Control Act by clear and convincing evidence. However, he chose another course. Whatever his motivation, he traveled another road simultaneously. This alternative road was composed of Allen Dorfman, Alvin Malnik, Samuel Cohen, the Central and Southwestern States Teamster Pension Funds, the Amalgamated Insurance Agency and the United Founders Life Insurance Companies of Oklahoma and Illinois. He traveled the road with mendacity and with disregard for the regulatory process. Fortunately, the legislative wisdom of New Jersey does not permit this dual personality. I find I have no choice but to vote to deny Mr. McElnea's status as a qualifier. I find him unsuitable. New Jersey public policy demands that he be made of sterner stuff than he exhibited in this case. This state need not allow persons to do business within this state who choose to operate on several occasions with persons of such obvious bad reputations.

Section 84(c) requires "each applicant" to produce such "information, documentation and assurances of good character as may be required to establish by clear and convincing evidence the applicant's good reputation for honesty and integrity". Such information shall include business activities and professional associates.

Mr. McElnea's business associations reflect upon his present character and fitness. The duration of these associations, their purpose and intensity, and the reputation and character of the associates preclude his being found qualified under *N.J.S.A.* 5:12-89(b)(2). In furtherance of this finding, Mr. McElnea's knowledge of the "bad" reputation and character of the associates is compelling. He did not exercise efforts to determine the suitability of these associates prior to engaging in business relations with them, nor did he terminate or attempt to terminate the relationships in a timely fashion once aware of their reputations and character. Even a brief association with a person, pension fund, or business known to be of such questionable character as the persons and business referred to herein, would be a powerful negative proof of honesty and integrity. It is clear that the greater notoriety the more negative the reflection on the applicant. The persons and businesses Mr. McElnea chose to associate with are notorious and clearly unacceptable today as they were for the last decade.

A business and its leadership must be alert to persons or other related businesses who compromise their concern for integrity. CWI and Mr. McElnea, as the Chief Operating Officer and Director, should have been concerned with those with whom the company did business

and with whom it entered into professional relationships. The fact that he permitted his company, without objection, to knowingly deal with persons known or reputed to be linked with organized crime, corruption, kickbacks and the like, permits adverse and fatal inferences pertaining to his honesty and integrity to ensue. Here, where the course of conduct reveals a series of transactions over a course of more than a decade, such inferences are unavoidable. Moreover, the sources of Mr. McElnea's knowledge regarding these unsavory associates are significant. He had been placed on notice by his own outside counsel, Dave Bernstein, by the Securities and Exchange Commission, by numerous newspaper and other media material, by the Nevada Gaming Board and Commission, and by his own shareholders and corporate security officer. These notices from government and the private sector coupled with his willful disregard for this advice indicate a wreckless indifference to the opinion of the public, government, his shareholders and advisors to the detriment of his own character, his company's reputation, the requirements and needs of his stockholders and the regulatory process. The adverse reflection on Mr. McElnea's character is severe and conclusive. Deliberate initiation, cultivation and maintenance of the relationships with Alvin Malnik, Sam Cohen, the Teamster Pension Fund, Allen Dorfman and his insurance agency, in the face of this widespread official disapproval is evidence of a lack of good character.

As the Chief Operating Officer and Director, and one of the most important if not the most important person in the parent corporation, to maintain these associations with disreputable individuals is an indication of not only past behavior but an important predictor of future conduct. I find that hs conduct is such that I have grave reservations that cannot be overcome about his willingness and ability to operate within the strict regulatory guidelines of the State of New Jersey.

For all the foregoing reasons, William H. McElnea, Jr., is not qualified.

You must check the New Jersey Citation Tracker in the companion looseleaf volume to determine the history of this case in the New Jersey courts.

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DISTRICT COURT

CLARK COUNTY, NEVADA

WYNN RESORTS, LIMITED, a Nevada Corporation,

Plaintiff,

vs.

KAZUO OKADA, an individual, ARUZE USA, INC., a Nevada corporation, and UNIVERSAL ENTERTAINMENT CORP., a Japanese corporation,

Defendants.

Case No.: A-12-656710-B

Dept. No.: XI

AFFIDAVIT OF ROBERT J. MILLER IN SUPPORT OF WYNN PARTIES' OPPOSITION TO MOTION FOR PRELIMINARY INJUNCTION

Date of Hearing: October 2, 2012

Time of Hearing: 8:30 a.m.

STATE OF NEVADA)
ss:
COUNTY OF CLARK)

ROBERT J. MILLER, being duly sworn, deposes and says:

1. I am a resident of Clark County, Nevada and a director of Wynn Resorts, Limited ("Wynn Resorts"), Chairman of the Compliance Committee of Wynn Resorts, and Chairman of the Nominating and Corporate Governance Committee of the board. I also serve as presiding director for executive sessions of the independent members of the Wynn Resorts board. From 1989 to 1999, I served as Governor of the State of Nevada.

2. I make this affidavit in opposition to the motion by Aruze USA, Inc. ("Aruze") and Universal Entertainment Corp. ("Universal") for a preliminary injunction. I have personal knowledge of the facts set forth herein unless otherwise so stated and could, if called to testify as a witness, testify competently to them.

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The Wynn Resorts board

3. Wynn Resorts has a twelve-member board of directors. Excluding Kazuo Okada, eight of Wynn Resorts' eleven directors have no employment relationship with the Company (myself, Russell Goldsmith, Ray R. Irani, John A. Moran, Alvin V. Shoemaker, D. Boone Wayson, Elaine P. Wynn, and Allan Zeman). Stephen A. Wynn, Chairman and Chief Executive Officer of Wynn Resorts, Linda Chen, President of Wynn International Marketing, Limited and Chief Operating Officer of Wynn Resorts (Macau), S.A., and Marc D. Schorr, Chief Operating Officer of Wynn Resorts, are the only members of Wynn Resorts' management on the board.

The Compliance Committee

4. In 2002, the Company adopted a "Compliance Program," which has been periodically reviewed and amended. The Compliance Program states that it is designed to mitigate the "dangers of unsuitable associations and compliance with regulatory requirements." It describes the duties of the Compliance Committee and provides that the Committee has an affirmative obligation to investigate all senior executives, directors, and key employees "in order to protect the Company from becoming associated with an Unsuitable Person." Under the program, the term "Unsuitable Person" refers to anyone "that the Company determines is

unqualified as a business associate of the Company or its Affiliates based on, without limitation, that Person's antecedents, associations, financial practices, financial condition, or business probity."

5. The Compliance Program also requires the Company to report to Nevada gaming authorities to keep them "advised of the Company's compliance efforts in Nevada and other jurisdictions." Specifically, the Company has an obligation to self-report — that is, to inform the gaming regulators of significant compliance-related issues.

History of compliance concerns related to Mr. Okada

6. As Chairman of the Compliance Committee, I have reviewed certain investigative reports, and from these, I have learned the following facts. Mr. Okada began developing a large casino resort in the Philippines some time in 2007 or 2008. Wynn Resorts was not a partner or participant in the project, and Mr. Okada attempted to persuade Wynn Resorts to participate in the project in some way.

7. In the summer of 2010, a senior executive of Wynn Resorts prepared a report on the business climate in the Philippines that caused the Compliance Committee to become increasingly concerned about Mr. Okada's business involvement in that country. Thereafter, in early 2011, management retained an independent third-party firm to do preliminary investigative work concerning the Philippines and Mr. Okada's activities there.

8. The Wynn Resorts board discussed the results of that preliminary investigation at a board meeting on February 24, 2011. Mr. Okada was present at the meeting. At that time, Mr. Wynn advised the board that Mr. Okada had arranged a meeting for him with Philippine President Aquino. Based on the information the board had received about endemic corruption in the Philippines, the independent directors unanimously advised management that any involvement in the Philippines was inadvisable, and the board strongly recommended that Mr. Wynn cancel the meeting with President Aquino. Management agreed with the board's recommendation. At this board meeting, Mr. Okada was clearly made aware that the board was greatly concerned about any direct or indirect Wynn Resorts involvement in the Philippines.

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9. Also at the February 24, 2011 board meeting, Kim Sinatra, Wynn Resorts' General Counsel, updated the board on Foreign Corrupt Practices Act ("FCPA") matters, particularly with respect to Wynn Resorts' program of director compliance and education. Such updates were and are part of the Compliance Committee's efforts, as part of the overall Compliance Program, to insure that Wynn Resorts does not risk compliance problems that could affect its present and future licensing status, which in turn is critical to the Company's business and its prospects for the future.

10. In the course of this meeting, Mr. Okada made the surprising and disturbing comment that, in his view, making gifts to government officials was a recognized and accepted way of doing business in parts of Asia, and that it was all a question of using third parties. Needless to say, this comment raised concerns for me and others about Mr. Okada's ability and willingness to comply with Wynn Resorts' compliance policies and with anti-corruption statutes such as the FCPA.

11. The Wynn Resorts board again discussed Mr. Okada's business activities in the Philippines at a board meeting held on July 28, 2011. Mr. Okada confirmed to the board that he was proceeding with the Philippines project. In the course of the meeting, certain of the Company's independent directors, including me, expressed concern with regard to probity issues related to Mr. Okada and the possible effect that Mr. Okada's involvement in the Philippines would have on Wynn Resorts. Following that board meeting, in August 2011, the Company received additional information from a separate independent investigatory firm that raised further questions about the business climate in the Philippines and Mr. Okada's activities there.

12. At a meeting held on September 27, 2011, the Compliance Committee reviewed the results of a third-party investigative report that had been conducted at the Company's request and that addressed the current political environment in the Philippines and the issues related to Mr. Okada's project there. Three days later, at the direction of the Committee, representatives of the Company met with Mr. Okada's lawyers to discuss the Committee's concerns with regard to Mr. Okada's involvement in the Philippines project. These concerns included, among other

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things, whether Mr. Okada had violated Philippine law in acquiring the land for his project. I was informed that the discussion at this meeting with Mr. Okada's representatives was unproductive.

13. On October 31, 2011, Mr. Okada failed to attend a long-scheduled training session for board members concerning the Foreign Corrupt Practices Act. Every other Wynn Resorts director attended, either in person or by telephone. Management informed the directors that Mr. Okada had RSVP'd for the training session in mid-September, and later asked the Company to translate the training materials into Japanese, which they did. But in the end, Mr. Okada did not participate.

The Freeh investigation

14. On October 29, 2011, the Compliance Committee determined to retain Freeh Sporkin & Sullivan, LLP, and specifically Louis Freeh. Mr. Freeh is the former director of the FBI and a former federal judge. We believed his experience and reputation were the finest in the field, and that his firm had the resources to pursue the somewhat difficult task of investigating matters arising out of Mr. Okada's conduct in Asia. That decision was based on the concerns raised by and the information gathered in the preliminary investigations that had been conducted by firms retained by the Company, and on Mr. Okada's troubling comments about FCPA compliance.

15. The Wynn Resorts board met on November 1, 2011. Mr. Okada was told at this meeting that the Compliance Committee intended to retain Mr. Freeh to do an in-depth investigation of his activities, and Mr. Okada attempted to persuade us not to engage Mr. Freeh. At this meeting, Mr. Wynn explained to Mr. Okada that Mr. Okada would be breaching his fiduciary duties as a director of Wynn Resorts if Mr. Okada — as it appeared he was planning — used information he obtained as a Wynn Resorts director concerning the Company's marketing to Asian customers to siphon off to the Philippines profitable business from Wynn Resorts' existing and planned Macau properties. Mr. Okada strongly disagreed.

16. Also at the November 1, 2011 board meeting, the Wynn Resorts board ratified the Compliance Committee's decision to hire Mr. Freeh and the Committee formally retained

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Mr. Freeh to conduct an investigation and produce a report related to Mr. Okada and his business activities in the Philippines.

17. Over a three-month period, Mr. Freeh and/or his colleagues made several trips to the Philippines and Macau; conducted numerous interviews; and engaged in detailed documentary research of public records. By early 2012, Mr. Freeh and his team had uncovered detailed prima facie evidence of serious wrongdoing by Mr. Okada and his associates.

18. In early 2012, I received a preliminary briefing from Mr. Freeh indicating that his investigation had revealed serious issues concerning the legality, under Philippine law, of Mr. Okada's purchase and title to the land on which his new casino project was to be built. Moreover, Mr. Freeh had found evidence from records maintained by Wynn Macau, and from interviews of Wynn Macau personnel, that Aruze provided gifts of value at Wynn Macau to senior officials of PAGCOR (including its Chairman, Mr. Cristino Naguiat), and that Mr. Okada was aware of this. (PAGCOR is a Philippine governmental agency that is both the regulator and operator of gaming in that country.) Mr. Freeh also uncovered evidence that Mr. Okada's associates had requested anonymity for a VIP guest they did not wish to be registered. This individual was later determined to be Chairman Naguiat of PAGCOR.

19. As Chairman of the Compliance Committee, I decided that before Mr. Freeh concluded his investigation and produced his report, Mr. Okada should be offered the opportunity to submit exculpatory evidence. For several weeks, Mr. Okada would not commit to a date for an interview with Mr. Freeh. Finally, Mr. Okada agreed to let Mr. Freeh interview him, in Tokyo, on February 15, 2012. I was informed that one or more of Mr. Okada's attorneys from the Paul Hastings firm were present at the interview.

20. As is reflected in the 47-page "Freeh Report" that was presented to the Compliance Committee and the Wynn Resorts board on February 18, 2012, Mr. Freeh concluded that Mr. Okada had not presented any persuasive evidence whatsoever to rebut what Mr. Freeh had found, and that while Mr. Okada had offered broad denials of involvement in any of the misconduct, the evidence uncovered in Mr. Freeh's investigation cast substantial doubt on Mr. Okada's credibility. The Freeh Report is attached hereto as Exhibit 1.

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The February 18, 2012 board meeting and the redemption of Aruze's shares

21. The first portion of the Wynn Resorts board meeting on February 18, 2012 was devoted to a consideration of the response to the Court's order in the books-and-records case brought by Mr. Okada. Mr. Okada then joined the meeting by telephone. In response to a question regarding whether Mr. Okada had joined the meeting alone, an attorney from Mr. Okada's U.S. law firm responded that he was in the room with Mr. Okada, along with a colleague and certain Universal executives. Mr. Okada was reminded that Company policy provided that board members attend meetings without personal lawyers. Thereafter, Mr. Okada's counsel advised that everyone would leave the room except for Mr. Okada and his translator. Following confirmation from Mr. Okada's translator that all other persons had departed, the meeting continued. As the focus of the meeting turned to the Freeh Report, the meeting was interrupted constantly by issues relating to translation. The question was asked of Mr. Okada's translator whether he was a licensed translator, and he replied that he was, in fact, not a professional translator, but a Japanese attorney for Mr. Okada. That person was asked to leave the meeting. Subsequently, the meeting proceeded with Mr. Okada having the discussion at the meeting translated for him by a professional translator provided by the Company.

22. Mr. Freeh provided the board (including Mr. Okada) with a detailed summary of his investigation and his findings. The Chairman then declared that there would be a two-hour recess to allow the board members who had executed a confidentiality agreement to read the Freeh Report — that is, all members other than Mr. Okada, who refused to execute the agreement, which had been translated into Japanese — following which the meeting would resume with a discussion of the Freeh Report. Prior to taking the recess, the Chairman inquired of Mr. Okada whether he had any questions or comments. Mr. Okada did not respond. Thereafter, the decision was made that Mr. Okada would not be re-connected to the portion of the meeting that would involve a discussion of the Freeh Report.

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23. When the board meeting reconvened, there was a general discussion of the Freeh Report and its implications for Wynn Resorts and its shareholders. The board then received advice from two attorneys from separate law firms, each of whom is expert in gaming law, and asked questions of them. There was a consensus among the members of the board that Aruze's status as a substantial shareholder of the Company jeopardized the gaming licenses held by Wynn Resorts and could jeopardize future efforts by Wynn Resorts to become licensed in other jurisdictions.

24. After further extensive discussion, the directors present voted unanimously to declare Mr. Okada, Aruze, and Universal "Unsuitable Persons" within the meaning and according to the criteria specified in Article VII of the Wynn Resorts Articles of Incorporation. (The Articles are attached as Exhibit 2 to this affidavit.) In connection with this determination, the board received advice from the gaming law experts present at the meeting, including on the topics of the likely response of Nevada gaming regulators to a lack of action by the board, to a delay in action by the board, and related matters.

25. The board then considered the amount at which to value the Aruze shares within the meaning of Article VII, and whether to redeem the Aruze shares with cash or with a promissory note having the terms specified in Article VII. In connection with these questions, the board received information and advice from the independent investment banking firm of Moelis & Company, from Duff & Phelps, and from the Company's chief financial officer.

26. In determining the "fair value" of the securities to be redeemed, the board first considered what would be the fair value of unrestricted shares of Wynn Resorts and determined that it would be the then current NASDAQ market price. The board then considered the transfer restrictions applicable to Aruze's shares under the stockholders agreement among Aruze, Mr. Wynn, and Ms. Wynn, as well as the size of Aruze's block, and determined that it would be appropriate to apply a discount to the then current NASDAQ market price to account for these restrictions. In determining what discount to apply, the board was guided by the view of Moelis & Company that the transfer restrictions on Aruze's shares (restrictions that would travel with the shares to any potential buyer) were as restrictive as any other restrictions it had identified

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in respect of the shares of a U.S. public company. In addition, the board was guided by the advice of Moelis & Company that the size of Aruze's block would make it more difficult to sell. Based on this information, and following further discussion, the board determined to apply a 30% discount to the then current NASDAQ market price of Wynn Resorts shares in calculating the fair value of Aruze's shares.

27. The board then considered whether to pay cash or to issue a promissory note to Aruze to effect the redemption. In consideration of the potential negative effects on the Company's balance sheet and the borrowing costs associated with a cash payment, as well as the related negative impact on the Company's public shareholders, the board determined to issue to Aruze a promissory note on the terms set forth in the Articles of Incorporation. That promissory note is attached as Exhibit 3 to this affidavit. In connection with the decision to pay by note rather than by cash, the board received advice from outside expert gaming counsel, and it considered the potential views of the Nevada gaming authorities.

28. The board instructed management to advise Aruze of the redemption of its shares and the board's decision to issue to it a promissory note in exchange. That redemption notice is attached as Exhibit 4 to this affidavit.

29. On February 18, 2012, Wynn Resorts gave notice to the Nevada State Gaming Control Board that the board had found Mr. Okada, Aruze, and Universal to be "Unsuitable Persons" and redeemed Aruze's shares pursuant to Article VII in exchange for a promissory note. To my knowledge, the Gaming Control Board has expressed no concern with respect to the board's unsuitability determination, the redemption of Aruze's shares, or the board's decision to issue a promissory note to Aruze.

30. I understand that, in this motion, Aruze is making two main arguments — first, that Aruze's shares are not subject to the redemption provisions that the board invoked because Article VII has never applied to them; and, second, that the redemption was a "sham" meant to advance a plan by Steve Wynn to increase control over Wynn Resorts, and that the board has

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treated Mr. Okada unfairly because the directors are simply carrying out Steve Wynn's personal wishes. I am unaware of any evidence that would support these contentions.

ROBERT J. MILLER

Subscribed and sworn to in my presence this
20th day of September, 2012

Laurie Nady
Notary Public

LAURIE NADY
Notary Public State of Nevada
No. 06-105684-1
My appt. exp. Mar. 7 2014

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EXHIBIT 1

REPORT
Attorney – Client / Work Product / Privileged and Confidential

I. Introduction

Wynn Resorts, Limited ("Wynn Resorts"), a publicly traded company incorporated in the State of Nevada, on behalf of its Compliance Committee, retained Freeh Sporkin & Sullivan, LLP ("FSS") on November 2, 2011 to conduct an independent investigation. That independent investigation has been conducted under the sole direction of the Compliance Committee. The purpose of the investigation was to determine whether there is evidence that Mr. Kazuo Okada, a member of the Wynn Resorts Board of Directors, may have: (i) breached his fiduciary duties to Wynn Resorts; (ii) engaged in conduct that potentially could jeopardize the gaming licenses of Wynn Resorts; and/or, (iii) violated the Wynn Resorts compliance policy. Specifically, FSS has been asked to examine Mr. Okada's efforts in connection with the creation of a gaming establishment in the Republic of the Philippines.

This is the Report to the Compliance Committee Chairman on the results of FSS' investigation. As set forth with greater detail in the attached appendix, FSS has performed its investigation by interviewing dozens of individuals and by reviewing thousands of documents, electronic emails, corporate and public records.

II. Summary

The investigation has produced substantial evidence that:

1. Despite being advised by the Wynn Resorts Board of Directors and Wynn Resorts attorneys on the strict US anti-bribery laws which govern Wynn Resorts and its board, Mr. Okada strongly believes and asserts that when doing business in Asia, he should be able to provide gifts and things of value to foreign government officials, whether directly or by the use of third party intermediaries or consultants.

2. Mr. Okada, his associates and companies have arranged and designed his corporate gaming business and operations in the Philippines in a manner which appears to contravene Philippine Constitutional provisions and statutes that require 60% ownership by Philippine nationals, as well as a Philippine criminal statute.

3. Mr. Okada, his associates and companies appear to have engaged in a longstanding practice of making payments and gifts to his two (2) chief gaming regulators at the Philippines Amusement and Gaming Corporation ("PAGCOR"), who directly oversee and regulate Mr. Okada's Provisional Licensing Agreement to operate in that country. Since 2008, Mr. Okada and his associates have made multiple payments to and on behalf of these chief regulators, former PAGCOR Chairman Efraim Genuino and Chairman Cristino Naguiat (his current chief regulator), their families and PAGCOR associates, in an amount exceeding US 110,000. At times, Mr. Okada, his

associates and companies have consciously taken active measures to conceal both the nature and amount of these payments, which appear to be prima facie violations of the United States Foreign Corrupt Practices Act ("FCPA"). In one such instance in September 2010, Mr. Okada, his associates and companies, paid the expenses for a luxury stay at Wynn Macau by Chairman Naguiat, Chairman Naguiat's wife, their three children and nanny, along with other senior PAGCOR officials, one of whom also brought his family. Mr. Okada and his staff intentionally attempted to disguise this particular visit by Chairman Naguiat by keeping his identity "Incognito" and attempting to get Wynn Resorts to pay for the excessive costs of the chief regulator's stay, fearing an investigation. Wynn Resorts rejected the request by Mr. Okada and his associates to disguise and to conceal the actual expenditures made on behalf of Chairman Naguiat.

4. Additionally, Mr. Okada, his associates and companies appear to have engaged in a pattern of such prima facie violations of the FCPA. For example, in 2010 it also is possible that Mr. Okada, his associates and companies made similar payments to a Korean government official who oversees Mr. Okada's initial gaming investment in that country. Additional investigation is needed to develop and confirm these possible FCPA violations.

5. The prima facie FCPA violations by Mr. Okada, his associates and companies constitute a substantial, ongoing risk to Wynn Resorts and to its Board of Directors, creating regulatory risk, conflicts of interest and potential violations of his fiduciary duty to Wynn Resorts. Finally, Mr. Okada's documented refusal to receive Wynn Resorts requisite FCPA training provided to other Directors, as well as his failure to sign an acknowledgment of understanding of Wynn Resorts Code of Conduct, increase this risk going forward.

6. Mr. Okada insisted in his interview that all of his gaming efforts in the Philippines prior to the change of the presidential administration in the summer of 2010 were undertaken on behalf of and for the benefit of Steve Wynn and Wynn Resorts. This assertion is contradicted by press releases dating back to 2007 on his website, which announce an independent effort by Universal; his real estate investments; and the ownership of his corporations in the Philippines.

7. (7) Mr. Okada has stated that Universal paid expenses related to then-PAGCOR Chairman Genuino's trip to Beijing during the 2008 Olympics.

III. Kazuo Okada's Relevant Corporate Affiliations

A. Wynn Resorts

After an initial public offering which closed in October 2002, Aruze USA, Inc., controlled by Mr. Okada, became a 24.5% shareholder of Wynn Resorts. Mr. Okada's current ownership of Wynn Resorts through his control of Aruze USA, Inc. is 19.66%.

Mr. Okada became a member of the Wynn Resorts Board of Directors on October 21, 2002, and remains on the Board of Directors as of the date of this Report. In the past, Mr. Okada has used the title of Vice Chairman of Wynn Resorts. In October 2011, the Wynn Resorts Board of Directors eliminated the position of Vice Chairman.

As a Director of Wynn Resorts, Mr. Okada is entitled to receive the courtesy of what is called a "City Ledger Account." Such accounts were originally instituted as a result of Sarbanes Oxley's prohibition of extensions of credit, in the form of a personal loan from an issuer to an officer or director. The accounts were funded by deposits from the director or his company. Such an account exists for billing conveniences related to charges incurred at various Wynn Resorts locales. Mr. Okada has availed himself of this courtesy and established such a City Ledger Account.[1] Within Wynn Resorts, this Okada City Ledger Account is referred to either as the "Universal City Ledger Account" or as the "Aruze City Ledger Account." Accordingly, the phrases Universal City Ledger Account and Aruze City Ledger Account will be referred to interchangeably within this report despite the fact that Aruze Corp.'s name was changed to Universal Entertainment Corporation in November of 2009.

Mr. Okada has been found to be suitable by the Nevada Gaming Commission.[2]

B. Universal Entertainment Corporation of Japan

Mr. Okada currently serves as Director and Chairman of the Board of Universal Entertainment Corporation ("Universal Entertainment"), registered in Tokyo, Japan. Universal Entertainment Corporation is the current trade name of a company which was incorporated in 1969 as Universal Lease Co. Ltd. and which became Aruze Corp. in 1998. Aruze changed its

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[1] The initial wire to establish the Aruze Corp. City Ledger Account was dated February 15, 2008.

[2] Mr. Okada was originally found to be suitable as a shareholder of Aruze Corp. as part of *An Order of Registration* issued jointly by the State Gaming Control Board and the Nevada Gaming Commission on June 4, 2004. On June 5, 2005, in a similar order, the Nevada Commission and the State Gaming Control Board found Aruze Corp. to be (1) suitable as a controlling shareholder of Wynn Resorts, Limited, (2) suitable as the sole shareholder of Aruze USA, Inc., (3) that Aruze USA, Inc. is registered as an intermediary company and is found suitable as a shareholder of Wynn Resorts, Limited, and (4) that Mr. Okada is suitable as a shareholder and controlling shareholder of Aruze Corp. [See Appendix]

name to Universal Entertainment Corporation in November 2009. Universal is listed on the JASDAQ stock exchange and is engaged in the manufacture and sale of pachinko and gaming machines and related business activities. As of September 2011, Okada Holdings Godokaisha was Universal Entertainment's major shareholder, with 67.90% of the issued shares.

The Nevada Gaming Commission has approved Universal Entertainment's suitability as the 100% shareholder for a subsidiary, Aruze USA, Inc.

C. **Aruze USA, Inc.**

Aruze USA, Inc. ("Aruze USA") is a wholly owned subsidiary of Universal Entertainment. Aruze USA is a US company and was incorporated in the State of Nevada on June 9, 1999. Mr. Okada is a Director of Aruze USA and serves as its President, Secretary, and Treasurer.

Aruze USA has been found suitable by the Nevada Gaming Commission as a major shareholder of Wynn Resorts.

D. **Aruze Gaming America, Inc.**

Aruze Gaming America, Inc. is a private company that is 100% personally owned by Mr. Okada. He currently serves as a Director, Secretary, and Treasurer of the company. Aruze Gaming America, Inc. is a US company and was incorporated on February 7, 1983. The company changed its name from Universal Distributing of Nevada, Inc. to Aruze Gaming America, Inc. on January 6, 2006. Aruze Gaming America, Inc. shares a common business address with Aruze USA, Inc. in Las Vegas, Nevada.

E. **Business Interests in the Republic of the Philippines**

Since 2008, Mr. Okada has been involved with a variety of corporate entities and with various business associates in the creation of a gaming establishment in an area of the Philippines known as Entertainment City Manila.[3] In furtherance of this endeavor, Mr. Okada and his associates have procured land and a provisional gaming license in the Philippines. A more detailed review of Mr. Okada's corporate entities and business associates in the Philippines is set forth in Section V(2)(A) below.

F. **Business Interests in the Republic of Korea**

Mr. Okada has recently pursued development of a casino resort complex in the Incheon Free Economic Zone in the Republic of Korea. A more detailed review of Mr. Okada's activities in Korea is set forth in Section V(4) below.

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[3] On the Universal Entertainment website (viewed January 30, 2012) this project is referenced as "Manila Bay Resorts." [See Appendix]

IV. Relevant Legal and Policy Standards

A. FCPA

The United States Foreign Corrupt Practices Act ("FCPA") contains two primary categories of violations: (i) a books and records provision, and (ii) a bribery provision. Based upon available information, it seems clear that Aruze USA fits the definition of domestic concern[4] and United States person[5] provided in the FCPA, and that the FCPA applies both to Aruze USA and to Mr. Okada personally, in his capacity as an officer and director of Aruze USA.

Under the definitions of domestic concern and United States person, the statute applies to a corporation, partnership, unincorporated organization and other enumerated entities that have their principal place of business in the United States or which are organized under the laws of a State of the United States. It also applies to officers and directors of such concerns.[6]

In 1998, the FCPA was amended and added an alternative basis to interstate commerce for jurisdiction. As the United States District Court for the Southern District of New York wrote: ". . . . The amendments expanded FCPA coverage to 'any person' -- not just 'issuers' or 'domestic concerns' . . . . [A]ny United States person or entity violating the Act outside of the United States is subject to prosecution, regardless of whether any means of interstate commerce were used. Citing 15 USC 78dd-1, 78dd-2. . . . (Emphasis added.)[7]

Under this definition, Aruze USA is a covered party under the FCPA.

The FCPA provides that "[i]t shall be unlawful for any domestic concern, other than an issuer which is subject to section 78dd–1 of this title, or for any officer, director, employee, or agent of such domestic concern or any stockholder thereof acting on behalf of such domestic concern, to make use of the mails or any means or instrumentality of interstate commerce corruptly in furtherance of an offer, payment, promise to pay, or authorization of the payment of any money, or offer, gift, promise to give, or authorization of the giving of anything of value to—

(1) any foreign official for purposes of—

(A)

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[4] 15 U.S.C. 78 dd – 2(a),(h).
[5] 15 U.S.C. 78 dd – 2(i).
[6] 15 U.S.C. 78 dd – 2(g).
[7] *In re Grand Jury Subpoena*, 218 F. Supp. 2d 544, 550 (S.D.N.Y 2002).

(i) influencing any act or decision of such foreign official in his official capacity,

(ii) inducing such foreign official to do or omit to do any act in violation of the lawful duty of such official, or

(iii) securing any improper advantage; or

(B) inducing such foreign official to use his influence with a foreign government or instrumentality thereof to affect or influence any act or decision of such government or instrumentality, in order to assist such domestic concern in obtaining or retaining business for or with, or directing business to, any person; . . ."[8]

The head of PAGCOR fits within the definition of foreign official as used in the FCPA.

According to PAGCOR's website, it "is a 100 percent government-owned and controlled corporation that runs under the direct supervision of the Office of the President of the Republic of the Philippines."[9] In addition to prescribing mandates to generate revenue for certain government programs and promote tourism in the Philippines, PAGCOR's charter states that the entity will "...[r]egulate, authorize and license games of chance, games of cards and games of numbers, *particularly casino gaming,* in the Philippines...."[10] (Emphasis added.)

As set forth above, there is still the interstate commerce basis for jurisdiction, but there is also an alternative. The alternative would require the same elements for an offense, but a showing of interstate commerce would not be required. If the interstate commerce basis for jurisdiction were used, the analysis set forth below would be of significance.

With regard to means or instrumentality of interstate commerce, some of the facts referred to in this report pertain to Mr. Okada utilizing the Universal City Ledger Account to confer financial benefits upon Philippine gambling regulators who could affect the business interests of Aruze USA, Inc. in the Philippines. Some of those benefits were conferred at Wynn Macau. The following facts concerning the Universal City Ledger Account, which bear upon use of means or instrumentalities of interstate commerce, were established during the investigation:

- The account is maintained at the corporate offices of Wynn Resorts, Limited in Las Vegas, Nevada where periodic deposits are made from Universal into the Wynn Resorts, Limited operating account at Bank of America in Las Vegas, Nevada to ensure that the amount on deposit remains at or about US 100,000. Bank documents reflect that the deposits are received from a Universal Entertainment account located in Japan.[11]

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[8] 15 U.S.C. Section 78dd – 2(a).
[9] http://www.pagcor.ph/pagcor-faqs-profile.php, viewed January 18, 2012. [See Appendix]
[10] Ibid., viewed January 18, 2012. [See Appendix]
[11] See, e.g. wire transfer documents from Sumitomo Mitsumi Bank to Bank of America. [See Appendix]

- When charges are incurred at Wynn Macau, Wynn Macau tracks all charges for the Universal City Ledger Account on its books, and then the accounting department transfers the charges to accounting at Wynn Resorts, Limited in Las Vegas via a journal entry. Wynn Macau sends a pdf file to a staff accountant at Wynn Resorts, Limited in Las Vegas with all the backup documentation. Invoices issued by Wynn Resorts, Limited are periodically sent to a Universal Entertainment email address.[12]

B. Nevada Gaming Regulations and Wynn Resorts Policies

The question of whether or not a gaming licensee or licensee applicant is deemed "suitable" in Nevada is answered by reviewing the Nevada Revised Statutes ("NRS") in conjunction with the regulations promulgated by the Nevada Gaming Commission ("NGC"), which is empowered by the NRS.[13]

1. Legislative Authority

The standard for determining suitability is found in Section 463.170 of the NRS. Paragraph (2) of the NRS 463.170, entitled *Qualifications for license, finding of suitability or approval; regulations*, provides that the person seeking a license or a suitability determination is subject to the following considerations: "[a]n application to receive a license or be found suitable must not be granted unless the Commission is satisfied that the applicant is: (a) A person of good character, honesty and integrity; (b) A person whose prior activities, criminal record, if any, reputation, habits and associations do not pose a threat to the public interest of this State or to the effective regulation and control of gaming. . . ." In addition, paragraph (3) provides in pertinent part "[a] license to operate a gaming establishment or an inter-casino linked system must not be granted unless the applicant has satisfied the Commission that: (a) [t]he applicant has adequate business probity, competence and experience, in gaming or generally. . . ."

The Nevada Gaming Commission Regulations ("Nevada Gaming Regulations") are also relevant to the conditions placed upon suitability. According to Section 3.080 of the Nevada Gaming Regulations, entitled *Unsuitable affiliates*, "[t]he commission may deny, revoke, suspend, limit, condition or restrict any registration or finding of suitability or application therefor upon the same grounds as it may take such action with respect to licenses, licensees and licensing; without exclusion of any other grounds." Paragraph (1) of Section 3.090, entitled

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[12] In a Wynn Resorts Memorandum to File from the Corporate Accounting department, dated January 10, 2012, the "invoice[s] and all support documentation are emailed to kimiko.okamura@hq.universal-777.com, takashi.usami@hq.universal-777.com and iwayama.hidetsugu@hq.universal-777.com on the 5th of each month for the prior month [sic] activity." [See Appendix]

[13] For further advice regarding suitability, please consult directly with David Arrajj, Esq. and/or see Memo dated December 9, 2011 from Kate Lowenhar-Fisher, Esq. and Jamie L. Thalgott, Esq. to David Arrajj, Esq. re Associations and the Suitability Analysis. [See Appendix]

Standards for commission action, provides in pertinent part that "[n]o license, registration, finding of suitability, or approval shall be granted unless and until the applicant has satisfied the commission that the applicant: (a) Is a person of good character, honesty, and integrity; (b) Is a person whose background, reputation and associations will not result in adverse publicity for the State of Nevada and its gaming industry; and (c) Has adequate business competence and experience for the role or position for which application is made."

2. Underlying Corporate Documents of Wynn Resorts

The Second Amended and Restated Articles of Incorporation of Wynn Resorts, Limited (filed September 16, 2002) also provide for standards that seek to define an "Unsuitable Person." As set forth on page 8 of the Articles of Incorporation, the phrase Unsuitable Person "shall mean a Person who . . . in the sole discretion of the board of directors of the Corporation, is deemed likely to jeopardize the Corporation's or any Affiliated Company's application for, receipt of approval for, right to the use of, or entitlement to, any Gaming License." (Emphasis added.)

Finally, the Amended and Restated Gaming and Compliance Program of Wynn Resorts, Limited (adopted as of July 29, 2010) defines an *Unsuitable person* as a "[p]erson (i) who has been denied licensing or other related approvals by a Gaming Authority on the grounds of unsuitability or who has been determined to be unsuitable to be associated with a gaming enterprise by a Gaming Authority; or (ii) that the Company determines is unqualified as a business associate of the Company or its Affiliates based on, without limitation, that Person's antecedents, associations, financial practices, financial condition or business probity."

In the event of a finding of unsuitability, there are provisions within the aforementioned corporate documents that provide for a resolution post determination. Specifically, on page 6 of the Second Amended and Restated Articles of Incorporation of Wynn Resorts, Limited, the Articles state in pertinent part, "[t]he Securities Owned or Controlled by an Unsuitable Person or an Affiliate of an Unsuitable Person shall be subject to redemption by the Corporation, out of funds legally available therefor, by action of the board of directors, to the extent required by the Gaming Authority making the determination of unsuitability or to the extent deemed necessary or advisable by the board of directors. If a Gaming Authority requires the Corporation, or the board of directors deems it necessary or advisable, to redeem any such Securities, the Corporation shall give a Redemption Notice to the Unsuitable Person or its Affiliate and shall purchase on the Redemption Date the number of shares of the Securities specified in the Redemption Notice for the Price set forth in the Redemption Notice. . . ." The Articles provide further guidance as to the terms of the redemption.

In addition, according to Section 3.6 of the Fourth Amended and Restated Bylaws, effective as of November 13, 2006, the removal of a director is premised upon ". . . the

affirmative vote of the holders of not less than two-thirds (2/3) of the voting power of the issued and outstanding stock of the Corporation entitled to vote generally in the election of directors (voting as a single class). . . ." Resignation is also listed as an option "upon giving written notice, unless the notice specifies a later time for effectiveness of such resignation, to the chairman of the board, if any, the president or secretary, or in the absence of all of them, any other officer."

C. Wynn Resorts Code of Business Ethics

Wynn Resorts first adopted a Code of Business Conduct and Ethics on May 4, 2004. The document defines itself as "a statement of policies for the individual and business conduct of the Company's employees and Directors . . . ."[14] There are two sections of the Code that are relevant to this investigation: (i) conflict of interest and (ii) interaction with government officials. The sections are included below for reference purposes.

1. Conflict of Interest:

"A Conflict of interest occurs when your private interests interfere, or even appear to interfere, with the interests of the Company. A conflict situation can arise when you take actions or have interests that make it difficult for you to perform your Company work objectively and effectively. Your obligation to conduct the Company's business in an honest and ethical manner includes the ethical handling of actual, apparent and potential conflicts of interest between personal and business relationships. This includes full disclosure of any actual, apparent or potential conflicts of interest as set forth below.

Special rules apply to executive officers and Directors who engage in conduct that creates an actual, apparent or potential conflict of interest. Before engaging in any such conduct, executive officers and Directors must make full disclosure of all facts and circumstances to the Corporate Secretary, who shall inform and seek the prior approval of the Audit Committee of the Board of Directors."

2. Interacting with Government:

Prohibition on Gifts to Government Officials and Employees

"Different governments have different laws restricting gifts, including meals, entertainment, transportation and lodging, that may be provided to government officials and government employees. You are prohibited from providing gifts, meals or anything of value to government officials or employees or members of their families in connection with Company business without prior written approval from the Compliance Officer."

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[14] Wynn Resorts Code of Business Conduct and Ethics dated May 4, 2004, page 7. [See Appendix]

Bribery of Government Officials

"The Company's Policy Regarding Payments to Foreign Officials, the U.S. Foreign Corrupt Practices Act (the "FCPA"), and the laws of many other countries prohibit the Company and its officers, employees and agents from giving or offering to give money or anything of value to a foreign official, a foreign political party, a party official or a candidate for political office in order to influence official acts or decisions of that person or entity, to obtain or retain business, or to secure any improper advantage. Please refer to the Company's Policy Regarding Payments to Foreign Officials for more details regarding prohibited payments to foreign government officials."

Discipline for Violations:

"The Company intends to use every reasonable effort to prevent the occurrence of conduct not in compliance with its Code and to halt any such conduct that may occur as soon as reasonably possible after its discovery. Subject to applicable laws and agreements, Company personnel who violate this Code and other Company policies and procedures may be subject to disciplinary action, up to and including discharge." (Emphasis added.)

The Code has since been revised twice, once in 2009 and then again on November 1, 2011. Although the above sections have been expanded in these later editions, for the purpose of this investigation and the dates in question the substance has remained basically the same and the FCPA has continued to be a point of emphasis.

V. Report of Investigation

1. Mr. Okada's Attitude Toward Wynn Resorts Compliance Requirements

Mr. Okada's prima facie violations of FCPA, involving both his government regulators in the Philippines and possibly in Korea, do not appear to be accidental or based upon a misunderstanding of anti-bribery laws. Conversely, despite being advised by fellow Wynn Resorts Board members and Wynn Resorts counsel that payments and gifts to foreign government officials are strictly prohibited, Mr. Okada has insisted that there is nothing wrong with this practice in Asian countries. Mr. Okada has stated his personal rejection of Wynn Resorts anti-bribery rules and regulations, as well as legal prohibitions against making such payments to government officials, to fellow Wynn Resorts Board members.

In a February 24, 2011 Wynn Resorts Board of Directors ("Board") meeting at which Mr. Okada was present, after a lengthy discussion by the Board of the FCPA,[15] including specifically the Universal project in the Philippines and potential Wynn Resorts' involvement, "[t]he

[15] In an email from Kim Sinatra to Michiaki Tanaka, dated February 26, 2011, Ms. Sinatra referenced a meeting with Mr. Okada in which she furnished FCPA policy and training materials and reiterated the importance of strict compliance with the FCPA. [See Appendix]

independent members of the board unanimously advised management that any involvement [by Wynn Resorts] in the Philippines under the current circumstances was inadvisable."[16] During this discussion, Mr. Okada challenged the other board members over statements regarding the impermissibility under the FCPA of giving gifts abroad in return for favorable treatment, and made statements about hiring "third party consultants" to give gifts to officials.[17]

One board member recalled Mr. Okada stating that, in Asia, one must follow the local culture, and that is why one should hire "consultants" to give the gifts.[18] This board member understood Mr. Okada to mean that such use of consultants would help avoid prosecution under the FCPA. Another board member who was present recalled Mr. Okada stating that conducting business in the Philippines was all a matter of "hiring the right people" to pay other people.[19] Yet another board member recalled Mr. Okada being "adamant" during the FCPA discussion that it is not corrupt to give "gifts."[20] A board member who participated in the meeting by phone recalled Mr. Okada claiming that, in the Philippines, "business is done in a different manner, and sometimes you have an 'intermediary' that will do whatever he has to do," or words to that effect.[21] A different board member recalled being "shocked" by the contradiction between two of Mr. Okada's statements during this discussion.[22] Early in the discussion, Mr. Okada explained that there were no longer corruption issues in the Philippines with the new administration. However, Mr. Okada subsequently stated, in effect, that while he himself would not pay bribes, he would "hire someone else" to bribe the necessary person.

Pursuant to a chain of emails reviewed by FSS, commencing with an email on August 4, 2011 from Roxane Peper, Director of Intellectual Property and Corporate Records, to each of the board members (or their representatives), and ending with an email from Ms. Peper to Kevin Tourek, Senior Vice President and Corporate Counsel, on October 26, 2011, the following is clear:[23]

- All board members were notified of upcoming FCPA training/board meeting set for October 31 – November 1, 2011 and asked to confirm attendance by August 31, 2011.
- Mr. Okada, through two of his representatives, was emailed at least three (3) separate times before Shinobu Noda, his assistant, sent an email on September 15, 2011 confirming that Mr. Okada would attend.

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[16] Minutes of Wynn Resorts Board of Directors meeting, February 24, 2011, p.3. [See Appendix]
[17] Interview of Steve Wynn, November 7, 2011.
[18] Interview of Robert J. Miller, December 16, 2011.
[19] Interview of Alvin V. Shoemaker, December 20, 2011.
[20] Interview of Marc D. Schorr, December 20, 2011.
[21] Interview of Allan Zeman, December 21, 2011.
[22] Interview of D. Boone Wayson, December 20, 2011.
[23] See emails from Roxane Peper to Kevin Tourek on October 26, 2011. [See Appendix]

Subsequent to the confirmation, Ms. Peper received an email from Ms. Noda on October 25, 2011. Ms. Noda stated that the email contained a message to Kim Sinatra, Senior Vice President and General Counsel of Wynn Resorts, from Mr. Okada.[24] This part of the message was entirely in Japanese and had to be translated. Mr. Okada asked for the FCPA training materials to be provided in Japanese. He also stated that he would be arriving on "Monday [October 31]", which was the day the FCPA training was to commence. He asked if the training could be held after the board meeting or rescheduled. Kim Sinatra sent a response to Ms. Noda via email on October 25, 2011 thanking Mr. Okada for the note and stating further that the FCPA training materials had been translated and would be provided to him via email and that Wynn Resorts had made further arrangements to have the FCPA live training translated to Japanese via simultaneous translation.[25] She also stated that the date of the training could not be rescheduled because it had been planned around his previous confirmation and that outside counsel was coming to Las Vegas to provide the training.

Mr. Okada failed to attend the training on October 31, 2011. He was the only member of the board not in attendance (all others attended in person or via telephone dial-in as evidenced via a sign-in sheet).[26]

2. Gaming Establishment in the Philippines

Evidence obtained in the course of the investigation establishes that Mr. Okada, his associates and companies, may have arranged and manipulated the ownership and management of legal entities in the Philippines under his control, in a manner that may have enabled the evasion of Philippine constitutional and statutory requirements. It is also noted that Mr. Okada's two principal Philippine corporations, Eagle I Landholdings, Inc. and Eagle II Holdco, Inc., which may have been purposefully created to circumvent Philippine constitutional restrictions on foreign ownership of land, appear to be closely intertwined with Rodolfo Soriano, Paolo Bombase and Manuel M. Camacho, who have numerous common ties to former PAGCOR Chairman Efraim Genuino. For example, with regard to Eagle II Holdco, Inc., as late as 2010, Platinum Gaming and Entertainment ("Platinum") had acquired 60% of its shares. According to a dated filing by Platinum on file with the Philippine SEC, Rodolfo Soriano controlled 20% of Platinum at the time of its incorporation. Mr. Soriano, referred to by attorney Camacho as a "bag man" for then-Chairman Genuino, is a former PAGCOR consultant and respondent in PAGCOR corruption referrals (see page 15 infra). Similarly, Paolo Bombase, an officer, director and nominal shareholder of Eagle I Landholding, Inc. and Eagle II Holdco., Inc. has a 1.25% share of Ophiuchus Real Properties Corp. This Ophiuchus entity is 15% owned by a Philippine company named SEAA Corp. In turn, SEAA is the family-controlled company of former PAGCOR Chairman Efraim Genuino. At this time, the significance of this interlocking shareholder link

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[24] See email from Shinobu Noda to Roxane Peper dated October 25, 2011. [See Appendix]
[25] See email from Kim Sinatra to Shinobu Noda dated October 25, 2011. [See Appendix]
[26] See FCPA Training Sign-In sheet dated October 31, 2011. [See Appendix]

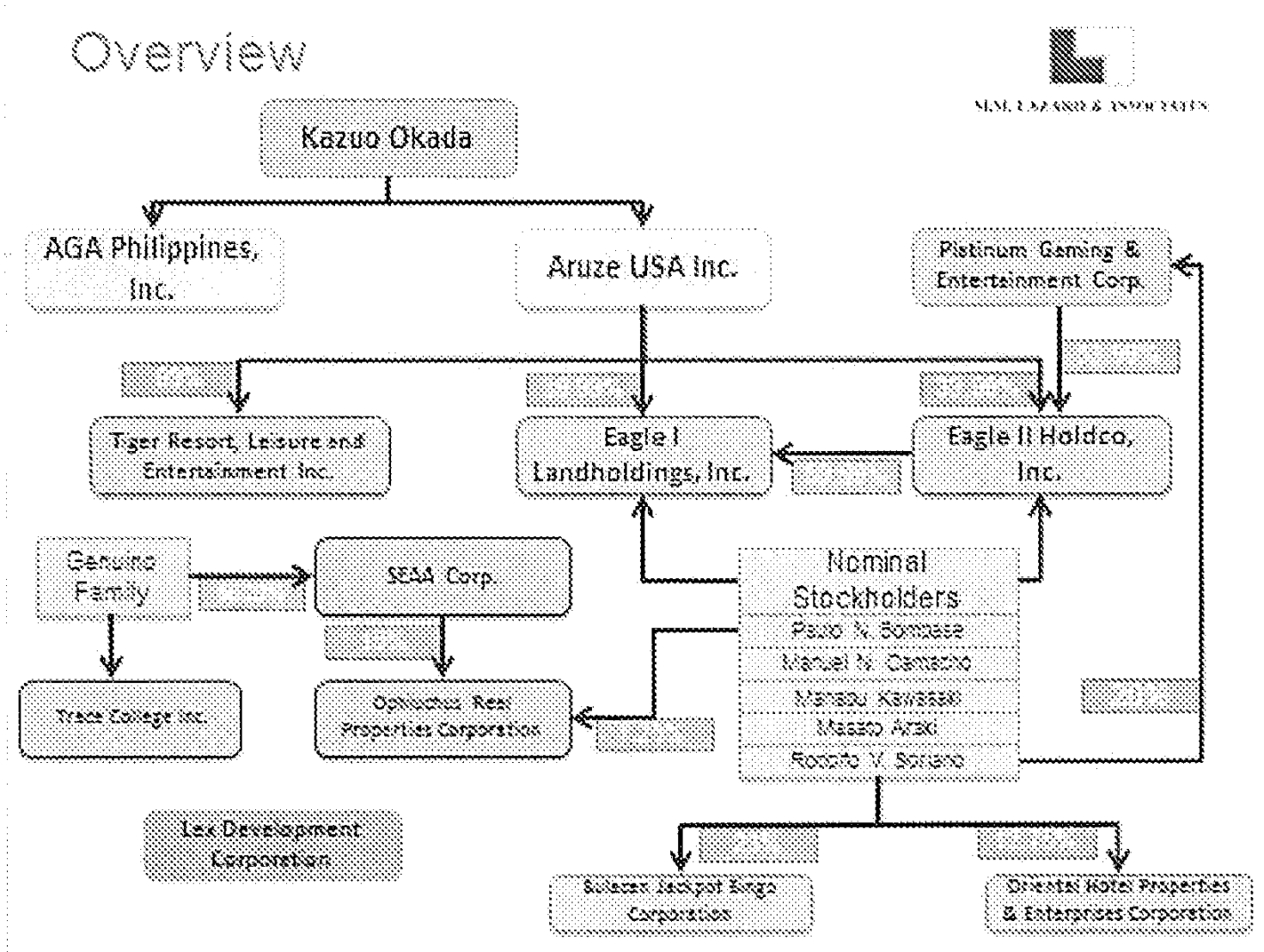
between Mr. Okada, his former Philippine gaming regulator, and the regulator's associates is not known.

A. Corporate Links between Mr. Okada's Business Interests and Those of Philippine Government Officials

Close associates and consultants of the former Genuino PAGCOR administration eventually attained positions as corporate officers, directors and/or nominal shareholders in legal entities controlled by Mr. Okada, and, in some cases, served as links between the business interests of Mr. Okada and those of former PAGCOR chairman Efraim Genuino and members of Genuino's immediate family.

In order to better understand the interrelationships among corporate entities in the Philippines controlled by Mr. Okada and those controlled by PAGCOR officials and their associates, FSS requested the Philippines law firm of M. M. Lazaro & Associates ("Lazaro") to produce a study of this issue.[27] Drawing upon official records obtained from the Philippines Securities and Exchange Commission, Lazaro produced an analysis of the relationships created by the ownership and control structures of these entities.[28] The chart below, extracted from that analysis, illustrates these relationships in schematic form.

[27] Manuel Lazaro was formerly a government corporate counsel with the rank and privileges of a Philippine presiding justice, court of appeals, who FSS retained to assist in the investigation and to advise on certain aspects of Philippine law. [See Appendix]
[28] The complete Lazaro PPT is attached to this report. [See Appendix]



Tiger Resorts, Leisure and Entertainment, Inc. ("Tiger") was incorporated in the Philippines on June 13, 2008.[29] Its primary purpose was stated as:

> To acquire, own, maintain, operate and/or manage hotels (city and resort), inns, apartments, private clubs, pension houses, convention halls, lodging houses, restaurants, cocktail bars, and any and all services and facilities related or incident thereto.[30]

Tiger is predominantly owned by Aruze USA, Inc.[31] In August 2008, PAGCOR granted Tiger a Provisional Licensing Agreement to operate a gaming establishment in the Entertainment City Manila Zone. An official of the current PAGCOR administration told FSS in December 2011 that PAGCOR was currently reexamining this license.[32]

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[29] Articles of Incorporation of Tiger. [See Appendix]
[30] Ibid. [See Appendix]
[31] GIS of Tiger, 2010. [See Appendix]
[32] Combined interview of Jay Daniel R. Santiago and Thadeo Francis P. Hernando, on December 12, 2011. It should be noted that after the interview with Santiago and Hernando, FSS along with its Philippine counsel, for purposes of this investigation, formally requested a copy of the Provisional Licensing Agreement from PAGCOR, as well as other related documents. On the same date that the formal request was made, PAGCOR refused to supply a

Eagle I Landholdings, Inc. ("Eagle I") was incorporated in the Philippines on May 16, 2008 with 5 partners of the Philippines law firm Sycip Salazar Gatmaitan ("Sycip") as the shareholders, directors and officers.[33] By certification on September 5, 2008, the original shareholders were all replaced by, among others, Eagle II Holdco, Inc. ("Eagle II"), with approximately 60% ownership. Eagle II maintained this percentage of ownership of Eagle I through the filing of the latest available General Information Statement ("GIS") for the year 2010.[34] Eagle I's 2009 GIS, filed September 17, 2009, indicates that Paolo Bombase, Manuel N. Camacho and Rodolfo V. Soriano (whose associations with PAGCOR and Mr. Genuino are explained below) all had become officers/directors and nominal stockholders of Eagle I; they retained this status through the filing of the latest GIS for Eagle I.[35] Aruze USA, Inc. first appears as the owner of approximately 40% of Eagle I as of the 2010 GIS, owning the share previously owned by Molly Investments Cooperative UA ("Molly").[36]

Eagle II's filings with the Philippines Securities and Exchange Commission indicate a history similar to that of Eagle I. Incorporated on May 19, 2008 by the same 5 Sycip partners,[37] Eagle II reflected the acquisition of approximately 60% of its shares by Platinum Gaming & Entertainment Corp. ("Platinum") on its GIS filed September 17, 2009, with Platinum owning the same percentage as of the 2010 GIS.[38] The same filings reflect the appearance--in 2009 and continuing through the 2010 filing--of Messrs. Camacho, Soriano and Bombase as officers/directors and nominal shareholders. In 2010 Aruze USA, Inc. appears with the 40% shareholding that was attributed to Molly in 2009.[39]

Platinum was incorporated in the Philippines on November 21, 2001, with a Certificate of Filing of Amended Articles of Incorporation ("AOI") issued by the Philippines Securities and Exchange Commission on June 10, 2002.[40] Platinum has no GIS on file with the Philippines Securities and Exchange Commission, and the only corporate document filed besides the Articles of Incorporation is the 2004 Financial Statement. The latest information on file lists Mr.

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copy of Tiger's Provisional Licensing Agreement, saying that they were bound by a non-disclosure clause. That refusal was signed by Francis P. Hernando, who is identified below as a PAGCOR employee, who stayed in Wynn Macau in June 2011 and had US 709.72 of expenses paid for by the Aruze City Ledger account. See Letter of Request and Letter of Refusal. [See Appendix]

[33] Articles of Incorporation of Eagle I. [See Appendix]

[34] GIS of Eagle I for years 2009 and 2010. [See Appendix] A GIS is required to be filed on an annual basis according to Section 141 of the Corporation Code of the Philippines. [See Appendix]

[35] Ibid. [See Appendix]

[36] Ibid. [See Appendix]; FSS has determined Molly to be a wholly owned subsidiary of Aruze Corp. See http://www.universal-777.com/en/ir/ir_lib/material/annual_20081119.pdf, page 32.

[37] Articles of Incorporation of Eagle II. [See Appendix]

[38] GIS of Eagle II, years 2009-2010. [See Appendix]

[39] GIS of Eagle II, 2010. [See Appendix]

[40] Articles of Incorporation of Platinum, as amended June 10, 2002. [See Appendix]

Soriano, a former PAGCOR consultant, as a director/officer and a 20% shareholder in Platinum.[41]

Messrs. Camacho, Bombase and Soriano are all directly associated with former PAGCOR Chairman Genuino in significant ways. Mr. Camacho is an attorney and a principal of the Manila law firm Camacho & Associates. He was for a time in a law partnership with Mr. Genuino's son, Erwin Genuino.[42] Mr. Camacho traveled to Japan with Mr. Soriano at then PAGCOR Chairman Genuino's behest, to meet with Mr. Okada and other representatives of Aruze. This meeting resulted in Mr. Camacho's firm replacing Sycip in representing Aruze with respect to the development of the project in Entertainment City Manila.[43]

Sometime subsequent to this meeting, Aruze wired retainer funds to the bank account of Mr. Camacho's firm, an account controlled jointly by Mr. Camacho and Erwin Genuino. Later, Mr. Camacho discovered that all or most of these funds had been withdrawn by Erwin Genuino. When he questioned this withdrawal, he was eventually told by Mr. Soriano and/or then PAGCOR Chairman Genuino that the funds had been withdrawn to be used as a "cash payoff" to the mayor of the municipality in which the Entertainment City Manila project is located, in order to facilitate approval of the use of some plots of land to build roads needed for Mr. Okada's casino project. Mr. Camacho claims to have had a falling out with Erwin Genuino and Mr. Soriano, and to be involved currently in a lawsuit against Erwin Genuino over the dissolution of their law partnership.[44] Erwin Genuino is named as a respondent, along with former PAGCOR Chairman Genuino, in two sworn corruption referrals ("PAGCOR Referrals") filed with the Republic of the Philippines Department of Justice ("DOJ") in the summer of 2011 by the current PAGCOR Administration.[45]

Mr. Bombase, also an attorney, is an officer/director and shareholder of Ophiuchus Real Properties Corporation ("Ophiuchus"), incorporated in April 2011.[46] According to its 2011 GIS, Ophiuchus was 15% owned by SEAA Corporation ("SEAA").[47] SEAA, which was registered with the Philippine SEC on December 3, 1997, is, according to its 2011 GIS, 100% owned by members of former PAGCOR Chairman Genuino's immediate family.[48] The Articles of

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[41] M. M. Lazaro & Associates, "Aruze Corporations in the Philippines and 'Related' Corporations", p. 18. [See Appendix]
[42] Interview of M. Camacho, December 13, 2011.
[43] In his discussion with FSS, Mr. Camacho referred to the firm only as "Aruze," not further defined.

[44] Although Mr. Camacho, who is in his seventies, failed to recall some details of his dealings with Mr. Genuino and Mr. Soriano, FSS credits the general account given by him during the December 13, 2011 interview.
[45] See PAGCOR Referrals. [See Appendix]
[46] Articles of Incorporation of Ophiuchus. [See Appendix]
[47] GIS of Ophiuchus, 2011. [See Appendix]
[48] GIS of SEAA, 2011. [See Appendix]

Incorporation of Ophiuchus also list Emilio Marcelo as an officer/director and shareholder.[49] Mr. Marcelo is named as a respondent in the PAGCOR Referrals.[50]

Mr. Soriano is a former PAGCOR consultant, named by Mr. Camacho as a close business associate and "bag man" for Mr. Genuino.[51] Mr. Soriano is also named as a respondent in the PAGCOR Referrals.[52] As of the latest information filed with the Philippines Securities and Exchange Commission in 2002, Mr. Soriano was a 20% shareholder and an officer/director of Platinum,[53] identified above as a 60% shareholder in Eagle II. If Mr. Soriano still held the same stake in Platinum when it acquired its share of Eagle II in 2009, then he became an effective owner of 12% of Eagle II and approximately 7% in Eagle I.

B. Apparent Evasion of Republic of Philippines Legal Requirements

As described in the preceding section, Mr. Okada caused various legal entities to be incorporated in the Philippines, in order to develop his casino resort project there, over time replacing the original incorporating Filipino shareholders with combinations of foreign shareholders affiliated with or controlled by him and associates of then-PAGCOR Chairman Genuino. As discussed below, there are constitutional and statutory requirements in the Republic of the Philippines requiring that purchasers of land be Philippines citizens or Filipino-owned legal entities, and that legal entities conducting business in the Philippines, with certain exceptions, be at least 60% Filipino owned.

In 2008, Eagle I purchased various tracts of land near Manila Bay totaling approximately 30 hectares at a total price of PHP 13,527,637,941.00 (approximately US 314,953,000.00) for the development of the project in Entertainment City Manila.[54]

At FSS' request, Lazaro prepared an analysis and opinion on the validity of Eagle I's ownership of these properties, in light of the aforementioned provisions of the Philippines Constitution and applicable statutes.[55] The analysis included a detailed review of the ownership and capitalization of Eagle I and associated entities described in the preceding section. The following is a summary of pertinent findings of the Lazaro analysis.

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[49] Articles of Incorporation of Ophiuchus. [See Appendix]
[50] See PAGCOR Referrals. [See Appendix]
[51] Interview of M. Camacho, Dec 13, 2011.
[52] See PAGCOR Referrals. [See Appendix]
[53] Articles of Incorporation of Platinum, as amended June 10, 2002. The 2001 Articles of Incorporation list four (4) additional 20% shareholders, identified as Filipino nationals. Because Platinum has not filed a GIS since 2002, the current ownership and control of Platinum is unknown. [See Appendix]
[54] Numbered Transfer Certificates of Title ("TCT") for Eagle I purchase of land tracts in Parañaque City, Philippines, dated August 19, 2008. [See Appendix]
[55] M. M. Lazaro & Associates. Memo re "Validity of Eagle I's Ownership of Real Estate Properties" ("Ownership Memo"), Jan 2012. [See Appendix]

A review of the 2009 Financial Statement of Eagle I disclosed that the funds used to purchase the land tracts appear to have been advanced by Molly.[56]

Platinum, the 59.99% owner of Eagle II, has filed no records with the Philippines Securities and Exchange Commission indicating that its paid-in capital ever increased beyond the original PHP 62,500, despite its amended Articles of Incorporation indicating that its authorized capital stock was increased from the initial PHP 1,000,000.00 to PHP 24,000,000.00.[57] Nor is it known today what person(s) or entities have controlled Platinum since incorporation in 2001.

The 1987 Constitution of the Philippines requires that only Philippines citizens or corporations with at least 60% of their capital stock owned by Filipinos are qualified to acquire land in the Philippines.[58] The Philippines Foreign Investment Act further requires that for a corporation to be considered a Philippines national, at least 60% of its capital stock outstanding and entitled to vote must be owned and held by citizens of the Philippines.[59]

Whenever facts or circumstances create doubt as to whether the ownership of 60% of a corporation is truly Filipino, Philippines Securities and Exchange Commission case law has held that a stringent examination of the true ownership of the voting stock of the subject corporation and of the true ownership of the voting stock of all successive layers of corporate ownership should be conducted. The application of this stringent standard is known as the "Grandfather Rule."[60]

Serious doubts are therefore raised about the actual Filipino equity of Eagle I, because of the appearance that Eagle I and Eagle II were created purposely to "...circumvent the constitutional restriction on foreign ownership of land."[61] Lazaro bases this assertion on its conclusion that "...Platinum appears to be merely a shell corporation used to satisfy the Filipino equity requirement."[62] Application of the Grandfather Rule would therefore be appropriate.

Applying the Grandfather Rule, Lazaro calculates the true percentage of Filipino versus foreign equity in Eagle I as illustrated in the following table:[63]

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[56] Ibid, p. 2. [See Appendix]
[57] Ibid, pp. 5-6. [See Appendix]
[58] Ibid, p. 8. [See Appendix]
[59] Ibid, pp. 9-10. [See Appendix]
[60] Ibid, pp. 11-14. [See Appendix]
[61] Ibid, p. 14. [See Appendix]
[62] Ibid, pp. 14-15. [See Appendix]
[63] Ibid, p. 15. [See Appendix]

Shareholder	Direct	Indirect	Total Filipino investment in Eagle I	Total Foreign investment in Eagle I
Aruze USA	40% of Eagle I	24% (40% of 60% total holdings of Eagle II in Eagle I)		64%
Platinum*		36% (60% of 60% total holdings of Eagle II in Eagle I)	36%	

*As noted above, Platinum has failed to file its annually required GIS with the Philippine SEC since its inception in 2001. The calculations in the above table prepared by Lazaro assume the "best case" scenario (for Platinum), i.e., that it is a truly 100% Filipino-owned corporation. If Platinum's actual Filipino ownership is less than 100%, then the percentage of Filipino investment in Eagle I would be correspondingly even less than calculated in the table.

Lazaro concludes that "...the foregoing shareholder structure appears to have been formulated by the parties as a legal scheme to justify the qualification of Eagle I to own real estate properties. The scheme employed...gives Aruze USA, Inc....a convenient vehicle to justify its ownership...in circumvention of the constitutional restriction on the foreign ownership of land."[64] Lazaro goes on to conclude that the apparent shareholder structuring scheme outlined above may also constitute a violation of Commonwealth Act No. 108, commonly known in the Philippines as the "Anti-Dummy Law."[65] If convicted of a violation of this law, stockholders of Platinum and of Aruze USA, Inc. who profited from the scheme would face a sentence of imprisonment of not less than five years nor more than fifteen years.[66]

From the foregoing discussion, there is substantial evidence and credible legal opinion indicating that the ownership structure of Eagle I and Eagle II may subject Mr. Okada, along with his associates and companies, to civil as well as criminal sanctions under Philippine law.

[64] Ibid, p. 16. [See Appendix]
[65] Ibid, pp. 16-17. [See Appendix]
[66] Ibid, p. 17. [See Appendix]

3. Apparent FCPA Violations Regarding Philippine PAGCOR Officials at Wynn Resort Properties

FSS has reviewed records of the Aruze City Ledger Account, through which Mr. Okada and Universal charge expenses for lodging, entertainment and other incidentals incurred at Wynn Resorts facilities against funds deposited into the account by Universal, and available underlying documentation furnished by Wynn Resorts management. The table below highlights thirty-six (36) separate instances, from May, 2008, through June 2011 (more than a three (3) year period), when Mr. Okada, his associates and companies made payments exceeding US 110,000, which directly benefitted senior PAGCOR officials, including two chairmen and their family members.

Name	Relationship to PAGCOR/Phil. Gov't.	Location(s) and Date(s) of Stay(s)	Total Charged to Aruze City Ledger Account (in US)
Efraim C. Genuino	Former PAGCOR Chairman (February 2001 to June 30, 2010)	WM June 6-9 2010	1,870.64
Cristino L. Naguiat Jr.	PAGCOR Chairman (July 2, 2010 to Present)	WM Sep 22-26 2010	See Suzzanne Bangsil[67]
		WLV Nov 15-20 2010	5,380.86
		WM June 6-10 2011	3,909.80
Dinner (Naguiat Party)	Chairman (PAGCOR)	WM Sep 24 2010 (Hosted by and charged to Kazuo Okada)	1,673.07
Maria Teresa Socorro Naguiat	Wife of PAGCOR Chairman Cristino L. Naguiat Jr.	WM June 6-10 2011	1,039.31
Suzzanne Bangsil[68]	Wife of Rogelio Bangsil, PAGCOR	WM Sep 22-26 2010	50,523.22
Jose Miguel	Husband of former	WLV Nov 12-17	4,642.40

[67] Chairman Naguiat did not identify himself and Mr. Okada's representatives insisted that his stay there be "Incognito." Accordingly, the bulk of the charges for the trip are reflected on the City Ledger Account as attributable to "Suzzanne Bangsil," the wife of Rogelio Bangsil, a senior PAGCOR official and Chairman Naguiat's employee. However, interviews, photo identifications and documentary evidence clearly establish that Chairman Naguiat was the "Incognito" guest and the direct beneficiary of these payments.

[68] Investigation has in fact determined that Chairman Naguiat was registered as an "Incognito" VIP guest under Suzzanne Bangsil's reservation. Therefore, this US 50,523.22 was paid for Chairman Naguiat's benefit.

"Mike" Arroyo	Philippines President Gloria M. Arroyo (Jan 20 2001 – June 20 2010)	2009	
Imelda Dimaporo	PAGCOR Board Member	WM June 8-10 2010	891.44
Philip Lo	PAGCOR Board Member	WLV April 29 2009 – May 3 2009	1,755.25
Manuel Roxas	PAGCOR Board Member	WLV April 2009[69]	253.75
		WLV April 29 2009 – May 3 2009	1,686.95
Susan Vargas	PAGCOR Board Member	WM June 8-10 2010	480.17
Jose Tanjuatco	PAGCOR Board Member (July 19 2010 to Present)	WLV Nov 15-18 2010	2,148.57
Rogelio J. B. Bangsil	Officer in Charge of PAGCOR Gaming Department	WM Sep 24-26 2010	1,149.04
		WM June 6-12 2011	2,955.23
Rodolfo Soriano	PAGCOR Consultant	WM June 3-7 2008	1,186.08
		WLV Nov 12-17 2009	4,228.00
		WM June 7-10 2010	1,104.06
		WM Aug 18 2010	368.06
Olivia Soriano	Relative of Rodolfo Soriano	WLV May 2008	975.55
Anthony F. "Ton" Genuino[70]	Son of Efraim C. Genuino; Mayor of Los Baños (2010 to Present)	WLV Sep. 2008	2,386.26
		WLV Oct 2008	2,326.49
Rafael Francisco	PAGCOR COO and President	WLV Nov 12-17 2009	4,360.16
		WM June 7-11 2010	935.21

[69] When the "Dates of Stay" in this table were not readily available, the month and year that the charges were entered in the City Ledger Account are used.
[70] See PAGCOR Referrals (Anthony Genuino is named as a respondent). [See Appendix]

Emelio Marcello	PAGCOR Consultant	WLV Nov 12-17 2009	1,181.60
		WM June 7-9 2010	471.51
Carlos Bautista	PAGCOR VP Legal	WM June 6-10 2010	1,049.69
Mario Cornista	PAGCOR Consultant	WM June 7-9 2010	600.02
Rene Figueroa	PAGCOR Executive VP	WM June 7-10 2010	646.76
Ernesto Francisco	PAGCOR Executive Committee and Casino General Manager	WM June 7-10 2010	797.17
Edward King	PAGCOR VP Corporate Communications	WM June 7-10 2010	767.71
Transportation	PAGCOR Delegation	WM Aug 2010	462.42
Jeffrey Opinion	Member of Naguiat Party	WM Sep 24-26 2010	906.61
Ed de Guzman	PAGCOR Executive Committee, AVP Slots	WM Jun 6-12 2011	3,421.79
Gabriel Guzman	Probable relative of Ed de Guzman (had adjoining room)	WM Jun 6-12 2011	1,391.71
(Thadeo) Francis P. Hernando[71]	PAGCOR VP, Licensed Casino Development Dept.	WM Jun 8-10 2011	709.72
TOTAL			110,636.36

The total in the above table represents charges from the Aruze City Ledger Account that are readily identifiable as incurred directly by officials and consultants of PAGCOR,[72] their family members and close associates, including Jose Miguel Arroyo, the then-First Gentleman of the Republic of the Philippines, husband of Philippine President Gloria Arroyo. Through a review of the Aruze City Ledger Account for statement periods March 2008 through November 2011, FSS has calculated that total charges to the account for that period, attributable to

[71] This is the same PAGCOR official who denied the FSS request for documents in December 2011, including a copy of the Provisional License Agreement. See footnote 31.
[72] In order to establish the PAGCOR affiliation of some of the individuals listed in this chart, various sources were consulted, including the PAGCOR website, internet news articles and the PAGCOR Referrals.

PAGCOR officials, employees, consultants, their associates and family members, exceed USD 110,000.[73]

FSS investigators interviewed members of the Wynn Macau management team, who furnished the following relevant information regarding a visit to that property in September 2010 by then and current PAGCOR Chairman and CEO Cristino L. Naguiat, Jr., his wife, three children, nanny and other PAGCOR officials, whose four-day stay at Wynn Macau was paid for via the Aruze City Ledger Account:

- September 20, 2010: Yoshiyuki Shoji of Universal, in an e-mail to Angela Lai of Wynn Macau, requests reservations for "Rogelio Bangsil (Guest Representative) & Others." Mr. Shoji requests Encore Suite or "more gorgeous room, such as Villa," and "the best butler" for unnamed person in group, who is "VIP for Universal." Mr. Shoji states that guests other than Bangsil should not be registered, that all charges should be posted to Universal's City Ledger,[74] and that "Mr. Okada would like them to experience the best accommodations and services at Wynn Macau."[75] The communication makes no reference to PAGCOR or the government affiliation of the guests.

- September 20, 2010: In an e-mail to Wynn Macau President Ian Coughlan and others, Ms. Lai informs Mr. Coughlan of the reservation and that checks of websites indicate that Mr. Bangsil is in charge of PAGCOR's gaming department.[76]

- September 20, 2010: In an e-mail to Mr. Shoji, Ms. Lai advises that Wynn Macau is checking on availability of the requested upgrade and that Macau law requires that all room occupants be registered, and requests that all guest names be furnished in advance of or at the time of registration.[77]

- September 22, 2010: In an e-mail to Wynn Macau President Ian Coughlan, Wynn Macau Senior Vice-President – Legal Jay M. Schall advises Mr. Coughlan of

[73] See City Ledger Account. [See Appendix]
[74] When Mr. Shoji set up the City Ledger Account for Mr. Okada in 2008, he asked whether the customer name and amount paid would be made public. He was advised that such information would not become public. Email response from Kim Sinatra to Shoji, dated February 8, 2008. [See Appendix]
[75] E-mail from Y. Shoji to A. Lai, September 20, 2010 [See Appendix]; interview of A. Lai, January 4, 2012.
[76] E-mail from A. Lai to I. Coughlan, September 20, 2011 [See Appendix]; interview of A. Lai, January 4, 2012; interview of I. Coughlan, December 29, 2011. It should be noted that according to an article in Manilatimes.net, published February 2, 2012, Rogelio Bangsil has recently been transferred to the PAGCOR international marketing department after a probe that found the government losing PHP 160 million in government run casinos to a Mr. Liu. [See Appendix]
[77] E-mail from A. Lai to Y. Shoji, September 20, 2010 [See Appendix]; interview of A. Lai, January 4, 2012.

PAGCOR's 100% government ownership and of Mr. Bangsil's position there. He writes "Bangsil, the guest of Mr. Okada, is a top five (if not 3) officer."[78]

- September 22, 2010 (14:00): Wynn Macau sends 1 Rolls Royce and 1 Elgrand to the airport, along with Masato Araki, Special Assistant to Mr. Okada; and Kenichiro Watanabe, another Universal associate, to meet arriving party, who arrived on Philippine Airline Flight 352 from Manila. They return with Chairman Cristino L. Naguiat, Rogelio Bangsil and Jeffrey Opinion at 14:45.[79] Only Mr. Bangsil furnishes his name upon registration. Ms. Lai and Wynn Macau VIP Services Manager Beatrice Yeung thereafter checks PAGCOR website and identifies Chairman Naguiat's name from his picture there.[80] Ms. Yeung's log and ongoing entries refer to "[I]ncognito (Mr. Naguiat, Cristino L.)."[81]

- Chairman Naguiat occupies Villa 81, the most expensive accommodation at Wynn Resorts Macau (about 7,000 square feet in size, which then cost about US 6,000 per day and is mostly reserved for "high rollers").

- September 22, 2010: the Wynn Encore log book reflects "Incognito (Mr. Naguiat) stayed in Villa 81 Master Bedroom 1."[82]

- September 23, 2010 (10:00): Mr. Araki advises Ms. Yeung that Chairman Naguiat plans to have lunch with Miss Pansy Ho at MGM.[83]

- September 23, 2010 (14:04): Jay Schall sends an email to Wynn Macau corporate security to check Worldcheck, as a rush job, for Cristino L. Naguiat Jr., Chairman and Chief Executive Officer of PAGCOR.[84]

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[78] E-mail from J. Schall to I. Coughlan, September 22, 2010 [See Appendix]; interview of J. Schall, January 3, 2012; interview of I. Coughlan, December 29, 2011.
[79] Wynn Macau Manager – Encore Logbook, September 22, 2010. [See Appendix]
[80] Interviews of Beatrice Yeung, January 4, 2012 and February 1, 2012; interviews of Angela Lai January 4, 2012 and February 2, 2012.
[81] Wynn Macau Manager – Encore Logbook, September 22, 2010. [See Appendix]
[82] Ibid. [See Appendix] During subsequent visits, Chairman Naguiat was identified as "Naguiat," though he was identified during his initial visit as "incognito." The negative inference to be drawn is an attempt to hide the payment of extremely costly expenses by a corporation connected with a regulated entity. The fact that he had only recently become chairman may have been a factor in his desire to keep his identity secret.
[83] Miss Ho is the daughter of Hong-Kong and Macau-based businessman Stanley Ho. Though Nevada gaming regulators found Miss Ho to be a suitable business partner for MGM Mirage, see http://www.lvrj.com/business/45462797.html, New Jersey regulators recommended that she be found unsuitable as MGM Mirage's joint venture partner in Macau. See http://www.newjerseynewsroom.com/state/mgm-mirage-chooses-pansy-ho-over-atlantic-city. [See Appendix]
[84] Email from Jay Schall to Peter Barnes of Wynn Macau Corporate Security, dated September 23, 2010. [See Appendix]

- September 23, 2010: In an e-mail to Ms. Lai, with a copy to Mr. Okada, Mr. Shoji requests that a credit of US 5,000 be extended to each person now staying at the Villa for shopping and gaming, up to a total of US 50,000. According to Mr. Shoji's email, the funds are to be advanced by Wynn Macau and charged to the Universal City Ledger account. [85]

- September 24, 2010 (13:45): MOP 80,000[86] (approximately US 10,000) is advanced from the Wynn Macau main cage to a Wynn Macau VIP Services employee (no longer employed at Wynn Macau), who in turn hands the money to Masato Araki, special assistant to president of Aruze USA, based upon instructions in the above referenced e-mail to Ms. Lai. The handover of funds is witnessed by Wynn Encore manager Alex Kong. The funds are charged to the Universal City Ledger Account.[87] MOP 15,000 of this sum is used to pay for a Chanel bag that Chairman Naguiat requested be purchased for his wife.[88]

- September 24, 2010 (Approximately 14:00): Mrs. Naguiat, her three children, Mrs. Bangsil and her daughter arrive at Wynn Macau.

- September 24, 2010 (15:45): Wynn Macau employees meet Mr. Okada and his assistant, Jun Yoshie, at the airport, transport them to Wynn Macau and escort Mr. Okada to room 5688.[89]

- September 24, 2010 (late afternoon): Mr. Coughlan receives a phone message from Mr. Yoshie that Mr. Okada would like to speak to him. Mr. Coughlan proceeds to an area near the Wynn Encore reception desk, where he meets Mr. Yoshie and Mr. Okada. They step into the Cristal Bar to talk, whereupon Mr. Okada, with Mr. Yoshie interpreting into English, tells Mr. Coughlan that the guests [referring to

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[85] E-mail from Y. Shoji to A. Lai, September 23, 2010 [See Appendix]; e-mail from B. Yeung to I. Coughlan, September 27, 2010 [See Appendix]; interview of B. Yeung, January 4, 2012; Wynn Macau Manager – Encore Logbook, September 24, 2010.
[86] MOP 80,000 was worth approximately US 9,816 at that time.
[87] Wynn Macau Manager – Encore Logbook, September 24, 2010 [See Appendix]; Wynn Macau "Miscellaneous Disbursement" record #013014, dated September 24, 2010 [See Appendix]; e-mail from B. Yeung to I. Coughlan, September 27, 2010 [See Appendix]; interview of B. Yeung, January 4, 2012; interview of Alex Kong, February 1, 2012.
[88] Wynn Macau Manager – Encore Logbook, September 24, 2010. [See Appendix]. The Chanel bag was purchased by a Wynn Macau employee as per instructions by Mr. Araki, who works for Mr. Okada. The Wynn Macau employee gave the bag, store receipt and change to Mr. Araki to deliver to Mrs. Naguiat. Later, Mr. Araki stated that Mrs. Naguiat did not like the bag so he would give it to his own wife.
[89] Wynn Macau Manager – Encore Logbook, September 24, 2010 [See Appendix]; interview of B. Yeung, January 4, 2012.

Chairman Naguiat's party] are very important to Universal, and that Mr. Okada wants Mr. Couglan to insure that they are well cared for during their stay.[90]

- September 24, 2010 (17:00): Mr. Okada meets Chairman Naguiat (and approximately thirteen (13)) others in his party) for dinner at Okada Restaurant.[91] Mr. Okada hosts the dinner and the bill for $1,673.07 is charged to his room.

- September 25, 2010 (05:45): Wynn Macau employees meet Mr. Okada outside his room and escort him to a limousine, which transports him to the Macau Ferry Terminal for 07:00 scheduled ferry departure to Hong Kong International Airport.[92]

- September 25, 2010: Beatrice Yeung describes in her log book "Movements – Incognito (Mr. Naguiat, Cristino L) / Mr. Bangsil, Rogelio / Mr. Opinion, Jeffrey (Mr. Okada's guests, Villa 81)."[93]

- September 25, 2010: Mr. Araki requests a second advance of MOP 80,000 for guests in Villa 81. Ms. Yeung accompanies Mr. Araki to the Main Cage and obtains the advance for him.[94] [This makes a total of MOP 160,000 advanced for the use of Chairman Naguiat and his party and charged to the Universal City Ledger Account per Mr. Okada's orders, as relayed in Mr. Shoji's e-mail.]

- September 26, 2010 (11:10): Mr. Araki departs the Wynn Macau Encore main entrance. He hands Ms. Yeung MOP 4100, returning what he says is the remainder of the two cash advances for Chairman Naguiat's party.[95]

- September 26, 2010 (13:15): Chairman Naguiat's party departs via Wynn Macau limousine to pick up Mrs. Naguiat from shopping and proceeds to the airport.[96]

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[90] Interviews of Ian Coughlan, January 5, 2012 and February 2, 2012.
[91] Interview of B. Yeung, January 4, 2012; Wynn Macau Manager – Encore Logbook, September 24, 2010. [See Appendix]
[92] Interview of B. Yeung, January 4, 2012; Wynn Macau Manager – Encore Logbook, September 25, 2010. [See Appendix]
[93] Wynn Macau Manager – Encore Logbook, September 25, 2010. [See Appendix]
[94] Interview of B. Yeung, January 4, 2012; Wynn Macau Manager – Encore Logbook, September 25, 2010 [See Appendix]; Wynn Macau "Miscellaneous Disbursement" record #013066, dated September 25, 2010. [See Appendix]
[95] E-mail from B. Yeung to I. Coughlan, September 27, 2010 [See Appendix]; Wynn Macau Manager – Encore Logbook, September 26, 2010 [See Appendix]; handwritten and signed note dated "9/26/10" with notation "MOP 4.100". [See Appendix]. The returned funds were equal to approximately US 503.07 returned out of a total of approximately US 19,632 provided.
[96] Interview of B. Yeung, January 4, 2012; Wynn Macau Manager – Encore Logbook, September 26, 2010. [See Appendix]

- November 10, 2010: Mr. Shoji advises Mr. Coughlan in an e-mail of receipt of Wynn Macau's invoice for the late September 2010 visit, in which the Villa [for Chairman Naguiat] was charged at the amount of MOP 48,000. Mr. Shoji states that "I understand that Mr. Okada explained to you in Macau that they were our business guests and we made reservations for them and all charges are billed to our company. While some of charges [sic] will be reimbursed by them, room charges were planned to be borne by us as ordinary business expenses. Since the amount charged is too much and beyond the ordinary room charge, our company will be put in a very difficult position to give reasonable explanations if we are inquired by someone. I would appreciate if you would reconsider this matter and charge us the original rate (free upgrade to Villa) since the party directly dealing with [sic] on this matter is our company rather than the each [sic] individual guest."(Emphasis added.)[97]

- On or about December 10, 2010: After e-mails and phone messages following Mr. Shoji's September 20, 2010 e-mail, Mr. Coughlan has a phone conversation with Mr. Shoji, in which he advises Mr. Shoji that, after internal Wynn Macau discussions, the final decision was that Wynn Macau would not provide the requested free upgrade for the Villa occupied during the September 2010 visit.[98]

The foregoing recitation of facts surrounding the September 2010 visit of Chairman Naguiat and his party to Wynn Macau demonstrates several significant elements of that visit:

- Mr. Okada considered these guests to be very important to his company.

- An effort was made from the outset to conceal Chairman Naguiat's identity and official status, to the point of not even wanting to advise Wynn Macau management and staff.

- With Mr. Okada's knowledge, Chairman Naguiat and his family were provided with approximately US 20,000 cash to use for gaming and also shopping

- Mr. Okada's representative sought to have Wynn Resorts fund a portion of the expenses incurred by Chairman Naguiat and his party, i.e., the free upgrade to a Villa.

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[97] E-mail from Y. Shoji to I. Coughlan, November 10, 2010 [See Appendix]; interviews of I. Coughlan, December 29, 2011 and January 5, 2012.
[98] Interviews of I. Coughlan, December 29, 2011and January 5, 2012; e-mail string between I. Coughlan and Y. Shoji and others, September 20 to December 9, 2010, subject: "Invoice and Statement for September Stay." [See Appendix]

- Mr. Okada's representative expressed apprehension about Universal being able to justify the level of expenditures in the event of future inquiries.

There is evidence that Mr. Okada personally directed the payments and gifts provided to Chairman Naguiat and his family during their luxury stay at Wynn Macau's most expensive accommodation in September 2010. On October 5, 2010, Mr. Araki sent an email to Wynn Macau in order to arrange for a "second group of PAGCOR" checking into Wynn Macau on October 8, 2010. Clearly referring back to Chairman Naguiat's stay less than two weeks earlier, Mr. Araki writes: "Our Chairman Okada once again instructed us to take care of the group, but not like last time meaning that we will not take care of their room charges and others." (Emphasis added). Mr. Araki, who worked for Mr. Okada and personally supervised Chairman Naguiat's luxury stay at Wynn Macau, appears to confirm Mr. Okada's personal knowledge and control of the payments for Chairman Naguiat.[99]

It is significant to note that the leadership of PAGCOR, which is appointed by the President of the Republic of the Philippines, changed effective June 30, 2010, when Benigno S. Aquino III assumed office as President of the Republic of the Philippines, succeeding Gloria M. Arroyo. Former PAGCOR Chairman Efraim C. Genuino, an Arroyo appointee, left office effective June 30, 2010, and Cristino L. Naguiat, Jr., President Aquino's appointee, assumed the position of Chairman and CEO of PAGCOR on July 2, 2010.

A review of the Aruze City Ledger Account records reveals that, after June 30, 2010, there are no charges attributed to Mr. Genuino or any of his family members who collectively had three (3) separate stays at Wynn resorts (Macau or Las Vegas) while Mr. Genuino was PAGCOR Chairman.[100] Conversely, the Aruze City Ledger Account reflects charges for Chairman Naguiat, his family, and key PAGCOR staff from Chairman Naguiat's "new" administration only after Naguiat became PAGCOR Chairman. This sequence is evidence that the hosting of these persons at Wynn Resorts, and payments made for them through the Aruze City Ledger Account, are solely related to PAGCOR, the Philippines government agency in charge of licensing and regulating Mr. Okada's business interests.

It is also clear that, having already received approval from PAGCOR in 2008 for a Provisional Licensing Agreement to develop a gaming business in the Philippines, Mr. Okada had a strong and continuing motive through 2010 and beyond to maintain favorable relations with the Chairmen and senior officials of PAGCOR. As previously noted, PAGCOR's primary governmental mission is regulating gaming businesses in the Philippines. Mr. Okada's project in Entertainment City Manila was prominently featured in PAGCOR's annual reports for

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[99] Email from Matt Araki to Beatrice Yeung dated October 5, 2010. [See Appendix]
[100] The sole exception identified, Rodolfo Soriano, Jr., is listed on the Aruze City Ledger Account as having a single room charge on August 18, 2010. [See Appendix]

2008,[101]2009[102] and 2010.[103] The 2010 Annual report features photos and messages from Chairman Naguiat, and several other members of the new PAGCOR leadership. The 2010 Annual report makes it clear that two of the proponents, Bloomsbury and the SM Consortium, are constructing their resorts and are expected to complete their first phase within 2014. The other two proponents (one of which is Tiger, the provisional licensee for Mr. Okada's casino project) are in the initial design stages and are expected to break ground in 2012.

The continuing coverage of Mr. Okada's Manila Bay Resorts project in PAGCOR's annual reports indicates that PAGCOR's interest in and oversight of this project did not stop with the granting of the Provisional Licensing Agreement in 2008. Indeed, the very nature of the Provisional Licensing Agreement requires continued oversight by PAGCOR officials. As Lazaro advised, the Provisional Licensing Agreement was issued in relation to the "Bagong Nayong Philipino Manila Bay Tourism City" project, which is also referred to as "PAGCOR City." PAGCOR City is envisioned to be a Las Vegas-style gaming and entertainment complex. The project was designed to attract proponents with established experience in the hotel and gaming business. PAGCOR released the "Terms of Reference," which detailed a list of requirements to which project proponents must conform in order to qualify for a PAGCOR license to operate within PAGCOR City.

The "Terms of Reference" section provides, in pertinent part, a mandatory Minimum Investment of US 1 Billion, consisting of both equity and debt, and the submission of an associated Project Implementation Plan within 120 days from signing of the Provisional License and approval by PAGCOR (Paragraph 4, Section II, Terms of Reference). Furthermore, within 30 days of signing of the Provisional License, proponents are required to submit a Performance Assurance Bond in the amount of PHP 100 Million to guarantee the completion of the project (Paragraph 8, Section II, Terms of Reference). Within 15 days of signing of the Provisional License, proponents are also required to open an Escrow Account (with an initial deposit of at least US 100 Million) through which funds for the project will pass. This Escrow Account must maintain a balance of at least US 50 Million. (Paragraph 9, Section II, Terms of Reference).

Specifically, paragraph 13 of the Terms of Reference states the following in relation to achieving a regular, non-provisional, Casino Gaming license:

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[101] PAGCOR 2008 Annual Report, pp. 12-18, viewed January 25, 2012 at http://www.pagcor.ph/annual-reports/annual-2008/pagcor-annual-report-2008.html. [See Appendix]
[102] PAGCOR 2009 Annual Report, pp. 16-19, viewed January 25, 2012 at http://www.pagcor.ph/annual-reports/annual-2009/pagcor-annual-report-2009.html. [See Appendix]
[103] PAGCOR 2010 Annual Report, pp. 24-26, viewed January 25, 2012 at http://www.pagcor.ph/annual-reports/annual-2010/pagcor-annual-report-2010.html. [See Appendix]

"13. Issuance of License

A Provisional License will be issued to the winning proponent effective for the duration of the project development period and shall not exceed the approved completion date of the whole project.

The Regular Casino Gaming License will be issued upon completion of the Project and upon approval by PAGCOR of the report detailing the actual total cost of the Project to ensure the proponent's compliance with the approved project cost based on the Project Implementation Plan. The term of the License shall not exceed the term of PAGCOR as specified in RA 9487.

No sub-license will be issued nor allowed." (Emphasis added.)

Thus, a Regular Casino Gaming License will be issued by PAGCOR upon (1) completion of the Project and (2) compliance with the approved project cost as approved by PAGCOR, based on the previously submitted Project Implementation Plan, including all other conditions as may be stipulated in the Provisional License Agreement.[104] Clearly, PAGCOR maintains an active regulatory role over gaming businesses after the issuance of a provisional gaming license. An operator who has already been granted a provisional license, therefore, would have a powerful business incentive to maintain favorable relations with PAGCOR's Chairman and senior leadership.[105]

Finally, the PAGCOR officials with whom FSS spoke in December 2011 indicated that, upon "taking over" from the Genuino Administration in 2010, they conducted a review of previously granted gaming licenses to ensure that all issuance decisions had been done properly, indicating that the Naguiat Administration was exercising close review in monitoring of all licensees, including Mr. Okada.

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[104] See research of Michelle Lazaro as expressed in her email dated January 30, 2012 to Mike McCall; See also "Terms of Reference" that were attached to the email. [See Appendix]

[105] A recent example of the extent of PAGCOR's continuing oversight of gaming operators can be found in the August 2011 issue of *Inside Asian Gaming* magazine. An article therein reported on claims by gaming operator Thunderbird Resorts, Inc. ("Thunderbird") that PAGCOR had unlawfully attempted to force Thunderbird, through various allegedly selective enforcement actions, to renegotiate the revenue sharing agreement it had signed with the previous PAGCOR leadership under Mr. Genuino. See "Ball of Confusion," dated August 10, 2011, *Inside Asian Gaming*, online edition, viewed January 26, 2011 at http://www.asgam.com/features/item/1238-ball-of-confusion.html. In the September 2011 issue, PAGCOR responded by making reference to various regulatory or enforcement functions it had been carrying out with regard to Thunderbird's casinos, up through the time that the dispute became heated. Among the functions mentioned were "resident monitoring teams" in Thunderbird casinos to "...guarantee the fair conduct of games..." as well as PAGCOR's serving of a notice of closure to Thunderbird in response to the disputed issues. See "Philippines Gaming Regulation—The Untold Story", dated 23 September 2011, *Inside Asian Gaming*, online edition, viewed January 26, 2011. [See Appendix]. These statements by PAGCOR clearly indicate that PAGCOR maintains active regulatory monitoring of licensed gaming businesses in the Philippines and claims the authority to close down licensed operators.

Mr. Okada's hosting and payments on behalf of PAGCOR Chairman Naguiat and his family at Wynn Macau, was most likely related to Mr. Okada's business interests in the Philippines, and would therefore constitute a prima facie violation of the FCPA both by Mr. Okada as well as by Aruze USA, Inc.

4. Possible Pattern of FCPA Violations Regarding Korean Government Officials

As stated previously, in recent years, Mr. Okada has been pursuing development of a resort complex in the Incheon Free Economic Zone in the Republic of Korea. Jong Cheol Lee, the Commissioner of the Incheon Free Economic Zone Authority, and apparently an Incheon government official, announced the signing of a Memorandum of Understanding on approximately October 27, 2011, between the Incheon Free Economic Zone ("IFEZ") and Okada Holdings Korea to develop a casino resort near the Incheon International Airport.[106]

A review of the Aruze City Ledger Account disclosed charges paid for Jong Cheol Lee and other guests of his party at Wynn Las Vegas and Wynn Macau for the period November 2010 to June 2011. Registration documents provided by Wynn Resorts disclosed annotations for Mr. Lee and three other guests, indicating: "Share with Incheon Free Economic Zone." According to the Aruze City Ledger Account, the following amounts were paid for government Lee and his party:

Name	Relationship to Incheon Free Economic Zone	Location and Date of Stay	Total Charged to Aruze City Ledger Account
Jong Cheol Lee	Commissioner	WLV Nov 16-18 2010	1,597.16
		WM June 2011	1,134.55
Woo Hyeung Lee	Unknown	WLV Nov 16-18 2010	843.89
		WM June 2011	1,083.22
Min Yong Choi	Unknown	WLV Nov 16-18 2010	507.50
Ki Dong Hur	Unknown	WLV Nov 16-18 2010	779.20
TOTAL PAID			5,945.52

These payments made for and on behalf of possible Korean government officials may be part of a continuing pattern by Mr. Okada and his associates to commit prima facie violations of the

[106] http://english.visitkorea.or.kr/enu/bs/tour_investment_support/pds/content/cms_view_1516066.jsp?gotoPage=&item=&keyword=, viewed January 14, 2012 [See Appendix]. http://blog.daum.net/ikoreatimes/60, viewed January 14, 2012. [See Appendix]

FCPA. However, further investigation is required in order to determine (i) the nature of Mr. Okada's relationship with these guests; (ii) whether these guests actually had a government affiliation at the time of their 2010 visits to Wynn Las Vegas and Wynn Macau; and, (iii) the status of Mr. Okada's gaming initiative in Korea.

5. Mr. Okada's Continuing Refusal to Receive Wynn Resorts mandated FCPA Orientation Training and to Acknowledge Wynn Resorts Code of Conduct

Mr. Okada's apparent practice and pattern of committing prima facie violations of the FCPA must also be reviewed in the context of his ongoing and likely future conduct as a majority shareholder and director of Wynn Resorts. Since August, 2011, Mr. Okada has failed to make himself available for requisite Wynn Resorts Board of Directors training regarding the FCPA and compliance. Not only has every other board member accepted and received such training, but attempts to accommodate Mr. Okada (including Japanese translation of the FCPA training materials and telephonic availability for the training) have failed.

Moreover, since August 2011, Mr. Okada has also failed even to acknowledge in writing Wynn Resorts Code of Business Ethics and Wynn Resorts Policy regarding Payments to Government Officials. Mr. Okada's continuing failure to perform this requisite review and agreement to comply with Wynn Resorts Ethics and anti-bribery rules and regulations create risk to Wynn Resorts and its board. Such non-compliance by Mr. Okada also suggests that he intends to continue his apparent practice and pattern of making FCPA prohibited payments on a going-forward basis. Any such future conduct would substantially enhance the risks to Wynn Resorts and compromise Mr. Okada's fiduciary duties to Wynn Resorts.

On August 5, 2011, Cheryl Palmer, the executive assistant to Kevin Tourek, sent out an email memorandum on Mr. Tourek's behalf to all board members stating that per compliance policy requirements, all members must acknowledge in writing on an annual basis having reviewed (and agreeing to comply with) two separate documents: (1) the Company's Code of Business Ethics and (2) Policy Regarding Payments to Government Officials.[107] A copy of the form was attached to the email, as was a copy of both the Code and the Policy. The email asked for the executed form to be returned prior to August 26, 2011. All of the members of the board, except for Mr. Okada, returned a signed copy of the acknowledgement. Mr. Okada was reminded, via emails to his representatives on a number of occasions,[108] as well as via a letter from Kevin Tourek, dated November 2, 2011, to provide an executed copy of the

[107] See email from Cheryl Palmer dated August 5, 2011. [See Appendix]
[108] See emails contained in email from Kevin Tourek to Robert Shapiro, Esq., dated October 24, 2011. [See Appendix]

acknowledgement form no later than November 15, 2011.[109] Mr. Okada failed to meet this deadline and, as of the date of this report, has yet to provide a signed copy of the form.[110]

In addition to his failure to return the fully executed Code of Business Conduct and Ethics and the Policy Regarding Payments to Government Officials Acknowledgment Form, which, as previously indicated, was sent out in August of 2011, Mr. Okada has yet to return a secondary acknowledgement form that was attached to the annual Directors' & Officers' Questionnaire ("D&O Questionnaire"). This form was sent out to each member of the board of directors on January 9, 2012, as part of the overall D&O Questionnaire packet.[111] The packet contained instructions to "sign where indicated by the *sign here tabs*" and asked that the 2012 D&O Questionnaire be returned in its entirety on or before January 27, 2012. The two places that required Mr. Okada's signature were (1) on page 26 of the D/O Questionnaire itself, and (2) on page 50 on the separate Code of Business Conduct and Ethics Acknowledgement Form that was part of the overall D&O Questionnaire packet. Though Mr. Okada returned the signature page (page 26) of the D&O Questionnaire itself on January 27, 2012,[112] (which was confirmed to FSS on February 7, 2012), the fact that he has yet to return the separate Code of Business Conduct and Ethics Acknowledgement Form (which he has unequivocally pledged to do by virtue of signing on the signature page of the D&O Questionnaire) is telling and is consistent with his refusal to provide an executed copy of the Code of Business Conduct and Ethics and the Policy Regarding Payments to Government Officials Acknowledgment Form that was sent to him in August of 2011. Though Wynn Resorts did not send to Mr. Okada the Code of Business Conduct and Ethics and the Policy Regarding Payments to Government Officials attached to the D & O Questionnaire in Japanese language versions, which they did previously with respect to the code and policy sent out in August of 2011 after a request by Mr. Okada's attorney, Mr. Okada has never previously requested that the D & O Questionnaire itself be translated into Japanese. Mr. Okada was again reminded of his obligation to return the separate Code of Business Conduct and Ethics Acknowledgment Form (page 50 of the D&O Questionnaire packet) in an email from Roxane Peper to Mr. Okada's assistant, Takashi Matsui, on January 31, 2012.[113] A copy of the form was attached to the email for Mr. Okada's convenience. This form remains outstanding.

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[109] See letter from Kevin Tourek to Mr. Okada, dated November 2, 2011. [See Appendix]
[110] In a letter dated December 1, 2011 to Robert Shapiro, Esq., outside counsel for Wynn Resorts, Gidon Caine, Esq., counsel for Mr. Okada, explained that the reason Mr. Okada did not sign the acknowledgment form was due to the fact that the materials had not been translated into Japanese. As of the date of submission of this Report, Mr. Okada has not yet submitted a signed copy of the acknowledgment form despite being provided with the requested translations, which were attached to a letter sent via email dated December 27, 2011 from Jeffrey Soza to Gidon Caine. [See Appendix]
[111] See Memorandum from Kim Sinatra to Board of Directors and Officers of Wynn Resorts, Limited, dated January 9, 2012, and 2012 Director's & Officers Questionnaire attached thereto. [See Appendix]
[112] See email from Takashi Matsui to Roxane Peper, dated January 27, 2012. [See Appendix]
[113] See email from Roxane Peper to Takashi Matsui, dated January 31, 2012. [See Appendix]

On February 1, 2012, Barry Brooks, one of Mr. Okada's attorneys, contacted Kevin Tourek, senior vice president and general counsel with Wynn Resorts, via email regarding "address[ing] the request, forwarded to Mr. Okada under cover of a memorandum from Mr. Wynn, that Mr. Okada execute and return to Wynn Resorts, Ltd. ("Wynn Resorts") a form of acknowledgment ("Acknowledgment") in regard to the Wynn Resorts Code of Business Conduct and Ethics (the "Code"). Most importantly, I wanted to emphasize that Mr. Okada agrees, with a deep sense of commitment, with the principles set out in the Code and agrees that it is in the best interest of Wynn Resorts and its shareholders that he, as a director, be a leader in observing and advocating for those principles. Also, and in any case, Mr. Okada believes that the requirements of the Code, and the spirit of those requirements, are keys to the future success of Wynn Resorts."[114] In a follow-up phone call to that email, Mr. Brooks and Mr. Tourek discussed the ramifications of Mr. Okada not signing the policy, the possibility of interpretation issues, and concerns over whether Mr. Okada may have any conflict of interest issues. Mr. Brooks also asked for a copy of the D & O Questionnaire.[115]

6. Mr. Okada, his associates and companies, Universal have pursued independently a casino gambling development in the Philippines since 2008.

FSS interviewed Mr. Okada on February 15, 2012 and the results of that interview are set forth more fully in Section VI.[116] In this interview, Mr. Okada asserted that all his efforts in the Philippines prior to the change of presidential administration in the summer of 2010 were undertaken on behalf of and for the benefit of Steve Wynn and Wynn Resorts, and that he only undertook to develop a gaming business in the Philippines independently subsequent to the change of presidential administrations.

On December 20, 2007, Aruze Corp. issued a press release entitled "Business Realignment and Future Business Development." The press release stated the following:

"The Company looks to acquire the licenses necessary to operate a casino resort in the Asian region, including Macau, and to commence operation of a casino resort on its own over the next business year. . . . For this know-how, which is vital from a management perspective, the Company intends to enlist the full cooperation of Wynn Resorts, Limited's Steve Wynn in its future pursuits regarding this project. For the purpose of successfully operating a casino resort in the Asian Region on an independent basis, the Company has received agreement from Steve Wynn that he will supply all necessary support, including active personal exchange with Wynn Resorts, Limited...."[117](Emphasis added.)

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[114] See email from Barry Brooks to Kevin Tourek, dated February 1, 2012. [See Appendix]
[115] See email from Kevin Tourek to Kim Sinatra, dated February 2, 2012. [See Appendix]
[116] Statements attributed to Okada during the February 15, 2012 interview are based on FSS' contemporaneous notes.
[117] See JASDAQ press release for Aruze Corp., dated December 20, 2007, entitled "Business Realignment and Future Business," available at: http://www.universal-777.com/en/ir/releases/2007/20071220_e.pdf. [See Appendix]

On April 25, 2008, Aruze Corp. issued another press release entitled "Casino Project in the Philippines." This press release stated the following:

"As announced in its 'Business Realignment and Future Business Development' press release issued December 20, 2007, ARUZE GROUP seeks to commence the operation of a casino resort in the Asian region, which shall be conducted independently by ARUZE CORP. . . . Out of the above mentioned elements, where essential management-based know-how is concerned, the Company intends to proceed with the project under the full guidance of Wynn Resorts, Limited's Steve Wynn."[118](Emphasis added.)

The press release identifies the location of the planned casino as a plot of land adjacent to "Bagong Nayong Pilipino Manila Bay Tourism City."

The language in the press releases suggest that Universal's intentions from the inception of the project were to develop a gaming business independently, and not for the benefit of Steve Wynn or Wynn Resorts.

7. **Mr. Okada has stated that Universal paid expenses related to then-PAGCOR Chairman Genuino's trip to Beijing during the 2008 Olympics.**[119]

Mr. Okada was asked during his interview whether he met then-PAGCOR Chairman Genuino in Beijing during the 2008 Olympics. Mr. Okada stated that Universal's President Tokuda made the arrangements for Chairman Genuino to travel to the Olympics. Mr. Okada explained that Mr. Tokuda was involved with the setting of the travel itinerary. When Mr. Okada was asked if the travel arrangements were "paid by Universal," Mr. Okada responded "not 100% perhaps there were people certainly not all but I'm not familiar with the details." Mr. Okada was then asked "To your knowledge, did Universal pay any of the associated costs of any of the travel of Mr. Genuino?" Mr. Okada answered "I don't know whether or not the travel expense was paid by them. My understanding is that there was a certain amount of personal monies being spent from the attendees and participants including Chairman Genuino but I do not know details regarding this." Mr. Okada was then asked "But is it your knowledge that some of those expenses were paid by Universal?" Mr. Okada answered: "Regarding the individual payment of personal monies, whether before or after, it was Universal that put together all of the expenses."

Mr. Okada then explained that since Mr. Okada was previously invited to "one of the islands in the Philippines so in return well we decided that we would decide to do this in turn so I too would invite them as well. There was a time from where we had that understanding now that I recall. So I may have asked Mr. Tokuda to include this person [Genuino] as well." The

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[118] See JASDAQ press release for Aruze Corp., dated April 25, 2008, entitled "Casino Project in the Philippines," available at: http://www.universal-777.com/en/ir/releases/2008/20080425_e_pr2.pdf. [See Appendix]
[119] Attributions from Mr. Okada's interview are based on FSS contemporaneous notes.

following question was then asked: "If there was a time that Genuino has invited you to the Philippines and in return for that you may have invited him or had some knowledge that Universal paid some of his expenses when he came to Beijing?" Mr. Okada responded: "I don't like to be invited more than what is necessary because that would mean that I am vulnerable and I don't like that. I was told that it was paid for and he insisted so I remember he had to be paid for in this way. So I remember that Mr. Tokuda said he should be included as well. I remember thinking that I had to return this in some way so I may have made that decision based on that memory." (Emphasis Added).

Later in the interview, Mr. Okada stated that Chairman Genuino appeared to have a "few people" with him at the Olympics and, "I asked my staff why wasn't he around and then my people said Mr. Genuino had a few people accompany him and he met with them to go shopping and once I heard that I do not recall now but again I don't have a clear recollection of his whereabouts."

VI. Summary of Mr. Okada's February 15, 2012 Interview[120]

Mr. Okada had four lawyers present over the course of the interview, including a Japanese interpreter/associate. Mr. Okada was given a full opportunity to answer all questions. He attended the interview voluntarily and at the end he was asked whether he wanted to explain anything else.

A. Apparent FCPA Violations regarding Philippine PAGCOR officials.

1. Mr. Okada admitted going to Macau on or about September 24 2010 to meet with PAGCOR chairman Naguiat at Wynn Macau. Mr. Araki called Mr. Okada on either September 24 or 23 to advise that Chairman Naguiat was at Wynn Macau.
2. Mr. Okada stated he flew to Macau from Japan for the sole reason of meeting Chairman Naguiat.
3. Mr. Okada stated the purpose of Chairman Naguiat's visit to Wynn Macau was for business – as a new PAGCOR Chairman, Naguiat wanted to better understand the casino business. Mr. Okada stated that a number of his Universal employees, including Araki, were at Wynn Macau in order to assist Chairman Naguiat in this regard.
4. Mr. Okada stated that when he got to Wynn Macau he asked to see Ian Coughlan, Wynn Macau CEO.
5. Mr. Okada asked to see and met with Ian Coughlan at Wynn Macau but denied telling Coughlan that the guests were Universal VIPs and that they should be treated well.

[120] Certain sections of the report below are presented in an abbreviated form. See the attached notes of Mr. Okada's interview for a more expansive description. [See Appendix]

6. Mr. Okada emphatically denied saying this and related that there is no way he would have said something to that extent regarding special care: "I would have said this is a person with a position with PAGCOR, I would have said be normal and don't do anything out of the ordinary."
7. Mr. Okada stated he attended a dinner for approximately ten (10) people at Wynn Macau and that Chairman Naguiat also attended.
8. Mr. Okada stated that either Araki, Shoji or Universal paid for the dinner
9. Mr. Okada said that he did not know whether any other PAGCOR officials attended the dinner.
10. Mr. Okada stated that he and Naguiat did not discuss any business at the dinner which would have been rude.
11. Mr. Okada stated that he believed Naguiat's wife was present at the dinner but that he was not introduced to her.
12. Mr. Okada stated he left early the next morning.

B. <u>Mr. Okada's Knowledge of and Response to Chairman Naguiat's September 2010 stay</u>

1. Mr. Okada stated that sometime after September 2010 he learned from Universal President Tokuda that the cost of Chairman Naguiat's stay at Wynn Macau exceeded reasonable entertainment expenses.
2. Mr. Okada learned about the excessive September 2010 expenses from Takuda about three or four months after the events when the bills would come up.
3. Mr. Okada stated that he was never told the cost of Chairman Naguiat's Wynn Macau stay nor did he ask anybody that question.
4. Mr. Okada stated that he understood that Chairman Naguiat had stayed in the most expensive accommodation at Wynn Macau. But he said "I heard later on that he was in one of the more expensive rooms. I heard this in the context of it would be a problem regarding our corporate policy…."
5. Mr. Okada stated that Chairman Naguiat's wife was present at Wynn Macau. Mr. Okada did not know if his children were present.
6. Mr. Okada stated that he did not know that any cash had been provided to Chairman Naguiat.
7. Mr. Okada stated that he did not know that Universal employees had tried to hide the identity of Chairman Naguiat as a guest.
8. Mr. Okada stated that he did not know how long Chairman Naguiat had stayed at Wynn Macau.
9. Mr. Okada denied seeing two (2) emails from Shoji to Angela Lai at Wynn Macau, dated September 20th and 23rd 2010 respectively, which requested

reservations for a Universal VIP guest, "who would not be registered," and arrangements to provide up to 5,000 US credit for each person staying at Naguiat's Villa. Mr. Okada explained that although he saw his name in the email cc's, he would not have seen either email because for the most part he does not use his PC.

10. Mr. Okada stated that internal Universal rules do not permit the payment of cash to government officials. Mr. Okada stated that no stay in the Villa in Wynn Macau could cost US 50,000
11. Mr. Okada stated that internal Universal rules permitted the payment of reasonable entertainment expense for government officials but did not know what amount was permitted.
12. Mr. Okada stated that the cost of Chairman Naguiat's stay at Wynn Macau caused a "problem" for Universal and that as a result Araki was fired, and Shoji resigned after having been scolded by Mr. Okada.
13. Mr. Okada stated that he did not make any changes at his company or give anyone new instructions as a result of finding out about Naguiat's stay in September 2010.
14. Mr. Okada said that it was possible that Chairman Naguiat would be billed for the cost of the stay.
15. Mr. Okada said, when he was asked about a reference in a Shoji email to posting all expenses to the Universal City Ledger Account, that he lacked any knowledge of such an account and said "I wonder if the City Ledger is in reference to our internal policy, as long as it is under that ceiling…."

C. <u>Mr. Okada stated that he was aware of only one other guest stay at Wynn Macau that he believed was improperly paid by Universal.</u>

1. Mr. Okada stated only a few weeks ago he learned from President Tokuda that Anthony Genuino, son of former PAGCOR Chairman Genuino, had stayed at Wynn Las Vegas in September of 2008 and that Universal had paid US 2300 for his stay.
2. Mr. Okada stated that Genuino would be sent the bill for this cost
3. Mr. Okada denied any knowledge of other PAGCOR officials staying at Wynn Resorts from 2008 through June 2011 with Universal paying for their expenses.
4. Mr. Okada stated that he had just instructed President Tokuda of Universal to conduct an investigation into Universal's payment of entertainment expenses.
5. Mr. Okada blamed Shoji as the responsible party for these payments.
6. Mr. Okada stated that he yelled at Shoji for not reporting these matters to him and would have fired Shoji except that Shoji resigned. Mr. Okada stated that Tokuda

did report these matters and Mr. Okada believed that Shoji was also in a position to know all about what had happened but had failed to report it to him.

7. Mr. Okada stated that Shoji was a trusted employee who had worked closely with him since 2002 and should have reported these matters to him.
8. Mr. Okada stated that they were just starting this investigation and that bills may be sent to certain of these guests for the expenses which Universal paid.
9. Mr. Okada especially blamed Mr. Shoji since he was the head of the company's compliance committee from 2002-2010.
10. Mr. Okada stated that he last met with Chairman Naguiat in the Philippines during January 2012 in order to seek land leasing approval from PAGCOR.
11. Mr. Okada stated that Universal had an expense policy but he didn't know what the amounts were. Mr. Okada stated that he was unfamiliar with the specific details of his compliance policy because he was too high within the company. He left it to others to handle the details of the policies.
12. Mr. Okada was asked a series of questions regarding about a dozen other PAGCOR officials who stayed at Wynn Macau or Wynn Las Vegas during 2010 and 2011 for whom Universal paid their expenses.
13. Mr. Okada denied having authorized any of these payments and said that he would not have authorized such payments if the guests were PAGCOR officials.
14. Mr. Okada stated that on one occasion he met Jose Miguel Arroyo, husband of Former Philippine President Gloria Arroyo, but did not know that Jose Arroyo had stayed at Wynn Las Vegas in November 2009, with Universal paying for his expenses totaling US 4,642.
15. Mr. Okada stated that he met Chairman Naguiat approximately 4 or 5 times since Naguiat's Chairmanship in June 2010 and that these meetings always involved official matters.
16. Mr. Okada stated that he told Tokuda in December of 2011 to investigate these matters.
17. Mr. Okada stated that December was the first time he asked Mr. Tokuda investigate these charges for Universal.
18. Mr. Okada stated further that Shoji was a trusted employee whom he had met with "very frequently." During the time period in September 2010 when Shoji was setting up the Naguiat visit, Shoji told Mr. Okada nothing about Naguiat.

D. Okada statements to the Board of Directors Regarding doing business in Asia

1. Mr. Okada stated that he could not specifically remember attending a Wynn Resorts Board of Directors meeting in February 2011.

2. Mr. Okada stated that he did not remember attending a Wynn Resorts Board of Directors meeting where bribery was discussed.
3. Mr. Okada denied ever stating to Wynn Resort Directors words to the effect that "it was a matter of hiring the right people and that you must pay other people." He responded "absolutely not, that's a lie."
4. Mr. Okada denied telling fellow board members words to the effect that "you have to follow local customs and that's why you have consultants."
5. Mr. Okada also denied ever stating to fellow board members words to the effect "I wouldn't bribe someone but would have someone else bribe that person."
6. As to bribing someone in the Philippines, Mr. Okada stated that "there is no need to do that in the Philippines even because we are in the position to invest."
7. Mr. Okada also denied ever stating words to the effect that "in Asia, it is okay to give gifts to government officials." His response was "absolutely not."
8. Mr. Okada stated that he had been a member of the Wynn Resorts Board of Directors since 2005 or 2006. When asked about his duties or responsibilities as a director of Wynn Resorts, Okada stated that he had to "ensure socially just company, there should be no illegal activities, and that I have to help them be successful and grow as a company."
9. Mr. Okada was asked if he had ever read the Wynn Resorts Code of Conduct to which he responded, "No because it is in English, no I cannot."
10. Mr. Okada was asked if he had accepted Wynn Resorts Board of Director FCPA training in 2011, to which he replied that he had received some documents but sent them to his lawyers.

E. <u>Doing Business in the Philippines</u>

1. Mr. Okada stated that prior to the new Philippine administration taking over in 2010, his efforts to conduct a gambling business in the Philippines were being done for Wynn Resorts and that he was reporting to Steve Wynn about these activities.
2. Mr. Okada said before the new Philippine administration in 2010 "All of the conversation between myself and Genuino was for the sake of explaining to Mr. Wynn."
3. Mr. Okada stated that a press release from Aruze Corp. dated April 25, 2008, that announced Aruze would independently operate a casino project in the Philippines, had not been presented to him for approval.
4. Mr. Okada stated that neither Steve Wynn nor Wynn Resorts had invested any money in the Philippine business initiative which he had been conducting since 2008.

5. Okada stated that Universal had invested between US 300-400 million in 2008 to acquire the land for the Manila Bay project.
6. When asked whether Mr. Wynn or Wynn Resorts invested any money in the US 300-400 million purchase, Mr. Okada stated that "Wynn Resorts had no involvement whatsoever."
7. Mr. Okada stated that it was only after the new Aquino presidency in June of 2010 that he decided to pursue a Philippine gaming project independently.
8. Mr. Okada stated that this land had been acquired by a company called Eagle I Land Holdings in which Aruze USA had an ownership interest.
9. Mr. Okada stated that at the time of the land acquisition in 2008, Eagle I Land Holdings was 60% owned by Filipino nationals. However, when asked to identify the 60% ownership today, he responded "I know of them I know who they are but I don't remember their names."
10. Mr. Okada stated that he was aware of the Philippine legal requirement that land be 60% owned by Filipinos.
11. Mr. Okada stated that neither Tiger or Aruze had a provisional gaming license for the Philippines.
12. Mr. Okada does not know whether a deposit was made by Universal in order to pursue the Filipino gaming initiative.
13. It was his understanding that to get a gaming license in the Philippines you needed to do certain things beforehand and that he asked questions on Wynn's behalf as to what had to be done.
14. Mr. Okada stated that Platinum Gaming and Entertainment was a Philippine company run by Soriano.
15. Mr. Okada stated that he did not know Paolo Bombase or Manuel Camacho as shareholders of Eagle I and Eagle II.
16. Mr. Okada stated that Masato Araki may have lent his name as a stockholder to Eagle I and Eagle II but that Mr. Okada did not know the details. Mr. Okada stated that he did not know whether Manabu Kawasaki, who was another Universal employee, was a stockholder of Eagle I or Eagle II.

F. Possible Payments by Universal to Korean Government Officials.

Mr. Okada stated that he is interested in the IFEZ for possible investment. Mr. Okada stated that he personally set up arrangements in 2009 or 2010 for a Korean delegation from the IFEZ to visit Las Vegas. According to Mr. Okada, this delegation was led by a Mr. Lee, who was "seconded" to IFEZ by the Korean government. Mr. Okada invited this delegation to see the Venetian.

Mr. Okada stated that "at the very beginning" he discussed the "issue of expense" and the Korean side said they had to pay for their own expenses as government officials. Mr. Okada stated that the Korean delegation stayed at Wynn Las Vegas and paid for their rooms. When told that Universal in fact paid for the Koreans' rooms, Mr. Okada stated "It's possible we paid in advance the first time but then they paid later. I am personally in charge of the Koreans." When Mr. Okada was then asked if he knew that was done he responded "I am certain it was done."

Mr. Okada later repeated that the Koreans paid for their own travel. When advised that Universal paid for Commissioner Lee and others to stay at Wynn Macau in 2011, and Wynn Las Vegas in 2010, Mr. Okada stated that "It may have been that we made a temporary payment to be reimbursed later but in any case for Korea all trips must be applied for with the City Hall and they need to get prior approval."

Mr. Okada later repeated that he did not authorize Universal to pay approximately US 6,000 worth of room charges for Commissioner Lee and other IFEZ officials for stays at Wynn Resorts. When asked if it would be against "Universal's policy" to pay such travel expenses, Mr. Okada repeated that the Koreans would pay for their own expenses. He added that "Maybe it was the case where Universal made a temporary payment to be reimbursed later and all this would be paid by 'admin official.'"

G. Mr. Okada Instructs Mr. Tokuda to Conduct an Investigation

Mr. Okada stated that since about 2008-2009, Universal has had both "ordinary" and "extraordinary" rules about paying entertainment expenses regarding government officials. However, he stated that he did not know the "specific details." Mr. Okada stated that "cash" could not be given but that he did not know the dollar amount limit for providing government officials with meals.

Mr. Okada stated that after learning from Mr. Tokuda about the excessive expenses paid by Universal for Chairman Naguiat's September 2010 stay at Wynn Macau, Mr. Okada did not take any steps or give instructions to prevent a recurrence. Indeed, Mr. Okada stated his belief that Universal's corporate policy as it exists today is "plenty on its own."

Mr. Okada stated that "within the last week or so" he learned from Mr. Tokuda that the son of then-PAGCOR Chairman Genuino stayed at Wynn Las Vegas in 2008 and that Universal had paid US 2,800 for his expenses. Mr. Okada said this was "inexcusable" and that he had given instructions to have him [Genuino] billed directly. Mr. Okada further stated that Mr. Tokuda had found "several more" of these instances but that Mr. Okada did not "know the details." Mr. Okada stated that in regard to Chairman Naguiat's stay at Wynn Macau, perhaps an invoice should also be sent to him as the customer.

Mr. Okada stated that "it was just yesterday" that he heard from Tokuda about "these issues being raised." After being asked what he knew about a list of PAGCOR officials whose

stays at Wynn Macau and Wynn Las Vegas were paid by Universal from 2008 – 2011, Mr. Okada denied any knowledge of these events. However, Mr. Okada stated that "everything I believe [FSS] mentioned matches with what Mr. Tokuda is investigating right now. And I will have him write a paper that lists all the countermeasures and a progress report and what has been wrapped up and so forth."

Mr. Okada stated that in approximately December 2011, he "clearly instructed" Mr. Tokuda to conduct an investigation about these matters. At the end of the interview, Mr. Okada stated that "I will look into all the expense that you have asked about and if it is someone who has an existing relationship I will for sure bill that person."

VII. Conclusions

The investigation has produced substantial evidence that directly relates to Mr. Okada's suitability under Nevada law as both a major shareholder and director of Wynn Resorts.

Nevada Gaming Commission Regulations regarding individual suitability issues encompass, among other things, a person's "good character, honesty and integrity," and whether a person's "background, reputation and associations will not result in adverse publicity for the State of Nevada and its gaming industry" (Section 3.090 of the NRS). The NRS also require that a covered person satisfy the Commission that such person has "adequate business probity" (Section 463.170, paragraph 3).

Both Aruze USA , a Nevada corporation, and Mr. Okada personally, as a Director, President, Secretary and Treasurer of Aruze Inc., are covered parties under the jurisdiction of the FCPA.

As set forth above, the investigation has produced substantial evidence that Mr. Okada, his associates and companies have apparently been engaging in a longstanding practice and pattern of committing prima facie violations of anti-bribery laws, particularly the FCPA.

The testimonial and documentary evidence appear to prove that, since at least 2008, Mr. Okada, his associates and companies have made over US 110,000 in payments to his chief gaming regulators (2) in the Philippines (PAGCOR), their families and associates. Mr. Okada is building a multi-billion dollar gaming business and operation in the Philippines.

The practice and means of making these payments varied slightly but were regularly and repeatedly arranged in the same manner. For example, between June 2008 and August 2010, former PAGCOR Chairman Efraim Genuino (February 2001 – June 30, 2010), his son and other PAGCOR government officials, were hosted by Mr. Okada, his associates and companies at either Wynn Resorts Las Vegas or Wynn Resorts Macau. Mr. Okada, his associates and companies would arrange and pay thousands of dollars to cover the expenses of Chairman

Genuino, his son and other then-current PAGCOR officials in his party. These payments were made by Mr. Okada, his associates and companies, using the City Ledger Account, which contained an average balance of US 100,000 funded and replenished by Universal. International money transfers and the facilities of interstate commerce were used to make these payments.

There is substantial evidence to show that Chairman Genuino's June 2010 stay at Wynn Macau was due to the fact that he was then Mr. Okada's principal Philippine gaming regulator. This is also demonstrated by the fact that after Chairman Genuino left his PAGCOR office in June 2010, he and his family were no longer the beneficiaries of such payments at Wynn Resorts facilities.

However, as set forth above in greater detail, Mr. Okada's current chief Philippine gaming regulator, Chairman Cristino Naguiat (July 2, 2010 – present) and his family quickly succeeded Chairman Genuino as the beneficiaries of payments by Universal for stays at Wynn Resorts Las Vegas and Wynn Resorts Macau (September 2010 in Macau; November 2010 in Las Vegas; and June 2011 in Macau, just over seven (7) months ago).

These payments were made using Mr. Okada's City Ledger Account, as was done regarding payments on behalf of the former PAGCOR Chairman. The evidence further suggests that Chairman Naguiat's luxury stays at Wynn Resorts facilities were fully known to Mr. Okada, who actively involved himself in some of the arrangements. For example, Chairman Naguiat's September 22-26, 2010 stay at Wynn Resorts Macau luxury Villa 81, the most expensive accommodation at Wynn Resorts Macau (about 7,000 square feet in size, which then cost about US 6,000 per day), was intended by Mr. Okada and his associates to be kept secret and concealed within Wynn Resorts Macau records. Initially, Mr. Okada's associates arranging for Chairman Naguiat's September 2010 stay at Wynn Resorts Macau purposefully withheld Naguiat's name and had him registered as an "Incognito" VIP guest of Universal, utilizing the named reservation of "Rogelio Bangsil" (another then-senior PAGCOR official). Chairman Naguiat then stayed at the Wynn Resorts Macau for four days, together with his wife, three children and a nanny, without ever once introducing himself to the constantly attending Wynn Resorts Macau VIP service managers.

Mr. Okada's associate, who made this reservation for Chairman Naguiat, requested a "more gorgeous room, such as "Villa" and "the best butler," for this unnamed "VIP for Universal," who turned out to be the chief gaming regulator for the Philippines. The evidence also shows that on September 24, 2010, Mr. Okada personally made clear (via an interpreter) to Ian Coughlan, the Wynn Resorts Macau Executive Director and President, that Chairman Naguiat and his party were important guests and that Mr. Coughlan should make sure that his staff took good care of them. The evidence further shows that on the evening of September 24, 2010, Mr. Okada hosted a dinner at Wynn Macau for Chairman Naguiat (and approximately13 others). The US 1,673.07 cost of this dinner was charged to Mr. Okada's room.

The testimonial and documentary evidence also shows that despite deliberate attempts to conceal Chairman Naguiat's identity while a guest at Wynn Resorts Macau in September 2010, hotel staff, acting on their own, soon identified Chairman Naguiat by means of a photo from the PAGCOR website. Their interest in doing so was sparked by the fact that the senior PAGCOR guest known to them, Mr. Bangsil, exercised great deference to Chairman Naguiat, who the staff determined must be the 'boss'. Nevertheless, the VIP service providers continued to refer to Chairman Naguiat only as "sir," thereby following the wishes and directions of Chairman Naguiat and Mr. Okada's associates. The evidence also shows that several weeks after Chairman Naguiat's intended "Incognito" stay at Villa 81, Mr. Okada's associates became concerned about the high cost of Chairman Naguiat's luxury stay at Wynn Resorts Macau. Specifically, Mr. Okada's associate advised Wynn Resorts Macau that the amount being charged for Chairman Naguiat's stay was too much over an ordinary business expense. Mr. Okada's associate then asked if Wynn Resorts Macau "could reconsider the matter [Chairman Naguiat's stay] and charge us [Mr. Okada's company] the original rate [and free upgrade to a Villa] since the party directly dealing with on this matter is our company [Mr. Okada's company] rather than each individual guest [Chairman Naguiat]." Mr. Okada's associate further stated that "since the amount charged [for Chairman Naguiat] is too much beyond the ordinary room charge, our company [Mr. Okada's company] will be put in a very difficult position to give reasonable explanations if we are inquired by someone." (Emphasis added).

Despite Mr. Okada's associate's efforts to have Wynn Resorts Macau reduce these payments and assist in covering up the beneficial amounts received by Chairman Naguiat, Wynn Resorts Macau denied this request.

Mr. Araki's later email ("Our Chairman Okada once again instructed us to take care of the group [PAGCOR], but not like the last time....") to Wynn Macau, dated October 5, 2010, also tends to confirm Mr. Okada's personal knowledge and direction of the payments made on behalf of Chairman Naguiat and his family for their luxury stay at Wynn Macau for September 22-26, 2010.

The evidence also shows that on September 24-25, 2010, Mr. Okada's associates obtained a total of US 20,000 cash from Wynn Resorts Macau's main cage as "cash advances" for Chairman Naguiat, his family and party. This same associate of Mr. Okada returned approximately US 503 of this advance on September 26, 2010 as the remainder from Chairman Naguiat's party. Mr. Okada's City Ledger Account was again used to pay for this advance.

The evidence also shows that the PAGCOR-related payments made by Mr. Okada and his associates are not the result of any misunderstanding of the applicable anti-bribery laws, including the FCPA. Conversely, by his own statements and declarations to fellow Wynn Resorts Board members, Mr. Okada apparently believes that there is nothing wrong with making payments and gifts to government officials when doing business in Asia. When advised by fellow directors and Wynn Resorts lawyers that such payments are bribes strictly prohibited by

the FCPA and other laws, Mr. Okada responded that third party intermediaries or "consultants" can be used to make the payments.

The best evidence of Mr. Okada's belief that it is permissible to make payments to government officials is his admission that Universal paid expenses for then-PAGCOR Chairman Genuino's trip to the 2008 Beijing Olympics. Mr. Okada explained that since Mr. Genuino had previously invited Mr. Okada to "one of the islands in the Philippines," Mr. Okada and Universal's President Tokuda in turn had Universal pay for expenses related to Genuino's trip to Beijing, which Mr. Okada stated was arranged by President Tokuda. This admission by Mr. Okada is consistent with his February 24, 2011 statements to board members that there is nothing wrong with making payments and gifts to government officials.

The evidence about the corporate structures utilized by Mr. Okada and his associates to initiate his multibillion dollar gaming business in the Philippines also appears to demonstrate Mr. Okada's intent to do business as he desires, regardless of the applicable laws and regulations. FSS's examination of the corporate documents relating to Mr. Okada's gaming initiative in the Philippines appears to show that he has used a complex web of corporate structures and companies to evade laws which require Philippine nationals to own 60% interest in all real estate. A separate legal analysis by a Philippine attorney confirms this finding and suggests that Mr. Okada's Philippine gaming initiative has been set up in violation of applicable law.

Additionally, the preliminary evidence also shows that in connection with Mr. Okada's efforts to develop a gaming business in IFEZ, Mr. Okada and his associates may be engaging in the same pattern of proscribed payments to government officials. The preliminary evidence shows that in October 2011, Mr. Okada's company signed a Memorandum of Understanding with IFEZ to develop a casino resort near the Incheon International Airport. Preliminary information indicates that IFEZ is overseen by the Incheon Free Economic Zone Authority, apparently part of the City of Incheon government. Mr. Okada's City Ledger account reflects that from November 2010 through June 2011, four (4) individuals, including IFEZ Commissioner Jong Cheol Lee, had two stays at Wynn Resorts Las Vegas and Wynn Resorts Macau, where payments totaling US 5,945.52 were made on their behalf through Mr. Okada's City Ledger account. Preliminary internet research identifies Jong Cheol Lee as the current IFEZ Commissioner, a position he has held since July 2010. It is not clear at this preliminary stage i) whether Mr. Okada's announced gaming investment and operation within IFEZ has received any gaming licensing, and ii) whether the three (3) guests who accompanied Commissioner Lee were then Korean government officials.

The investigation has established that despite requests by Wynn Resorts since August 2011 that Mr. Okada acknowledge in writing that he has reviewed (and agreed to comply with) Wynn Resort's "Code of Business Ethics" and "Policy Regarding Payments to Government Officials," Mr. Okada has failed to do so.

Finally, Mr. Okada was interviewed by FSS on February 15, 2012 by FSS and was given the opportunity to present his version of the facts. Mr. Okada denied knowledge of Chairman Naguiat staying "incognito" at Wynn Macau in September 2010. He also denied knowledge that Mr. Shoji was actively involved in arranging for Chairman Naguiat's stay. Although Mr. Shoji's emails asking that Chairman Naguiat's identity be kept secret, and that Chairman Naguiat be provided with cash in connection with his visit, were copied directly to Mr. Okada, the latter stated that because he rarely uses his personal computer, he would not have seen such emails. Mr. Okada acknowledged flying to Macau on September 24, 2010 in order to visit Chairman Naguiat but denied telling Ian Coughlan that Chairman Naguiat was an important Universal guest who should be treated well. Conversely, Mr. Okada stated that there is "no way" he would have said something like that, but would have said "be normal and don't do anything out of the ordinary." The substantial evidence relating to Chairman Naguiat's September 2010 stay at Wynn Macau, including emails, Coughlan's statements, and the facts and reasonable inferences regarding this evidence, cast substantial doubt on Mr. Okada's credibility.

Mr. Okada also vehemently denied making statements to fellow board members to the effect that doing business in Asia requires and permits bribes to be made to government officials. Mr. Okada's denials are directly contradicted by many of his fellow board members.

Similarly, Mr. Okada insists that all of his efforts to establish a gambling business in the Philippines prior to 2010 were undertaken solely on behalf of Wynn Resorts. His insistence is largely contradicted by the actions which he undertook. First, Mr. Okada and Universal invested US 300-400 million to buy property in the Manila Bay Entertainment Zone, which was to be used for his gaming operation. Mr. Okada admitted that Wynn Resorts had "no money involved in this investment." Secondly, Mr. Okada and Universal set up an elaborate corporate structure in order to initiate, and operate in the future, a multimillion dollar casino operation. Wynn Resorts had no participation in any of these corporate initiatives or structures, all of which were controlled by Universal and Mr. Okada. Third, the provisional gaming license, which is required in order to establish a gaming business in the Philippines, was procured by Mr. Okada and his companies, without any relation to Wynn Resorts. Finally, when shown an April 25, 2008 Aruze Corp. press release, which states that the Aruze casino operation will be independently developed by Aruze with the mere intent that Wynn Resorts help guide its project, Mr. Okada denied any knowledge of this press release.

In sum, the substantial evidence developed by this investigation and set forth above, based on witness interviews, public information, documentary and electronic data, provide the Compliance Committee and Board of Directors a factual basis to review Mr. Okada's continued suitability to be a major shareholder and director of Wynn Resorts.

may be convenient to the Committee. Other Committee meetings shall be held on a special or emergency basis, as deemed necessary by the Committee members. Committee meetings may be conducted in person or by telephonic communication; provided, however, that the Committee shall meet in person at least semi-annually.

3. Minutes

Minutes of all Committee meetings shall be kept by the Compliance Officer, copies of which shall be provided to all Committee within thirty (30) days after any Committee meeting. Minutes shall reflect the matters discussed and decided by the Committee. A copy of all Committee minutes shall also be sent directly to the CEO and the Audit Committee of the Company Board, and a copy of all ratified minutes, documents, exhibits and reports reviewed by the Committee members shall be provided to the Chairman of the Nevada Board or his designee within ten (10) business days of the Committee meeting at which they are ratified. The minutes shall contain the amount of detail appropriate to reflect a well-reasoned decision by the Committee members. In those matters in which no action is taken by the Committee, the minutes shall reflect the reasons why no action was deemed appropriate.

VIII.
DUTIES OF THE COMMITTEE

1. Required areas of review and information to be provided

The Committee shall review the results of all inquiries or investigations conducted by or on behalf of the Committee and the result of this review and any comments shall be made a part of the Committee's minutes.

The Committee shall provide a report of the results of its review to the Company Board, where its action is required, or the appropriate Executives in other cases, covering the following proposed activities by the Company or its Affiliates prior to any commitment by the Company or any such Affiliate.

However, if the CEO or COO determines that exigent circumstances exist which would preclude timely action by the Committee, the Compliance Officer shall provide such report to the CEO or COO as appropriate. In all cases in which the determination is made to go forward with a proposed transaction prior to Committee review: (i) the contract regarding the transaction shall contain a provision permitting termination of the contract without liability in the event of Committee disapproval; and (ii) the Committee shall review the transaction at its next meeting following entry into the contract.

A. *Material Transactions* - Prior to completing any Material Transaction by the Company or any of its Affiliates, the following information with respect to the other Person(s) involved is to be obtained, documented and reviewed by the Committee:

(1) Name and address of entity.

(2) Legal form of entity (corporation, partnership, etc.).

(3) General nature of business conducted and the reason(s) for the proposed transaction.

(4) Geographical area where business conducted.

(5) Principal officers, individual owners of more than 10% of the equity interests and all directors, including:

(a) Name and address of each.

(b) Known general background and known reputation of each Controlling Person.

(c) Known financial background of each Controlling Person.

(d) Known major creditors (amount).

(e) Known major debtors (amount).

(f) Description of all known material litigation to which the person is a party (including administrative matters).

(6) Examination of recent financial statements and regulatory filings of entity, if any (e.g., SEC filings).

(7) Specific laws under which business operation is permitted, if relevant.

(8) Identification of any broker, finder, or other person who suggested or proposed the transaction and disclosure of any arrangements whereby such person is to receive any compensation for such services.

(9) Other significant and material information relating to the entity or individuals associated therewith that may be disclosed during the course of due diligence, including, but not limited to, any material disciplinary action taken against such Person, if the Person has all required licenses or approvals and such licenses or approvals are in good standing.

(10) In the event that a Material Transaction involves a lease of real estate, a review of the background of the lessor or lessee, as the case may be, shall be made and, if deemed to be advisable by the Committee, an independent appraisal of the fair market value of the lease shall be obtained.

Should circumstances warrant further investigation of a Material Transaction, the Committee may, in its discretion, conduct such investigation.

B. *Executives, Key Employees, Consultants and Lobbyists* - Except as provided below or in exigent circumstances, the Committee shall conduct or have conducted an investigation of all Executives, Key Employees, Consultants and Lobbyists, prior to employment or engagement, in order to protect the Company from becoming associated with an Unsuitable Person. The results of such investigation shall contain the following

information:

(1) Past employment history.
(2) General background information and reputation.
(3) Law enforcement agency checks.
(4) Credit information.
(5) Public information on immediate family background.
(6) Litigation information for the past five years.

The Committee shall not be required to conduct investigations of Executives, Key Employees, Consultants and Lobbyists that were hired or retained by the Company prior to the effective date of this Program. However, if contracts or agreements with such Persons that in place prior to the effective date of this Program are renewed, renegotiated or otherwise changed, or if such Persons are later promoted, then normal due diligence procedures will be followed.

With respect to Consultants or Lobbyists, in lieu of an investigation, the Committee may accept the following as evidence of good reputation, unless reliance upon the same is unwarranted: (i) the licensing or approval of such Person by any Gaming Authority or by any other governmental or professional licensing authority; (ii) favorable information generally available to the Company from the business or professional community; or (iii) information derived from prior relationships or dealings with the Company.

With respect to Executives and Key Employees, in lieu of an investigation, the Committee may accept the licensing or approval of such Person by any Gaming Authority, as evidence of good reputation, unless reliance upon the same is unwarranted.

The Compliance Officer is responsible for gathering, documenting and interpreting available information, and for making recommendations to the Committee regarding whether sufficient information exists, is available to the Company and will suffice as due diligence in lieu of an investigation. The Committee will make the final determination as to the acceptability of such information in lieu of an investigation. It is the intent of the Program that this provision primarily apply to Persons who are involved in advancing the Gaming Operations or gaming interests of the Company or any Affiliate.

C. *Professional Advisors* - The Compliance Officer shall conduct a cursory review of available public information regarding Professional Advisors to establish whether there is sufficient evidence to conclude that the Professional Advisor is not considered an Unsuitable Person. Such evidence may include, but is not limited to, evidence of current licensing, lack of unfavorable reports from professional oversight or consumer affairs agencies or submittal of the Company's "Business Disclosure Form" for review by the Committee. The Committee shall not be required to conduct investigations of Professional Advisors unless information becomes available to the Committee indicating that a Professional Advisor may be an Unsuitable Person or that the Committee's reliance on a Professional Advisor's good reputation is otherwise

unwarranted. If such information becomes available, the Compliance Officer will provide it to the Committee. The Committee will then decide if an investigation is warranted. It is the intent of the Program that this provision primarily apply to Persons who are involved in advancing the Gaming Operations or gaming interests of the Company or any Affiliate.

D. *Independent Agents and Junket Representatives* - Independent Agents, sometimes known as Junket Representatives in jurisdictions other than Nevada, engaged in connection with Nevada Gaming Operations must register with the Nevada Board pursuant to Nevada Commission Regulation 25. Such Independent Agents may not be compensated for services rendered by a Nevada licensee until the Chairman of the Nevada Board notifies the licensee in writing that the Independent Agent has submitted the information required by and in compliance with such regulation. Therefore, each of the Company's licensed subsidiaries in Nevada shall ensure that all requirements of Regulation *25* have been complied with before any Independent Agent is compensated in any manner.

The Committee shall not ordinarily be required to conduct investigations of Independent Agents or Junket Representatives unless information becomes available to the Committee indicating that an Independent Agent or Junket Representative may be an Unsuitable Person. The Compliance Officer shall review the personal history records, the report of arrangements and any other documents filed with Gaming Authorities in Nevada by or on behalf of Independent Agents or Junket Representatives, and shall review available public information, to ensure that all filing requirements have been complied with and to determine whether such filings raise any suitability issues. In other jurisdictions, the Compliance Officer may review such information and documentation as he shall deem appropriate, including available public information and information obtained from the Junket Representative. The Compliance Officer shall provide the Committee with a quarterly report on summarizing such filings and any suitability issues or violations of applicable registration requirements.

In the event that (i) the Compliance Officer determines that there are suitability issues or (ii) an Independent Agent is required to be licensed or found suitable by the Nevada Commission, the Committee shall conduct or have conducted an investigation in accordance with the provision of Subsection VIII-l-B above and make a recommendation to the appropriate Executive as to whether the relationship should be continued or terminated. The Committee shall also conduct an investigation of any discovered instance of non-compliance with the registration requirements in Nevada for Independent Agents.

E. *Material Financings* - Except as provided below or in exigent circumstances, investigation and review of any proposed Material Financing by the Company or by any of its Affiliates should occur prior to commitment by the Company or by its Affiliates. The following information shall be obtained and documented by the Committee:

(1) Disclosure of any material relationship between the Company or its Affiliates and other parties to the proposed Material Financing.
(2) Disclosure of any middleman, finder, broker or other person who is to receive compensation in connection with securing, arranging, negotiating or otherwise dealing with the proposed Material Financing.

Material Financings (i) involving the registration and sale by the Company or one of its Affiliates of securities which are registered under the federal securities laws; (ii) involving the sale of non-registered securities pursuant to SEC Rule 144A or commercial paper to or through registered broker-dealers; (iii) involving banks chartered by the federal government or by any State; or (iv) which have been approved by the Nevada Board, the Nevada Commission or other Gaming Authorities shall not be subject to the provisions of this section.

F. *Material Litigation* - The General Counsel shall notify the Compliance Officer of all Material Litigation against the Company or its Affiliates as soon as is practical. The Compliance Officer will forward information regarding all Material Litigation to the Committee as soon as it is received. The Committee shall receive and review copies of the letters from outside counsel with respect to Material Litigation against the Company or any of its Affiliates received in connection with the Company's annual audit. In the event that any Material Litigation includes allegations of material gaming regulatory violations, the General Counsel shall provide a report of such litigation to the Committee.

G. *Acts of Wrongdoing* - The Committee shall obtain and review information concerning any prosecutions or administrative actions taken against any Executive or Key Employee of the company or of its Affiliates, which involve any of the following circumstances:

(1) Any criminal action involving (i) a felony; (ii) any material crime against the Company or one of its Affiliates or involving embezzlement or larceny; or (iii) violation of any law relating to gambling.
(2) Material administrative actions by a Gaming Authority relating to a gaming license or gaming approval held by such Person.

The Committee may report to appropriate Executives or to the Audit Committee of the Company Board regarding any known acts of wrongdoing by any such Executive, Key Employee or other employee of the Company or its Affiliates. A copy of such report shall be provided to the Chairman of the Nevada Board within ten (10) business days of the date of the report.

H. *Sales and leases of Gaming Devices* - Except as provided below, the Committee shall obtain and review the following information prior to the completion of

any sale or lease of Gaming Devices by the Company or its Affiliates:

(1) The name and address of the purchaser or lessee, and pertinent background information, including licensing status.
(2) A complete description of the Gaming Devices, including serial number of each.
(3) Identification of the state or foreign country into which the Gaming Devices are to be shipped.
(4) Identification of any broker or finder and the compensation provided.

Except as provided by State law, it will not be necessary to file reports on sales or leases of Gaming Devices in the State of Nevada unless such transactions involve brokers or finders. The Compliance Officer will determine whether the importation of gaming devices is permitted in the jurisdiction into which the devices are to be shipped. Shipment of Gaming Devices into any other jurisdiction where importation is not permitted, or to any Person who is not licensed to possess Gaming Devices, if the same is required in the destination jurisdiction, is prohibited.

In addition, the Committee shall receive and review a quarterly report from the Compliance Officer of any exceptions to the Company's policy of selling and delivering Gaming Devices only to approved Persons and locations.

I. *Suppliers, purveyors and other providers of goods and services* - The Company has the responsibility to ensure that it and its Affiliates do business only with suppliers, purveyors and other providers of goods and services who are not Unsuitable Persons. Accordingly, the Committee shall review for evidence of good reputation in the business community all suppliers, purveyors and providers of goods and services to the Company or its Affiliates who receive or are entitled to receive payments of greater than $350,000 during any fiscal year. The Compliance Officer may require such Persons to complete the Company's "Business Disclosure Form" for review by the Committee. The Committee may accept the following as evidence of good reputation, unless such reliance is unwarranted: (i) licensing or approval by any Gaming Authority or by any other governmental or professional licensing authority; (ii) favorable information generally available to the Company from the business or professional community; or (iii) information derived from prior relationships or dealings between such Persons and the Company or its Affiliates. The Compliance Officer will provide any such available evidence to the Committee, and the Committee will decide if the evidence is sufficient to determine that the supplier, purveyor or provider of goods and services to the Company is not an Unsuitable Person.

J. *Regulatory filings* - The Compliance Officer shall prepare a quarterly report detailing any known violations of filing requirements with Gaming Authorities and the corrective action taken to reduce the occurrence of future violations. The Committee shall review this report to determine if all required filings with Gaming Authorities have been

made. A copy of the final report shall be provided to the Audit Committee of the Company Board and the Chairman of the Nevada Board within ten (10) days of the date of the final report.

The Compliance Officer shall also be responsible for the filing of, and will provide the Committee with copies of, all foreign gaming reports filed with the Nevada Board pursuant to NRS 463.710.

K. *Actions requested by the Gaming Authorities* - The Committee shall conduct or have conducted an investigation of any Person(s) or transactions as requested by the Chairman of the Nevada Board.

L. *Loans* - The COO shall provide the Committee with a report, for its renew, of any loans, guarantees or indemnities in excess of $1,000,000 made by the Company other than to or for the benefit of an Affiliate. Such report shall contain the following information:

(1) The name and address of any borrower, indemnitee or person receiving a guarantee from the Company or any Affiliate.
(2) A complete description of the transaction in reasonable detail.
(3) Identification of any Persons involved in the transaction, including any brokers or finders.

If any loan, guarantee or indemnity qualifies as, or is related to, a Material Transaction or Material Financing, it shall be reviewed in accordance with the requirements of Sections VIII-l (A) or (E) as appropriate.

M. *Political Contributions* - The Company believes that our democratic form of government benefits citizens who are politically active. For this reason, the Company encourages each of its employees to participate in civic and political activities in his or her own way. The Company's direct political activities, however, are limited by law. Corporations may not make any contributions, whether direct or indirect, to candidates for federal office. The Company also may not make contributions to political action committees that make contributions to federal candidates and cannot reimburse its employees for any money they may contribute to federal candidates or campaigns.

Violation of federal election laws carries potential criminal penalties of up to one year in jail and a line of $25,000 or three times the amount of the illegal contribution, whichever is greater. Civil penalties may also be assessed.

Although some states impose similar restrictions on corporate political contributions, this is not true in all cases. In addition, even under federal law the Company is not prohibited from engaging in all political activities. For example, the Company can invite a candidate for federal office to address meetings of its employees and can express its support of that candidate to that group. The Company may also

express its views on public issues and spend money to support or oppose those issues.

To ensure that the Company and its subsidiaries are in compliance with all state and federal campaign finance laws, the Compliance Officer and the General Counsel should be consulted prior to the donation or loan of Company funds, facilities, or assets, directly or indirectly, to support or oppose any political party, political action committee, candidate for political office or ballot or initiative campaign.

N. *Annual report to the Nevada Board* - The Committee shall prepare and submit to the Audit Committee of the Company Board and the Chairman of the Nevada Board a report summarizing the activities, assessments and decisions of the Committee for the preceding year. This annual report shall be due no later than 90 days after the end of the Company's fiscal year.

2. Ultimate authority of the Company Board and Executives

The foregoing responsibilities of the Committee are not intended to displace the decision-making authority of the Company Board, its Audit Committee or any of the Executives.

IX.
REPORTING OF AFFILIATES TO THE COMMITTEE

To ensure prompt notification by the Company's Affiliates of proposed or pending matters relating to new transactions, undesirable associations or other matters which may constitute any Unsuitable Situation or adversely affect the Company, the Committee shall devise a written internal reporting system to govern items that must be reported to it by the Company and its Affiliates. The internal reporting system will provide for the reporting of transactions of Affiliates involving required areas of review set forth in Section VIII of this Program, and will be deemed adopted as part of the Program.

X.
COMPENSATION AND INDEMNIFICATION OF COMMITTEE MEMBERS

The Company shall compensate the Independent Member for his or her service to the Committee in such amount as shall be established by the Company Board. The Company shall indemnify and hold harmless all Committee members to the fullest extent permitted by law and the Articles of Incorporation and By-laws of the Company.

XI.
INFORMATION TO BE FURNISHED TO THE NEVADA BOARD

The Committee shall provide to the Nevada Board within thirty (30) days after notice, copies of any adverse actions, proceedings or filings by any Gaming Authority implicating the Company, or any of its Executives, Key Employees or Affiliates. The

Committee shall provide the Nevada Board with copies of any documentation involved in such proceedings. The Committee shall also provide the Nevada Board with copies of any final reports of an investigation conducted at the Nevada Board's request pursuant to Section VIII-l (M), and any other information that the Nevada Board may request. Copies of all information and reports furnished to the Nevada Board under this Article XI shall also be provided to the Audit Committee of the Company Board.

XII.
ASSIGNMENTS BY THE NEVADA BOARD

The Nevada Board may request that the Committee undertake additional duties and/or assignments relating to a review of activities relevant to the continued qualification of the Company under the provisions of the Nevada Gaming Control Act and the regulations of the Nevada Commission. Upon conclusion of any such assignment by the Committee, the Committee shall provide the Audit Committee of the Company Board and the Nevada Board with a copy of the final report detailing the investigation and the concluding results within ten (10) business days of the date of the final report.

XIII.
ANNUAL MEETING WITH THE NEVADA BOARD

Prior to the end of each calendar year, the Chairman and the Compliance Officer, together with any other members of the Committee or Executives of the Company designated by, or approved to attend by, the Chairman of the Nevada Board or his designee, shall, if required by such Chairman or designee, meet with the Chairman of the Nevada Board or his designee to discuss the Program and related matters.

XIV.
AMENDMENT OF THE PROGRAM

The Program may be amended by the Company Board upon the recommendation of the Compliance Committee or at the direction of the Chairman of the Nevada Board. Once any affiliate is licensed in Nevada, all such amendments shall be subject to the approval of the Chairman of the Nevada Board or his designee.

XV.
EFFECTIVE DATE OF THE PROGRAM

This Program was initially adopted by the Company Board effective as of March 26, 2003. Those portions of this Program that refer to assignments by, reports or notices to, the direction or approval of, or meetings with the Chairman of the Nevada Board, became effective as of April 8, 2005, the date this Program was initially approved by the chairman of the Nevada Board. Section V of this Program was amended by the Company Board, after approval of the Chairman of the Nevada Board, effective November 7, 2005. Section V of this Program was amended by the Company Board, after approval of the Chairman of the Nevada Board, effective July 29, 2010.

EXHIBIT 6

EX-3.1 2 dex31.htm AMENDED AND RESTATED CERTIFICATE OF INCORPORATION-CAESARS ENTERTAINMENT CORP

Exhibit 3.1

AMENDED AND RESTATED

CERTIFICATE OF INCORPORATION

OF

HARRAH'S ENTERTAINMENT, INC.

Dated as of November 22, 2010

HARRAH'S ENTERTAINMENT, INC., a Delaware corporation (the "Corporation"), does hereby certify that:

FIRST: The present name of the Corporation is "HARRAH'S ENTERTAINMENT, INC.". The Corporation was originally incorporated by the filing of its original Certificate of Incorporation with the Secretary of State of the State of Delaware (the "DE Secretary") on November 2, 1989 under the name "THE PROMUS COMPANIES INCORPORATED".

SECOND: An Amended Certificate of Incorporation of the Corporation (the "Amended Certificate") was filed with the DE Secretary on January 28, 2008.

THIRD: This Amended and Restated Certificate of Incorporation (this "Certificate") amends and restates in its entirety the Amended Certificate, and has been approved in accordance with Sections 242 and 245 of the General Corporation Law of the State of Delaware and by the stockholders of the Corporation in accordance with Sections 228 and 245 of the General Corporation Law of the State of Delaware.

FOURTH: This Certificate shall become effective immediately upon its filing with the DE Secretary.

FIFTH: Upon the filing of this Certificate with the DE Secretary, the Amended Certificate shall be amended and restated in its entirety to read as set forth on Exhibit A attached hereto.

* * * * *

IN WITNESS WHEREOF, the undersigned, being the Vice President, Associate General Counsel and Corporate Secretary of the Corporation, DOES HEREBY CERTIFY that the facts hereinabove stated are truly set forth and, accordingly, such officer has hereunto set his hand as of the date first above written.

HARRAH'S ENTERTAINMENT, INC.

By: /s/ MICHAEL D. COHEN
Name: Michael D. Cohen
Title: Vice President, Associate General Counsel and Corporate Secretary

Exhibit A

AMENDED AND RESTATED

CERTIFICATE OF INCORPORATION

OF

CAESARS ENTERTAINMENT CORPORATION

ARTICLE I
NAME OF THE CORPORATION

The name of the corporation (the "Corporation") is: Caesars Entertainment Corporation.

ARTICLE II
REGISTERED OFFICE; REGISTERED AGENT

The address of the registered office of the Corporation in the State of Delaware is: 2711 Centerville Road, Suite 400, Wilmington, New Castle County, DE 19808. The name of the registered agent of the Corporation at such address is Corporation Service Company.

ARTICLE III
PURPOSE

The nature of the business or purposes to be conducted or promoted by the Corporation is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of the State of Delaware (the "DGCL").

ARTICLE IV
CAPITAL STOCK

Section 4.1 Authorized Shares. The total number of shares of capital stock which the Corporation shall have authority to issue is 1,375,000,000 shares of capital stock, consisting of 1,250,000,000 shares of common stock, par value $.01 per share (the "Common Stock"), and 125,000,000 shares of preferred stock, par value $.01 per share (the "Preferred Stock").

Section 4.2 Preferred Stock. The Board of Directors is expressly authorized to provide for the issuance of all or any shares of the Preferred Stock in one or more series, to fix the number of shares constituting such series, and to increase or decrease the number of shares of any such series (but not below the number of shares thereof then outstanding) and to fix for each such series such voting powers, full or limited, or no voting powers, and such distinctive designations, powers, preferences and relative, participating, optional or other special rights and such qualifications, limitations or restrictions thereof, as shall be stated and expressed in the resolution or resolutions adopted by the Board of Directors providing for the issuance of such series including, without limitation, the authority to provide that any such series may be (a) subject to redemption at such time or times and at such price or prices; (b) entitled to receive dividends (which may be cumulative or non-cumulative) at such rates, on such conditions, and at

such times, and payable in preference to, or in such relation to, the dividends payable on any other class or classes or any other series; (c) entitled to such rights upon the dissolution of, or upon any distribution of the assets of, the Corporation; or (d) convertible into, or exchangeable for, shares of any other class or classes of stock, or of any other series of the same or any other class or classes of stock, of the Corporation at such price or prices or at such rates of exchange and with such adjustments, all as may be stated in such resolution or resolutions. Notwithstanding the foregoing, the rights of each holder of Preferred Stock shall be subject at all times to compliance with all gaming and other statutes, laws, rules and regulations applicable to the Corporation and such holder at that time.

Section 4.3 Common Stock.

(a) Dividends. Subject to the rights of holders of Preferred Stock, if any, when, as and if dividends are declared on the Common Stock, whether payable in cash, in property or in securities of the Corporation, the holders of Common Stock shall be entitled to share equally, share for share, in such dividends.

(b) Liquidation or Dissolution. In the event of any voluntary or involuntary liquidation, dissolution or winding up of the Corporation, holders of Common Stock shall receive a pro rata distribution of any remaining assets after payment of or provision for liabilities and the liquidation preference on Preferred Stock, if any.

(c) Voting Rights. The holders of Common Stock shall be entitled to one vote per share on all matters to be voted on by the stockholders of the Corporation.

(d) Consideration for Shares. The Common Stock and Preferred Stock authorized by this Article shall be issued for such consideration as shall be fixed, from time to time, by the Board of Directors.

(e) Assessment of Stock. The capital stock of the Corporation, after the amount of the subscription price has been fully paid in, shall not be assessable for any purpose, and no stock issued as fully paid shall ever be assessable or assessed. No stockholder of the Corporation, to the fullest extent permitted by law, shall be individually liable for the debts or liabilities of the Corporation.

(f) Cumulative Voting for Directors. No stockholder of the Corporation shall be entitled to cumulative voting of his shares for the election of directors.

(g) Preemptive Rights. No stockholder of the Corporation shall have any preemptive rights by virtue of this Amended and Restated Certificate of Incorporation.

Section 4.4 Reclassification of Previously Issued and Outstanding Non-Voting Common Stock of the Corporation. Immediately prior to the effective time of the filing of this Amended and Restated Certificate of Incorporation with the Secretary of State of the State of Delaware (the "Effective Time"), the Corporation had 80,000,000 authorized shares of non-voting common stock, $0.01 par value per share, of which 60,560,806.86 shares were issued and outstanding (the "Outstanding Non-Voting Common Stock"). At and as of the Effective Time, by virtue of filing of this Amended and Restated Certificate of Incorporation, each share of

Outstanding Non-Voting Common Stock issued and outstanding or held in treasury immediately prior to the Effective Time shall be automatically reclassified, without any action by the holder thereof, as one share of Common Stock, and, from and after such time, the capital stock described in Section 4.1 above shall represent all of the authorized capital stock of the Company.

Section 4.5 Cancellation of Previously Issued and Outstanding Voting Stock of the Corporation. Immediately prior to the Effective Time, the Corporation had 20 authorized shares of voting common stock, $0.01 par value per share, of which 10 shares were issued and outstanding (the "Outstanding Voting Common Stock"). At and as of the Effective Time, by virtue of filing of this Amended and Restated Certificate of Incorporation, each share of Outstanding Voting Common Stock issued and outstanding or held in treasury immediately prior to the Effective Time shall be automatically cancelled, without any action by the holder thereof, and, from and after such time, the capital stock described in Section 4.1 above shall represent all of the authorized capital stock of the Company.

ARTICLE V
GAMING AND REGULATORY MATTERS

Section 5.1 Definitions. For purposes of this Article V, the following terms shall have the meanings specified below:

(a) "Affiliate" (and derivatives of such term) shall have the meaning ascribed to such term under Rule 12b-2 promulgated by the SEC under the Exchange Act.

(b) "Affiliated Company" shall mean any partnership, corporation, limited liability company, trust or other entity directly or indirectly Affiliated or under common Ownership or Control with the Corporation including, without limitation, any subsidiary, holding company or intermediary company (as those or similar terms are defined under the Gaming Laws of any applicable Gaming Jurisdictions), in each case that is registered or licensed under applicable Gaming Laws.

(c) "Control" (and derivatives of such term) (i) with respect to any Person, shall have the meaning ascribed to such term under Rule 12b-2 promulgated by the SEC under the Exchange Act, (ii) with respect to any Interest, shall mean the possession, directly or indirectly, of the power to direct, whether by agreement, contract, agency or otherwise, the voting rights or disposition of such Interest, and (iii) as applicable, the meaning ascribed to the term "control" (and derivatives of such term) under the Gaming Laws of any applicable Gaming Jurisdictions).

(d) "Exchange Act" shall mean the Securities Exchange Act of 1934, as amended from time to time.

(e) "Gaming" or "Gaming Activities" shall mean the conduct of gaming and gambling activities, race books and sports pools, or the use of gaming devices, equipment and supplies in the operation of a casino, simulcasting facility, card club or other enterprise, including, without limitation, slot machines, gaming tables, cards, dice, gaming chips, player tracking systems, cashless wagering systems, mobile gaming systems, inter-casino linked systems and related and associated equipment, supplies and systems.

(f) "Gaming Authorities" shall mean all international, national, foreign, domestic, federal, state, provincial, regional, local, tribal, municipal and other regulatory and licensing bodies, instrumentalities, departments, commissions, authorities, boards, officials, tribunals and agencies with authority over or responsibility for the regulation of Gaming within any Gaming Jurisdiction.

(g) "Gaming Jurisdictions" shall mean all jurisdictions, domestic and foreign, and their political subdivisions, in which Gaming Activities are or may be lawfully conducted, including, without limitation, all Gaming Jurisdictions in which the Corporation or any of the Affiliated Companies currently conducts or may in the future conduct Gaming Activities.

(h) "Gaming Laws" shall mean all laws, statutes and ordinances pursuant to which any Gaming Authority possesses regulatory, permit and licensing authority over the conduct of Gaming Activities, or the Ownership or Control of an Interest in an entity which conducts Gaming Activities, in any Gaming Jurisdiction, all orders, decrees, rules and regulations promulgated thereunder, all written and unwritten policies of the Gaming Authorities and all written and unwritten interpretations by the Gaming Authorities of such laws, statutes, ordinances, orders, decrees, rules, regulations and policies.

(i) "Gaming Licenses" shall mean all licenses, permits, approvals, orders, authorizations, registrations, findings of suitability, franchises, exemptions, waivers, concessions and entitlements issued by any Gaming Authority necessary for or relating to the conduct of Gaming Activities by any Person or the Ownership or Control by any Person of an Interest in an entity that conducts or may in the future conduct Gaming Activities.

(j) "Interest" shall mean the stock or other securities of an entity or any other interest or financial or other stake therein, including, without limitation, the Securities.

(k) "Own" or "Ownership" (and derivatives of such terms) shall mean (i) ownership of record, (ii) "beneficial ownership" as defined in Rule 13d-3 or Rule 16a-1(a)(2) promulgated by the SEC under the Exchange Act, and (iii) as applicable, the meaning ascribed to the terms "own" or "ownership" (and derivatives of such terms) under the Gaming Laws of any applicable Gaming Jurisdictions.

(l) "Person" shall mean an individual, partnership, corporation, limited liability company, trust or any other entity.

(m) "Redemption Date" shall mean the date set forth in the Redemption Notice by which the Securities Owned or Controlled by an Unsuitable Person or an Affiliate of an Unsuitable Person are to be redeemed by the Corporation or any of its Affiliated Companies, which redemption date shall be determined in the sole and absolute discretion of the Board of Directors of the Corporation but which shall in no event be fewer than 45 calendar days following the date of the Redemption Notice, unless (i) otherwise required by a Gaming Authority or pursuant to any applicable Gaming Laws, (ii) prior to the expiration of such 45-day period, the Unsuitable Person shall have sold (or otherwise fully transferred or otherwise disposed of its Ownership of) its Securities to a Person that is not an Unsuitable Person (in which case, such Redemption Notice will only apply to those Securities that have not been sold or

otherwise disposed of) by the selling Unsuitable Person and, commencing as of the date of such sale, the purchaser or recipient of such Securities shall have all of the rights of a Person that is not an Unsuitable Person), or (iii) the cash or other Redemption Price necessary to effect the redemption shall have been deposited in trust for the benefit of the Unsuitable Person or its Affiliate and shall be subject to immediate withdrawal by such Unsuitable Person or its Affiliate upon (x) surrender of the certificate(s) evidencing the Securities to be redeemed accompanied by a duly executed stock power or assignment or (y) if the Securities are uncertificated, upon the delivery of a duly executed assignment or other instrument of transfer.

(n) "Redemption Notice" shall mean that notice of redemption delivered by the Corporation pursuant to this Article to an Unsuitable Person or an Affiliate of an Unsuitable Person if a Gaming Authority so requires the Corporation, or if the Board of Directors deems it necessary or advisable, to redeem such Unsuitable Person's or Affiliate's Securities. Each Redemption Notice shall set forth (i) the Redemption Date, (ii) the number and type of Securities to be redeemed, (iii) the Redemption Price and the manner of payment therefor, (iv) the place where any certificates for such Securities shall be surrendered for payment, and (v) any other requirements of surrender of the certificates, including how such certificates are to be endorsed, if at all.

(o) "Redemption Price" shall mean the price to be paid by the Corporation for the Securities to be redeemed pursuant to this Article, which shall be that price (if any) required to be paid by the Gaming Authority making the finding of unsuitability, or if such Gaming Authority does not require a certain price to be paid (including if the finding of unsuitability is made by the Board of Directors alone), that amount determined by the Board of Directors to be the fair value of the Securities to be redeemed; provided, that unless a Gaming Authority requires otherwise, the Redemption Price shall in no event exceed (i) the lowest closing price of such Securities reported on any of the domestic securities exchanges on which such Securities are listed on the date of the Redemption Notice or, if there have been no sales on any such exchange on such day, the average of the highest bid and lowest ask prices on all such exchanges at the end of such day, or (ii) if such Securities are not then listed for trading on any national securities exchange, then the mean between the representative bid and the ask price as quoted by another generally recognized reporting system, or (iii) if such Securities are not so quoted, then the average of the highest bid and lowest ask prices on such day in the domestic over-the-counter market as reported by Pink OTC Markets Inc. or any similar successor organization, or (v) if such Securities are not quoted by any recognized reporting system, then the fair value thereof, as determined in good faith and in the reasonable discretion of the Board of Directors. The Corporation may pay the Redemption Price in any combination of cash and/or promissory note as required by the applicable Gaming Authority and, if not so required (including if the finding of unsuitability is made by the Board of Directors alone), as determined by the Board of Directors, provided, that in the event the Corporation elects to pay all or any portion of the Redemption Price with a promissory note, such promissory note shall have a term of ten years, bear interest at a rate equal to three percent (3)% per annum and amortize in 120 equal monthly installments, and shall contain such other terms and conditions as the Board of Directors determines, in its discretion, to be necessary or advisable.

(p) "SEC" shall mean the U.S. Securities and Exchange Commission.

(q) "Securities" shall mean the capital stock of the Corporation and the capital stock, member's interests or membership interests, partnership interests or other equity securities of any Affiliated Company.

(r) "Transfer" shall mean the sale and every other method, direct or indirect, of transferring or otherwise disposing of an Interest, or the Ownership, Control or possession thereof, or fixing a lien thereupon, whether absolutely or conditionally, voluntarily or involuntarily, by or without judicial proceedings, as a conveyance, sale, payment, pledge, mortgage, lien, encumbrance, gift, security, or otherwise (including by merger or consolidation).

(s) "Unsuitable Person" shall mean a Person 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 a Gaming Authority to be unsuitable or disqualified to Own or Control any Securities, (iv) is determined by a Gaming Authority to be unsuitable to be Affiliated, associated or involved with a Person engaged in Gaming Activities in any Gaming Jurisdiction, (v) causes any Gaming License of the Corporation or any Affiliated Company to be lost, rejected, rescinded, suspended, revoked or not renewed by any Gaming Authority, or causes the Corporation or any Affiliated Company to be threatened by any Gaming Authority with the loss, rejection, rescission, suspension, revocation or non-renewal of any Gaming License (in each of (ii) through (v) above, regardless of whether such denial, disqualification or determination by a Gaming Authority is final and/or non-appealable), or (vi) is deemed likely, in the sole and absolute discretion of the Board of Directors, to (A) preclude or materially delay, impede, impair, threaten or jeopardize any Gaming License held by the Corporation or any Affiliated Company or the Corporation's or any Affiliated Company's application for, right to the use of, entitlement to, or ability to obtain or retain, any Gaming License, (B) cause or otherwise result in, the disapproval, cancellation, termination, material adverse modification or non-renewal of any material contract to which the Corporation or any Affiliated Company is a party, or (C) cause or otherwise result in the imposition of any materially burdensome or unacceptable terms or conditions on any Gaming License of the Corporation or any Affiliated Company.

Section 5.2 Compliance with Gaming Laws. All Securities shall be held subject to the restrictions and requirements of all applicable Gaming Laws. All Persons Owning or Controlling Securities shall comply with all applicable Gaming Laws, including any provisions of such Gaming Laws that require such Person to file applications for Gaming Licenses with, and provide information to, the applicable Gaming Authorities. Any Transfer of Securities may be subject to the prior approval of the Gaming Authorities and/or the Corporation or the applicable Affiliated Company, and any purported Transfer thereof in violation of such requirements shall be void *ab initio*.

Section 5.3 Ownership Restrictions. Any Person who Owns or Controls five percent (5%) or more of any class or series of the Corporation's Securities shall (a) promptly notify the Corporation of such fact, (b) provide to the Gaming Authorities in each Gaming Jurisdiction in which the Corporation or any subsidiary thereof either conducts Gaming or has a pending application for a Gaming License all information regarding such Person as may be requested or required by such Gaming Authorities, (c) respond to written or oral questions or

inquiries from any such Gaming Authorities and (d) by virtue of such Ownership or Control, be deemed to consent to the performance of any personal background investigation that may be required by such Gaming Authorities.

Section 5.4 Finding of Unsuitability.

(a) The Securities Owned or Controlled by an Unsuitable Person or an Affiliate of an Unsuitable Person shall be redeemable by the Corporation or the applicable Affiliated Company, out of funds legally available therefor, as directed by a Gaming Authority and, if not so directed, as and to the extent deemed necessary or advisable by the Board of Directors, in which event the Corporation shall deliver a Redemption Notice to the Unsuitable Person or its Affiliate and shall redeem or purchase or cause one or more Affiliated Companies to purchase the Securities on the Redemption Date and for the Redemption Price set forth in the Redemption Notice. From and after the Redemption Date, such Securities shall no longer be deemed to be outstanding, such Unsuitable Person or Affiliate of such Unsuitable Person shall cease to be a stockholder, member, partner or owner, as applicable, of the Corporation and/or Affiliated Company with respect to such Securities, and all rights of such Unsuitable Person or Affiliate of such Unsuitable Person in such Securities, other than the right to receive the Redemption Price, shall cease. In accordance with the requirements of the Redemption Notice, such Unsuitable Person or its Affiliate shall surrender the certificate(s), if any, representing the Securities to be so redeemed.

(b) Commencing on the date that a Gaming Authority serves notice of a determination of unsuitability or disqualification of a holder of Securities, or the Board of Directors otherwise determines that a Person is an Unsuitable Person, and until the Securities Owned or Controlled by such Person are Owned or Controlled by a Person who is not an Unsuitable Person, it shall be unlawful for such Unsuitable Person or any of its Affiliates to and such Unsuitable Person and its Affiliates shall not: (i) receive any dividend, payment, distribution or interest with regard to the Securities, (ii) exercise, directly or indirectly or through any proxy, trustee, or nominee, any voting or other right conferred by such Securities, and such Securities shall not for any purposes be included in the Securities of the Corporation or the applicable Affiliated Company entitled to vote, or (iii) receive any remuneration that may be due to such Person, accruing after the date of such notice of determination of unsuitability or disqualification by a Gaming Authority, in any form from the Corporation or any Affiliated Company for services rendered or otherwise, or (iv) be or continue as a manager, officer, partner or director of the Corporation or any Affiliated Company.

Section 5.5 Notices. All notices given by the Corporation or an Affiliated Company pursuant to this Article, including Redemption Notices, shall be in writing and shall be deemed given when delivered by personal service, overnight courier, first-class mail, postage prepaid, addressed to the Person at such Person's address as it appears on the books and records of the Corporation or Affiliated Company.

Section 5.6 Indemnification. Any Unsuitable Person and any Affiliate of an Unsuitable Person shall indemnify and hold harmless the Corporation and its Affiliated Companies for any and all losses, costs, and expenses, including attorneys' costs, fees and expenses, incurred by the Corporation and its Affiliated Companies as a result of, or arising out

of, such Unsuitable Person's continuing Ownership or Control of Securities, failure or refusal to comply with the provisions of this Article, or failure to divest himself, herself or itself of any Securities when and in the specific manner required by the Gaming Authorities or this Article.

Section 5.7 Injunctive Relief. The Corporation shall be entitled to injunctive or other equitable relief in any court of competent jurisdiction to enforce the provisions of this Article and each Person who Owns or Controls Securities shall be deemed to have consented to injunctive or other equitable relief and acknowledged, by virtue of such Ownership or Control, that the failure to comply with this Article will expose the Corporation and the Affiliated Companies to irreparable injury for which there is no adequate remedy at law and that the Corporation and the Affiliated Companies shall be entitled to injunctive or other equitable relief to enforce the provisions of this Article.

Section 5.8 Non-Exclusivity of Rights. The right of the Corporation or any Affiliated Company to redeem Securities pursuant to this Article shall not be exclusive of any other rights the Corporation or any Affiliated Company may have or hereafter acquire under any agreement, provision of the bylaws of the Corporation or such Affiliated Company or otherwise. To the extent permitted under applicable Gaming Laws, the Corporation shall have the right, exercisable in the sole discretion of the Board of Directors, to propose that the parties, immediately upon the delivery of the Redemption Notice, enter into an agreement or other arrangement, including, without limitation, a divestiture trust or divestiture plan, which will reduce or terminate an Unsuitable Person's Ownership or Control of all or a portion of its Securities.

Section 5.9 Further Actions. Nothing contained in this Article shall limit the authority of the Board of Directors to take such other action, to the extent permitted by law, as it deems necessary or advisable to protect the Corporation or the Affiliated Companies from the denial or loss or threatened denial or loss of any Gaming License of the Corporation or any of its Affiliated Companies. Without limiting the generality of the foregoing, the Board of Directors may conform any provisions of this Article to the extent necessary to make such provisions consistent with Gaming Laws. In addition, the Board of Directors may, to the extent permitted by law, from time to time establish, modify, amend or rescind bylaws, regulations, and procedures of the Corporation not inconsistent with the express provisions of this Article for the purpose of determining whether any Person is an Unsuitable Person and for the orderly application, administration and implementation of the provisions of this Article. Such procedures and regulations shall be kept on file with the Secretary of the Corporation, the secretary of each of the Affiliated Companies and with the transfer agent, if any, of the Corporation and/or any Affiliated Companies, and shall be made available for inspection and, upon reasonable request, mailed to any record holder of Securities.

Section 5.10 Authority of the Board of Directors. The Board of Directors shall have exclusive authority and power to administer this Article and to exercise all rights and powers specifically granted to the Board of Directors or the Corporation, or as may be necessary or advisable in the administration of this Article. All such actions which are done or made by the Board of Directors in good faith shall be final, conclusive and binding on the Corporation and all other Persons; provided, that the Board of Directors may delegate all or any portion of its duties and powers under this Article to a committee of the Board of Directors as it deems necessary or advisable.

Section 5.11 Severability. If any provision of this Article or the application of any such provision to any Person or under any circumstance shall be held invalid, illegal, or unenforceable in any respect by a court of competent jurisdiction, such invalidity, illegality or unenforceability shall not affect any other provision of this Article.

Section 5.12 Termination and Waivers. Except as may be required by any applicable Gaming Law or Gaming Authority, the Board of Directors may waive any of the rights of the Corporation or any restrictions contained in this Article in any instance in which and to the extent the Board of Directors determines that a waiver would be in the best interests of the Corporation. Except as required by a Gaming Authority, nothing in this Article shall be deemed or construed to require the Corporation to repurchase any Securities Owned or Controlled by an Unsuitable Person or an Affiliate of an Unsuitable Person.

Section 5.13 Legend. The restrictions set forth in this Article shall be noted conspicuously on any certificate evidencing the Securities in accordance with the requirements of the DGCL and any applicable Gaming Laws.

Section 5.14 Required New Jersey Charter Provisions.

(a) This Amended and Restated Certificate of Incorporation shall be deemed to include all provisions required by the New Jersey Casino Control Act, N.J.S.A. 5:12-1 et seq., as amended from time to time (the "New Jersey Act") and, to the extent that anything contained herein or in the bylaws of the Corporation is inconsistent with the New Jersey Act, the provisions of the New Jersey Act shall govern. All provisions of the New Jersey Act, to the extent required by law to be stated in this Amended and Restated Certificate of Incorporation, are incorporated herein by this reference.

(b) This Amended and Restated Certificate of Incorporation shall be subject to the provisions of the New Jersey Act and the rules and regulations of the New Jersey Casino Control Commission (the "New Jersey Commission") promulgated thereunder. Specifically, and in accordance with the provisions of Section 82(d)(7) of the New Jersey Act, the Securities of the Corporation are held subject to the condition that, if a holder thereof is found to be disqualified by the New Jersey Commission pursuant to the provisions of the New Jersey Act, the holder must dispose of such Securities in accordance with Section 5.4(a) of this Article and shall be subject to Section 5.4(b) of this Article.

(c) Any newly elected or appointed director or officer of, or nominee to any such position with, the Corporation, who is required to qualify pursuant to the New Jersey Act, shall not exercise any powers of the office to which such individual has been elected, appointed or nominated until such individual has been found qualified to hold such office or position by the New Jersey Commission in accordance with the New Jersey Act or the New Jersey Commission permits such individual to perform duties and exercise powers relating to any such position pending qualification, with the understanding that such individual will be immediately removed from such position if the New Jersey Commission determines that there is reasonable cause to believe that such individual may not be qualified to hold such position.

ARTICLE VI
MEETINGS; BOOKS AND RECORDS

Meetings of stockholders may be held within or without the State of Delaware, as the By-Laws may provide. Any action to be taken at any annual or special meeting of the stockholders may be taken without a meeting, without prior notice and without a vote, if a consent or consents in writing, setting forth the action so taken, shall be signed by the holders of outstanding Common Stock having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares of Common Stock entitled to vote thereon were present and voted and shall be delivered to the Corporation.

The books of the Corporation may be kept (subject to any provision contained in the DGCL) outside of the State of Delaware at such place or places as may be designated from time to time by the Board of Directors or in the By-Laws of the Corporation.

ARTICLE VII
AMENDMENTS; BY-LAWS

The Corporation reserves the right to amend, alter, change or repeal any provision contained in this Amended and Restated Certificate of Incorporation, in the manner now or hereafter prescribed by statute, and all rights conferred upon stockholders herein are granted subject to this reservation.

In furtherance and not in limitation of the powers conferred by the laws of the State of Delaware, the By-Laws of the Corporation may be made, altered, amended or repealed by the stockholders or by a majority of the entire Board of Directors.

ARTICLE VIII
ELECTIONS

Unless and except to the extent that the By-Laws of the Corporation shall so require, elections of directors need not be by written ballot.

ARTICLE IX
INDEMNIFICATION; ADVANCEMENT OF EXPENSES; EXCULPATION

(a) Right to Indemnification. The Corporation shall indemnify and hold harmless to the fullest extent permitted under and in accordance with the laws of the State of Delaware, as the same exists or may hereafter be amended, any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the Corporation) (hereinafter a "proceeding") by reason of the fact that the person is or was a director, officer or employee of the Corporation, or is or was serving at the request of the Corporation as a director, officer or employee of another corporation, partnership, joint venture, trust or other enterprise, including service with respect to employee benefit plans, whether the basis of such proceeding is alleged action in an official capacity as a director, officer or employee while serving as a director, officer or employee, against all expenses and loss

(including attorneys' fees, judgments, fines, amounts paid or to be paid in settlement, and excise taxes or penalties arising under the Employee Retirement Income Security Act of 1974) reasonably incurred or suffered by such person in connection therewith and such indemnification shall continue as to a person who has ceased to be a director, officer or employee and shall inure to the benefit of his or her heirs, executors and administrators; provided, however, that, except as provided in paragraph (c) hereof, the Corporation shall indemnify any such person seeking indemnification in connection with a proceeding (or part thereof) initiated by such person only if such proceeding (or part thereof) was authorized by the Board.

(b) The Corporation shall indemnify and hold harmless any person who was or is a party or is threatened to be made a party to any threatened, pending or completed proceeding by or in the right of the Corporation to procure a judgment in its favor by reason of the fact that the person is or was a director, officer or employee of the Corporation, or is or was serving at the request of the Corporation as a director, officer or employee of another corporation, partnership, joint venture, trust or other enterprise, including service with respect to employee benefit plans, whether the basis of such proceeding is alleged action in an official capacity as a director, officer or employee, while serving as a director, officer or employee, against all expenses and loss (including attorneys' fees, judgments, fines, amounts paid or to be paid in settlement, and excise taxes or penalties arising under the Employee Retirement Income Security Act of 1974), reasonably incurred or suffered by such person in connection with the defense or settlement of such proceeding and such indemnification shall continue as to a person who has ceased to be a director, officer or employee and shall inure to the benefit of his or her heirs, executors and administrators; provided, however, that, except as provided in paragraph (c) hereof, the Corporation shall indemnify any such person seeking indemnification in connection with a proceeding (or part thereof) initiated by such person only if such proceeding (or part thereof) was authorized by the Board; provided, further, that no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable to the Corporation unless and only to the extent that the Court of Chancery or the court in which such proceeding was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which the Court of Chancery or such other court shall deem proper.

(c) Right of Claimant to Bring Suit. If a claim under paragraph (a) or (b) of this Section is not paid in full by the Corporation within thirty (30) days after a written claim has been received by the Corporation, the claimant may at any time thereafter bring suit against the Corporation to recover the unpaid amount of the claim and, if successful in whole or in part, the claimant shall be entitled to be paid also the expense of prosecuting such claim. It shall be a defense to any such proceeding (other than an action brought to enforce a claim for expenses incurred in defending any proceeding in advance of its final disposition where the required undertaking, if any is required, has been tendered to the Corporation) that the claimant has not met the standards of conduct which make it permissible under the DGCL for the Corporation to indemnify the claimant for the amount claimed, but the burden of proving such defense shall be on the Corporation. Neither the failure of the Corporation (including its Board of Directors, independent legal counsel, or its stockholders) to have made a determination prior to the commencement of such proceeding that indemnification of the claimant is proper in the circumstances because he or she has met the applicable standard of conduct set forth in the

DGCL, nor an actual determination by the Corporation (including its Board of Directors, independent legal counsel, or its stockholders) that the claimant has not met such applicable standard of conduct, shall be a defense to the proceeding or create a presumption that the claimant has not met the applicable standard of conduct.

(d) Advancement of Expenses. Expenses incurred in defending a civil or criminal action, suit or proceeding shall (in the case of any action, suit or proceeding against a director of the Corporation) or may as authorized by the Board, to the fullest extent not prohibited by law (in the case of any action, suit or proceeding against an officer, trustee, employee or agent), be paid by the Corporation in advance of the final disposition of such action, suit or proceeding upon receipt of an undertaking by or on behalf of the indemnified person to repay such amount if it shall ultimately be determined that he is not entitled to be indemnified by the Corporation as authorized in this Article IX.

(e) Non-Exclusivity of Rights; Indemnification of Persons other than Directors, Officers and Employees. The indemnification and other rights set forth in this Article IX shall not be exclusive of any provisions with respect thereto in any statute, provision of this Amended and Restated Certificate of Incorporation, the By-Laws of the Corporation or any other contract or agreement between the Corporation and any officer, director or employee. The Corporation may, to the extent authorized from time to time by the Board of Directors, grant rights to indemnification and to the advancement of expenses to any agent of the Corporation or any person (other than a person who is entitled to indemnification under clauses (a) or (b) of this Article IX) who was serving at the request of the Corporation as a director, officer, manager, employee, agent or trustee of another corporation, partnership, joint venture, trust or other enterprise, including service with respect to employee benefit plans, to the fullest extent of the provisions of this Article IX with respect to the indemnification and advancement of expenses of directors, officers and employees of the Corporation.

(f) Insurance. The Corporation may maintain insurance, at its expense, to protect itself and any director, officer, employee or agent of the Corporation or another corporation, partnership, joint venture, trust or other enterprise, against any such expense, liability or loss, whether or not the Corporation would have the power to indemnify such person against such expense, liability or loss under the DGCL.

(g) Amendment. Neither the amendment nor repeal of this Article IX (by merger, consolidation or otherwise), nor the adoption of any provision of this Amended and Restated Certificate of Incorporation inconsistent with Article IX, shall eliminate or reduce the effect of this Article IX in respect of any matter occurring before such amendment, repeal or adoption of an inconsistent provision or in respect of any cause of action, suit or claim relating to any such matter which would have given rise to a right of indemnification or right to receive expenses pursuant to this Article IX if such provision had not been so amended or repealed or if a provision inconsistent therewith had not been so adopted.

(h) Exculpation. No director shall be personally liable to the Corporation or any stockholder for monetary damages for breach of fiduciary duty as a director; provided, however, that the foregoing shall not eliminate or limit the liability of a director:

(i) for any breach of the director's duty of loyalty to the Corporation or its stockholders;

(ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law;

(iii) under Section 174 of the DGCL; or

(iv) for any transaction from which the director derived an improper personal benefit.

If the DGCL is amended after the date hereof to authorize corporate action further eliminating or limiting the personal liability of directors, then the liability of a director of the Corporation shall be eliminated or limited to the fullest extent permitted by the DGCL, as so amended.

The rights to indemnification and advancement of expenses conferred upon directors and officers of the Corporation in this Article IX shall be contract rights, shall vest when such person becomes a director or officer of the Corporation and shall continue as vested contract rights. Any repeal or modification of the foregoing paragraph shall not adversely affect any right or protection of a director or officer of the Corporation existing hereunder with respect to any act or omission occurring prior to such repeal or modification.

ARTICLE X
NO CONFLICT

Neither any contract or other transaction between the Corporation and any other corporation, partnership, limited liability company, joint venture, firm, association, or other entity (an "Entity"), nor any other acts of the Corporation with relation to any other Entity will, in the absence of fraud, to the fullest extent permitted by applicable law, in any way be invalidated or otherwise affected by the fact that any one or more of the directors or officers of the Corporation are pecuniarily or otherwise interested in, or are directors, officers, partners, or members of, such other Entity (such directors, officers, and Entities, each a "Related Person"). Any Related Person may be a party to, or may be pecuniarily or otherwise interested in, any contract or transaction of the Corporation; provided that the fact that person is a Related Person is disclosed or is known to the Board or a majority of directors present at any meeting of the Board at which action upon any such contract or transaction is taken; and any director of the Corporation who is also a Related Person may be counted in determining the existence of a quorum at any meeting of the board of directors during which any such contract or transaction is authorized and may vote thereat to authorize any such contract or transaction, with like force and effect as if such person were not a Related Person. Any director of the Corporation may vote upon any contract or any other transaction between the Corporation and any subsidiary or affiliated corporation without regard to the fact that such person is also a director or officer of such subsidiary or affiliated corporation.

Any contract, transaction or act of the Corporation or of the directors that is ratified at any annual meeting of the stockholders of the Corporation, or at any special meeting of the stockholders of the Corporation called for such purpose, will, insofar as permitted by applicable law, be as valid and as binding as though ratified by every stockholder of the

Corporation; provided, however, that any failure of the stockholders to approve or ratify any such contract, transaction or act, when and if submitted, will not be deemed in any way to invalidate the same or deprive the Corporation, its directors, officers or employees, of its or their right to proceed with such contract, transaction or act.

Subject to any express agreement that may from time to time be in effect, (x) any director or officer of the Corporation who is also an officer, director, employee, managing director or other affiliate of either Apollo Management VI, L.P., on behalf of its investment funds ("Apollo"), and/or TPG Capital, L.P. ("TPG") or any of their respective affiliates (collectively, the "Managers") and (y) the Managers and their affiliates, may, and shall have no duty not to, in each case on behalf of the Managers or their affiliates (the persons and entities in clauses (x) and (y), each a "Covered Manager Person"), to the fullest extent permitted by applicable law, (i) carry on and conduct, whether directly, or as a partner in any partnership, or as a joint venturer in any joint venture, or as an officer, director or stockholder of any corporation, or as a participant in any syndicate, pool, trust or association, any business of any kind, nature or description, whether or not such business is competitive with or in the same or similar lines of business as the Corporation, (ii) do business with any client, customer, vendor or lessor of any of the Corporation or its affiliates, and (iii) make investments in any kind of property in which the Corporation may make investments. To the fullest extent permitted by Section 122(17) of the DGCL, the Corporation hereby renounces any interest or expectancy of the Corporation to participate in any business of the Managers or their affiliates, and waives any claim against a Covered Manager Person and shall indemnify a Covered Manager Person against any claim that such Covered Manager Person is liable to the Corporation or its stockholders for breach of any fiduciary duty solely by reason of such person's or entity's participation in any such business.

In the event that a Covered Manager Person acquires knowledge of a potential transaction or matter which may constitute a corporate opportunity for both (x) the Covered Manager Person, in his or her Apollo-related capacity or TPG-related capacity, as the case may be, or Apollo or TPG, to the fullest extent permitted by applicable law, as the case may be, or its affiliates and (y) the Corporation, the Covered Manager Person shall not have any duty to offer or communicate information regarding such corporate opportunity to the Corporation. To the fullest extent permitted by Section 122(17) of the DGCL, the Corporation hereby renounces any interest or expectancy of the Corporation in such corporate opportunity and waives any claim against each Covered Manager Person and shall indemnify a Covered Manager Person against any claim, that such Covered Manager Person is liable to the Corporation or its stockholders for breach of any fiduciary duty solely by reason of the fact that such Covered Manager Person (i) pursues or acquires any corporate opportunity for its own account or the account of any affiliate, (ii) directs, recommends, sells, assigns, or otherwise transfers such corporate opportunity to another person or (iii) does not communicate information regarding such corporate opportunity to the Corporation, provided, however, in each case, that any corporate opportunity which is expressly offered to a Covered Manager Person in writing solely in his or her capacity as an officer or director of the Corporation shall belong to the Corporation.

Any person or entity purchasing or otherwise acquiring any interest in any shares of capital stock of the Corporation shall be deemed to have notice of and to have consented to the provisions of this Article X.

This Article X may not be amended, modified or repealed without the prior written consent of each of the Managers.

ARTICLE XI
FORUM SELECTION

Unless the Corporation consents in writing to the selection of an alternative forum, the Court of Chancery of the State of Delaware shall be the sole and exclusive forum for (a) any derivative action or proceeding brought on behalf of the Corporation, (b) any action asserting a claim of breach of a fiduciary duty owed by any director, officer, employee or agent of the Corporation to the Corporation or the Corporation's stockholders, (c) any action asserting a claim arising pursuant to any provision of the DGCL, or (d) any action asserting a claim governed by the internal affairs doctrine, in each such case subject to such Court of Chancery having personal jurisdiction over the indispensable parties named as defendants therein. Any person or entity purchasing or otherwise acquiring any interest in shares of capital stock of the Corporation shall be deemed to have notice of and consented to the provisions of this Article XI.

EXHIBIT 7

CERTIFICATE OF AMENDMENTOF
AMENDED AND RESTATED CERTIFICATE OF INCORPORATION
OF
GLOBAL CASH ACCESS HOLDINGS, INC.

The undersigned, Scott Betts, hereby certifies that:

1. He is the President of Global Cash Access Holdings, Inc., a Delaware corporation (the "Corporation").

2. The last paragraph of Article IV of the Amended and Restated Certificate of Incorporation of the Corporation is amended and restated to read in its entirety as follows:

Subject to Article X, each outstanding share of Common Stock shall entitle the holder thereof to one vote on each matter properly submitted to the stockholders of the Corporation for their vote; *provided, however* , that, except as otherwise required by law, holders of Common Stock shall not be entitled to vote on any amendment to this Amended and Restated Certificate of Incorporation (including any certificate of designation filed with respect to any series of Preferred Stock) that relates solely to the terms of one or more outstanding series of Preferred Stock if the holders of such affected series are entitled, either separately or together as a class with the holders of one or more other such series, to vote thereon by law or pursuant to this Amended and Restated Certificate of Incorporation (including any certificate of designation filed with respect to any series of Preferred Stock).

3. The following Article X is added to the Amended and Restated Certificate of Incorporation of the Corporation:

ARTICLE X

COMPLIANCE WITH GAMING LAWS

A. REDEMPTION .

1. Redemption of Shares of an Unsuitable Person . At the option of the Corporation, any or all shares of any class or series of stock of the Corporation ("Shares") owned by an Unsuitable Person may be redeemed by the Corporation for the Redemption Price out of funds lawfully available on the Redemption Date. Shares redeemable pursuant to this Section A.1. shall be redeemable at any time and from time to time pursuant to the terms hereof.

2. Partial Redemption. In the case of a redemption of only some of the shares owned by a stockholder, the Board of Directors shall select the Shares to be redeemed, by lot or in any other manner determined in good faith by the Board of Directors.

3. Redemption Notice. In the case of a redemption pursuant to Section A.1. of this ARTICLE X, the Corporation shall send a written notice to the holder of the Shares called for redemption (the "Redemption Notice"), which shall set forth: (a) the Redemption Date, (b) the number of Shares to be redeemed on the Redemption Date, (c) the Redemption Price and the manner of payment therefor, (d) the place where any certificates for such Shares shall be surrendered for payment, duly endorsed in blank or accompanied by proper instruments of transfer, and (e) any other requirements of surrender of the certificates (if any) representing the Shares to be redeemed.

4. Method of Payment of Redemption Price. The Redemption Price may be paid in cash, by promissory note, or both, as required by any Gaming Authority and, if not so required, as the Corporation elects. If any portion of the Redemption Price is to be paid pursuant to a promissory note: (a) such note will have a face amount equal to the portion of the Redemption Price for which the note is given (i.e., if the Redemption Price is $1,000, and cash of $250 is paid, the note shall have a face amount of $750), and (b) unless the Corporation agrees to different terms, the note will (i) be unsecured, (ii) have a term of five years, (iii) bear interest, compounded annually, at the prime rate of interest as published in the Wall Street Journal on the Redemption Date, provided that if the Wall Street Journal ceases to publish the prime rate, the Corporation will reasonably determine a substitute method for determining the prime rate, and (iv) have such other terms as are determined to be customary and appropriate by the board, in its sole discretion, after consultation with a nationally recognized investment bank.

B. RIGHTS OF HOLDERS OF SHARES. On and after the date of a Redemption Notice, any Unsuitable Person owning Shares called for redemption shall cease to have any voting rights with respect to such Shares and, on and after the Redemption Date specified therein, such holder shall cease to have any rights whatsoever with respect to such Shares other than the right to receive the Redemption Price, without interest, on the Redemption Date; provided, however, that if any such Shares come to be owned solely by persons other than Unsuitable Persons, such persons may exercise voting rights of such Shares, and the Corporation may determine, in its discretion, not to redeem such Shares.

C. NOTICES . All notices given by the corporation to holders of shares pursuant to this ARTICLE X, including the redemption notice, shall be in writing and shall be deemed given when delivered by personal service, overnight courier or first-class mail, postage prepaid, to the holder's address as shown on the Corporation's books and records.

D. NON-EXCLUSIVITY OF RIGHTS . The Corporation's right to redeem shares pursuant to this ARTICLE X shall not be exclusive of any other rights the Corporation may have or hereafter acquire under any agreement, any provision of this Amended and Restated Certificate of Incorporation or the Bylaws of the Corporation or otherwise with respect to the acquisition by the Corporation of shares or any restrictions on holders thereof.

E. SEVERABILITY . In the event that any provision (or portion of a provision) of this ARTICLE X or the application thereof becomes or is declared by a court of competent jurisdiction to be illegal, void or unenforceable, the remainder of this ARTICLE X (including the remainder of such provision, as applicable) will continue in full force and effect.

F. DEFINITIONS . For purposes of this ARTICLE X, the following terms shall have the meanings specified below:

1. "Fair Market Value" shall equal: (a) the average closing sales price per share of the Shares to be redeemed during the thirty (30) Trading Day period immediately preceding the date of the Redemption Notice on the primary national securities exchange or national quotation system on which such Shares are listed or quoted, (b) in the event such Shares are not traded or quoted on a national securities exchange or national quotation system, the average of the means between the representative bid and asked prices as quoted by Pink OTC Markets Inc. or another generally recognized quotation reporting system during the thirty (30) Trading Day period immediately preceding the date of the Redemption Notice, or (c) if no such quotations are available, the fair market value per share of such Shares as determined in good faith by the Corporation's Board of Directors.

2. "Gaming" shall mean the conduct of any gaming or gaming-related activities, including, without limitation, the use, manufacture, sale or distribution of gaming devices, ticket technology, ATMs, and cash access, check cashing, cash advance, wagering account funding, casino cage and casino credit equipment and services, and any related and associated equipment and services, and the provision of any type of services or equipment pursuant to a contract, agreement, relationship or otherwise with any holder or beneficiary of a Gaming License.

3. "Gaming Authority" shall mean any international, foreign, federal, state, local, tribal and other regulatory and licensing body or agency with authority over Gaming.

4. "Gaming Licenses" shall mean all licenses, permits, approvals, orders, authorizations, registrations, findings of suitability, franchises, exemptions, waivers and entitlements issued by a Gaming Authority required for, or relating to, the conduct of Gaming.

5. "ownership" (and derivatives thereof) shall mean (a) ownership of record, and (b) "beneficial ownership" as defined in Rule 13d-3 or Rule 16a-1(a)(2) promulgated by the Securities and Exchange Commission under the Securities and Exchange Act of 1934.

6. "person" shall mean an individual, partnership, corporation, limited liability company, trust or any other entity.

7. "Redemption Date" shall mean the date on which Shares shall be redeemed by the Corporation pursuant to Section A.1. of this ARTICLE X. The Redemption Date shall be not less than sixty (60) Trading Days following the date of the Redemption Notice unless a Gaming Authority requires that the Shares be redeemed as of an earlier date, in which case, the Redemption Date shall be such earlier date and the Redemption Notice shall be sent on the first day following the day the Corporation becomes apprised of such earlier Redemption Date.

8. "Redemption Price" shall mean the price per Share to be paid by the Corporation on the Redemption Date for the redemption of Shares pursuant to Section A.1. of this ARTICLE X and shall be equal to the Fair Market Value of a Share, unless otherwise required by any Gaming Authority.

9. "Trading Day" means a day on which the Shares (a) are not suspended from trading on any national or regional securities exchange or association or over-the-counter market at the close of business on such day, and (b) have traded at least once on the national or regional securities exchange or association or over-the-counter market that is the primary market for the trading of the Shares.

10. "Unsuitable Person" shall mean any person whose ownership of Shares or whose failure to make application to seek licensure from or otherwise comply with the requirements of a Gaming Authority will result in the Corporation losing a Gaming License, or the Corporation being unable to reinstate prior a Gaming License, or the Corporation being unable to obtain a new Gaming License, as determined by the Corporation's Board of Directors, in its sole discretion, after consultation with counsel.

4. This Certificate of Amendment has been duly adopted by the Board of Directors and stockholders of the Corporation in accordance with Section 242 of the General Corporation Law of the State of Delaware.

IN WITNESS WHEREOF, the undersigned has executed this Certificate of Amendment of Amended and Restated Certificate of Incorporation on April 30, 2009.

/s/ Scott Betts
Scott Betts, President

EXHIBIT 8

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RESTATED CERTIFICATE OF INCORPORATION
OF
PINNACLE ENTERTAINMENT, INC.
a Delaware corporation

Pinnacle Entertainment, Inc., a corporation organized and existing under the laws of the State of Delaware, hereby certifies as follows:

1. The present name of this corporation is Pinnacle Entertainment, Inc. (the "Company"). The Company was originally incorporated under the name Hollywood Park Realty Enterprises, Inc., and its original Certificate of Incorporation was filed with the Delaware Secretary of State on October 26, 1981.

2. The Restated Certificate of Incorporation has been duly adopted in accordance with Section 245 of the Delaware General Corporation Law by the Board of Directors of the Company without a vote of the stockholders of the Company.

3. The Restated Certificate of Incorporation of the Company attached hereto as Exhibit A only restates and integrates, but does not further amend, all of the provisions of the Company's Certificate of Incorporation as theretofore amended or supplemented and currently in effect, and there is no discrepancy between the provisions of the Certificate of Incorporation of the Company currently in effect and the provisions of the Restated Certificate of Incorporation.

4. The Company's Certificate of Incorporation is hereby restated in its entirety to read as set forth on Exhibit A attached hereto and incorporated herein by this reference.

IN WITNESS WHEREOF, the Company has caused this Restated Certificate of Incorporation to be duly executed by the undersigned officer of the Company this 12th day of August, 2002.

PINNACLE ENTERTAINMENT, INC.

By: /s/ Bruce C. Hinckley

Bruce C. Hinckley,
Senior Vice President
and Chief Financial
Officer

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Exhibit A

RESTATED CERTIFICATE OF INCORPORATION
OF
PINNACLE ENTERTAINMENT, INC.

ARTICLE I

The name of the corporation is: Pinnacle Entertainment, Inc.

ARTICLE II

The address of its registered office in the State of Delaware is 30 Old Rudnick Lane, in the City of Dover, County of Kent. The name of its registered agent is CorpAmerica, Inc.

ARTICLE III

The nature of the business to be conducted or promoted is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of the State of Delaware.

ARTICLE IV

The amount of the total authorized capital stock of the corporation is 40,250,000 shares which are divided into two classes as follows:

250,000 shares of Preferred Stock having a par value of $1.00 per share; and

40,000,000 shares of Common Stock having a par value of $0.10 per share.

The designations, voting powers, preferences and relative participating, optional or other special rights, and qualifications, limitations or restrictions of the above classes of stock are as follows:

A. Preferred Stock.

The Board of Directors is expressly authorized, from time to time, (1) to fix the number of shares of one or more series of Preferred Stock; (2) to determine the designation of any such series; (3) to determine or alter, without limitation or restriction, the rights, preferences, privileges and restrictions granted to or imposed upon any wholly unissued series of Preferred Stock; and (4) within the limits or restrictions stated in any resolution or resolutions of the Board of Directors originally fixing the number of shares constituting any series, to increase or decrease (but not below the number of shares then outstanding) the number of shares of any such series subsequent to the issue of shares of that series.

B. Common Stock.

(i) Subject to the preferential rights of the Preferred Stock, the holders of the Common Stock shall be entitled to receive, to the extent permitted by law, such dividends as may be declared from time to time by the Board of Directors.

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(ii) In the event of the voluntary or involuntary liquidation, dissolution, distribution of assets or winding up of the corporation, after distribution in full of the preferential amount to be distributed to the holders of shares of the Preferred Stock, holders of the Common Stock shall be entitled to receive all the remaining assets of the corporation of

whatever kind available for distribution to stockholders, ratably in proportion to the number of shares of Common Stock held by them respectively. A consolidation, merger or reorganization of the corporation with any other corporation or corporations, or a sale of all or substantially all of the assets of the corporation, shall not be considered a dissolution, liquidation or winding up of the corporation within the meaning of these provisions.

(iii) Except as may be otherwise required by law, each share of Common Stock shall entitle the holder to one vote in respect of each matter voted by the stockholders.

ARTICLE V

Any and all right, title, interest and claim in or to any dividends declared by the corporation, whether in cash, stock, or otherwise, which are unclaimed by the stockholder entitled thereto for a period of six years after the close of business on the payment date, shall be and is deemed to be extinguished and abandoned; and such unclaimed dividends in the possession of the corporation, its transfer agents or other agents or depositories shall at such time become the absolute property of the corporation, free and clear of any and all claims of any persons whatsoever.

ARTICLE VI

In furtherance and not in limitation of the power conferred by statute, the Board of Directors is expressly authorized to make, alter, amend or repeal the by-laws of the corporation.

ARTICLE VII

Whenever a compromise or arrangement is proposed between the corporation and its creditors or any class of them and/or between the corporation and its stockholders or any class of them, any court of equitable jurisdiction within the State of Delaware may, on the application in a summary way of the corporation or of any creditor or stockholder thereof or on the application of any receiver or receivers appointed for the corporation under the provisions of Section 291 of Title 8 of the Delaware Code or on the application of trustees in dissolution or of any receiver or receivers appointed for the corporation under the provisions of Section 279 of Title 8 of the Delaware Code order a meeting of the creditors or class of creditors, and/or of the stockholders or class of stockholders of the corporation, as the case may be, to be summoned in such manner as the said court directs. If a majority in number representing three-fourths in value of the creditors or class of creditors, and/or of the stockholders or class of stockholders of the corporation, as the case may be, agree to any compromise or arrangement and to any reorganization of the corporation as consequence of such compromise or arrangement, the said compromise or arrangement and the said reorganization shall, if sanctioned by the court to which the said application has been made,

be binding on all the creditors or class of creditors, and/or on all the stockholders or class of stockholders, of the corporation, as the case may be, and also on the corporation.

ARTICLE VIII

The corporation shall indemnify its officers and directors to the full extent permitted by the Delaware General Corporation Law.

ARTICLE IX

Elections of directors need not be by written ballot unless the by-laws of

the corporation so provide.

ARTICLE X

The corporation reserves the right to amend, alter, change or repeal any provision contained in this Certificate of Incorporation, in the manner now or hereafter prescribed by statute, and all rights conferred upon stockholders herein are granted subject to this reservation.

ARTICLE XI

[ARTICLE XI has been intentionally omitted.]

ARTICLE XII

No director of the corporation shall be personally liable to the corporation or its stockholders for monetary damages for breach of fiduciary duty by such director for corporate actions as a director; provided, however, that this Article XII shall not eliminate or limit the liability of a director to the extent provided by applicable law (1) for any breach of the director's duty of loyalty to the corporation or its stockholders, (2) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (3) under Section 174 of the Delaware General Corporation Law, or (4) for any transaction from which the director derived an improper personal benefit. No amendment to repeal this Article XII shall apply to, or have any effect on the liability or alleged liability of any director of the corporation for or with respect to any acts or omissions of such director occurring prior to such amendment or repeal.

ARTICLE XIII

A. Definitions. For purposes of this Article XIII, the following terms shall have the meanings specified below:

1. "Affiliate" shall have the meaning ascribed to such term in Rule 12b-2 promulgated by the Securities and Exchange Commission ("SEC") under the Securities Exchange Act of 1934, as amended (the "Exchange Act").

2. "Affiliated Companies" shall mean those companies directly or indirectly affiliated or under common Ownership or Control with the corporation, including, without limitation, subsidiaries, holding companies and intermediary companies (as those and similar terms are defined in the Gaming Laws of the applicable Gaming Jurisdictions) that are registered or licensed under applicable Gaming Laws.

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3. "Gaming" or "Gaming Activities" shall mean the conduct of gaming and gambling activities, or the use of gaming devices, equipment and supplies in the operation of a casino, card club or other enterprise, including, without limitation, slot machines, gaming tables, cards, dice, gaming chips, player tracking systems, cashless wagering systems and related and associated equipment and supplies.

4. "Gaming Authorities" shall mean all international, foreign, federal, state and local regulatory and licensing bodies and agencies with authority over Gaming within any Gaming Jurisdiction.

5. "Gaming Jurisdictions" shall mean all jurisdictions, domestic and foreign, and their political subdivisions, in which Gaming Activities are lawfully conducted.

6. "Gaming Laws" shall mean all laws, statutes and ordinances pursuant to which any Gaming Authority possesses regulatory and licensing authority over

Gaming within any Gaming Jurisdiction, and all rules and regulations promulgated by such Gaming Authority thereunder.

7. "Gaming Licenses" shall mean all licenses, permits, approvals, authorizations, registrations, findings of suitability, franchises and entitlements issued by a Gaming Authority necessary for or relating to the conduct of Gaming Activities.

8. "Ownership or Control" (and derivatives thereof) shall mean (i) ownership of record, (ii) "beneficial ownership" as defined in Rule 13d-3 or Rule 16a-1(a)(2) promulgated by the SEC under the Exchange Act, (iii) the power to direct and manage, by agreement, contract, agency or other manner, the voting or management rights or disposition of securities of the corporation, and/or (iv) definitions of ownership or control under applicable Gaming Laws.

9. "Person" shall mean an individual, partnership, corporation, limited liability company, trust or any other entity.

10. "Redemption Date" shall mean the date by which the securities Owned or Controlled by an Unsuitable Person are to be redeemed by the corporation.

11. "Redemption Notice" shall mean that notice of redemption served by the corporation on an Unsuitable Person if a Gaming Authority requires the corporation, or the corporation deems it necessary or advisable, to redeem such Unsuitable Person's securities. Each Redemption Notice shall set forth (i) the Redemption Date; (ii) the number of shares of securities to be redeemed; (iii) the Redemption Price and the manner of payment therefor; (iv) the place where certificates for such shares shall be surrendered for payment; and (v) any other requirements of surrender of the certificates, including how they are to be endorsed, if at all.

12. "Redemption Price" shall mean the per share price for the redemption of any securities to be redeemed pursuant to this Article XIII, which shall be that price (if any) required to be paid by the Gaming Authority making the finding of unsuitability, or if such Gaming Authority does not require a certain price per share to be paid, that sum deemed reasonable by the corporation (which may include, in the corporation's discretion,

the original purchase price per share of the securities); provided, however, the Redemption Price, unless the Gaming Authority requires otherwise, shall in no event exceed (i) the closing sales price of the securities on the national securities exchange on which such shares are then listed on the date the notice of redemption is delivered to the Unsuitable Person by the corporation, or (ii) if such shares are not then listed for trading on any national securities exchange, then the closing sales price of such shares as quoted in the NASDAQ National Market System, or (iii) if the shares are not then so quoted, then the mean between the representative bid and the ask price as quoted by NASDAQ or another generally recognized reporting system. The Redemption Price may be paid in cash, by promissory note, or both, as required by the applicable Gaming Authority and, if not so required, as the corporation elects.

13. "Unsuitable Person" shall mean a Person who Owns or Controls any securities of the corporation or any securities of or interest in any Affiliated Company (i) that is determined by a Gaming Authority to be unsuitable to Own or Control such securities or unsuitable to be connected with a Person engaged in Gaming Activities in that Gaming Jurisdiction, or (ii) who causes the corporation or any Affiliated Company to lose or to be threatened with the loss of, or who, in the sole discretion of the Board of Directors of the corporation, is deemed likely to jeopardize the corporation's right to the use of or

entitlement to, any Gaming License.

B. Compliance with Gaming Laws. The corporation, all Persons Owning or Controlling securities of the corporation and any Affiliated Companies, and each director and officer of the corporation and any Affiliated Companies shall comply with all requirements of the Gaming Laws in each Gaming Jurisdiction in which the corporation or any Affiliated Companies conduct Gaming Activities. All securities of the corporation shall be held subject to the requirements of such Gaming Laws, including any requirement that (i) the holder file applications for Gaming Licenses with, or provide information to, applicable Gaming Authorities, or (ii) that any transfer of such securities may be subject to prior approval by Gaming Authorities, and any transfer of securities of the corporation in violation of any such approval requirement shall not be permitted and the purported transfer shall be void ab initio.

C. Finding of Unsuitability.

1. The securities of the corporation Owned or Controlled by an Unsuitable Person or an Affiliate of an Unsuitable Person shall be redeemable by the corporation, out of funds legally available therefor, by appropriate action of the Board of Directors, to the extent required by the Gaming Authority making the determination of unsuitability or to the extent deemed necessary or advisable by the corporation. If a Gaming Authority requires the corporation, or the corporation deems it necessary or advisable, to redeem such securities, the corporation shall serve a Redemption Notice on the Unsuitable Person or its Affiliate and shall purchase the securities on the Redemption Date and for the Redemption Price set forth in the Redemption Notice. From and after the Redemption Date, such securities shall no longer be deemed to be outstanding and all rights of the Unsuitable Person or any Affiliate of the Unsuitable Person therein, other than the right to receive the Redemption Price, shall cease. The Unsuitable Person shall surrender the certificates for any securities to be redeemed in accordance with the requirements of the Redemption

Notice. Notwithstanding the foregoing, so long as the corporation and Hollywood Park Operating Company are a paired stock real estate investment trust and operating company, the corporation may, in its sole discretion, convert any securities that are redeemable pursuant to this Section (C)(1) into shares of Excess Stock effective upon written notice to the Unsuitable Person or its Affiliate, and such shares of Excess Stock shall be transferred to a Trust for sale to a Permitted Transferee (as such terms are defined in Article IV) in accordance with Sections (D)(4) through (9) of Article IV.

2. Commencing on the date that a Gaming Authority serves notice of a determination of unsuitability or the loss or threatened loss of a Gaming License upon the corporation, and until the securities Owned or Controlled by the Unsuitable Person or the Affiliate of an Unsuitable Person are Owned or Controlled by Persons found by such Gaming Authority to be suitable to own them, it shall be unlawful for the Unsuitable Person or any Affiliate of an Unsuitable Person (i) to receive any dividend, payment, distribution or interest with regard to the securities; (ii) to exercise, directly or indirectly or through any proxy, trustee, or nominee, any voting or other right conferred by such securities, and such securities shall not for any purposes be included in the securities of the corporation entitled to vote, or (iii) to receive any remuneration in any form from the corporation or an Affiliated Company for services rendered or otherwise.

D. Issuance and Transfer of Securities. The corporation shall not issue or transfer any securities or any interest, claim or charge thereon or thereto except in accordance with applicable Gaming Laws. The issuance or transfer of any securities in violation thereof shall be ineffective until (i) the corporation shall cease to be subject to the jurisdiction of the applicable

Gaming Authorities, or (ii) the applicable Gaming Authorities shall, by affirmative action, validate said issuance or transfer or waive any defect in said issuance or transfer.

E. Indenture Restrictions. The corporation shall cause to be placed in every indenture or other operative document relating to publicly traded securities (other than capital stock) of the corporation a provision requiring that any Person or Affiliate of a Person who holds the indebtedness represented by that indenture and is found to be unsuitable to hold such interest shall have the interest redeemed or shall dispose of the interest in the corporation in the manner set forth in the indenture or other document.

F. Notices. All notices given by the corporation pursuant to this Article XIII, including Redemption Notices, shall be in writing and shall be deemed given when delivered by personal service or telegram, facsimile, overnight courier or first class mail, postage prepaid, to the Person's address as shown on the corporation's books and records.

G. Indemnification. Any Unsuitable Person and any Affiliate of an Unsuitable Person shall indemnify the corporation and its Affiliated Companies for any and all costs, including attorneys' fees, incurred by the corporation and its Affiliated Companies as a result of such Unsuitable Person's or Affiliate's continuing Ownership or Control or failure to promptly divest itself of any securities in the corporation.

H. Fiduciary Obligations; Contractual Arrangements; Etc. Nothing contained in this Article XIII shall be construed (i) to relieve any Unsuitable Person (or Affiliate of such

Person) from any fiduciary obligation imposed by law, (ii) to prohibit or affect any contractual arrangement which the corporation may make from time to time with any holder of securities of the corporation to purchase all or any part of shares of capital stock or other securities held by them, or (iii) to be in derogation of any action, past or future, which has been or may be taken by the Board of Directors or any holder of securities with respect to the subject matter of this Article XIII.

I. Injunctive Relief. The corporation is entitled to injunctive relief in any court of competent jurisdiction to enforce the provisions of this Article XIII and each holder of the securities of the corporation shall be deemed to have acknowledged, by acquiring the securities of the corporation, that the failure to comply with this Article XIII will expose the corporation to irreparable injury for which there is no adequate remedy at law and that the corporation is entitled to injunctive relief to enforce the provisions of this Article XIII.

J. Legend. The restrictions set forth in this Article XIII shall be noted conspicuously on any certificate representing securities of the corporation in accordance with the requirements of the Delaware General Corporation Law and applicable Gaming Laws.

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EXHIBIT 9

IN THE MATTER OF THE APPLICATIONS OF BOARDWALK REGENCY CORPORATION AND THE JEMM COMPANY FOR CASINO LICENSES.

Decided: November 13, 1980
Approved for Publication By the Casino Control Commission:
April 8, 1988

SYNOPSIS

Boardwalk Regency Corporation and the Jemm Company (lessor of the casino hotel operated by Boardwalk Regency) applied to the Casino Control Commission for casino licenses. Following a hearing by the Commission, a conditional license was granted to Boardwalk Regency and a limited owner-lessor license was granted to Jemm.

The main obstacle to licensure for Boardwalk Regency was the good character qualifications of four individuals required to be qualified. All were executives of Caesars World, Inc., parent company of Boardwalk Regency. The Commission, after consideration of the evidence, found that two of those individuals—Clifford Perlman, Chairman of the Board of CWI, and Stuart Perlman, Vice-Chairman of the CWI board, and both major shareholders—did not establish their good character and were not qualified.

The Commission determined, however, that it had authority to issue a casino license despite the disqualifying individuals, provided the license was conditioned so as to eliminate the influence of the unacceptable qualifiers. *N.J.S.A.* 5:12-75 and -105. Such conditions must remove any unacceptable individuals from the categories of persons required to be qualified. In addition, there should be good reasons why the public interest would be better served through conditional licensure than through license denial and appointment of a conservator.

Accordingly, the Commission granted the license on the condition that Boardwalk Regency either separate the unqualified individuals from the corporation or withdraw from casino operations in New Jersey. The applicant was given a 30-day interim period in which to decide which of the two options it would elect.

William R. Glendon, Esq., for Boardwalk Regency Corporation (Rogers & Wells, attorneys)
Morris Brown, Esq., for Boardwalk Regency Corporation (Wilentz, Goldman & Spitzer, attorneys)
Richard H. Sheehan, Esq., for Boardwalk Regency Corporation (Vice President-Law, Caesars World, Inc.)
James L. Cooper, Esq., for the Jemm Company (Cooper, Perskie, Katzman, April, Niedelman & Wagenheim, attorneys)
Michael R. Cole, Assistant Attorney General; **Joan Robinson Gross,** Deputy Attorney General, and **Anthony J. Parillo,** Deputy Attorney General, the Division of Gaming Enforcement
R. Benjamin Cohen, General Counsel, and **Joseph A. Fusco,** Special Counsel for Licensing, for the Casino Control Commission

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BY THE CASINO CONTROL COMMISSION:

I. *INTRODUCTION*

On September 1, 1978, Boardwalk Regency Corporation ("BRC") applied to the Casino Control Commission for a casino license. In accordance with the Casino Control Act ("the Act"), the Commission requested the Division of Gaming Enforcement ("Division") to conduct a comprehensive investigation into BRC's qualifications. While the investigation was in progress, BRC proceeded with its reconstruction and expansion of the former Howard Johnson's Regency Hotel. On April 30, 1979, with completion of its facility approaching, BRC formally requested issuance of a temporary casino permit which the Commission is authorized to grant upon the filing of certain corporate information, the institution of an appropriate voting trust agreement and the establishment of the suitability of the proposed casino hotel facilities. See *N.J.S.A.* 5:12-95.1. After conducting a hearing on this request, the Commission found that, subject to certain conditions, BRC met the requirements for a temporary casino permit. The Commission then issued such a permit which became effective on June 26, 1979. That permit expired at midnight on October 26, 1980. As noted, the statutory requirements for a temporary casino permit were limited to areas which did not concern the suitability of the applicant or other persons required to be qualified for a casino license.

As the landlord and lessor of the casino hotel facility, the Jemm Company ("Jemm") is required by Section 82 of the Act to apply for and obtain a casino license. *N.J.S.A.* 5:12-82(c)(2). Jemm did apply for such license on or about February 26, 1979. In the usual course, the matter was referred to the Division for investigation.

On January 23, 1980, the Division filed its "Report to the Casino Control Commission with Reference to the Casino License Application of Boardwalk Regency Corporation" (the "BRC Report"). Along with the BRC Report, the Division filed a "Statement of Issues" emphasizing several matters which the Division deemed significant. On February 1, 1980, the Division filed its "Report to the Casino Control Commission with Reference to the Casino License Application of Jemm Company, a Partnership". These documents were submitted by the Division pursuant to its statutory responsibility to investigate the qualifications of each applicant and to provide all necessary information to the Commission. *N.J.S.A.* 5:12-76. Although they assist the Commission in focusing its inquiry into the qualifications of the applicants, these documents are not evidence of the matters stated therein. Nor did the Report and Statement of Issues initiate the present hearing. The Casino Control Act requires a hearing on every casino license application and each applicant must meet the statutory criteria regardless of the tenor of the Division's report. See *N.J.S.A.* 5:12-80(a) and -87(a).

In order to expedite the proceedings and to fairly permit the parties to prepare for the hearing, six pre-hearing conferences were conducted. Those conferences resulted in six pre-hearing conference orders delineating the factual matters which were to be the primary subjects of the hearing. Essentially, those subjects concern the areas described in the Division's reports. Further, the applicants and the Division have entered into extensive stipulations of fact relevant to those areas. These stipulations have been accepted by the Commission. As to any other factual matters not placed in issue nor actually litigated during the hearing, it must be assumed that such matters pose no cause for concern. In this regard, the Commission took notice of the fact that the applicants have to date filed numerous documents which pertain to uncontested matters and which were not introduced at the hearing.

Sections 84 and 89(b) of the Act set forth the criteria which a casino license applicant and other persons required to be qualified as a condition of such licensure must affirmatively establish by clear and convincing evidence. *N.J.S.A.* 5:12-84 and 89(b). The clear and

convincing evidence requirement falls between the ordinary civil standard of "preponderance of the evidence" and the criminal standard of "beyond a reasonable doubt". The preponderance standard means simply that when the record is considered as a whole the credible evidence renders the existence of the fact in question more likely than not. In contrast, the familiar criminal standard means that the trier of fact must not have a reasonable doubt, that is, one based on the evidence or the lack of evidence. A reasonable doubt is one which has some justification rather than an imaginary or possible doubt. The clear and convincing standard is much higher than the preponderance standard but somewhat less than the reasonable doubt requirement. Clear and convincing evidence should produce in the mind of the Commissioner a firm belief or conviction as to the truth of the matters sought to be established. In order to sustain its burden, the applicant was obliged to present clear and convincing proof of the facts upon which the Commission may reach a reasonable conclusion as to suitability. Further, the Act requires that four of the five Commission members must concur in any necessary finding for casino licensure. *N.J.S.A.* 5:12-73(d).

As noted, a casino license applicant must establish by clear and convincing evidence that it meets the criteria of Section 84 and that the persons who must be qualified meet the criteria of Section 89(b) for casino key employees. For BRC, a corporate applicant, the persons required to so qualify are described in Sections 85(c) and 85(d) of the Act. Under Section 85(c), the following persons connected with BRC must qualify:

(a) Each officer;
(b) Each director;
(c) Each person holding any beneficial interest, direct or indirect in the securities of the applicant corporation;
(d) Any person who in the opinion of the Commission has the ability to control the corporation or elect a majority of the board of directors of the corporation, other than a bank or other licensed lending institution which holds a mortgage or other lien acquired in the ordinary course of business; and
(e) Any lender, underwriter, agent or employee of the applicant corporation or other person whom the Commission considers appropriate for qualification.

Under Section 85(d) the officers, directors, lenders, underwriters, agents, employees and securities holders of Caesars, New Jersey, Inc. (the intermediary company) and Caesar's World, Inc. (the holding

company) must qualify to the standards under Section 89, except residency. However, since both the intermediary company ("CNJ") and the holding company ("CWI") are publicly traded corporations, the Commission and the Director of the Division may agree to waive such qualification requirements as to any person who is not significantly involved in the activities or BRC and who does not have the ability to control the holding company or the intermediary company or to elect one or more directors thereof.

As to Jemm, the partnership which leases the casino hotel facility to BRC, Section 85(e) of the Act requires the following persons to be qualified to the standards for casino key employees, except for residency:

(a) Each person who directly or indirectly holds any beneficial interest or ownership in the partnership applicant;

(b) Any person who in the opinion of the Commission has the ability to control the partnership applicant; and

(c) Any person whom the Commission considers appropriate for qualification.

During the pre-hearing conferences, the Division submitted a list of persons whom the Division deemed required to be qualified for both BRC and Jemm. The Division also indicated those individuals to whom it interposed an objection and the grounds for such objection. These materials were provided to the Commissioners and the parties. The Commission found that there are 30 persons who must be qualified as part of the BRC application and eight persons who must be qualified as part of the Jemm application. At the conclusion of the hearing, the Division objected to four of the BRC "qualifiers", namely, Clifford S. Perlman, Stuart Z. Perlman, Jay E. Leshaw and William H. McElnea, Jr. No objection was interposed regarding any of the Jemm qualifiers.[1]

As to the licensure standards themselves, Sections 84 and 89(b)(2) establish essentially the same qualification criteria which must be established by clear and convincing evidence for the applicants and the persons to be qualified. The first affirmative qualification criterion is that of "financial stability, integrity and responsibility". *N.J.S.A.*

[1]Prior to the hearing, the Division stated its opposition to Mark A. Geller, who resigned his position as vice-president for BRC's casino operations and who took a leave of absence from his office in CWI. Mr. Geller's qualifications are the subject of a separate proceeding and will be determined by the Commission apart from the instant matter.

5:12-84(a); *N.J.S.A.* 5:12-89(b). The second criterion appears in Section 84(c) and Section 89(b)(2). Although the wording varies slightly between these sections, the thrust is the same. A casino licensee applicant or person required to qualify must demonstrate its "reputation for good character, honesty and integrity". *N.J.S.A.* 5:12-89(b)(2). The third criterion demands that the applicant or qualifying person possess "sufficient business ability and casino experience as to establish the likelihood" that the applicant will create and maintain "a succesful, efficient casino operation" or that the qualifying person will achieve "success and efficiency in the particular position involved". *N.J.S.A.* 5:12-84(d); *N.J.S.A.* 5:12-89(b)(3). A fourth affirmative criterion applies only to the casino license applicant which must establish the "integrity and reputation" of all financial investors or lenders whose investments or loans are related to the Atlantic City casino hotel project.[2]

As mentioned earlier, the Division filed investigative reports as to both the BRC application and the Jemm application. In addition, the Division submitted a "Statement of Issues" in which it enumerated 13 areas of concern covered by the BRC report. The Commission received evidence on these areas and considered that evidence in determining whether BRC had met the affirmative qualification criteria. However, certain "issues" as developed on this record simply were not of the same force and importance as others. The matters which truly concerned the Commission were those which are related in the opinions regarding the four challenged BRC qualifiers. With respect to the otherwise unmentioned issues, the Commission found on this record no reasons to seriously question the suitability of the applicants or persons to be qualified. Since the real difficulties with the BRC application concern the persons to be qualified, we now consider those individuals.

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[2]At the hearing, the Chairman distributed to the Commissioners and to the parties a proposed written instruction on the licensing criteria and the decisional process. After considering the exceptions filed by the parties, the Chairman modified the proposal in two respects. The written instruction, as modified, was adopted by the Chairman for the guidance of the Commission and the edification of the parties. It is not necessary to restate the instruction here since it is part of the record. Moreover, the meaning of the pertinent standards and their application to the contested matters in this case are apparent from the opinions of the Commission members herein.

II. *PERSONS REQUIRED TO QUALIFY*

A. *CLIFFORD S. PERLMAN*

Clifford S. Perlman who presently resides in Miami, Florida, was born on March 30, 1926, in Philadelphia, Pennsylvania and was educated in the Philadelphia public schools. After attending Temple University for a short time, he completed his undergraduate education at the University of Miami and proceeded to obtain a law degree from the same institution in 1951. He has been a member of the Bar of the State of Florida since 1951.

Caesars World Inc. ("CWI") was formed in 1958 as "Lum's Bar, Inc." by Clifford Perlman and his brother, Stuart, to operate a small restaurant in Miami Beach, Florida which the brothers had purchased in 1956. By 1969, the Perlmans had built the corporation into a publicly-held (over-the-counter) company which operated or franchised approximately 380 fast-food restaurants. The company also acquired in the late 1960's a Florida-based producer and distributor of processed meats (Dirr's Gold Seal Meats) and a chain of more than 100 retail discount stores. (Dade Wholesale Products). On September 30, 1969, Lumm's acquired Caesars Palace in Las Vegas, Nevada. Within the next two years, Lum's disposed of Dirr's Gold Seal Meats and Dade Wholesale Products and its fast-food restaurants. In December 1971, the name of the corporation was changed from Lums to Caesars World. Clifford Perlman was the primary catalyst in changing the direction of the company from the fast-food business to the casino hotel business.

Caesars World Inc. is today a publicly traded corporation, the stock of which is listed on the New York and Pacific stock exchanges. The approximately 26,100,000 shares of the company are owned by about 70,000 shareholders. Through subsidiaries, CWI presently owns and operates Caesars Palace Hotel and Casino in Las Vegas, Nevada, Caesars Tahoe Hotel and Casino in Stateline, Nevada, and Boardwalk Regency Hotel and Casino in Atlantic City, New Jersey. Through other subsidiary companies, CWI owns real estate and operates a country club in southern Florida, operates three honeymoon resorts in the Pocono Mountain area of Pennsylvania, and owns a computer terminal manufacturing company based in New York. In fiscal 1980, the gross revenues of CWI exceeded $500,000,000.

Clifford Perlman is Chairman of the Board of Directors and chief

executive officer of both CWI and Caesars New Jersey, Inc. ("CNJ").[3] He is the largest single stockholder of CWI, owning approximate 2.4 million shares, or about 10 percent of the outstanding stock. In addition, he owns approximately 221,000 shares of CNJ, or about 1.4 percent of the outstanding stock of that company. Clifford Perlman clearly is today, and has been since the beginning, the acknowledged leader and prime mover of CWI.

By virtue of his positions as an officer, director, major stockholder and principal employee of CWI and CNJ, Clifford Perlman is a person who must individually be qualified for approval as a casino key employee (except for New Jersey residence) in order for Boardwalk Regency Corporation ("BRC") to be eligible to hold a casino license. BRC therefore has the affirmative responsibility to establish by clear and convincing evidence Clifford Perlman's "financial stability, integrity and responsibility", his "good character, honesty and integrity", and his "business ability and casino experience".

With regard to Clifford Perlman, the bulk of the evidence presented to the Commission relates to the licensure criteria of "good character, honesty and integrity". To determine an individual's "good character, honesty and integrity", the Act requires the Commission to examine, among other factors, the individual's "family, habits, character, criminal and arrest record [if any], business activities, financial affairs, and business, professional and personal associates".

In an effort to meet its statutorily imposed burden, BRC produced a great deal of evidence in support of both the good reputation of Clifford Perlman and the good character, honesty and integrity of Clifford Perlman. Several witnesses testified as to Clifford Perlman's good reputation in the financial community, in the casino hotel industry and in the communities where he lives and works. Most of these witnesses also testified as to his good character, honesty and integrity. Suffice it to say that the Commission has very carefully examined, considered and weighed all of this evidence.

The Division of Gaming Enforcement has recommended that this

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[3]Mr. Perlman has been on unpaid leave of absence from his position with CWI and CNJ and has been prohibited from taking any management position with BRC since June 26, 1979, the effective date of the BRC temporary casino permit. Mr. Perlman agreed to this arrangement in response to concerns raised by the Division which was then continuing its investigation of Mr. Perlman's and CWI's dealings with Messrs. Malnik and Cohen.

Commission find Clifford Perlman unsuitable for qualification. In support of its recommendation the Division has adduced evidence which it contends reflects adversely on the good character, honesty and integrity of Clifford Perlman. This evidence may be most conveniently considered in the context of the four major areas which were closely examined at the hearing.

1. *ACQUISITION OF CAESARS PALACE*

CWI's (then Lum's, Inc.) entry into the casino gaming business was marked by the purchase of Caesars Palace in 1969 for approximately $58 million. The Caesars Palace venture was largely the initiative of Clifford Perlman. It was Clifford Perlman who discovered the deal for the company and who established the purchase price at a multiple of earnings not to exceed $60 million.

At the time of acquisition, CWI retained prior management to run the casino operation without conducting a background study or investigation of any of the individuals, relying instead on their general reputation in the gaming community. One of these individuals was Jerome Zarowitz, the Director of Casino Operations, responsible for the day to day operations of the casino. He was then not required by the Nevada authorities to be licensed as a casino key employee. Although not a record owner of the Palace, Mr. Zarowitz received $3.5 million in cash upon the consummation of the acquisition from the former owners and received further monies on a deferred compensation plan, which CWI was obligated to fund.

Mr. Zarowitz had a known criminal record and by the latter part of 1969, was considered by Clifford Perlman unsuitable to operate the casino at Caesars Palace. While Mr. Zarowitz was still in charge of the casino, Clifford Perlman was aware of reports concerning Mr. Zarowitz's attendance at a so-called "little Appalachia" meeting of reputed organized crime members in Palm Springs in 1965. And Clifford Perlman was also aware that the Nevada Gaming Control Board had expressed concerns about Mr. Zarowitz's suitability for licensure and that his employment at Caesars Palace might have to be terminated. Notwithstanding this knowledge, CWI retained Mr. Zarowitz in his same executive capacity after the purchase settlement on September 30, 1969, until his resignation in April, 1970. Moreover, he was allowed to occupy an apartment at Caesars Palace on a complimentary basis for a period of time after his termination of employment. And, CWI replaced him with Sanford Waterman, on Mr. Zarowitz's own recommendation.

Between May 1, 1969, shortly after CWI entered into the agreement to purchase Caesars Palace, and September 30, 1969, when that purchase was completed, Caesars Palace suffered a loss of $932,266 before taxes, while continuing to be operated by the previous owners including Mr. Zarowitz. During the same period in the prior year of 1968, Caesars Palace had a profit before taxes of $2,230,014. Although professing concern over this drop in casino win, CWI accepted, without any independent investigation, the explanation tendered by Mr. Zarowitz and other personnel of the former owners that losses during the settlement period were due to patron win at the baccarat tables and, generally, to the fortunes of gaming. Indeed, CWI did nothing to confirm Zarowitz's explanation. Neither its Board of Directors nor management raised, or even considered, the possibility of an independent, outside audit of the records for the operation of the Caesars Palace casino during the settlement period. To do any such investigation, according to Clifford Perlman, would have disturbed the delicate negotiations then in progress between CWI and the previous owners over restructuring the financing aspects of the deal, occasioned by CWI's inability to adhere to its original plan of financing. In Clifford Perlman's words, "If I had accused them [the prior owners] of stealing, we would not have bought the hotel".

On December 12, 1970, the Federal Bureau of Investigation, acting under the supervision of Harold E. Campbell, Jr., then Special Agent in Charge of the Bureau's Nevada Regional Division, and having cause to believe the existence of an illegal interstate gambling operation, executed search and arrest warrants at Caesars Palace. In the course of the search, the agents uncovered funds in lockboxes listed to Mr. Zarowitz ($1,100,000), Elliot Price ($325,000) and Sanford Waterman ($135,000). Mr. Waterman and Mr. Price, who were casino executives at Caesars Palace at the time, were arrested as a result. Apparently, neither Clifford Perlman, who took personal charge of the Palace after this occurrence, nor anyone else on behalf of CWI confronted Mr. Zarowitz, Mr. Price or Mr. Waterman regarding this event or made any independent attempt to ascertain the source of these monies.

On January 27, 1971, the Securities and Exchange Commission ("SEC") ordered an examination and investigation into the possibility that CWI did not receive a substantial portion of the results of the casino proceeds of Caesars Palace for the summer of 1969 because the prior operators had been "skimming" the casino revenues during that period. In the course of its hearings in this matter, the SEC

subpoenaed, among others, the former principal owners of Caesars Palace and its key casino employees, including: William Weinberger, Sr., who at the time was President of Caesars Palace; Harry Wald, then Secretary-Treasurer of Caesars Palace (now Executive Vice President, Secretary and Director of Desert Palace, Inc., a wholly-owned subsidiary of CWI), Albert Faccinto (now Senior Vice President with Desert Palace, Inc.), Jerry Gordon and Bert Grober. All these individuals refused to testify, most invoking their constitutional privilege against self-incrimination. This fact came to the attention of Clifford Perlman who, once again, made no attempt to interview any of his employees about their possible knowledge that others may have been sharing in Caesars Palace revenues through skimming.

One of these employees, Jerry Gordon, had been indicted on March 25, 1971, along with Samuel Cohen, Meyer Lansky, Morris Lansburgh and others for income tax evasion arising from an alleged skimming operation at the Flamingo Hotel, a neighboring casino. Although professing shock over the indictment, Clifford Perlman never inquired of Gordon whether he knew of possible skimming at Caesars Palace under its prior ownership. Quite to the contrary, when Nevada gaming authorities sought Gordon's dismissal from Desert Palace, Inc., by reason of his indictment, Clifford Perlman directed William Weinberger (then President of Desert Palace, Inc.) to intervene in the matter. After a series of correspondence between Weinberger and the Nevada Gaming Control Board, Mr. Gordon was allowed to take a temporary leave of absence.

Another employee of Caesars Palace who had pled the Fifth Amendment before the SEC was Joel Snow. Mr. Snow had been rehired at Caesars Palace one year after his termination for a $1,000 shortage in the baccarat pit. He also was never asked about the drastic drop in casino winnings during the 1969 acquisition settlement period.

From the foregoing, certain conclusions are self-evident. Despite an awareness of Mr. Zarowitz's criminal conviction and his general, unsuitability in the eyes of Nevada gaming officials, CWI, through Clifford Perlman, retained him in a position of responsibility and authority within the casino, allowed him to live on the premises rent free after his resignation, accepted without further inquiry his explanation for casino losses and followed his recommendation that he be replaced by Sanford Waterman. Unquestionably, Mr. Zarowitz's record as well as the sensitivities exhibited by Nevada gaming authorities should have disabused Clifford Perlman of any such trust and reliance. In the face of an official SEC investigation into the possibility of

skimming at Caesars Palace under its prior owners—a charge which strikes at the heart of the regulatory concerns—CWI's apparent lack of diligence in ascertaining the truth of this allegation is disturbing, especially since individuals with possible relevant knowledge remained in CWI's employ. Two of these employees, Joel Snow and Jerry Gordon, in particular, should have given CWI cause for concern—indeed, Jerry Gordon at this time had just been indicted for an alleged skimming operation at the nearby casino, the Flamingo.

Of course, the nature and relevance of these events must be considered in the context in which they occurred. Clifford Perlman and CWI were new to the casino gaming industry. Nevertheless, *at the very least,* the facts outlined above relating to the acquisition of Caesars Palace should have raised Clifford Perlman's consciousness concerning the sensitive nature of this industry and concerning the regulatory process under which it operates.

2. *SKY LAKE NORTH*

In the late spring of 1971, Alvin I Malnik, a principal along with Samuel E. Cohen of Comal Corp., approached CWI President Melvyn Chasen about the possibility of CWI purchasing property in Dade County, Florida known as Sky Lake North. A previous overture to this effect had been rejected by Clifford Perlman in 1970. The Sky Lake property consisted of about 623 acres including a country club, lakes and approximately 325 acres of developable land owned by Comal. In the 1971 offer, the price was set by Malnik at $23 million. More specifically, CWI was to assume an existing $10 million mortgage debt to the Central States, Southeast and Southwest Areas Pension Fund (Teamsters Pension Fund) and undertake a $13 million purchase money mortgage to Comal. These terms appeared attractive to Clifford Perlman.

At a July 1971 meeting at Sky Lake, Mr. Malnik along with Samuel Cohen presented their proposal to certain representatives of CWI including Clifford and Stuart Perlman, William McElnea, Jay Leshaw, Bertin Perez and CWI's outside counsel, David Bernstein of Rogers & Wells. Also by this time, Mr. Malnik was proposing to sell the stock of Comal to CWI, rather than having CWI purchase the property outright, and seeking as part of the transaction, to acquire rights to CWI stock.

Sometime later in July 1971, CWI's Board of Directors met and considered the proposed transaction. Certain aspects of the deal were discussed including the reputations of Mr. Malnik and Mr. Samuel

Cohen. The Board was told: that Mr. Malnik had been accused, in a book entitled *Lansky* by one Hank Messick, of being a close associate of Meyer Lansky; that Mr. Malnik denied such association; and that Federal law enforcement authorities apparently believed Mr. Malnik was involved in organized crime. They were told that Mr. Malnik had once been indicted for tax fraud, but that he had received a directed verdict of acquittal, and that he had never been convicted of a crime. Board members were also informed of Mr. Cohen's violation of the Commodity Exchange Act.

At this meeting, David Bernstein expressed his concern over entering this transaction, given Mr. Malnik's reputation. As outside counsel, Mr. Bernstein recommended seeking the Justice Department's approval before consummating the deal. The Board rejected this advice, however, as a bad precedent, and as a poor business move. CWI's directors felt that the reputations of Mr. Malnik and Mr. Cohen should not preclude the company from the undertaking at hand and consequently decided to proceed with the transaction. Mr. Bernstein's concerns remained unabated but, he was eventually dissuaded by Clifford Perlman from again addressing the issue before the Board.

All of CWI's outside directors were not made aware of every important aspect of Mr. Cohen's background at the time of the Board's July 1971 approval of the Sky Lake transaction. In fact, Mr. Cohen had been indicted together with Meyer Lansky and others in March 1971, for income tax evasion arising from an alleged casino skimming operation at the Flamingo Hotel in Las Vegas. Clifford Perlman was aware of Meyer Lansky's reputation. Clifford Perlman also knew of the Flamingo skimming indictment involving Messrs. Cohen, Lansky and others when it was returned in March 1971. Indeed, one of Mr. Perlman's employees, at Caesars Palace, Jerry Gordon, had been charged as a co-defendant in the same indictment. Stuart Perlman knew of the Flamingo skimming indictment at the time of its filing, as did Jay Leshaw, since it was extensively reported in the news media of Miami where both resided. However, Mr. Cohen's then pending indictment with Meyer Lansky and Caesars Palace employee Jerry Gordon was not discussed with William McElnea and the other outside directors of CWI. Clifford Perlman testified that he did not consider it a sensitive issue. Stuart Perlman testified that he "assumed" all directors knew, even though the subject of Mr. Cohen's indictment was never raised or discussed at the same Board meeting in which Mr. Cohen's conviction for a commodities violation was disclosed. Jay Leshaw testified that at the time of the

Board meeting he focused on the architectural and land development aspects of the deal rather than on the character and backgrounds of those with whom his company was entering into a business relationship.

Based on the foregoing, the following findings are inescapable. In 1971, CWI's Board of Directors was faced with the prospect of entering into a major business relationship with two men of admittedly controversial and questionable reputations. This presented sufficient concern to certain directors that the topic was raised and considered at a formal Board meeting. And it was of particular concern to CWI's counsel, David Bernstein. Apparently, however, the Board was satisfied with Mr. Malnik's denial of an association with Meyer Lansky and was unpersuaded by the nature of the allegations. On the basis of the information disclosed at that meeting, the Board approved the deal after weighing the various considerations before it.

The most pertinent piece of information, however—Mr. Cohen's then pending indictment with Meyer Lansky in a casino skimming scheme—was not brought to the attention of the outside directors by Clifford Perlman, Stuart Perlman or Jay Leshaw. Just four months earlier, Mr. Cohen had been indicted with Meyer Lansky and others for a crime rooted in an alleged casino skim. Its relevance to the discussion at hand was apparent. Had this fact been disclosed at the meeting it might well have brought the Lansky connection into sharper focus. The media allegations concerning Mr. Malnik and Mr. Cohen, then thought to be baseless, might not have been so readily dismissed. Mr. Bernstein's unheeded admonition might not have been so lightly regarded. Indeed, William McElnea testified that the fact of Mr. Cohen's indictment would have been dispositive of the issue for him if he had known about it. It was, according to his business ethic, a fact which should have been fully disclosed to the Board for its consideration. It was not; and Mr. Perlman has provided no good reason why.

As the chairman of a publicly held corporation engaged in the heavily regulated business of casino gaming, Clifford Perlman should have approached Sky Lake with caution and circumspection, impelled by a sense of duty to his shareholders and to the regulatory authorities. This sense of duty both demanded, at the very least, full disclosure to the Board of Directors. It should have compelled further inquiry, such as a confrontation with Mr. Cohen himself or communication with law enforcement or regulatory agencies. But apparently none of this was done.

3. *CRICKET CLUB*

In the early summer of 1972, Clifford Perlman became personally involved in a real estate investment with Alvin Malnik and Samuel Cohen's two sons, Joel and Alan Cohen. This project involved the purchase of the partially completed Cricket Club, a high-rise condominium complex consisting of approximately 220 units in Miami, Florida. Calvin Kovens was chosen to be the general contractor for the completion of the condominium project. Mr. Kovens, along with Teamsters Union President Jimmy Hoffa, had been convicted in 1964 for fraud and conspiracy in using $1 million in Teamsters Pension funds to finance a real estate venture. Although aware of this conviction, Clifford Perlman's only objection to using Mr. Kovens' construction company was based on the personal relationship between Mr. Malnik and Mr. Kovens. When the costs of the condominium project began to exceed the financing made available for it, Samuel Cohen lent the Cricket Club substantial sums in excess of $6 million with which to complete the undertaking. Close to $2 million was also borrowed from Comal Corporation. Clifford Perlman knew that Mr. Cohen was lending money to the Cricket Club.

Clifford Perlman's equity interest in the Cricket Club was $10,000. Although asserting he was to be a passive investor, and this in part due to Mr. Malnik's reputation, all decisions involving the business or property of the corporations formed to undertake the condominium project required the consent of Clifford Perlman. Moreover, the four partners in this venture were required to indemnify each other against liabilities in excess of the percentage interest of each in the stock of the corporation. Clifford Perlman's interest was one-third.

Clifford Perlman soon became the guarantor of some substantial institutional loans. As a condition to a $13 million loan from the Carner Bank of Miami Beach to the Cricket Club, Clifford Perlman and his partners were required to guarantee (1) completion of the project, (2) payment of all costs thereof and (3) repayment of the construction loan. In October 1972, Mr. Perlman, Mr. Malnik, the Cohen sons and Mr. Kovens executed a performance bond and a labor and material payment bond, each in the amount of $6,100,000. More guarantees would follow.

Sometime in November 1972, Philip Hannifin, then Chairman of the Nevada Gaming Control Board (NGCB), personally approached Clifford Perlman concerning his involvement with Alvin Malnik in the Cricket Club. At this meeting, Mr. Hannifin voiced

his concerns over Mr. Perlman's association with an individual of Mr. Malnik's reputation. As a consequence of what Mr. Hannifin had said, Mr. Perlman committed to extricate himself from the Cricket Club if Mr. Malnik would not institute a libel suit against Hank Messick, the author of *Lansky*.

However, Clifford Perlman remained in the Cricket Club even after Mr. Malnik informed him that he would not file a libel suit. Citing the fact that he was still committed as a co-guarantor on several substantial loans to the Cricket Club, Clifford Perlman chose to continue his involvement in the project, guaranteeing new loans throughout its construction period and lending sums of money to the corporation.

The Cricket Club project represents yet another and more direct involvement by Clifford Perlman in the business world of Alvin Malnik. Mr. Perlman's partnership with Mr. Malnik and Mr. Cohen's sons in this venture developed into one of long duration, a fact which should have been evident from the outset. His series of guarantees on loans to the Cricket Club bound Mr. Perlman so firmly to the arrangement that even when he later wanted to extricate himself, he found it impossible to do so. To this day, Mr. Perlman remains obligated on $280,000 of these guarantees after paying $386,000 to be relieved of guarantees of $3 million, a telling indication of his once intricate and deep involvement in the matter.

Prior to his entry into the Cricket Club, Clifford Perlman neither consulted with Harold Campbell, CWI's then recently hired Director of Corporate Security, nor inquired as to Mr. Malnik's background nor sought confirmation of the allegations made against him. He was apparently content with Mr. Malnik's denials. Neither did Mr. Perlman notify the Nevada regulatory authorities as to his contemplated venture with Mr. Malnik.

When Mr. Hannifin first approached Mr. Perlman about this matter in November 1972, Mr. Perlman assumed the defense or Mr. Malnik. This was indeed a curious position given Mr. Perlman's earlier concern that Mr. Malnik was not licensible in Nevada, his awareness of Mr. Malnik's reputation and his desire to become only a passive investor in the Cricket Club partly due to this reputation. But not only did Mr. Perlman defend Mr. Malnik, he proposed an alternative to outright severance which permitted him a means to remain in the project as Mr. Malnik expressly desired. By the time this alternative was no longer viable, Clifford Perlman found himself inextricably tied to the financial health of the project.

Much has been argued as to whether Mr. Perlman's conduct in this regard was violative of an official directive to the contrary. The issue, however, is not so easily defined. The fact that such a violation may not have occurred does not preclude this Commission from viewing Mr. Perlman's conduct negatively. In November 1972, Philip Hannifin, the Chairman of the Nevada Gaming Control Board, communicated his concerns to Clifford Perlman. As a result of this meeting, Mr. Perlman understood that he had made a commitment to Mr. Hannifin. He subsequently, in his own words, "definitely" breached that commitment. These circumstances cause us deep concern about Clifford Perlman's attitude toward the regulatory process.

4. *COVE HAVEN*

According to Mr. Perlman's testimony, he chanced to meet Alvin Malnik on an airplane in December 1974. Mr. Malnik inquired whether Clifford Perlman or his company could provide an opportunity to invest a substantial sum of money. Clifford Perlman first suggested that Mr. Malnik pay for improvements to the Sky Lake Country Club and accordingly increase CWI's rent for the country club. Mr. Perlman's proposal would have resulted in an increased cash drain for CWI rather than in the cash relief his company was supposedly then seeking. When Mr. Malnik declined that offer, Mr. Perlman suggested a sale and leaseback of CWI's two honeymoon resorts located in the Poconos.

Mr. Malnik offered to purchase the properties for $15 million and to lease the properties back to CWI at an annual rental of 13 percent to 15 percent of the purchase price. Mr. Perlman, in turn, presented the matter to the CWI Board for resolution. There were no negotiations over the price set by Mr. Malnik. CWI's Board of Directors gave conceptual approval to the plan and, because of an apparent conflict of interest occasioned by Clifford Perlman's Cricket Club involvement, assigned CWI President William McElnea to conclude the transaction. His conflict of interest, however, did not bar Clifford Perlman from ultimately voting to approve the transaction.

On February 20, 1975, CWI entered into a sale and leaseback of its Cove Haven and Paradise Stream resorts with Cove Associates, a Florida partnership comprised of Alvin Malnik and Samuel Cohen's sons, Joel and Alan. The assets of these properties were sold for $15 million. Prior to the consummation of the deal, CWI learned that Cove Associates, through Mr. Malnik, was borrowing the $15 million at 9 percent interest from the Teamsters Pension Fund. As part of

the arrangement, CWI agreed to lease back the two Pocono properties for 20 years at an annual rent of $2,130,000 (14.25 percent of the purchase price). Each of the leases gave CWI certain options to renew and to purchase, and obligated CWI to make certain improvements.

Three related aspects of the Cove Haven sale and leaseback transaction are worthy of particular note as they reflect on the character of Clifford Perlman. The first aspect concerns his willingness in late 1974 to lead his company into yet another business entanglement with Alvin Málnik and the sons of Samuel Cohen. The second aspect concerns his willingness to do this despite his November 1972, meeting with Philip Hannifin and his commitment to Mr. Hannifin to disassociate from Mr. Malnik and the Cricket Club. The third aspect concerns his failure to disclose all relevant information to the full CWI Board during its consideration of the Cove Haven transaction. Specifically, Clifford Perlman did not advise the full CWI Board of his November 1972, conversation with Philip Hannifin prior to the Cove Haven approval. Clifford Perlman presumed that the independent directors knew of the Hannifin meeting even though the Perlmans and Mr. McElnea made no disclosure and the subject was neither raised nor considered at the Board meeting when the Cove Haven transaction was discussed.

Also noteworthy is the fact that CWI's Corporate Security Chief, Harold Campbell, was not asked to review the Cove Haven transaction as to suitability. At that time company policy was that all significant transactions were, in the discretion of the head of the subsidiary, to be submitted for security review.

In late 1972, Harold Campbell had been asked to investigate Mr. Malnik's background and had reported his results to Clifford Perlman. While Mr. Campbell refused to express an opinion in his testimony before us as to whether Alvin Malnik was associated with organized crime, both Clifford Perlman and William McElnea recalled that Mr. Campbell had previously been of the opinion that Mr. Malnik was so associated.

At about the same time as his investigation of Mr. Malnik (late 1972), Campbell also reported to Clifford Perlman on the subject of honorary memberships at the Skylake Country Club. In response to Mr. Perlman's inquiry, Mr. Campbell advised:

> Many of the other Teamsters officials possessing Honorary Memberships have been in frequent business and social contact with top organized crime figures throughout the

country. Whether one agrees or not, the Central States Pension Fund has in recent years been described in the news media as the "bankroll of the Mafia". Rightly or wrongly, many Mafia figures have obtained loans from this fund and even more importantly, many top Mafia figures have been in a position to arrange for loans from the fund for others, sometimes on the basis of friendship and at other times for a substantial fee.

Interestingly enough, both the source of Mr. Malnik's funds for the $15 million purchase price of Cove Haven—namely the Teamsters Pension Fund—and the 9 percent interest rate at which the money was borrowed were known to CWI in advance of the sale-leaseback agreement.

Once again, in the absence of any credible explanation presented in this record, we are left with a serious question. Why did Clifford Perlman, in late 1974, lead his company into its second (and his third) business entanglement with Alvin Malnik, especially in light of his November 1972 discussion with the Chairman of the Nevada Gaming Control Board?

CONCLUSIONS AS TO CLIFFORD PERLMAN

The facts outlined above simply do not square with the positive testimony adduced as to the good character, honesty and integrity of Clifford Perlman. Stated bluntly, this Commission is unable to declare that Clifford Perlman may be trusted to control a company which seeks licensure to operate a casino in this jurisdiction. This determination flows primarily from three considerations:

(1) The assocations with Alvin I. Malnik and Samuel E. Cohen which Clifford Perlman led CWI to engage in or which he engaged in personally;

(2) The attitude of Clifford Perlman with regard to the regulatory process; and

(3) The candor with which Clifford Perlman dealt with his fellow Directors on the CWI Board.

Based on the substantial credible evidence in the record as a whole, this Commission finds Samuel E. Cohen to be a person of unsuitable character and unsuitable reputation. Following indictment by the Federal authorities together with Meyer Lansky and others, he was convicted and incarcerated for filing a false income tax return on facts relating to the skimming of proceeds from the Flamingo

casino in Las Vegas, Nevada. Previously he had been fined for violating the Commodity Exchange Act. Mr. Cohen's alleged involvement with Meyer Lansky and others in the Flamingo skimming indictment received widespread publicity in the Miami area in 1971.

Based on the substantial credible evidence in the record as a whole, this Commission finds Alvin I. Malnik to be a person of unsuitable character and unsuitable reputation. As to his character, the evidence establishes that Mr. Malnik associated with persons engaged in organized criminal activities, and that he himself participated in transactions that were clearly illegitimate and illegal. As to his reputation, he has been identified repeatedly in the news media as a close business associate of Meyer Lansky and other reputed organized crime figures. Moreover, Federal law enforcement authorities have long believed Mr. Malnik to be involved in organized crime.

Prior to the 1971 Sky Lake transaction, Clifford Perlman knew of Mr. Malnik's unsavory reputation and Mr. Cohen's pending indictment for casino skimming. Yet Mr. Perlman led his company into a direct, intense, long-lasting association with these men. He himself became personally involved in the 1972 Cricket Club transaction directly and intimately with Mr. Malnik and Mr. Cohen's two sons in a second ongoing association. And, in the late 1974 Cove Haven transaction he led his company into a direct, intensive, continuing association with Mr. Malnik and Mr. Cohen's sons.

Although Samuel Cohen was not a direct participant in either the Cricket Club project or the Cove Haven agreement, the evidence plainly indicates that he was indirectly interested in both. Mr. Cohen lent large sums of money to the Cricket Club and Mr. Perlman knew of those loans. Moreover, as part of the Cove Haven transaction, CWI requested and received a deferral of the payments due on the Sky Lake obligations. Since Mr. Malnik and Samuel Cohen were the principals in the Sky Lake deal, it is possible that some of the Cove Haven proceeds were being channelled to Mr. Cohen. Thus, Mr. Perlman exhibited no great reluctance to continuing involvement, direct or indirect, with the indicted and later convicted Mr. Cohen as well as the suspect Mr. Malnik.

Beyond Mr. Perlman's willingness to engage in repeated and enduring relationships with Messrs. Malnik and Cohen, no reasonable explanation has been provided for the failure of Mr. Perlman to provide the CWI directors with material information regarding those relationships. Specifically, Mr. Perlman chose not to disclose the fact

of Mr. Cohen's pending indictment when the board voted on the Sky Lake proposal. Second, Mr. Perlman made no mention of Mr. Hannifin's disapproval of Mr. Malnik before the board was presented with the Cove Haven offer. These omissions contradict the characterization of Mr. Perlman as a man of candor and forthrightness. Further, they raise disturbing questions as to whether Mr. Perlman was so anxious to consummate the transactions that he refused to jeopardize board approval by full disclosure. These questions have simply not been answered.

BRC contends that these transactions may have been public relations mistakes but that they did not actually jeopardize the integrity of gaming operations. While it may be true that Mr. Malnik and Mr. Cohen were not literally in control of the casino, their financial arrangements provided them with an obvious opportunity to exercise economic leverage against CWI. In point of fact, CWI experienced cash shortages which prompted it to obtain relaxation of its Sky Lake obligation from Mr. Malnik and Mr. Cohen. At the same time, CWI was increasing its debtedness to Mr. Malnik and the sons of Samuel Cohen. Thus, Mr. Perlman in a very real sense delivered his company into the hands of Mr. Malnik, Samuel Cohen and Mr. Cohen's sons.

From the foregoing and from the entire record, this Commission is not able to find by clear and convincing evidence that Clifford Perlman possesses the good character, honesty and integrity demanded by the Casino Control Act. Accordingly, Clifford Perlman is not qualified.[4]

B. *STUART Z. PERLMAN*

Stuart Z. Perlman, who presently resides in Miami Beach, Florida and maintains a residence in Longport, New Jersey, was born on September 20, 1927, in Philadelphia, Pennsylvania. He was educated in the Philadelphia public schools and attended LaSalle College for one year. In 1956, along with his older brother, Clifford, he purchased the first Lum's restaurant.

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[4]The Division also asserted that Mr. Perlman had supplied false or misleading information as to when he first learned of Mr. Cohen's indictment. In his testimony, Mr. Perlman admitted that he acquired such knowledge before the Sky Lake transaction. It seems that Mr. Perlman's recollection was not as clear in an interview which he gave to the Division in April 1979. In any event, the Commission does not find Mr. Perlman to be disqualified on this basis. See *N.J.S.A.* 5:12-86(b).

Today, Stuart Perlman is Vice Chairman of the Board of Directors of both CWI and CNJ. He is also the second largest stockholder of CWI, owning approximately 1.7 million shares, or about eight percent of the outstanding stock. In addition, he owns approximately 153,000 shares of CNJ, or about one percent of the outstanding stock of that company. By virtue of his positions as an officer, director, major stockholder and principal employee of CWI and CNJ, Stuart Perlman is a person who must individually be qualified for approval. The applicant, BRC, and Stuart Perlman have produced evidence in support of the qualification of Stuart Perlman all of which has been carefully examined, considered and weighed. The Division has recommended that this Commission find Stuart Perlman unsuitable for qualification.

Most of the evidence relevant to the suitability of Stuart Perlman has already been stated with regard to Clifford Perlman and is incorporated here by reference. In July 1971, with full knowledge of the pending indictment against Samuel Cohen, Meyer Lansky and others, with full knowledge of the questionable reputations of Samuel Cohen and Alvin Malnik, without discussing the Cohen indictment with CWI's outside directors, and against the advice of CWI's outside counsel, Stuart Perlman voted in favor of entering the Sky Lake transaction. Moreover, during the period between December, 1974, and February 20, 1975, CWI was considering the Cove Haven sale and leaseback transaction. At that time, Stuart Perlman, who was aware of the substance of the November 1972 conversation between Philip Hannifin and Clifford Perlman, voted to enter into the Cove Haven transaction. Additionally, Stuart Perlman did not discuss or bring to the attention of CWI's outside directors the Hannifin conversation.

By virtue of his own involvement in these events, Stuart Perlman was obliged to answer serious questions about his character, honesty and integrity. More particularly, these questions flow from his associations with Alvin Malnik and Samuel Cohen, his attitude toward the regulatory process, and his apparent lack of candor in dealing with the other CWI directors.

Furthermore, it is clear from the record that Stuart and Clifford Perlman are more than just brothers. Since 1956, when they jointly purchased the first Lum's restaurant, they have been close business associates. They own, respectively, 3 percent and 10 percent of the outstanding stock of publicly traded CWI. They participate jointly in several other business ventures. Indeed, the testimony indicates that

for the past several years Stuart Perlman has handled all of Clifford's personal finances, even to the point of signing Clifford's checks and making investments for him. Thus, there is a substantial commonality of economic interests as well as a close blood relationship between the two men.

In light of all of the above considerations, and after carefully weighing these matters and viewing them in the context of the entire record, the Commission finds that BRC has failed to meet the affirmative responsibility of establishing the good character, honesty and integrity of Stuart Perlman. Accordingly, Stuart Perlman is not qualified.

C. JAY E. LESHAW

Jay Leshaw is clearly a qualifier as to the casino license applicant. He is now a senior vice president and a director of Caesars World, Inc., and president and a director of three of its subsidiaries: Sky Lake Development, Inc.; California Club, Inc.; and Corporate Real Estate Equities, Inc. He is also a shareholder in Caesars World, Inc. (owning 30,000 of its approximately 26.3 million shares or 0.001 percent).

The Division's objection to Mr. Leshaw's qualifications is based primarily upon his role, while a Caesars World, Inc. inside director and vice president, in the 1971 approval of the Sky Lake transaction. At the time of the transaction, Mr. Leshaw knew of Mr. Malnik's reputation and of Mr. Cohen's indictment with Meyer Lansky in Florida less than four months earlier in the Flamingo "skim" prosecution. No open discussion with the outside directors of these facts had occurred at that board meeting. However, when 31 months later Caesars World, Inc. voted to restructure the Sky Lake lease, Mr. Leshaw appears to have been unaware of the November 1972 discussions between Philip Hannifin and Clifford Perlman concerning Mr. Hannifin's reservations as to the propriety of Mr. Perlman's personal business dealings with Mr. Malnik in the Cricket Club.

Jay Leshaw was born in 1927, educated at the University of Miami and presently resides in Coral Gables, Florida. About 1963, while in the construction business, he met Clifford Perlman and began doing work for Lum's, Inc. which was designing, locating, financing, constructing and eventually franchising its fast food restaurants. In 1967 he joined Lum's, Inc. as an executive vice president and became one of its directors. By that date he had assumed a primary responsibility for the company's restaurant business and thereafter maintained it until July 1971 when its restaurant operations were sold. In later

1968, Melvin Chasen joined the company as an executive vice president and, in mid-1970, became its president.

Less than three months after divesting itself of the restaurant operations, Lum's, Inc. closed on its long-term lease of the Sky Lake development property. Mr. Leshaw then became, and has to the present remained as, president of the Caesars World, Inc., subsidiary responsible for this asset. Since then, Mr. Leshaw has maintained his offices at the property. Initially, before the south Florida condominium economy slowed, he actively refined the development program as to the property. In 1977, however, CWI retained California land developer Jerry Snyder to design a more effective sales program for the project. Currently, more than 95 percent of the units have been sold. It was in 1978 that the name of the country club there was changed to the California Club.

On balance, Mr. Leshaw's activities are not such as to prevent his qualification. His role in Caesars World, Inc., has never been one of setting policy or deciding as to acquisitions. It rather has been confined to the design and development of South Florida real estate operations, at first the restaurant business and more recently the condominium property. He has always been located in South Florida. Although that locale is admittedly the base for Messrs. Lansky, Malnik and Cohen, Mr. Leshaw's responsibilities to CWI are quite remote from the concerns and sensitivities of Nevada and its casino gaming industry. Mr. Leshaw was not the source of the Malnik or Cohen associations nor were the associations ever personal to him. Plainly, as an employee of Caesars World, Inc., he was subject to the policies set by the Perlmans. It is true that in 1971, he did not discuss with CWI's outside directors the fact of the Samuel Cohen "skim" indictment. Although this failure is hardly praiseworthy, it is understandable in light of the relative positions of the Perlmans and Mr. Leshaw. Were such an omission to occur today under the New Jersey regulatory system, a different result might follow. On this record, though, the Commission is satisfied that Mr. Leshaw has established his "good character, honesty and integrity" by clear and convincing evidence. Acordingly, Jay E. Leshaw is found to qualify as a director, officer and shareholder as to this applicant for a New Jersey casino license.

D. *WILLIAM H. McELNEA, JR.*[5]

1. Investment Banker and Outside Director William H. McElnea, Jr., is the president and chief operating officer of the holding company, Caesars World, Inc., and the intermediary company, Caesars New Jersey. He is separately a member of each of the eight-member boards of directors of Caesars World, Inc., Caesars New Jersey, and the Boardwalk Regency Corporation. He is a shareholder of Caesars World, Inc. in which he holds 420,000 shares, or 1.6 percent of the stock, and a shareholder of Caesars New Jersey, in which he has 58,970 shares, or 0.4 percent of the 15.98 million outstanding shares. He has been associated with CWI and its predecessor, Lum's Inc., since 1966, first as a financial advisor, later as an outside director, and since late 1972 as the president of CWI, a position that has produced his current, thorough involvement in the corporation and its subsidiaries. Undoubtedly, Mr. McElnea is a person required to meet the standards, except residency, for a casino key employee license. See *N.J.S.A.* 5:12-85(c) and (d).

Significant points about Mr. McElnea reside in the evidence concerning two of CWI's associations. The first is with the Central States Southeast and Southwest Teamsters Pension Fund of Chicago, Illinois, a relationship that began in 1969 with the acquisition of Caesars Palace Hotel and Casino. The second is the association between CWI and Alvin Malnik and Samuel Cohen, who are reputed associates of in 1969 with the acquisition of Caesars Palace Hotel and Casino. The second is the association between CWI and Alvin Malnik and Samuel Cohen, who are reputed associates of Meyer Lansky, of Miami, Florida, the same city where Mr. Malnik and Mr. Cohen reside and do business. This association remained in place until recent days through the corporation's involvement in the Sky Lake development, and with Cove Associates in the Pocono Mountain properties, and began at least as early as June 1971.[6]

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[5]Only Commissioners Thomas, Zeitz and McWhinney join in this opinion regarding Mr. McElnea. Chairman Lordi separately concurs in the determination to find Mr. McElnea qualified. Vice-Chairman Danziger dissents from this determination.

[6]At the conclusion of the hearing, BRC presented a plan to create and fund two trusts which would pay when due the continuing obligations of CWI as to the Cove Haven transaction and the Sky Lake acquisition. This plan was accepted by the Commission as adequately insulating the companies from Mr. Malnik and Mr. Cohen.

The associations with the Teamsters Pension Fund, and with Malnik and Cohen were active and growing until December 10, 1975. The first, with the Pension Fund, deepened because of the second, that is the association with Mr. Malnik and Mr. Cohen, but particularly with Mr. Malnik. The Nevada Gaming Commission and the Nevada Gaming Control Board made their joint position on the Malnik association clear to Caesars World, Inc. on December 10, 1975, and again on April 13, 1976, when the corporation was ordered not to associate with persons of unsavory notorious reputations.

From that point, the expansion of the two associations halted and a corporate effort was begun to sever them. Only a beginning has been made until now, but it is doubtful that beginning could or would have been initiated without the effort of Mr. McElnea. The qualification of Mr. McElnea depends upon his role in these CWI associations, which the Attorney General, through the Division of Gaming Enforcement, finds is such as to prevent his qualification.

The evidence does not raise questions as to the reputation of Mr. McElnea. It does put before the Commission matters concerning Mr. McElnea's treatment of the associations with Mr. Malnik and Mr. Cohen, and the Pension Fund. Of course, it is the applicant who has the burden to establish by clear and convincing evidence the traits of good character, honesty and integrity. The evidence must enable the Commission to believe that the requisite character, honesty and integrity have been demonstrated.

William H. McElnea, Jr., was born in New Jersey in 1922, reared in Connecticut, and educated at Dartmouth College from which he received his bachelor's and master's degrees. In 1955 after having worked for seven years in Wall Street banks, he joined the small New York investment banking firm of Van Alstyne, Noel and Co., where he specialized in corporate financing.

In 1966, shortly after he met Clifford Perlman, Mr. McElnea and the Van Alstyne firm accepted the Florida-based Lum's Inc., as a client. When, in 1967, Lum's became a publicly traded company, Mr. McElnea was made an outside director. He remained as a partner in Van Alstyne, Noel and Co. His status as an outside director and investment banker continued for six years. Effective August 31, 1972, Melvin Chasen resigned as president of Caesars World, Inc. Two months later, on November 1, 1972, William McElnea succeeded Mr. Chasen as president of the corporation. Mr. McElnea continued as a director, and relocated to the corporation's headquarters in Los

Angeles. He is and since that day has been the chief operating officer of CWI.

In 1966 when Mr. McElnea began his association with Lum's as its investment banker, it was a growing fast food restaurant and franchising firm, based in South Florida. In 1967 through the offices and talents of Mr. McElnea the company undertook and completed its first major financing. This public offering may seem a pittance today when measured against the magnitude of CWI's current financings, but in 1967 it represented a milestone in its corporate development. At the time, Stuart Perlman was president of the corporation and his brother, Clifford Perlman, was its principal executive officer. They had then owned the company for 10 years.

In early 1969 Clifford Perlman began discussions which led to the September 30, 1969, acquisition by Lum's of the then three-year-old, 680-room Caesars Palace Hotel and Casino in Las Vegas, Nevada. As part of the transaction, Lum's assumed an $18.1 million mortgage obligation to the Teamsters Pension Fund.

In December, 1969, Lum's acquired the Pennsylvania honeymoon resort called Cove Haven, and 14 months later acquired the nearby honeymoon resort called Paradise Stream. In July, 1971, Lum's divested itself of the restaurant and franchising operations, and by then had also divested itself of the Dirr's Meat Processing and Distribution Company, and the chain of Eagle Army-Navy retail outlet stores. In June, 1971, discussions between Mr. Malnik and Lum's President Melvin Chasen led to negotiations in July 1971, which resulted on October 14, 1971 in Lum's closing with the Comal Corporation on the 623-acre condominium development property in North Miami, Florida, known as Sky Lake North. Comal Corporation, which had acquired the property 10 months earlier, was owned equally by Mr. Malnik and Mr. Cohen. The property was then subject to a $10 million Teamsters Pension Fund loan. On December 16, 1971, Lum's Inc. changed its name to Caesars World, Inc.

Mr. McElnea was not the cause of the association of CWI with the Teamsters Pension Fund, a relationship which originated in the 1969 acquisition of Caesars Palace, described on the record as being initiated by Clifford Perlman. Nor did Mr. McElnea bring the corporation into contact with Mr. Malnik and Mr. Cohen, a development attributed to Melvin Chasen and Clifford Perlman in the 1971 acquisition of Sky Lake. As its investment banker, Mr. McElnea was the servant of the policy and business decisions made by his client, and by its chief executive, Clifford Perlman. Becoming an outside director

required Mr. McElnea to take positions and record his votes on matters of corporate policy formulated by the company's executives, most notably the Perlmans.

In the corporate world in the period of 1969 to 1971 the role and obligation of outside directors of publicly traded corporations were not perceived as strictly or as solemnly as in 1980. More deference was given at that time to policy determinations made by corporate executives, such as Clifford and Stuart Perlman.

CWI's associations with Mr. Malnik, Mr. Cohen and the Pension Fund before late 1972 do not reflect on William McElnea's "good character, honesty and integrity," or his fitness to participate now in the New Jersey gaming industry. The associations were not personal as to McElnea. They were business relationships arranged by the corporate lenders who were members of the Miami community. During this time, McElnea worked and resided in New York and Connecticut.

2. President of Caesars World, Inc.

The role of William McElnea changed on November 1, 1972, when he became president of CWI. As president he became, after Clifford Perlman, the corporation's leading executive, but guided heavily by the policies developed by Clifford Perlman, and transmitted by the corporation chairman to the board of directors.

In his first three years as president, Mr. McElnea led CWI in restructuring the Sky Lake financial arrangement with Comal Corporation from a lease into a purchase. This finally made it possible for CWI to begin undertaking development of the property, which had been delayed three years by the transaction over which Mr. Perlman and Mr. Chasen had presided in 1971. In February, 1975, through a sale and leaseback of the Cove Haven and Paradise Stream resorts with Cove Associates, CWI fell headlong into a new association with Mr. Malnik and the Teamsters Pension Fund. This time, Mr. Cohen's two sons, rather than Mr. Cohen himself, were part of the deal. Again the transaction was brought to CWI by Clifford Perlman. There is also some evidence that CWI considered, at about the time it made the sale and leaseback, a refinancing of its overall corporate debt.

Following the transaction with Cove Associates, the Securities and Exchange Commission ordered a private investigation of CWI's corporate dealings with Mr. Malnik. The SEC examined both the Sky Lake and Cove Associates transactions, and also Clifford Perlman's private dealings with Mr. Malnik in the Cricket Club venture. On November 10, 1975, the Los Angeles Times published a front page

story under the headline, "Caesars Palace Firm Under Investigation". As noted, the Nevada gaming authorities followed swiftly on December 10, 1975, and April 13, 1976, first with an admonition and subsequently with an order directing CWI not to expand its associations with Mr. Malnik, and to refrain from associating again with persons of unsavory or notorious reputation.

It appears from the record that such compliance efforts as CWI began to make then and has made until now flow from William McElnea. After a prolonged—and the Division claims too long—time the corporation was able to sever its insurance ties with the notorious Allen Dorfman, and through him, with United Founders Insurance Corporation. These ties were forged not by Mr. McElnea but by his predecessor as CWI president, Melvin Chasen. Mr. McElnea, clearly, was the driving force in the severance. If he tempered his drive because of considerations stemming from the ongoing relationships with the Pension Fund, this tempering must be seen against the backdrop of his concerted effort to arrange new, conventional, sound, institutional financing for the corporation. He has succeeded. Where the Perlmans brought Mr. Malnik and the Teamsters Pension Fund to Caesars World, Mr. McElnea has brought the Chemical Bank, the services of E.F. Hutton, and now the Aetna Insurance Company, among others. No evidence suggests new or expanded associations with Mr. Malnik, Mr. Cohen or the Teamsters Pension Fund since 1975 by CWI, a bright comparison to the dalliance of Clifford Perlman in his effort to sever himself from the Cricket Club and in his flirtation with that investment even after Nevada had made its message eminently clear.

The sources of the $138 million committed to date by CWI to the Boardwalk Regency project in Atlantic City demonstrate amply the new kind of financing that Mr. McElnea has sought and found. Those sources include $47 million from major financial institutions, $28 million from obligations undertaken to former owners of realty, and $63 million from such internal financial wellsprings as bank lines, public offerings, and operating revenues.

The November 1975 Los Angeles Times news story alerted two members of CWI's Board of Directors to Mr. Malnik's reputation, and to the fact that Philip Hannifin of the Nevada Gaming Control Board had talked to Clifford Perlman in November 1972 and left him with an understanding that Mr. Perlman was to end his Cricket Club involvement.

It is undisputed that Mr. McElnea knew about Mr. Malnik by

the end of 1974 and the beginning of 1975, when the Cove Associates deal was presented and consummated. He also knew by then the substance of the Hannifin-Perlman discussion. He did not share his knowledge with the two uninformed directors, Manuel Yellen and John Polite. That he should have, he knows now, and this Commission knows. But seen against the background of Clifford Perlman's disproportionate influence in the corporation, and the division of labor and interest between Mr. Perlman, the man who decided what would happen, and Mr. McElnea, the man Perlman charged with making it happen, it is clear that Mr. McElnea could rightfully infer that such disclosure was always Mr. Perlman's responsibility.

There is no doubt that sometime in 1975, after the Cove Associates deal, but before the November 10 Los Angeles Times story, both Mr. Perlman and Mr. McElnea discussed with Mr. Malnik a sale and leaseback of Caesars Palace Hotel. The weight of the record is clear and convincing that when Alvin Malnik had deals to propose to Caesars World, Inc., he went to Clifford Perlman. Whatever the extent of those discussions with Mr. Malnik, and in the testimony there was only one, Mr. Perlman would have been the source.

Caesars World, Inc. in this hearing has brought before this Commission a group of young, able, honest management professionals, and new outside directors of measurable business experience and probity, who have been attracted to the company under the presidency of Mr. McElnea, and who serve on his management team. Their presence is further testimony to his business ability. It also underscores the increasing tenacity of his commitment to put not only time but distance between his corporation and the questionable beginnings of Nevada gaming.

3. Finding as to William H. McElnea, Jr.

In judging the good character, honesty and integrity of William McElnea, as in making such judgment upon any applicant, the Commission must examine the whole man, and the entire circumstances in which he performed. As in all areas of human endeavor, there is in the regulatory process never a situation absent some scintilla, some particle of doubt. But on the basis of the whole record, on his accomplishments at Caesars World, the performance of the corporation in New Jersey under his leadership since May 30, 1979, and the sureness of his understanding of the regulatory process for five years, the Commission can and does find clearly and convincingly that Mr. McElnea is a man of good character, honesty, and integrity and one suitable to hold a license, and to conduct gaming affairs in the State

of New Jersey. He is thus found to qualify as an officer, director, and shareholder as to this casino applicant.

The finding that Mr. McElnea is qualified and suitable for licensure puts a heavy responsibility upon him. Placed in the perspective of the Commission's other findings as to the unsuitability of the chairman and vice chairman, the leadership of Caesars World, Inc., right now, and as a practical matter, appears to fall squarely upon Mr. McElnea. It will be for him to decipher the meaning of that leadership, and to demonstrate it. In making this decision as to Mr. McElnea the Commission reposes a trust in him. It is fully mindful of the circumstances and expects he will be too.

E. *OTHER PERSONS REQUIRED TO QUALIFY*

In accordance with Sections 85(c) and 85(d) of the Act (*N.J.S.A.* 5:12-85(c) and (d)), the Commission and the Division agreed that there were 30 persons required to qualify as part of the BRC application. The 26 individuals who were not the subject of a Division challenge and about whom no grounds for rejection appear are the following:

1. HOWARD B. BACHARACH, a resident of Ventnor, New Jersey is 39 years of age and employed by BRC as Vice-President of Administration.

2. HAROLD B. BERKOWITZ, a resident of Los Angeles, California, 61 years of age, is an outside director of both Caesars World, Inc. and Caesars New Jersey, Inc.

3. LARRY L. BERTSCH, a resident of Somers Point, New Jersey, is 41 years of age and employed by BRC as Treasurer and Vice President of Finance.

4. PETER G. BOYNTON, a resident of Linwood, New Jersey, is 36 years of age, a Director of BRC and, a Senior Vice President of BRC.

5. ALFRED J. CADE, a resident of Linwood, New Jersey, is 49 years of age, a Director of BRC and a Senior Vice President of BRC.

6. HOWARD E. CAMPBELL, JR., a resident of Las Vegas, Nevada, is 59 years of age and employed by Caesars World, Inc., as Vice President of Security.

7. JOHN H. CONNORS, a resident of Glen Ridge, New Jersey, is 56 years of age and employed by Caesars World, Inc., as Assistant Vice-President of Security.

8. DUANE M. EBERLEIN, a resident of Tarzana, California, is 40 years of age and is employed by Caesars World, Inc., as Con-

troller and Chief Accounting Officer and by Caesars New Jersey, Inc., as Controller and Vice President.

9. MAXWELL J. GOLDBERG, a resident of Margate, New Jersey, is 55 years of age, an employee of BRC in the Office of the President and a Director of BRC.

10. WILLIAM E. HAINES, a California resident, is 58 years of age and is employed by both Caesars World, Inc., and Caesars New Jersey, Inc., as Vice President of Finance.

11. DAVID P. HANLON, a resident of San Juan Capistrano, California, is 34 years of age and is employed by Caesars World, Inc., and by Caesars New Jersey, Inc., as Vice President of Operations.

12. STEPHEN F. HYDE, a resident of Linwood, New Jersey, is 34 years of age, is an Executive Vice President and Chief Operating Officer of BRC and a Director of BRC.

13. J. TERRANCE LANNI, a resident of Margate, New Jersey and California, is 37 years of age. Although he recently resigned as Director and Chief Executive Office of BRC, Mr. Lanni still is employed as Executive Vice President of both Caesars World, Inc. and Caesars New Jersey, Inc.

14. JAMES A. LENZ, a resident of Longport, New Jersey, is 45 years of age and is employed by BRC as the Casino Manager.

15. CYRIL PATRICK McCOY, a resident of Parsippany and Absecon Highlands, New Jersey, is employed by BRC as Corporate Controller.

16. JAMES J. NEEDHAM, a resident of Bronxville, New York, serves as an outside director of both Caesars World, Inc. and Caesars New Jersey, Inc.

17. MILTON NEUSTADTER, a resident of Margate, New Jersey, 55 years of age, is an employee of BRC in the Office of the President and is a Director of BRC.

18. BERTIN J. PEREZ, a resident of Encino, California, although recently resigned as Group Vice President of Caesars World, Inc., continues to serve as a consultant to Caesars World, Inc.

19. CARL A. PROPES, a resident of Beverly Hills, California, is 52 years of age and is employed as Vice President of Administration by both Caesars World, Inc., and Caesars New Jersey, Inc.

20. BERNARD W. RESNICK, a resident of New Jersey, is 55 years of age and is employed by BRC as the Assistant Casino Manager. It should be noted that the Commission previously licensed Mr. Resnick as a casino key employee.

21. DONALD D. ROBERTSON, a resident of Burbank, Cali-

fornia, is 43 years of age and is employed as Treasurer of both Caesars World, Inc. and Caesars New Jersey, Inc., in addition to being employed as Assistant Treasurer of BRC.

22. MEYER P. SCHWEITZER, a resident of New York, New York, is 69 years of age and serves as an outside director of both Caesars World, Inc., and Caesars New Jersey, Inc.

23. RICHARD H. SHEEHAN, JR., a resident of Encino, California, is 35 years of age and is employed by both Caesars World, Inc. and Caesars New Jersey, Inc., as Secretary and Vice President of Law, in addition to being employed by BRC as Corporate Secretary.

24. WILLIAM P. WEIDNER, a resident of Atlantic City, New Jersey, is 35 years of age and is employed by BRC as Vice President of Marketing.

25. LARRY J. WOOLF, a resident of Brigantine, New Jersey, is 35 years of age and is employed by BRC as Assistant Vice President of Casino Operations. It should be noted that the Commission previously licensed Mr. Woolf as a casino key employee.

26. MANUEL YELLEN, a resident of Pacific Palisades, California, serves as an outside director of both Caesars World, Inc., and Caesars New Jersey, Inc., in addition to being employed as a consultant to Caesars World, Inc.

In addition to considering the qualifiers for the Boardwalk Regency Corporation application for a casino license, the Commission has also considered the qualifiers for the Jemm Company based upon its application for a casino license to be the owner and lessor of the casino hotel facility. See *N.J.S.A.* 5:12-82(b). The Jemm Company is a New Jersey general partnership consisting of five partners all of whom are the legal owners of a partnership interest and thereby required to be considered as qualifiers pursuant to *N.J.S.A.* 5:12-85(e). Additionally, three of the five partners hold their respective partnership interest in trust for their wives. Accordingly, the wives of these three partners hold a beneficial interest in the Jemm Company and thereby are also required to be considered as qualifiers pursuant to *N.J.S.A.* 5:12-85(e).

It should be noted that the Division did not interpose an objection to the suitability of any of the eight qualifiers of the Jemm Company. Those eight qualifiers are the following:

1. ALBERT A. TOLL, a resident of Pennsylvania and Florida, holds as trustee for his wife, Sylvia S. Toll, a 29.16 percent partnership interest in the Jemm Company.

2. SYLVIA S. TOLL, the wife of Albert A. Toll, is the beneficiary of the 29.16 percent partnership interest indicated immediately above.

3. JOSEPH TOLL, a resident of Margate, New Jersey, holds, as trustee for his wife, Evelyn Toll, an 18.75 percent partnership interest in the Jemm Company.

4. EVELYN TOLL, the wife of Joseph Toll, is the beneficiary of the 18.75 percent partnership interest indicated immediately above.

5. EDWARD BERON, a resident of Margate, New Jersey, holds, as trustee for his wife, Edna Beron, an 18.75 percent partnership interest in the Jemm Company.

6. EDNA BERON, the wife of Edward Beron, is the beneficiary of the 18.75 percent partnership interest indicated immediately above.

7. MILTON NEUSTATDER, a resident of Margate, New Jersey, holds a 16.67 percent partnership interest in the Jemm Company. As previously indicated, Mr. Neustatder is also a qualifier of Boardwalk Regency Corporation in that he is employed by that applicant in the Office of the President in addition to serving as a director of that corporation.

8. MAXWELL GOLDBERG, a resident of Margate, New Jersey, holds a 16.67 percent partnership interest in the Jemm Company. As previously indicated, Mr. Goldberg is also a qualifier of Boardwalk Regency Corporation in that he is employed by that applicant in the Office of the President in addition to serving as a director of that corporation.

Having considered all of the information supplied by each of the qualifiers and by the Division of Gaming Enforcement, the Commission is satisfied that each of the named individuals meets the statutory standards required of a person who must qualify as part of a casino license application.

III. *FINDINGS AS TO COMPLIANCE WITH OTHER LICENSING REQUIREMENTS*

In addition to those areas discussed above, the Commission was required to make other findings in order to issue a casino license, even though these areas were not the subject of a dispute between the parties. The Commission accordingly made the following findings with reference to these remaining areas:

1. That the applicants have established to the satisfaction of the Commission that the facility and its location are suitable and that

neither the Atlantic City patron market nor the overall environment nor its economic, social, demographic, competitive or natural resource conditions will be adversely affected by the facility, as required by *N.J.S.A.* 5:12-84(e); provided, however, that the conditions attached to the temporary casino permit relating to the facilities (nos. 2 through 13) remain in effect until further order of the Commission.

2. That Boardwalk Regency Corporation and the Jemm Company together own in fee all the land on which the approved hotel is situated; that the Jemm Company as landlord leases the entire approved hotel facility and land thereunder directly to Boardwalk Regency Corporation as tenant; that both Boardwalk Regency Corporation and the Jemm Company are eligible and required to hold separate casino licenses in accordance with *N.J.S.A.* 5:12-82(a), (b) and (c).

3. That the lease agreement entered into by Boardwalk Regency Corporation and the Jemm Company is in writing and has been filed with the Commission; that the term thereof exceeds 30 years; that it concerns the entire approved hotel building and the land thereunder; that it contains a fixed-sum buy-out provision conferring upon Boardwalk Regency Corporation as lessee the right to acquire the entire interest of the lessor in the event said lessor is found to be unsuitable; that it contains a provision for the payment to the Jemm Company of a percentage of casino revenues; and that said lease is approved as conforming to the requirements of *N.J.S.A.* 5:12-82(c)(5) and (6).

4. That Boardwalk Regency Corporation and the Jemm Company shall be jointly and severally liable for all acts, omissions or violations of the Casino Control Act by either Boardwalk Regency Corporation or the Jemm Company as required by *N.J.S.A.* 5:12-82(c)(9).

5. That the approved hotel contains a total of 130,714 square feet of qualifying public space including 77,781 square feet of dining, entertainment and sports space and 27,052 square feet of kitchen support facilities and thereby exceeds the minimum qualified public space requirements set forth in *N.J.S.A.* 5:12-83.

6. That the approved hotel contains 503 qualifying sleeping units of an average size of 400 square feet and thereby exceeds the minimum qualifying sleeping units requirements set forth in *N.J.S.A.* 5:12-27 and 83(a).

7. That the approved hotel contains a single casino room of

48,630 square feet which conforms to the limiation set forth in *N.J.S.A.* 5:12-6 and 83(d).

8. That Boardwalk Regency Corporation has agreed to afford an equal employment opportunity to all prospective employees in accordance with an affirmative action program approved by the Commission and consonant with the provisions of the "Law Against Discrimination" as required by *N.J.S.A.* 5:12-134(b); it is to be noted, however, that the applicant did not in a timely and diligent fashion insure that its construction contractors would offer equal employment opportunity to all persons employed in the construction of the Boardwalk Regency Hotel and Casino.

9. That the applicants, except as otherwise previously found herein with regard to Stuart Perlman and Clifford Perlman, have established by clear and convincing evidence the integrity and reputation of, as well as the adequacy of, all financial sources which bear any relation to the casino proposal, as required by *N.J.S.A.* 5:12-84(b).

10. That both applicants have established by clear and convincing evidence their financial stability, integrity and responsibility as required by the provisions of *N.J.S.A.* 5:12-84(a).

11. That the applicants, except as otherwise previously found with regard to Stuart Perlman and Clifford Perlman, have established by clear and convincing evidence their good reputation for honesty and integrity as required by the provisions of *N.J.S.A.* 5:12-84(c).

12. That Boardwalk Regency Corporation has established by clear and convincing evidence that it has sufficient business ability and casino experience as to establish the likelihood of creation and maintenance of a successful, efficient casino operation as required by the provisions of *N.J.S.A.* 5:12-84(d).

13. That Boardwalk Regency Corporation is a wholly-owned subsidiary both of the intermediary publicly-traded holding company, Caesars New Jersey, Inc., which is, in turn, approximately 86 percent owned by the parent publicly-traded holding company, Caesars World, Inc., and that both said companies have registered with the Commission as required by *N.J.S.A.* 5:12-85(b)(2).

14. That Boardwalk Regency Corporation has complied with the corporate filing and securities ownership transfer requirements set forth in *N.J.S.A.* 5:12-82 and 85.

IV. *CONCLUSION*

The Commission has reviewed the entire record in light of the policies, standards and requirements of the Casino Control Act. As to the Jemm Company, the Commission is satisfied that the entity and the eight individual qualifiers have met the statutory criteria for Jemm to receive a casino license as the owner-lessor of the Boardwalk Regency Hotel and Casino. Accordingly, an appropriately limited casino license will issue to the Jemm Company.

As to the Boardwalk Regency Corporation, the Commission finds that, subject to any conditions expressed herein, the entity itself meets the applicable statutory requirements. With regard to the persons who must each qualify as part of the BRC application, all but two of the 30 named individuals have demonstrated their suitability and are qualified. For the reasons stated above, however, Stuart Perlman and Clifford Perlman have failed to establish by clear and convincing evidence that they each possess the good character, honesty and integrity demanded by the Act. *See N.J.S.A.* 5:12-85(d) and -89(b)(2).

Section 85(d) of the Act clearly states that "no corporation which is a subsidiary shall be eligible to *receive or hold* a casino license unless each holding or intermediary company" separately would meet certain requirements applicable to the applicant corporation. (*N.J.S.A.* 5:12-85(d) (emphasis added). Under the referenced requirements, each officer, each director, each holder of beneficial interest in corporate securities, each person able to control the corporation or elect a majority of the board of directors, and every "other person whom the commission may consider appropriate for approval or qualification" must meet the standards, except residency, for a casino key employee license. *N.J.S.A.* 5:12-85(c). Since Stuart Perlman and Clifford Perlman do not meet those standards, the Act mandates denial of the license if the Perlmans continue to be persons required to qualify. Moreover, since BRC has been operating a casino under a temporary casino permit, the Act unequivocally directs that upon denial of the license "and notwithstanding the pendency of any appeal therefrom, the commission shall appoint and constitute a conservator to, among other things, take over and into his possession and control all the property and business of the temporary casino permittee relating to the casino and the approved hotel". *N.J.S.A.* 5:12-130.1(b).

While the Commission recognizes its obligation to fulfill these statutory dictates, the question arises whether any alternative to denial

of the license and imposition of the conservatorship would be lawful and appropriate. Quite obviously, no alternative is viable if either of the Perlmans continues to be a person required to qualify. Thus, the question becomes whether the Commission can fashion conditions precedent and subsequent to remove the licensing impediment.

Anticipating this question, the Commission requested both the applicant and the Division to address the legal issues involved. This request was made following summations on October 15, 1980. Subsequently, both parties submitted legal memoranda. Although their positions differ as to the type and extent of the conditions which the Commission could impose, both sides agree that the Commission possesses the authority to issue a casino license appropriately conditioned so as to eliminate the obstacle otherwise created by the existence of unacceptable qualifiers. This Commission concludes that such authority does exist. See *N.J.S.A.* 5:12-75 and -105.

Use of this authority to condition casino licenses with respect to unsuitable persons must be sparing and exceedingly cautious. It must be certain that such conditions will truly avoid the evils perceived by the Legislature and will provide a fully adequate substitute for the statutorily preferred procedure of denying the license and, in cases such as the present one, appointing a conservator. Of course, the conditions must remove the unacceptable individual from any of the categories of persons required to be qualified. *N.J.S.A.* 5:12-85(c). In particular, the conditions must warrant the conclusion that the individual is no longer a person "whom the commission may consider appropriate for approval or qualification". *Id.* Even then, there should appear good reasons why the public interest would be better served through conditional licensure than through license denial and appointment of a conservator.

In the instant matter, acceptable conditions have been formulated which both satisfy the policies of the Act and advance the public interest. By its choice of the conditional licensure alternative, the applicant agrees to the Commission's findings and further agrees either: (1) to irrevocably and completely separate the Perlmans from the corporate family or (2) to withdraw from casino operations in New Jersey. However, this Commission realizes that these results could not have been achieved between October 23, 1980, when the Commission announced its findings and offered the conditional licensure alternative, and midnight October 26, 1980, when the BRC temporary casino permit was to expire. This realization prompts us to consider a short, definite interim period during which the applicant and the Perlmans

may decide which of the two alternatives will be chosen and how the chosen alternative will be implemented. Of course, the Perlmans' control over CWI, CNJ and BRC must be minimized during the interim. Thus, as a component of the conditional license, the applicant must agree that the Perlmans take an unpaid leave of absence from any positions with the three companies, refrain from exerting any influence over the corporations' activities and neither vote their stock nor receive any dividends therefrom. These preliminary requirements were also announced to the applicant on October 23, 1980.

Since we now find these preliminary measures have been timely taken and since the applicant has now committed itself to choose one of the two permanent alternatives during the 30 day interim period, the Perlmans will not be deemed qualifiers during such period.

It is on the commitment of the applicant to comply with the stated conditions that our extraordinary decision is founded. Through this pledge, the State of New Jersey and its casino industry are spared the uncertainty of protracted challenges to the Commission's decision. Of course, the applicant gains the advantage of retaining control of the casino and of making the determination as to what course of action it will pursue in response to the Commission's findings. Derivatively, the State is spared the trouble and expense of directing a conservatorship. Moreover, by virtue of the applicant's decision to accept the Commission's findings and to elect between two clearly defined options, the applicant is far less likely to be influenced by the interests of its unqualified founders. Once the decision is made, the Perlmans will either be segregated from the corporate group in a permanent fashion or the corporate group will begin to disengage from New Jersey. If necessary, the Commission will then demand further safeguards as part of the implementation plan. Thus, the proposal is an acceptable alternative to the denial of the license with the attendant conservatorship and an order granting to Boardwalk Regency Corporation an appropriately conditioned license will be entered.

Chairman Lordi, concurring:

I join in all aspects of the Commission's decision in this matter. I take this opportunity only to discuss certain facts bearing upon the qualification of William H. McElnea, Jr. (See Part II D of the Commission's opinion). Rather than repeat the biographical and background information contained in the Commission's opinion, I will

focus on those areas which I believe are important to a consideration of Mr. McElnea's suitability.

In order to understand the role played by William McElnea in the development of Caesars World, Inc. over the years, it is important to emphasize the fact that, from late 1968 to 1972, Melvin Chasen served as a principal corporate executive. In 1967, in addition to adding Mr. McElnea to its Board of Directors, Lum's, Inc., also added Melvin Chasen as an outside director. In October 1968, Mr. Chasen became its executive vice president and, on April 23, 1970, its president. On August 31, 1972, Mr. Chasen resigned as president and left Caesars World, Inc.

After eight years in the cigarette vending business in New York, Mr. Chasen in 1963 relocated to Miami and began operating a similar business there. At about that time he came to know Alvin Malnik. In late 1970, Mr. Malnik asked Mr. Chasen if he was interested in the Sky Lake North property, which was owned by Comal Corporation whose principals were Mr. Malnik and Samuel E. Cohen. After discussing the matter with Clifford Perlman, they both decided that Lum's, Inc., was not interested. Seven or eight months later, however, when Mr. Malnik renewed Comal's offer, Mr. Chasen and Clifford Perlman had changed their minds. It was during this period that, after golfing with Teamsters Pension Fund officials, Frank Fitzsimmons, Allen Dorfman and Alvin Baron at Sky Lake, Mr. Chasen learned that the Fund which held a $10 million mortgage on the property would not object to Lum's, Inc., as "tenants" of Comal Corporation.

On October 14, 1971, Lum's, Inc., "closed" on the property. Following the closing, Mr. Chasen requested that Lum's, Inc., financial officer Bertin Perez review its group health insurance plan and give Mr. Dorfman's Chicago based insurance brokerage firm an opportunity to make a proposal for the insurance business. Seven months later, on June 1, 1972, Caesars World, Inc.'s group insurance was placed through Mr. Dorfman's Amalgamated Insurance Agency Services with the United Founders Insurance Company, replacing Massachusetts General as its carrier. Almost six years later, February 1, 1978, United Founders was replaced as CWI's carrier by the Equitable Life Insurance Company.

On December 10, 1971, also shortly after the Sky Lake closing, Mr. Dorfman wrote to Mr. Chasen requesting that Fund officials be given honorary memberships by Caesars World, Inc. at the Sky Lake Country Club. This request also was accommodated by Mr. Chasen.

Several months later an application dated June 1, 1972, was

prepared on behalf of Caesars World, Inc., for an $18.7 million loan from the Teamsters Pension Fund. The application recited the purpose of the loan as development of the Sky Lake property and the construction of a "fantasy tower" at Caesars Palace. The loan application, however, apparently was never actually submitted to the Fund.

During the first six years (1966 to 1972) of his 14 year association with the company, while Mr. Chasen was in charge of administration, Mr. McElnea was its investment banker and an outside director. During Mr. Chasen's tenure, Caesars World, Inc. underwent a dramatic change in its corporate "personality". Prior to 1969, it was a publicly traded over-the-counter Florida based fast-food restaurant and franchising company with a meat packing subsidiary and a discount chain store subsidiary. Between 1969 and 1972, however, it completely divested itself of these Florida holdings and acquired two Nevada casino hotels, two Pennsylvania honeymoon resorts and a large Florida condominium development property. It also, in 1969, shortly after the acquisition of Caesars Palace, became listed on the New York Stock Exchange.

The role of William McElnea also significantly changed from this initial 1966-1972 period as its investment banker and "outside" director to the more recent 1972-1980 period of his presidency. Judgments as to his suitability as a qualifier must give consideration to this fact. As the Commission's opinion observes, Mr. McElnea was not the source of the company's associations with either the Teamsters Pension Fund (which Clifford Perlman initiated through the 1969 acquisition of Caesars Palace) or with Messrs. Malnik and Cohen (which Melvin Chasen originated through the 1971 acquisition of Sky Lake). It is also important to recognize that as its investment banker, he was subject to the policy and business decisions made by his corporate client and its chief executive Clifford Perlman. In sum, at the time that the associations between the corporation and Mr. Malnik, Mr. Cohen and the Fund were made firm, Mr. McElnea was not an executive of the company.

It is noteworthy that the transactions with Messrs. Malnik, Cohen and the Fund between 1969 and the present, do not, when separately examined, appear to have been illegal in either a civil or criminal sense. Nor, standing alone, do they seem to have been unethical. Neither the associations nor the transactions seem to have technically or expressly violated any Nevada Gaming Commission or Gaming Control Board regulation or directive, although express suggestions of concern by Nevada regulators did appear as early as

October 1972. Similarly, neither the associations nor the transactions appear to have been disapproved by the Securities and Exchange Commission prior to its private order of investigation into the association with Mr. Malnik filed in September 1975. Consequently, it must be concluded that prior to his assuming its presidency, the associations previously commenced by CWI cannot be fairly said to suggest in William McElnea a lack of "good character, honesty and integrity" or his unfitness to participate in the New Jersey gaming industry.

Eight years ago, in November 1972, Mr. McElnea became president of Caesars World, Inc., and assumed major executive authority and responsibility. During his first three years as president, Mr. McElnea and CWI engaged in three transactions which demand our attention. The nature and degree of Mr. McElnea's participation in these events must be examined to determine whether they indicate any lack of character or integrity. Then, Mr. McElnea's entire tenure as CWI president should be reviewed to ascertain whether we can say with confidence that he is fit to participate in New Jersey's casino industry.

1. *Sky Lake Transaction Restructuring*

Twenty-eight months after CWI entered into its initial long-term lease of Sky Lake from Comal Corporation and following an almost 18 month negotiation period, CWI on February 11, 1974, purchased the Sky Lake property from Comal Corporation outright in a financial restructuring of the transaction. As part of the agreement, CWI, as owner, assumed the then $10.7 million mortgage obligation to the Teamsters Pension Fund. Comal Corporation continued to be owned equally by Mr. Malnik and Mr. Cohen; and, only one year before the transaction, Mr. Cohen had pled guilty to charges related to the Flamingo "skim" prosecution. Nevertheless, in light of the lease between the parties which had existed since 1971, this 1974 purchase cannot be fairly said to represent a new association or transaction with Mr. Malnik, Mr. Cohen or the Fund and thus cannot be said to adversely reflect upon the suitability of Mr. McElnea.

2. *Corporate Debt Refinancing*

Documents in evidence produced from the files of CWI's insurance consultant and corporate attorney suggest that, at least as of January 1975, and prior to the Cove Associates transaction with Mr. Malnik, Mr. McElnea was considering the development of a comprehensive program to refinance CWI's overall corporate debt. In

February, the Cove Associates deal was closed. On July 16, 1975, in its offices in Los Angeles and at Mr. McElnea's request, CWI's corporate security officer interrogated Mr. Malnik for a full day as to his reputed association with Meyer Lansky. Mr. Malnik flatly denied any such link.

On a date apparently following this session and also apparently prior to the September 18, 1975 Securities and Exchange Commission investigation of the Cove Associates transaction, Mr. Malnik approached Mr. McElnea and Clifford Perlman in Las Vegas and inquired whether CWI would consider a $75 million sale and leaseback of its Caesars Palace property. Both executives rejected this proposal. Whatever may have been in the mind of Mr. Malnik, the serious question presented is whether Mr. McElnea's thoughts on refinancing the overall corporate debt in 1975 included or would have included any consideration whatsoever of any participation therein by either Mr. Malnik or the Teamsters Pension Fund. No evidence establishes that he did consider Mr. Malnik or the Fund as a potential source for any such financing. As a matter of fact, CWI obtained no further financing from either.

3. *Cove Associates Sale-Leaseback*

On February 20, 1975, following initial discussions three months earlier between Mr. Malnik and Clifford Perlman and following Board approval on February 5, CWI sold the Cove Haven and Paradise Stream Pennsylvania honeymoon resort properties, which it had owned for four or five years, to a Florida partnership named Cove Associates. The partners in Cove Associates are Mr. Malnik (69 percent) and Samuel Cohen's two sons (31 percent). As part of the transaction, Cove Associates leased the properties back to CWI under terms requiring CWI, as tenant, to operate and improve the two resort complexes. On the date of the transaction, the Teamsters Pension Fund granted Comal Corporation a $15.0 million loan which was secured by a mortgage from Cove Associates on the two Pennsylvania properties and which was guaranteed by Comal Corporation. The loan further required that CWI guarantee payment of the lease rental obligations to Cove Associates.

By this sale and leaseback, the Teamsters Pension Fund, Mr. Malnik and Samuel Cohen's sons were for the first time able to establish an association with CWI's Pennsylvania honeymoon resort properties and thus were able to increase and expand their financial relationship with CWI and its assets. Samuel Cohen by this time had

pled guilty to criminal charges related to the Flamingo "skim" two years earlier. Thus, nearly six years after having entered the gaming industry, CWI in early 1975 was still, in part, relying upon the Teamsters Pension Fund for its financial needs.

It is this corporate transaction and Mr. McElnea's relationship to it which causes the greatest difficulty in determining his present fitness to participate in the New Jersey gaming industry. Although not the source of the proposal, Mr. McElnea did vote his approval as a director and, as CWI's president, assisted in structuring the agreement. The transaction, by its terms, does not appear to have been illegal. The arrangement expanded already along existing associations with Mr. Malnik, Mr. Cohen (through his sons) and the Teamsters Pension Fund. It did not create those associations. Nevada gaming authorities had been aware of and did not disapprove similar associations originating in the 1971 Sky Lake acquisition. Obviously, no personal association with Mr. McElnea was involved here. Most significantly, Clifford Perlman, the corporate chief executive officer and chairman of the board, supported and voted for approval of the Cove Associates agreements.

Mr. McElnea's conduct on behalf of his employer with respect to these agreements occurred almost six years ago. It would appear that in failing to oppose the Cove Associates proposal, Mr. McElnea made a significant misjudgment. Indeed, prior to the end of 1975 that fact was made clear by the reactions of the Securities and Exchange Commission and the Nevada gaming authorities. However, in judging Mr. McElnea's "good character, honesty and integrity", we must consider the entire man and the circumstances in which he acted.

As noted, the Securities and Exchange Commission on September 18, 1975, ordered a private investigation into CWI's corporate dealings with Mr. Malnik in both the Comal Corporation and Cove Associates transactions and into Clifford Perlman's personal dealings with him in the Cricket Club. Shortly thereafter, the Los Angeles Times (on November 10, 1975) published a negative front page article under the headline "Caesars Palace Firm Under Investigation". Finally, the Nevada Gaming Commission and Gaming Control Board, on December 10, 1975, and April 13, 1976, directed that Caesars World, Inc. not expand its association with Mr. Malnik and not associate with persons of unsavory or notorious repute.

No evidence suggests any expanded or new associations with Mr. Malnik, Mr. Cohen or the Teamsters Pension Fund since 1975, almost six years ago. More specifically, no such associations seem to have

attended the corporate acquisitions of the Ontel Corporation in New York in January 1976; the Pocono Palace in Pennsylvania in November 1976; the Traymore site in Atlantic City in August 1977; the Regency project in Atlantic City in June 1978; or, the Caesars Tahoe complex in Nevada in November 1979. Notably, of the $138 million so far committed by CWI to the Boardwalk Regency project, $47 million was derived from large institutional sources, $28 million from obligations undertaken to former owners of the realty and $63 million from internal corporate funds (bank lines, public offerings and operating revenues).

In February 1978, CWI freed itself of its association with Teamsters Pension Fund official Allen Dorfman. CWI changed the broker for its employee health insurance from Mr. Dorfman's agency and transferred the coverage from United Founders Insurance Company to Equitable Life Insurance Company. The decision, admittedly, took the corporation more than three years to reach. It must be recognized, however, that it was Melvin Chasen who initiated the corporation's relationship with Mr. Dorfman and that it was Mr. McElnea who, in June 1974, brought in John Ames Associates to reexamine the company's insurance portfolio. It was McElnea who finally caused Dorfman's agency and its carrier to be replaced.

Mr. McElnea's contribution in obtaining conventional financing for Caesars World, Inc. has been significant. In October 1978, principally through his efforts, CWI was able to obtain financing in an amount of $60 million from the Aetna Life Insurance Company. Until that point, the gaming industry company had been unable to obtain significant funding from such a major national institutional lender. In addition, through Mr. McElnea, CWI has been able to repeatedly obtain substantial lines of credit from major national banks such as Chemical, Security Pacific, First Chicago and others. It has been successful in its public offerings of both stocks and debentures. Its annual financial conferences, which Mr. McElnea initiated, have substantially enhanced its own as well as the industry's credibility with the financial community. Again, it was Mr. McElnea who was instrumental in 1969 in CWI's being listed on the prestigious New York Stock Exchange and who, during his presidency, did much to attract such substantial outside directors as: James Needham, the former chairman of the New York Stock Exchange (1972-1976); M. Peter Schweitzer, who for 17 years had been vice-chairman of the board of the Kimberly Clark Corporation; and, Manuel Yellen, who at the time of his retirement from P. Lorillard and Company occupied the

position of its chairman and chief executive officer.

Credit, it is true, must be given to Clifford Perlman as the chief executive officer who set the corporate policy with such vision. It was William McElnea, however, who so effectively implemented those policies and made them live. He gradually over the years gained CWI access to respected conventional institutional lenders. He has served as a major catalyst in attracting its impressive and very professional management group. He has, as chief operating officer, efficiently managed its constantly expanding operations. Without William McElnea, CWI would not have attained its present status as one of the leading companies within the gaming industry.

It would appear that in 1969 obtaining conventional financing from respected institutional sources for a gaming industry was a tougher problem than CWI and Mr. McElnea originally anticipated. In fact, it was not until more than three years after the Cove Associates agreements that CWI, through the efforts of Mr. McElnea, obtained the precedent setting loan from the Aetna Insurance Company. The danger in the Cove Associates transaction of six years ago was that, even though Nevada authorities had not prohibited such corporate dealings with Mr. Malnik, Mr. Cohen or the Teamsters Pension Fund, the sale-leaseback agreement could have provided them with extensive enough loan obligations from CWI to potentially exercise some degree of control over CWI or its casino operations. This is the danger against which New Jersey, with its toughest possible regulatory scheme, has committed strong and unyielding vigilance.

In the licensing process, there can never be a total absence of doubt. Plainly, Mr. McElnea made a serious misjudgment in not trying to prevent CWI from engaging in the Cove Associates transaction. But, in the entirety of the evidence before this Commission, it cannot be said that the applicant has failed in its burden to produce a firm belief and conviction as to William McElnea's suitability and fitness for New Jersey's casino gaming industry and to demonstrate clearly and convincingly his good character, honesty and integrity. He accordingly ought to be found to qualify as an officer, director and shareholder as to this casino license applicant.

Although I find Mr. McElnea qualified, I stress that my decision has not been an easy one. If BRC chooses to remain in New Jersey and to sever all relations to the Perlmans, Mr. McElnea's stature and importance will increase proportionately. He must understand that his performance will be closely scrutinized in the hope that we have decided correctly. I trust that he will be aware of this fact and will

discharge his responsibilities in an exemplary manner.

Vice-Chairman Danziger, concurring and dissenting:

In reaching my decision in this serious and important matter, I have carefully evaluated the testimony of the witnesses who appeared before us and the reliability of the documentary materials which were introduced into evidence. Moreover, I have conscientiously endeavored to assess the suitability of the applicants and the persons to be qualified in accordance with the pertinent licensing criteria. As a result of this process, I find that Clifford S. Perlman, the Chairman of the Board of Caesars World, Inc. ("CWI") and its largest stockholder with approximately 10 percent of the outstanding shares, has failed to meet his heavy burden of establishing his good character, honesty and integrity by clear and convincing evidence. I further find that Stuart Z. Perlman, Vice-Chairman of the CWI board and second largest stockholder with approximately 8 percent of its stock, has likewise failed. In contrast, I find that Jay E. Leshaw, a CWI director and officer in charge of the Florida properties, does qualify. My reasons for these three determinations are essentially contained in the Commission's Decision and I will not lengthen this opinion by elaborating upon them. However, I must address myself to the suitability of William H. McElnea, Jr., the President and Chief Operating Officer and a director of CWI.

Preliminarily, there is no question that Mr. McElnea is a person required to qualify as a condition of Boardwalk Regency's Corporation casino license application. In addition to his positions with the parent company, CWI, Mr. McElnea serves as president and a director of the intermediary company, Caesars New Jersey ("CNJ"). Further, Mr. McElnea owns the third largest block of shares in both CWI, approximately 1.6 percent, and CNJ, approximately 0.4%. Thus, Section 85(d) of the Casino Control Act (*N.J.S.A.* 5:12-85(d)) classifies Mr. McElnea as a so-called "qualifier".

Yet, Mr. McElnea's importance to these companies runs deeper even than his high posts and large holdings would indicate. He has been associated with CWI or its predecessor, Lum's Inc., since 1966. In the ensuing years, it was Mr. McElnea who directed the Company's financing and who made it possible for the Company to move from a closely held fast-food restaurant firm to a publicly owned gaming giant. According to the applicant, it is Mr. McElnea who deserves much of the credit for the success of CWI in leading the way for publicly owned corporations into gaming and in breaking down the

traditional resistance of respected institutional lenders against extending loans to casino operators. In fact, Mr. McElnea's contribution and value to the company are considered by CWI itself to be, in many ways, on par with those of Clifford Perlman. If Mr. Perlman's creative insights set the goals for the company, Mr. McElnea's financial arrangements powered the company toward those goals. Of course, with the rejection of Clifford Perlman by this Commission, Mr. McElnea's importance to the company increases even more.

In assessing Mr. McElnea's suitability under the licensing standards, his value, even indispensability, to CWI and CNJ must be considered. However, it would be a grievous error to conclude that such consideration warrants a lowering of the statutory criteria in order to protect the economic well-being of the company. Quite the contrary is mandated. The greater an individual qualifer's authority and responsibility, the greater the harm which that individual can bring to both legalized gaming operations in this State and public confidence in the regulatory process. Hence, this Commission is bound to exercise an extra measure of care and scrutiny in such instances. While financial stability and business competence are criteria for casino licensure, those criteria must not be allowed to subsume the separate requirement of good character. Economic strength cannot substitute for integrity.

As to the licensing criteria themselves, the operative requirement is that Mr. McElnea must demonstrate by clear and convincing evidence his good character, honesty and integrity. This requirement is purposely stringent. It is Mr. McElnea's obligation to respond to any questions raised by this record and to induce in the mind of this Commission a firm belief that he indeed possesses the positive attributes necessary for qualification. In deciding whether such a belief is engendered, each Commissioner must consider all the relevant events and Mr. McElnea's conduct in each circumstance. Business and professional associations must be examined to ascertain whether such associations bear adversely on Mr. McElnea. Of cousre, I am mindful that such events, conduct and associations must be viewed in the context of then existing circumstances. Subsequent revelations and developments which were neither foreseen nor reasonably foreseeable are of little value in this process. With these concepts, I now turn to the record.

As noted, Mr. McElnea's forte is his competence and expertise in financial matters. Born in 1922, Mr. McElnea attended Dartmouth College where he obtained both a bachelors degree and a masters

degree in business administration. Following graduation, he spent seven years working for New York City commercial banking houses before joining the investment banking firm of Van Alstyne, Noel and Co. in 1955. As a specialist in corporate financing, Mr. McElnea met Clifford Perlman in 1966 when Lum's, Inc., became a client of Van Alstyne. The following year, Lum's became an over-the-counter, publicly traded company and Mr. McElnea accepted a position as an "outside" director for Lum's. Naturally, Mr. McElnea continued to serve as the financial adviser and architect for the company.

It is clear that, when Mr. McElnea first joined Lum's, he was a sophisticated, experienced and mature businessman and banker. Although technically an "outside" director until November 1972, Mr. McElnea's deep involvement with the financial arrangements of the company brought him into a much closer relationship with the company and its management. In fact, the post-hearing memorandum submitted by the applicants states on page 99 that Mr. McElnea enjoyed a "close, intimate, professional relationship with [Clifford] Perlman" from the time he first became a Lum's director. It is in this framework, rather than the more typical outside director context, that Mr. McElnea's participation in the events before November 1972 must be considered.

In the late 1960's, Clifford Perlman sought to move the company into new fields. In 1969, Mr. Perlman was introduced, through a person acting as a broker, to the owners of Caesars Palace who were then seeking a buyer for the casino hotel. Mr. Perlman contacted Mr. McElnea and asked him to study the proposal for the purpose of arranging the financing. Prior to the acquisition, Mr. McElnea was well aware that gaming companies were generally thought to be connected with underworld figures and that this tawdry image was a primary reason for the unavailability of major institutional financing to such companies. Mr. McElnea was also aware that, to obtain Caesars Palace, Lum's would have to assume a preexisting $18.1 million mortgage to the Teamsters Pension Fund.

On April 24, 1969, Lum's entered into an agreement for the sale of the Palace but the actual closing did not occur until September 30, 1969. In the interim period, the casino experienced a loss of $932,266 before taxes while it was still being operated by the sellers. In the comparable period for 1968, the casino had a pre-tax profit of $2,230,014. Under the terms of the acquisition agreement, Lum's was entitled to any profits realized during the settlement period. Thus, if this precipitous drop in profits was the result of embezzlement or

skimming, Lum's, Inc., was deprived of a substantial sum of money at a time when the company was in a cash poor position. Although Mr. McElnea may not have been knowledgeable about reasonable fluctuations in gaming win, his failure to suggest even a consultation with independent experts or auditors cannot be ignored. This failure is underscored by the fact that Lum's, Inc., was first listed on the New York Stock Exchange on October 14, 1969, and that Mr. McElnea was both the acknowledged financial expert and an outside director. Failure to investigate such circumstances in this State under our law, I submit, would cause this Commission serious concern. However, there is much more.

The applicant and Mr. McElnea argue that, in the years following acquisition of the Palace, they were in a new industry and they were not far progressed on the so-called "learning curve". This argument cannot withstand scrutiny. Mr. McElnea's sophistication and accomplishment in business and finance has already been demonstrated. Even assuming that he was relatively naive about the gaming industry, the events which occurred in rapid fashion during and after the acquisition of the Palace must have accelerated his education. Beyond the casino's loss during the settlement period, a search of the casino by the Federal Bureau of Investigation in December 1970, must have been a further awakening. The F.B.I.'s discovery of large sums of money in certain lockboxes led to an investigation by the Securities and Exchange Commission in early 1971. In the course of the investigation, many employees whom Lum's had retained from the prior owners invoked their Fifth Amendment right to avoid self-incrimination when questioned about the casino loss during the settlement period. Such occurrences should have alarmed Mr. McElnea if he truly hoped to upgrade the image of casino gaming and to attract major lenders. New Jersey requires, at a minimum, more caution and concern than exhibited by Mr. McElnea in this case.

It was against this background that the Sky Lake transactions commenced. Mr. McElnea testified that the proposal was first brought to the attention of Clifford Perlman in 1970 by Mel Chasen, then president of Lum's, Inc. Mr. McElnea knew that the owner of the property was the Comal Corporation which was owned by Alvin I. Malnik and Samuel Cohen. Although Mr. Perlman initially rejected the proposal, Mr. Chasen again offered it on behalf of Comal in 1971. This time Mr. Perlman agreed to consider it. A meeting was held in early July, 1971. According to Mr. McElnea, the meeting was attended

by Mr. McElnea, other corporate officers and Messrs. Malnik and Cohen.

A few weeks prior to the meeting, Mr. McElnea received a telephone call from Mr. Chasen who advised that Messrs. Malnik and Cohen had "controversial" reputations. At the meeting, Mr. Malnik presented the Sky Lake proposal. However, Mr. McElnea has no recollection of questioning Mr. Malnik or Mr. Cohen about their reputations at that time. In any event, Mr. McElnea was told by Mr. Chasen that Mr. Cohen had been convicted of a Commodity Exchange Act violation and that Mr. Malnik was the subject of disturbing allegations in Hank Messick's book, *Lansky*. Mr. McElnea denies knowing or being told of Mr. Cohen's pending indictment with Meyer Lansky for skimming from the Flamingo hotel casino in Las Vegas. That indictment was returned in March 1971 by a Federal grand jury sitting in Florida.

The Comal proposal was presented to the Lum's board of directors later in July 1971. By that time, the offer had been changed from a simple sale of the land to a lease with an option to purchase the stock of Comal after three years and an option to purchase portions of the land for development. These modifications were the result of Lum's efforts to accommodate Comal's tax problems. The board decided to proceed with the transaction subject to a feasibility study and an appraisal.

Of more significance is the fact that the board was apprised of Mr. Cohen's commodity violation and Mr. Malnik's notoriety. Specifically, the book *Lansky* was discussed. In that book, Mr. Malnik was accused of organized crime activities and association with Meyer Lansky. Moreover, the book recited the fact that electronic surveillance had been conducted on Mr. Malnik in 1963 and damaging conversations were recorded. Further, the board knew that Mr. Malnik was suspected by several government agencies of being involved in criminal activities. Indeed, the corporation's own counsel, David Bernstein of Rogers and Wells, implored the board not to take any action until the Malnik allegations were discussed with the Justice Department. To be sure, the board was told by Mr. Chasen that Mr. Malnik denied the allegations, that he was indicted but never convicted, and that he was a member of the Florida bar.

In the face of the serious questions raised regarding both Mr. Malnik and Mr. Cohen, Mr. McElnea joined with other board members in voting for the Sky Lake proposal and in ignoring the entreaties of the company's own counsel. Mr. McElnea argues that it would have

been futile to ask a government agency for its opinion in this matter and that such an inquiry would have set a bad precedent. These lame excuses are not acceptable now and were not acceptable then. If Mr. McElnea really intended to raise his company above the suspicions surrounding the gaming industry, then he would not acquiesce in Sky Lake without so much as an inquiry into the truth or falsity of the allegations. If that inquiry brought no response, then nothing was lost. As to setting a bad precedent, Mr. McElnea would have this Commission believe that he then expected Lum's, Inc., the parent corporation of a licensed Nevada gaming company, to routinely enter into multimillion dollar real estate transactions with persons of Mr. Malnik's reputation. Unfortunately, subsequent events give reason to believe that the company may have anticipated just such repeated transactions. Mr. McElnea's support for this transaction, considering his importance to the corporation, his sophistication and expertise call into issue his ability to adequately perform under the strict regulatory controls of this State.

The nature of the Sky Lake transaction is of great importance. Mr. McElnea would characterize it as hardly more than an ordinary, arm's-length real estate transfer. The record does not support that characterization. As noted, the proposal had already undergone substantial revisions before it was presented to the board in July 1971. These changes were readily accepted by Lum's management in order to protect Comal from adverse tax consequences. While some adjustments to accommodate the other party in a transaction may not be unusual, the drastic alterations involved here actually prevented Lum's from developing the property for a substantial period of time, a period during which the Florida land market collapsed.

In October 1971, the Sky Lake agreement called for Lum's to include, as part of the sale price, warrants to purchase up to 600,000 shares of Lum's stock at various prices. Upon hearing of this, Nevada gaming authorities indicated that such stock warrants might require approval of Messrs. Malnik and Cohen. Although the warrant provision was deleted in 1972, Lum's knew that Malnik and Cohen might not be approved by the Nevada authorities. Nevertheless, the interminable negotiations and revisions of the Sky Lake transaction dragged on. In my view the warrants were ultimately not part of the transaction because of regulatory agency pressure, not any reaction by Mr. McElnea to the nature of his business associates. This lack of concern in my view is unacceptable under the Casino Control Act and the public policy of this State.

At no point did Mr. McElnea voice any opposition. Even after he assumed the presidency of the company in November, 1972, he did not press to take advantage of opportunities to disengage from Sky Lake. More disturbing still, he uttered no objection when he finally learned of Samuel Cohen's indictment with Meyer Lansky for skimming from the Flamingo. His failure to recall when and how he learned of this devastating information casts serious doubt about his candor before this Commission. In fact, Mr. McElnea testified here that he would have probably changed his opinion about entering the transaction if he had known of Mr. Cohen's indictment.

Upon discovery that not only Mr. Malnik but Mr. Cohen was alleged to be associated illegally with the notorious Lansky, Mr. McElnea should have taken immediate steps to reexamine the company's involvement with Comal. Moreover, Mr. McElnea could have readily ascertained that the Cohen indictment pre-dated the initial Sky Lake proposal by nearly three months. Given Mr. McElnea's assertion that the CWI board of directors were a closely knit group, he would have had cause to wonder why he was not told of the indictment by Clifford Perlman and the other directors who were aware of it prior to Sky Lake. Furthermore, Mr. McElnea knew from the outset that the Sky Lake proposal required the company to assume a $10 million Teamsters Pension Fund mortgage. This too did not prompt a reaction.

Two additional matters involving the Sky Lake transaction deserve mention. First, on the issue of the $164,000 sewer bond that was prepaid by Comal, I find that Caesar's World was not required to make the repayment to Alvin Malnik. The reason they were not required to repay these monies was that they purchased the assets of Comal (a corporation) and since one of the assets was the prepaid sewer bond, that asset should have been transferred for the benefit of the stockholders of Caesars World, Inc. However, William McElnea, the financial expert, disregarded the concerns and needs of his own company and stockholders to benefit Alvin Malnik and Comal. Secondly, the eagerness displayed by the corporate executives, including Mr. McElnea, in permitting Alvin Malnik to secure a $375,000 yacht to the detriment of the corporation and its stockholders and their willingness to maintain the pleasure vessel, on behalf of Alvin Malnik, refute any assertion that Sky Lake was an arms-length real estate transaction. These dealings are the type which can be employed to skim money from the corporate till. Unfortunately, Mr. McElnea, the person with the most sophisticated financial

acumen of those who have appeared before this Commission, consented to these transactions at substantial cost and detriment to the stockholders he represented.

In short, the Sky Lake transaction belies Mr. McElnea's contention that he was concerned about the reputation and business associates of CWI. The mere fact that the Nevada authorities did not issue any instruction to terminate the Sky Lake transaction will not absolve Mr. McElnea. An apparent eagerness to associate with disreputable individuals and a reluctance to sever the relationship even if one of the individuals is convicted of casino-related crimes argue powerfully against his character and integrity. New Jersey need not allow persons to hold positions of authority in casino companies unless such persons can be trusted to act properly without being constantly threatened or coerced by the regulatory authorities.

As previously mentioned, Mr. McElnea succeeded Mel Chasen as president and chief operating officer of CWI in November 1972. (Lum's, Inc., changed its name to Caesars World, Inc., in December 1971). At about the same time, Mr. McElnea was informed by Clifford Perlman that Philip Hannifin, the Chairman of the Nevada Gaming Control Board, had expressed concern about Mr. Perlman's involvement in the Cricket Club, a condominium project in Florida. Mr. Hannifin's concern was caused by the fact that Mr. Perlman's chief partner in the Cricket Club was Alvin Malnik. Mr. McElnea assumed that Mr. Hannifin was only distressed because Mr. Perlman's interest was a personal one and that Mr. Hannifin would not react similarly to future dealings between CWI and Mr. Malnik. It does not appear that Mr. McElnea made any effort to verify the accuracy of his assumption prior to the Cove Haven sale and lease back with Mr. Malnik in early 1975. The arrogance of Mr. McElnea in relying on this faulty assumption evinces a callousness to the Nevada regulatory system which, if it occurred in New Jersey, would be clearly unacceptable.

Before addressing the Cove Haven transaction, it is appropriate to consider Mr. McElnea's conduct as CWI's president in the two intervening years. More particularly, his interactions with the Teamsters Pension Fund, Allen M. Dorfman, the Amalgamated Insurance Agency ("Amalgamated") and United Founders Life Insurance Company ("United Founders") must be examined.

In 1972, CWI had a number of financial relationships to the Teamsters Pension Fund, principally the mortgages on Sky Lake and Caesars Palace. At the direction of then President, Mel Chasen, CWI

transferred its employee group health insurance from Massachusetts General to United Founders on June 1, 1972. At the same time, CWI retained Amalgamated, Dorfman's agency, as its broker for this coverage. From the documents produced by John Ames and from the transcript of Mel Chasen's testimony before the Securities and Exchange Commission, it is quite evident: (1) that Allen Dorfman was a principal in Amalgamated; (2) that Mr. Dorfman was apparently able to manipulate Teamsters Pension Fund loans and mortgages; and (3) that the CWI group insurance was placed with United Founders through Mr. Dorfman's agency for the purpose of obtaining favorable treatment for CWI by the fund.

The applicant responds to these facts by arguing that the costs and benefits of the United Founders policy were fair and competitive and that Amalgamated's fees were not unreasonable. Further, as to Mr. McElnea, the applicant emphasizes that these arrangements were made before he became president and chief operating officer. Even if these contentions were accepted, later events place responsibility squarely on Mr. McElnea. As early as 1974, CWI management was advised by its independent consultants to replace United Founders as underwriter and Amalgamated as broker for the group health plans. These suggestions became more frequent and urgent until the insurance was finally transferred in February 1978.

Evidence is uncontroverted that United Founders Life Insurance of Oklahoma and Illinois were unrated by Bests Insurance, the prestigious rating service for the insurance industry. John Ames, CWI's consultant, knew of this and testified that he would never place a client's insurance coverage with such companies because of their financial instability.

According to a memorandum of John Ames, he talked with Mr. McElnea as chief operating officer and Bertin Perez, the former financial head and now a consultant of CWI, on January 23, 24 and 25, 1975. At that time, it was indicated that CWI could prepay a Teamsters Pension Fund mortgage for $11 million and "until that is done, the climate for moving the United Founders group case is still not great". The memorandum continues in the next and concluding sentence: "On the other hand, Bill has done a lot of study on a possible sale and lease back of the Palace and if it should take place, this would change the whole picture". The "Bill" is obviously Mr. McElnea.

Standing alone, the excerpts from this memorandum do not indicate whether Mr. McElnea had any specific party in mind for a sale and lease back of the Palace nor whether the changed picture

would mean retention or quicker severance of Amalgamated and United Founders. However, it is evident that Mr. McElnea was fully cognizant of the connection between the insurance placement and any negotiations with the Teamsters Pension Fund. Neither the applicant nor Mr. McElnea have contested this relationship and their awareness of it. Even more distressing is the fact that, during this period, Allen Dorfman was convicted of a federal offense for taking kickbacks to arrange loans from the pension fund. He served a prison sentence from March to December 1973. This must be combined with Mr. McElnea admission that he knew in 1975 of the Teamsters Pension Fund's widespread reputation for "having done such things as paid illegal finders fees and paid kickbacks and a lot of very nasty business transactions".

The applicant and Mr. McElnea contend that CWI could not extricate itself from Amalgamated and United Founders any sooner than they ultimately did. This was allegedly due to the problems created by United Founders' precarious financial status, so precarious, in fact, that withdrawal of the CWI account would probably have broken the carrier. Again, even if this contention were accepted, the Ames consultants advised that CWI had sufficiently aided United Founders' recovery by the end of 1976 to allow the transfer. Despite the fact that he agreed with the position of the Ames group, Mr. McElnea told Bertin Perez on November 23, 1976, to do nothing for one month.

Mr. Ames spoke to Mr. McElnea the same day. In his memorandum of this conversation, Mr. Ames states Mr. McElnea's reason for the delay as being that "they are still finalizing negotiations with the teamsters pension fund on extending maturities on some of those Florida properties and Bill [McElnea] didn't want to do anything which would rock any boats or make any waves". This statement unequivocally refutes the applicant's assertion that any delay was the result of the carrier's solvency problems and not an effort to appease and accommodate Dorfman. Moreover, the argument that the delay was inconsequential utterly misses the point. Mr. McElnea did not want the transaction completed at that time. Obviously, he was not willing to assume that it would be delayed in the ordinary course.

In any event, the delay was hardly one month. A June 15, 1977, memorandum from V. Paul Ricken to John Ames reveals that seven months later Ricken was still waiting for the "green light" from Mr. McElnea. The only conclusion which can be drawn is that Mr. McElnea was thoroughly versed in the rules of the Teamsters Pension

Fund and that he was quite willing to follow those rules. It is not important whether he did so purposely to aid the nefarious schemes of others or whether he aided those schemes to achieve his and CWI's own economic ends. The Casino Control Act does not require or permit this Commission to draw such distinctions. These practices establish Mr. McElnea's unsuitability to participate in New Jersey's gaming industry. Negative implications also must be drawn from the applicant's failure to produce Bertin Perez an obviously important witness to the transaction with Alan Dorfman. This failure, I infer, was because his testimony would support the negative inferences about Mr. McElnea drawn from the Ames' record and testimony.

Added to all the foregoing, the Cove Haven transaction and its aftermath demand that the Commission exclude Mr. McElnea. As mentioned above, Mr. McElnea knew of the Hannifin conversation with Clifford Perlman in November 1972. Of course, he knew of Mr. Malnik's reputation and he also knew before the deal was closed on February 20, 1975, that the $15 million was obtained by Mr. Malnik from the Teamsters Pension Fund at 9 percent interest. The offer from Mr. Malnik was to charge roughly 15 percent of the purchase price to CWI as rent. It has already been demonstrated that Mr. McElnea was then aware of the reputation of the fund and, from personal experience, the manner in which it did business.

Despite all of these factors, Mr. McElnea tendered no objection when the offer was presented to the board by Clifford Perlman. Nor did Mr. McElnea share with his fellow board members the fact of the Hannifin conversations with Mr. Perlman. Further, Mr. McElnea chose not to call in the CWI Director of Security, former FBI agent Harold Campbell, to determine prior to the transaction whether any new information was available on Mr. Malnik. Instead, Mr. McElnea requested Mr. Campbell to conduct such an investigation, including an interview of Mr. Malnik, in July 1975 well after the transaction was completed. And even then, Mr. McElnea acted only upon learning that the Nevada authorities were investigating Mr. Malnik and Cove Haven. Although steadfastly maintaining that no hard evidence was ever produced against Mr. Malnik, Mr. McElnea acknowledges that Harold Campbell believed Mr. Malnik to be an organized crime figure.

There are yet other serious questions regarding the Cove Haven transaction. The sale and lease back was conducted between a CWI subsidiary and a Florida partnership called Cove Associates. The partners were Mr. Malnik and his wife, and the two sons of Samuel

Cohen. Mr. McElnea concedes that no business should have been conducted by CWI with the convicted Samuel Cohen. Yet, Mr. McElnea becomes oddly myopic in this respect.

Before final approval of the transaction, Harold Berkowitz, one of CWI's outside directors, suggested a condition be imposed to the effect that CWI would be granted a deferment of payments on its Sky Lake obligations. This condition was accepted and, in July 1975, a substantial deferment was obtained. Of course, as Mr. McElnea well knew, the Sky Lake obligations ran to Comal Corporation not to Cove Associates. Comal was Mr. Malnik and Samuel Cohen. Despite his admission that Samuel Cohen was unacceptable as a business associate and despite his admission that he then knew of Mr. Cohen's conviction for skimming from a Las Vegas casino, Mr. McElnea agreed to do business with Mr. Cohen through Alvin Malnik. In addition, the deferred Sky Lake payments were, in large part, a Teamsters Pension Fund obligation. Mr. McElnea, with his redoubtable business acumen, chose not to dwell on the obvious implication that Samuel Cohen would receive a direct benefit from the Cove Haven proceeds and that the disreputable Mr. Malnik would have to intercede with the Teamsters Pension Fund on behalf of CWI. Naturally, too, any hope of separating CWI from the Teamsters Pension Fund in the near future was snuffed by the Cove Haven commitment. In this act, Mr. McElnea was no idle observer. He was instrumental. Again, actions that would be more than enough to deny qualifier status in this State.

The closing of the Cove Haven deal, in February 1975, and the grant of a deferment from Comal in July 1975, did not mark the end of Mr. McElnea's association with Mr. Malnik. Although the exact date is in dispute, in early 1975, Mr. Malnik approached Mr. Clifford Perlman and Mr. McElnea with one more proposition. This time he proposed no less than a $75 million sale and lease back of the Palace itself. As usual, the source of Mr. Malnik's funds was to be the Teamsters Pension Fund. Notwithstanding all that had gone before, Mr. McElnea admits that "we listened".

As to the seriousness of Mr. Malnik's last proposition, Mr. Fritsch of Rogers and Wells observed in a January 17, 1975, memorandum that the proposed Cove Haven transaction appeared "atypical" and "very costly" but it should proceed because it was only the "first step" in the refinancing of CWI's debt. The clear implication is that the benefits accruing to the other party, Cove Associates, would be inducement to further, perhaps more favorable financing. It should

be recalled that Mr. Ames' memorandum of January 1975 recites that Mr. McElnea was then thinking seriously of a sale and lease back of the Palace. Although this proposal never came to fruition, it is quite clear that Mr. McElnea did not say: "No, we'll not do business with Mr. Malnik again". To the contrary, only the publication of a damaging article in the Los Angeles Times and subsequent inquiries by regulatory authorities finally terminated consideration of Mr. Malnik's proposition. These events provide a chilling insight into the financial activities being conducted by Mr. McElnea in 1975. Although the applicant argues that this adverse inference should not be drawn, it is appropriate to note that Mr. McElnea himself did not resume the stand at this hearing to address these matters after Mr. Ames' testimony.

CONCLUSION

The Casino Control Act intended, among other things, to insure that organized crime does not infiltrate the resort casino industry in Atlantic City or the service industries interacting with those resort casinos. This Commission has an awesome responsibility in controlling the infiltration of organized crime into legitimate business as well as assisting in stopping the corrupting influence of criminal cartels and their acquisition and expansion of political and social influence.

The potential of infiltration and domination of legitimate business by organized crime has been incontrovertably revealed by a series of investigations and congressional probes over the last 25 years. The attempts to conceal criminal activities in a mantle of respectability is dramatically presented by the evidence in this case. It appears Mr. McElnea contributed to the efforts of persons with reputations as high-ranking racketeers to invest large sums of money in legitimate enterprises. Moreover, through these arrangements, Mr. McElnea granted those persons the economic leverage to exercise very real control over a licensed gaming company. We should not license such an individual.

It is clear from the present record that William McElnea traveled two different roads. Were he to have remained solely on the path composed of Paul Bagley from E. F. Hutton and Robert VanBuren and Robert R. Ferguson from the Midlantic Bank and the First National State Bank Corporation respectively, the world of which he was a part as an investment banker, I would probably have found he had met the standards of honesty and integrity of the Casino

IN THE SUPREME COURT OF THE STATE OF NEVADA

WYNN RESORTS LIMITED, Petitioners, vs. THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF CLARK; AND THE HONORABLE ELIZABETH GONZALEZ, DISTRICT JUDGE, DEPT. XI, Respondent, and KAZUO OKADA, UNIVERSAL ENTERTAINMENT CORP. AND ARUZE USA, INC.. Real Parties in Interest.	Case No. _____ **APPENDIX IN SUPPORT OF PETITIONER WYNN RESORTS LIMITED'S PETITION FOR WRIT OF PROHIBITION OR ALTERNATIVELY, MANDAMUS** **VOLUME 3 OF 17**

DATED this 17th day of July, 2015.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of PISANELLI BICE PLLC, and that on this 17th day of July, 2015, I electronically filed and served by electronic mail and United States Mail a true and correct copy of the above and foregoing **APPENDIX IN SUPPORT OF PETITIONER WYNN RESORTS LIMITED'S PETITION FOR WRIT OF PROHIBITION OR ALTERNATIVELY, MANDAMUS** properly addressed to the following:

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/s/ Cinda Towne
An employee of PISANELLI BICE PLLC

(c) *Liquidation Rights.* In the event of liquidation, dissolution, or winding up of the affairs of the Corporation, whether voluntary or involuntary, subject to the prior rights of holders of Preferred Stock to share ratably in the Corporation's assets, the Common Stock and any shares of

Preferred Stock which are not entitled to any preference in liquidation shall share equally and ratably in the Corporation's assets available for distribution after giving effect to any liquidation preference of any shares of Preferred Stock. A merger, conversion, exchange or consolidation of the Corporation with or into any other person or sale or transfer of all or any part of the assets of the Corporation (which shall not in fact result in the liquidation of the Corporation and the distribution of assets to stockholders) shall not be deemed to be a voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Corporation.

(d) *No Conversion, Redemption, or Preemptive Rights.* The holders of Common Stock shall not have any conversion, redemption, or preemptive rights.

(e) *Consideration for Shares.* The Common Stock authorized by this Article shall be issued for such consideration as shall be fixed, from time to time, by the board of directors.

Section 3. *Preferred Stock.*

(a) *Designation.* The board of directors is hereby vested with the authority from time to time to provide by resolution for the issuance of shares of Preferred Stock in one or more series not exceeding the aggregate number of shares of Preferred Stock authorized by these Articles, and to prescribe with respect to each such series the voting powers, if any, designations, preferences, and relative, participating, optional, or other special rights, and the qualifications, limitations, or restrictions relating thereto, including, without limiting the generality of the foregoing: the voting rights relating to the shares of Preferred Stock of any series (which voting rights, if any, may be full or limited, may vary over time, and may be applicable generally or only upon any stated fact or event); the rate of dividends (which may be cumulative or noncumulative), the condition or time for payment of dividends and the preference or relation of such dividends to dividends payable on any other class or series of capital stock; the rights of holders of Preferred Stock of any series in the event of liquidation, dissolution, or winding up of the affairs of the Corporation; the rights, if any, of holders of Preferred Stock of any series to convert or exchange such shares of Preferred Stock of such series for shares of any other class or series of capital stock or for any other securities, property, or assets of the Corporation or any subsidiary (including the determination of the price or prices or the rate or rates applicable to such rights to convert or exchange and the adjustment thereof, the time or times during which the right to convert or exchange shall be applicable, and the time or times during which a particular price or rate shall be applicable); whether the shares of any series of Preferred Stock shall be subject to redemption by the Corporation (in addition to any right of redemption pursuant to Article VII of these Articles) and if subject to redemption, the times, prices, rates, adjustments and other terms and conditions of such redemption. The powers, designations, preferences, limitations, restrictions and relative rights may be made dependent upon any fact or event which may be ascertained outside the Articles or the resolution if the manner in which the fact or event may operate on such series is stated in the Articles or resolution. As used in this section "fact or event" includes, without limitation, the existence of a fact or occurrence of an event, including, without limitation, a determination or action by a person, government, governmental agency or political subdivision of a government. The board of directors is further authorized to increase or decrease (but not below the number of such shares of such series then outstanding) the number of shares of any series subsequent to the issuance of shares of that series. Unless the board of directors provides to the contrary in the resolution which fixes the characteristics of a series of Preferred Stock, neither the consent by series, or otherwise, of the holders of any outstanding Preferred Stock nor the consent of the holders of any outstanding Common Stock shall be required for the issuance of any new series of Preferred Stock regardless of whether the rights and preferences of the new series of Preferred Stock are senior or superior, in any way, to the outstanding series of Preferred Stock or the Common Stock.

(b) *Certificate.* Before the Corporation shall issue any shares of Preferred Stock of any series, a certificate of designation setting forth a copy of the resolution or resolutions of the board of directors, and establishing the voting

powers, designations, preferences, the relative, participating, optional, or other rights, if any, and the qualifications, limitations, and restrictions, if any, relating to the shares of Preferred Stock of such series, and the number of shares of Preferred Stock of such series authorized by the board of directors to be issued shall be made and signed by an officer of the corporation and filed in the manner prescribed by the NRS.

Section 4. *Non-Assessment of Stock.* The capital stock of the Corporation, after the amount of the subscription price has been fully paid, shall not be assessable for any purpose, and no stock issued as fully paid shall ever be assessable or assessed, and the Articles shall not be amended in this particular. No stockholder of the Corporation is individually liable for the debts or liabilities of the Corporation.

ARTICLE III
ACTION OF STOCKHOLDERS

Prior to the completion of the initial public offering of the Corporation, the stockholders may take action by written consent in lieu of a meeting. After the completion of the initial public offering of the Corporation, the stockholders may not in any circumstance take action by written consent.

ARTICLE IV
DIRECTORS AND OFFICERS

Section 1. *Number of Directors.* The members of the governing board of the Corporation are styled as directors. The board of directors of the Corporation shall be elected in such manner as shall be provided in the bylaws of the Corporation. The board of directors shall consist of at least one (1) individual and not more than thirteen (13) individuals. The number of directors may be changed from time to time in such manner as shall be provided in the bylaws of the Corporation.

Section 2. *Classified Board.* Upon the effectiveness of the Corporation's registration statement on Form S-1 with respect to its initial public offering of common stock, the directors shall be classified, with respect to the time for which they shall hold their respective offices, by dividing them into three classes, to be known as "Class I," "Class II" and "Class III." Directors of Class I shall hold office until the next annual meeting of stockholders after such effectiveness and until their successors are elected and qualified, directors of Class II shall hold office until the second annual meeting of stockholders after such effectiveness and until their successors are elected and qualified and directors of Class III shall hold office until the third annual meeting of stockholders after such effectiveness and until their successors are elected and qualified. At each annual meeting of stockholders following such effectiveness, successors to the directors of the class whose term of office expires at such annual meeting shall be elected to hold office until the third succeeding annual meeting of stockholders, so that the term of office of only one class of directors shall expire at each annual meeting. The number of directors in each class, which shall be such that as near as possible to one-third and at least one-fourth (or such other fraction as required by the NRS) in number are elected at each annual meeting, shall be established from time to time by resolution of the board of directors and shall be increased or decreased by resolution of the board of directors, as may be appropriate whenever the total number of directors is increased or decreased.

Section 3. *Limitation of Liability.* The liability of directors and officers of the Corporation shall be eliminated or limited to the fullest extent permitted by the NRS. If the NRS is amended to further eliminate or limit or authorize corporate action to further eliminate or limit the liability of directors or officers, the liability of directors and officers of the Corporation shall be eliminated or limited to the fullest extent permitted by the NRS, as so amended from time to time.

Section 4. *Payment of Expenses.* In addition to any other rights of indemnification permitted by the laws of the State of Nevada or as may be provided for by the Corporation in its bylaws or by agreement, the expenses of officers and directors incurred in defending any threatened, pending, or completed action, suit or proceeding (including without limitation, an action, suit or proceeding by or in the right of the Corporation), whether civil, criminal, administrative or investigative, involving alleged acts or omissions of such officer or director in his or her capacity as an officer or director of the Corporation or member, manager, or managing member of a predecessor limited liability company or affiliate of such limited liability company or while serving in any capacity at the request of the Corporation as a director, officer, employee, agent, member, manager, managing member, partner, or fiduciary of, or in any other capacity for, another corporation or any partnership, joint venture, trust, or other enterprise, shall be paid by the Corporation or through insurance purchased and maintained by the Corporation or through other financial arrangements made by the Corporation, as they are incurred and in

advance of the final disposition of the action, suit or proceeding, upon receipt of an undertaking by or on behalf of the officer or director to repay the amount if it is ultimately determined by a court of competent jurisdiction that he or she is not entitled to be indemnified by the Corporation. To the extent that an officer or director is successful on the merits in defense of any such action, suit or proceeding, or in the defense of any claim, issue or matter therein, the Corporation shall indemnify him or her against expenses, including attorneys' fees, actually and reasonably incurred by him or her in connection with the defense. Notwithstanding anything to the contrary contained herein or in the bylaws, no director or officer may be indemnified for expenses incurred in defending any threatened, pending, or completed action, suit or proceeding (including without limitation, an action, suit or proceeding by or in the right of the Corporation), whether civil, criminal, administrative or investigative, that such director or officer incurred in his or her capacity as a stockholder, including, but not limited to, in connection with such person being deemed an Unsuitable Person (as defined in Article VII hereof).

Section 5. *Repeal And Conflicts.* Any repeal or modification of Sections 3 or 4 above approved by the stockholders of the Corporation shall be prospective only, and shall not adversely affect any limitation on the liability of a director or officer of the Corporation existing as of the time of such repeal or modification. In the event of any conflict between Sections 3 or 4 above and any other Article of the Articles, the terms and provisions of Sections 3 or 4 above shall control.

ARTICLE V
VOTING ON CERTAIN TRANSACTIONS

Section 1. *Amendment of Articles.* The Corporation reserves the right to amend, alter, change or repeal any provision contained in the Articles, in the manner now or hereafter prescribed by the NRS, and all rights conferred on stockholders herein are granted subject to this reservation; *provided, however*, that no amendment, alteration, change or repeal may be made to: (a) Article III, (b) Sections 1, 2, 3 and 4 of Article IV, or (c) this Article V without the affirmative vote of the holders of at least sixty-six and two-thirds percent (66 2/3%) of the issued and outstanding shares of stock of the Corporation entitled to vote in the election of directors excluding stock entitled to vote only upon the happening of a fact or event unless such fact or event shall have occurred, considered for the purposes of this section as one class.

Section 2. *Additional Vote Required.* Any affirmative vote required by this Article V shall be in addition to the vote of the holders of any class or series of stock of the Corporation otherwise required by law, the Articles, the resolutions of the board of directors providing for the issuance of such class or series and any agreement between the Corporation and any securities exchange or over-the-counter market upon which the Corporation's shares are listed or designated for trading.

ARTICLE VI
COMBINATIONS WITH INTERESTED STOCKHOLDERS

At such time, if any, as the Corporation becomes a "resident domestic corporation," as that term is defined in NRS 78.427, the Corporation shall not be subject to, or governed by, any of the provisions in NRS 78.411 to 78.444, inclusive, as may be amended from time to time, or any successor statutes.

ARTICLE VII
COMPLIANCE WITH GAMING LAWS

Section 1. *Definitions.* For purposes of this Article VII, the following terms shall have the meanings specified below:

(a) "Affiliate" shall mean a Person who, directly or indirectly, through one or more intermediaries, controls, is controlled by or is under common control with, a specified Person. For the purpose of this Section 1(a) of Article VII, **"control," "controlled by"** and **"under common control with"** means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a Person, whether through ownership of voting securities, by contract, or otherwise. **"Affiliated Companies"** shall mean those partnerships, corporations, limited liability companies, trusts or other entities that are Affiliates of the Corporation, including, without limitation, subsidiaries, holding companies and intermediary companies (as those and similar terms are defined in the Gaming Laws of the applicable Gaming Jurisdictions) that are registered or licensed under applicable Gaming Laws.

(b) "Gaming" or "Gaming Activities" shall mean the conduct of gaming and gambling activities, or the use of

gaming devices, equipment and supplies in the operation of a casino or other enterprise, including, without limitation, race books, sports pools, slot machines, gaming devices, gaming tables, cards, dice, gaming chips, player tracking systems, cashless wagering systems and associated equipment and supplies.

(c) "Gaming Authorities" shall mean all international, foreign, federal, state, local and other regulatory and licensing bodies and agencies with authority over Gaming within any Gaming Jurisdiction. "Gaming Jurisdiction" shall mean all jurisdictions, domestic and foreign, and their political subdivisions, in which Gaming Activities are lawfully conducted.

(d) "Gaming Laws" shall mean all laws, statutes, ordinances and regulations pursuant to which any Gaming Authority possesses regulatory and licensing authority over Gaming within any Gaming Jurisdiction, and all orders, decrees, rules and regulations promulgated by such Gaming Authority thereunder.

(e) "Gaming Licenses" shall mean all licenses, permits, approvals, authorizations, registrations, findings of suitability, franchises, concessions and entitlements issued by a Gaming Authority necessary for or relating to the conduct of Gaming Activities.

(f) "Own," "Ownership," or "Control," (and derivatives thereof) shall mean (i) ownership of record, (ii) "beneficial ownership" as defined in Rule 13d-3 promulgated by the United States Securities and Exchange Commission (as now or hereafter amended), or (iii) the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a Person or the disposition of Securities, by agreement, contract, agency or other manner.

(g) "Person" shall mean an individual, partnership, corporation, limited liability company, trust or any other entity.

(h) "Redemption Date" shall mean the date specified in the Redemption Notice as the date on which the shares of the Securities Owned or Controlled by an Unsuitable Person or an Affiliate of an Unsuitable Person are to be redeemed by the Corporation.

(i) "Redemption Notice" shall mean that notice of redemption given by the Corporation to an Unsuitable Person or an Affiliate of an Unsuitable Person pursuant to this Article VII. Each Redemption Notice shall set forth (i) the Redemption Date, (ii) the number and type of shares of the Securities to be redeemed, (iii) the Redemption Price and the manner of payment therefor, (iv) the place where any certificates for such shares shall be surrendered for payment, and (v) any other requirements of surrender of the certificates, including how they are to be endorsed, if at all.

(j) "Redemption Price" shall mean the price to be paid by the Corporation for the Securities to be redeemed pursuant to this Article VII, which shall be that price (if any) required to be paid by the Gaming Authority making the finding of unsuitability, or if such Gaming Authority does not require a certain price to be paid, that amount determined by the board of directors to be the fair value of the Securities to be redeemed; *provided, however*, that the price per share represented by the Redemption Price shall in no event be in excess of the closing sales price per share of shares on the principal national securities exchange on which such shares are then listed on the trading date on the day before the Redemption Notice is deemed given by the Corporation to the Unsuitable Person or an Affiliate of an Unsuitable Person or, if such shares are not then listed for trading on any national securities exchange, then the closing sales price of such shares as quoted in the Nasdaq National Market or SmallCap Market or, if the shares are not then so quoted, then the mean between the representative bid and the ask price as quoted by any other generally recognized reporting system. The Redemption Price may be paid in cash, by promissory note, or both, as required by the applicable Gaming Authority and, if not so required, as the board of directors determines. Any promissory note shall contain such terms and conditions as the board of directors determines necessary or advisable, including without limitation, subordination provisions, to comply with any law or regulation then applicable to the Corporation or any Affiliate of the Corporation or to prevent a default under, breach of, event of default under or acceleration of any loan, promissory note, mortgage, indenture, line of credit, or other debt or financing agreement of the Corporation or any

Affiliate of the Corporation. Subject to the foregoing, the principal amount of the promissory note together with any unpaid interest shall be due and payable no later than the tenth anniversary of delivery of the note and interest on the unpaid principal thereof shall be payable annually in arrears at the rate of 2% per annum.

(k) "Securities" shall mean the capital stock of the Corporation.

(l) "Unsuitable Person" shall mean a Person who (i) is determined by a Gaming Authority to be unsuitable to Own or Control any Securities or unsuitable to be connected or affiliated with a Person engaged in Gaming Activities in a Gaming Jurisdiction, or (ii) causes the Corporation or any Affiliated Company to lose or to be threatened with the loss of any Gaming License, or (iii) in the sole discretion of the board of directors of the Corporation, is deemed likely to jeopardize the Corporation's or any Affiliated Company's application for, receipt of approval for, right to the use of, or entitlement to, any Gaming License.

Section 2. *Finding of Unsuitability.*

(a) The Securities Owned or Controlled by an Unsuitable Person or an Affiliate of an Unsuitable Person shall be subject to redemption by the Corporation, out of funds legally available therefor, by action of the board of directors, to the extent required by the Gaming Authority making the determination of unsuitability or to the extent deemed necessary or advisable by the board of directors. If a Gaming Authority requires the Corporation, or the board of directors deems it necessary or advisable, to redeem any such Securities, the Corporation shall give a Redemption Notice to the Unsuitable Person or its Affiliate and shall purchase on the Redemption Date the number of shares of the Securities specified in the Redemption Notice for the Redemption Price set forth in the Redemption Notice. From and after the Redemption Date, such Securities shall no longer be deemed to be outstanding, such Unsuitable Person or any Affiliate of

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such Unsuitable Person shall cease to be a stockholder with respect to such shares and all rights of such Unsuitable Person or any Affiliate of such Unsuitable Person therein, other than the right to receive the Redemption Price, shall cease. Such Unsuitable Person or its Affiliate shall surrender the certificates representing any shares to be redeemed in accordance with the requirements of the Redemption Notice.

(b) Commencing on the date that a Gaming Authority serves notice of a determination of unsuitability or the board of directors determines that a Person is an Unsuitable Person, and until the Securities Owned or Controlled by such Person are Owned or Controlled by a Person who is not an Unsuitable Person, the Unsuitable Person or any Affiliate of an Unsuitable Person shall not be entitled: (i) to receive any dividend or interest with regard to the Securities, (ii) to exercise, directly or indirectly or through any proxy, trustee, or nominee, any voting or other right conferred by such Securities, and such Securities shall not for any purposes be included in the shares of capital stock of the Corporation entitled to vote, or (iii) to receive any remuneration in any form from the Corporation or any Affiliated Company for services rendered or otherwise.

Section 3. *Notices.* All notices given by the Corporation pursuant to this Article, including Redemption Notices, shall be in writing and may be given by mail, addressed to the Person at such Person's address as it appears on the records of the Corporation, with postage thereon prepaid, and such notice shall be deemed given at the time deposited in the United States mail. Written notice may also be given personally or by telegram, facsimile, telex or cable and such notice shall be deemed to be given at the time of receipt thereof, if given personally, or at the time of transmission thereof, if given by telegram, facsimile, telex or cable.

Section 4. *Indemnification.* Any Unsuitable Person and any Affiliate of an Unsuitable Person shall indemnify and hold harmless the Corporation and its Affiliated Companies for any and all losses, costs, and expenses, including attorneys' fees, incurred by the Corporation and its Affiliated Companies as a result of, or arising out of, such Unsuitable Person's or Affiliate's continuing Ownership or Control of Securities, the neglect, refusal or other failure to comply with the provisions of this Article VII, or failure to promptly divest itself of any Securities when required by the Gaming Laws or this Article VII.

Section 5. *Injunctive Relief.* The Corporation is entitled to injunctive or other equitable relief in any court of competent jurisdiction to enforce the provisions of this Article VII and each holder of the Securities of the Corporation shall

be deemed to have acknowledged, by acquiring the Securities of the Corporation, that the failure to comply with this Article VII will expose the Corporation to irreparable injury for which there is no adequate remedy at law and that the Corporation is entitled to injunctive or other equitable relief to enforce the provisions of this Article.

Section 6. *Non-exclusivity of Rights.* The Corporation's rights of redemption provided in this Article VII shall not be exclusive of any other rights the Corporation may have or hereafter acquire under any agreement, provision of the bylaws or otherwise.

Section 7. *Further Actions.* Nothing contained in this Article VII shall limit the authority of the board of directors to take such other action to the extent permitted by law as it deems necessary or advisable to protect the Corporation or its Affiliated Companies from the denial or threatened denial or loss or threatened loss of any Gaming License of the Corporation or any of its Affiliated Companies. Without limiting the generality of the foregoing, the board of directors may conform any provisions of this Article VII to the extent necessary to make such provisions consistent with Gaming Laws. In addition, the board of directors may, to the extent permitted by law, from time to time establish, modify, amend or rescind bylaws, regulations, and procedures of the Corporation not inconsistent with the express provisions of this Article VII for the purpose of determining whether any Person is an Unsuitable Person and for the orderly application, administration and implementation of the provisions of this Article VII. Such procedures and regulations shall be kept on file with the

Secretary of the Corporation, the secretary of its Affiliated Companies and with the transfer agent, if any, of the Corporation and any Affiliated Companies, and shall be made available for inspection by the public and, upon request, mailed to any holder of Securities. The board of directors shall have exclusive authority and power to administer this Article VII and to exercise all rights and powers specifically granted to the board of directors or the Corporation, or as may be necessary or advisable in the administration of this Article VII. All such actions which are done or made by the board of directors in good faith shall be final, conclusive and binding on the Corporation and all other Persons; *provided, however*, that the board of directors may delegate all or any portion of its duties and powers under this Article VII to a committee of the board of directors as it deems necessary or advisable.

Section 8. *Severability.* If any provision of this Article VII or the application of any such provision to any Person or under any circumstance shall be held invalid, illegal, or unenforceable in any respect by a court of competent jurisdiction, such invalidity, illegality or unenforceablilty shall not affect any other provision of this Article VII.

Section 9. *Termination and Waivers.* Except as may be required by any applicable Gaming Law or Gaming Authority, the board of directors may waive any of the rights of the Corporation or any restrictions contained in this Article VII in any instance in which the board of directors determines that a waiver would be in the best interests of the Corporation. The board of directors may terminate any rights of the Corporation or restrictions set forth in this Article VII to the extent that the board of directors determines that any such termination is in the best interests of the Corporation. Except as may be required by a Gaming Authority, nothing in this Article VII shall be deemed or construed to require the Corporation to repurchase any Securities Owned or Controlled by an Unsuitable Person or an Affiliate of an Unsuitable Person.

IN WITNESS WHEREOF, Wynn Resorts, Limited has caused these second amended and restated articles of incorporation to be executed in its name by its Chief Executive Officer this 16 day of September, 2002.

/s/ STEPHEN A. WYNN

Stephen A. Wynn

QuickLinks

SECOND AMENDED AND RESTATED ARTICLES OF INCORPORATION OF WYNN RESORTS, LIMITED

EXHIBIT "T"

8-K 1 d400600d8k.htm FORM 8-K

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM 8-K

CURRENT REPORT

PURSUANT TO SECTION 13 OR 15(D) OF THE SECURITIES EXCHANGE ACT OF 1934, AS AMENDED

Date of Report (Date of earliest event reported): August 24, 2012

WYNN RESORTS, LIMITED
(Exact name of registrant as specified in its charter)

Nevada	000-50028	46-0484987
(State or other jurisdiction of incorporation)	(Commission File Number)	(IRS Employer Identification No.)

3131 Las Vegas Boulevard South Las Vegas, Nevada	89109
(Address of principal executive offices)	(Zip Code)

(Registrant's telephone number, including area code) (702) 770-7555

Not Applicable
(Former name or former address, if changed since last report.)

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

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

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

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

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

Item 8.01. Other Events.

Wynn Resorts, Limited (the "Company") will hold its 2012 Annual Meeting of Stockholders (the "Annual Meeting") on November 2, 2012 in Las Vegas, Nevada. Stockholders of record of the Company at the close of business on September 12, 2012, the record date fixed for the Annual Meeting, will be entitled to notice of and to vote at the Annual Meeting.

Pursuant to the Company's Bylaws, notice of any proposal to be presented by any stockholder at the Annual Meeting must be delivered to the secretary of the Company at its principle office not later than September 3, 2012. The Company also will consider any proposal submitted not later than September 3, 2012 to have been timely received for purposes of Rule 14a-8 under the Securities Exchange Act of 1934.

SIGNATURES

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

WYNN RESORTS, LIMITED

Date: August 24, 2012

By: /s/ Matt Maddox
Name: Matt Maddox
Title: Chief Financial Officer and Treasurer

OPPS

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DISTRICT COURT

CLARK COUNTY, NEVADA

WYNN RESORTS, LIMITED, a Nevada Corporation,

Plaintiff,

vs.

KAZUO OKADA, an individual, ARUZE USA, INC., a Nevada corporation, and UNIVERSAL ENTERTAINMENT CORP., a Japanese corporation,

Defendants.

Case No.: A-12-656710-B

Dept. No.: XI

WYNN PARTIES' OPPOSITION TO MOTION FOR PRELIMINARY INJUNCTION

Date of Hearing: October 2, 2012

Time of Hearing: 8:30 a.m.

The Wynn Parties respectfully submit this opposition to the motion for a preliminary injunction filed by Aruze USA, Inc. and Universal Entertainment Corp.[1] The Wynn Parties also join in the arguments presented in opposition being submitted today by Stephen A. Wynn.

I. INTRODUCTION

Seven months ago, the Board of Directors of Wynn Resorts redeemed the Wynn Resorts stock held by Aruze because the Board had received unrebutted evidence of serious misconduct by Aruze's controlling stockholder, Kazuo Okada, and entities controlled by him, including Aruze. These shares were redeemed in exchange for a promissory note pursuant to express procedures contained in Article VII of the Wynn Resorts Articles of Incorporation. Article VII gives the Wynn Board the discretionary power to redeem the shares of a stockholder it deems to be an "Unsuitable Person" as defined in the Articles, most relevantly where the Board determines that the continued ownership of the shares would jeopardize Wynn Resorts' existing gaming licenses or opportunities for additional licenses. Now, Aruze has applied to this Court for a preliminary injunction that, if granted, would require the Company to re-issue shares to Aruze and reinstate its share ownership. As demonstrated herein and by the evidence submitted in the accompanying affidavits of former Nevada Governor Robert Miller and David Arrajj[2] (as well as the affidavit of Stephen A. Wynn), there is no basis whatsoever for the extraordinary relief that Aruze seeks.

In its motion, Aruze expressly does not challenge the evidentiary basis on which the Wynn Board acted on February 18, 2012 (*i.e.*, the written report of former FBI Director Louis Freeh), and does not challenge the general validity of the provisions in the Articles that expressly give the Board discretionary power to redeem shares. (Aruze Br. at 17 n.15.) It is no surprise that Aruze does not challenge the *merits* of the Wynn Board's decision to redeem its shares, since at no time

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[1] The "Wynn Parties" are plaintiff-counterdefendant Wynn Resorts, Limited and counterdefendants Linda Chen, Russell Goldsmith, Ray R. Irani, Robert J. Miller, John A. Moran, Marc D. Schorr, Alvin V. Shoemaker, Kimmarie Sinatra, D. Boone Wayson, and Allan Zeman. The movants will be referred to collectively herein as "Aruze."

[2] *See* Affidavit of Governor Robert J. Miller, dated September 20, 2012 ("Miller Aff."); Affidavit of David R. Arrajj, dated September 20, 2012 ("Arrajj Aff."). The various exhibits submitted with these affidavits are referred to herein as "Ex. __" (*e.g.*, "Miller Aff. Ex. __").

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before, during, or after Mr. Freeh rendered the results of his investigation to the Wynn Board has Mr. Okada proffered any substantive defense of his conduct. The Freeh investigation found, among other things, that "Mr. Okada, his associates and companies appear to have engaged in a longstanding practice of making payments and gifts to his two chief gaming regulators at the Philippines Amusement and Gaming Corporation [the Philippine government regulator]," as well as their families and associates. Further, Mr. Freeh found that "Mr. Okada has stated his personal rejection of Wynn Resorts anti-bribery rules and regulations, as well as legal prohibitions against making such payment to government officials."[3]

In short, the Wynn Board was confronted with unchallenged evidence from an unimpeachable source that a major stockholder of the company was engaged in illicit conduct. This, in turn, jeopardized Wynn Resorts' own licensing status and opportunities. The Board had no choice but to take action, and the Company's Articles of Incorporation prescribed the action to take. The remedy provided for by the Articles was no secret to anyone since it had been in place and publicly disclosed since 2002. Indeed, it was printed in bold capital letters on Aruze's own former stock certificates and reviewed by the Nevada State Gaming Control Board in early 2004 in connection with Wynn Resorts' application for registration as a publicly traded gaming corporation.

Despite all of this, Aruze seeks to have this Court — seven months after the redemption occurred and became effective — override the business judgment of the Wynn Board, reverse its decision, and order the re-issuance of shares to Aruze. In support of its motion, Aruze offers no evidence whatsoever. Even putting aside the legal insufficiency of its claims, Aruze comes into this Court seeking sweeping relief without submitting a single piece of sworn testimony: There is no affidavit from Mr. Okada, and there is no affidavit from *any* fact witness in support of Aruze's claims. There is only a single attorney's affidavit. Aruze's request that this Court exercise its extraordinary injunctive powers on this non-existent factual record should be rejected, even before the arguments advanced by Aruze are addressed.

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[3] (Miller Aff. Ex. 1 (Freeh Report) at 10.)

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Aruze contends that its shares should be re-issued because the redemption was a "sham." The basis for this claim is that Wynn Resorts gave Aruze a promissory note in exchange for its shares, and that there are certain circumstances where even a debtholder can be deemed "unsuitable" under Nevada gaming law. But the fact is that the danger to Wynn Resorts' licensing status posed by having Aruze as a 20% stockholder is significantly greater than having Aruze as a mere debtholder. The regulations and regulatory practices of the Nevada Gaming Commission have recognized this distinction. And, while the Wynn Resorts Articles of Incorporation — which have expressly permitted redeemed shares to be exchanged for a promissory note since Wynn Resorts became a public company in 2002 — were submitted to the Nevada State Gaming Control Board for review in 2004, the Nevada gaming regulators have never *at any time* raised an objection to the provision allowing for redemption via a note. Moreover, in the seven months since the Commission was informed that Aruze had become a Wynn Resorts' debtholder, the Commission has never suggested to the Company that this raises any issue.

Finally, while Aruze contends that the purpose of its motion is to permit it to engage in a proxy contest to attempt to elect two directors to the Wynn Board, the relief it seeks is simply not appropriate in a preliminary injunction context. To compel Wynn Resorts to re-issue shares to Aruze is not relief that maintains the status quo — it is a mandatory injunction that alters the status quo irreversibly. Re-issuing the shares would also endanger Wynn Resorts' licensing status, a potential harm to the Company and its public stockholders and employees that cannot be outweighed by any harm to Aruze from being unable to nominate two candidates for seats on a 12-member board. And it is an imposition on this Court for Aruze to seek to have these issues resolved on an emergency basis, when Aruze waited over seven months before seeking any relief with respect to a transaction that was completed on February 18, 2012.

For all the reasons set forth herein, the motion should be denied in its entirety.[4]

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[4] Aruze's meritless claim that the redemption provisions in the Wynn Resorts Articles of Incorporation do not apply to Aruze's shares is addressed in Mr. Wynn's opposition, and the Wynn Parties incorporate the arguments made therein by reference.

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II. STATEMENT OF FACTS

A. Wynn Resorts and its Board of Directors.

Wynn Resorts, Limited ("Wynn Resorts" or "the Company") operates resort casinos in Las Vegas and in the Macau Special Administrative Region of the People's Republic of China ("Macau"). Wynn Resorts was organized as a Nevada corporation on June 3, 2002, and conducted an initial public offering ("IPO") of common shares on October 25, 2002. (Wynn Aff. ¶¶ 26, 32 & Ex. 10.)[5] Those shares trade on the NASDAQ Global Select Market under the symbol "WYNN."

The Board of Directors of Wynn Resorts is comprised of twelve members. Excluding defendant Kazuo Okada, eight of Wynn Resorts' eleven directors have no employment relationship with the Company. (Miller Aff. ¶ 3.)

B. The Redemption Provisions in the Wynn Resorts Articles of Incorporation.

In making its unsuitability determination and redeeming Aruze's shares, the Wynn Board acted pursuant to Article VII of the Wynn Resorts Articles of Incorporation. Article VII provides that if a Wynn Resorts stockholder is determined to be an "Unsuitable Person" — whether by a gaming regulator or by the Wynn Board of Directors in its sole discretion — then Wynn Resorts shall have the power to redeem any shares held by that "Unsuitable Person" or its affiliates. (Miller Aff. Ex. 2, at Art. VII, § 2.) Section 2 of Article VII provides, in relevant part:

> Finding of Unsuitability. (a) The Securities Owned or Controlled by an Unsuitable Person or an Affiliate of an Unsuitable Person shall be subject to redemption by the Corporation, out of funds legally available therefor, by action of the board of directors, to the extent required by the Gaming Authority making the determination of unsuitability or to the extent deemed necessary or advisable by the board of directors. . . .

(Miller Aff. Ex. 2, at Art. VII, § 2(a).)

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[5] References herein to "Wynn Aff." are to the affidavit of Stephen A. Wynn, dated September 20, 2012, which Mr. Wynn has submitted to the Court in connection with his opposition to Aruze's application.

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"Unsuitable Person" is a defined term in the Wynn Resorts Articles of Incorporation:

> "Unsuitable Person" shall mean a Person who (i) is determined by a Gaming Authority to be unsuitable to Own or Control any Securities or unsuitable to be connected or affiliated with a Person engaged in Gaming Activities in a Gaming Jurisdiction, or (ii) causes the Corporation or any Affiliated Company to lose or to be threatened with the loss of any Gaming License, or (iii) in the sole discretion of the board of directors of the Corporation, is deemed likely to jeopardize the Corporation's or any Affiliated Company's application for, receipt of approval for, right to the use of, or entitlement to, any Gaming License.

(Miller Aff. Ex. 2, at Art. VII, § 1(l).)[6] Pursuant to this definition, any stockholder who in the Wynn Board's "sole discretion" is "deemed likely to jeopardize" the Company's existing gaming licenses or the Company's ability to secure additional gaming licenses in the future qualifies as an "Unsuitable Person," and its shares become subject to redemption. (Miller Aff. Ex. 2, at Art. VII, § 1(l)(iii).) In addition, the term "Unsuitable Person" also applies to any stockholder who is found unsuitable through an administrative determination by a gaming regulator, or who causes Wynn Resorts to be explicitly threatened with the loss of a gaming license. (Miller Aff. Ex. 2, at Art. VII, § 1(l)(i), (ii).)

In the event that it redeems shares owned by an "Unsuitable Person" pursuant to the Articles of Incorporation, the Wynn Board must determine the "Redemption Price" to be paid for the redeemed shares. (Miller Aff. ¶ 26.) Article VII provides that unless a gaming regulator mandates that a particular price be paid, the price should be an "amount determined by the board of directors to be the fair value of the Securities to be redeemed." (Miller Aff. Ex. 2, at Art. VII, § 1(j).) In paying this "Redemption Price," the Wynn Board has the discretion to compensate the unsuitable stockholder with either cash or a ten-year promissory note with a prescribed interest rate of 2% per year (or some combination of the two). (Miller Aff. Ex. 2, at Art. VII, § 1(j).)

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[6] The Articles of Incorporation define the term "Gaming Licenses" to include "all licenses, permits, approvals, authorizations, registrations, findings of suitability, franchises, concessions and entitlements issued by a Gaming Authority necessary for or relating to the conduct of Gaming Activities." (Miller Aff. Ex. 2 § 1(e).)

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The underlying basis for these provisions is the basic, fundamental Nevada public interest in the "probity" of gaming licensees and their associates. (*See* Arrajj Aff. ¶¶ 9-16.)

C. The Investigation of Mr. Okada and the Redemption of Aruze's Shares.

1. The Wynn Resorts Compliance Committee retains Louis Freeh to investigate Mr. Okada's conduct in the Philippines and elsewhere.

Since sometime in 2007 or 2008, Mr. Okada has been engaged in promoting and financing a projected multi-billion-dollar casino resort to be located in the Philippines. (Miller Aff. ¶ 6.) At a meeting of the Wynn Board held on November 1, 2011, former Nevada Governor Robert Miller, the Chairman of the Wynn Resorts Compliance Committee, discussed the results of two independent investigations into Mr. Okada's activities in the Philippines. (Miller Aff. ¶¶ 14-15.) These investigations were undertaken as a result of concerns about the general compliance environment in the Philippines, a country in which corruption is considered widespread, and the risk that Mr. Okada's efforts to develop a casino resort there would create compliance-related problems for Wynn Resorts. (Miller Aff. ¶¶ 7-8, 11-12.)

Governor Miller reported to the Wynn Board that the evidence uncovered prior to November 1, 2011 raised questions about Mr. Okada's suitability as a significant stockholder of a Nevada gaming corporation. (Miller Aff. ¶¶ 14-15.) Governor Miller advised the Board that, in light of the preliminary findings, the Compliance Committee intended to retain Louis Freeh of Freeh Sporkin & Sullivan, LLP, a former Director of the FBI, to conduct a full investigation of Mr. Okada's conduct in the Philippines and elsewhere. (Miller Aff. ¶ 15.) Following Governor Miller's presentation, the Wynn Board ratified the Compliance Committee's decision to retain Mr. Freeh to conduct such an investigation and produce a report. (Miller Aff. ¶ 16.)

Mr. Freeh's work involved intensive investigative efforts over the next three and a half months. (Miller Aff. ¶ 17.) While Mr. Okada initially seemed reluctant to be interviewed, Mr. Okada ultimately participated in a full-day interview by Mr. Freeh in Tokyo on February 15, 2012. (Miller Aff. ¶ 19.)

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2. *The Wynn Board determines that Mr. Okada, Aruze, and Universal are "Unsuitable Persons" within the meaning of the redemption provisions in the Articles of Incorporation.*

Mr. Freeh presented the results of his investigation to the Wynn Board at a Board meeting held on February 18, 2012. In addition to providing the directors with a 47-page written report detailing his findings (the "Freeh Report"), Mr. Freeh made an extensive oral presentation at the meeting. (Miller Aff. ¶ 22 & Ex. 1 (Freeh Report).) Mr. Freeh described the scope of his investigation, reported on impressions of the personal interview of Mr. Okada in Tokyo, and answered questions from the directors. (Miller Aff. ¶¶ 20, 22.) As reflected in the Freeh Report, Mr. Freeh advised the Board that Mr. Okada had not presented any exculpatory evidence — that is, evidence that would tend to contradict Mr. Freeh's findings — and that Mr. Okada's broad denials of personal involvement in any misconduct were not credible in light of the evidence that Mr. Freeh had uncovered. (Miller Aff. ¶ 20 & Ex. 1 at 47.)

The Board meeting then adjourned for two hours to give the directors who had executed a confidentiality agreement an opportunity to review the written Freeh Report. (Miller Aff. ¶ 22.) That report includes evidence of the following actions and statements regarding Mr. Okada:

- "Mr. Okada, his associates and companies appear to have engaged in a longstanding practice of making payments and gifts to his two (2) chief gaming regulators at the Philippines Amusement and Gaming Corporation," as well as their families and associates, in substantial amounts. (Miller Aff. Ex. 1 (Freeh Report) at 1.)

- "In one such instance in September 2010, Mr. Okada . . . paid the expenses for a luxury stay at Wynn Macau by [PAGCOR] Chairman Naguiat," his family, and "other senior PAGCOR officials. . . . Mr. Okada and his staff intentionally attempted to disguise this particular visit by Chairman Naguiat by keeping his identity 'Incognito' and attempting to get Wynn Resorts to pay for the excessive costs of the chief regulator's stay, fearing an investigation." (*Id.* at 2.)

- "[D]espite being advised by fellow Wynn Resorts Board members and Wynn Resorts counsel that payments and gifts to foreign government officials are strictly prohibited" — including under the Wynn Resorts Code of Business Conduct and Ethics — "Mr. Okada has insisted that there is nothing wrong with this practice in Asian countries." (*Id.* at 10.)

- "Mr. Okada has stated his personal rejection of Wynn Resorts anti-bribery rules and regulations, as well as legal prohibitions against making such payments to government officials, to fellow Wynn Resorts Board members." (*Id.*)

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- Mr. Okada has "refus[ed] to receive Wynn Resorts requisite FCPA training provided to other Directors" and "fail[ed] to sign an acknowledgement of understanding of Wynn Resorts Code of Conduct." (*Id.* at 2.)

When the meeting reconvened, the members of the Wynn Board engaged in an extensive discussion of the contents of the Freeh Report. (Miller Aff. ¶ 23.) During the course of its deliberations, the Wynn Board received advice from two attorneys expert in the applicable Nevada gaming statutes and regulations. (Miller Aff. ¶ 23.) At the conclusion of these discussions, in light of the findings in the Freeh Report, Mr. Freeh's presentation at the meeting, and the advice of expert gaming counsel, the Wynn Board (excluding Mr. Okada) unanimously determined that Mr. Okada, Aruze, and Universal were "Unsuitable Persons" whose continued affiliation with Wynn Resorts through Aruze's stock ownership was "likely to jeopardize" the Company's existing and potential future gaming licenses. (Miller Aff. ¶ 23 & Ex. 4.)

3. The Wynn Board determines to pay the "Redemption Price" with a promissory note, as authorized by the Articles of Incorporation.

Under the terms of Article VII, the redemption price could be paid wholly in cash, or with a ten-year promissory note bearing annual interest rate of two percent, or by some combination of these two options. (Miller Aff. ¶ 25 & Ex. 2, at Art. VII, § 1(j).) The directors discussed with the chief financial officer of Wynn Resorts the effect on the Company's financial condition and flexibility under each of the alternatives. (Miller Aff. ¶¶ 25, 27.) The Wynn Board was also cognizant of its duties to the remaining stockholders of Wynn Resorts in determining the method of payment to be used. (Miller Aff. ¶ 27.) Based on all of these considerations, the Wynn Board (other than Mr. Okada) unanimously determined to pay the full amount of the redemption price by issuing a promissory note to Aruze. (Miller Aff. ¶¶ 27-28.) Consistent with the express provisions of Article VII of the Articles of Incorporation, the promissory note issued to Aruze was payable in ten years and carried an interest rate of 2% per year. (Miller Aff. Ex. 3.)[7]

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[7] Article VII required the Wynn Board to determine the "fair value" of Aruze's shares in setting the redemption price. (Miller Aff. ¶ 25 & Ex. 2, at Art. VII, § 1(j).) In that connection, the Wynn Board received advice from an outside financial advisor, Moelis & Company, which presented the Board with a written report containing an analysis of a fair valuation range for Aruze's shares, taking into consideration provisions in a stockholders agreement that prohibited

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4. The Wynn Board effects the redemption of Aruze's shares and the shares are cancelled.

Immediately following the meeting on February 18, 2012, the Wynn Board caused a "Redemption Notice" to be delivered to Aruze. (Miller Aff. ¶ 28 & Ex. 4.) The notice made clear that the "Redemption Date" was February 18, 2012 (Miller Aff. Ex. 4 § 2), and it contained a provision tracking the language in Article VII of Articles of Incorporation governing the "Surrender of Certificates" (Miller Aff. Ex. 4 § 5). That provision directed Mr. Okada, Aruze, and Universal to "surrender, or cause to be surrendered, to the Corporation's transfer agent any and all certificates evidencing the Securities owned of record by" them. (Miller Aff. Ex. 4 § 5.) A copy of the promissory note that the Company was issuing to Aruze as compensation for the redeemed shares was enclosed with the Redemption Notice. (Miller Aff. Ex. 4 § 4; *see* Miller Aff. Ex. 3 ("Redemption Price Promissory Note").)

Thereafter, on February 23, 2012, Wynn Resorts' official transfer agent American Stock Transfer, which maintains Wynn Resorts' stock transfer ledger, provided notice to the Company that the redemption of Aruze's shares was completed and that the shares had been cancelled. (Wynn Aff. ¶ 9.) The financial media followed suit so that, for example, Reuters and Bloomberg have reported the number of issued and outstanding shares of Wynn Resorts to be a figure reflecting the redemption. Wynn Resorts' SEC filings since February 18, 2012 have also reflected the effectiveness of the redemption. (Wynn Aff. ¶ 9.)

5. Wynn Resorts reports the Board's unsuitability determination and the redemption of Aruze's shares to gaming regulators.

On February 18, 2012, Wynn Resorts gave notice to the Nevada State Gaming Control Board that the Board had found Mr. Okada, Aruze, and Universal to be "Unsuitable Persons" and redeemed Aruze's shares on that basis pursuant to Article VII of the Wynn Resorts Articles of Incorporation. (Miller Aff. ¶ 29.) The Gaming Control Board was specifically advised that the

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Aruze from transferring its shares without the consent of Mr. Wynn and Ms. Wynn, as well as the overall size of Aruze's block of shares. (Miller Aff. ¶ 26.) Following its review of the Moelis analysis, the Wynn Board (other than Mr. Okada) unanimously determined to apply a blended 30% discount to the public trading price of the Company's shares. (Miller Aff. ¶ 26.)

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Wynn Board had determined to issue a promissory note to Aruze in exchange for the redeemed shares. (Miller Aff. ¶ 29.) To date, the Gaming Control Board has expressed no concern with respect to the Board's unsuitability determination, the corresponding redemption of Aruze's shares, or the form of payment that the Board determined to provide to Aruze. (Miller Aff. ¶ 29.)

III. ARGUMENT

A. Legal Standard and Evidentiary Requirements for Obtaining a Preliminary Injunction.

A party seeking a preliminary injunction must demonstrate a "reasonable likelihood of success on the merits" of its claim, and that the opposing "party's conduct, if allowed to continue, will cause irreparable harm for which compensatory relief is inadequate." *Boulder Oaks Cmty. Ass'n* v. *B&J Andrews Enters., LLC*, 125 Nev. 397, 403, 215 P.3d 27, 31 (2009). The movant "bears the burden" of establishing these prerequisites, *S.O.C., Inc.* v. *Mirage Casino-Hotel*, 117 Nev. 403, 408, 23 P.3d 243, 246 (2001), and "in the absence of testimony or exhibits establishing the material allegations of the complaint," an "application for a preliminary injunction [should be] denied." *Coronet Homes, Inc.* v. *Mylan*, 442 P.2d 901, 902 (1968); *accord Las Vegas Novelty, Inc.* v. *Fernandez*, 106 Nev. 113, 120, 787 P.2d 772, 776 (1990) (noting that an application "based solely on affidavits and a few exhibits . . . . may not be sufficient evidence to support an injunction").

What Aruze really seeks here is not a prohibitory preliminary injunction, but rather a *mandatory* preliminary injunction, a form of relief that is strongly disfavored. Aruze seeks an injunction that, among other things, "[p]rohibits Wynn Resorts . . . from acting . . . to deprive Aruze USA of any of its rights as a stockholder of Wynn Resorts." (Aruze Motion at 2.) Although it is superficially phrased in prohibitory terms, this request is actually mandatory in nature. An order granting this request would require Wynn Resorts to take affirmative acts to treat Aruze as though it remains a stockholder, and to take affirmative acts to accord Aruze all of the rights a stockholder would have. That would mean, in effect, reissuing the shares, counting votes cast by Aruze, and even — since the requested relief would require Wynn Resorts to accord Aruze "*any* . . . rights" a stockholder would have — including paying Aruze dividends.

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Aruze thus asks this Court to issue "injunctive relief that goes beyond preservation of the status quo, and has the effect of requiring affirmative action by the party enjoined." *Venetian Casino Resort, L.L.C.* v. *Local Joint Exec. Bd. of Las Vegas*, 45 F. Supp. 2d 1027, 1031 (D. Nev. 1999). There is "a serious question as to the propriety of granting preliminary injunctive relief" that thus "compel[s] [a] party … to take some other action to satisfy [the] rights" of another party, as opposed to "injunctive relief to preserve the status quo," because ordinarily the former "would require a trial on the merits." *Arnoff* v. *Katleman*, 75 Nev. 424, 432-34, 345 P.2d 221, 225-26 (1959). It is thus a settled principle of equity that a mandatory injunction "'is particularly disfavored,'" *Malo, Inc.* v. *Alta Mere Indus., Inc.*, No. 02:06-CV-01449-KJD-GWF, 2007 WL 1703454, at *2 (D. Nev. June 11, 2007) (citation omitted) — and "is *rarely* granted," *Alvarez* v. *Eden Twp. Hosp. Dist.*, 191 Cal. App. 2d 309, 312 (1961) (emphasis added).

As a result, "a very urgent case is required to justify a mandatory preliminary injunction," and "a clear case of prospective injury is indispensible." *Id.* Courts of equity should accordingly "deny such relief 'unless the facts and law clearly favor the moving party,'" such as when the merits are not "'doubtful'" and "'extreme or very serious damage will result'" if the requested relief is denied. *Malo*, 2007 WL 1703454, at *2 & n.4 (quoting *Martinez* v. *Matthews*, 544 F.2d 1233, 1243 (5th Cir. 1977), and quoting *Anderson* v. *United States*, 612 F.2d 1112, 1114 (9th Cir. 1980)).

B. <u>Aruze Was Not Exempt From the Redemption Provisions in the Articles of Incorporation</u>.

The Wynn Parties incorporate by reference the points and authorities contained in Point I of Mr. Wynn's opposition, which addresses Aruze's claim that it was exempt from the redemption provisions in the Wynn Resorts Articles of Incorporation. For all of the reasons stated therein, Aruze has not demonstrated a likelihood of success on the merits of this claim.

C. <u>Aruze Has Not Demonstrated a Likelihood of Success on the Merits of its Claim that the Wynn Board Breached its Fiduciary Duties in Effecting the Redemption</u>.

Having failed to demonstrate a likelihood of success on the merits of the claim that it was exempt from the redemption provisions in the Articles of Incorporation, Aruze is left to argue that

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the redemption was nevertheless unlawful because the Wynn Board's actions amounted to a breach of the directors' fiduciary duties. To demonstrate a likelihood of success on that claim, Aruze would need to present sufficient evidence to rebut the statutory presumption that, in effecting the redemption, the Wynn Board acted in good faith, on an informed basis, and in the best interests of the Company. NRS 78.138(3). As shown below, however, this application does not come close to making such a showing, and therefore Aruze cannot establish a likelihood of success on the merits of this claim either.

1. The statutory business judgment presumption.

The Nevada legislature has adopted an express statutory scheme that affords "protection" to "directors in conducting the corporation's affairs." *Shoen* v. *SAC Holding Corp.*, 122 Nev. 621, 632, 137 P.3d 1171, 1178-79 (2006). Nevada Revised Statute 78.138(3) establishes a presumption that directors, in deciding on business matters, "act in good faith, on an informed basis and with a view to the interests of the corporation." A related statutory provision establishes that "[i]n performing their [ ] duties, directors . . . are entitled to rely on information, opinions, [and] reports" that are presented to the board by, among others, "[c]ounsel" or "persons as to matters reasonably believed to be within the preparer's or presenter's professional or expert competence." NRS 78.138(2).

2. The Wynn Board was well informed and acted in the best interest of the Company and its stockholders.

In making its unsuitability determination and redeeming Aruze's shares pursuant to Article VII of the Articles of Incorporation, the Wynn Board was informed by the results of the investigation conducted by Mr. Freeh, its understanding of the probity and suitability standards imposed by various gaming jurisdictions, including Nevada, and the advice of expert gaming counsel. The specific issue the Board faced was whether Aruze's stock ownership was "likely to jeopardize" Wynn Resorts' existing gaming licenses, or its ability to obtain new licenses in the future. (Miller Aff. Ex. 2, at Art. VII, § 1(l)(iii).) The Articles of Incorporation committed this decision to the directors' "sole discretion" (Miller Aff. Ex. 2, at Art. VII, § 1(l)(iii)), and, as a

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matter of statutory law, the Wynn Board's exercise of that discretion was presumptively in accord with its fiduciary duties, *see* NRS 78.138(3).

Aruze argues that the Wynn Board is not entitled to the business judgment presumption because it acted with an improper "motive," namely, the "disenfranchisement of Aruze USA" and the removal of Mr. Okada as a "dissenting voice of the corporation." (Aruze Br. at 18.) According to Aruze, that there could be no jeopardy to the Company's gaming licenses in the absence of an actual regulatory determination of unsuitability, and in any event, exchanging Aruze's shares for a note failed to eliminate whatever threat may have existed. As discussed below (at pages 19-22), Aruze is wrong on both counts as a gaming law matter, and therefore this argument provides Aruze with no basis to overcome the statutory business judgment presumption.

Aruze's other attempts to overcome the presumption fare no better:

Duty of Care. A director's fiduciary duty of care "consists of an obligation to act on an informed basis" when taking action on behalf of the corporation. *Shoen*, 122 Nev. at 632, 137 P.3d at 1178. As noted above, NRS 78.138(3) provides that Nevada directors are presumed to act "on an informed basis" when making business decisions on behalf of the corporation.

In this case, the Wynn Board acted after receiving a report from former FBI Director Louis Freeh detailing Mr. Okada's improper conduct. The Board also received advice from expert gaming counsel, and at the conclusion of its deliberations, determined unanimously (apart from Mr. Okada) that Mr. Okada's conduct was "likely to jeopardize" the Company's gaming licenses and, on that basis, redeemed the shares owned by Aruze pursuant to the Articles. (*See* pages 8-9, *supra*.)

Against this record, Aruze makes two arguments for rebutting the presumption the Wynn Board acted on an informed basis. *First*, Aruze conclusorily asserts without any detail or support that the Freeh Report was "incomplete and fundamentally flawed," an apparent effort to cast doubt on the Board's reliance on that report. (Aruze Br. at 1.) But the controlling statutory standard is whether the directors had actual "knowledge" of facts that would cause reliance on the Freeh Report "to be unwarranted." NRS 78.138(2). Aruze has made no such showing. In fact, its brief expressly *declines* to address the evidence presented in the Freeh Report (Aruze Br. at 17

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n.15),[8] and Aruze has not supported its application with *any* exculpatory evidence (much less evidence that was brought to the Board's attention). In short, Aruze has presented nothing that would remotely suffice to deprive the Wynn Board of its statutory right to rely on the evidence of the Freeh Report.

Second, Aruze contends that the Wynn Board acted with "tremendous haste" and "without allowing any of the subjects to respond to the allegations." (Aruze Br. at 17.) Aruze seems to be arguing that if only Mr. Okada had been given more time to respond to the evidence uncovered by Mr. Freeh, the Wynn Board's determination might have been different. As noted above, however, Aruze's application does not identify any specific rebuttal evidence that Mr. Okada was prepared to offer that would have called Mr. Freeh's findings into question. Mr. Okada did not present any rebuttal evidence at his interview with Mr. Freeh in Tokyo, he did not present any rebuttal evidence at the Board meeting on February 18, and neither he nor Aruze have presented any rebuttal evidence either in their pleading in this case or in connection with Aruze's injunction application. Moreover, as discussed below (at pages 21-22), once the Wynn Board was presented with the evidence of Mr. Okada's misconduct contained in the Freeh Report, the Wynn Board was under an affirmative obligation to act promptly to address the regulatory risks posed by the persons that it had found to be unsuitable.

This contention also ignores the fact that Mr. Okada had weeks, if not months, to present exonerating evidence to Wynn Resorts. Aruze does not and cannot deny that Mr. Okada knew about the Freeh investigation well in advance of the presentation of the Freeh Report — Mr. Freeh had been trying to arrange Mr. Okada's interview for weeks in advance of February 18. (Miller Aff. ¶ 19.) There was no reason for Mr. Okada to wait until the Board was in session to "rebut" the concerns about his conduct. If he actually *had* any evidence to exonerate himself, he could have brought that evidence forward at any time during the investigation. Specifically, he could have presented it to Mr. Freeh at the interview in Tokyo, at which Mr. Okada was assisted

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[8] Aruze says that it "look[s] forward to addressing" the evidence in the Freeh Report "at trial," but explains that it has "not addressed those allegations here" because "it is not necessary for the Court to resolve [them] as part of this Motion." (Aruze Br. at 17 n.15.)

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by several senior lawyers from the Paul Hastings firm. (*See* Miller Aff. ¶¶ 19-20 & Ex. 1 (Freeh Report) at 36.) But, as the Freeh Report noted, Mr. Okada did not present any exculpatory evidence at that meeting, and Mr. Freeh concluded that Mr. Okada lacked credibility in the statements he did make concerning his conduct. (Miller Aff. ¶ 20 & Ex. 1 (Freeh Report) at 47.)

Duty of loyalty. "[T]he duty of loyalty requires the board and its directors to maintain, in good faith, the corporation's and its shareholders' best interests over anyone else's interests." *Shoen*, 122 Nev. at 632, 137 P.3d at 1178. Under NRS 78.138(3), in making business decisions, directors are presumed to act "in good faith" and "with a view to the interests of the corporation."

Aruze makes three arguments related to the issue of loyalty (apart from the meritless contention, discussed below, that the Wynn Board's actions must have been pretextual because the redemption supposedly failed to protect the Company's gaming licenses). *First*, Aruze asserts that "one Board member who voted in favor of the redemption has admitted in court filings that Wynn Resorts was not in imminent danger of losing any gaming licenses." (Aruze Br. at 1, 18.) Here, Aruze is purposefully mischaracterizing a statement made by Ms. Wynn in her answer to its counterclaim. Ms. Wynn has explained this point in a sworn declaration, which the Wynn Parties have submitted to the Court in support of their opposition. (*See* Declaration of Elaine P. Wynn ("E. Wynn Decl."), attached hereto as Exhibit 1.) As Ms. Wynn states in her declaration, the language from her answer that is quoted in Aruze's brief was intended to reflect Ms. Wynn's understanding that "no regulatory authority had rescinded or threatened to rescind a gaming license" granted to Wynn Resorts. (E. Wynn Decl. ¶ 3.) Ms. Wynn makes clear in her declaration, however, that she had voted for the redemption of Aruze's shares under a separate prong of Article VII of the Articles of Incorporation, "based on a showing that Mr. Okada was a person who was 'likely to jeopardize the Corporation's or any Affiliated Company's application for, receipt of approval for, right to the use of, or entitlement to, and Gaming License.'" (E. Wynn Decl. ¶ 5.)

Second, Aruze contends that the Wynn Board was conflicted because of its supposed desire to "further concentrate [Mr. Wynn's] control of the Company." (Aruze Br. at 18.) But Aruze has not provided a shred of evidence to support a claim that the Board — which is

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comprised of a majority of independent (*i.e.*, non-management) directors — was under the control of Mr. Wynn or acting to serve his interests. All that Aruze's brief offers on that score are conclusions, which do not suffice at the pleading stage, much less on an application for preliminary injunctive relief. *Cf. Aronson* v. *Lewis*, 473 A.2d 805, 816 (Del. 1984) (holding that the "shorthand shibboleth of 'dominated and controlled directors'" was insufficient to satisfy the particularized pleading requirement for demand futility allegations in a derivative action). And while Aruze has pleaded that the Board is dominated and controlled by Mr. Wynn because certain of the directors were nominated by Mr. Wynn (Aruze Second Am. Countercl. ¶ 36), as a matter of law, the mere fact that one director nominates another or causes him or her to be elected through stock ownership is insufficient to establish control or cast doubt upon the nominated director's independence, *Aronson*, 473 A.2d at 816 ("it is not enough to charge that a director was nominated by or elected at the behest" of the interested director).

In any case, this argument is based on a false premise, because Mr. Wynn's voting power with respect to the election of directors actually *decreased* as a result of the redemption from 35.9% to 19.8%. As described in the affidavit that Mr. Wynn has submitted in connection with his opposition brief, rather than "concentrat[ing] his control of the Company" (Aruze Br. at 18), the effect of the redemption was to place a substantially larger percentage of Wynn Resorts' outstanding shares in the hands of public stockholders whose votes are *not* subject to the 2010 Stockholders Agreement (Wynn Aff. ¶ 6). Thus, the claim that Mr. Wynn had a conflict in respect of the redemption because of a supposed desire to consolidate control of the Board must be rejected.[9]

Finally, Aruze attempts to tell a story that it is being punished for Mr. Okada's "dissent" with respect to the Wynn Board's approval of charitable pledge to the University of Macau at a

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[9] In any case, one director's conflict would be insufficient to deprive the Wynn Board as a whole of the statutory business judgment presumption. The presence of one or more conflicted directors does not overcome the presumption if a majority of the non-conflicted directors approved the transfer and were aware of the conflict. *See* NRS 78.140(2)(a) (providing that the statutory business judgment presumption will apply if the conflict "is known to the board" and the board approves the transaction "in good faith by a vote sufficient for the purpose without counting the vote or votes of the . . . interested director or directors").

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board meeting in April 2011. The story, however, is fiction. As the affidavits of both Mr. Wynn and former Governor Miller state, management, the Compliance Committee, and the Board all had substantial compliance-related concerns about Mr. Okada *before* the Macau pledge was made in May 2011. (Miller Aff. ¶¶ 6-10; Wynn Aff. ¶¶ 4-5.)

Those concerns first surfaced in 2010 when it became clear that Mr. Okada was proceeding with his efforts to develop a large gaming resort in the Philippines, a jurisdiction know for endemic corruption. (Miller Aff. ¶¶ 7-8; Wynn Aff. ¶ 5.) In the summer of that year, a senior executive of Wynn Resorts prepared a report on the business climate in the Philippines that raised questions about whether Mr. Okada's business involvement in that country might create compliance problems for Wynn Resorts. (Miller Aff. ¶ 7.) Thereafter, in early 2011, the Company retained an independent third-party firm to do preliminary investigative work concerning the Philippines and Mr. Okada's business activities there. (Miller Aff. ¶ 7.)

The Wynn Board discussed the results of that investigation at a board meeting on February 24, 2011. (Miller Aff. ¶ 8.) At that meeting, the independent members of the Board determined that any involvement in the Philippines would be inadvisable and made clear to Okada that it was greatly concerned about any direct or indirect involvement by the Company in projects in the Philippines. (Miller Aff. ¶ 8.) It was during this February 2011 meeting when Mr. Okada made the remark that, in his view, providing gifts to government officials was an accepted way of doing business in parts of Asia and that it was simply a matter of using third parties. (Miller Aff. ¶ 10.)

All of this pre-dated the April 2011 Board meeting at which Mr. Okada stated that he had a reservation about the Macau Pledge. In short, the notion that Mr. Okada objected to the Macau pledge and Wynn Resorts swung into action to "punish" him is belied by the facts and the chronology. Aruze has submitted no evidence to support its tale of retaliation — merely innuendo — and no evidence that the other eleven members of the Board would have been willing to go along with a program of "punishment." Instead, as is clearly set forth in both the Wynn and Miller affidavits, what led to the Freeh investigation were "red flags" about Mr. Okada's conduct that any responsible Board of a gaming company would have been negligent

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to ignore (Miller Aff. ¶¶ 6-14; Wynn Aff. ¶¶ 4-5), and what led to the redemption was the evidence that Freeh uncovered, which represented a clear threat to Wynn Resorts' gaming licenses (Miller Aff. ¶¶ 17-20, 22-24).

3. Aruze's stock ownership was "likely to jeopardize" the Company's gaming licenses, and the means of redemption addressed the risk that the Wynn Board had identified.

Aruze also argues that the Wynn Board *must* have acted for an improper purpose — that of "depriv[ing] Aruze USA of its rights as a stockholder — "[b]ecause the Board's attempt to exchange Aruze USA's shares for debt entirely failed to achieve its supposed objective – elimination of the potential for scrutiny of Wynn Resorts by the Nevada [Gaming] Commission." (Aruze Br. 16.) This is so, Aruze argues, because "the Nevada Commission may investigate a gaming licensee because of an affiliation with an unsuitable stockholder *or debtholder*," and the redemption "merely converted Wynn Resorts' largest stockholder into its largest debtholder." (Aruze Br. at 16-17 (citing NRS 463.643(7)).)

Aruze is wrong. The Nevada Gaming Control Act makes a significant distinction between stockholders and debtholders of publicly traded corporations like Wynn Resorts: it imposes *mandatory* suitability determinations for large *stockholders*, but makes such determinations *discretionary* for *debtholders*. Specifically, the Act provides that a "beneficial owner[] of more than 10 percent of any class of voting securities of a publicly traded corporation registered with the Commission ... *shall* apply to the Commission for a finding of suitability." NRS 463.643(4) (emphasis added). The statute thus provides that a 10 percent stockholder — like Aruze used to be — *must* apply to be found, and *must* be found, suitable. In contrast, a debtholder faces *no* such suitability requirement. The statute instead provides only that a debt holder "*may* be required to be found suitable *if the Commission has reason to believe that the person's acquisition of the debt security would otherwise be inconsistent with the declared policy of this state*." NRS 463.643(2) (emphasis added). In other words, the Gaming Commission exercises discretion as to debtholders, and the statute does not automatically require them to apply for a finding of suitability.

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This is an important distinction, and it makes perfect sense. A 10% equity holder may potentially have significant influence on the management of a corporation — influence that a typical debtholder will not have. Indeed, gaming regulators understand and rely on this statutorily-established and commonsensical distinction, just as Wynn Resorts did here. Regulators will therefore allow persons who could not hold voting stock to nonetheless hold debt, as shown in the accompanying affidavit of David Arrajj. (Arrajj Aff. ¶¶ 22-24.) This is also shown by the fact that the gaming regulators have now known of Aruze's status as a debtholder for seven months and have raised no issue.

Nor is there any merit to the other arguments that Aruze makes about Nevada gaming law. Aruze has asserted that an "association with an 'unsuitable' person would only conceivably create a problem for a gaming license after that person has been found by a gaming authority to be unsuitable." (Aruze Second Am. Countercl. ¶ 162.) "No law or regulation in Nevada," claims Aruze, "requires or even encourages gaming companies to redeem stock prior to a determination of unsuitability by the Nevada Commission," and so "the Company's gaming licenses never faced an imminent risk." (Aruze Br. at 17.) Aruze asserts that, "[b]y [thus] advancing its own premature 'judgment' as to a question of suitability, the Board disregarded the well-established procedures and authority of the Nevada Commission for no apparent reason." (Aruze Br. at 17.)

These contentions not only misstate what the Wynn Board did, but they also disregard important features of the Nevada regulatory scheme. As for what the Board did: the Board did not purport to make any "premature 'judgment' as to a question of suitability" as that term is understood under Nevada gaming law. Instead, in accordance with the Articles of Incorporation, the Wynn Board made a determination after receiving the Freeh Report that Aruze and Mr. Okada were "Unsuitable Persons" within the meaning of Article VII because Aruze's stock ownership was "likely to jeopardize" the Company's existing gaming licenses and its opportunities to obtain new licenses. Indeed, the effect of this on a specific opportunity was discussed by the Board at the February 18 meeting.

Beyond this, the actions the Wynn Board took *were* necessary to fulfill the Company's obligations under Nevada's gaming regulations. As far as suitability is concerned, gaming

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licensees and registrants are not, to borrow a phrase, "potted plants." They are not allowed to be. Far from refraining from "encouraging gaming companies to redeem stock prior to a determination of unsuitability by the Nevada Commission" (Aruze Br. at 17), Nevada law affirmatively requires licensees and registrants to take independent and proactive steps toward ridding themselves of unsuitable persons before gaming regulators have to do it for them. Indeed, for this reason, other public companies have "unsuitable person" and redemption provisions in their organizational documents that are essentially identical to the provisions in Article VII of the Wynn Resorts Articles of Incorporation (Arrajj Aff. ¶¶ 17-18).

In addition, as explained in the Arrajj affidavit, the Gaming Commission and Gaming Control Board, exercising authority under Gaming Commission Regulation 5.045, have ordered Wynn Resorts to maintain and follow a "Compliance Program" that has been reviewed and approved by the Commission and the Control Board. (Arrajj Aff. ¶¶ 11-15.) That program specifically states that its purpose is to mitigate the "dangers of unsuitable associations and compliance with regulatory requirements," and it defines an "Unsuitable Person" as anyone "that the Company determines is unqualified as a business associate of the Company or its Affiliates based on, without limitation, that Person's antecedents, associations, financial practices, financial condition, or business probity." (Arrajj Aff. Ex. 5 at 1, 4.) The Compliance Program affirmatively requires the Company's Compliance Committee to *investigate* all senior executives, directors, and key employees, "in order to protect the Company from becoming associated with an Unsuitable Person." (Arrajj Aff. Ex. 5 at 8.) The program also requires the Company to report to Nevada gaming authorities to keep them "advised of the Company's compliance efforts in Nevada and other jurisdictions." (Arrajj Aff. Ex. 5 at 1.) In particular, the Compliance Program requires that "any known acts of wrongdoing" by any executive or director that are reported to the Wynn Board must also be reported to the Chairman of the Nevada State Gaming Control Board within ten business days of the report to the Board. (Arrajj Aff. Ex. 5 at 11.)

Thus, under the Nevada gaming regulations, Wynn Resorts has an affirmative obligation to rid itself of potentially unsuitable persons before any regulator acts. Indeed, precisely because

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the Wynn Board had the tools at hand to deal with a probity problem itself, prior to any government action, the more incumbent it was upon the Wynn Board to move proactively.

4. The "compelling justification" standard that Aruze proposes has no application in these circumstances.

Aruze argues that in assessing the Wynn Board's decision to effect the redemption of its shares, the Court should disregard the business judgment presumption codified in NRS 78.138(3) and instead apply the "compelling justification" standard of review applied in *Blasius Industries, Inc.* v. *Atlas Corp.*, 564 A.2d 651, 661 (Del. Ch. 1988). Since no Nevada court has addressed *Blasius*, it is unclear whether a Nevada court would adopt the *Blasius* approach; but even if there were some hypothetical circumstance in which *Blasius* could be applied to a Nevada corporation, this is not that case.

Blasius involved a board decision that was taken in "immediate response" to a stockholder's effort to gain majority control of the board. One day after Blasius commenced a stockholder consent solicitation that, if successful, would have increased the size of the Atlas board from seven to fifteen and elected eight new directors nominated by Blasius, the Atlas board increased the size of the board to nine and installed two new directors. *Id.* at 652. The effect of the board's action was to "preclud[e] the holders of a majority of [Atlas]'s shares from placing a majority of new directors on the board . . . should they want to do so." *Id.* at 655. Based on a factual finding that the board had acted with the "primary purpose" of preempting the consent solicitation, *id.* at 652, the *Blasius* court held that the board's action was invalid absent a "compelling justification." *Id.* at 661.

The "compelling justification" standard of review is "rarely applied" by the Delaware courts, *Williams* v. *Geier*, 671 A.2d 1368, 1376 (Del. 1996), and only in the narrow circumstance where the "primary purpose of the board's action was to interfere with or impede exercise of the shareholder franchise." *Stroud* v. *Grace*, 606 A.2d 75, 92 (Del. 1992). No state court in Nevada has even cited the *Blasius* decision, much less applied the "compelling justification" standard that

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it announced, and there is substantial reason to doubt whether *Blasius* is compatible with the business judgment presumption embodied in NRS 78.138.[10]

But in any event, the facts in this case do not remotely warrant application of the *Blasius* standard to the Wynn Board's decision to redeem Aruze's shares. The record makes clear that the "primary purpose" of that Board decision was protecting the existing and potential future gaming licenses of Wynn Resorts, not impeding an upcoming stockholder vote. When the Board made its unsuitability determination in February 2012, no stockholder meeting had been scheduled, and no stockholder meeting was on the horizon. And the Compliance Committee had retained Mr. Freeh much earlier, in October 2011, which was months before Mr. Okada expressed any interest in running a slate of directors. *See Shamrock Holdings, Inc.* v. *Polaroid Corp.*, 559 A.2d 278, 286 (Del. Ch. 1989) (distinguishing *Blasius* on timing grounds; "the Management Transactions were being considered, reviewed and . . . negotiated, for several weeks, if not months, before Shamrock announced the proxy contest"). In short, there is nothing in the record to support the inference that the "primary purpose" of the Wynn Board's actions was to interfere with any stockholder election.[11]

Another essential distinction between *Blasius* and this case is that *Blasius* involved an effort to gain control of a board. Case law from Delaware makes clear that the *Blasius* standard has no application outside the context of a contest for majority control of the board of directors. *See, e.g., Stroud*, 606 A.2d at 92 (holding that *Blasius* was inapplicable because the board's

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[10] Aruze cites two decision from the Nevada federal court in which the "compelling justification" standard of review was applied, but those cases, like *Blasius* itself, bear no factual relation to the circumstances here. In *Hilton Hotels Corp.* v. *ITT Corp.*, 978 F. Supp. 1342 (D. Nev. 1997), in direct response to Hilton's announcement of a hostile tender offer and a proxy contest, the ITT board took a series of steps that collectively "ensure[d] that ITT shareholders will be absolutely precluded from electing a majority of the directors nominated under Hilton's proxy contest at the 1997 annual meeting." *Id.* at 1349. In *Shoen* v. *AMERCO*, 885 F. Supp. 1332 (D. Nev. 1994), the AMERCO board moved up the date of the annual meeting "for the purpose of interfering with free and fair voting by the shareholders, by incumbent managers afraid that they would lose an election held" on the originally scheduled date. *Id.* at 1344.

[11] Aruze's claim that the Board was motivated by a desire to interfere with the stockholder franchise is also inconsistent with the fact that the effect of the redemption was *actually* to *decrease* the percentage of shares that Mr. Wynn was entitled to vote from 36% to 19.5%. (Wynn Aff. ¶ 6.)

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actions were not in response to "any threat to its control"); *Mercier* v. *Inter-Tel, Inc.*, 929 A.2d 786, 809 (Del. Ch. 2007) ("Post-*Blasius* cases . . . display understandable discomfort about using such a stringent standard of review in circumstances when a stockholder vote has no bearing on issues of corporate control."); *In re MONY Group, Inc. S'holder Litig.*, 853 A.2d 661, 678 (Del. Ch. 2004) (noting that *Blasius* review is only "implicated" when "the board's control of the corporation is at play"). Here, "control" of the Wynn Board was not an issue: Wynn Resorts has a staggered board, and Aruze seeks at most two out of twelve seats.[12]

Finally, even if this Court were to determine that the *Blasius* standard should apply here, the Wynn Board's actions would easily satisfy the standard. The Freeh Report provided a strong basis for the Wynn Board to believe that Aruze's status as a stockholder of the Company was "likely to jeopardize" Wynn Resorts' licensing status and prospects, and protecting that status and those prospects was a "compelling justification" for the Board to take the action authorized by the Articles of Incorporation. Under any standard of review, the Board acted appropriately.

D. Granting Aruze the Preliminary Injunction it Seeks Would be Inequitable.

For all of the reasons set out above, Aruze has utterly failed to show *any* likelihood of success on the merits of its claim, much less demonstrate that the record "clearly favors" granting the preliminary mandatory relief that Aruze seeks. But even apart from that failure of proof, Aruze's motion should be denied because granting a preliminary injunction would otherwise be inequitable. This is so for several reasons: *First,* Aruze has failed to demonstrate that it will suffer irreparable harm. *Second*, the balance of hardships weighs against an injunction. *Third*, Aruze, having chosen to wait *seven months* to seek relief while it pursued a federal forum, is not

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[12] NRS 78.139 establishes a heightened standard of review that applies to director decisions made in the face of a "potential change in control of [the] corporation" that "impede[]" the stockholders' ability to remove directors. NRS 78.139(2). All this statute does – even in circumstances where it applies (and the Wynn Parties do not believe it applies here, given that the Wynn Board was not acting in the context of a potential change of control) – is require the board to have a reasonable perception of a threat and to take reasonably proportionate action in response. *Id.* The Wynn Board's actions would clearly satisfy this standard. Indeed, the Delaware case that formulated this test, *Unocal Corp.* v. *Mesa Petroleum Co.*, 493 A.2d 946 (Del. 1985), involved a board's decision to repurchase shares from the public in a way that harmed a single shareholder who was deemed a threat.

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entitled to relief under the doctrine of laches. *Fourth*, Aruze has unclean hands. *Fifth*, and finally, an injunction would greatly disserve the public interest.

1. Lack of irreparable harm. Aruze cannot show "a clear case of prospective injury" or that "extreme or very serious damage" would result if its motion is denied. It argues that the loss of "its fundamental right to participate meaningfully in [a] corporate election[]" automatically constitutes irreparable injury. (Aruze Br. at 19.) To begin with, the cases Aruze cites (Aruze Br. at 11) are inapposite: they involved circumstances where the status quo was that the parties seeking relief were actual stockholders at the time, and the stockholders were seeking injunctive relief that would allow them to vote the shares that they actually owned, relief that would thus prevent irreparable harm.[13] Here, in contrast, the status quo is that Aruze *no longer holds any shares* and has *no* right to vote. Aruze can suffer no irreparable harm by being denied the right to vote non-existent shares.

And even if it were still a stockholder, the only way in which Aruze could conceivably suffer "harm" is that, under the 2010 Stockholders Agreement, it would arguably have the right to designate two nominees for election to the Wynn Board. The inability to nominate such a small minority of directors cannot constitute irreparable harm.[14] In any event, even if that were not so, the harm to Aruze from the deprivation of the ability to designate two members of the Board would not be irreparable in the absence of an injunction: courts have the power to set aside director election results even after the fact if the election took place in violation of law.[15]

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[13] *See, e.g., Shoen* v. *AMERCO*, 885 F. Supp. 1332, 1352 (D. Nev. 1994) ("'the denial or frustration of the right of *shareholders* to vote their shares ... amounts to an irreparable injury'" (citation omitted; emphasis added)) (cited in Aruze Br. at 10), *vacated pursuant to settlement*, No. CV-N-94-475-ECR, 1995 WL 936692 (D. Nev. Feb. 10, 1995).

[14] *See H.F. Ahmanson & Co.* v. *Great W. Fin. Corp.*, No. Civ. A. 15650, 1997 WL 305824, at *11 (Del. Ch. June 3, 1997) (denial of ability to elect minority three directors prior to vote on merger held to be "in no sense irreparable").

[15] *See, e.g., Pantry Pride, Inc.* v. *Rooney*, 598 F. Supp. 891, 899 (S.D.N.Y. 1984) (finding no irreparable harm and denying preliminary injunction against shareholder vote because "the Court has the power . . . to set aside the election"); *Portnoy* v. *Cryo-Cell Int'l, Inc.*, 940 A.2d 43, 82 (Del. Ch. 2008) (setting aside election results and "order[ing] a prompt special meeting at which a new election will be held and presided over by a special master"); *Wright* v. *Cent. Cal. Water Co.*, 67 Cal. 532, 532-33 (1885) (affirming order setting aside election).

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2. Balance of hardships. Not only would denial of the injunction impose no harm upon, but granting the injunction could injure Wynn Resorts greatly. If Aruze's former shares are reissued, then approximately 20% of Wynn Resorts' stock will be in the hands of an entity that, on the basis of undisputed evidence, was found by the Board to be an "Unsuitable Person" to hold such stock. As Mr. Arrajj explains in his affidavit, that type of association with an entity that lacks the "probity" required by the Nevada regulations could seriously endanger Wynn Resorts' licensing status. (Arrajj Aff. ¶¶ 9-16.) And any adverse effect on the Company's licensing status would, of course, be incredibly damaging to Wynn Resorts' business.

This constitutes another basis for the denial of the requested injunction. "In considering preliminary injunctions, courts also weigh the potential hardships to the . . . parties." *Univ. & Cmty. Coll. Sys.* v. *Nevadans for Sound Gov't*, 120 Nev. 712, 721, 100 P.3d 179, 187 (2004). And "[w]here ... the effect of the injunction would be disastrous to an established and legitimate business though its destruction or interruption in whole or in part, strong and convincing proof of the right on the part of the complainant, and of the urgency of his case, is necessary to justify an exercise of the injunctive power." *Rhodes Mining Co.* v. *Belleville Placer Mining Co.*, 32 Nev. 230, 106 P. 561, 562 (1910). Here, the balance of hardship strongly favors denial of preliminary relief.

3. Laches. Beyond this, granting an injunction here would be inequitable in light of Aruze's unjustified delay in bringing its motion. Its shares were redeemed seven months ago, and it was well aware then that Wynn Resorts must hold a stockholders' meeting annually for the election of directors. It could have made its application for relief months ago. Instead, it wasted time pursuing an improper removal of this case to the federal court – which actually imposed *sanctions* upon Aruze for its unreasonable conduct. In the meantime, Wynn Resorts and the investing public have come to rely on the fact that Wynn Resorts had rid itself of the regulatory problems that the Company's relationship with Aruze and Mr. Okada could engender. This "unreasonable delay" on Aruze's part constitutes laches. *Building & Constr. Trades Council of N. Nev.* v. *Public Works*, 108 Nev. 605, 610-11, 836 P.2d 633, 636-37 (1992) (one-month delay

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constitutes laches); *Carson City* v. *Price*, 113 Nev. 409, 411, 934 P.2d 1042, 1043 (1997) (eight-month delay constitutes laches).

4. Unclean hands. Equitable relief should also be denied because of Aruze's unclean hands. "The unclean hands doctrine generally 'bars a party from receiving equitable relief because of that party's own inequitable conduct.'" *Las Vegas Fetish & Fantasy Halloween Ball, Inc.* v. *Ahern Rentals, Inc.*, 124 Nev. 272, 275, 182 P.3d 764, 766 (2008) (citation omitted). Here, it was Aruze's principal's improper conduct — as reflected by the unrebutted evidence of the Freeh Report — that led to circumstances from which Aruze now asks this Court for relief. Aruze has not come to this Court with clean hands, and is therefore not entitled to relief.

5. Public interest. Finally, "[i]n considering preliminary injunctions, courts also weigh . . . the public interest." *Univ. & Cmty. Coll. Sys.*, 120 Nev. at 721, 100 P.3d at 187. Here, the public interest is reflected in the regulatory structure that the State of Nevada has erected for the gaming industry. Everything that Wynn Resorts did furthered the declared public policy of this State, and what Aruze asks this Court to do now is to undo it all. That would surely be inimical to the public interest.

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IV. CONCLUSION

For the foregoing reasons, as well as the reasons stated in the opposition submitted by Stephen A. Wynn, Aruze's application for injunctive relief should be denied in its entirety.

DATED this 20th day of September, 2012.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of Pisanelli Bice, PLLC, and that on this 20th day of September, 2012, I caused to be sent via United States Mail, postage prepaid, true and correct copies of the foregoing **WYNN PARTIES' OPPOSITION TO MOTION FOR PRELIMINARY INJUNCTION** properly addressed to the following:

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EXHIBIT 1

DECLARATION OF ELAINE P. WYNN

ELAINE P. WYNN, declares as follows:

1. I am over the age of eighteen and am competent to make this Declaration. This Declaration is based upon my personal knowledge unless otherwise so stated, and if called upon to testify, I would testify as set forth herein.

2. In its Motion for Preliminary Injunction, Aruze USA, Inc. ("Aruze") and Universal Entertainment Corp. ("Universal") claim that I admitted "Wynn Resorts was not in imminent danger of losing any gaming licenses." (Prelim. Inj. Mem. at 1.) This is not true.

3. Aruze and Universal alleged in their First Amended Counterclaim that one of the bases upon which the redemption of Wynn Resorts stock could take place was a showing that a person had caused the corporation or its affiliates "to lose or to be threatened with the loss of any Gaming License" and that this had not occurred. (¶161.) In my Answer, I admitted that this was not the prong of the Articles of Incorporation upon which I understood the Board to have acted in effecting the redemption: specifically, I admitted that the company and its affiliates "have not lost, and have not been threatened with the loss of, a gaming license, and that she did not understand the redemption to be based on such a loss or threatened loss." (Answer ¶161.) The basis for this statement was my understanding that no regulatory authority had rescinded or threatened to rescind a gaming license.

4. I understood that the redemption took place under the prong of the Articles of Incorporation that authorized redemption where a person, "in the sole discretion of the board of directors of the Corporation, is deemed likely to jeopardize the Corporation's or any Affiliated Company's application for, receipt of approval for, right to the use of, or entitlement to, any Gaming License." This is consistent with Wynn Resorts' complaint against Okada. (Complaint ¶ 76.) Although Okada alleges that no such showing was made (First Amended Counterclaim ¶163), I denied that allegation (Answer ¶163).

5. In short, I did not admit that Wynn Resorts was not in "imminent danger" of losing a license, only that no such revocation had been "threatened" by a gaming authority. I voted for the redemption based on a showing that Mr. Okada was a person who was "likely to jeopardize

the Corporation's or any Affiliated Company's application for, receipt of approval for, right to the use of, or entitlement to, any Gaming License."

I declare under penalty of perjury that the foregoing is true and correct.

Dated this 10th day of September, 2012.

Elaine P. Wynn

Elaine P. Wynn

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DISTRICT COURT

CLARK COUNTY, NEVADA

WYNN RESORTS, LIMITED, a Nevada Corporation,

Plaintiff,

vs.

KAZUO OKADA, an individual, ARUZE USA, INC., a Nevada corporation, and UNIVERSAL ENTERTAINMENT CORP., a Japanese corporation,

Defendants.

Case No.: A-12-656710-B

Dept. No.: XI

AFFIDAVIT OF DAVID R. ARRAJJ IN SUPPORT OF WYNN PARTIES' OPPOSITION TO MOTION FOR PRELIMINARY INJUNCTION

Date of Hearing: October 2, 2012

Time of Hearing: 8:30 a.m.

STATE OF NEVADA)
ss:
COUNTY OF CLARK)

DAVID R. ARRAJJ, being duly sworn, deposes and says:

1. I am a resident of Clark County, Nevada. I make this affidavit based upon personal knowledge unless otherwise so stated and, if called to testify as a witness, could testify competently to the contents hereof.

2. I am a shareholder in the law firm of Brownstein Hyatt Farber Schreck, LLP ("BHFS"), and I am a member of the State Bar of Nevada. My principal area of practice is gaming law, and I have acted as gaming law counsel to Wynn Resorts, Limited ("Wynn Resorts") both generally and in connection with matters relating to Kazuo Okada, Aruze USA, Inc. ("Aruze"), and Universal Entertainment Corporation ("Universal"). Before joining BHFS, I served as corporate counsel for Park Place Entertainment Corporation and Hilton Gaming Corporation, as vice president and general counsel of Bally's Las Vegas, as a Deputy Attorney General for the New Jersey Division of Gaming Enforcement, and as Special Counsel for Licensing and Director of the License Division of the New Jersey Casino Control Commission.

3. I respectfully submit this affidavit in opposition to the motion of defendants and counterclaimants Aruze and Universal, and specifically to respond to certain incorrect factual assertions made in support of that motion and in the counterclaims in this case.

4. In particular, Aruze and Universal assert that Wynn Resorts acted improperly in redeeming Aruze's shares in the absence of any determination by Nevada gaming authorities that Okada was an "unsuitable person" under Nevada gaming law. Aruze and Universal argue that Wynn Resorts, "[b]y [thus] advancing its own premature 'judgment' as to a question of suitability, the Board disregarded the well-established procedures and authority of the Nevada Commission for no apparent reason." Aruze Br. at 17. Aruze and Universal also assert that "association with an 'unsuitable' person would only conceivably create a problem for a gaming license after that person has been found by a gaming authority to be unsuitable." Aruze Second Amended Counterclaim ¶ 162.

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5. These assertions are incorrect, and they misconceive the basis upon which Wynn Resorts' board acted to redeem the Aruze shares as well as Wynn Resorts' obligations to comply with the gaming law of Nevada.

6. To begin with, the Wynn Resorts board did not purport to make any "premature 'judgment' as to a question of suitability" as that term is understood under Nevada gaming law. Instead, it made a determination that Okada was an "Unsuitable Person" as that term is specifically defined in Wynn Resorts' Articles of Incorporation, which are attached as Exhibit 1 to this affidavit.

7. Article VII of Wynn Resorts' Articles of Incorporation, entitled "Compliance with Gaming Laws," defines an "Unsuitable Person" not solely as someone who has been found to be unsuitable by gaming regulators, but rather alternatively as someone who

> in the sole discretion of the board of directors of the Corporation, is *deemed likely to jeopardize* the Corporation's or any Affiliated Company's application for, right to the use of, or entitlement to, any Gaming License.

Exhibit 1, at Art. VII, § 1(l) (emphasis added).

8. In 2004, Wynn Resorts and Wynn Las Vegas, LLC filed applications for registration as publicly traded corporations (the "2004 Applications"), which were approved by the Nevada Gaming Commission on March 24, 2005. The Nevada Gaming Control Board reviewed the Wynn Resorts Articles of Incorporation in early 2004 as part of its investigation into the 2004 Applications. Further, as part of the investigation into the 2004 Applications, the Wynn Resorts Form 10-K filed with the U.S. Securities and Exchange Commission ("SEC") on August 28, 2003, and Amendment No. 6 to the Form S-1 Registration Statement of Wynn Resorts filed with the SEC on October 22, 2002, were provided to the Nevada Gaming Control Board staff. These filings included comprehensive summaries of the redemption provisions contained in the Wynn Resorts Articles of Incorporation. From March 2005 until May 2011, Wynn Resorts was required to file with the Nevada Gaming Control Board a copy of any material document filed with the SEC. Many of these filings, including all of Wynn Resorts' Form 10-Ks, included a similar comprehensive summary of the redemption provisions.

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9. The "suitability" standard in Wynn Resorts' Articles differs importantly from the "suitability" standard applied by the Nevada gaming regulators to applicants and license holders. The Articles of Incorporation's definition of suitability is a *prophylactic* standard that allows the Board to take action in advance of an actual administrative determination. This protects the Company by allowing the Board to deem unsuitable anyone who is "likely to jeopardize" its gaming licenses, either by being found unsuitable by regulators or by otherwise causing regulatory problems for the Company.

10. Importantly, the Articles of Incorporation's prophylactic definition of unsuitability serves to fulfill Wynn Resorts' obligation under Nevada gaming law to police itself and to take independent and proactive measures to rid itself of unsuitable persons before it becomes necessary for gaming regulators to take action.

11. Nevada Gaming Commission Regulation 5.045 provides that the Commission may condition the approval of a licensee or registrant on the "implementation of a compliance review and reporting system by the licensee or registrant." And Regulation 5.045(4) makes clear that such a compliance review and monitoring system must address issues of continuing suitability and must be embodied in a written plan approved by regulators:

> The compliance review and reporting system shall be created for the purpose of monitoring activities relating to the licensee's or registrant's *continuing qualifications* under the provisions of the Nevada Gaming Control Act and regulations of the commission in accordance with a *written plan* to be approved by the board administratively or as otherwise ordered by the commission. (Emphasis added.)

In addition, Regulation 5.045(6)(a) provides that "[t]he activities to be monitored" may include "[a]ssociations with persons . . . who *may* be deemed to be unsuitable to be associated with a licensee or registrant."

12. Acting pursuant to Regulation 5.045, the Gaming Commission and Gaming Control Board imposed just such a condition on Wynn Resorts, Limited and Wynn Las Vegas, LLC. Thus, on March 24, 2005, the Commission and Control Board issued Orders of Registration for Wynn Resorts, Ltd. and Wynn Las Vegas, LLC that required Wynn Resorts to "establish and maintain a gaming compliance program"

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> for the purpose of, at a minimum, performing due diligence, *determining the suitability of relationships with other entities and individuals*, and to review and ensure compliance by Wynn Resorts, Limited, Wynn Las Vegas, LLC, their subsidiaries and any affiliated entities, with the Nevada Gaming Control Act (the "Act"), as amended, the Commission's Regulations (the "Regulations"), as amended, and the laws and regulations of any other jurisdictions in which Wynn Resorts, Limited, Wynn Las Vegas, LLC[,] their subsidiaries and any affiliated entities they operate. The gaming compliance program, any amendments thereto, and the members of the compliance committee, at least one such member who shall be independent and knowledgeable of the Act and Regulations, shall be administratively reviewed and approved by the Chairman of the Board or his designee. Wynn Resorts, Limited shall amend the gaming compliance program or any element thereof, and perform such duties as may be assigned by the Chairman of the Board or his designee, related to *a review of activities relevant to the continuing qualification* of Wynn Resorts, Limited, Wynn Las Vegas, LLC, their subsidiaries and any affiliated entities under the provisions of the Act and Regulations.

Orders of Registration ¶ 10, *In re Wynn Resorts, Ltd. and Wynn Las Vegas, LLC*, File No. SD-171 (Nev. Gam. Comm'n & St. Gam. Control Bd. Mar. 24, 2005) (Exhibit 2 hereto) (emphasis added). The Gaming Commission and State Gaming Control Board have since issued Revised, Second Revised, and Third Revised Orders of Registration that, in substantially identical language, require Wynn Resorts and Wynn Las Vegas to continue to "maintain its gaming compliance program." Second Revised Orders of Registration ¶ 12, *In re Wynn Resorts, Ltd. and Wynn Las Vegas, LLC*, File No. SD-171 (Nev. Gam. Comm'n & St. Gam. Control Bd. Jan. 27, 2011) (Exhibit 3 hereto); Third Revised Orders of Registration ¶ 12, *In re Wynn Resorts, Ltd. and Wynn Las Vegas, LLC*, File No. SD-171 (Nev. Gam. Comm'n & St. Gam. Control Bd. Aug. 23, 2012) (Exhibit 4 hereto) (emphasis added).

13. That gaming compliance program, attached hereto as Exhibit 5, specifically states that its purpose is to mitigate the "dangers of unsuitable associations and compliance with regulatory requirements":

> In order to maintain the highest standards of compliance with the regulatory requirements imposed upon gaming operations in Nevada, Wynn Resorts, Limited (the "Company") has established a program designed to protect the integrity and reputation of the Company. The nature of the gaming businesses in which the Company will be engaged requires particular sensitivity to the potential dangers of unsuitable associations and noncompliance with regulatory

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> requirements. It is for this reason that the Company has developed this program for investigation and reporting in various areas of the Company's business activities.

Exhibit 5 at 1.

14. The compliance program defines an "Unsuitable Person" as anyone "that the Company determines is unqualified as a business associate of the Company or its Affiliates based on, without limitation, that Person's antecedents, associations, financial practices, financial condition, or business probity." *Id.* at 4. The program charters a Compliance Committee that is charged with, among other things, investigating all senior executives, directors, and key employees, "in order to protect the Company from becoming associated with an Unsuitable Person." *Id.* at 8. And it requires the company to report to Nevada gaming authorities to keep them "advised of the Company's compliance efforts in Nevada and other jurisdictions." *Id.* at 1. In particular, the compliance program requires that "any known acts of wrongdoing" by any executive or director that are reported to Wynn Resorts' board must also be reported to the Chairman of the Nevada Gaming Control Board within ten business days of the report to the Wynn Resorts' board. *Id.* at 11.

15. Regulation 5.045, the registration order, and the gaming compliance program together make clear that Aruze is flatly wrong to assert that "association with an 'unsuitable' person would only conceivably create a problem for a gaming license after that person has been found by a gaming authority to be unsuitable." Aruze Second Amended Counterclaim ¶ 162. Wynn Resorts' compliance program has been mandated by the Gaming Commission and the State Gaming Control Board pursuant to Commission Regulation 5.045 and the registration order, and any failure to follow the program would constitute a violation of the Gaming Control Act. Wynn Resorts is legally required to actively monitor its directors for *potential* unsuitability under Nevada law, and to take action if it finds any such potential unsuitability.

16. Thus, it is an important feature of the Nevada regulatory scheme that licensees and registrants must actively take steps to monitor themselves for, to prevent, and to rid themselves of, potentially unsuitable associations. This obligation to self-police is fully consistent with the requirement in NRS 463.170(8) that persons who have been licensed or found suitable "continue

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to meet the applicable standards and qualifications" for licensing and suitability. Article VII of Wynn Resorts' Articles of Incorporation, which, as noted, deems unsuitable anyone "deemed likely to jeopardize" the company's gaming licenses, is an important part of Wynn Resorts' efforts to comply with its obligations under Nevada law.

17. Given Nevada's requirements that gaming licensees and registrants police themselves for potentially unsuitable associations, it is not surprising that other publicly-traded gaming corporations have adopted certificates of incorporation that contain "unsuitable person" definitions and stock-redemption provisions similar to the one contained in Wynn Resorts' Articles. Thus, for example:

- The certificate of incorporation of Caesars Entertainment Corporation, attached hereto as Exhibit 6, provides that an "Unsuitable Person" includes anyone who "is deemed likely, in the sole and absolute discretion of the Board of Directors, to . . . impair, threaten or jeopardize any Gaming License held by the Corporation," and provides that securities owned by an "Unsuitable Person" may be redeemed by the board. Exhibit §§ 5.1(s), 5.4(a).
- The certificate of incorporation of Global Cash Access Holdings, Inc., attached hereto as Exhibit 7, provides that an "Unsuitable Person" is anyone "whose ownership of Shares . . . will result in the Corporation losing a Gaming License, . . . *as determined by the Corporation's Board of Directors, in its sole discretion*," and provides that securities owned by an "Unsuitable Person" may be redeemed by the board. Exhibit 7 §§ X(A)(1), X(F)(10) (emphasis added).
- The certificate of incorporation of Pinnacle Entertainment, Inc., attached hereto as Exhibit 8, defines "Unsuitable Person" as including any person "who, in the sole discretion of the Board of Directors of the corporation, is deemed likely to jeopardize the corporation's right to the use of or entitlement to, any Gaming License," and provides that securities owned by an "Unsuitable Person" may be redeemed by the board. Exhibit 8 §§ XIII(A)(13), XII(C)(1).

18. Accordingly, as these examples show, there is nothing unusual about the provisions in Wynn Resorts' Articles of Incorporation that authorize the board to make a finding that a stockholder is unsuitable and that the stockholder's shares should be redeemed.

19. Finally, there is no merit to Aruze's contention that redemption of Aruze's shares in exchange for a note "was legally incapable of achieving its stated purpose because it merely

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converted Wynn Resorts' largest stockholder into its largest debt holder." Aruze Br. at 17; *see also* Second Amended Counterclaim ¶ 162 (alleging that redemption makes "Aruze USA . . . Wynn Resorts' largest holder of debt — a circumstance which would be impermissible under Nevada law if Aruze USA were truly 'unsuitable.'"). Contrary to Aruze's contention, the Nevada Gaming Control Act makes a significant distinction between stockholders and debtholders of registered publicly traded corporations like Wynn Resorts.

20. Specifically, the Gaming Control Act provides that a holder of 10 percent or more of any class of voting securities in a publicly traded corporation registered with the Nevada Gaming Commission "*shall* apply to the Commission for a finding of suitability." N.R.S. 463.643(4) (emphasis added). This application is *mandatory* and not discretionary. In contrast, a person who acquires the *debt* of a publicly traded registrant does *not* face such a mandatory application requirement. Instead, the statute provides only that a debtholder "*may* be required to be found suitable *if* the Commission has reason to believe that the person's acquisition of the debt security would otherwise be inconsistent with the declared policy of this state." N.R.S. 463.643(2) (emphasis added).

21. Thus, whether a debtholder must apply to be found suitable turns upon the discretionary judgment of the Commission, whereas a 10 percent stockholder *must* apply and be found suitable. A suitability determination for a debtholder will be made only if the debtholder is requested or "called forward" by the Commission to make an application. And only if a debtholder is called forward and found unsuitable would the corporation be required to redeem the holder's debt. *See* N.R.S. 463.585(3).

22. In light of this important distinction between significant stockholders and debtholders, the gaming regulators have not rigidly required redemptions of unsuitable stockholders' shares to be made in exchange for cash. Instead, aware that forced cash redemptions could cripple a licensee or registrant, regulators have been willing to permit redemptions for debt.

23. For example, in May 1979, the Nevada Gaming Control Board initiated procedures to revoke the licenses of Allen Glick to conduct gaming operations; through stock he held in a

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holding company, Glick was a significant owner of the Stardust and Fremont Hotels. Glick entered into an agreement with the Nevada Gaming Commission under which he stipulated to the revocation of his gaming licenses, but the revocation was temporarily held in abeyance so that he could sell his interests to a qualified buyer. The Commission ultimately allowed Glick to sell his shares in exchange for notes from the buyer of his interests, and he was allowed to hold those notes after the Commission revoked his licenses. *See* Petition for a Writ of Certiorari, *Rockman v. United States*, No. 87-1543, 1988 WL 1094551, at *11 (U.S. filed Mar. 14, 1988); *see also United States v. Thomas*, 759 F.2d 659, 665 (8th Cir. 1985).

24. Similarly, in 1980, the New Jersey Casino Control Commission concluded that Clifford and Stuart Perlman, two major shareholders of Boardwalk Regency Corporation's parent company, Caesars World, Inc., were not qualified. As a result, the Control Commission gave Boardwalk and Caesars the choice of either "(1) . . . irrevocably and completely separat[ing] the Perlmans from the corporate family or (2) . . . withdraw[ing] from casino operations in New Jersey." *In re Boardwalk Regency Casino Application*, 10 N.J. A.R. 295, 332 (1980) (Exhibit 9 hereto). Caesars chose to purchase the Perlmans' shares, and was allowed by the regulators to use promissory notes as part of the purchase price. *See id.*

DAVID R. ARRAJJ

Subscribed and sworn to in my presence this
26th day of September, 2012

Notary Public

DOROTHY K. HENSHAW
Notary Public State of Nevada
No. 96-3065-1
My appt. exp. Apr. 12, 2016

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EXHIBIT 1

C14059-02

DEAN HELLER
Secretary of State

202 North Carson Street
Carson City, Nevada 89701-4201
(775) 684 5708

Certificate to Accompany
Restated Articles
(PUR... 78.4...

FILED # ...002

Filed in the office of
Dean Heller
Secretary of State
State of Nevada

Document Number
C14059-2002-004

Filing Date and Time
09/16/2002 12:00 AM

Entity Number
C14059-2002

Important: Read attached ins...

This Form is to Accompany Res...

(Pursuant to NRS 78.403 or 82.371)
(This form may also be used to accompany Restated Articles for Limited-Liability Companies and Certificates of Limited Partnership and Business Trusts)
- Remit in Duplicate -

1. Name of Nevada entity as last recorded in this office:

Wynn Resorts, Limited

2. Indicate what changes have been made by checking the appropriate spaces.*

- ☐ The entity name has been amended.
- ☐ The resident agent has been changed. (attach Certificate of Acceptance from new resident agent)
- ☐ The purpose of the entity has been amended.
- ☐ The authorized shares have been amended.
- ☐ The directors, managers or general partners have been amended.
- ☐ The duration of the entity has been amended.
- ☐ IRS tax language has been added.
- ☐ Articles have been added to the articles or certificate.
- ☐ Articles have been deleted from the articles or certificate.
- ☑ None of the above apply. The articles or certificate have been amended as follows: (provide article numbers, if available)

Article IV, Section 2: The board will become classified upon the effectiveness of the IPO.

Article V, Section 1: The provisions regarding the number of directors and providing for the classified board cannot be amended without the approval of at least 66-2/3% of the issued and outstanding stock.

* This form is to accompany Restated Articles which contain newly altered or amended articles.

The Restated Articles must contain all of the requirements as set forth in the statutes for amending or altering Articles of Incorporation, Articles of Organization or Certificates of Limited Partnership.

IMPORTANT: Failure to include any of the above information and remit the proper fees may cause this filing to be rejected.

FILED # C14069-02

SECOND AMENDED AND RESTATED ARTICLES OF INCORPORATION SEP 16 2002

OF

IN THE OFFICE OF
DEAN HELLER SECRETARY OF STATE

WYNN RESORTS, LIMITED

WYNN RESORTS, LIMITED (the "**Corporation**"), a corporation organized under the laws of the State of Nevada, by its Chief Executive Officer does hereby certify that:

1. Pursuant to the provisions of Sections 78.390 and 78.403 of *Nevada Revised Statutes* ("**NRS**") the Corporation hereby amends and restates its articles of incorporation as follows:

2. The amendment and restatement of the Articles of Incorporation as set forth below was adopted by the Corporation's board of directors by the unanimous written consent as of September 16, 2002 in accordance with the provisions of NRS 78.315 and NRS 78.390.

3. The amendment and restatement of the Articles of Incorporation as set forth below was approved by the written consent of the sole stockholder as of September 16, 2002.

4. That the undersigned officer has been authorized and directed by the board of directors to execute and file this certificate setting forth the text of the Articles of Incorporation of the Corporation as amended and restated in its entirety to this date as follows:

ARTICLE I
NAME

The name of the corporation is Wynn Resorts, Limited (the "**Corporation**").

ARTICLE II
CAPITAL STOCK

Section 1. Authorized Shares. The aggregate number of shares which the Corporation shall have authority to issue is four hundred and forty million (440,000,000) shares, consisting of two classes to be designated, respectively, "Common Stock" and "Preferred Stock," with all of such shares having a par value of $.01 per share. The total number of shares of Common Stock that the Corporation shall have authority to issue is four hundred million (400,000,000) shares. The total number of shares of Preferred Stock that the Corporation shall have authority to issue is forty million (40,000,000) shares. The Preferred Stock may be issued in one or more series, each series to be appropriately designated by a distinguishing letter or title, prior to the issuance of any shares thereof. The voting powers, designations, preferences, limitations, restrictions, and relative, participating, optional and other rights, and the qualifications, limitations, or restrictions thereof, of the Preferred Stock shall hereinafter be prescribed by resolution of the board of directors pursuant to Section 3 of this Article II.

Section 2. Common Stock.

(a) Dividend Rate. Subject to the rights of holders of any Preferred Stock having preference as to dividends and except as otherwise provided by these Articles of Incorporation, as amended from time to time (hereinafter, the "Articles") or the NRS, the holders of Common Stock shall be entitled to receive dividends when, as and if declared by the board of directors out of assets legally available therefor.

(b) Voting Rights. Except as otherwise provided by the NRS, the holders of the issued and outstanding shares of Common Stock shall be entitled to one vote for each share of Common Stock. No holder of shares of Common Stock shall have the right to cumulate votes.

(c) Liquidation Rights. In the event of liquidation, dissolution, or winding up of the affairs of the Corporation, whether voluntary or involuntary, subject to the prior rights of holders of Preferred Stock to share ratably in the Corporation's assets, the Common Stock and any shares of Preferred Stock which are not entitled to any preference in liquidation shall share equally and ratably in the Corporation's assets available for distribution after giving effect to any liquidation preference of any shares of Preferred Stock. A merger, conversion, exchange or consolidation of the Corporation with or into any other person or sale or transfer of all or any part of the assets of the Corporation (which shall not in fact result in the liquidation of the Corporation and the distribution of assets to stockholders) shall not be deemed to be a voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Corporation.

(d) No Conversion, Redemption, or Preemptive Rights. The holders of Common Stock shall not have any conversion, redemption, or preemptive rights..

(e) Consideration for Shares. The Common Stock authorized by this Article shall be issued for such consideration as shall be fixed, from time to time, by the board of directors.

Section 3. Preferred Stock.

(a) Designation. The board of directors is hereby vested with the authority from time to time to provide by resolution for the issuance of shares of Preferred Stock in one or more series not exceeding the aggregate number of shares of Preferred Stock authorized by these Articles, and to prescribe with respect to each such series the voting powers, if any, designations, preferences, and relative, participating, optional, or other special rights, and the qualifications, limitations, or restrictions relating thereto, including, without limiting the generality of the foregoing: the voting rights relating to the shares of Preferred Stock of any series (which voting rights, if any, may be full or limited, may vary over time, and may be applicable generally or only upon any stated fact or event); the rate of dividends (which may be cumulative or noncumulative), the condition or time for payment of dividends and the preference or relation of such dividends to dividends payable on any other class or series of capital stock; the rights of holders of Preferred Stock of any series in the event of liquidation, dissolution, or winding up of the affairs of the Corporation; the rights, if any, of holders of Preferred Stock of any series to convert or exchange such shares

of Preferred Stock of such series for shares of any other class or series of capital stock or for any other securities, property, or assets of the Corporation or any subsidiary (including the determination of the price or prices or the rate or rates applicable to such rights to convert or exchange and the adjustment thereof, the time or times during which the right to convert or exchange shall be applicable, and the time or times during which a particular price or rate shall be applicable); whether the shares of any series of Preferred Stock shall be subject to redemption by the Corporation (in addition to any right of redemption pursuant to Article VII of these Articles) and if subject to redemption, the times, prices, rates, adjustments and other terms and conditions of such redemption. The powers, designations, preferences, limitations, restrictions and relative rights may be made dependent upon any fact or event which may be ascertained outside the Articles or the resolution if the manner in which the fact or event may operate on such series is stated in the Articles or resolution. As used in this section "fact or event" includes, without limitation, the existence of a fact or occurrence of an event, including, without limitation, a determination or action by a person, government, governmental agency or political subdivision of a government. The board of directors is further authorized to increase or decrease (but not below the number of such shares of such series then outstanding) the number of shares of any series subsequent to the issuance of shares of that series. Unless the board of directors provides to the contrary in the resolution which fixes the characteristics of a series of Preferred Stock, neither the consent by series, or otherwise, of the holders of any outstanding Preferred Stock nor the consent of the holders of any outstanding Common Stock shall be required for the issuance of any new series of Preferred Stock regardless of whether the rights and preferences of the new series of Preferred Stock are senior or superior, in any way, to the outstanding series of Preferred Stock or the Common Stock.

(b) Certificate. Before the Corporation shall issue any shares of Preferred Stock of any series, a certificate of designation setting forth a copy of the resolution or resolutions of the board of directors, and establishing the voting powers, designations, preferences, the relative, participating, optional, or other rights, if any, and the qualifications, limitations, and restrictions, if any, relating to the shares of Preferred Stock of such series, and the number of shares of Preferred Stock of such series authorized by the board of directors to be issued shall be made and signed by an officer of the corporation and filed in the manner prescribed by the NRS.

Section 4. Non-Assessment of Stock. The capital stock of the Corporation, after the amount of the subscription price has been fully paid, shall not be assessable for any purpose, and no stock issued as fully paid shall ever be assessable or assessed, and the Articles shall not be amended in this particular. No stockholder of the Corporation is individually liable for the debts or liabilities of the Corporation.

ARTICLE III
ACTION OF STOCKHOLDERS

Prior to the completion of the initial public offering of the Corporation, the stockholders may take action by written consent in lieu of a meeting. After the completion of the initial public offering of the Corporation, the stockholders may not in any circumstance take action by written consent.

ARTICLE IV
DIRECTORS AND OFFICERS

Section 1. Number of Directors. The members of the governing board of the Corporation are styled as directors. The board of directors of the Corporation shall be elected in such manner as shall be provided in the bylaws of the Corporation. The board of directors shall consist of at least one (1) individual and not more than thirteen (13) individuals. The number of directors may be changed from time to time in such manner as shall be provided in the bylaws of the Corporation.

Section 2. Classified Board. Upon the effectiveness of the Corporation's registration statement on Form S-1 with respect to its initial public offering of common stock, the directors shall be classified, with respect to the time for which they shall hold their respective offices, by dividing them into three classes, to be known as "Class I," "Class II" and "Class III." Directors of Class I shall hold office until the next annual meeting of stockholders after such effectiveness and until their successors are elected and qualified, directors of Class II shall hold office until the second annual meeting of stockholders after such effectiveness and until their successors are elected and qualified and directors of Class III shall hold office until the third annual meeting of stockholders after such effectiveness and until their successors are elected and qualified. At each annual meeting of stockholders following such effectiveness, successors to the directors of the class whose term of office expires at such annual meeting shall be elected to hold office until the third succeeding annual meeting of stockholders, so that the term of office of only one class of directors shall expire at each annual meeting. The number of directors in each class, which shall be such that as near as possible to one-third and at least one-fourth (or such other fraction as required by the NRS) in number are elected at each annual meeting, shall be established from time to time by resolution of the board of directors and shall be increased or decreased by resolution of the board of directors, as may be appropriate whenever the total number of directors is increased or decreased.

Section 3. Limitation of Liability. The liability of directors and officers of the Corporation shall be eliminated or limited to the fullest extent permitted by the NRS. If the NRS is amended to further eliminate or limit or authorize corporate action to further eliminate or limit the liability of directors or officers, the liability of directors and officers of the Corporation shall be eliminated or limited to the fullest extent permitted by the NRS, as so amended from time to time.

Section 4. Payment of Expenses. In addition to any other rights of indemnification permitted by the laws of the State of Nevada or as may be provided for by the Corporation in its bylaws or by agreement, the expenses of officers and directors incurred in defending any threatened, pending, or completed action, suit or proceeding (including without limitation, an action, suit or proceeding by or in the right of the Corporation), whether civil, criminal, administrative or investigative, involving alleged acts or omissions of such officer or director in his or her capacity as an officer or director of the Corporation or member, manager, or managing member of a predecessor limited liability company or affiliate of such limited liability company or while serving in any capacity at the request of the Corporation as a director, officer, employee, agent, member, manager, managing member, partner, or fiduciary of, or in any other capacity for, another corporation or any partnership,

joint venture, trust, or other enterprise, shall be paid by the Corporation or through insurance purchased and maintained by the Corporation or through other financial arrangements made by the Corporation, as they are incurred and in advance of the final disposition of the action, suit or proceeding, upon receipt of an undertaking by or on behalf of the officer or director to repay the amount if it is ultimately determined by a court of competent jurisdiction that he or she is not entitled to be indemnified by the Corporation. To the extent that an officer or director is successful on the merits in defense of any such action, suit or proceeding, or in the defense of any claim, issue or matter therein, the Corporation shall indemnify him or her against expenses, including attorneys' fees, actually and reasonably incurred by him or her in connection with the defense. Notwithstanding anything to the contrary contained herein or in the bylaws, no director or officer may be indemnified for expenses incurred in defending any threatened, pending, or completed action, suit or proceeding (including without limitation, an action, suit or proceeding by or in the right of the Corporation), whether civil, criminal, administrative or investigative, that such director or officer incurred in his or her capacity as a stockholder, including, but not limited to, in connection with such person being deemed an Unsuitable Person (as defined in Article VII hereof).

Section 5. Repeal And Conflicts. Any repeal or modification of Sections 3 or 4 above approved by the stockholders of the Corporation shall be prospective only, and shall not adversely affect any limitation on the liability of a director or officer of the Corporation existing as of the time of such repeal or modification. In the event of any conflict between Sections 3 or 4 above and any other Article of the Articles, the terms and provisions of Sections 3 or 4 above shall control.

ARTICLE V
VOTING ON CERTAIN TRANSACTIONS

Section 1. Amendment of Articles. The Corporation reserves the right to amend, alter, change or repeal any provision contained in the Articles, in the manner now or hereafter prescribed by the NRS, and all rights conferred on stockholders herein are granted subject to this reservation; provided, however, that no amendment, alteration, change or repeal may be made to: (a) Article III, (b) Sections 1, 2, 3 and 4 of Article IV, or (c) this Article V without the affirmative vote of the holders of at least sixty-six and two-thirds percent (66⅔%) of the issued and outstanding shares of stock of the Corporation entitled to vote in the election of directors excluding stock entitled to vote only upon the happening of a fact or event unless such fact or event shall have occurred, considered for the purposes of this section as one class.

Section 2. Additional Vote Required. Any affirmative vote required by this Article V shall be in addition to the vote of the holders of any class or series of stock of the Corporation otherwise required by law, the Articles, the resolutions of the board of directors providing for the issuance of such class or series and any agreement between the Corporation and any securities exchange or over-the-counter market upon which the Corporation's shares are listed or designated for trading.

ARTICLE VI
COMBINATIONS WITH INTERESTED STOCKHOLDERS

At such time, if any, as the Corporation becomes a "resident domestic corporation," as that term is defined in NRS 78.427, the Corporation shall not be subject to, or governed by, any of the provisions in NRS 78.411 to 78.444, inclusive, as may be amended from time to time, or any successor statutes.

ARTICLE VII
COMPLIANCE WITH GAMING LAWS

Section 1. Definitions. For purposes of this Article VII, the following terms shall have the meanings specified below:

(a) "Affiliate" shall mean a Person who, directly or indirectly, through one or more intermediaries, controls, is controlled by or is under common control with, a specified Person. For the purpose of this Section 1(a) of Article VII, "**control**," "**controlled by**" and "**under common control with**" means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a Person, whether through ownership of voting securities, by contract, or otherwise. "**Affiliated Companies**" shall mean those partnerships, corporations, limited liability companies, trusts or other entities that are Affiliates of the Corporation, including, without limitation, subsidiaries, holding companies and intermediary companies (as those and similar terms are defined in the Gaming Laws of the applicable Gaming Jurisdictions) that are registered or licensed under applicable Gaming Laws.

(b) "Gaming" or "Gaming Activities" shall mean the conduct of gaming and gambling activities, or the use of gaming devices, equipment and supplies in the operation of a casino or other enterprise, including, without limitation, race books, sports pools, slot machines, gaming devices, gaming tables, cards, dice, gaming chips, player tracking systems, cashless wagering systems and associated equipment and supplies.

(c) "Gaming Authorities" shall mean all international, foreign, federal, state, local and other regulatory and licensing bodies and agencies with authority over Gaming within any Gaming Jurisdiction. "Gaming Jurisdiction" shall mean all jurisdictions, domestic and foreign, and their political subdivisions, in which Gaming Activities are lawfully conducted.

(d) "Gaming Laws" shall mean all laws, statutes, ordinances and regulations pursuant to which any Gaming Authority possesses regulatory and licensing authority over Gaming within any Gaming Jurisdiction, and all orders, decrees, rules and regulations promulgated by such Gaming Authority thereunder.

(e) "Gaming Licenses" shall mean all licenses, permits, approvals, authorizations, registrations, findings of suitability, franchises, concessions and entitlements issued by a Gaming Authority necessary for or relating to the conduct of Gaming Activities.

(f) "Own," "Ownership," or "Control," (and derivatives thereof) shall mean (i) ownership of record, (ii) "beneficial ownership" as defined in Rule 13d-3

promulgated by the United States Securities and Exchange Commission (as now or hereafter amended), or (iii) the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a Person or the disposition of Securities, by agreement, contract, agency or other manner.

(g) "Person" shall mean an individual, partnership, corporation, limited liability company, trust or any other entity.

(h) "Redemption Date" shall mean the date specified in the Redemption Notice as the date on which the shares of the Securities Owned or Controlled by an Unsuitable Person or an Affiliate of an Unsuitable Person are to be redeemed by the Corporation.

(i) "Redemption Notice" shall mean that notice of redemption given by the Corporation to an Unsuitable Person or an Affiliate of an Unsuitable Person pursuant to this Article VII. Each Redemption Notice shall set forth (i) the Redemption Date, (ii) the number and type of shares of the Securities to be redeemed, (iii) the Redemption Price and the manner of payment therefor, (iv) the place where any certificates for such shares shall be surrendered for payment, and (v) any other requirements of surrender of the certificates, including how they are to be endorsed, if at all.

(j) "Redemption Price" shall mean the price to be paid by the Corporation for the Securities to be redeemed pursuant to this Article VII, which shall be that price (if any) required to be paid by the Gaming Authority making the finding of unsuitability, or if such Gaming Authority does not require a certain price to be paid, that amount determined by the board of directors to be the fair value of the Securities to be redeemed; provided, however, that the price per share represented by the Redemption Price shall in no event be in excess of the closing sales price per share of shares on the principal national securities exchange on which such shares are then listed on the trading date on the day before the Redemption Notice is deemed given by the Corporation to the Unsuitable Person or an Affiliate of an Unsuitable Person or, if such shares are not then listed for trading on any national securities exchange, then the closing sales price of such shares as quoted in the Nasdaq National Market or SmallCap Market or, if the shares are not then so quoted, then the mean between the representative bid and the ask price as quoted by any other generally recognized reporting system. The Redemption Price may be paid in cash, by promissory note, or both, as required by the applicable Gaming Authority and, if not so required, as the board of directors determines. Any promissory note shall contain such terms and conditions as the board of directors determines necessary or advisable, including without limitation, subordination provisions, to comply with any law or regulation then applicable to the Corporation or any Affiliate of the Corporation or to prevent a default under, breach of, event of default under or acceleration of any loan, promissory note, mortgage, indenture, line of credit, or other debt or financing agreement of the Corporation or any Affiliate of the Corporation. Subject to the foregoing, the principal amount of the promissory note together with any unpaid interest shall be due and payable no later than the tenth anniversary of delivery of the note and interest on the unpaid principal thereof shall be payable annually in arrears at the rate of 2% per annum.

(k) "Securities" shall mean the capital stock of the Corporation.

(i) "Unsuitable Person" shall mean a Person who (i) is determined by a Gaming Authority to be unsuitable to Own or Control any Securities or unsuitable to be connected or affiliated with a Person engaged in Gaming Activities in a Gaming Jurisdiction, or (ii) causes the Corporation or any Affiliated Company to lose or to be threatened with the loss of any Gaming License, or (iii) in the sole discretion of the board of directors of the Corporation, is deemed likely to jeopardize the Corporation's or any Affiliated Company's application for, receipt of approval for, right to the use of, or entitlement to, any Gaming License.

Section 2. Finding of Unsuitability.

(a) The Securities Owned or Controlled by an Unsuitable Person or an Affiliate of an Unsuitable Person shall be subject to redemption by the Corporation, out of funds legally available therefor, by action of the board of directors, to the extent required by the Gaming Authority making the determination of unsuitability or to the extent deemed necessary or advisable by the board of directors. If a Gaming Authority requires the Corporation, or the board of directors deems it necessary or advisable, to redeem any such Securities, the Corporation shall give a Redemption Notice to the Unsuitable Person or its Affiliate and shall purchase on the Redemption Date the number of shares of the Securities specified in the Redemption Notice for the Redemption Price set forth in the Redemption Notice. From and after the Redemption Date, such Securities shall no longer be deemed to be outstanding, such Unsuitable Person or any Affiliate of such Unsuitable Person shall cease to be a stockholder with respect to such shares and all rights of such Unsuitable Person or any Affiliate of such Unsuitable Person therein, other than the right to receive the Redemption Price, shall cease. Such Unsuitable Person or its Affiliate shall surrender the certificates representing any shares to be redeemed in accordance with the requirements of the Redemption Notice.

(b) Commencing on the date that a Gaming Authority serves notice of a determination of unsuitability or the board of directors determines that a Person is an Unsuitable Person, and until the Securities Owned or Controlled by such Person are Owned or Controlled by a Person who is not an Unsuitable Person, the Unsuitable Person or any Affiliate of an Unsuitable Person shall not be entitled: (i) to receive any dividend or interest with regard to the Securities, (ii) to exercise, directly or indirectly or through any proxy, trustee, or nominee, any voting or other right conferred by such Securities, and such Securities shall not for any purposes be included in the shares of capital stock of the Corporation entitled to vote, or (iii) to receive any remuneration in any form from the Corporation or any Affiliated Company for services rendered or otherwise.

Section 3. Notices. All notices given by the Corporation pursuant to this Article, including Redemption Notices, shall be in writing and may be given by mail, addressed to the Person at such Person's address as it appears on the records of the Corporation, with postage thereon prepaid, and such notice shall be deemed given at the time deposited in the United States mail. Written notice may also be given personally or by telegram, facsimile, telex or cable and such notice shall be deemed to be given at the time of receipt thereof, if given personally, or at the time of transmission thereof, if given by telegram, facsimile, telex or cable.

Section 4. Indemnification. Any Unsuitable Person and any Affiliate of an Unsuitable Person shall indemnify and hold harmless the Corporation and its Affiliated Companies for any and all losses, costs, and expenses, including attorneys' fees, incurred by the Corporation and its Affiliated Companies as a result of, or arising out of, such Unsuitable Person's or Affiliate's continuing Ownership or Control of Securities, the neglect, refusal or other failure to comply with the provisions of this Article VII, or failure to promptly divest itself of any Securities when required by the Gaming Laws or this Article VII.

Section 5. Injunctive Relief. The Corporation is entitled to injunctive or other equitable relief in any court of competent jurisdiction to enforce the provisions of this Article VII and each holder of the Securities of the Corporation shall be deemed to have acknowledged, by acquiring the Securities of the Corporation, that the failure to comply with this Article VII will expose the Corporation to irreparable injury for which there is no adequate remedy at law and that the Corporation is entitled to injunctive or other equitable relief to enforce the provisions of this Article.

Section 6. Non-exclusivity of Rights. The Corporation's rights of redemption provided in this Article VII shall not be exclusive of any other rights the Corporation may have or hereafter acquire under any agreement, provision of the bylaws or otherwise.

Section 7. Further Actions. Nothing contained in this Article VII shall limit the authority of the board of directors to take such other action to the extent permitted by law as it deems necessary or advisable to protect the Corporation or its Affiliated Companies from the denial or threatened denial or loss or threatened loss of any Gaming License of the Corporation or any of its Affiliated Companies. Without limiting the generality of the foregoing, the board of directors may conform any provisions of this Article VII to the extent necessary to make such provisions consistent with Gaming Laws. In addition, the board of directors may, to the extent permitted by law, from time to time establish, modify, amend or rescind bylaws, regulations, and procedures of the Corporation not inconsistent with the express provisions of this Article VII for the purpose of determining whether any Person is an Unsuitable Person and for the orderly application, administration and implementation of the provisions of this Article VII. Such procedures and regulations shall be kept on file with the Secretary of the Corporation, the secretary of its Affiliated Companies and with the transfer agent, if any, of the Corporation and any Affiliated Companies, and shall be made available for inspection by the public and, upon request, mailed to any holder of Securities. The board of directors shall have exclusive authority and power to administer this Article VII and to exercise all rights and powers specifically granted to the board of directors or the Corporation, or as may be necessary or advisable in the administration of this Article VII. All such actions which are done or made by the board of directors in good faith shall be final, conclusive and binding on the Corporation and all other Persons; provided, however, that the board of directors may delegate all or any portion of its duties and powers under this Article VII to a committee of the board of directors as it deems necessary or advisable.

Section 8. Severability. If any provision of this Article VII or the application of any such provision to any Person or under any circumstance shall be held invalid, illegal, or

unenforceable in any respect by a court of competent jurisdiction, such invalidity, illegality or unenforceability shall not affect any other provision of this Article VII.

Section 9. Termination and Waivers. Except as may be required by any applicable Gaming Law or Gaming Authority, the board of directors may waive any of the rights of the Corporation or any restrictions contained in this Article VII in any instance in which the board of directors determines that a waiver would be in the best interests of the Corporation. The board of directors may terminate any rights of the Corporation or restrictions set forth in this Article VII to the extent that the board of directors determines that any such termination is in the best interests of the Corporation. Except as may be required by a Gaming Authority, nothing in this Article VII shall be deemed or construed to require the Corporation to repurchase any Securities Owned or Controlled by an Unsuitable Person or an Affiliate of an Unsuitable Person.

IN WITNESS WHEREOF, Wynn Resorts, Limited has caused these second amended and restated articles of incorporation to be executed in its name by its Chief Executive Officer this 16th day of September, 2002.

Stephen A. Wynn

EXHIBIT 2

File No. SD-171

BEFORE THE NEVADA GAMING COMMISSION

AND THE STATE GAMING CONTROL BOARD

In the Matter of

WYNN RESORTS, LIMITED and
WYNN LAS VEGAS, LLC

(Registration)

ORDERS OF REGISTRATION

THIS MATTER came on regularly for hearing before the State Gaming Control Board ("Board") on March 9, 2005, and before the Nevada Gaming Commission ("Commission") on March 24, 2005, at Las Vegas, Nevada; and

THE BOARD AND COMMISSION having considered all information pertinent hereto;

IT IS HEREBY ORDERED BY THE NEVADA GAMING COMMISSION UPON THE RECOMMENDATION OF THE STATE GAMING CONTROL BOARD:

1. THAT the following applications, as amended and supplemented, have been filed:

a. The applications of Wynn Resorts, Limited for (i) registration as a publicly traded corporation, and (ii) a finding of suitability as manager of Wynn Resorts Holdings, LLC;

b. The applications of Wynn Resorts Holdings, LLC for (i) registration as an intermediary company, (ii) a finding of suitability as sole member and manager of Wynn Las Vegas, LLC, and (iii) approval to pledge the membership interest of Wynn Las Vegas, LLC, to Deutsche Bank Trust Company Americas in conjunction with First Mortgage Notes due 2014 and a credit agreement;

c. The applications of Wynn Las Vegas for (i) registration as a publicly traded corporation (ii) approval of an exemption from the provisions of NGC Regulation 16.100(1) (iii) a nonrestricted gaming license, including a race book and sports pool (iv) licensure to conduct off track pari-mutuel race and sports wagering (v) licensure to operate gaming salons, and (vi) licensure as a manufacturer and distributor; and,

d. The applications of (i) Stephen Alan Wynn for a finding of suitability as a shareholder and controlling shareholder of Wynn Resorts, Limited and (ii) Aruze Corp. for a finding of suitability as a controlling shareholder of Wynn Resorts, Limited.

2. THAT Wynn Resorts, Limited is registered as a publicly traded corporation, is found suitable as the manager of Wynn Resorts Holdings, LLC, and the Commission acknowledges that Wynn Resorts, Limited is the sole member of Wynn Resorts Holdings, LLC.

3. THAT Wynn Resorts Holdings, LLC is registered as an intermediary company and is found suitable as the sole member and manager of Wynn Las Vegas, LLC.

4. THAT Wynn Las Vegas, LLC is registered as a publicly traded corporation and, pursuant to NGC Regulation 16.450, is granted an exemption from NGC Regulation 16.100(1).

5. THAT Wynn Las Vegas, LLC, dba Wynn Las Vegas, is licensed to conduct off-track pari-mutuel race and sports wagering and nonrestricted gaming operations, including a race book and sports pool, and to operate Gaming Salons, at 3131 Las Vegas Boulevard South, Las Vegas, subject to such conditions or limitations as may be imposed by the Commission.

6. THAT Wynn Las Vegas, LLC is licensed as a manufacturer and distributor, subject to such conditions or limitations as may be imposed by the Commission.

7. THAT Stephen Alan Wynn is found suitable, pursuant to NRS 463.643 and NGC Regulation 16.400, as a shareholder and controlling shareholder of Wynn Resorts, Limited.

8. THAT Aruze Corp. is found suitable, pursuant to NGC Regulation 16.400 as a controlling shareholder of Wynn Resorts, Limited.

9. THAT Wynn Resorts Holdings, LLC, is granted approval, pursuant to NRS 463.5733(1) and NGC Regulation 8.030, to pledge its membership interest in Wynn Las Vegas, LLC, to Deutsche Bank Trust Company Americas, as Collateral Agent, in conjunction with the First Mortgage Notes due 2014, and the Credit Agreement dated as of December 14, 2004, provided that:

a. This approval is pursuant to the Pledge and Security Agreement dated as of December 14, 2004 ("Pledge Agreement');

b. The prior approval of the Commission must be obtained before any foreclosure or transfer of any possessory security interest in such interest (except back to Wynn Resorts Holdings, LLC) and before any other resort to the collateral or other enforcement of a security interest in such interest may occur; and

c. Pursuant to NGC Regulations 15B.140 and 8.030(4)(a), the membership certificates of Wynn Las Vegas, LLC evidencing said pledge of the membership interest must at all times remain physically within the State of Nevada at a location designated to the Board and must be made available for inspection by agents of the Board immediately upon request during normal business hours.

10. THAT Wynn Resorts, Limited shall establish and maintain a gaming compliance program for the purpose of, at a minimum, performing due diligence, determining the suitability of relationships with other entities and individuals, and to review and ensure compliance by Wynn Resorts, Limited, Wynn Las Vegas, LLC, their subsidiaries and any affiliated entities, with the Nevada Gaming Control Act (the "Act"), as amended, the Commission's Regulations (the "Regulations"), as amended, and the laws and regulations of any other jurisdictions in which Wynn Resorts, Limited, Wynn Las Vegas, LLC their subsidiaries and any affiliated entities they operate. The gaming compliance program, any amendments thereto, and the members of the compliance committee, at least one such member who shall be independent and knowledgeable of the Act and Regulations, shall be administratively reviewed and approved by the Chairman of

the Board or his designee. Wynn Resorts, Limited shall amend the gaming compliance program, or any element thereof, and perform such duties as may be assigned by the Chairman of the Board or his designee, related to a review of activities relevant to the continuing qualification of Wynn Resorts, Limited, Wynn Las Vegas, LLC, their subsidiaries and any affiliated entities under the provisions of the Act and Regulations.

11. THAT Wynn Resorts, Limited, shall fund and maintain with the Board a revolving fund in the amount of $25,000 for the purpose of funding investigative reviews by the Board for compliance with the terms of this Order of Registration. Without limiting the foregoing, the Board shall have the right, without notice, to draw upon the funds of said account for the payment of costs and expenses incurred by the Board and its staff in the surveillance, monitoring and investigative review of all activities of Wynn Resorts, Limited, Wynn Las Vegas, LLC, their subsidiaries and any affiliated entities.

12. THAT pursuant to NRS 463.625, Wynn Resorts, Limited, is exempted from compliance with NRS 463.585 through NRS 463.615, inclusive, and shall instead comply with NRS 463.635 through NRS 463.645, inclusive.

13. THAT Wynn Resorts, Limited, is exempted from NGC Regulation 15 and shall instead comply with the provisions of NGC Regulation 16.

14. THAT pursuant to NRS 463.625, Wynn Las Vegas, LLC is exempted from compliance with NRS 463.585 through 463.615, inclusive, and shall instead comply with NRS 463.635 through NRS 463.645, inclusive.

15. THAT Wynn Las Vegas, LLC, is exempted from NGC Regulation 15B, except for the provisions of NGC Regulations 15B.150, 15B.170 and 15B.200 and shall instead comply with the provisions of NGC Regulation 16, provided however, that (i) pursuant to NGC Regulation 16.450, Wynn Las Vegas, LLC is exempted from compliance with NGC Regulation 16.100(1) and (2) and the balance of NGC Regulation 16 shall be interpreted so as to apply to Wynn Las Vegas, LLC and (ii) Wynn Resorts Holdings, LLC shall not sell, assign, transfer,

pledge or otherwise dispose of any interest in Wynn Las Vegas, LLC, without the prior approval of the Commission.

16. THAT the Commission hereby expressly finds that the exemptions and waivers herein granted are consistent with the State policy set forth in NRS 463.0129 and NRS 463.489.

ENTERED at Las Vegas, Nevada, this 24th day of March 2005.

EXHIBIT 3

File No. SD-171

BEFORE THE NEVADA GAMING COMMISSION

AND THE STATE GAMING CONTROL BOARD

In the Matter of

WYNN RESORTS, LIMITED and
WYNN LAS VEGAS, LLC

(Registration)

SECOND REVISED ORDERS OF REGISTRATION

THIS MATTER came on regularly for hearing before the State Gaming Control Board ("Board") on January 12, 2011, and before the Nevada Gaming Commission ("Commission") on January 27, 2011, at Las Vegas, Nevada; and

THE BOARD AND COMMISSION having considered all information pertinent hereto;

IT IS HEREBY ORDERED BY THE NEVADA GAMING COMMISSION UPON THE RECOMMENDATION OF THE STATE GAMING CONTROL BOARD:

1. THAT the following applications, as amended and supplemented, have been filed:

a. The applications of Wynn Resorts, Limited and Wynn Las Vegas, LLC for an amendment to its Orders of Registration, and

b. The application of Wynn Resorts Holdings, LLC for approval to pledge the membership interest of Wynn Las Vegas, LLC to Deutsche Bank Trust Company Americas in conjunction with 7.75% First Mortgage Notes due 2020.

2. THAT the Revised Orders of Registration of Wynn Resorts, Limited and Wynn Las Vegas, LLC dated July 22, 2010, are hereby amended and restated, in their entirety, by these Second Revised Orders of Registration.

3. THAT Wynn Resorts, Limited is registered as a publicly traded corporation, is found suitable as the manager of Wynn Resorts Holdings, LLC, and the Commission acknowledges that Wynn Resorts, Limited is the sole member of Wynn Resorts Holdings, LLC.

4. THAT Wynn Resorts Holdings, LLC is registered as an intermediary company and is found suitable as the sole member and manager of Wynn Las Vegas, LLC.

5. THAT Wynn Las Vegas, LLC is registered as a publicly traded corporation and, pursuant to NGC Regulation 16.450, is granted an exemption from NGC Regulation 16.100(1).

6. THAT Wynn Las Vegas, LLC, dba Wynn Las Vegas, is licensed to conduct off-track pari-mutuel race and sports wagering and nonrestricted gaming operations, including a race book and sports pool, and to operate Gaming Salons, at 3131 Las Vegas Boulevard South, Las Vegas, subject to such conditions or limitations as may be imposed by the Commission.

7. THAT Wynn Las Vegas, LLC is licensed as a manufacturer and distributor, subject to such conditions or limitations as may be imposed by the Commission.

8. THAT Stephen Alan Wynn is found suitable, pursuant to NRS 463.643 and NGC Regulation 16.400, as a shareholder and controlling shareholder of Wynn Resorts, Limited.

9. THAT Universal Entertainment Corporation is found suitable, pursuant to NGC Regulation 16.400 as a controlling shareholder of Wynn Resorts, Limited.

10. THAT Wynn Resorts Holdings, LLC, is granted approval, pursuant to NRS 463.5733(1) and NGC Regulation 8.030, to pledge its membership interest in Wynn Las Vegas, LLC, to Deutsche Bank Trust Company Americas, as Collateral Agent, in conjunction with First Mortgage Notes due 2014, First Mortgage Notes due 2017, 7.875 % First Mortgage Notes due 2020, 7.75 % First Mortgage Notes due 2020 and an amended and restated Credit Agreement dated as of August 15, 2006, as amended, provided that:

a. This approval is pursuant to the Pledge and Security Agreement dated December 14, 2004, as amended, the Pledge and Security Agreement dated April 28, 2010, as amended, and the Pledge and Security Agreement dated August 4, 2010, as amended (together the "Pledge Agreements");

b. The prior approval of the Commission must be obtained before any foreclosure or transfer of any possessory security interest in such interest (except back to Wynn Resorts Holdings, LLC) and before any other resort to the collateral or other enforcement of a security interest in such interest may occur; and

c. Pursuant to NGC Regulations 15B.140 and 8.030(4)(a), the membership certificates of Wynn Las Vegas, LLC evidencing said pledge of the membership interest must at all times remain physically within the State of Nevada at a location designated to the Board and must be made available for inspection by agents of the Board immediately upon request during normal business hours.

11. THAT the Pledge Agreements shall not be amended without the prior administrative approval of the Chairman of the Board or his designee. Such administrative approval may not be granted regarding amendments to the Pledge Agreement that increase the number of shares of common stock that are the subject of the pledge, or that change the identity of the Collateral Agent.

12. THAT Wynn Resorts, Limited shall maintain its gaming compliance program for the purpose of, at a minimum, performing due diligence, determining the suitability of relationships with other entities and individuals, and to review and ensure compliance by Wynn Resorts, Limited, Wynn Las Vegas, LLC, their subsidiaries and any affiliated entities, with the Nevada Gaming Control Act (the "Act"), as amended, the Commission's Regulations (the "Regulations"), as amended, and the laws and regulations of any other jurisdictions in which Wynn Resorts, Limited, Wynn Las Vegas, LLC their subsidiaries and any affiliated entities they operate. The gaming compliance program, any amendments thereto, and the members of the

compliance committee, at least one such member who shall be independent and knowledgeable of the Act and Regulations, shall be administratively reviewed and approved by the Chairman of the Board or his designee. Wynn Resorts, Limited shall amend the gaming compliance program, or any element thereof, and perform such duties as may be assigned by the Chairman of the Board or his designee, related to a review of activities relevant to the continuing qualification of Wynn Resorts, Limited, Wynn Las Vegas, LLC, their subsidiaries and any affiliated entities under the provisions of the Act and Regulations.

13. THAT Wynn Resorts, Limited shall fund and maintain with the Board a revolving fund in the amount of $75,000 for the purpose of funding investigative reviews by the Board for compliance with the terms of this Order of Registration. Without limiting the foregoing, the Board shall have the right, without notice, to draw upon the funds of said account for the payment of costs and expenses incurred by the Board and its staff in the surveillance, monitoring and investigative review of all activities of Wynn Resorts, Limited, Wynn Las Vegas, LLC, their subsidiaries and any affiliated entities.

14. THAT pursuant to NRS 463.625, Wynn Resorts, Limited, is exempted from compliance with NRS 463.585 through NRS 463.615, inclusive, and shall instead comply with NRS 463.635 through NRS 463.645, inclusive.

15. THAT Wynn Resorts, Limited, is exempted from NGC Regulation 15 and shall instead comply with the provisions of NGC Regulation 16.

16. THAT pursuant to NRS 463.625, Wynn Las Vegas, LLC is exempted from compliance with NRS 463.585 through 463.615, inclusive, and shall instead comply with NRS 463.635 through NRS 463.645, inclusive.

17. THAT Wynn Las Vegas, LLC, is exempted from NGC Regulation 15B, except for the provisions of NGC Regulations 15B.150, 15B.170 and 15B.200 and shall instead comply with the provisions of NGC Regulation 16, provided however, that (i) pursuant to NGC Regulation 16.450, Wynn Las Vegas, LLC is exempted from compliance with NGC Regulation

16.100(1) and (2) and the balance of NGC Regulation 16 shall be interpreted so as to apply to Wynn Las Vegas, LLC and (ii) Wynn Resorts Holdings, LLC shall not sell, assign, transfer, pledge or otherwise dispose of any interest in Wynn Las Vegas, LLC, without the prior approval of the Commission.

18. THAT the Commission hereby expressly finds that the exemptions and waivers herein granted are consistent with the State policy set forth in NRS 463.0129 and NRS 463.489.

ENTERED at Las Vegas, Nevada, this 27th day of January 2011.

EXHIBIT 4

File No. SD-171

BEFORE THE NEVADA GAMING COMMISSION

AND THE STATE GAMING CONTROL BOARD

In the Matter of

WYNN RESORTS, LIMITED and
WYNN LAS VEGAS, LLC

(Registration)

THIRD REVISED ORDERS OF REGISTRATION

THIS MATTER came on regularly for hearing before the State Gaming Control Board ("Board") on August 8, 2012, and before the Nevada Gaming Commission ("Commission") on August 23, 2012, at Carson City, Nevada; and

THE BOARD AND COMMISSION having considered all information pertinent hereto;

IT IS HEREBY ORDERED BY THE NEVADA GAMING COMMISSION UPON THE RECOMMENDATION OF THE STATE GAMING CONTROL BOARD:

1. THAT the following applications, as amended and supplemented, have been filed:

a. The applications of Wynn Resorts, Limited and Wynn Las Vegas, LLC for amendments to their Orders of Registration, and

b. The application of Wynn Resorts Holdings, LLC for approval to pledge the membership interest of Wynn Las Vegas, LLC to Deutsche Bank Trust Company Americas, as Collateral Agent, in conjunction with 5.375% First Mortgage Notes due 2022.

2. THAT the Second Revised Orders of Registration of Wynn Resorts, Limited and Wynn Las Vegas, LLC dated January 27, 2011, are hereby amended and restated, in their entirety, by these Third Revised Orders of Registration.

3. THAT Wynn Resorts, Limited is registered as a publicly traded corporation, is found suitable as the manager of Wynn Resorts Holdings, LLC, and the Commission acknowledges that Wynn Resorts, Limited is the sole member of Wynn Resorts Holdings, LLC.

4. THAT Wynn Resorts Holdings, LLC is registered as an intermediary company and is found suitable as the sole member and manager of Wynn Las Vegas, LLC.

5. THAT Wynn Las Vegas, LLC is registered as a publicly traded corporation and, pursuant to NGC Regulation 16.450, is granted an exemption from NGC Regulation 16.100(1).

6. THAT Wynn Las Vegas, LLC, dba Wynn Las Vegas, is licensed to conduct off-track pari-mutuel race and sports wagering and nonrestricted gaming operations, including a race book and sports pool, and to operate Gaming Salons, at 3131 Las Vegas Boulevard South, Las Vegas, subject to such conditions or limitations as may be imposed by the Commission.

7. THAT Wynn Las Vegas, LLC is licensed as a manufacturer and distributor, subject to such conditions or limitations as may be imposed by the Commission.

8. THAT Stephen Alan Wynn is found suitable, pursuant to NRS 463.643 and NGC Regulation 16.400, as a shareholder and controlling shareholder of Wynn Resorts, Limited.

9. THAT Universal Entertainment Corporation is found suitable, pursuant to NGC Regulation 16.400 as a controlling shareholder of Wynn Resorts, Limited.

10. THAT Wynn Resorts Holdings, LLC, is granted approval, pursuant to NRS 463.5733(1) and NGC Regulation 8.030, to pledge its membership interest in Wynn Las Vegas, LLC, to Deutsche Bank Trust Company Americas, as Collateral Agent, in conjunction with First Mortgage Notes due 2017, 7.875 % First Mortgage Notes due 2020, 7.75 % First Mortgage Notes due 2020, 5.375% First Mortgage Notes due 2022 and an amended and restated Credit Agreement dated as of August 15, 2006, as amended, provided that:

a. This approval is pursuant to the Pledge and Security Agreement dated December 14, 2004, as amended, the Pledge and Security Agreement dated April 28, 2010, as amended, the Pledge and Security Agreement dated August 4, 2010, as amended, and the Pledge and Security Agreement dated March 12, 2012 (together the "Pledge Agreements");

b. The prior approval of the Commission must be obtained before any foreclosure or transfer of any possessory security interest in such interest (except back to Wynn Resorts Holdings, LLC) and before any other resort to the collateral or other enforcement of a security interest in such interest may occur; and

c. Pursuant to NGC Regulations 15B.140 and 8.030(4)(a), the membership certificates of Wynn Las Vegas, LLC evidencing said pledge of the membership interest must at all times remain physically within the State of Nevada at a location designated to the Board and must be made available for inspection by agents of the Board immediately upon request during normal business hours.

11. THAT the Pledge Agreements shall not be amended without the prior administrative approval of the Chairman of the Board or his designee. Such administrative approval may not be granted regarding amendments to the Pledge Agreement that increase the number of shares of common stock that are the subject of the pledge, or that change the identity of the Collateral Agent.

12. THAT Wynn Resorts, Limited shall maintain its gaming compliance program for the purpose of, at a minimum, performing due diligence, determining the suitability of relationships with other entities and individuals, and to review and ensure compliance by Wynn Resorts, Limited, Wynn Las Vegas, LLC, their subsidiaries and any affiliated entities, with the Nevada Gaming Control Act (the "Act"), as amended, the Commission's Regulations (the "Regulations"), as amended, and the laws and regulations of any other jurisdictions in which Wynn Resorts, Limited, Wynn Las Vegas, LLC their subsidiaries and any affiliated entities they operate. The gaming compliance program, any amendments thereto, and the members of the

compliance committee, at least one such member who shall be independent and knowledgeable of the Act and Regulations, shall be administratively reviewed and approved by the Chairman of the Board or his designee. Wynn Resorts, Limited shall amend the gaming compliance program, or any element thereof, and perform such duties as may be assigned by the Chairman of the Board or his designee, related to a review of activities relevant to the continuing qualification of Wynn Resorts, Limited, Wynn Las Vegas, LLC, their subsidiaries and any affiliated entities under the provisions of the Act and Regulations.

13. THAT Wynn Resorts, Limited shall fund and maintain with the Board a revolving fund in the amount of $75,000 for the purpose of funding investigative reviews by the Board for compliance with the terms of this Order of Registration. Without limiting the foregoing, the Board shall have the right, without notice, to draw upon the funds of said account for the payment of costs and expenses incurred by the Board and its staff in the surveillance, monitoring and investigative review of all activities of Wynn Resorts, Limited, Wynn Las Vegas, LLC, their subsidiaries and any affiliated entities.

14. THAT pursuant to NRS 463.625, Wynn Resorts, Limited, is exempted from compliance with NRS 463.585 through NRS 463.615, inclusive, and shall instead comply with NRS 463.635 through NRS 463.645, inclusive.

15. THAT Wynn Resorts, Limited, is exempted from NGC Regulation 15 and shall instead comply with the provisions of NGC Regulation 16.

16. THAT pursuant to NRS 463.625, Wynn Las Vegas, LLC is exempted from compliance with NRS 463.585 through 463.615, inclusive, and shall instead comply with NRS 463.635 through NRS 463.645, inclusive.

17. THAT Wynn Las Vegas, LLC, is exempted from NGC Regulation 15B, except for the provisions of NGC Regulations 15B.150, 15B.170 and 15B.200 and shall instead comply with the provisions of NGC Regulation 16, provided however, that (i) pursuant to NGC Regulation 16.450, Wynn Las Vegas, LLC is exempted from compliance with NGC Regulation

16.100(1) and (2) and the balance of NGC Regulation 16 shall be interpreted so as to apply to Wynn Las Vegas, LLC and (ii) Wynn Resorts Holdings, LLC shall not sell, assign, transfer, pledge or otherwise dispose of any interest in Wynn Las Vegas, LLC, without the prior approval of the Commission.

18. THAT the Commission hereby expressly finds that the exemptions and waivers herein granted are consistent with the State policy set forth in NRS 463.0129 and NRS 463.489.

ENTERED at Carson City, Nevada, this 23rd day of August 2012.

EXHIBIT 5

AMENDED AND RESTATED
GAMING COMPLIANCE PROGRAM OF
WYNN RESORTS, LIMITED

ADOPTED AS OF July 29, 2010

I.
INTRODUCTION

In order to maintain the highest standards of compliance with the regulatory requirements imposed upon gaming operations in Nevada, Wynn Resorts, Limited (the "Company") has established a program designed to protect the integrity and reputation of the Company. The nature of the gaming businesses in which the Company will be engaged requires particular sensitivity to the potential dangers of unsuitable associations and noncompliance with regulatory requirements. It is for this reason that the Company has developed this program for investigation and reporting in various areas of the Company's business activities.

II.
PURPOSE

This Gaming Compliance Program ("Program") is hereby created for the purpose of (i) monitoring compliance with gaming laws applicable to the Gaming Operations (as defined) of the Company and its Affiliates in Nevada and other jurisdictions; (ii) advising the Compliance Committee the Company of any gaming law compliance problems or situations which may adversely affect the objectives of gaming control in Nevada and other jurisdictions; (iii) providing appropriate reports for the purpose of keeping the Nevada Board (as defined) advised of the Company's compliance efforts in Nevada and other jurisdictions; (iv) performing due diligence in respect of proposed transactions and business associations; and (v) receiving appropriate input from Gaming Authorities (as defined) in order to assist the Company in enhancing its compliance with respect to gaming laws.

The scope and size of the Company's proposed operations militate against the implementation, investigation and enforcement of the Program by its individual subsidiaries and divisions. That implementation and administration will therefore be centrally controlled by a Compliance Committee ("Committee") with day-to-day responsibility for implementation provided by a Compliance Officer. However, the responsibility for promptly providing complete and accurate information to the Compliance Officer regarding matters requiring due diligence rests with the COO of the Company and the Company's Division Heads (as defined). The authority to complete and forward information may be delegated to other employees, but the ultimate responsibility rests with the COO and the Division Heads.

The Committee is intended to function as an oversight committee with the responsibility to assist the Board of Directors and the Executives (as defined) of the

Company in obtaining information necessary to make decisions in hiring, regulatory compliance and business associations requiring due diligence.

III.
DEFINITIONS

Affiliate means a Person that, directly or indirectly, through one or more intermediaries, controls or is controlled by, or is under common control with, the Company. The term does not include independent or unrelated Persons who are associated with the Company or its Affiliates in a business venture, or business entities exclusively engaged in non-gaming businesses.

CEO means the Chief Executive Officer of the Company.

CFO means the Chief Financial Officer of the Company.

CAO means the Chief Administrative Officer of the Company.

Chairman means the Chairman of the Compliance Committee.

Committee means the Compliance Committee.

Company means Wynn Resorts, Limited and its direct and indirect subsidiaries.

Company Board means the Board of Directors of the Company.

Compliance Officer means the Compliance Officer of the Company, or any Person named by the Company Board to fulfill the responsibilities of the Compliance Officer as set forth herein.

Consultant means a Person, other than a Professional Advisor, engaged by the Company to furnish advisory or consulting services related to furthering or advancing the Company's Gaming Operations for fees which are reasonably expected to be at least $25,000 on an annual basis.

Controlling Person means a Person who possesses the power to direct or cause the direction of the management and policies of a Person.

COO means the Chief Operating Officer of the Company.

Division Head means the top management level person in charge of the operation of a direct or indirect subsidiary of the Company, such as general manager of a gaming property, or the COO of a gaming Affiliate.

Executive means an executive officer, director or Division Head of the Company or any gaming Affiliate.

Gaming Authority means, individually, the Nevada Board, the Nevada Commission or any other federal, state, tribal, local or foreign regulatory agency that has jurisdiction over the Company's Gaming Operations or those of any gaming Affiliate.

Gaming Authorities means, collectively, the Nevada Board, the Nevada Commission and any other federal, state, tribal or local or foreign regulatory agency that has jurisdiction over the Company's Gaming Operations or those of any gaming Affiliate.

Gaming Device has the same meaning as set forth in NRS 463.0155 or any successor statute.

Gaming Operations means the gaming operations of the Company or any gaming Affiliate.

General Counsel means the General Counsel of the Company.

Independent Agent or *Junket Representative* has the meaning set forth in: (i) the Nevada Gaming Control Act (NRS 463.0164) with respect to Nevada Gaming Operations, or (ii) with respect to any other jurisdiction in which the Company conducts Gaming Operations, as the term is defined in that jurisdiction or, if it is not so defined, then the Nevada definition shall apply.

Key Employee means any Person that is compensated in any manner in excess of $150,000 per annum, including the value of all salary, bonuses, other taxable benefits and deferred compensation.

Lobbyist means any Person, other than an employee of the Company, engaged by the Company to perform lobbying activities on behalf of the Company.

Material Financing means a financing by the Company or by one of its Affiliates exceeding $5,000,000.

Material Litigation means litigation against the Company or an Affiliate which must be disclosed pursuant to applicable rules of the SEC or which the recovery sought exceeds $1,000,000. Lawsuits founded primarily in personal injury, workers' compensation or non-material employment-related actions are specifically excluded from this term, regardless of the amount involved.

Material Transaction means any sale, purchase, lease or other contract, including, but not limited to, joint ventures and other similar business arrangements, by the Company or any Affiliate with a Person other than the Company, an Affiliate or a Professional Advisor involving (i) a sum greater than $2,000,000; and (ii) a continuing relationship with the Person, provided, however, that any lease of space to a tenant within any property involving a lease term of two (2) years or more, and any joint venture or partnership of the Company with a Person, regardless of the dollar amount involved, are Material Transactions.

Nevada Board means the Nevada State Gaming Control Board.

Nevada Commission means the Nevada Gaming Commission.

Person means any association, corporation, firm, partnership, trust or other form of business association as well as a natural person.

Professional Advisor means a Person that is a licensed attorney, licensed accountant, law firm, accounting firm, financial institution chartered by the federal government or by any state, underwriter, investment banker, broker-dealer or investment adviser regulated by state or federal regulatory authorities, licensed real estate agent or broker, licensed insurance company or outside investigator retained by the Company for the purposes of complying with this Program.

Program means this Gaming Compliance Program of the Company.

SEC means the Securities and Exchange Commission.

Unsuitable Person means a Person (i) who has been denied licensing or other related approvals by a Gaming Authority on the grounds of unsuitability or who has been determined to be unsuitable to be associated with a gaming enterprise by a Gaming Authority; or (ii) that the Company determines is unqualified as a business associate of the Company or its Affiliates based on, without limitation, that Person's antecedents, associations, financial practices, financial condition or business probity.

Unsuitable Situation means a situation involving (i) an Unsuitable Person; (ii) a violation of the statutes or regulations enforced by a Gaming Authority; (iii) any material noncompliance with the provisions of the Program; or (iv) conduct or action undertaken by the Company or an Affiliate resulting in an inquiry, formal allegation or investigation by a Gaming Authority.

IV.
COMPLIANCE OFFICER

1. Appointment and Approval of Compliance Officer. The Compliance Officer shall be appointed by and serve at the will and pleasure of the Company Board, subject to the written approval of the Chairman of the Nevada Board.

2. Resignation of Compliance Officer. A Person may resign his position as the Compliance Officer at any time. The Company shall notify the Chairman of the Nevada Board of any such resignation within ten (10) business days of its effectiveness.

3. Certain Duties and Responsibilities. The Compliance Officer shall be a person who is knowledgeable of gaming control and generally familiar with the requirements of the Nevada Gaming Control Act and the regulations promulgated thereunder. The Compliance Officer is responsible for coordinating the activities of the

Committee and will report to the Committee on all information received, inquiries conducted, recommendations for action, and all related matters. The Compliance Officer shall take steps to adequately inform Executives and other appropriate Company personnel of the requirements of the Program and their reporting responsibilities under it. The Compliance Officer will also periodically review Company procedures and advise the Committee whether such procedures are reasonably adequate to detect matters requiring review under the Program. Finally, the Compliance Officer is responsible for disseminating information from the Committee to the Company Board, appropriate Executives and the Gaming Authorities.

V.
COMPOSITION OF THE COMMITTEE

The Committee shall be composed of at least the following three (3) members:

1. One (1) Person who is not an Executive or employee of the Company or any Affiliate, and who is familiar with the terms of the Nevada Gaming Control Act and the regulations promulgated thereunder (the "Independent Member").

2. The COO.

3. The CFO or CAO.

The Company Board shall designate the Chairman of the Committee and may appoint additional members. The Compliance Officer shall be the recording secretary of the Committee and shall be responsible for supervising all activities on behalf of the Committee and preparing all Committee minutes and reports. Committee members shall serve at the pleasure of the Company Board. All appointments and resignations of Committee members shall be recorded in the minutes of the Committee. Prior notice shall not be required, but the Compliance Officer shall promptly notify the Chairman of the Nevada Board of any change in the membership or composition of the Committee within ten (10) business days of any such change.

VI.
GENERAL OPERATION OF THE PROGRAM

Responsibility for the administration of the Program rests with the Committee. The COO of the Company and the Division Head of each gaming subsidiary, division or Affiliate of the Company shall be responsible for promptly reporting to the Committee, through the Compliance Officer, all matters required to be reviewed pursuant to Section VIII below. Internal audit and security personnel of the Company and its Affiliates shall be available to the Committee and, when necessary, shall report to the Committee on any matter designated by the Committee.

The outline in Section VIII of information to be obtained by or on behalf of the Committee is intended as a guide. Generally, an in-depth inquiry will not be required in

instances where the party to be reviewed is regulated by or reports to a governmental agency, for example publicly traded corporations regulated by the SEC, financial institutions registered with or chartered by federal or state authorities, or companies or individuals regulated or licensed by a Gaming Authority, unless such in-depth inquiry is otherwise warranted. In addition, the privacy laws of certain states and foreign jurisdictions may make it illegal to obtain, or difficult to obtain in a timely fashion, certain required information. In the event that this situation is encountered, specific questions relating thereto shall be directed to the Compliance Officer or the General Counsel for appropriate action.

In performing its duties outlined in Sections VIII and XII, the Committee may use such resources as are necessary or appropriate to have investigations performed or reports prepared, including, but not limited to, employees and outside investigative consultants with expertise in investigations, security, law, law enforcement, finance or accounting. The Compliance Officer shall be responsible for coordinating and supervising any investigation on behalf of the Committee. The Compliance Officer shall maintain a log of all investigations conducted on behalf of the Committee, which log shall be available for reference by Committee members and Gaming Authorities. The investigation log and all files regarding background investigations shall be maintained by the Compliance Officer on a confidential basis.

The Committee shall adopt and follow a suitable record retention and destruction policy. The Committee may consult with the Company's outside counsel specializing in gaming law with respect to matters involving compliance with regulatory requirements. The Committee shall be responsible to and shall provide information to the Company Board with respect to all reports received and investigations conducted regarding matters requiring action by the Company Board, and other appropriate matters. With respect to matters not requiring action by the Company Board, the Committee shall provide such information required by this Program to the appropriate Executive who shall use such information in making any decision regarding a required area of review set forth in Section VIII. Such Executive shall report back to the Committee with respect to the action taken and the Compliance Officer shall log such report in the records of the Committee.

VII.
QUORUM, MEETINGS, AND MINUTES

1. Quorum

The presence of at least two Committee members, at least one of whom is an Independent Member, is required to compose a quorum for all meetings. Actions taken by the Committee shall require a simple majority of the members present.

2. Meetings

The Committee shall hold regular meetings at least quarterly in such location as