

(d) Caesars shall have the right, but not the obligation, immediately or at any time after such expiration or termination, to operate a restaurant in the Restaurant Premises; provided, however, such restaurant shall not employ the Restaurant's food and beverage menus developed by MOTI pursuant to Section 2.3 or any of the Marks (as such term is hereinafter defined).

4. **RESTAURANT EMPLOYEES:**

4.1 **General Requirements:**

4.1.1 **Employees:** Caesars shall be responsible for, and shall have final approval with respect to, hiring, training, managing, evaluating, promoting, disciplining and firing all kitchen and front-of-house management and staff of the Restaurant (collectively, the "Employees"). All Employees, including, without limitation, all Senior Management Employees (as defined below), shall be employees of Caesars and shall be expressly subject to (a) Caesars' human resources policies and procedures and hiring requirements in existence as of the Effective Date and as modified by Caesars from time to time during the Term, and (b) Caesars' compliance committee requirements, as more particularly set forth in Section 10.2 hereof.

4.1.2 **Definition of Affiliate:** As used herein, "Affiliate" means, with respect to a specified Person, any other Person who or which is directly or indirectly controlling, controlled by or under common control with the specified Person, or any member, stockholder, director, officer, manager, or comparable principal of, or Relative of the specified Person. For purposes of this definition, "control", "controlling", "controlled" mean the right to exercise, directly or indirectly, any percentage interest of the voting power of the stockholders, members or owners and, with respect to any individual, partnership, trust or other entity or association, the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of the controlled entity. The term "Relative" shall mean: mother, father, spouse brother, sister, children, son-in-law, daughter-in-law, mother-in-law, father-in-law, step-parents, step-children, grandmother, grandfather, grandchildren and any Relative or other person residing in the place of resident of Rowen Seibel, any of the interest holders of MOTI or any of the interest holders of GLP.

4.2 **Union Agreements:**

4.2.1 **Agreements:** MOTI acknowledges and agrees that all of Caesars' agreements, covenants and obligations and all of MOTI's rights and agreements contained herein are subject to the provisions of any and all collective bargaining agreements and related union agreements to which Caesars is or may become a party and that are or may be applicable to the Employees (collectively, the "Union Agreements"), including, without limitation, that certain Union Agreement by and between Caesars and the Local Joint Executive Board of Las Vegas (the "Executive Board") in effect as of the Effective Date. MOTI agrees that all of its agreements, covenants and obligations hereunder, shall be undertaken in such manner as to be in accordance with and to assist and cooperate with Caesars' obligation to fulfill its obligations contained in the Union Agreements and any supplements thereto provided, that Caesars now and hereafter, shall advise MOTI of the obligations contained in said Union Agreements and any supplement thereto that are applicable to Employees. Notwithstanding the foregoing, in no event shall MOTI be deemed a party to any such Agreement whether by reason of this Agreement, the performance of its obligations hereunder or otherwise.

4.2.2 **Amendments:** MOTI acknowledges and agrees that from time to time during the Term; Caesars may negotiate and enter into supplements to the Union Agreements with the Executive Board or its component unions. Each Union Agreement or supplement thereto may include those provisions agreed to by and between the Executive Board and Caesars, in its sole discretion, including, without limitation, provisions for (a) notifying then-existing employees of Caesars in the bargaining units represented by the Executive Board of employment opportunities in the Restaurant, (b) preferences in training opportunities for such then-existing employees, (c) preferences in hiring of such then-existing employees, if such then-existing employees are properly qualified, and (d) other provisions concerning matters addressed in this Section 4.3.

4.2.3 **Conflicts:** In the event any agreement, covenant or obligation of Caesars or the exercise of any

right or agreement of MOTI contained herein is, or at any time during the Term shall be, prohibited pursuant to the terms of any Union Agreement or supplement thereto, Caesars shall be relieved of such agreement, covenant or obligation, with no continuing or accruing liabilities of any kind, and such agreement, covenant or obligation shall be deemed to be separate and severable from the other portions of this Agreement, and the other portions shall be given full force and effect. Caesars and MOTI shall thereafter cooperate in good faith to modify this Agreement to provide the parties with continuing agreements, covenants and obligations that are consistent with the requirements and obligations of this Agreement (including, but not limited to, the economic provisions contained herein), such Union Agreement and supplements thereto, and applicable law.

4.3 Employment Authorization: Caesars shall be solely responsible for applying for, and shall be solely responsible for all costs and expenses arising therefrom (with the understanding that said costs shall be deemed to be an expense of the Restaurant), any work authorizations from the United States Citizenship and Immigration Services, a Bureau of the United States Department of Homeland Security ("USCIS"), that may be required in order for the Executive Chef or other Senior Management Employees to be employed by Caesars at the Restaurant; provided, however, each such Employee shall be required to cooperate with Caesars with respect to applying for such work authorization and shall be required to diligently provide to Caesars or directly to USCIS, as applicable, all information such Employee is required to provide in support of the application for such work authorization; provided further, however, MOTI expressly acknowledges that in the event that Caesars is unable to reasonably obtain such work authorization for any Employee, the offer of employment for such Employee shall be revoked and MOTI shall have an obligation, within a reasonable period thereafter, to advise Caesars as to whom MOTI recommends be hired for such position.

5. LICENSE:

5.1 MOTI License: MOTI represents and warrants to Caesars that MOTI possesses worldwide right and license (the "License") to license those certain marks and images to be used by the Restaurant, including, without limitation, the logos, trademark, trade names, service marks and registrations thereof, programs, techniques, processes, formulas, developmental or experimental work, work-in-process, methods, trade secrets or business affairs relating to MOTI including, without limitation, those as are identified on Exhibit D attached hereto (collectively, the "Materials and Marks"). MOTI hereby grants to Caesars a license, to use (and permit its Affiliates to use) and employ the Materials and Marks on and in connection with the operation, marketing and promotion of the Restaurant by Caesars and its Affiliates under the terms and conditions more fully set forth herein. MOTI further represents and warrants that it shall not revoke or otherwise terminate the License at any time during the Term unless, as of the date of such revocation or termination, MOTI or MOTI's lawful designee licenses the Marks to Caesars for the balance of the Term substantially and materially in accordance with the terms of the License. MOTI shall, at Caesars' reasonable request, provide information or documents possessed by MOTI and execute documents that are necessary or useful for Caesars to exercise its rights under this Agreement and the License.

5.2 Ownership: MOTI agrees and acknowledges Caesars shall own all copyright and other rights, title and interest in and to all media created by Caesars (and by MOTI pursuant to this Agreement) whether such media uses or contains any or all of the Materials and the Marks, including, without limitation, all photographic or video images, all promotional materials produced in accordance with the provisions of Article 6 hereof, and all marketing materials produced in accordance with the provisions of Article 8 hereof and, in addition to the rights granted by copyright, may use such media and the Materials and the Marks in promotional pieces listing, indicating or depicting people or entities that have or have had an appearance, relationship or other connection to Caesars. Notwithstanding the foregoing, Caesars shall only be entitled to use the Materials and the Marks as expressly permitted herein.

5.3 Intellectual Property License: Subject to the terms and conditions hereof, MOTI hereby grants to Caesars a non-exclusive, royalty-free (the "Intellectual Property License") to make use of the Materials and Marks identified in Exhibit D pursuant to the following terms and conditions:

5.3.1 Scope of Use: Caesars may use MOTI's Intellectual Property to the extent necessary to the furtherance of its rights and obligations under the terms and conditions of this Agreement, including but not limited to the following: Caesars may use the Materials and Marks contained in Exhibit D to effectuate the rights and responsibilities of the Parties as described herein. With respect to Materials and Marks not contained in Exhibit D, Caesars shall submit promotional materials and advertisements proposing use of said Materials and Marks for approval to Rowen Seibel by delivering such materials (by mail, email or facsimile)

to his office at MOTI or to such other person and/or location as MOTI may designate in the future. Use of such Materials and Marks shall be deemed approved unless within five (5) business days of submission, MOTI provides a written notice denying approval to Caesars by fax and email with a confirmation copy by overnight carrier as set forth in Paragraph 13.5 and/or such other person or location as Caesars may designate in the future. Notwithstanding the foregoing, MOTI agrees that it shall not unreasonably withhold or delay its approval of any Caesars' request.

5.3.2 Territory: Caesars' right to use the Materials and Marks is worldwide.

5.3.3 Usage: Caesars shall use the Materials and Marks only as contained in Exhibit D or in the manner and form(s) as set forth in written approval provided by MOTI.

5.3.4 Marking: Caesars shall place the trademark registration symbol, ®, next to the Materials and Marks, and the superscripted "TM" or "SM" symbols next to MOTI's common-law trademarks and service marks identified in Exhibit D. If it is not feasible to use the above referenced trademark symbols, Caesars shall use good-faith efforts, when reasonable and commercially feasible, to include a statement in an appropriate location and size substantially similar to: "The Mark _____ (include Mark description) is a trademark owned by _____ (identify Mark's owner)" and, where appropriate, to continue "and is registered in the U.S. Patent and Trademark Office. Use without permission is strictly prohibited." Caesars also agrees that, if any web page on its web site contains any of the Materials and Marks that do not contain any of the above-mentioned trademark symbols, it shall use this trademark statement on such web pages either by including this language on the web page itself or through use of hypertext links to this language.

5.3.5 Quality Control: Caesars agrees that it shall use the Materials and Marks in a manner consistent with the quality associated with its own Intellectual Property. Caesars shall use commercially reasonable efforts to bring to MOTI's attention any issues with respect to the quality of use of the Materials and Marks and shall cooperate with any reasonable suggestion by MOTI to resolve any such issue. The parties acknowledge that due to their close working relationship with respect to the subject matter of this Agreement, MOTI can monitor Caesars's performance of its obligations under this Paragraph.

5.3.6 Limitation on Usage: Caesars acknowledges and agrees that MOTI reserves for itself the right to object to any use of the MOTI Marks even if such use is within the scope of permissible use set forth in this Agreement. Upon written notice by MOTI to Caesars of any such objection, Caesars shall promptly discontinue such use in the future, provided that MOTI shall provide Caesars with a reasonably acceptable equivalent alternative and provided further that MOTI shall reimburse Caesars for any reasonable expense it incurs in discarding existing inventory of approved marketing materials. Such expenses shall be deemed expenses of MOTI and shall not be deemed expenses of the Restaurant.

5.3.7 Registration: Caesars shall not register any mark in any jurisdiction, either during or after the term of this Agreement, which is identical or confusingly similar to any of the Materials or Marks.

5.3.8 Domain Names: Caesars shall not register any domain name, either during or after the term of this Agreement, consisting of or including any of the Materials or Marks or any variation thereof.

5.3.9 Estoppel: Upon conclusion of any "run out" provision described in this Agreement following termination of this Agreement, Caesars shall immediately stop all advertising and promotional use of the Materials and Mark. Caesars agrees that at no time either during or after the term of this Agreement will it directly or indirectly challenge or assist others to challenge the validity or strength of the Materials or Marks, provided that nothing herein shall preclude Caesars from complying with any lawful subpoena or other legal requirement.

6. SERVICES FEE:

6.1 Services Fee: In consideration of MOTI provision of the Services described herein, monthly Net Revenues shall be calculated and allocated between the parties in the following amounts and in the following order:

(a) Caesars shall be entitled to retain a sum sufficient to make payment with respect to all Operating Expenses (consistent with Caesars' standards applicable to other similar operations, but which expenses shall

always include all costs, overhead including, but not limited to, compensation and benefits paid to employees) of the restaurant, which shall include those items listed in Exhibit B, which is attached hereto and incorporated herein by reference.

(b) If, following deduction of Operating Expenses from Net Revenue, a sum remains that equals or exceeds Thirteen (13%) of Net Revenue in the calendar month at issue:

1. Caesars shall be entitled to retain a sum as Rent equal to the of Eight (8%) Percent of Net Revenue for that calendar month: and

2. Caesars shall pay to MOTI (i) the sum of Five (5%) Percent of Net Revenue for Net Revenue received in a calendar month up to the sum of Eight Hundred Thousand Three Hundred Thirty-Three Thousand Dollars and 33/100 (\$833,333.33) (ii) the sum of Six (6%) Percent of Net Revenue for Net Revenue received in a calendar month equal to or exceeding the sum of Eight Hundred Thousand Three Hundred Thirty-Three Thousand Dollars and 33/100 (\$833,333.33) up to the sum of One Million Two Hundred Fifty Thousand Dollars and 00/100; and (iii) the sum of Seven (7%) Percent of Net Revenue for Net Revenue received in a calendar month exceeding the sum of One Million Two Hundred Fifty Thousand Dollars and 00/100 (\$1,250,000.00) as and for a License Fee (the "License Fee") in exchange for the performance of MOTI's obligations described herein.

3. Following retention by Caesars of the sum as referred to in paragraph b(1) hereinabove and payment to MOTI as referred to in paragraph b(2) hereinabove, Caesars shall be entitled to retain Fifty (50%) Percent of remaining Net Revenue and shall pay to MOTI Fifty (50%) of remaining Net Revenue for that calendar month.

(c) If Net Revenue in any calendar month during the Term is less than Thirteen, (13%) Percent greater than Operating Expenses, in place of retention by Caesars and payment to MOTI of the amounts referred to hereinabove in paragraph 6.1(b), Caesars shall be entitled to retain as Rent Sixty-One and One Half (61.5%) Percent of Net Revenue and Caesars shall pay to MOTI Thirty-Eight and One Half (38.5%) Percent of Net Revenue above Operating Expenses received in that calendar month. In any month in which Net Revenue does not exceed Operating Expenses, there shall be no allocation of Net Revenue to the Parties for that month (except for Caesars retention of all monies which shall be offset against Operating Expenses) and any loss shall be carried forward and netted against Net Revenue until Caesars receives monies sufficient to cover all Operating Expenses incurred.

Although calculated and allocated on a monthly basis, monies due and payable to MOTI as described in this Section 6.1 shall be payable on a calendar quarter basis, or any pro rata portion thereof during the Term, no later than thirty (30) days after the end of the calendar quarter to which they relate by check, money order or wire transfer in lawful funds of the United States of America to such address or account located within the United States of America as directed by MOTI from time to time. The Parties agree that should revenue in any calendar month not exceed Operating Expenses for that calendar month, no payment shall be allocated to MOTI for that month and Caesars shall be entitled to retain (and continue to retain in each succeeding month) all revenues until it has recouped all outstanding Operating Expenses incurred.. The Parties agree that should revenues in any reporting period not be sufficient to make any payment as described hereinabove in subparts 6.1 (b) and (c), there shall be no obligation to make any payment for same in any future reporting period.

Examples:

In the first example, the Net Revenues for the year are \$9,000,000 and operating margin is 21%

	Net Revenues	\$	9,000,000
7.1			
(a)	Less: Operating Expenses	\$	7,110,000
7.1			
(b)	Less: Rent Payment to HET	\$	720,000
7.1(c)			
)	Less: Advisory Fee to MOTI	\$	450,000
	Remaining Cash	\$	720,000
7.1			
(d)	Less: Distribution to HET	\$	360,000
	Less: Distribution to MOTI	\$	360,000
	Remaining Cash	\$	-

In the second example, the Net Revenues for the year are \$9,000,000 and operating margin is 11%. Since the operating margin is less than 13%, Caesars receives 61.5% of remaining, while MOTI receives 38.5%.

	Net Revenues	\$	9,000,000
7.1			
(a)	Less: Operating Expenses	\$	8,010,000
7.1			
(b)	Less: Rent Payment to HET	\$	608,850
7.1(c)			
)	Less: Advisory Fee to MOTI	\$	381,150
	Remaining Cash	\$	-
7.1			
(d)	Less: Distribution to HET	\$	-
	Less: Distribution to MOTI	\$	-
	Remaining Cash	\$	-

In the third example, the Net Revenues for the year are \$9,000,000 and operating margin is -2%. Since the operating margin does not sufficiently cover the expenses, no allocations of net revenue will be paid to either party and the loss shall be carried forward and netted against net revenue until CLV receives monies sufficient to cover all operating costs.

	Net Revenues	\$	9,000,000
7.1			
(a)	Less: Operating Expenses	\$	9,180,000
7.1			
(b)	Less: Rent Payment to HET	\$	-
7.1(c)			
)	Less: Advisory Fee to MOTI	\$	-
	Remaining Cash	\$	(180,000)
7.1			
(d)	Less: Distribution to HET	\$	-
	Less: Distribution to MOTI	\$	-
	Remaining Cash	\$	(180,000)

6.2 Determination of Gross Revenues, Net Revenues and Operating Expenses: As used herein, "Gross Revenues" means the aggregate gross revenues, whether paid by cash or credit, of all goods, merchandise and services sold in or from the Restaurant, including, without limitation, food, retail merchandise, private party minimums, floral arrangements, set-up fees and similar expenses, and all food sold or served outside the Restaurant that is prepared by or represented as Restaurant cuisine. Caesars shall be solely responsible for maintaining and shall maintain, all books and records necessary to calculate Gross Revenues, Net Revenues and Operating Expenses and for the calculation thereof and, within thirty (30) days after the end of each calendar quarter shall deliver notice to MOTI reasonably detailing the calculation of Gross Revenues, Net Revenues and Operating Expenses for such quarter. Caesars' calculations shall be conclusive and binding unless, (i) within thirty (30) calendar days' of Caesars delivery of such notice, MOTI notifies Caesars in writing of any claimed manifest calculation error therein; or (ii) such calculations are determined to be inaccurate as the result of any audit pursuant to Section 6.3. Upon receipt of any such notification, Caesars shall review the claimed manifest calculation error and, within thirty (30) calendar days of such notification, advise MOTI as to the corrected calculation, if any. Absent such notification and such manifest calculation error, Caesars' calculations shall be binding on the parties. The items contained in subparagraphs (a)-(d) hereinbelow shall be deducted from the calculation of Gross Revenues and revenue remaining following these deductions shall constitute "Net Revenues" as such term is used further herein:

- (a) taxes of any nature added to checks or invoices pursuant to applicable laws;
- (b) gratuities and service fees received from customers for services and actually paid to Employees;
- (c) money and credits received by the Restaurant in settlement of claims for losses or damages; and
- (d) rebates, discounts or credits (which shall not include Restaurant "comps" issued to patrons) received by the Restaurant and consistent with Caesar's accounting system, except for rebates, discounts or credits related to items that are acquired for use solely in the Restaurant and not in any other outlet at Caesars Palace. This exception shall not apply to the purchase of any alcoholic beverages.

6.3 Audit: MOTI shall be entitled at any time upon ten (10) calendar days' notice to Caesars, but not more than one (1) time per calendar year, to cause an audit to be made, during normal business hours, by any Person designated by MOTI and approved by Caesars (who shall not unreasonably withhold, delay or condition said approval), of all books, records, accounts and receipts required to be kept for the calculation of Gross Revenues, Net Revenues and Operating Expenses which shall not include tax returns of Caesars filed on a consolidated basis, which audit shall be conducted without material disruption or disturbance of Caesars Operations. If such audit discloses that Gross Revenues or Net Revenues were understated or Operating Expenses were overstated for any relevant period, Caesars shall be entitled to review such audit materials and to conduct its own audit related to such period. If Caesars does not dispute the result of MOTI audit within ninety (90) days after conclusion and presentation by MOTI to Caesars of MOTI's findings, Caesars shall (in the next monthly allocation) allocate to MOTI such additional monies necessary to compensate MOTI consistent with the terms of payment described in Section 6.1 hereinabove. If such audit discloses that Gross Revenues or Net Revenues were understated or Operating Expenses were overstated for any monthly period by an amount equal to or greater than five percent (5%), Caesars shall pay MOTI actual costs of such audit, including, without limitation, all accountants' fees. MOTI shall hold all information disclosed to MOTI pursuant to this Section 6.3 in confidence, and not disclose same to any third Person other than (a) to any Person with the prior written consent of Caesars, (b) to MOTI directors, officers, employees, agents or advisors, including, without limitation, attorneys, and, as reasonably required, accountants, consultants and financial advisors, all of whom MOTI shall inform of the confidential nature of such information, (c) in furtherance of any legal process to which MOTI is a party, or (d) as required to be disclosed by MOTI in compliance with any Applicable Laws.

7. OPERATIONS:

7.1 Marketing: As reasonably required by Caesars from time to time during the Term, but not less than once each quarter, Rowen Scibel shall consult with Caesars, and provide Caesars with advice regarding the marketing of the Restaurant; provided, however, Caesars, after considering all reasonable recommendations received from MOTI, shall have final approval with respect to all aspects of same. Such marketing consultations (the "Marketing Consulting")

Services”), and meetings with respect to same, shall take place primarily in Las Vegas or such other location or locations as may be mutually and reasonably agreed to by Caesars and MOTI from time to time. Caesars shall market the Restaurant through means and in media which shall include, in room TV, the Caesars marquee, Dura-trans and the webpage for Caesars located within the website of Caesars’ affiliate.

7.2 Accommodations: Each month during the first three (3) months of the Term and, thereafter, for each quarterly visit, subject to availability, Caesars shall provide for Rowen Seibel’s use two (2) Deluxe rooms (room and tax only in Palace or Augustus Tower) at the Hotel Casino; provided, however, Rowen Seibel shall be responsible for all incidental room charges and other expenses incurred during the occupancy of such rooms. All such Travel Expenses as described above shall be considered an operating expense of the Restaurant. In addition to the foregoing, during the Term and subject to availability, Rowen Seibel shall be entitled to receive (for his use only) use of one (1) Deluxe Room (in Palace or Augustus Tower) at a discount of twenty (20%) percent off the then prevailing “casino” rate.

8. REPRESENTATIONS AND WARRANTIES:

8.1 Caesars’ Representations and Warranties: Caesars hereby represents and warrants to MOTI that:

(a) Caesars has the valid corporate power to execute and deliver, and perform its obligations under, this Agreement and such execution, delivery and performance has been authorized by all necessary corporate action on the part of Caesars;

(b) no consent or approval or authorization of any applicable governmental authority or natural person, form of business or social organization, other non-governmental legal entity, including, without limitation, a corporation, partnership, association, trust, unincorporated organization, estate or limited liability company (as applicable, a “Person”) is required in connection with Caesars’ execution and delivery, and performance of its obligations under this Agreement and, additionally, as of the date of the signing of this Agreement, MOTI has fulfilled its obligations with respect to the compliance policy of Caesars’ affiliate and no further approval of this Agreement is required by the Compliance Committee of Caesars’ affiliate;

(c) there are no known actions, suits or proceedings pending or, to the best knowledge of Caesars, threatened against Caesars in any court or administrative agency that would prevent Caesars from completing the transactions provided for herein;

(d) this Agreement constitutes the legal, valid and binding obligation of Caesars, enforceable in accordance with its terms;

(e) as of the Effective Date, no representation or warranty made herein by Caesars contains any untrue statement of material fact, or omits to state a material fact necessary to make such statements not misleading; and

(f) at all times during the Term, the Restaurant shall be a first-class gourmet restaurant.

8.2 MOTI Representations and Warranties: MOTI hereby represents and warrants to Caesars that:

(a) MOTI has the legal capacity to execute and deliver, and perform its obligations under, this Agreement;

(b) no consent or approval or authorization of any applicable governmental authority or Person is required in connection with MOTI’s execution and delivery, and performance of its obligations under, this Agreement;

(c) there are no known actions, suits or proceedings pending or, to the best knowledge of MOTI, threatened against MOTI in any court or before any administrative agency that would prevent MOTI from completing the transactions provided for herein;

(d) this Agreement constitutes the legal, valid and binding obligation of MOTI, enforceable in accordance with its terms; and

(e) as of the Effective Date, no representation or warranty made herein by MOTI contains any untrue statement of a material fact, or omits to state a material fact necessary to make such statements not misleading.

9. **STANDARDS; PRIVILEGED LICENSE:**

9.1 **Standards:** MOTI acknowledges that the Hotel Casino is an exclusive first-class resort hotel casino and that the Restaurant shall be an exclusive first-class restaurant and that the maintenance of the reputation of Caesars, the Marks, the Hotel Casino and the Restaurant reputation and the goodwill of the guests and invitees of Caesars, the Hotel Casino and the Restaurant guests and invitees is absolutely essential to Caesars, and that any impairment thereof whatsoever will cause great damage to Caesars. MOTI therefore covenants and agrees that it shall conduct all of its obligations hereunder in accordance with the highest standards of honesty, integrity, quality and courtesy so as to maintain and enhance the reputation and goodwill of Caesars, the Marks, the Hotel Casino, and the Restaurant and at all times in keeping with and not inconsistent with or detrimental to the operation of an exclusive, first-class resort hotel casino and an exclusive, first-class restaurant. MOTI shall use commercially reasonable efforts to continuously monitor the performance of each of its respective agents, employees, servants, contractors, and licensees at the Restaurant to ensure such standards are consistently maintained. MOTI failure to comply or failure to cause any of their respective agents, employees, servants, contractors, or licensees to comply with the terms of this Section 10.1 (after receiving a notice of such failure and being afforded a reasonable opportunity to cure to Caesars reasonable satisfaction) may be deemed, in Caesars' sole and absolute discretion, as a default hereunder.

9.2 **Privileged License:** MOTI acknowledges that Caesars and Caesars' Affiliates are businesses that are or may be subject to and exist because of privileged licenses issued by federal, state and local governmental, regulatory and administrative authorities, agencies, boards and officials responsible for or involved in the regulation of gaming or gaming activities and the sale, distribution and possession of alcoholic beverages (the "**Gaming Authorities**"). The Gaming Authorities require Caesars, and Caesars deems it advisable, to have a compliance committee (the "**Compliance Committee**") that does its own background checks on, and issues approvals of, Persons involved with Caesars and Caesars' business operations. Prior to the execution of this Agreement and, in any event, prior to the payment of any monies by Caesars to MOTI hereunder or by Caesars to Licensor under the License, and thereafter on each anniversary of the Opening Date during the Term, (a) MOTI shall provide to Caesars written disclosure regarding, MOTI and all of their respective key employees, agents, representatives, management personnel, lenders, or any financial participants (collectively, "**Associated Parties**"), and (b) the Compliance Committee shall have issued approvals of MOTI and the Associated Parties. Additionally, during the Term, on five (5) calendar days written request by Caesars to MOTI, MOTI shall disclose to Caesars all Associated Parties; provided, however, Caesars shall make not more than two (2) such written requests to MOTI in any twelve (12) month period; provided further, however, if Caesars has made two (2) such written requests to MOTI in any twelve (12) month period, and the Gaming Authorities require Caesars to make any additional written request(s), MOTI shall comply with such additional written request(s). To the extent that any prior disclosure becomes inaccurate, MOTI shall, within five (5) calendar days from that event, update the prior disclosure without Caesars making any further request. MOTI and its respective Associated Parties shall provide all requested information and apply for and obtain all necessary approvals required or requested of MOTI by Caesars or the Gaming Authorities. If MOTI fails to satisfy or fails to cause the Associated Parties to satisfy such requirement, if Caesars or any of Caesars' Affiliates are directed to cease business with MOTI or any Associated Party by the Gaming Authorities, or if Caesars shall determine, in Caesars' sole and exclusive judgment, that MOTI or any Associated Party is or may engage in any activity or relationship that could or does jeopardize any of the privileged licenses held by Caesars or any Caesars' Affiliate, then (a) MOTI shall terminate any relationship with the Associated Party who is the source of such issue, (b) MOTI shall cease the activity or relationship creating the issue to Caesars' satisfaction, in Caesars' sole judgment, or (c) if such activity or relationship is not subject to cure as set forth in the foregoing clauses (a) and (b), as determined by Caesars in its sole discretion, Caesars shall, without prejudice to any other rights or remedies of Caesars including at law or in equity, terminate this Agreement and its relationship with MOTI. In the event MOTI does not comply with any of the foregoing, such noncompliance may be deemed, in Caesars' sole discretion, as a default hereunder. MOTI further acknowledges that Caesars shall have the absolute right, without any obligation to comply with Article 11 hereof, to terminate this Agreement in the event any Gaming Authority require Caesars to do so.

10. **CONDEMNATION; CASUALTY; FORCE MAJEURE:**

10.1 **Condemnation:** In the event that during the Term the whole of the Restaurant shall be taken under power of eminent domain by any Governmental Authority or conveyed by Caesars to any Governmental Authority in lieu of such taking, then this Agreement shall terminate as of the date of such taking. In the event that during the Term a substantial portion of the Restaurant shall be taken under power of eminent domain by any Governmental Authority or conveyed by Caesars to any Governmental Authority in lieu of such taking, Caesars may, in the exercise of its sole discretion, terminate this Agreement upon written notice give not more than thirty (30) calendar days after the date of such taking. All compensation awarded by any such Governmental Authority shall be the sole property of Caesars and MOTI shall have no right, title or interest in and to same.

10.2 **Casualty:**

10.2.1 **Hotel Casino:** In the event that during the Term there is damage or destruction to the Hotel Casino by any casualty whatsoever and Caesars determines to close the Hotel for a period exceeding one hundred eighty (180) calendar days on account thereof, Caesars shall have the right, but not the obligation, to terminate this Agreement upon written notice delivered within one hundred twenty (120) calendar days after the occurrence of such damage or destruction.

10.2.2 **Restaurant:** In the event that during the Term there is damage or destruction to the Restaurant by any casualty whatsoever, Caesars shall have the right, but not the obligation, to terminate this Agreement upon written notice delivered within one hundred twenty (120) calendar days after the occurrence of such damage or destruction, only if (a) the casualty is a risk normally covered by fire and extended coverage insurance, with a special form endorsement, and the cost of repair and reconstruction will exceed fifty percent (50%) of the replacement cost of the Restaurant, or (b) the casualty is a risk not normally covered by fire and extended coverage insurance, with a special form endorsement, and the cost of repair and reconstruction will exceed ten percent (10%) of the replacement cost of the Restaurant. In the event this Agreement is not so terminated, Caesars shall use commercially reasonable efforts to promptly repair, reconstruct and restore the Restaurant in accordance with the provisions of Section 2.2. hereof.

10.2.3 **Excusable Delay:** In the event that during the Term either party shall be delayed in or prevented from the performance of any of such party's respective agreements, covenants or obligations hereunder by reason of strikes, lockouts, unavailability of materials, failure of power, fire, earthquake or other acts of God, restrictive applicable laws, riots, insurrections, the act, failure to act or default of the other party, war, terrorist acts, or other reasons wholly beyond its control and not reasonably foreseeable (each, an "Excusable Delay"), then the performance of such act shall be excused for the period of the delay and the period for the performance of such act shall be extended for a period equivalent to the period of such delay. Notwithstanding the foregoing, lack of funds shall not be deemed an Excusable Delay. Any claim for an extension of time due to an Excusable Delay must be made in writing and received by the other party not more than fifteen (15) calendar days after the commencement of such delay, otherwise, such party's rights under this Section 10.2.3 shall be deemed waived.

10.3 **No Extension of Term:** Nothing in this Article 10 shall extend the Term and no other payments shall accrue during any period during which the Restaurant is closed by reason of such condemnation, casualty, or Excusable Delay. Any termination by Caesars under Sections 9 or 10 shall terminate the obligations of each Party to this Agreement, except for those obligations that, by definition, are intended to survive termination.

11. **ARBITRATION:**

11.1 **Dispute Resolution:** Except for a breach by MOTI of Section 1.2, Section 5 or Section 9 (for which dispute Caesars may seek affirmative relief through any means and the filing of any action in any forum it deems appropriate), in the event of any other dispute, controversy or claim arising out of or relating to this Agreement between the parties to this Agreement ("Dispute"), either party shall serve written notice (a "Dispute Notice") upon the other party setting forth the nature of the Dispute and the relief sought, and the parties shall attempt to resolve the Dispute by negotiation. If the Dispute has not been resolved within thirty (30) days of receipt of a Dispute Notice, either party may serve on the other party a request to resolve the Dispute by arbitration. All Disputes not resolved by the foregoing negotiation shall be finally settled by binding arbitration. Such arbitration shall be held in Las Vegas,

Nevada in accordance with the Commercial Rules of Arbitration of the American Arbitration Association ("AAA"), in effect on the date of the Dispute Notice (the "Rules") by one or more arbitrators appointed in accordance with Section 11.2 hereof.

11.2 Arbitrator(s): If the claim in the Dispute Notice does not exceed Five Hundred Thousand and 00/100 Dollars (\$500,000.00), there shall be a single arbitrator nominated by mutual agreement of the parties and appointed according to the Rules. If the claim in the Dispute Notice exceeds Five Hundred Thousand and 00/100 Dollars (\$500,000.00), the arbitration panel shall consist of three (3) members unless both parties agree to use a single arbitrator. One of the arbitrators shall be nominated by Caesars, one of the arbitrators shall be nominated by MOTI and the third, who shall serve as chairman, shall be nominated by the two (2) party-arbitrators within thirty (30) days of the confirmation of the nomination of the second arbitrator. If either party fails to timely nominate an arbitrator in accordance with the Rules, or if the two (2) arbitrators nominated by the parties fail to timely agree upon a third arbitrator, then such arbitrator will be selected by the AAA Court of Arbitration in accordance with the Rules. The arbitral award shall be final and binding on the parties and may be entered and enforced in any court having jurisdiction over any of the parties or any of their assets.

12. MISCELLANEOUS:

12.1 No Partnership or Joint Venture: Nothing expressed or implied by the terms of this Agreement shall make or constitute either party hereto the agent, partner or joint venturer of and with any other party. Accordingly, the parties acknowledge and agree that all payments made to MOTI under this Agreement shall be for services rendered as an independent contractor and, unless otherwise required by law, Caesars shall report as such on IRS Form 1099, and both parties shall report this for financial and tax purposes in a manner consistent with the foregoing.

12.2 Successors, Assigns and Delagees; Sale: Caesars is relying upon the skill and expertise of MOTI and, specifically, the skills of Rowen Seibel (the "Principal") in entering into this Agreement and accordingly, the obligations and duties of MOTI specifically designated hereunder to be performed by the Principal are personal to each such Principal and are not assignable or, unless expressly contemplated hereby, delegable by MOTI to any other Person. Without limiting the foregoing or the provisions of Section 12.4, this Agreement shall inure to the benefit of and be binding upon the parties and, if written consent to assignment or delegation is given, their respective successors, assigns and delagees. Additionally, MOTI may not assign this Agreement or any obligation contained herein without written consent of Caesars, which consent may be withheld in Caesars' sole and absolute discretion.

12.3 Waiver of Rights: Failure to insist on compliance with any of the agreements, obligations and covenants hereof shall not be deemed a waiver of such agreements, obligations and covenants, nor shall any waiver or relinquishment of any right or power hereunder at any one or more time or times be deemed a waiver or relinquishment of such rights or powers at any other time or times. The exercise of any right or remedy shall not impair Caesars' or MOTI right to any other remedy.

12.4 At least sixty (60) days prior to any contemplated sale of the Hotel Casino, Caesars (or the then owner of the Hotel Casino) shall give MOTI written notice of such contemplated sale, which notice shall include the name and identity of the proposed purchaser. In the event such sale is thereafter consummated, Caesars (or the then owner of the Hotel Casino) shall be and hereby is relieved of all liability under any and all of its agreements, obligations and covenants contained in or derived from this Agreement arising out of any act, occurrence or omission relating to the Restaurant Premises or Caesars Palace occurring after the consummation of such sale or exchange. Provided that such purchaser of the Hotel Casino represents and warrants to operate the Restaurant substantially and materially in accordance with those standards set forth in this Agreement, MOTI shall continue to be obligated to such purchaser pursuant to the terms and conditions of this Agreement and MOTI hereby agrees to attorn to such purchaser and to continue to fulfill its obligations under this Agreement (including, but not limited to, providing for the services of the Principals as further described herein), in full force and effect, without the requirement of notice to or consent by MOTI with respect to such sale and attornment.

12.5 Notices: Any notice or other communication required or permitted to be given by a party hereunder shall be in writing, and shall be deemed to have been given by such party to the other party or parties (a) on the date of personal delivery, (b) on the next business day following any facsimile transmission to a party at its facsimile number set forth below; provided, however, such delivery is concurrent with delivery pursuant to the provisions of clause (a)

of this Section 12.5, (c) three (3) calendar days after being given to an international delivery company, or (d) ten (10) calendar days after being placed in the mail, as applicable, registered or certified, postage prepaid addressed to the following addresses (each of the parties shall be entitled to specify a different address by giving notice as aforesaid):

If to Caesars: Desert Palace, Inc.
3570 Las Vegas Boulevard South
Las Vegas, NV 89109
Facsimile: (702) 699-5110
Attention: President

With a copy, which shall not constitute notice, to:
Harrah's Legal Department
One Caesars Palace Drive
Las Vegas, NV 89109
Facsimile: (702) 407-6000
Attention: General Counsel

If to MOTI: MOTI Partners
200 Central Park South
New York, New York
New York, NY 10019
Facsimile: (212) _____
Attention: Rowen Seibel

With a copy, which shall not constitute notice, to:
Robert A. Seibel
Seibel & Rosen
560 3rd Avenue, 28th Floor
NY, NY 10016
Attention: Robert Seibel
(212)983-9200 Phone
(917)885-2610 Mobile
(212)983-9201 Facsimile
bobsiebel@yahoo.com

12.6 Entire Agreement: This Agreement constitutes the entire agreement between the parties hereto pertaining to the subject matter hereof and supersedes all prior agreements, understandings, negotiations, and discussions, whether oral or written.

12.7 Severability: If any part of this Agreement is determined to be void, invalid or unenforceable, such void, invalid, or unenforceable portion shall be deemed to be separate and severable from the other portions of this Agreement, and the other portions shall be given full force and effect, as though the void, invalid or unenforceable portions or provisions were never a part of this Agreement.

12.8 Amendment and Modification: No supplement, modification, waiver or termination of this Agreement shall be binding unless executed in writing by the party to be bound. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provisions (whether or not similar), nor shall such waiver constitute a continuing waiver unless otherwise expressly provided.

12.9 Headings: Article or Section headings are not to be considered part of this Agreement and are included solely for convenience and reference and shall not be held to define, construe, govern or limit the meaning of any term or provision of this Agreement. References in this Agreement to an Article or Section shall be reference to an Article or Section of this Agreement unless otherwise stated or the context otherwise requires.

12.10 Governing Law: Submission to Jurisdiction: The laws of the State of Nevada applicable to agreements made in that State shall govern the validity, construction, performance and effect of this Agreement. Subject to the provisions of Section 11.1 MOTI and Caesars each agree to submit to the exclusive jurisdiction of any state or federal court within the Clark County Nevada (the "Nevada Courts") for any court action or proceeding to compel or in support of arbitration or for provisional remedies in aid of arbitration, including but not limited to any action to enforce the provisions of Article 11 (each an "Arbitration Support Action"). Each of the parties hereto irrevocably and unconditionally waives any objection to the laying of venue of any action, suit or proceeding arising out of this Agreement including, but not limited to, an Arbitration Support Action and hereby further irrevocably and unconditionally waives and agrees not to plead or claim in any such court that any such action, suit or proceeding brought in any such court has been brought in an inconvenient forum.

12.11 Interpretation: This Agreement is to be deemed to have been prepared jointly by the parties hereto, and if any inconsistency or ambiguity exists herein, it shall not be interpreted against either party but according to the application of rules of the interpretation of contracts. Each party has had the availability of legal counsel with respect to its execution of this Agreement.

12.12 Third Persons: Nothing in this Agreement, expressed or implied, is intended to confer upon any Person

other than the parties hereto any rights or remedies under or by reason of this Agreement.

12.13 Attorney Fees: The prevailing Party in any dispute that arises out of or relates to the making or enforcement of the terms of this Agreement shall be entitled to receive an award of its expenses incurred in pursuit or defense of said claim, including, without limitation, attorneys' fees and costs, incurred in such action.

12.14 Counterparts: This Agreement may be executed in counterparts, each one of which so executed shall be deemed an original, and both of which shall together constitute one and the same agreement.

12.15 Indemnification: Each Party covenants and agrees, jointly and severally, to defend, indemnify and save and hold harmless the other Party and its Affiliates and its Affiliates' respective stockholders, directors, officers, agents and employees (collectively, the "Related Parties") from and against all claims, losses, expenses, obligations, liabilities, liens, demands, charges, litigation and judgments, including, without limitation, court costs and reasonable attorneys' fees, arising directly or indirectly from any claim by any third Person (each a "Claim") arising out of a Party's performance of its obligations under or in connection with this Agreement. The Party asserting a Claim (the "Indemnified Party") shall notify the other Party (the "Indemnifying Party") of each Claim and the Indemnifying Party shall, at its sole cost and expense, defend such Claim, or cause the same to be defended by counsel designated by the Indemnified Party.

12.16 Withholding and Tax Indemnification Required Withholding: MOTI represents that no amounts due to be paid to MOTI hereunder are subject to withholding. If Caesars is required to deduct and withhold from any payments or other consideration payable or otherwise deliverable pursuant to this Agreement to MOTI any amounts under the Internal Revenue Code of 1986, as amended (the "Code"), or any provision of United States federal, state, local or foreign law, statute, regulation, treaty, administrative ruling, pronouncement or other authority or judicial opinion, Caesars agrees that, prior to said deduction and withholding, it shall provide MOTI with notice of same. To the extent such amounts are so deducted or withheld, such amounts shall be treated for all purposes under this Agreement as having been paid to the person to whom such amounts would otherwise have been paid. If requested by Caesars, MOTI shall promptly deliver to Caesars all the appropriate Internal Revenue Service forms necessary for Caesars, in its sole and absolute discretion deems necessary to make a determination as to its responsibility to make any such U.S. federal withholding with respect to any payment payable pursuant to this Agreement.

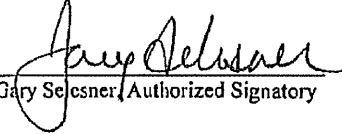
12.17 Indemnification: Notwithstanding anything to the contrary in this MOTI shall be responsible for and shall indemnify and hold harmless Caesars and its Affiliates (collectively, the "Indemnified Parties") against (i) all Taxes (including, without limitation, any interest and penalties imposed thereon) payable by or assessed against such Indemnified Parties with respect to all amounts payable by Caesars to MOTI pursuant to this Agreement and (ii) any and all claims, losses, damages, liabilities, costs and expenses (including, without limitation, reasonable attorneys' fees and expenses) suffered or paid by the Indemnified Parties as a result of or in connection with such Taxes Caesars shall have the right to reduce any payment payable by Caesars to MOTI pursuant to this Agreement in order to satisfy any indemnity claim pursuant to this Section 12.16(b).

12.18 Definition: For purposes of this Section, the term "Tax" or "Taxes" means all taxes, assessments, charges, duties, fees, levies or other governmental charges, including, without limitation, all federal, state, local and foreign income, franchise, profits, capital gains, capital stock, transfer, sales, use, value added, occupation, property, excise, severance, windfall profits, stamps, license, payroll, social security, withholding and other taxes, or other governmental assessments, duties, fees, levies or charges of any kind whatsoever, all estimated taxes, deficiency assessments, additions to tax, penalties and interest.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the Effective Date.

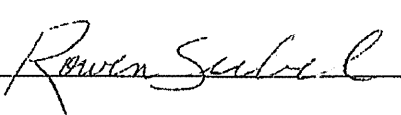
"CAESARS"

Desert Palace, Inc., a Nevada corporation

By: 
Gary Selesner, Authorized Signatory

"MOTI"

MOTI Partners, a New York limited liability company

By: 

Its: Managing Member

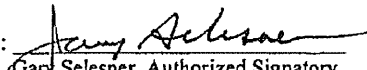
IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the Effective Date.

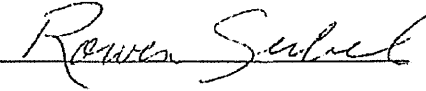
"CAESARS"

"MOTI"

Desert Palace, Inc., a Nevada corporation

MOTI Partners, a New York limited liability company

By: 
Gary Selesner, Authorized Signatory

By: 

Its: Managing Member

E X H I B I T " A "

RESTAURANT PREMISES

[Attached hereto.]

E X H I B I T " B "

Buildings and Improvements: Includes, but is not limited to, the cost of investment in buildings (and structural improvements), including the cost of construction labor, materials, and services such as architectural fees. Includes original cost of equipment that services normal heating, plumbing, fire protection, power requirements, and equipment such as elevators and escalators.

Building improvements consist of additions to or renovations of existing structures subsequent to the building being placed in service. Building improvements are an integral part of the building and are of a nature that would be included in the assessed valuation of the real estate for local real property tax purposes.

Furniture, Fixtures and Equipment:

Restaurant Equipment

Includes, but is not limited to, heavy equipment used in the restaurant and bar. This account does not include air conditioning units, compressors, coolers, etc., used in the restaurant and bar areas.

Bar-Front and Back	Grease Pits	Dishwashers
Cash Registers	Ranges	Ventilation Systems
Cooks Units	Refrigerators	Fire Extinguisher Systems
Cookers-Steam	Stoves-Heavy	

Miscellaneous Restaurant Equipment

Bar Doors	Lamps – Wall & Table	Kitchen Utensils
Booths	Lecterns	Water Softeners
Candelabra	Mixers	Ice Crushers & Makers
Carts – Room Service	Ornamental Iron Gates	Waitress Stations
Chairs	Ovens	Glass Racks
Chandeliers	Pictures	
Coffee Maker	Popcorn Machines	
Dance Floors	Projectors	
Dish Table	Sandwich Units	
Dishwashers	Serving, Banquets	
Disposals	Sneeze Guards	
Exhaust Fans	Stoves	
Faucets – Bar/Restaurant	Table Tops	
Faucets & Rims – Lavatories	Tape Deck/Player	
Fryers	Utility Stands	

China, Glass and Silverware

The initial complement of china, glass and silverware should be capitalized at full cost. The assets will be assigned a 50% salvage value. The remaining 50% of the capitalized amount will be depreciated on a straight-line basis over a two-year life. Initial complements consist of items purchased for a start-up operation. A complete replacement of a particular design or series of base stocks may also be capitalized, with the old china, glass and silverware items being expensed in the period of replacement. All subsequent purchases and replacements for worn or broken items should be expensed as purchased.

Linens and Uniforms

The initial complement of linens and uniforms should be capitalized and fully depreciated over a three-year life. Initial complements consist of items purchased for a start-up operation. A complete replacement due to design, style or color changes may also be capitalized, with the old linen/uniform items being expensed in the period of replacement. All subsequent purchases and replacements for worn items should be expensed as purchased.

Utilities and Related Expenses

Operating expenses shall include an allowance of .90 per square foot, per month for costs related to trash, sewer, water, electric and gas usage. This figure shall be adjusted annually based upon the increase or decrease in pricing for these services. The premises shall also have allocated the sum of \$500 per month for hood cleaning.

Miscellaneous Operating Expenses

Operating expenses shall include, but not be limited to, payroll costs, taxes, insurance, advertising, contractor labor, repairs/maintenance, cost of goods sold, laundry, postage, telephone, floral, uniforms and travel on an "as incurred" basis. Additionally, the restaurant shall receive an allocation charge for use of the commissary for areas such as baker, butchery, gardmanger and cook chill. The restaurant shall also have allocated to it the expense of 2.8 employees for cleaning of restrooms, the patio area, stairs and the areas surrounding the restaurant.

E X H I B I T " C "

**RESTAURANT TRAINING AND DEVELOPMENT OF CULINARY
AND SERVICE STANDARDS**

E X H I B I T " D "

MARKS

[ONE TO PROVIDE LIST OF MARKS]

Exhibit B

Criminal Charges against Rowen Seibel

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #:
DATE FILED JAN 18 2016

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- - - - -X

UNITED STATES OF AMERICA, : INFORMATION

-v.- : 16 Cr.

ROWEN SEIBEL, :

Defendant. :
- - - - -X

15 CRIM 279

COUNT ONE

(Corrupt Endeavor to Obstruct and Impede the
Due Administration of the Internal Revenue Laws)

The United States Attorney charges:

The Defendant

1. At all times relevant to this Information, ROWEN SEIBEL, the defendant, was a United States citizen who maintained a residence in the borough of Manhattan, in New York, New York.

Obligations of United States Taxpayers
With Respect to Foreign Financial Accounts

2. Citizens and residents of the United States who have income in any one calendar year in excess of a threshold amount ("United States taxpayers") are obligated to file a U.S. Individual Income Tax Return, Form 1040 ("Form 1040"), for that calendar year with the Internal Revenue Service ("IRS"). On such return, United States taxpayers are obligated to report their income from any source, regardless of whether the source of their income is inside or outside the United States. In addition, on Schedule B of Form

Judge Paulay

1040, the filer must indicate whether "at any time during [the relevant calendar year]" the filer had "an interest in or a signature or other authority over a financial account in a foreign country, such as a bank account, securities account, or other financial account." If the taxpayer answers that question in the affirmative, then the taxpayer must indicate the name of the particular country in which the account is located.

3. Separate and apart from the obligation to file Forms 1040, United States taxpayers who have a financial interest in, or signature authority over, a financial account in a foreign country with an aggregate value of more than \$10,000 at any time during a particular calendar year are required to file with the IRS a Report of Foreign Bank and Financial Accounts, Form TD F 90-22.1 ("FBAR"). The FBAR for any calendar year is required to be filed on or before June 30 of the following calendar year. The FBAR requires that the filer identify the financial institution with which the financial account is held, the type of account (either bank, securities, or other), the account number, and the maximum value of the account during the calendar year for which the FBAR is being filed.

UBS AG

4. At all times relevant to this Information, UBS AG ("UBS") was a corporation organized under the laws of Switzerland. UBS, directly and through its subsidiaries, operated a global

financial services business. Among other things, UBS provided banking, wealth management, and asset management services to United States taxpayers, including many like ROWEN SEIBEL, the defendant, who lived and/or worked in the Southern District of New York.

5. Beginning well before 2000 and continuing through at least 2009, UBS, through various of its employees, engaged in a scheme to assist United States taxpayers who had accounts at UBS in concealing the existence of UBS accounts, and the income earned in UBS accounts, from the IRS.

6. Among the means by which UBS assisted certain United States taxpayers who had accounts at UBS in Switzerland in concealing from the IRS the existence of such UBS accounts, and the income earned in such UBS accounts, was having United States taxpayer clients agree that account statements for those taxpayers' accounts would not be sent by UBS to the United States.

SEIBEL's Numbered UBS Account

7. From in or about March 3, 2004, through in or about 2008, ROWEN SEIBEL, the defendant, maintained an account at UBS in Switzerland, as follows:

a. On or about March 3, 2004, ROWEN SEIBEL, the defendant, and a relative of the defendant (hereinafter "Taxpayer One"), traveled to UBS offices overseas to execute UBS forms allowing SEIBEL to open and become the beneficiary and account holder of a

UBS bank account held not in his own name, but identified with the moniker "CQUE," followed by the account number (the "Numbered UBS Account"). At that same time, Taxpayer One executed forms to have unlimited Power of Attorney over SEIBEL's Numbered UBS Account. At or about the same time, SEIBEL executed a UBS Telefax Agreement, thereby allowing regular communication between SEIBEL and UBS via facsimile. SEIBEL also executed forms acknowledging that he was a United States citizen subject to United States taxation, and a form representing that SEIBEL was the beneficial owner of the assets and income stemming from the Numbered UBS Account. Finally, in exchange for the payment of an additional fee to UBS, SEIBEL authorized and directed UBS to retain all account correspondence so that no bank statements or other correspondence related to the Numbered UBS Account would be mailed to him in the United States.

b. ROWEN SEIBEL, the defendant, caused his Numbered UBS Account to be opened in 2004 with a \$25,000 cash deposit made by Taxpayer One. Between 2004 and 2005, Taxpayer One caused cash and checks totaling approximately \$1,000,000 to be deposited into SEIBEL's account, bringing to \$1,011,279 the total deposits made into SEIBEL's Numbered UBS Account. Between 2004 and 2008, SEIBEL monitored and approved the selection, and investment of the assets maintained in the Numbered UBS Account, resulting in the production of substantial income in the form of capital gains, dividends and

interest, and a 2008 high-water balance in the account of approximately \$1,300,200.

**The Closing of the UBS Account and
the Opening of a New Swiss Bank Account**

8. On or about May 30, 2008, ROWEN SEIBEL, the defendant, traveled to Switzerland and informed UBS personnel that he wanted to close his Numbered UBS Account, specifically mentioning that his concern had been engendered by press reports relating to UBS. Those press reports had revealed various investigations commenced by United States law enforcement of UBS's role in helping United States citizens to evade federal income taxes by, among other things, using undeclared foreign bank accounts at UBS.

9. In connection with the closing of his Numbered UBS Account, on or about May 22, 2008, ROWEN SEIBEL, the defendant, caused the creation, under Panama law, of a company named MIRZA International ("MIRZA"), of which SEIBEL became the beneficial owner. On or about May 30, 2008, SEIBEL caused MIRZA to open, at a different Swiss bank ("Swiss Bank S"), a financial account over which SEIBEL had signatory authority. Shortly before SEIBEL closed out the Numbered UBS Account, he caused a \$900,000 check that had been issued from the Numbered UBS Account in the name of MIRZA to be deposited into the MIRZA account at Swiss Bank S.

SEIBEL's Tax Returns

10. On or about October 10, 2008, ROWEN SEIBEL, the defendant, filed and caused to be filed with the IRS a Form 1040 for calendar year 2007. On that return, which SEIBEL signed under penalty of perjury, SEIBEL omitted any dividend, interest, and other income received by him in one or more bank, securities, and other financial accounts at UBS. SEIBEL also failed to report, as required by law, on Schedule B of his 2007 Form 1040 that he had an interest in or a signature authority over a financial account in a foreign country. Moreover, because of his signatory or other authority over SEIBEL's Numbered UBS Account, SEIBEL was required to file an FBAR for calendar year 2007, but SEIBEL knowingly and willfully failed to do so.

11. On or about April 15, 2009, ROWEN SEIBEL, the defendant, filed and caused to be filed with the IRS a Form 1040 for calendar year 2008. On that return, SEIBEL omitted the dividend, interest, and other income received by him in one or more bank, securities, and other financial accounts at UBS. Moreover, SEIBEL falsely and fraudulently claimed, on Schedule B attached to his 2008 Form 1040, that he did not have an interest in or a signature authority or control over a financial account in a foreign country. Also, because of his signatory or other authority over SEIBEL's Numbered

UBS Account, SEIBEL was required to file an FBAR for calendar year 2008, but SEIBEL knowingly and willfully failed to do so.

SEIBEL's Voluntary Disclosure Program Submission

12. The Offshore Account Voluntary Disclosure Program ("Voluntary Disclosure Program") was a program administered by the IRS that was intended to serve as a vehicle for U.S. taxpayers, not already under investigation by the IRS, to disclose their previously undeclared offshore accounts and pay tax on the income earned in those accounts. Under the Voluntary Disclosure Program, in order to avoid criminal prosecution, participants paid tax on the unreported income, a 20% accuracy penalty on the tax, and a 20% penalty on the high balance of the undeclared account, together with interest, related to their failure to disclose their accounts. The IRS announced the First Voluntary Disclosure Program on March 23, 2009 and closed that program on October 15, 2009.

13. On or about October 15, 2009, ROWEN SEIBEL, the defendant, signed and caused to be submitted to the IRS an application to the Voluntary Disclosure Program ("the Application"). The Application, drafted by Taxpayer One's attorney, falsely stated that although SEIBEL had been aware, during the years 2004 and 2005, that Taxpayer One had made deposits into a UBS Account for SEIBEL's benefit, SEIBEL had been unaware, until he made inquiries of UBS in 2009, of the status of his account at UBS and had in fact over time

reached "the conclusion that deposits [into his UBS Account] had been stolen or otherwise disappeared." In truth and in fact, however, as set forth above, SEIBEL was (a) at all times knowledgeable about the Numbered UBS Account and had taken a role in the oversight of, and transactions in, that account; and (b) was aware as to the disposition of the funds from that account, as SEIBEL had traveled to Switzerland the year before to effect the closing of the Numbered UBS Account and the transfer of its funds into another foreign bank account at Swiss Bank S.

Statutory Allegations

14. From in and about 2004 through in and about 2009, within the Southern District of New York and elsewhere, the defendant ROWEN SEIBEL did corruptly endeavor, as set forth above, to obstruct and impede the due administration of Title 26 of the United States Code.

(Title 26, United States Code, Section 7212(a))



PREET BHARARA
United States Attorney

Exhibit C

GR Burgr Agreement

DEVELOPMENT, OPERATION AND LICENSE AGREEMENT
AMONG
GORDON RAMSAY,
GR BURGR, LLC
AND
PHW MANAGER, LLC ON BEHALF OF PHW LAS VEGAS, LLC
DBA PLANET HOLLYWOOD

2580005.3

within such thirty (30) day period, PH shall not be permitted to terminate the Agreement unless such cure is not completed within a reasonable time thereafter) and within five (5) days after written notice is given to PH for monetary breaches by PH (it being understood that PH' failure to pay any amount disputed in good faith shall not entitle Gordon Ramsay to terminate this Agreement).

4.2.8 Bankruptcy, etc.

(a) This Agreement may be terminated by PH upon written notice to GRB and Gordon Ramsay having immediate effect if Gordon Ramsay or GRB (i) becomes insolvent or admits in writing its inability to pay its debts as they become due, (ii) has instituted against it a proceeding seeking a judgment of insolvency, suspension of payment or bankruptcy, or a petition is presented against it for its winding up or liquidation, in each case that is not dismissed within sixty (60) days, (iii) institutes a proceeding seeking a judgment of insolvency, suspension of payment or bankruptcy, or files a petition for its winding up or liquidation, (iv) makes a general assignment for the benefit of its creditors, (v) seeks or becomes subject to the appointment of a receiver over all or substantially all of its assets, or (vi) any analogous procedure or step is taken in any jurisdiction.

(b) This Agreement may be terminated by GRB upon written notice to PH having immediate effect if PH (i) becomes insolvent or admits in writing its inability to pay its debts as they become due, (ii) has instituted against it a proceeding seeking a judgment of insolvency, suspension of payment or bankruptcy, or a petition is presented against it for its winding up or liquidation, in each case that is not dismissed within sixty (60) days, (iii) institutes a proceeding seeking a judgment of insolvency, suspension of payment or bankruptcy, or files a petition for its winding up or liquidation, (iv) makes a general assignment for the benefit of its creditors, (v) seeks or becomes subject to the appointment of a receiver over all or substantially all of its assets, or (vi) any analogous procedure or step is taken in any jurisdiction.

4.3 Effect of Expiration or Termination.

4.3.1 Termination of Obligations; Survival. Upon expiration or termination of this Agreement, there shall be no liability or obligation on the part of any party with respect to this Agreement, other than that such termination or expiration shall not (a) relieve any party of any liabilities resulting from any breach hereof by such party on or prior to the date of such termination or expiration, (b) relieve any party of any payment obligation arising prior to the date of such termination or expiration, or (c) affect any rights arising as a result of such breach or termination or expiration. The provisions of this Section 4.3 and Sections 2.3.2, 6.2, 6.6, the last sentence of Section 12.2.2 and Articles 13 and 14 (other than Section 14.16) shall survive any termination or expiration of this Agreement.

4.3.2 Certain Rights of PH Upon Expiration or Termination. Upon expiration or termination of this Agreement:

(a) PH shall cease operation of the Restaurant and its use of any GRB Marks and GR Materials; provided, however, that (i) in the event of an

early termination of this Agreement, other than pursuant to Section 4.2.2, PH shall be entitled to operate the Restaurant and use the License for one hundred twenty (120) days from such termination to orderly and properly wind-up operations of the Restaurant; and (ii) in the event of an early termination of this Agreement pursuant to Section 4.2.2, PH shall be entitled to operate the Restaurant and use the License for up to nine (9) months from such termination to orderly and properly reconcept or wind-up operations of the Restaurant; provided that in the event of a termination pursuant to clause (i) or (ii) during the applicable post-termination period during which PH is operating the Restaurant, PH shall continue to be obligated to pay GRB all amounts due GRB hereunder that accrue during such period in accordance with the terms of this Agreement as if this Agreement had not been terminated;

(b) PH shall retain all right, title and interest in and to the Restaurant Premises except for the GRB Marks and General GR Materials and any personal property containing any GRB Marks;

(c) PH shall retain all right, title and interest in and to the furniture, fixtures, equipment, inventory, supplies and other tangible and intangible assets used or held for use in connection with the Restaurant, except as expressly provided in Section 4.3.2;

(d) PH shall retain all right, title and interest in and to PH Marks and Materials; and

(e) PH shall have the right, but not the obligation, immediately or at any time after such expiration or termination, to operate a restaurant in the Restaurant Premises; provided, however, such restaurant shall not use the Restaurant's food and beverage menus or recipes developed by GRB and/or Gordon Ramsay or use any of the GRB Marks or General GR Materials.

4.3.3 Certain Rights of Gordon Ramsay/GRB Upon Expiration or Termination. Upon expiration or termination of this Agreement:

(a) In the case of termination by PH pursuant to Section 4.2.1, PH shall pay to GRB the Early Termination Payment as a lump-sum payment within five (5) business days after the effective date of such termination; and

(b) Subject to Section 4.3.2(a), Gordon Ramsay and/or GRB shall retain all right, title and interest in and to the GRB Marks and General GR Materials and all right title and interest in and to the Restaurant's food and beverage menus and recipes developed by GRB and/or Gordon Ramsay.

5. RESTAURANT EMPLOYEES.

5.1 General Requirements.

5.1.1 Employees. Subject to the terms of this Article 5, after consulting with and giving full and proper consideration to all reasonable recommendations of GRB, PH shall be responsible for, and shall have final approval with respect to, hiring, training, managing, evaluating, promoting,

and each of Gordon Ramsay and GRB hereby approves and consents to the use of the GRB Marks and General GR Materials as contemplated by this Agreement;

10.3.3 no consent or approval or authorization of any Person (including the direct or indirect owners of GRB, but other than any governmental authority) is required in connection with the execution and delivery by GRB of, and performance by GRB of its obligations under, this Agreement, and to the best of GRB's knowledge and belief, no such consent or approval or authorization is required of any applicable governmental authority;

10.3.4 there are no actions, suits or proceedings pending or, to the best knowledge of GRB, threatened against GRB in any court or before any administrative agency that would prevent GRB from completing the transactions provided for herein (including granting the License);

10.3.5 this Agreement constitutes the legal, valid and binding obligation of GRB, enforceable in accordance with its terms; and

10.3.6 as of the Effective Date, no representation or warranty made herein by GRB contains any untrue statement of a material fact, or omits to state a material fact necessary to make such statements not misleading.

11. STANDARDS; PRIVILEGED LICENSE.

11.1 Standards. Each of Gordon Ramsay and GRB acknowledges that the PH is an exclusive first-class resort hotel casino and that the Restaurant shall be an exclusive first-class restaurant and that the maintenance of PH and GRB Marks, PH's and the Restaurant's reputation and the goodwill of all of PH's, PH's and the Restaurant's guests and invitees is absolutely essential to PH, and that any impairment thereof whatsoever will cause great damage to PH. GRB therefore covenants and agrees that (a) it shall not and it shall cause its Affiliates not to use or license GRB Marks or General GR Materials in a manner that is inconsistent with, or take any action that dilutes or denigrates, the current level of quality, integrity and upscale positioning associated with the GRB Marks and General GR Materials and (b) it shall and it shall cause its Affiliates to conduct themselves in accordance with the highest standards of honesty, integrity, quality and courtesy so as to maintain and enhance the reputation and goodwill of PH, the GRB Marks, PH and the Restaurant and at all times in keeping with and not inconsistent with or detrimental to the operation of an exclusive, first-class resort hotel casino and an exclusive, first-class restaurant. GRB shall use commercially reasonable efforts to continuously monitor the performance of each of its and its Affiliates' respective agents, employees, servants, contractors and licensees and shall ensure the foregoing standards are consistently maintained by all of them. Any failure by GRB or any of its respective Affiliates or any of their respective agents, employees, servants, contractors or licensees to maintain the standards described in this Section 11.1 shall, in addition to any other rights or remedies it PH have, give PH the right to terminate this Agreement pursuant to Section 4.2.4 in its sole and absolute discretion. For the avoidance of doubt, Gordon Ramsay's persona as exhibited on the television show Hell's Kitchen prior to the date hereof shall not constitute a failure by Gordon Ramsay to maintain the standards described in this Section 11.1.

11.2 Privileged License. Each of Gordon Ramsay and GRB acknowledges that PH and PH's Affiliates are businesses that are or may be subject to and exist because of privileged licenses issued U.S., state, local and foreign governmental, regulatory and administrative authorities, agencies, boards and officials (the "Gaming Authorities") responsible for or involved in the administration of application of laws, rules and regulations relating to gaming or gaming activities or the sale, distribution and possession of alcoholic beverages. The Gaming Authorities require PH, and PH deems it advisable, to have a compliance committee (the "Compliance Committee") that does its own background checks on, and

issues approvals of, Persons involved with PH and its Affiliates. Prior to the execution of this Agreement and, in any event, prior to the payment of any monies by PH to Gordon Ramsay and/or GRB hereunder, and thereafter on each anniversary of the Opening Date during the Term, (a) each of Gordon Ramsay and GRB shall provide or cause to be provided to PH written disclosure regarding its GR Associates and (b) the Compliance Committee shall have issued approvals of all of the GR Associates. Additionally, during the Term, on ten (10) calendar days written request by PH to Gordon Ramsay and GRB, Gordon Ramsay and GRB shall disclose to PH all GR Associates. To the extent that any prior disclosure becomes inaccurate, Gordon Ramsay and GRB shall, within ten (10) calendar days from that event, update the prior disclosure without PH making any further request. Each of Gordon Ramsay and GRB shall cause all GR Associates to provide all requested information and apply for and obtain all necessary approvals required or requested by PH or the Gaming Authorities. If any GR Associate fails to satisfy any such requirement, if PH or any of PH's Affiliates are directed to cease business with any GR Associate by any Gaming Authority, or if PH shall determine, in PH's sole and exclusive judgment, that any GR Associate is an Unsuitable Person, then immediately following notice by PH to Gordon Ramsay and GRB, (a) Gordon Ramsay and/or GRB shall terminate any relationship with the Person who is the source of such issue, (b) Gordon Ramsay and/or GRB shall cease the activity or relationship creating the issue to PH's satisfaction, in PH's sole judgment, or (c) if such activity or relationship is not subject to cure as set forth in the foregoing clauses (a) and (b), as determined by PH in its sole discretion, PH shall, without prejudice to any other rights or remedies of PH including at law or in equity, have the right to terminate this Agreement and its relationship with Gordon Ramsay and GRB. Each of Gordon Ramsay and GRB further acknowledges that PH shall have the absolute right to terminate this Agreement in the event any Gaming Authority requires PH or one of its Affiliates to do so. Any termination by PH pursuant to this Section 11.2 shall not be subject to dispute by Gordon Ramsay or GRB and shall not be the subject of any proceeding under Article 13.

12. CONDEMNATION; CASUALTY; FORCE MAJEURE.

12.1 Condemnation. In the event that during the Term the whole of the Restaurant shall be taken under power of eminent domain by any governmental authority or conveyed by PH to any governmental authority in lieu of such taking, then this Agreement shall terminate as of the date of such taking. In the event that during the Term a substantial portion of the Restaurant (thirty percent (30%) or more) shall be taken under power of eminent domain by any governmental authority or conveyed by PH to any governmental authority in lieu of such taking (as determined by PH in its sole and absolute discretion), PH may, in the exercise of its sole discretion, terminate this Agreement upon written notice give not more than thirty (30) calendar days after the date of such taking. All compensation awarded by any such governmental authority shall be the sole property of PH and neither Gordon Ramsay nor GRB shall have any right, title or interest in and to same except that Gordon Ramsay and GRB may pursue their own separate claim provided, that any such claim will not reduce the award granted to PH.

12.2 Casualty.

12.2.1 Permanent and Substantial Damage. If PH or the Restaurant experiences any Permanent Damage or any Substantial Damage, in each case PH shall have the right to terminate this Agreement upon written notice having immediate effect delivered to Gordon Ramsay within one hundred twenty (120) days after the occurrence of the Permanent Damage or Substantial Damage, as the case may be. All insurance proceeds recovered in connection with any damage or casualty to PH or Restaurant shall be the sole property of PH and neither Gordon Ramsay nor GRB shall have any right, title or interest in and to same.

12.2.2 Obligation in Connection With a Casualty. If (i) PH does not terminate this Agreement the event of a Substantial Damage to PH or Restaurant within the time periods provided in

Exhibit D

Letter Terminating MOTI Agreement



Mark A. Clayton
Tel 702.792.3773
Fax 702.792.9002
claytonm@gtlaw.com

September 2, 2016

VIA UPS OVERNIGHT

MOTI Partners
Attn: Rowen Seibel
200 Central Park South
New York, NY 10019

Robert A. Seibel
Seibel & Rosen
560 3rd Avenue, 28th Floor
New York, NY 10016

Re: Development, Operation and License Agreement by and between Moti Partners, LLC ("MOTI") and Desert Palace, Inc. ("Caesars") ("Agreement")

To whom it may concern:

For purposes of this letter, capitalized terms not defined herein have the meaning set forth in the Agreement.

Pursuant to Section 9.2 of the Agreement, MOTI has acknowledged and agrees that Caesars and/or its affiliates conduct business that are or may be subject to and exist because of privileged licenses issued by governmental authorities. Additionally, Section 9.2 provides that if Caesars determines, in its sole and absolute judgment, that (a) any MOTI Associate is an Unsuitable Person and (b) such relationship is not subject to cure, Caesars shall have the right to terminate the Agreement.

Caesars is aware that Rowen Seibel, who is a MOTI Associate under the Agreement, has recently pleaded guilty to a one-count criminal information charging him with impeding the administration of the Internal Revenue Code (26 U.S.C. § 7212) (corrupt endeavor to obstruct and impede the due administration of the Internal Revenue Laws), a Class E Felony. Such felony conviction renders Rowen Seibel an Unsuitable Person.

Therefore, Caesars has determined that the nature of Rowen Seibel's actions and his relationship to MOTI are not capable of being cured. Accordingly, Caesars is exercising its rights under Section 9.2 of the Agreement and is terminating the Agreement effective immediately.

Lastly, Caesars reserves and retains all other rights and remedies available under the Agreement.

Sincerely,

Mark A. Clayton
Shareholder

MAC/

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*OPERATES AS
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*STRATEGIC ALLIANCE

*OPERATES AS
GREENBERG TRAURIG LLP
FOREIGN LEGAL CONSULTANT OFFICE

*A BRANCH OF
GREENBERG TRAURIG, P.A.,
FLORIDA, USA

*OPERATES AS
GREENBERG TRAURIG GRIZARD SPK

Exhibit E

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

In re:)	
	)	Chapter 11
)	
CAESARS ENTERTAINMENT OPERATING	)	Case No. 15-01145 (ABG)
COMPANY, INC., <u>et al.</u> , ¹)	
	)	(Jointly Administered)
Debtors.)	
	)	Re: Docket No. 5862

**DEBTORS' OBJECTION TO REQUEST FOR PAYMENT OF
ADMINISTRATIVE EXPENSE FILED BY THE MOTI PARTIES**

The above-captioned debtors and debtors in possession (collectively, the “Debtors”) submit this objection (this “Objection”) in further support of their preliminary objection [Docket No. 5901] to the *Request for Payment of Administrative Expense* [Docket No. 5862] (the “Motion”), filed by Moti Partners, LLC and Moti Partners 16, LLC (collectively, “MOTI”).² In support of this Objection, the Debtors state as follows:

Introduction

1. In 2009, Caesars and MOTI entered into an agreement (the “MOTI Agreement”) relating to the operation of the Serendipity 3 Restaurant in Las Vegas (“Serendipity”). Caesars terminated that agreement in September 2016 after discovering that Rowen Seibel, the manager and member of MOTI, had engaged in illegal activity, and, on January 1, 2017, shut down Serendipity.

¹ A complete list of the Debtors and the last four digits of their federal tax identification numbers may be obtained at <https://cases.primeclerk.com/CEOC>.

² Capitalized terms used but not defined herein have the meanings ascribed to them in the Debtors’ preliminary objection [Docket No. 5901].

2. MOTI now claims that it is entitled to administrative expense claims for both an “Early Termination Payment” and the payment of normal fees during the wind-up of Serendipity’s operations. To prevail on its Motion, MOTI must demonstrate that (a) the Early Termination Payment and payment of normal fees result from a transaction with the Debtors where MOTI provided beneficial services to the estate, and (b) the payments are permitted under the MOTI Agreement. MOTI can do neither.

3. *First*, MOTI has not provided the estate with any postpetition benefits. The Early Termination Payment is not linked to any beneficial services MOTI provided to the Debtors postpetition, nor is it related to any postpetition inducement by the Debtors as debtors in possession. The claim for payment of normal fees during the wind-up period is also ineligible for administrative priority status because MOTI did not provide any services that enhanced or furthered the Debtors’ reorganization process during that wind-up period.

4. *Second*, the plain language of the MOTI Agreement does not provide for an Early Termination Payment where, as here, the MOTI Agreement was terminated on suitability grounds. Nor does the section of the MOTI Agreement providing Caesars with a wind-up period require any payment to MOTI during that 120-day period.

5. *Third*, as in the other pending disputes involving the Debtors and Mr. Seibel, the Debtors intend to establish through discovery that Mr. Seibel improperly withheld information from Caesars relating to his illegal conduct. If the Debtors can establish that they were fraudulently induced to enter into the MOTI Agreement based on Mr. Seibel’s misrepresentations or omissions, they can rescind the contract and thereby eliminate any requirement for an Early Termination Payment or the payment of normal fees.

6. Accordingly, the Debtors request that the Court deny the Motion or, in the alternative, allow the Debtors to seek discovery relating to certain issues presented by the Motion.

Background

I. The Debtors' Agreements With Mr. Seibel and His Entities Required Disclosures Relating to His Suitability.

7. Caesars Palace began its relationship with Mr. Seibel, the member-manager of MOTI, on March 6, 2009, when the Debtors and Mr. Seibel entered into an agreement relating to the development of Serendipity. Ex. A, MOTI Agmt. Between the entry into the MOTI Agreement and the petition date of these cases, entities owned by Mr. Seibel (the "Seibel Entities") entered into five additional agreements (collectively with the MOTI Agreement, the "Seibel Agreements") with the Caesars enterprise, including three contracts with Debtor entities. Ex. B, *Development, Operation and License Agreement Among DNT Acquisition LLC, The Original Homestead Restaurant, Inc. and Desert Palace, Inc.* (the "DNT Agreement"); Ex. C, *Development, Operation and License Agreement Between TPOV Enterprises, LLC And Paris Las Vegas Operating Company, LLC* (the "TPOV Agreement"); Ex. D, *Development, Operation and License Agreement Among LLTQ Enterprises, LLC and Desert Palace, Inc.* (the "LLTQ Agreement"); Ex. E, GR Burgr Agmt.; Ex. F, *Consulting Agreement Between FERG, LLC And Caesars Atlantic City* (the "FERG Agreement").

8. Each of the Seibel Agreements required Mr. Seibel to make certain disclosures regarding himself, his employees, and his entities that would enable Caesars to determine whether they were engaged in any activity "that could or does jeopardize any of the privileged

licenses held by Caesars . . .” (“Suitability”).³ Ex. A, MOTI Agmt. § 9.2 (“MOTI shall provide to Caesars written disclosure regarding, MOTI and all of their key respective employees. . . .”); Ex. B, DNT Agmt. § 11.2 (similar with reference to DNT); Ex. C, TPOV Agmt. § 10.2 (similar with reference to TPOV); Ex. D, LLTQ Agmt. § 10.2 (similar with reference to LLTQ); Ex. E, GR Burgr Agmt. § 11.2 (similar with reference to GR Burgr); Ex. F, FERG Agmt. § 11.2 (similar with reference to FERG). As part of these disclosures, Mr. Seibel provided Caesars with a business information form where he represented that there was nothing in his past “that would prevent [him] from being licensed by a gaming authority.”

9. Each agreement further requires that if prior disclosures become inaccurate, Mr. Seibel must voluntarily update Caesars regarding Suitability. *See, e.g.*, Ex. A, MOTI Agmt. § 9.2 (“To the extent that any prior disclosure becomes inaccurate, MOTI shall, within five (5) calendar days from that event, update the prior disclosure without Caesars making any further request.”); Ex. B, DNT Agmt. § 11.2 (similar with reference to DNT and ten (10) day notice); Ex. C, TPOV Agmt. § 10.2 (similar with reference to TPOV and ten (10) day notice); Ex. D, LLTQ § 10.2 (similar with reference to LLTQ and ten (10) day notice); Ex. E, GR Burgr Agmt.

³ An “Unsuitable Person” is defined in certain of the Seibel Agreements as “any Person (a) whose association with Caesars or its affiliates could be anticipated to result in a disciplinary action relating to, or the loss of, inability to reinstate or failure to obtain, any registration, application, or license or any other rights or entitlements held or required to be held by Caesars or any of its Affiliates under any United States, state, local or foreign laws, rules or regulations relating to gaming or the sale of alcohol, (b) whose association or relationship with Caesars or its Affiliates could be anticipated to violate any United States, state, local or foreign laws, rules or regulations relating to gaming or the sale of alcohol to which Caesars or its Affiliates are subject, (c) who is or might be engaged or about to be engaged in any activity which could adversely impact the business or reputation of Caesars or its Affiliates, or (d) who is required to be licensed, registered, qualified or found suitable under any United States, state, local or foreign laws, rules or regulations relating to gaming or the sale of alcohol under which Caesars or any of its Affiliates is licensed, registered, qualified or found suitable, and such Person is not or does not remain so licensed, registered, qualified or found suitable.” *See, e.g.*, Ex. D § 1.

§ 11.2 (similar with reference to GR Burgr and ten (10) day notice); Ex. F, FERG Agmt. § 11.2 (similar with reference to FERG and ten (10) day notice).

10. Furthermore, each agreement provides for termination by the Debtors, in their “sole discretion,” in the event that an affiliate of the Seibel Entities is not Suitable. Ex. A, MOTI Agmt. § 9.2; Ex. B, DNT Agmt. § 11.2; Ex. C, TPOV Agmt. § 10.2; Ex. D, LLTQ Agmt. § 10.2; Ex. E, GR Burgr Agmt. § 11.2. These terms in the MOTI Agreement provide Caesars Palace with independent grounds to terminate the agreements and are thus distinct from the provisions MOTI relies upon in its Motion. *See, e.g.*, Ex. A, MOTI Agmt. § 3.2.3 (contemplating termination for circumstances that constitute “without cause,” which is distinguishable from termination due to a finding of unsuitability).

11. On May 14, 2014, Mr. Seibel and Caesars Palace signed an addendum (the “Addendum”) to the existing terms of the MOTI Agreement, DNT Agreement, TPOV Agreement, and LLTQ Agreement which stated, in part, that any affiliate or member of the Seibel Entities is permitted to assign or transfer his interests so long as written disclosures are provided regarding “all of the proposed transferee’s or assignee’s Associates,” and Caesars Palace, in its “sole reasonable discretion,” is satisfied “that neither the proposed transferee or assignee nor any of their respective Associates is an Unsuitable Person.” Ex. G, Addendum § 1. These new terms pertaining to the assignment of interests had no effect on the existing terms requiring the Seibel Entities to notify the Debtors if any prior disclosures become inaccurate.⁴

⁴ Pursuant to Section 3.1 of the MOTI Agreement, the agreement would expire by its terms “five (5) years from the Opening Date [April 5, 2009], unless extended by Caesars.” MOTI Agmt. § 3.1. The parties discussed entering into an extension but never executed an amendment extending the term of the MOTI Agreement. As a result, the parties have been operating under a month-to-month agreement since the expiration of the MOTI Agreement.

II. The Debtors Terminated The Agreements With The Seibel Entities Following Discovery of Rowen Seibel's Criminal Activity.

12. On April 8, 2016, Mr. Seibel notified the Debtors that he would be assigning his management duties in the Seibel Entities. Ex. H, Notice of Assignment. On April 13, 2016, Mr. Seibel claims to have transferred his membership interests in the Seibel Entities and assigned his duties and obligations under the Seibel Agreements to Jeffrey Frederick.

13. Five days after Mr. Seibel allegedly assigned his rights, duties, and interests, he was charged with one count of a corrupt endeavor to obstruct and impede the due administration of the Internal Revenue Laws, 26 U.S.C. § 7212, a Class E Felony. (*See* Exs. I–K, Case No. 1:16-cr-00279-WHP, Dkt. Nos. 2, 14, 15). According to the charging document submitted by the United States government, Mr. Seibel had, for more than a decade, illegally utilized Swiss bank accounts and Panamanian shell corporations to commit tax fraud. (*See generally* Ex. I, Case No. 1:16-cr-00279-WHP, Dkt. No. 2).

14. The Debtors first became aware of Mr. Seibel's charges and sentencing in August through a series of news articles.⁵ Upon learning of Mr. Seibel's conduct, Caesars Palace terminated the MOTI Agreement "effective immediately" on September 2, 2016. Ex. L (letter terminating MOTI Agreement).

15. Caesars Palace then began the process of shutting Serendipity down and replacing it with a new concept. That process was completed on January 1, 2017, five days before Caesars Palace opened up a replacement restaurant in the Serendipity space.

⁵ *See, e.g., Restaurateur Seibel Sent to Jail, Then Kitchen, in Tax Scam*, Bloomberg.com, <http://www/Bloomberg.com/news/articles/2016-08-19/restaurateur-turned-tax-dodger-readies-for-manhattan-sentencing> (last visited January 11, 2017); *Gordon Ramsay's Business Partner Gets Jail Time for Tax Evasion*, Page Six, <http://pagesix.com/2010/08/20/gordon-ramseys-business-partner-gets-jail-time-for-tax-evasion-scheme/> (last visited January 11, 2017).

Argument

16. Administrative priority claims are to be “strictly construed.” *In re Nat’l Steel Corp.*, 316 B.R. 287, 299 (Bankr. N.D. Ill. 2004); *In re Dynacircuits, L.P.*, 143 B.R. 174, 176 (Bankr. N.D. Ill. 1992) (“Statutory priorities are narrowly construed.”). As such, a party seeking payment for a claim as an administrative expense must demonstrate that the claim (1) “arise[s] from a transaction with the debtor-in-possession” and (2) was “beneficial to the debtor-in-possession in the operation of the business.” *Matter of Jartran, Inc.*, 732 F.2d 584, 587 (7th Cir. 1984). An applicant is not entitled to an administrative expense under section 503(b) unless it can establish that “the estate has actually benefitted under the contract post-petition.” *In re Nat’l Steel Corp.*, 316 B.R. at 306; *Jartran*, 732 F.2d at 586 (“[T]he claimant must demonstrate that the debt . . . benefited the operation of the debtor’s business.”). The benefit and services conferred by an applicant for an administrative expense cannot be “services that indirectly, incidentally, or tangentially benefit [the] estate.” *Cargill Fin. Servs. Corp. v. Envirodyne Indus., Inc.*, No. 94 C 6950, 1995 WL 461854, at *3 (N.D. Ill. July 12, 1995). The moving party bears the burden of proving that its claim is entitled to administrative expense priority through a preponderance of evidence. *Id.*

17. By the Motion, MOTI seeks the payment of administrative expenses for (a) the Debtors’ operation of Serendipity from September 5, 2016, until January 1, 2017 and (b) an Early Termination Payment. As set forth below, MOTI has failed to meet its burden of proving that its claims benefitted the Debtors’ estate.

I. MOTI Cannot Show That There is a Benefit to the Estate Requiring Payment of Normal Fees During the Wind-Up Period.

18. Mr. Seibel’s criminal actions forced the Debtors to incur unexpected costs to wind-up a restaurant concept that was meant to continue operating for the benefit of the estate

throughout and at least until the effective date of reorganization.⁶ *In re Sentinel Mgmt. Grp., Inc.*, 404 B.R. 488, 499 (Bankr. N.D. Ill. 2009) (holding that the applicant was not entitled to administrative expense status for its claim because of the “expenses the [applicant] caused the Plan Proponents to incur” during the reorganization process); *In re Alert Holdings Inc.*, 157 B.R. 753, 757 (Bankr. S.D.N.Y. 1993) (holding that services to the estate which “merely deplete the assets of the estate without providing a corresponding greater benefit” are deemed non-substantial benefits); *In re Richton Int’l Corp.*, 15 B.R. 854, 856 (Bankr. S.D.N.Y. 1981) (holding that administrative expense status is merited for services “which foster and enhance, rather than retard or interrupt the progress of reorganization.”).

19. The termination has forced the Debtors to find a replacement for Serendipity at a time when they had not otherwise allocated any capital expenditures for a new restaurant or identified a new restaurant concept. This is not a benefit to the Debtors’ estates. *In re Air S. Airlines, Inc.*, No. 97-07229-W, 2000 WL 33281490, at *4 (Bankr. D.S.C. Dec. 18, 2000) (holding that the Debtor’s inability to utilize their assets in the ordinary course of business because of its creditor’s actions and restrictions was not a concrete benefit to the estate meriting administrative expense reimbursement).

20. Furthermore, the Debtors did not and had not expected to close Serendipity “without cause,” as it was permitted to under the MOTI Agreement. MOTI Agmt. § 3.2.3. Nor was the MOTI Agreement terminated for reasons that constitute “without cause.” Rather, as discussed more fully below, the termination was effectuated pursuant to Section 9.2 of the MOTI Agreement, which provides that the Debtors will terminate the MOTI Agreement if parties

⁶ The Debtors had not yet determined whether they would operate Serendipity after exiting chapter 11, but were contemplating rejecting the MOTI Agreement on the effective date of their plan of reorganization absent reaching agreement on amendments to the MOTI Agreement. *See* [Docket No. 4389], Ex. GG.

connected to MOTI are determined to be unsuitable. This termination is not without cause but a separate termination to protect the Debtors' gaming licenses from possible suspension by the Gaming Authorities.⁷ MOTI Agmt. § 9.2. Under these circumstances, where the Debtors were required to replace a restaurant that was otherwise not expected to be replaced in September 2016, it would be inappropriate and inequitable to hold the Debtors liable for reimbursement of services provided during a wind-up period that resulted from the actions of MOTI's principals, and not the Debtors.

II. MOTI Cannot Demonstrate That The Early Termination Payment Benefits The Estate.

21. The claim for the Early Termination Payment does not arise out of a transaction between MOTI and Caesars Palace during the postpetition period, nor was the consideration supporting MOTI's right to payment supplied to or beneficial to Caesars Palace in the operation of its business postpetition. As such, the Early Termination Payment in no way "is beneficial to the debtor-in-possession in the operation of the business," *Jartran*, 732 F.2d at 587, and it therefore cannot be construed as an "actual, necessary cost[] and expense of preserving the estate" and cannot be treated as an administrative expense claim. 11 U.S.C. § 503(b)(1)(A).

22. The Early Termination Payment does not arise from a promise made by the Debtors as debtor-in-possession. *In re WorldCom, Inc.*, 308 B.R. 157, 165 (Bankr. S.D.N.Y. 2004) (holding that the claim must "arise[s] out of a transaction between the creditor and the bankrupt's trustee or the debtor-in-possession"). The MOTI Agreement is a prepetition contract

⁷ Nevada Gaming Control Regulation 5.011 provides the basis for disciplinary action by the Nevada Gaming Control Board upon a finding of an unsuitable method of operation, which includes "associating with, either socially or in business affairs, persons of notorious or unsavory reputation or who have extensive police records, or persons who have defied congressional investigative committees, or other officially constituted bodies acting on behalf of the United States."

made almost 6 years before the commencement of these cases and it has not been assumed. Ex. A, MOTI Agmt. Any inducement that was created by the Early Termination Payment when the MOTI Agreement was signed in May 2009 is thus irrelevant to the Debtors' continued operation of Serendipity postpetition.⁸ Put another way, the Early Termination Payment does not arise from a transaction with the debtor in possession and cannot be an administrative expense under Seventh Circuit law. *See Jartran*, 732 F.2d at 587–88 (holding that a contract that was entered into prepetition was not an inducement by the debtor in possession and therefore claims arising under that contract that were not requested postpetition were not administrative expenses).

23. Moreover, the Early Termination Payment harms—rather than helps—the Debtors because it is an expense for terminating a contract when the Debtors were not planning on terminating that contract. The payment, therefore, is not beneficial to the Debtors' business. *Id.* at 587; *see also Nat'l Steel*, 316 B.R. at 301 (finding that a creditor did not benefit the estate where it sought refunds from a debtor for the price paid under a contract because the amounts paid were below market rates). Under these circumstances, bankruptcy courts regularly find that termination penalties arising from the postpetition termination of a contract are prepetition rather than postpetition expenses. *See, e.g., In re Old Carco LLC*, 424 B.R. 650, 654 (Bankr. S.D.N.Y. 2010) (denying administrative expense priority for payments arising from a contractual termination); *In re Uly-Pak, Inc.*, 128 B.R. 763, 768 (Bankr. S.D. Ill. 1991) (denying administrative expense claim for termination of employment agreement); *In re FBI Distribution*

⁸ The Debtors made payments under the MOTI Agreement for the continued operation of Serendipity in accordance with the express terms of the MOTI Agreement, and ended such payments when the agreement was terminated under Section 9.2 (and operated the restaurant under Section 3.3(a) for the 120-day wind-up period discussed above. No other payments squarely fit within the administrative expense claim test set forth in *Jartran*.

Corp., 330 F.3d 36, 45 (1st Cir. 2003) (same); *see also Amalgamated Ins. Fund v. McFarlin's, Inc.*, 789 F.2d 98, 101–104 (2d Cir. 1986) (stating that “[a] debt is not entitled to priority simply because the right to payment arises after the debtor in possession has begun managing the estate”). The Earlier Termination Payment should also be denied administrative priority status.

III. The Plain Language of the MOTI Agreement Does Not Provide for Payments During the Wind-Up Period or for Payment of the Early Termination Payment.

24. Even if MOTI can establish that its claims for the wind-up period payments or the Early Termination Payment meet the burden for administrative expense priority, such payments must be “measured by reference to the contract.” *Cont’l Energy Assocs. L.P. v. Hazelton Fuel Mgmt. Co. (In re Cont’l Energy Assocs. L.P.)*, 178 B.R. 405, 408 (Bankr. M.D. 1995); *see also NLRB v. Bildisco & Bildisco*, 465 U.S. 513, 531 (1984), 465 U.S. at 531 (“[T]he debtor-in-possession is obligated to pay for the reasonable value of [a service], . . . which, depending on the circumstances of a particular contract, may be what is specified in the contract.”).

25. Caesars Palace operated Serendipity for a period of up to 120-days pursuant to Section 3.3(a) of the MOTI Agreement. That section provides that upon termination of the MOTI Agreement, “Caesars shall cease operations of [Serendipity], provided, however, in the event of an early termination of this Agreement, Caesars shall be entitled to operate [Serendipity] and use the License . . . for that reasonable period of time required to orderly and properly wind-up operations of [Serendipity] not to exceed” 120 days. MOTI Agmt. § 3.3(a).⁹

26. MOTI claims that this section requires Caesars Palace to make payments during the wind-up period. But the plain language of this section says nothing to this effect. *See* MOTI

⁹ It should be noted that the Debtors have operated this wind-up period in accordance with the terms of the MOTI Agreement following the termination effective date of September 5, 2016. On January 1, 2017, Serendipity closed its doors permanently within the 120-day wind-up period.

Agmt. § 3.3(a). Furthermore, it stands in plain contrast to other contracts between Mr. Seibel and the Caesars Enterprise, which specifically provide for the wind-up payments MOTI seeks here. *See, e.g.*, GR Burgr Agmt. § 4.3.2(a) (“provided that in the event of a termination pursuant to clause (i) or (ii) during the applicable post-termination period during which PH is operating the Restaurant, PH shall continue to be obligated to pay GRB all amounts due GRB hereunder that accrue during such period in accordance with the terms of this Agreement as if this Agreement had not been terminated”). The absence of similar language here demonstrates that MOTI is not entitled to payment during the 120-day wind-up period. *In re Martinson*, 2000 WL 33964097, at *6 (Bankr. C.D. Ill. Dec. 29, 2000) (noting that the “contract should be enforced as written and its . . . terms will control the rights of the parties”).

27. Similarly, there is nothing in the MOTI Agreement that requires payment of the Early Termination Payment pursuant to termination under Section 9.2. Contrary to the allegations in the Motion, Caesars Palace did not terminate the MOTI Agreement pursuant to Section 3.2.3. Instead, MOTI breached Section 9.2 of the MOTI Agreement through its failure to properly disclose Mr. Seibel’s criminal activities, which then led to the termination under Section 9.2.

28. These are two distinct provisions. Section 3.2.3 provides for the Early Termination Payment pursuant to a termination that is done “without cause, meaning for any reason or no reason at all.” Ex. A, MOTI Agmt. § 3.2.3. Section 9.2 on the other hand specifically provides for termination upon a finding by Caesars Palace that MOTI or one of its affiliates is an unsuitable person, and that MOTI has failed to remedy through disassociation or termination with that affiliate. Ex. A, MOTI Agmt. § 9.2 (“Caesars shall, without prejudice to any other rights or remedies of Caesars including at law or in equity, terminate this Agreement

and its relationship with MOTI.”). Suitability is thus an absolute basis of cause for termination, which is not what is provided for in Section 3.2.3. And Section 9.2 does cite to other provisions, including Section 10.1 (dealing with closure of the restaurant because the government exercises eminent domain) and Section 11 (setting forth when arbitration is required), but it does not cite to Section 3.2.3 as the basis for the termination; Section 3.2.3 similarly does not state that it is inclusive of termination for Section 9.2. Such failure to cite to termination in the other section (or to state that the provisions were inclusive of the other provisions) demonstrates that each of Section 9.2 and Section 3.2.3 is independent of the other section. As such, the Debtors properly effectuated termination pursuant to Section 9.2, which calls for no Early Termination Payment.¹⁰

IV. If the Court Does Not Deny the Motion, the Debtors Should be Permitted to Seek Discovery Relating to the Enforceability of the Agreement and Mr. Seibel’s Assignments.

29. The Debtors believe that the Motion can be denied based on the plain language of the MOTI Agreement. If not denied on that basis, however, the Debtors believe that they will be able to establish through continued discovery additional grounds to deny the Motion.

30. *First*, the MOTI Agreement, like the other agreements between the Debtors and the Seibel Entities, imposed on Mr. Seibel an ongoing duty to disclose any information relating to Suitability. These agreements also contain representations and covenants from Mr. Seibel and the Seibel Affiliates that “no representation or warranty made herein by MOTI contains any untrue statement of a material fact, or omits to state a material fact necessary to make such statements not misleading.” Despite Mr. Seibel’s duties and representations, the conduct that

¹⁰ In addition, the MOTI Agreement had already expired by its terms and the parties had a month-to-month contract. As a result, the Early Termination Payment provision is no longer applicable because there was no early termination before the expiration of the MOTI Agreement.

was revealed in connection with Mr. Seibel's felony conviction indicates that Mr. Seibel omitted a number of material facts relating to Suitability.

31. If the Debtors are correct that Mr. Seibel failed to update the Debtors and/or omitted information regarding his illegal activities when he entered into the agreements, the agreements are likely void, voidable, or void ab initio. *See* Restatement (Second) of Contracts § 164 (1981) ("If a party's manifestation of assent is induced by either a fraudulent or a material misrepresentation by the other party upon which the recipient is justified in relying, the contract is voidable by the recipient."). And, if the contracts can be rescinded, MOTI no longer has any agreement that can serve as the basis of its administrative claims.

32. *Second*, the Debtors have recently obtained evidence indicating that Mr. Seibel did not, as he and MOTI have claimed, assign all the obligations and duties of himself and the Seibel Entities under the relevant agreements to Jeffrey Frederick. Instead, as Mr. Frederick testified during his deposition, he could not say that he agreed to the assignment of duties as described in the letter Mr. Seibel to Caesars. (Ex. M, Dep. Tr. 72:4–19) In fact, Mr. Frederick testified that he had never entered into any agreements with FERG or LLTQ—two of the entities that purportedly assigned their duties and obligations to Mr. Frederick. (*Id.* at 82:21–83:7) Mr. Frederick's testimony also establishes that the purported assignment is not an enforceable contract because, at the very least, (a) there was no meeting of the minds on the terms of the assignment (i.e., Mr. Frederick could not identify what specific obligations he agreed to perform) (Ex. M, 72:24–73:8, 80:24–81:24; and (b) no consideration was exchanged (*Id.* 73:9, 82:9–20).

33. If, as the evidence establishes, the assignment from Mr. Seibel to Mr. Frederick is not valid, then Mr. Seibel is still responsible for performing the duties and obligations under the various agreements with Caesars. But, as Mr. Seibel implicitly conceded when he assigned all of

those duties and obligations a week before pleading guilty, the MOTI Agreement prohibits him from having such a relationship with Caesars. As a result, Caesars had valid grounds to terminate the MOTI Agreement on Suitability grounds pursuant to Section 9.2, further demonstrating that MOTI is not entitled to the Early Termination Payment. Moreover, any payment of fees under the MOTI Agreement in this scenario could cause the Debtors to run afoul of obligations under Nevada Gaming Control Regulation 5.011 noted above.

Conclusion

34. In sum, the Debtors respectfully submit that the Motion should be denied because it seeks payments not required by the MOTI Agreement and because MOTI has not established the necessity for an administrative expense. In the alternative, the Debtors should be permitted to take discovery on certain issues relating to the MOTI Agreement.

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Dated: January 11, 2017
Chicago, Illinois

/s/ David R. Seligman, P.C.

James H.M. Sprayregen, P.C.

David R. Seligman, P.C.

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Counsel to the Debtors and Debtors in Possession

Exhibit A

MOTI Agreement

DEVELOPMENT, OPERATION AND LICENSE AGREEMENT

THIS DEVELOPMENT, OPERATION AND LICENSE AGREEMENT (this "Agreement") shall be deemed made, entered into and effective as of this ___ day of March 2009 (the "Effective Date"), by and between Desert Palace, Inc. d/b/a Caesars Palace, a Nevada corporation ("Caesars"), having its principal place of business located at 3570 Las Vegas Boulevard South, Las Vegas, Nevada 89109 and Moti Partners, LLC a New York limited liability company ("MOTI"), having its principal place of business located at 200 Central Park South, New York, New York 10019.

RECITALS

A. Caesars Palace Realty Corp. a Nevada corporation and an Affiliate (as defined below) of Caesars, owns that certain real property located at 3570 Las Vegas Boulevard South, Las Vegas, Nevada (the "Property"), on which Caesars operates a resort hotel casino known as Caesars Palace (the "Hotel Casino"); and

B. MOTI has the non-exclusive right to use and exploit the Marks (as defined below) and also has certain qualifications, expertise and reputation in development and operation of first-class restaurants including, but not limited to, a restaurant known as "Serendipity" located in NY, NY; and

C. Caesars desires to design, develop, construct and operate a certain first-class restaurant (the "Restaurant") in those certain premises as more particularly shown on Exhibit "A" attached hereto (the "Restaurant Premises") that shall be known as "Serendipity"; and

D. Caesars desires to obtain a non-exclusive, royalty-free license to use the Marks from MOTI and to retain MOTI to perform those services and fulfill those obligations with respect to consultation concerning the design, development, construction and operation of the Restaurant, and MOTI desires to grant a non-exclusive, royalty-free license to use the Marks to Caesars and to be retained by Caesars to perform such services and fulfill such obligations, and the parties desire to enter into this Agreement to set forth their respective rights and obligations with respect thereto, all as more particularly set forth herein.

NOW THEREFORE, in consideration of the premises and the mutual covenants set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree that the foregoing recitals are true and correct and further agree as follows:

1. APPOINTMENT:

1.1 Appointment and Payment of Initial Capital Contribution: Caesars hereby appoints MOTI, and MOTI hereby accepts such appointment, subject to all of the terms and conditions more particularly set forth herein, to perform those services and fulfill those obligations with sound business practice, due diligence and care, all as more particularly set forth herein. MOTI shall make a non-refundable Capital Contribution ("MOTI's Initial Capital Contribution") toward "Initial Capital Expenditure" for the Restaurant as outlined hereinbelow. The Parties shall meet and confer with respect to preparation and approval of an Initial Capital Budget. The parties agree that "MOTI's Initial Capital Contribution" shall be fifty percent (50%) of the Initial Capital Expenditure necessary to design, construct and equip the Restaurant, which Initial Capital Expenditure is currently estimated to be Six Hundred Thousand (\$600,000.00) and No/100 Dollars. The parties acknowledge and agree that, with regard to remaining sum necessary to design, construct and cost to equip the Restaurant, Caesars shall be responsible for the remaining fifty percent (50%) of the "Initial Capital Expenditure" which amount shall be "Caesars' Initial Capital Contribution". Caesars shall consider and be the sole arbiter of the need for additional capital expenditure necessary to maintain and enhance the Restaurant ("Future Capital Expenditure") or that which is necessary to maintain the Restaurant as a high end facility ("Maintenance Capital Expenditure"). MOTI and Caesars shall be required to make additional capital contributions for Future Capital Expenditures and Maintenance Capital Expenditures (collectively, the "Future Capital Contribution") for Future Capital Expenditures and Maintenance Capital Expenditures in the same percentage as the percentage of that Party's Initial Capital Contribution. The definition of that for which the Parties shall be responsible for payment of their Initial Capital Contribution and Future Capital Contribution is attached hereto and incorporated herein by reference as Exhibit B. Payment by MOTI to Caesars of its Initial Capital Contribution shall be made to Caesars on or before April 6, 2009.

In no event shall MOTI otherwise be entitled to use, offset against amounts due under this Agreement or otherwise receive the benefit of any portion of its Initial Capital Expenditure. Each Party shall share in the same proportion as its Initial Capital Contribution to any cost overrun or savings from the Initial Capital Budget. MOTI's payment of its Initial Capital Contribution, cost overrun related to the Initial Capital Budget and Future Capital Contribution shall be made to Caesars within thirty (30) days of its receipt of an invoice for same, which invoice shall provide detail as to the nature and cost of each expenditure. Caesars payment to MOTI of any cost savings related to the Initial Capital Budget shall be paid to MOTI within thirty (30) days following the opening of the Restaurant.

1.2 Exclusivity: MOTI covenants and agrees that at all times during the Term (as defined below) neither MOTI, its parent nor any Affiliate of MOTI will (the term "Affiliate" shall be defined as provided hereinbelow) will operate or agree, permit or license, directly or indirectly, the concept of the Restaurant nor any Mark (as defined below) to be used within Clark County, Nevada, other than by Caesars, its parent or any of its Affiliates with respect to the Restaurant the "Exclusivity Provision"). For the purpose of clarity, the term "MOTI" in this paragraph is intended to apply to MOTI, its parent and any affiliate and each of those entity's officers, directors and any other individual having any ownership interest in MOTI, its parent or any of its Affiliates. To the extent this Agreement is terminated by Caesars prior to the end of the Term originally stated herein, and MOTI is (and Caesar is not) in default or breach of this Agreement at the time of such termination, the Exclusivity Provisions shall continue for a period of twenty-four (24) months following such termination. With respect to any proposed operation or agreement by MOTI to operate, permit or license, directly or indirectly the concept of the Restaurant within a fifty (50) mile radius of any parent or affiliate of Caesars, MOTI shall provide Caesars (or, at Caesars' option, its designated Affiliate) with an offer, in writing, to participate in such venture, either at the proposed site location or, at Caesars' option, by placement at the premises of its designated Affiliate. If Caesars (or its designated Affiliate) indicates within thirty (30) days its interest in considering such opportunity, MOTI and Caesars (or its designated Affiliate) will consult and discuss such opportunity for the succeeding one hundred twenty (120) days to determine if mutually agreeable terms of participation can be reached. If they do not agree, and MOTI nevertheless decides to proceed with such venture, MOTI will also offer Caesars (or its designated Affiliate) a right of last refusal of thirty (30) days duration to accept the material terms of the opportunity proposed to be entered into by the other venturer(s) before entering into the proposed venture with any other party. If Caesars (or its designated Affiliate) does not timely exercise such right, MOTI will be free to proceed without Caesars (or its designated Affiliate).

2. RESTAURANT DESIGN AND DEVELOPMENT:

2.1 General: The Restaurant shall be comprised of that square footage indicated on Exhibit "A" attached hereto.

2.2 Design: Subject to all of the terms and conditions more particularly set forth herein, Caesars shall work closely with MOTI and give consideration to all of MOTI's reasonable recommendations in the design, development, construction and outfitting of the Restaurant, including, without limitation, all furniture, fixtures, equipment, inventory and supplies (the "Development Services"); provided, however, that Caesars, after consulting with MOTI and considering all reasonable recommendations from MOTI, shall have final approval with respect to all aspects of same. Caesars shall be solely responsible for hiring, and retaining any and all design and development professionals engaged in the design, development, construction, and outfitting of the Restaurant. Caesars shall appoint an individual or individuals, who may be changed from time to time by Caesars, acting in its sole and absolute discretion, to act as Caesars² liaison with MOTI in the design, development, construction and outfitting of the Restaurant. Caesars shall provide MOTI with copies of all proposed budgets and afford MOTI the reasonable opportunity to review each such budget and to make reasonable recommendations on same based upon MOTI's experience prior to Caesars' adoption and implementation of any such budget. After giving consideration to all reasonable recommendations made by MOTI, Caesars shall establish, control, and amend from time to time as necessary, all in Caesars' sole and absolute discretion, the budgets costs and expenses for the design, development, construction, and outfitting of the Restaurant. From time to time hereafter, Caesars shall promptly advise MOTI of, and consult with MOTI regarding, any material changes in, modifications to and/or deviations from any budget, with the understanding that Caesars shall make all decisions related to same acting in its sole and absolute discretion. Development Services, and meetings with respect to same, shall take place primarily in Las Vegas, or at such other location or locations as may be mutually and reasonably agreed to by Caesars and MOTI from time to time. Any subsequent refurbishment, redesign or reconstruction of the Restaurant shall be undertaken by Caesars, acting in its sole discretion, but with a view toward maintaining the Restaurant in a first class condition.

2.3 Menu Development:

2.3.1 Menu Development: Prior to the commencement of the Term, MOTI shall develop the initial food and beverage menus of the Restaurant, and the recipes for same, and thereafter, MOTI shall revise the food and beverage menus of the Restaurant, and the recipes for same (the "Menu Development Services"), all of which recipes shall be owned by MOTI. Caesars shall have the reasonable opportunity to review such food and beverage menus prior to their implementation and make reasonable recommendations to same based upon the proposed costs and Caesars' experience with the Las Vegas, Nevada fine-dining industry. After consulting with and giving consideration to all reasonable advice and reasonable recommendations from MOTI, Caesars shall establish the pricing of such food and beverage menus, in its sole and absolute discretion. Menu Development Services, and meetings with respect to same, shall take place primarily in Las Vegas or such other location or locations as may be mutually and reasonably agreed to by Caesars and MOTI from time to time.

2.3.2 Menu Standards: The food and beverage menus of the Restaurant, and the recipes for same, shall feature familiar casual "comfort foods", signature desserts, sundaes, shakes and frozen hot chocolates with minimum menu categories that include appetizers, sandwiches, entrée salads, soups, hot dogs, burgers, omelets, pastas and a cocktail menu. A walk up window may feature "finger food" appetizers, hot dogs, burgers, salad wraps, sandwiches, shakes, frozen hot chocolates and signature "to go" cocktails.

2.3.3 Opening Date: The parties intend that the Restaurant shall open to the public on a date that shall be mutually agreed to, which is presently anticipated to be on or about April 1, 2009, except in the event of an act of Excusable Delay (as defined below). Should the Restaurant not open to the public on or before December 31, 2011 (except in the event of an act of Excusable Delay), either Party shall have the right to terminate this Agreement without further obligation to the other Party. Any reasonable delay in construction of the facility, whether by acts within Caesars' or its Affiliates' control or by acts of Excusable Delay shall not result in a termination of this Agreement; provided, however, notwithstanding the provisions of this Section 2.3.3 or Section 11.3 to the contrary, if, construction is stopped in its entirety for more than one hundred twenty (120) calendar days, either party, upon thirty (30) calendar days' notice to the other, may terminate this Agreement and all further obligations hereunder.

2.3.4 General Development and Management: Unless expressly provided herein to the contrary, Caesars shall be solely responsible for:

- (a) all costs, fees and expenses of Caesars or any third Person (as defined below) incurred or required to be incurred with respect to the design, development, construction, outfitting and operation of the Restaurant;
- (b) managing the operations, business, finances and Employees (as defined below) of the Restaurant on a day-to-day basis;
- (c) developing and enforcing employment and training procedures, marketing plans, pricing policies and quality standards of the Restaurant;
- (d) supervising the use of the food and beverage menus and recipes developed by MOTI pursuant to the terms of Section 2.3; and
- (e) providing copies of the Restaurant's unaudited financial statements to MOTI on a: i) monthly, within fifteen (15) days after the end of each calendar month; ii) quarterly, within forty-five (45) days after the end of each calendar quarter; and iii) annually, within one hundred twenty (120) days following the conclusion of each calendar year.

3. TERM:

3.1 Term: The initial term of this Agreement shall commence on the Effective Date and shall expire on that date that is five (5) years from the Opening Date, unless extended by Caesars or unless earlier terminated pursuant to the terms hereof (the "Initial Term"). Caesars shall have the right, but not the obligation, upon not less than one

hundred eighty (180) calendar days' written notice to MOTI, to extend the term of this Agreement for one (1) additional five (5) year period (together with the Initial Term, the "Term"), which shall be on all of the same terms and conditions as contained herein. Thereafter, there shall be no additional extensions of the term of this Agreement.

3.2 Termination:

3.2.1 Gross Revenue Threshold: If, after conclusion of the first year following the Opening Date Gross Revenue for any continuous twelve (12) month period after the Opening Date (the "Determination Period") is the aggregate less than Ten Million and 00/100 Dollars (\$10,000,000.00), compounded by four (4%) percent annually from the Opening Date, Caesars shall have the right, but not the obligation, upon not less than thirty (30) calendar days' notice given with the six (6) month period immediately following the Determination Period, to terminate this Agreement in accordance with the terms hereof. Should Caesars terminate the Agreement pursuant to this provision, Caesars shall pay to MOTI its then undepreciated Initial Capital Contribution.

3.2.2 Death, Disability or Non-Involvement of MOTI Principal: In the event at any time during the Term of following with respect to Rowen Seibel's (a) death, (b) material disability, including, without limitation, any physical or mental condition, which impairs the ability to render, in a timely manner, all of MOTI covenants, agreements and obligations hereunder for a period of three (3) consecutive months or six (6) months in any eighteen (18) month period, or (c) Rowan Seibel is no longer actively engaged as a restaurateur for any reason whatsoever and fails to fulfill (after notice and opportunity to cure) the obligations required of him in this Agreement, then, upon not less than ninety (90) calendar days' written notice to MOTI, or immediately in the case of death or disability, and without prejudice to any other rights or remedies of Caesars including at law or in equity, Caesars shall have the right to terminate this Agreement in accordance with its respective terms unless, during that period, MOTI presents to Caesars a proposed assignee that, during that period, : a) fulfills the requirements of the Compliance Committee of Caesars and its affiliates; and b) demonstrates sufficient financial means and operational experience necessary to fulfill MOTI's obligations hereunder, a decision that shall be within Caesars sole discretion, but acting reasonably .

3.2.3 Right to Terminate or Relocate: At any time during the Term, Caesars may immediately terminate this Agreement ("Early Termination", the effective date of which shall be referred to as the "Early Termination Date") or relocate the Restaurant ("Relocation", the effective date of which shall be referred to as the "Relocation Date") without cause, meaning for any reason or no reason at all. If Gross Revenue for the twelve (12) month period immediately preceding the Early Termination Date or Relocation Date is greater than Ten Million and 00/100 Dollars (\$10,000,000.00), compounded by four (4%) percent annually from the Opening Date, Caesars shall, within thirty (30) days following the Early Termination Date or Relocation Date, pay to MOTI the following amount: a) MOTI's undepreciated Initial Capital Contribution and undepreciated Future Capital Contribution; and b) the lesser of (i) the aggregate of the payments made to MOTI as described in paragraph 7 hereinbelow for the twelve (12) months immediately preceding the Early Termination Date or Relocation Date; or (ii) a calculation, the numerator of which shall be the aggregate of the payments made to MOTI as described in paragraph 7 hereinbelow for the twelve (12) months immediately preceding the Early Termination Date or Relocation Date and the denominator shall be the difference between the Term's natural expiration date and the Early Termination Date or Relocation Date.

3.3 Effect of Expiration or Termination: Upon the expiration or earlier termination of this Agreement:

(a) Caesars shall cease operations of the Restaurant; provided, however, in the event of an early termination of this Agreement, Caesars shall be entitled to operate the Restaurant and use the License (as defined below) for that reasonable period of time required to orderly and properly wind-up operations of the Restaurant not to exceed one hundred twenty (120) days;

(b) Caesars shall retain all right, title and interest in and to the Restaurant Premises;

(c) Caesars shall retain all right, title and interest in and to the plans and specifications and any other materials or work product produced in connection with or procured by Caesars in connection with the Restaurant design, and all furniture, fixtures, equipment, inventory supplies and intangible assets located within or associated with the Restaurant, with the exception of any intellectual property owned by MOTI or its Affiliates); and

(d) Caesars shall have the right, but not the obligation, immediately or at any time after such expiration or termination, to operate a restaurant in the Restaurant Premises; provided, however, such restaurant shall not employ the Restaurant's food and beverage menus developed by MOTI pursuant to Section 2.3 or any of the Marks (as such term is hereinafter defined).

4. **RESTAURANT EMPLOYEES:**

4.1 **General Requirements:**

4.1.1 **Employees:** Caesars shall be responsible for, and shall have final approval with respect to, hiring, training, managing, evaluating, promoting, disciplining and firing all kitchen and front-of-house management and staff of the Restaurant (collectively, the "**Employees**"). All Employees, including, without limitation, all Senior Management Employees (as defined below), shall be employees of Caesars and shall be expressly subject to (a) Caesars' human resources policies and procedures and hiring requirements in existence as of the Effective Date and as modified by Caesars from time to time during the Term, and (b) Caesars' compliance committee requirements, as more particularly set forth in Section 10.2 hereof.

4.1.2 **Definition of Affiliate:** As used herein, "**Affiliate**" means, with respect to a specified Person, any other Person who or which is directly or indirectly controlling, controlled by or under common control with the specified Person, or any member, stockholder, director, officer, manager, or comparable principal of, or Relative of the specified Person. For purposes of this definition, "control", "controlling", "controlled" mean the right to exercise, directly or indirectly, any percentage interest of the voting power of the stockholders, members or owners and, with respect to any individual, partnership, trust or other entity or association, the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of the controlled entity. The term "Relative" shall mean: mother, father, spouse brother, sister, children, son-in-law, daughter-in-law, mother-in-law, father-in-law, step-parents, step-children, grandmother, grandfather, grandchildren and any Relative or other person residing in the place of resident of Rowen Seibel, any of the interest holders of MOTI or any of the interest holders of GLP.

4.2 **Union Agreements:**

4.2.1 **Agreements:** MOTI acknowledges and agrees that all of Caesars' agreements, covenants and obligations and all of MOTI's rights and agreements contained herein are subject to the provisions of any and all collective bargaining agreements and related union agreements to which Caesars is or may become a party and that are or may be applicable to the Employees (collectively, the "**Union Agreements**"), including, without limitation, that certain Union Agreement by and between Caesars and the Local Joint Executive Board of Las Vegas (the "**Executive Board**") in effect as of the Effective Date. MOTI agrees that all of its agreements, covenants and obligations hereunder, shall be undertaken in such manner as to be in accordance with and to assist and cooperate with Caesars' obligation to fulfill its obligations contained in the Union Agreements and any supplements thereto provided, that Caesars now and hereafter, shall advise MOTI of the obligations contained in said Union Agreements and any supplement thereto that are applicable to Employees. Notwithstanding the foregoing, in no event shall MOTI be deemed a party to any such Agreement whether by reason of this Agreement, the performance of its obligations hereunder or otherwise.

4.2.2 **Amendments:** MOTI acknowledges and agrees that from time to time during the Term; Caesars may negotiate and enter into supplements to the Union Agreements with the Executive Board or its component unions. Each Union Agreement or supplement thereto may include those provisions agreed to by and between the Executive Board and Caesars, in its sole discretion, including, without limitation, provisions for (a) notifying then-existing employees of Caesars in the bargaining units represented by the Executive Board of employment opportunities in the Restaurant, (b) preferences in training opportunities for such then-existing employees, (c) preferences in hiring of such then-existing employees, if such then-existing employees are properly qualified, and (d) other provisions concerning matters addressed in this Section 4.3.

4.2.3 **Conflicts:** In the event any agreement, covenant or obligation of Caesars or the exercise of any

right or agreement of MOTI contained herein is, or at any time during the Term shall be, prohibited pursuant to the terms of any Union Agreement or supplement thereto, Caesars shall be relieved of such agreement, covenant or obligation, with no continuing or accruing liabilities of any kind, and such agreement, covenant or obligation shall be deemed to be separate and severable from the other portions of this Agreement, and the other portions shall be given full force and effect. Caesars and MOTI shall thereafter cooperate in good faith to modify this Agreement to provide the parties with continuing agreements, covenants and obligations that are consistent with the requirements and obligations of this Agreement (including, but not limited to, the economic provisions contained herein), such Union Agreement and supplements thereto, and applicable law.

4.3 **Employment Authorization:** Caesars shall be solely responsible for applying for, and shall be solely responsible for all costs and expenses arising therefrom (with the understanding that said costs shall be deemed to be an expense of the Restaurant), any work authorizations from the United States Citizenship and Immigration Services, a Bureau of the United States Department of Homeland Security ("**USCIS**"), that may be required in order for the Executive Chef or other Senior Management Employees to be employed by Caesars at the Restaurant; provided, however, each such Employee shall be required to cooperate with Caesars with respect to applying for such work authorization and shall be required to diligently provide to Caesars or directly to USCIS, as applicable, all information such Employee is required to provide in support of the application for such work authorization; provided further, however, MOTI expressly acknowledges that in the event that Caesars is unable to reasonably obtain such work authorization for any Employee, the offer of employment for such Employee shall be revoked and MOTI shall have an obligation, within a reasonable period thereafter, to advise Caesars as to whom MOTI recommends be hired for such position.

5. **LICENSE:**

5.1 **MOTI License:** MOTI represents and warrants to Caesars that MOTI possesses worldwide right and license (the "**License**") to license those certain marks and images to be used by the Restaurant, including, without limitation, the logos, trademark, trade names, service marks and registrations thereof, programs, techniques, processes, formulas, developmental or experimental work, work-in-process, methods, trade secrets or business affairs relating to MOTI including, without limitation, those as are identified on Exhibit D attached hereto (collectively, the "**Materials and Marks**"). MOTI hereby grants to Caesars a license, to use (and permit its Affiliates to use) and employ the Materials and Marks on and in connection with the operation, marketing and promotion of the Restaurant by Caesars and its Affiliates under the terms and conditions more fully set forth herein. MOTI further represents and warrants that it shall not revoke or otherwise terminate the License at any time during the Term unless, as of the date of such revocation or termination, MOTI or MOTI's lawful designee licenses the Marks to Caesars for the balance of the Term substantially and materially in accordance with the terms of the License. MOTI shall, at Caesars' reasonable request, provide information or documents possessed by MOTI and execute documents that are necessary or useful for Caesars to exercise its rights under this Agreement and the License.

5.2 **Ownership:** MOTI agrees and acknowledges Caesars shall own all copyright and other rights, title and interest in and to all media created by Caesars (and by MOTI pursuant to this Agreement) whether such media uses or contains any or all of the Materials and the Marks, including, without limitation, all photographic or video images, all promotional materials produced in accordance with the provisions of Article 6 hereof, and all marketing materials produced in accordance with the provisions of Article 8 hereof and, in addition to the rights granted by copyright, may use such media and the Materials and the Marks in promotional pieces listing, indicating or depicting people or entities that have or have had an appearance, relationship or other connection to Caesars. Notwithstanding the foregoing, Caesars shall only be entitled to use the Materials and the Marks as expressly permitted herein.

5.3 **Intellectual Property License:** Subject to the terms and conditions hereof, MOTI hereby grants to Caesars a non-exclusive, royalty-free (the "**Intellectual Property License**") to make use of the Materials and Marks identified in Exhibit D pursuant to the following terms and conditions:

5.3.1 **Scope of Use:** Caesars may use MOTI's Intellectual Property to the extent necessary to the furtherance of its rights and obligations under the terms and conditions of this Agreement, including but not limited to the following: Caesars may use the Materials and Marks contained in Exhibit D to effectuate the rights and responsibilities of the Parties as described herein. With respect to Materials and Marks not contained in Exhibit D, Caesars shall submit promotional materials and advertisements proposing use of said Materials and Marks for approval to Rowen Seibel by delivering such materials (by mail, email or facsimile)

to his office at MOTI or to such other person and/or location as MOTI may designate in the future. Use of such Materials and Marks shall be deemed approved unless within five (5) business days of submission, MOTI provides a written notice denying approval to Caesars by fax and email with a confirmation copy by overnight carrier as set forth in Paragraph 13.5 and/or such other person or location as Caesars may designate in the future. Notwithstanding the foregoing, MOTI agrees that it shall not unreasonably withhold or delay its approval of any Caesars' request.

5.3.2 Territory: Caesars' right to use the Materials and Marks is worldwide.

5.3.3 Usage: Caesars shall use the Materials and Marks only as contained in Exhibit D or in the manner and form(s) as set forth in written approval provided by MOTI.

5.3.4 Marking: Caesars shall place the trademark registration symbol, ®, next to the Materials and Marks, and the superscripted "TM" or "SM" symbols next to MOTI's common-law trademarks and service marks identified in Exhibit D. If it is not feasible to use the above referenced trademark symbols, Caesars shall use good-faith efforts, when reasonable and commercially feasible, to include a statement in an appropriate location and size substantially similar to: "The Mark _____ (include Mark description) is a trademark owned by _____ (identify Mark's owner)" and, where appropriate, to continue "and is registered in the U.S. Patent and Trademark Office. Use without permission is strictly prohibited." Caesars also agrees that, if any web page on its web site contains any of the Materials and Marks that do not contain any of the above-mentioned trademark symbols, it shall use this trademark statement on such web pages either by including this language on the web page itself or through use of hypertext links to this language.

5.3.5 Quality Control: Caesars agrees that it shall use the Materials and Marks in a manner consistent with the quality associated with its own Intellectual Property. Caesars shall use commercially reasonable efforts to bring to MOTI's attention any issues with respect to the quality of use of the Materials and Marks and shall cooperate with any reasonable suggestion by MOTI to resolve any such issue. The parties acknowledge that due to their close working relationship with respect to the subject matter of this Agreement, MOTI can monitor Caesars's performance of its obligations under this Paragraph.

5.3.6 Limitation on Usage: Caesars acknowledges and agrees that MOTI reserves for itself the right to object to any use of the MOTI Marks even if such use is within the scope of permissible use set forth in this Agreement. Upon written notice by MOTI to Caesars of any such objection, Caesars shall promptly discontinue such use in the future, provided that MOTI shall provide Caesars with a reasonably acceptable equivalent alternative and provided further that MOTI shall reimburse Caesars for any reasonable expense it incurs in discarding existing inventory of approved marketing materials. Such expenses shall be deemed expenses of MOTI and shall not be deemed expenses of the Restaurant.

5.3.7 Registration: Caesars shall not register any mark in any jurisdiction, either during or after the term of this Agreement, which is identical or confusingly similar to any of the Materials or Marks.

5.3.8 Domain Names: Caesars shall not register any domain name, either during or after the term of this Agreement, consisting of or including any of the Materials or Marks or any variation thereof.

5.3.9 Estoppel: Upon conclusion of any "run out" provision described in this Agreement following termination of this Agreement, Caesars shall immediately stop all advertising and promotional use of the Materials and Mark. Caesars agrees that at no time either during or after the term of this Agreement will it directly or indirectly challenge or assist others to challenge the validity or strength of the Materials or Marks, provided that nothing herein shall preclude Caesars from complying with any lawful subpoena or other legal requirement.

6. SERVICES FEE:

6.1 Services Fee: In consideration of MOTI provision of the Services described herein, monthly Net Revenues shall be calculated and allocated between the parties in the following amounts and in the following order:

- (a) Caesars shall be entitled to retain a sum sufficient to make payment with respect to all Operating Expenses (consistent with Caesars' standards applicable to other similar operations, but which expenses shall

always include all costs, overhead including, but not limited to, compensation and benefits paid to employees) of the restaurant, which shall include those items listed in Exhibit B, which is attached hereto and incorporated herein by reference.

(b) If, following deduction of Operating Expenses from Net Revenue, a sum remains that equals or exceeds Thirteen (13%) of Net Revenue in the calendar month at issue:

1. Caesars shall be entitled to retain a sum as Rent equal to the of Eight (8%) Percent of Net Revenue for that calendar month; and

2. Caesars shall pay to MOTI (i) the sum of Five (5%) Percent of Net Revenue for Net Revenue received in a calendar month up to the sum of Eight Hundred Thousand Three Hundred Thirty-Three Thousand Dollars and 33/100 (\$833,333.33) (ii) the sum of Six (6%) Percent of Net Revenue for Net Revenue received in a calendar month equal to or exceeding the sum of Eight Hundred Thousand Three Hundred Thirty-Three Thousand Dollars and 33/100 (\$833,333.33) up to the sum of One Million Two Hundred Fifty Thousand Dollars and 00/100; and (iii) the sum of Seven (7%) Percent of Net Revenue for Net Revenue received in a calendar month exceeding the sum of One Million Two Hundred Fifty Thousand Dollars and 00/100 (\$1,250,000.00) as and for a License Fee (the "License Fee") in exchange for the performance of MOTI's obligations described herein.

3. Following retention by Caesars of the sum as referred to in paragraph b(1) hereinabove and payment to MOTI as referred to in paragraph b(2) hereinabove, Caesars shall be entitled to retain Fifty (50%) Percent of remaining Net Revenue and shall pay to MOTI Fifty (50%) of remaining Net Revenue for that calendar month.

(c) If Net Revenue in any calendar month during the Term is less than Thirteen, (13%) Percent greater than Operating Expenses, in place of retention by Caesars and payment to MOTI of the amounts referred to hereinabove in paragraph 6.1(b), Caesars shall be entitled to retain as Rent Sixty-One and One Half (61.5%) Percent of Net Revenue and Caesars shall pay to MOTI Thirty-Eight and One Half (38.5%) Percent of Net Revenue above Operating Expenses received in that calendar month. In any month in which Net Revenue does not exceed Operating Expenses, there shall be no allocation of Net Revenue to the Parties for that month (except for Caesars retention of all monies which shall be offset against Operating Expenses) and any loss shall be carried forward and netted against Net Revenue until Caesars receives monies sufficient to cover all Operating Expenses incurred.

Although calculated and allocated on a monthly basis, monies due and payable to MOTI as described in this Section 6.1 shall be payable on a calendar quarter basis, or any pro rata portion thereof during the Term, no later than thirty (30) days after the end of the calendar quarter to which they relate by check, money order or wire transfer in lawful funds of the United States of America to such address or account located within the United States of America as directed by MOTI from time to time. The Parties agree that should revenue in any calendar month not exceed Operating Expenses for that calendar month, no payment shall be allocated to MOTI for that month and Caesars shall be entitled to retain (and continue to retain in each succeeding month) all revenues until it has recouped all outstanding Operating Expenses incurred. The Parties agree that should revenues in any reporting period not be sufficient to make any payment as described hereinabove in subparts 6.1 (b) and (c), there shall be no obligation to make any payment for same in any future reporting period.

Examples:

In the first example, the Net Revenues for the year are \$9,000,000 and operating margin is 21%

	Net Revenues	\$	9,000,000
7.1			
(a)	Less: Operating Expenses	\$	7,110,000
7.1			
(b)	Less: Rent Payment to HET	\$	720,000
7.1(c)			
)	Less: Advisory Fee to MOTI	\$	450,000
	Remaining Cash	\$	720,000
7.1			
(d)	Less: Distribution to HET	\$	360,000
	Less: Distribution to MOTI	\$	360,000
	Remaining Cash	\$	-

In the second example, the Net Revenues for the year are \$9,000,000 and operating margin is 11%. Since the operating margin is less than 13%, Caesars receives 61.5% of remaining, while MOTI receives 38.5%.

	Net Revenues	\$	9,000,000
7.1			
(a)	Less: Operating Expenses	\$	8,010,000
7.1			
(b)	Less: Rent Payment to HET	\$	608,850
7.1(c)			
)	Less: Advisory Fee to MOTI	\$	381,150
	Remaining Cash	\$	-
7.1			
(d)	Less: Distribution to HET	\$	-
	Less: Distribution to MOTI	\$	-
	Remaining Cash	\$	-

In the third example, the Net Revenues for the year are \$9,000,000 and operating margin is -2%. Since the operating margin does not sufficiently cover the expenses, no allocations of net revenue will be paid to either party and the loss shall be carried forward and netted against net revenue until CLV receives monies sufficient to cover all operating costs.

	Net Revenues	\$	9,000,000
7.1			
(a)	Less: Operating Expenses	\$	9,180,000
7.1			
(b)	Less: Rent Payment to HET	\$	-
7.1(c)			
)	Less: Advisory Fee to MOTI	\$	-
	Remaining Cash	\$	(180,000)
7.1			
(d)	Less: Distribution to HET	\$	-
	Less: Distribution to MOTI	\$	-
	Remaining Cash	\$	(180,000)

6.2 Determination of Gross Revenues, Net Revenues and Operating Expenses: As used herein, "**Gross Revenues**" means the aggregate gross revenues, whether paid by cash or credit, of all goods, merchandise and services sold in or from the Restaurant, including, without limitation, food, retail merchandise, private party minimums, floral arrangements, set-up fees and similar expenses, and all food sold or served outside the Restaurant that is prepared by or represented as Restaurant cuisine. Caesars shall be solely responsible for maintaining and shall maintain, all books and records necessary to calculate Gross Revenues, Net Revenues and Operating Expenses and for the calculation thereof and, within thirty (30) days after the end of each calendar quarter shall deliver notice to MOTI reasonably detailing the calculation of Gross Revenues, Net Revenues and Operating Expenses for such quarter. Caesars' calculations shall be conclusive and binding unless, (i) within thirty (30) calendar days' of Caesars delivery of such notice, MOTI notifies Caesars in writing of any claimed manifest calculation error therein; or (ii) such calculations are determined to be inaccurate as the result of any audit pursuant to Section 6.3. Upon receipt of any such notification, Caesars shall review the claimed manifest calculation error and, within thirty (30) calendar days of such notification, advise MOTI as to the corrected calculation, if any. Absent such notification and such manifest calculation error, Caesars' calculations shall be binding on the parties. The items contained in subparagraphs (a)-(d) hereinbelow shall be deducted from the calculation of Gross Revenues and revenue remaining following these deductions shall constitute "Net Revenues" as such term is used further herein:

- (a) taxes of any nature added to checks or invoices pursuant to applicable laws;
- (b) gratuities and service fees received from customers for services and actually paid to Employees;
- (c) money and credits received by the Restaurant in settlement of claims for losses or damages; and
- (d) rebates, discounts or credits (which shall not include Restaurant "comps" issued to patrons) received by the Restaurant and consistent with Caesar's accounting system, except for rebates, discounts or credits related to items that are acquired for use solely in the Restaurant and not in any other outlet at Caesars Palace. This exception shall not apply to the purchase of any alcoholic beverages.

6.3 Audit: MOTI shall be entitled at any time upon ten (10) calendar days' notice to Caesars, but not more than one (1) time per calendar year, to cause an audit to be made, during normal business hours, by any Person designated by MOTI and approved by Caesars (who shall not unreasonably withhold, delay or condition said approval), of all books, records, accounts and receipts required to be kept for the calculation of Gross Revenues, Net Revenues and Operating Expenses which shall not include tax returns of Caesars filed on a consolidated basis, which audit shall be conducted without material disruption or disturbance of Caesars Operations. If such audit discloses that Gross Revenues or Net Revenues were understated or Operating Expenses were overstated for any relevant period, Caesars shall be entitled to review such audit materials and to conduct its own audit related to such period. If Caesars does not dispute the result of MOTI audit within ninety (90) days after conclusion and presentation by MOTI to Caesars of MOTI's findings, Caesars shall (in the next monthly allocation) allocate to MOTI such additional monies necessary to compensate MOTI consistent with the terms of payment described in Section 6.1 hereinabove. If such audit discloses that Gross Revenues or Net Revenues were understated or Operating Expenses were overstated for any monthly period by an amount equal to or greater than five percent (5%), Caesars shall pay MOTI actual costs of such audit, including, without limitation, all accountants' fees. MOTI shall hold all information disclosed to MOTI pursuant to this Section 6.3 in confidence, and not disclose same to any third Person other than (a) to any Person with the prior written consent of Caesars, (b) to MOTI directors, officers, employees, agents or advisors, including, without limitation, attorneys, and, as reasonably required, accountants, consultants and financial advisors, all of whom MOTI shall inform of the confidential nature of such information, (c) in furtherance of any legal process to which MOTI is a party, or (d) as required to be disclosed by MOTI in compliance with any Applicable Laws.

7. OPERATIONS:

7.1 Marketing: As reasonably required by Caesars from time to time during the Term, but not less than once each quarter, Rowen Seibel shall consult with Caesars, and provide Caesars with advice regarding the marketing of the Restaurant; provided, however, Caesars, after considering all reasonable recommendations received from MOTI, shall have final approval with respect to all aspects of same. Such marketing consultations (the "**Marketing Consulting**

Services”), and meetings with respect to same, shall take place primarily in Las Vegas or such other location or locations as may be mutually and reasonably agreed to by Caesars and MOTI from time to time. Caesars shall market the Restaurant through means and in media which shall include, in room TV, the Caesars marquee, Dura-trans and the webpage for Caesars located within the website of Caesars’ affiliate.

7.2 Accommodations: Each month during the first three (3) months of the Term and, thereafter, for each quarterly visit, subject to availability, Caesars shall provide for Rowen Seibel’s use two (2) Deluxe rooms (room and tax only in Palace or Augustus Tower) at the Hotel Casino; provided, however, Rowen Seibel shall be responsible for all incidental room charges and other expenses incurred during the occupancy of such rooms. All such Travel Expenses as described above shall be considered an operating expense of the Restaurant. In addition to the foregoing, during the Term and subject to availability, Rowen Seibel shall be entitled to receive (for his use only) use of one (1) Deluxe Room (in Palace or Augustus Tower) at a discount of twenty (20%) percent off the then prevailing “casino” rate.

8. REPRESENTATIONS AND WARRANTIES:

8.1 Caesars’ Representations and Warranties: Caesars hereby represents and warrants to MOTI that:

- (a) Caesars has the valid corporate power to execute and deliver, and perform its obligations under, this Agreement and such execution, delivery and performance has been authorized by all necessary corporate action on the part of Caesars;
- (b) no consent or approval or authorization of any applicable governmental authority or natural person, form of business or social organization, other non-governmental legal entity, including, without limitation, a corporation, partnership, association, trust, unincorporated organization, estate or limited liability company (as applicable, a “Person”) is required in connection with Caesars’ execution and delivery, and performance of its obligations under this Agreement and, additionally, as of the date of the signing of this Agreement, MOTI has fulfilled its obligations with respect to the compliance policy of Caesars’ affiliate and no further approval of this Agreement is required by the Compliance Committee of Caesars’ affiliate;
- (c) there are no known actions, suits or proceedings pending or, to the best knowledge of Caesars, threatened against Caesars in any court or administrative agency that would prevent Caesars from completing the transactions provided for herein;
- (d) this Agreement constitutes the legal, valid and binding obligation of Caesars, enforceable in accordance with its terms;
- (e) as of the Effective Date, no representation or warranty made herein by Caesars contains any untrue statement of material fact, or omits to state a material fact necessary to make such statements not misleading; and
- (f) at all times during the Term, the Restaurant shall be a first-class gourmet restaurant.

8.2 MOTI Representations and Warranties: MOTI hereby represents and warrants to Caesars that:

- (a) MOTI has the legal capacity to execute and deliver, and perform its obligations under, this Agreement;
- (b) no consent or approval or authorization of any applicable governmental authority or Person is required in connection with MOTI’s execution and delivery, and performance of its obligations under, this Agreement;
- (c) there are no known actions, suits or proceedings pending or, to the best knowledge of MOTI, threatened against MOTI in any court or before any administrative agency that would prevent MOTI from completing the transactions provided for herein;

(d) this Agreement constitutes the legal, valid and binding obligation of MOTI, enforceable in accordance with its terms; and

(e) as of the Effective Date, no representation or warranty made herein by MOTI contains any untrue statement of a material fact, or omits to state a material fact necessary to make such statements not misleading.

9. **STANDARDS; PRIVILEGED LICENSE:**

9.1 **Standards:** MOTI acknowledges that the Hotel Casino is an exclusive first-class resort hotel casino and that the Restaurant shall be an exclusive first-class restaurant and that the maintenance of the reputation of Caesars, the Marks, the Hotel Casino and the Restaurant reputation and the goodwill of the guests and invitees of Caesars, the Hotel Casino and the Restaurant guests and invitees is absolutely essential to Caesars, and that any impairment thereof whatsoever will cause great damage to Caesars. MOTI therefore covenants and agrees that it shall conduct all of its obligations hereunder in accordance with the highest standards of honesty, integrity, quality and courtesy so as to maintain and enhance the reputation and goodwill of Caesars, the Marks, the Hotel Casino, and the Restaurant and at all times in keeping with and not inconsistent with or detrimental to the operation of an exclusive, first-class resort hotel casino and an exclusive, first-class restaurant. MOTI shall use commercially reasonable efforts to continuously monitor the performance of each of its respective agents, employees, servants, contractors, and licensees at the Restaurant to ensure such standards are consistently maintained. MOTI failure to comply or failure to cause any of their respective agents, employees, servants, contractors, or licensees to comply with the terms of this Section 10.1 (after receiving a notice of such failure and being afforded a reasonable opportunity to cure to Caesars reasonable satisfaction) may be deemed, in Caesars' sole and absolute discretion, as a default hereunder.

9.2 **Privileged License:** MOTI acknowledges that Caesars and Caesars' Affiliates are businesses that are or may be subject to and exist because of privileged licenses issued by federal, state and local governmental, regulatory and administrative authorities, agencies, boards and officials responsible for or involved in the regulation of gaming or gaming activities and the sale, distribution and possession of alcoholic beverages (the "Gaming Authorities"). The Gaming Authorities require Caesars, and Caesars deems it advisable, to have a compliance committee (the "Compliance Committee") that does its own background checks on, and issues approvals of, Persons involved with Caesars and Caesars' business operations. Prior to the execution of this Agreement and, in any event, prior to the payment of any monies by Caesars to MOTI hereunder or by Caesars to Licensor under the License, and thereafter on each anniversary of the Opening Date during the Term, (a) MOTI shall provide to Caesars written disclosure regarding, MOTI and all of their respective key employees, agents, representatives, management personnel, lenders, or any financial participants (collectively, "Associated Parties"), and (b) the Compliance Committee shall have issued approvals of MOTI and the Associated Parties. Additionally, during the Term, on five (5) calendar days written request by Caesars to MOTI, MOTI shall disclose to Caesars all Associated Parties; provided, however, Caesars shall make not more than two (2) such written requests to MOTI in any twelve (12) month period; provided further, however, if Caesars has made two (2) such written requests to MOTI in any twelve (12) month period, and the Gaming Authorities require Caesars to make any additional written request(s), MOTI shall comply with such additional written request(s). To the extent that any prior disclosure becomes inaccurate, MOTI shall, within five (5) calendar days from that event, update the prior disclosure without Caesars making any further request. MOTI and its respective Associated Parties shall provide all requested information and apply for and obtain all necessary approvals required or requested of MOTI by Caesars or the Gaming Authorities. If MOTI fails to satisfy or fails to cause the Associated Parties to satisfy such requirement, if Caesars or any of Caesars' Affiliates are directed to cease business with MOTI or any Associated Party by the Gaming Authorities, or if Caesars shall determine, in Caesars' sole and exclusive judgment, that MOTI or any Associated Party is or may engage in any activity or relationship that could or does jeopardize any of the privileged licenses held by Caesars or any Caesars' Affiliate, then (a) MOTI shall terminate any relationship with the Associated Party who is the source of such issue, (b) MOTI shall cease the activity or relationship creating the issue to Caesars' satisfaction, in Caesars' sole judgment, or (c) if such activity or relationship is not subject to cure as set forth in the foregoing clauses (a) and (b), as determined by Caesars in its sole discretion, Caesars shall, without prejudice to any other rights or remedies of Caesars including at law or in equity, terminate this Agreement and its relationship with MOTI. In the event MOTI does not comply with any of the foregoing, such noncompliance may be deemed, in Caesars' sole discretion, as a default hereunder. MOTI further acknowledges that Caesars shall have the absolute right, without any obligation to comply with Article 11 hereof, to terminate this Agreement in the event any Gaming Authority require Caesars to do so.

10. **CONDEMNATION; CASUALTY; FORCE MAJEURE:**

10.1 **Condemnation:** In the event that during the Term the whole of the Restaurant shall be taken under power of eminent domain by any Governmental Authority or conveyed by Caesars to any Governmental Authority in lieu of such taking, then this Agreement shall terminate as of the date of such taking. In the event that during the Term a substantial portion of the Restaurant shall be taken under power of eminent domain by any Governmental Authority or conveyed by Caesars to any Governmental Authority in lieu of such taking, Caesars may, in the exercise of its sole discretion, terminate this Agreement upon written notice give not more than thirty (30) calendar days after the date of such taking. All compensation awarded by any such Governmental Authority shall be the sole property of Caesars and MOTI shall have no right, title or interest in and to same.

10.2 **Casualty:**

10.2.1 **Hotel Casino:** In the event that during the Term there is damage or destruction to the Hotel Casino by any casualty whatsoever and Caesars determines to close the Hotel for a period exceeding one hundred eighty (180) calendar days on account thereof, Caesars shall have the right, but not the obligation, to terminate this Agreement upon written notice delivered within one hundred twenty (120) calendar days after the occurrence of such damage or destruction.

10.2.2 **Restaurant:** In the event that during the Term there is damage or destruction to the Restaurant by any casualty whatsoever, Caesars shall have the right, but not the obligation, to terminate this Agreement upon written notice delivered within one hundred twenty (120) calendar days after the occurrence of such damage or destruction, only if (a) the casualty is a risk normally covered by fire and extended coverage insurance, with a special form endorsement, and the cost of repair and reconstruction will exceed fifty percent (50%) of the replacement cost of the Restaurant, or (b) the casualty is a risk not normally covered by fire and extended coverage insurance, with a special form endorsement, and the cost of repair and reconstruction will exceed ten percent (10%) of the replacement cost of the Restaurant. In the event this Agreement is not so terminated, Caesars shall use commercially reasonable efforts to promptly repair, reconstruct and restore the Restaurant in accordance with the provisions of Section 2.2. hereof.

10.2.3 **Excusable Delay:** In the event that during the Term either party shall be delayed in or prevented from the performance of any of such party's respective agreements, covenants or obligations hereunder by reason of strikes, lockouts, unavailability of materials, failure of power, fire, earthquake or other acts of God, restrictive applicable laws, riots, insurrections, the act, failure to act or default of the other party, war, terrorist acts, or other reasons wholly beyond its control and not reasonably foreseeable (each, an "Excusable Delay"), then the performance of such act shall be excused for the period of the delay and the period for the performance of such act shall be extended for a period equivalent to the period of such delay. Notwithstanding the foregoing, lack of funds shall not be deemed an Excusable Delay. Any claim for an extension of time due to an Excusable Delay must be made in writing and received by the other party not more than fifteen (15) calendar days after the commencement of such delay, otherwise, such party's rights under this Section 10.2.3 shall be deemed waived.

10.3 **No Extension of Term:** Nothing in this Article 10 shall extend the Term and no other payments shall accrue during any period during which the Restaurant is closed by reason of such condemnation, casualty, or Excusable Delay. Any termination by Caesars under Sections 9 or 10 shall terminate the obligations of each Party to this Agreement, except for those obligations that, by definition, are intended to survive termination.

11. **ARBITRATION:**

11.1 **Dispute Resolution:** Except for a breach by MOTI of Section 1.2, Section 5 or Section 9 (for which dispute Caesars may seek affirmative relief through any means and the filing of any action in any forum it deems appropriate), in the event of any other dispute, controversy or claim arising out of or relating to this Agreement between the parties to this Agreement ("Dispute"), either party shall serve written notice (a "Dispute Notice") upon the other party setting forth the nature of the Dispute and the relief sought, and the parties shall attempt to resolve the Dispute by negotiation. If the Dispute has not been resolved within thirty (30) days of receipt of a Dispute Notice, either party may serve on the other party a request to resolve the Dispute by arbitration. All Disputes not resolved by the foregoing negotiation shall be finally settled by binding arbitration. Such arbitration shall be held in Las Vegas,

Nevada in accordance with the Commercial Rules of Arbitration of the American Arbitration Association ("AAA"), in effect on the date of the Dispute Notice (the "Rules") by one or more arbitrators appointed in accordance with Section 11.2 hereof.

11.2 Arbitrator(s): If the claim in the Dispute Notice does not exceed Five Hundred Thousand and 00/100 Dollars (\$500,000.00), there shall be a single arbitrator nominated by mutual agreement of the parties and appointed according to the Rules. If the claim in the Dispute Notice exceeds Five Hundred Thousand and 00/100 Dollars (\$500,000.00), the arbitration panel shall consist of three (3) members unless both parties agree to use a single arbitrator. One of the arbitrators shall be nominated by Caesars, one of the arbitrators shall be nominated by MOTI and the third, who shall serve as chairman, shall be nominated by the two (2) party-arbitrators within thirty (30) days of the confirmation of the nomination of the second arbitrator. If either party fails to timely nominate an arbitrator in accordance with the Rules, or if the two (2) arbitrators nominated by the parties fail to timely agree upon a third arbitrator, then such arbitrator will be selected by the AAA Court of Arbitration in accordance with the Rules. The arbitral award shall be final and binding on the parties and may be entered and enforced in any court having jurisdiction over any of the parties or any of their assets.

12. MISCELLANEOUS:

12.1 No Partnership or Joint Venture: Nothing expressed or implied by the terms of this Agreement shall make or constitute either party hereto the agent, partner or joint venturer of and with any other party. Accordingly, the parties acknowledge and agree that all payments made to MOTI under this Agreement shall be for services rendered as an independent contractor and, unless otherwise required by law, Caesars shall report as such on IRS Form 1099, and both parties shall report this for financial and tax purposes in a manner consistent with the foregoing.

12.2 Successors, Assigns and Delagees; Sale: Caesars is relying upon the skill and expertise of MOTI and, specifically, the skills of Rowen Seibel (the "Principal") in entering into this Agreement and accordingly, the obligations and duties of MOTI specifically designated hereunder to be performed by the Principal are personal to each such Principal and are not assignable or, unless expressly contemplated hereby, delegable by MOTI to any other Person. Without limiting the foregoing or the provisions of Section 12.4, this Agreement shall inure to the benefit of and be binding upon the parties and, if written consent to assignment or delegation is given, their respective successors, assigns and delagees. Additionally, MOTI may not assign this Agreement or any obligation contained herein without written consent of Caesars, which consent may be withheld in Caesars' sole and absolute discretion.

12.3 Waiver of Rights: Failure to insist on compliance with any of the agreements, obligations and covenants hereof shall not be deemed a waiver of such agreements, obligations and covenants, nor shall any waiver or relinquishment of any right or power hereunder at any one or more time or times be deemed a waiver or relinquishment of such rights or powers at any other time or times. The exercise of any right or remedy shall not impair Caesars' or MOTI right to any other remedy.

12.4 At least sixty (60) days prior to any contemplated sale of the Hotel Casino, Caesars (or the then owner of the Hotel Casino) shall give MOTI written notice of such contemplated sale, which notice shall include the name and identity of the proposed purchaser. In the event such sale is thereafter consummated, Caesars (or the then owner of the Hotel Casino) shall be and hereby is relieved of all liability under any and all of its agreements, obligations and covenants contained in or derived from this Agreement arising out of any act, occurrence or omission relating to the Restaurant Premises or Caesars Palace occurring after the consummation of such sale or exchange. Provided that such purchaser of the Hotel Casino represents and warrants to operate the Restaurant substantially and materially in accordance with those standards set forth in this Agreement, MOTI shall continue to be obligated to such purchaser pursuant to the terms and conditions of this Agreement and MOTI hereby agrees to attorn to such purchaser and to continue to fulfill its obligations under this Agreement (including, but not limited to, providing for the services of the Principals as further described herein), in full force and effect, without the requirement of notice to or consent by MOTI with respect to such sale and attornment.

12.5 Notices: Any notice or other communication required or permitted to be given by a party hereunder shall be in writing, and shall be deemed to have been given by such party to the other party or parties (a) on the date of personal delivery, (b) on the next business day following any facsimile transmission to a party at its facsimile number set forth below; provided, however, such delivery is concurrent with delivery pursuant to the provisions of clause (a)

of this Section 12.5, (c) three (3) calendar days after being given to an international delivery company, or (d) ten (10) calendar days after being placed in the mail, as applicable, registered or certified, postage prepaid addressed to the following addresses (each of the parties shall be entitled to specify a different address by giving notice as aforesaid):

If to Caesars: Desert Palace, Inc.
3570 Las Vegas Boulevard South
Las Vegas, NV 89109
Facsimile: (702) 699-5110
Attention: President

With a copy, which shall not constitute notice, to:
Harrah's Legal Department
One Caesars Palace Drive
Las Vegas, NV 89109
Facsimile: (702) 407-6000
Attention: General Counsel

If to MOTI: MOTI Partners
200 Central Park South
New York, New York
New York, NY 10019
Facsimile: (212) _____
Attention: Rowen Seibel

With a copy, which shall not constitute notice, to:
Robert A. Seibel
Seibel & Rosen
560 3rd Avenue, 28th Floor
NY, NY 10016
Attention: Robert Seibel
(212)983-9200 Phone
(917)885-2610 Mobile
(212)983-9201 Facsimile
bobseibel@yahoo.com

12.6 Entire Agreement: This Agreement constitutes the entire agreement between the parties hereto pertaining to the subject matter hereof and supersedes all prior agreements, understandings, negotiations, and discussions, whether oral or written.

12.7 Severability: If any part of this Agreement is determined to be void, invalid or unenforceable, such void, invalid, or unenforceable portion shall be deemed to be separate and severable from the other portions of this Agreement, and the other portions shall be given full force and effect, as though the void, invalid or unenforceable portions or provisions were never a part of this Agreement.

12.8 Amendment and Modification: No supplement, modification, waiver or termination of this Agreement shall be binding unless executed in writing by the party to be bound. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provisions (whether or not similar), nor shall such waiver constitute a continuing waiver unless otherwise expressly provided.

12.9 Headings: Article or Section headings are not to be considered part of this Agreement and are included solely for convenience and reference and shall not be held to define, construe, govern or limit the meaning of any term or provision of this Agreement. References in this Agreement to an Article or Section shall be reference to an Article or Section of this Agreement unless otherwise stated or the context otherwise requires.

12.10 Governing Law: Submission to Jurisdiction: The laws of the State of Nevada applicable to agreements made in that State shall govern the validity, construction, performance and effect of this Agreement. Subject to the provisions of Section 11.1 MOTI and Caesars each agree to submit to the exclusive jurisdiction of any state or federal court within the Clark County Nevada (the "Nevada Courts") for any court action or proceeding to compel or in support of arbitration or for provisional remedies in aid of arbitration, including but not limited to any action to enforce the provisions of Article 11 (each an "Arbitration Support Action"). Each of the parties hereto irrevocably and unconditionally waives any objection to the laying of venue of any action, suit or proceeding arising out of this Agreement including, but not limited to, an Arbitration Support Action and hereby further irrevocably and unconditionally waives and agrees not to plead or claim in any such court that any such action, suit or proceeding brought in any such court has been brought in an inconvenient forum.

12.11 Interpretation: This Agreement is to be deemed to have been prepared jointly by the parties hereto, and if any inconsistency or ambiguity exists herein, it shall not be interpreted against either party but according to the application of rules of the interpretation of contracts. Each party has had the availability of legal counsel with respect to its execution of this Agreement.

12.12 Third Persons: Nothing in this Agreement, expressed or implied, is intended to confer upon any Person

other than the parties hereto any rights or remedies under or by reason of this Agreement.

12.13 Attorney Fees: The prevailing Party in any dispute that arises out of or relates to the making or enforcement of the terms of this Agreement shall be entitled to receive an award of its expenses incurred in pursuit or defense of said claim, including, without limitation, attorneys' fees and costs, incurred in such action.

12.14 Counterparts: This Agreement may be executed in counterparts, each one of which so executed shall be deemed an original, and both of which shall together constitute one and the same agreement.

12.15 Indemnification: Each Party covenants and agrees, jointly and severally, to defend, indemnify and save and hold harmless the other Party and its Affiliates and its Affiliates' respective stockholders, directors, officers, agents and employees (collectively, the "Related Parties") from and against all claims, losses, expenses, obligations, liabilities, liens, demands, charges, litigation and judgments, including, without limitation, court costs and reasonable attorneys' fees, arising directly or indirectly from any claim by any third Person (each a "Claim") arising out of a Party's performance of its obligations under or in connection with this Agreement. The Party asserting a Claim (the "Indemnified Party") shall notify the other Party (the "Indemnifying Party") of each Claim and the Indemnifying Party shall, at its sole cost and expense, defend such Claim, or cause the same to be defended by counsel designated by the Indemnified Party.

12.16 Withholding and Tax Indemnification Required Withholding: MOTI represents that no amounts due to be paid to MOTI hereunder are subject to withholding. If Caesars is required to deduct and withhold from any payments or other consideration payable or otherwise deliverable pursuant to this Agreement to MOTI any amounts under the Internal Revenue Code of 1986, as amended (the "Code"), or any provision of United States federal, state, local or foreign law, statute, regulation, treaty, administrative ruling, pronouncement or other authority or judicial opinion, Caesars agrees that, prior to said deduction and withholding, it shall provide MOTI with notice of same. To the extent such amounts are so deducted or withheld, such amounts shall be treated for all purposes under this Agreement as having been paid to the person to whom such amounts would otherwise have been paid. If requested by Caesars, MOTI shall promptly deliver to Caesars all the appropriate Internal Revenue Service forms necessary for Caesars, in its sole and absolute discretion deems necessary to make a determination as to its responsibility to make any such U.S. federal withholding with respect to any payment payable pursuant to this Agreement.

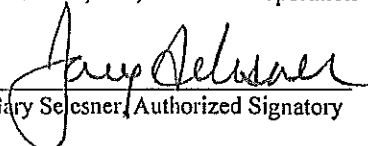
12.17 Indemnification: Notwithstanding anything to the contrary in this MOTI shall be responsible for and shall indemnify and hold harmless Caesars and its Affiliates (collectively, the "Indemnified Parties") against (i) all Taxes (including, without limitation, any interest and penalties imposed thereon) payable by or assessed against such Indemnified Parties with respect to all amounts payable by Caesars to MOTI pursuant to this Agreement and (ii) any and all claims, losses, damages, liabilities, costs and expenses (including, without limitation, reasonable attorneys' fees and expenses) suffered or paid by the Indemnified Parties as a result of or in connection with such Taxes Caesars shall have the right to reduce any payment payable by Caesars to MOTI pursuant to this Agreement in order to satisfy any indemnity claim pursuant to this Section 12.16(b).

12.18 Definition: For purposes of this Section, the term "Tax" or "Taxes" means all taxes, assessments, charges, duties, fees, levies or other governmental charges, including, without limitation, all federal, state, local and foreign income, franchise, profits, capital gains, capital stock, transfer, sales, use, value added, occupation, property, excise, severance, windfall profits, stamps, license, payroll, social security, withholding and other taxes, or other governmental assessments, duties, fees, levies or charges of any kind whatsoever, all estimated taxes, deficiency assessments, additions to tax, penalties and interest.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the Effective Date.

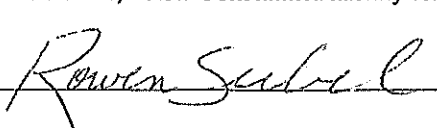
"CAESARS"

Desert Palace, Inc., a Nevada corporation

By: 
Gary Selesner, Authorized Signatory

"MOTI"

MOTI Partners, a New York limited liability company

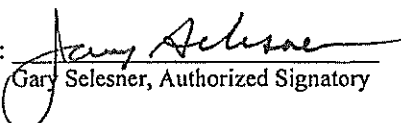
By: 

Its: Managing Member

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the Effective Date.

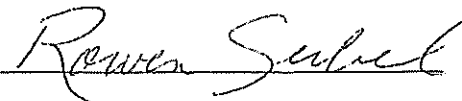
"CAESARS"

Desert Palace, Inc., a Nevada corporation

By: 
Gary Selesner, Authorized Signatory

"MOTI"

MOTI Partners, a New York limited liability company

By: 

Its: Managing Member

E X H I B I T “ A ”

RESTAURANT PREMISES

[Attached hereto.]

E X H I B I T “ B ”

Buildings and Improvements: Includes, but is not limited to, the cost of investment in buildings (and structural improvements), including the cost of construction labor, materials, and services such as architectural fees. Includes original cost of equipment that services normal heating, plumbing, fire protection, power requirements, and equipment such as elevators and escalators.

Building improvements consist of additions to or renovations of existing structures subsequent to the building being placed in service. Building improvements are an integral part of the building and are of a nature that would be included in the assessed valuation of the real estate for local real property tax purposes.

Furniture, Fixtures and Equipment:

Restaurant Equipment

Includes, but is not limited to, heavy equipment used in the restaurant and bar. This account does not include air conditioning units, compressors, coolers, etc., used in the restaurant and bar areas.

Bar-Front and Back	Grease Pits	Dishwashers
Cash Registers	Ranges	Ventilation Systems
Cooks Units	Refrigerators	Fire Extinguisher Systems
Cookers-Steam	Stoves-Heavy	

Miscellaneous Restaurant Equipment

Bar Doors	lamps – Wall & Table	Kitchen Utensils
Booths	Lecterns	Water Softeners
Candelabra	Mixers	Ice Crushers & Makers
Carts – Room Service	Ornamental Iron Gates	Waitress Stations
Chairs	Ovens	Glass Racks
Chandeliers	Pictures	
Coffee Maker	Popcorn Machines	
Dance Floors	Projectors	
Dish Table	Sandwich Units	
Dishwashers	Serving, Banquets	
Disposals	Sneeze Guards	
Exhaust Fans	Stoves	
Faucets – Bar/Restaurant	Table Tops	
Faucets & Rims – Lavatories	Tape Deck/Player	
Fryers	Utility Stands	

China, Glass and Silverware

The initial complement of china, glass and silverware should be capitalized at full cost. The assets will be assigned a 50% salvage value. The remaining 50% of the capitalized amount will be depreciated on a straight-line basis over a two-year life. Initial complements consist of items purchased for a start-up operation. A complete replacement of a particular design or series of base stocks may also be capitalized, with the old china, glass and silverware items being expensed in the period of replacement. All subsequent purchases and replacements for worn or broken items should be expensed as purchased.

Linens and Uniforms

The initial complement of linens and uniforms should be capitalized and fully depreciated over a three-year life. Initial complements consist of items purchased for a start-up operation. A complete replacement due to design, style or color changes may also be capitalized, with the old linen/uniform items being expensed in the period of replacement. All subsequent purchases and replacements for worn items should be expensed as purchased.

Utilities and Related Expenses

Operating expenses shall include an allowance of .90 per square foot, per month for costs related to trash, sewer, water, electric and gas usage. This figure shall be adjusted annually based upon the increase or decrease in pricing for these services. The premises shall also have allocated the sum of \$500 per month for hood cleaning.

Miscellaneous Operating Expenses

Operating expenses shall include, but not be limited to, payroll costs, taxes, insurance, advertising, contractor labor, repairs/maintenance, cost of goods sold, laundry, postage, telephone, floral, uniforms and travel on an "as incurred" basis. Additionally, the restaurant shall receive an allocation charge for use of the commissary for areas such as baker, butchery, gardmanger and cook chill. The restaurant shall also have allocated to it the expense of 2.8 employees for cleaning of restrooms, the patio area, stairs and the areas surrounding the restaurant.

E X H I B I T " C "

**RESTAURANT TRAINING AND DEVELOPMENT OF CULINARY
AND SERVICE STANDARDS**

E X H I B I T “ D ”

MARKS

[ONE TO PROVIDE LIST OF MARKS]

Exhibit B

DNT Agreement

DEVELOPMENT, OPERATION AND LICENSE AGREEMENT

among

DNT ACQUISITION LLC,

THE ORIGINAL HOMESTEAD RESTAURANT, INC.

and

DESERT PALACE, INC.

or Old Homestead System in a manner that is inconsistent with, or take any action that dilutes or denigrates, the current level of quality, integrity and upscale positioning associated with the Old Homestead Marks, Old Homestead Materials and Old Homestead System and (b) they shall, and they shall cause their Affiliates to, conduct themselves in accordance with the highest standards of honesty, integrity, quality and courtesy so as to maintain and enhance the reputation and goodwill of Caesars, the Old Homestead Marks, the Old Homestead Materials, the Old Homestead System, the Caesars Palace and the Restaurant and at all times in keeping with and not inconsistent with or detrimental to the operation of an exclusive, first-class resort hotel casino and an exclusive, first-class restaurant. The DNT Parties shall use commercially reasonable efforts to continuously monitor the performance of each of its and its Affiliates' respective agents, employees, servants, contractors and licensees and shall ensure the foregoing standards are consistently maintained by all of them. Any failure by any of the DNT Parties, their Affiliates or any of their respective agents, employees, servants, contractors or licensees to maintain the standards described in this Section 11.1 shall, in addition to any other rights or remedies Caesars may have, give Caesars the right to terminate this Agreement pursuant to Section 4.2.2 in its sole and absolute discretion.

11.2 Privileged License. The DNT Parties acknowledges that Caesars and Caesars' Affiliates are businesses that are or may be subject to and exist because of privileged licenses issued U.S., state, local and foreign governmental, regulatory and administrative authorities, agencies, boards and officials (the "Gaming Authorities") responsible for or involved in the administration of application of laws, rules and regulations relating to gaming or gaming activities or the sale, distribution and possession of alcoholic beverages. The Gaming Authorities require Caesars, and Caesars deems it advisable, to have a compliance committee (the "Compliance Committee") that does its own background checks on, and issues approvals of, Persons involved with Caesars and its Affiliates. Prior to the execution of this Agreement and, in any event, prior to the payment of any monies by Caesars to the DNT Parties hereunder, and thereafter on each anniversary of the Opening Date during the Term, (a) the DNT Parties shall provide to Caesars written disclosure regarding the DNT Associates, and (b) the Compliance Committee shall have issued approvals of the DNT Associates. Additionally, during the Term, on ten (10) calendar days written request by Caesars to the DNT Parties, the DNT Parties shall disclose to Caesars the identity of all DNT Associates. To the extent that any prior disclosure becomes inaccurate, the DNT Parties shall, within ten (10) calendar days from the event, update the prior disclosure without Caesars making any further request. The DNT Parties shall cause all DNT Associates to provide all requested information and apply for and obtain all necessary approvals required or requested by Caesars or the Gaming Authorities. If any DNT Associate fails to satisfy or such requirement, if Caesars or any of Caesars' Affiliates are directed to cease business with any DNT Associate by any Gaming Authority, or if Caesars shall determine, in Caesars' sole and exclusive judgment, that any DNT Associate is an Unsuitable Person, whether as a result of DNT Change of Control or otherwise, then, immediately following notice by Caesars to DNT, (a) the DNT Parties shall terminate any relationship with the Person who is the source of such issue, (b) the DNT Parties shall cease the activity or relationship creating the issue to Caesars' satisfaction, in Caesars' sole judgment, or (c) if such activity or relationship is not subject to cure as set forth in the foregoing clauses (a) and (b), as determined by Caesars in its sole discretion, Caesars shall, without prejudice to any other rights or remedies of Caesars including at law or in equity, have the right to terminate this Agreement and its relationship with the DNT Parties. The DNT Parties further acknowledges that Caesars shall have the absolute right to terminate this Agreement in the event any Gaming Authority requires Caesars or one of its Affiliates to do so. Any termination by Caesars pursuant to this Section 11.2 shall not be subject to dispute by the DNT Parties and shall not be the subject of any proceeding under Article 13.

12. CONDEMNATION; CASUALTY; FORCE MAJEURE.

12.1 Condemnation. In the event that during the Term the whole of the Restaurant shall be taken under power of eminent domain by any governmental authority or conveyed by Caesars to any governmental authority in lieu of such taking, then this Agreement shall terminate as of the date of such taking. In the event that during the Term a substantial portion of the Restaurant (thirty percent (30%) or more) shall be taken under power of eminent domain by any governmental authority or conveyed by Caesars to any governmental authority in lieu of such taking (as determined by Caesars in its sole and absolute discretion), Caesars may, in the exercise of its sole discretion, terminate this Agreement upon written notice give not more than thirty (30) calendar days after the date of such taking. All compensation awarded by any such governmental authority shall be the sole property of Caesars and the DNT Parties shall have no right, title or interest in and to same except that the DNT Parties may pursue their own separate claim provided their claim will not reduce the award granted to Caesars.

Exhibit C

TPOV Agreement

DEVELOPMENT AND OPERATION AGREEMENT
BETWEEN
TPOV ENTERPRISES, LLC
AND
PARIS LAS VEGAS OPERATING COMPANY, LLC

10. **STANDARDS; PRIVILEGED LICENSE.**

10.1 Standards. TPOV acknowledges that the Paris Las Vegas is an exclusive first-class resort hotel casino and that the Restaurant shall be an exclusive first-class restaurant and that the maintenance of Paris', the Paris Las Vegas' and the Restaurant's reputation and the goodwill of all of Paris', the Paris Las Vegas' and the Restaurant's guests and invitees is absolutely essential to Paris, and that any impairment thereof whatsoever will cause great damage to Paris. TPOV therefore covenants and agrees that (a) it shall not and shall cause its Affiliates not to take any action that dilutes or denigrates the current level of quality, integrity and upscale positioning associated with the GR Marks and General GR Materials (each as defined in the GR Agreement) and (b) it shall and it shall cause its Affiliates to conduct themselves in accordance with the highest standards of honesty, integrity, quality and courtesy so as to maintain and enhance the reputation and goodwill of Paris, the Paris Las Vegas and the Restaurant and at all times in keeping with and not inconsistent with or detrimental to the operation of an exclusive, first-class resort hotel casino and an exclusive, first-class restaurant. TPOV shall use commercially reasonable efforts to continuously monitor the performance of each of its and its Affiliates' respective agents, employees, servants, contractors and licensees and shall ensure the foregoing standards are consistently maintained by all of them.

10.2 Privileged License. TPOV acknowledges that Paris and Paris' Affiliates are businesses that are or may be subject to and exist because of privileged licenses issued U.S., state, local and foreign governmental, regulatory and administrative authorities, agencies, boards and officials (the "Gaming Authorities") responsible for or involved in the administration of application of laws, rules and regulations relating to gaming or gaming activities or the sale, distribution and possession of alcoholic beverages. The Gaming Authorities require Paris, and Paris deems it advisable, to have a compliance committee (the "Compliance Committee") that does its own background checks on, and issues approvals of, Persons involved with Paris and its Affiliates. Prior to the execution of this Agreement and, in any event, prior to the payment of any monies by Paris to TPOV hereunder, and thereafter on each anniversary of the Opening Date during the Term, (a) TPOV shall provide to Paris written disclosure regarding the TPOV Associates, and (b) the Compliance Committee shall have issued approvals of the TPOV Associates. Additionally, during the Term, on ten (10) calendar days written request by Paris to TPOV, TPOV shall disclose to Paris all TPOV Associates. To the extent that any prior disclosure becomes inaccurate, TPOV shall, within ten (10) calendar days from that event, update the prior disclosure without Paris making any further request. TPOV shall cause all TPOV Associates to provide all requested information and apply for and obtain all necessary approvals required or requested by Paris or the Gaming Authorities. If any TPOV Associate fails to satisfy or such requirement, if Paris or any of Paris' Affiliates are directed to cease business with any TPOV Associate by any Gaming Authority, or if Paris shall determine, in Paris' sole and exclusive judgment, that any TPOV Associate is an Unsuitable Person, whether as a result of a TPOV Change of Control or otherwise, then (a) TPOV shall terminate any relationship with the Person who is the source of such issue, (b) TPOV shall cease the activity or relationship creating the issue to Paris' satisfaction, in Paris' sole judgment, or (c) if such activity or relationship is not subject to cure as set forth in the foregoing clauses (a) and (b), as determined by Paris in its sole discretion, Paris shall, without prejudice to any other rights or remedies of Paris including at law or in equity, have the right to terminate this Agreement and its relationship with TPOV. TPOV further acknowledges that Paris shall have the absolute right to terminate this Agreement in the event any Gaming Authority requires Paris or one of its Affiliates to do so. Any termination by Paris pursuant to this Section 10.2 shall not be subject to dispute by TPOV and shall not be the subject of any proceeding under Article 12.

Exhibit D

LLTQ Agreement

DEVELOPMENT AND OPERATION AGREEMENT
BETWEEN
LLTQ ENTERPRISES, LLC
AND
DESERT PALACE, INC.

(g) at all times during the Term, the Restaurant shall be a first-class gourmet restaurant and the Hotel shall maintain the standard and quality of the Hotel existing on the Effective Date.

9.2 LLTQ's Representations and Warranties. LLTQ hereby represents and warrants to Caesars that:

(a) LLTQ is a limited liability company duly organized, validly existing, and in good standing under the laws of the jurisdiction of its organization;

(b) LLTQ has the legal capacity to execute and deliver, and perform its obligations under, this Agreement;

(c) no consent or approval or authorization of any applicable governmental authority or Person is required in connection with the execution and delivery by LLTQ of, and performance by LLTQ of its obligations under, this Agreement;

(d) there are no actions, suits or proceedings pending or, to the best knowledge of LLTQ, threatened against LLTQ in any court or before any administrative agency that would prevent LLTQ from completing the transactions provided for herein;

(e) this Agreement constitutes the legal, valid and binding obligation of LLTQ, enforceable in accordance with its terms;

(f) as of the Effective Date, no representation or warranty made herein by LLTQ contains any untrue statement of a material fact, or omits to state a material fact necessary to make such statements not misleading; and

(g) to the best knowledge of LLTQ, Gordon Ramsay is not in breach of the GR Agreement in any respect.

10. **STANDARDS; PRIVILEGED LICENSE.**

10.1 Standards. LLTQ acknowledges that the Caesars Las Vegas is an exclusive first-class resort hotel casino and that the Restaurant shall be an exclusive first-class restaurant and that the maintenance of Caesars', the Caesars Las Vegas' and the Restaurant's reputation and the goodwill of all of Caesars', the Caesars Las Vegas' and the Restaurant's guests and invitees is absolutely essential to Caesars, and that any impairment thereof whatsoever will cause great damage to Caesars. LLTQ therefore covenants and agrees that (a) it shall not and shall cause its Affiliates not to take any action that dilutes or denigrates the current level of quality, integrity and upscale positioning associated with the GR Marks and General GR Materials (each as defined in the GR Agreement) and (b) it shall and it shall cause its Affiliates to conduct themselves in accordance with the highest standards of honesty, integrity, quality and courtesy so as to maintain and enhance the reputation and goodwill of Caesars, the Caesars Las Vegas and the Restaurant and at all times in keeping with and not inconsistent with or detrimental to the operation of an exclusive, first-class resort hotel casino and an exclusive, first-class restaurant. LLTQ shall use commercially reasonable efforts to continuously monitor the performance of each of its and its Affiliates' respective agents, employees, servants, contractors and licensees and shall ensure the foregoing standards are consistently maintained by all of them.

10.2 Privileged License. LLTQ acknowledges that Caesars and Caesars' Affiliates are businesses that are or may be subject to and exist because of privileged licenses issued U.S., state, local

and foreign governmental, regulatory and administrative authorities, agencies, boards and officials (the "Gaming Authorities") responsible for or involved in the administration of application of laws, rules and regulations relating to gaming or gaming activities or the sale, distribution and possession of alcoholic beverages. The Gaming Authorities require Caesars, and Caesars deems it advisable, to have a compliance committee (the "Compliance Committee") that does its own background checks on, and issues approvals of, Persons involved with Caesars and its Affiliates. Prior to the execution of this Agreement and, in any event, prior to the payment of any monies by Caesars to LLTQ hereunder, and thereafter on each anniversary of the Opening Date during the Term, (a) LLTQ shall provide to Caesars written disclosure regarding the LLTQ Associates, and (b) the Compliance Committee shall have issued approvals of the LLTQ Associates. Additionally, during the Term, on ten (10) calendar days written request by Caesars to LLTQ, LLTQ shall disclose to Caesars all LLTQ Associates. To the extent that any prior disclosure becomes inaccurate, LLTQ shall, within ten (10) calendar days from that event, update the prior disclosure without Caesars making any further request. LLTQ shall cause all LLTQ Associates to provide all requested information and apply for and obtain all necessary approvals required or requested by Caesars or the Gaming Authorities. If any LLTQ Associate fails to satisfy or such requirement, if Caesars or any of Caesars' Affiliates are directed to cease business with any LLTQ Associate by any Gaming Authority, or if Caesars shall determine, in Caesars' sole and exclusive judgment, that any LLTQ Associate is an Unsuitable Person, whether as a result of a LLTQ Change of Control or otherwise, then (a) LLTQ shall terminate any relationship with the Person who is the source of such issue, (b) LLTQ shall cease the activity or relationship creating the issue to Caesars' satisfaction, in Caesars' sole judgment, or (c) if such activity or relationship is not subject to cure as set forth in the foregoing clauses (a) and (b), as determined by Caesars in its sole discretion, Caesars shall, without prejudice to any other rights or remedies of Caesars including at law or in equity, have the right to terminate this Agreement and its relationship with LLTQ. LLTQ further acknowledges that Caesars shall have the absolute right to terminate this Agreement in the event any Gaming Authority requires Caesars or one of its Affiliates to do so. Any termination by Caesars pursuant to this Section 10.2 shall not be subject to dispute by LLTQ and shall not be the subject of any proceeding under Article 12.

11. CONDEMNATION; CASUALTY; FORCE MAJEURE.

11.1 Condemnation. In the event that during the Term the whole of the Restaurant shall be taken under power of eminent domain by any governmental authority or conveyed by Caesars to any governmental authority in lieu of such taking, then this Agreement shall terminate as of the date of such taking. In the event that during the Term a substantial portion of the Restaurant (thirty percent (30%) or more) shall be taken under power of eminent domain by any governmental authority or conveyed by Caesars to any governmental authority in lieu of such taking (as determined by Caesars in its sole and absolute discretion), Caesars may, in the exercise of its sole discretion, terminate this Agreement upon written notice give not more than thirty (30) calendar days after the date of such taking. Except to the extent otherwise provided in Section 4.3.3, all compensation awarded by any such governmental authority shall be the sole property of Caesars and LLTQ shall have no right, title or interest in and to same except that LLTQ may pursue its own separate claim; provided, that its claim will not reduce the award granted to Caesars.

11.2 Casualty.

11.2.1 Permanent and Substantial Damage. If the Caesars Las Vegas or the Restaurant experiences any Permanent Damage or any Substantial Damage, in each case Caesars shall have the right to terminate this Agreement upon written notice having immediate effect delivered to LLTQ within one hundred twenty (120) days after the occurrence of the Permanent Damage or Substantial Damage, as the case may be. Except to the extent otherwise provided in Section 4.3.3, all insurance proceeds recovered

Exhibit E

GR Burgr Agreement

DEVELOPMENT, OPERATION AND LICENSE AGREEMENT

AMONG

GORDON RAMSAY,

GR BURGR, LLC

AND

PHW MANAGER, LLC ON BEHALF OF PHW LAS VEGAS, LLC

DBA PLANET HOLLYWOOD

within such thirty (30) day period, PH shall not be permitted to terminate the Agreement unless such cure is not completed within a reasonable time thereafter) and within five (5) days after written notice is given to PH for monetary breaches by PH (it being understood that PH' failure to pay any amount disputed in good faith shall not entitle Gordon Ramsay to terminate this Agreement).

4.2.8 Bankruptcy, etc.

(a) This Agreement may be terminated by PH upon written notice to GRB and Gordon Ramsay having immediate effect if Gordon Ramsay or GRB (i) becomes insolvent or admits in writing its inability to pay its debts as they become due, (ii) has instituted against it a proceeding seeking a judgment of insolvency, suspension of payment or bankruptcy, or a petition is presented against it for its winding up or liquidation, in each case that is not dismissed within sixty (60) days, (iii) institutes a proceeding seeking a judgment of insolvency, suspension of payment or bankruptcy, or files a petition for its winding up or liquidation, (iv) makes a general assignment for the benefit of its creditors, (v) seeks or becomes subject to the appointment of a receiver over all or substantially all of its assets, or (vi) any analogous procedure or step is taken in any jurisdiction.

(b) This Agreement may be terminated by GRB upon written notice to PH having immediate effect if PH (i) becomes insolvent or admits in writing its inability to pay its debts as they become due, (ii) has instituted against it a proceeding seeking a judgment of insolvency, suspension of payment or bankruptcy, or a petition is presented against it for its winding up or liquidation, in each case that is not dismissed within sixty (60) days, (iii) institutes a proceeding seeking a judgment of insolvency, suspension of payment or bankruptcy, or files a petition for its winding up or liquidation, (iv) makes a general assignment for the benefit of its creditors, (v) seeks or becomes subject to the appointment of a receiver over all or substantially all of its assets, or (vi) any analogous procedure or step is taken in any jurisdiction.

4.3 Effect of Expiration or Termination.

4.3.1 Termination of Obligations; Survival. Upon expiration or termination of this Agreement, there shall be no liability or obligation on the part of any party with respect to this Agreement, other than that such termination or expiration shall not (a) relieve any party of any liabilities resulting from any breach hereof by such party on or prior to the date of such termination or expiration, (b) relieve any party of any payment obligation arising prior to the date of such termination or expiration, or (c) affect any rights arising as a result of such breach or termination or expiration. The provisions of this Section 4.3 and Sections 2.3.2, 6.2, 6.6, the last sentence of Section 12.2.2 and Articles 13 and 14 (other than Section 14.16) shall survive any termination or expiration of this Agreement.

4.3.2 Certain Rights of PH Upon Expiration or Termination. Upon expiration or termination of this Agreement:

(a) PH shall cease operation of the Restaurant and its use of any GRB Marks and GR Materials; provided, however, that (i) in the event of an

early termination of this Agreement, other than pursuant to Section 4.2.2, PH shall be entitled to operate the Restaurant and use the License for one hundred twenty (120) days from such termination to orderly and properly wind-up operations of the Restaurant; and (ii) in the event of an early termination of this Agreement pursuant to Section 4.2.2, PH shall be entitled to operate the Restaurant and use the License for up to nine (9) months from such termination to orderly and properly reconcept or wind-up operations of the Restaurant; provided that in the event of a termination pursuant to clause (i) or (ii) during the applicable post-termination period during which PH is operating the Restaurant, PH shall continue to be obligated to pay GRB all amounts due GRB hereunder that accrue during such period in accordance with the terms of this Agreement as if this Agreement had not been terminated;

(b) PH shall retain all right, title and interest in and to the Restaurant Premises except for the GRB Marks and General GR Materials and any personal property containing any GRB Marks;

(c) PH shall retain all right, title and interest in and to the furniture, fixtures, equipment, inventory, supplies and other tangible and intangible assets used or held for use in connection with the Restaurant, except as expressly provided in Section 4.3.2;

(d) PH shall retain all right, title and interest in and to PH Marks and Materials; and

(e) PH shall have the right, but not the obligation, immediately or at any time after such expiration or termination, to operate a restaurant in the Restaurant Premises; provided, however, such restaurant shall not use the Restaurant's food and beverage menus or recipes developed by GRB and/or Gordon Ramsay or use any of the GRB Marks or General GR Materials.

4.3.3 Certain Rights of Gordon Ramsay/GRB Upon Expiration or Termination. Upon expiration or termination of this Agreement:

(a) In the case of termination by PH pursuant to Section 4.2.1, PH shall pay to GRB the Early Termination Payment as a lump-sum payment within five (5) business days after the effective date of such termination; and

(b) Subject to Section 4.3.2(a), Gordon Ramsay and/or GRB shall retain all right, title and interest in and to the GRB Marks and General GR Materials and all right title and interest in and to the Restaurant's food and beverage menus and recipes developed by GRB and/or Gordon Ramsay.

5. RESTAURANT EMPLOYEES.

5.1 General Requirements.

5.1.1 Employees. Subject to the terms of this Article 5, after consulting with and giving full and proper consideration to all reasonable recommendations of GRB, PH shall be responsible for, and shall have final approval with respect to, hiring, training, managing, evaluating, promoting,

and each of Gordon Ramsay and GRB hereby approves and consents to the use of the GRB Marks and General GR Materials as contemplated by this Agreement;

10.3.3 no consent or approval or authorization of any Person (including the direct or indirect owners of GRB, but other than any governmental authority) is required in connection with the execution and delivery by GRB of, and performance by GRB of its obligations under, this Agreement, and to the best of GRB's knowledge and belief, no such consent or approval or authorization is required of any applicable governmental authority;

10.3.4 there are no actions, suits or proceedings pending or, to the best knowledge of GRB, threatened against GRB in any court or before any administrative agency that would prevent GRB from completing the transactions provided for herein (including granting the License);

10.3.5 this Agreement constitutes the legal, valid and binding obligation of GRB, enforceable in accordance with its terms; and

10.3.6 as of the Effective Date, no representation or warranty made herein by GRB contains any untrue statement of a material fact, or omits to state a material fact necessary to make such statements not misleading.

11. STANDARDS; PRIVILEGED LICENSE.

11.1 Standards. Each of Gordon Ramsay and GRB acknowledges that the PH is an exclusive first-class resort hotel casino and that the Restaurant shall be an exclusive first-class restaurant and that the maintenance of PH and GRB Marks, PH's and the Restaurant's reputation and the goodwill of all of PH's, PH's and the Restaurant's guests and invitees is absolutely essential to PH, and that any impairment thereof whatsoever will cause great damage to PH. GRB therefore covenants and agrees that (a) it shall not and it shall cause its Affiliates not to use or license GRB Marks or General GR Materials in a manner that is inconsistent with, or take any action that dilutes or denigrates, the current level of quality, integrity and upscale positioning associated with the GRB Marks and General GR Materials and (b) it shall and it shall cause its Affiliates to conduct themselves in accordance with the highest standards of honesty, integrity, quality and courtesy so as to maintain and enhance the reputation and goodwill of PH, the GRB Marks, PH and the Restaurant and at all times in keeping with and not inconsistent with or detrimental to the operation of an exclusive, first-class resort hotel casino and an exclusive, first-class restaurant. GRB shall use commercially reasonable efforts to continuously monitor the performance of each of its and its Affiliates' respective agents, employees, servants, contractors and licensees and shall ensure the foregoing standards are consistently maintained by all of them. Any failure by GRB or any of its respective Affiliates or any of their respective agents, employees, servants, contractors or licensees to maintain the standards described in this Section 11.1 shall, in addition to any other rights or remedies it PH have, give PH the right to terminate this Agreement pursuant to Section 4.2.4 in its sole and absolute discretion. For the avoidance of doubt, Gordon Ramsay's persona as exhibited on the television show Hell's Kitchen prior to the date hereof shall not constitute a failure by Gordon Ramsay to maintain the standards described in this Section 11.1.

11.2 Privileged License. Each of Gordon Ramsay and GRB acknowledges that PH and PH's Affiliates are businesses that are or may be subject to and exist because of privileged licenses issued U.S., state, local and foreign governmental, regulatory and administrative authorities, agencies, boards and officials (the "Gaming Authorities") responsible for or involved in the administration of application of laws, rules and regulations relating to gaming or gaming activities or the sale, distribution and possession of alcoholic beverages. The Gaming Authorities require PH, and PH deems it advisable, to have a compliance committee (the "Compliance Committee") that does its own background checks on, and

issues approvals of, Persons involved with PH and its Affiliates. Prior to the execution of this Agreement and, in any event, prior to the payment of any monies by PH to Gordon Ramsay and/or GRB hereunder, and thereafter on each anniversary of the Opening Date during the Term, (a) each of Gordon Ramsay and GRB shall provide or cause to be provided to PH written disclosure regarding its GR Associates and (b) the Compliance Committee shall have issued approvals of all of the GR Associates. Additionally, during the Term, on ten (10) calendar days written request by PH to Gordon Ramsay and GRB, Gordon Ramsay and GRB shall disclose to PH all GR Associates. To the extent that any prior disclosure becomes inaccurate, Gordon Ramsay and GRB shall, within ten (10) calendar days from that event, update the prior disclosure without PH making any further request. Each of Gordon Ramsay and GRB shall cause all GR Associates to provide all requested information and apply for and obtain all necessary approvals required or requested by PH or the Gaming Authorities. If any GR Associate fails to satisfy any such requirement, if PH or any of PH's Affiliates are directed to cease business with any GR Associate by any Gaming Authority, or if PH shall determine, in PH's sole and exclusive judgment, that any GR Associate is an Unsuitable Person, then immediately following notice by PH to Gordon Ramsay and GRB, (a) Gordon Ramsay and/or GRB shall terminate any relationship with the Person who is the source of such issue, (b) Gordon Ramsay and/or GRB shall cease the activity or relationship creating the issue to PH's satisfaction, in PH's sole judgment, or (c) if such activity or relationship is not subject to cure as set forth in the foregoing clauses (a) and (b), as determined by PH in its sole discretion, PH shall, without prejudice to any other rights or remedies of PH including at law or in equity, have the right to terminate this Agreement and its relationship with Gordon Ramsay and GRB. Each of Gordon Ramsay and GRB further acknowledges that PH shall have the absolute right to terminate this Agreement in the event any Gaming Authority requires PH or one of its Affiliates to do so. Any termination by PH pursuant to this Section 11.2 shall not be subject to dispute by Gordon Ramsay or GRB and shall not be the subject of any proceeding under Article 13.

12. CONDEMNATION; CASUALTY; FORCE MAJEURE.

12.1 Condemnation. In the event that during the Term the whole of the Restaurant shall be taken under power of eminent domain by any governmental authority or conveyed by PH to any governmental authority in lieu of such taking, then this Agreement shall terminate as of the date of such taking. In the event that during the Term a substantial portion of the Restaurant (thirty percent (30%) or more) shall be taken under power of eminent domain by any governmental authority or conveyed by PH to any governmental authority in lieu of such taking (as determined by PH in its sole and absolute discretion), PH may, in the exercise of its sole discretion, terminate this Agreement upon written notice give not more than thirty (30) calendar days after the date of such taking. All compensation awarded by any such governmental authority shall be the sole property of PH and neither Gordon Ramsay nor GRB shall have any right, title or interest in and to same except that Gordon Ramsay and GRB may pursue their own separate claim provided, that any such claim will not reduce the award granted to PH.

12.2 Casualty.

12.2.1 Permanent and Substantial Damage. If PH or the Restaurant experiences any Permanent Damage or any Substantial Damage, in each case PH shall have the right to terminate this Agreement upon written notice having immediate effect delivered to Gordon Ramsay within one hundred twenty (120) days after the occurrence of the Permanent Damage or Substantial Damage, as the case may be. All insurance proceeds recovered in connection with any damage or casualty to PH or Restaurant shall be the sole property of PH and neither Gordon Ramsay nor GRB shall have any right, title or interest in and to same.

12.2.2 Obligation in Connection With a Casualty. If (i) PH does not terminate this Agreement the event of a Substantial Damage to PH or Restaurant within the time periods provided in

Exhibit F

FERG Agreement

CONSULTING AGREEMENT
BETWEEN
FERG, LLC
AND
BOARDWALK REGENCY CORPORATION
DBA CAESARS ATLANTIC CITY

(b) FERG has the legal capacity to execute and deliver, and perform its obligations under, this Agreement;

(c) no consent or approval or authorization of any applicable governmental authority or Person is required in connection with the execution and delivery by FERG of, and performance by FERG of its obligations under, this Agreement;

(d) there are no actions, suits or proceedings pending or, to the best knowledge of FERG, threatened against FERG in any court or before any administrative agency that would prevent FERG from completing the transactions provided for herein;

(e) this Agreement constitutes the legal, valid and binding obligation of FERG, enforceable in accordance with its terms; and

(f) as of the Effective Date, no representation or warranty made herein by FERG contains any untrue statement of a material fact, or omits to state a material fact necessary to make such statements not misleading.

11. **STANDARDS; PRIVILEGED LICENSE.**

11.1 **Standards.** FERG acknowledges that CAC is an exclusive first-class resort hotel casino and that the Restaurant shall be an exclusive first-class restaurant and that the maintenance of CAC's and the Restaurant's reputation and the goodwill of all of CAC's and the Restaurant's guests and invitees is absolutely essential to CAC, and that any impairment thereof whatsoever will cause great damage to CAC. FERG therefore covenants and agrees that it shall and it shall cause its Affiliates to conduct themselves in accordance with the highest standards of honesty, integrity, quality and courtesy so as to maintain and enhance the reputation and goodwill of the CAC Marks and materials, the GR Marks, CAC and the Restaurant and at all times in keeping with and not inconsistent with or detrimental to the operation of an exclusive, first-class resort hotel casino and an exclusive, first-class restaurant. FERG shall use commercially reasonable efforts to continuously monitor the performance of each of its and its Affiliates' respective agents, employees, servants, contractors and licensees and shall ensure the foregoing standards are consistently maintained by all of them.

11.2 **Privileged License.** FERG acknowledges that CAC and CAC's Affiliates are businesses that are or may be subject to and exist because of privileged licenses issued U.S., state, local and foreign governmental, regulatory and administrative authorities, agencies, boards and officials (each a "**Gaming Authority**"; collectively, the "**Gaming Authorities**") responsible for or involved in the administration of application of laws, rules and regulations relating to gaming or gaming activities or the sale, distribution and possession of alcoholic beverages. The Gaming Authorities require CAC, and CAC deems it advisable, to have a compliance committee (the "**Compliance Committee**") that does its own background checks on, and issues approvals of, Persons involved with CAC and its Affiliates. Prior to the execution of this Agreement and, in any event, prior to the payment of any monies by CAC to FERG hereunder, and thereafter on each anniversary of the Opening Date during the Term, (a) FERG shall provide or cause to be provided to CAC written disclosure regarding its FERG Associates and (b) the Compliance Committee shall have issued approvals of all of the FERG Associates. Additionally, during the Term, on ten (10) calendar days written request by CAC to FERG, FERG shall disclose to CAC all FERG Associates. To the extent that any prior disclosure becomes inaccurate, FERG shall, within ten (10) calendar days from that event, update the prior disclosure without CAC making any further request. FERG shall cause all FERG Associates to provide all requested information and apply for and obtain all necessary approvals required or requested by CAC or the Gaming Authorities at GP's sole cost and expense. If any FERG Associate fails to satisfy any such requirement, if CAC or any of CAC's Affiliates are directed to cease

business with any FERG Associate by any Gaming Authority, or if CAC shall determine, in CAC's sole and exclusive judgment, that any FERG Associate is an Unsuitable Person, then immediately following notice by CAC to FERG, (a) FERG shall terminate any relationship with the Person who is the source of such issue, (b) FERG shall cease the activity or relationship creating the issue to CAC's satisfaction, in CAC's sole judgment, or (c) if such activity or relationship is not subject to cure as set forth in the foregoing clauses (a) and (b) herein, as determined by CAC in its sole discretion, CAC shall, without prejudice to any other rights or remedies of CAC including at law or in equity, have the right to terminate this Agreement and its relationship with FERG. FERG further acknowledges that CAC shall have the absolute right to terminate this Agreement in the event any Gaming Authority requires CAC or one of its Affiliates to do so. Any termination by CAC pursuant to this Section 11.2 shall not be subject to dispute by FERG and shall not be the subject of any proceeding under Article 13.

12. CONDEMNATION; CASUALTY; FORCE MAJEURE.

12.1 Condemnation. In the event that during the Term the whole of the Restaurant shall be taken under power of eminent domain by any governmental authority or conveyed by CAC to any governmental authority in lieu of such taking, then this Agreement shall terminate as of the date of such taking. In the event that during the Term a substantial portion of the Restaurant (thirty percent (30%) or more) shall be taken under power of eminent domain by any governmental authority or conveyed by CAC to any governmental authority in lieu of such taking (as determined by CAC in its sole and absolute discretion), CAC may, in the exercise of its sole discretion, terminate this Agreement upon written notice give not more than thirty (30) calendar days after the date of such taking. All compensation awarded by any such governmental authority shall be the sole property of CAC and neither Gordon Ramsay nor FERG shall have any right, title or interest in and to same except that Gordon Ramsay and FERG may pursue their own separate claim provided, that any such claim will not reduce the award granted to CAC.

12.2 Casualty.

(a) Permanent and Substantial Damage. If the Hotel or the Restaurant experiences any Permanent Damage or any Substantial Damage, in each case CAC shall have the right to terminate this Agreement and the GR Agreement upon written notice having immediate effect delivered to Gordon Ramsay and FERG within one hundred twenty (120) days after the occurrence of the Permanent Damage or Substantial Damage, as the case may be. All insurance proceeds recovered in connection with any damage or casualty to CAC or Restaurant shall be the sole property of CAC and neither Gordon Ramsay nor FERG shall have any right, title or interest in and to same.

(b) Obligation in Connection With a Casualty. If (i) CAC does not terminate this Agreement and the GR Agreement in the event of a Substantial Damage to CAC or Restaurant within the time periods provided in Section 12.2(a), (ii) restoration and repair of the damage is permitted under applicable Law and the terms of any agreement to which CAC or any of its Affiliates is a party and (iii) CAC has received net insurance proceeds sufficient to complete restoration and repair, CAC shall use commercially reasonable efforts to restore and repair CAC or the Restaurant, as applicable, to its condition and character immediately prior to the damage. If all such restoration and repair is not completed within one hundred eighty (180) days following the occurrence of the damage, FERG shall have the right to terminate this Agreement upon written notice having immediate effect delivered to CAC within one hundred twenty (120) days after one hundred eighty (180) days following the date of the damage and CAC shall have no liability related to the failure of such completion to have occurred.

12.3 Excusable Delay. In the event that during the Term any party shall be delayed in or prevented from the performance of any of such party's respective agreements, covenants or obligations hereunder by reason of strikes, lockouts, unavailability of materials, failure of power, fire, earthquake or

Exhibit G

Addendum

May 16, 2014

Desert Palace, Inc.
3570 Las Vegas Boulevard South
Las Vegas, Nevada 89109

Paris Las Vegas Operating Company, LLC
3655 Las Vegas Boulevard South
Las Vegas, Nevada 89109

Ladies and Gentlemen:

Reference is made to the following (as any of the same may have been amended):

- (a) The Development, Operation and License Agreement, dated as of March ___, 2009, by and between Moti Partners, LLC ("Moti") and Desert Palace, Inc. d/b/a Caesars Palace (the "First Agreement");
- (b) The Development, Operation and License Agreement, dated as of June 21, 2011, by and among DNT Acquisition LLC ("DNT"), Desert Palace, Inc., The Original Homestead Restaurant, Inc., d/b/a the "Old Homestead Steakhouse," Marc Sherry, Greg Sherry and Rowen Seibel (the "Second Agreement");
- (c) The Development and Operation Agreement, dated as of November ___, 2011, by and between TPOV Enterprises, LLC ("TPOV") and Paris Las Vegas Operating Company, LLC ("PLV" and, collectively with Desert Palace, Inc., "Caesars") (the "Third Agreement"); and
- (d) The Development and Operation Agreement, dated as of April 4, 2012, by and between LLTQ Enterprises, LLC ("LLTQ") and Desert Palace, Inc. (the "Fourth Agreement" and, collectively with the First Agreement, Second Agreement and Third Agreement, the "Agreements").

The following provisions of this letter (this "Letter Agreement") shall confirm our mutual understanding that:

1. Notwithstanding anything to the contrary in the Agreements, each of Moti, DNT, TPOV and LLTQ (the "Entities") and/or each individual, corporation, proprietorship, firm, partnership, limited partnership, limited liability company, trust, association or other entity (each a "Person") holding an interest in any of the Entities, without the consent of but with notice to Desert Palace, Inc. or PLV, as applicable, shall be permitted to issue, sell, assign or transfer interests in any of the Entities to any Person or assign any of the Agreements, so long as: (i) the receiving Person or assignee or any of such Person's or assignee's Affiliates is not a Competitor of Caesars or any of its Affiliates; and (ii) each receiving Person holding and/or proposed to hold any interest in any of the Entities or the assignee shall be subject to the internal compliance process of Caesars and/or its Affiliates by (A) submitting written disclosure regarding all of the proposed transferee's or assignee's Associates, (B) submitting all information reasonably requested by Caesars regarding the proposed transferee's or assignee's Associates, (C) Caesars being satisfied, in its sole reasonable discretion, that neither the proposed transferee or assignee nor any of their respective Associates is an Unsuitable Person and (D) the Compliance Committee's reasonable approval of the proposed transferee and the proposed transferee not being deemed by Caesars, its Affiliates or any Gaming Authority as an Unsuitable Person. Additionally, notwithstanding anything to the contrary in the Agreements, any obligations and/or duties of Moti, DNT, TPOV, LLTQ and/or Rowen Seibel that are specifically designated to be performed by Rowen Seibel are assignable or delegable by Moti, DNT, TPOV, LLTQ and/or Rowen Seibel without the consent of but with notice to Desert Palace, Inc. or PLV, as applicable, so long as the Person to whom such obligations and/or duties are assigned or delegated is reasonably qualified to carry out

such obligations and/or duties. Subject to the foregoing, this Letter Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective permitted successors, assigns and delagees.

2. For purposes of this Letter Agreement, (i) the term "Competitor" means a Person that, or a Person that has an Affiliate that, in each case directly or indirectly, whether as owner, operator, manager, licensor or otherwise: (A) derives twenty percent (20%) or more of its revenues, operating income or net profits from one or more Gaming Businesses; or (B) has as its primary purpose the conduct of one or more Gaming Businesses and (ii) the term "Gaming Business" means the ownership, operation or management of one or more casinos, video lottery terminal facilities, racetracks, on-line gaming businesses or other business involving gaming or wagering. Capitalized terms used in this Letter Agreement and not otherwise defined herein shall have the meaning ascribed to them in the First Agreement, Second Agreement, Third Agreement or Fourth Agreement, as applicable, or, if not defined therein, in the Consulting Agreement, dated as of May 16, 2014, by and between FERG, LLC and Boardwalk Regency Corporation d/b/a Caesars Atlantic City.

3. This Letter Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. A signed copy of this Letter Agreement delivered by facsimile, e-mail or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Letter Agreement. This Letter Agreement shall serve as an amendment to each of the Agreements.

If the terms of this Letter Agreement are acceptable, kindly so indicate by signing where indicated below and returning a copy of this Letter Agreement to us. Thank you.

Very truly yours,

MOTI PARTNERS, LLC

By: Rowen Seibel
Name: Rowen Seibel
Title: Managing Member

DNT ACQUISITION, LLC

By: Rowen Seibel
Name: Rowen Seibel
Title: Manager

TPOV ENTERPRISES, LLC

By: Rowen Seibel
Name: Rowen Seibel
Title: Manager

LLTQ ENTERPRISES, LLC

By: Rowen Seibel
Name: Rowen Seibel
Title: Manager

1 **IN THE SUPREME COURT OF THE STATE OF NEVADA**

2 ROWEN SEIBEL; LLTQ
3 ENTERPRISES, LLC; LLTQ
4 ENTERPRISES 16, LLC; FERG, LLC;
5 FERG 16, LLC; MOTI PARTNERS,
6 LLC; MOTI PARTNERS 16, LLC; TPOV
7 ENTERPRISES, LLC; TPOV 16
8 ENTERPRISES, LLC; DNT
9 ACQUISITION, LLC, appearing
10 derivatively by one of its two members, R
11 Squared Global Solutions, LLC,

12 Petitioners

13 vs.

14 CLARK COUNTY DISTRICT COURT,
15 THE HONORABLE JOSEPH HARDY,
16 DEPARTMENT 15,

17 Respondent,

18 DESERT PALACE, INC.; PARIS LAS
19 VEGAS OPERATING COMPANY,
20 LLC; PHWLTV, LLC; and BOARDWALK
21 REGENCY CORPORATION d/b/a
22 CAESARS ATLANTIC CITY,

23 Real Parties in Interest.

Case Number:

Electronic Filed
Eighth Judicial District
Case No. A-17-76037-18
Dept. 15, Honorable Joseph Hardy
Elizabeth A. Brown
Clerk of Supreme Court
Jun 18 2018 04:31 p.m.

**APPENDIX TO PETITION FOR
WRIT OF MANDAMUS OR
PROHIBITION**

VOLUME 4 OF 15

(APP. 751 – 1000)

24 **MCNUTT LAW FIRM**
25 DANIEL R. MCNUTT (SBN 7815)
26 MATTHEW C. WOLF (SBN 10801)
27 625 South Eighth Street
28 Las Vegas, Nevada 89101
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1 **CERTIFICATE OF SERVICE**

2 Pursuant to NEV. R. APP. P. 25, I certify that I am an employee of MCNUTT
3 LAW FIRM. On June 18, 2018, I caused a copy of the **APPENDIX TO PETITION**
4 **FOR WRIT OF MANDAMUS OR PROHIBITION** to be hand delivered, in a
5 sealed envelope, on the date and to the addressee(s) shown below:

6 Honorable Joseph Hardy
7 District Court Judge, Dept. 15
8 Regional Justice Center
9 200 Lewis Ave., Las Vegas, NV 89155
10 *Respondent*

11 James J. Pisanelli, Esq.
12 Pisanelli Bice, PLLC
13 400 S. 7th Street, Suite 300
14 Las Vegas, NV 89101
15 *Attorney for Real Parties in Interest*

16 /s/ Lisa Heller
17 Employee of McNutt Law Firm, P.C.
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APPENDIX TO PETITION FOR WRIT OF MANDAMUS OR PROHIBITION

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PROHIBITION**

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05.01.18	Transcript of Proceedings: Motions to Dismiss	14/15	App. 3482 - 3533

1 **4. Accounting (claim 5)**

2 Finally, TPOV 16 alleges that the exact amount owed to it as a result of Paris's breach
3 could be unknown because the accounts between the parties are complicated enough to warrant an
4 accounting. (ECF No. 1 at 22).

5 An action for an accounting may be brought to compel the defendant to account to
6 the plaintiff for money or property (1) where a fiduciary relationship exists between
7 the parties, or (2) where, even though no fiduciary relationship exists, the accounts
are so complicated that an ordinary legal action demanding a fixed sum is
impracticable.

8 *Meixner v. Wells Fargo Bank, N.A.*, 101 F. Supp. 3d 938, 961 (E.D. Cal. 2015) (citing *Brea v.*
9 *McGlashan*, 39 P.2d 877 (Cal. App. 1934)).

10 Here, TPOV 16 does not allege a fiduciary relationship. (ECF No. 1). As a result, the
11 accounts in this case must be "so complicated that an ordinary legal action demanding a fixed sum
12 is impracticable." *Id.* The complaint alleges that a "waterfall provision" in the contract governed
13 payments to TPOV 16. (ECF No. 1 at 5–7). The provision is enough to support an allegation that
14 the accounts in this case are sufficiently complicated to require an accounting in order to ascertain
15 how much of GR Steak's profits TPOV 16 is entitled to in addition to paying off the remainder of
16 TPOV Enterprises' initial capital investment, if any, should there be a breach of contract. (ECF
17 No. 1 at 5–7).

18 Accordingly, the motion to dismiss will be denied as to the fifth claim.

19 **IV. Conclusion**

20 Based on the aforementioned, the court will dismiss, without prejudice, claim (3) of TPOV
21 16's complaint. (ECF No. 1).

22 Accordingly,

23 IT IS HEREBY ORDERED, ADJUDGED, and DECREED that Paris's motion to dismiss
24 (ECF No. 9) be, and the same hereby is, DENIED IN PART and GRANTED IN PART, consistent
25 with the foregoing.

26 DATED July 3, 2017

27 
28 UNITED STATES DISTRICT JUDGE

Exhibit D

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Attorneys for Paris Las Vegas Operating Company, LLC

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

TPOV ENTERPRISES 16, LLC, a
 Delaware Limited Liability Company,

Plaintiff,

vs.

PARIS LAS VEGAS OPERATING
 COMPANY, LLC, a Nevada limited
 liability company,

Defendant.

PARIS LAS VEGAS OPERATING
 COMPANY, LLC, a Nevada limited
 liability company,

Counterclaimant.

vs.

TPOV ENTERPRISES, LLC, a Delaware
 Limited Liability Company, TPOV
 ENTERPRISES 16, LLC, a Delaware
 Limited Liability Company, Rowen Siebel,
 an individual.

Counter-defendants.

CASE NO. 2:17-cv-00346-JCM-VCF

**ANSWER TO COMPLAINT AND
 COUNTERCLAIM**

Paris Las Vegas Operating Company, LLC ("Paris"), by and through its undersigned counsel, responds to the allegations set forth in the in Plaintiff TPOV Enterprises 16, LLC's ("Plaintiff" or "TPOV 16") Complaint as follows:

1 1. Paris admits that the Steak Restaurant has been profitable since its opening. Paris
2 denies the remaining allegations in Paragraph 1 of the Complaint.

3 **I. PARTIES AND JURISDICTION**

4 2. Paris is without knowledge or information sufficient to form a belief as to the truth
5 or falsity of the allegations in Paragraph 2 of the Complaint, and therefore denies the same.

6 3. Paris admits the allegations in Paragraph 3 of the Complaint.

7 4. Paris states that the allegations in Paragraph 4 are legal conclusions to which no
8 responsive pleading is required. To the extent a response is required, Paris denies any and all
9 remaining allegations contained in Paragraph 4 of the Complaint.

10 5. Paris is without knowledge or information sufficient to form a belief as to the truth
11 or falsity of the allegations in Paragraph 5 of the Complaint, and therefore denies the same.

12 6. Paris repeats and realleges each and every response to the proceeding Paragraphs
13 as if set out in each and every response herein.

14 **II. THE STEAK RESTAURANT IF CONCEIVED, BUILT, AND PAID FOR**
15 **JOINTLY BY TPOV 16 AND PARIS.**

16 7. Paris admits the allegation in Paragraph 7 of the Complaint.

17 8. Paris admits that Paris entered into the TPOV Agreement in or around November
18 2011 to design, develop, construct, and operate Gordon Ramsay Steak. Paris denies the
19 remaining allegations in Paragraph 8 of the Complaint.

20 9. Paris admits that it entered into a Development, Operation, and License Agreement
21 ("Ramsay Agreement") with Gordon Ramsay ("Ramsay") and Gordon Ramsay Holdings Limited
22 ("GRH"). Paris denies the remaining allegations in Paragraph 9 of the Complaint.

23 10. Paris admits that Paris entered into the TPOV Agreement with TPOV to design,
24 develop, construct, and operate Gordon Ramsay Steak. Paris admits that Gordon Ramsay Steak is
25 open for business. To the extent Paragraph 10 purports to restate the terms of the TPOV
26 Agreement, the document speaks for itself and no response is required. Paris denies all other
27 allegations contained therein.
28

11. To the extent Paragraph 11 purports to restate the terms of the Ramsay Agreement, the document speaks for itself and no response is required. Paris denies all other allegations contained therein.

12. Paris admits it has received capital contribution return payment and profits. Paris is without knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations in Paragraph 12 of the Complaint, and therefore denies the same.

13. Paris admits that the Ramsay License Agreement has not been terminated. Paris admits that Paris continues to operate Gordon Ramsay Steak. Paris denies the remaining allegations in Paragraph 13 of the Complaint.

14. Paris admits that Seibel is an unsuitable person, as defined in the TPOV Development Agreement. Paris denies all other allegations in Paragraph 14.

15. Paris denies the allegations in Paragraph 15 of the Complaint.

16. Paris denies the allegations in Paragraph 16 of the Complaint.

17. Paris denies the allegations in Paragraph 17 of the Complaint.

18. Paris admits that Paris rejected TPOV's attempted assignment of the TPOV Development Agreement to TPOV 16. Paris denies that it recognized the validity of the assignment. Paris admits that it made payments to an account as directed by TPOV. Paris otherwise denies the allegations in Paragraph 18 of the Complaint.

19. Paris admits it rejected the purported assignment to TPOV 16 and that it terminated the TPOV Agreement. Paris denies the remaining allegations in Paragraph 19 of the Complaint.

20. Paris admits the allegations in Paragraph 20 of the Complaint.

21. Paris is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 21 of the Complaint, and therefore denies the same.

22. Paris admits that the Steak Restaurant has continued to operate and generate profits and revenue. Paris denies the remaining allegations in Paragraph 22 of the Complaint.

23. Paris denies the allegations in Paragraph 23 of the Complaint.

24. Paris denies the allegations in Paragraph 24 of the Complaint.

1 25. Paris denies the allegations in Paragraph 25 of the Complaint.

2 **A. TPOV's Initial Capital Contribution and the Structure for Profit Disbursement.**

3 26. To the extent Paragraph 26 purports to restate the terms of the TPOV Agreement,
4 the document speaks for itself and no response is required. Paris denies all other allegations
5 contained therein.

6 27. Paris admits it received \$1,000,000 in Capital Contribution payments. Paris is
7 without knowledge or information sufficient to form a belief as to the truth or falsity of the
8 allegations in Paragraph 27 of the Complaint, and therefore denies the same.

9 **B. The Waterfall Payment Provision in the TPOV Agreement.**

10 28. To the extent Paragraph 28 purports to restate the terms of the TPOV Agreement,
11 the document speaks for itself and no response is required. Paris denies all other allegations
12 contained therein.

13 a. To the extent Paragraph 28(a) purports to restate the terms of the TPOV
14 Agreement, the document speaks for itself and no response is required.
15 Paris denies all other allegations contained therein.

16 b. To the extent Paragraph 28(b) purports to restate the terms of the TPOV
17 Agreement, the document speaks for itself and no response is required.
18 Paris denies all other allegations contained therein.

19 c. To the extent Paragraph 28(c) purports to restate the terms of the TPOV
20 Agreement, the document speaks for itself and no response is required.
21 Paris denies all other allegations contained therein.

22 d. To the extent Paragraph 28(d) purports to restate the terms of the TPOV
23 Agreement, the document speaks for itself and no response is required.
24 Paris denies all other allegations contained therein.

25 e. To the extent Paragraph 28(e) purports to restate the terms of the TPOV
26 Agreement, the document speaks for itself and no response is required.
27 Paris denies all other allegations contained therein.

28

1 f. To the extent Paragraph 28(f) purports to restate the terms of the TPOV
2 Agreement, the document speaks for itself and no response is required.
3 Paris denies all other allegations contained therein.

4 g. To the extent Paragraph 28(g) purports to restate the terms of the TPOV
5 Agreement, the document speaks for itself and no response is required.
6 Paris denies all other allegations contained therein.

7 29. To the extent Paragraph 29 purports to restate the terms of the TPOV Agreement,
8 the document speaks for itself and no response is required. Paris denies all other allegations
9 contained therein.

10 30. Paris admits that it repaid certain capital contributions. Paris denies all other
11 allegations contained in Paragraph 30 of the Complaint.

12 31. To the extent Paragraph 31 purports to restate the terms of the TPOV Agreement,
13 the document speaks for itself and no response is required. Paris denies all other allegations
14 contained therein.

15 **C. TPOV Assigned the TPOV Agreement to TPOV 16.**

16 32. To the extent Paragraph 32 purports to restate the terms of the TPOV Agreement,
17 the document speaks for itself and no response is required. Paris denies all other allegations
18 contained therein.

19 33. Paris admits that TPOV notified Paris in writing of a purported assignment. Paris
20 denies all other allegations contained in Paragraph 33 of the Complaint.

21 34. Paris denies the allegations in Paragraph 34 of the Complaint.

22 35. Paris admits that J. Jeffrey Frederick was a Vice President of Food & Beverage at
23 Caesars and that he acted as a Caesars' consultant for a period of time after his departure. Paris
24 denies the remaining allegations in Paragraph 35 of the Complaint.

25 36. Paris is without knowledge or information sufficient to form a belief as to the truth
26 or falsity of the allegations in Paragraph 36, and therefore denies the same.

27
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37. To the extent Paragraph 37 purports to restate the terms of the TPOV Agreement, the document speaks for itself and no response is required. Paris denies all other allegations contained therein.

38. Paris denies the allegations in Paragraph 38 of the Complaint.

39. Paris denies the allegations in Paragraph 39 of the Complaint.

40. Paris admits it rejected the purported TPOV assignment and that it terminated TPOV Development Agreement based on Seibel's unsuitability. Paris denies all other allegations contained in Paragraph 40.

41. Paris is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 41, and therefore denies the same.

42. To the extent Paragraph 42 purports to restate the terms of the TPOV Agreement, the document speaks for itself and no response is required. Paris denies all other allegations contained therein.

43. To the extent Paragraph 43 purports to restate the terms of the TPOV Agreement, the document speaks for itself and no response is required. Paris denies all other allegations contained therein.

44. To the extent Paragraph 44 purports to restate the terms of the TPOV Agreement, the document speaks for itself and no response is required. Paris denies all other allegations contained therein.

45. Paris denies the allegations in Paragraph 45 of the Complaint.

D. Paris May Not Terminate the TPOV Agreement Without Also Terminating the Ramsay Agreement.

46. To the extent Paragraph 46 purports to restate the terms of the TPOV Agreement or the Ramsay Agreement, the documents speak for themselves and no response is required. Paris denies all other allegations contained therein.

47. To the extent Paragraph 47 purports to restate the terms of the TPOV Agreement, the document speaks for itself and no response is required. Paris denies all other allegations contained therein.

1 48. To the extent Paragraph 48 purports to restate the terms of the TPOV Agreement,
2 the document speaks for itself and no response is required. Paris denies all other allegations
3 contained therein.

4 49. Paris admits that Paris and Ramsay have not terminated the Ramsay Agreement.
5 Paris denies the remaining allegations in Paragraph 49 of the Complaint.

6 50. Paris denies the allegations in Paragraph 50 of the Complaint.

7 **E. Paris' Decision to Purport to Terminate the TPOV Agreement Was in Bad Faith.**

8 51. Paris denies the allegations in Paragraph 51 of the Complaint.

9 52. Paris admits that Caesars Entertainment Operating Company, Inc. ("CEOC") filed
10 for bankruptcy in the United States Bankruptcy Court for the Northern District of Illinois in or
11 around January 2015. Paris admits that Paris was not included in the bankruptcy. Paris denies the
12 remaining allegations in Paragraph 52 of the Complaint.

13 53. Paris is without knowledge or information sufficient to form a belief as to the truth
14 or falsity of the allegations in Paragraph 53 of the Complaint, and therefore denies the same.

15 54. Paris is without knowledge or information sufficient to form a belief as to the truth
16 or falsity of the allegations in Paragraph 54, and therefore denies the same.

17 55. Paris is without knowledge or information sufficient to form a belief as to the truth
18 or falsity of the allegations in Paragraph 55, and therefore denies the same.

19 56. Paris is without knowledge or information sufficient to form a belief as to the truth
20 or falsity of Ramsay and Seibel's current member interests in GR BURGR, LLC ("GRB"), and
21 therefore denies the same. Paris is without knowledge or information sufficient to form a belief
22 as to the truth or falsity of any communication between TPOV and Ramsay, and therefore denies
23 the same. Paris denies the remaining allegations in Paragraph 56 of the Complaint.

24 57. Paris denies the allegations in Paragraph 57 of the Complaint.

25 58. Paris denies the allegations in Paragraph 58 of the Complaint.

26 59. Paris denies the allegations in Paragraph 59 of the Complaint.

27 60. Paris is without knowledge or information sufficient to form a belief as to the truth
28 or falsity of the allegations in Paragraph 60 of the Complaint, and therefore denies the same.

1 61. Paris admits the allegations in Paragraph 61 of the Complaint.

2 62. Paris denies the allegations in Paragraph 62 of the Complaint.

3 63. Paris denies the allegations in Paragraph 63 of the Complaint.

4 64. Paris denies the allegations in Paragraph 64 of the Complaint.

5 65. Paris denies the allegations in Paragraph 65 of the Complaint.

6 66. Paris denies the allegations in Paragraph 66 of the Complaint.

7 67. Paris denies the allegations in Paragraph 67 of the Complaint.

8 68. Paris denies the allegations in Paragraph 68 of the Complaint.

9 **F. Paris May Not Continue to Operate the Steak Restaurant After its Purported**
10 **Termination of the TPOV Agreement.**

11 69. Paris denies the allegations in Paragraph 69 of the Complaint.

12 70. To the extent Paragraph 70 purports to restate the terms of the TPOV Agreement,
13 the document speaks for itself and no response is required. Paris denies all other allegations
14 contained therein.

15 71. To the extent Paragraph 71 purports to restate the terms of the TPOV Agreement,
16 the document speaks for itself and no response is required. Paris denies all other allegations
17 contained therein.

18 72. To the extent Paragraph 72 purports to restate the terms of the TPOV Agreement,
19 the document speaks for itself and no response is required. Paris denies all other allegations
20 contained therein.

21 73. Paris admits that contracts were executed related to the design, construction, and
22 operation of the Steak Restaurant. Paris denies the remaining allegations in Paragraph 73 of the
23 Complaint.

24 74. Paris denies the allegations in Paragraph 74 of the Complaint.

25 75. Paris is without knowledge or information sufficient to form a belief as to the truth
26 or falsity of the allegations in Paragraph 75 of the Complaint, and therefore denies the same.

27 76. Paris is without knowledge or information sufficient to form a belief as to the truth
28 or falsity of the allegations in Paragraph 76 of the Complaint, and therefore denies the same.

77. Paris is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 77 of the Complaint, and therefore denies the same.

78. Paris is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 78 of the Complaint, and therefore denies the same.

79. Paris admits that the restaurant remains open and profitable. Paris denies the remaining allegations in Paragraph 79 of the Complaint.

80. Paris denies the allegations in Paragraph 80 of the Complaint.

81. To the extent Paragraph 81 purports to restate the terms of the TPOV Agreement, the document speaks for itself and no response is required. Paris denies all other allegations contained therein.

82. To the extent Paragraph 82 purports to restate the terms of the TPOV Agreement, the document speaks for itself and no response is required. Paris denies all other allegations contained therein.

FIRST CAUSE OF ACTION

(Breaches of Contract)

83. Paris repeats and realleges each and every response to paragraphs 1 through 82 above as if set forth fully herein.

84. Paris admits the existence of the TPOV Agreement and the Assignment Amendment and refers to those agreements for a complete and accurate statement of the terms thereof. Paris states that the remaining allegations in Paragraph 84 are legal conclusions to which no responsive pleading is required. To the extent a response is required, Paris denies the allegations in Paragraph 84.

85. Paris denies the allegations in Paragraph 85 of the Complaint.

86. Paris denies the allegations in Paragraph 86 of the Complaint.

87. Paris denies the allegations in Paragraph 87 of the Complaint.

88. Paris denies the allegations in Paragraph 88 of the Complaint.

89. Paris denies the allegations in Paragraph 89 of the Complaint:

a. Paris denies the allegations in Paragraph 89(a) of the Complaint.

b. Paris denies the allegations in Paragraph 89(b) of the Complaint:

c. Paris denies the allegations in Paragraph 89(c) of the Complaint:

d. Paris denies the allegations in Paragraph 89(d) of the Complaint:

e. Paris denies the allegations in Paragraph 89(e) of the Complaint:

f. Paris denies the allegations in Paragraph 89(f) of the Complaint:

g. Paris denies the allegations in Paragraph 89(g) of the Complaint:

h. Paris denies the allegations in Paragraph 89(h) of the Complaint:

90. Paris denies the allegations in Paragraph 90 of the Complaint.

91. Paris is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 91 of the Complaint, and therefore denies the same.

SECOND CAUSE OF ACTION

(Breach of the Implied Covenant of Good Faith and Fair Dealing)

92. Paris repeats and realleges each and every response to paragraphs 1 through 91 above as if set forth fully herein.

93. Paris states that the allegations in Paragraph 93 are legal conclusions to which no responsive pleading is required. To the extent a response is required, Paris denies the allegations in Paragraph 93.

94. Paris admits the existence of the TPOV Agreement and the Assignment Amendment and refers to those agreements for a complete and accurate statement of the terms thereof. Paris states that the remaining allegations in Paragraph 94 are legal conclusions to which no responsive pleading is required. To the extent a response is required, Paris denies the allegations in Paragraph 94.

95. Paris denies the allegations in Paragraph 95 of the Complaint:

a. Paris denies the allegations in Paragraph 95(a) of the Complaint.

b. Paris denies the allegations in Paragraph 95(b) of the Complaint.

c. Paris denies the allegations in Paragraph 95(c) of the Complaint.

d. Paris denies the allegations in Paragraph 95(d) of the Complaint.

e. Paris denies the allegations in Paragraph 95(e) of the Complaint.

- 1 f. Paris denies the allegations in Paragraph 95(f) of the Complaint.
- 2 g. Paris denies the allegations in Paragraph 95(g) of the Complaint.
- 3 h. Paris denies the allegations in Paragraph 95(h) of the Complaint.
- 4 i. Paris denies the allegations in Paragraph 95(i) of the Complaint.
- 5 j. Paris denies the allegations in Paragraph 95(j) of the Complaint.
- 6 k. Paris denies the allegations in Paragraph 95(k) of the Complaint.
- 7 l. Paris denies the allegations in Paragraph 95(l) of the Complaint.
- 8 m. Paris denies the allegations in Paragraph 95(m) of the Complaint.
- 9 96. Paris denies the allegations in Paragraph 96 of the Complaint:
- 10 97. Paris is without knowledge or information sufficient to form a belief as to the truth
- 11 or falsity of the allegations in Paragraph 97 of the Complaint, and therefore denies the same.

THIRD CAUSE OF ACTION

(Unjust Enrichment)

- 14 98. Paris repeats and realleges each and every response to paragraphs 1 through 97
- 15 above as if set forth fully herein.
- 16 99. The Court dismissed this Count in its entirety. (*See* ECF No. 30.) Accordingly, no
- 17 response is required.
- 18 100. The Court dismissed this Count in its entirety. (*See* ECF No. 30.) Accordingly, no
- 19 response is required.
- 20 101. The Court dismissed this Count in its entirety. (*See* ECF No. 30.) Accordingly, no
- 21 response is required.
- 22 102. The Court dismissed this Count in its entirety. (*See* ECF No. 30.) Accordingly, no
- 23 response is required.
- 24 103. The Court dismissed this Count in its entirety. (*See* ECF No. 30.) Accordingly, no
- 25 response is required.
- 26 104. The Court dismissed this Count in its entirety. (*See* ECF No. 30.) Accordingly, no
- 27 response is required.
- 28

FOURTH CAUSE OF ACTION

c. Paris is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 111(c) of the Complaint, and therefore denies the same.

112. Paris is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 112 of the Complaint, and therefore denies the same.

FIFTH CAUSE OF ACTION

(Accounting)

113. Paris repeats and realleges each and every response to paragraphs 1 through 112 above as if set forth fully herein.

114. To the extent Paragraph 114 purports to restate the terms of the TPOV Agreement, the document speaks for itself and no response is required. Paris denies all other allegations contained therein.

115. Paris states that the allegations in Paragraph 115 are legal conclusions to which no responsive pleading is required. To the extent a response is required, Paris denies any and all remaining allegations contained in Paragraph 115 of the Complaint.

116. Paris denies the allegations in Paragraph 116 of the Complaint.

117. Paris is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 117 of the Complaint, and therefore denies the same.

118. Paris is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 118 of the Complaint, and therefore denies the same.

GENERAL DENIAL

All allegations in the Complaint that have not been expressly admitted, denied, or otherwise responded to, are denied.

AFFIRMATIVE DEFENSES

Paris asserts the following affirmative defenses and reserves the right to assert other defenses and claims, including, without limitation, counterclaims, crossclaims, and third-party claims, as and when appropriate and/or available in this or any other action. The statement of any defense herein does not assume the burden of proof for any issue as to which applicable law otherwise places the burden of proof on Paris.

FIRST AFFIRMATIVE DEFENSE

The Complaint fails to state a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

Plaintiff's claims are barred, in whole or in part, by its own conduct, including his failure to mitigate damages.

THIRD AFFIRMATIVE DEFENSE

Plaintiff failed to give timely notice to Paris of any alleged breach of the covenant of good faith and fair dealing, if any.

FOURTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred, in whole or in part, by the doctrines of waiver, estoppel, laches, acquiescence, unclean hands, unjust enrichment and/or ratification, as well as other applicable equitable doctrines.

FIFTH AFFIRMATIVE DEFENSE

Plaintiff's damages or harm, if any, were not caused by any conduct of Paris.

SIXTH AFFIRMATIVE DEFENSE

Insofar as any alleged breach of contract is concerned, Plaintiff failed to give Paris timely notice thereof.

SEVENTH AFFIRMATIVE DEFENSE

Paris acted in good faith in all dealings with Plaintiff.

EIGHTH AFFIRMATIVE DEFENSE

Plaintiff is not entitled to any recovery because it failed to fulfill the terms of the TPOV Development Agreement.

NINTH AFFIRMATIVE DEFENSE

The injuries to Plaintiff, if any, as alleged in the Complaint, were provoked and brought about by Plaintiff, and any actions taken by Paris in response to Plaintiff's conduct were justified and privileged under the circumstances.

TENTH AFFIRMATIVE DEFENSE

All possible affirmative defenses may not have been alleged herein insofar as sufficient facts were not available after reasonable inquiry upon the filing of Paris' Answer to Plaintiff's

1 Complaint and therefore, Paris reserves the right to amend its Answer to allege additional
2 affirmative defenses if subsequent investigation so warrants.

3 **ELEVENTH AFFIRMATIVE DEFENSE**

4 Paris reserves the right to (a) rely upon such other affirmative defenses as may be
5 supported by the facts to be determined through full and complete discovery, and (b) voluntarily
6 withdraw any affirmative defense.

7 **COUNTERCLAIM**

8 Paris Las Vegas Operating Company, LLC ("Paris"), by and through its undersigned
9 counsel, hereby brings its Counterclaims against Plaintiff TPOV Enterprises 16, LLC ("TPOV
10 16"), TPOV Enterprises, LLC ("TPOV"), , and Rowen Siebel ("Siebel") (collectively, "Counter-
11 defendants") as follows:

12 **THE PARTIES**

13 1. Paris was, at all times relevant hereto, a Nevada limited liability company duly
14 authorized to conduct business in Nevada.

15 2. Upon information and belief, Seibel is, and at all times relevant hereto, was a
16 citizen of New York conducting business in the State of Nevada.

17 3. Upon information and belief, TPOV is and, at all times relevant hereto, was a
18 Delaware limited liability company.

19 4. Upon information and belief, TPOV 16 is and, at all times relevant hereto, was a
20 Delaware limited liability company.

21 **GENERAL ALLEGATIONS**

22 5. Paris is a gaming licensee and thus subject to rigorous regulation. Nevada requires
23 its licensees to police themselves and their affiliates to ensure unwavering compliance with
24 gaming regulations.

25 6. As part of its compliance program, Paris conducts suitability investigations of
26 potential vendors that meet certain criteria as outlined in its compliance program, and requires
27 various disclosures by vendors meeting such criteria to ensure that the entities with which it does
28 business are suitable.

7. In November 2011, TPOV and Paris entered into a Development and Operation Agreement to design, develop, construct and operate a first-class restaurant and retail premises known as Gordon Ramsay Steak ("GR Steak") (the "TPOV Development Agreement").

8. Paris retained TPOV to fulfill consultation needs regarding the design, development, construction, and operation of GR Steak.

9. Around the same time Paris entered into the TPOV Development Agreement, Paris also entered into the Development, Operation and License Agreement with non-parties Gordon Ramsay ("Ramsay") and Gordon Ramsay Holdings, LLC ("Gordon Ramsay Holdings") to make use of certain intellectual property known as GR Marks and General GR Materials (the "Ramsay License Agreement").

10. Thereafter, in or about May 16, 2014, the parties executed a "Letter Agreement," providing that, subject to certain conditions precedent, TPOV would be allowed to assign its rights and obligations under the TPOV Development Agreement.

11. The Letter Agreement provides as follows:

Notwithstanding anything to the contrary in the Agreements . . . TPOV . . . shall be permitted to issue, sell, assign or transfer interests . . . to any Person or assign any of the Agreements, so long as: (i) the receiving Person or assignee or any of such Person's or assignee's Affiliates is not a Competitor of Caesars or any of its Affiliates; and (ii) each receiving Person holding and/or proposed to hold any interest in any of the Entities or the assignee shall be subject to the internal compliance process of Caesars and/or its Affiliates by (A) submitting written disclosure regarding all of the proposed transferee's or assignee's Associates, (B) submitting all information reasonably requested by Caesars regarding the proposed transferee's or assignee's Associates, (C) Caesars being satisfied, in its sole reasonable discretion, that neither the proposed transferee or assignee nor any of their respective Associates is an Unsuitable Person and (D) the Compliance Committee's reasonable approval of the proposed transferee and the proposed transferee not being deemed by Caesars, its Affiliates or any Gaming Authority as an Unsuitable Person.

12. The Letter Agreement provides that "so long as" certain conditions are met, Paris would consider a future assignment by TPOV.

13. Because issues of suitability affect Paris' primary business and its crown jewel - its gaming license - Paris expressly contracted for the sole and absolute discretion to terminate the TPOV Development Agreement should TPOV or its Affiliates - a term that includes Seibel - diverge from Paris' suitability standards.

1 14. Specifically, Section 4.2.5 of the TPOV Development Agreement provides that the
2 "[a]greement may be terminated by Paris upon written notice to TPOV having immediate effect
3 as contemplated by Section 10.2." In turn, Section 10.2 explicitly provides that Paris has the
4 right, in its "sole and exclusive judgment," to determine that a TPOV Associate is an Unsuitable
5 Person under the TPOV Development Agreement.

6 15. To ensure continued suitability, TPOV Associates were required to update their
7 disclosures without Paris' prompting if anything became inaccurate or material changes occurred.

8 16. Prior to the TPOV Development Agreement's execution, Paris obtained disclosures
9 from TPOV in its other business dealings, at which time TPOV was initially determined suitable.

10 17. Upon information and belief, prior to execution of the TPOV Development
11 Agreement, Seibel sought amnesty from the federal government for tax crimes.

12 18. Upon information and belief, on or about April 18, 2016, Seibel pleaded guilty to
13 one count of obstructing or impeding the due administration of the internal revenue laws under
14 26 U.S.C. § 7212(a), a Class E felony.

15 19. Upon information and belief, on or about August 19, 2016, judgment was entered
16 on Seibel's guilty plea in the Southern District of New York.

17 20. Seibel concealed his tax crimes from Paris over the span of years.

18 21. In an effort to conceal Siebel's wrongdoing from Caesars, in April 2016, TPOV
19 sent a letter to Paris purporting to assign its interests to TPOV 16.

20 22. Paris rejected TPOV's purported assignment to TPOV 16, stating that "[t]he
21 purported assignments did not meet the internal compliance criteria set forth in (l)(ii)(A)-(D) of
22 the Letter Agreement dated May 26, 2014. Therefore, [TPOV's] purported assignments are void."

23 23. It was not until Seibel's sentencing hearing was covered by the media that Paris
24 learned of Seibel's conviction and events leading up to the conviction.

25 24. As a result, Paris determined "in its sole discretion" that Seibel's relationship with
26 TPOV was not subject to cure, and exercised its contractual right, pursuant to Paragraphs 4.2.5
27 and 10.2 of the TPOV Development Agreement, to terminate the TPOV Development
28 Agreement.

25. Paris terminated the TPOV Development Agreement on or about September 2, 2016.

26. As a result of Counter-defendants' conduct, Paris has been forced to retain the services of PISANELLI BICE PLLC to address the conduct complained of herein and is therefore entitled to all of its attorneys' fees and costs associated with bringing this action.

FIRST CAUSE OF ACTION

Breach of Contract

(Against TPOV)

27. Paris hereby repeats, realleges, and incorporates all of the allegations contained in the preceding Paragraphs as though fully set forth herein.

28. The TPOV Development Agreement constitutes a valid, binding, and enforceable contract between Paris and TPOV.

29. At all times relevant hereto, Paris fulfilled its contractual obligations to TPOV under the TPOV Development Agreement, or was excused from performance under the same.

30. TPOV failed to fulfill its obligations under the TPOV Development Agreement as set forth herein by failing to update its prior disclosures within ten calendar days without Paris making any further request under Paragraph 10.2 of the TPOV Development Agreement.

31. In particular, TPOV failed to notify Paris that: (a) Seibel was being investigated; (b) Seibel entered into a plea agreement, and (c) Seibel pleaded guilty to obstructing or impeding the due administration of the internal revenue laws pursuant to 26 U.S.C. § 7212(a), a felony.

32. As a direct and proximate result of TPOV's acts and omissions, Paris has suffered and will continue to suffer damages in an amount to be proven at trial, but in any event, in excess of \$15,000.00.

33. As a result of TPOV's conduct, Paris has been forced to retain the services of PISANELLI BICE PLLC to address the conduct complained of herein and is therefore entitled to all of its attorneys' fees and costs associated with bringing this action.

SECOND CAUSE OF ACTION

Breach of the Implied Covenant of Good Faith and Fair Dealing

(Against TPOV)

34. Paris hereby repeats, realleges, and incorporates all of the allegations contained in the preceding Paragraphs as though fully set forth herein.

35. The TPOV Development Agreement constitutes a valid, binding, and enforceable contract between Paris and TPOV.

36. In Nevada, every contract contains an implied covenant of good faith and fair dealing, which prohibits a party from deliberately contravening the spirit and intent of the agreement, and the parties are required to operate under that covenant.

37. Paris is informed and believes, and thereon alleges, TPOV breached its duty of good faith to Paris by, among other things: (a) failing to disclose to Paris that Seibel sought and was denied amnesty from the federal government for his tax evasion prior to entering into the TPOV Development Agreement; (b) failing to disclose to Paris that Seibel was being investigated for tax evasion; (c) failing to disclose to Paris that Seibel entered into a plea agreement for his tax evasion; and d) failing to disclose to Paris that Seibel pleaded guilty to obstructing or impeding the due administration of the internal revenue laws pursuant to 26 U.S.C. § 7212(a), a felony.

38. Paris had a justified expectation that TPOV would disclose that Seibel sought and was denied amnesty for tax evasion.

39. Paris had a justified expectation that TPOV would disclose that Siebel was being investigated for tax evasion.

40. Paris had a justified expectation that TPOV would disclose that Seibel entered into a plea agreement for tax evasion.

41. Paris had a justified expectation that TPOV would disclose that Seibel pled guilty to obstructing or impeding the due administration of the internal revenue laws pursuant to 26 U.S.C. § 7212(a), a felony.

42. As a direct and proximate result of TPOV's breach of the implied covenant of good faith and fair dealing arising from the TPOV Development Agreement, Paris has been damaged in an amount in excess of \$15,000.00.

43. As a result of TPOV's conduct, Paris has been forced to retain the services of PISANELLI BICE PLLC to address the conduct complained of herein and is therefore entitled to all of its attorneys' fees and costs associated with bringing this action.

THIRD CAUSE OF ACTION

Declaratory Relief

(Against TPOV)

44. Paris hereby repeats, realleges, and incorporates all of the allegations contained in the preceding Paragraphs as though fully set forth herein.

45. Valid disputes exist and justiciable controversies have arisen between Paris and TPOV relative to the TPOV Development Agreement and the conduct of the parties in relationship to the TPOV Development Agreement.

46. Pursuant to N.R.S. § 30.030, Paris is entitled to a declaration from this Court as to the TPOV Development Agreement and the rights and status of the parties thereunder.

47. Based on the language of the TPOV Development Agreement and the actions of the parties, Paris is entitled to a judicial declaration that Paris properly terminated the TPOV Development Agreement.

48. As a result of TPOV's conduct, Paris has been forced to retain the services of PISANELLI BICE PLLC to address the conduct complained of herein and is therefore entitled to all of its attorneys' fees and costs associated with bringing this action.

FOURTH CAUSE OF ACTION

Fraudulent Concealment

(Against All Counter-Defendants)

49. Paris hereby repeats, realleges, and incorporates all of the allegations contained in the preceding Paragraphs as though fully set forth herein.

1 50. Counter-defendants concealed material facts from Paris, including that Siebel
2 sought and was denied amnesty for tax evasion in 2009, that he was being investigated for tax
3 evasion; and that he pled guilty to one count of obstructing or impeding the due administration of
4 the internal revenue laws under 26 U.S.C. § 7212(a), a Class E felony, on or about April 18, 2016.

5 51. Counter-defendants had a duty to disclose these wrongdoings to Caesars.
6 Specifically, as TPOV Associates, they were required to disclose these material facts before and
7 after execution of the TPOV Development Agreement and provide certain disclosures to Paris to
8 allow it to complete suitability investigations.

9 52. Counter-defendants intentionally concealed his wrongdoings from Paris to avoid
10 termination of the TPOV Development Agreement.

11 53. In an effort to defraud and conceal Siebel's wrongdoings, on or about
12 April 8, 2016, Siebel sent a letter on behalf of TPOV purporting to assign his membership interest
13 in TPOV and purporting to assign the TPOV Development Agreement to TPOV 16, without
14 disclosing his wrongdoings to Paris.

15 54. Paris was unaware until media reports surfaced that Siebel had sought and was
16 denied amnesty, that he had been investigated for tax evasion, that he pled guilty to one count of
17 obstructing or impeding the due administration of the internal revenue laws under 26 U.S.C. §
18 7212(a), a Class E felony on or about April 18, 2016, and that he had been convicted.

19 55. Had Paris been aware of Siebel's wrongdoings, it would have not continued doing
20 business with TPOV and would have terminated its relationship with TPOV.

21 56. As a direct and proximate result of Counter-defendants' acts and omissions, Paris
22 has suffered and will continue to suffer damages in an amount to be proven at trial, but in any
23 event in excess of \$15,000.00.

24 57. As a result of Counter-defendants' conduct, Paris has been forced to retain the
25 services of PISANELLI BICE PLLC to address the conduct complained of herein and is therefore
26 entitled to all of its attorneys' fees and costs associated with bringing this action.

1 **SIXTH CAUSE OF ACTION**

2 ***Civil Conspiracy***

3 **(Against All Counter-Defendants)**

4 58. Paris hereby repeats, realleges, and incorporates all of the allegations contained in
5 the preceding Paragraphs as though fully set forth herein.

6 59. Siebel, TPOV, TPOV 16, and others knowingly acted in concert with each other,
7 intending to accomplish an unlawful objective for the purpose of harming and/or defrauding
8 Paris.

9 60. Specifically, Siebel, TPOV, TPOV 16, and others conspired to conceal material
10 facts related to Siebel's wrongdoings, including, but not limited to, tax evasion in an effort to
11 harm Paris.

12 61. In an effort to defraud Paris, on or about April 8, 2016, Siebel sent a letter on
13 behalf of TPOV purporting to assign his membership interest in TPOV and purporting to assign
14 the TPOV Development Agreement to TPOV 16, without disclosing his wrongdoings to Paris.

15 62. As a direct and proximate result of Counter-defendants acts and omissions, Paris
16 has suffered and will continue to suffer damages in an amount to be proven at trial, but in any
17 event in excess of \$15,000.00.

18 63. As a result of Counter-defendants' conduct, Paris has been forced to retain the
19 services of PISANELLI BICE PLLC to address the conduct complained of herein and is therefore
20 entitled to all of its attorneys' fees and costs associated with bringing this action.

21 **PRAYER FOR RELIEF**

22 WHEREFORE, Paris prays for judgment against Counter-defendants and demands as
23 follows:

24 1. That TPOV 16's Complaint be dismissed with prejudice, with TPOV 16 taking
25 nothing thereby;

26 2. That judgment be entered in favor of Paris and against TPOV 16 on all of TPOV
27 16's claims;

4. For an award of pre- and post-judgment interest until the judgment is paid in full;
5. For declaratory relief as requested herein;
6. For an award of attorney fees and costs of suit; and
7. For such other and further relief as this Court deems just and proper.

PISANELLI BICE PLLC

*Attorneys for Paris Las Vegas Operating Company,
LLC*

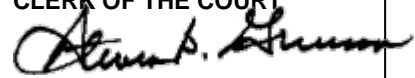
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of PISANELLI BICE PLLC and that, on this 21st day of July 2017, I caused to be sent via the Court's E-Filing/E-Service system a true and correct copy of the above and foregoing **ANSWER TO COMPLAINT AND COUNTERCLAIM** properly addressed to the following:

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Matthew C. Wolf, Esq.
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/s/ Cinda Towne
An employee of PISANELLI BICE PLLC

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MTD

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AND MOTI PARTNERS 16, LLC

DISTRICT COURT

CLARK COUNTY, NEVADA

ROWEN SEIBEL, an individual and citizen of
New York, derivatively on behalf of Real Party
in Interest GR BURGR LLC, a Delaware limited
liability company,

Plaintiff,

v.

PHWLTV, LLC, a Nevada limited liability
company; GORDON RAMSAY, an individual;
DOES I through X; ROE CORPORATIONS I
through X,

Defendants,

AND ALL RELATED MATTERS

Case No.: A-17-751759-B
Dept. No.: 15

Consolidated with:
Case No.: A-17-760537-B

**AMENDED MOTION TO DISMISS OR, IN
THE ALTERNATIVE, TO STAY CLAIMS
ASSERTED AGAINST MOTI
DEFENDANTS**

This document applies to:
A-17-760537-B

1 Defendants MOTI PARTNERS, LLC and MOTI PARTNERS 16, LLC (collectively, the
2 “MOTI Defendants”), hereby submit their amended motion (the “Motion”) to dismiss or, in the
3 alternative, to stay the claims asserted against the MOTI Defendants in the complaint filed on August
4 25, 2017, seeking declaratory relief (the “NV Complaint”).

5 **NOTICE OF HEARING**

6 PLEASE TAKE NOTICE that on the 4 day of April, 2018, at
7 9:00 a.m. / p.m. o'clock, the Court will call for hearing the instant **AMENDED**
8 **MOTION TO DISMISS OR, IN THE ALTERNATIVE, TO STAY CLAIMS ASSERTED**
9 **AGAINST MOTI DEFENDANTS.**

10 DATED February 22, 2018.

11 MCNUTT LAW FIRM, P.C.

12
13 */s/ Dan McNutt*

14 DANIEL R. MCNUTT (SBN 7815)

15 MATTHEW C. WOLF (SBN 10801)

16 625 South Eighth Street

17 Las Vegas, Nevada 89101

18 *Attorney for Defendants MOTI PARTNERS, LLC*

19 *AND MOTI PARTNERS 16, LLC*

20 **MEMORANDUM OF POINTS AND AUTHORITIES**

21 **INTRODUCTION**

22 The MOTI Defendants move to dismiss each of the three claims asserted against them in the
23 NV Complaint. With respect to Counts I and III, there are no disputes among the parties and there is,
24 therefore, no justiciable controversy ripe for adjudication. With respect to Count II: (i) Desert Palace,
25 Inc. (“Caesars”), one of the plaintiffs herein, and the MOTI Defendants have been litigating for over a
26 year and continue to litigate an identical claim in a federal bankruptcy court; (ii) declaratory relief is
27 improper under the circumstances; (iii) no relief is available where Caesars elected to receive and retain
28 the benefits of the contract they allege to have terminated; and (iv) the “first-to-file rule” should be
applied. Alternatively, if the Court decides not to dismiss the claims asserted against the MOTI
Defendants, it should stay all proceedings in this action against the MOTI Defendants until the issues
being litigated between the parties before the United States Bankruptcy Court for the Northern District

1 of Illinois, Eastern Division (the “Bankruptcy Court”) – the court in which such matters were first
2 brought and remain pending – are fully resolved.

3 Nevada law does not allow a plaintiff to maintain two actions involving the same claims or set
4 of facts against duplicative parties. The adjudication of the pending matters between the parties before
5 the Bankruptcy Court will resolve all issues and determine all rights and obligations between them.

6 The MOTI Defendants and Caesars have litigated in Caesars’ chapter 11 cases the same
7 allegations, claims, and defenses at issue in the NV Complaint – i.e. the rights and obligations of the
8 parties in connection with the Serendipity restaurant previously located in Las Vegas and operated by
9 Caesars. The litigation now before both courts is premised on the same restaurant and the same contract,
10 and the claims by the parties involve the same facts and allegations. Such litigation also affects the
11 proof of claim the MOTI Defendants filed against Caesars in its bankruptcy. The litigation in the
12 Bankruptcy Court, however, was initiated first and continues to date after intensive motion practice and
13 discovery. In addition, the Bankruptcy Court has already commented unfavorably on Caesars’ fraud in
14 the inducement/rescission theory which Caesars now seeks (as Count II of the NV Complaint) to have
15 this Court also decide. To the extent Caesars asserts a dispute as to Counts I and III, then the Bankruptcy
16 Court should decide same as all disputes surrounding the rights and obligations of the parties related to
17 the Serendipity restaurant remain pending before the Bankruptcy Court.

18 In 2009, Caesars entered into a development, operation and license agreement with MOTI for
19 the development and operation of Serendipity (the “MOTI Agreement”).¹ By its terms, the MOTI
20 Agreement was set to expire on April 5, 2014, unless 180 days prior to such expiration Caesars extended
21 the MOTI Agreement for an additional five (5) year period on the same terms and conditions. The
22 MOTI Agreement allowed Caesars to terminate for any reason whatsoever. In September 2016, Caesars
23 elected to terminate its relationship with the MOTI Defendants. Notwithstanding this termination,
24 Caesars continued to operate Serendipity and utilize the non-exclusive license to use certain intellectual
25 property provided by the MOTI Defendants in connection with such operations through and including
26 January 1, 2017, when Caesars closed the restaurant.

27
28 ¹ A true and correct copy of the MOTI Agreement is attached hereto as **Exhibit A**.

1 The MOTI Defendants have not challenged the fact that Caesars properly terminated the
2 relationship. The reason for the termination is irrelevant, as the MOTI Agreement expressly provides
3 Caesars the right to terminate for any reason whatsoever. Rather, the MOTI Defendants simply seek
4 payment of amounts due in connection with the continued operations of Serendipity and use of
5 intellectual property by Caesars post-termination. Thus, there is no justiciable controversy ripe for
6 adjudication among the parties regarding the propriety of the termination and Count I of the NV
7 Complaint –which seeks a determination that Caesars properly terminated the MOTI Agreement–
8 should be dismissed.

9 The MOTI Defendants have asserted in Caesars’ chapter 11 bankruptcy case that the MOTI
10 Defendants are entitled to an administrative priority expense claim under section 503 of the Bankruptcy
11 Code based on Caesars’ continued use of the license and the continued operations of Serendipity
12 through and including January 1, 2017. In defense to the request for an administrative expense claim,
13 Caesars has asserted that, based on certain suitability requirements, Caesars was fraudulently induced
14 into entering into the MOTI Agreement, which makes the MOTI Agreement subject to rescission.

15 In order to resolve the request for an administrative priority expense claim and determine
16 Caesars’ obligations under the MOTI Agreement, the Bankruptcy Court will determine: (i) what terms
17 governed the parties’ relationship; and (ii) whether Caesars’ theories of fraud in the inducement or
18 rescission can serve to defeat the request. The parties have formally presented claim and defenses with
19 respect to these issues, and have commenced and continue to conduct discovery regarding same. The
20 Bankruptcy Court: (a) questioned whether the suitability requirements upon which Caesars purported
21 to rely are relevant (depending on what terms controlled the relationship of the parties); and (b) in
22 related matters, described Caesars’ rescission theory to be “thin” and “dubious.” Caesars now seeks to
23 have these same issues determined through Count II of the NV Complaint, which requests a
24 determination that Caesars has no obligations under the MOTI Agreement. Because there is a prior
25 pending action set to resolve the very same issue (i.e. Caesar’s obligations under the MOTI Agreement)
26 between the very same parties based upon the very same set of facts, Count II should be dismissed or,
27 in the alternative, stayed. Further, because Caesars continued to operate the Serendipity restaurant after
28 the alleged termination, and because the very object of the MOTI Agreement has been fulfilled in its

entirety, Caesars has failed to state a claim in Count II upon which relief can be granted.

Count III of the NV Complaint seeks a determination that various agreements do not prohibit or limit existing restaurants between the plaintiffs and Gordon Ramsay. To the extent this Count is asserted against the MOTI Defendants (which is not clear), it has no bearing on any restaurants or contracts between the plaintiffs and Mr. Ramsay. Mr. Ramsay is not a party to the MOTI Agreement nor does the Serendipity restaurant have any connection to Mr. Ramsay or his brand. Thus, there is no justiciable controversy ripe for adjudication among the parties and Count III of the NV Complaint should be dismissed.

BACKGROUND AND PROCEDURAL HISTORY

A. The matters pending before the Bankruptcy Court

1. On January 15, 2015 (the “Petition Date”), Caesars and several of its affiliated entities each filed voluntary petitions under Chapter 11 of the United States Code (11 U.S.C. §§ 101 et seq., as amended, the “Bankruptcy Code”) in the Bankruptcy Court, thereby commencing the chapter 11 cases jointly administered as case no. 15-01145 (collectively, the “Chapter 11 Cases”). NV Complaint, ¶ 120.

2. The MOTI Defendants filed a proof of claim in the Chapter 11 Cases on May 22, 2015 (Claim No. 3922) (the “MOTI Claim”). The MOTI Claim is over \$700,000, based on fees, revenues and operating income due under section 6.1 of the MOTI Agreement. A true and correct copy of the MOTI Claim is attached hereto as **Exhibit B**.

3. On or about September 2, 2016, Caesars terminated the MOTI Agreement. NV Complaint, ¶ 5.

4. On November 30, 2016, approximately ten months prior to Caesars filing the NV Complaint, the MOTI Defendants filed that certain *Request for Payment of Administrative Expense* [Dkt. No. 5862] (the “Admin Expense Motion”) seeking payment based on Caesars’ continued use of the license and the continued operation of Serendipity after termination. NV Complaint, ¶ 123. A true and correct copy of the Admin Expense Motion is attached hereto as **Exhibit C**. The Admin Expense Motion is premised on section 503 of the Bankruptcy Code, and can only be decided by the Bankruptcy Court.

5. On December 7, 2016, Caesars filed the *Debtors’ Preliminary Objection to Request for*

1 *Payment of Administrative Expense filed by the MOTI Parties* [Dkt. No. 5901] (the “Preliminary
2 Objection”), a true and correct copy of which is attached hereto as **Exhibit D**.

3 6. On January 11, 2017, Caesars filed the *Debtor’s Objection to Request for Payment of*
4 *Administrative Expense* [Dkt. No. 6267] (the “Objection”), a true and correct copy of which is attached
5 hereto as **Exhibit E**. In the Objection, Caesars asserts that, if Caesars can establish it was fraudulently
6 induced into entering into the MOTI Agreement as a result of alleged misrepresentations or omissions
7 by Rowen Seibel, a former principal of MOTI, then Caesars can rescind the MOTI Agreement and
8 eliminate any requirement to pay the MOTI Defendants as requested in the Admin Expense Motion.
9 Exh. D, p. 2, ¶ 5; NV Complaint, ¶ 123.

10 7. On February 1, 2017, Claimants filed their *Reply Brief in Support of Request for*
11 *Payment of Administrative Expense* [Dkt. No. 6518] (the “Reply Brief”), a true and correct copy of
12 which is attached hereto as **Exhibit F**.

13 8. On February 15, 2017, a hearing was held on the Admin Expense Motion. A true and
14 correct copy of the February 15, 2017 hearing transcript is attached hereto as **Exhibit G**. At this hearing,
15 the Bankruptcy Court invited the parties to submit further briefing to assist the court in determining
16 what terms governed the parties’ continued relationship. If and after the MOTI Agreement expired,
17 depending on such terms, the Bankruptcy Court questioned whether the suitability requirements upon
18 which Caesars relied are even relevant:

19 Isn’t there also a question about this suitability requirement if in fact the contract
20 expired? I mean, I don’t think you can pull these issues apart. If the written agreement
21 that had that requirement in it expired, and the parties were operating on some other
22 basis, then I don’t know if it would be relevant any more. I’m just not sure. That’s
23 why, again, I can’t get past this expiration problem.

24 Exh. F, p. 25, lines 1 – 9.

25 9. On April 21, 2017, the MOTI Defendants filed their *Supplemental Brief in Support of*
26 *Request for Payment of Administrative Expense* [Dkt. No. 6878] (the “Supplemental Brief”), a true and
27 correct copy of which is attached hereto as **Exhibit H**.

28 10. On May 12, 2017, Caesars filed the *Debtors’ Limited Response to MOTI’s Supplemental*
Brief in Support of Request for Payment of Administrative Expense [Dkt. No. 6912] (the “Limited

1 Response”), a true and correct copy of which is attached hereto as **Exhibit I**. In the Limited Response,
2 Caesars states:

3 If the Court concludes that [the MOTI Defendants] may be entitled to a claim, the
4 Debtors request that the Court allow the Debtors to conduct discovery into Mr. Seibel’s
5 suitability as an additional defense to [the MOTI Defendants’] continued request for
6 administrative payment by the Debtors after [the MOTI Defendants] breached the
MOTI Agreement by, for example, not informing the Debtors that Mr. Seibel had
engaged in criminal activity as required by section 9.2

7 Exh. H, p. 3.

8 11. On June 21, 2017, a hearing was held on the Admin Expense Motion, during which the
9 Bankruptcy Court concluded that a factual question existed as to the terms under which the parties
10 continued to operate post-expiration of the MOTI Agreement and, therefore, would require an
11 evidentiary hearing. A true and correct copy of the June 21, 2017 hearing transcript is attached hereto
12 as **Exhibit J**.

13 12. Extensive discovery has been commenced and remains on-going in connection with the
14 Admin Expense Motion, pursuant to that certain *Amended Agreed Discovery Scheduling Order*
15 *FERG/LLTQ/MOTI Matters* [Dkt. No. 7251]. The discovery among Caesars and the MOTI Defendants
16 for the Admin Expense Motion is tied into the “suitability” discovery Caesars is pursuing in connection
17 with other matters pending in the Chapter 11 Cases among Caesars and other defendants to the NV
18 Complaint, i.e. the LLTQ and FERG corporate entities.²

19 **B. Caesars’ plan of reorganization provides that the Admin Expense Motion will be**
20 **determined by the Bankruptcy Court**

21 13. Caesars’ plan of reorganization filed in the Chapter 11 Cases [Dkt. No. 6318] (the
22 “Plan”), was confirmed on January 17, 2017 [Dkt. No. 6334], but did not become effective until October
23 6, 2017 [Dkt. No. 742]. The Plan expressly contemplates that the Bankruptcy Court will hear and
24 determine the Admin Expense Motion and all disputes related thereto. A true and correct copy of the
25 Plan is attached hereto as **Exhibit K**.

26 14. Article III of the Plan provides for payment of administrative claims not allowed as of
27

28 ² Contemporaneously with the filing of this motion to dismiss, the LLTQ and FERG defendants
filed a separate motion to dismiss the claims being asserted against them in this action.

1 the Effective Date (e.g. the Admin Expense Motion), within 30 days after the date on which an order
2 of the Bankruptcy Court allowing such administrative claim becomes a final order. It also sets a
3 deadline for filing administrative claims.

4 15. Article XI of the Plan expressly provides that, notwithstanding the entry of the order
5 confirming the Plan, “on and after the Effective Date, to the extent legally permissible, the Bankruptcy
6 Court shall retain such jurisdiction over the Chapter 11 Cases and all matters arising out of, or related
7 to, the Chapter 11 Cases and the Plan, including jurisdiction to,” among other things:

8 1. allow, disallow, determine, liquidate, classify, estimate, or establish the priority,
9 Secured or unsecured status, or amount of any Claim or Interest, including the
10 resolution of any request for payment of any Administrative Claim and the resolution
11 of any and all objections to the Secured or unsecured status, priority, amount, or
allowance of Claims or Interests;

12 ***

13 5. adjudicate, decide, or resolve any motions, adversary proceedings, contested
14 or litigated matters, and any other matters, and grant or deny any applications
involving a Debtor that may be pending on the Effective Date;

15 ***

16 17. determine requests for payment of Claims and Interests entitled to priority
pursuant to section 507 of the Code;

17 16. The claims alleged in the NV Complaint against the MOTI Defendants are subsumed
18 within the foregoing matters, and Count II, in particular, has been unequivocally asserted by Caesars as
19 a defense to the Admin Expense Motion, and is necessary to resolve the Admin Expense Motion. Put
20 another way, each count in NV Complaint either represents a contested matter or constitutes an “other
21 matter” pending on the Effective Date of the Plan, over which the Bankruptcy Court had jurisdiction
22 during the Chapter 11 Cases and expressly retained jurisdiction after confirmation of the Plan.

23 17. With regard to objecting to Claims such as the MOTI Claim, the Plan provides that:

24 Subject to Article XII.G hereof, the Reorganized Debtors shall have the authority to:
25 (a) *File objections to Claims*, settle, compromise, withdraw, or litigate to judgment
26 objections to any and all Claims, regardless of whether such claims are in a Class or
27 otherwise; (b) settle or compromise any Disputed Claim without any further notice to
28 or action, order, or approval by the Bankruptcy Court; and (c) administer and adjust
the Claims Register to reflect any such settlements or compromises without any further
notice to or action, order, or approval by the Bankruptcy Court.

1 Art. VII(A)(2).

2 **C. The NV Complaint includes the same claims presently before the**
3 **Bankruptcy Court**

4 18. On August 25, 2017, Caesars and some of its affiliated entities filed the NV Complaint,
5 and repackaged the claims and defenses at issue before the Bankruptcy Court in connection with the
6 Admin Expense Motion. The relief sought in the NV Complaint against the MOTI Defendants arises
7 out of the same core set of facts necessary to, and which are at the heart of, the pending disputes on the
8 Admin Expense Motion.

9 19. Counts I and II of the NV Complaint seek, among other relief, determinations that
10 Caesars properly terminated the MOTI Agreement and has no current or future obligations to the MOTI
11 Defendants.

12 20. As set forth above, the Bankruptcy Court is set to determine the terms that governed the
13 parties' relationship and, based thereon, to what extent Caesars has any post-termination obligations to
14 the MOTI Defendants. The allegations of breach and fraudulent inducement and the related legal issue
15 of whether the MOTI Agreement may be rescinded has been asserted by Caesars as a defense to the
16 Admin Expense Motion and will be resolved at the same time. The Admin Expense Motion remains
17 pending as discovery continues. As also set forth above, there is no dispute as to the propriety of the
18 termination of the MOTI Agreement as Caesars could terminate for any reason whatsoever.

19 21. In addition, on May 31, 2017, the Bankruptcy Court denied a request for a protective
20 order in a related, but separate, dispute regarding the continued operations of a restaurant at Caesars.
21 As part of its decision, the Bankruptcy Court referred to Caesars' legal theories regarding fraud in the
22 inducement and rescission as "thin" and "dubious". *See* May 31, 2017 hearing transcript, p. 6, line 23
23 – p. 7, line 7 and p.10, line 3, a true and correct copy of which is attached hereto as **Exhibit L**. The
24 Bankruptcy Court nonetheless allowed discovery on these claims to proceed:

25 They have objected to discovery as if they were moving for summary judgment,
26 claiming that the facts and law show the debtors' [fraud in the
27 inducement/rescission] theories are so devoid of merit that all discovery on
28 suitability should stop. Dubious though the debtors' legal theories seem to be – at
least based on what I have been given to date – that is not a determination I am
comfortable making on a discovery motion.

1 Exh. L, p. 9, line 23 – p. 10, line 6.

2 22. Count III of the NV Complaint seeks, among other relief, a determination that the certain
3 restrictive covenants contained in unrelated agreements between Caesars (or its affiliates) and third
4 party entities (i.e. not the MOTI Defendants) do not prohibit or limit existing or future restaurant
5 ventures between the plaintiffs and celebrity Gordon Ramsay. The Serendipity restaurant was never
6 affiliated with Mr. Ramsay in any regard, and the MOTI Agreement does not involve Mr. Ramsay or
7 his affiliates, with respect to restrictive covenants or otherwise. Count III thus does not relate to or
8 implicate the MOTI Defendants or the MOTI Agreement.

9 23. Even if there is some plausible connection between the MOTI Defendants and Count
10 III, it should be dismissed or, in the alternative, stayed until the Admin Expense Motion is resolved by
11 the Bankruptcy Court. The adjudication of the Admin Expense Motion will resolve all issues and
12 determine all rights and obligations between the MOTI Defendants and Caesars.

13 **C. Removal, remand and appeal of the Nevada Bankruptcy Court Orders**

14 24. On September 27, 2017, the MOTI Defendants removed the claims asserted against the
15 MOTI Defendants in the NV Complaint (the “MOTI Removed Claims”), pursuant to 28 U.S.C. §§
16 1452(a) and 1334(b) and Bankruptcy Rule 9027, to the United States Bankruptcy Court, District of
17 Nevada (the “NV Bankruptcy Court”), by filing that certain Notice of Removal of Lawsuit Pending in
18 Nevada State Court to Bankruptcy Court [Dkt. No. 1].

19 25. On October 2, 2017, the MOTI Defendants filed a motion to transfer venue of the MOTI
20 Removed Claims to the Bankruptcy Court [Dkt. No. 9] (the “Transfer Venue Motion”).

21 26. On October 23, 2017, Caesars filed an objection to the Transfer Venue Motion [Dkt. No.
22 29].

23 27. On October 24, 2017, Caesars filed an amended motion to remand the MOTI Removed
24 Claims to this Court [Dkt. No. 34] (the “Remand Motion”).

25 28. On December 14, 2017, the NV Bankruptcy Court issued Findings of Fact and
26 Conclusions of Law [Dkt. No. 68], an order granting the Remand Motion [Dkt. No. 70]; and an order
27 denying the Transfer Venue Motion as moot [Dkt. No. 69] (collectively, the “NV Bankruptcy Court
28 Orders”).

1 29. On December 28, 2017, the MOTI Defendants filed a notice of appeal of the NV
2 Bankruptcy Court Orders with the NV Bankruptcy Court, which appeal is pending.

3 **RELIEF REQUESTED**

4 30. By this Motion, the MOTI Defendants seek the entry of an order dismissing or, in the
5 alternative, staying all claims in the NV Complaint against the MOTI Defendants until the prior Admin
6 Expense Motion is fully resolved by the Bankruptcy Court.

7 31. As detailed above, for more than a year, the MOTI Defendants and Caesars have been
8 litigating the Admin Expense Motion and the defenses thereto in order to have the Bankruptcy Court
9 determine the parties' respective rights and obligations under the MOTI Agreement and related to the
10 Serendipity restaurant. Such claims and defenses revolve around a common core of facts involving
11 allegations against Mr. Seibel, alleged "suitability" issues, and breach of contract, among others. The
12 Admin Expense Motion and the objections and defenses thereto remain pending and should be decided
13 by the Bankruptcy Court without duplicate litigation before this Court.

14 32. Further, Caesars continued to operate the Serendipity restaurant that is the very object
15 of the MOTI Agreement and continued to receive and retain the benefits therefrom (i.e. the profits from
16 operation) for approximately eight years, including approximately four months from and after alleged
17 termination. Caesars therefore cannot now disavow its obligations under the MOTI Agreement or
18 otherwise rescind the MOTI Agreement. No relief is available for Caesars under the NV Complaint.

19 **ARGUMENT**

20 **A. Standards for Motion to Dismiss**

21 33. A complaint must be dismissed if it "fail[s] to state a claim upon which relief can be
22 granted." NRCp 12(b)(5). In order to survive dismissal, Caesars' factual allegations are accepted as
23 true and "must be legally sufficient to constitute the elements of the claim asserted." *Sanchez ex rel.*
24 *Sanchez v. Wal-Mart Stores, Inc.*, 125 Nev. 818, 823, 221 P.3d 1276, 1280 (2009). When reviewing a
25 12(b)(5) motion to dismiss for failure to state a claim, the court must determine whether the plaintiff
26 "asserts specific allegations sufficient to constitute the elements of a claim on which [the] court can
27 grant relief." *Malfabon v. Garcia*, 111 Nev. 793, 796, 898 P.2d 107, 108 (1995). Caesars has not reached
28 that threshold and its claims against the MOTI Defendants must be dismissed.

1 34. “In ruling on a motion to dismiss for failure to state a claim, the court may consider any
2 exhibits attached to the complaint and matters on the record.” *Schmidt v. Washoe County*, 123 Nev.
3 128, 133, 159 P.3d 1099, 1103 (2008) *abrogated on other grounds by Buzz Stew, LLC v. City of N. Las*
4 *Vegas*, 124 Nev. 224, 181 P.3d 670 (2008). Specifically, a court may consider the papers filed in the
5 Chapter 11 Cases, including without limitation, the Admin Expense Motion and objections thereto, and
6 the relevant discovery motions and rulings, without converting the instant motion into a NRCP 56
7 motion for summary judgment because the pleadings, motions and other documents filed in the Chapter
8 11 Cases are a matter of public record. *Breliant v. Preferred Equities Corp.*, 109 Nev. 842, 847, 858
9 P.2d 1258, 1261 (1993) (“the court may take into account matters of public record...when ruling on a
10 motion to dismiss for failure to state a claim upon which relief can be granted.”)

11 35. The Court may also consider the MOTI Agreement, as the authenticity of this agreement
12 is not contested, and it is a document on which Caesars’ claims necessarily rely. *C.f. Lee v. City of Los*
13 *Angeles*, 250 F.3d 668, 688-89 (9th Cir. 2001) (holding that, while “a district court may not consider
14 any material beyond the pleadings in ruling on a Fed. R. Civ. P. 12(b)(6) motion,” the motion need not
15 be converted into a motion for summary judgment “[i]f the documents are not physically attached to
16 the complaint, but the documents’ authenticity is not contested and the plaintiff’s complaint necessarily
17 relies on them” (internal quotations and citation omitted).) *See also Schmidt*, 123 Nev. at 133, 159 P.3d
18 at 1103 (2007) (“In ruling on a motion to dismiss for failure to state a claim, the court may take into
19 account any exhibits attached to the complaint and matters in the record.”). The MOTI Agreement is
20 publicly available as an exhibit to various pleadings filed in the Chapter 11 Cases, and is attached as
21 Exhibit A to this Motion for reference.

22 **B. Dismissal of Counts I and III against the MOTI Defendants is appropriate**
23 **because there are no justiciable controversies between the parties.**

24 36. The Court should dismiss the NV Complaint as to the MOTI Defendants because it
25 “fail[s] to state a claim upon which relief can be granted.” NRCP 12(b)(5). Here, the NV Complaint
26 seeks declaratory relief, which “is available only if: (1) a justiciable controversy exists between persons
27 with adverse interests, (2) the party seeking declaratory relief has a legally protectable interest in the
28 controversy, and (3) the issue is ripe for judicial determination.” *Cty. of Clark, ex rel. Univ. Med. Ctr.*

1 *v. Uproach*, 114 Nev. 749, 752, 961 P.2d 754, 756 (1998) (internal citation omitted).

2 37. “If there is no justiciable controversy, then the precise contours of the Nevada
3 Declaratory Judgment Act are irrelevant.” *Am. Realty Inv’rs, Inc. v. Prime Income Asset Mgmt., LLC*,
4 No. 2:13-CV-00278-APG, 2013 WL 5663069, at *7 (D. Nev. Oct. 15, 2013). Generally Caesars’ claims
5 for declaratory relief in the NV Complaint overlap or directly implicate the claims and defenses
6 currently at issue in the Admin Expense Motion. Caesars’ claims in the instant matter are therefore not
7 legally protectable and unripe for declaratory relief. *See Knittle v. Progressive Cas. Ins. Co.*, 112 Nev.
8 8, 11, 908 P.2d 724, 726 (1996) (holding that where a prior action is pending, a Plaintiff “can assert no
9 legally protectible interest creating a justiciable controversy ripe for declaratory relief.”).

10 38. Furthermore, Count I of the NV Complaint seeks a determination that Caesars properly
11 terminated the MOTI Agreement. The MOTI Agreement expressly provides Caesars the right to
12 terminate “without cause, meaning for any reason or no reason at all.” Exh. A, § 3.2.3.
13 The MOTI Defendants do not contend otherwise. The Admin Expense Motion does not challenge
14 termination, but rather requests payment for post-termination obligations. The propriety of the
15 termination is simply not in dispute. Accordingly, a justiciable controversy does not exist with respect
16 to the relief sought in Count I against the MOTI Defendants and Count I should be dismissed.

17 39. As set forth above, Count III of the NV Complaint seeks, among other relief, a
18 determination that certain restrictive covenants contained in agreements unrelated to the MOTI
19 Agreement do not prohibit or limit existing or future restaurant ventures between the plaintiffs and
20 celebrity Gordon Ramsay. The MOTI Agreement does not reference, let alone prohibit or limit, existing
21 or future restaurant ventures between the plaintiffs and Gordon Ramsay. The MOTI Defendants do not
22 contend otherwise and there is no dispute. Accordingly, a justiciable controversy does not exist with
23 respect to the relief sought in Count III against the MOTI Defendants and Count III should be dismissed.

24 **C. Dismissal of Count II is appropriate because the same claims between the**
25 **same parties based upon the same evidence is pending in the Bankruptcy**
26 **Court.**

27 40. “It is well-settled that courts will not entertain a declaratory judgment action if there is
28 pending, at the time of the commencement of the action for declaratory relief, another action or
proceeding to which the same persons are parties and in which the same issues may be adjudicated.”

1 *Pub. Serv. Comm'n of Nevada v. Eighth Judicial Dist. Court of State of Nev.*, 107 Nev. 680, 684, 818
2 P.2d 396, 399 (1991) quoting *Haas & Haynie Corp. v. Pacific Millwork Supply*, 2 Haw.App. 132, 134,
3 627 P.2d 291, 293 (1981). Moreover, a “separate action for declaratory judgment is not an appropriate
4 method of testing defenses in a pending action. *Id.* at 685 citing *Ratley v. Sheriff's Civil Service Bd. of*
5 *Sedgwick County*, 7 Kan.App.2d 638, 646 P.2d 1133 (1982).

6 41. When two actions are pending that involve the same parties and arise from the same set
7 of facts, the Nevada Supreme Court has determined the second filed action may be dismissed. *Fitzharris*
8 *v. Phillips*, 74 Nev. 371, 376-77, 333 P.2d 721, 724 (1958). It “would be contrary to fundamental
9 judicial procedure to permit two actions to remain pending between the same parties upon the identical
10 cause.” *Id.* at 376; *see also Goldfield Consol. Milling & Transp. Co. v. Old Sandstrom Annex Gold*
11 *Mining Co.*, 38 Nev. 426, 435, 150 P. 313, 315 (1915); *State v. Cal. Mining Co.*, 13 Nev. 289, 294,
12 (1878).

13 42. As set forth above, Count II of the NV Complaint seeks a determination that Caesars has
14 no further obligations under the MOTI Agreement (based on its termination of the MOTI Agreement
15 and its rescission/fraud in the inducement theory). To resolve the Admin Expense Motion, the
16 Bankruptcy Court is set to fully determine the parties’ rights and obligations with respect to the MOTI
17 Agreement, including what terms governed the parties’ relationship and whether Caesar’s objection
18 based on its rescission/fraud in the inducement theory can serve to defeat the Admin Expense Motion.
19 Accordingly, to avoid having two courts decide the very same issues between the same parties based
20 on the same set of facts, Count II of the NV Complaint should be dismissed.

21 **D. Count II of the NV Complaint should be dismissed because Caesars**
22 **operated and profited from the Serendipity restaurant for eight years.**

23 43. Caesars also fails to state a claim under Count II upon which relief can be granted
24 pursuant to NRCP 12(b)(5) because, as a matter of law, (a) Caesars cannot elect to receive and retain
25 the benefits under the MOTI Agreement and simultaneously refuse to perform its part of the bargain
26 thereunder, and (b) the object of the MOTI Agreement has been realized in full.

27 44. Count II of the NV Complaint Caesars seeks a determination that it has no obligations
28 under the MOTI Agreements and may rescind same, notwithstanding that Caesars operated the

1 Serendipity restaurant and enjoyed all the benefits therefrom for approximately eight years, even after
2 the purported termination of the underlying MOTI Agreement.

3 45. The parties entered into the MOTI Agreement to “design, develop, construct and operate
4 a certain first-class restaurant . . . that shall be known as ‘Serendipity’” at Caesars’ real property known
5 as Caesars Palace in Las Vegas, Nevada. Exh. A, Recitals A, C. Without the entry into the MOTI
6 Agreement between Caesars and MOTI, the Serendipity restaurant would not exist. As set forth in the
7 Complaint and the MOTI Admin Request, the express terms for the development and operation of the
8 Serendipity restaurant, and compensation therefor, is provided in the MOTI Agreement.

9 46. Because Caesars elected to continue receiving the benefits from the MOTI Agreement
10 (i.e. the operation of and profits from the Serendipity restaurant), it cannot refuse to perform its
11 obligations thereunder (e.g. compensation to MOTI), nor can it rescind the MOTI Agreement and treat
12 the contract as if it never existed. See 13 Williston on Contracts § 39:32 (4th ed.) (termination and
13 enforcing the contract are inconsistent rights; “the nonbreaching party, by electing to continue receiving
14 benefits under the agreement, cannot then refuse to perform its part of the bargain.”); and 17B C.J.S.
15 Contracts § 754 (“However, under no circumstances may the nonbreaching party stop his or her
16 performance and continue to take advantage of the contract’s benefits. Furthermore, the nonbreaching
17 party, by continuing his or her performance and treating the contract as continuing after the other party’s
18 breach, is deprived of any excuse for terminating his or her own performance.”).

19 **E. Dismissal is appropriate for abusive litigation practices, including forum**
20 **shopping.**

21 47. “Courts have inherent equitable powers to dismiss actions for abusive litigation
22 practices.” *Lane v. Allstate Ins. Co.*, 114 Nev. 1176, 1181, 969 P.2d 938, 941 (1998) (internal citation
23 omitted). “Judge shopping, generally, occurs when a litigant who obtains an unfavorable ruling seeks
24 to have a second judge consider the same issue in hopes of having a more favorable outcome.” *Albert*
25 *Winemiller, Inc. v. Keilly*, No. 48140, 2009 WL 1491481, *2 (Nev. Feb. 6, 2009), citing *Moore v. City*
26 *of Las Vegas*, 92 Nev. 402, 404, 551 P.2d 244, 246 (1976).

27 48. The NV Complaint was filed after the Bankruptcy Court provided negative commentary
28 on more than one occasion with respect to Caesars’ rescission/fraud in the inducement theory –

1 presumably in the hopes of having a more favorable outcome. This type of gamesmanship should not
2 be condoned and the NV Complaint should be dismissed.

3 **F. Alternatively, the claims against the MOTI Defendants should be stayed**
4 **pending resolution of the Admin Expense Motion and the MOTI Claim.**

5 49. In the alternative to dismissal, the court should stay the claims pending against the MOTI
6 Defendants until there is a final determination of the Admin Expense Motion by the Bankruptcy Court
7 pursuant to the “first-to-file rule”.

8 50. “The first-to-file rule is a doctrine of comity providing that ‘where substantially identical
9 actions are proceeding in different courts, the court of the later-filed action should defer to the
10 jurisdiction of the first-filed action by either dismissing, staying, or transferring the later filed suit.’”
11 *Sherry v. Sherry*, No. 62895, 2015 WL 1798857, 1 (Nev. Apr. 16, 2015) quoting *SAES Getters S.p.A.*
12 *v. Aeronex, Inc.*, 219 F.Supp.2d 1081, 1089 (S.D.Cal.2002). “The two actions need not be identical,
13 only substantially similar.” *Id.* (internal citation omitted).

14 51. Here, the NV Complaint is the later-filed action and, as detailed above, the actions are
15 substantially similar (and identical with respect to Count II). The Nevada Complaint should be stayed
16 with respect to the MOTI Defendants until the Bankruptcy Court fully adjudicates the Admin Expense
17 Motion (at which point there will be nothing left for this Court to decide). Such resolution will
18 necessarily affect any objection to the MOTI Claim which Caesars might file as well.

19 **CONCLUSION**

20 52. For the reasons set forth above, the MOTI Defendants submit that this Court should
21 dismiss all claims in the NV Complaint against the MOTI Defendants or, in the alternative, stay such
22 claims until the prior Admin Expense Motion is resolved by the Bankruptcy Court.

23 DATED February 22, 2018.

24 MCNUTT LAW FIRM, P.C.

25 /s/ Dan McNutt

26 DANIEL R. MCNUTT (SBN 7815)

27 MATTHEW C. WOLF (SBN 10801)

28 625 South Eighth Street

Las Vegas, Nevada 89101

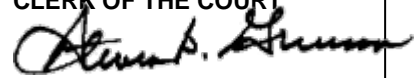
Attorney for Defendants MOTI PARTNERS, LLC

AND MOTI PARTNERS 16, LLC

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Attorney for Defendant J. Jeffrey Frederick

App. 793



APEN

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AND MOTI PARTNERS 16, LLC

DISTRICT COURT

CLARK COUNTY, NEVADA

ROWEN SEIBEL, an individual and citizen of
New York, derivatively on behalf of Real Party
in Interest GR BURGR LLC, a Delaware limited
liability company,

Plaintiff,

v.

PHWLTV, LLC, a Nevada limited liability
company; GORDON RAMSAY, an individual;
DOES I through X; ROE CORPORATIONS I
through X,

Defendants,

AND ALL RELATED MATTERS

Case No.: A-17-751759-B
Dept. No.: 15

Consolidated with:
Case No.: A-17-760537-B

**APPENDIX OF EXHIBITS IN SUPPORT
OF AMENDED MOTION TO DISMISS OR,
IN THE ALTERNATIVE, TO STAY
CLAIMS ASSERTED AGAINST MOTI
DEFENDANTS – VOLUME I**

This document applies to:
A-17-760537-B

Exhibit	Description	Page No. Range	Volume
A.	MOTI Agreement	1 - 24	1
B.	MOTI Claim	25 - 36	1
C.	Admin Expense Motion	37 - 92	1
D.	Debtors' Preliminary Objection to Request for Payment of Administrative Expense filed by the MOTI Parties	93 - 140	1
E.	Debtor's Objection to Request for Payment of Administrative Expense	141 - 287	1-2
F.	Reply Brief in Support of Request for Payment of Administrative Expense	288 - 304	2
G.	February 15, 2017 Hearing Transcript	305 - 342	2
H.	Supplemental Brief in Support of Request for Payment of Administrative Expense	343 - 384	2
I.	Debtors' Limited Response to MOTI's Supplemental Brief in Support of Request for Payment of Administrative Expense	385 - 389	2
J.	June 21, 2017 Hearing Transcript	390 - 422	2
K.	Caesars' Plan of Reorganization	423 - 571	2-3
L.	May 31, 2017 Hearing Transcript	572 - 583	3

DATED February 22, 2018.

MCNUTT LAW FIRM, P.C.

/s/ Dan McNutt

DANIEL R. MCNUTT (SBN 7815)

MATTHEW C. WOLF (SBN 10801)

625 South Eighth Street

Las Vegas, Nevada 89101

Attorney for Defendants MOTI PARTNERS, LLC

AND MOTI PARTNERS 16, LLC

1 **CERTIFICATE OF MAILING**

2 I HEREBY CERTIFY that pursuant to Nev. R. Civ. P. 5(b) and EDCR 8.05 on February 22,
3 2018 I caused service of the foregoing **APPENDIX OF EXHIBITS IN SUPPORT OF AMENDED**
4 **MOTION TO DISMISS OR, IN THE ALTERNATIVE, TO STAY CLAIMS ASSERTED**
5 **AGAINST MOTI DEFENDANTS – VOLUME I** to be made by depositing a true and correct copy
6 of same in the United States Mail, postage fully prepaid, addressed to the following and/or via
7 electronic mail through the Eighth Judicial District Court's E-Filing system to the following at the e-
8 mail address provided in the e-service list:

9 James Pisanelli, Esq. (SBN 4027)
10 Debra Spinelli, Esq. (SBN 9695)
11 Brittne Watkins, Esq. (SBN 13612)
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18 Attorneys for Defendant
19 *PHWL, LLC*

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Attorney for Defendant J. Jeffrey Frederick

/s/ Lisa A. Heller

Employee of McNutt Law Firm

Exhibit A

DEVELOPMENT, OPERATION AND LICENSE AGREEMENT

THIS DEVELOPMENT, OPERATION AND LICENSE AGREEMENT (this "Agreement") shall be deemed made, entered into and effective as of this ___ day of March 2009 (the "Effective Date"), by and between Desert Palace, Inc. d/b/a Caesars Palace, a Nevada corporation ("Caesars"), having its principal place of business located at 3570 Las Vegas Boulevard South, Las Vegas, Nevada 89109 and Moti Partners, LLC a New York limited liability company ("MOTI"), having its principal place of business located at 200 Central Park South, New York, New York 10019.

RECITALS

A. Caesars Palace Realty Corp. a Nevada corporation and an Affiliate (as defined below) of Caesars, owns that certain real property located at 3570 Las Vegas Boulevard South, Las Vegas, Nevada (the "Property"), on which Caesars operates a resort hotel casino known as Caesars Palace (the "Hotel Casino"); and

B. MOTI has the non-exclusive right to use and exploit the Marks (as defined below) and also has certain qualifications, expertise and reputation in development and operation of first-class restaurants including, but not limited to, a restaurant known as "Serendipity" located in NY, NY; and

C. Caesars desires to design, develop, construct and operate a certain first-class restaurant (the "Restaurant") in those certain premises as more particularly shown on Exhibit "A" attached hereto (the "Restaurant Premises") that shall be known as "Serendipity"; and

D. Caesars desires to obtain a non-exclusive, royalty-free license to use the Marks from MOTI and to retain MOTI to perform those services and fulfill those obligations with respect to consultation concerning the design, development, construction and operation of the Restaurant, and MOTI desires to grant a non-exclusive, royalty-free license to use the Marks to Caesars and to be retained by Caesars to perform such services and fulfill such obligations, and the parties desire to enter into this Agreement to set forth their respective rights and obligations with respect thereto, all as more particularly set forth herein.

NOW THEREFORE, in consideration of the premises and the mutual covenants set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree that the foregoing recitals are true and correct and further agree as follows:

1. APPOINTMENT:

1.1 Appointment and Payment of Initial Capital Contribution: Caesars hereby appoints MOTI, and MOTI hereby accepts such appointment, subject to all of the terms and conditions more particularly set forth herein, to perform those services and fulfill those obligations with sound business practice, due diligence and care, all as more particularly set forth herein. MOTI shall make a non-refundable Capital Contribution ("MOTI's Initial Capital Contribution") toward "Initial Capital Expenditure" for the Restaurant as outlined hereinbelow. The Parties shall meet and confer with respect to preparation and approval of an Initial Capital Budget. The parties agree that "MOTI's Initial Capital Contribution" shall be fifty percent (50%) of the Initial Capital Expenditure necessary to design, construct and equip the Restaurant, which Initial Capital Expenditure is currently estimated to be Six Hundred Thousand (\$600,000.00) and No/100 Dollars. The parties acknowledge and agree that, with regard to remaining sum necessary to design, construct and cost to equip the Restaurant, Caesars shall be responsible for the remaining fifty percent (50%) of the "Initial Capital Expenditure" which amount shall be "Caesars' Initial Capital Contribution". Caesars shall consider and be the sole arbiter of the need for additional capital expenditure necessary to maintain and enhance the Restaurant ("Future Capital Expenditure") or that which is necessary to maintain the Restaurant as a high end facility ("Maintenance Capital Expenditure"). MOTI and Caesars shall be required to make additional capital contributions for Future Capital Expenditures and Maintenance Capital Expenditures (collectively, the "Future Capital Contribution") for Future Capital Expenditures and Maintenance Capital Expenditures in the same percentage as the percentage of that Party's Initial Capital Contribution. The definition of that for which the Parties shall be responsible for payment of their Initial Capital Contribution and Future Capital Contribution is attached hereto and incorporated herein by reference as Exhibit B. Payment by MOTI to Caesars of its Initial Capital Contribution shall be made to Caesars on or before April 6, 2009.

In no event shall MOTI otherwise be entitled to use, offset against amounts due under this Agreement or otherwise receive the benefit of any portion of its Initial Capital Expenditure. Each Party shall share in the same proportion as its Initial Capital Contribution to any cost overrun or savings from the Initial Capital Budget. MOTI's payment of its Initial Capital Contribution, cost overrun related to the Initial Capital Budget and Future Capital Contribution shall be made to Caesars within thirty (30) days of its receipt of an invoice for same, which invoice shall provide detail as to the nature and cost of each expenditure. Caesars payment to MOTI of any cost savings related to the Initial Capital Budget shall be paid to MOTI within thirty (30) days following the opening of the Restaurant.

1.2 Exclusivity: MOTI covenants and agrees that at all times during the Term (as defined below) neither MOTI, its parent nor any Affiliate of MOTI will (the term "Affiliate" shall be defined as provided hereinbelow) will operate or agree, permit or license, directly or indirectly, the concept of the Restaurant nor any Mark (as defined below) to be used within Clark County, Nevada, other than by Caesars, its parent or any of its Affiliates with respect to the Restaurant the "Exclusivity Provision"). For the purpose of clarity, the term "MOTI" in this paragraph is intended to apply to MOTI, its parent and any affiliate and each of those entity's officers, directors and any other individual having any ownership interest in MOTI, its parent or any of its Affiliates. To the extent this Agreement is terminated by Caesars prior to the end of the Term originally stated herein, and MOTI is (and Caesar is not) in default or breach of this Agreement at the time of such termination, the Exclusivity Provisions shall continue for a period of twenty-four (24) months following such termination. With respect to any proposed operation or agreement by MOTI to operate, permit or license, directly or indirectly the concept of the Restaurant within a fifty (50) mile radius of any parent or affiliate of Caesars, MOTI shall provide Caesars (or, at Caesars' option, its designated Affiliate) with an offer, in writing, to participate in such venture, either at the proposed site location or, at Caesars' option, by placement at the premises of its designated Affiliate. If Caesars (or its designated Affiliate) indicates within thirty (30) days its interest in considering such opportunity, MOTI and Caesars (or its designated Affiliate) will consult and discuss such opportunity for the succeeding one hundred twenty (120) days to determine if mutually agreeable terms of participation can be reached. If they do not agree, and MOTI nevertheless decides to proceed with such venture, MOTI will also offer Caesars (or its designated Affiliate) a right of last refusal of thirty (30) days duration to accept the material terms of the opportunity proposed to be entered into by the other venturer(s) before entering into the proposed venture with any other party. If Caesars (or its designated Affiliate) does not timely exercise such right, MOTI will be free to proceed without Caesars (or its designated Affiliate).

2. RESTAURANT DESIGN AND DEVELOPMENT:

2.1 General: The Restaurant shall be comprised of that square footage indicated on Exhibit "A" attached hereto.

2.2 Design: Subject to all of the terms and conditions more particularly set forth herein, Caesars shall work closely with MOTI and give consideration to all of MOTI's reasonable recommendations in the design, development, construction and outfitting of the Restaurant, including, without limitation, all furniture, fixtures, equipment, inventory and supplies (the "Development Services"); provided, however, that Caesars, after consulting with MOTI and considering all reasonable recommendations from MOTI, shall have final approval with respect to all aspects of same. Caesars shall be solely responsible for hiring, and retaining any and all design and development professionals engaged in the design, development, construction, and outfitting of the Restaurant. Caesars shall appoint an individual or individuals, who may be changed from time to time by Caesars, acting in its sole and absolute discretion, to act as Caesars² liaison with MOTI in the design, development, construction and outfitting of the Restaurant. Caesars shall provide MOTI with copies of all proposed budgets and afford MOTI the reasonable opportunity to review each such budget and to make reasonable recommendations on same based upon MOTI's experience prior to Caesars' adoption and implementation of any such budget. After giving consideration to all reasonable recommendations made by MOTI, Caesars shall establish, control, and amend from time to time as necessary, all in Caesars' sole and absolute discretion, the budgets costs and expenses for the design, development, construction, and outfitting of the Restaurant. From time to time hereafter, Caesars shall promptly advise MOTI of, and consult with MOTI regarding, any material changes in, modifications to and/or deviations from any budget, with the understanding that Caesars shall make all decisions related to same acting in its sole and absolute discretion. Development Services, and meetings with respect to same, shall take place primarily in Las Vegas, or at such other location or locations as may be mutually and reasonably agreed to by Caesars and MOTI from time to time. Any subsequent refurbishment, redesign or reconstruction of the Restaurant shall be undertaken by Caesars, acting in its sole discretion, but with a view toward maintaining the Restaurant in a first class condition.

2.3 Menu Development:

2.3.1 Menu Development: Prior to the commencement of the Term, MOTI shall develop the initial food and beverage menus of the Restaurant, and the recipes for same, and thereafter, MOTI shall revise the food and beverage menus of the Restaurant, and the recipes for same (the "Menu Development Services"), all of which recipes shall be owned by MOTI. Caesars shall have the reasonable opportunity to review such food and beverage menus prior to their implementation and make reasonable recommendations to same based upon the proposed costs and Caesars' experience with the Las Vegas, Nevada fine-dining industry. After consulting with and giving consideration to all reasonable advice and reasonable recommendations from MOTI, Caesars shall establish the pricing of such food and beverage menus, in its sole and absolute discretion. Menu Development Services, and meetings with respect to same, shall take place primarily in Las Vegas or such other location or locations as may be mutually and reasonably agreed to by Caesars and MOTI from time to time.

2.3.2 Menu Standards: The food and beverage menus of the Restaurant, and the recipes for same, shall feature familiar casual "comfort foods", signature desserts, sundaes, shakes and frozen hot chocolates with minimum menu categories that include appetizers, sandwiches, entrée salads, soups, hot dogs, burgers, omelets, pastas and a cocktail menu. A walk up window may feature "finger food" appetizers, hot dogs, burgers, salad wraps, sandwiches, shakes, frozen hot chocolates and signature "to go" cocktails.

2.3.3 Opening Date: The parties intend that the Restaurant shall open to the public on a date that shall be mutually agreed to, which is presently anticipated to be on or about April 1, 2009, except in the event of an act of Excusable Delay (as defined below). Should the Restaurant not open to the public on or before December 31, 2011 (except in the event of an act of Excusable Delay), either Party shall have the right to terminate this Agreement without further obligation to the other Party. Any reasonable delay in construction of the facility, whether by acts within Caesars' or its Affiliates' control or by acts of Excusable Delay shall not result in a termination of this Agreement; provided, however, notwithstanding the provisions of this Section 2.3.3 or Section 11.3 to the contrary, if, construction is stopped in its entirety for more than one hundred twenty (120) calendar days, either party, upon thirty (30) calendar days' notice to the other, may terminate this Agreement and all further obligations hereunder.

2.3.4 General Development and Management: Unless expressly provided herein to the contrary, Caesars shall be solely responsible for:

- (a) all costs, fees and expenses of Caesars or any third Person (as defined below) incurred or required to be incurred with respect to the design, development, construction, outfitting and operation of the Restaurant;
- (b) managing the operations, business, finances and Employees (as defined below) of the Restaurant on a day-to-day basis;
- (c) developing and enforcing employment and training procedures, marketing plans, pricing policies and quality standards of the Restaurant;
- (d) supervising the use of the food and beverage menus and recipes developed by MOTI pursuant to the terms of Section 2.3; and
- (e) providing copies of the Restaurant's unaudited financial statements to MOTI on a: i) monthly, within fifteen (15) days after the end of each calendar month; ii) quarterly, within forty-five (45) days after the end of each calendar quarter; and iii) annually, within one hundred twenty (120) days following the conclusion of each calendar year.

3. TERM:

3.1 Term: The initial term of this Agreement shall commence on the Effective Date and shall expire on that date that is five (5) years from the Opening Date, unless extended by Caesars or unless earlier terminated pursuant to the terms hereof (the "Initial Term"). Caesars shall have the right, but not the obligation, upon not less than one

hundred eighty (180) calendar days' written notice to MOTI, to extend the term of this Agreement for one (1) additional five (5) year period (together with the Initial Term, the "Term"), which shall be on all of the same terms and conditions as contained herein. Thereafter, there shall be no additional extensions of the term of this Agreement.

3.2 Termination:

3.2.1 Gross Revenue Threshold: If, after conclusion of the first year following the Opening Date Gross Revenue for any continuous twelve (12) month period after the Opening Date (the "Determination Period") is the aggregate less than Ten Million and 00/100 Dollars (\$10,000,000.00), compounded by four (4%) percent annually from the Opening Date, Caesars shall have the right, but not the obligation, upon not less than thirty (30) calendar days' notice given with the six (6) month period immediately following the Determination Period, to terminate this Agreement in accordance with the terms hereof. Should Caesars terminate the Agreement pursuant to this provision, Caesars shall pay to MOTI its then undepreciated Initial Capital Contribution.

3.2.2 Death, Disability or Non-Involvement of MOTI Principal: In the event at any time during the Term of following with respect to Rowen Seibel's (a) death, (b) material disability, including, without limitation, any physical or mental condition, which impairs the ability to render, in a timely manner, all of MOTI covenants, agreements and obligations hereunder for a period of three (3) consecutive months or six (6) months in any eighteen (18) month period, or (c) Rowan Seibel is no longer actively engaged as a restaurateur for any reason whatsoever and fails to fulfill (after notice and opportunity to cure) the obligations required of him in this Agreement, then, upon not less than ninety (90) calendar days' written notice to MOTI, or immediately in the case of death or disability, and without prejudice to any other rights or remedies of Caesars including at law or in equity, Caesars shall have the right to terminate this Agreement in accordance with its respective terms unless, during that period, MOTI presents to Caesars a proposed assignee that, during that period, : a) fulfills the requirements of the Compliance Committee of Caesars and its affiliates; and b) demonstrates sufficient financial means and operational experience necessary to fulfill MOTI's obligations hereunder, a decision that shall be within Caesars sole discretion, but acting reasonably .

3.2.3 Right to Terminate or Relocate: At any time during the Term, Caesars may immediately terminate this Agreement ("Early Termination", the effective date of which shall be referred to as the "Early Termination Date") or relocate the Restaurant ("Relocation", the effective date of which shall be referred to as the "Relocation Date") without cause, meaning for any reason or no reason at all. If Gross Revenue for the twelve (12) month period immediately preceding the Early Termination Date or Relocation Date is greater than Ten Million and 00/100 Dollars (\$10,000,000.00), compounded by four (4%) percent annually from the Opening Date, Caesars shall, within thirty (30) days following the Early Termination Date or Relocation Date, pay to MOTI the following amount: a) MOTI's undepreciated Initial Capital Contribution and undepreciated Future Capital Contribution; and b) the lesser of (i) the aggregate of the payments made to MOTI as described in paragraph 7 hereinbelow for the twelve (12) months immediately preceding the Early Termination Date or Relocation Date; or (ii) a calculation, the numerator of which shall be the aggregate of the payments made to MOTI as described in paragraph 7 hereinbelow for the twelve (12) months immediately preceding the Early Termination Date or Relocation Date and the denominator shall be the difference between the Term's natural expiration date and the Early Termination Date or Relocation Date.

3.3 Effect of Expiration or Termination: Upon the expiration or earlier termination of this Agreement:

(a) Caesars shall cease operations of the Restaurant; provided, however, in the event of an early termination of this Agreement, Caesars shall be entitled to operate the Restaurant and use the License (as defined below) for that reasonable period of time required to orderly and properly wind-up operations of the Restaurant not to exceed one hundred twenty (120) days;

(b) Caesars shall retain all right, title and interest in and to the Restaurant Premises;

(c) Caesars shall retain all right, title and interest in and to the plans and specifications and any other materials or work product produced in connection with or procured by Caesars in connection with the Restaurant design, and all furniture, fixtures, equipment, inventory supplies and intangible assets located within or associated with the Restaurant, with the exception of any intellectual property owned by MOTI or its Affiliates); and

(d) Caesars shall have the right, but not the obligation, immediately or at any time after such expiration or termination, to operate a restaurant in the Restaurant Premises; provided, however, such restaurant shall not employ the Restaurant's food and beverage menus developed by MOTI pursuant to Section 2.3 or any of the Marks (as such term is hereinafter defined).

4. RESTAURANT EMPLOYEES:

4.1 General Requirements:

4.1.1 Employees: Caesars shall be responsible for, and shall have final approval with respect to, hiring, training, managing, evaluating, promoting, disciplining and firing all kitchen and front-of-house management and staff of the Restaurant (collectively, the "Employees"). All Employees, including, without limitation, all Senior Management Employees (as defined below), shall be employees of Caesars and shall be expressly subject to (a) Caesars' human resources policies and procedures and hiring requirements in existence as of the Effective Date and as modified by Caesars from time to time during the Term, and (b) Caesars' compliance committee requirements, as more particularly set forth in Section 10.2 hereof.

4.1.2 Definition of Affiliate: As used herein, "Affiliate" means, with respect to a specified Person, any other Person who or which is directly or indirectly controlling, controlled by or under common control with the specified Person, or any member, stockholder, director, officer, manager, or comparable principal of, or Relative of the specified Person. For purposes of this definition, "control", "controlling", "controlled" mean the right to exercise, directly or indirectly, any percentage interest of the voting power of the stockholders, members or owners and, with respect to any individual, partnership, trust or other entity or association, the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of the controlled entity. The term "Relative" shall mean: mother, father, spouse brother, sister, children, son-in-law, daughter-in-law, mother-in-law, father-in-law, step-parents, step-children, grandmother, grandfather, grandchildren and any Relative or other person residing in the place of resident of Rowen Seibel, any of the interest holders of MOTI or any of the interest holders of GLP.

4.2 Union Agreements:

4.2.1 Agreements: MOTI acknowledges and agrees that all of Caesars' agreements, covenants and obligations and all of MOTI's rights and agreements contained herein are subject to the provisions of any and all collective bargaining agreements and related union agreements to which Caesars is or may become a party and that are or may be applicable to the Employees (collectively, the "Union Agreements"), including, without limitation, that certain Union Agreement by and between Caesars and the Local Joint Executive Board of Las Vegas (the "Executive Board") in effect as of the Effective Date. MOTI agrees that all of its agreements, covenants and obligations hereunder, shall be undertaken in such manner as to be in accordance with and to assist and cooperate with Caesars' obligation to fulfill its obligations contained in the Union Agreements and any supplements thereto provided, that Caesars now and hereafter, shall advise MOTI of the obligations contained in said Union Agreements and any supplement thereto that are applicable to Employees. Notwithstanding the foregoing, in no event shall MOTI be deemed a party to any such Agreement whether by reason of this Agreement, the performance of its obligations hereunder or otherwise.

4.2.2 Amendments: MOTI acknowledges and agrees that from time to time during the Term; Caesars may negotiate and enter into supplements to the Union Agreements with the Executive Board or its component unions. Each Union Agreement or supplement thereto may include those provisions agreed to by and between the Executive Board and Caesars, in its sole discretion, including, without limitation, provisions for (a) notifying then-existing employees of Caesars in the bargaining units represented by the Executive Board of employment opportunities in the Restaurant, (b) preferences in training opportunities for such then-existing employees, (c) preferences in hiring of such then-existing employees, if such then-existing employees are properly qualified, and (d) other provisions concerning matters addressed in this Section 4.3.

4.2.3 Conflicts: In the event any agreement, covenant or obligation of Caesars or the exercise of any

right or agreement of MOTI contained herein is, or at any time during the Term shall be, prohibited pursuant to the terms of any Union Agreement or supplement thereto, Caesars shall be relieved of such agreement, covenant or obligation, with no continuing or accruing liabilities of any kind, and such agreement, covenant or obligation shall be deemed to be separate and severable from the other portions of this Agreement, and the other portions shall be given full force and effect. Caesars and MOTI shall thereafter cooperate in good faith to modify this Agreement to provide the parties with continuing agreements, covenants and obligations that are consistent with the requirements and obligations of this Agreement (including, but not limited to, the economic provisions contained herein), such Union Agreement and supplements thereto, and applicable law.

4.3 **Employment Authorization:** Caesars shall be solely responsible for applying for, and shall be solely responsible for all costs and expenses arising therefrom (with the understanding that said costs shall be deemed to be an expense of the Restaurant), any work authorizations from the United States Citizenship and Immigration Services, a Bureau of the United States Department of Homeland Security ("**USCIS**"), that may be required in order for the Executive Chef or other Senior Management Employees to be employed by Caesars at the Restaurant; provided, however, each such Employee shall be required to cooperate with Caesars with respect to applying for such work authorization and shall be required to diligently provide to Caesars or directly to USCIS, as applicable, all information such Employee is required to provide in support of the application for such work authorization; provided further, however, MOTI expressly acknowledges that in the event that Caesars is unable to reasonably obtain such work authorization for any Employee, the offer of employment for such Employee shall be revoked and MOTI shall have an obligation, within a reasonable period thereafter, to advise Caesars as to whom MOTI recommends be hired for such position.

5. **LICENSE:**

5.1 **MOTI License:** MOTI represents and warrants to Caesars that MOTI possesses worldwide right and license (the "**License**") to license those certain marks and images to be used by the Restaurant, including, without limitation, the logos, trademark, trade names, service marks and registrations thereof, programs, techniques, processes, formulas, developmental or experimental work, work-in-process, methods, trade secrets or business affairs relating to MOTI including, without limitation, those as are identified on Exhibit D attached hereto (collectively, the "**Materials and Marks**"). MOTI hereby grants to Caesars a license, to use (and permit its Affiliates to use) and employ the Materials and Marks on and in connection with the operation, marketing and promotion of the Restaurant by Caesars and its Affiliates under the terms and conditions more fully set forth herein. MOTI further represents and warrants that it shall not revoke or otherwise terminate the License at any time during the Term unless, as of the date of such revocation or termination, MOTI or MOTI's lawful designee licenses the Marks to Caesars for the balance of the Term substantially and materially in accordance with the terms of the License. MOTI shall, at Caesars' reasonable request, provide information or documents possessed by MOTI and execute documents that are necessary or useful for Caesars to exercise its rights under this Agreement and the License.

5.2 **Ownership:** MOTI agrees and acknowledges Caesars shall own all copyright and other rights, title and interest in and to all media created by Caesars (and by MOTI pursuant to this Agreement) whether such media uses or contains any or all of the Materials and the Marks, including, without limitation, all photographic or video images, all promotional materials produced in accordance with the provisions of Article 6 hereof, and all marketing materials produced in accordance with the provisions of Article 8 hereof and, in addition to the rights granted by copyright, may use such media and the Materials and the Marks in promotional pieces listing, indicating or depicting people or entities that have or have had an appearance, relationship or other connection to Caesars. Notwithstanding the foregoing, Caesars shall only be entitled to use the Materials and the Marks as expressly permitted herein.

5.3 **Intellectual Property License:** Subject to the terms and conditions hereof, MOTI hereby grants to Caesars a non-exclusive, royalty-free (the "**Intellectual Property License**") to make use of the Materials and Marks identified in Exhibit D pursuant to the following terms and conditions:

5.3.1 **Scope of Use:** Caesars may use MOTI's Intellectual Property to the extent necessary to the furtherance of its rights and obligations under the terms and conditions of this Agreement, including but not limited to the following: Caesars may use the Materials and Marks contained in Exhibit D to effectuate the rights and responsibilities of the Parties as described herein. With respect to Materials and Marks not contained in Exhibit D, Caesars shall submit promotional materials and advertisements proposing use of said Materials and Marks for approval to Rowen Seibel by delivering such materials (by mail, email or facsimile)

to his office at MOTI or to such other person and/or location as MOTI may designate in the future. Use of such Materials and Marks shall be deemed approved unless within five (5) business days of submission, MOTI provides a written notice denying approval to Caesars by fax and email with a confirmation copy by overnight carrier as set forth in Paragraph 13.5 and/or such other person or location as Caesars may designate in the future. Notwithstanding the foregoing, MOTI agrees that it shall not unreasonably withhold or delay its approval of any Caesars' request.

5.3.2 Territory: Caesars' right to use the Materials and Marks is worldwide.

5.3.3 Usage: Caesars shall use the Materials and Marks only as contained in Exhibit D or in the manner and form(s) as set forth in written approval provided by MOTI.

5.3.4 Marking: Caesars shall place the trademark registration symbol, ®, next to the Materials and Marks, and the superscripted "TM" or "SM" symbols next to MOTI's common-law trademarks and service marks identified in Exhibit D. If it is not feasible to use the above referenced trademark symbols, Caesars shall use good-faith efforts, when reasonable and commercially feasible, to include a statement in an appropriate location and size substantially similar to: "The Mark _____ (include Mark description) is a trademark owned by _____ (identify Mark's owner)" and, where appropriate, to continue "and is registered in the U.S. Patent and Trademark Office. Use without permission is strictly prohibited." Caesars also agrees that, if any web page on its web site contains any of the Materials and Marks that do not contain any of the above-mentioned trademark symbols, it shall use this trademark statement on such web pages either by including this language on the web page itself or through use of hypertext links to this language.

5.3.5 Quality Control: Caesars agrees that it shall use the Materials and Marks in a manner consistent with the quality associated with its own Intellectual Property. Caesars shall use commercially reasonable efforts to bring to MOTI's attention any issues with respect to the quality of use of the Materials and Marks and shall cooperate with any reasonable suggestion by MOTI to resolve any such issue. The parties acknowledge that due to their close working relationship with respect to the subject matter of this Agreement, MOTI can monitor Caesars's performance of its obligations under this Paragraph.

5.3.6 Limitation on Usage: Caesars acknowledges and agrees that MOTI reserves for itself the right to object to any use of the MOTI Marks even if such use is within the scope of permissible use set forth in this Agreement. Upon written notice by MOTI to Caesars of any such objection, Caesars shall promptly discontinue such use in the future, provided that MOTI shall provide Caesars with a reasonably acceptable equivalent alternative and provided further that MOTI shall reimburse Caesars for any reasonable expense it incurs in discarding existing inventory of approved marketing materials. Such expenses shall be deemed expenses of MOTI and shall not be deemed expenses of the Restaurant.

5.3.7 Registration: Caesars shall not register any mark in any jurisdiction, either during or after the term of this Agreement, which is identical or confusingly similar to any of the Materials or Marks.

5.3.8 Domain Names: Caesars shall not register any domain name, either during or after the term of this Agreement, consisting of or including any of the Materials or Marks or any variation thereof.

5.3.9 Estoppel: Upon conclusion of any "run out" provision described in this Agreement following termination of this Agreement, Caesars shall immediately stop all advertising and promotional use of the Materials and Mark. Caesars agrees that at no time either during or after the term of this Agreement will it directly or indirectly challenge or assist others to challenge the validity or strength of the Materials or Marks, provided that nothing herein shall preclude Caesars from complying with any lawful subpoena or other legal requirement.

6. SERVICES FEE:

6.1 Services Fee: In consideration of MOTI provision of the Services described herein, monthly Net Revenues shall be calculated and allocated between the parties in the following amounts and in the following order:

- (a) Caesars shall be entitled to retain a sum sufficient to make payment with respect to all Operating Expenses (consistent with Caesars' standards applicable to other similar operations, but which expenses shall

always include all costs, overhead including, but not limited to, compensation and benefits paid to employees) of the restaurant, which shall include those items listed in Exhibit B, which is attached hereto and incorporated herein by reference.

(b) If, following deduction of Operating Expenses from Net Revenue, a sum remains that equals or exceeds Thirteen (13%) of Net Revenue in the calendar month at issue:

1. Caesars shall be entitled to retain a sum as Rent equal to the of Eight (8%) Percent of Net Revenue for that calendar month; and

2. Caesars shall pay to MOTI (i) the sum of Five (5%) Percent of Net Revenue for Net Revenue received in a calendar month up to the sum of Eight Hundred Thousand Three Hundred Thirty-Three Thousand Dollars and 33/100 (\$833,333.33) (ii) the sum of Six (6%) Percent of Net Revenue for Net Revenue received in a calendar month equal to or exceeding the sum of Eight Hundred Thousand Three Hundred Thirty-Three Thousand Dollars and 33/100 (\$833,333.33) up to the sum of One Million Two Hundred Fifty Thousand Dollars and 00/100; and (iii) the sum of Seven (7%) Percent of Net Revenue for Net Revenue received in a calendar month exceeding the sum of One Million Two Hundred Fifty Thousand Dollars and 00/100 (\$1,250,000.00) as and for a License Fee (the "License Fee") in exchange for the performance of MOTI's obligations described herein.

3. Following retention by Caesars of the sum as referred to in paragraph b(1) hereinabove and payment to MOTI as referred to in paragraph b(2) hereinabove, Caesars shall be entitled to retain Fifty (50%) Percent of remaining Net Revenue and shall pay to MOTI Fifty (50%) of remaining Net Revenue for that calendar month.

(c) If Net Revenue in any calendar month during the Term is less than Thirteen, (13%) Percent greater than Operating Expenses, in place of retention by Caesars and payment to MOTI of the amounts referred to hereinabove in paragraph 6.1(b), Caesars shall be entitled to retain as Rent Sixty-One and One Half (61.5%) Percent of Net Revenue and Caesars shall pay to MOTI Thirty-Eight and One Half (38.5%) Percent of Net Revenue above Operating Expenses received in that calendar month. In any month in which Net Revenue does not exceed Operating Expenses, there shall be no allocation of Net Revenue to the Parties for that month (except for Caesars retention of all monies which shall be offset against Operating Expenses) and any loss shall be carried forward and netted against Net Revenue until Caesars receives monies sufficient to cover all Operating Expenses incurred.

Although calculated and allocated on a monthly basis, monies due and payable to MOTI as described in this Section 6.1 shall be payable on a calendar quarter basis, or any pro rata portion thereof during the Term, no later than thirty (30) days after the end of the calendar quarter to which they relate by check, money order or wire transfer in lawful funds of the United States of America to such address or account located within the United States of America as directed by MOTI from time to time. The Parties agree that should revenue in any calendar month not exceed Operating Expenses for that calendar month, no payment shall be allocated to MOTI for that month and Caesars shall be entitled to retain (and continue to retain in each succeeding month) all revenues until it has recouped all outstanding Operating Expenses incurred. The Parties agree that should revenues in any reporting period not be sufficient to make any payment as described hereinabove in subparts 6.1 (b) and (c), there shall be no obligation to make any payment for same in any future reporting period.

Examples:

In the first example, the Net Revenues for the year are \$9,000,000 and operating margin is 21%

	Net Revenues	\$	9,000,000
7.1			
(a)	Less: Operating Expenses	\$	7,110,000
7.1			
(b)	Less: Rent Payment to HET	\$	720,000
7.1(c)			
)	Less: Advisory Fee to MOTI	\$	450,000
	Remaining Cash	\$	720,000
7.1			
(d)	Less: Distribution to HET	\$	360,000
	Less: Distribution to MOTI	\$	360,000
	Remaining Cash	\$	-

In the second example, the Net Revenues for the year are \$9,000,000 and operating margin is 11%. Since the operating margin is less than 13%, Caesars receives 61.5% of remaining, while MOTI receives 38.5%.

	Net Revenues	\$	9,000,000
7.1			
(a)	Less: Operating Expenses	\$	8,010,000
7.1			
(b)	Less: Rent Payment to HET	\$	608,850
7.1(c)			
)	Less: Advisory Fee to MOTI	\$	381,150
	Remaining Cash	\$	-
7.1			
(d)	Less: Distribution to HET	\$	-
	Less: Distribution to MOTI	\$	-
	Remaining Cash	\$	-

In the third example, the Net Revenues for the year are \$9,000,000 and operating margin is -2%. Since the operating margin does not sufficiently cover the expenses, no allocations of net revenue will be paid to either party and the loss shall be carried forward and netted against net revenue until CLV receives monies sufficient to cover all operating costs.

	Net Revenues	\$	9,000,000
7.1			
(a)	Less: Operating Expenses	\$	9,180,000
7.1			
(b)	Less: Rent Payment to HET	\$	-
7.1(c)			
)	Less: Advisory Fee to MOTI	\$	-
	Remaining Cash	\$	(180,000)
7.1			
(d)	Less: Distribution to HET	\$	-
	Less: Distribution to MOTI	\$	-
	Remaining Cash	\$	(180,000)

6.2 Determination of Gross Revenues, Net Revenues and Operating Expenses: As used herein, "**Gross Revenues**" means the aggregate gross revenues, whether paid by cash or credit, of all goods, merchandise and services sold in or from the Restaurant, including, without limitation, food, retail merchandise, private party minimums, floral arrangements, set-up fees and similar expenses, and all food sold or served outside the Restaurant that is prepared by or represented as Restaurant cuisine. Caesars shall be solely responsible for maintaining and shall maintain, all books and records necessary to calculate Gross Revenues, Net Revenues and Operating Expenses and for the calculation thereof and, within thirty (30) days after the end of each calendar quarter shall deliver notice to MOTI reasonably detailing the calculation of Gross Revenues, Net Revenues and Operating Expenses for such quarter. Caesars' calculations shall be conclusive and binding unless, (i) within thirty (30) calendar days' of Caesars delivery of such notice, MOTI notifies Caesars in writing of any claimed manifest calculation error therein; or (ii) such calculations are determined to be inaccurate as the result of any audit pursuant to Section 6.3. Upon receipt of any such notification, Caesars shall review the claimed manifest calculation error and, within thirty (30) calendar days of such notification, advise MOTI as to the corrected calculation, if any. Absent such notification and such manifest calculation error, Caesars' calculations shall be binding on the parties. The items contained in subparagraphs (a)-(d) hereinbelow shall be deducted from the calculation of Gross Revenues and revenue remaining following these deductions shall constitute "Net Revenues" as such term is used further herein:

- (a) taxes of any nature added to checks or invoices pursuant to applicable laws;
- (b) gratuities and service fees received from customers for services and actually paid to Employees;
- (c) money and credits received by the Restaurant in settlement of claims for losses or damages; and
- (d) rebates, discounts or credits (which shall not include Restaurant "comps" issued to patrons) received by the Restaurant and consistent with Caesar's accounting system, except for rebates, discounts or credits related to items that are acquired for use solely in the Restaurant and not in any other outlet at Caesars Palace. This exception shall not apply to the purchase of any alcoholic beverages.

6.3 Audit: MOTI shall be entitled at any time upon ten (10) calendar days' notice to Caesars, but not more than one (1) time per calendar year, to cause an audit to be made, during normal business hours, by any Person designated by MOTI and approved by Caesars (who shall not unreasonably withhold, delay or condition said approval), of all books, records, accounts and receipts required to be kept for the calculation of Gross Revenues, Net Revenues and Operating Expenses which shall not include tax returns of Caesars filed on a consolidated basis, which audit shall be conducted without material disruption or disturbance of Caesars Operations. If such audit discloses that Gross Revenues or Net Revenues were understated or Operating Expenses were overstated for any relevant period, Caesars shall be entitled to review such audit materials and to conduct its own audit related to such period. If Caesars does not dispute the result of MOTI audit within ninety (90) days after conclusion and presentation by MOTI to Caesars of MOTI's findings, Caesars shall (in the next monthly allocation) allocate to MOTI such additional monies necessary to compensate MOTI consistent with the terms of payment described in Section 6.1 hereinabove. If such audit discloses that Gross Revenues or Net Revenues were understated or Operating Expenses were overstated for any monthly period by an amount equal to or greater than five percent (5%), Caesars shall pay MOTI actual costs of such audit, including, without limitation, all accountants' fees. MOTI shall hold all information disclosed to MOTI pursuant to this Section 6.3 in confidence, and not disclose same to any third Person other than (a) to any Person with the prior written consent of Caesars, (b) to MOTI directors, officers, employees, agents or advisors, including, without limitation, attorneys, and, as reasonably required, accountants, consultants and financial advisors, all of whom MOTI shall inform of the confidential nature of such information, (c) in furtherance of any legal process to which MOTI is a party, or (d) as required to be disclosed by MOTI in compliance with any Applicable Laws.

7. OPERATIONS:

7.1 Marketing: As reasonably required by Caesars from time to time during the Term, but not less than once each quarter, Rowen Seibel shall consult with Caesars, and provide Caesars with advice regarding the marketing of the Restaurant; provided, however, Caesars, after considering all reasonable recommendations received from MOTI, shall have final approval with respect to all aspects of same. Such marketing consultations (the "**Marketing Consulting**")

Services”), and meetings with respect to same, shall take place primarily in Las Vegas or such other location or locations as may be mutually and reasonably agreed to by Caesars and MOTI from time to time. Caesars shall market the Restaurant through means and in media which shall include, in room TV, the Caesars marquee, Dura-trans and the webpage for Caesars located within the website of Caesars’ affiliate.

7.2 Accommodations: Each month during the first three (3) months of the Term and, thereafter, for each quarterly visit, subject to availability, Caesars shall provide for Rowen Seibel’s use two (2) Deluxe rooms (room and tax only in Palace or Augustus Tower) at the Hotel Casino; provided, however, Rowen Seibel shall be responsible for all incidental room charges and other expenses incurred during the occupancy of such rooms. All such Travel Expenses as described above shall be considered an operating expense of the Restaurant. In addition to the foregoing, during the Term and subject to availability, Rowen Seibel shall be entitled to receive (for his use only) use of one (1) Deluxe Room (in Palace or Augustus Tower) at a discount of twenty (20%) percent off the then prevailing “casino” rate.

8. REPRESENTATIONS AND WARRANTIES:

8.1 Caesars’ Representations and Warranties: Caesars hereby represents and warrants to MOTI that:

(a) Caesars has the valid corporate power to execute and deliver, and perform its obligations under, this Agreement and such execution, delivery and performance has been authorized by all necessary corporate action on the part of Caesars;

(b) no consent or approval or authorization of any applicable governmental authority or natural person, form of business or social organization, other non-governmental legal entity, including, without limitation, a corporation, partnership, association, trust, unincorporated organization, estate or limited liability company (as applicable, a “Person”) is required in connection with Caesars’ execution and delivery, and performance of its obligations under this Agreement and, additionally, as of the date of the signing of this Agreement, MOTI has fulfilled its obligations with respect to the compliance policy of Caesars’ affiliate and no further approval of this Agreement is required by the Compliance Committee of Caesars’ affiliate;

(c) there are no known actions, suits or proceedings pending or, to the best knowledge of Caesars, threatened against Caesars in any court or administrative agency that would prevent Caesars from completing the transactions provided for herein;

(d) this Agreement constitutes the legal, valid and binding obligation of Caesars, enforceable in accordance with its terms;

(e) as of the Effective Date, no representation or warranty made herein by Caesars contains any untrue statement of material fact, or omits to state a material fact necessary to make such statements not misleading; and

(f) at all times during the Term, the Restaurant shall be a first-class gourmet restaurant.

8.2 MOTI Representations and Warranties: MOTI hereby represents and warrants to Caesars that:

(a) MOTI has the legal capacity to execute and deliver, and perform its obligations under, this Agreement;

(b) no consent or approval or authorization of any applicable governmental authority or Person is required in connection with MOTI’s execution and delivery, and performance of its obligations under, this Agreement;

(c) there are no known actions, suits or proceedings pending or, to the best knowledge of MOTI, threatened against MOTI in any court or before any administrative agency that would prevent MOTI from completing the transactions provided for herein;

(d) this Agreement constitutes the legal, valid and binding obligation of MOTI, enforceable in accordance with its terms; and

(e) as of the Effective Date, no representation or warranty made herein by MOTI contains any untrue statement of a material fact, or omits to state a material fact necessary to make such statements not misleading.

9. **STANDARDS; PRIVILEGED LICENSE:**

9.1 **Standards:** MOTI acknowledges that the Hotel Casino is an exclusive first-class resort hotel casino and that the Restaurant shall be an exclusive first-class restaurant and that the maintenance of the reputation of Caesars, the Marks, the Hotel Casino and the Restaurant reputation and the goodwill of the guests and invitees of Caesars, the Hotel Casino and the Restaurant guests and invitees is absolutely essential to Caesars, and that any impairment thereof whatsoever will cause great damage to Caesars. MOTI therefore covenants and agrees that it shall conduct all of its obligations hereunder in accordance with the highest standards of honesty, integrity, quality and courtesy so as to maintain and enhance the reputation and goodwill of Caesars, the Marks, the Hotel Casino, and the Restaurant and at all times in keeping with and not inconsistent with or detrimental to the operation of an exclusive, first-class resort hotel casino and an exclusive, first-class restaurant. MOTI shall use commercially reasonable efforts to continuously monitor the performance of each of its respective agents, employees, servants, contractors, and licensees at the Restaurant to ensure such standards are consistently maintained. MOTI failure to comply or failure to cause any of their respective agents, employees, servants, contractors, or licensees to comply with the terms of this Section 10.1 (after receiving a notice of such failure and being afforded a reasonable opportunity to cure to Caesars reasonable satisfaction) may be deemed, in Caesars' sole and absolute discretion, as a default hereunder.

9.2 **Privileged License:** MOTI acknowledges that Caesars and Caesars' Affiliates are businesses that are or may be subject to and exist because of privileged licenses issued by federal, state and local governmental, regulatory and administrative authorities, agencies, boards and officials responsible for or involved in the regulation of gaming or gaming activities and the sale, distribution and possession of alcoholic beverages (the "Gaming Authorities"). The Gaming Authorities require Caesars, and Caesars deems it advisable, to have a compliance committee (the "Compliance Committee") that does its own background checks on, and issues approvals of, Persons involved with Caesars and Caesars' business operations. Prior to the execution of this Agreement and, in any event, prior to the payment of any monies by Caesars to MOTI hereunder or by Caesars to Licensor under the License, and thereafter on each anniversary of the Opening Date during the Term, (a) MOTI shall provide to Caesars written disclosure regarding, MOTI and all of their respective key employees, agents, representatives, management personnel, lenders, or any financial participants (collectively, "Associated Parties"), and (b) the Compliance Committee shall have issued approvals of MOTI and the Associated Parties. Additionally, during the Term, on five (5) calendar days written request by Caesars to MOTI, MOTI shall disclose to Caesars all Associated Parties; provided, however, Caesars shall make not more than two (2) such written requests to MOTI in any twelve (12) month period; provided further, however, if Caesars has made two (2) such written requests to MOTI in any twelve (12) month period, and the Gaming Authorities require Caesars to make any additional written request(s), MOTI shall comply with such additional written request(s). To the extent that any prior disclosure becomes inaccurate, MOTI shall, within five (5) calendar days from that event, update the prior disclosure without Caesars making any further request. MOTI and its respective Associated Parties shall provide all requested information and apply for and obtain all necessary approvals required or requested of MOTI by Caesars or the Gaming Authorities. If MOTI fails to satisfy or fails to cause the Associated Parties to satisfy such requirement, if Caesars or any of Caesars' Affiliates are directed to cease business with MOTI or any Associated Party by the Gaming Authorities, or if Caesars shall determine, in Caesars' sole and exclusive judgment, that MOTI or any Associated Party is or may engage in any activity or relationship that could or does jeopardize any of the privileged licenses held by Caesars or any Caesars' Affiliate, then (a) MOTI shall terminate any relationship with the Associated Party who is the source of such issue, (b) MOTI shall cease the activity or relationship creating the issue to Caesars' satisfaction, in Caesars' sole judgment, or (c) if such activity or relationship is not subject to cure as set forth in the foregoing clauses (a) and (b), as determined by Caesars in its sole discretion, Caesars shall, without prejudice to any other rights or remedies of Caesars including at law or in equity, terminate this Agreement and its relationship with MOTI. In the event MOTI does not comply with any of the foregoing, such noncompliance may be deemed, in Caesars' sole discretion, as a default hereunder. MOTI further acknowledges that Caesars shall have the absolute right, without any obligation to comply with Article 11 hereof, to terminate this Agreement in the event any Gaming Authority require Caesars to do so.

10. **CONDEMNATION; CASUALTY; FORCE MAJEURE:**

10.1 **Condemnation:** In the event that during the Term the whole of the Restaurant shall be taken under power of eminent domain by any Governmental Authority or conveyed by Caesars to any Governmental Authority in lieu of such taking, then this Agreement shall terminate as of the date of such taking. In the event that during the Term a substantial portion of the Restaurant shall be taken under power of eminent domain by any Governmental Authority or conveyed by Caesars to any Governmental Authority in lieu of such taking, Caesars may, in the exercise of its sole discretion, terminate this Agreement upon written notice given not more than thirty (30) calendar days after the date of such taking. All compensation awarded by any such Governmental Authority shall be the sole property of Caesars and MOTI shall have no right, title or interest in and to same.

10.2 **Casualty:**

10.2.1 **Hotel Casino:** In the event that during the Term there is damage or destruction to the Hotel Casino by any casualty whatsoever and Caesars determines to close the Hotel for a period exceeding one hundred eighty (180) calendar days on account thereof, Caesars shall have the right, but not the obligation, to terminate this Agreement upon written notice delivered within one hundred twenty (120) calendar days after the occurrence of such damage or destruction.

10.2.2 **Restaurant:** In the event that during the Term there is damage or destruction to the Restaurant by any casualty whatsoever, Caesars shall have the right, but not the obligation, to terminate this Agreement upon written notice delivered within one hundred twenty (120) calendar days after the occurrence of such damage or destruction, only if (a) the casualty is a risk normally covered by fire and extended coverage insurance, with a special form endorsement, and the cost of repair and reconstruction will exceed fifty percent (50%) of the replacement cost of the Restaurant, or (b) the casualty is a risk not normally covered by fire and extended coverage insurance, with a special form endorsement, and the cost of repair and reconstruction will exceed ten percent (10%) of the replacement cost of the Restaurant. In the event this Agreement is not so terminated, Caesars shall use commercially reasonable efforts to promptly repair, reconstruct and restore the Restaurant in accordance with the provisions of Section 2.2. hereof.

10.2.3 **Excusable Delay:** In the event that during the Term either party shall be delayed in or prevented from the performance of any of such party's respective agreements, covenants or obligations hereunder by reason of strikes, lockouts, unavailability of materials, failure of power, fire, earthquake or other acts of God, restrictive applicable laws, riots, insurrections, the act, failure to act or default of the other party, war, terrorist acts, or other reasons wholly beyond its control and not reasonably foreseeable (each, an "Excusable Delay"), then the performance of such act shall be excused for the period of the delay and the period for the performance of such act shall be extended for a period equivalent to the period of such delay. Notwithstanding the foregoing, lack of funds shall not be deemed an Excusable Delay. Any claim for an extension of time due to an Excusable Delay must be made in writing and received by the other party not more than fifteen (15) calendar days after the commencement of such delay, otherwise, such party's rights under this Section 10.2.3 shall be deemed waived.

10.3 **No Extension of Term:** Nothing in this Article 10 shall extend the Term and no other payments shall accrue during any period during which the Restaurant is closed by reason of such condemnation, casualty, or Excusable Delay. Any termination by Caesars under Sections 9 or 10 shall terminate the obligations of each Party to this Agreement, except for those obligations that, by definition, are intended to survive termination.

11. **ARBITRATION:**

11.1 **Dispute Resolution:** Except for a breach by MOTI of Section 1.2, Section 5 or Section 9 (for which dispute Caesars may seek affirmative relief through any means and the filing of any action in any forum it deems appropriate), in the event of any other dispute, controversy or claim arising out of or relating to this Agreement between the parties to this Agreement ("Dispute"), either party shall serve written notice (a "Dispute Notice") upon the other party setting forth the nature of the Dispute and the relief sought, and the parties shall attempt to resolve the Dispute by negotiation. If the Dispute has not been resolved within thirty (30) days of receipt of a Dispute Notice, either party may serve on the other party a request to resolve the Dispute by arbitration. All Disputes not resolved by the foregoing negotiation shall be finally settled by binding arbitration. Such arbitration shall be held in Las Vegas,

Nevada in accordance with the Commercial Rules of Arbitration of the American Arbitration Association ("AAA"), in effect on the date of the Dispute Notice (the "Rules") by one or more arbitrators appointed in accordance with Section 11.2 hereof.

11.2 Arbitrator(s): If the claim in the Dispute Notice does not exceed Five Hundred Thousand and 00/100 Dollars (\$500,000.00), there shall be a single arbitrator nominated by mutual agreement of the parties and appointed according to the Rules. If the claim in the Dispute Notice exceeds Five Hundred Thousand and 00/100 Dollars (\$500,000.00), the arbitration panel shall consist of three (3) members unless both parties agree to use a single arbitrator. One of the arbitrators shall be nominated by Caesars, one of the arbitrators shall be nominated by MOTI and the third, who shall serve as chairman, shall be nominated by the two (2) party-arbitrators within thirty (30) days of the confirmation of the nomination of the second arbitrator. If either party fails to timely nominate an arbitrator in accordance with the Rules, or if the two (2) arbitrators nominated by the parties fail to timely agree upon a third arbitrator, then such arbitrator will be selected by the AAA Court of Arbitration in accordance with the Rules. The arbitral award shall be final and binding on the parties and may be entered and enforced in any court having jurisdiction over any of the parties or any of their assets.

12. MISCELLANEOUS:

12.1 No Partnership or Joint Venture: Nothing expressed or implied by the terms of this Agreement shall make or constitute either party hereto the agent, partner or joint venturer of and with any other party. Accordingly, the parties acknowledge and agree that all payments made to MOTI under this Agreement shall be for services rendered as an independent contractor and, unless otherwise required by law, Caesars shall report as such on IRS Form 1099, and both parties shall report this for financial and tax purposes in a manner consistent with the foregoing.

12.2 Successors, Assigns and Delagees; Sale: Caesars is relying upon the skill and expertise of MOTI and, specifically, the skills of Rowen Seibel (the "Principal") in entering into this Agreement and accordingly, the obligations and duties of MOTI specifically designated hereunder to be performed by the Principal are personal to each such Principal and are not assignable or, unless expressly contemplated hereby, delegable by MOTI to any other Person. Without limiting the foregoing or the provisions of Section 12.4, this Agreement shall inure to the benefit of and be binding upon the parties and, if written consent to assignment or delegation is given, their respective successors, assigns and delagees. Additionally, MOTI may not assign this Agreement or any obligation contained herein without written consent of Caesars, which consent may be withheld in Caesars' sole and absolute discretion.

12.3 Waiver of Rights: Failure to insist on compliance with any of the agreements, obligations and covenants hereof shall not be deemed a waiver of such agreements, obligations and covenants, nor shall any waiver or relinquishment of any right or power hereunder at any one or more time or times be deemed a waiver or relinquishment of such rights or powers at any other time or times. The exercise of any right or remedy shall not impair Caesars' or MOTI right to any other remedy.

12.4 At least sixty (60) days prior to any contemplated sale of the Hotel Casino, Caesars (or the then owner of the Hotel Casino) shall give MOTI written notice of such contemplated sale, which notice shall include the name and identity of the proposed purchaser. In the event such sale is thereafter consummated, Caesars (or the then owner of the Hotel Casino) shall be and hereby is relieved of all liability under any and all of its agreements, obligations and covenants contained in or derived from this Agreement arising out of any act, occurrence or omission relating to the Restaurant Premises or Caesars Palace occurring after the consummation of such sale or exchange. Provided that such purchaser of the Hotel Casino represents and warrants to operate the Restaurant substantially and materially in accordance with those standards set forth in this Agreement, MOTI shall continue to be obligated to such purchaser pursuant to the terms and conditions of this Agreement and MOTI hereby agrees to attorn to such purchaser and to continue to fulfill its obligations under this Agreement (including, but not limited to, providing for the services of the Principals as further described herein), in full force and effect, without the requirement of notice to or consent by MOTI with respect to such sale and attornment.

12.5 Notices: Any notice or other communication required or permitted to be given by a party hereunder shall be in writing, and shall be deemed to have been given by such party to the other party or parties (a) on the date of personal delivery, (b) on the next business day following any facsimile transmission to a party at its facsimile number set forth below; provided, however, such delivery is concurrent with delivery pursuant to the provisions of clause (a)

of this Section 12.5, (c) three (3) calendar days after being given to an international delivery company, or (d) ten (10) calendar days after being placed in the mail, as applicable, registered or certified, postage prepaid addressed to the following addresses (each of the parties shall be entitled to specify a different address by giving notice as aforesaid):

If to Caesars: Desert Palace, Inc.
3570 Las Vegas Boulevard South
Las Vegas, NV 89109
Facsimile: (702) 699-5110
Attention: President

With a copy, which shall not constitute notice, to:
Harrah's Legal Department
One Caesars Palace Drive
Las Vegas, NV 89109
Facsimile: (702) 407-6000
Attention: General Counsel

If to MOTI: MOTI Partners
200 Central Park South
New York, New York
New York, NY 10019
Facsimile: (212) _____
Attention: Rowen Seibel

With a copy, which shall not constitute notice, to:
Robert A. Seibel
Seibel & Rosen
560 3rd Avenue, 28th Floor
NY, NY 10016
Attention: Robert Seibel
(212)983-9200 Phone
(917)885-2610 Mobile
(212)983-9201 Facsimile
bobseibel@yahoo.com

12.6 Entire Agreement: This Agreement constitutes the entire agreement between the parties hereto pertaining to the subject matter hereof and supersedes all prior agreements, understandings, negotiations, and discussions, whether oral or written.

12.7 Severability: If any part of this Agreement is determined to be void, invalid or unenforceable, such void, invalid, or unenforceable portion shall be deemed to be separate and severable from the other portions of this Agreement, and the other portions shall be given full force and effect, as though the void, invalid or unenforceable portions or provisions were never a part of this Agreement.

12.8 Amendment and Modification: No supplement, modification, waiver or termination of this Agreement shall be binding unless executed in writing by the party to be bound. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provisions (whether or not similar), nor shall such waiver constitute a continuing waiver unless otherwise expressly provided.

12.9 Headings: Article or Section headings are not to be considered part of this Agreement and are included solely for convenience and reference and shall not be held to define, construe, govern or limit the meaning of any term or provision of this Agreement. References in this Agreement to an Article or Section shall be reference to an Article or Section of this Agreement unless otherwise stated or the context otherwise requires.

12.10 Governing Law; Submission to Jurisdiction: The laws of the State of Nevada applicable to agreements made in that State shall govern the validity, construction, performance and effect of this Agreement. Subject to the provisions of Section 11.1 MOTI and Caesars each agree to submit to the exclusive jurisdiction of any state or federal court within the Clark County Nevada (the "Nevada Courts") for any court action or proceeding to compel or in support of arbitration or for provisional remedies in aid of arbitration, including but not limited to any action to enforce the provisions of Article 11 (each an "Arbitration Support Action"). Each of the parties hereto irrevocably and unconditionally waives any objection to the laying of venue of any action, suit or proceeding arising out of this Agreement including, but not limited to, an Arbitration Support Action and hereby further irrevocably and unconditionally waives and agrees not to plead or claim in any such court that any such action, suit or proceeding brought in any such court has been brought in an inconvenient forum.

12.11 Interpretation: This Agreement is to be deemed to have been prepared jointly by the parties hereto, and if any inconsistency or ambiguity exists herein, it shall not be interpreted against either party but according to the application of rules of the interpretation of contracts. Each party has had the availability of legal counsel with respect to its execution of this Agreement.

12.12 Third Persons: Nothing in this Agreement, expressed or implied, is intended to confer upon any Person

other than the parties hereto any rights or remedies under or by reason of this Agreement.

12.13 Attorney Fees: The prevailing Party in any dispute that arises out of or relates to the making or enforcement of the terms of this Agreement shall be entitled to receive an award of its expenses incurred in pursuit or defense of said claim, including, without limitation, attorneys' fees and costs, incurred in such action.

12.14 Counterparts: This Agreement may be executed in counterparts, each one of which so executed shall be deemed an original, and both of which shall together constitute one and the same agreement.

12.15 Indemnification: Each Party covenants and agrees, jointly and severally, to defend, indemnify and save and hold harmless the other Party and its Affiliates and its Affiliates' respective stockholders, directors, officers, agents and employees (collectively, the "Related Parties") from and against all claims, losses, expenses, obligations, liabilities, liens, demands, charges, litigation and judgments, including, without limitation, court costs and reasonable attorneys' fees, arising directly or indirectly from any claim by any third Person (each a "Claim") arising out of a Party's performance of its obligations under or in connection with this Agreement. The Party asserting a Claim (the "Indemnified Party") shall notify the other Party (the "Indemnifying Party") of each Claim and the Indemnifying Party shall, at its sole cost and expense, defend such Claim, or cause the same to be defended by counsel designated by the Indemnified Party.

12.16 Withholding and Tax Indemnification Required Withholding: MOTI represents that no amounts due to be paid to MOTI hereunder are subject to withholding. If Caesars is required to deduct and withhold from any payments or other consideration payable or otherwise deliverable pursuant to this Agreement to MOTI any amounts under the Internal Revenue Code of 1986, as amended (the "Code"), or any provision of United States federal, state, local or foreign law, statute, regulation, treaty, administrative ruling, pronouncement or other authority or judicial opinion, Caesars agrees that, prior to said deduction and withholding, it shall provide MOTI with notice of same. To the extent such amounts are so deducted or withheld, such amounts shall be treated for all purposes under this Agreement as having been paid to the person to whom such amounts would otherwise have been paid. If requested by Caesars, MOTI shall promptly deliver to Caesars all the appropriate Internal Revenue Service forms necessary for Caesars, in its sole and absolute discretion deems necessary to make a determination as to its responsibility to make any such U.S. federal withholding with respect to any payment payable pursuant to this Agreement.

12.17 Indemnification: Notwithstanding anything to the contrary in this MOTI shall be responsible for and shall indemnify and hold harmless Caesars and its Affiliates (collectively, the "Indemnified Parties") against (i) all Taxes (including, without limitation, any interest and penalties imposed thereon) payable by or assessed against such Indemnified Parties with respect to all amounts payable by Caesars to MOTI pursuant to this Agreement and (ii) any and all claims, losses, damages, liabilities, costs and expenses (including, without limitation, reasonable attorneys' fees and expenses) suffered or paid by the Indemnified Parties as a result of or in connection with such Taxes Caesars shall have the right to reduce any payment payable by Caesars to MOTI pursuant to this Agreement in order to satisfy any indemnity claim pursuant to this Section 12.16(b).

12.18 Definition: For purposes of this Section, the term "Tax" or "Taxes" means all taxes, assessments, charges, duties, fees, levies or other governmental charges, including, without limitation, all federal, state, local and foreign income, franchise, profits, capital gains, capital stock, transfer, sales, use, value added, occupation, property, excise, severance, windfall profits, stamps, license, payroll, social security, withholding and other taxes, or other governmental assessments, duties, fees, levies or charges of any kind whatsoever, all estimated taxes, deficiency assessments, additions to tax, penalties and interest.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the Effective Date.


"CAESARS"

Desert Palace, Inc., a Nevada corporation

By: 
Gary Selesner, Authorized Signatory

"MOTI"

MOTI Partners, a New York limited liability company

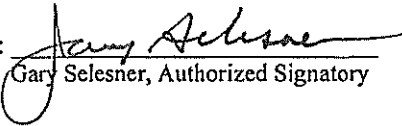
By: 

Its: Managing Member

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the Effective Date.

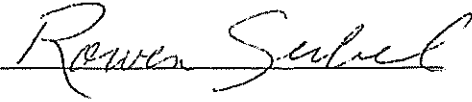
"CAESARS"

Desert Palace, Inc., a Nevada corporation

By: 
Gary Selesner, Authorized Signatory

"MOTI"

MOTI Partners, a New York limited liability company

By: 

Its: Managing Member

E X H I B I T “ A ”

RESTAURANT PREMISES

[Attached hereto.]

E X H I B I T “ B ”

Buildings and Improvements: Includes, but is not limited to, the cost of investment in buildings (and structural improvements), including the cost of construction labor, materials, and services such as architectural fees. Includes original cost of equipment that services normal heating, plumbing, fire protection, power requirements, and equipment such as elevators and escalators.

Building improvements consist of additions to or renovations of existing structures subsequent to the building being placed in service. Building improvements are an integral part of the building and are of a nature that would be included in the assessed valuation of the real estate for local real property tax purposes.

Furniture, Fixtures and Equipment:

Restaurant Equipment

Includes, but is not limited to, heavy equipment used in the restaurant and bar. This account does not include air conditioning units, compressors, coolers, etc., used in the restaurant and bar areas.

Bar-Front and Back	Grease Pits	Dishwashers
Cash Registers	Ranges	Ventilation Systems
Cooks Units	Refrigerators	Fire Extinguisher Systems
Cookers-Steam	Stoves-Heavy	

Miscellaneous Restaurant Equipment

Bar Doors	lamps – Wall & Table	Kitchen Utensils
Booths	Lecterns	Water Softeners
Candelabra	Mixers	Ice Crushers & Makers
Carts – Room Service	Ornamental Iron Gates	Waitress Stations
Chairs	Ovens	Glass Racks
Chandeliers	Pictures	
Coffee Maker	Popcorn Machines	
Dance Floors	Projectors	
Dish Table	Sandwich Units	
Dishwashers	Serving, Banquets	
Disposals	Sneeze Guards	
Exhaust Fans	Stoves	
Faucets – Bar/Restaurant	Table Tops	
Faucets & Rims – Lavatories	Tape Deck/Player	
Fryers	Utility Stands	

China, Glass and Silverware

The initial complement of china, glass and silverware should be capitalized at full cost. The assets will be assigned a 50% salvage value. The remaining 50% of the capitalized amount will be depreciated on a straight-line basis over a two-year life. Initial complements consist of items purchased for a start-up operation. A complete replacement of a particular design or series of base stocks may also be capitalized, with the old china, glass and silverware items being expensed in the period of replacement. All subsequent purchases and replacements for worn or broken items should be expensed as purchased.

Linens and Uniforms

The initial complement of linens and uniforms should be capitalized and fully depreciated over a three-year life. Initial complements consist of items purchased for a start-up operation. A complete replacement due to design, style or color changes may also be capitalized, with the old linen/uniform items being expensed in the period of replacement. All subsequent purchases and replacements for worn items should be expensed as purchased.

Utilities and Related Expenses

Operating expenses shall include an allowance of .90 per square foot, per month for costs related to trash, sewer, water, electric and gas usage. This figure shall be adjusted annually based upon the increase or decrease in pricing for these services. The premises shall also have allocated the sum of \$500 per month for hood cleaning.

Miscellaneous Operating Expenses

Operating expenses shall include, but not be limited to, payroll costs, taxes, insurance, advertising, contractor labor, repairs/maintenance, cost of goods sold, laundry, postage, telephone, floral, uniforms and travel on an "as incurred" basis. Additionally, the restaurant shall receive an allocation charge for use of the commissary for areas such as baker, butchery, gardmanger and cook chill. The restaurant shall also have allocated to it the expense of 2.8 employees for cleaning of restrooms, the patio area, stairs and the areas surrounding the restaurant.

E X H I B I T “ C ”

**RESTAURANT TRAINING AND DEVELOPMENT OF CULINARY
AND SERVICE STANDARDS**

E X H I B I T “ D ”
MARKS
[ONE TO PROVIDE LIST OF MARKS]

Exhibit B

UNITED STATES BANKRUPTCY COURT Northern District of Illinois		PROOF OF CLAIM						
Name of Debtor: DESERT PALACE, INC.	Case Number: 15-01167	<div style="font-size: 1.2em; font-weight: bold;">RECEIVED</div> <div style="font-size: 1.2em; font-weight: bold;">MAY 22 2015</div> <div style="font-size: 1.2em; font-weight: bold;">PRIME CLERK LLC</div>						
NOTE: Do not use this form to make a claim for an administrative expense that arises after the bankruptcy filing. You may file a request for payment of an administrative expense according to 11 U.S.C. § 503.								
Name of Creditor (the person or other entity to whom the debtor owes money or property): MOTI PARTNERS, LLC.								
Name and address where notices should be sent: MOTI PARTNERS, LLC. c/o Certilman Balin Adler & Hyman, LLP. 90 Merrick Avenue, East Meadow, NY 11554 Telephone number: (516) 296-7801 email: rmccord@certilmanbalin.com		<div style="text-align: center; font-weight: bold;">COURT USE ONLY</div> <input type="checkbox"/> Check this box if this claim amends a previously filed claim. Court Claim Number: _____ (If known) Filed on: _____						
Name and address where payment should be sent (if different from above): <div style="text-align: center;"> <input checked="" type="checkbox"/> Date Stamped Copy Returned <input type="checkbox"/> No Self-Addressed Stamped Envelope <input type="checkbox"/> No Copy Provided </div> Telephone number: _____ email: _____		<input type="checkbox"/> Check this box if you are aware that anyone else has filed a proof of claim relating to this claim. Attach copy of statement giving particulars.						
1. Amount of Claim as of Date Case Filed: \$ <u>703,142.39</u> plus interest								
If all or part of the claim is secured, complete item 4. If all or part of the claim is entitled to priority, complete item 5. <input type="checkbox"/> Check this box if the claim includes interest or other charges in addition to the principal amount of the claim. Attach a statement that itemizes interest or charges.								
2. Basis for Claim: <u>Fees, Revenues and Operating Income pursuant to Section 6.1(b) of the Development,</u> (See instruction #2) <u>Operation and License Agreement</u>								
3. Last four digits of any number by which creditor identifies debtor:	3a. Debtor may have scheduled account as: _____ (See instruction #3a)	3b. Uniform Claim Identifier (optional): _____ (See instruction #3b)						
4. Secured Claim (See instruction #4) Check the appropriate box if the claim is secured by a lien on property or a right of setoff, attach required redacted documents, and provide the requested information.								
<table style="width: 100%; border: none;"> <tr> <td style="width: 50%; vertical-align: top;"> Nature of property or right of setoff: <input type="checkbox"/> Real Estate <input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Other Describe: Value of Property: \$ _____ Annual Interest Rate _____ % <input type="checkbox"/> Fixed or <input type="checkbox"/> Variable (when case was filed) </td> <td style="width: 50%; vertical-align: top;"> Amount of arrearage and other charges, as of the time case was filed, included in secured claim, if any: \$ _____ Basis for perfection: _____ Amount of Secured Claim: \$ _____ Amount Unsecured: \$ _____ </td> </tr> </table>			Nature of property or right of setoff: <input type="checkbox"/> Real Estate <input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Other Describe: Value of Property: \$ _____ Annual Interest Rate _____ % <input type="checkbox"/> Fixed or <input type="checkbox"/> Variable (when case was filed)	Amount of arrearage and other charges, as of the time case was filed, included in secured claim, if any: \$ _____ Basis for perfection: _____ Amount of Secured Claim: \$ _____ Amount Unsecured: \$ _____				
Nature of property or right of setoff: <input type="checkbox"/> Real Estate <input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Other Describe: Value of Property: \$ _____ Annual Interest Rate _____ % <input type="checkbox"/> Fixed or <input type="checkbox"/> Variable (when case was filed)	Amount of arrearage and other charges, as of the time case was filed, included in secured claim, if any: \$ _____ Basis for perfection: _____ Amount of Secured Claim: \$ _____ Amount Unsecured: \$ _____							
5. Amount of Claim Entitled to Priority under 11 U.S.C. § 507 (a). If any part of the claim falls into one of the following categories, check the box specifying the priority and state the amount.								
<table style="width: 100%; border: none;"> <tr> <td style="width: 33%; vertical-align: top;"> <input type="checkbox"/> Domestic support obligations under 11 U.S.C. § 507 (a)(1)(A) or (a)(1)(B). </td> <td style="width: 33%; vertical-align: top;"> <input type="checkbox"/> Wages, salaries, or commissions (up to \$12,475*) earned within 180 days before the case was filed or the debtor's business ceased, whichever is earlier – 11 U.S.C. § 507 (a)(4). </td> <td style="width: 33%; vertical-align: top;"> <input type="checkbox"/> Contributions to an employee benefit plan – 11 U.S.C. § 507 (a)(5). </td> </tr> <tr> <td style="vertical-align: top;"> <input type="checkbox"/> Up to \$2,775* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use – 11 U.S.C. § 507 (a)(7). </td> <td style="vertical-align: top;"> <input type="checkbox"/> Taxes or penalties owed to governmental units – 11 U.S.C. § 507 (a)(8). </td> <td style="vertical-align: top;"> <input type="checkbox"/> Other – Specify applicable paragraph of 11 U.S.C. § 507 (a)(____). </td> </tr> </table>			<input type="checkbox"/> Domestic support obligations under 11 U.S.C. § 507 (a)(1)(A) or (a)(1)(B).	<input type="checkbox"/> Wages, salaries, or commissions (up to \$12,475*) earned within 180 days before the case was filed or the debtor's business ceased, whichever is earlier – 11 U.S.C. § 507 (a)(4).	<input type="checkbox"/> Contributions to an employee benefit plan – 11 U.S.C. § 507 (a)(5).	<input type="checkbox"/> Up to \$2,775* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use – 11 U.S.C. § 507 (a)(7).	<input type="checkbox"/> Taxes or penalties owed to governmental units – 11 U.S.C. § 507 (a)(8).	<input type="checkbox"/> Other – Specify applicable paragraph of 11 U.S.C. § 507 (a)(____).
<input type="checkbox"/> Domestic support obligations under 11 U.S.C. § 507 (a)(1)(A) or (a)(1)(B).	<input type="checkbox"/> Wages, salaries, or commissions (up to \$12,475*) earned within 180 days before the case was filed or the debtor's business ceased, whichever is earlier – 11 U.S.C. § 507 (a)(4).	<input type="checkbox"/> Contributions to an employee benefit plan – 11 U.S.C. § 507 (a)(5).						
<input type="checkbox"/> Up to \$2,775* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use – 11 U.S.C. § 507 (a)(7).	<input type="checkbox"/> Taxes or penalties owed to governmental units – 11 U.S.C. § 507 (a)(8).	<input type="checkbox"/> Other – Specify applicable paragraph of 11 U.S.C. § 507 (a)(____).						
<div style="text-align: right;"> Amount entitled to priority: \$ _____ </div>								
<i>*Amounts are subject to adjustment on 4/01/16 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.</i>								
6. Credits. The amount of all payments on this claim has been credited for the purpose of making this proof of claim. (See instruction #6)								

7. Documents: Attached are **redacted** copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, security agreements, or, in the case of a claim based on an open-end or revolving consumer credit agreement, a statement providing the information required by FRBP 3001(c)(3)(A). If the claim is secured, box 4 has been completed, and **redacted** copies of documents providing evidence of perfection of a security interest are attached. If the claim is secured by the debtor's principal residence, the Mortgage Proof of Claim Attachment is being filed with this claim. (See instruction #7, and the definition of "redacted".)

DO NOT SEND ORIGINAL DOCUMENTS. ATTACHED DOCUMENTS MAY BE DESTROYED AFTER SCANNING.

If the documents are not available, please explain:

8. Signature: (See instruction #8)

Check the appropriate box.

- ☐ I am the creditor. ☒ I am the creditor's authorized agent. ☐ I am the trustee, or the debtor, or their authorized agent. ☐ I am a guarantor, surety, indorser, or other codebtor. (See Bankruptcy Rule 3005.)
(See Bankruptcy Rule 3004.)

I declare under penalty of perjury that the information provided in this claim is true and correct to the best of my knowledge, information, and reasonable belief.

Print Name: Richard J. McCord, Esq.
Title: Partner
Company: _____
Address and telephone number (if different from notice address above): _____

Telephone number: _____ email: _____

(Signature)

(Date)

Penalty for presenting fraudulent claim: Fine of up to \$500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571.

INSTRUCTIONS FOR PROOF OF CLAIM FORM

The instructions and definitions below are general explanations of the law. In certain circumstances, such as bankruptcy cases not filed voluntarily by the debtor, exceptions to these general rules may apply.

Items to be completed in Proof of Claim form

Court, Name of Debtor, and Case Number:

Fill in the federal judicial district in which the bankruptcy case was filed (for example, Central District of California), the debtor's full name, and the case number. If the creditor received a notice of the case from the bankruptcy court, all of this information is at the top of the notice.

Creditor's Name and Address:

Fill in the name and the person or entity asserting a claim and the name and address of the person who should receive notices issued during the bankruptcy case. A separate space is provided for the payment address if it differs from the notice address. The creditor has a continuing obligation to keep the court informed of its current address. See Federal Rule of Bankruptcy Procedure (FRBP) 2002(g).

1. Amount of Claim as of Date Case Filed:

State the total amount owed to the creditor on the date of the bankruptcy filing. Follow the instructions concerning whether to complete items 4 and 5. Check the box if interest or other charges are included in the claim.

2. Basis for Claim:

State the type of debt or how it was incurred. Examples include goods sold, money loaned, services performed, personal injury/wrongful death, car loan, mortgage note, and credit card. If the claim is based on delivering health care goods or services, limit the disclosure of the goods or services so as to avoid embarrassment or the disclosure of confidential health care information. You may be required to provide additional disclosure if an interested party objects to the claim.

3. Last Four Digits of Any Number by Which Creditor Identifies Debtor:

State only the last four digits of the debtor's account or other number used by the creditor to identify the debtor.

3a. Debtor May Have Scheduled Account As:

Report a change in the creditor's name, a transferred claim, or any other information that clarifies a difference between this proof of claim and the claim as scheduled by the debtor.

3b. Uniform Claim Identifier:

If you use a uniform claim identifier, you may report it here. A uniform claim identifier is an optional 24-character identifier that certain large creditors use to facilitate electronic payment in chapter 13 cases.

4. Secured Claim:

Check whether the claim is fully or partially secured. Skip this section if the

claim is entirely unsecured. (See Definitions.) If the claim is secured, check the box for the nature and value of property that secures the claim, attach copies of lien documentation, and state, as of the date of the bankruptcy filing, the annual interest rate (and whether it is fixed or variable), and the amount past due on the claim.

5. Amount of Claim Entitled to Priority Under 11 U.S.C. § 507 (a).

If any portion of the claim falls into any category shown, check the appropriate box(es) and state the amount entitled to priority. (See Definitions.) A claim may be partly priority and partly non-priority. For example, in some of the categories, the law limits the amount entitled to priority.

6. Credits:

An authorized signature on this proof of claim serves as an acknowledgment that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

7. Documents:

Attach redacted copies of any documents that show the debt exists and a lien secures the debt. You must also attach copies of documents that evidence perfection of any security interest and documents required by FRBP 3001(c) for claims based on an open-end or revolving consumer credit agreement or secured by a security interest in the debtor's principal residence. You may also attach a summary in addition to the documents themselves. FRBP 3001(c) and (d). If the claim is based on delivering health care goods or services, limit disclosing confidential health care information. Do not send original documents, as attachments may be destroyed after scanning.

8. Date and Signature:

The individual completing this proof of claim must sign and date it. FRBP 9011. If the claim is filed electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what constitutes a signature. If you sign this form, you declare under penalty of perjury that the information provided is true and correct to the best of your knowledge, information, and reasonable belief. Your signature is also a certification that the claim meets the requirements of FRBP 9011(b). Whether the claim is filed electronically or in person, if your name is on the signature line, you are responsible for the declaration. Print the name and title, if any, of the creditor or other person authorized to file this claim. State the filer's address and telephone number if it differs from the address given on the top of the form for purposes of receiving notices. If the claim is filed by an authorized agent, provide both the name of the individual filing the claim and the name of the agent. If the authorized agent is a servicer, identify the corporate servicer as the company. Criminal penalties apply for making a false statement on a proof of claim.

DEFINITIONS**Debtor**

A debtor is the person, corporation, or other entity that has filed a bankruptcy case.

Creditor

A creditor is a person, corporation, or other entity to whom debtor owes a debt that was incurred before the date of the bankruptcy filing. See 11 U.S.C. §101 (10).

Claim

A claim is the creditor's right to receive payment for a debt owed by the debtor on the date of the bankruptcy filing. See 11 U.S.C. §101 (5). A claim may be secured or unsecured.

Proof of Claim

A proof of claim is a form used by the creditor to indicate the amount of the debt owed by the debtor on the date of the bankruptcy filing. The creditor must file the form with the clerk of the same bankruptcy court in which the bankruptcy case was filed.

Secured Claim Under 11 U.S.C. § 506 (a)

A secured claim is one backed by a lien on property of the debtor. The claim is secured so long as the creditor has the right to be paid from the property prior to other creditors. The amount of the secured claim cannot exceed the value of the property. Any amount owed to the creditor in excess of the value of the property is an unsecured claim. Examples of liens on property include a mortgage on real estate or a security interest in a car. A lien may be voluntarily granted by a debtor or may be obtained through a court proceeding. In some states, a court judgment is a lien.

A claim also may be secured if the creditor owes the debtor money (has a right to setoff).

Unsecured Claim

An unsecured claim is one that does not meet the requirements of a secured claim. A claim may be partly unsecured if the amount of the claim exceeds the value of the property on which the creditor has a lien.

Claim Entitled to Priority Under 11 U.S.C. § 507 (a)

Priority claims are certain categories of unsecured claims that are paid from the available money or property in a bankruptcy case before other unsecured claims.

Redacted

A document has been redacted when the person filing it has masked, edited out, or otherwise deleted, certain information. A creditor must show only the last four digits of any social-security, individual's tax-identification, or financial-account number, only the initials of a minor's name, and only the year of any person's date of birth. If the claim is based on the delivery of health care goods or services, limit the disclosure of the goods or services so as to avoid embarrassment or the disclosure of confidential health care information.

Evidence of Perfection

Evidence of perfection may include a mortgage, lien, certificate of title, financing statement, or other document showing that the lien has been filed or recorded.

INFORMATION**Acknowledgment of Filing of Claim**

To receive acknowledgment of your filing, you may either enclose a stamped self-addressed envelope and a copy of this proof of claim or you may access the court's PACER system (www.pacer.psc.uscourts.gov) for a small fee to view your filed proof of claim.

Offers to Purchase a Claim

Certain entities are in the business of purchasing claims for an amount less than the face value of the claims. One or more of these entities may contact the creditor and offer to purchase the claim. Some of the written communications from these entities may easily be confused with official court documentation or communications from the debtor. These entities do not represent the bankruptcy court or the debtor. The creditor has no obligation to sell its claim. However, if the creditor decides to sell its claim, any transfer of such claim is subject to FRBP 3001(e), any applicable provisions of the Bankruptcy Code (11 U.S.C. § 101 *et seq.*), and any applicable orders of the bankruptcy court.

DEVELOPMENT, OPERATION AND LICENSE AGREEMENT

THIS DEVELOPMENT, OPERATION AND LICENSE AGREEMENT (this "Agreement") shall be deemed made, entered into and effective as of this ___ day of March 2009 (the "Effective Date"), by and between Desert Palace, Inc. d/b/a Caesars Palace, a Nevada corporation ("Caesars"), having its principal place of business located at 3570 Las Vegas Boulevard South, Las Vegas, Nevada 89109 and Moti Partners, LLC a New York limited liability company ("MOTI"), having its principal place of business located at 200 Central Park South, New York, New York 10019.

RECITALS

A. Caesars Palace Realty Corp. a Nevada corporation and an Affiliate (as defined below) of Caesars, owns that certain real property located at 3570 Las Vegas Boulevard South, Las Vegas, Nevada (the "Property"), on which Caesars operates a resort hotel casino known as Caesars Palace (the "Hotel Casino"); and

3. **TERM:**

3.1 **Term:** The initial term of this Agreement shall commence on the Effective Date and shall expire on that date that is five (5) years from the Opening Date, unless extended by Caesars or unless earlier terminated pursuant to the terms hereof (the "Initial Term"). Caesars shall have the right, but not the obligation, upon not less than one

hundred eighty (180) calendar days' written notice to MOTI, to extend the term of this Agreement for one (1) additional five (5) year period (together with the Initial Term, the "Term"), which shall be on all of the same terms and conditions as contained herein. Thereafter, there shall be no additional extensions of the term of this Agreement.

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6.

SERVICES FEE:

6.1 Services Fee: In consideration of MOTI provision of the Services described herein, monthly Net Revenues shall be calculated and allocated between the parties in the following amounts and in the following order:

(a) Caesars shall be entitled to retain a sum sufficient to make payment with respect to all Operating Expenses (consistent with Caesars' standards applicable to other similar operations, but which expenses shall

Page 7 of 22

always include all costs, overhead including, but not limited to, compensation and benefits paid to employees) of the restaurant, which shall include those items listed in Exhibit B, which is attached hereto and incorporated herein by reference.

(b) If, following deduction of Operating Expenses from Net Revenue, a sum remains that equals or exceeds Thirteen (13%) of Net Revenue in the calendar month at issue:

1. Caesars shall be entitled to retain a sum as Rent equal to the of Eight (8%) Percent of Net Revenue for that calendar month: and

2. Caesars shall pay to MOTI (i) the sum of Five (5%) Percent of Net Revenue for Net Revenue received in a calendar month up to the sum of Eight Hundred Thousand Three Hundred Thirty-Three Thousand Dollars and 33/100 (\$833,333.33) (ii) the sum of Six (6%) Percent of Net Revenue for Net Revenue received in a calendar month equal to or exceeding the sum of Eight Hundred Thousand Three Hundred Thirty-Three Thousand Dollars and 33/100 (\$833,333.33) up to the sum of One Million Two Hundred Fifty Thousand Dollars and 00/100; and (iii) the sum of Seven (7%) Percent of Net Revenue for Net Revenue received in a calendar month exceeding the sum of One Million Two Hundred Fifty Thousand Dollars and 00/100 (\$1,250,000.00) in exchange for the performance of MOTI's obligations described herein.

3. Following retention by Caesars of the sum as referred to in paragraph b(1) hereinabove and payment to MOTI as referred to in paragraph b(2) hereinabove, Caesars shall be entitled to retain Fifty (50%) Percent of remaining Net Revenue and shall pay to MOTI Fifty (50%) of remaining Net Revenue for that calendar month.

(c) If Net Revenue in any calendar month during the Term is less than Thirteen, (13%) Percent greater than Operating Expenses, in place of retention by Caesars and payment to MOTI of the amounts referred to hereinabove in paragraph 6.1(b), Caesars shall be entitled to retain as Rent Sixty-One and One Half (61.5%) Percent of Net Revenue and Caesars shall pay to MOTI Thirty-Eight and One Half (38.5%) Percent of Net Revenue above Operating Expenses received in that calendar month. In any month in which Net Revenue does not exceed Operating Expenses, there shall be no allocation of Net Revenue to the Parties for that month (except for Caesars retention of all monies which shall be offset against Operating Expenses) and any loss shall be carried forward and netted against Net Revenue until Caesars receives monies sufficient to cover all Operating Expenses incurred.

Although calculated and allocated on a monthly basis, monies due and payable to MOTI as described in this Section 6.1 shall be payable on a calendar quarter basis, or any pro rata portion thereof during the Term, no later than thirty (30) days after the end of the calendar quarter to which they relate by check, money order or wire transfer in lawful funds of the United States of America to such address or account located within the United States of America as directed by MOTI from time to time. The Parties agree that should revenue in any calendar month not exceed Operating Expenses for that calendar month, no payment shall be allocated to MOTI for that month and Caesars shall be entitled to retain (and continue to retain in each succeeding month) all revenues until it has recouped all outstanding Operating Expenses incurred. The Parties agree that should revenues in any reporting period not be sufficient to make any payment as described hereinabove in subparts 6.1 (b) and (c), there shall be no obligation to make any payment for same in any future reporting period.

Examples:

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the Effective Date.

"CAESARS"

Desert Palace, Inc., a Nevada corporation

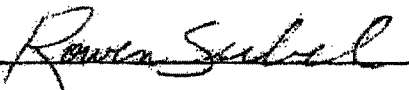
By:


Gary Selesner, Authorized Signatory

"MOTI"

MOTI Partners, a New York limited liability company

By:



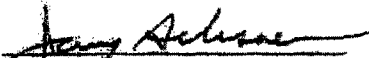
Its: Managing Member

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the Effective Date.

"CAESARS"

Desert Palace, Inc., a Nevada corporation


By:


Gary Selesner, Authorized Signatory

"MOTI"

MOTI Partners, a New York limited liability company

By:



Its: Managing Member

RICHARD J. MCCORD
PARTNER
DIRECT DIAL 516.296.7801
rmccord@certilmanbalin.com

May 21, 2015

VIA FEDERAL EXPRESS

Ceasars Entertainment Operating Company, Inc.
Claims Processing Center
c/o Prime Clerk, LLC.
830 Third Avenue, 9th Floor
New York, NY 10022

***Re: Ceasars Entertainment Operating Company, Inc., et al.,
Chapter 11
Case No. 15-01145(ABG)
(Jointly Administered)***

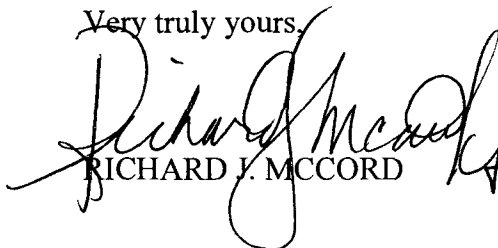
Dear Sir/Madam:

Enclosed herein please find an original and one copy of the Proof of Claim to be filed on behalf of DNT Acquisition, LLC., R. Squared Global Solutions, LLC. and Moti Partners, LLC. in connection with the Debtor Entity known as Desert Palace, Inc., Case No. 15-01167.

Please acknowledge receipt of each claim by stamping the enclosed three copies of the claims and returning them in the postage-paid envelope provided herein.

Thank you for your assistance in this matter. If you have any questions, please do not hesitate to contact the undersigned.

Very truly yours,


RICHARD J. MCCORD

RJM:ccf
Encls.

Exhibit C

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

In re:	)	Chapter 11
)	
CAESARS ENTERTAINMENT OPERATING)	
COMPANY, INC., <i>et al.</i> , ¹	)	Case No. 15-01145 (ABG)
	)	(Jointly Administered)
Debtors.)	
	)	Honorable A. Benjamin Goldgar
)	
	)	Hearing Date: December 14, 2016
	)	Hearing Time: 1:30 p.m.

NOTICE OF MOTION

PLEASE TAKE NOTICE that on the 14th day of December, 2016, at the hour of 1:30 p.m. (prevailing Central Time), or as soon thereafter as counsel may be heard, the undersigned shall appear before the Honorable A. Benjamin Goldgar, United States Bankruptcy Judge for the Northern District of Illinois, in Courtroom No. 642 of the Everett McKinley Dirksen Federal Building at 219 South Dearborn Street, Chicago, Illinois, 60604 and at that time and place we shall present the attached Request for Payment of Administrative Expense (the “**Motion**”).

PLEASE TAKE FURTHER NOTICE that any objection to the Motion must be filed with the Court and served upon the undersigned counsel and those entities in accordance with the notice, case management, and administrative procedures (the “**Case Management Procedures**”) by **December 7, 2016 at 4:00 p.m. (prevailing Central Time)**. If no objection is timely filed and served in accordance with the Case Management Procedures, the relief requested in the Motion may be granted without a hearing.

PLEASE TAKE FURTHER NOTICE that copies of the Motion as well as copies of all documents filed in these chapter 11 cases are available free of charge by visiting <https://cases.primeclerk.com/CEOC> or by calling (855) 842-4123 within the United States or Canada or, outside of the United States or Canada, by calling +1 (646) 795-6969. You may also obtain copies of any pleadings by visiting the Court’s website at www.ilnb.uscourts.gov in accordance with the procedures and fees set forth therein.

¹ The last four digits of Caesars Entertainment Operating Company, Inc.’s tax identification number are 1623. Due to the large number of Debtors in these jointly-administrated chapter 11 cases, a complete list of the Debtors and the last four digits of their federal tax identification numbers may be obtained on the website of the Debtor’s claims and noticing agent at <http://cases.primeclerk.com/CEOC>.

DATED this 30th day of November, 2016

ADELMAN & GETTLEMAN, LTD.
Attorneys for Moti Partners, LLC
And Moti Partners 16, LLC

/s/ Nathan Q. Rugg
NATHAN Q. RUGG, ESQ. (ARDC #6272969)
STEVEN B. CHAIKEN, ESQ. (ARDC #6272045)
53 West Jackson Boulevard, Suite 1050
Chicago, Illinois 60604
Telephone: (312) 435-1050
Facsimile: (312) 435-1059

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

In re:	)	Chapter 11
)	
CAESARS ENTERTAINMENT OPERATING	)	Case No. 15-01145
COMPANY, INC., <i>et al.</i> ²)	
)	
Debtors.	)	(Jointly Administered)
)	
	)	Hearing Date: December 14, 2016
	)	Hearing Time: 1:30 p.m.

REQUEST FOR PAYMENT OF ADMINISTRATIVE EXPENSE

NOW COME Moti Partners, LLC, a New York limited liability company (“MOTI”) and Moti Partners 16, LLC, a Delaware limited liability company (“MOTI 16”, and with MOTI, the “Claimants”), by and through their undersigned counsel, and hereby request the entry of an order for allowance and payment of their respective outstanding and ongoing administrative expense claims owed by Desert Palace, Inc., one of the debtors herein (“Caesars”) pursuant to 11 U.S.C. § 503 (the “Request for Payment”). In support of the Request for Payment, the Claimants respectfully state as follows:

I. INTRODUCTION

Since 2009, pursuant to a license agreement with the Claimants, Caesars has operated a popular and profitable restaurant known as Serendipity 3 (“Serendipity” or the “Restaurant”) at their Las Vegas Caesars Palace location. Caesars terminated the Claimants’ license agreement in September 2016, but continues to this date to operate Serendipity under the license agreement and retain profits therefrom. Notwithstanding Caesars’ continued use of the trademarks, logos, recipes

² The last four digits of Caesars Entertainment Operating Company, Inc.’s tax identification number are 1623. Due to the large number of debtors in these jointly-administrated chapter 11 cases, a complete list of the debtors and the last four digits of their federal tax identification numbers may be obtained on the website of the Debtor’s claims and noticing agent at <http://cases.primeclerk.com/CEOC>.

and other intellectual property subject to the license agreement, Caesars refuses to remit any payment to Claimants for such use, contrary to the terms of the license agreement and applicable law.

The license agreement allows Caesars to terminate the contract for any reason and without cause, prior to the end of the contract's "Term." In such event, however, the license agreement explicitly provides that Caesars must remit an early termination payment and continue to pay for the use of all intellectual property related to the Restaurant during any wind-up operations. Continued operation of Serendipity post-petition and post-termination is not possible without the rights granted to Caesars by Claimants under their license agreement. Now that Caesars has voluntarily initiated an early termination and keeps the doors to the Restaurant open for business, Caesars is obligated to pay for the use of the intellectual property and to remit the early termination fee. Caesars' actions fall squarely within the Seventh Circuit's test for awarding an administrative priority claim, where the debtor has engaged in a post-petition transaction that benefited the estate in the form of profits from the Restaurant. The Claimants therefore request an order approving the Request for Payment, awarding an administrative priority claim for all payments due under the license agreement so long as Caesars continues to operate the Restaurant post-petition.

II. BACKGROUND

A. Caesars is operating Serendipity pursuant to a license agreement with the Claimants.

1. MOTI and Caesars entered into that certain Development, Operation and License Agreement in March 2009 (the "License Agreement"). A true and correct copy of the License Agreement is attached hereto as Exhibit A. Pursuant to the License Agreement, the Claimants, among other things, grant Caesars a non-exclusive license to use certain marks in connection with Serendipity on Caesars' property located at 3570 Las Vegas Boulevard South, Las Vegas,

Nevada (the “Restaurant Premises”). MOTI, under section 1.1 of the License Agreement, also provided a \$300,000 capital contribution for the design and construction of the Restaurant.

2. Among other terms, the License Agreements provides:

- a. “MOTI shall develop the initial food and beverage menus of the Restaurant, and the recipes for same, and thereafter, MOTI shall revise the food and beverage menus of the Restaurant, and the recipes for same . . . **all of which recipes shall be owned by MOTI.**” License Agreement, § 2.3.1 (emphasis added);
- b. Caesars shall be solely responsible to manage the operations, business, finances and employees of the Restaurant on a day-to-day basis. *Id.* at § 2.3.4;
- c. Caesars shall be responsible for the hiring, training, managing, evaluating, promoting, disciplining and firing of all kitchen and front-of-house management and staff of the Restaurant. *Id.* at § 4.1.1;
- d. MOTI grants Caesars a license to employ the marks and images to be used by the Restaurant including logos, trademark, trade names, service marks, trade secrets and business affairs relating to MOTI (collectively, the “Materials and Marks”), **and to use same in connection with the operation, marketing and promotion of the Restaurant.** *Id.* at § 5.1 (emphasis added); and
- e. MOTI grants Caesars a non-exclusive, royalty-free license to use the Materials and Marks “to the extent necessary to the furtherance of its rights and obligations under the terms and conditions of this [License Agreement] . . .” *Id.* at § 5.3.1

3. In exchange, Caesars is obligated to provide MOTI with a calculated percentage of “Net Revenues” generated by the Restaurant operations “**as and for a License Fee** (the “License Fee”).” *Id.* at § 6.1(b)(2) (emphasis added). Under the License Agreement, after retention of “Rent” and payment of the License Fee to MOTI, Caesars and MOTI split the remaining Net Revenue. *See* § 6.1(b)(3).

4. The License Agreement was set to expire by its terms, unless renewed at Caesars’ option, on or about April 5, 2014. In June 2013, Caesars drafted and sent to MOTI that certain

First Amendment to the Development, Operation and License Agreement (the “Amendment”).

A true and correct copy of the Amended is attached hereto as Exhibit B.

5. Under the draft Amendment, Caesars proposed to extend the term of the License Agreement for an additional five years (through April 6, 2019) (§1), pay a higher License Fee to MOTI and end the profit sharing with MOTI (§2), and remove MOTI’s obligation to make future capital contributions (§4). Section 7 of the Amendment provides that “Except as modified by this First Amendment, the [License] Agreement shall remain in full force and effect and all other terms and provisions of the [License] Agreement are hereby reaffirmed and ratified.”

6. Neither party executed the Amendment, but Caesars continued operating the Restaurant and paid MOTI the revised License Fee proposed in the Amendment from April 6, 2014 through September 5, 2016.

7. On or about May 16, 2014, Caesars, MOTI and other affiliated parties entered into that certain letter agreement amending the terms of the License Agreement, among others (the “Letter Agreement”). A true and correct copy of the letter agreement is attached hereto as Exhibit C.

8. Mr. Rowen Seibel, an individual residing in New York City, New York, was initially both a manager and member of MOTI. Effective as of April 13, 2016, Mr. Seibel resigned as manager, assigned his membership interests in MOTI The Seibel Family 2016 Trust; MOTI assigned the License Agreement to MOTI 16, and all obligations and duties of MOTI and/or Mr. Seibel that were specifically designated to be performed by Mr. Seibel were assigned and delegated to J. Jeffrey Frederick, a former Regional Vice-President of Food and Beverage for the debtors (the “Assignment”).

9. Mr. Seibel notified Caesars of the Assignment by a letter dated April 8, 2016. A true and correct copy of the letter is attached hereto as Exhibit D.

10. Thereafter, Caesars continued to operate the Restaurant and remitted payments due thereunder to MOTI 16, which is MOTI's assignee under the Assignment.

11. In letters dated September 2, 2016, addressed to MOTI's counsel and to Rowen Seibel, the Debtors (through their counsel) purported to retroactively deny the Assignment and to terminate the License Agreement "effective immediately."

12. In October 2016, notwithstanding the attempt to retroactively vacate their acceptance of the Assignment, the Debtors made payments to MOTI 16 for the operation of the Restaurant in July and August 2016, and a prorated amount for September 2016. As recently as November 30, 2016, Caesars placed a purchase order with MOTI 16 for proprietary hot chocolate to be delivered in December 2016, suggesting that Caesars intends to continue operating Serendipity for the foreseeable future. *See* Purchase Order dated 11/30/16, attached hereto as Exhibit E.

B. Caesars continued to operate the Restaurant and payments to MOTI MOTI 16 post-petition and post-termination.

13. Since the Restaurant opening in 2009 Caesars operated the Restaurant, realized "Net Profits" (as defined in the License Agreement) therefrom, and until recently, remitted payments to the Claimants under the License Agreement.

14. On January 15, 2015 (the "Petition Date"), each of the debtors in the above captioned case (the "Debtors") filed a voluntary petition with this Court under chapter 11 of the Bankruptcy Code, thereby commencing the jointly administered cases (the "Chapter 11 Cases").

15. In connection with its *Third Modified Chapter 11 Plan of Reorganization* [Docket No. 5178] (the "Plan"), the Debtors have indicated that they will reject the License Agreement as

an executory contract of the “Effective Date” of the Plan. *See First Amendment to Supplement* [Docket No. 4998], Exhibit G thereto.

16. Notwithstanding the purported termination of the License Agreement, the attempt to invalidate the Assignment, and the notice of intent to reject, Caesars presently continues to operate the Restaurant as required under the License Agreement and to receive Net Profits therefrom. Caesars, however, has stopped remitting License Fee payments to the Claimants as required under the License Agreement from and after September 5, 2016.

C. The License Agreement requires Caesars to remit payments for use of the licensed intellectual property while operating the Restaurant after termination.

17. As of the date of this Request for Payment, Caesars continues to operate the Restaurant and enjoy the benefits from the License Agreement. Caesars cannot have it both ways, deriving profits from the Restaurant which necessarily uses the license granted by Claimants under the License Agreement while failing to make payments to the Claimants required thereunder.

18. Under section 3.1 of License Agreement, Caesars had the right to extend the term of the agreement “for one (1) additional five (5) year period . . . which shall be on all of the same terms and conditions as contained herein.” Caesars in fact elected to extend the term for an additional five year beyond the original termination date of April 5, 2014.

19. Sections 3.2 and 9.2 provide certain instances that allow Caesars to terminate the License Agreement. In addition, section 3.2.3 allows Caesars to terminate the License Agreement “without cause, meaning for any reason or no reason at all,” which is defined as an “Early Termination.” Section 3.2.3 further provides that a payment to MOTI based on twelve months of operations is due in connection with an Early Termination (as set forth in section 3.2.3, an “Early Termination Payment”).

20. Serendipity is defined as the “Restaurant” under the Agreement, to be operated at the “Restaurant Premises” (as defined in the Agreement) located at Caesars Palace.

21. Section 3.3 expressly states that upon the termination of the License Agreement:

- a. Caesars shall cease operation of the Restaurant; provided, however, in the event of any early termination of this Agreement, Caesars shall be entitled to operate the Restaurant and use the License (as defined below) for that reasonable period of time required to orderly and properly wind-up operations of the Restaurant not to exceed one hundred twenty (120) days;
- b. Caesars shall retain all right, title and interest in and to the Restaurant Premises;
- c. Caesars shall retain all right, title and interest in and to the plans and specifications any other materials or work product produced in connection with or procured by Caesars in connection with the Restaurant design, and all furniture, fixtures, equipment, inventory supplies and intangible assets located within or associated with the Restaurant, **with the exception of any intellectual property owned by MOTI or its Affiliates**; and
- d. **Caesars shall have the right, but not the obligation, immediately or at any time after such expiration or termination, to operate a restaurant in the Restaurant Premises; provided, however, such restaurant shall not employ the Restaurant’s food and beverage menu developed by MOTI pursuant to Section 2.3 or any of the Marks (as such term is hereinafter defined).**

License Agreement, § 3.3 (emphasis added).

22. After Caesars failed to remit payment for the period following September 5, 2016, through phone calls and email communications by the undersigned counsel, MOTI 16 inquired as to the missing payment and asserted same was due under the License Agreement. Caesars’ counsel has indicated that Caesars is operating the Restaurant under section 3.3 of the License Agreement for the 120-day wind-up period. *See* email correspondence between counsel dated November 15, 2016, attached hereto as Exhibit F.

23. The Debtors admit that they have continued to operate the Restaurant post-termination pursuant to the License Agreement, but simply assert that no further payment is required. Rather, by the plain terms of the License Agreement, because Caesars (a) elected to

terminate the License Agreement prior to the end of its Term, and (b) continues to operate the Restaurant using intellectual property subject to the License Agreement, Claimants are contractually entitled to both the License Fee and the Early Termination Payment.

24. This dispute and Request for Payment effectively is a simple contract dispute, where Caesars incorrectly asserts that it does not have to make any payments to Claimants since it terminated the License Agreement. The License Agreement provides otherwise, which intuitively makes sense. Otherwise, Caesars would be allowed to run and profit from the Restaurant using the trademarks, logo, menus, recipes and other intellectual property licensed by the Claimants, for free.

III. RELIEF REQUESTED: PAYMENTS DUE UNDER THE LICENSE AGREEMENT ARE ADMINISTRATIVE EXPENSES AND MUST BE PAID

25. The Claimants seek the Court's allowance, and Caesars' remittance, of all post-petition payments that have accrued and continue to accrue under the License Agreement as an administrative expense, including the License Fee and the Early Termination Payment.

26. Section 503 of the Bankruptcy Code provides that, after notice and a hearing, "there shall be allowed administrative expenses . . . including . . . the actual, necessary costs and expenses of preserving the estate . . ." 11 U.S.C. § 503(b)(1)(A).

27. A particular expense is entitled to administrative priority under section 503 if it both "(1) arises from a transaction with the debtor-in-possession and (2) is beneficial to the debtor-in-possession in the operation of the business." *In re Jartran, Inc.*, 732 F.2d 584, 587 (7th Cir. 1984) (internal citation and alteration omitted).

28. Caesars, who continues to derive net profits under the License Agreement by voluntarily operating the Restaurant post-petition, has:

- a. remitted all License Fee payments due to MOTI and MOTI 16 as assignee under the License Agreement after the Petition Date through September 5, 2016;
- b. remitted the License Fee payments to MOTI 16 for months after the Assignment; and
- c. admitted that it continues to operate the Restaurant after September 5, 2016, and after the purported termination pursuant to section 3.3 of the License Agreement.

The License Fee and the Early Termination Payment thus qualify as administrative claims under *Jartran* and the Court should grant the Request for Payment.

29. If Caesars operates the Restaurant under the License Agreement, it must pay for the value of the services received, *i.e.* the License Fee. In most cases, as here, the value is determined by the contract rate. Indeed, Caesars has paid the contract rate under the License Agreement and the Amendment through approximately September 5, 2015. Caesars admits that it is operating the Restaurant under the 120-day wind-up provisions of section 3.3. Nothing in that section or the License Agreement (or the Amendment) allows the Debtors to operate the Restaurant without providing compensation to the Claimants for use of their license.

30. Further, by electing to terminate the License Agreement prior to the end of the new Term, Caesars is obligated to pay the Early Termination Fee as an administrative claim.

31. “There is ample authority for the proposition that, pending assumption or rejection, the Debtor may elect to enforce the contract thereby being **required** to pay for the reasonable value of the material or services supplied. Often times that cost will be measured by reference to the contract which presumably has been negotiated at arm's length.” *In re Cont'l Energy Associates Ltd. P'ship*, 178 B.R. 405, 408 (Bankr. M.D. Pa. 1995) (citations omitted) (emphasis added); *see also In re Nat'l Steel Corp.*, 316 B.R. 287, 305 (Bankr. N.D. Ill. 2004).

32. The Supreme Court has addressed this specific issue in context of the existence of an executory contract. “If the debtor-in-possession elects to continue to receive benefits from the

other party to an executory contract pending a decision to reject or assume the contract, the debtor-in-possession is obligated to pay for the reasonable value of those services. . . . which, depending on the circumstances of a particular contract, may be what is specified in the contract.” *NLRB v. Bildisco & Bildisco*, 465 U.S. 513, 531, 104 S.Ct. 1188, 1199, 79 L.Ed.2d 482 (1984) (citations omitted).

33. The reasoning for applying the contract rate as a baseline presumption is intuitive. “Presumptively, the value of consideration received under an executory contract is the amount set forth in such contract. . . . The basis for such a presumption is that the parties are in the best position to negotiate the terms and value of the consideration. It logically follows that if a debtor makes full use of the services provided under a contract, the benefit to the debtor is the entire bargained for value pursuant to such agreement.” *In re Beverage Canners Int’l Corp.*, 255 B.R. 89, 93-94 (Bankr. S.D. Fla. 2000).

34. Anything less than the contract rate would deprive the Claimants the benefit of their bargain under the License Agreement. For that reason, “decisions awarding an administrative expense of less than the full contract amount typically involve less than full use of the contract rights.” *Id.* No such limitation is available here where Caesars continues to operate the Restaurant and receive all net income from such operations in the exact same manner and fashion as they did pre-petition and during the first twenty-one months of the Chapter 11 Cases, when Caesars paid the Claimants administrative expenses due and owing under the License Agreement.

35. The Seventh Circuit has ruled that continued use of services by the debtor post-petition does not elevate a prepetition claim, but the post-petition claim for services is entitled to administrative priority. *See In re Whitcomb & Keller Mortgage Co., Inc.*, 715 F.2d 375, 379-380

(7th Cir. 1983). This applies equally to license agreements and contracts that a debtor plans to reject. *See In re Home Interiors & Gifts, Inc.*, 08-31961-11-BJH, 2008 WL 4772102, at *8 (Bankr. N.D. Tex. Oct. 9, 2008) (“In other words, notwithstanding its rejection of the License Agreement, HIG took acts inconsistent with rejection which benefitted the HIG bankruptcy estate by generating post-petition, post-rejection revenues. Accordingly, Meredith is entitled to a further administrative expense claim for such continued use”).

36. In *In re Whitcomb*, the Seventh Circuit noted that “in effect” the debtor “assumed the burdens as it received the benefits during the administration of the estate. If [the debtor] had continued to receive the services of Data-Link during the administration of the estate and not paid for them, the law clearly states that that indebtedness would be entitled to priority status.” *Id.* at 380, FN 5.

37. Here Caesars has assumed the burdens of paying the License Fee and the Early Termination Payment to the Claimants by terminating the License Agreement and continuing to obtain the benefit of the Restaurant operations under the License Agreement. Simply put, “during the period prior to assumption or rejection of an executory contract or unexpired lease, the estate **must pay** the reasonable value of any contractual benefits the estate receives during that period, as an administrative expense.” *In re Res. Tech. Corp.*, 254 B.R. 215, 221 (Bankr. N.D. Ill. 2000) (emphasis added).

IV. CONCLUSION

38. Through their voluntary post-petition operations of the Restaurant, Caesars has engaged in a post-petition transaction that benefitted its estate through collection of Net Profits. Therefore, Caesars cannot credibly argue that the payments due to the Claimants for the use of

their license under the License Agreement are not an administrative claim in these Chapter 11 Cases.

WHEREFORE, Moti Partners, LLC and Moti Partners 16, LLC respectfully request that the Court enter an order approving the Request for Payment, awarding an administrative expense claim for all distributions due under the Agreement, requiring payment thereof, and granting such further relief as is appropriate under the circumstances.

Dated: November 30, 2016

Respectfully submitted,

**Moti Partners, LLC
and Moti Partners 16, LLC**

By: /s/ Nathan Q. Rugg
One of Their Attorneys

NATHAN Q. RUGG, ESQ. (ARDC #6272969)
STEVEN B. CHAIKEN, ESQ. (ARDC #6272045)
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53 West Jackson Boulevard, Suite 1050
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(312) 435-1050
Counsel for Moti Partners, LLC and Moti Partners 16, LLC

EXHIBIT A

DEVELOPMENT, OPERATION AND LICENSE AGREEMENT

THIS DEVELOPMENT, OPERATION AND LICENSE AGREEMENT (this "Agreement") shall be deemed made, entered into and effective as of this ___ day of March 2009 (the "Effective Date"), by and between Desert Palace, Inc. d/b/a Caesars Palace, a Nevada corporation ("Caesars"), having its principal place of business located at 3570 Las Vegas Boulevard South, Las Vegas, Nevada 89109 and Moti Partners, LLC a New York limited liability company ("MOTI"), having its principal place of business located at 200 Central Park South, New York, New York 10019.

RECITALS

A. Caesars Palace Realty Corp. a Nevada corporation and an Affiliate (as defined below) of Caesars, owns that certain real property located at 3570 Las Vegas Boulevard South, Las Vegas, Nevada (the "Property"), on which Caesars operates a resort hotel casino known as Caesars Palace (the "Hotel Casino"); and

B. MOTI has the non-exclusive right to use and exploit the Marks (as defined below) and also has certain qualifications, expertise and reputation in development and operation of first-class restaurants including, but not limited to, a restaurant known as "Serendipity" located in NY, NY; and

C. Caesars desires to design, develop, construct and operate a certain first-class restaurant (the "Restaurant") in those certain premises as more particularly shown on Exhibit "A" attached hereto (the "Restaurant Premises") that shall be known as "Serendipity"; and

D. Caesars desires to obtain a non-exclusive, royalty-free license to use the Marks from MOTI and to retain MOTI to perform those services and fulfill those obligations with respect to consultation concerning the design, development, construction and operation of the Restaurant, and MOTI desires to grant a non-exclusive, royalty-free license to use the Marks to Caesars and to be retained by Caesars to perform such services and fulfill such obligations, and the parties desire to enter into this Agreement to set forth their respective rights and obligations with respect thereto, all as more particularly set forth herein.

NOW THEREFORE, in consideration of the premises and the mutual covenants set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree that the foregoing recitals are true and correct and further agree as follows:

1. APPOINTMENT:

1.1 Appointment and Payment of Initial Capital Contribution: Caesars hereby appoints MOTI, and MOTI hereby accepts such appointment, subject to all of the terms and conditions more particularly set forth herein, to perform those services and fulfill those obligations with sound business practice, due diligence and care, all as more particularly set forth herein. MOTI shall make a non-refundable Capital Contribution ("MOTI's Initial Capital Contribution") toward "Initial Capital Expenditure" for the Restaurant as outlined hereinbelow. The Parties shall meet and confer with respect to preparation and approval of an Initial Capital Budget. The parties agree that "MOTI's Initial Capital Contribution" shall be fifty percent (50%) of the Initial Capital Expenditure necessary to design, construct and equip the Restaurant, which Initial Capital Expenditure is currently estimated to be Six Hundred Thousand (\$600,000.00) and No/100 Dollars. The parties acknowledge and agree that, with regard to remaining sum necessary to design, construct and cost to equip the Restaurant, Caesars shall be responsible for the remaining fifty percent (50%) of the "Initial Capital Expenditure" which amount shall be "Caesars' Initial Capital Contribution". Caesars shall consider and be the sole arbiter of the need for additional capital expenditure necessary to maintain and enhance the Restaurant ("Future Capital Expenditure") or that which is necessary to maintain the Restaurant as a high end facility ("Maintenance Capital Expenditure"). MOTI and Caesars shall be required to make additional capital contributions for Future Capital Expenditures and Maintenance Capital Expenditures (collectively, the "Future Capital Contribution") for Future Capital Expenditures and Maintenance Capital Expenditures in the same percentage as the percentage of that Party's Initial Capital Contribution. The definition of that for which the Parties shall be responsible for payment of their Initial Capital Contribution and Future Capital Contribution is attached hereto and incorporated herein by reference as Exhibit B. Payment by MOTI to Caesars of its Initial Capital Contribution shall be made to Caesars on or before April 6, 2009.

In no event shall MOTI otherwise be entitled to use, offset against amounts due under this Agreement or otherwise receive the benefit of any portion of its Initial Capital Expenditure. Each Party shall share in the same proportion as its Initial Capital Contribution to any cost overrun or savings from the Initial Capital Budget. MOTI's payment of its Initial Capital Contribution, cost overrun related to the Initial Capital Budget and Future Capital Contribution shall be made to Caesars within thirty (30) days of its receipt of an invoice for same, which invoice shall provide detail as to the nature and cost of each expenditure. Caesars payment to MOTI of any cost savings related to the Initial Capital Budget shall be paid to MOTI within thirty (30) days following the opening of the Restaurant.

1.2 Exclusivity: MOTI covenants and agrees that at all times during the Term (as defined below) neither MOTI, its parent nor any Affiliate of MOTI will (the term "Affiliate" shall be defined as provided hereinbelow) will operate or agree, permit or license, directly or indirectly, the concept of the Restaurant nor any Mark (as defined below) to be used within Clark County, Nevada, other than by Caesars, its parent or any of its Affiliates with respect to the Restaurant the "Exclusivity Provision"). For the purpose of clarity, the term "MOTI" in this paragraph is intended to apply to MOTI, its parent and any affiliate and each of those entity's officers, directors and any other individual having any ownership interest in MOTI, its parent or any of its Affiliates. To the extent this Agreement is terminated by Caesars prior to the end of the Term originally stated herein, and MOTI is (and Caesar is not) in default or breach of this Agreement at the time of such termination, the Exclusivity Provisions shall continue for a period of twenty-four (24) months following such termination. With respect to any proposed operation or agreement by MOTI to operate, permit or license, directly or indirectly the concept of the Restaurant within a fifty (50) mile radius of any parent or affiliate of Caesars, MOTI shall provide Caesars (or, at Caesars' option, its designated Affiliate) with an offer, in writing, to participate in such venture, either at the proposed site location or, at Caesars' option, by placement at the premises of its designated Affiliate. If Caesars (or its designated Affiliate) indicates within thirty (30) days its interest in considering such opportunity, MOTI and Caesars (or its designated Affiliate) will consult and discuss such opportunity for the succeeding one hundred twenty (120) days to determine if mutually agreeable terms of participation can be reached. If they do not agree, and MOTI nevertheless decides to proceed with such venture, MOTI will also offer Caesars (or its designated Affiliate) a right of last refusal of thirty (30) days duration to accept the material terms of the opportunity proposed to be entered into by the other venturer(s) before entering into the proposed venture with any other party. If Caesars (or its designated Affiliate) does not timely exercise such right, MOTI will be free to proceed without Caesars (or its designated Affiliate).

2. RESTAURANT DESIGN AND DEVELOPMENT:

2.1 General: The Restaurant shall be comprised of that square footage indicated on Exhibit "A" attached hereto.

2.2 Design: Subject to all of the terms and conditions more particularly set forth herein, Caesars shall work closely with MOTI and give consideration to all of MOTI's reasonable recommendations in the design, development, construction and outfitting of the Restaurant, including, without limitation, all furniture, fixtures, equipment, inventory and supplies (the "Development Services"); provided, however, that Caesars, after consulting with MOTI and considering all reasonable recommendations from MOTI, shall have final approval with respect to all aspects of same. Caesars shall be solely responsible for hiring, and retaining any and all design and development professionals engaged in the design, development, construction, and outfitting of the Restaurant. Caesars shall appoint an individual or individuals, who may be changed from time to time by Caesars, acting in its sole and absolute discretion, to act as Caesars² liaison with MOTI in the design, development, construction and outfitting of the Restaurant. Caesars shall provide MOTI with copies of all proposed budgets and afford MOTI the reasonable opportunity to review each such budget and to make reasonable recommendations on same based upon MOTI's experience prior to Caesars' adoption and implementation of any such budget. After giving consideration to all reasonable recommendations made by MOTI, Caesars shall establish, control, and amend from time to time as necessary, all in Caesars' sole and absolute discretion, the budgets costs and expenses for the design, development, construction, and outfitting of the Restaurant. From time to time hereafter, Caesars shall promptly advise MOTI of, and consult with MOTI regarding, any material changes in, modifications to and/or deviations from any budget, with the understanding that Caesars shall make all decisions related to same acting in its sole and absolute discretion. Development Services, and meetings with respect to same, shall take place primarily in Las Vegas, or at such other location or locations as may be mutually and reasonably agreed to by Caesars and MOTI from time to time. Any subsequent refurbishment, redesign or reconstruction of the Restaurant shall be undertaken by Caesars, acting in its sole discretion, but with a view toward maintaining the Restaurant in a first class condition.

2.3 Menu Development:

2.3.1 Menu Development: Prior to the commencement of the Term, MOTI shall develop the initial food and beverage menus of the Restaurant, and the recipes for same, and thereafter, MOTI shall revise the food and beverage menus of the Restaurant, and the recipes for same (the "Menu Development Services"), all of which recipes shall be owned by MOTI. Caesars shall have the reasonable opportunity to review such food and beverage menus prior to their implementation and make reasonable recommendations to same based upon the proposed costs and Caesars' experience with the Las Vegas, Nevada fine-dining industry. After consulting with and giving consideration to all reasonable advice and reasonable recommendations from MOTI, Caesars shall establish the pricing of such food and beverage menus, in its sole and absolute discretion. Menu Development Services, and meetings with respect to same, shall take place primarily in Las Vegas or such other location or locations as may be mutually and reasonably agreed to by Caesars and MOTI from time to time.

2.3.2 Menu Standards: The food and beverage menus of the Restaurant, and the recipes for same, shall feature familiar casual "comfort foods", signature desserts, sundaes, shakes and frozen hot chocolates with minimum menu categories that include appetizers, sandwiches, entrée salads, soups, hot dogs, burgers, omelets, pastas and a cocktail menu. A walk up window may feature "finger food" appetizers, hot dogs, burgers, salad wraps, sandwiches, shakes, frozen hot chocolates and signature "to go" cocktails.

2.3.3 Opening Date: The parties intend that the Restaurant shall open to the public on a date that shall be mutually agreed to, which is presently anticipated to be on or about April 1, 2009, except in the event of an act of Excusable Delay (as defined below). Should the Restaurant not open to the public on or before December 31, 2011 (except in the event of an act of Excusable Delay), either Party shall have the right to terminate this Agreement without further obligation to the other Party. Any reasonable delay in construction of the facility, whether by acts within Caesars' or its Affiliates' control or by acts of Excusable Delay shall not result in a termination of this Agreement; provided, however, notwithstanding the provisions of this Section 2.3.3 or Section 11.3 to the contrary, if, construction is stopped in its entirety for more than one hundred twenty (120) calendar days, either party, upon thirty (30) calendar days' notice to the other, may terminate this Agreement and all further obligations hereunder.

2.3.4 General Development and Management: Unless expressly provided herein to the contrary, Caesars shall be solely responsible for:

- (a) all costs, fees and expenses of Caesars or any third Person (as defined below) incurred or required to be incurred with respect to the design, development, construction, outfitting and operation of the Restaurant;
- (b) managing the operations, business, finances and Employees (as defined below) of the Restaurant on a day-to-day basis;
- (c) developing and enforcing employment and training procedures, marketing plans, pricing policies and quality standards of the Restaurant;
- (d) supervising the use of the food and beverage menus and recipes developed by MOTI pursuant to the terms of Section 2.3; and
- (e) providing copies of the Restaurant's unaudited financial statements to MOTI on a: i) monthly, within fifteen (15) days after the end of each calendar month; ii) quarterly, within forty-five (45) days after the end of each calendar quarter; and iii) annually, within one hundred twenty (120) days following the conclusion of each calendar year.

3. TERM:

3.1 Term: The initial term of this Agreement shall commence on the Effective Date and shall expire on that date that is five (5) years from the Opening Date, unless extended by Caesars or unless earlier terminated pursuant to the terms hereof (the "Initial Term"). Caesars shall have the right, but not the obligation, upon not less than one

hundred eighty (180) calendar days' written notice to MOTI, to extend the term of this Agreement for one (1) additional five (5) year period (together with the Initial Term, the "Term"), which shall be on all of the same terms and conditions as contained herein. Thereafter, there shall be no additional extensions of the term of this Agreement.

3.2 Termination:

3.2.1 Gross Revenue Threshold: If, after conclusion of the first year following the Opening Date Gross Revenue for any continuous twelve (12) month period after the Opening Date (the "Determination Period") is the aggregate less than Ten Million and 00/100 Dollars (\$10,000,000.00), compounded by four (4%) percent annually from the Opening Date, Caesars shall have the right, but not the obligation, upon not less than thirty (30) calendar days' notice given with the six (6) month period immediately following the Determination Period, to terminate this Agreement in accordance with the terms hereof. Should Caesars terminate the Agreement pursuant to this provision, Caesars shall pay to MOTI its then undepreciated Initial Capital Contribution.

3.2.2 Death, Disability or Non-Involvement of MOTI Principal: In the event at any time during the Term of following with respect to Rowen Seibel's (a) death, (b) material disability, including, without limitation, any physical or mental condition, which impairs the ability to render, in a timely manner, all of MOTI covenants, agreements and obligations hereunder for a period of three (3) consecutive months or six (6) months in any eighteen (18) month period, or (c) Rowan Seibel is no longer actively engaged as a restaurateur for any reason whatsoever and fails to fulfill (after notice and opportunity to cure) the obligations required of him in this Agreement, then, upon not less than ninety (90) calendar days' written notice to MOTI, or immediately in the case of death or disability, and without prejudice to any other rights or remedies of Caesars including at law or in equity, Caesars shall have the right to terminate this Agreement in accordance with its respective terms unless, during that period, MOTI presents to Caesars a proposed assignee that, during that period, : a) fulfills the requirements of the Compliance Committee of Caesars and its affiliates; and b) demonstrates sufficient financial means and operational experience necessary to fulfill MOTI's obligations hereunder, a decision that shall be within Caesars sole discretion, but acting reasonably .

3.2.3 Right to Terminate or Relocate: At any time during the Term, Caesars may immediately terminate this Agreement ("Early Termination", the effective date of which shall be referred to as the "Early Termination Date") or relocate the Restaurant ("Relocation", the effective date of which shall be referred to as the "Relocation Date") without cause, meaning for any reason or no reason at all. If Gross Revenue for the twelve (12) month period immediately preceding the Early Termination Date or Relocation Date is greater than Ten Million and 00/100 Dollars (\$10,000,000.00), compounded by four (4%) percent annually from the Opening Date, Caesars shall, within thirty (30) days following the Early Termination Date or Relocation Date, pay to MOTI the following amount: a) MOTI's undepreciated Initial Capital Contribution and undepreciated Future Capital Contribution; and b) the lesser of (i) the aggregate of the payments made to MOTI as described in paragraph 7 hereinbelow for the twelve (12) months immediately preceding the Early Termination Date or Relocation Date; or (ii) a calculation, the numerator of which shall be the aggregate of the payments made to MOTI as described in paragraph 7 hereinbelow for the twelve (12) months immediately preceding the Early Termination Date or Relocation Date and the denominator shall be the difference between the Term's natural expiration date and the Early Termination Date or Relocation Date.

3.3 Effect of Expiration or Termination: Upon the expiration or earlier termination of this Agreement:

(a) Caesars shall cease operations of the Restaurant; provided, however, in the event of an early termination of this Agreement, Caesars shall be entitled to operate the Restaurant and use the License (as defined below) for that reasonable period of time required to orderly and properly wind-up operations of the Restaurant not to exceed one hundred twenty (120) days;

(b) Caesars shall retain all right, title and interest in and to the Restaurant Premises;

(c) Caesars shall retain all right, title and interest in and to the plans and specifications and any other materials or work product produced in connection with or procured by Caesars in connection with the Restaurant design, and all furniture, fixtures, equipment, inventory supplies and intangible assets located within or associated with the Restaurant, with the exception of any intellectual property owned by MOTI or its Affiliates); and

(d) Caesars shall have the right, but not the obligation, immediately or at any time after such expiration or termination, to operate a restaurant in the Restaurant Premises; provided, however, such restaurant shall not employ the Restaurant's food and beverage menus developed by MOTI pursuant to Section 2.3 or any of the Marks (as such term is hereinafter defined).

4. **RESTAURANT EMPLOYEES:**

4.1 **General Requirements:**

4.1.1 **Employees:** Caesars shall be responsible for, and shall have final approval with respect to, hiring, training, managing, evaluating, promoting, disciplining and firing all kitchen and front-of-house management and staff of the Restaurant (collectively, the "**Employees**"). All Employees, including, without limitation, all Senior Management Employees (as defined below), shall be employees of Caesars and shall be expressly subject to (a) Caesars' human resources policies and procedures and hiring requirements in existence as of the Effective Date and as modified by Caesars from time to time during the Term, and (b) Caesars' compliance committee requirements, as more particularly set forth in Section 10.2 hereof.

4.1.2 **Definition of Affiliate:** As used herein, "**Affiliate**" means, with respect to a specified Person, any other Person who or which is directly or indirectly controlling, controlled by or under common control with the specified Person, or any member, stockholder, director, officer, manager, or comparable principal of, or Relative of the specified Person. For purposes of this definition, "control", "controlling", "controlled" mean the right to exercise, directly or indirectly, any percentage interest of the voting power of the stockholders, members or owners and, with respect to any individual, partnership, trust or other entity or association, the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of the controlled entity. The term "Relative" shall mean: mother, father, spouse brother, sister, children, son-in-law, daughter-in-law, mother-in-law, father-in-law, step-parents, step-children, grandmother, grandfather, grandchildren and any Relative or other person residing in the place of resident of Rowen Seibel, any of the interest holders of MOTI or any of the interest holders of GLP.

4.2 **Union Agreements:**

4.2.1 **Agreements:** MOTI acknowledges and agrees that all of Caesars' agreements, covenants and obligations and all of MOTI's rights and agreements contained herein are subject to the provisions of any and all collective bargaining agreements and related union agreements to which Caesars is or may become a party and that are or may be applicable to the Employees (collectively, the "**Union Agreements**"), including, without limitation, that certain Union Agreement by and between Caesars and the Local Joint Executive Board of Las Vegas (the "**Executive Board**") in effect as of the Effective Date. MOTI agrees that all of its agreements, covenants and obligations hereunder, shall be undertaken in such manner as to be in accordance with and to assist and cooperate with Caesars' obligation to fulfill its obligations contained in the Union Agreements and any supplements thereto provided, that Caesars now and hereafter, shall advise MOTI of the obligations contained in said Union Agreements and any supplement thereto that are applicable to Employees. Notwithstanding the foregoing, in no event shall MOTI be deemed a party to any such Agreement whether by reason of this Agreement, the performance of its obligations hereunder or otherwise.

4.2.2 **Amendments:** MOTI acknowledges and agrees that from time to time during the Term; Caesars may negotiate and enter into supplements to the Union Agreements with the Executive Board or its component unions. Each Union Agreement or supplement thereto may include those provisions agreed to by and between the Executive Board and Caesars, in its sole discretion, including, without limitation, provisions for (a) notifying then-existing employees of Caesars in the bargaining units represented by the Executive Board of employment opportunities in the Restaurant, (b) preferences in training opportunities for such then-existing employees, (c) preferences in hiring of such then-existing employees, if such then-existing employees are properly qualified, and (d) other provisions concerning matters addressed in this Section 4.3.

4.2.3 **Conflicts:** In the event any agreement, covenant or obligation of Caesars or the exercise of any

right or agreement of MOTI contained herein is, or at any time during the Term shall be, prohibited pursuant to the terms of any Union Agreement or supplement thereto, Caesars shall be relieved of such agreement, covenant or obligation, with no continuing or accruing liabilities of any kind, and such agreement, covenant or obligation shall be deemed to be separate and severable from the other portions of this Agreement, and the other portions shall be given full force and effect. Caesars and MOTI shall thereafter cooperate in good faith to modify this Agreement to provide the parties with continuing agreements, covenants and obligations that are consistent with the requirements and obligations of this Agreement (including, but not limited to, the economic provisions contained herein), such Union Agreement and supplements thereto, and applicable law.

4.3 **Employment Authorization:** Caesars shall be solely responsible for applying for, and shall be solely responsible for all costs and expenses arising therefrom (with the understanding that said costs shall be deemed to be an expense of the Restaurant), any work authorizations from the United States Citizenship and Immigration Services, a Bureau of the United States Department of Homeland Security ("**USCIS**"), that may be required in order for the Executive Chef or other Senior Management Employees to be employed by Caesars at the Restaurant; provided, however, each such Employee shall be required to cooperate with Caesars with respect to applying for such work authorization and shall be required to diligently provide to Caesars or directly to USCIS, as applicable, all information such Employee is required to provide in support of the application for such work authorization; provided further, however, MOTI expressly acknowledges that in the event that Caesars is unable to reasonably obtain such work authorization for any Employee, the offer of employment for such Employee shall be revoked and MOTI shall have an obligation, within a reasonable period thereafter, to advise Caesars as to whom MOTI recommends be hired for such position.

5. **LICENSE:**

5.1 **MOTI License:** MOTI represents and warrants to Caesars that MOTI possesses worldwide right and license (the "**License**") to license those certain marks and images to be used by the Restaurant, including, without limitation, the logos, trademark, trade names, service marks and registrations thereof, programs, techniques, processes, formulas, developmental or experimental work, work-in-process, methods, trade secrets or business affairs relating to MOTI including, without limitation, those as are identified on Exhibit D attached hereto (collectively, the "**Materials and Marks**"). MOTI hereby grants to Caesars a license, to use (and permit its Affiliates to use) and employ the Materials and Marks on and in connection with the operation, marketing and promotion of the Restaurant by Caesars and its Affiliates under the terms and conditions more fully set forth herein. MOTI further represents and warrants that it shall not revoke or otherwise terminate the License at any time during the Term unless, as of the date of such revocation or termination, MOTI or MOTI's lawful designee licenses the Marks to Caesars for the balance of the Term substantially and materially in accordance with the terms of the License. MOTI shall, at Caesars' reasonable request, provide information or documents possessed by MOTI and execute documents that are necessary or useful for Caesars to exercise its rights under this Agreement and the License.

5.2 **Ownership:** MOTI agrees and acknowledges Caesars shall own all copyright and other rights, title and interest in and to all media created by Caesars (and by MOTI pursuant to this Agreement) whether such media uses or contains any or all of the Materials and the Marks, including, without limitation, all photographic or video images, all promotional materials produced in accordance with the provisions of Article 6 hereof, and all marketing materials produced in accordance with the provisions of Article 8 hereof and, in addition to the rights granted by copyright, may use such media and the Materials and the Marks in promotional pieces listing, indicating or depicting people or entities that have or have had an appearance, relationship or other connection to Caesars. Notwithstanding the foregoing, Caesars shall only be entitled to use the Materials and the Marks as expressly permitted herein.

5.3 **Intellectual Property License:** Subject to the terms and conditions hereof, MOTI hereby grants to Caesars a non-exclusive, royalty-free (the "**Intellectual Property License**") to make use of the Materials and Marks identified in Exhibit D pursuant to the following terms and conditions:

5.3.1 **Scope of Use:** Caesars may use MOTI's Intellectual Property to the extent necessary to the furtherance of its rights and obligations under the terms and conditions of this Agreement, including but not limited to the following: Caesars may use the Materials and Marks contained in Exhibit D to effectuate the rights and responsibilities of the Parties as described herein. With respect to Materials and Marks not contained in Exhibit D, Caesars shall submit promotional materials and advertisements proposing use of said Materials and Marks for approval to Rowen Seibel by delivering such materials (by mail, email or facsimile)

to his office at MOTI or to such other person and/or location as MOTI may designate in the future. Use of such Materials and Marks shall be deemed approved unless within five (5) business days of submission, MOTI provides a written notice denying approval to Caesars by fax and email with a confirmation copy by overnight carrier as set forth in Paragraph 13.5 and/or such other person or location as Caesars may designate in the future. Notwithstanding the foregoing, MOTI agrees that it shall not unreasonably withhold or delay its approval of any Caesars' request.

5.3.2 Territory: Caesars' right to use the Materials and Marks is worldwide.

5.3.3 Usage: Caesars shall use the Materials and Marks only as contained in Exhibit D or in the manner and form(s) as set forth in written approval provided by MOTI.

5.3.4 Marking: Caesars shall place the trademark registration symbol, ®, next to the Materials and Marks, and the superscripted "TM" or "SM" symbols next to MOTI's common-law trademarks and service marks identified in Exhibit D. If it is not feasible to use the above referenced trademark symbols, Caesars shall use good-faith efforts, when reasonable and commercially feasible, to include a statement in an appropriate location and size substantially similar to: "The Mark _____ (include Mark description) is a trademark owned by _____ (identify Mark's owner)" and, where appropriate, to continue "and is registered in the U.S. Patent and Trademark Office. Use without permission is strictly prohibited." Caesars also agrees that, if any web page on its web site contains any of the Materials and Marks that do not contain any of the above-mentioned trademark symbols, it shall use this trademark statement on such web pages either by including this language on the web page itself or through use of hypertext links to this language.

5.3.5 Quality Control: Caesars agrees that it shall use the Materials and Marks in a manner consistent with the quality associated with its own Intellectual Property. Caesars shall use commercially reasonable efforts to bring to MOTI's attention any issues with respect to the quality of use of the Materials and Marks and shall cooperate with any reasonable suggestion by MOTI to resolve any such issue. The parties acknowledge that due to their close working relationship with respect to the subject matter of this Agreement, MOTI can monitor Caesars's performance of its obligations under this Paragraph.

5.3.6 Limitation on Usage: Caesars acknowledges and agrees that MOTI reserves for itself the right to object to any use of the MOTI Marks even if such use is within the scope of permissible use set forth in this Agreement. Upon written notice by MOTI to Caesars of any such objection, Caesars shall promptly discontinue such use in the future, provided that MOTI shall provide Caesars with a reasonably acceptable equivalent alternative and provided further that MOTI shall reimburse Caesars for any reasonable expense it incurs in discarding existing inventory of approved marketing materials. Such expenses shall be deemed expenses of MOTI and shall not be deemed expenses of the Restaurant.

5.3.7 Registration: Caesars shall not register any mark in any jurisdiction, either during or after the term of this Agreement, which is identical or confusingly similar to any of the Materials or Marks.

5.3.8 Domain Names: Caesars shall not register any domain name, either during or after the term of this Agreement, consisting of or including any of the Materials or Marks or any variation thereof.

5.3.9 Estoppel: Upon conclusion of any "run out" provision described in this Agreement following termination of this Agreement, Caesars shall immediately stop all advertising and promotional use of the Materials and Mark. Caesars agrees that at no time either during or after the term of this Agreement will it directly or indirectly challenge or assist others to challenge the validity or strength of the Materials or Marks, provided that nothing herein shall preclude Caesars from complying with any lawful subpoena or other legal requirement.

6. SERVICES FEE:

6.1 Services Fee: In consideration of MOTI provision of the Services described herein, monthly Net Revenues shall be calculated and allocated between the parties in the following amounts and in the following order:

- (a) Caesars shall be entitled to retain a sum sufficient to make payment with respect to all Operating Expenses (consistent with Caesars' standards applicable to other similar operations, but which expenses shall

always include all costs, overhead including, but not limited to, compensation and benefits paid to employees) of the restaurant, which shall include those items listed in Exhibit B, which is attached hereto and incorporated herein by reference.

(b) If, following deduction of Operating Expenses from Net Revenue, a sum remains that equals or exceeds Thirteen (13%) of Net Revenue in the calendar month at issue:

1. Caesars shall be entitled to retain a sum as Rent equal to the of Eight (8%) Percent of Net Revenue for that calendar month; and

2. Caesars shall pay to MOTI (i) the sum of Five (5%) Percent of Net Revenue for Net Revenue received in a calendar month up to the sum of Eight Hundred Thousand Three Hundred Thirty-Three Thousand Dollars and 33/100 (\$833,333.33) (ii) the sum of Six (6%) Percent of Net Revenue for Net Revenue received in a calendar month equal to or exceeding the sum of Eight Hundred Thousand Three Hundred Thirty-Three Thousand Dollars and 33/100 (\$833,333.33) up to the sum of One Million Two Hundred Fifty Thousand Dollars and 00/100; and (iii) the sum of Seven (7%) Percent of Net Revenue for Net Revenue received in a calendar month exceeding the sum of One Million Two Hundred Fifty Thousand Dollars and 00/100 (\$1,250,000.00) as and for a License Fee (the "License Fee") in exchange for the performance of MOTI's obligations described herein.

3. Following retention by Caesars of the sum as referred to in paragraph b(1) hereinabove and payment to MOTI as referred to in paragraph b(2) hereinabove, Caesars shall be entitled to retain Fifty (50%) Percent of remaining Net Revenue and shall pay to MOTI Fifty (50%) of remaining Net Revenue for that calendar month.

(c) If Net Revenue in any calendar month during the Term is less than Thirteen, (13%) Percent greater than Operating Expenses, in place of retention by Caesars and payment to MOTI of the amounts referred to hereinabove in paragraph 6.1(b), Caesars shall be entitled to retain as Rent Sixty-One and One Half (61.5%) Percent of Net Revenue and Caesars shall pay to MOTI Thirty-Eight and One Half (38.5%) Percent of Net Revenue above Operating Expenses received in that calendar month. In any month in which Net Revenue does not exceed Operating Expenses, there shall be no allocation of Net Revenue to the Parties for that month (except for Caesars retention of all monies which shall be offset against Operating Expenses) and any loss shall be carried forward and netted against Net Revenue until Caesars receives monies sufficient to cover all Operating Expenses incurred.

Although calculated and allocated on a monthly basis, monies due and payable to MOTI as described in this Section 6.1 shall be payable on a calendar quarter basis, or any pro rata portion thereof during the Term, no later than thirty (30) days after the end of the calendar quarter to which they relate by check, money order or wire transfer in lawful funds of the United States of America to such address or account located within the United States of America as directed by MOTI from time to time. The Parties agree that should revenue in any calendar month not exceed Operating Expenses for that calendar month, no payment shall be allocated to MOTI for that month and Caesars shall be entitled to retain (and continue to retain in each succeeding month) all revenues until it has recouped all outstanding Operating Expenses incurred.. The Parties agree that should revenues in any reporting period not be sufficient to make any payment as described hereinabove in subparts 6.1 (b) and (c), there shall be no obligation to make any payment for same in any future reporting period.

Examples:

In the first example, the Net Revenues for the year are \$9,000,000 and operating margin is 21%

	Net Revenues	\$	9,000,000
7.1			
(a)	Less: Operating Expenses	\$	7,110,000
7.1			
(b)	Less: Rent Payment to HET	\$	720,000
7.1(c)			
)	Less: Advisory Fee to MOTI	\$	450,000
	Remaining Cash	\$	720,000
7.1			
(d)	Less: Distribution to HET	\$	360,000
	Less: Distribution to MOTI	\$	360,000
	Remaining Cash	\$	-

In the second example, the Net Revenues for the year are \$9,000,000 and operating margin is 11%. Since the operating margin is less than 13%, Caesars receives 61.5% of remaining, while MOTI receives 38.5%.

	Net Revenues	\$	9,000,000
7.1			
(a)	Less: Operating Expenses	\$	8,010,000
7.1			
(b)	Less: Rent Payment to HET	\$	608,850
7.1(c)			
)	Less: Advisory Fee to MOTI	\$	381,150
	Remaining Cash	\$	-
7.1			
(d)	Less: Distribution to HET	\$	-
	Less: Distribution to MOTI	\$	-
	Remaining Cash	\$	-

In the third example, the Net Revenues for the year are \$9,000,000 and operating margin is -2%. Since the operating margin does not sufficiently cover the expenses, no allocations of net revenue will be paid to either party and the loss shall be carried forward and netted against net revenue until CLV receives monies sufficient to cover all operating costs.

	Net Revenues	\$	9,000,000
7.1			
(a)	Less: Operating Expenses	\$	9,180,000
7.1			
(b)	Less: Rent Payment to HET	\$	-
7.1(c)			
)	Less: Advisory Fee to MOTI	\$	-
	Remaining Cash	\$	(180,000)
7.1			
(d)	Less: Distribution to HET	\$	-
	Less: Distribution to MOTI	\$	-
	Remaining Cash	\$	(180,000)

6.2 Determination of Gross Revenues, Net Revenues and Operating Expenses: As used herein, "**Gross Revenues**" means the aggregate gross revenues, whether paid by cash or credit, of all goods, merchandise and services sold in or from the Restaurant, including, without limitation, food, retail merchandise, private party minimums, floral arrangements, set-up fees and similar expenses, and all food sold or served outside the Restaurant that is prepared by or represented as Restaurant cuisine. Caesars shall be solely responsible for maintaining and shall maintain, all books and records necessary to calculate Gross Revenues, Net Revenues and Operating Expenses and for the calculation thereof and, within thirty (30) days after the end of each calendar quarter shall deliver notice to MOTI reasonably detailing the calculation of Gross Revenues, Net Revenues and Operating Expenses for such quarter. Caesars' calculations shall be conclusive and binding unless, (i) within thirty (30) calendar days' of Caesars delivery of such notice, MOTI notifies Caesars in writing of any claimed manifest calculation error therein; or (ii) such calculations are determined to be inaccurate as the result of any audit pursuant to Section 6.3. Upon receipt of any such notification, Caesars shall review the claimed manifest calculation error and, within thirty (30) calendar days of such notification, advise MOTI as to the corrected calculation, if any. Absent such notification and such manifest calculation error, Caesars' calculations shall be binding on the parties. The items contained in subparagraphs (a)-(d) hereinbelow shall be deducted from the calculation of Gross Revenues and revenue remaining following these deductions shall constitute "Net Revenues" as such term is used further herein:

- (a) taxes of any nature added to checks or invoices pursuant to applicable laws;
- (b) gratuities and service fees received from customers for services and actually paid to Employees;
- (c) money and credits received by the Restaurant in settlement of claims for losses or damages; and
- (d) rebates, discounts or credits (which shall not include Restaurant "comps" issued to patrons) received by the Restaurant and consistent with Caesar's accounting system, except for rebates, discounts or credits related to items that are acquired for use solely in the Restaurant and not in any other outlet at Caesars Palace. This exception shall not apply to the purchase of any alcoholic beverages.

6.3 Audit: MOTI shall be entitled at any time upon ten (10) calendar days' notice to Caesars, but not more than one (1) time per calendar year, to cause an audit to be made, during normal business hours, by any Person designated by MOTI and approved by Caesars (who shall not unreasonably withhold, delay or condition said approval), of all books, records, accounts and receipts required to be kept for the calculation of Gross Revenues, Net Revenues and Operating Expenses which shall not include tax returns of Caesars filed on a consolidated basis, which audit shall be conducted without material disruption or disturbance of Caesars Operations. If such audit discloses that Gross Revenues or Net Revenues were understated or Operating Expenses were overstated for any relevant period, Caesars shall be entitled to review such audit materials and to conduct its own audit related to such period. If Caesars does not dispute the result of MOTI audit within ninety (90) days after conclusion and presentation by MOTI to Caesars of MOTI's findings, Caesars shall (in the next monthly allocation) allocate to MOTI such additional monies necessary to compensate MOTI consistent with the terms of payment described in Section 6.1 hereinabove. If such audit discloses that Gross Revenues or Net Revenues were understated or Operating Expenses were overstated for any monthly period by an amount equal to or greater than five percent (5%), Caesars shall pay MOTI actual costs of such audit, including, without limitation, all accountants' fees. MOTI shall hold all information disclosed to MOTI pursuant to this Section 6.3 in confidence, and not disclose same to any third Person other than (a) to any Person with the prior written consent of Caesars, (b) to MOTI directors, officers, employees, agents or advisors, including, without limitation, attorneys, and, as reasonably required, accountants, consultants and financial advisors, all of whom MOTI shall inform of the confidential nature of such information, (c) in furtherance of any legal process to which MOTI is a party, or (d) as required to be disclosed by MOTI in compliance with any Applicable Laws.

7. OPERATIONS:

7.1 Marketing: As reasonably required by Caesars from time to time during the Term, but not less than once each quarter, Rowen Seibel shall consult with Caesars, and provide Caesars with advice regarding the marketing of the Restaurant; provided, however, Caesars, after considering all reasonable recommendations received from MOTI, shall have final approval with respect to all aspects of same. Such marketing consultations (the "**Marketing Consulting**

Services”), and meetings with respect to same, shall take place primarily in Las Vegas or such other location or locations as may be mutually and reasonably agreed to by Caesars and MOTI from time to time. Caesars shall market the Restaurant through means and in media which shall include, in room TV, the Caesars marquee, Dura-trans and the webpage for Caesars located within the website of Caesars’ affiliate.

7.2 Accommodations: Each month during the first three (3) months of the Term and, thereafter, for each quarterly visit, subject to availability, Caesars shall provide for Rowen Seibel’s use two (2) Deluxe rooms (room and tax only in Palace or Augustus Tower) at the Hotel Casino; provided, however, Rowen Seibel shall be responsible for all incidental room charges and other expenses incurred during the occupancy of such rooms. All such Travel Expenses as described above shall be considered an operating expense of the Restaurant. In addition to the foregoing, during the Term and subject to availability, Rowen Seibel shall be entitled to receive (for his use only) use of one (1) Deluxe Room (in Palace or Augustus Tower) at a discount of twenty (20%) percent off the then prevailing “casino” rate.

8. REPRESENTATIONS AND WARRANTIES:

8.1 Caesars’ Representations and Warranties: Caesars hereby represents and warrants to MOTI that:

- (a) Caesars has the valid corporate power to execute and deliver, and perform its obligations under, this Agreement and such execution, delivery and performance has been authorized by all necessary corporate action on the part of Caesars;
- (b) no consent or approval or authorization of any applicable governmental authority or natural person, form of business or social organization, other non-governmental legal entity, including, without limitation, a corporation, partnership, association, trust, unincorporated organization, estate or limited liability company (as applicable, a “Person”) is required in connection with Caesars’ execution and delivery, and performance of its obligations under this Agreement and, additionally, as of the date of the signing of this Agreement, MOTI has fulfilled its obligations with respect to the compliance policy of Caesars’ affiliate and no further approval of this Agreement is required by the Compliance Committee of Caesars’ affiliate;
- (c) there are no known actions, suits or proceedings pending or, to the best knowledge of Caesars, threatened against Caesars in any court or administrative agency that would prevent Caesars from completing the transactions provided for herein;
- (d) this Agreement constitutes the legal, valid and binding obligation of Caesars, enforceable in accordance with its terms;
- (e) as of the Effective Date, no representation or warranty made herein by Caesars contains any untrue statement of material fact, or omits to state a material fact necessary to make such statements not misleading; and
- (f) at all times during the Term, the Restaurant shall be a first-class gourmet restaurant.

8.2 MOTI Representations and Warranties: MOTI hereby represents and warrants to Caesars that:

- (a) MOTI has the legal capacity to execute and deliver, and perform its obligations under, this Agreement;
- (b) no consent or approval or authorization of any applicable governmental authority or Person is required in connection with MOTI’s execution and delivery, and performance of its obligations under, this Agreement;
- (c) there are no known actions, suits or proceedings pending or, to the best knowledge of MOTI, threatened against MOTI in any court or before any administrative agency that would prevent MOTI from completing the transactions provided for herein;

(d) this Agreement constitutes the legal, valid and binding obligation of MOTI, enforceable in accordance with its terms; and

(e) as of the Effective Date, no representation or warranty made herein by MOTI contains any untrue statement of a material fact, or omits to state a material fact necessary to make such statements not misleading.

9. **STANDARDS; PRIVILEGED LICENSE:**

9.1 **Standards:** MOTI acknowledges that the Hotel Casino is an exclusive first-class resort hotel casino and that the Restaurant shall be an exclusive first-class restaurant and that the maintenance of the reputation of Caesars, the Marks, the Hotel Casino and the Restaurant reputation and the goodwill of the guests and invitees of Caesars, the Hotel Casino and the Restaurant guests and invitees is absolutely essential to Caesars, and that any impairment thereof whatsoever will cause great damage to Caesars. MOTI therefore covenants and agrees that it shall conduct all of its obligations hereunder in accordance with the highest standards of honesty, integrity, quality and courtesy so as to maintain and enhance the reputation and goodwill of Caesars, the Marks, the Hotel Casino, and the Restaurant and at all times in keeping with and not inconsistent with or detrimental to the operation of an exclusive, first-class resort hotel casino and an exclusive, first-class restaurant. MOTI shall use commercially reasonable efforts to continuously monitor the performance of each of its respective agents, employees, servants, contractors, and licensees at the Restaurant to ensure such standards are consistently maintained. MOTI failure to comply or failure to cause any of their respective agents, employees, servants, contractors, or licensees to comply with the terms of this Section 10.1 (after receiving a notice of such failure and being afforded a reasonable opportunity to cure to Caesars reasonable satisfaction) may be deemed, in Caesars' sole and absolute discretion, as a default hereunder.

9.2 **Privileged License:** MOTI acknowledges that Caesars and Caesars' Affiliates are businesses that are or may be subject to and exist because of privileged licenses issued by federal, state and local governmental, regulatory and administrative authorities, agencies, boards and officials responsible for or involved in the regulation of gaming or gaming activities and the sale, distribution and possession of alcoholic beverages (the "Gaming Authorities"). The Gaming Authorities require Caesars, and Caesars deems it advisable, to have a compliance committee (the "Compliance Committee") that does its own background checks on, and issues approvals of, Persons involved with Caesars and Caesars' business operations. Prior to the execution of this Agreement and, in any event, prior to the payment of any monies by Caesars to MOTI hereunder or by Caesars to Licensor under the License, and thereafter on each anniversary of the Opening Date during the Term, (a) MOTI shall provide to Caesars written disclosure regarding, MOTI and all of their respective key employees, agents, representatives, management personnel, lenders, or any financial participants (collectively, "Associated Parties"), and (b) the Compliance Committee shall have issued approvals of MOTI and the Associated Parties. Additionally, during the Term, on five (5) calendar days written request by Caesars to MOTI, MOTI shall disclose to Caesars all Associated Parties; provided, however, Caesars shall make not more than two (2) such written requests to MOTI in any twelve (12) month period; provided further, however, if Caesars has made two (2) such written requests to MOTI in any twelve (12) month period, and the Gaming Authorities require Caesars to make any additional written request(s), MOTI shall comply with such additional written request(s). To the extent that any prior disclosure becomes inaccurate, MOTI shall, within five (5) calendar days from that event, update the prior disclosure without Caesars making any further request. MOTI and its respective Associated Parties shall provide all requested information and apply for and obtain all necessary approvals required or requested of MOTI by Caesars or the Gaming Authorities. If MOTI fails to satisfy or fails to cause the Associated Parties to satisfy such requirement, if Caesars or any of Caesars' Affiliates are directed to cease business with MOTI or any Associated Party by the Gaming Authorities, or if Caesars shall determine, in Caesars' sole and exclusive judgment, that MOTI or any Associated Party is or may engage in any activity or relationship that could or does jeopardize any of the privileged licenses held by Caesars or any Caesars' Affiliate, then (a) MOTI shall terminate any relationship with the Associated Party who is the source of such issue, (b) MOTI shall cease the activity or relationship creating the issue to Caesars' satisfaction, in Caesars' sole judgment, or (c) if such activity or relationship is not subject to cure as set forth in the foregoing clauses (a) and (b), as determined by Caesars in its sole discretion, Caesars shall, without prejudice to any other rights or remedies of Caesars including at law or in equity, terminate this Agreement and its relationship with MOTI. In the event MOTI does not comply with any of the foregoing, such noncompliance may be deemed, in Caesars' sole discretion, as a default hereunder. MOTI further acknowledges that Caesars shall have the absolute right, without any obligation to comply with Article 11 hereof, to terminate this Agreement in the event any Gaming Authority require Caesars to do so.

10. **CONDEMNATION; CASUALTY; FORCE MAJEURE:**

10.1 **Condemnation:** In the event that during the Term the whole of the Restaurant shall be taken under power of eminent domain by any Governmental Authority or conveyed by Caesars to any Governmental Authority in lieu of such taking, then this Agreement shall terminate as of the date of such taking. In the event that during the Term a substantial portion of the Restaurant shall be taken under power of eminent domain by any Governmental Authority or conveyed by Caesars to any Governmental Authority in lieu of such taking, Caesars may, in the exercise of its sole discretion, terminate this Agreement upon written notice give not more than thirty (30) calendar days after the date of such taking. All compensation awarded by any such Governmental Authority shall be the sole property of Caesars and MOTI shall have no right, title or interest in and to same.

10.2 **Casualty:**

10.2.1 **Hotel Casino:** In the event that during the Term there is damage or destruction to the Hotel Casino by any casualty whatsoever and Caesars determines to close the Hotel for a period exceeding one hundred eighty (180) calendar days on account thereof, Caesars shall have the right, but not the obligation, to terminate this Agreement upon written notice delivered within one hundred twenty (120) calendar days after the occurrence of such damage or destruction.

10.2.2 **Restaurant:** In the event that during the Term there is damage or destruction to the Restaurant by any casualty whatsoever, Caesars shall have the right, but not the obligation, to terminate this Agreement upon written notice delivered within one hundred twenty (120) calendar days after the occurrence of such damage or destruction, only if (a) the casualty is a risk normally covered by fire and extended coverage insurance, with a special form endorsement, and the cost of repair and reconstruction will exceed fifty percent (50%) of the replacement cost of the Restaurant, or (b) the casualty is a risk not normally covered by fire and extended coverage insurance, with a special form endorsement, and the cost of repair and reconstruction will exceed ten percent (10%) of the replacement cost of the Restaurant. In the event this Agreement is not so terminated, Caesars shall use commercially reasonable efforts to promptly repair, reconstruct and restore the Restaurant in accordance with the provisions of Section 2.2. hereof.

10.2.3 **Excusable Delay:** In the event that during the Term either party shall be delayed in or prevented from the performance of any of such party's respective agreements, covenants or obligations hereunder by reason of strikes, lockouts, unavailability of materials, failure of power, fire, earthquake or other acts of God, restrictive applicable laws, riots, insurrections, the act, failure to act or default of the other party, war, terrorist acts, or other reasons wholly beyond its control and not reasonably foreseeable (each, an "Excusable Delay"), then the performance of such act shall be excused for the period of the delay and the period for the performance of such act shall be extended for a period equivalent to the period of such delay. Notwithstanding the foregoing, lack of funds shall not be deemed an Excusable Delay. Any claim for an extension of time due to an Excusable Delay must be made in writing and received by the other party not more than fifteen (15) calendar days after the commencement of such delay, otherwise, such party's rights under this Section 10.2.3 shall be deemed waived.

10.3 **No Extension of Term:** Nothing in this Article 10 shall extend the Term and no other payments shall accrue during any period during which the Restaurant is closed by reason of such condemnation, casualty, or Excusable Delay. Any termination by Caesars under Sections 9 or 10 shall terminate the obligations of each Party to this Agreement, except for those obligations that, by definition, are intended to survive termination.

11. **ARBITRATION:**

11.1 **Dispute Resolution:** Except for a breach by MOTI of Section 1.2, Section 5 or Section 9 (for which dispute Caesars may seek affirmative relief through any means and the filing of any action in any forum it deems appropriate), in the event of any other dispute, controversy or claim arising out of or relating to this Agreement between the parties to this Agreement ("Dispute"), either party shall serve written notice (a "Dispute Notice") upon the other party setting forth the nature of the Dispute and the relief sought, and the parties shall attempt to resolve the Dispute by negotiation. If the Dispute has not been resolved within thirty (30) days of receipt of a Dispute Notice, either party may serve on the other party a request to resolve the Dispute by arbitration. All Disputes not resolved by the foregoing negotiation shall be finally settled by binding arbitration. Such arbitration shall be held in Las Vegas,

Nevada in accordance with the Commercial Rules of Arbitration of the American Arbitration Association ("AAA"), in effect on the date of the Dispute Notice (the "Rules") by one or more arbitrators appointed in accordance with Section 11.2 hereof.

11.2 Arbitrator(s): If the claim in the Dispute Notice does not exceed Five Hundred Thousand and 00/100 Dollars (\$500,000.00), there shall be a single arbitrator nominated by mutual agreement of the parties and appointed according to the Rules. If the claim in the Dispute Notice exceeds Five Hundred Thousand and 00/100 Dollars (\$500,000.00), the arbitration panel shall consist of three (3) members unless both parties agree to use a single arbitrator. One of the arbitrators shall be nominated by Caesars, one of the arbitrators shall be nominated by MOTI and the third, who shall serve as chairman, shall be nominated by the two (2) party-arbitrators within thirty (30) days of the confirmation of the nomination of the second arbitrator. If either party fails to timely nominate an arbitrator in accordance with the Rules, or if the two (2) arbitrators nominated by the parties fail to timely agree upon a third arbitrator, then such arbitrator will be selected by the AAA Court of Arbitration in accordance with the Rules. The arbitral award shall be final and binding on the parties and may be entered and enforced in any court having jurisdiction over any of the parties or any of their assets.

12. MISCELLANEOUS:

12.1 No Partnership or Joint Venture: Nothing expressed or implied by the terms of this Agreement shall make or constitute either party hereto the agent, partner or joint venturer of and with any other party. Accordingly, the parties acknowledge and agree that all payments made to MOTI under this Agreement shall be for services rendered as an independent contractor and, unless otherwise required by law, Caesars shall report as such on IRS Form 1099, and both parties shall report this for financial and tax purposes in a manner consistent with the foregoing.

12.2 Successors, Assigns and Delagees; Sale: Caesars is relying upon the skill and expertise of MOTI and, specifically, the skills of Rowen Seibel (the "Principal") in entering into this Agreement and accordingly, the obligations and duties of MOTI specifically designated hereunder to be performed by the Principal are personal to each such Principal and are not assignable or, unless expressly contemplated hereby, delegable by MOTI to any other Person. Without limiting the foregoing or the provisions of Section 12.4, this Agreement shall inure to the benefit of and be binding upon the parties and, if written consent to assignment or delegation is given, their respective successors, assigns and delagees. Additionally, MOTI may not assign this Agreement or any obligation contained herein without written consent of Caesars, which consent may be withheld in Caesars' sole and absolute discretion.

12.3 Waiver of Rights: Failure to insist on compliance with any of the agreements, obligations and covenants hereof shall not be deemed a waiver of such agreements, obligations and covenants, nor shall any waiver or relinquishment of any right or power hereunder at any one or more time or times be deemed a waiver or relinquishment of such rights or powers at any other time or times. The exercise of any right or remedy shall not impair Caesars' or MOTI right to any other remedy.

12.4 At least sixty (60) days prior to any contemplated sale of the Hotel Casino, Caesars (or the then owner of the Hotel Casino) shall give MOTI written notice of such contemplated sale, which notice shall include the name and identity of the proposed purchaser. In the event such sale is thereafter consummated, Caesars (or the then owner of the Hotel Casino) shall be and hereby is relieved of all liability under any and all of its agreements, obligations and covenants contained in or derived from this Agreement arising out of any act, occurrence or omission relating to the Restaurant Premises or Caesars Palace occurring after the consummation of such sale or exchange. Provided that such purchaser of the Hotel Casino represents and warrants to operate the Restaurant substantially and materially in accordance with those standards set forth in this Agreement, MOTI shall continue to be obligated to such purchaser pursuant to the terms and conditions of this Agreement and MOTI hereby agrees to attorn to such purchaser and to continue to fulfill its obligations under this Agreement (including, but not limited to, providing for the services of the Principals as further described herein), in full force and effect, without the requirement of notice to or consent by MOTI with respect to such sale and attornment.

12.5 Notices: Any notice or other communication required or permitted to be given by a party hereunder shall be in writing, and shall be deemed to have been given by such party to the other party or parties (a) on the date of personal delivery, (b) on the next business day following any facsimile transmission to a party at its facsimile number set forth below; provided, however, such delivery is concurrent with delivery pursuant to the provisions of clause (a)

of this Section 12.5, (c) three (3) calendar days after being given to an international delivery company, or (d) ten (10) calendar days after being placed in the mail, as applicable, registered or certified, postage prepaid addressed to the following addresses (each of the parties shall be entitled to specify a different address by giving notice as aforesaid):

If to Caesars: Desert Palace, Inc.
3570 Las Vegas Boulevard South
Las Vegas, NV 89109
Facsimile: (702) 699-5110
Attention: President

With a copy, which shall not constitute notice, to:
Harrah's Legal Department
One Caesars Palace Drive
Las Vegas, NV 89109
Facsimile: (702) 407-6000
Attention: General Counsel

If to MOTI: MOTI Partners
200 Central Park South
New York, New York
New York, NY 10019
Facsimile: (212) _____
Attention: Rowen Seibel

With a copy, which shall not constitute notice, to:
Robert A. Seibel
Seibel & Rosen
560 3rd Avenue, 28th Floor
NY, NY 10016
Attention: Robert Seibel
(212)983-9200 Phone
(917)885-2610 Mobile
(212)983-9201 Facsimile
bobseibel@yahoo.com

12.6 Entire Agreement: This Agreement constitutes the entire agreement between the parties hereto pertaining to the subject matter hereof and supersedes all prior agreements, understandings, negotiations, and discussions, whether oral or written.

12.7 Severability: If any part of this Agreement is determined to be void, invalid or unenforceable, such void, invalid, or unenforceable portion shall be deemed to be separate and severable from the other portions of this Agreement, and the other portions shall be given full force and effect, as though the void, invalid or unenforceable portions or provisions were never a part of this Agreement.

12.8 Amendment and Modification: No supplement, modification, waiver or termination of this Agreement shall be binding unless executed in writing by the party to be bound. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provisions (whether or not similar), nor shall such waiver constitute a continuing waiver unless otherwise expressly provided.

12.9 Headings: Article or Section headings are not to be considered part of this Agreement and are included solely for convenience and reference and shall not be held to define, construe, govern or limit the meaning of any term or provision of this Agreement. References in this Agreement to an Article or Section shall be reference to an Article or Section of this Agreement unless otherwise stated or the context otherwise requires.

12.10 Governing Law: Submission to Jurisdiction: The laws of the State of Nevada applicable to agreements made in that State shall govern the validity, construction, performance and effect of this Agreement. Subject to the provisions of Section 11.1 MOTI and Caesars each agree to submit to the exclusive jurisdiction of any state or federal court within the Clark County Nevada (the "Nevada Courts") for any court action or proceeding to compel or in support of arbitration or for provisional remedies in aid of arbitration, including but not limited to any action to enforce the provisions of Article 11 (each an "Arbitration Support Action"). Each of the parties hereto irrevocably and unconditionally waives any objection to the laying of venue of any action, suit or proceeding arising out of this Agreement including, but not limited to, an Arbitration Support Action and hereby further irrevocably and unconditionally waives and agrees not to plead or claim in any such court that any such action, suit or proceeding brought in any such court has been brought in an inconvenient forum.

12.11 Interpretation: This Agreement is to be deemed to have been prepared jointly by the parties hereto, and if any inconsistency or ambiguity exists herein, it shall not be interpreted against either party but according to the application of rules of the interpretation of contracts. Each party has had the availability of legal counsel with respect to its execution of this Agreement.

12.12 Third Persons: Nothing in this Agreement, expressed or implied, is intended to confer upon any Person

other than the parties hereto any rights or remedies under or by reason of this Agreement.

12.13 Attorney Fees: The prevailing Party in any dispute that arises out of or relates to the making or enforcement of the terms of this Agreement shall be entitled to receive an award of its expenses incurred in pursuit or defense of said claim, including, without limitation, attorneys' fees and costs, incurred in such action.

12.14 Counterparts: This Agreement may be executed in counterparts, each one of which so executed shall be deemed an original, and both of which shall together constitute one and the same agreement.

12.15 Indemnification: Each Party covenants and agrees, jointly and severally, to defend, indemnify and save and hold harmless the other Party and its Affiliates and its Affiliates' respective stockholders, directors, officers, agents and employees (collectively, the "Related Parties") from and against all claims, losses, expenses, obligations, liabilities, liens, demands, charges, litigation and judgments, including, without limitation, court costs and reasonable attorneys' fees, arising directly or indirectly from any claim by any third Person (each a "Claim") arising out of a Party's performance of its obligations under or in connection with this Agreement. The Party asserting a Claim (the "Indemnified Party") shall notify the other Party (the "Indemnifying Party") of each Claim and the Indemnifying Party shall, at its sole cost and expense, defend such Claim, or cause the same to be defended by counsel designated by the Indemnified Party.

12.16 Withholding and Tax Indemnification Required Withholding: MOTI represents that no amounts due to be paid to MOTI hereunder are subject to withholding. If Caesars is required to deduct and withhold from any payments or other consideration payable or otherwise deliverable pursuant to this Agreement to MOTI any amounts under the Internal Revenue Code of 1986, as amended (the "Code"), or any provision of United States federal, state, local or foreign law, statute, regulation, treaty, administrative ruling, pronouncement or other authority or judicial opinion, Caesars agrees that, prior to said deduction and withholding, it shall provide MOTI with notice of same. To the extent such amounts are so deducted or withheld, such amounts shall be treated for all purposes under this Agreement as having been paid to the person to whom such amounts would otherwise have been paid. If requested by Caesars, MOTI shall promptly deliver to Caesars all the appropriate Internal Revenue Service forms necessary for Caesars, in its sole and absolute discretion deems necessary to make a determination as to its responsibility to make any such U.S. federal withholding with respect to any payment payable pursuant to this Agreement.

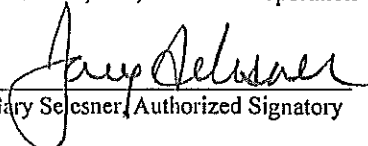
12.17 Indemnification: Notwithstanding anything to the contrary in this MOTI shall be responsible for and shall indemnify and hold harmless Caesars and its Affiliates (collectively, the "Indemnified Parties") against (i) all Taxes (including, without limitation, any interest and penalties imposed thereon) payable by or assessed against such Indemnified Parties with respect to all amounts payable by Caesars to MOTI pursuant to this Agreement and (ii) any and all claims, losses, damages, liabilities, costs and expenses (including, without limitation, reasonable attorneys' fees and expenses) suffered or paid by the Indemnified Parties as a result of or in connection with such Taxes Caesars shall have the right to reduce any payment payable by Caesars to MOTI pursuant to this Agreement in order to satisfy any indemnity claim pursuant to this Section 12.16(b).

12.18 Definition: For purposes of this Section, the term "Tax" or "Taxes" means all taxes, assessments, charges, duties, fees, levies or other governmental charges, including, without limitation, all federal, state, local and foreign income, franchise, profits, capital gains, capital stock, transfer, sales, use, value added, occupation, property, excise, severance, windfall profits, stamps, license, payroll, social security, withholding and other taxes, or other governmental assessments, duties, fees, levies or charges of any kind whatsoever, all estimated taxes, deficiency assessments, additions to tax, penalties and interest.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the Effective Date.

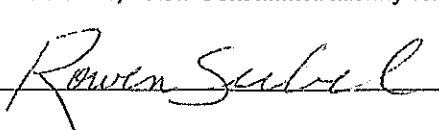
"CAESARS"

Desert Palace, Inc., a Nevada corporation

By: 
Gary Selesner, Authorized Signatory

"MOTI"

MOTI Partners, a New York limited liability company

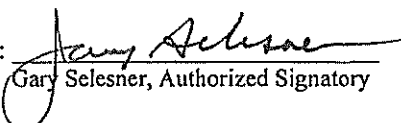
By: 

Its: Managing Member

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the Effective Date.

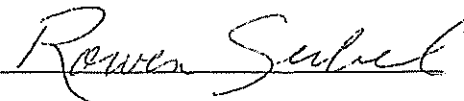
"CAESARS"

Desert Palace, Inc., a Nevada corporation

By: 
Gary Selesner, Authorized Signatory

"MOTI"

MOTI Partners, a New York limited liability company

By: 

Its: Managing Member

E X H I B I T “ A ”

RESTAURANT PREMISES

[Attached hereto.]

E X H I B I T " B "

Buildings and Improvements: Includes, but is not limited to, the cost of investment in buildings (and structural improvements), including the cost of construction labor, materials, and services such as architectural fees. Includes original cost of equipment that services normal heating, plumbing, fire protection, power requirements, and equipment such as elevators and escalators.

Building improvements consist of additions to or renovations of existing structures subsequent to the building being placed in service. Building improvements are an integral part of the building and are of a nature that would be included in the assessed valuation of the real estate for local real property tax purposes.

Furniture, Fixtures and Equipment:

Restaurant Equipment

Includes, but is not limited to, heavy equipment used in the restaurant and bar. This account does not include air conditioning units, compressors, coolers, etc., used in the restaurant and bar areas.

Bar-Front and Back	Grease Pits	Dishwashers
Cash Registers	Ranges	Ventilation Systems
Cooks Units	Refrigerators	Fire Extinguisher Systems
Cookers-Steam	Stoves-Heavy	

Miscellaneous Restaurant Equipment

Bar Doors	lamps – Wall & Table	Kitchen Utensils
Booths	Lecterns	Water Softeners
Candelabra	Mixers	Ice Crushers & Makers
Carts – Room Service	Ornamental Iron Gates	Waitress Stations
Chairs	Ovens	Glass Racks
Chandeliers	Pictures	
Coffee Maker	Popcorn Machines	
Dance Floors	Projectors	
Dish Table	Sandwich Units	
Dishwashers	Serving, Banquets	
Disposals	Sneeze Guards	
Exhaust Fans	Stoves	
Faucets – Bar/Restaurant	Table Tops	
Faucets & Rims – Lavatories	Tape Deck/Player	
Fryers	Utility Stands	

China, Glass and Silverware

The initial complement of china, glass and silverware should be capitalized at full cost. The assets will be assigned a 50% salvage value. The remaining 50% of the capitalized amount will be depreciated on a straight-line basis over a two-year life. Initial complements consist of items purchased for a start-up operation. A complete replacement of a particular design or series of base stocks may also be capitalized, with the old china, glass and silverware items being expensed in the period of replacement. All subsequent purchases and replacements for worn or broken items should be expensed as purchased.

Linens and Uniforms

The initial complement of linens and uniforms should be capitalized and fully depreciated over a three-year life. Initial complements consist of items purchased for a start-up operation. A complete replacement due to design, style or color changes may also be capitalized, with the old linen/uniform items being expensed in the period of replacement. All subsequent purchases and replacements for worn items should be expensed as purchased.

Utilities and Related Expenses

Operating expenses shall include an allowance of .90 per square foot, per month for costs related to trash, sewer, water, electric and gas usage. This figure shall be adjusted annually based upon the increase or decrease in pricing for these services. The premises shall also have allocated the sum of \$500 per month for hood cleaning.

Miscellaneous Operating Expenses

Operating expenses shall include, but not be limited to, payroll costs, taxes, insurance, advertising, contractor labor, repairs/maintenance, cost of goods sold, laundry, postage, telephone, floral, uniforms and travel on an "as incurred" basis. Additionally, the restaurant shall receive an allocation charge for use of the commissary for areas such as baker, butchery, gardmanger and cook chill. The restaurant shall also have allocated to it the expense of 2.8 employees for cleaning of restrooms, the patio area, stairs and the areas surrounding the restaurant.

E X H I B I T " C "

**RESTAURANT TRAINING AND DEVELOPMENT OF CULINARY
AND SERVICE STANDARDS**

E X H I B I T “ D ”

MARKS

[ONE TO PROVIDE LIST OF MARKS]

EXHIBIT B

FIRST AMENDMENT TO THE DEVELOPMENT, OPERATION AND LICENSE AGREEMENT

THIS FIRST AMENDMENT to the Development, Operation and License Agreement ("**First Amendment**") shall be deemed made, entered into and effective as of the ___ day of June 2013, (the "Effective Date"), by and between **DESERT PALACE, INC. d/b/a Caesars Palace, a Nevada corporation ("Caesars")**, whose business address is 3570 Las Vegas Boulevard South, Las Vegas, Nevada 89109, and **MOTI PARTNERS, LLC, a New York limited liability corporation ("MOTI")**, whose business address is 200 Central Park South, New York, New York 10019. Caesars and MOTI shall also be referred to herein individually as "**Party**" or collectively, as "**Parties**."

RECITALS

A. WHEREAS, the Parties, **on April 6, 2009**, entered into and executed a Development, Operation and License Agreement ("**DOL Agreement**") for the benefit of both Parties.

B. WHEREAS, Caesars owns the real property located at 3570 Las Vegas Boulevard South, Las Vegas, Nevada, where the restaurant known as "Serendipity" is located (the "Restaurant").

C. WHEREAS, the DOL Agreement, among other things, grants Caesars a non-exclusive, royalty-free license to use certain marks from MOTI and retains MOTI to perform certain services and fulfill certain obligations with respect to the consultation concerning the design, development, construction and operation of a certain restaurant.

D. WHEREAS, the DOL Agreement will expire, unless renewed at Caesars' option, on or about April 5, 2014.

E. WHEREAS, the Parties desire to amend the DOL Agreement to (i) renew the DOL Agreement for an additional term of five (5) years, commencing on **April 6, 2014** and expiring on **April 5, 2019**; and (ii) modify their rights and obligations under the DOL Agreement such that MOTI shall only receive a licensing fee under the Agreement.

NOW, THEREFORE, for good and valuable consideration, of which each party acknowledges receipt and in consideration of the mutual representations, warranties, covenants and agreements contained herein, the Parties agree as follows:

FIRST AMENDMENT TO THE DOL AGREEMENT

1. **Renewal Term.** The Parties agree to renew the DOL Agreement for an additional five (5) years. The renewal term shall commence on April 6, 2014 and terminate on April 6, 2019 ("Renewal Term"). The Renewal Term shall be effective upon execution of this First Amendment to the DOL Agreement.

2. **Paragraph 6 – Services Fee,** shall be shall be amended to include Sub-Paragraph 6.1(d) as follows:

"From and after **April 6, 2014** through the remainder of the Renewal Term, the Parties agree that Caesars shall pay to MOTI a license fee equal (a) to six percent (6%) of the Gross Revenue up to twelve million dollars and no cents (\$12,000,000.00), and (b) seven percent (7%) of the Gross Revenue exceeding twelve million dollars and no cents (\$12,000,000.00) (the "Renewal Term License Fee") in exchange for MOTI's obligations described in the DOL Agreement. The Renewal Term License Fee shall be paid by Caesars on or before the thirtieth (30th) day of each month based on the Gross Revenues from the preceding month. No other payments to MOTI under the DOL Agreement shall be applicable during the Renewal Term.

3. **Reconciliation and Payment of Fees Related to the Initial Term.** Within forty-five (45) days of the last day of the Initial Term, Caesars shall provide MOTI with a statement showing the Gross Revenues, Net Revenues and Operating Expenses for the final year of the Initial Term. In addition, Caesars shall pay to MOTI any applicable License Fee or distribution based on such statement. This final reconciliation of the Initial Term payments shall be subject to the provisions of Paragraph 6.3.
4. **Termination of MOTI's Capital Obligations.** During the Renewal Term: i) Paragraph 1.1 shall be of no further force and effect; ii) the last sentence of Paragraph 3.1 shall be deleted; and iii) Paragraph 3.2.3(a) shall be deleted.
5. **Counterparts and Admissibility of Electronic Copies.** This First Amendment may be executed in counterparts, each of which when executed by the requisite Parties shall be deemed to be a complete, original document. An electronic or facsimile copy thereof shall be deemed, and shall have the same legal force and effect as an original document.
6. **Capitalized Terms.** All capitalized terms used in this First Amendment and not otherwise defined shall have the meanings set forth in the DOL Agreement.
7. **Entire Agreement.** Except as modified by this First Amendment, the DOL Agreement shall remain in full force and effect and all other terms and provisions of the DOL Agreement are hereby reaffirmed and ratified. In the event of any inconsistency between this First Amendment and the DOL Agreement, the terms of this First Amendment to the DOL Agreement shall control.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, Landlord and Tenant have executed and delivered this First Amendment to the DOL Agreement as of the day and year first above written.

MOTI PARTNERS, LLC,
a New York limited liability corporation

By: _____

Name: _____

Title: _____

DESERT PALACE, INC.,
a Nevada corporation

By: _____

Name: _____

Title: _____

EXHIBIT C

May 16, 2014

Desert Palace, Inc.
3570 Las Vegas Boulevard South
Las Vegas, Nevada 89109

Paris Las Vegas Operating Company, LLC
3655 Las Vegas Boulevard South
Las Vegas, Nevada 89109

Ladies and Gentlemen:

Reference is made to the following (as any of the same may have been amended):

- (a) The Development, Operation and License Agreement, dated as of March __, 2009, by and between Moti Partners, LLC ("Moti") and Desert Palace, Inc. d/b/a Caesars Palace (the "First Agreement");
- (b) The Development, Operation and License Agreement, dated as of June 21, 2011, by and among DNT Acquisition LLC ("DNT"), Desert Palace, Inc., The Original Homestead Restaurant, Inc., d/b/a the "Old Homestead Steakhouse," Marc Sherry, Greg Sherry and Rowen Seibel (the "Second Agreement");
- (c) The Development and Operation Agreement, dated as of November __, 2011, by and between TPOV Enterprises, LLC ("TPOV") and Paris Las Vegas Operating Company, LLC ("PLV" and, collectively with Desert Palace, Inc., "Caesars") (the "Third Agreement"); and
- (d) The Development and Operation Agreement, dated as of April 4, 2012, by and between LLTQ Enterprises, LLC ("LLTQ") and Desert Palace, Inc. (the "Fourth Agreement" and, collectively with the First Agreement, Second Agreement and Third Agreement, the "Agreements").

The following provisions of this letter (this "Letter Agreement") shall confirm our mutual understanding that:

1. Notwithstanding anything to the contrary in the Agreements, each of Moti, DNT, TPOV and LLTQ (the "Entities") and/or each individual, corporation, proprietorship, firm, partnership, limited partnership, limited liability company, trust, association or other entity (each a "Person") holding an interest in any of the Entities, without the consent of but with notice to Desert Palace, Inc. or PLV, as applicable, shall be permitted to issue, sell, assign or transfer interests in any of the Entities to any Person or assign any of the Agreements, so long as: (i) the receiving Person or assignee or any of such Person's or assignee's Affiliates is not a Competitor of Caesars or any of its Affiliates; and (ii) each receiving Person holding and/or proposed to hold any interest in any of the Entities or the assignee shall be subject to the internal compliance process of Caesars and/or its Affiliates by (A) submitting written disclosure regarding all of the proposed transferee's or assignee's Associates, (B) submitting all information reasonably requested by Caesars regarding the proposed transferee's or assignee's Associates, (C) Caesars being satisfied, in its sole reasonable discretion, that neither the proposed transferee or assignee nor any of their respective Associates is an Unsuitable Person and (D) the Compliance Committee's reasonable approval of the proposed transferee and the proposed transferee not being deemed by Caesars, its Affiliates or any Gaming Authority as an Unsuitable Person. Additionally, notwithstanding anything to the contrary in the Agreements, any obligations and/or duties of Moti, DNT, TPOV, LLTQ and/or Rowen Seibel that are specifically designated to be performed by Rowen Seibel are assignable or delegable by Moti, DNT, TPOV, LLTQ and/or Rowen Seibel without the consent of but with notice to Desert Palace, Inc. or PLV, as applicable, so long as the Person to whom such obligations and/or duties are assigned or delegated is reasonably qualified to carry out

2845977.3

such obligations and/or duties. Subject to the foregoing, this Letter Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective permitted successors, assigns and delagees.

2. For purposes of this Letter Agreement, (i) the term "Competitor" means a Person that, or a Person that has an Affiliate that, in each case directly or indirectly, whether as owner, operator, manager, licensor or otherwise: (A) derives twenty percent (20%) or more of its revenues, operating income or net profits from one or more Gaming Businesses; or (B) has as its primary purpose the conduct of one or more Gaming Businesses and (ii) the term "Gaming Business" means the ownership, operation or management of one or more casinos, video lottery terminal facilities, racetracks, on-line gaming businesses or other business involving gaming or wagering. Capitalized terms used in this Letter Agreement and not otherwise defined herein shall have the meaning ascribed to them in the First Agreement, Second Agreement, Third Agreement or Fourth Agreement, as applicable, or, if not defined therein, in the Consulting Agreement, dated as of May 16, 2014, by and between FERG, LLC and Boardwalk Regency Corporation d/b/a Caesars Atlantic City.

3. This Letter Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. A signed copy of this Letter Agreement delivered by facsimile, e-mail or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Letter Agreement. This Letter Agreement shall serve as an amendment to each of the Agreements.

If the terms of this Letter Agreement are acceptable, kindly so indicate by signing where indicated below and returning a copy of this Letter Agreement to us. Thank you.

Very truly yours,

MOTI PARTNERS, LLC

By: Rowen Seibel
Name: Rowen Seibel
Title: Managing Member

DNT ACQUISITION, LLC

By: Rowen Seibel
Name: Rowen Seibel
Title: Manager

TPOV ENTERPRISES, LLC

By: Rowen Seibel
Name: Rowen Seibel
Title: Manager


LLTQ ENTERPRISES, LLC

By: Rowen Seibel
Name: Rowen Seibel
Title: Manager

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ACCEPTED AND AGREED:

DESERT PALACE, INC.

By: 
Name: Gary Selesner
Title: President

Legal
Department

Digitally signed by Legal
Department
DN: cn=Legal Department, o=ou,
email=lsabo@caesars.com,
c=US
Date: 2014.05.15 22:22:40 -07'00'

PARIS LAS VEGAS OPERATING COMPANY, INC.

By: _____
Name:
Title:

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ACCEPTED AND AGREED:

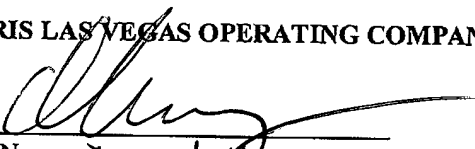
DESERT PALACE, INC.

By: _____
Name:
Title:

Legal
Department

Digitally signed by Legal
Department
DN: cn=Legal Department, o, ou,
email=asabo@caesars.com,
c=US
Date: 2014.05.15 22:22:40 -07'00'

PARIS LAS VEGAS OPERATING COMPANY, INC.

By: 
Name: David Boenemeyer
Title: Sr. VP and GM

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EXHIBIT D

Moti Partners, LLC
200 Central Park South
19th Floor
New York, New York 10019

April 8, 2016

Via Federal Express

Desert Palace, Inc.
3570 Las Vegas Boulevard South
Las Vegas, Nevada 89109
Attention: President

Re: Development, Operation and License Agreement (the
"Agreement") dated as of March 2009, by and between Desert
Palace, Inc. d/b/a Caesars Palace and Moti Partners, LLC ("Moti")

Ladies and Gentlemen:

Reference is made to the Agreement and to that certain letter agreement dated May 16, 2014 to which we are each parties (the "Letter Agreement"). This shall serve as notice that, pursuant to the terms of the Letter Agreement, effective April 13, 2016:

(1) All of the membership interests in Moti shall be transferred to Brian K. Ziegler and Craig Green, as Trustees of The Seibel Family 2016 Trust. Additionally, the new manager of Moti shall be Craig Green;

(2) The Agreement will be assigned to Moti Partners 16, LLC, a Delaware limited liability company of which the sole manager is Craig Green and all of the membership interests are owned by Brian K. Ziegler and Craig Green, as Trustees of The Seibel Family 2016 Trust; and

(3) All obligations and duties of Moti and/or Rowen Seibel that are specifically designated to be performed by Rowen Seibel shall be assigned and delegated by Moti, Moti Partners 16, LLC and/or Rowen Seibel to, and will be performed by, J. Jeffrey Frederick.

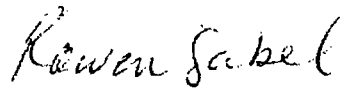
The sole beneficiaries of The Seibel Family 2016 Trust are Netty Wachtel Slushny, Bryn Dorfman and potential descendants of Rowen Seibel (none of which exist as of the date hereof). Other than the parties described in this letter, there are no other parties that have any management rights, powers or responsibilities regarding, or equity or financial interests in, Moti Partners 16, LLC.

3292259.1

To the extent you reasonably require any additional information concerning the referenced transferee's or assignee's Associates, please advise.

Thank you.

Very truly yours,

A handwritten signature in black ink, appearing to read "Rowen Seibel". The signature is written in a cursive, flowing style.

Rowen Seibel

cc: Harrah's Legal Department
One Caesars Palace Drive
Las Vegas, Nevada 89109
Attn: General Counsel

3292259.1

EXHIBIT E

PURCHASE ORDER

INVOICE TO: CAESARS LAS VEGAS
PO BOX 29030
HOT SPRINGS, AR 71903

VENDOR: 533675

MOTI PARTNERS 16 LLC
ATTN: CRAIG GREEN

NEW YORK, NY

TELEPHONE:
FAX:

SHIP TO LOCATION:

RECEIVING-DOCK
CAESARS PALACE
3570 LAS VEGAS BLVD SOUTH
LAS VEGAS, NV 89109

This order constitutes the entire agreement between buyer and vendor and it may only be modified in writing signed by vendor and buyer. The vendor acknowledges that it has made no price or other consideration in anticipation of future business with buyer.

Harrah's is committed to procuring its goods, products and services from a diversified pool of vendors, contractors and professional service providers, including certified minority-owned, women-owned, disabled and/or disadvantaged business enterprises. Harrah's complies with Title VII of the Civil Rights Act of 1964, Title I of the Americans with Disabilities Act, as well as federal, state and local laws.

MINORITY STATUS:

LICENSE #:

PAYMENT TERMS: NET 10 DAYS %

BUYER: GTHEVENIN

CONFIRMING ORDER: N

JOB COST:

PROJECT:

CHG. DIVISION: FOOD & BEVERAGE OPS

CHG. DEPT.: SERENDIPITY FOH

This purchase order number must appear on all invoices, packing slips, cases, bills of lading and correspondence.

P.O. NUMBER: C0393448 MOD 000

DATE: 11/30/16

DATE REQUIRED: 12/07/16

F.O.B.: DEST

SHIP VIA: BW

QTY.	U/M	ITEM #	DESCRIPTION	UNIT PRICE	EXTENSION
2	CASE	8210073	<p>***DELIVER ONLY TO THE RECEIVING WAREHOUSE***</p> <p>RECEIVING DOCK CLOSING @ 12 PM *NO EXCEPTIONS*</p> <p>NO OUTLET DELIVERIES</p> <p>ALL DOCUMENTS TO REFERENCE PO# C0393448</p> <p>PO TO BE ON OUTSIDE OF ALL BOXES</p> <p>PURCHASING CONTACT IS GREGORY THEVENIN</p> <p>702-777-2733 - GTHEVENIN@CAESARS.COM</p> <p>ORDERED BY: B ERICKSON</p> <p>MIX HOT CHOC PACKETS PLAIN FZ 84/CS SERENDIPITY</p> <p>MOTI</p> <p>G/L ACCT# N30-2664-4500-000</p>		
89	TOTALS			NET AMOUNT	

DISCOUNT AMOUNT	TAX AMOUNT	NET AMOUNT

By: _____ Date: _____

Authorized Signature _____

THIS PURCHASE ORDER IS SUBJECT TO ALL OF THE TERMS, CONDITIONS AND INSTRUCTIONS SET FORTH ON THE FRONT AND BACK HEREOF. IN ADDITION, THIS ORDER IS SUBJECT TO THE APPROVAL OF ANY GAMING OR OTHER REGULATORY AUTHORITY, AND THE SATISFACTORY COMPLETION AND RETURN OF BUYER'S VENDOR QUESTIONNAIRE (IF REQUIRED).

* Prepay and add freight and insurance charges to invoice unless otherwise specified. * Packing list must accompany each shipment. * Mail Invoice with Bill of Lading after shipment. * Discount will be taken from date of invoice

EXHIBIT F

Nathan Q. Rugg

From: Graham, Joe <joe.graham@kirkland.com>
Sent: Tuesday, November 15, 2016 6:22 PM
To: Nathan Q. Rugg
Subject: RE: MOTI - Serendipity

It has been our position that nothing is owed during the 120 day wind down period. I've reached out again to my client to discuss further though based on your follow up email.

Thanks,
Joe

Joe Graham

KIRKLAND & ELLIS LLP
300 North LaSalle, Chicago, IL 60654
T +1 312 862 2434
F +1 312 862 2200

joe.graham@kirkland.com

From: Nathan Q. Rugg [<mailto:NQR@ag-ltd.com>]
Sent: Tuesday, November 15, 2016 2:31 PM
To: Graham, Joe
Subject: RE: MOTI - Serendipity

Joe, do you have a position on this? - Nate

From: Nathan Q. Rugg [<mailto:NQR@ag-ltd.com>]
Sent: Monday, November 07, 2016 10:58 AM
To: Graham, Joe (joe.graham@kirkland.com)
Subject: MOTI - Serendipity

Joe –

Following up on our conversation last week, did you have a chance to review the contract language? We believe payments are due so long as Caesars keeps the Serendipity restaurant open. Accordingly, the remainder of the third quarter 2016 license fees (September 6-30) are overdue and payable now.

Best regards,

Nate

Nathan Q. Rugg
nrugg@ag-ltd.com



Adelman & Gettleman, Ltd. • 53 W. Jackson Blvd., Suite 1050 • Chicago, IL 60604 • Phone 312.435.1050 • Fax 312.435.1059 • www.ag-ltd.com

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Exhibit D

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

In re:)	
	)	Chapter 11
)	
CAESARS ENTERTAINMENT OPERATING	)	Case No. 15-01145 (ABG)
COMPANY, INC., <u>et al.</u> , ¹)	
	)	(Jointly Administered)
Debtors.)	
	)	Re: Docket No. 5862

**DEBTORS' PRELIMINARY OBJECTION TO REQUEST FOR PAYMENT OF
ADMINISTRATIVE EXPENSE FILED BY THE MOTI PARTIES**

¹ A complete list of the Debtors and the last four digits of their federal tax identification numbers may be obtained at <https://cases.primeclerk.com/CEOC>.

The above-captioned debtors and debtors in possession (collectively, the “Debtors”) file this preliminary objection to the *Request for Payment of Administrative Expense* [Docket No. 5862] (the “Motion”), filed by Moti Partners, LLC and Moti Partners 16, LLC (collectively, “MOTI”) on November 30, 2016, which seeks the allowance and payment of administrative expense claims from September 5, 2016, to the present for the Debtors’ continued operation of the restaurant Serendipity 3 (“Serendipity”) at Caesars Palace pursuant to the Development, Operation and License Agreement by and between Debtor Desert Palace, Inc. (“Caesars Palace”) and MOTI (the “MOTI Agreement”), a copy of which is attached hereto as Exhibit A. The Court should deny the Motion because (1) MOTI is not entitled to payment of any amounts under the MOTI Agreement when such agreement is terminated—as it was—because MOTI was and is an “unsuitable person” that the Debtors cannot engage in business with without putting the Debtors’ gaming licenses at risk, and (2) MOTI has not demonstrated that it is entitled to an administrative expense claim in contradiction to the express terms of the MOTI Agreement. In support of this preliminary objection, the Debtors respectfully state as follows:

I. The MOTI Agreement Was Terminated Because Mr. Seibel Is An Unsuitable Person.

1. Contrary to the allegations in the Motion, Caesars Palace did not terminate the MOTI Agreement pursuant to section 3.2.3. Instead, the MOTI Agreement was terminated pursuant to section 9.2, which provides that Caesars Palace may determine, in its sole and exclusive judgment, whether MOTI or an associated party has engaged “in any activity or relationship that could or does jeopardize” any of Caesars enterprises’ gaming licenses and upon such a determination, Caesars Palace will “terminate [the] Agreement and its relationship with MOTI.” MOTI Agmt. § 9.2. Caesars Palace properly invoked this provision after it discovered in August that on April 18, 2016, Mr. Rowen Seibel had pled guilty to one count of a corrupt

endeavor to obstruct and impede the due administration of the Internal Revenue Code, 26 U.S.C. § 7212, a Class E Felony. (See Ex. B, Case No. 1:16-cr-00279-WHP, Dkt. No. 2). At no time did MOTI or Mr. Seibel inform the Debtors or any of their affiliates of this fact despite a requirement to do so in multiple agreements with the Caesars enterprise. See, e.g., Ex. A, MOTI Agmt. § 9.2 (“To the extent that any prior disclosure becomes inaccurate, MOTI shall, within five (5) calendar days from that event, update the prior disclosure without Caesars making any further request.”); Ex. C, Development, Operation and License Agreement Among Gordon Ramsay, GR Burgr, LLC and PHW Manager, LLC on Behalf of PHW Las Vegas, LLC DBA Planet Hollywood (the “GR Burgr Agreement”) § 11.2 (“To the extent that any prior disclosure becomes inaccurate, GRB shall, within ten (10) calendar days from that event, update the prior disclosure without PH making any further request.”). Instead, the Debtors independently discovered that Mr. Seibel had been sentenced to one month in prison on August 20, 2016.² Caesars Palace (and other Caesars entities) determined that Mr. Seibel was an unsuitable person because of his activities and terminated the MOTI Agreement “effective immediately” on September 2, 2016. See Ex. D (letter terminating MOTI Agreement).³ Other Caesars entities (Debtor and non-debtor) also terminated their agreements with entities related to Mr. Seibel.⁴

² See, e.g., *Restaurateur Seibel Sent to Jail, Then Kitchen, in Tax Scam*, Bloomberg.com, <https://www.bloomberg.com/news/articles/2016-08-19/restaurateur-turned-tax-dodger-readies-for-manhattan-sentencing> (last visited Dec. 5, 2016).

³ MOTI did not raise termination under section 9.2 in the Motion, nor did it argue that MOTI remained suitable because Mr. Seibel purportedly assigned his ownership interests in MOTI and other entities with business relationships with the Caesars enterprise a mere 5 days before pleading guilty to his felony. To the extent this assignment is relevant to MOTI’s request, the Debtors and Mr. Seibel are already engaged in discovery on the matter, and any briefing on the issue should be done once that discovery is complete.

⁴ The determination that Mr. Seibel is unsuitable is discussed more fully at Docket No. 5246.

II. The MOTI Agreement Does Not Provide For Wind-Up Payments Or For Termination Payments When There Is An Unsuitable Person Determination.

2. Caesars Palace is operating Serendipity for a period of up to 120-days pursuant to section 3.3(a) of the MOTI Agreement. That section provides that upon termination of the MOTI Agreement, “Caesars shall cease operations of [Serendipity], provided, however, in the event of an early termination of this Agreement, Caesars shall be entitled to operate [Serendipity] and use the License . . . for that reasonable period of time required to orderly and properly wind-up operations of [Serendipity] not to exceed” 120 days. MOTI Agmt. § 3.3(a).

3. MOTI claims that this section requires Caesars Palace to make wind-up payments. But the plain language of this section says nothing about wind-up payments. *See* MOTI Agmt. § 3.3(a). And it stands in stark contrast to other contracts between Mr. Seibel and the Caesars Enterprise, which specifically provide for the early termination payments MOTI seeks here. *See, e.g.,* GR Burgr Agmt. § 4.3.2(a) (“provided that in the event of a termination pursuant to clause (i) or (ii) during the applicable post-termination period during which PH is operating the Restaurant, PH shall continue to be obligated to pay GRB all amounts due GRB hereunder that accrue during such period in accordance with the terms of this Agreement as if this Agreement had not been terminated”). The absence of similar language here demonstrates that MOTI is not entitled to payment during the 120-day wind-up period. *In re Martinson*, 2000 WL 33964097, at *6 (Bankr. C.D. Ill. Dec. 29, 2000) (noting that the “contract should be enforced as written and its . . . terms will control the rights of the parties”).

4. MOTI also is not entitled to any “Early Termination Payment” as sought in the Motion. MOTI asserts that this payment is owed because Caesars Palace terminated the MOTI Agreement under section 3.2.3 thereof, but that is not the case because the MOTI Agreement was terminated under section 9.2 thereof. No payment is due under that provision.

III. MOTI Has Not Established Entitlement To An Administrative Expense Claim.

5. MOTI is entitled to an administrative expense only if it can establish that “the estate has actually benefitted under the contract post-petition.” *In re Nat’l Steel Corp.*, 316 B.R. 287, 306 (Bankr. N.D. Ill. 2004). Even if MOTI can establish that the estate has benefitted from the 120-day wind-up period, such payment is “measured by reference to the contract.” *Cont’l Energy Assocs. L.P. v. Hazelton Fuel Mgmt. Co. (In re Cont’l Energy Assocs. L.P.)*, 178 B.R. 405, 408 (Bankr. M.D. 1995).

6. Here, Caesars Palace is winding down Serendipity’s operations and will be replacing it with an as-of-yet unnamed facility. The contract does not require payment during this short period. *Cf. id.* More importantly, under Nevada gaming regulations, the Debtors cannot continue to pay MOTI until there has been a determination that MOTI is a suitable person. *See Nev. Rev. Stat. § 463.166.* In these circumstances, there is no basis for MOTI’s asserted administrative expense claim for the operation of Serendipity during the wind-up period.

7. Similarly, assuming *arguendo* that the MOTI Agreement required the payment of the “Early Termination Payment” (which it does not), such a payment provides no benefit to the estate and thus cannot be characterized as an administrative expense. Such a termination penalty in no way “is beneficial to the debtor-in-possession in the operation of the business,” *In re Jartran, Inc.*, 732 F.2d 584, 587 (7th Cir. 1984), and it therefore cannot be construed as an “actual, necessary cost[] and expense of preserving the estate.” 11 U.S.C. § 503(b)(1)(A).

8. In sum, the Debtors respectfully submit that the Motion should be denied because it seeks payments not required by the MOTI Agreement and because MOTI has not established the necessity for an administrative expense. To the extent this Court requires, the Debtors are prepared to further brief this matter.

Dated: December 7, 2016
Chicago, Illinois

/s/ David R. Seligman, P.C.

James H.M. Sprayregen, P.C.

David R. Seligman, P.C.

David J. Zott, P.C.

Jeffrey J. Zeiger, P.C.

KIRKLAND & ELLIS LLP

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Exhibit A

MOTI Agreement

DEVELOPMENT, OPERATION AND LICENSE AGREEMENT

THIS DEVELOPMENT, OPERATION AND LICENSE AGREEMENT (this "Agreement") shall be deemed made, entered into and effective as of this ___ day of March 2009 (the "Effective Date"), by and between Desert Palace, Inc. d/b/a Caesars Palace, a Nevada corporation ("Caesars"), having its principal place of business located at 3570 Las Vegas Boulevard South, Las Vegas, Nevada 89109 and Moti Partners, LLC a New York limited liability company ("MOTI"), having its principal place of business located at 200 Central Park South, New York, New York 10019.

RECITALS

A. Caesars Palace Realty Corp. a Nevada corporation and an Affiliate (as defined below) of Caesars, owns that certain real property located at 3570 Las Vegas Boulevard South, Las Vegas, Nevada (the "Property"), on which Caesars operates a resort hotel casino known as Caesars Palace (the "Hotel Casino"); and

B. MOTI has the non-exclusive right to use and exploit the Marks (as defined below) and also has certain qualifications, expertise and reputation in development and operation of first-class restaurants including, but not limited to, a restaurant known as "Serendipity" located in NY, NY; and

C. Caesars desires to design, develop, construct and operate a certain first-class restaurant (the "Restaurant") in those certain premises as more particularly shown on Exhibit "A" attached hereto (the "Restaurant Premises") that shall be known as "Serendipity"; and

D. Caesars desires to obtain a non-exclusive, royalty-free license to use the Marks from MOTI and to retain MOTI to perform those services and fulfill those obligations with respect to consultation concerning the design, development, construction and operation of the Restaurant, and MOTI desires to grant a non-exclusive, royalty-free license to use the Marks to Caesars and to be retained by Caesars to perform such services and fulfill such obligations, and the parties desire to enter into this Agreement to set forth their respective rights and obligations with respect thereto, all as more particularly set forth herein.

NOW THEREFORE, in consideration of the premises and the mutual covenants set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree that the foregoing recitals are true and correct and further agree as follows:

1. APPOINTMENT:

1.1 Appointment and Payment of Initial Capital Contribution: Caesars hereby appoints MOTI, and MOTI hereby accepts such appointment, subject to all of the terms and conditions more particularly set forth herein, to perform those services and fulfill those obligations with sound business practice, due diligence and care, all as more particularly set forth herein. MOTI shall make a non-refundable Capital Contribution ("MOTI's Initial Capital Contribution") toward "Initial Capital Expenditure" for the Restaurant as outlined hereinbelow. The Parties shall meet and confer with respect to preparation and approval of an Initial Capital Budget. The parties agree that "MOTI's Initial Capital Contribution" shall be fifty percent (50%) of the Initial Capital Expenditure necessary to design, construct and equip the Restaurant, which Initial Capital Expenditure is currently estimated to be Six Hundred Thousand (\$600,000.00) and No/100 Dollars. The parties acknowledge and agree that, with regard to remaining sum necessary to design, construct and cost to equip the Restaurant, Caesars shall be responsible for the remaining fifty percent (50%) of the "Initial Capital Expenditure" which amount shall be "Caesars' Initial Capital Contribution". Caesars shall consider and be the sole arbiter of the need for additional capital expenditure necessary to maintain and enhance the Restaurant ("Future Capital Expenditure") or that which is necessary to maintain the Restaurant as a high end facility ("Maintenance Capital Expenditure"). MOTI and Caesars shall be required to make additional capital contributions for Future Capital Expenditures and Maintenance Capital Expenditures (collectively, the "Future Capital Contribution") for Future Capital Expenditures and Maintenance Capital Expenditures in the same percentage as the percentage of that Party's Initial Capital Contribution. The definition of that for which the Parties shall be responsible for payment of their Initial Capital Contribution and Future Capital Contribution is attached hereto and incorporated herein by reference as Exhibit B. Payment by MOTI to Caesars of its Initial Capital Contribution shall be made to Caesars on or before April 6, 2009.

In no event shall MOTI otherwise be entitled to use, offset against amounts due under this Agreement or otherwise receive the benefit of any portion of its Initial Capital Expenditure. Each Party shall share in the same proportion as its Initial Capital Contribution to any cost overrun or savings from the Initial Capital Budget. MOTI's payment of its Initial Capital Contribution, cost overrun related to the Initial Capital Budget and Future Capital Contribution shall be made to Caesars within thirty (30) days of its receipt of an invoice for same, which invoice shall provide detail as to the nature and cost of each expenditure. Caesars payment to MOTI of any cost savings related to the Initial Capital Budget shall be paid to MOTI within thirty (30) days following the opening of the Restaurant.

1.2 **Exclusivity:** MOTI covenants and agrees that at all times during the Term (as defined below) neither MOTI, its parent nor any Affiliate of MOTI will (the term "Affiliate" shall be defined as provided hereinbelow) will operate or agree, permit or license, directly or indirectly, the concept of the Restaurant nor any Mark (as defined below) to be used within Clark County, Nevada, other than by Caesars, its parent or any of its Affiliates with respect to the Restaurant the "Exclusivity Provision"). For the purpose of clarity, the term "MOTI" in this paragraph is intended to apply to MOTI, its parent and any affiliate and each of those entity's officers, directors and any other individual having any ownership interest in MOTI, its parent or any of its Affiliates. To the extent this Agreement is terminated by Caesars prior to the end of the Term originally stated herein, and MOTI is (and Caesar is not) in default or breach of this Agreement at the time of such termination, the Exclusivity Provisions shall continue for a period of twenty-four (24) months following such termination. With respect to any proposed operation or agreement by MOTI to operate, permit or license, directly or indirectly the concept of the Restaurant within a fifty (50) mile radius of any parent or affiliate of Caesars, MOTI shall provide Caesars (or, at Caesars' option, its designated Affiliate) with an offer, in writing, to participate in such venture, either at the proposed site location or, at Caesars' option, by placement at the premises of its designated Affiliate. If Caesars (or its designated Affiliate) indicates within thirty (30) days its interest in considering such opportunity, MOTI and Caesars (or its designated Affiliate) will consult and discuss such opportunity for the succeeding one hundred twenty (120) days to determine if mutually agreeable terms of participation can be reached. If they do not agree, and MOTI nevertheless decides to proceed with such venture, MOTI will also offer Caesars (or its designated Affiliate) a right of last refusal of thirty (30) days duration to accept the material terms of the opportunity proposed to be entered into by the other venturer(s) before entering into the proposed venture with any other party. If Caesars (or its designated Affiliate) does not timely exercise such right, MOTI will be free to proceed without Caesars (or its designated Affiliate).

2. **RESTAURANT DESIGN AND DEVELOPMENT:**

2.1 **General:** The Restaurant shall be comprised of that square footage indicated on Exhibit "A" attached hereto.

2.2 **Design:** Subject to all of the terms and conditions more particularly set forth herein, Caesars shall work closely with MOTI and give consideration to all of MOTI's reasonable recommendations in the design, development, construction and outfitting of the Restaurant, including, without limitation, all furniture, fixtures, equipment, inventory and supplies (the "Development Services"); provided, however, that Caesars, after consulting with MOTI and considering all reasonable recommendations from MOTI, shall have final approval with respect to all aspects of same. Caesars shall be solely responsible for hiring, and retaining any and all design and development professionals engaged in the design, development, construction, and outfitting of the Restaurant. Caesars shall appoint an individual or individuals, who may be changed from time to time by Caesars, acting in its sole and absolute discretion, to act as Caesars' liaison with MOTI in the design, development, construction and outfitting of the Restaurant. Caesars shall provide MOTI with copies of all proposed budgets and afford MOTI the reasonable opportunity to review each such budget and to make reasonable recommendations on same based upon MOTI's experience prior to Caesars' adoption and implementation of any such budget. After giving consideration to all reasonable recommendations made by MOTI, Caesars shall establish, control, and amend from time to time as necessary, all in Caesars' sole and absolute discretion, the budgets costs and expenses for the design, development, construction, and outfitting of the Restaurant. From time to time hereafter, Caesars shall promptly advise MOTI of, and consult with MOTI regarding, any material changes in, modifications to and/or deviations from any budget, with the understanding that Caesars shall make all decisions related to same acting in its sole and absolute discretion. Development Services, and meetings with respect to same, shall take place primarily in Las Vegas, or at such other location or locations as may be mutually and reasonably agreed to by Caesars and MOTI from time to time. Any subsequent refurbishment, redesign or reconstruction of the Restaurant shall be undertaken by Caesars, acting in its sole discretion, but with a view toward maintaining the Restaurant in a first class condition.

2.3 **Menu Development:**

2.3.1 Menu Development: Prior to the commencement of the Term, MOTI shall develop the initial food and beverage menus of the Restaurant, and the recipes for same, and thereafter, MOTI shall revise the food and beverage menus of the Restaurant, and the recipes for same (the "Menu Development Services"), all of which recipes shall be owned by MOTI. Caesars shall have the reasonable opportunity to review such food and beverage menus prior to their implementation and make reasonable recommendations to same based upon the proposed costs and Caesars' experience with the Las Vegas, Nevada fine-dining industry. After consulting with and giving consideration to all reasonable advice and reasonable recommendations from MOTI, Caesars shall establish the pricing of such food and beverage menus, in its sole and absolute discretion. Menu Development Services, and meetings with respect to same, shall take place primarily in Las Vegas or such other location or locations as may be mutually and reasonably agreed to by Caesars and MOTI from time to time.

2.3.2 Menu Standards: The food and beverage menus of the Restaurant, and the recipes for same, shall feature familiar casual "comfort foods", signature desserts, sundaes, shakes and frozen hot chocolates with minimum menu categories that include appetizers, sandwiches, entrée salads, soups, hot dogs, burgers, omelets, pastas and a cocktail menu. A walk up window may feature "finger food" appetizers, hot dogs, burgers, salad wraps, sandwiches, shakes, frozen hot chocolates and signature "to go" cocktails.

2.3.3 Opening Date: The parties intend that the Restaurant shall open to the public on a date that shall be mutually agreed to, which is presently anticipated to be on or about April 1, 2009, except in the event of an act of Excusable Delay (as defined below). Should the Restaurant not open to the public on or before December 31, 2011 (except in the event of an act of Excusable Delay), either Party shall have the right to terminate this Agreement without further obligation to the other Party. Any reasonable delay in construction of the facility, whether by acts within Caesars' or its Affiliates' control or by acts of Excusable Delay shall not result in a termination of this Agreement; provided, however, notwithstanding the provisions of this Section 2.3.3 or Section 11.3 to the contrary, if, construction is stopped in its entirety for more than one hundred twenty (120) calendar days, either party, upon thirty (30) calendar days' notice to the other, may terminate this Agreement and all further obligations hereunder.

2.3.4 General Development and Management: Unless expressly provided herein to the contrary, Caesars shall be solely responsible for:

- (a) all costs, fees and expenses of Caesars or any third Person (as defined below) incurred or required to be incurred with respect to the design, development, construction, outfitting and operation of the Restaurant;
- (b) managing the operations, business, finances and Employees (as defined below) of the Restaurant on a day-to-day basis;
- (c) developing and enforcing employment and training procedures, marketing plans, pricing policies and quality standards of the Restaurant;
- (d) supervising the use of the food and beverage menus and recipes developed by MOTI pursuant to the terms of Section 2.3; and
- (e) providing copies of the Restaurant's unaudited financial statements to MOTI on a: i) monthly, within fifteen (15) days after the end of each calendar month; ii) quarterly, within forty-five (45) days after the end of each calendar quarter; and iii) annually, within one hundred twenty (120) days following the conclusion of each calendar year.

3. **TERM:**

3.1 Term: The initial term of this Agreement shall commence on the Effective Date and shall expire on that date that is five (5) years from the Opening Date, unless extended by Caesars or unless earlier terminated pursuant to the terms hereof (the "Initial Term"). Caesars shall have the right, but not the obligation, upon not less than one

hundred eighty (180) calendar days' written notice to MOTI, to extend the term of this Agreement for one (1) additional five (5) year period (together with the Initial Term, the "Term"), which shall be on all of the same terms and conditions as contained herein. Thereafter, there shall be no additional extensions of the term of this Agreement.

3.2 Termination:

3.2.1 Gross Revenue Threshold: If, after conclusion of the first year following the Opening Date Gross Revenue for any continuous twelve (12) month period after the Opening Date (the "Determination Period") is the aggregate less than Ten Million and 00/100 Dollars (\$10,000,000.00), compounded by four (4%) percent annually from the Opening Date, Caesars shall have the right, but not the obligation, upon not less than thirty (30) calendar days' notice given with the six (6) month period immediately following the Determination Period, to terminate this Agreement in accordance with the terms hereof. Should Caesars terminate the Agreement pursuant to this provision, Caesars shall pay to MOTI its then undepreciated Initial Capital Contribution.

3.2.2 Death, Disability or Non-Involvement of MOTI Principal: In the event at any time during the Term of following with respect to Rowen Seibel's (a) death, (b) material disability, including, without limitation, any physical or mental condition, which impairs the ability to render, in a timely manner, all of MOTI covenants, agreements and obligations hereunder for a period of three (3) consecutive months or six (6) months in any eighteen (18) month period, or (c) Rowan Seibel is no longer actively engaged as a restaurateur for any reason whatsoever and fails to fulfill (after notice and opportunity to cure) the obligations required of him in this Agreement, then, upon not less than ninety (90) calendar days' written notice to MOTI, or immediately in the case of death or disability, and without prejudice to any other rights or remedies of Caesars including at law or in equity, Caesars shall have the right to terminate this Agreement in accordance with its respective terms unless, during that period, MOTI presents to Caesars a proposed assignee that, during that period, : a) fulfills the requirements of the Compliance Committee of Caesars and its affiliates; and b) demonstrates sufficient financial means and operational experience necessary to fulfill MOTI's obligations hereunder, a decision that shall be within Caesars sole discretion, but acting reasonably .

3.2.3 Right to Terminate or Relocate: At any time during the Term, Caesars may immediately terminate this Agreement ("Early Termination", the effective date of which shall be referred to as the "Early Termination Date") or relocate the Restaurant ("Relocation", the effective date of which shall be referred to as the "Relocation Date") without cause, meaning for any reason or no reason at all. If Gross Revenue for the twelve (12) month period immediately preceding the Early Termination Date or Relocation Date is greater than Ten Million and 00/100 Dollars (\$10,000,000.00), compounded by four (4%) percent annually from the Opening Date, Caesars shall, within thirty (30) days following the Early Termination Date or Relocation Date, pay to MOTI the following amount: a) MOTI's undepreciated Initial Capital Contribution and undepreciated Future Capital Contribution; and b) the lesser of (i) the aggregate of the payments made to MOTI as described in paragraph 7 hereinbelow for the twelve (12) months immediately preceding the Early Termination Date or Relocation Date; or (ii) a calculation, the numerator of which shall be the aggregate of the payments made to MOTI as described in paragraph 7 hereinbelow for the twelve (12) months immediately preceding the Early Termination Date or Relocation Date and the denominator shall be the difference between the Term's natural expiration date and the Early Termination Date or Relocation Date.

3.3 Effect of Expiration or Termination: Upon the expiration or earlier termination of this Agreement:

(a) Caesars shall cease operations of the Restaurant; provided, however, in the event of an early termination of this Agreement, Caesars shall be entitled to operate the Restaurant and use the License (as defined below) for that reasonable period of time required to orderly and properly wind-up operations of the Restaurant not to exceed one hundred twenty (120) days;

(b) Caesars shall retain all right, title and interest in and to the Restaurant Premises;

(c) Caesars shall retain all right, title and interest in and to the plans and specifications and any other materials or work product produced in connection with or procured by Caesars in connection with the Restaurant design, and all furniture, fixtures, equipment, inventory supplies and intangible assets located within or associated with the Restaurant, with the exception of any intellectual property owned by MOTI or its Affiliates); and