) the Replacement Reserve Current Year Lookback Deficiency and (y) the Replacement Reserve Five Year Lookback Deficiency (the "**Replacement Reserve Quarterly Deposit**"). The funds on deposit in the Replacement Reserve Account (as defined below) shall be used to fund the cost of Replacements, PIP Work and Brand Mandated Work; provided, however, that Replacements shall not include expense items that would otherwise be expensed in the operating statements of any Individual Property pursuant to GAAP (unless such expense items are unanticipated repair and maintenance expenses in connection with Replacements not contemplated by the Annual Budget) and provided, further, that, for so long as any Individual Property is managed by (x) a Brand Manager in accordance

with a Brand Management Agreement and/or (y) a Casino Operator in accordance with a Casino Management Agreement, the amounts required to be funded as a Replacement Reserve Monthly Deposit or a Replacement Reserve Quarterly Deposit shall be reduced on a dollar-for-dollar basis by any amounts deposited into a Manager Account for Replacements, PIP Work or Brand Mandated Work for the applicable calendar months as set forth in the Annual Budget and required pursuant to the terms of the Brand Management Agreement and/or Casino Management Agreement if Borrower delivers evidence reasonably satisfactory to Lender that such deposit has been made. Amounts so deposited shall hereinafter be referred to as Borrower's "**Replacement Reserve Fund**" and the account in which such amounts are held shall hereinafter be referred to as Borrower's "**Replacement Reserve Account**". In the event an Individual Property is released in accordance with the terms and provisions of this Agreement, provided that no Event of Default has occurred and is continuing, Lender shall deposit into the Cash Management Account any amounts then held in the Replacement Reserve Account and allocated to such Release Property, to be disbursed in accordance with the Cash Management Agreement.

7.3.2. Disbursements from Replacement Reserve Account. (a) Lender shall make disbursements from the Replacement Reserve Account to pay Borrower for the costs of the Replacements upon satisfaction of the requirements set forth in this Section 7.3.2. In addition, Lender shall make disbursements from the Replacement Reserve Account to pay Borrower for the costs of PIP Work and/or Brand Mandated Work, upon satisfaction of the requirements set forth in this Section 7.3.2.

(b) Lender shall disburse to Borrower the Replacement Reserve Funds from the Replacement Reserve Account from time to time upon satisfaction by Borrower of each of the following conditions: (i) Borrower shall submit a written request for payment to Lender at least five (5) days prior to the date on which Borrower requests such payment be made and specifies the Replacements, PIP Work or Brand Mandated Work to be paid, (ii) on the date such payment is to be made, no Event of Default shall exist and remain uncured and (iii) Lender shall have received an Officer's Certificate: (A) stating that, to Borrower's Knowledge, all Replacements, PIP Work or Brand Mandated Work to be funded by the requested disbursement have been performed in good and workmanlike manner and in accordance with all applicable federal, state and local laws, rules and regulations, in all material respects, (B) identifying each Person that supplied materials or labor in connection with such Replacements, PIP Work or Brand Mandated Work to be funded by the requested disbursement, (C) stating that each such Person has been paid or will be paid the amounts then due and payable to such Person in connection with the Replacements, PIP Work or Brand Mandated Work with the proceeds of such disbursement, and (D) stating that Borrower has obtained (or caused to be obtained) lien waivers from any contractors or subcontractors with respect to the applicable Replacements, PIP Work or Brand Mandated Work for which reimbursement is being sought. Lender shall not be required to make disbursements from the Replacement Reserve Account with respect to any Individual Property unless such requested disbursement is in an amount greater than Ten Thousand and No/100 Dollars (\$10,000) (or a lesser amount if the total amount in the Replacement Reserve Account is less than \$10,000, in which case only one disbursement of the amount remaining in the account shall be made) and such disbursement shall be made only upon satisfaction of each condition contained in this Section 7.3.2. In no event shall Lender be obligated to disburse funds to Borrower from the Replacement Reserve Account if an Event of Default exists.

7.3.3. Performance of Replacements.

(a) Borrower shall make (or shall cause to be made) Replacements when required in order to keep the Property in good condition and repair and to keep the Property or any portion thereof from deteriorating consistent with the requirements of each (x) Casino Management Agreement, (y) Management Agreement and (z) Franchise/License Agreement. Borrower shall complete (or if the Property is subject to (x) a Brand Management Agreement, shall cause Brand Manager to complete all Replacements as required pursuant to and in accordance with such Brand Management Agreement or (y) a Casino Management Agreement, shall cause Casino Operator to complete all Replacements as required pursuant to and in accordance with such Casino Management Agreement) all Replacements in a good and workmanlike manner as soon as practicable following the commencement of making each such Replacement.

(b) During a Cash Trap Period, Lender shall have the right, at its option, to approve all contracts or work orders for amounts in excess of Five Million and No/100 Dollars (\$5,000,000.00) (such approval not to be unreasonably withheld, delayed or conditioned and to the extent that any Individual Property is subject to (x) a Brand Management Agreement, such approval shall be limited to the extent that Borrower shall have the right to approve such contracts in accordance with such Brand Management Agreement and (y) a Casino Management Agreement, such approval shall be limited to the extent that Borrower shall have the right to approve such contracts in accordance with such Casino Management Agreement) with materialmen, mechanics, suppliers, subcontractors, contractors or other parties providing labor or materials in connection with the Replacements. Upon Lender's request during a Cash Trap Period, Borrower shall assign any contract or subcontract to Lender (provided, that if any Individual Property is subject to (x) a Brand Management Agreement, such assignment shall be limited to the extent that Borrower shall be permitted to assign such contracts under such Brand Management Agreement and (y) a Casino Management Agreement, such assignment shall be limited to the extent that Borrower shall be permitted to assign such contracts under such Casino Management Agreement).

(c) During the continuance of an Event of Default, in the event Lender determines in its reasonable discretion that any Replacement is not being performed in a workmanlike or timely manner or that any Replacement has not been completed in a workmanlike or timely manner, upon three (3) Business Days written notice to Borrower, Lender shall have the option to withhold disbursement for such unsatisfactory Replacements and to proceed under existing contracts or to contract with third-parties to complete such Replacement and to apply the Replacement Reserve Funds toward the labor and materials necessary to complete such Replacement, and during the continuance of an Event of Default, to exercise any and all other remedies available to Lender upon an Event of Default hereunder, provided, that to the extent that any Individual Property is subject to (x) a Brand Management Agreement, Lender's rights under this Section 7.3.3(c) shall be subject to the rights of such Brand Manager to the extent that such Brand Manager is permitted to perform such Replacements pursuant to and in accordance with such Brand Management Agreement and (y) a Casino Management Agreement, Lender's rights under this Section 7.3.3(c) shall be subject to the rights of such Casino Operator to the extent that such Casino Operator is permitted to perform such Replacements pursuant to and in accordance with such Casino Management Agreement.

(d) During the continuance of an Event of Default, in order to facilitate Lender's completion or making of such Replacements pursuant to Section 7.3.3(c) above, Borrower grants Lender the right to enter onto each Individual Property and perform any and all work and labor necessary to complete or make such Replacements and/or employ watchmen to protect each Individual Property from damage (subject to the rights of Tenants, guests and patrons) (provided, that to the extent that any Individual Property is subject to (x) a Brand Management Agreement, Lender's rights shall be subject to the rights of such Brand Manager to the extent that such Brand Manager shall perform such Replacements pursuant to and in accordance with such Brand Management Agreement and Borrower shall enforce all of its rights under such Brand Management Agreement to cause such Replacements to be completed in accordance with the terms thereunder or (y) a Casino Management Agreement, Lender's rights shall be subject to the rights of such Casino Operator to the extent that such Casino Operator shall perform such Replacements pursuant to and in accordance with such Casino Management Agreement and Borrower shall enforce all of its rights under such Casino Management Agreement to cause such Replacements to be completed in accordance with the terms thereunder). All sums so expended by Lender, to the extent not from the Replacement Reserve Fund, shall be deemed to have been advanced under the Loan to Borrower and secured by the Mortgage. For this purpose Borrower constitutes and appoints Lender its true and lawful attorney in fact with full power of substitution to complete or undertake such Replacements in the name of Borrower. Such power of attorney shall be deemed to be a power coupled with an interest and cannot be revoked. Borrower empowers said attorney in fact as follows: (i) to use any funds in the Replacement Reserve Account for the purpose of making or completing such Replacements; (ii) to make such additions, changes and corrections to such Replacements as shall be necessary to complete such Replacement; (iii) to employ such contractors, subcontractors, agents, architects and inspectors as shall be reasonably required for such purposes; (iv) to pay, settle or compromise all existing bills and claims which are or may become Liens against any Individual Property, or as may be necessary or desirable for the completion of such Replacements, or for clearance of title; (v) to execute all applications and certificates in the name of Borrower which may be reasonably required by any of the contract documents; (vi) to prosecute and defend all actions or proceedings in connection with any Individual Property or the rehabilitation and repair of any Individual Property; and (vii) to do any and every reasonable act which Borrower might do in its own behalf to fulfill the terms of this Agreement.

(e) Nothing in this Section 7.3.3 shall: (i) make Lender responsible for making or completing any Replacements; (ii) require Lender to expend funds in addition to the Replacement Reserve Fund to make or complete any Replacement; (iii) obligate Lender to proceed with any Replacements; or (iv) obligate Lender to demand from Borrower additional sums to make or complete any Replacement.

(f) If reasonably determined to be necessary and upon reasonable prior notice, Borrower shall permit Lender and Lender's agents and representatives (including, without limitation, Lender's engineer, architect, or inspector) or third-parties making Replacements pursuant to this Section 7.3.3 to enter onto each Individual Property during normal business hours (subject to the rights of Tenants under their Leases, guests and patrons) to inspect the progress of any Replacements and all materials being used in connection therewith, to examine all plans and shop drawings relating to such Replacements which are or may be kept at each Individual Property, and to complete any Replacements made pursuant to this Section 7.3.3 (provided, that to the extent that any Individual Property is subject to (x) a Brand Management

Agreement, Lender's rights shall be subject to the rights of such Brand Manager to the extent that such Brand Manager shall perform such Replacements pursuant to and in accordance with such Brand Management Agreement and Borrower shall enforce all of its rights under such Brand Management Agreement to cause such Replacements to be completed in accordance with the terms thereunder or (y) a Casino Management Agreement, Lender's rights shall be subject to the rights of such Casino Operator to the extent that such Casino Operator shall perform such Replacements pursuant to and in accordance with such Casino Management Agreement and Borrower shall enforce all of its rights under such Casino Management Agreement to cause such Replacements to be completed in accordance with the terms thereunder). Borrower shall cause all contractors and subcontractors to cooperate with Lender or Lender's representatives or such other persons described above in connection with inspections described in this Section 7.3.3(f) or the completion of Replacements pursuant to this Section 7.3.3. Notwithstanding the foregoing, unless a DSCR Trigger Period or an Event of Default has occurred and is continuing, such inspections shall not take place more than once per year and the cost to Borrower in connection with each shall not exceed Five Thousand and No/100 Dollars (\$5,000).

(g) The Replacements and all materials, equipment, fixtures, or any other item comprising a part of any Replacement shall be constructed, installed or completed, as applicable, free and clear of all mechanic's, materialmen's or other liens (except for (i) those Liens existing on the date of this Agreement which have been approved in writing by Lender and (ii) Permitted Indebtedness).

(h) All Replacements shall comply in all material respects with all applicable Legal Requirements of all Governmental Authorities having jurisdiction over the applicable Individual Property and applicable insurance requirements including, without limitation, applicable building codes, special use permits, environmental regulations, and requirements of insurance underwriters.

(i) In addition to any insurance required under the Loan Documents, Borrower shall provide or cause to be provided workmen's compensation insurance, builder's risk, and public liability insurance and other insurance to the extent required under applicable law in connection with a particular Replacement. All such policies shall be in form and amount reasonably satisfactory to Lender. All such policies which can be endorsed with standard mortgagee clauses making loss payable to Lender or its assigns shall be so endorsed. Certified copies of such policies shall be delivered to Lender.

7.3.4. Failure to Make Replacements. It shall be an Event of Default under this Agreement if Borrower fails to comply with any provision of this Section 7.3 and such failure is not cured within thirty (30) days after Borrower's receipt of written notice from Lender; provided, however, that if such failure is susceptible of cure but cannot reasonably be cured within such thirty (30) day period and provided further that Borrower or any other Loan Party shall have commenced to cure such failure within such thirty (30) day period and thereafter diligently and expeditiously proceeds to cure the same, such thirty (30) day period shall be extended for such time as is reasonably necessary for Borrower in the exercise of due diligence to cure such Default, such additional period not to exceed ninety (90) days.

7.3.5. Balance in the Replacement Reserve Account. The insufficiency of any balance in the Replacement Reserve Account shall not relieve Borrower from its obligation to fulfill all preservation and maintenance covenants in the Loan Documents or to complete the Replacements as required hereunder. Any amount remaining in the Replacement Reserve Account after the Debt has been paid in full shall be returned to Borrower.

Section 7.4. Intentionally Omitted.

Section 7.5. Excess Cash Flow Reserve Funds.

7.5.1. Excess Cash Flow Reserve. During a Cash Trap Period, Borrower shall deposit with Lender all Excess Cash Flow in the Cash Management Account, which shall be held by Lender as additional security for the Loan and amounts so held shall be hereinafter referred to as the “**Excess Cash Flow Reserve Funds**” and the account to which such amounts are held shall hereinafter be referred to as the “**Excess Cash Flow Reserve Account**”.

7.5.2. Release of Excess Cash Flow Reserve Funds. (a) Prior to the Anticipated Repayment Date and during a DSCR Trigger Period, so long as (x) no Event of Default has occurred and is continuing and (y) no OpCo Trigger Event has occurred and is continuing, upon written request of Borrower, Lender shall disburse within three (3) Business Days of Borrower’s request and no more frequently than bimonthly, Excess Cash Flow Reserve Funds for:

(1) for so long as the Property is subject to the MGM/Mandalay Lease, without duplication of any amounts disbursed pursuant to subclause (a)(2), below, (i) Debt Service and/or Mezzanine Loan Debt Service, (ii) voluntary prepayment of the (A) Loan in accordance with Section 2.4.1, Section 2.5.1 or Section 6.4(c) hereof (including payment of any costs incurred with a Defeasance Event and/or the Yield Maintenance Premium) or (B) Mezzanine Loan in accordance with Section 2.4.1, Section 2.5.1 or Section 6.4(c) thereof (including payment of any costs incurred with a Defeasance Event and/or the Yield Maintenance Premium) (provided such prepayment is made pro rata between the Loan and the Mezzanine Loan), (iii) principal prepayments of the Loan in the amount necessary to achieve a DSCR Cure (which shall be applied to Note A and Note B in accordance with Section 2.4.4 hereof), (iv) costs associated with the MGM/Mandalay Lease, (v) any fees and costs payable by Borrower, including to Lender, subject to and in compliance with the Loan Documents, including, without limitation costs to extend any PLL Policy or renew, extend or purchase a Letter of Credit, (vi) legal, audit, tax and accounting (including actual costs incurred by MGP OP or BREIT OP (directly or indirectly) and its service providers for back-office accounting and for costs associated with any Individual Property or Borrower); provided that Excess Cash Flow shall not be used for expenses in connection with (A) the enforcement of any Borrower’s rights under the Loan Documents, as applicable or (B) any defense of any enforcement by Lender of its rights under the Loan Documents, (vii) Permitted REIT Distributions and (viii) such other items as reasonably approved by Lender; or

(2) for so long as the Property is not subject to the MGM/Mandalay Lease, without duplication of any amounts disbursed pursuant to subclause (a)(1), above, (i) payment of any Operating Expenses (including management fees, franchise fees and other fees, charges or costs, payable to Casino Operator under the Casino Management Agreement, Manager under the Management Agreement or Franchisor/Licenser under the Franchise/License Agreement), (ii) emergency repairs and/or life safety issues (including any Capital Expenditures) at the applicable Individual Property which Lender will endeavor to fund within one (1) Business Day of Borrower's request therefor, (iii) Capital Expenditures, Replacements, PIP Work and Brand Mandated Work (iv) Hotel Taxes and Custodial Funds, (v) costs incurred in connection with the purchase of any FF&E, (vi) intentionally omitted, (vii) voluntary prepayment of the (A) Loan in accordance with Section 2.4.1, Section 2.5.1 or Section 6.4(c) hereof (including payment of any costs incurred with a Defeasance Event and/or the Yield Maintenance Premium) or (B) Mezzanine Loan in accordance with Section 2.4.1, Section 2.5.1 or Section 6.4(c) thereof (including payment of any costs incurred with a Defeasance Event and/or the Yield Maintenance Premium) (provided such prepayment is made pro rata between the Loan and the Mezzanine Loan), (viii) legal, audit, tax and accounting (including actual costs incurred by MGP OP or BREIT OP (directly or indirectly) and its service providers for back-office accounting and for costs associated with the applicable Individual Property or Borrower); provided that Excess Cash Flow shall not be used for expenses in connection with (A) the enforcement of Borrower's rights under the Loan Documents, as applicable or (B) any defense of any enforcement by Lender of its rights under the Loan Documents, (ix) costs incurred in connection with the renewal, extension or purchase of a Letter of Credit, (x) costs of Restoration in excess of available Net Proceeds, (xi) Debt Service and/or Mezzanine Loan Debt Service, (xii) any fees and costs payable by Borrower, including to Lender, subject to and in compliance with the Loan Documents, including, without limitation costs to extend any PLL Policy, (xiii) costs associated with the MGM/Mandalay Lease, existing Leases or any new Leases entered into pursuant to the terms of this Agreement, including costs related to tenant improvement allowances, leasing commissions, Tenant related Capital Expenditures, tenant inducement payments and relocation costs, vacant space preparation costs and marketing costs with respect to potential leasing at any Individual Property, (xiv) principal prepayments of the Loan or Mezzanine Loan in the amount necessary to achieve a DSCR Cure (which, with respect to the Loan, shall be applied to Note A and Note B in accordance with Section 2.4.4 hereof), (xv) Approved Alterations, (xvi) payment of shortfalls in the required deposits into the Reserve Accounts (in each case, to the extent required in this Agreement and/or the Cash Management Agreement), (xvii) Permitted REIT Distributions and (xviii) such other items as reasonably approved by Lender.

Provided no Event of Default has occurred and is continuing, on each Payment Date occurring after the Anticipated Repayment Date, all funds in the Excess Cash Flow Reserve Account shall be applied by Lender (x) first, toward the Additional Interest Amount in accordance with Section 2.3.1(b) hereof and (y) second, to reduce the outstanding principal balance of the Loan, in each case, on a dollar-for-dollar basis.

(b) Any Excess Cash Flow Reserve Funds remaining on deposit in the Excess Cash Flow Reserve Account upon the occurrence of a Cash Trap Event Cure or the date Borrower delivers an Excess Cash Flow Guaranty pursuant to Section 7.5.2(c) hereof shall be paid to Borrower. Any Excess Cash Flow Reserve Funds remaining on deposit in the Excess Cash Flow Reserve Account upon a Cash Trap Event Cure shall be paid (i) provided a cash sweep event under the Mezzanine Loan is then continuing or any amounts are then due and payable to Mezzanine Lender, to Mezzanine Lender to be held by Mezzanine Lender pursuant to the Mezzanine Loan Agreement for the purposes described therein and (ii) if the Mezzanine Loan is no longer outstanding or if there does not then exist a cash sweep event under the Mezzanine Loan and all amounts due and payable to Mezzanine Lender have been paid, to Borrower. Any Excess Cash Flow Reserve Funds remaining on deposit in the Excess Cash Flow Reserve Account after the Debt and all amounts due to Lender have been paid in full or following a Total Defeasance Event shall be paid (A) if any portion of the Mezzanine Loan is then outstanding, to Mezzanine Lender to be held by Mezzanine Lender pursuant to the Mezzanine Loan Agreement for the purposes described therein and (B) if no portion of the Mezzanine Loan is outstanding, to Borrower.

(c) In lieu of Agent depositing all Excess Cash Flow into the Excess Cash Flow Reserve Account in accordance with Section 7.5.1 hereof and Section 4.1(i) of the Cash Management Agreement and for so long as (x) no ARD Failure Event has occurred, (y) no Event of Default has occurred and is continuing and (z) BREIT OP owns a direct and/or indirect interest in Borrower, Borrower shall have the right to cause an Excess Cash Flow Guarantor to deliver to Lender the Excess Cash Flow Guaranty, provided, that, as a condition precedent to the delivery of such Excess Cash Flow Guaranty to Lender, Borrower shall deliver to Lender, at Borrower's sole cost and expense (i) an Additional Insolvency Opinion in respect of such Excess Cash Flow Guaranty in form and substance reasonably satisfactory to Lender if such disbursement of such amounts would cause the aggregate amount of obligations then outstanding under the Excess Cash Flow Guaranty (plus any outstanding amount under any Letter of Credit if the applicant thereunder is (x) BREIT OP or a subsidiary of BREIT OP that directly or indirectly owns 49% or more of the equity interests in Borrower, (y) MGP OP or a subsidiary of MGP OP that directly or indirectly owns 49% or more of the equity interests in Borrower and/or (z) a subsidiary of each of BREIT OP and/or MGP OP that in the aggregate directly or indirectly owns 49% or more of the equity interests in Borrower) to exceed fifteen percent (15.00%) of the then outstanding principal balance of the Loan and (ii) a legal opinion that the Excess Cash Flow Guaranty has been duly authorized, executed and delivered by the Excess Cash Flow Guarantor, and that the Excess Cash Flow Guaranty is valid, binding and enforceable against Excess Cash Flow Guarantor in accordance with its terms, which opinions shall be in form and substance substantially similar to the opinions delivered by Borrower's counsel upon the closing of the Loan with respect to validity, authority, execution and enforceability, and which may be relied upon by Lender and the Rating Agencies. In no instance shall Borrower be entitled to request, nor shall Lender be obligated to disburse, Excess Cash Flow to Borrower in lieu of depositing the same into the Excess Cash Flow Reserve Account if (I) an Event of Default has occurred and is

continuing and/or (II) such Excess Cash Flow is not guaranteed pursuant to the Excess Cash Flow Guaranty. Notwithstanding anything contained herein to the contrary, no Person other than an Excess Cash Flow Guarantor shall be permitted to deliver the Excess Cash Flow Guaranty in accordance with this Section 7.5.2(c). Upon the earliest to occur of (i) a monetary Event of Default, (ii) a Priority Payment Cessation Event, and (iii) the delivery of a deed in lieu of foreclosure, Borrower (or Excess Cash Flow Guarantor, pursuant to the Excess Cash Flow Guaranty) shall remit to Lender an amount equal to the Guaranteed Excess Cash Flow as of such date, which amount shall at Lender's option either be deposited by Lender into the Excess Cash Flow Reserve Account or applied in accordance with Section 7.5 as if such amounts had been contained in the Excess Cash Flow Reserve Account.

Section 7.6. Reserve Funds, Generally. Borrower hereby grants to Lender a security interest in each of the Reserve Funds and any and all monies now or hereafter deposited in each Reserve Fund as additional security for payment of the Debt. Until expended or applied in accordance herewith, the Reserve Funds shall constitute additional security for the Debt. Subject to Priority Waterfall Payments made pursuant to Section 3.5 of the Cash Management Agreement and Section 2.6.2(d) hereof, upon the occurrence and during the continuance of an Event of Default, Lender may, in addition to any and all other rights and remedies available to Lender, apply any sums then present in any or all of the Reserve Funds to the payment of the Debt in any order in its sole discretion. The Reserve Funds shall not constitute trust funds and may be commingled with other monies held by Lender. The Reserve Funds shall be held in an Eligible Account and shall be invested only in Permitted Investments in accordance with the terms and provisions of the Cash Management Agreement. All interest or other earnings on the Reserve Funds shall be added to and become a part of such Reserve Funds and shall be disbursed or applied, as applicable, in the same manner as other monies deposited in such Reserve Fund. Borrower shall be responsible for payment of any federal, state or local income or other tax applicable to the interest earned on the Reserve Funds credited or paid to Borrower. Borrower shall not, without obtaining the prior written consent of Lender, further pledge, assign or grant any security interest in any Reserve Fund or the monies deposited therein or permit any lien or encumbrance to attach thereto, or any levy to be made thereon, or any UCC-1 financing statements, except those naming Lender as the secured party, to be filed with respect thereto. Lender shall not be liable for any loss sustained on the investment of any funds constituting the Reserve Funds, provided such Reserve Funds are held in an Eligible Account and invested only in Permitted Investments in accordance with the terms and provisions of the Cash Management Agreement. Borrower shall indemnify Lender and hold Lender harmless from and against any and all actions, suits, claims, demands, liabilities, losses, damages, obligations and reasonable, actual, out-of-pocket, costs and expenses (including litigation costs and reasonable attorneys' fees and expenses) arising from or in any way connected with the Reserve Funds or the performance of the obligations for which the Reserve Funds were established except to the extent any of the foregoing results from Agent's or Lender's or Servicer's gross negligence, willful misconduct. Borrower shall assign to Lender all rights and claims Borrower may have against all persons or entities supplying labor, materials or other services which are to be paid from or secured by the Reserve Funds; provided, however, that Lender may not pursue any such right or claim unless an Event of Default has occurred and remains uncured. Notwithstanding anything to the contrary contained herein, any amount remaining in the Reserve Funds after the Debt has been paid in full or a Total Defeasance Event shall be returned to Borrower.

Section 7.7. Distributions to Mezzanine Lender.

(a) Notwithstanding anything to the contrary contained herein, any amount remaining in the Reserve Funds after the Debt has been paid in full shall be returned (A) if any portion of the Mezzanine Loan is then outstanding, to the Mezzanine Lender to be held by the Mezzanine Lender pursuant to the Mezzanine Loan Agreement for the purposes described therein and (B) if no portion of the Mezzanine Loan is then outstanding, to Borrower.

(b) Notwithstanding anything to the contrary contained herein, any portions of the Reserve Funds that are to be paid, returned or delivered to the Mezzanine Lender shall be in the case paid, returned or delivered to the Mezzanine Lender, deemed to be disbursed to the Mezzanine Borrower and therefrom disbursed to the Mezzanine Borrower for payment to the Mezzanine Lender.

ARTICLE VIII.

DEFAULTS

Section 8.1. Event of Default. (a) Each of the following events shall constitute an event of default hereunder (an “**Event of Default**”):

(i) if (A) any Monthly Debt Service Payment Amount is not paid on or before the date it is due, (B) the Debt is not paid in full on the Maturity Date, or (C) any other portion of the Debt (including any deposits to the Reserve Funds to the extent Borrower is required to make any such deposits in accordance with the terms and provisions hereof) not specified in the foregoing clauses (A) or (B) is not paid on or prior to the date when same is due with such failure continuing for five (5) Business Days after Lender delivers written notice thereof to Borrower;

(ii) if any of the real property Taxes or material Other Charges are not paid prior to the date upon which such payment becomes delinquent, other than those Taxes or material Other Charges being contested by Borrower or MGM/Mandalay Tenant in accordance with Section 5.1.2 hereof (provided, it shall not be an Event of Default (A) if there are sufficient funds in the Tax and Insurance Escrow Fund to pay such Taxes prior to the date upon which such payment becomes delinquent and Lender is required to use such amounts for the payment of such Taxes hereunder and Servicer or Lender fails to make such payment in accordance with the Loan Documents, or (B) if the Property is subject to the MGM/Mandalay Lease, unless MGM/Mandalay Tenant is contesting such Taxes or material Other Charges in accordance with the MGM/Mandalay Lease, Borrower shall pay, or cause to be paid, such real property Taxes or material Other Charges within ninety (90) days of the date upon which payment becomes delinquent so long as the failure to pay the same would not reasonably be expected to have a material adverse effect on the Borrower or the Property);

(iii) if the Policies are not kept in full force and effect, or if certified copies of the Policies are not delivered to Lender upon request when required pursuant to the applicable provisions of this Agreement;

(iv) if Borrower or any other Loan Party consummates a Transfer of any portion of the Property without Lender's prior written consent in violation of Section 5.2.9 hereof;

(v) if any representation or warranty made by Borrower or any other Loan Party herein or in any other Loan Document, or in any report, certificate, financial statement or other instrument, agreement or document furnished to Lender by or on behalf of Borrower or any other Loan Party shall have been false or misleading in any material adverse respect as of the date the representation or warranty was made; provided that if such untrue representation or warranty is susceptible of being cured, Borrower and any other Loan Party shall have the right to cure such representation or warranty within thirty (30) days of receipt of written notice from Lender;

(vi) if Borrower or any other Loan Party shall make an assignment for the benefit of creditors;

(vii) if a receiver, liquidator or trustee shall be appointed for Borrower or any other Loan Party or if Borrower or any other Loan Party shall be adjudicated as bankrupt or insolvent, or if any petition for bankruptcy, reorganization or arrangement pursuant to federal bankruptcy law, or any similar federal or state law, shall be filed by or against, consented to, or acquiesced in by, Borrower or any other Loan Party, or if any proceeding for the dissolution or liquidation of Borrower or any other Loan Party, shall be instituted; provided, however, if such appointment, adjudication, petition or proceeding was involuntary and not consented to by Borrower or any other Loan Party, upon the same not being discharged, stayed or dismissed within ninety (90) days;

(viii) if Borrower or any other Loan Party assigns its rights under this Agreement or any of the other Loan Documents or any interest herein or therein in contravention of the Loan Documents;

(ix) if a Guarantor Bankruptcy Event occurs with respect to Guarantor, provided, however, it shall be at Lender's option to determine whether the foregoing shall be an Event of Default and provided, further, in any case, it shall not be an Event of Default under this Section 8.1(a)(ix) if (x) a Replacement Guarantor or Substitute Guarantor shall have assumed all of the liabilities and obligations of Guarantor under the Loan Documents executed by Guarantor or executed a Substitute Guaranty in accordance with the terms hereunder or (y) (i) MGP OP and BREIT OP are Guarantors on a several basis, (ii) one of MGP OP or BREIT OP is not subject to such Guarantor Bankruptcy Event and (iii) such Guarantor not subject to such Guarantor Bankruptcy Event agrees to increase its Liability Percentage (as defined in the Guaranty as of the Closing Date) to one hundred percent (100%);

(x) if Borrower or any other Loan Party breaches any covenant contained in Section 5.1.25 hereof, provided, however, that any such breach shall not constitute an Event of Default (A) (i) if such breach is inadvertent and non-recurring or (ii) if such breach is curable, if Borrower or any other Loan Party shall promptly cure such breach within thirty (30) days after such breach occurs, and (B) upon the written request of Lender, if Borrower or any other Loan Party promptly delivers to Lender an Additional Insolvency Opinion or a modification of the Insolvency Opinion, as applicable, to the effect that such breach shall not in any way impair, negate or amend the opinions rendered in the Insolvency Opinion, which opinion or modification and the counsel delivering such opinion and modification shall be acceptable to Lender in its sole discretion;

(xi) with respect to any term, covenant or provision set forth herein which specifically contains a notice requirement or grace period, if Borrower or any other Loan Party shall be in default under such term, covenant or condition after the giving of such notice or the expiration of such grace period;

(xii) if any of the assumptions related to the Borrower or any other Loan Party, contained in the Insolvency Opinion delivered to Lender in connection with the Loan, or in any Additional Insolvency Opinion delivered subsequent to the closing of the Loan, is or shall become untrue in any material respect, provided, however, that any such breach shall not constitute an Event of Default (A) (i) if such breach is inadvertent and non-recurring or (ii) if such breach is curable, if Borrower or any other Loan Party shall promptly cure such breach within thirty (30) days after such breach occurs, and (B) upon the written request of Lender, if Borrower or any other Loan Party promptly delivers to Lender an Additional Insolvency Opinion or a modification of the Insolvency Opinion, as applicable, to the effect that such breach shall not in any way impair, negate or amend the opinions rendered in the Insolvency Opinion, which opinion or modification and the counsel delivering such opinion and modification shall be acceptable to Lender in its sole discretion;

(xiii) for so long as the Property is not subject to the MGM/Mandalay Lease and is subject to a Management Agreement that is not a Brand Management Agreement, if a material default by Borrower or any other Loan Party has occurred and continues beyond any applicable cure period under the Management Agreement and if such default permits the Manager thereunder to terminate or cancel the Management Agreement, or the term of the Management Agreement expires and in each case, unless Borrower enters into (x) a Management Agreement or (y) MGM/Mandalay Lease within thirty (30) days' notice of such default (subject to the applicable cure period) or the date of such expiration;

(xiv) for so long as the Property is not subject to the MGM/Mandalay Lease and is subject to a Brand Management Agreement, if, without Lender's prior written consent, (a) the Brand Management Agreement is terminated (unless within five (5) Business Days of such termination Borrower enters into (x) a Brand Management Agreement, (y) a Management Agreement that is not a Brand Management Agreement and either (1) a Franchise/License Agreement or (2) a

license to use the MGM/Mandalay Brand Names in connection with the operation of the Hotel Components or (z) a MGM/Mandalay Lease), (b) the Brand Management Agreement is materially amended in violation of the terms hereof or (c) there is a material default by Borrower under the Brand Management Agreement beyond any applicable notice or grace period that permits the Brand Manager thereunder to terminate or cancel the Brand Management Agreement and Lender delivers a written notice of Event of Default in connection therewith to Borrower (a “**Brand Management Default Election Notice**”) (unless, within forty-five (45) days after receipt of the Brand Management Default Election Notice, Borrower (1) cures such material default and such cure is accepted by the applicable Brand Manager or (2) enters into (x) a Brand Management Agreement, (y) a Management Agreement that is not a Brand Management Agreement and either (1) a Franchise/License Agreement or (2) a license to use the MGM/Mandalay Brand Names in connection with the operation of the Hotel Components or (z) a MGM/Mandalay Lease);

(xv) for so long as the Property is not subject to the MGM/Mandalay Lease and is subject to a Casino Management Agreement, if, without Lender’s prior written consent, (a) the Casino Management Agreement is terminated (unless within five (5) Business Days of such termination Borrower enters into (x) a Casino Management Agreement or (y) a MGM/Mandalay Lease), (b) the Casino Management Agreement is materially amended in violation of the terms hereof or (c) there is a material default by Borrower under the Casino Management Agreement beyond any applicable notice or grace period that permits the Casino Operator thereunder to terminate or cancel the Casino Management Agreement and Lender delivers a written notice of Event of Default in connection therewith to Borrower (a “**Casino Management Default Election Notice**”) (unless, within forty-five (45) days after receipt of the Casino Management Default Election Notice, Borrower (1) cures such material default and such cure is accepted by the applicable Casino Operator or (2) enters into (x) a Casino Management Agreement or (y) a MGM/Mandalay Lease);

(xvi) if there shall be default under any of the other Loan Documents beyond any applicable cure periods contained in such documents, whether as to Borrower, any other Loan Party or any Individual Property, or if any other such event shall occur or condition shall exist, if the effect of such default, event or condition is to accelerate the maturity of any portion of the Debt or to permit Lender to accelerate the maturity of all or any portion of the Debt;

(xvii) for so long as the Property is not subject to the MGM/Mandalay Lease and subject to a Franchise/License Agreement, if, without Lender’s prior written consent, (a) the Franchise/License Agreement is terminated (unless within five (5) Business Days of such termination Borrower enters into a (w) a license to use the MGM/Mandalay Brand Names in connection with the operation of the Hotel Components, (x) Franchise/License Agreement, (y) a Brand Management Agreement or (z) a MGM/Mandalay Lease), (b) the Franchise/License Agreement is materially amended in violation of Section 5.2.1 or (c) there is a material default by Borrower under the Franchise/License Agreement (including a default

thereunder that results in a breach of Section 5.1.20 or 5.2.1 hereof) beyond any applicable notice or grace period that permits the Franchisor/Licensors thereunder to terminate or cancel the Franchise/License Agreement and Lender delivers a written notice of Event of Default in connection therewith to Borrower (a “**Franchise/License Default Election Notice**”) (unless, within forty-five (45) days after receipt of such Franchise/License Default Election Notice, Borrower (1) cures such material default and such cure is accepted by the Franchisor/Licensors or (2) enters into (w) a license to use the MGM/Mandalay Brand Names in connection with the operation of the Hotel Components, (x) a Franchise/License Agreement, (y) a Brand Management Agreement or (z) a MGM/Mandalay Lease);

(xviii) Guarantor breaches any of the Guarantor Financial Covenants and a Substitute Guaranty is not delivered in accordance with the terms of the Guaranty and the Loan Agreement;

(xix) Intentionally omitted;

(xx) for so long as the Property is subject to the MGM/Mandalay Lease, if Borrower consents to MGM/Mandalay Tenant (A) ceasing to do business as a hotel and casino at the Property or (B) terminating such business for any reason whatsoever (in each case other than temporary cessation in connection with any continuous and diligent renovation or restoration of the Property following a Casualty or Condemnation) without Lender’s prior written consent in violation of the provisions of this Agreement;

(xxi) for so long as the Property is subject to the MGM/Mandalay Lease, (A) Borrower amends the MGM/Mandalay Lease, MGM/Mandalay Lease Guaranty or any other MGM/Mandalay Lease Document without the prior written consent of Lender if required pursuant to this Agreement or (B) Borrower terminates (or consents to the termination of) the MGM/Mandalay Lease, MGM/Mandalay Lease Guaranty or any other MGM/Mandalay Lease Document without Lender’s prior written consent but only to the extent Lender’s prior written consent was required by the provisions of this Agreement;

(xxii) Intentionally omitted;

(xxiii) for so long as the Property is subject to the MGM/Mandalay Lease, Borrower consents to any Transfer of MGM/Mandalay Tenant’s leasehold interest in the Property or the MGM/Mandalay Lease without Lender’s prior written consent but only to the extent Lender’s prior written consent was required by the provisions of this Agreement; or (xxiv) if Borrower or any other Loan Party shall continue to be in Default under any of the other terms, covenants or conditions of this Agreement not specified in subsections (i) to (xxiii) above, for ten (10) days after notice to Borrower from Lender, in the case of any Default which can be cured by the payment of a sum of money, or for thirty (30) days after notice from Lender in the case of any other Default; provided, however, that if such non-monetary Default is susceptible of cure but cannot reasonably be cured within

such thirty (30) day period and provided further that Borrower or any other Loan Party shall have commenced to cure such Default within such thirty (30) day period and thereafter diligently and expeditiously proceeds to cure the same, such thirty (30) day period shall be extended for such time as is reasonably necessary for Borrower in the exercise of due diligence to cure such Default, such additional period not to exceed ninety (90) days.

(b) During the continuance of an Event of Default (other than an Event of Default described in clauses (vi), (vii) or (viii) above), in addition to any other rights or remedies available to it pursuant to this Agreement and the other Loan Documents or at law or in equity, Lender may take such action, without notice or demand, that Lender deems advisable to protect and enforce its rights against Borrower or any other Loan Party and in and to all or any of the Property, including, without limitation, declaring the Debt to be immediately due and payable, and Lender may enforce or avail itself of any or all rights or remedies provided in the Loan Documents against Borrower, any other Loan Party and any or all of the Property, including, without limitation, all rights or remedies available at law or in equity; and upon any Event of Default described in clauses (vi), (vii) or (viii) above, the Debt and Other Obligations of Borrower hereunder and under the other Loan Documents shall immediately and automatically become due and payable, without notice or demand, and Borrower hereby expressly waives any such notice or demand, anything contained herein or in any other Loan Document to the contrary notwithstanding.

Section 8.2. Remedies. (a) During the continuance of an Event of Default, all or any one or more of the rights, powers, privileges and other remedies available to Lender against Borrower or any other Loan Party under this Agreement or any of the other Loan Documents executed and delivered by, or applicable to, Borrower and the other Loan Parties or at law or in equity may be exercised by Lender at any time and from time to time, to the extent permitted by applicable law, whether or not all or any of the Debt shall be declared due and payable, and whether or not Lender shall have commenced any foreclosure proceeding or other action for the enforcement of its rights and remedies under any of the Loan Documents with respect to all or any part of the Property. Any such actions taken by Lender shall be cumulative and concurrent and may be pursued independently, singularly, successively, together or otherwise, at such time and in such order as Lender may determine in its sole discretion, to the fullest extent permitted by law, without impairing or otherwise affecting the other rights and remedies of Lender permitted by law, equity or contract or as set forth herein or in the other Loan Documents. Without limiting the generality of the foregoing, Borrower and each other Loan Party agree that if an Event of Default is continuing (i) Lender is not subject to any “one action” or “election of remedies” law or rule, and (ii) all liens and other rights, remedies or privileges provided to Lender shall remain in full force and effect until Lender has exhausted all of its remedies against the Property and each Mortgage has been foreclosed, sold and/or otherwise realized upon in satisfaction of the Debt or the Debt has been paid in full, including without limitation, any liquidation fees, workout fees, special servicing fees and interest payable on advances made by the Servicer with respect to delinquent debt service payments or expenses of curing Borrower’s or any other Loan Party’s defaults under the Loan Documents or other similar fees payable to Servicer or any special servicer in connection therewith.

(b) With respect to Borrower, the other Loan Parties and the Property, nothing contained herein or in any other Loan Document shall be construed as requiring Lender to resort to any Individual Property for the satisfaction of any of the Debt in any preference or priority to any other Individual Property, and Lender may seek satisfaction out of all of the Properties, or any part thereof, in its absolute discretion in respect of the Debt. In addition, during the continuance of an Event of Default, (i) Lender shall have the right from time to time to partially foreclose any Mortgage in any manner and for any amounts secured by such Mortgage then due and payable as determined by Lender in its sole discretion including, without limitation, in the event Borrower or any other Loan Party defaults beyond any applicable grace period in the payment of one or more scheduled payments of interest, (ii) Lender may foreclose one or more of the Mortgages to recover such delinquent payments or (iii) in the event Lender elects to accelerate less than the entire outstanding principal balance of the Loan, Lender may foreclose one or more of the Mortgages to recover so much of the principal balance of the Loan as Lender may accelerate and such other sums secured by the Mortgages as Lender may elect. Notwithstanding one or more partial foreclosures, the remaining Properties shall remain subject to the Mortgages to secure payment of sums secured by the Mortgages and not previously recovered.

(c) Upon the occurrence and during the continuance of an Event of Default, Lender shall have the right from time to time to sever the Note and the other Loan Documents into one or more separate notes, mortgages and other security documents (the "Severed Loan Documents") in such denominations as Lender shall determine in its sole discretion for purposes of evidencing and enforcing its rights and remedies provided hereunder. Borrower shall execute and deliver to Lender from time to time, promptly after the request of Lender, a severance agreement and such other documents as Lender shall request in order to effect the severance described in the preceding sentence, all in form and substance reasonably satisfactory to Lender. Borrower hereby absolutely and irrevocably appoints Lender as its respective true and lawful attorney, coupled with an interest, in its name and stead to make and execute all documents necessary or desirable to effect the aforesaid severance, Borrower ratifying all that its said attorney shall do by virtue thereof; provided, however, Lender shall not make or execute any such documents under such power until three (3) days after notice has been given to Borrower by Lender of Lender's intent to exercise its rights under such power. Borrower shall be obligated to pay any costs or expenses incurred in connection with the preparation, execution, recording or filing of the Severed Loan Documents and the Severed Loan Documents shall not contain any representations, warranties or covenants not contained in the Loan Documents and any such representations and warranties contained in the Severed Loan Documents will be given by Borrower only as of the Closing Date.

(d) As used in this Section 8.2, a "foreclosure" shall include, without limitation, any sale by power of sale (or conveyance in lieu).

Section 8.3. Additional Provisions Regarding MGM/Mandalay Lease. Upon the occurrence of an Event of Default hereunder arising from any default or breach by MGM/Mandalay Tenant, MGM/Mandalay Lease Guarantor, MGM/Mandalay Operating Subtenant or any of their respective Affiliates under the MGM/Mandalay Lease, any of the other MGM/Mandalay Lease Documents or any MGM/Mandalay Operating Sublease (each of the foregoing, an "**MGM/Mandalay Lease Default**"), Lender shall not commence any judicial or non-judicial foreclosure proceeding, exercise any power of sale, take a deed or assignment in lieu of

foreclosure, obtain a receiver or take any other enforcement action to take possession or control of the Property or any portion thereof, accelerate the Debt or apply amounts in the Lockbox Account, Cash Management Account or Reserve Funds to the payment of the Debt (except for Priority Waterfall Payments) and shall not restrict Borrower's right to make a payment or perform its obligations hereunder as a result of such Event of Default (each, an "**Enforcement Action**"), unless such Event of Default shall be continuing for (i) in the case of any MGM/Mandalay Lease Default which can be cured by the payment of a sum of money, five (5) Business Days after such MGM/Mandalay Lease Default and (ii) in the case of any other MGM/Mandalay Lease Default, thirty (30) days after such MGM/Mandalay Lease Default, provided, that if such non-monetary MGM/Mandalay Lease Default cannot actually be cured by Borrower within such thirty (30) day period without repaying the Loan in full, so long as Borrower shall have commenced to cure such MGM/Mandalay Lease Default within such thirty (30) day period and thereafter diligently and expeditiously proceeds to cure the same, such thirty (30) day period shall be extended for such time as is reasonably necessary for Borrower in the exercise of due diligence to cure such MGM/Mandalay Lease Default, so long as Borrower is thereafter diligently and expeditiously proceeding to cure the same (which for purposes of this Section 8.3 include Borrower enforcing rights and remedies under the MGM/Mandalay Lease or seeking a replacement MGM/Mandalay Tenant in accordance with the terms hereunder or seeking refinancing sources to repay the Loan in full), such period shall be extended for such time as is reasonably necessary for Borrower in the exercise of due diligence to cure such MGM/Mandalay Lease Default, such additional period not to exceed three hundred sixty-five (365) days after such Event of Default (which cure may include the termination of the MGM/Mandalay Lease and the entrance into (x) a new MGM/Mandalay Lease or (y) (1) a Casino Management Agreement and (2) (A) a Brand Management Agreement or (B) a Management Agreement that is not a Brand Management Agreement if (i) Borrower has a license to use the MGM/Mandalay Brand Names in connection with the operation of the Hotel Components or (ii) Borrower does not have a license to use the MGM/Mandalay Brand Names in connection with the operation of the Hotel Components, a Franchise/License Agreement).

Section 8.4. Remedies Cumulative; Waivers. The rights, powers and remedies of Lender under this Agreement shall be cumulative and not exclusive of any other right, power or remedy which Lender may have against Borrower and any other Loan Party pursuant to this Agreement or the other Loan Documents, or existing at law or in equity or otherwise. Lender's rights, powers and remedies may be pursued singularly, concurrently or otherwise, at such time and in such order as Lender may determine in Lender's sole discretion. No delay or omission to exercise any remedy, right or power accruing upon an Event of Default shall impair any such remedy, right or power or shall be construed as a waiver thereof, but any such remedy, right or power may be exercised from time to time and as often as may be deemed expedient. A waiver of one Default or Event of Default with respect to Borrower or any other Loan Party shall not be construed to be a waiver of any subsequent Default or Event of Default by Borrower or any other Loan Party or to impair any remedy, right or power consequent thereon.

ARTICLE IX.

SPECIAL PROVISIONS

Section 9.1. Sales and Securitization.

9.1.1. Sale of Notes and Securitization. Borrower acknowledges and agrees that Lender may (i) sell or otherwise transfer the Loan as a whole loan or sell or otherwise transfer or syndicate all or any portion of the Loan and the Loan Documents to (A) an Eligible Assignee, or (B) any other Person reasonably approved by Borrower (such approval not to be unreasonably withheld, conditioned or delayed), (ii) sell or otherwise transfer the Loan as a whole loan or sell or otherwise transfer or syndicate all or any portion of the Loan and the Loan Documents to an Affiliate of a Lender (provided that such Affiliate is (A) an Eligible Assignee (other than the requirement to satisfy the economic threshold contained in clause (i) of the definition of the Eligibility Requirements) or (B) otherwise reasonably approved by Borrower (such approval not to be unreasonably withheld, conditioned or delayed)), (iii) sell participation interests in the Loan or (iv) consummate one or more private or public securitizations of rated or unrated single class or multi class securities (the “**Securities**”) secured by or evidencing ownership interests in all or any portion of the Loan and the Loan Documents or a pool of assets that include the Loan and the Loan Documents (the transactions referred to in clause (iv) shall hereinafter be referred to as a “**Securitization**”). For the avoidance of doubt, in no instance shall the restriction on the sale, assignment, syndication or participation of the Loan or any portion thereof to an Eligible Assignee or to a Person otherwise reasonably approved by Borrower apply (1) to any Securitization or to any Securities issued in connection therewith, (2) to any sale or transfer of the Loan following an assumption of the Loan pursuant to Section 5.2.9(f) hereof or (3) during the continuance of an Event of Default. At the request of Lender, and to the extent not already provided by Borrower or any other Loan Party under this Agreement, Borrower shall use reasonable efforts to provide information in the possession or control of Borrower, any other Loan Party or any of their respective Affiliates and not in the possession of Lender or which may be reasonably required by Lender in order to satisfy the market standards to which Lender customarily adheres or which may be reasonably required by prospective investors, financing sources and/or the Rating Agencies in connection with any such sale, syndication, participation or Securitization including, without limitation, to:

(a) provide additional and/or updated Provided Information;

(b) review, and comment on the Disclosure Documents delivered to Borrower, which Disclosure Documents shall be delivered for review and comment by Borrower not less than five (5) Business Days prior to the date upon which Borrower is otherwise required to confirm such Disclosure Documents;

(c) deliver an updated Insolvency Opinion;

(d) deliver an opinion of New York counsel with respect to due execution and enforceability of the Loan Documents governed by New York law substantially the same as those delivered as of the Closing Date, which opinions shall be addressed, for purposes of reliance thereon, to each Person acquiring any interest in the Loan in connection with any

Securitization, which counsel opinions shall be reasonably satisfactory to Lender and the Approved Rating Agencies;

(e) subject to Section 9.3 hereof, confirm that the representations and warranties as set forth in the Loan Documents are true, complete and correct in all material respects as of the closing date of the Securitization with respect to the Property, Borrower, each other Loan Party and the Loan Documents (except to the extent that any such representations and warranties are and can only be made as of a specific date and the facts and circumstances upon which such representation and warranty is based are specific solely to a certain date in which case confirmation as to truth, completeness and correctness shall be provided as of such specific date or to the extent such representations are no longer true and correct as a result of subsequent events in which case Borrower and any applicable other Loan Party shall provide an updated representation or warranty);

(f) if requested by Lender, review the following sections of the Disclosure Documents: (i) in the case of the term sheet, the sections titled “Executive Summary and Transaction Highlights”, “Structural Overview — Mortgage Loan Monthly Payments”, “Certain Mortgage Loan Terms”, “Property Overview”, “Sponsorship Overview” (which for the avoidance of doubt shall exclude MGM) and “Historical and Underwritten Financials” (limited to historical financials) (or sections similarly titled or covering similar subject matters) and (ii) in the case of the other Disclosure Documents, the sections titled “Summary of Offering Circular” (solely to the extent “Summary of Offering Circular” relates to Borrower, Principal, Guarantor, any Loan Party, Manager (if Manager is an Affiliated Manager), the MGM/Mandalay Lease, the Management Agreement, the Franchise/License Agreement, the Loan and the Properties), “Description of the Properties,” “Description of the Mortgages,” “Description of the Mortgage Loan,” “Description of the Borrower, Guarantor and Related Parties” (which for the avoidance of doubt shall exclude MGM), “Description of the Property Manager” (if Manager is an Affiliated Manager), “Description of the MGM/Mandalay Lease,” “Description of the Management Agreement and Management Agreement SNDA,” “Description of the Franchise/License Agreement,” “Use of Proceeds,” “Annex A — Mortgage Loan Collateral Schedule”, “Annex E — Representations and Warranties of the Borrower,” and “Annex F Organizational Structure of the Borrower” (or sections similarly titled or covering similar subject matters);

(g) execute such amendments to the Loan Documents as may be reasonably necessary to reflect structural changes to the Loan that are requested in writing from Lender, from time to time, prior to a Securitization; provided that any such amendments (i) shall not increase (x) any monetary obligation of Borrower, Principal or Guarantor, or (y) any other obligation or liability of Borrower under the Loan Documents in any material respect or (z) any other obligation or liability of Guarantor in any respect, (ii) shall not change the weighted average spread of the Loan in place immediately prior to such amendment (except following an Event of Default or due to principal payments with respect to the Loan or a Casualty or Condemnation), (iii) shall not affect the aggregate amortization of the Loan (i.e. none), (iv) shall not change the dates of the Interest Period, the Maturity Date or the Payment Date, (v) shall not affect the time periods during which Borrower is permitted to perform any obligations under the Loan Documents, (vi) shall not decrease any of Borrower’s, Principal’s or Guarantor’s rights or remedies under the Loan Documents in any respect and (vii) any such amendments shall be in substantially the same form as this Agreement; and

(h) if reasonably requested by Lender, Borrower shall provide Lender, within a reasonable period of time following Lender's request, with any financial statements, or financial, statistical or operating information, as Lender shall reasonably determine to be required pursuant to Regulation AB under the Securities Act of 1933, as amended (the "Securities Act"), or the Securities Exchange Act of 1934, as amended (the "Exchange Act"), or any amendment, modification or replacement thereto or other legal requirements in connection with any Disclosure Documents or any filing pursuant to the Exchange Act in connection with the Securitization or as shall otherwise be reasonably requested by Lender.

9.1.2. Mezzanine Loan. Lender covenants and agrees that at no time shall Lender have the right to bifurcate the Loan into one or more mezzanine loans (i) prior to the first Securitization of the Loan without the prior written consent of Borrower, which consent shall not be unreasonably withheld or delayed, provided the amendment(s) to the Loan Documents and the new mezzanine loan documents contain mezzanine provisions substantially similar to what Lender and Affiliates of Borrower have agreed to in past transactions and (ii) after the first Securitization of the Loan. Notwithstanding anything to the contrary herein, all reasonable costs and expenses incurred by Borrower and/or Lender in connection with any new mezzanine loan (including, without limitation, any documentary stamp taxes, intangible taxes and other recording taxes) shall be paid in accordance with Section 9.1.4 hereof.

9.1.3. Intentionally Omitted.

9.1.4. Costs. All reasonable, out-of-pocket third-party costs and expenses incurred by Borrower, any other Loan Party and Guarantor in connection with Borrower's complying with this Section 9.1 (including, without limitation, any documentary stamp, intangible tax and any other mortgage taxes) and any fees and expenses of the Rating Agencies incurred in connection with a sale, syndication or participation of the Loan and/or Securitization shall be paid by Lender, provided, that Borrower shall be responsible for payment of all of Borrower's, any other Loan Party's and Guarantor's respective attorneys' fees and expenses.

Section 9.2. Securitization Indemnification. (a) Borrower and each other Loan Party understands that certain of the Provided Information may be included in Disclosure Documents in connection with the Securitization and may also be included in filings with the Securities and Exchange Commission pursuant to the Securities Act, or the Exchange Act or provided or made available to investors or prospective investors in the Securities, the Rating Agencies, and service providers relating to the Securitization. In the event that any Disclosure Document is required to be revised prior to the sale of all Securities, Borrower and each other Loan Party will cooperate with the holder of the Note in updating the Covered Disclosure Information by providing all current information necessary to keep the Covered Disclosure Information accurate and complete in all material respects.

(b) The Indemnifying Persons agree to provide, in connection with the Securitization, an indemnification agreement (A) certifying that (i) the Indemnifying Persons have, at Lender's request in connection with each Securitization, reviewed the following sections of the Disclosure Documents: (1) in the case of the term sheet, the sections titled "Executive Summary and Transaction Highlights", "Structural Overview — Mortgage Loan Monthly Payments", "Certain Mortgage Loan Terms," "Property Overview", "Sponsorship and Management Overview" (which for the avoidance of doubt shall exclude MGM) and "Historical

and Underwritten Financials” (limited to historical financials) (or sections similarly titled or covering similar subject matters) and (2) in the case of the other Disclosure Documents, the sections titled “Summary of Offering Circular” (solely to the extent “Summary of Offering Circular” relates to Borrower, Principal, Guarantor, any Loan Party, Manager (if Manager is an Affiliated Manager), the MGM/Mandalay Lease, the Management Agreement, the Franchise/License Agreement, the Loan and the Properties), “Description of the Properties,” “Description of the Mortgages,” “Description of the Mortgage Loan,” “Description of the Borrower, Guarantor and Related Parties” (which for the avoidance of doubt shall exclude MGM), “Description of the Property Manager” (if Manager is an Affiliated Manager), “Description of the MGM/Mandalay Lease,” “Description of the Management Agreement and Management Agreement SNDA,” “Description of the Franchise/License Agreement,” “Use of Proceeds,” “Annex A — Mortgage Loan Collateral Schedule,” “Annex E — Representations and Warranties of the Borrower” and “Annex F — Organizational Structure of the Borrower” or similar sections, in each case, (I) solely to the extent each of the foregoing relate to Borrower, Principal, Guarantor, any Loan Party, the Manager (if Manager is an Affiliated Manager), the MGM/Mandalay Lease, the Management Agreement, the Franchise/License Agreement, the Loan and the Properties, and (II) excluding (v) any statements and information relating to the cities and regions in which the Property are located (other than the Property addresses), including local market information and local market performance data, (w) any underwritten financial information (except to the extent such underwritten financial information is included in the Provided Information), (x) any information (including financial information or forecasted information) that is solely obtained from any third-party report, including, without limitation, zoning reports, appraisals, property condition reports or environmental reports, (y) any electronic media (except those portions of Annex A that are not otherwise excluded pursuant to this clause (A) and Annex E) and (z) any financial projections or reforecasts relating to the performance of the Properties and other Collateral (except to the extent such projections or reforecasts are included in the Provided Information) (collectively with the Provided Information, the “**Covered Disclosure Information**”) and (ii) the Covered Disclosure Information does not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, (B) jointly and severally indemnifying the Indemnified Persons for any losses, claims, damages, liabilities, costs or expenses (including without limitation reasonable legal fees and expenses for enforcement of these obligations) (collectively, the “**Liabilities**”) to which any such Indemnified Person may become subject insofar as the Liabilities arise out of or are based upon any untrue statement or alleged untrue statement of any material fact contained in the Covered Disclosure Information or arise out of or are based upon the omission or alleged omission to state in the Covered Disclosure Information a material fact required to be stated therein or necessary in order to make the statements in the Covered Disclosure Information, in light of the circumstances under which they were made, not misleading and (C) agreeing to reimburse each Indemnified Person for any reasonable legal or other expenses incurred by such Indemnified Person, as they are incurred, in connection with investigating or defending the Liabilities. This indemnity agreement will be in addition to any liability which Indemnifying Persons may otherwise have. Moreover, the indemnification and reimbursement obligations provided for in clauses (B) and (C) above shall be effective, valid and binding obligations of Indemnifying Persons, whether or not an indemnification agreement described in clause (A) above is provided. Notwithstanding the foregoing, the indemnification agreement shall not require, with respect to any financial projections or reforecasts that are included in the Provided Information or in the Disclosure Documents (to the extent such projections or reforecasts are included in the Provided

Information), that the Indemnifying Persons be liable for any Liabilities resulting from the actual results being different from such projections or reforecasts so long as (i) the Indemnifying Persons had no reason to believe that such projections or reforecasts were materially inaccurate and (ii) the Indemnifying Persons have disclosed to Lender all facts known to them and have not failed to disclose any fact known to them, in each case that could be reasonably expected to cause any such projections or reforecasts or made herein to be materially misleading.

(c) In connection with Exchange Act Filings, the Indemnifying Persons jointly and severally agree to indemnify (i) the Indemnified Persons for Liabilities to which any such Indemnified Person may become subject insofar as the Liabilities arise out of or are based upon any untrue statement or alleged untrue statement of any material fact in the Covered Disclosure Information, or the omission or alleged omission to state in the Covered Disclosure Information a material fact required to be stated therein or necessary in order to make the statements in the Covered Disclosure Information, in light of the circumstances under which they were made, not misleading; (ii) reimburse each Indemnified Person for any legal or other out-of-pocket expenses incurred by such Indemnified Persons, as they are incurred, in connection with defending or investigating the Liabilities; provided, that, notwithstanding anything to the contrary contained herein, (A) the Indemnifying Persons shall not be responsible for (x) any liabilities relating to any filings under the Exchange Act (or the applicable provisions thereof) relating to untrue statements or omissions in any Covered Disclosure Information for which Borrower provided reasonable prior notice to Lender in writing prior to the applicable filings under the Exchange Act, or (y) any liabilities relating to any filings under the Exchange Act (or the applicable provisions thereof) that Borrower is not first provided a reasonable opportunity to review; and (iii) the Indemnifying Persons shall not be liable for any misstatements or omissions in the applicable filings under the Exchange Act relating to Covered Disclosure Information resulting from (A) Lender's failure to accurately transcribe written information by or on behalf of the Indemnifying Persons to Lender unless Borrower was provided a reasonable opportunity to review such filings under the Exchange Act with respect to the Covered Disclosure Information (or the applicable portions thereof) and failed to notify Lender of such misstatements or omissions and (B) Lender's failure to incorporate any comment provided by Borrower in writing into the Covered Disclosure Information.

(d) Promptly after receipt by an Indemnified Person of notice of any claim or the commencement of any action, the Indemnified Person shall, if a claim in respect thereof is to be made against any Indemnifying Person, notify such Indemnifying Person in writing of the claim or the commencement of that action; provided, however, that the failure to notify such Indemnifying Person shall not relieve it from any liability which it may have under the indemnification provisions of this Section 9.2 except to the extent that it has been materially prejudiced by such failure and, provided, further, that the failure to notify such Indemnifying Person shall not relieve it from any liability which it may have to an Indemnified Person otherwise than under the provisions of this Section 9.2. If any such claim or action shall be brought against an Indemnified Person, and it shall notify any Indemnifying Person thereof, such Indemnifying Person shall be entitled to participate therein and, to the extent that it wishes, assume the defense thereof with counsel reasonably satisfactory to the Indemnified Person. After notice from any Indemnifying Person to the Indemnified Person of its election to assume the defense of such claim or action, such Indemnifying Person shall not be liable to the Indemnified Person for any legal or other expenses subsequently incurred by the Indemnified Person in connection with the defense thereof except as provided in the following sentence; provided,

however, if the defendants in any such action include both an Indemnifying Person, on the one hand, and one or more Indemnified Persons on the other hand, and an Indemnified Person shall have reasonably concluded that there are any legal defenses available to it and/or other Indemnified Persons that are different or in addition to those available to the Indemnifying Person, the Indemnified Person or Persons shall have the right to select separate counsel to assert such legal defenses and to otherwise participate in the defense of such action on behalf of such Indemnified Person or Persons. The Indemnified Person shall instruct its counsel to maintain reasonably detailed billing records for fees and disbursements for which such Indemnified Person is seeking reimbursement hereunder and shall submit copies of such detailed billing records to substantiate that such counsel's fees and disbursements are solely related to the defense of a claim for which the Indemnifying Person is required hereunder to indemnify such Indemnified Person. No Indemnifying Person shall be liable for the expenses of more than one (1) such separate counsel and local counsel unless such Indemnified Person shall have reasonably concluded that there may be legal defenses available to it that are different from or additional to those available to another Indemnified Person.

(e) Borrower shall jointly and severally indemnify Lender and each of its respective officers, directors, partners, employees, representatives, agents and Affiliates against any liabilities to which Lender, each of its respective officers, directors, partners, employees, representatives, agents and Affiliates, may become subject in connection with any indemnification to the Rating Agencies in connection with issuing, monitoring or maintaining the Securities insofar as the liabilities arise out of or are based upon any untrue statement of any material fact in any information provided by or on behalf of the Borrowers to the Rating Agencies (the "Covered Rating Agency Information") or arise out of or are based upon the omission to state a material fact in the Covered Rating Agency Information required to be stated therein or necessary in order to make the statements in the Covered Rating Agency Information, in light of the circumstances under which they were made, not misleading, provided that, notwithstanding anything to the contrary contained herein, (i) the Indemnifying Persons shall not be responsible for any (x) liabilities relating to untrue statements or omissions in any Covered Rating Agency Information which Borrower was provided an opportunity to review and provided notice to Lender in writing prior to the pricing of any Securities or (y) any liabilities relating to any Covered Rating Agency Information (or the applicable provisions thereof) that Borrower is not first provided an opportunity to review; (ii) the Indemnifying Persons shall not be liable for any misstatements or omissions in any Covered Rating Agency Information resulting from Lender's failure to accurately transcribe written information provided by or on behalf of the Indemnifying Persons to Lender unless Borrower was provided a reasonable opportunity to review such Covered Rating Agency Information (or the applicable portions thereof) and failed to notify Lender of such misstatements or omissions and (iii) the Indemnifying Persons shall not be liable for any portion of the Covered Rating Agency Information to the extent that the Lender does not incorporate any comment provided by Borrower in writing with respect to such Covered Rating Agency Information.

(f) Without the prior written consent of Lender or its designee (which consent shall not be unreasonably withheld or delayed), no Indemnifying Person shall settle or compromise or consent to the entry of any judgment in any pending or threatened claim, action, suit or proceeding in respect of which indemnification may be sought hereunder (whether or not any Indemnified Person is an actual or potential party to such claim, action, suit or proceeding) unless (i) the Indemnifying Person shall have given the Indemnified Persons reasonable prior

written notice thereof and shall have obtained an unconditional release of each Indemnified Person hereunder from all liability arising out of such claim, action, suit or proceedings and (ii) such settlement, compromise or judgment does not include a statement as to, or admission of, fault, culpability or a failure to act by or on behalf of any Indemnified Person. As long as an Indemnifying Person has complied with its obligations to defend and indemnify hereunder, such Indemnifying Person shall not be liable for any settlement made by any Indemnified Person without the consent of such Indemnifying Person (which consent shall not be unreasonably withheld or delayed).

(g) The Indemnifying Persons agree that if any indemnification or reimbursement sought pursuant to this Section 9.2 is finally judicially determined to be unavailable for any reason or is insufficient to hold any Indemnified Person harmless (with respect only to the Liabilities that are the subject of this Section 9.2), then the Indemnifying Persons, on the one hand, and such Indemnified Person, on the other hand, shall contribute to the Liabilities for which such indemnification or reimbursement is held unavailable or is insufficient: (x) in such proportion as is appropriate to reflect the relative benefits to the Indemnifying Persons, on the one hand, and such Indemnified Person, on the other hand, from the transactions to which such indemnification or reimbursement relates; or (y) if the allocation provided by clause (x) above is not permitted by applicable law, in such proportion as is appropriate to reflect not only the relative benefits referred to in clause (x) but also the relative faults of the Indemnifying Persons, on the one hand, and all Indemnified Persons, on the other hand, as well as any other equitable considerations. Notwithstanding the provisions of this Section 9.2, (A) no party found liable for a fraudulent misrepresentation shall be entitled to contribution from any other party who is not also found liable for such fraudulent misrepresentation, and (B) the Indemnifying Persons agree that in no event shall the amount to be contributed by the Indemnified Persons collectively pursuant to this paragraph exceed the amount of the fees actually received by the Indemnified Persons in connection with the closing of the Loan and Securitization.

(h) The Indemnifying Persons agree that the indemnification, contribution and reimbursement obligations set forth in this Section 9.2 shall apply whether or not any Indemnified Person is a formal party to any lawsuits, claims or other proceedings. The Indemnifying Persons further agree that the Indemnified Persons are intended third-party beneficiaries under this Section 9.2.

(i) The liabilities and obligations of the Indemnified Persons and the Indemnifying Persons under this Section 9.2 shall survive the termination of this Agreement and the satisfaction and discharge of the Debt.

(j) Notwithstanding anything to the contrary contained herein, Borrower and the other Loan Parties shall have no obligation to act as depositor with respect to the Loan or an issuer or registrant with respect to the Securities issued in any Securitization.

Section 9.3. Exculpation.

(a) Subject to the qualifications set forth in this Section 9.3, Lender shall not enforce the liability and obligation of Borrower or any other Loan Party to perform and observe the obligations contained in the Note, this Agreement, the Mortgage or the other Loan

Documents by any action or proceeding wherein a money judgment shall be sought against Borrower or any other Loan Party, except that Lender may bring a foreclosure action, an action for specific performance or any other appropriate action or proceeding to enable Lender to enforce and realize upon its interest under the Note, this Agreement, the Mortgage and the other Loan Documents, or in the Property, the Rents (including, without limitation, the MGM/Mandalay Lease Rents), or any other Collateral given to Lender pursuant to the Loan Documents; provided, however, that, except as specifically provided herein, any judgment in any such action or proceeding shall be enforceable against Borrower and any other Loan Party only to the extent of Borrower's and any other Loan Party's interest in the Property, in the Rents and in any other collateral given to Lender, and Lender, by accepting the Note, this Agreement, the Mortgages and the other Loan Documents, agrees that it shall not sue for, seek or demand any deficiency judgment against Borrower or any other Loan Party in any such action or proceeding under or by reason of or under or in connection with the Note, this Agreement, the Mortgages or the other Loan Documents. The provisions of this Section 9.3 shall not, however, (i) constitute a waiver, release or impairment of any obligation evidenced or secured by any of the Loan Documents; (ii) impair the right of Lender to name Borrower or any other Loan Party as a party defendant in any action or suit for foreclosure and sale under any of the Mortgages; (iii) affect the validity or enforceability of or any guaranty made in connection with the Loan or any of the rights and remedies of Lender thereunder; (iv) impair the right of Lender to obtain the appointment of a receiver; (v) impair the enforcement of any assignment of leases contained in the Mortgage; or (vi) constitute a prohibition against Lender to seek a deficiency judgment against Borrower or any other Loan Party in order to fully realize the security granted by each of the Mortgages or to commence any other appropriate action or proceeding in order for Lender to exercise its remedies against all of the Properties.

(b) Nothing contained herein shall in any manner or way release, affect or impair the right of Lender to enforce the liability and obligation of Borrower and the other Loan Parties, by money judgment or otherwise, to the extent of any loss, damage, cost, expense, liability, claim or other obligation to the extent actually incurred by Lender (including reasonable attorneys' fees and costs reasonably incurred by Lender) arising out of or incurred in connection with the following actions or omissions:

(i) fraud or material and willful misrepresentation by Borrower, any other Loan Party, Guarantor, or any Affiliate of Borrower, any other Loan Party or Guarantor Controlled by BREIT, MGP or Guarantor in connection with the Loan;

(ii) willful misconduct by Borrower, any other Loan Party, Guarantor, or any Affiliate of Borrower, any other Loan Party or Guarantor Controlled by BREIT, MGP or Guarantor, that results in physical damage or waste to the Property;

(iii) the removal or disposal by, or on behalf, of Borrower, any other Loan Party, Guarantor, or any Affiliate of Borrower, any other Loan Party or Guarantor Controlled by BREIT, MGP or Guarantor, of any portion of the Property during the continuance of an Event of Default;

(iv) the misappropriation or conversion by any Individual Borrower, any other Loan Party, Guarantor or any Affiliate of such Individual Borrower, any other Loan Party or Guarantor Controlled by BREIT, MGP or Guarantor of (A) any Insurance Proceeds paid by reason of a Casualty, (B) any Awards received in connection with a Condemnation of all or a portion of any Individual Property, (C) any Rents during the continuance of an Event of Default, or (D) any Rents paid more than one month in advance;

(v) a material breach by Borrower or any other Loan Party or material failure by Borrower or any Loan Party to comply with the covenants set forth in Section 5.1.25(a) or (b) hereof (provided, however that (1) there shall be no liability hereunder (x) for trade payables or other operational Debt incurred in the ordinary course of business or as may otherwise be permitted in accordance with this Agreement or for the failure to pay such trade payables or operational debt as a result of insufficient funds having been generated from the Property for Borrower's or any Loan Party's business operations or (y) if reserve funds held by Lender and specifically allocated for such amount have not been made available to Borrower by Lender to pay such outstanding amounts, shall not, in each case, in and of itself, cause any liability under this Section 9.3(b)(v) and (2) the foregoing shall not require Borrower's equityholders to make any additional capital contributions or loans to Borrower);

(vi) if Borrower fails to obtain Lender's prior written consent to any financing or other voluntary Lien encumbering any Individual Property, if such consent is required in accordance with the applicable provisions of the Loan Documents;

(vii) any voluntary termination, or any voluntary, material modification of the MGM/Mandalay Lease (to the extent the Property is subject to the MGM/Mandalay Lease) by Borrower without Lender's prior written consent in violation of this Agreement;

(viii) if Borrower or any other Loan Party fails to obtain Lender's prior written consent to any Sale or Pledge of the Property or a Transfer of the ownership interests in Borrower or the other Loan Parties, in each case, to the extent required by Section 5.2.9 hereof, and in each case, excluding Permitted Transfers, Permitted Encumbrances and any other Lien expressly permitted under the Loan Documents. For the avoidance of doubt, a Transfer resulting from the exercise of Lender's rights under the Loan Documents or the Mezzanine Lender's rights under the Mezzanine Loan Documents or the consummation of any remedial or enforcement action by the Lender or any holder of the Mezzanine Loan of the collateral for the Loan or the Mezzanine Loan, including, without limitation, any foreclosure, deed-in-lieu or assignment in lieu of foreclosure and the exercise of any rights of Lender or the Mezzanine Lender under the Mortgages or any Pledge Agreement, including, without limitation, any right to vote any pledged securities or any right to replace officers and directors of any Person (collectively, a "**Foreclosure**"), shall not be a Transfer in violation of Section 5.2.9 hereof; and

(ix) to the extent that (A) the Property is not subject to the MGM/Mandalay Lease and (B) Borrower obtains a PLL Policy that does not run through the Required PLL Period and Borrower fails to renew, replace or extend such PLL Policy through the Required PLL Period as required under Section 6.1(a)(xiii), any liability pursuant to Section 4 of the Environmental Indemnity (other than Section 4(a)(1) thereof) that first arises after the expiration of such PLL Policy and that would have otherwise been covered by the PLL Policy had it been renewed, replaced or extended through the Required PLL Period, provided, however that there shall be no liability hereunder (x) for any amounts in excess of the applicable coverage amounts of the PLL Policy had the PLL Policy been renewed, replaced or extended through the Required PLL Period and (y) for any amounts which are recovered from the PLL Policy.

(c) Notwithstanding anything to the contrary in this Agreement, the Note or any of the Loan Documents, (i) Lender shall not be deemed to have waived any right which Lender may have under Section 506(a), 506(b), 1111(b) or any other provisions of the Bankruptcy Code to file a claim against Borrower for the full amount of the Debt secured by the Mortgages or to require that all collateral shall continue to secure all of the Debt owing to Lender in accordance with the Loan Documents, and (ii) the Debt shall be fully recourse to Borrower in the event of: (A) any Individual Borrower or Principal filing a voluntary petition under the Bankruptcy Code or any other Federal or state bankruptcy or insolvency law; (B) the filing of an involuntary petition by any Person against any Individual Borrower or Principal under the Bankruptcy Code or any other Federal or state bankruptcy or insolvency law in which any Individual Borrower, Principal or Guarantor or any Affiliate of Borrower, Principal or Guarantor Controlled by BREIT, MGP or Guarantor colludes with, or otherwise assists, such Person, or solicits or causes to be solicited petitioning creditors for any involuntary petition against Borrower or Principal; (C) any Individual Borrower, Principal or Guarantor or any Affiliate of Borrower, Principal or Guarantor Controlled by BREIT, MGP or Guarantor filing an answer consenting to or otherwise acquiescing in or joining in any involuntary petition filed against any Individual Borrower or Principal, by any other Person under the Bankruptcy Code or any other Federal or state bankruptcy or insolvency law; (D) any Individual Borrower or Principal, consenting to or acquiescing in or joining in an application for the appointment of a custodian, receiver, trustee, or examiner for any Individual Borrower or Principal, or any portion of the Property; or (E) the Mortgage or other Loan Document being deemed a fraudulent conveyance or preference or otherwise being deemed void pursuant to any principles limiting the rights of creditors, whether such claims, demands or assertions are made under the Bankruptcy Code, including, without limitation, under Sections 544, 547 or 548 thereof, or under any applicable state fraudulent conveyance statutes or similar laws.

Section 9.4. Matters Concerning Manager. For so long as the Property is not subject to the MGM/Mandalay Lease and subject to a Management Agreement, if (i) other than to the extent that an Individual Property is subject to a Brand Management Agreement, an Event of Default hereunder has occurred and is continuing, (ii) Manager shall become subject to a Bankruptcy Action or (iii) to the extent that an Individual Property is subject to a Brand Management Agreement, (x) an Event of Default hereunder has occurred and is continuing, (y) an event of default by the Brand Manager under the Brand Management Agreement has occurred and is continuing, and (z) Borrower has the right to terminate the Brand Manager as a result of such event of default, Borrower shall, in each case, solely to the extent Borrower has an explicit

contractual right which may be exercised without any fee or penalty, at the request of Lender, exercise its contractual rights under such Management Agreement to terminate such Management Agreement and replace such Manager with a new Manager who agrees to assume Manager's obligations under the CBA in a manner that avoids the imposition of withdrawal liability under the CBA pursuant to a Management Agreement; provided that with respect to clause (i) above, such termination shall be upon not less than thirty (30) days' notice (unless the Manager is an Affiliate of Borrower, in which case such notice shall not be required).

Section 9.5. Servicer. At the option of Lender, the Loan may be serviced by a master servicer, primary servicer, special servicer and/or trustee (any such master servicer, primary servicer, special servicer, and trustee, together with its agents, nominees or designees, are collectively referred to as "**Servicer**") selected by Lender and Lender may delegate all or any portion of its responsibilities under this Agreement and the other Loan Documents to Servicer pursuant to a pooling and servicing agreement, trust and servicing agreement, servicing agreement, special servicing agreement or other agreement providing for the servicing of one or more mortgage loans (collectively, the "**Servicing Agreement**") between Lender and Servicer. Borrower shall not be responsible for any cost or expenses relating to the Servicing Agreement or the services provided by Servicer thereunder, including, without limitation, any set up fees or other initial costs, the regular monthly master servicing fee or trustee fee due to Servicer under the Servicing Agreement or any other fees or expenses required to be borne by, and not reimbursable to, Servicer, provided that, notwithstanding the foregoing, Borrower shall promptly reimburse Lender on demand for (a) interest payable on advances made by Servicer with respect to delinquent debt service payments (to the extent charges pursuant to Section 2.3.4 and interest at the Default Rate actually paid by Borrower in respect of such payments are insufficient to pay the same) or expenses paid by Servicer in curing any Event of Default hereunder and which are provided for under the Servicing Agreement or actual, out-of-pocket expenses paid by Servicer in respect of the protection and preservation of the Property (including, without limitation, payments of Taxes and Insurance Premiums), (b) the following costs and expenses payable by Lender to Servicer as a result of the Loan becoming specially serviced: (i) any liquidation fees that are due and payable to Servicer under the Servicing Agreement in connection with the exercise of any or all remedies permitted under this Agreement, (ii) any workout fees and special servicing fees that are due and payable to Servicer under the Servicing Agreement, which fees may be due and payable under the Servicing Agreement on a periodic or continuing basis, and (iii) during the continuance of an Event of Default, the costs of all property inspections and/or appraisals of the Property (or any updates to any existing inspection or appraisal) that Servicer may be required to obtain (other than the cost of regular annual inspections required to be borne by Servicer under the Servicing Agreement), and (c) customary and reasonable servicing fees and expenses (subject to any caps set forth in this Agreement) in connection with any special requests made by Borrower to Servicer during the term of the Loan.

Section 9.6. Matters Concerning Franchisor/Licensors. For so long as the Properties are not subject to the MGM/Mandalay Lease, if (a) an Event of Default has occurred and is continuing, and if the Franchisor/Licensors is not an Affiliate of Borrower, solely to the extent permitted pursuant to the Franchise/License Agreement (if any) or the applicable comfort letter without any fee or penalty or (b) Franchisor/Licensors shall become subject to a Bankruptcy Action, Borrower shall in each case solely to the extent Borrower has an explicit contractual right which may be exercised, at the request of Lender, exercise its contractual rights under a Franchise/License Agreement to terminate such Franchise/License Agreement and replace the

Franchisor/Licensors with a Franchisor/Licensors pursuant to a Franchise/License Agreement; provided that with respect to clause (a) above, such termination shall be after thirty (30) days' prior written notice if Franchisor/Licensors is an Affiliate of Borrower.

Section 9.7. Register.

(a) The Servicer, or if no Servicer has been engaged, Lender, as non-fiduciary agent of Borrower, shall maintain a record that identifies each owner (including successors and assignees) of an interest in the Loan, including the name and address of the owner, and each owner's rights to principal and stated interest (the "Register"), and shall record all transfers of an interest in the Loan, including each assignment, in the Register. Transfers of interests in the Loan (including assignments) shall be subject to the applicable conditions set forth in the Loan Documents with respect thereto and Servicer will update the Register to reflect the transfer. Furthermore, each Lender that sells a participation shall, acting solely for this purpose as agent of Borrower, maintain a register on which it enters the name and address of each participant and the principal amounts and stated interest of each participant's interest (the "Participant Register"); provided that no Lender shall have any obligation to disclose all or any portion of the Participant Register to any Person (including the identity of any participant or any information relating to a participant's interest) except to the extent that such disclosure is necessary to establish that such obligation is in registered form under Section 5f.103-1(c) of the U.S. Department of Treasury Regulations. The entries in the Register and Participant Register shall be conclusive absent manifest error. The Borrower, Lender and the Servicer 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, and the Borrower, Lender and the Servicer shall treat each Person whose name is recorded in the Participant Register pursuant to the terms hereof as the owner of such participation for all purposes of this Agreement. Failure to make any such recordation, or any error in such recordation, however, shall not affect Borrower's obligations in respect of the Loan. Borrower and Lender acknowledge that the Notes are in registered form and may not be transferred except by register.

(b) Borrower agrees that each participant pursuant to Section 9.1 shall be entitled to the benefits of Section 2.7 (subject to the requirements and limitations therein, including the requirements under Section 2.7(e) (it being understood that the documentation required under Section 2.7(e) shall be delivered to the participating Lender)) to the same extent as if it were a Lender and had acquired its interest by assignment; provided that such participant (A) agrees to be subject to the provisions of Section 2.7(h) as if it were an assignee hereunder; and (B) shall not be entitled to receive any greater payment under Section 2.7, with respect to any participation, than its participating Lender would have been entitled to receive, except to the extent such entitlement to receive a greater payment results from a change in a requirement of law or in the interpretation or application thereof, or compliance by such participant or the participating Lender with any request or directive (whether or not having the force of law) issued from any central bank or other Governmental Authority, in each case after the participant acquired the applicable participation.

Section 9.8. Matters Concerning Casino Operator. For so long as the Property is not subject to the MGM/Mandalay Lease and is subject to a Casino Management Agreement, if an Event of Default has occurred and is continuing, solely to the extent permitted pursuant to such Casino Management Agreement without any fee or penalty, Borrower shall, solely to the extent

Borrower has an explicit contractual right which may be exercised, at the request of Lender, exercise its contractual rights under such Casino Management Agreement to terminate such Casino Management Agreement and replace the then-current Casino Operator with another Casino Operator pursuant to a new Casino Management Agreement.

ARTICLE X.

MISCELLANEOUS

Section 10.1. Survival. This Agreement and all covenants, agreements, representations and warranties made herein and in the certificates delivered pursuant hereto shall survive the making by Lender of the Loan and the execution and delivery to Lender of the Note, and shall continue in full force and effect so long as all or any of the Debt is outstanding and unpaid unless a longer period is expressly set forth herein or in the other Loan Documents. Whenever in this Agreement any of the parties hereto is referred to, such reference shall be deemed to include the legal representatives, successors and assigns of such party. All covenants, promises and agreements in this Agreement, by or on behalf of Borrower or any other Loan Party, shall inure to the benefit of the legal representatives, successors and assigns of Lender.

Section 10.2. Lender's Discretion. Whenever pursuant to this Agreement, Lender exercises any right given to it to approve or disapprove, or any arrangement or term is to be satisfactory to Lender, the decision of Lender to approve or disapprove or to decide whether arrangements or terms are satisfactory or not satisfactory shall (except as is otherwise specifically herein provided) be in the sole discretion of Lender and shall be final and conclusive.

Section 10.3. Governing Law.

(a) THIS AGREEMENT WAS NEGOTIATED IN THE STATE OF NEW YORK, THE LOAN WAS MADE BY LENDER AND ACCEPTED BY BORROWER AND THE OTHER LOAN PARTIES IN THE STATE OF NEW YORK, AND THE PROCEEDS OF THE LOAN DELIVERED PURSUANT HERETO WERE DISBURSED FROM THE STATE OF NEW YORK, WHICH STATE THE PARTIES AGREE HAS A SUBSTANTIAL RELATIONSHIP TO THE PARTIES AND TO THE UNDERLYING TRANSACTION EMBODIED HEREBY, AND IN ALL RESPECTS, INCLUDING, WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, MATTERS OF CONSTRUCTION, VALIDITY AND PERFORMANCE, THIS AGREEMENT, THE NOTE AND THE OTHER LOAN DOCUMENTS AND THE OBLIGATIONS ARISING HEREUNDER AND THEREUNDER SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK APPLICABLE TO CONTRACTS MADE AND PERFORMED IN SUCH STATE AND ANY APPLICABLE LAW OF THE UNITED STATES OF AMERICA, EXCEPT THAT AT ALL TIMES THE PROVISIONS FOR THE CREATION, PERFECTION, AND ENFORCEMENT OF THE LIENS AND SECURITY INTERESTS CREATED PURSUANT HERETO AND PURSUANT TO THE OTHER LOAN DOCUMENTS SHALL BE GOVERNED BY AND CONSTRUED ACCORDING TO THE LAW OF THE STATE IN WHICH THE PROPERTY IS LOCATED, OTHER THAN WITH RESPECT TO THE CREATION, PERFECTION, PRIORITY, ENFORCEMENT AND FORECLOSURE OF THE SECURITY INTERESTS IN THE LOCKBOX ACCOUNT AND CASH MANAGEMENT ACCOUNT WHICH SHALL BE GOVERNED BY THE LAW OF

THE STATE OF NEW YORK, IT BEING UNDERSTOOD THAT, TO THE FULLEST EXTENT PERMITTED BY THE LAW OF SUCH STATE, THE LAW OF THE STATE OF NEW YORK SHALL GOVERN THE CONSTRUCTION, VALIDITY AND ENFORCEABILITY OF ALL LOAN DOCUMENTS AND ALL OF THE OBLIGATIONS ARISING HEREUNDER OR THEREUNDER. TO THE FULLEST EXTENT PERMITTED BY LAW, EACH OF BORROWER AND THE OTHER LOAN PARTIES HEREBY UNCONDITIONALLY AND IRREVOCABLY WAIVES ANY CLAIM TO ASSERT THAT THE LAW OF ANY OTHER JURISDICTION GOVERNS THIS AGREEMENT, THE NOTE AND THE OTHER LOAN DOCUMENTS, AND THIS AGREEMENT, THE NOTE AND THE OTHER LOAN DOCUMENTS SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK PURSUANT TO SECTION 5-1401 OF THE NEW YORK GENERAL OBLIGATIONS LAW.

(b) ANY LEGAL SUIT, ACTION OR PROCEEDING AGAINST LENDER OR BORROWER OR THE OTHER LOAN PARTIES ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE OTHER LOAN DOCUMENTS MAY AT LENDER'S OPTION BE INSTITUTED IN ANY FEDERAL OR STATE COURT IN THE CITY OF NEW YORK, COUNTY OF NEW YORK, PURSUANT TO SECTION 5 1402 OF THE NEW YORK GENERAL OBLIGATIONS LAW AND EACH OF BORROWER AND THE OTHER LOAN PARTIES WAIVES ANY OBJECTIONS WHICH IT MAY NOW OR HEREAFTER HAVE BASED ON VENUE AND/OR FORUM NON CONVENIENS OF ANY SUCH SUIT, ACTION OR PROCEEDING, AND EACH OF BORROWER AND THE OTHER LOAN PARTIES HEREBY IRREVOCABLY SUBMITS TO THE JURISDICTION OF ANY SUCH COURT IN ANY SUIT, ACTION OR PROCEEDING. EACH OF BORROWER AND THE OTHER LOAN PARTIES DOES HEREBY DESIGNATE AND APPOINT:

CORPORATION SERVICES COMPANY
1180 AVENUE OF THE AMERICAS, SUITE 210
NEW YORK, NEW YORK 10036-8401

AS ITS AUTHORIZED AGENT TO ACCEPT AND ACKNOWLEDGE ON ITS BEHALF SERVICE OF ANY AND ALL PROCESS WHICH MAY BE SERVED IN ANY SUCH SUIT, ACTION OR PROCEEDING IN ANY FEDERAL OR STATE COURT IN NEW YORK, NEW YORK, AND AGREES THAT SERVICE OF PROCESS UPON SAID AGENT AT SAID ADDRESS AND WRITTEN NOTICE OF SAID SERVICE MAILED OR DELIVERED TO BORROWER AND THE OTHER LOAN PARTIES IN THE MANNER PROVIDED HEREIN SHALL BE DEEMED IN EVERY RESPECT EFFECTIVE SERVICE OF PROCESS UPON BORROWER AND THE OTHER LOAN PARTIES IN ANY SUCH SUIT, ACTION OR PROCEEDING IN THE STATE OF NEW YORK. EACH OF BORROWER AND THE OTHER LOAN PARTIES (I) SHALL GIVE PROMPT NOTICE TO LENDER OF ANY CHANGED ADDRESS OF ITS AUTHORIZED AGENT HEREUNDER, (II) MAY AT ANY TIME AND FROM TIME TO TIME DESIGNATE A SUBSTITUTE AUTHORIZED AGENT WITH AN OFFICE IN NEW YORK, NEW YORK (WHICH SUBSTITUTE AGENT AND OFFICE SHALL BE DESIGNATED AS THE PERSON AND ADDRESS FOR SERVICE OF PROCESS), AND (III) SHALL PROMPTLY DESIGNATE SUCH A SUBSTITUTE IF ITS AUTHORIZED AGENT CEASES TO HAVE AN OFFICE IN NEW YORK, NEW YORK OR IS DISSOLVED WITHOUT LEAVING A SUCCESSOR.

Section 10.4. Modification, Waiver in Writing. No modification, amendment, extension, discharge, termination or waiver of any provision of this Agreement, or of the Note, or of any other Loan Document, nor consent to any departure by Borrower or any other Loan Party therefrom, shall in any event be effective unless the same shall be in writing signed by the party against whom enforcement is sought, and then such waiver or consent shall be effective only in the specific instance, and for the purpose, for which given. Except as otherwise expressly provided herein, no notice to, or demand on Borrower, shall entitle Borrower or such other Loan Party to any other or future notice or demand in the same, similar or other circumstances.

Section 10.5. Delay Not a Waiver. Neither any failure nor any delay on the part of Lender in insisting upon strict performance of any term, condition, covenant or agreement, or exercising any right, power, remedy or privilege hereunder, or under the Note or under any other Loan Document, or any other instrument given as security therefor, shall operate as or constitute a waiver thereof, nor shall a single or partial exercise thereof preclude any other future exercise, or the exercise of any other right, power, remedy or privilege. In particular, and not by way of limitation, by accepting payment after the due date of any amount payable under this Agreement, the Note or any other Loan Document, Lender shall not be deemed to have waived any right either to require prompt payment when due of all other amounts due under this Agreement, the Note or the other Loan Documents, or to declare a default for failure to effect prompt payment of any such other amount.

Section 10.6. Notices. All notices, consents, approvals and requests required or permitted hereunder or under any other Loan Document shall be given in writing and shall be effective for all purposes if (a) hand delivered, (b) sent by certified or registered United States mail, postage prepaid, return receipt requested, (c) sent by expedited prepaid delivery service, either commercial or United States Postal Service, with proof of attempted delivery, or (d) sent by electronic mail provided that, if sent by electronic mail such delivery must be accompanied or followed by a delivery method specified in clauses (a) through (c) hereof, addressed to the address, as set forth below, of the party to whom such notice is to be given (or at such other address and Person as shall be designated from time to time by any party hereto, as the case may be, in a written notice to the other parties hereto in the manner provided for in this Section 10.6):

If to Lender:

Citi Real Estate Funding Inc.
388-390 Greenwich Street
New York, New York 10013
Attention: Ana Rosu Marmann

Citigroup Global Markets Inc.
388-390 Greenwich Street
New York, New York 10013
Attention: Ana Rosu Marmann
Email: ana.rosu@citi.com

Barclays Capital Real Estate Inc.
745 Seventh Avenue
New York, New York 10019
Attention: Sabrina Khabie

and

Deutsche Bank AG, New York Branch
60 Wall Street, 10th Floor
New York, New York 10005
Attention: Robert Pettinato

and

Société Générale Financial Corporation
245 Park Avenue
New York, New York 10167
Attention: Kevin Kelley, COO

with a copy to:

Dechert LLP
2929 Arch Street
Philadelphia, Pennsylvania 19104
Attention: David W. Forti

If to Borrower:

MGM Growth Properties LLC
1980 Festival Plaza Drive, Suite 750
Las Vegas, Nevada 89135
Attention: Andy Chien
Email: achien@mngpreit.com

and

BCORE Windmill Parent LLC
c/o BREIT Operating Partnership L.P.
345 Park Avenue
New York, New York 10154
Attention: Head, U.S. Asset Management
Email: realestatenotices@blackstone.com

and

BCORE Windmill Parent LLC
c/o BREIT Operating Partnership L.P.
345 Park Avenue
New York, New York 10154
Attention: General Counsel
Email: realestatenotices@blackstone.com

with a copy to:

Email: leglanotices@mgmresorts.com (which shall not constitute notice)

Weil, Gotshal & Manges LLP
767 Fifth Avenue
New York, New York 10153
Attention: W. Michael Bond and David Herman
Email: Michael.Bond@weil.com
Email: David.Herman@weil.com

and

Simpson Thacher & Bartlett LLP
425 Lexington Avenue
New York, New York 10017
Attention: Gregory J. Ressa, Esq. and Erik Quarfordt, Esq.
Email: gressa@stblaw.com and equarfordt@stblaw.com

A notice shall be deemed to have been given: (i) in the case of hand delivery, when delivered; (ii) in the case of registered or certified mail, when delivered or upon the first attempted delivery on a Business Day; (iii) in the case of expedited prepaid delivery service, when delivered or upon the first attempted delivery on a Business Day; and (iv) in the case of email, upon the sender's receipt of confirmation (which may be in the form of an automated electronic response) of delivery or upon the first attempted delivery on a Business Day.

Borrower hereby appoints MGM Grand Borrower (the "**Representative Borrower**") to serve as agent on behalf of all Individual Borrowers to receive any notices required to be delivered to any or all of the Individual Borrowers hereunder or under the other Loan Documents and to be the sole party authorized to deliver notices on behalf of the Individual Borrowers hereunder. Any notice delivered to the Representative Borrower shall be deemed to have been delivered to all Individual Borrowers, and any notice received from the Representative Borrower shall be deemed to have been received from all Individual Borrowers. The Individual Borrowers shall be entitled from time to time to appoint a replacement Representative Borrower by written notice delivered to Lender and signed by both the new Representative Borrower and the Representative Borrower being so replaced.

Section 10.7. Trial by Jury. EACH OF LENDER, BORROWER AND THE OTHER LOAN PARTIES HEREBY AGREES NOT TO ELECT A TRIAL BY JURY OF ANY ISSUE TRIABLE OF RIGHT BY JURY, AND WAIVES ANY RIGHT TO TRIAL BY JURY FULLY

TO THE EXTENT THAT ANY SUCH RIGHT SHALL NOW OR HEREAFTER EXIST WITH REGARD TO THE LOAN DOCUMENTS, OR ANY CLAIM, COUNTERCLAIM OR OTHER ACTION ARISING IN CONNECTION THEREWITH. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS GIVEN KNOWINGLY AND VOLUNTARILY BY LENDER, BORROWER AND THE OTHER LOAN PARTIES, AND IS INTENDED TO ENCOMPASS INDIVIDUALLY EACH INSTANCE AND EACH ISSUE AS TO WHICH THE RIGHT TO A TRIAL BY JURY WOULD OTHERWISE ACCRUE. LENDER, BORROWER AND THE OTHER LOAN PARTIES ARE EACH HEREBY AUTHORIZED TO FILE A COPY OF THIS PARAGRAPH IN ANY PROCEEDING AS CONCLUSIVE EVIDENCE OF THIS WAIVER BY LENDER, BORROWER AND THE OTHER LOAN PARTIES.

Section 10.8. Headings. The Article and/or Section headings and the Table of Contents in this Agreement are included herein for convenience of reference only and shall not constitute a part of this Agreement for any other purpose.

Section 10.9. Severability. Wherever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement shall be prohibited by or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement.

Section 10.10. Preferences. Lender shall have the continuing and exclusive right to apply or reverse and reapply any and all payments by Borrower and any other Loan Party to any portion of the obligations of Borrower and such other Loan Parties hereunder in accordance with the Loan Documents. To the extent Borrower or any other Loan Party makes a payment or payments to Lender, which payment or proceeds or any part thereof are subsequently invalidated, declared to be fraudulent or preferential, set aside or required to be repaid to a trustee, receiver or any other party under any bankruptcy law, state or federal law, common law or equitable cause, then, to the extent of such payment or proceeds received, the obligations hereunder or part thereof intended to be satisfied shall be revived and continue in full force and effect, as if such payment or proceeds had not been received by Lender.

Section 10.11. Waiver of Notice. Neither Borrower nor any other Loan Party shall be entitled to any notices of any nature whatsoever from Lender except with respect to matters for which this Agreement or the other Loan Documents specifically and expressly provide for the giving of notice by Lender to Borrower or any other Loan Party and except with respect to matters for which Borrower and the other Loan Parties are not, pursuant to applicable Legal Requirements, permitted to waive the giving of notice. Each of Borrower and the other Loan Parties hereby expressly waives the right to receive any notice from Lender with respect to any matter for which this Agreement or the other Loan Documents do not specifically and expressly provide for the giving of notice by Lender to Borrower and the other Loan Parties.

Section 10.12. Remedies of Borrower and the Other Loan Parties. In the event that a claim or adjudication is made that Lender or its agents have acted unreasonably or unreasonably delayed acting in any case where by law or under this Agreement or the other Loan Documents, Lender or such agent, as the case may be, has an obligation to act reasonably or promptly, each of Borrower and the other Loan Parties agrees that neither Lender nor its agents shall be liable for any monetary damages, and Borrower's and such other Loan Party's sole remedy shall be

limited to commencing an action seeking injunctive relief or declaratory judgment. The parties hereto agree that any action or proceeding to determine whether Lender has acted reasonably shall be determined by an action seeking declaratory judgment.

Section 10.13. Expenses; Indemnity. (a) Other than as expressly provided for in Sections 9.1.4 and 9.5, Borrower covenants and agrees to pay or, if Borrower fails to pay, to reimburse, Lender upon receipt of written notice from Lender for all reasonable costs and expenses (including reasonable actually incurred attorneys' fees, disbursements and expenses) actually incurred by Lender in connection with (i) the preparation, negotiation, execution and delivery of this Agreement and the other Loan Documents and the consummation of the transactions contemplated hereby and thereby and all the costs of furnishing all opinions by counsel for Borrower and the other Loan Parties (including, without limitation, any opinions requested by Lender as to any legal matters arising under this Agreement or the other Loan Documents with respect to the Property) subject to the terms and provisions of Section 9.1.4 hereof; (ii) Borrower's and the other Loan Parties' ongoing performance of and compliance with Borrower's and the other Loan Parties' agreements and covenants contained in this Agreement and the other Loan Documents on its part to be performed or complied with after the Closing Date, including, without limitation, confirming compliance with environmental and insurance requirements; (iii) Lender's ongoing performance and compliance with all agreements and conditions contained in this Agreement and the other Loan Documents on its part to be performed or complied with after the Closing Date; (iv) the negotiation, preparation, execution, delivery and administration of any consents, amendments, waivers or other modifications to this Agreement and the other Loan Documents and any other documents or matters reasonably requested by Borrower; (v) securing Borrower's and the other Loan Parties' compliance with any requests made pursuant to the provisions of this Agreement; (vi) the filing and recording fees and expenses, title insurance and fees and expenses of counsel for providing to Lender all required legal opinions, and other similar expenses incurred in creating and perfecting the Liens in favor of Lender pursuant to this Agreement and the other Loan Documents; (vii) enforcing or preserving any rights, in response to third-party claims or the prosecuting or defending of any action or proceeding or other litigation, in each case against, under or affecting Borrower, any other Loan Party, this Agreement, the other Loan Documents, the Property, or any other security given for the Loan; and (viii) enforcing any obligations of or collecting any payments due from Borrower or any other Loan Party under this Agreement, the other Loan Documents or with respect to the Property (including any fees and expenses reasonably incurred by or payable to Servicer or a trustee in connection with the transfer of the Loan to a special servicer upon Servicer's anticipation of a Default or Event of Default, liquidation fees, workout fees, special servicing fees, operating advisor fees or any other similar fees and interest payable on advances made by the Servicer with respect to delinquent debt service payments or expenses of curing Borrowers' or any other Loan Parties' defaults under the Loan Documents) or in connection with any refinancing or restructuring of the credit arrangements provided under this Agreement in the nature of a "**work out**" or of any insolvency or bankruptcy proceedings or any other amounts required under Section 9.5 hereof, provided, however, that Borrower and the other Loan Parties shall not be liable for the payment of any such costs and expenses to the extent the same arise by reason of the gross negligence, illegal acts, fraud or willful misconduct of Lender. Any cost and expenses due and payable to Lender may be paid from any amounts in the Cash Management Account.

(b) Borrower and the other Loan Parties shall indemnify, defend and hold harmless the Indemnified Persons from and against any and all other liabilities, obligations, losses, damages, penalties, actions, judgments, suits, claims, costs, expenses and disbursements of any kind or nature whatsoever (including, without limitation, the reasonable fees and disbursements of counsel in connection with any investigative, administrative or judicial proceeding commenced or threatened, whether or not an Indemnified Person shall be designated a party thereto), that may be imposed on, incurred by, or asserted against any Indemnified Person in any manner relating to or arising out of (i) any breach by Borrower or any other Loan Party of its obligations under, or any material misrepresentation by Borrower or any other Loan Party contained in, this Agreement or the other Loan Documents, or (ii) the use or intended use of the proceeds of the Loan (collectively, the “Indemnified Liabilities”); provided, however, that neither Borrower nor any other Loan Party shall have any obligation to any Indemnified Person hereunder to the extent that such Indemnified Liabilities arise from the gross negligence, illegal acts, fraud or willful misconduct of such Indemnified Person; provided, further, that this Section 10.13(b) shall not apply with respect to Taxes other than any Taxes that represent losses or damages arising from any non-Tax claim. To the extent that the undertaking to indemnify, defend and hold harmless set forth in the preceding sentence may be unenforceable because it violates any law or public policy, Borrower and the other Loan Parties shall pay the maximum portion that it is permitted to pay and satisfy under applicable law to the payment and satisfaction of all Indemnified Liabilities incurred by the Indemnified Persons.

(c) Other than as provided for in Section 9.1 and Section 9.5, each of Borrower and the other Loan Parties covenants and agrees to pay for or, if Borrower or such other Loan Party fails to pay, to reimburse Lender for, any fees and expenses incurred by any Rating Agency in connection with any Rating Agency review of the Loan, the Loan Documents or any transaction contemplated thereby or any consent, approval, waiver or confirmation obtained from such Rating Agency pursuant to the terms and conditions of this Agreement or any other Loan Document and Lender shall be entitled to require payment of such fees and expenses as a condition precedent to the obtaining of any such consent, approval, waiver or confirmation.

Section 10.14. Incorporated. The Schedules annexed hereto are hereby incorporated herein as a part of this Agreement with the same effect as if set forth in the body hereof.

Section 10.15. Offsets, Counterclaims and Defenses. Any assignee of Lender’s interest in and to this Agreement, the Note and the other Loan Documents shall take the same free and clear of all offsets, counterclaims or defenses which are unrelated to such documents which Borrower or any other Loan Party may otherwise have against any assignor of such documents, and no such unrelated counterclaim or defense shall be interposed or asserted by Borrower or any other Loan Party in any action or proceeding brought by any such assignee upon such documents and any such right to interpose or assert any such unrelated offset, counterclaim or defense in any such action or proceeding is hereby expressly waived by Borrower or any other Loan Party.

Section 10.16. No Joint Venture or Partnership; No Third-Party Beneficiaries.

(a) Borrower, the other Loan Parties and Lender intend that the relationships created hereunder and under the other Loan Documents be solely that of borrower and lender. Nothing herein or therein is intended to create a joint venture, partnership, tenancy in common,

or joint tenancy relationship between Borrower, the other Loan Parties and Lender nor to grant Lender any interest in the Property other than that of mortgagee, beneficiary or lender.

(b) This Agreement and the other Loan Documents are solely for the benefit of Lender and Borrower and the other Loan Parties and nothing contained in this Agreement or the other Loan Documents shall be deemed to confer upon anyone other than Lender and Borrower and the other Loan Parties any right to insist upon or to enforce the performance or observance of any of the obligations contained herein or therein. All conditions to the obligations of Lender to make the Loan hereunder are imposed solely and exclusively for the benefit of Lender and no other Person shall have standing to require satisfaction of such conditions in accordance with their terms or be entitled to assume that Lender will refuse to make the Loan in the absence of strict compliance with any or all thereof and no other Person shall under any circumstances be deemed to be a beneficiary of such conditions, any or all of which may be freely waived in whole or in part by Lender if, in Lender's sole discretion, Lender deems it advisable or desirable to do so.

Section 10.17. Publicity. All news releases, publicity or advertising by Borrower, any other Loan Party or their respective Affiliates through any media intended to reach the general public which refers to the Loan Documents or the financing evidenced by the Loan Documents, to Lender or its Affiliates shall be subject to the prior written approval of Lender in its sole discretion. Nothing in this Section 10.17 shall prevent Borrower or any of its Affiliates from disclosing any information in connection with any investor communication or statutory reporting requirement or other Legal Requirements applicable to Borrower or any of its Affiliates.

Section 10.18. Cross-Default; Cross-Collateralization; Waiver of Marshalling of Assets.

(a) Borrower acknowledges that Lender has made the Loan to Borrower upon the security of its collective interest in the Properties and in reliance upon the aggregate of the Properties taken together being of greater value as collateral security than the sum of each Individual Property taken separately. Borrower agrees that the Mortgages are and will be cross-collateralized and cross-defaulted with each other so that (i) upon the occurrence of any Event of Default, an event of default shall be deemed to have occurred under each of the Mortgages regardless of whether the event constituting such Event of Default related to any particular Individual Property; (ii) an Event of Default under the Note or this Agreement shall constitute an Event of Default under each Mortgage; (iii) each Mortgage shall constitute security for the Note as if a single blanket lien were placed on all of the Properties as security for the Note; and (iv) such cross collateralization shall in no event be deemed to constitute a fraudulent conveyance.

(b) To the fullest extent permitted by law, Borrower, for itself and its successors and assigns, waives all rights to a marshalling of the assets of Borrower, Borrower's partners and others with interests in Borrower, and of the Properties, or to a sale in inverse order of alienation in the event of foreclosure of all or any of the Mortgages, and agrees not to assert any right under any laws pertaining to the marshalling of assets, the sale in inverse order of alienation, homestead exemption, the administration of estates of decedents, or any other matters whatsoever to defeat, reduce or affect the right of Lender under the Loan Documents to a sale of the Properties for the collection of the Debt without any prior or different resort for collection or of the right of Lender to the payment of the Debt out of the net proceeds of the Properties in preference to every other claimant whatsoever. In addition, Borrower, for itself and its successors

and assigns, waives in the event of foreclosure of any or all of the Mortgages, any equitable right otherwise available to Borrower which would require the separate sale of the Properties or require Lender to exhaust its remedies against any Individual Property or any combination of the Properties before proceeding against any other Individual Property or combination of Properties; and further in the event of such foreclosure, Borrower does hereby expressly consent to and authorize, at the option of Lender, the foreclosure and sale either separately or together of any combination of the Properties.

Section 10.19. Waiver of Counterclaim. Each of Borrower and the other Loan Parties hereby waives the right to assert a counterclaim, other than a compulsory counterclaim, in any action or proceeding brought against it by Lender or its agents.

Section 10.20. Conflict; Construction of Documents; Reliance. In the event of any conflict between the provisions of this Agreement and any of the other Loan Documents, the provisions of this Agreement shall control. The parties hereto acknowledge that they were represented by competent counsel in connection with the negotiation, drafting and execution of the Loan Documents and that such Loan Documents shall not be subject to the principle of construing their meaning against the party which drafted same. Each of Borrower and the other Loan Parties acknowledges that, with respect to the Loan, each of Borrower and the other Loan Parties shall rely solely on its own judgment and advisors in entering into the Loan without relying in any manner on any statements, representations or recommendations of Lender or any parent, subsidiary or Affiliate of Lender. Lender shall not be subject to any limitation whatsoever in the exercise of any rights or remedies available to it under any of the Loan Documents or any other agreements or instruments which govern the Loan by virtue of the ownership by it or any parent, subsidiary or Affiliate of Lender of any equity interest any of them may acquire in Borrower or any other Loan Party, and Borrower and the other Loan Parties hereby irrevocably waives the right to raise any defense or take any action on the basis of the foregoing with respect to Lender's exercise of any such rights or remedies. Each of Borrower and the other Loan Parties acknowledges that Lender engages in the business of real estate financings and other real estate transactions and investments which may be viewed as adverse to or competitive with the business of Borrower, the other Loan Parties or their respective Affiliates.

Section 10.21. Brokers and Financial Advisors. Each of Borrower and the other Loan Parties hereby represents that it has dealt with no financial advisors, brokers, underwriters, placement agents, agents or finders in connection with the transactions contemplated by this Agreement. Each of Borrower and the other Loan Parties hereby agrees to indemnify, defend and hold Lender harmless from and against any and all claims, liabilities, costs and expenses of any kind (including Lender's attorneys' fees and expenses) in any way relating to or arising from a claim by any Person that such Person acted on behalf of Borrower, or any other Loan Party or Lender in connection with the transactions contemplated herein. The provisions of this Section 10.21 shall survive the expiration and termination of this Agreement and the payment of the Debt.

Section 10.22. Prior Agreements. This Agreement and the other Loan Documents contain the entire agreement of the parties hereto and thereto in respect of the transactions contemplated hereby and thereby and may not be contradicted by evidence of any alleged oral agreements, and all prior agreements among or between such parties, whether oral or written, between Borrower,

or any other Loan Party and Lender are superseded by the terms of this Agreement and the other Loan Documents.

Section 10.23. Joint and Several Liability. If Borrower consists of more than one (1) Person the obligations and liabilities of each Borrower under the Loan Documents shall be joint and several.

Section 10.24. Approvals and Consents; Co-Lenders. The below Section 10.24(a) through (e) shall be of no further force and effect following a Securitization of any portion of the Loan.

(a) Administrative Agent Decisions. Notwithstanding anything to the contrary contained in this Agreement, but subject to the terms of this Section 10.24, any consent or approval required or permitted by this Agreement or in any Loan Document to be given by Lender with respect to (i) administrative functions with respect to the Loan, including all determinations relating to the distribution of funds in the Reserve Accounts held by Lender (subject to compliance with the terms and conditions set forth in Article VII hereof); (ii) all insurance matters, including settlement of Casualty and Condemnation proceeds and determinations regarding restoration and release of Net Proceeds pursuant to Section 6.4 hereof; (iii) confirmation (or determinations) of economic calculations under the Loan Documents (including the Aggregate LTV Ratio, Debt Service Coverage Ratio and Loan to Value Ratio); (iv) consents and approvals arising under the Loan and Loan Documents not expressly requiring the consent of Lender; (v) property level consent and approvals (or deemed approvals) including approvals of easements, zoning matters, non-disturbance agreements and REAs; (vi) budget approvals during the continuance of a Cash Trap Period or an Event of Default, (vii) Material Leases pursuant to Section 5.1.18 hereof; (viii) approvals of the Approved Annual Budget during the continuance of a Cash Trap Period or Event of Default, (ix) alterations (excluding, for the avoidance of doubt, any Replacements, PIP Work, Brand Mandated Work or Approved Alterations) if the aggregate amount required to complete such alterations exceeds the Threshold Amount; (x) changes to insurance requirements that are not otherwise contemplated pursuant to the terms and conditions hereof, (xi) approvals pursuant to Section 5.1.20, Section 5.2.1 and Section 5.3 hereof, (xii) review and confirmation of a Person's satisfaction of the requirements set forth herein for a Replacement Guarantor, Substitute Guarantor, Public Vehicle or Qualified Transferee (but, in each case, the "know your customer" requirements of each Lender must be satisfied), (xiii) consent to or waiver of any non-monetary encumbrance of any Individual Property which is not permitted pursuant to the terms and conditions of the Loan Documents and (xiv) waiver of any non-monetary Event of Default under the Loan (collectively, the "**Administrative Agent Decisions**") may, at all times when the Loan is held by more than one Lender, be given or may be waived with the written consent of Administrative Agent only and without the consultation, consent or approval of any of the other Lenders. At any time that Administrative Agent's consent is required hereunder for an Administrative Agent Decision, provided no Event of Default is continuing, Administrative Agent's consent shall be deemed granted if the Deemed Approval Requirements have been satisfied with respect thereto.

(b) Unanimous Decisions. Notwithstanding the foregoing, any consent or approval required or permitted by this Agreement or in any Loan Document to be given by Lender to (i) increase the commitment of any Lender; (ii) change the principal of, or Interest Rate that has accrued or that will be charged on the outstanding principal amount of any Note; (iii) reduce the amount of any fees payable to Lender; (iv) postpone any date fixed for any

payment of principal or, or interest on, the Loan (including, the Maturity Date) or for the payment of fees or any other obligations of Borrower or Guarantor; (v) change any Lender's Ratable Share; (vi) amend the sections of the Loan Agreement governing waivers and amendments or amend the definitions of the terms used in the Loan Agreement or any of the other Loan Documents insofar as such definitions affect amendments; (vii) release any Guarantor of its obligations except in connection with a Replacement Guarantor, Substitute Guarantor or other substitute Guaranty in accordance with the Loan Documents; (viii) except as contemplated in Section 10.24(a) above or as expressly permitted by the Loan Documents without consent, release or dispose, or consent to any Transfer of any collateral; (ix) waive any monetary Event of Default; (x) decide to accelerate the Loan during the continuance of an Event of Default; (xi) consent to or waiver of any further monetary encumbrance of the Property or pledge of the direct or indirect interest in Borrower, except as expressly permitted by the Loan Documents; (xii) enter into agreement providing for the subordination of the Loan to any other interest which would constitute a Lien against the Property or any transfers of the Property or the Loan by Borrower or of equity interests in Borrower (in each instance to the extent not permitted by this Agreement and the other Loan Documents) or (xiii) amend this Section 10.24 (collectively, the "**Unanimous Decisions**") may only be given or waived, with the written consent of Administrative Agent at the written direction of all Lenders. Any consent or approval required or permitted by this Agreement or the other Loan Documents that is not a Unanimous Decision may be given or waived with the written consent of Administrative Agent only and without consultation, consent or approval of any of the other Lenders.

(c) Replacement Administrative Agent. Prior to a Securitization of the whole Loan, there shall be an Administrative Agent for the Loan at all times when the Loan is held by more than one Lender. Citi Real Estate Funding Inc. shall be the initial Administrative Agent, provided that at any time (i) neither Citi Real Estate Funding Inc. nor any affiliate thereof owns a portion of the Loan, (ii) during the continuance of an Event of Default with respect to which Administrative Agent has provided written notice thereof to Borrower, or (iii) following a default by the Administrative Agent of its obligations under this Agreement or any Lender Documents, the Administrative Agent may resign or be replaced with a single Lender that is either then the sole Lender (of an affiliate thereof) or is a Lender (or an affiliate thereof) that (A) has otherwise been designated as the replacement Administrative Agent under the Lender Documents and (B) except in the case of clause (ii) above, has been approved by Borrower in its reasonable discretion. Upon the appointment of any successor Administrative Agent hereunder, such successor Administrative Agent shall succeed to and become the Administrative Agent hereunder and any further resignation or replacement of any successor Administrative Agent shall be subject to the terms and conditions of this Section 10.24(c). Notwithstanding the foregoing, Borrower acknowledges and agrees that if the Loan is sold by any Lender such that the Loan is held by a single Lender, then automatically, and without any further action by any such Lender, all references to Administrative Agent hereunder shall be deemed to refer to such single Lender (or affiliate appointed thereby) that holds the Loan.

(d) Lenders. Except as otherwise provided herein, at all times when the Loan is held by more than one Lender, Borrower shall have no obligation to recognize or deal directly with any Lender and Borrower may direct all notices, financial reporting, and requests for consent or approvals and any other relayed documentation or information to Administrative Agent and may conclusively rely upon the actions of Administrative Agent to bind the Lenders, notwithstanding that any particular action in question may, pursuant to this Agreement or any

Lender Document, be subject to the consent or approval of some or all of the Lenders in accordance with this Section 10.24. The Lenders, including Administrative Agent, and each of their affiliates may accept deposits from, lend money to, act as trustee under indentures of, and generally engage in any kind of business with Borrower (subject to the terms hereof) or any affiliate of Borrower, or any Person who may do business with or own securities in Borrower or any affiliate of Borrower, all as if they were not serving in such capacities hereunder and without any duty to account therefor to each other.

(e) Non-Consenting Lenders. If any Co-Lender declines to consent to any amendment, waiver or consent that shall have been requested in a writing by Borrower to Administrative Agent, which amendment, waiver or consent is a Unanimous Decision (a “**Non-Consenting Lender**”), and such amendment, waiver or consent is not approved (e.g., all other Co-Lenders have consented to such amendment, waiver or consent and such consent is insufficient in accordance with this Agreement to approve such amendment, waiver or consent), then Borrower, upon three (3) Business Days’ written notice to such Non-Consenting Lender (the “**Consent Request Date**”) may, at its sole expense require such Non-Consenting Lender to assign and delegate all of its interests, rights and obligations under this Agreement and the Loan Documents to an Eligible Assignee approved by Administrative Agent that shall assume such obligations; provided that (i) as of such Consent Request Date, no Event of Default shall have occurred and be continuing other than an Event of Default which results solely from the subject matter of the amendment, waiver or consent that such Non-Consenting Lender disapproved, (ii) such Non-Consenting Lender shall have received from the assignee Lender or Borrower payment of an amount equal to the outstanding principal amount of the Loan outstanding and owed to such Non-Consenting Lender as of the date such Non-Consenting Lender is replaced, together with accrued and unpaid interest thereon, and any other amounts due and payable to the Non-Consenting Lender hereunder and under the other Loan Documents in respect of its Loan had the Loan been repaid in full at such time, (iii) such assignment does not conflict with applicable law and (iv) such assignee Lender consents to the proposed amendment, waiver or consent on account of which Borrower shall have exercised its rights pursuant to this paragraph. A Non-Consenting Lender shall not be required to make any such assignment and delegation if prior thereto, such Non-Consenting Lender consents to the applicable amendment, waiver or consent.

(f) At all times (i) the liabilities of Lender shall be several and not joint, (ii) no Co-Lender shall be responsible for the obligations of any other Co-Lender, and (iii) each Co-Lender shall be liable to Borrower and the other Loan Parties only for their respective Ratable Share of the Loan. Notwithstanding anything to the contrary herein, all indemnities by Borrower and the other Loan Parties and obligations for costs, expenses, damages or advances set forth herein shall run to and benefit each Co-Lender in accordance with its Ratable Share.

(g) Each Co-Lender agrees that it has, independently and without reliance on the other Co-Lender, and based on such documents and information as it has deemed appropriate, made its own credit analysis of Borrower, the other Loan Parties and its Affiliates and decision to enter into this Agreement and that it will, independently and without reliance upon the other Co-Lender, and based on such documents and information as it shall deem appropriate at the time, continue to make its own analysis and decisions in taking or not taking action under this Agreement or under any other Loan Document.

Section 10.25. Certain Additional Rights of Lender (VCOC). Notwithstanding anything to the contrary contained in this Agreement, Lender shall have:

(a) upon not less than fifteen (15) Business Days' prior written notice to Borrower, the right to request and to hold a meeting at Lender's office in New York, New York no more than two (2) times during any calendar year to consult with an officer of Borrower that is familiar with the financial condition of each Individual Borrower or other Loan Party and the operation of each Individual Property regarding such significant business activities and business and financial developments of Borrower or other Loan Party as are specified by Lender in writing in the request for such meeting; provided, however, that such consultations shall not include discussions of environmental compliance programs or disposal of hazardous substances; and

(b) the right, in accordance with the terms Section 5.1.11(a) of this Agreement, to examine the books and records of Borrower and the other Loan Parties at any reasonable times upon reasonable notice no more than four (4) times during any calendar year, provided that any such examination shall be conducted so as not to unreasonably interfere with the business of Borrower, the other Loan Parties, guests or any Tenants or other occupants of any Individual Property.

The rights described above in this Section 10.25 may be exercised by Lender on behalf of any Person which Controls Lender.

Section 10.26. Use of Borrower Provided Information. Lender agrees that it shall use commercially reasonable efforts to use Provided Information solely for purposes of the ownership and sale of its interest in the Loan (including, without limitation, the administration of the Loan and any Securitization). Notwithstanding the foregoing, nothing in this Section 10.26 shall prevent any Lender from: (i) disclosing or otherwise using any Provided Information in the manner and for the purposes set forth in Section 9.1 and Section 9.2 of this Agreement, (ii) disclosing Provided Information to any loan participant or similar holders of an interest in the Loan, provided that such participants or other holders shall be instructed to use commercially reasonable efforts to use such Provided Information solely in connection with their ownership of their interest in the Loan, (iii) disclosing Provided Information subject to an instruction to comply with the provisions of this Section 10.26, to any prospective participant or other transferee of an interest in the Loan, (iv) disclosing Provided Information to its employees, directors, agents, attorneys, accountants, investors, potential investors, finance providers, tax consultants, tax preparers, financial consultants and other professional advisors or those of any of its affiliates, (v) disclosing Provided Information upon the request or demand of any Governmental Authority, (vi) disclosing Provided Information in response to any order of any court or other Governmental Authority or as may otherwise be required pursuant to any Legal Requirement, (vii) disclosing Provided Information if requested or required to do so in connection with any litigation or similar proceeding, (viii) disclosing or otherwise using any Provided Information that has been publicly disclosed, or (ix) disclosing or otherwise using any Provided Information in connection with the exercise of any remedy hereunder or under any other Loan Document.

Section 10.27. Borrower Affiliate Lender. Lender agrees that the Lender Documents to which it is a party shall not prohibit or restrict Affiliates of Borrower from purchasing or

otherwise acquiring and owning all or any portion of the Loan or the Mezzanine Loan, including, without limitation, the beneficial interests in the Loan or the Mezzanine Loan as evidenced by any single or multi-class non-voting Securities in respect of any private or public securitization of the Loan or the Mezzanine Loan (or otherwise impose additional restrictions or requirements on a transfer to such Affiliate of Borrower), provided, however, that the Lender Documents may include restrictions on the exercise of the rights and remedies by such Affiliates of Borrower under the Loan including, without limitation, (i) restrictions on any such Affiliate having the right to, or exercising, directly or indirectly, any control, decision making power, voting rights, notice and cure rights, or other rights that would otherwise benefit a holder by virtue of its ownership or control of any interest with respect to the Loan, (ii) restrictions on any such Affiliate's approval and consent rights under any intercreditor agreement, (iii) restrictions on such Affiliate's initiation of enforcement actions against equity collateral, (iv) restrictions on the making of protective advances, (v) restrictions on such Affiliate from making or bringing any claim, in its capacity as a holder of any direct or indirect interest in the Loan, against Lender or any agent of Lender with respect to the duties and obligations of such Person under the Loan Documents or any Lender Document and (vi) restrictions on such Affiliate's access to any electronic platform for the distribution of materials or information among the Lender, "asset status reports" or any correspondence or materials or notices of or participation in any discussions, meetings or conference calls (among Lender, its co-lenders or participants, or otherwise) regarding or relating to any workout discussions or litigation or foreclosure strategy (or potential litigation strategy) involving the Loan, other than in its capacity as Borrower to the extent discussions and negotiations are being conducted with Borrower (as distinct from internal discussions and negotiations among the various creditors).

Section 10.28. Franchise/License Agreements. For the avoidance of doubt, nothing contained in this Agreement or any of the other Loan Documents is, or shall be deemed to constitute, a collateral assignment, pledge or grant of a security interest by Borrower to Lender with respect to any Franchise/License Agreement or any guaranty of Borrower of a Franchise/License Agreement in violation of such Franchise/License Agreement or guaranty of such Franchise/License Agreement.

Section 10.29. EU Bail In Rule. Notwithstanding anything to the contrary in any of the Loan Documents or in any other agreement, arrangement or understanding among any such parties, each party hereto acknowledges that any liability of any EEA Financial Institution arising under any Loan Document may be subject to the write down and conversion powers of an EEA Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by:

- (i) the application of any EEA Write Down and Conversion Powers by an EEA Resolution Authority to any such liabilities arising hereunder which may be payable to it by any party hereto that is an EEA Financial Institution; and
- (ii) the effects of any EEA Bail In Action on any such liability, including, if applicable:
 - (A) a reduction in full or in part or cancellation of any such liability;

(B) a conversion of all, or a portion of, such liability into shares or other instruments of ownership in such EEA Financial Institution, its parent undertaking, or a bridge institution that may be issued to it or otherwise conferred on it, and that such shares or other instruments of ownership will be accepted by it in lieu of any rights with respect to any such liability under this Agreement or any other Loan Document; or

(C) the variation of the terms of such liability in connection with the exercise of the EEA Write Down and Conversion Powers of any EEA Resolution Authority.

Section 10.30. Gaming Laws.

(a) This Agreement and the other Loan Documents are subject to the Gaming Laws. Lender acknowledges that (i) it may be subject of being called forward by any Gaming Authority or any Liquor Authority, in each of their discretion, for licensing or a finding of suitability or to file or provide other information, and (ii) all rights, remedies and powers under this Agreement and the other Loan Documents, including with respect to the entry into, ownership and/or operation of the Property, and the possession or control of Gaming Equipment, alcoholic beverages or a Gaming License or liquor license, shall be subject to any applicable provisions of the Gaming Laws and Liquor Laws and receipt of required approvals from the requisite Governmental Authorities.

(b) Lender agrees to cooperate with each Gaming Authority and each Liquor Authority in connection with the administration of their regulatory jurisdiction over Borrower, including, without limitation, the provision of such documents or other information as may be requested by any such Gaming Authorities and/or Liquor Authorities relating to Lender, Borrower, or to the Loan Documents.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed by their duly authorized representatives, all as of the day and year first above written.

BORROWER:

MANDALAY PROPCO, LLC
MGM GRAND PROPCO, LLC,
each a Delaware limited liability company

By: /s/ Qahir Madhany
Name: Qahir Madhany
Title: Authorized Signatory

[Signature Page to Loan Agreement]

CITI:

CITI REAL ESTATE FUNDING INC.

By: /s/ Harry Kramer
Name: Harry Kramer
Title: Vice President

[Signature Page to Loan Agreement]

BARCLAYS:

BARCLAYS CAPITAL REAL ESTATE INC.

By: /s/ Sabrina J. Khabie
Name: Sabrina J. Khabie
Title: Authorized Signatory

[Signature Page to Loan Agreement]

DB:

DEUTSCHE BANK AG, NEW YORK BRANCH

By: /s/ Stephen H. Choe
Name: Stephen H. Choe
Title: Managing Director

By: /s/ Eugene Kim
Name: Eugene Kim
Title: Director

[Signature Page to Loan Agreement]

SOCGEN:

SOCIÉTÉ GÉNÉRALE FINANCIAL CORPORATION

By: /s/ Kevin Kelley
Name: Kevin Kelley
Title: Vice President

[Signature Page to Loan Agreement]

ADMINISTRATIVE AGENT:

CITI REAL ESTATE FUNDING INC.

By: /s/ Harry Kramer
Name: Harry Kramer
Title: Vice President

[Signature Page to Loan Agreement]

FIRST AMENDMENT TO LOAN AGREEMENT AND OTHER LOAN DOCUMENTS

Dated as of March 30, 2020

among

MANDALAY PROPCO, LLC and MGM GRAND PROPCO, LLC,
collectively, as Borrower

and

**CITI REAL ESTATE FUNDING INC.,
BARCLAYS CAPITAL REAL ESTATE INC.,
DEUTSCHE BANK AG, NEW YORK BRANCH and
SOCIÉTÉ GÉNÉRALE FINANCIAL CORPORATION,**
collectively, as Lender

FIRST AMENDMENT TO LOAN AGREEMENT AND OTHER LOAN DOCUMENTS

THIS FIRST AMENDMENT TO LOAN AGREEMENT AND OTHER LOAN DOCUMENTS, dated as of March 30, 2020 (this “**Amendment**”), is by and among **CITI REAL ESTATE FUNDING INC.**, a New York corporation, having an address at 388-390 Greenwich Street, Tower Floor 8, New York, New York 10013 (together with its successors and/or assigns, “**Citi**”), **BARCLAYS CAPITAL REAL ESTATE INC.**, a Delaware corporation, having an address at 745 Seventh Avenue, New York, New York 10019 (together with its successors and/or assigns, “**Barclays**”), **DEUTSCHE BANK AG, NEW YORK BRANCH**, a branch of Deutsche Bank AG, a German Bank, authorized by the New York Department of Financial Services, having an address at 60 Wall Street, 10th Floor, New York, New York 10005 (together with its successors, assigns and/or alternate branches, “**DB**”), **SOCIÉTÉ GÉNÉRALE FINANCIAL CORPORATION**, having an address at 245 Park Avenue, New York, New York 10167 (together with its successors and/or assigns, “**SocGen**” and, collectively with Citi, Barclays, DB and each of their respective successors and/or assigns, collectively, “**Lender**”), **CITI REAL ESTATE FUNDING INC.**, having an address at 388-390 Greenwich Street, Tower Floor 8, New York, New York 10013, as agent for Lender (in such capacity, together with its successors and/or assigns, “**Administrative Agent**”) and **MANDALAY PROPCO, LLC**, a Delaware limited liability company (“**Mandalay Bay Borrower**”) and **MGM GRAND PROPCO, LLC**, a Delaware limited liability company (“**MGM Grand Borrower**”), each having its principal place of business at 1980 Festival Plaza Drive, Suite 750, Las Vegas, NV 89135 (each an “**Individual Borrower**” and collectively and/or individually, as the context may require, “**Borrower**”). All capitalized terms not defined herein shall have the respective meanings set forth in the Loan Agreement (as defined below).

WITNESSETH:

WHEREAS, Lender has made a loan in the outstanding principal amount of Three Billion Dollars (\$3,000,000,000) (the “**Loan**”) to Borrower pursuant to that certain Loan Agreement, dated as of February 14, 2020, by and among Borrower, Lender and Administrative Agent (the “**Original Loan Agreement**”), which Loan is evidenced by the Original Loan Agreement and the other Loan Documents (as defined in the Original Loan Agreement); and

WHEREAS, Borrower and Lender now desire to amend the Original Loan Agreement (the Original Loan Agreement, as amended by this Amendment, and as the same may be further amended, replaced, restated, supplemented or otherwise modified from time to time, the “**Loan Agreement**”) and certain other Loan Documents, each as more specifically set forth herein.

NOW, THEREFORE, in consideration of the agreements set forth in this Amendment and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the parties hereto, the parties hereto hereby agree as follows.

A G R E E M E N T:

Section I. Modification to Original Loan Agreement.

(i) Section 1.1 of the Original Loan Agreement is hereby amended to replace the definition of “Adjusted Interest Rate” in its entirety to read as follows:

“**Adjusted Interest Rate**” shall mean, with respect to each Note, a rate per annum equal to from and including the first day of the Interest Period commencing on the day after the Anticipated Repayment Date through and including the last day of the Interest Period relating to the Maturity Date, the sum of (i) two hundred basis points (2.00%) plus (ii) the greater of (A) the sum of (I) the ARD Treasury Note Rate in effect as of 1:00 p.m., New York City time, on the Anticipated Repayment Date (or, if such day is not a Business Day, the first Business Day immediately preceding the Anticipated Repayment Date), as determined by Lender plus (II) (x) with respect to Note A, 1.65% or (y) with respect to Note B, 1.65%, and (B) the applicable Initial Interest Rate for such Note.”

(ii) Section 1.1 of the Original Loan Agreement is hereby amended to replace the definition of “Closing Date Debt Service Coverage Ratio” in its entirety to read as follows:

“**Closing Date Debt Service Coverage Ratio**” shall mean 4.97x.”

(iii) Section 1.1 of the Original Loan Agreement is hereby amended to replace the definition of “Initial Interest Rate” in its entirety to read as follows:

“**Initial Interest Rate**” shall mean, (a) for the period commencing on (and including) the Closing Date and ending on (and including) March 29, 2020, with respect to each Note, 3.308%, and (b) commencing on (and including) March 30, 2020 and thereafter, (i) with respect to each Note A, the Note A Interest Rate; and (ii) with respect to each Note B, the Note B Interest Rate.”

(iv) Section 1.1 of the Original Loan Agreement is hereby amended to replace the definition of “Note A Interest Rate” in its entirety to read as follows:

“**Note A Interest Rate**” means, with respect to each Note A, a rate equal to 3.438% per annum (or, when applicable pursuant to this Agreement or any other Loan Document, the Default Rate).”

(v) Section 1.1 of the Original Loan Agreement is hereby amended to replace the definition of “Note B Interest Rate” in its entirety to read as follows:

“**Note B Interest Rate**” means, with respect to each Note B, a rate equal to 3.438% per annum (or, when applicable pursuant to this Agreement or any other Loan Document, the Default Rate).”

(vi) The sample calculation of the Debt Service Coverage Ratio as shown on Exhibit C of the Original Loan Agreement is hereby replaced in its entirety with the sample calculation of the Debt Service Coverage Ratio attached hereto as Exhibit A.

Section II. Amendment to Other Loan Documents. Each of the Loan Documents (other than the Loan Agreement) is hereby amended such that (i) each reference in any of the Loan Documents (other than the Loan Agreement) to the defined terms Adjusted Interest Rate, Closing Date Debt Service Coverage Ratio, Initial Interest Rate, Note A Interest Rate and Note B Interest Rate, which defined terms have been modified pursuant to this Amendment shall be deemed to be a reference to each such defined term as so modified, (ii) each reference in any of the Loan Documents to Exhibit C of the Loan Agreement, which has been modified pursuant to this Amendment, shall be deemed to be a reference to the exhibit as so modified, and (iii) each reference to the Loan Agreement shall mean the Original Loan Agreement, as modified pursuant to the terms of this Amendment.

Section III. Reaffirmation of Guaranty. In connection with this Amendment, Guarantor hereby:

(a) Consents to and acknowledges this Amendment and acknowledges and agrees that this Amendment shall not impair, reduce or adversely affect the nature of the obligations of Guarantor under the Guaranty.

(b) Warrants and represents that there are no defenses, offsets or counterclaims with respect to its obligations under the Guaranty.

(c) Acknowledges that the Guaranty and the obligations of Guarantor contained in the Guaranty are continuing and in full force and effect.

(d) Hereby reaffirms the Guaranty and its obligations thereunder, and acknowledges that this reaffirmation of the Guaranty is for the benefit of Lender.

Section IV. Reaffirmation of Environmental Indemnity. In connection with this Amendment, Borrower hereby:

(a) Consents to and acknowledges this Amendment and acknowledges and agrees that this Amendment shall not impair, reduce or adversely affect the nature of the obligations of Borrower under the Environmental Indemnity.

(b) Warrants and represents that there are no defenses, offsets or counterclaims with respect to its obligations under the Environmental Indemnity.

(c) Acknowledges that the Environmental Indemnity and the obligations of Borrower contained in the Environmental Indemnity are continuing and in full force and effect.

(d) Hereby reaffirms the Environmental Indemnity and its obligations thereunder, and acknowledges that this reaffirmation of the Environmental Indemnity is for the benefit of Lender.

Section V. No Offset. Borrower hereby waives all offsets, defenses and claims it may have against Lender that accrued on or before the date hereof.

Section VI. No Waiver. The execution, delivery and effectiveness of this Amendment shall not, except to the extent expressly provided herein, operate as a waiver of any right, power or remedy of any of Lender, Borrower, any other Loan Party or Guarantor under the Loan Agreement or any of the other Loan Documents, nor constitute a waiver of any provision of the Loan Agreement or any of the other Loan Documents by any of the parties hereto.

Section VII. No Presumption Against Party Drafting Amendment. Should any provision of this Amendment require judicial interpretation, it is agreed that a court interpreting or construing the same shall not apply a presumption that the terms hereof shall be more strictly construed against any party by reason of the rule of construction that a document is to be construed more strictly against the party who itself or through its agent prepared or drafted the same, it being agreed that all parties to this Amendment participated in the preparation hereof.

Section VIII. Successors and Assigns. This Amendment shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns.

Section IX. Ratification. Borrower and Lender hereby ratify and confirm the Loan Agreement, as modified hereby. Except as modified and amended by this Amendment, the Loan, the Loan Agreement and the other Loan Documents and the respective obligations of Lender and Borrower thereunder shall be and remain unmodified and in full force and effect.

Section X. No Further Modification. No further modification, amendment, extension, discharge, termination or waiver hereof shall be effective unless the same shall be in a writing signed by the party against whom enforcement is sought, and then such waiver or consent shall be effective only in the specific instance, and for the purpose, for which given.

Section XI. Governing Law. This Amendment shall be construed and enforced in accordance with the laws of the State of New York. If any provision hereof is not enforceable, the remaining provisions of this Amendment shall be enforced in accordance with their terms.

Section XII. Counterparts; Electronic Signatures. This Amendment may be executed in any number of counterparts, all of which taken together shall constitute one and the same instrument. Delivery of an executed counterpart of a signature page of this Amendment by telecopy or in a .PDF via email shall be effective as delivery of a manually executed counterpart of this Amendment.

Section XIII. References to Loan Agreement. All references in the Loan Documents to the Loan Agreement shall mean the Loan Agreement as hereby modified herein.

Section XIV. Entire Agreement. This Amendment constitutes the entire agreement between Borrower and Lender with respect to subject matter hereof and supersedes all other prior agreements and understandings, both written and oral, among the parties with respect to the subject matter hereof.

Section XV. Incorporation of Recitals; Defined Terms. The recitals hereto are hereby incorporated into this Amendment as if fully set forth herein. All capitalized terms used herein and not otherwise defined herein shall have the respective meanings set forth in the Loan Agreement.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be duly executed by their duly authorized representatives, all as of the day and year first above written.

BORROWER:

MANDALAY PROPCO, LLC
MGM GRAND PROPCO, LLC,
each a Delaware limited liability company

By: /s/ Qahir Madhany____
Name: Qahir Madhany
Title: Authorized Signatory

[Signature Page to First Amendment to Loan Agreement and Other Loan Documents]

LENDER:

CITI REAL ESTATE FUNDING INC.

By: /s/ Harry Kramer
Name: Harry Kramer
Title: Vice President

[Signature Page to First Amendment to Loan Agreement and Other Loan Documents]

BARCLAYS CAPITAL REAL ESTATE INC.

By: /s/ Sabrina J. Khabie
Name: Sabrina J. Khabie
Title: Authorized Signatory

[Signature Page to First Amendment to Loan Agreement and Other Loan Documents]

DEUTSCHE BANK AG, NEW YORK BRANCH

By: /s/ Stephen H. Choe
Name: Stephen H. Choe
Title: Managing Director

By: /s/ Eugene Kim
Name: Eugene Kim
Title: Director

[Signature Page to First Amendment to Loan Agreement and Other Loan Documents]

SOCIÉTÉ GÉNÉRALE FINANCIAL CORPORATION

By: /s/ Kevin Kelley
Name: Kevin Kelley
Title: Vice President

[Signature Page to First Amendment to Loan Agreement and Other Loan Documents]

ADMINISTRATIVE AGENT:

CITI REAL ESTATE FUNDING INC.

By: /s/ Harry Kramer
Name: Harry Kramer
Title: Vice President

[Signature Page to First Amendment to Loan Agreement and Other Loan Documents]

The undersigned hereby acknowledges and consents to Section III of this First Amendment to Loan Agreement and Other Loan Documents.

GUARANTOR:

BREIT OPERATING PARTNERSHIP L.P.,
a Delaware limited partnership

By: Blackstone Real Estate Income Trust, Inc.,
a Maryland corporation, its general partner

By: /s/ Jacob Werner
Name: Jacob Werner
Title: Authorized Person

[Signature Page to First Amendment to Loan Agreement and Other Loan Documents]

MGM GROWTH PROPERTIES OPERATING PARTNERSHIP LP, a
Delaware limited partnership

By: MGM Growth Properties OP GP LLC, a Delaware limited liability company, its
general partner

By: /s/ Andy Chien
Name: Andy Chien
Title: Chief Financial Officer and Treasurer

[Signature Page to First Amendment to Loan Agreement and Other Loan Documents]

**SECOND AMENDMENT TO LOAN AGREEMENT AND OTHER LOAN
DOCUMENTS**

Dated as of May 1, 2020

among

MANDALAY PROPCO, LLC and MGM GRAND PROPCO, LLC,
collectively, as Borrower

and

**CITI REAL ESTATE FUNDING INC.,
BARCLAYS CAPITAL REAL ESTATE INC.,
DEUTSCHE BANK AG, NEW YORK BRANCH and
SOCIÉTÉ GÉNÉRALE FINANCIAL CORPORATION,**
collectively, as Lender

SECOND AMENDMENT TO LOAN AGREEMENT AND OTHER LOAN DOCUMENTS

THIS SECOND AMENDMENT TO LOAN AGREEMENT AND OTHER LOAN DOCUMENTS, dated as of May 1, 2020 (this “**Amendment**”), is by and among CITI REAL ESTATE FUNDING INC., a New York corporation, having an address at 388-390 Greenwich Street, Tower Floor 8, New York, New York 10013 (together with its successors and/or assigns, “**Citi**”), **BARCLAYS CAPITAL REAL ESTATE INC.**, a Delaware corporation, having an address at 745 Seventh Avenue, New York, New York 10019 (together with its successors and/or assigns, “**Barclays**”), **DEUTSCHE BANK AG, NEW YORK BRANCH**, a branch of Deutsche Bank AG, a German Bank, authorized by the New York Department of Financial Services, having an address at 60 Wall Street, 10th Floor, New York, New York 10005 (together with its successors, assigns and/or alternate branches, “**DB**”), **SOCIÉTÉ GÉNÉRALE FINANCIAL CORPORATION**, having an address at 245 Park Avenue, New York, New York 10167 (together with its successors and/or assigns, “**SocGen**” and, collectively with Citi, Barclays, DB and each of their respective successors and/or assigns, collectively, “**Lender**”), **CITI REAL ESTATE FUNDING INC.**, having an address at 388-390 Greenwich Street, Tower Floor 8, New York, New York 10013, as agent for Lender (in such capacity, together with its successors and/or assigns, “**Administrative Agent**”) and **MANDALAY PROPCO, LLC**, a Delaware limited liability company (“**Mandalay Bay Borrower**”) and **MGM GRAND PROPCO, LLC**, a Delaware limited liability company (“**MGM Grand Borrower**”), each having its principal place of business at 1980 Festival Plaza Drive, Suite 750, Las Vegas, NV 89135 (each an “**Individual Borrower**” and collectively and/or individually, as the context may require, “**Borrower**”). All capitalized terms not defined herein shall have the respective meanings set forth in the Loan Agreement (as defined below).

WITNESSETH:

WHEREAS, Lender has made a loan in the outstanding principal amount of Three Billion Dollars (\$3,000,000,000) (the “**Loan**”) to Borrower pursuant to that certain Loan Agreement, dated as of February 14, 2020, by and among Borrower, Lender and Administrative Agent (the “**Initial Loan Agreement**”);

WHEREAS, on March 30, 2020, Borrower, Lender and Administrative Agent entered into that certain First Amendment to Loan Agreement and Other Loan Documents (the “**First Amendment**”; together with the Initial Loan Agreement, the “**Original Loan Agreement**”); and

WHEREAS, Borrower and Lender now desire to further amend the Original Loan Agreement (the Original Loan Agreement, as further amended by this Amendment, and as the same may be further amended, replaced, restated, supplemented or otherwise modified from time to time, the “**Loan Agreement**”) and certain other Loan Documents, each as more specifically set forth herein.

NOW, THEREFORE, in consideration of the agreements set forth in this Amendment and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the parties hereto, the parties hereto hereby agree as follows.

AGREEMENT:

Section I. Modification to Original Loan Agreement.

(i) Section 1.1 of the Original Loan Agreement is hereby amended to replace the definition of “Adjusted Interest Rate” in its entirety to read as follows:

“**Adjusted Interest Rate**” shall mean, with respect to each Note, a rate per annum equal to from and including the first day of the Interest Period commencing on the day after the Anticipated Repayment Date through and including the last day of the Interest Period relating to the Maturity Date, the sum of (i) two hundred basis points (2.00%) plus (ii) the greater of (A) the sum of (I) the ARD Treasury Note Rate in effect as of 1:00 p.m., New York City time, on the Anticipated Repayment Date (or, if such day is not a Business Day, the first Business Day immediately preceding the Anticipated Repayment Date), as determined by Lender plus (II) (x) with respect to Note A, 1.77%, (y) with respect to Note B, 1.77%, or (z) with respect to Note C, 1.77%, and (B) the applicable Initial Interest Rate for such Note.”

(ii) Section 1.1 of the Original Loan Agreement is hereby amended to replace the definition of “Closing Date Debt Service Coverage Ratio” in its entirety to read as follows:

“**Closing Date Debt Service Coverage Ratio**” shall mean 4.81x.”

(iii) Section 1.1 of the Original Loan Agreement is hereby amended to replace the definition of “Initial Interest Rate” in its entirety to read as follows:

“**Initial Interest Rate**” shall mean, (a) for the period commencing on (and including) the Closing Date and ending on (and including) March 29, 2020, with respect to each Note (as defined in the Original Loan Agreement), 3.308%, (b) for the period commencing on (and including) March 30, 2020 and ending on (and including) May 5, 2020, with respect to each Note (as defined in the Original Loan Agreement), 3.438%; and (c) for the period commencing on (and including) May 6, 2020 and thereafter, (i) with respect to each Note A, the Note A Interest Rate, (ii) with respect to each Note B, the Note B Interest Rate, and (iii) with respect to each Note C, the Note C Interest Rate.”

(iv) Section 1.1 of the Original Loan Agreement is hereby amended to replace the definition of “Note” in its entirety to read as follows:

“**Note**” shall mean, collectively, Note A, Note B and Note C.”

(v) Section 1.1 of the Original Loan Agreement is hereby amended to replace the definition of “Note A” in its entirety to read as follows:

“**Note A**” shall mean, collectively, Note A-1, Note A-2, Note A-3, Note A-4, Note A-5, Note A-6, Note A-7 and Note A-8, as each of the foregoing may be further amended, restated, split, supplemented, modified, combined or replaced.”

(vi) Section 1.1 of the Original Loan Agreement is hereby amended to replace the definition of “Note A Interest Rate” in its entirety to read as follows:

“**Note A Interest Rate**” means, with respect to each Note A, a rate equal to 3.558% per annum (or, when applicable pursuant to this Agreement or any other Loan Document, the Default Rate).”

(vii) Section 1.1 of the Original Loan Agreement is hereby amended to replace the definition of “Note A-1” in its entirety to read as follows:

“**Note A-1**” shall mean that certain Replacement, Amended and Restated Promissory Note A-1, dated as of May 1, 2020, in the principal amount of TWO HUNDRED SIXTY EIGHT THOUSAND FIFTY FIVE AND 60/100 DOLLARS (\$268,055.60), made by Borrower in favor of Citi and any replacement or split notes made by Borrower in favor of Citi, as each of the same may be further amended, restated, replaced, supplemented or otherwise modified from time to time.”

(viii) Section 1.1 of the Original Loan Agreement is hereby amended to replace the definition of “Note A-2” in its entirety to read as follows:

“**Note A-2**” shall mean that certain Replacement, Amended and Restated Promissory Note A-2, dated as of May 1, 2020, in the principal amount of ONE HUNDRED THIRTY FOUR THOUSAND TWENTY SEVEN AND 80/100 DOLLARS (\$134,027.80), made by Borrower in favor of Barclays and any replacement or split notes made by Borrower in favor of Barclays, as each of the same may be further amended, restated, replaced, supplemented or otherwise modified from time to time.”

(ix) Section 1.1 of the Original Loan Agreement is hereby amended to replace the definition of “Note A-3” in its entirety to read as follows:

“**Note A-3**” shall mean that certain Replacement, Amended and Restated Promissory Note A-3, dated as of May 1, 2020, in the principal amount of ONE HUNDRED THIRTY FOUR THOUSAND TWENTY SEVEN AND 80/100 DOLLARS (\$134,027.80), made by Borrower in favor of DB and any replacement or split notes made by Borrower in favor of DB, as each of the same may be further amended, restated, replaced, supplemented or otherwise modified from time to time.”

(x) Section 1.1 of the Original Loan Agreement is hereby amended to replace the definition of “Note A-4” in its entirety to read as follows:

“**Note A-4**” shall mean that certain Replacement, Amended and Restated Promissory Note A-4, dated as of May 1, 2020, in the principal amount of ONE HUNDRED THIRTY FOUR THOUSAND TWENTY SEVEN AND 80/100 DOLLARS (\$134,027.80), made by Borrower in favor of SocGen and any replacement or split notes made by Borrower in favor of SocGen, as each of the same may be further amended, restated, replaced, supplemented or otherwise modified from time to time.”

(xi) Section 1.1 of the Original Loan Agreement is hereby amended to add in the appropriate alphabetical order the following definition of “Note A-5”:

“**Note A-5**” shall mean that certain Replacement, Amended and Restated Promissory Note A-5, dated as of May 1, 2020, in the principal amount of SIX HUNDRED FIFTY THREE MILLION FOUR HUNDRED ELEVEN THOUSAND NINE HUNDRED FORTY FOUR AND 40/100 DOLLARS (\$653,411,944.40), made by Borrower in favor of Citi and any replacement or split notes made by Borrower in favor of Citi, as each of the same may be further amended, restated, replaced, supplemented or otherwise modified from time to time.”

(xii) Section 1.1 of the Original Loan Agreement is hereby amended to add in the appropriate alphabetical order the following definition of “Note A-6”:

“**Note A-6**” shall mean that certain Replacement, Amended and Restated Promissory Note A-6, dated as of May 1, 2020, in the principal amount of THREE HUNDRED TWENTY SIX MILLION SEVEN HUNDRED FIVE THOUSAND NINE HUNDRED SEVENTY TWO AND 20/100 DOLLARS (\$326,705,972.20), made by Borrower in favor of Barclays and any replacement or split notes made by Borrower in favor of Barclays, as each of the same may be further amended, restated, replaced, supplemented or otherwise modified from time to time.”

(xiii) Section 1.1 of the Original Loan Agreement is hereby amended to add in the appropriate alphabetical order the following definition of “Note A-7”:

“**Note A-7**” shall mean that certain Replacement, Amended and Restated Promissory Note A-7, dated as of May 1, 2020, in the principal amount of THREE HUNDRED TWENTY SIX MILLION SEVEN HUNDRED FIVE THOUSAND NINE HUNDRED SEVENTY TWO AND 20/100 DOLLARS (\$326,705,972.20), made by Borrower in favor of DB and any replacement or split notes made by Borrower in favor of DB, as each of the same may be further amended, restated, replaced, supplemented or otherwise modified from time to time.”

(xiv) Section 1.1 of the Original Loan Agreement is hereby amended to add in the appropriate alphabetical order the following definition of “Note A-8”:

“**Note A-8**” shall mean that certain Replacement, Amended and Restated Promissory Note A-8, dated as of May 1, 2020, in the principal amount of THREE HUNDRED TWENTY SIX MILLION SEVEN HUNDRED FIVE THOUSAND NINE HUNDRED SEVENTY TWO AND 20/100 DOLLARS (\$326,705,972.20), made by Borrower in favor of SocGen and any replacement or split notes made by Borrower in favor of SocGen, as each of the same may be further amended, restated, replaced, supplemented or otherwise modified from time to time.”

(xv) Section 1.1 of the Original Loan Agreement is hereby amended to replace the definition of “Note B” in its entirety to read as follows:

“**Note B**” shall mean, collectively, Note B-1, Note B-2, Note B-3, Note B-4, Note B-5, Note B-6, Note B-7 and Note B-8, as each of the foregoing may be further amended, restated, split, supplemented, modified, combined or replaced.”

(xvi) Section 1.1 of the Original Loan Agreement is hereby amended to replace the definition of “Note B Interest Rate” in its entirety to read as follows:

“**Note B Interest Rate**” means, with respect to each Note B, a rate equal to 3.558% per annum (or, when applicable pursuant to this Agreement or any other Loan Document, the Default Rate).”

(xvii) Section 1.1 of the Original Loan Agreement is hereby amended to replace the definition of “Note B-1” in its entirety to read as follows:

“**Note B-1**” shall mean that certain Replacement, Amended and Restated Promissory Note B-1, dated as of May 1, 2020, in the principal amount of ONE HUNDRED THIRTY ONE THOUSAND NINE HUNDRED FORTY FOUR AND 40/100 DOLLARS (\$131,944.40), made by Borrower in favor of Citi and any replacement or split notes made by Borrower in favor of Citi, as each of the same may be further amended, restated, replaced, supplemented or otherwise modified from time to time.”

(xviii) Section 1.1 of the Original Loan Agreement is hereby amended to replace the definition of “Note B-2” in its entirety to read as follows:

“**Note B-2**” shall mean that certain Replacement, Amended and Restated Promissory Note B-2, dated as of May 1, 2020, in the principal amount of SIXTY FIVE THOUSAND NINE HUNDRED SEVENTY TWO AND 20/100 DOLLARS (\$65,972.20), made by Borrower in favor of Barclays and any replacement or split notes made by Borrower in favor of Barclays, as each of the same may be further amended, restated, replaced, supplemented or otherwise modified from time to time.”

(xix) Section 1.1 of the Original Loan Agreement is hereby amended to replace the definition of “Note B-3” in its entirety to read as follows:

“**Note B-3**” shall mean that certain Replacement, Amended and Restated Promissory Note B-3, dated as of May 1, 2020, in the principal amount of SIXTY FIVE THOUSAND NINE HUNDRED SEVENTY TWO AND 20/100 DOLLARS (\$65,972.20), made by Borrower in favor of DB and any replacement or split notes made by Borrower in favor of DB, as each of the same may be further amended, restated, replaced, supplemented or otherwise modified from time to time.”

(xx) Section 1.1 of the Original Loan Agreement is hereby amended to replace the definition of “Note B-4” in its entirety to read as follows:

“**Note B-4**” shall mean that certain Replacement, Amended and Restated Promissory Note B-4, dated as of May 1, 2020, in the principal amount of SIXTY FIVE

THOUSAND NINE HUNDRED SEVENTY TWO AND 20/100 DOLLARS (\$65,972.20), made by Borrower in favor of SocGen and any replacement or split notes made by Borrower in favor of SocGen, as each of the same may be further amended, restated, replaced, supplemented or otherwise modified from time to time.”

(xxi) Section 1.1 of the Original Loan Agreement is hereby amended to add in the appropriate alphabetical order the following definition of “Note B-5”:

“**Note B-5**” shall mean that certain Replacement, Amended and Restated Promissory Note B-5, dated as of May 1, 2020, in the principal amount of THREE HUNDRED TWENTY ONE MILLION SIX HUNDRED TWENTY EIGHT THOUSAND FIFTY FIVE AND 60/100 DOLLARS (\$321,628,055.60), made by Borrower in favor of Citi and any replacement or split notes made by Borrower in favor of Citi, as each of the same may be further amended, restated, replaced, supplemented or otherwise modified from time to time.”

(xxii) Section 1.1 of the Original Loan Agreement is hereby amended to add in the appropriate alphabetical order the following definition of “Note B-6”:

“**Note B-6**” shall mean that certain Replacement, Amended and Restated Promissory Note B-6, dated as of May 1, 2020, in the principal amount of ONE HUNDRED SIXTY MILLION EIGHT HUNDRED FOURTEEN THOUSAND TWENTY SEVEN AND 80/100 DOLLARS (\$160,814,027.80), made by Borrower in favor of Barclays and any replacement or split notes made by Borrower in favor of Barclays, as each of the same may be further amended, restated, replaced, supplemented or otherwise modified from time to time.”

(xxiii) Section 1.1 of the Original Loan Agreement is hereby amended to add in the appropriate alphabetical order the following definition of “Note B- 7”:

“**Note B-7**” shall mean that certain Replacement, Amended and Restated Promissory Note B-7, dated as of May 1, 2020, in the principal amount of ONE HUNDRED SIXTY MILLION EIGHT HUNDRED FOURTEEN THOUSAND TWENTY SEVEN AND 80/100 DOLLARS (\$160,814,027.80), made by Borrower in favor of DB and any replacement or split notes made by Borrower in favor of DB, as each of the same may be further amended, restated, replaced, supplemented or otherwise modified from time to time.”

(xxiv) Section 1.1 of the Original Loan Agreement is hereby amended to add in the appropriate alphabetical order the following definition of “Note B-8”:

“**Note B-8**” shall mean that certain Replacement, Amended and Restated Promissory Note B-8, dated as of May 1, 2020, in the principal amount of ONE HUNDRED SIXTY MILLION EIGHT HUNDRED FOURTEEN THOUSAND TWENTY SEVEN AND 80/100 DOLLARS (\$160,814,027.80), made by Borrower in favor of SocGen and any replacement or split notes made by Borrower in favor of SocGen, as each of the same may be further amended, restated, replaced, supplemented or otherwise modified from time to time.”

(xxv) Section 1.1 of the Original Loan Agreement is hereby amended to add in the appropriate alphabetical order the following definition of “Note C”:

“**Note C**” shall mean, collectively, Note C-1, Note C-2, Note C-3 and Note C-4, as each of the foregoing may be amended, restated, split, supplemented, modified, combined or replaced.”

(xxvi) Section 1.1 of the Original Loan Agreement is hereby amended to add in the appropriate alphabetical order the following definition of “Note C Defeased Note”:

“**Note C Defeased Note**” shall have the meaning set forth in Section 2.8.1(a)(xii) hereof.”

(xxvii) Section 1.1 of the Original Loan Agreement is hereby amended to add in the appropriate alphabetical order the following definition of “Note C Interest Rate”:

“**Note C Interest Rate**” means, with respect to each Note C, a rate equal to 3.558% per annum (or, when applicable pursuant to this Agreement or any other Loan Document, the Default Rate).”

(xxviii) Section 1.1 of the Original Loan Agreement is hereby amended to add in the appropriate alphabetical order the following definition of “Note C Undefeased Note”:

“**Note C Undefeased Note**” shall have the meaning set forth in Section 2.8.1(a)(xii) hereof.”

(xxix) Section 1.1 of the Original Loan Agreement is hereby amended to add in the appropriate alphabetical order the following definition of “Note C-1”:

“**Note C-1**” shall mean that certain Replacement, Amended and Restated Promissory Note C-1, dated as of May 1, 2020, in the principal amount of TWO HUNDRED TWENTY FOUR MILLION FIVE HUNDRED SIXTY THOUSAND AND 00/100 DOLLARS (\$224,560,000.00), made by Borrower in favor of Citi and any replacement or split notes made by Borrower in favor of Citi, as each of the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.”

(xxx) Section 1.1 of the Original Loan Agreement is hereby amended to add in the appropriate alphabetical order the following definition of “Note C- 2”:

“**Note C-2**” shall mean that certain Replacement, Amended and Restated Promissory Note C-2, dated as of May 1, 2020, in the principal amount of ONE HUNDRED TWELVE MILLION TWO HUNDRED EIGHTY THOUSAND AND 00/100 DOLLARS (\$112,280,000.00), made by Borrower in favor of Barclays and any replacement or split notes made by Borrower in favor of Barclays, as each of the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.”

(xxxix) Section 1.1 of the Original Loan Agreement is hereby amended to add in the appropriate alphabetical order the following definition of “Note C-3”:

““**Note C-3**” shall mean that certain Replacement, Amended and Restated Promissory Note C-3, dated as of May 1, 2020, in the principal amount of ONE HUNDRED TWELVE MILLION TWO HUNDRED EIGHTY THOUSAND AND 00/100 DOLLARS (\$112,280,000.00), made by Borrower in favor of DB and any replacement or split notes made by Borrower in favor of DB, as each of the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.”

(xxxix) Section 1.1 of the Original Loan Agreement is hereby amended to add in the appropriate alphabetical order the following definition of “Note C-4”:

““**Note C-4**” shall mean that certain Replacement, Amended and Restated Promissory Note C-4, dated as of May 1, 2020, in the principal amount of ONE HUNDRED TWELVE MILLION TWO HUNDRED EIGHTY THOUSAND AND 00/100 DOLLARS (\$112,280,000.00), made by Borrower in favor of SocGen and any replacement or split notes made by Borrower in favor of SocGen, as each of the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.”

(xxxix)Section 2.4.4 of the Original Loan Agreement is hereby amended and restated in its entirety to read as follows:

“2.4.4 Application of Interest and Principal to the Notes. Provided no Event of Default has occurred and is continuing, (A) payments of interest on the Loan shall be applied by Lender on a pro-rata basis among Note A, Note B and Note C and such payments of interest shall be applied (i) with respect to Note A, on a pro rata and pari passu basis among each of Note A-1, Note A-2, Note A-3, Note A-4, Note A-5, Note A-6, Note A-7 and Note A-8, (ii) with respect to Note B, on a pro rata and pari passu basis among each of Note B-1, Note B-2, Note B-3, Note B-4, Note B- 5, Note B-6, Note B-7 and Note B-8, and (iii) with respect to Note C, on a pro rata and pari passu basis among each of Note C-1, Note C-2, Note C-3 and Note C-4 and (B) payments of principal shall be applied (i) first, to the reduction of the outstanding principal balance of each Note (other than any Accrued and Deferred Principal) comprising Note A, on a pro rata and pari passu basis, until the principal amount of each Note comprising Note A (other than any Accrued and Deferred Principal associated with such Notes comprising Note A) is reduced to zero, (ii) second, to the reduction of the outstanding principal balance of each Note (other than any Accrued and Deferred Principal) comprising Note B, on a pro rata and pari passu basis, until the principal amount of each Note comprising Note B (other than any Accrued and Deferred Principal associated with such Notes comprising Note B) is reduced to zero, (iii) third, to the reduction of the outstanding principal balance of each Note (other than any Accrued and Deferred Principal) comprising Note C, on a pro rata and pari passu basis, until the principal amount of each Note comprising Note C (other than any Accrued and Deferred Principal associated with such Notes comprising Note C) is reduced to zero, (iv) fourth, to the reduction of the Accrued and Deferred Principal of each Note comprising Note A, on a pro rata and pari passu basis, until the Accrued and Deferred Principal amount of each Note comprising Note A is reduced to zero, (v) fifth, to the reduction of the Accrued and Deferred Principal of each Note

comprising Note B, on a pro rata and pari passu basis, until the Accrued and Deferred Principal amount of each Note comprising Note B is reduced to zero and (vi) sixth, to the reduction of the Accrued and Deferred Principal of each Note comprising Note C, on a pro rata and pari passu basis, until the Accrued and Deferred Principal amount of each Note comprising Note C is reduced to zero. Notwithstanding anything herein to the contrary, during the continuance of any Event of Default, any payment of interest and/or principal from whatever source may be applied by Lender among the Notes in Lender's sole discretion."

(xxxiv) Section 2.8.1(a)(xii) of the Original Loan Agreement is hereby amended and restated in its entirety to read as follows:

"(xii) In connection with a Partial Defeasance Event, the Notes shall be defeased sequentially relative to each Note in accordance with Section 2.4.4 hereof (as if such Partial Defeasance Event is a prepayment hereunder). Subject to the preceding sentence, Lender shall prepare and Borrower shall execute all necessary documents to modify this Agreement and to amend and restate (A) each Note A and issue two substitute notes for each Note A, one note having a principal balance equal to the pro rata portion of the Release Amount (or, in the event of a Third Party Waived DSCR Release, the Third Party Waived DSCR Release Price) (or, in each instance, applicable portion thereof) for the applicable Release Property relative to the principal amount of such Note A (each, a "**Note A Defeased Note**"), and the other note having a principal balance equal to the excess of (1) the principal amount of such Note A existing immediately prior to the applicable Partial Defeasance Event, over (2) the amount of the related Note A Defeased Note (each, a "**Note A Undefeased Note**"), (B) each Note B and issue two substitute notes for each Note B, one note having a principal balance equal to the pro rata portion of the Release Amount (or, in the event of a Third Party Waived DSCR Release, the Third Party Waived DSCR Release Price) (or, in each instance, applicable portion thereof) for the applicable Release Property relative to the principal amount of such Note B (each, a "**Note B Defeased Note**") and the other note having a principal balance equal to the excess of (1) the principal amount of such Note B existing immediately prior to the applicable Partial Defeasance Event, over (2) the amount of the related Note B Defeased Note (each, a "**Note B Undefeased Note**") and (C) each Note C and issue two substitute notes for each Note C, one note having a principal balance equal to the pro rata portion of the Release Amount (or, in the event of a Third Party Waived DSCR Release, the Third Party Waived DSCR Release Price) (or, in each instance, applicable portion thereof) for the applicable Release Property relative to the principal amount of such Note C (each, a "**Note C Defeased Note**" and together with the Note A Defeased Note and Note B Defeased Note, individually and/or collectively, as the context may require, the "**Defeased Note**"), and the other note having a principal balance equal to the excess of (1) the principal amount of such Note C existing immediately prior to the applicable Partial Defeasance Event, over (2) the amount of the related Note C Defeased Note (each, a "**Note C Undefeased Note**", and together with the Note A Undefeased Note and the Note B Undefeased Note, individually and/or collectively, as the context may require, the "**Undefeased Note**"). Each Defeased Note and the related Undefeased Note shall have identical terms as the applicable original Note except for the principal balance. Notwithstanding anything to the contrary contained herein or in the other Loan Documents, the Defeased Note and the Undefeased Note shall not be cross-defaulted or cross-collateralized

unless the Rating Agencies or Lender shall require otherwise. A Defeased Note may not be the subject of any further defeasance; and”

(xxxv) Section 5.1.15(a) of the Original Loan Agreement is hereby amended and restated in its entirety to read as follows:

“5.1.15 Estoppel Statement. (a) After written request by Lender, Borrower shall within ten (10) Business Days furnish Lender with a statement, duly acknowledged and certified, setting forth (i) the original principal amount of the Note, (ii) the unpaid principal amount of the Note, (iii) the Interest Rate of the Loan (including Note A, Note B and Note C), (iv) the date installments of interest and/or principal were last paid, (v) any offsets or defenses to the payment of the Debt, if any, claimed by Borrower, and (vi) that the Note, this Agreement, each Mortgage and the other Loan Documents are valid, legal and binding obligations and have not been modified or if modified, giving particulars of such modification; provided, however, that so long as no Event of Default has occurred and is continuing, Borrower shall not be required to provide such statement more than one (1) time in any calendar year.”

(xxxvi)Section 7.5.2(a) of the Original Loan Agreement is hereby amended and restated in its entirety to read as follows:

“(a) Prior to the Anticipated Repayment Date and during a DSCR Trigger Period, so long as (x) no Event of Default has occurred and is continuing and (y) no OpCo Trigger Event has occurred and is continuing, upon written request of Borrower, Lender shall disburse within three (3) Business Days of Borrower’s request and no more frequently than bimonthly, Excess Cash Flow Reserve Funds for:

(1) for so long as the Property is subject to the MGM/Mandalay Lease, without duplication of any amounts disbursed pursuant to subclause (a)(2), below, (i) Debt Service and/or Mezzanine Loan Debt Service, (ii) voluntary prepayment of the (A) Loan in accordance with Section 2.4.1, Section 2.5.1 or Section 6.4(c) hereof (including payment of any costs incurred with a Defeasance Event and/or the Yield Maintenance Premium) or (B) Mezzanine Loan in accordance with Section 2.4.1, Section 2.5.1 or Section 6.4(c) thereof (including payment of any costs incurred with a Defeasance Event and/or the Yield Maintenance Premium) (provided such prepayment is made pro rata between the Loan and the Mezzanine Loan), (iii) principal prepayments of the Loan in the amount necessary to achieve a DSCR Cure (which shall be applied to Note A, Note B and Note C in accordance with Section 2.4.4 hereof), (iv) costs associated with the MGM/Mandalay Lease, (v) any fees and costs payable by Borrower, including to Lender, subject to and in compliance with the Loan Documents, including, without limitation costs to extend any PLL Policy or renew, extend or purchase a Letter of Credit, (vi) legal, audit, tax and accounting (including actual costs incurred by MGP OP or BREIT OP (directly or indirectly) and its service providers for back-office accounting and for costs associated with any Individual Property or Borrower); provided that Excess Cash Flow shall not be used for expenses in connection with (A) the enforcement of any Borrower’s rights under

the Loan Documents, as applicable or (B) any defense of any enforcement by Lender of its rights under the Loan Documents, (vii) Permitted REIT Distributions and (viii) such other items as reasonably approved by Lender; or

(2) for so long as the Property is not subject to the MGM/Mandalay Lease, without duplication of any amounts disbursed pursuant to subclause (a)(i), above, (i) payment of any Operating Expenses (including management fees, franchise fees and other fees, charges or costs, payable to Casino Operator under the Casino Management Agreement, Manager under the Management Agreement or Franchisor/Licensors under the Franchise/License Agreement), (ii) emergency repairs and/or life safety issues (including any Capital Expenditures) at the applicable Individual Property which Lender will endeavor to fund within one (1) Business Day of Borrower's request therefor, (iii) Capital Expenditures, Replacements, PIP Work and Brand Mandated Work (iv) Hotel Taxes and Custodial Funds, (v) costs incurred in connection with the purchase of any FF&E, (vi) intentionally omitted, (vii) voluntary prepayment of the (A) Loan in accordance with Section 2.4.1, Section 2.5.1 or Section 6.4(c) hereof (including payment of any costs incurred with a Defeasance Event and/or the Yield Maintenance Premium) or (B) Mezzanine Loan in accordance with Section 2.4.1, Section 2.5.1 or Section 6.4(c) thereof (including payment of any costs incurred with a Defeasance Event and/or the Yield Maintenance Premium) (provided such prepayment is made pro rata between the Loan and the Mezzanine Loan), (viii) legal, audit, tax and accounting (including actual costs incurred by MGP OP or BREIT OP (directly or indirectly) and its service providers for back-office accounting and for costs associated with the applicable Individual Property or Borrower); provided that Excess Cash Flow shall not be used for expenses in connection with (A) the enforcement of Borrower's rights under the Loan Documents, as applicable or (B) any defense of any enforcement by Lender of its rights under the Loan Documents, (ix) costs incurred in connection with the renewal, extension or purchase of a Letter of Credit, (x) costs of Restoration in excess of available Net Proceeds, (xi) Debt Service and/or Mezzanine Loan Debt Service, (xii) any fees and costs payable by Borrower, including to Lender, subject to and in compliance with the Loan Documents, including, without limitation costs to extend any PLL Policy, (xiii) costs associated with the MGM/Mandalay Lease, existing Leases or any new Leases entered into pursuant to the terms of this Agreement, including costs related to tenant improvement allowances, leasing commissions, Tenant related Capital Expenditures, tenant inducement payments and relocation costs, vacant space preparation costs and marketing costs with respect to potential leasing at any Individual Property, (xiv) principal prepayments of the Loan or Mezzanine Loan in the amount necessary to achieve a DSCR Cure (which, with respect to the Loan, shall be applied to Note A, Note B and Note C in accordance with Section 2.4.4 hereof), (xv) Approved Alterations, (xvi) payment of shortfalls in the required deposits into the Reserve Accounts (in each case, to the extent required in this Agreement and/or the Cash

Management Agreement), (xvii) Permitted REIT Distributions and (xviii) such other items as reasonably approved by Lender.

Provided no Event of Default has occurred and is continuing, on each Payment Date occurring after the Anticipated Repayment Date, all funds in the Excess Cash Flow Reserve Account shall be applied by Lender (x) first, toward the Additional Interest Amount in accordance with Section 2.3.i(b) hereof and (y) second, to reduce the outstanding principal balance of the Loan, in each case, on a dollar-for-dollar basis in accordance with Section 2.4.4 hereof.”

(xxxvii) The sample calculation of the Debt Service Coverage Ratio as shown on Exhibit C of the Original Loan Agreement is hereby replaced in its entirety with the sample calculation of the Debt Service Coverage Ratio attached hereto as Exhibit A.

Section II. Amendment to Other Loan Documents. Each of the Loan Documents (other than the Loan Agreement) is hereby amended such that (i) each reference in any of the Loan Documents (other than the Loan Agreement) to the defined terms Adjusted Interest Rate, Closing Date Debt Service Coverage Ratio, Initial Interest Rate, Note, Note A, Note A Interest Rate, Note A-1, Note A-2, Note A-3, Note A-4, Note B, Note B Interest Rate, Note B-1, Note B-2, Note B-3 and Note B-4, which defined terms have been modified pursuant to this Amendment shall be deemed to be a reference to each such defined term as so modified, (ii) each reference in any of the Loan Documents to Exhibit C of the Loan Agreement, which has been modified pursuant to this Amendment, shall be deemed to be a reference to the exhibit as so modified, and (iii) each reference to the Loan Agreement shall mean the Original Loan Agreement, as modified pursuant to the terms of this Amendment.

Section III. Reaffirmation of Guaranty. In connection with this Amendment, Guarantor hereby:

(a) Consents to and acknowledges this Amendment and acknowledges and agrees that this Amendment shall not impair, reduce or adversely affect the nature of the obligations of Guarantor under the Guaranty.

(b) Warrants and represents that there are no defenses, offsets or counterclaims with respect to its obligations under the Guaranty.

(c) Acknowledges that the Guaranty and the obligations of Guarantor contained in the Guaranty are continuing and in full force and effect.

(d) Hereby reaffirms the Guaranty and its obligations thereunder, and acknowledges that this reaffirmation of the Guaranty is for the benefit of Lender.

Section IV. Reaffirmation of Environmental Indemnity. In connection with this Amendment, Borrower hereby:

(a) Consents to and acknowledges this Amendment and acknowledges and agrees that this Amendment shall not impair, reduce or adversely affect the nature of the obligations of Borrower under the Environmental Indemnity.

(b) Warrants and represents that there are no defenses, offsets or counterclaims with respect to its obligations under the Environmental Indemnity.

(c) Acknowledges that the Environmental Indemnity and the obligations of Borrower contained in the Environmental Indemnity are continuing and in full force and effect.

(d) Hereby reaffirms the Environmental Indemnity and its obligations thereunder, and acknowledges that this reaffirmation of the Environmental Indemnity is for the benefit of Lender.

Section V. No Offset. Borrower hereby waives all offsets, defenses and claims it may have against Lender that accrued on or before the date hereof.

Section VI. No Waiver. The execution, delivery and effectiveness of this Amendment shall not, except to the extent expressly provided herein, operate as a waiver of any right, power or remedy of any of Lender, Borrower, any other Loan Party or Guarantor under the Loan Agreement or any of the other Loan Documents, nor constitute a waiver of any provision of the Loan Agreement or any of the other Loan Documents by any of the parties hereto.

Section VII. No Presumption Against Party Drafting Amendment. Should any provision of this Amendment require judicial interpretation, it is agreed that a court interpreting or construing the same shall not apply a presumption that the terms hereof shall be more strictly construed against any party by reason of the rule of construction that a document is to be construed more strictly against the party who itself or through its agent prepared or drafted the same, it being agreed that all parties to this Amendment participated in the preparation hereof.

Section VIII. Successors and Assigns. This Amendment shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns.

Section IX. Ratification. Borrower and Lender hereby ratify and confirm the Loan Agreement, as modified hereby. Except as modified and amended by this Amendment, the Loan, the Loan Agreement and the other Loan Documents and the respective obligations of Lender and Borrower thereunder shall be and remain unmodified and in full force and effect.

Section X. No Further Modification. No further modification, amendment, extension, discharge, termination or waiver hereof shall be effective unless the same shall be in a writing signed by the party against whom enforcement is sought, and then such waiver or consent shall be effective only in the specific instance, and for the purpose, for which given.

Section XI. Governing Law. This Amendment shall be construed and enforced in accordance with the laws of the State of New York. If any provision hereof is not enforceable, the remaining provisions of this Amendment shall be enforced in accordance with their terms.

Section XII. Counterparts; Electronic Signatures. This Amendment may be executed in any number of counterparts, all of which taken together shall constitute one and the same instrument. Delivery of an executed counterpart of a signature page of this Amendment by telecopy or in a .PDF via email shall be effective as delivery of a manually executed counterpart of this Amendment.

Section XIII. References to Loan Agreement. All references in the Loan Documents to the Loan Agreement shall mean the Loan Agreement as hereby modified herein.

Section XIV. Entire Agreement. This Amendment constitutes the entire agreement between Borrower and Lender with respect to subject matter hereof and supersedes all other prior agreements and understandings, both written and oral, among the parties with respect to the subject matter hereof.

Section XV. Incorporation of Recitals; Defined Terms. The recitals hereto are hereby incorporated into this Amendment as if fully set forth herein. All capitalized terms used herein and not otherwise defined herein shall have the respective meanings set forth in the Loan Agreement.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be duly executed by their duly authorized representatives, all as of the day and year first written above.

BORROWER:

**MANADALAY PROPCO, LLC,
MGM GRAND PROPCO, LLC,**
each a Delaware limited liability company

By: /s/ Qahir Madhany
Name: Qahir Madhany
Title: Authorized Signatory

[Signature Page to Second Amendment to Loan Agreement and Other Loan Documents]

LENDER:

CITI REAL ESTATE FUNDING INC.

By: /s/ Harry Kramer
Name: Harry Kramer
Title: Vice President

[Signature Page to Second Amendment to Loan Agreement and Other Loan Documents]

BARCLAYS CAPITAL REAL ESTATE INC.

By: /s/ Sabrina J. Khabie
Name: Sabrina J. Khabie
Title: Authorized Signatory

[Signature Page to Second Amendment to Loan Agreement and Other Loan Documents]

**DEUTSCHE BANK AG, NEW YORK
BRANCH**

By: /s/ Stephen H. Choe
Name: Stephen H. Choe
Title: Managing Director

By: /s/ Eugene Kim
Name: Eugene Kim
Title: Director

[Signature Page to Second Amendment to Loan Agreement and Other Loan Documents]

**SOCIÉTÉ GÉNÉRALE FINANCIAL
CORPORATION**

By: /s/ Kevin Kelley
Name: Kevin Kelley
Title: Vice President

[Signature Page to Second Amendment to Loan Agreement and Other Loan Documents]

ADMINISTRATIVE AGENT:

CITI REAL ESTATE FUNDING INC.

By: /s/ Harry Kramer

Name: Harry Kramer

Title: Vice President

[Signature Page to Second Amendment to Loan Agreement and Other Loan Documents]

The undersigned hereby acknowledges and consents to Section III of this Second Amendment to Loan Agreement and Other Loan Documents.

GUARANTOR:

BREIT OPERATING PARTNERSHIP, L.P.,
a Delaware limited partnership

By: Blackstone Real Estate Income Trust Inc.,
a Maryland corporation, its general partner

By: /s/ Jacob Werner
Name: Jacob Werner
Title: Authorized Person

[Signature Page to Second Amendment to Loan Agreement and Other Loan Documents]

MGM GROWTH PROPERTIES OPERATING PARTNERSHIP LP, a
Delaware limited partnership

By: MGM Growth Properties OP GP LLC, a
Delaware limited liability company, its
general partner

By: /s/ Andy Chien
Name: Andy Chien
Title: Chief Financial Officer and Treasurer

[Signature Page to Second Amendment to Loan Agreement and Other Loan Documents]

THIRD AMENDMENT TO LOAN AGREEMENT AND OTHER LOAN DOCUMENTS

Dated as of July 15, 2020

among

MANDALAY PROPCO, LLC and MGM GRAND PROPCO, LLC,
collectively, as Borrower

and

WILMINGTON TRUST, NATIONAL ASSOCIATION, in its capacity as trustee on behalf of
the holders of BX Commercial Mortgage Trust 2020-VIVA, Commercial Mortgage Pass-
Through Certificates, Series 2020-VIVA, and on behalf of the holders of the Notes, as Lender

THIRD AMENDMENT TO LOAN AGREEMENT AND OTHER LOAN DOCUMENTS

THIS THIRD AMENDMENT TO LOAN AGREEMENT AND OTHER LOAN DOCUMENTS, dated as of July 15, 2020 (this "Amendment"), is by and among WILMINGTON TRUST, NATIONAL ASSOCIATION, in its capacity as trustee on behalf of the holders of BX Commercial Mortgage Trust 2020-VIVA, Commercial Mortgage Pass-Through Certificates, Series 2020-VIVA, and on behalf of the holders of the Notes, having an address at 1100 North Market Street, Wilmington, Delaware 19890 (together with its successors and/or assigns, "Lender"), MANDALAY PROPCO, LLC, a Delaware limited liability company ("Mandalay Bay Borrower") and MGM GRAND PROPCO, LLC, a Delaware limited liability company ("MGM Grand Borrower"), each having its principal place of business at 1980 Festival Plaza Drive, Suite 750, Las Vegas, NV 89135 (each an "Individual Borrower" and collectively and/or individually, as the context may require, "Borrower"). All capitalized terms not defined herein shall have the respective meanings set forth in the Loan Agreement (as defined below).

WITNESSETH:

WHEREAS, Citi Real Estate Funding Inc., a New York corporation (together with its successors and/or assigns, "Citi"), Barclays Capital Real Estate Inc, a Delaware corporation (together with its successors and/or assigns, "Barclays"), Deutsche Bank AG, New York Branch, a branch of Deutsche Bank AG, a German Bank, authorized by the New York Department of Financial Services (together with its successors, assigns and/or alternate branches, "DB"), Société Générale Financial Corporation (together with its successors and/or assigns, "SocGen" and, collectively with Citi, Barclays, DB and each of their respective successors and/or assigns, collectively, "Original Lender") made a loan in the outstanding principal amount of Three Billion Dollars (\$3,000,000,000) (the "Loan") to Borrower pursuant to that certain Loan Agreement, dated as of February 14, 2020, by and among Borrower, Original Lender and Citi Real Estate Funding Inc., as agent for Original Lender (in such capacity, together with its successors and/or assigns, "Administrative Agent") (the "Initial Loan Agreement");

WHEREAS, on March 30, 2020, Borrower, Original Lender and Administrative Agent entered into that certain First Amendment to Loan Agreement and Other Loan Documents (the "First Amendment");

WHEREAS, on May 1, 2020, Borrower, Original Lender and Administrative Agent entered into that certain Second Amendment to Loan Agreement and Other Loan Documents (the "Second Amendment"; together with the Initial Loan Agreement, the First Amendment and the Second Amendment collectively, the "Original Loan Agreement");

WHEREAS, on May 14, 2020, Original Lender and/or certain affiliates thereof assigned certain interests in the Loan and the Loan Documents to Lender; and

WHEREAS, Borrower and Lender now desire to further amend the Original Loan Agreement (the Original Loan Agreement, as further amended by this Amendment, and as the same may be further amended replaced, restated, supplemented or otherwise modified from time to time, the "Loan Agreement") and certain other Loan Documents, each as more specifically set forth herein.

NOW, THEREFORE, in consideration of the agreements set forth in this Amendment and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the parties hereto, the parties hereto hereby agree as follows.

A G R E E M E N T:

Section I. Modification to Original Loan Agreement.

(i) Section 1.1 of the Original Loan Agreement is hereby amended to replace the definition of “Note A” in its entirety to read as follows:

““Note A” shall mean, collectively, Note A-1, Note A-2, Note A-3, Note A-4, Note A-5, Note A-6, Note A-7, Note A-8, Note A-9, Note A-10, Note A-11 and Note A-12, as each of the foregoing may be further amended, restated, split, supplemented, modified, combined or replaced.”

(ii) Section 1.1 of the Original Loan Agreement is hereby amended to replace the definition of “Note A-5” in its entirety to read as follows:

““Note A-5” shall mean that certain Replacement, Second Amended and Restated Promissory Note A-5, dated as of July 15, 2020, in the principal amount of THREE HUNDRED SEVENTEEN THOUSAND NINE HUNDRED FORTY FOUR AND 40/100 DOLLARS (\$317,944.40), made by Borrower in favor of Citi and any replacement or split notes made by Borrower in favor of Citi, as each of the same may be further amended restated, replaced, supplemented or otherwise modified from time to time.”

(iii) Section 1.1 of the Original Loan Agreement is hereby amended to replace the definition of “Note A-6” in its entirety to read as follows:

““Note A-6” shall mean that certain Replacement, Second Amended and Restated Promissory Note A-6, dated as of July 15, 2020, in the principal amount of ONE HUNDRED FIFTY EIGHT THOUSAND NINE HUNDRED SEVENTY TWO AND 20/100 DOLLARS (\$158,972.20), made by Borrower in favor of Barclays and any replacement or split notes made by Borrower in favor of Barclays, as each of the same may be further amended, restated, replaced, supplemented or otherwise modified from time to time.”

(iv) Section 1.1 of the Original Loan Agreement is hereby amended to replace the definition of “Note A-7” in its entirety to read as follows:

““Note A-7” shall mean that certain Replacement, Second Amended and Restated Promissory Note A-7, dated as of July 15, 2020, in the principal amount of ONE HUNDRED FIFTY EIGHT THOUSAND NINE HUNDRED SEVENTY TWO AND 20/100 DOLLARS (\$158,972.20), made by Borrower in favor of DB and any replacement or split notes made by Borrower in favor of DB, as each of the same may be further amended restated, replaced, supplemented or otherwise modified from time to time.”

(v) Section 1.1 of the Original Loan Agreement is hereby amended to replace the definition of “Note A-8” in its entirety to read as follows:

““Note A-8” shall mean that certain Replacement, Second Amended and Restated Promissory Note A-8, dated as of July 15, 2020, in the principal amount of ONE HUNDRED

FIFTY EIGHT THOUSAND NINE HUNDRED SEVENTY TWO AND 20/100 DOLLARS (\$158,972.20), made by Borrower in favor of SocGen and any replacement or split notes made by Borrower in favor of SocGen, as each of the same may be further amended, restated, replaced, supplemented or otherwise modified from time to time.”

(vi) Section 1.1 of the Original Loan Agreement is hereby amended to add in the appropriate alphabetical order the following definition of “Note A-9”:

““Note A-9” shall mean that certain Replacement, Amended and Restated Promissory Note A-9, dated as of July 15, 2020, in the principal amount of SIX HUNDRED FIFTY THREE MILLION NINETY FOUR THOUSAND AND 00/100 DOLLARS (\$653,094,000.00), made by Borrower in favor of Citi and any replacement or split notes made by Borrower in favor of Citi, as each of the same may be further amended, restated, replaced, supplemented or otherwise modified from time to time.”

(vii) Section 1.1 of the Original Loan Agreement is hereby amended to add in the appropriate alphabetical order the following definition of “Note A-10”:

““Note A-10” shall mean that certain Replacement, Amended and Restated Promissory Note A-10, dated as of July 15, 2020, in the principal amount of THREE HUNDRED TWENTY SIX MILLION FIVE HUNDRED FORTY SEVEN THOUSAND AND 00/100 DOLLARS (\$326,547,000.00), made by Borrower in favor of Barclays and any replacement or split notes made by Borrower in favor of Barclays, as each of the same may be further amended, restated, replaced, supplemented or otherwise modified from time to time.”

(viii) Section 1.1 of the Original Loan Agreement is hereby amended to add in the appropriate alphabetical order the following definition of “Note A-11”:

““Note A-11” shall mean that certain Replacement, Amended and Restated Promissory Note A-11, dated as of July 15, 2020, in the principal amount of THREE HUNDRED TWENTY SIX MILLION FIVE HUNDRED FORTY SEVEN THOUSAND AND 00/100 DOLLARS (\$326,547,000.00), made by Borrower in favor of DB and any replacement or split notes made by Borrower in favor of DB, as each of the same may be further amended, restated, replaced, supplemented or otherwise modified from time to time.”

(ix) Section 1.1 of the Original Loan Agreement is hereby amended to add in the appropriate alphabetical order the following definition of “Note A-12”:

““Note A-12” shall mean that certain Replacement Amended and Restated Promissory Note A-12, dated as of July 15, 2020, in the principal amount of THREE HUNDRED TWENTY SIX MILLION FIVE HUNDRED FORTY SEVEN THOUSAND AND 00/100 DOLLARS (\$326,547,000.00), made by Borrower in favor of SocGen and any replacement or split notes made by Borrower in favor of SocGen, as each of the same may be further and, restated, replaced, supplemented or otherwise modified from time to time.”

(x) Section 1.1 of the Original Loan Agreement is hereby amended to delete the definitions of “Note B-1”, “Note B-2”, “Note B-3”, “Note B-4”, “Note B-5”, “Note B-6”, “Note B-7”, “Note B-8”, “Note B Defeased Note” and “Note B Undefeased Note” in their entirety.

(xi) Section 1.1 of the Original Loan Agreement is hereby amended to replace the definition of “Note B” in its entirety to read as follows:

““Note B” shall mean, collectively, Note B (Senior) and Note B (Junior).”

(xii) Section 1.1 of the Original Loan Agreement is hereby amended to add in the appropriate alphabetical order the following definition of “Note B (Junior)”:

““Note B (Junior)” shall mean, collectively, Note B-1-B, Note B-2-B, Note B-3-B, Note B-4-B, Note B-5-B, Note B-6-B, Note B-7-B and Note B-8-B, as each of the foregoing may be further amended, restated, split supplemented modified, combined or replaced.”

(xiii) Section 1.1 of the Original Loan Agreement is hereby amended to add in the appropriate alphabetical order the following definition of “Note B (Junior) Defeased Note”:

““Note B (Junior) Defeased Note” shall have the meaning set forth in Section 2.8.1(a)(xii) hereof.”

(xiv) Section 1.1 of the Original Loan Agreement is hereby amended to add in the appropriate alphabetical order the following definition of “Note B (Junior) Undefeased Note”:

““Note B (Junior) Undefeased Note” shall have the meaning set forth in Section 2.8.1(a)(xii) hereof.”

(xv) Section 1.1 of the Original Loan Agreement is hereby amended to add in the appropriate alphabetical order the following definition of “Note B (Senior)”:

““Note B (Senior)” shall mean, collectively, Note B-1-A, Note B-2-A, Note B-3-A, Note B-4-A, Note B-5-A, Note B-6-A, Note B-7-A, Note B-8-A, Note B-9-A, Note B-10-A, Note B-11-A and Note B-12-A, as each of the foregoing may be further amended, restated, split supplemented, modified, combined or replaced.”

(xvi) Section 1.1 of the Original Loan Agreement is hereby amended to add in the appropriate alphabetical order the following definition of “Note B (Senior) Defeased Note”:

““Note B (Senior) Defeased Note” shall have the meaning set forth in Section 2.8.1(a)(xii) hereof.”

(xvii) Section 1.1 of the Original Loan Agreement is hereby amended to add in the appropriate alphabetical order the following definition of “Note B (Senior) Undefeased Note”:

““Note B (Senior) Undefeased Note” shall have the meaning set forth in Section 2.8.1(a)(xii) hereof.”

(xviii) Section 1.1 of the Original Loan Agreement is hereby amended to add in the appropriate alphabetical order the following definition of “Note B-1-A”:

““Note B-1-A” shall mean that certain Replacement, Amended and Restated Promissory Note B-1-A, dated as of July 15, 2020, in the principal amount of SEVENTY THOUSAND FIVE HUNDRED FORTY EIGHT AND 60/100 DOLLARS (\$70,548.60), made by Borrower in favor of Wilmington Trust and any replacement or split notes made by Borrower in favor of Wilmington Trust, as each of the same may be further amended, restated, replaced, supplemented or otherwise modified from time to time.”

(xix) Section 1.1 of the Original Loan Agreement is hereby amended to add in the appropriate alphabetical order the following definition of “Note B- 2-A”:

““Note B-2-A” shall mean that certain Replacement, Amended and Restated Promissory Note B-2-A, dated as of July 15, 2020, in the principal amount of THIRTY FIVE THOUSAND TWO HUNDRED SEVENTY FOUR AND 30/100 DOLLARS (\$35,274.30), made by Borrower in favor of Wilmington Trust and any replacement or split notes made by Borrower in favor of Wilmington Trust, as each of the same may be further amended, restated, replaced, supplemented or otherwise modified from time to time.”

(xx) Section 1.1 of the Original Loan Agreement is hereby amended to add in the appropriate alphabetical order the following definition of “Note B-3-A”:

““Note B-3-A” shall mean that certain Replacement, Amended and Restated Promissory Note B-3-A, dated as of July 15, 2020, in the principal amount of THIRTY FIVE THOUSAND TWO HUNDRED SEVENTY FOUR AND 30/100 DOLLARS (\$35,274.30), made by Borrower in favor of Wilmington Trust and any replacement or split notes made by Borrower in favor of Wilmington Trust, as each of the same may be further amended, restated, replaced, supplemented or otherwise modified from time to time.”

(xxi) Section 1.1 of the Original Loan Agreement is hereby amended to add in the appropriate alphabetical order the following definition of “Note B-4-A”:

““Note B-4-A” shall mean that certain Replacement, Amended and Restated Promissory Note B-4-A, dated as of July 15, 2020, in the principal amount of THIRTY FIVE THOUSAND TWO HUNDRED SEVENTY FOUR AND 30/100 DOLLARS (\$35,274.30), made by Borrower in favor of Wilmington Trust and any replacement or split notes made by Borrower in favor of Wilmington Trust, as each of the same may be further amended, restated, replaced, supplemented or otherwise modified from time to time.”

(xxii) Section 1.1 of the Original Loan Agreement is hereby amended to add in the appropriate alphabetical order the following definition of “Note B-5-A”:

““Note B-5-A” shall mean that certain Replacement, Amended and Restated Promissory Note B-5-A, dated as of July 15, 2020, in the principal amount of EIGHTY THREE THOUSAND FOUR HUNDRED FIFTY ONE AND 40/100 DOLLARS (\$83,451.40), made by Borrower in favor of Citi and any replacement or split notes made by Borrower in favor of Citi, as each of the same may be further amended, restated, replaced, supplemented or otherwise modified from time to time.”

(xxiii) Section 1.1 of the Original Loan Agreement is hereby amended to add in the appropriate alphabetical order the following definition of “Note B-6-A”:

““Note B-6-A” shall mean that certain Replacement, Amended and Restated Promissory Note B-6-A, dated as of July 15, 2020, in the principal amount of FORTY ONE THOUSAND SEVEN HUNDRED TWENTY FIVE AND 70/100 DOLLARS (\$41,725.70), made by Borrower in favor of Barclays and any replacement or split notes made by Borrower in favor of Barclays, as each of the same may be further amended, restated, replaced, supplemented or otherwise modified from time to time.”

(xxiv) Section 1.1 of the Original Loan Agreement is hereby amended to add in the appropriate alphabetical order the following definition of “Note B- 7-A”:

““Note B-7-A” shall mean that certain Replacement, Amended and Restated Promissory Note B-7-A, dated as of July 15, 2020, in the principal amount of FORTY ONE THOUSAND SEVEN HUNDRED TWENTY FIVE AND 70/100 DOLLARS (\$41,725.70), made by Borrower in favor of DB and any replacement or split notes made by Borrower in favor of DB, as each of the same may be further amended, restated, replaced, supplemented or otherwise modified from time to time”

(xxv) Section 1.1 of the Original Loan Agreement is hereby amended to add in the appropriate alphabetical order the following definition of “Note B-8-A”:

““Note B-8-A” shall mean that certain Replacement, Amended and Restated Promissory Note B-8-A, dated as of July 15, 2020, in the principal amount of FORTY ONE THOUSAND SEVEN HUNDRED TWENTY FIVE AND 70/100 DOLLARS (\$41,725.70), made by Borrower in favor of SocGen and any replacement or split notes made by Borrower in favor of SocGen, as each of the same may be further amended, restated, replaced, supplemented or otherwise modified from time to time.”

(xxvi) Section 1.1 of the Original Loan Agreement is hereby amended to add in the appropriate alphabetical order the following definition of “Note B-9-A”:

““Note B-9-A” shall mean that certain Replacement, Amended and Restated Promissory Note B-9-A, dated as of July 15, 2020, in the principal amount of ONE HUNDRED SEVENTY ONE MILLION EIGHT HUNDRED EIGHTY SIX THOUSAND AND 00/100 DOLLARS (\$171,886,000.00), made by Borrower in favor of Citi and any replacement or split notes made by Borrower in favor of Citi, as each of the same may be further amended, restated, replaced, supplemented or otherwise modified from time to time.”

(xxvii) Section 1.1 of the Original Loan Agreement is hereby amended to add in the appropriate alphabetical order the following definition of “Note B-10-A”:

““Note B-10-A” shall mean that certain Replacement, Amended and Restated Promissory Note B-10-A, dated as of July 15, 2020, in the principal amount of EIGHTY FIVE MILLION NINE HUNDRED FORTY THREE THOUSAND AND 00/100 DOLLARS (\$85,943,000.00), made by Borrower in favor of Barclays and any replacement or split notes made by Borrower in favor of Barclays, as each of the same may be further amended, restated, replaced, supplemented or otherwise modified from time to time.”

(xxviii) Section 1.1 of the Original Loan Agreement is hereby amended to add in the appropriate alphabetical order the following definition of “Note B-11-A”:

““Note B-11-A” shall mean that certain Replacement, Amended and Restated Promissory Note B-11-A, dated as of July 15, 2020, in the principal amount of EIGHTY FIVE MILLION NINE HUNDRED FORTY THREE THOUSAND AND 00/100 DOLLARS (\$85,943,000.00), made by Borrower in favor of DB and any replacement or split notes made by Borrower in favor of DB, as each of the same may be further amended, restated, replaced, supplemented or otherwise modified from time to time.”

(xxix) Section 1.1 of the Original Loan Agreement is hereby amended to add in the appropriate alphabetical order the following definition of “Note B-12-A”:

““Note B-12-A” shall mean that certain Replacement, Amended and Restated Promissory Note B-12-A, dated as of July 15, 2020, in the principal amount of EIGHTY FIVE MILLION NINE HUNDRED FORTY THREE THOUSAND AND 00/100 DOLLARS (\$85,943,000.00), made by Borrower in favor of SocGen and any replacement or split notes made by Borrower in favor of SocGen, as each of the same may be further amended, restated, replaced, supplemented or otherwise modified from time to time.”

(xxx) Section 1.1 of the Original Loan Agreement is hereby amended to add in the appropriate alphabetical order the following definition of “Note B-1-B”:

““Note B-1-B” shall mean that certain Replacement, Amended and Restated Promissory Note B-1-B, dated as of July 15, 2020, in the principal amount of SIXTY ONE THOUSAND THREE HUNDRED NINETY FIVE AND 80/100 DOLLARS (\$61,395.80), made by Borrower in favor of Wilmington Trust and any replacement or split notes made by Borrower in favor of Wilmington Trust as each of the same may be further amended, restated, replaced, supplemented or otherwise modified from time to time.”

(xxxi) Section 1.1 of the Original Loan Agreement is hereby amended to add in the appropriate alphabetical order the following definition of “Note B-2-B”:

““Note B-2-B” shall mean that certain Replacement, Amended and Restated Promissory Note B-2-B, dated as of July 15, 2020, in the principal amount of THIRTY THOUSAND SIX HUNDRED NINETY SEVEN AND 90/100 DOLLARS (\$30,697.90), made

by Borrower in favor of Wilmington Trust and any replacement or split notes made by Borrower in favor of Wilmington Trust, as each of the same may be further amended, restated, replaced, supplemented or otherwise modified from time to time.”

(xxxii) Section 1.1 of the Original Loan Agreement is hereby amended to add in the appropriate alphabetical order the following definition of “Note B-3-B”:

““Note B-3-B” shall mean that certain Replacement, Amended and Restated Promissory Note B-3-B, dated as of July 15, 2020, in the principal amount of THIRTY THOUSAND SIX HUNDRED NINETY SEVEN AND 90/100 DOLLARS (\$30,697.90), made by Borrower in favor of Wilmington Trust and any replacement or split notes made by Borrower in favor of Wilmington Trust as each of the same may be further amended, restated, replaced, supplemented or otherwise modified from time to time.”

(xxxiii) Section 1.1 of the Original Loan Agreement is hereby amended to add in the appropriate alphabetical order the following definition of “Note B-4-B”:

““Note B-4-B” shall mean that certain Replacement, Amended and Restated Promissory Note B-4-B, dated as of July 15, 2020, in the principal amount of THIRTY THOUSAND SIX HUNDRED NINETY SEVEN AND 90/100 DOLLARS (\$30,697.90), made by Borrower in favor of Wilmington Trust and any replacement or split notes made by Borrower in favor of Wilmington Trust as each of the same may be further amended, restated, replaced, supplemented or otherwise modified from time to time.”

(xxxiv) Section 1.1 of the Original Loan Agreement is hereby amended to add in the appropriate alphabetical order the following definition of “Note B-5-B”:

““Note B-5-B” shall mean that certain Replacement, Amended and Restated Promissory Note B-5-B, dated as of July 15, 2020, in the principal amount of ONE HUNDRED FORTY NINE MILLION SIX HUNDRED FIFTY EIGHT THOUSAND SIX HUNDRED FOUR AND 20/100 DOLLARS (\$149,658,604.20), made by Borrower in favor of Citi and any replacement or split notes made by Borrower in favor of Citi, as each of the same may be further amended, restated, replaced, supplemented or otherwise modified from time to time.”

(xxxv) Section 1.1 of the Original Loan Agreement is hereby amended to add in the appropriate alphabetical order the following definition of “Note B-6-B”:

““Note B-6-B” shall mean that certain Replacement, Amended and Restated Promissory Note B-6-B, dated as of July 15, 2020, in the principal amount of SEVENTY FOUR MILLION EIGHT HUNDRED TWENTY NINE THOUSAND THREE HUNDRED TWO AND 10/100 DOLLARS (\$74,829,302.10), made by Borrower in favor of Barclays and any replacement or split notes made by Borrower in favor of Barclays, as each of the same may be further amended, restated, replaced, supplemented or otherwise modified from time to time.”

(xxxvi) Section 1.1 of the Original Loan Agreement is hereby amended to add in the appropriate alphabetical order the following definition of “Note B-7-B”:

““Note B-7-B” shall mean that certain Replacement, Amended and Restated Promissory Note B-7-B, dated as of July 15, 2020, in the principal amount of SEVENTY FOUR MILLION EIGHT HUNDRED TWENTY NINE THOUSAND THREE HUNDRED TWO AND 10/100 DOLLARS (\$74,829,302.10), made by Borrower in favor of DB and any replacement or split notes made by Borrower in favor of DB, as each of the same may be further amended, restated, replaced, supplemented or otherwise modified from time to time.”

(xxxvii) Section 1.1 of the Original Loan Agreement is hereby amended to add in the appropriate alphabetical one the following definition of “Note B-8-B”:

““Note B-8-B” shall mean that certain Replacement, Amended and Restated Promissory Note B-8-B, dated as of July 15, 2020, in the principal amount of SEVENTY FOUR MILLION EIGHT HUNDRED TWENTY NINE THOUSAND THREE HUNDRED TWO AND 10/100 DOLLARS (\$74,829,302.10), made by Borrower in favor of SocGen and any replacement or split notes made by Borrower in favor of SocGen, as each of the same may be further amended, restated, replaced, supplemented or otherwise modified from time to time.”

(xxxviii) Section 1.1 of the Original Loan Agreement is hereby amended to add in the appropriate alphabetical order the following definition of “Wilmington Trust”:

““Wilmington Trust” means Wilmington Trust, National Association, in its capacity as trustee on behalf of the holders of BX Commercial Mortgage Trust 2020-VIVA, Commercial Mortgage Pass-Through Certificates, Series 2020-VIVA, and on behalf of the holders of the Notes, having an address at 1100 North Market Street, Wilmington, Delaware 19890.”

(xxxix) Section 2.4.4 of the Original Loan Agreement is hereby amended and restated in its entirety to read as follows:

“2.4.4 Application of Interest and Principal to the Notes. Provided no Event of Default has occurred and is continuing, (A) payments of interest on the Loan shall be applied by Lender on a pro-rata basis among Note A, Note B (Senior), Note B (Junior) and Note C and such payments of interest shall be applied (i) with respect to Note A, on a pro rata and pari passu basis among each of Note A-1, Note A-2, Note A-3, Note A-4, Note A-5, Note A-6, Note A-7, Note A-8, Note A-9, Note A-10, Note A-11 and Note A-12, (ii) with respect to Note B (Senior), on a pro rata and pari passu basis among each of Note B-1-A, Note B-2-A, Note B-3-A, Note B-4-A, Note B-5-A, Note B-6-A, Note B-7-A, Note B-8-A, B-9-A, B-10-A, B-11-A and B-12-A, (iii) with respect to Note B (Junior), on a pro rata and pari passu basis among each of Note B-1-B, Note B-2-B, Note B-3-B, Note B-4-B, Note B-5-B, Note B-6-B, Note B-7-B and Note B-8-B and (iv) with respect to Note C, on a pro rata and pari passu basis among each of Note C-1, Note C-2, Note C-3 and Note C-4 and (B) payments of principal shall be applied (i) first, to the reduction of the outstanding principal balance of each Note (other than any Accrued and Deferred Principal) comprising Note A, on a pro rata and pari passu basis, until the principal amount of each Note comprising Note A (other than any Accrued and Deferred Principal associated with such Notes comprising Note A) is reduced to zero, (ii) second, to the reduction of the outstanding principal balance of each Note (other than any Accrued and Deferred Principal) comprising Note B

(Senior), on a pro rata and pari passu basis, until the principal amount of each Note comprising Note B (Senior) (other than any Accrued and Deferred Principal associated with such Notes comprising Note B (Senior)) is reduced to zero, (iii) third, to the reduction of the outstanding principal balance of each Note (other than any Accrued and Deferred Principal) comprising Note B (Junior), on a pro rata and pari passu basis, until the principal amount of each Note comprising Note B (Junior) (other than any Accrued and Deferred Principal associated with such Notes comprising Note B (Junior)) is reduced to zero, (iv) fourth, to the reduction of the outstanding principal balance of each Note (other than any Accrued and Deferred Principal) comprising Note C, on a pro rata and pari passu basis, until the principal amount of each Note comprising Note C (other than any Accrued and Deferred Principal associated with such Notes comprising Note C) is reduced to zero, (v) fifth, to the reduction of the Accrued and Deferred Principal of each Note comprising Note A, on a pro rata and pari passu basis, until the Accrued and Deferred Principal amount of each Note comprising Note A is reduced to zero, (vi) sixth, to the reduction of the Accrued and Deferred Principal of each Note comprising Note B (Senior), on a pro rata and pari passu basis, until the Accrued and Deferred Principal amount of each Note comprising Note B (Senior) is reduced to zero, (vii) seventh, to the reduction of the Accrued and Deferred Principal of each Note comprising Note B (Junior), on a pro rata and pari passu basis, until the Accrued and Deferred Principal amount of each Note comprising Note B (Junior) is reduced to zero and (viii) eighth, to the reduction of the Accrued and Deferred Principal of each Note comprising Note C, on a pro rata and pari passu basis, until the Accrued and Deferred Principal amount of each Note comprising Note C is reduced to zero. Notwithstanding anything herein to the contrary, during the continuance of any Event of Default any payment of intent and/or principal from whatever source may be applied by Lender among the Notes in Lender's sole discretion."

(xl) Section 2.8.1(a)(xii) of the Original Loan Agreement is hereby amended and restated in its entirety to read as follows:

"(xii) In connection with a Partial Defeasance Event, the Notes shall be defeased sequentially relative to each Note in accordance with Section 2.4.4 hereof (as if such Partial Defeasance Event is a prepayment hereunder). Subject to the preceding sentence, Lender shall prepare and Borrower shall execute all necessary documents to modify this Agreement and to amend and restate (A) each Note A and issue two substitute notes for each Note A, one note having a principal balance equal to the pro rata portion of the Release Amount (or, in the event of a Third Party Waived DSCR Release, the Third Party Waived DSCR Release Price) (or, in each instance, applicable portion thereof) for the applicable Release Property relative to the principal amount of such Note A (each, a "Note A Defeased Note"), and the other note having a principal balance equal to the excess of (1) the principal amount of such Note A existing immediately prior to the applicable Partial Defeasance Event, over (2) the amount of the related Note A Defeased Note (each, a "Note A Undefeased Note"), (B) each Note B (Senior) and issue two substitute notes for each Note B (Senior), one note having a principal balance equal to the pro rata portion of the Release Amount (or, in the event of a Third Party Waived DSCR Release, the Third Party Waived DSCR Release Price) (or, in each instance, applicable portion thereof) for the applicable Release Property relative to the principal amount of such Note B (Senior) (each, a "Note B (Senior) Defeased Note") and the other note having a principal balance equal to the excess of (1) the principal amount of such Note B (Senior) existing immediately prior to the

applicable Partial Defeasance Event, over (2) the amount of the related Note B (Senior) Defeased Note (each, a “Note B (Senior) Undefeased Note”), (C) each Note B (Junior) and issue two substitute notes for each Note B (Junior), one note having a principal balance equal to the pro rata portion of the Release Amount (or, in the event of a Third Party Waived DSCR Release, the Third Party Waived DSCR Release Price) (or, in each instance, applicable portion thereof) for the applicable Release Property relative to the principal amount of such Note B (Junior) (each, a “Note B (Junior) Defeased Note”) and the other note having a principal balance equal to the excess of (1) the principal amount of such Note B (Junior) existing immediately prior to the applicable Partial Defeasance Event, over (2) the amount of the related Note B (Junior) Defeased Note (each, a “Note B (Junior) Undefeased Note”) and (D) each Note C and issue two substitute notes for each Note C, one note having a principal balance equal to the pro rata portion of the Release Amount (or, in the event of a Third Party Waived DSCR Release, the Third Party Waived DSCR Release Price) (or, in each instance, applicable portion thereof) for the applicable Release Property relative to the principal amount of such Note C (each, a “Note C Defeased Note” and together with the Note A Defeased Note, the Note B (Senior) Defeased Note and the Note B (Junior) Defeased Note, individually and/or collectively, as the context may require, the “Defeased Note”), and the other note having a principal balance equal to the excess of (1) the principal amount of such Note C existing immediately prior to the applicable Partial Defeasance Event, over (2) the amount of the related Note C Defeased Note (each, a “Note C Undefeased Note”, and together with the Note A Undefeased Note, the Note B (Senior) Undefeased Note and the Note B (Junior) Undefeased Note, individually and/or collectively, as the context may require, the “Undefeased Note”). Each Defeased Note and the related Undefeased Note shall have identical terms as the applicable original Note except for the principal balance. Notwithstanding anything to the contrary contained herein or in the other Loan Documents, the Defeased Note and the Undefeased Note shall not be cross- defaulted or cross-collateralized unless the Rating Agencies or Lender shall require otherwise. A Defeased Note may not be the subject of any further defeasance; and”

Section II. Amendment to Other Loan Documents. Each of the Loan Documents (other than the Loan Agreement) is hereby amended such that (i) each reference in any of the Loan Documents (other than the Loan Agreement) to the defined terms Note A, Note A-5, Note A-6, Note A-7, Note A-8 and Note B, which defined terms have been modified pursuant to this Amendment, shall be deemed to be a reference to each such defined term as so modified and (ii) each reference to the Loan Agreement shall mean the Original Loan Agreement, as modified pursuant to the terms of this Amendment

Section III. Reaffirmation of Guaranty. In connection with this Amendment, Guarantor hereby:

- (a) Consents to and acknowledges this Amendment and acknowledges and agrees that this Amendment shall not impair, reduce or adversely affect the nature of the obligations of Guarantor under the Guaranty.
- (b) Warrants and represents that there are no defenses, offsets or counterclaims with respect to its obligations under the Guaranty.

(c) Acknowledges that the Guaranty and the obligations of Guarantor contained in the Guaranty are continuing and in full force and effect

(d) Hereby reaffirms the Guaranty and its obligations thereunder, and acknowledges that this reaffirmation of the Guaranty is for the benefit of Lender.

Section IV. Reaffirmation of Environmental Indemnity. In connection with this Amendment, Borrower hereby:

(a) Consents to and acknowledges this Amendment and acknowledges and agrees that this Amendment shall not impair, reduce or adversely affect the nature of the obligations of Borrower under the Environmental Indemnity.

(b) Warrants and represents that there are no defenses, offsets or counterclaims with respect to its obligations under the Environmental Indemnity.

(c) Acknowledges that the Environmental Indemnity and the obligations of Borrower contained in the Environmental Indemnity are continuing and in full force and effect.

(d) Hereby reaffirms the Environmental Indemnity and its obligations thereunder, and acknowledges that this reaffirmation of the Environmental Indemnity is for the benefit of Lender.

Section V. No Offset. Borrower hereby waives all offsets, defenses and claims it may have against Lender that accrued on or before the date hereof.

Section VI. No Waiver. The execution, delivery and effectiveness of this Amendment shall not except to the extent expressly provided herein, operate as a waiver of any right, power or remedy of any of Lender, Borrower, any other Loan Party or Guarantor under the Loan Agreement or any of the other Loan Documents, nor constitute a waiver of any provision of the Loan Agreement or any of the other Loan Documents by any of the parties hereto.

Section VII. No Presumption Against Party Drafting Amendment. Should any provision of this Amendment require judicial interpretation, it is agreed that a court interpreting or construing the same shall not apply a presumption that the terms hereof shall be more strictly construed against any party by reason of the rule of construction that a document is to be construed more strictly against the party who itself or through its counsel prepared or drafted the same, it being agreed that all parties to this Amendment participated in the preparation hereof.

Section VIII. Successors and Assigns. This Amendment shall be binding on and inure to the benefit of the parties hereto and their relative successors and permitted assigns.

Section IX. Ratification. Borrower and Lender hereby ratify and confirm the Loan Agreement as modified hereby. Except as modified and amended by this Amendment the Loan, the Loan Agreement and the other Loan Documents and the respective obligations of Lender and Borrower thereunder shall be and remain unmodified and in full force and effect.

Section X. No Further Modification. No further modification, amendment, extension, discharge, termination or waiver hereof shall be effective unless the same shall be in a writing signed by the party against whom enforcement is sought and then such waiver or consent shall be effective only in the specific instance, and for the purpose, for which given.

Section XI. Governing Law. This Amendment shall be construed and enforced in accordance with the laws of the State of New York. If any provision hereof is not enforceable, the remaining provisions of this Amendment shall be enforced in accordance with their terms.

Section XII. Counterparts; Electronic Signatures. This Amendment may be executed in any number of counterparts, all of which taken together shall constitute one and the same instrument. Delivery of an executed counterpart of a signature page of this Amendment by telecopy or in a .PDF via email shall be effective as delivery of a manually executed counterpart of this Amendment.

Section XIII. References to Loan Agreement. All references in the Loan Documents to the Loan Agreement shall mean the Loan Agreement as hereby modified herein.

Section XIV. Entire Agreement. This Amendment constitutes the entire agreement between Borrower and Lender with respect to subject matter hereof and supersedes all other prior agreements and understandings, both written and oral, among the parties with respect to the subject matter hereof.

Section XV. Incorporation of Recitals; Defined Terms. The recitals hereto are hereby incorporated into this Amendment as if fully set forth herein. All capitalized terms used herein and not otherwise defined herein shall have the respective meanings set forth in the Loan Agreement.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be duly executed by their duly authorized representatives, all as of the day and year first above written.

BORROWER:

MANDALAY PROPCO, LLC
MGM GRAND PROPCO, LLC,
each a Delaware limited liability company

By: /s/ Qahir Madhany

Name: Qahir Madhany

Title: Managing Director and Vice President

[Signature Page to Third Amendment to Loan Agreement and Other Loan Documents]

LENDER:

WILMINGTON TRUST, NATIONAL ASSOCIATION, in its capacity as trustee on behalf of the holders of BX Commercial Mortgage Trust 2020-VIVA, Commercial Mortgage Pass-Through Certificates, Series 2020-VIVA, and on behalf of the holders of the Notes

By: KEYBANK NATIONAL ASSOCIATION, as Servicer

By: /s/ Michael A. Tilden
Name: Michael A. Tilden
Title: Vice President

[Signature Page to Third Amendment to Loan Agreement and Other Loan Documents]

The undersigned hereby acknowledges and consents to Section III of this Third Amendment to Loan Agreement and Other Loan Documents.

GUARANTOR:

BREIT OPERATING PARTNERSHIP L.P., a Delaware limited partnership

By: Blackstone Real Estate Income Trust, Inc.,
a Maryland corporation, its general partner

By: /s/ Quhir Madjany
Name: Quhir Madjany
Title: Authorized Signatory

[Signature Page to Third Amendment to Loan Agreement and Other Loan Documents]

**MGM GROWTH PROPERTIES OPERATING
PARTNERSHIP LP,**
a Delaware limited partnership

By: MGM Growth Properties OP GP LLC,
a Delaware limited liability company, its general partner

By: /s/ Andy H. Chien
Name: Andy H. Chien Title: Chief Financial Officer

[Signature Page to Third Amendment to Loan Agreement and Other Loan Documents]

Subsidiaries of VICI Properties Inc.

Name of Entity	State or Country of Incorporation or Organization
2474322 Alberta ULC	Alberta, Canada
Biloxi Hammond, LLC	Delaware
Bluegrass Downs Property Owner LLC	Delaware
Caesars Atlantic City LLC	Delaware
Caesars Southern Indiana Propco LLC	Delaware
Cape G LLC	Delaware
Cascata LLC	Delaware
Centaur Propco LLC	Delaware
Chariot Run LLC	Delaware
Cincinnati Propco LLC	Delaware
Claudine Propco LLC	Delaware
Claudine Property Owner LLC	Delaware
Cleveland Propco LLC	Delaware
CPLV Property Owner LLC	Delaware
Expo Center Propco LLC	Delaware
Fitz Propco LLC	Delaware
Grand Bear LLC	Delaware
Grand Biloxi LLC	Delaware
Greektown Propco LLC	Delaware
Harrah's Atlantic City LLC	Delaware
Harrah's Bossier City LLC	Louisiana
Harrah's Council Bluffs LLC	Delaware
Harrah's Joliet LandCo LLC	Delaware
Harrah's Lake Tahoe LLC	Delaware
Harrah's Metropolis LLC	Delaware
Harrah's New Orleans LLC	Delaware
Harrah's Reno LLC	Delaware
Harvey's Lake Tahoe LLC	Delaware
Horseshoe Bossier City Prop LLC	Louisiana
Horseshoe Council Bluffs LLC	Delaware
Horseshoe Tunica LLC	Delaware
Lady Luck C LLC	Delaware
Laughlin Propco LLC	Delaware
Mandalay Propco, LLC	Delaware
Mandalay Grand Holdco Venture LLC	Delaware
Margaritaville Propco LLC	Delaware
MGM Grand Propco, LLC	Delaware
MGM Springfield reDevelopment, LLC	Massachusetts
MGP Finance Co-Issuer, Inc.	Delaware
MGP JV Investco 1 LLC	Delaware
MGP JV Investco 2 LLC	Delaware
MGP JV Investco 2.5 LLC	Delaware
MGP Lessor, LLC	Delaware
MGP Lessor II, LLC	Delaware
MGP Lessor Holdings, LLC	Delaware
MGP Yonkers Realty Sub, LLC	New York
Mirage Propco LLC	Delaware
Miscellaneous Land LLC	Delaware

Miscellaneous Venetian Propco LLC	Delaware
Mountaineer CRR LLC	Delaware
New Harrah's North Kansas City LLC	Delaware
New Horseshoe Hammond LLC	Delaware
New Laughlin Owner LLC	Delaware
New Tunica Roadhouse LLC	Delaware
Palazzo Propco LLC	Delaware
Philadelphia Propco LLC	Delaware
Propco Gulfport LLC	Delaware
Propco TRS LLC	Delaware
Pure CAN 1 LP	Delaware
Pure CAN 2 LP	Delaware
Pure CAN 3 LP	Delaware
Pure CAN 4 LP	Delaware
Pure CAN GP 1 LLC	Delaware
Pure CAN GP 2 LLC	Delaware
Pure CAN GP 3 LLC	Delaware
Pure CAN GP 4 LLC	Delaware
Pure CAN Holdco LLC	Delaware
Pure CAN Holdings GP 1 ULC	Alberta, Canada
Pure CAN Holdings GP 2 ULC	Alberta, Canada
Pure CAN Holdings GP 3 ULC	Alberta, Canada
Pure CAN Holdings GP 4 ULC	Alberta, Canada
Rio Secco LLC	Delaware
Riverview Properties 1 LLC	Delaware
Rocky Gap Propco LLC	Delaware
Thistledown Propco LLC	Delaware
Vegas Development LLC	Delaware
Vegas Operating Property LLC	Delaware
Venetian Holdco LLC	Delaware
Venetian Propco LLC	Delaware
Venetian Venue Propco LLC	Delaware
VICI Baby REIT 1 LLC	Delaware
VICI CAN Agent LLC	Delaware
VICI Golf LLC	Delaware
VICI Greenfield LLC	Delaware
VICI Lendco LLC	Delaware
VICI Note Co. Inc.	Delaware
VICI Properties 1 LLC	Delaware
VICI Properties 2 GP LLC	Delaware
VICI Properties 2 L.P.	Delaware
VICI Properties GP LLC	Delaware
VICI Properties Holdco LLC	Delaware
VICI Properties L.P.	Delaware
VICI Properties OP LLC	Delaware
VICI Revolving Lendco LLC	Delaware
Waterview Propco LLC	Delaware
WWW Propco LLC	Delaware
YRL Associates, L.P.	New York

Subsidiaries of VICI Properties L.P.

Name of Entity	State or Country of Incorporation or Organization
2474322 Alberta ULC	Alberta, Canada
Biloxi Hammond, LLC	Delaware
Bluegrass Downs Property Owner LLC	Delaware
Caesars Atlantic City LLC	Delaware
Caesars Southern Indiana Propco LLC	Delaware
Cape G LLC	Delaware
Centaur Propco LLC	Delaware
Cincinnati Propco LLC	Delaware
Claudine Propco LLC	Delaware
Claudine Property Owner LLC	Delaware
Cleveland Propco LLC	Delaware
CPLV Property Owner LLC	Delaware
Expo Center Propco LLC	Delaware
Fitz Propco LLC	Delaware
Grand Biloxi LLC	Delaware
Greektown Propco LLC	Delaware
Harrah's Atlantic City LLC	Delaware
Harrah's Bossier City LLC	Louisiana
Harrah's Council Bluffs LLC	Delaware
Harrah's Joliet LandCo LLC	Delaware
Harrah's Lake Tahoe LLC	Delaware
Harrah's Metropolis LLC	Delaware
Harrah's New Orleans LLC	Delaware
Harrah's Reno LLC	Delaware
Harvey's Lake Tahoe LLC	Delaware
Horseshoe Bossier City Prop LLC	Louisiana
Horseshoe Council Bluffs LLC	Delaware
Horseshoe Tunica LLC	Delaware
Lady Luck C LLC	Delaware
Laughlin Propco LLC	Delaware
Mandalay Propco, LLC	Delaware
Mandalay Grand Holdco Venture LLC	Delaware
Margaritaville Propco LLC	Delaware
MGM Grand Propco, LLC	Delaware
MGM Springfield reDevelopment, LLC	Massachusetts
MGP Finance Co-Issuer, Inc.	Delaware
MGP JV Investco 1 LLC	Delaware
MGP JV Investco 2 LLC	Delaware
MGP JV Investco 2.5 LLC	Delaware
MGP Lessor, LLC	Delaware
MGP Lessor II, LLC	Delaware
MGP Lessor Holdings, LLC	Delaware
MGP Yonkers Realty Sub, LLC	New York
Mirage Propco LLC	Delaware
Miscellaneous Land LLC	Delaware
Miscellaneous Venetian Propco LLC	Delaware
Mountaineer CRR LLC	Delaware
New Harrah's North Kansas City LLC	Delaware

New Horseshoe Hammond LLC	Delaware
New Laughlin Owner LLC	Delaware
New Tunica Roadhouse LLC	Delaware
Palazzo Propco LLC	Delaware
Philadelphia Propco LLC	Delaware
Propco Gulfport LLC	Delaware
Propco TRS LLC	Delaware
Pure CAN 1 LP	Delaware
Pure CAN 2 LP	Delaware
Pure CAN 3 LP	Delaware
Pure CAN 4 LP	Delaware
Pure CAN GP 1 LLC	Delaware
Pure CAN GP 2 LLC	Delaware
Pure CAN GP 3 LLC	Delaware
Pure CAN GP 4 LLC	Delaware
Pure CAN Holdco LLC	Delaware
Pure CAN Holdings GP 1 ULC	Alberta, Canada
Pure CAN Holdings GP 2 ULC	Alberta, Canada
Pure CAN Holdings GP 3 ULC	Alberta, Canada
Pure CAN Holdings GP 4 ULC	Alberta, Canada
Riverview Properties 1 LLC	Delaware
Rocky Gap Propco LLC	Delaware
Thistledown Propco LLC	Delaware
Vegas Development LLC	Delaware
Vegas Operating Property LLC	Delaware
Venetian Holdco LLC	Delaware
Venetian Propco LLC	Delaware
Venetian Venue Propco LLC	Delaware
VICI Baby REIT 1 LLC	Delaware
VICI CAN Agent LLC	Delaware
VICI Greenfield LLC	Delaware
VICI Lendco LLC	Delaware
VICI Note Co. Inc.	Delaware
VICI Properties 1 LLC	Delaware
VICI Properties 2 GP LLC	Delaware
VICI Properties 2 L.P.	Delaware
VICI Revolving Lendco LLC	Delaware
Waterview Propco LLC	Delaware
WWW Propco LLC	Delaware
YRL Associates, L.P.	New York

CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

We consent to the incorporation by reference in Registration Statement No. 333-264352 on Form S-3 and Registration Statement No. 333-220949 on Form S-8 of our reports dated February 23, 2023, relating to the financial statements of VICI Properties Inc. and the effectiveness of VICI Properties Inc.'s internal control over financial reporting appearing in this Annual Report on Form 10-K for the year ended December 31, 2022.

/s/ Deloitte & Touche LLP

New York, New York
February 23, 2023

CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

We consent to the incorporation by reference in Registration Statement No. 333-264352 on Form S-3 of our reports dated February 23, 2023, relating to the financial statements of VICI Properties L.P. and the effectiveness of VICI Properties L.P.'s internal control over financial reporting appearing in this Annual Report on Form 10-K for the year ended December 31, 2022.

/s/ Deloitte & Touche LLP

New York, New York
February 23, 2023

I, Edward B. Pitoniak, certify that:

1. I have reviewed this annual report on Form 10-K of VICI Properties Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officers and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - a) designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - b) designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - c) evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - d) disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officers and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
 - a) all significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - b) any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: February 23, 2023

By: /S/ EDWARD B. PITONIAK

Edward B. Pitoniak
Chief Executive Officer

By: _____ /S/ DAVID A. KIESKE
David A. Kieske
Chief Financial Officer

I, Edward B. Pitoniak, certify that:

1. I have reviewed this annual report on Form 10-K of VICI Properties L.P.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officers and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - a) designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - b) designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - c) evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - d) disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officers and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
 - a) all significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - b) any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: February 23, 2023

By: /S/ EDWARD B. PITONIAK

Edward B. Pitoniak
Chief Executive Officer

I, David Kieske, certify that:

1. I have reviewed this annual report on Form 10-K of VICI Properties L.P.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officers and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - a) designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - b) designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - c) evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - d) disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officers and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
 - a) all significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - b) any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: February 23, 2023

By: /S/ DAVID A. KIESKE
David A. Kieske
Chief Financial Officer

Certification of Principal Executive Officer

Pursuant to 18 U.S.C. § 1350, as created by Section 906 of the Sarbanes-Oxley Act of 2002, the undersigned officer of VICI Properties Inc. (the “Company”), hereby certifies, to such officer's knowledge, that:

- (i) the accompanying Annual Report on Form 10-K of the Company for the year ended December 31, 2022 (the “Report”) fully complies with the requirements of Section 13(a) or Section 15(d), as applicable, of the Securities Exchange Act of 1934, as amended; and
- (ii) the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: February 23, 2023

By: /S/ EDWARD B. PITONIAK

Edward B. Pitoniak
Chief Executive Officer

The foregoing certification is being furnished solely to accompany the Report pursuant to 18 U.S.C. § 1350, and is not being filed for purposes of Section 18 of the Securities Exchange Act of 1934, as amended, and is not to be incorporated by reference into any filing of the Company, whether made before or after the date hereof, regardless of any general incorporation language in such filing.

Certification of Principal Executive Officer

Pursuant to 18 U.S.C. § 1350, as created by Section 906 of the Sarbanes-Oxley Act of 2002, the undersigned officer of VICI Properties L.P. (the “Partnership”), hereby certifies, to such officer's knowledge, that:

- (i) the accompanying Annual Report on Form 10-K of the Partnership for the year ended December 31, 2022 (the “Report”) fully complies with the requirements of Section 13(a) or Section 15(d), as applicable, of the Securities Exchange Act of 1934, as amended; and
- (ii) the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Partnership.

Date: February 23, 2023

By: /S/ EDWARD B. PITONIAK

Edward B. Pitoniak
Chief Executive Officer

The foregoing certification is being furnished solely to accompany the Report pursuant to 18 U.S.C. § 1350, and is not being filed for purposes of Section 18 of the Securities Exchange Act of 1934, as amended, and is not to be incorporated by reference into any filing of the Partnership, whether made before or after the date hereof, regardless of any general incorporation language in such filing.

(i) the accompanying Annual Report on Form 10-K of the Partnership for the year ended December 31, 2022 (the “Report”) fully complies with the requirements of Section 13(a) or Section 15(d), as applicable, of the Securities Exchange Act of 1934, as amended; and

(ii) the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Partnership.

By: _____ /S/ DAVID A. KIESKE
David A. Kieske
Chief Financial Officer

The foregoing certification is being furnished solely to accompany the Report pursuant to 18 U.S.C. § 1350, and is not being filed for purposes of Section 18 of the Securities Exchange Act of 1934, as amended, and is not to be incorporated by reference into any filing of the Partnership, whether made before or after the date hereof, regardless of any general incorporation language in such filing.