14.2 Successors, Assigns and Delagees. CAC may assign or delegate all or any portion of this Agreement. FERG and/or the Persons holding an interest in FERG, without the consent of but with notice to CAC, shall be permitted to issue, sell, assign or transfer interests in FERG to any Person or assign this Agreement, so long as: (i) such receiving Person or assignee or any of such Person's or assignee's Affiliates are not a Competitor of CAC or any of its Affiliates; and (ii) each receiving Person holding and/or proposed to hold any interest in FERG or assignee shall be subject to the internal compliance process of CAC 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 CAC regarding the proposed transferee's or assignee's Associates, (C) CAC 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 CAC, its Affiliates or any Gaming Authority as an Unsuitable Person. Additionally, any obligations and/or duties of FERG and/or Rowen Seibel that are specifically designated to be performed by Rowen Seibel are assignable or delegable by FERG and/or Rowen Seibel without the consent of but with notice to CAC, 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 Agreement shall inure to the benefit of and be binding upon the Parties and their respective permitted successors, assigns and delagees.

14.3 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 anyone 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 CAC's, Gordon Ramsay's or FERG's right to any other remedy.

14.4 Intentionally omitted.

14.5 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 (if confirmation of transmission is received), (c) three (3) calendar days after being given to an international delivery company, (d) five (5) calendar days after being placed in the mail, as applicable, registered or certified, postage prepaid addressed to the following addresses, or (e) on the next business day if sent by first class overnight, nationally known delivery or courier service, prepaid in a sealed envelope or package addressed to the following addresses (each of the parties shall be entitled to specify a different address by giving notice as aforesaid):

If to CAC:

Boardwalk Regency Corporation
d/b/a Caesars Atlantic City
2100 Pacific Avenue
Atlantic City, New Jersey 08401

With a copy (which shall not constitute notice) to:

Caesars Entertainment Corporation
One Caesars Palace Drive
Las Vegas, Nevada 89109

Attention: General Counsel

If to FERG:

200 Central Park South
19th Floor
New York, NY 10019
Attention: Rowen Seibel

With a copy (which shall not constitute notice) to:

Certilman Balin Adler & Hyman, LLP
90 Merrick Avenue, 9th Floor
East Meadow, NY 11554
Attention: Brian Ziegler

14.6 Entire Agreement. This Agreement constitutes the entire agreement among the parties hereto pertaining to the subject matter hereof and supersedes all prior agreements, understandings, negotiations, and discussions, whether oral or written. For the avoidance of doubt, nothing in this Agreement shall supersede or in any way amend or modify that certain Development and Operation Agreement between LLTQ Enterprises, LLC and Desert Palace, Inc. dated as of April 4, 2012 (including, without limitation, Section 13.22 thereof), or that certain Development and Operation Agreement between TPOV, LLC and Paris Las Vegas Operating Company, Inc. dated as of November, 2011, or that certain that certain Development, Operation and License Agreement by and among Gordon Ramsay, GR BURGR, LLC and PHW Manager, LLC on behalf of PHW Las Vegas, LLC dated December 13, 2012, all of which shall remain in full force and effect and binding on the Parties or their Affiliates, as applicable.

14.7 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.

14.8 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.

14.9 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.

14.10 Governing Law: Submission to Jurisdiction; Specific Performance.

(a) The laws of the State of New Jersey applicable to agreements made in that State shall govern the validity, construction, performance and effect of this Agreement.

(b) Notwithstanding any other provision of this Agreement, the parties acknowledge and agree that monetary damages would be inadequate in the case of any breach by CAC of Section 14.18 or FERG of the covenants contained in Section 2.3, 2.3(a), or 14.19 or Article 6 of this Agreement. Accordingly, each party shall be entitled, without limiting its other remedies and without the necessity of proving actual damages or posting any bond, to equitable relief, including the remedy of specific performance or injunction, with respect to any breach or threatened breach of such covenants and each party (on behalf of itself and its Affiliates) consents to the entry thereof in any affected jurisdiction. In the event that any proceeding is brought in equity to enforce the provisions of this Agreement, no party hereto shall allege, and each party hereto hereby waives the defense or counterclaim that there is an adequate remedy at law.

(c) Subject to the provisions of Sections 13.1 and 14.10(a), FERG and CAC each agree to submit to the exclusive jurisdiction of any state or federal court within the Atlantic County, New Jersey (the "New Jersey Courts") for any court action or proceeding to compel or in support of arbitration or for provisional remedies in aid of arbitration, including any action to enforce the provisions of Article 13 (each an "Arbitration Support Action") or for any action or proceeding contemplated by Section 14.10(b). Each of the parties hereto irrevocably and unconditionally waives any objection to the laying of venue of any action, suit or proceeding in a New Jersey Court arising out of this Agreement including, but not limited to, an Arbitration Support Action or action or proceeding contemplated by Section 14.10(b) 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.

14.11 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 any 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. The use of the terms "includes" or "including" shall in all cases herein mean "includes, without limitation" and "including, without limitation", respectively. The use of the terms "FERG" or words of similar import shall in all cases herein mean FERG shall "cause one or more members of its team to," and the requirement of CAC to obtain any consent or approval from FERG shall be satisfied upon the consent or approval of any team member of FERG designated by FERG in writing and CAC shall be entitled to rely on all communications from any such team member.

14.12 Third Persons. Except as provided in Section 14.15 and 14.16, 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.

14.13 Attorneys' 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 aware of its expenses incurred in pursuit or defense of said claim, including, without limitation, attorneys' fees and costs, incurred in such action.

14.14 Counterparts and Admissibility of Electronic Copies. This Agreement may be executed in counterparts, each one of which so executed shall be deemed an original, and all of which shall together constitute one and the same agreement. An electronic or facsimile copy thereof shall be deemed, and shall have the same legal force and effect as, an original document.

14.15 Indemnification Against Third Party Claims.

(a) By CAC. CAC covenants and agrees to defend, indemnify and save and hold harmless Gordon Ramsay, FERG and their respective Affiliates and their and their respective Affiliates' stockholders, directors, officers, agents and employees from and against all claims, losses, expenses, obligations, liabilities, liens, demands, charges, litigation and judgments, including court costs and reasonable attorneys' fees, incurred or suffered by them arising directly or indirectly from any claim, action, suit, demand, assessment, investigation, arbitration or other proceeding by or in respect of any third Person (a "Third-Party Claim") arising out of CAC's breach, performance or non-performance of its obligations under or in connection with this Agreement.

(b) By FERG. FERG covenants and agrees to defend, indemnify and save and hold harmless CAC and its Affiliates and CAC's and CAC's Affiliates' respective stockholders, directors, officers, agents and employees from and against all claims, losses, expenses, obligations, liabilities, liens, demands, charges, litigation and judgments, including court costs and reasonable attorneys' fees, incurred or suffered by them arising directly or indirectly from any Third-Party Claim arising out of FERG's breach, performance or non- performance of its obligations under or in connection with this Agreement.

(c) Procedures. In connection with any Third Party Claim for which a Person (any of such Persons, an "Indemnified Person") is entitled to indemnification under this Section 14.15, the Indemnified Person asserting a claim for indemnification under this Section 14.15 shall notify the party from which indemnification is being sought (the "Indemnifying Person") of such Third Party Claim and the Indemnifying Person shall, at its sole cost and expense, defend such Third Party Claim or cause the same to be defended by counsel designated by the Indemnifying Person and reasonably acceptable to the Indemnified Person. Notwithstanding the foregoing, the Indemnified Person, at the Indemnifying Person's expense, if the Indemnifying Person does not undertake and duly pursue the defense of such Third Party Claim in a timely manner or, in the case of CAC, if the Third Party Claim is asserted by any governmental authority, may defend such action, suit or proceeding or cause the same to be defended by counsel designated by the Indemnified Person. Neither the Indemnified Person nor the Indemnifying Person shall settle or compromise any Third Party Claim that is the subject of a claim for indemnification under this Section 14.15 without the prior written consent of the other.

14.16 Insurance. FERG will maintain at all times during the Term, insurance for claims which may arise from, or in connection with, services performed/products furnished by FERG, its agents, representatives, employees or subcontractors with coverage at least as broad and with limits of liability not less than those stated below. Notwithstanding FERG's obligation to maintain the coverage described herein, CAC shall pay for the policy premium related to said coverage, with said premium payment not being treated as an Operating Expense as such is defined herein.

I. Workers Compensation and Employers Liability Insurance: Statutory workers compensation coverage, Employers liability insurance - $1,000,000 each accident, $1,000,000 disease, each employee, $1,000,000 disease, policy limit

II. General Liability Insurance: Limits: $1,000,000 per occurrence, $2,000,000 aggregate / include Products / Completed Operations, Blanket Contractual Liability, Independent Contractor Liability, Broad form property damage, Cross liability, severability of interests, Personal and advertising injury, Medical Expense Coverage, Fire Legal Liability / Damage to Rented Premises

III. Automobile Liability Insurance (if applicable): Liability limits: $1,000,000 combined single limit, $1,000,000 uninsured and underinsured motorist, Covers owned, hired and non-owned Vehicles

IV. Umbrella Liability Insurance: Limits: $3,000,000 per occurrence and aggregate, Provides excess limits over General Liability, Automobile Liability, and Employers Liability coverages, Coverage shall be no more restrictive than the applicable underlying policies

Evidence of Insurance: Before the Effective Date, immediately upon the renewal of any policy required above, and upon request, FERG shall provide CAC and Caesars Entertainment Operating Company, Inc. ("Caesars") with a Certificate of Insurance in accordance with the foregoing and referencing the services to be provided. Such certificate of insurance is to be delivered to CAC and in electronic format to jfrederick@Caesars.com.

General Terms: All policies of insurance shall (1) provide for cancellation of not less than thirty (30) days prior written notice to CAC and Caesars, (2) have a minimum A.M. Best rating of A+, (3) be primary and non-contributory with respect to any other insurance or self-insurance program of CAC or Caesars, and (4) provide a waiver of subrogation in favor of CAC and Caesars. FERG further agrees that any subcontractors engaged by FERG will carry like and similar insurance with the same additional insured requirements.

Additional Insured. Insurance required to be maintained by FERG pursuant to this Section 14.16 (excluding workers compensation) shall name CAC and Caesars, including their Affiliates (including their parent, affiliated or subsidiary corporations) and their respective agents, officers, members, directors, employees, successors and assigns, as additional insureds. The coverage for an additional insured shall apply on a primary basis and shall be to the full limits of liability purchased by FERG even if those limits of liability are in excess of those required by this contract.

Failure to Maintain Insurance. Failure to maintain the insurance required in this Section 14.16 will constitute a material breach and may result in termination of this Agreement at CAC's option except if failure to maintain such insurance is caused by CAC's acts or omissions.

Representation of Insurance. By requiring the insurance as set out in this Section 14.16, CAC does not represent that coverage and limits will necessarily be adequate to protect FERG, and such coverage and limits shall not be deemed as a limitation on FERG's liability under the indemnities provided to CAC in this Agreement, or any other provision of the Agreement.

14.17 Withholding and Tax Indemnification.

(a) If CAC is required to deduct and withhold from any payments or other consideration payable or otherwise deliverable pursuant to this Agreement to FERG 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, CAC agrees that, prior to said deduction and withholding, it shall provide FERG 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 CAC, FERG shall promptly deliver, or cause to be promptly delivered, to CAC all the appropriate Internal Revenue Service forms necessary for CAC, 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.

(b) Notwithstanding anything to the contrary in this Agreement, FERG shall be responsible for and shall jointly and severally indemnify and hold harmless CAC and its Affiliates against (i) all Taxes (including, without limitation, any interest and penalties imposed thereon) payable by or assessed against CAC or any of its Affiliates with respect to all amounts payable by CAC to FERG pursuant to this Agreement and (ii) any and all claims, losses, damages, liabilities, costs and expenses (including reasonable attorneys' fees and expenses) suffered or paid by CAC or any of its Affiliates as a result of or in connection with such Taxes. CAC shall have the right to reduce any payment payable by CAC to FERG pursuant to this Agreement in order to satisfy any indemnity claim pursuant to this Section 14.17. For purposes of this Section, the term "Tax" or "Taxes" means all taxes, assessments, charges, duties, fees, levies or other governmental charges, including 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.

14.18 Confidentiality.

(a) Each party agrees that it shall not use, nor shall it induce or permit others to use, any of the Confidential Information of another party for any purpose other than to further the purpose of this Agreement consistent with the terms hereof or as otherwise contemplated hereby. Each party further agrees that it shall not reveal, nor shall it permit or induce others to reveal, any of the Confidential Information of another party to any other Person: (i) except to the Representatives of the receiving party to the extent such Persons require knowledge of the same in connection with the transactions contemplated in this Agreement; (ii) except as required to comply with applicable laws, regulation or legal process (but only after compliance with Section 14.18(b)); and (iii) except as otherwise agreed by the party to which the Confidential Information belongs in writing. Each party receiving, or whose Representatives receive, Confidential Information of another party (a "Recipient") shall inform its Representatives of the proprietary nature of such Confidential Information and shall be responsible for any further disclosure of such Confidential Information by any such Representative unless the Recipient would have been permitted to make such disclosure hereunder. Each Recipient, upon written request following termination of this Agreement, shall destroy any Confidential Information of another party in its or any of its Representative's possession (and certify to the destruction thereof).

(b) In the event that a Recipient or any of its Representatives is requested or required by applicable law, regulation or legal process to disclose any of the Confidential Information of another party, the Recipient will notify the other party promptly in writing so that the other party may seek a protective order or other appropriate remedy, or, in the other party's sole discretion, waive compliance with the terms of this Agreement. The Recipient agrees not to, and agrees to cause its Representatives not to, oppose any action by the other party to obtain a protective order or other appropriate remedy. In the event that no such protective order or other remedy is obtained, or that the other party waives compliance with the terms of this agreement, the Recipient and its respective Representatives will furnish only that portion of the Confidential Information of the other party which the Recipient is advised by its counsel is legally required to be disclosed at that time and the Recipient will exercise its reasonable best efforts to obtain confidential treatment, to the extent available, for such Confidential Information so disclosed.

14.19 Subordination. For the avoidance of doubt, this Agreement does not create in favor of FERG any interest in real or personal property or any lien or encumbrance on CAC or any ground or similar lease affecting all or any portion of CAC (as the same may be renewed, modified, consolidated, replaced or extended, a "Ground Lease"). FERG acknowledges and agrees that CAC may from time to time assign or encumber all or any part of its interest in CAC or any Ground Lease by way of any one or

more mortgages, deeds of trust, security agreements or similar instruments (as the same may be renewed, modified, consolidated, replaced or extended, "Mortgages"), assign or encumber all or any part of its interest in this Agreement as security to any holder of a Mortgage or a landlord under a Ground Lease or enter into a Ground Lease. The rights of FERG hereunder whether with respect to CAC and the revenue thereof or otherwise shall be inferior and subordinate to the rights and remedies of the holder of any Mortgage and the landlord under any Ground Lease. For the avoidance of doubt, FERG shall not have any right to encumber or subject CAC or the Restaurant, or any interest of CAC therein, to any lien, charge or security interest, including any mechanic's or materialman's lien, charge or encumbrance of any kind. FERG, at its sole cost and expense, shall promptly cause any and all such liens, charges or security interests to be released by payment, bonding or otherwise (as acceptable to CAC in its sole discretion) within ten (10) days after FERG first has notice thereof. If FERG fails to timely take such action, CAC may pay the claim relating to such lien, charge or security interest and any amounts so paid by CAC shall be reimbursed by FERG upon demand.

14.20 Comps and Reward Points. FERG shall be entitled to reasonable comp privileges to be reasonably agreed to by the parties. CAC shall cause the Restaurant to participate in CAC's reward points system and the Restaurant shall be entitled to receive the point redemption thresholds in place as of the date of this Agreement for other first class, gourmet restaurants in CAC. For purposes of this Agreement, one reward point shall entitle the holder thereof to $1.00 of food or beverage in the Restaurant.

14.21 Intellectual Property Rights. Except with respect to the GR Marks and GR Materials, FERG acknowledges and agrees that CAC shall own: (a) any works, trade names, trademarks, designs, trade dress, service names and service marks, and registrations thereof and applications for registration thereof, and all works of authorship, programs, techniques, processes, formulas, developmental or experimental work, work-in-process, methods or trade secrets and all other materials, work product, intangible assets or other intellectual property rights created or developed by any party for use in association with the Restaurant or otherwise pursuant to this Agreement; (b) any materials that that are created by any party pursuant to this Agreement in which any intellectual property rights of FERG or any of its Affiliates are embodied or incorporated, including all photographic or video images, all promotional materials and all marketing materials produced in accordance with this Agreement; and (c) any other works, designs, trademarks, trade names, services marks and registrations thereof, programs, techniques, processes, formulas, developmental or experimental work, work-in-process, plans and specifications and any other materials or work product that were created by CAC. FERG acknowledges and agrees that FERG shall not have or obtain any right, title or interest in or to any of such marks or materials.

14.22 Submission of Agreement. Submission of this Agreement to FERG does not constitute an offer to contract; this Agreement shall become effective only upon execution and delivery thereof by CAC to FERG. FERG acknowledges, understands and agrees that CAC's willingness to enter into this Agreement is predicated upon successful approval of this Agreement by CAC's capital committee (the "Capital Committee") (a definition and determination of which shall be in the Capital Committee's sole and exclusive discretion).

[SIGNATURE PAGE TO FOLLOW]

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

BOARDWALK REGENCY CORPORATION
D/B/A CAESARS ATLANTIC CITY

By: _____

Name: _____

Its: _____

Date: _____

Legal Department

Digitally signed by Legal Department
DN: cn=Legal Department, o, ou, email=asabo@caesars.com, c=US
Date: 2014.05.15 22:39:02 -07'00'

FERG, LLC

By: _____

Name: _____

Its: _____

Date: _____

EXHIBIT A

RESTAURANT PREMISES

(SEE ATTACHED)

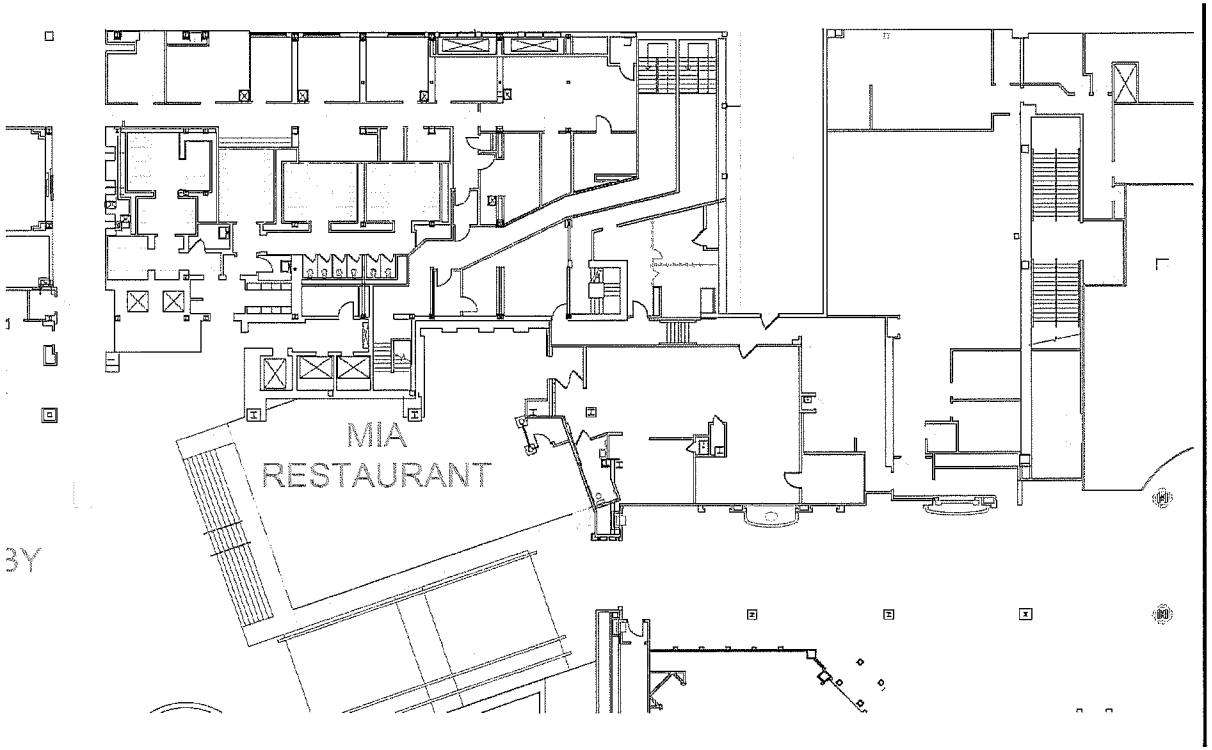
MIA
RESTAURANT
3Y

EXHIBIT B

MIA PROFIT AND LOSS STATEMENT

(SEE ATTACHED)

Mia's AC TTM P&L	TTM
3200-000-FOOD REVENUE	685,481
3210-000-COMP FOOD REVENUE	646,367
3299-000-FOOD REVENUE ALLOWANCE	(6,561)
3300-000-BEVERAGE REVENUE	294,936
3310-000-COMP BEVERAGE REVENUE	187,391
3399-000-BEVERAGE REVENUE ALLOWANCE	(36)
Total Revenue	1,807,578
% Comp	*46%*
4200-000-FOOD COSTS	428,147
4300-000-BEVERAGE COSTS	151,826
Total COGS	579,972
5000-000-SALARIES	110,749
5100-000-WAGES	10,453
5100-002-WAGES-UNION	346,780
5100-024-TRAINING	367
5110-000-OT WAGES	197
5110-002-OT WAGES-UNION	5,016
5100-182-LABOR ALLOCATION IN	82,743
5100-183-LABOR ALLOCATION OUT	(8,354)
5200-000-VACATION/PTO	16,255
5300-000-LONG TERM DISABILITY	271
5300-001-SHORT TERM DISABILITY	55
5620-010-MAJOR MEDICAL	18,835
5620-020-DENTAL BENEFITS	809
5620-030-LIFE BENEFITS	113
5620-040-VISION BENEFITS	16
5630-000-SAVINGS & RETIREMENT (401k)	1,337
5500-000-FEDERAL FICA	44,497
5510-000-FEDERAL UNEMPLOYMENT TAX	717
5530-000-STATE UNEMPLOYMENT TAX	23,803
5210-005-UNION HOLIDAY PAY	4,587
5600-590-UNION BENEFITS	2,238
5620-015-MEDICAL INSURANCE-UNION	156,542
5650-020-PENSION FUND UNION	61,669
5700-010-BONUS PLAN	1,000
5700-050-QUARTERLY PERFORMANCE PAYOUT	3,947
5700-055-EMPLOYEE INCENTIVE PROGRAM	591
5450-000-LABOR ALLOCATION IN	64,083
5450-005-LABOR ALLOCATION OUT	(2,506)
Total Payroll	946,810

6600-100-CREDIT CARD CHARGEBACKS	0
7920-000-PROFESSIONAL SERVICES	94,843
7920-400-PROF SVCS-CONSULTING	723
7930-000-SUPPLIES	12,857
7930-470-SUPPLIES-PRINTED FORMS/STATION	533
8008-000-CASH OVER/SHORT	(419)
8010-000-CHINA/GLASS/SILVER	8,137
8021-000-DUES/MEMBERSHIP/SUBSCRIPTIONS	6,885
8029-000-LAUNDRY	6,239
8066-000-UNIFORMS	1,836
7998-200-ALLOCATION IN	9,838
Total OpEx	1,088,280
Operating Income	139,325

EXHIBIT U

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

In re:	)	Chapter 11
	)	
CAESARS ENTERTAINMENT OPERATING COMPANY, INC., *et al.*,[1]	)	Case No. 15-01145 (ABG)
	)	
	)	(Jointly Administered)
Debtors.	)	
	)	Honorable A. Benjamin Goldgar
	)	
	)	**Hearing Date: October 19, 2016**
	)	**Hearing Time: 1:30 p.m.**

NOTICE OF MOTION

PLEASE TAKE NOTICE that on **October 19, 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. 2525 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 **Combined Motion for Partial Summary Judgment by LLTQ Enterprises, LLC and FERG, LLC in connection with 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 established in the above-captioned cases (the "**Case Management Procedures**") by **October 12, 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. **Please note that a copy of the Motion can also be obtained free of charge upon request to the undersigned counsel.**

[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 5th day of October, 2016

ADELMAN & GETTLEMAN, LTD.

/s/ Nathan Q. Rugg

NATHAN Q. RUGG, ESQ. (ARDC #6272969)
STEVEN B. CHAIKEN, ESQ. (ARDC #6272045)
ALEXANDER F. BROUGHAM, ESQ. (ARDC #6301515)
53 West Jackson Boulevard, Suite 1050
Chicago, Illinois 60604
Telephone: (312) 435-1050
Facsimile: (312) 435-1059
Attorneys for FERG, LLC and LLTQ Enterprises, LLC
nrugg@ag-ltd.com
schaiken@ag-ltd.com
abrougham@ag-ltd.com

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

In re:	)	Chapter 11
	)	
CAESARS ENTERTAINMENT OPERATING COMPANY, INC., *et al.*	)	Case No. 15-01145 (ABG)
	)	
	)	(Jointly Administered)
Debtors.	)	
	)	

COMBINED MOTION FOR PARTIAL SUMMARY JUDGMENT BY LLTQ ENTERPRISES, LLC AND FERG, LLC IN CONNECTION WITH REQUEST FOR PAYMENT OF ADMINISTRATIVE EXPENSE

NOW COME FERG, LLC, a Delaware limited liability company (and its successors and assigns, collectively "FERG") and LLTQ ENTERPRISES, LLC, a Delaware limited liability company (and its successors and assigns, collectively "LLTQ," and together with FERG, the "Movants"), by and through their undersigned counsel, and, pursuant to 11 U.S.C. §§ 365 and 503, Rules 7056 and 9014 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), and Rule 7056-1 of this Court's local rules, hereby move for partial summary judgment in connection with their *Request for Payment of Administrative Expense* [Docket No. 2531] (the "Admin Expense Motion"), for the following claims: (1) the "Pub Agreements" are integrated with the respective "Original Ramsay Agreements" for the operation of the "Ramsay Pubs," and (2) Movants are entitled to allowance and payment of administrative expense claims through at least September 2, 2016 (the "Motion"). Filed concurrently herewith is a statement of undisputed material facts in support of the Motion (the "Statement"), which is incorporated herein by reference. Capitalized terms not otherwise defined herein shall have the same meaning as ascribed in the Statement.

I. INTRODUCTION

Debtors and Movants agree that the continued operation of the Ramsay Pubs benefits the estate; that the Debtors have operated the Ramsay Pubs since the filing of these cases through the present; and that under the Debtors' contracts with the Movants, the Debtors are obligated to operate the Ramsay Pubs. In response to the Admin Expense Motion, however, the Debtors attempt to distinguish the last fact by asserting that they do not operate the Ramsay Pubs under the Pub Agreements with the Movants, but rather under the Original Ramsay Agreements with Gordon Ramsay. This distinction is without substance because the Pub Agreements and the Original Ramsay Agreements comprise integrated contracts made to effectuate a single transaction for each of the Ramsay Pubs. The Pub Agreements and the Original Ramsay Agreements were negotiated among the same three parties around the same time; they concern the exact same subject matter (the development and operation of the Ramsay Pubs); they were executed and became effective on the same day; the respective Debtors are party to each; and the contracts reference each other in multiple, critical aspects. As such, unless and until the Debtors reject the Original Ramsay Agreements, the Movants are entitled to payment of an administrative claim.

On September 2, 2016, the Debtors issued notices of termination for the Pub Agreements, "effective immediately." The Movants dispute and will contest the termination of the Pub Agreements, and reserve all rights, defenses and objections in connection with such purported termination. Nonetheless, such termination does not affect the fact that the Pub Agreements and the Original Ramsay Agreements are integrated in the first instance, nor does it affect Movants' entitlement to administrative priority claims through at least September 2, 2016. Thus partial summary judgment is appropriate to determine integration and award an administrative claim.

II. LEGAL STANDARDS

A. Summary Judgment

1. "The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a) (made applicable by Bankruptcy Rules 7056 and 9014). The court has "one task and one task only: to decide, based on the evidence of record, whether there is any material dispute of fact that requires trial." *Egan v. Freedom Bank*, 659 F.3d 639, 643 (7th Cir. 2011) (citation omitted).

2. In determining whether there is a "genuine" dispute about a material fact, the court will consider "if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986).

3. To demonstrate the absence of dispute as to material facts, a party may cite "to particular parts of materials in the record, including depositions, documents, electronically stored information, affidavits or declarations, stipulations (including those made for purposes of the motion only), admissions, interrogatory answers, or other materials." Fed. R. Civ. P. 56(c)(1).

4. A 2010 amendment to the Federal Rules of Civil Procedure codified the ability of federal courts to enter partial summary judgment, i.e., judgment on a part of a claim or defense. *See* Fed. R. Civ. P. 56(a); 10B Charles Alan Wright *et al.*, *Federal Practice and Procedure* § 2736 (4th ed. 2016). As amended, Rule 56 enables courts to "narrow the individual factual issues for trial by identifying the material disputes of fact that continue to exist." *BBL, Inc. v. City of Angola*, 809 F.3d 317, 325 (7th Cir. 2015); *see also Hotel 71 Mezz Lender LLC v. Nat'l Ret. Fund*, 778 F.3d 593, 606 (7th Cir. 2015) ("Nothing in Rule 56 demands an all-or-nothing approach to summary judgment.").

B. Hearsay: Definition and Exclusion for Statements of Party Opponent

5. Under the Federal Rules of Evidence, hearsay is generally inadmissible unless it falls within an exception to the hearsay rule. *See* Fed. R. Evid. 802. To be hearsay, evidence must be (a) an out-of-court statement, (b) offered to prove the truth of the matter asserted. *Flournoy v. City of Chi.*, 829 F.3d 869, ___ (7th Cir. 2016); Fed. R. Evid. 801(c).

6. To satisfy the first criterion, evidence must be a "statement," *i.e.*, "a person's oral assertion, written assertion, or nonverbal conduct, if the person intended it as an assertion." Fed. R. Evid. 801(a); *see also Catalan v. GMAC Mortg. Corp.*, 629 F.3d 676, 695 (7th Cir. 2011). Because it is not an "assertion," neither a request, *Carter v. Douma*, 796 F.3d 726, 735 (7th Cir. 2015); nor a question, *United States v. Thomas*, 453 F.3d 838, 845 (7th Cir. 2006); nor a contractual offer, *Hydrite Chem. Co. v. Calumet Lubricants Co.*, 47 F.3d 887, 892 (7th Cir. 1995), constitutes a statement barred by the hearsay rule.

7. To satisfy the second criterion, a statement must be offered "to prove the truth of the matter asserted in the statement." Fed. R. Evid. 801(c)(2). It follows that a statement offered as evidence of the declarant's belief or intention, rather than the truth of the statement itself, falls outside the hearsay rule. Thus, a statement by one contract party offered to show the parties' mutual intent in entering into their contract is not hearsay. *BKCAP, LLC v. Captec Franchise Trust 2000-1*, 688 F.3d 810, 814 (7th Cir. 2012); *see also Catalan*, 629 F.3d at 694-95; *Aetna Life Ins. Co v. Wise*, 184 F.3d 660, 665-66 (7th Cir. 1999).

8. Federal Rule of Evidence 801 further excludes from hearsay any statement "offered against an opposing party [that] was made by the party's agent or employee on a matter within the scope of that relationship and while it existed." Fed. R. Evid. 801(d)(2)(D).

9. There are only "two relevant requirements" for a statement to qualify as non-hearsay under this rule; it must be (a) "offered against" an opposing party, and (b) have been made while the declarant was "performing the duties of his employment." *Aliotta v. Nat'l R.R. Passenger Corp.*, 315 F.3d 756, 761-62 (7th Cir. 2003). There is no requirement, therefore, that the statement be inculpatory, *United States v. McGee*, 189 F.3d 626, 631 (1999), or even that it have been "conveyed or intended to be seen by anyone," *S. Cent. Bank & Trust Co. v. Citicorp Credit Servs., Inc.*, 863 F. Supp. 635, 646 (N.D. Ill. 1994).

C. Administrative Expenses

10. Section 503 of title 11 of the United States Code, 11 U.S.C. §§ 101 et seq. (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).

11. 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) (citation and alteration omitted).

D. Rejection of Contract

12. In *National Labor Relations Board v. Bildisco*, the Supreme Court ruled:

> 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.

465 U.S. 513, 531 (1984) (citations omitted).

13. The reasoning for applying the contract rate as a baseline presumption is intuitive. As one court observed:

> 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 (Bankr. S.D. Fla. 2000) (citation omitted).

14. The Seventh Circuit has ruled that continued use of services by the debtor post-petition does not elevate a prepetition claim to priority status, but the post-petition claim for services is entitled to administrative priority. *Data-Link Sys. v. Whitcomb & Keller Mortg. Co (In re Whitcomb & Keller Mortg. Co.)*, 715 F.2d 375, 379-380 & n.5 (7th Cir. 1983). 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).

E. Integrated Agreements and One Transaction – Bankruptcy

15. Under section 365(f) of the Bankruptcy Code, a debtor's assumption of a contract is subject to the benefits and burdens thereunder. If the debtor "accepts the contract he accepts it *cum onere*. If he receives the benefits he must adopt the burdens. He cannot accept one and reject the other." *In re Fleming Cos.*, 499 F.3d 300, 308 (3d Cir. 2007) (citation omitted).

16. "The *cum onere* rule 'prevents the [bankruptcy] estate from avoiding obligations that are an integral part of an assumed agreement.'" *Id.* (alteration in original) (quoting *United Air Lines, Inc. v. U.S. Bank Trust Nat'l Ass'n (In re UAL Corp.)*, 346 B.R. 456, 468 n.11 (Bankr. N.D. Ill. 2006); *see also In re Physiotherapy Holdings, Inc.*, 538 B.R. 225, 233 (D. Del. 2015) (holdings that debtors could not assume software licensing agreement without also assuming the master agreement signed on same date), *appeal dismissed*, __ Fed. App'x __ (3d Cir. Dec. 17,

2015); *In re Teligent, Inc.*, 268 B.R. 723, 729 (Bankr. S.D.N.Y. 2001) (concluding, for purposes of assumption, that two documents constituted a single agreement where both documents were executed on the same day and as part of the same transaction, and neither side would have signed one unless the other side signed the second).

17. Similarly, for purposes of rejection, this Court must examine whether the Pub Agreements are integrated with the Original Ramsay Agreements, and whether the agreements are part of a single transaction to operate the Ramsay Pubs. "Where multiple contracts are intended to comprise one agreement or transaction, a party may not sever them for purposes of assumption or rejection." *In re Trinity Coal Corp.*, 514 B.R. 526, 530 (Bank. E.D. Ky. 2014); *see also Kopel v. Campanile (In re Kopel)*, 232 B.R. 57, 65 n.4 (Bankr. E.D.N.Y. 1999) ("Where several documents are construed as one contract, the debtor must assume or reject them together.").

18. In other words, a "debtor in possession may not reject, and thereby breach, one contract and still enjoy the benefits of a related contract if that breach is also a breach of the related contract." *In re Comdisco, Inc.*, 270 B.R. 909, 911 (Bankr. N.D. Ill. 2001).

19. As a preliminary matter, to determine whether the Pub Agreements and/or the Original Ramsay Agreements are executory, the Court must first identify what constitutes the agreement at issue. And, as one court of appeals has stated:

> The general rule is that in the absence of a contrary intention, where two or more instruments are executed by the same contracting parties in the course of the same transaction, the instruments will be considered together . . . because they are, in the eyes of the law, one contract. A contract should be treated as entire when, by a consideration of its terms, nature, and purposes, each and all of the parts appear to be interdependent and common to one another and to the consideration.

Lewis Bros. Bakeries Inc. v. Interstate Brands Corp. (In re Interstate Bakeries Corp.), 751 F.3d 955, 961 (8th Cir. 2014) (alteration in original) (citations omitted).

20. This analysis, in turn, requires an examination of state law. *Empire State Bldg. Co. v. N.Y. Skyline, Inc. (In re N.Y. Skyline, Inc.),* 432 B.R. 66, 77 (Bankr. S.D.N.Y. 2010) ("It is well-settled that state law governs whether the agreements are separate or indivisible for purposes of § 365."); *see also In re AbitibiBowater Inc.*, 418 B.R. 815, 823 (Bankr. D. Del. 2009).

F. Integrated Agreements Constitute One Transaction Under Applicable State Law

21. Contract law generally provides that terms of one agreement can be expressed in more than one document, and that writings executed at the same time and relating to the same transaction are construed together as a single contract. *See Martin Marietta Materials, Inc. v. Vulcan Materials Co.*, 56 A.3d 1072, 1120 n.192 (Del. Ch. 2012) (citing 17A C.J.S. *Contracts* § 315, at 337 (1999)), *aff'd*, 45 A.3d 148 (Del. 2012); 11 *Williston on Contracts* § 30:26 (4th ed. 1999).

1. Nevada State Law

22. The LLTQ Agreement and Ramsay LV Agreement are both subject to and governed by Nevada law. LLTQ Agmt. § 13.10; Ramsay LV Agmt. § 14.10. Under Nevada law, two independently executed agreements can form one contract. *Whitemaine v. Aniskovich*, 183 P.3d 137, 141-42 (Nev. 2008).

23. Nevada state courts take a relatively permissive approach to the integration of related contracts. In *Collins v. Union Federal Savings & Loan Ass'n*, the Supreme Court of Nevada stated, "[t]he general presumption is that where two or more written instruments are executed contemporaneously the documents evidence but a single contract if they relate to the same subject matter and one of the two refers to the other." 662 P.2d 610, 615 (Nev. 1983).

24. Later, in *Whitemaine*, the Supreme Court of Nevada articulated this standard as a three-part test, holding that multiple contracts are integrated when "(1) they are contemporaneously executed, (2) they concern the same subject matter, and (3) one of the instruments refers to the other." 183 P.3d at 141. The court applied the three-part test to conclude that two employment agreements among three parties constituted one agreement, even though one of the agreements contained an integration clause. *Id.* (citing *Collins*, 662 P.2d at 615).

25. The *Whitemaine* court looked to a decision of the California Court of Appeal for guidance and adopted the rule that several contracts relating to the same matters, between the same parties, and made as parts of substantially one transaction, are to be taken together. *Id.* at 143-44 (citing *Brookwood v. Bank of Am.*, 53 Cal. Rptr. 2d 515, 520 (Cal. Ct. App. 1996) and Cal. Civ. Code § 1642).

26. In *Whitemaine*, one individual entered into two employment agreements with two corporations, a parent and subsidiary. The court ruled that an arbitration clause found in one of the contracts but not the other applied to both, because the two contracts constituted a single agreement. *Id.* at 144.

27. Similarly, the instant proceeding involves one debtor entity that entered in two contracts for each of the Ramsay Pubs. For the Las Vegas Pub, Caesars entered into the LLTQ Agreement and the Ramsay LV Agreement, both of which expressly (a) require Caesars to be "solely responsible for managing the operations, business, finances and Employees" of the pub, Stmt. ¶ 43; and (b) stated Caesars' desire to "design, develop, construct and operate" the pub, LLTQ Agmt., Recital B; Ramsay LV Agmt., Recital C.

28. In the recent case of *WuMac, Inc. v. Eagle Canyon Leasing, Inc.*, a district court applying Nevada law concluded that the *Whitemaine* test applied to disputes involving multiple integration clauses. No. 2:12-CV-0926-LRH-VCF, 2015 WL 995095, at *5 (D. Nev. Mar. 5, 2015). The court held that two contracts could not be read as a single contract because: (i) both contained integration clauses, **and** (ii) neither substantively referenced the other. As detailed below, while the LLTQ Agreement and the Ramsay LV Agreement both contain integration clauses, the LLTQ Agreement and the Ramsay LV Agreement reference one another in multiple, substantive, and material provisions.

2. New Jersey State Law

29. The FERG Agreement and Ramsay AC Agreement are both subject to New Jersey law. FERG Agmt. § 14.10; Ramsay AC Agmt. § 14.10.

30. Under New Jersey law, "the determination of whether a transaction constitutes one or several contracts is primarily based upon the intentions of the parties," which is "to be gathered from the language and subject matter of the agreement[,] . . . . from all the circumstances surrounding the agreement and from the face of the contract." *In re T & H Diner, Inc.*, 108 B.R. 448, 453-454 (D.N.J. 1989) (citations omitted); *see also Studzinski v. Travelers Ins. Co*., 434 A.2d 1160, 1161-62 (N.J. Super. Ct. Law Div. 1981) (holding that determination of whether contract is entire depends on intentions of the parties, to be ascertained from the circumstances surrounding the agreement and contract itself).

31. In determining the parties' intent as to a contract, several interpretative tools are available which "include consideration of the particular contractual provision, an overview of all the terms, the circumstances leading up to the formation of the contract, custom, usage, and the

interpretation placed on the disputed provision by the parties' conduct." *Kearny PBA Local No. 21 v. Town of Kearny*, 405 A.2d 393, 400 (N.J. 1979).

32. Further, New Jersey courts allow a

> broad use of extrinsic evidence to achieve the ultimate goal of discovering the intent of the parties. Extrinsic evidence may be used to uncover the true meaning of contractual terms. It is only after the meaning of the contract is discerned that the parol evidence rule comes into play to prohibit the introduction of extrinsic evidence to vary the terms of the contract.

Conway ex rel. Conway v. 287 Corporate Ctr. Assocs., 901 A.2d 341, 347 (N.J. 2006).

33. Even when the meaning of an agreement is seemingly apparent on its face, New Jersey courts permit an inquiry into the agreement's "surrounding and antecedent circumstances and negotiations." *Garden State Plaza Corp. v. S.S. Kresge Co.*, 189 A.2d 448, 496 (N.J. Super. Ct. App. Div. 1963). As one court explained:

> [D]ebatability of meaning is not always discernable at the first reading of a contract by a new mind. More often it becomes manifest upon exposure of the specific disputed interpretations in the light of the attendant circumstances.
>
> . . . .
>
> Repeatedly have our highest courts used negotiations antecedent to integration in arriving at and effectuating the specific intent of the parties, subject only to the caution that the construction adjudicated be compatible with the contractual language.

Id. at 499 (citations omitted).

34. As detailed below, the parties' interactions and dialogue during the year-long negotiation of the contracts demonstrate their intent that one transaction –development and operation of the Atlantic City Pub– would be (and had to be) governed by two contracts, *i.e.* the Ramsay AC Agreement and the FERG Agreement. The intent of the parties in this regard is definitively evidenced in the terms of those contracts. Among other things, the FERG Agreement and the Ramsay AC Agreement **both** expressly (a) require CAC to manage the "operations,

business, finances and employees" of the Atlantic City Pub, Stmt. ¶ 70; and (b) state CAC's desire to "design, develop, construct and operate" the Atlantic City Pub, FERG Agmt., Recital B; Ramsay AC Agmt., Recital C.

G. Substance Over Form

35. Regardless of labels and the Debtors' description in their pleadings, the Pub Agreements are not simple "consulting agreements." Among other distinguishing characteristics, so-called consultants do not make $1 million capital contributions (as LLTQ did for the Las Vegas Pub), and consulting agreements do not *require* the non-consulting party to operate a venture (as the Debtors are obligated to do under the Pub Agreements).

36. When applying section 365 of the Bankruptcy Code, courts look to the substance of the transaction rather than its form. *U.S. Bank Nat'l Ass'n v. United Air Lines, Inc. (In re United Air Lines, Inc.)*, 447 F.3d 504, 506 (7th Cir. 2006) ("[Section] 365 mandates that the substance of the transaction trumps the form of the transaction. . . . [A]s a matter of federal law, the genuine nature of a transaction will prevail over the titles and terms used.") (citing *United Airlines, Inc. v. HSBC Bank USA, N.A.*, 416 F.3d 609, 612-14 (7th Cir. 2005)); *see also Liona Corp., N.V. v. PCH Assocs. (In re PCH Assocs.)*, 804 F.2d 193, 199 (2d Cir.1986) (noting that a court must look to the "economic substance" to determine the true nature of a transaction).

III. ARGUMENT

A. The Pub Agreements and Original Ramsay Agreements are Integrated

37. The Court can find the contracts are integrated, as a matter of law, based solely on their language. The Pub Agreements contain numerous, substantive references to the Original Ramsay Agreements, and both sets of agreements provide nearly identical obligations for the Debtors with respect to the Ramsay Pub ventures.

38. The Debtors' responses to the various Requests for Admission only strengthen the integration arguments; in their responses the Debtors admit, among other things, that the agreements were negotiated around the same time, that all three parties discussed the terms of the respective agreements, and that they were executed at the same time. Finally, since the inception of the Ramsay Pub concept, the Debtors viewed and treated both LLTQ and Gordon Ramsay (or their affiliates) as necessary parties to open and operate any Ramsay Pub venture, as evidenced by multiple party admissions discussed below. Indeed, after opening the Las Vegas Pub, the Debtors affirmatively stated on numerous occasions that they would not (and believed they could not) move forward with a Ramsay Pub in Atlantic City unless both Rowen Seibel (representing LLTQ) and Gordon Ramsay were involved. Statement, ¶52.

1. *LLTQ Agreement and Ramsay LV Agreement*

39. Nevada's three-prong test, announced in *Whitemaine*, is easily satisfied in connection with the Las Vegas Pub venture. *See Whitemaine*, 183 P.3d at 141. Both the LLTQ Agreement and the Ramsay LV Agreement were (a) executed and effective as of the same day, (b) concern the same subject matter, and (c) refer to each other. Further, Caesars is a party to both contracts, which contain the same choice of law, dispute resolution, and other provisions.

40. The Debtors' internal communications reflect that the Las Vegas Pub venture would be evidenced and governed by both the LLTQ Agreement and the Ramsay LV Agreement. Stmt. ¶¶ 28, 29, 51. In fact Caesars was not prepared to proceed with the development of the Las Vegas Pub until it had "fully consummated agreements with [Mr. Seibel] and Gordon [Ramsay]." *Id.* ¶ 29.

41. Representatives of Caesars, Gordon Ramsay and LLTQ engaged in multiple meetings to negotiate and discuss the terms of the design, development and operation of the Las

Vegas Pub, the sharing of profits therefrom, the terms of the LLTQ Agreement and the Ramsay LV Agreement, all around the same time. *Id*. ¶¶ 30, 33, 34, 35.

42. Rowen Seibel was one of the primary participants in the negotiations of the LLTQ Agreement on behalf of LLTQ and the negotiations of the Ramsay LV Agreement on behalf of Gordon Ramsay. *Id.* ¶ 32. The same three representatives of the Debtors were primary participants in the negotiations of both agreements. *Id.* at ¶ 31.

43. Not only did Caesars execute and deliver its signature pages to both agreements on the same day, it stated that it would not deliver any of its signature pages until it received signatures from both LLTQ and the Ramsay parties. *Id.* ¶¶ 36-38.

44. Based on the history of the negotiation and execution of these agreements, it is clear the parties intended that the two agreements apply as one integrated agreement governing the Las Vegas Pub venture. The integrated nature of these agreements is further evidenced by the fact that the two agreements expressly concern the same subject matter (*i.e.* the development and operation of the Las Vegas Pub) and that they repeatedly refer to each other.

45. The LLTQ Agreement and Ramsay LV Agreement contain many identical and nearly identical provisions, including the following:

a. Both contracts state Caesars' "desire[] to design, develop, construct and operate a [] restaurant featuring primarily pub-style food and beverages known as 'Gordon Ramsay Pub' (collectively, the 'Restaurant') in those certain premises within the Caesars Las Vegas." LLTQ Agmt., Recital B; Ramsay LV Agmt., Recital C;

b. Both contracts state Caesars' "desire" for LLTQ and Gordon Ramsay to perform services and fulfill obligations "with respect to consultation concerning the design, development, construction and operation of the Restaurant." LLTQ Agmt., Recital C; Ramsay LV Agmt., Recital D;

c. Under both contracts, Caesars is obligated to manage and maintain the operation, business, finances, and employees of the Las Vegas Pub, develop marketing plans and training procedures, and oversee

management of the food and beverage menus. LLTQ Agmt. §3.4; Ramsay LV Agmt. § 3.3;

d. In section 5.1 of both agreements, Caesars is obligated to hire general employees for the Las Vegas Pub;

e. In section 5.2 of both agreements, Caesars is obligated to hire senior management employees for the Las Vegas Pub;

f. In section 5.4 of both agreements, Caesars is required to conduct both pre-opening and refresher training for Las Vegas Pub employees;

g. In section 5.5 of both agreements, Caesars is required to conduct employee evaluations;

h. In section 5.6 of both agreements, Caesars is required to apply for a secure employee authorization for Las Vegas Pub employees who require it; and

i. In section 9.1 of the Ramsay LV Agreement and section 8.1 of the LLTQ Agreement, Caesars is responsible for executing the marketing plan as **developed by Caesars, LLTQ, and Gordon Ramsay**.

46. The terms of the LLTQ Agreement and the Ramsay LV Agreement directly impact each other in at least seven significant ways:

a. Termination of the Ramsay LV Agreement that is the result of LLTQ breaching the LLTQ Agreement triggers the exclusivity provisions outlined in section 2.3 of the Ramsay LV Agreement;

b. The Ramsay LV Agreement **requires Gordon Ramsay and GRHL to coordinate with LLTQ to make recommendations to Caesars regarding the operation of Las Vegas Pub**. Ramsay LV Agmt. § 14.11. Such recommendations must be submitted as "**one combined communication or notice**," meaning that LLTQ and Gordon Ramsay/GRHL are required to work together and come to a consensus on their recommendations in order to complete their contractual duties to Caesars. *Id.*;

c. LLTQ agreed to "defend, indemnify and save and hold harmless Caesars and its affiliates. . .from any Third-Party Claim. . . to the extent covered by the insurance coverage required to be maintained by LLTQ pursuant to this Agreement, Gordon Ramsay's performance of his obligations under or in connection with the GR agreement." LLTQ Agmt. § 13.15.2;

d. Both agreements require that **LLTQ and Gordon Ramsay** consent to changes in promotions and discounts at the Las Vegas Pub if the related sales are to be included in the definition of "Gross Restaurant Sales." LLTQ Agmt § 1; Ramsay LV Agmt. § 1;

e. The LLTQ Agreement includes a warranty that to LLTQ's best knowledge, Gordon Ramsay is not in breach of the Ramsay LV Agreement in any respect. LLTQ Agmt. § 9.2(g);

f. The Ramsay LV Agreement requires payment of a fixed percentage of "Gross Restaurant Sales" as consideration, which impacts the compensation LLTQ receives under the LLTQ Agreement. Ramsay LV Agmt § 8.1; LLTQ Agmt. § 7.1.1; and

g. Termination of the Ramsay LV Agreement triggers termination of the LLTQ Agreement within 90 days. LLTQ Agmt. § 4.2.3.

47. The requirement under section 14.11 of the Ramsay LV Agreement for a jointly-submitted recommendation among Gordon Ramsay, GRHL, Rowen Seibel and LLTQ impacts numerous provisions under both agreements, including sections 5.1 and 5.2 of both agreements (recommendations regarding hiring certain employees); section 5.4 of both agreements (recommendations for pre-opening training and refresher training); section 5.5. of both agreements (recommendations regarding employee evaluation); section 9.1 of the Ramsay LV Agreement and section 8.1 of the LLTQ Agreement (recommendations regarding marketing and publicity for the Las Vegas Pub); and section 9.2 of the Ramsay LV Agreement and section 8.2 of the LLTQ Agreement (recommendations for operational efficiencies, including the Las Vegas Pub's food and beverage menus, quality standards, operations, efficiency and profitability).

48. Through a series of related provisions, the LLTQ Agreement and the Ramsay LV Agreement collectively bind LLTQ, Gordon Ramsay, Caesars, and the parties' respective affiliates, with respect to the future development of certain Ramsay-branded ventures. Such provisions include the following:

a. LLTQ Agreement:

i. Section 2.3 LLTQ Exclusivity—limits LLTQ and its affiliates' ability to become engaged or associated with business activities utilizing the GR Marks or GR Materials (as defined the Ramsay LV Agreement) in connection with any establishment similar to the Las Vegas Pub, "except as contemplated by this Agreement."

ii. Section 2.4 Right of First Refusal—broadens the scope of restrictions in section 2.3 to apply to any venture involving Gordon Ramsay, the GR Marks or GR Materials without first providing Caesars and its affiliates a right of first refusal to participate in such venture.

iii. Section 13.22 Additional Restaurant Projects—requires Caesars and its affiliates to enter into an agreement with LLTQ or its affiliates, similar to the LLTQ Agreement, in the event Caesars elects to pursue "any venture similar to (i) the [Las Vegas Pub] (i.e. any venture generally in the nature of a pub, bar, café, or tavern). Section 13.22 survives expiration and termination of the LLTQ Agreement. Stmt. ¶ 49; LLTQ Agmt. § 4.3.1.

b. Ramsay LV Agreement

i. Section 2.3 LLTQ Exclusivity—limits Gordon Ramsay, GRHL and their affiliates from licensing the GR Marks and GR Materials for restaurants similar to the Las Vegas Pub and various other "Competing Concepts," except "as contemplated by this Agreement."

ii. Section 2.4 Right of First Refusal—broadens the scope of restrictions in section 2.3 to apply to any restaurant or bar venture without first providing Caesars and its affiliates a right of first refusal to participate in such venture.

iii. Section 2.5 Caesars Exclusivity—prevents Caesars and its affiliates from opening a "similar 'gastro pub' or similar restaurant" without entering in an agreement with Gordon Ramsay or his affiliates.

49. The LLTQ Agreement incorporates language from the Ramsay LV Agreement by reference, including the following:

a. In defining "Operating Expenses," the LLTQ Agreement incorporates the terms "License Fee," "Service Fee," and "Operating Expenses" as defined in the Ramsay LV Agreement. LLTQ Agmt. at 4.

b. In its definition of "Project Costs" the LLTQ Agreement incorporates the "Project Budget" as set forth in the Ramsay LV Agreement. LLTQ Agmt. at 4.

c. In its provisions for exclusivity and rights of first refusal, the LLTQ Agreement incorporates the definitions of "GR Marks," "GR Materials," and ""General GR Materials" from the Ramsay LV Agreement. LLTQ Agmt. §§ 2.3(a), 2.4(a).

d. In setting forth the parties rights after termination, the LLTQ Agreement incorporates the definition of "Caesars Marks and Materials" from the Ramsay LV Agreement. LLTQ Agmt. § 4.3.2(c); and

e. The LLTQ Agreement incorporates section 9.1 of the Ramsay Agreement, which outlines Caesars' marketing responsibilities for the Las Vegas Pub. LLTQ Agmt. § 8.1.

50. Both contracts contain the exact same language requiring Caesars to operate the Las Vegas Pub: "[u]nless expressly provided herein to the contrary, Caesars shall be solely responsible for managing the operations, business, finances, and Employees of the Restaurant on a day-to-day basis." Stmt. ¶ 43. Since the filing of these cases to the present, Caesars has voluntarily continued to manage the operations, business, finances and employees of the Las Vegas Pub, and has not entered into any other agreement for the operation of the pub. *Id.* ¶¶ 42, 44. Further, since filing the Original Rejection Motion, neither the operation of the Las Vegas Pub, nor the benefits received by the Debtors and their estates from such operations, have changed in any material respect. *Id.* ¶¶ 46, 47.

51. Because the LLTQ Agreement and the Ramsay LV Agreement refer to each other in numerous, substantive ways, the third factor of the *Whitemaine* test is met notwithstanding the existence of integration clauses in the agreements. In *WuMac*, the court found that two contracts with different parties met the first two prongs of the *Whitemaine* test, but could not be read as a

single contract because "both contain integration clauses, **and** neither contract directly references the other." *WuMac*, 2015 WL 995095, at *5 (emphasis added). Conversely, the LLTQ Agreement and Ramsay LV Agreement must be read as a single contract, where both agreements have several direct and substantive references to one another.

52. In addition, the *WuMac* court noted that the "subject matter requirement dictates that the contracts must concern the **same underlying parties or objects**. For the reference requirement, 'while one of the instruments must reference the other, **both instruments are not required to reference each other**.'" *Id.* (quoting *Whitemaine*, 183 P.3d at 142-143) (emphasis added). Thus, Ramsay and LLTQ need not be parties to both contracts so long as they both concern the same subject matter; and only one of the two contracts must reference the other.

53. The LLTQ Agreement and the Ramsay LV Agreement easily satisfy the standards under Nevada law established in *Collins* and its progeny, *Whitemaine* and *WuMac*, as the contracts were executed and effective at the same time; Caesars is party to both contracts and has the same obligations to manage and operate the Las Vegas Pub under both; the contracts involve the exact same subject matter and require LLTQ and Ramsay to provide recommendations as one voice; and both contracts expressly reference one another.

54. *Madison Foods, Inc. v. Fleming Cos. (In re Fleming Cos.)* is instructive as well. 325 B.R. 687 (Bankr. D. Del. 2005). There, the court found that an arbitration clause in one agreement is applicable to numerous agreements where

> all the documents were executed at the same time between the same parties in connection with [a business venture] by the Plaintiffs. This is unlike situations where integration is lacking because the documents are supported by separate consideration, cover different subject matters, involve different parties, and as a whole have different objects.

Id. at 691.

55. Therefore, the Debtors cannot defeat payment of an administrative priority claim to Movants by relying on provisions contained in the Original Ramsay Agreements that are not in the Pub Agreements. For example, the Debtors' Preliminary Objection cites to the "license to use Gordon Ramsay's name and likeness in the Debtors' operation of the Ramsay Pubs" contained in the Original Ramsay Agreements as evidence that the Debtors are not operating the Ramsay Pubs under the Pub Agreements with Movants. Stmt. ¶ 20. Because the agreements are integrated, this argument has no merit.

2. *FERG Agreement and Ramsay AC Agreement*

56. The Atlantic City Pub venture is also governed by two integrated contracts, the FERG Agreement and the Ramsay AC Agreement. New Jersey courts apply a more flexible test than Nevada to determine whether contracts are integrated, allowing the factfinder to review the surrounding circumstances, language of the contracts and subject matter thereof. While the *Whitemaine* test does not apply, it should be noted, the same general underlying facts apply to the Atlantic City Pub venture, because the FERG Agreement and the Ramsay AC Agreement were (a) executed, dated and effective as of the same day, and (b) concern the same subject matter, and (c) the FERG Agreement references the Ramsay AC Agreement in numerous, substantive provisions. CAC is a party to both contracts, which contain the same choice of law, dispute resolution, and multiple other provisions.

57. As part of the broad fact analysis, a court may consider the circumstances leading up to the contract formation. *Kearny PBA*, 405 A.2d at 400. Significantly, prior to executing the underlying agreements or opening the Atlantic City Pub, the Debtors believed that they must have a contract with both Gordon Ramsay and with LLTQ (or its affiliate) to proceed with the venture. Stmt. ¶ 52.

58. In December 2013, about five months before the effective date of both the FERG Agreement and the Ramsay AC Agreement, the Debtors made clear to Rowen Seibel and Gordon Ramsay that the Debtors required both of them to proceed with the Atlantic City Pub Venture. In an email to Rowen Seibel, Gordon Ramsay, Stuart Gillies and Tom Jenkin, Jeffrey Frederick (the Debtors' Regional Vice President Food & Beverage and one of the Debtors' representatives who was a primary participant in the negotiations of the LLTQ Agreement and the Ramsay LV Agreement), stated that "we are not able to proceed" with a Ramsay Pub without both Rowen Seibel and Gordon Ramsay "agreeing to do so." *Id.* ¶¶ 31, 52; *see also* Letter from Jeffrey Frederick to Rowen Seibel *et al*. (Dec. 13, 2013), Group Exhibit AA. Mr. Frederick's statement was unambiguous and definitive— "I want to be clear. I've confirmed with Tom [Jenkin] and our legal counsel we are not able to proceed with GR Steak or GR P&G without both you and Rowen agreeing to do so, nor a concept similar in the Steakhouse, Chophouse, Bar & Grill, Pub or Tavern Categories." Frederick Letter (Dec. 13, 2013).

59. Stuart Gillies, one of the primary participants in the negotiations of the Ramsay AC Agreement on behalf of Gordon Ramsay and GRHL, requested that Rowen Seibel, one of the primary participants in the negotiations of the FERG Agreement, LLTQ Agreement and the Ramsay LV Agreement, negotiate with the Debtors the terms of the Atlantic City Pub venture. Stmt. ¶¶ 56, 57.

60. CAC, Gordon Ramsay and FERG discussed the terms of the FERG Agreement and the terms of the Ramsay AC Agreement among each other prior to the execution of the contracts. *Id.* ¶ 58. At the parties' request, the Debtors provided Gordon Ramsay and FERG drafts of the FERG Agreement and the Ramsay AC Agreement to ensure transparency for the Atlantic City Pub transaction. *Id.* ¶ 64.

61. The FERG Agreement and the Ramsay AC Agreement were negotiated around the same time. *Id.* ¶ 54. During the negotiations, which lasted over one year before the agreements were executed, Caesars proposed that FERG and Gordon Ramsay split a license fee for compensation for the Atlantic City Pub venture. *Id.* ¶¶ 59, 62. Throughout the negotiations spanning 2013, CAC sent several different drafts of a proposed agreement for the Atlantic City Pub venture, which was in the form of one contract among CAC, Gordon Ramsay and his affiliates and an entity affiliated with Rowen Seibel. *Id.* ¶¶ 60, 61, 62.

62. Eventually these drafts were divided into two agreements, which would become the FERG Agreement and the Ramsay AC Agreement. CAC was not concerned about the title of the FERG Agreement, whether it would be called a "Development and Operation Agreement," a "Development, Operation and Consulting Agreement," or a "Consulting Agreement." *Id.* ¶ 63.

63. The FERG Agreement and the Ramsay AC Agreement became effective on the same day. *Id.* ¶ 65. Not only did CAC execute and deliver its signature pages to both agreements on the same day, it did not deliver any of its signature pages until it received signatures from **both** FERG and the Ramsay parties. *Id.* ¶¶ 65, 66.

64. Based on the history of the negotiation and execution of these agreements, it is clear the parties intended that the two agreements apply as one integrated agreement governing the Atlantic City Pub venture. The terms of the two agreements further reflect their integrated nature, evidenced by, among other things, the fact that the two agreements expressly concern the same subject matter (*i.e.* the development and operation of the Atlantic City Pub), CAC's overlapping obligations in each contract, and the numerous substantive references to Gordon Ramsay and the Ramsay AC Agreement in the FERG Agreement.

65. Section 1 of the FERG Agreement contains definitions for the Ramsay AC Agreement (called the "GR Agreement"), the "GR Marks" (including trademarks owned by Gordon Ramsay and GRHL and used for the Atlantic City Pub), and "General GR Materials." The General GR Materials include the "concept, system, menus and designed for us in connection with the [Atlantic City Pub] that are (a) created by or for Gordon Ramsay . . . and (b) as are provided from time to time by Gordon Ramsay to CAC **for the purposes of [the FERG Agreement]**." FERG Agmt. at 3(emphasis added).

66. The FERG Agreement (sections 2.3 and 2.4) has nearly identical exclusivity and right of first refusal provisions as set forth in the LLTQ Agreement (sections 2.3 and 2.4); and the Ramsay AC Agreement (sections 2.3, 2.4 and 2.5) has nearly identical exclusivity and right of first refusal provisions as set forth in the Ramsay LV Agreement (sections 2.3, 2.4 and 2.5); all such provisions vary only with respect to the applicable Debtor (CAC instead of Caesars) and location.

67. The FERG Agreement and the Ramsay AC Agreement contain many identical or nearly identical provisions specific to the Atlantic City Pub and its operation, including the following:

a. Both contracts state CAC's "desire[] to design, develop, construct and operate a restaurant featuring primarily pub-style food and beverages known as 'Gordon Ramsay Pub and Grill' (collectively, the 'Restaurant') in those certain premises within [Caesars Atlantic City]. . ." FERG Agmt., Recital B; Ramsay AC Agmt., Recital C;

b. Both contracts state CAC's "desire" for LLTQ and Gordon Ramsay to respectively perform services and fulfill obligations "with respect to consultation concerning the design, development, construction and operation of the Restaurant. . . ." FERG Agmt., Recital C; Ramsay AC Agmt., Recital D;

c. Under both contracts, CAC is obligated to manage and maintain the operation, business, finances and employees of the Atlantic City Pub,

develop marketing plans and training procedures, and oversee management of the food and beverage menus. FERG Agmt. § 3.5; Ramsay AC Agmt. § 3.5;

d. In section 5.1 of both agreements, CAC is obligated to hire general employees for the Atlantic City Pub, with input from FERG and GRHL, respectively;

e. In section 5.2 of both agreements, CAC is obligated to hire senior management employees for the Atlantic City Pub, with input from FERG and GRHL, respectively;

f. Pursuant to section 5.4 of both agreements, CAC is required to conduct both pre-opening and refresher training for Atlantic City Pub employees, with input from FERG and GRHL, respectively;

g. Pursuant to section 5.5 of both agreements, CAC is required to conduct employee evaluations, with input from FERG and GRHL, respectively;

h. Pursuant to section 5.6 of both agreements, CAC is required to apply for a secure employee authorization for Atlantic City Pub employees who require it; and

i. Pursuant to section 9.1 of both agreements, CAC is responsible for executing the marketing plan as developed by CAC and GRHL, with the advice of FERG as reasonably required by CAC from time to time.

68. Perhaps most probative of the two agreements' integrated nature is section 4.1, which provides: "In the event a new agreement is executed between CAC and/or its Affiliate and Gordon Ramsay and/or his Affiliate relative to the [Atlantic City Pub] or the Restaurant Premises, [the FERG Agreement] shall be in effect and binding on the parties during the term thereof." FERG Agmt. § 4.1. A related provision allows either party to terminate the FERG Agreement if the Ramsay AC Agreement is terminated "and no different or amended agreement is entered into with Gordon Ramsay and/or his Affiliate(s) relative to the [Atlantic City Pub] or Restaurant Premises." *Id*. § 4.2(c).

69. In addition to those listed above, the FERG Agreement contains numerous references to Gordon Ramsay, GRHL and/or the Ramsay AC Agreement, including the following:

a. Section 3.5(d), referencing the menus developed by Ramsay under the Ramsay AC Agreement;

b. Section 5.3(a), requiring CAC to advise Ramsay and FERG with respect to union agreements;

c. Section 9.1, requiring CAC to market and advertise the Atlantic City Pub "reasonably consistent with how other partnered, first class, gourmet restaurants are marketed by CAC and subject to compliance with Section 9.1 of the [Ramsay AC Agreement]";

d. Section 12.1, addressing the rights of CAC, Ramsay and FERG with respect to potential eminent domain actions;

e. Section 12.2(a), addressing the rights CAC, Ramsay and FERG with respect to physical damage to the Atlantic City Pub; and

f. Sections 13.1 and 13.2, with respect to dispute resolution and arbitration rights for CAC, Ramsay and FERG.

70. Thus, as provided under New Jersey law, there is ample evidence in the language and construction of the contracts themselves to evidence the parties' intent that the Atlantic City Pub operation is one transaction governed by two integrated agreements, the FERG Agreement and the Ramsay AC Agreement.

B. Administrative Priority Claim through September 2, 2016

71. Based on the above undisputed facts and application of state and federal bankruptcy law, the Court should determine that: (i) the LLTQ Agreement is integrated with the Ramsay LV Agreement with respect to the operation of the Las Vegas Pub; and (ii) the FERG Agreement is integrated with the Ramsay AC Agreement with respect to the operation of Atlantic City Pub. Such determination in turn requires an award of an administrative priority

claim for the amounts due but unpaid to the Movants under the Pub Agreements through at least September 2, 2016.

72. The Debtors have admitted that they are operating the Ramsay Pubs post-petition pursuant to the Ramsay LV Agreement and the Ramsay AC Agreements (*i.e.* the Original Ramsay Agreements). Stmt. ¶ 20.

73. Both of the Ramsay Pubs are open and operating profitably, managed by the Debtors to date. *Id.* ¶¶ 42-46, 69-71, 73. The operations of the Ramsay Pubs have not changed in any material respect since the Debtors filed the Original Rejection Motion in June 2015, and such operations have continued to benefit the Debtors and their estates. *Id.* ¶¶ 46, 72.

74. As part of the New Rejection Motion, the Debtors confirmed that they will not enter into the New Ramsay Agreements for the operation of the Ramsay Pubs unless the Court authorizes rejection of the Original Ramsay Agreements, which has not occurred to date. *Id.* ¶ 21.

75. Because of the integration of the Pub Agreements and the Original Ramsay Agreements, so long as the Debtors continue to operate the Ramsay Pubs under the Original Ramsay Agreements post-petition, LLTQ and FERG are entitled to compensation as provided by the Pub Agreements. Such compensation is entitled to an administrative priority–just as any compensation due to Ramsay and GRHL for post-petition operation of the Ramsay Pubs under the Original Ramsay Agreements is entitled to an administrative priority.

76. Similar to the situation in *Whitemaine*, the license granted under the Original Ramsay Agreements for the operation of the Ramsay Pubs is inextricably a part of the Pub Agreements, where the two contracts equate to one agreement. *Whitemaine*, 183 P.3d at 144.

77. The Debtors have attempted to terminate the Pub Agreements in a letter dated September 2, 2016, with such purported termination to be "effective immediately." *Id.* ¶ 12. The Movants reject and deny that the termination is appropriate, and reserve all rights, defenses and claims with respect thereto. In light of this dispute, however, summary judgment is appropriate to award an administrative claim, at a minimum, through and including September 2, 2016.

IV. CONCLUSION

Under sections 365 and 503 of the Bankruptcy Code, controlling Seventh Circuit and Supreme Court case law, applicable state law, and the undisputed material facts set forth in the Statement, the Movants respectfully request the entry of an order granting partial summary judgment and (a) determining that the LLTQ Agreement is integrated with the Ramsay LV Agreement with respect to the Las Vegas Pub venture, (b) determining that the FERG Agreement is integrated with the Ramsay AC Agreement with respect to the Atlantic City Pub venture, and (c) awarding an administrative priority claim in favor of the Movants for all amounts due and unpaid under the Pub Agreements through and including September 2, 2016.

Respectfully submitted,

FERG, LLC, and
LLTQ ENTERPRISES, LLC

By: /s/ Nathan Q. Rugg
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EXHIBIT V

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

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

REPLY BRIEF IN SUPPORT OF
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 submit this reply brief in support of their Request for Payment of Administrative Expense [Docket No. 5862] (the "Request for Payment")[1]:

I. INTRODUCTION

As a beneficiary of section 365 of the Bankruptcy Code, Caesars had no obligation to operate the Serendipity restaurant before or after termination of the License Agreement. Caesars voluntarily elected to continue operating the Serendipity restaurant post-petition because of the substantial revenues and profits to be generated therefrom, *thereby benefitting the estate in excess of $3 million for the post-petition period*. Caesars also voluntarily chose to operate Serendipity after it unilaterally terminated the License Agreement. Section 3, upon which Caesars admits it relied upon as authority to continue operating post-termination, does not relieve Caesars from its

[1] All capitalized terms not otherwise defined herein shall have the meaning as ascribed in the Request for Payment.

obligation under section 6 to pay a License Fee. Section 3 does, however, expressly require the payment of the Early Termination Payment upon termination for "any reason."

There is no dispute that Caesars used the Materials and Marks, including the Serendipity food and beverage menu, to operate Serendipity post-termination, from September 5, 2016 through January 1, 2017. Indeed, there is no Serendipity restaurant without such intellectual property. The post-petition inducement by Caesars is automatic; Caesars used the intellectual property available exclusively under the License Agreement. Caesars does not dispute that it enjoyed the revenues and profits generated as a result of such use. There is thus no reasonable dispute that both elements of the *Jartran* test are met: Caesars, as a debtor-in-possession, induced the use of the licensed intellectual property to operate Serendipity and generated profits post-petition therefrom.

In light of these undisputed facts, Caesars attempts to parse the terms of the License Agreement to argue no payment is due if the License Fee is not specifically referenced in a particular subsection. To the contrary, section 6 of the License Agreement creates an absolute obligation to pay a License Fee to Claimants once revenues are generated.

Moreover, section 9, upon which Caesars relied for termination, is silent as to post-termination operation of Serendipity; and section 3.3, upon which Caesars relied to operate Serendipity for 120 days post-termination, does not excuse payment of the License Fee and expressly precludes the use of the any intellectual property licensed under the License Agreement. It is inconsistent for Caesars to simultaneously rely on one portion of section 3 as authorization for post-termination use of the License and disavow another portion of section 3 which requires payment of the Early Termination Payment.

Lastly, after arguing the remarkable position that the terms of the License Agreement provide for use of intellectual property at no cost, Caesars suggests that the Court should not

decide the matter now *only* if it disagrees with Caesars' position so that Caesars may conduct discovery to manufacture an argument for rescission. The equitable remedy of rescission, however, is not available here as a matter of law. Upon asserting an alleged breach of the License Agreement in September 2016, Caesars had the opportunity to stop performance, seek rescission and/or sue for a breach. It did not elect any of those remedies. Instead, Caesars invoked the termination provisions under section 3 of the License Agreement, continued to operate Serendipity, used the intellectual property for four months and obtained substantial revenues and profits therefrom. Priority payment under section 503 of the Bankruptcy Code is now required.

II. OBJECTION FILED BY DEBTORS

Based on the *Debtors' Objection to Request for Payment* [Docket No. 6267] (the "Objection"), the parties generally agree on the basic requirements for payment of an administrative claim under *Matter of Jartran, Inc.*, 732 F.2d 584, 587 (7th Cir. 1984), and *In re Nat'l Steel Corp.*, 316 B.R. 287, 305 (Bankr. N.D. Ill. 2004) (Objection ¶ 16). In addition, both parties have argued that the Court should look only to the terms of the License Agreement to determine the payments required (Objection ¶¶ 24, 26).[2]

The key facts relevant to the Request for Payment also are not disputed. Specifically, Caesars admits that it operated Serendipity for the 120-day wind-down period pursuant to section 3.3 of the License Agreement (Objection ¶ 25), and does not dispute that it has not paid the License Fee or the Early Termination Payment.

A. Caesars is not prohibited from making payments to Claimants

Caesars has waived and/or abandoned its argument in the preliminary objection [Docket No. 5901] (the "Preliminary Objection") that "Nevada gaming regulations" prohibit Caesars

[2] Caesars, however, later contradicts itself and cites to contracts to which the Claimants are not parties to interpret the License Agreement (Objection ¶ 26) (discussed further, below).

from paying Claimants under the License Agreement. In the Preliminary Objection, Caesars cited Nev. Rev. Stat. § 463.166 for that proposition, which does not apply to the License Agreement or the Claimants in any regard. Rather, this regulation prohibits licensees, such as Caesars, from entering into a contract with a person who has been either denied a license or found unsuitable *by the Nevada Gaming Commission*. None of the Claimants has been denied a license or found unsuitable by the Nevada Gaming Commission. Moreover, the License Agreement neither mentions the term "suitable person" or "unsuitable person," nor references the term "suitable" or "unsuitable" in section 9.2, upon which Caesars relies for termination. Caesars improperly conflates definitions from agreements to which the Claimants are not parties and attempts to impose restrictions on the Claimants that simply do not apply under applicable law.

B. Caesars invokes the "substantial contribution" standard under section 503(b)(3) and (4), which is not applicable to the Request for Payment

Despite its general citation to *Jartran* and the proper two-part test for determining the Request for Payment pursuant to section 503(b)(1)(A) of the Bankruptcy Code (i.e., costs and expenses incurred for preserving the estate), Caesars often inappropriately relies on and cites to cases invoking a different standard under section 503(b)(3) and (4) of the Bankruptcy Code (i.e., substantial contribution by a creditor) (Objection ¶ 18). Claimants do not have to demonstrate that services under the License Agreement "enhanced or furthered the Debtors' reorganization process" (Objection ¶ 3). Rather, the Court is tasked with determining whether the operation of Serendipity pursuant to the License Agreement 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) (emphasis added). Based on figures made available by Caesars, post-petition operations of Serendipity have generated net profits to Caesars in excess of $3 million.

In each of the three cases cited in paragraph 18 of the Objection, and in *Cargill Financial Services Corp. v. Envirodyne Industries, Inc.*, No. 94 C 6950, 1995 WL 461854 (N.D. Ill. July 12, 1995), cited in paragraph 16 of the Objection, the movants had each sought administrative priority claims under subsections 503(b)(3)(D) and (b)(4) of the Bankruptcy Code. In *Cargill*, for example, members of the official committee of creditors sought reimbursement for their individual attorneys' fees incurred in defending breach of fiduciary duty lawsuits. 1995 WL 461854, at *1. Such claims are based on expenses of a creditor or committee "in making a substantial contribution in a case under chapter 9 or 11 of this title. . . . [and] (4) reasonable compensation for professional services rendered by an attorney or an accountant of" such creditor or committee. 11 U.S.C. § 503. The remaining cases cited by Caesars are similarly inapposite.[3]

C. Caesars induced daily post-petition transactions by using the intellectual property and operating Serendipity after termination

Caesars unconvincingly argues that it did not induce the Claimants to do business with it post-petition. But for two years post-petition, including four months post-termination, Caesars voluntarily operated Serendipity, which is only possible through the use of the intellectual property provided under the License Agreement. These actions run directly contrary to Caesars bald assertion that there was no post-petition transaction (Objection ¶ 21).

[3] *See In re Sentinel Mgmt. Group, Inc.*, 404 B.R. 488, 498-99 (Bankr. N.D. Ill. 2009) (ad hoc committee's objections to various proposed plan provisions did not qualify as a substantial contribution under 11 U.S.C. 503(b)(3) or (4)); *In re Alert Holdings Inc.*, 157 B.R. 753, 759 (Bankr. S.D.N.Y. 1993) (creditors did not make any "substantial contribution" to reorganization by assisting in formation of ad hoc creditors' committee, participating in multidistrict litigation or objecting to disclosure statement); *In re Richton Int'l Corp.*, 15 B.R. 854 (Bankr. S.D.N.Y. 1981) (in absence of objections, counsel for seven bank creditors allowed fee reimbursement for substantial contribution to case under 11 U.S.C. § 503(b)(3) and (4)).

The cases cited in the Objection do not support Caesars' contentions. The *National Steel* court explicitly noted that "the situation at bar is not the typical scenario where a creditor provides goods or services to the debtor" and seeks payment for same. 316 B.R. at 300. *Jartran* is also distinguishable because there, the services at issue and liability therefor were irrevocably incurred prior to the petition date. 732 F.2d at 587-588. In contrast, Caesars, as debtor in possession, induced performance by unilaterally using the intellectual property to operate Serendipity post-petition, including the four month period post-termination.

To that end, Caesars mistakenly relies on numerous cases that involved prepetition services, which are simply not applicable here.[4] With each day of Serendipity's operation, Caesars received daily post-petition services under the License Agreement. Payment of the License Fee is thus required as part of the post-petition transactions.

Similarly, the Early Termination Payment is invoked by section 3 of the License Agreement, upon which Caesars relies for its authority to operate Serendipity during the post-termination wind-down period. Under section 365 of the Bankruptcy Code, Caesars had no obligation to continue operations of Serendipity post-termination. Caesars nonetheless voluntarily elected to do so because Caesars stood to benefit from the revenues generated, and in fact has earned *post-petition net profits in excess of $3 million.* As such, the Early Termination Payment

[4] *See In re WorldCom, Inc*., 308 B.R. 157, 167 (Bankr. S.D.N.Y. 2004) (creditor "fully performed any related services prior to the commencement of the Debtors' bankruptcy case"); *In re Dynacircuits, L.P.*, 143 B.R. 174, 177 (Bankr. N.D. Ill. 1992) (claim for commissions premised on orders placed prepetition and not paid by debtor's customers until after the petition date); *In re Old Carco LLC*, 424 B.R. 650, 653 (Bankr. S.D.N.Y. 2010) (subject contracts terminated prior to the petition date); and *Trustees of Amalgamated Ins. Fund v. McFarlin's, Inc.*, 789 F.2d 98, 103 (2d Cir. 1986) (no post-petition consideration furnished where, by statute, withdrawal liability was incurred years prior to petition date).

that is triggered by section 3 is part of the reasonable cost of the post-petition benefits obtained. The cases cited in the Objection do not hold otherwise.[5]

D. Caesars conflates contracts not at issue and individuals who are not parties to the License Agreement

Caesars conflates Mr. Seibel, an individual, and MOTI, a distinct corporate entity that is the original party to the License Agreement. Caesars did not enter into a contract with Mr. Seibel (the managing member of MOTI prior to the April 2016 assignment), individually. License Agmt. at 1, 17. Pursuant to Section 12.10 of the License Agreement, Nevada law governs "the validity, construction, performance and effect" of the contract. License Agmt. § 12.10. Nevada generally treats corporations and shareholders as separate legal entities. *See Brown v. Kinross Gold U.S.A., Inc.*, 531 F. Supp. 2d 1234, 1241 (D. Nev. 2008).

This distinction is important as the Objection references numerous additional agreements by and among Caesars, its non-debtor affiliates, and entities in which Mr. Seibel has (or had) an ownership interest (Objection ¶¶ 7-10, 26). Besides citing third-party contracts in an attempt to interpret the License Agreement (Objection ¶ 26), Caesars repeatedly asserts, without support, that obligations of these third-party entities are individual obligations of Mr. Seibel that purportedly have bearing on the present dispute.

The entire "Background" section of the Objection treats Mr. Seibel and MOTI as one and the same. Exacerbating the error, Caesars cites to a definition of "Unsuitable Person" (Objection

[5] *See In re FBI Distrib. Corp.*, 330 F.3d 36, 40 (1st Cir. 2003) (severance payments not based on services rendered and ineligible for administrative priority where one agreement required no performance obligations and was not executory, and other contract was rejected); *In re Air S. Airlines, Inc.*, No. 97-07229-W, 2000 WL 33281490, at *4 (Bankr. D.S.C. Dec. 18, 2000) (creditor affirmatively prohibited debtor from using aircraft subject to lease by withholding consent required by contract); and *In re Uly-Pak, Inc.*, 128 B.R. 763, 768 (Bankr. S.D. Ill. 1991) (in converted, liquidating case, insider of debtor not entitled to priority claim for severance package where insider had influence over debtor in connection with underlying rejection determination).

¶ 8 & n.3) that is contained in the "LLTQ Agreement" (as defined in the Objection) but is not found anywhere in the License Agreement. In fact, the License Agreement does not contain the term "Unsuitable Person," let alone define it. Caesars goes as far as to cite an alleged disclosure purportedly made in connection with an unspecified "Seibel Agreement" (Objection ¶ 8) without attaching the underlying document, leaving the Court unable to verify whether such disclosure was made in connection with the License Agreement.

E. Caesars may not rely on third party contracts to interpret the License Agreement

While initially referencing third-party contracts for guidance, Caesars later argues this Court must look to the four corners of the License Agreement to decide this matter (Objection ¶¶ 24, 26). The Claimants agree, and thus respectfully suggest that the Court should not look to any other so-called "Seibel Agreements" to decide the Request for Payment, which is based solely on the License Agreement.

Under Nevada law, the parol evidence rule provides that "when a contract is clear, unambiguous, and complete, its terms must be given their plain meaning and the contract must be enforced as written; the court may not admit any other evidence of the parties' intent because the contract expresses their intent." *Ringle v. Bruton*, 120 Nev. 82, 93, 86 P.3d 1032, 1039 (2004); *see also Khan v. Bakhsh*, 306 P.3d 411, 413 (Nev. 2013) ("The parol evidence rule generally bars extrinsic evidence regarding prior or contemporaneous agreements that are contrary to the terms of an integrated contract.") (citation omitted).

Caesars does not suggest that the language of the License Agreement is ambiguous, but nonetheless cites to numerous other agreements between entities other than MOTI and "the Caesars enterprise" (Objection ¶ 5). None of these contracts could provide "evidence of the parties' intent" because the Claimants are not parties to such agreements (nor is Mr. Seibel,

individually). Accordingly, Caesars' contention that the so-called "Seibel Agreements" have any bearing on the interpretation of the License Agreement or are otherwise relevant in determining the Request for Payment should be dismissed.

F. Caesars must pay the License Fee pursuant to section 6 of the License Agreement

Section 6, and only section 6, governs payment of the License Fee for all purposes under the License Agreement. Caesars, however, attempts to distinguish when the License Fee must be paid on a section by section basis, and sometimes based on a particular subsection. Its argument is myopically focused on whether section 3 or section 9 of the License Agreement is the basis for the termination. As detailed below, section 3 subsumes termination under section 9. Regardless, the payment of a License Fee is not covered in either section 3 or section 9, nor is it discussed anywhere in the License Agreement other than section 6. The only trigger for payment of the License Fee is the operation of Serendipity and the generation of revenues.

G. Section 3 of the License Agreement covers all rights and obligations of the parties once the contract is terminated

Section 3 is the only section that controls the term of the License Agreement, the effect of termination, and the parties' rights upon termination, expressly including the Early Termination Payment. Caesars cites to section 9 as the basis to terminate, but that section does not contain any provision addressing (i) post-termination rights; (ii) the continued use of Material and Marks; or (iii) the ability to continue to operate Serendipity.[6] Rather, all of those matters are addressed exclusively in section 3. Moreover, section 3.2.3 expressly provides that Caesars may terminate the

[6] Claimants do not dispute that Caesars terminated the License Agreement under section 9 of the agreement. The propriety of such termination is being challenged in other venues and is disputed in connection with other matters pending before this Court. Claimants do not agree with the basis for termination.

License Agreement "for any reason" thus encompassing a section 9 termination and triggering the Early Termination Payment.

Caesars admits that it is relying on section 3.3 of the License Agreement to operate the Restaurant during all times relevant to the Request for Payment (Objection ¶ 25). This same section explicitly states that "upon the earlier termination of this Agreement" Caesars shall not retain any right, title or interest in the intellectual property licensed under the agreement, License Agmt. § 3.3(c), and shall not have the right to use the food and beverage menus developed by MOTI or the other intellectual property licensed under the agreement (License Agmt. § 3.3(d)). Caesars is correct that section 3.3(a) does not explicitly state that a License Fee must be paid during wind down. Likewise, however, this section does not state that *no* License Fee shall be paid during wind down. Section 3 simply does not address payment of the License Fee in any regard, which is consistent with the License Agreement as a whole.

With sections 3 and 9 silent as to payment of the License Fee, the Court should require payment of the License Fee as universally mandated by section 6 of the License Agreement instead of *inferring* that no obligation to pay exists. Any such inference would effectively rewrite the License Agreement to affirmatively create a new right for Caesars to retain 100% of all revenues while continuing to use the intellectual property.

H. Caesars absolutely severed its relationship with Claimants and ceased operating Serendipity, thereby rendering Regulation 5.011 moot

As discussed above, Caesars provided no support in its Preliminary Objection for the position that it was prohibited from making payments to Claimants. Rather, in the Objection, Caesars refers to Regulation 5.011 to suggest Caesars (i) was justified in, and/or forced to, terminate the contract (Objection ¶ 20), and (ii) is prohibited from making any payments to the Claimants (Objection ¶ 33). As to the former, if Caesars had a legitimate concern as to preserving

its license under Regulation 5.011, it would not have continued to operate Serendipity for five months after learning about Mr. Seibel's conviction and four months after termination of the License Agreement. Further, the reason behind termination is irrelevant as the License Agreement does not require cause to terminate.

The latter proposition is unsupported by the cited regulation. As referenced by Caesars, the relevant portions of this regulation are as follows:

> 5.011 Grounds for disciplinary action. The board and the commission deem any activity on the part of any licensee, his agents or employees, that is inimical to the public health, safety, morals, good order and general welfare of the people of the State of Nevada, or that would reflect or tend to reflect discredit upon the State of Nevada or the gaming industry, to be an unsuitable method of operation and shall be grounds for disciplinary action by the board and the commission in accordance with the Nevada Gaming Control Act and the regulations of the board and the commission. Without limiting the generality of the foregoing, the following acts or omissions may be determined to be unsuitable methods of operation:
>
> *****
>
> 5. *Catering to, assisting, employing or 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, or any state, or persons who are associated with or support subversive movements, or the employing either directly or through a contract, or any other means, of any firm or individual in any capacity where the repute of the State of Nevada or the gaming industry is liable to be damaged because of the unsuitability of the firm or individual or because of the unethical methods of operation of the firm or individual.

NV GAM REG 5.011 (emphasis added)

Regardless of whether a corporate entity qualifies as a "person" under this regulation, this provision simply does not apply to payments under the License Agreement. Nowhere does this regulation provide that contractual payments for services qualify as an "unsuitable method of operation." Given the nature of the License Agreement and the operation of Serendipity, which is at the heart of this dispute, Caesars never catered to, assisted or employed MOTI or MOTI 16 (or Mr. Seibel for that matter). At best, this regulation could potentially apply to the extent providing

use of intellectual property under the License Agreement is deemed to be "associating with" the Claimants. If Caesars believed such extenuated association triggered Regulation 5.011, it would not have continued to operate Serendipity for months post-termination.

After termination, and notwithstanding Regulation 5.011, Caesars voluntarily continued to operate and obtain profits from Serendipity. Caesars does not dispute that it remitted payments to MOTI 16 after it became aware of Mr. Seibel's conviction *and after it terminated* the License Agreement. Caesars remitted payment to MOTI 16 in October 2016, a month after it terminated the contract, for pre-termination services. It is disingenuous to assert that payment is only now prohibited.

III. RESCISSION IS NOT AVAILABLE AS A MATTER OF LAW

Rescission of a contract is an equitable remedy that voids a contract in its entirety "and which seeks to place the parties in the position they occupied prior to executing the contract." *Scaffidi v. United Nissan*, 425 F. Supp. 2d 1172, 1183 (D. Nev. 2005) (citation omitted). Rescission of the License Agreement is not available to Caesars for a number of reasons, including: (a) Caesars cannot show damages arising from any alleged misrepresentation, as entry into the License Agreement resulted in profitable operations of the Restaurant; (b) it is impossible to put MOTI and Caesars back in their original positions before entering the License Agreement, which provided for and in fact accomplished the design, development, construction and successful operation of Serendipity for nearly eight years; (c) the License Agreement expressly provides a remedy for the "unsuitability" issue that Caesars has in fact employed --termination of the contract and cessation of use of the intellectual property; and (d) the License Agreement has been fully performed by both sides.

Caesars cites to the charges and conviction entered against Mr. Seibel as an alleged breach of the License Agreement and the basis to terminate it. Caesars also refers to deposition testimony obtained three months after termination to somehow challenge the April 2016 assignment and justify the termination after the fact. The reason for the termination is not relevant to the Request for Payment, however, as section 3.2.3 of the License Agreement explicitly allows Caesars to terminate the contract "at any time" and "for any reason." Nonetheless, the undisputed facts are that on April 8, 2016, Mr. Seibel notified Caesars of the assignment of his management and membership interests in MOTI (Objection ¶ 12), and no criminal charges were filed against Mr. Seibel until April 18, 2016. *See* Information (Exhibit I to the Objection).

After admitting that it relied on the terms of the License Agreement to both terminate the License Agreement and to operate Serendipity during the post-termination period, Caesars argues that –only in the event the Court is inclined to rule against it– a decision on the Request to Payment should be delayed so that Caesars can conduct discovery to support rescission of the License Agreement (Objection ¶ 31). Notwithstanding the contradiction in asserting these two positions simultaneously, rescission simply is not an available remedy as a matter of law. Presuming *arguendo* Caesars could identify an intentional misrepresentation upon which it relied, in the Objection (and the Preliminary Objection) Caesars provides no purported legal support for rescission other than a conclusory citation to a treatise.

Voiding or cancelling a contract through rescission is an extreme remedy available only in courts of equity. The Supreme Court has stated as much:

> Cancelling an executed contract is an exertion of the most extraordinary power of a court of equity. The power ought not to be exercised except in a clear case, and never for an alleged fraud, unless the fraud be made clearly to appear*; never for alleged false representations,* unless their falsity is certainly proved, *and unless the complainant has been deceived and injured by them.*

Atl. Delaine Co. v. James, 94 U.S. 207, 214 (1876) (emphasis added).

This remedy is unavailable, as Caesars and MOTI entered into the License Agreement in March 2009, and both fully performed thereunder for its eight years of operations. Both Caesars and MOTI provided a capital contribution to design, develop and construct Serendipity at Caesars Palace. License Agmt. at § 1.1. Even if Caesars could demonstrate fraud or a misrepresentation existed, it cannot show the required element of damages where it has enjoyed profits from Serendipity's operations from its inception through the date restaurant closed. *See Anderson v. Reynolds*, 588 F. Supp. 814, 818 (D. Nev. 1984) (damages to the plaintiff resulting from justifiable reliance on the alleged misrepresentation is a required element of intentional fraudulent misrepresentation); and *J.A. Jones Constr. Co. v. Lehrer McGovern Bovis, Inc.*, 120 Nev. 277, 290, 89 P.3d 1009, 1018 (2004) (to establish fraud in the inducement a party must demonstrate justifiable reliance upon the misrepresentation and damages resulting from such reliance).

The parties entered into the License Agreement to "design, develop, construct and operate" Serendipity at Caesars Palace with intellectual property granted under the contract. License Agmt., Recitals A-D. "Voiding" the License Agreement is an alien concept after eight years of operations and completion of the very object of the contract --the parties paid for, designed, developed, constructed, and operated Serendipity successfully, and enjoyed significant profits from Serendipity operations through January 1, 2017.

In the case of partial failure of performance, rescission is not available unless such failure "defeats the very object of the contract or renders that object impossible of attainment. . . ." *Canepa v. Durham*, 62 Nev. 417, 427, 153 P.2d 899, 903 (1944), *supplemented*, 62 Nev. 417,

155 P.2d 788 (1945). In *Canepa*, the Supreme Court of Nevada reversed a judgment ordering rescission when compensation for damages, if any, would be adequate. *Id.* at 428-429.

More fundamentally, Caesars has already chosen its remedy. A party must rescind or affirm the contract, but cannot do both. "If he would rescind it, he must immediately return whatever of value he has received under it, and then he may defend against an action for specific performance . . . and he may recover back whatever he has paid . . . . He cannot at the same time affirm the contract by retaining its benefits and rescind it by repudiating its burden." *Scaffidi,* 425 F. Supp. 2d at 1183. Caesars cannot erase history after accepting the benefits of the License Agreement both before *and after* termination.

Moreover, if the parties cannot be put back into their original positions, then rescission is not an available remedy. In *Scaffidi,* the court precluded rescission "as a matter of law" as "both parties could not be returned to the position they occupied prior to executing the contract." *Id.* at 1184. The Ninth Circuit similarly prohibited a party to amend its complaint to seek rescission of a merger agreement four years after its execution, commenting the remedy was "virtually impossible." *McKesson HBOC, Inc. v. New York State Common Ret. Fund, Inc.*, 339 F.3d 1087, 1096 (9th Cir. 2003).

IV. CONCLUSION

Because Caesars voluntarily chose to operate the Serendipity restaurant for two years post-petition and for four months post-termination, and generated significant profits therefrom, Claimants are entitled to payment of all amounts required under the License Agreement as an administrative expense claim in these Chapter 11 Cases.

Dated: February 1, 2017

Respectfully submitted,

Moti Partners, LLC
and Moti Partners 16, LLC

By: /s/ Nathan Q. Rugg
One of Their Attorneys

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EXHIBIT W

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 he 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 for 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 is 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 aware 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

EXHIBIT "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.

EXHIBIT "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 X

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

CAESARS ENTERTAINMENT OPERATING COMPANY, INC., et al.,	)	No. 15 B 01145
	)	Chicago, Illinois
	)	10:00 a.m.
Debtor.	)	May 31, 2017

TRANSCRIPT OF PROCEEDINGS BEFORE THE
HONORABLE A. BENJAMIN GOLDGAR

APPEARANCES:

For the Debtors:	Mr. William Arnault;
For FERG, LLC, LLTQ Enterprises and MOTI Partners:	Mr. Nathan Rugg;

Court Reporter:	Amy Doolin, CSR, RPR U.S. Courthouse 219 South Dearborn Room 661 Chicago, IL 60604.

THE CLERK: Caesars Entertainment Operating Company, Incorporated, et al.

MR. ARNAULT: Good morning, Your Honor. Bill Arnault on behalf of the debtors.

MR. RUGG: Good morning, Your Honor. Nathan Rugg on behalf of FERG, LLC, LLTQ Enterprises, and MOTI Partners.

THE COURT: Good morning. We are here on the motion for a protective order, and I have a ruling that I will read. You can have a seat, if you'd like.

Before me for ruling is the motion of LLTQ Enterprises, LLC, and FERG, LLC, for a protective order. For reasons I will describe, the motion will be denied.

In June 2015, the debtors moved to reject contracts with LLTQ and FERG. The contracts concerned the development and operation of restaurants at Caesars facilities in Nevada and New Jersey. The restaurants bear the name of British celebrity chef Gordon Ramsay who himself had contracts with two of the debtors. Some months later, LLTQ and FERG filed a request for payment of administrative expenses in connection with the restaurants, expenses they said had to be calculated

under the contracts. The debtors then moved to reject the two contracts with Ramsay and to enter into new agreements with him. LLTQ and FERG moved for partial summary judgment on their administrative expense request, but the motion was denied. Each of the motions is consequently still pending and is hotly contested. Discovery on the motions seems to have been extensive.

Meanwhile, in April 2016, Rowen Seibel, a manager and owner of both LLTQ and FERG, pled guilty to federal charges of obstructing the tax laws. In August 2016, the debtors learned of Seibel's conviction and terminated the LLTQ and FERG contracts. The debtors then asserted that Seibel's criminal activities made him an "unsuitable person" with whom they could not have done business and indeed would never have done business had they only known what he was up to. The debtors took the position that Seibel had fraudulently induced them to enter into the two contracts and began discovery on the subject, what both sides call "suitability discovery."

Precisely what discovery the parties have taken on suitability to date is unclear. Their papers on the current motion suggest the discovery

has been primarily if not entirely written, that there have yet to be any depositions. The debtors intend to continue pursuing suitability discovery. LLTQ and FERG maintain that enough is enough. In fact, LLTQ and FERG contend that enough is too much, that no suitability discovery should have been taken. They request a protective order under Rule 26(c)(1) terminating discovery on the subject.

Although I have some sympathy for LLTQ and FERG's position, their motion for protective order must be denied. They argue that suitability discovery should cease because the debtors' arguments about suitability are deficient as a matter both of fact and law. That is not a conclusion I am willing to draw on a discovery motion.

Under Bankruptcy Rules 6004(b), 6006(a), and 9014(c), Fed. R. Bankr. P. 6004(b), 6006(a), 9014(c), Rule 26 of the Civil Rules applies to contested matters like the ones here. The scope of permissible discovery is set out in Rule 26(b)(1). That rule says parties may obtain discovery on any non-privileged matter that is "relevant to any party's claim or defense." Fed. R. Civ. P. 26(b)(1). Relevance for this purpose has the same meaning it has under Rule 401 of the Federal Rules of Evidence.

Zimnicki v. General Foam Plastics Corp., No. 09 C 2132, 2011 WL 833601, at *2 (N.D. Ill. Mar. 3, 2011). Rule 401 says that evidence is relevant "if (a) it has any tendency to make a fact more or less probable than it would be without the evidence, and (b) the fact is of consequence in determining the action." Fed. R. Evid. 401.

For discovery to be permissible under Rule 26(b)(1), though, the matter in question must not only be relevant, it must also be "proportional to the needs of the case." Fed. R. Civ. P. 26(b)(1). Proportionality depends on "the importance of the issues at stake in the action, the amount in controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit." Id.

The Federal Rules are designed to promote liberal discovery. Kim v. Hopfauf, No. 15 C 9127, 2017 WL 85441, at *2 (N.D. Ill. Jan. 27, 2017); LaPorta v. City of Chicago, No. 14 C 9665, 2016 WL 4429746, at *3 (N.D. Ill. Aug. 22, 2016). The burden therefore rests with a party resisting discovery to show why discovery is improper and should not be

allowed. Last Atlantis Capital LLC v. AGS Specialist Partners, 292 F.R.D. 568, 573 (N.D. Ill. 2013). Whether to permit discovery is a matter over which a trial court has broad discretion. Kuttner v. Zaruba, 819 F.3d 970, 974 (7th Cir. 2016).

The motion for protective order essentially collapses relevance and proportionality into a single inquiry. LLTQ and FERG say little about the proportionality factors mentioned in Rule 26(b)(1): The importance of the issues, the amount in controversy, the parties' access to information, their resources, the importance of the proposed discovery to the issues, or the burdens and benefits discovery would entail. They offer conclusions but no detail. Instead, they argue principally that the subject of suitability is irrelevant because the debtors have no legally or factually plausible theory under which suitability could have an effect on the outcome of the contested matters. Because suitability is irrelevant, any discovery on the subject would be disproportionate. (See, e.g., Mot. at 20).

I agree that the debtors' legal theories look thin. At an earlier hearing, I raised questions about the fraudulent inducement theory. I

asked about the procedural context in which the debtors might argue fraudulent inducement, since the pending motions did not appear to provide one. I also asked how rescission based on fraudulent inducement could be accomplished since rescission involves restoring each side to its original position. That did not look like a possibility here.

The debtors have yet to answer those questions. Recognizing that there seem to have been no misrepresentations about suitability in connection with either the LLTQ agreement or the FERG agreement, the debtors now maintain that Seibel misrepresented his suitability in connection with another restaurant agreement, the MOTI agreement. But that agreement involved a different entity, MOTI Partners. It involved a different restaurant. And it predated the LLTQ and FERG agreements by several years. It is hard to understand how Seibel's misrepresentation in connection with one agreement in 2009 could have fraudulently induced the debtors to enter into two different agreements three and five years later. The debtors could have trouble demonstrating the requisite mental state as well as the reasonableness of their reliance.

For the first time, the debtors also

argue that LLTQ and FERG breached their agreements when they failed to disclose Seibel's unsuitability. Citing Arlington LF, LLC v. Arlington Hospitality, Inc., 637 F.3d 706 (7th Cir. 2011), a case with which I am all too familiar, the debtors argue that the non-disclosure was an anticipatory repudiation, absolving the debtors of their obligations under the agreements. But as Arlington Hospitality explains, anticipatory repudiation involves a party's manifestation of its intent not to perform under a contract when its performance is due. Id. at 713. The debtors fail to explain how the failure of LLTQ and FERG to disclose Seibel's unsuitability manifested an intent not to perform under the agreements. Perhaps the failure was a breach, but it does not appear to have been an anticipatory repudiation.

My skepticism is not so great, though, that I am prepared to conclude discovery on the subject of suitability should simply stop, as FERG and LLTQ request. The facts adduced thus far suggest that Seibel may have made a false disclosure to the debtors in 2009, a disclosure the debtors insist they relied on in connection with the LLTQ and FERG agreements. The facts also suggest that the LLTQ and

FERG agreements required their affiliates (Seibel was an affiliate) to behave with honesty and integrity. Seibel's conviction, another fact, tends to show he did neither. Although the relevance standard in Rule 26 is narrower than it used to be, it "is still a very broad one." 8 Charles Alan Wright, Arthur R. Miller & Richard L. Marcus, Federal Practice & Procedure § 2008 at 130 (3d ed. 2010). Discovery should shut down when the information would have "no conceivable bearing on the case," id. at 142, but the relevance of suitability to the contested matters is certainly conceivable, even if the debtors have explained it poorly. As for the legal sufficiency of the debtors' theories, "[d]iscovery is not to be denied because it relates to a claim or defense that is being challenged as insufficient." Id. at 137.

It might be another matter if LLTQ and FERG had made more of the proportionality end of things, arguing (for example) that suitability discovery should not be permitted because the issues are too insignificant, the expense too great, the benefit too small, and offering specifics to back up the arguments. But they have not. They have objected to the discovery as if they were moving for summary judgment, claiming that the facts and law

show the debtors' theories are so devoid of merit that all discovery on 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.

The motion of LLTQ Enterprises, LLC, and FERG, LLC, for a protective order is denied.

Now, we also have a motion to compel, and I had postponed addressing that until I could deal with the protective order motion, figuring that if I granted the protective order motion, I wouldn't have to deal with the motion to compel. Now I have to deal with the motion to compel, and that I will do on June 19.

So everything that is currently set for today will be continued until June 19. And I expect to have a ruling for you on the motion to compel then.

All right. Anything else need to be discussed today?

MR. RUGG: I don't believe so, Your Honor.

MR. ARNAULT: No, Your Honor.

MR. RUGG: Thank you, Your Honor.

MR. ARNAULT: Thank you.

THE COURT: Okay. Thank you very much.

(Brief pause.)

THE COURT: June 21 let's make that. Everything will be continued to June 21. The idea was to put everything with the omnibus date, so that's just my calendar impairedness exhibiting itself.

(Which were all the proceedings had in the above-entitled cause, May 31, 2017, 10:00 a.m.)

I, AMY B. DOOLIN, CSR, RPR, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE AND ACCURATE TRANSCRIPT OF PROCEEDINGS HAD IN THE ABOVE-ENTITLED CAUSE.

EXHIBIT Y

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UNITED STATES BANKRUPTCY COURT

DISTRICT OF NEVADA

DESERT PALACE, INC.; PARIS LAS VEGAS OPERATING COMPANY, LLC; PHWLV, LLC; and BOARDWALK REGENCY CORPORATION d/b/a CAESARS ATLANTIC CITY; Plaintiffs, vs. ROWEN SEIBEL; LLTQ ENTERPRISES, LLC; LLTQ ENTERPRISES 16, LLC; FERG, LLC; FERG 16, LLC; MOTI PARTNERS, LLC; MOTI PARTNERS 16, LLC; TPOV ENTERPRISES, LLC; TPOV ENTERPRISES 16, LLC; DNT ACQUISITION, LLC; GR BURGR, LLC; and J. JEFFREY FREDERICK, Defendants.	Adv. No. 17-01237-led **PLAINTIFFS' REPLY IN SUPPORT OF MOTION TO REMAND** Hearing Date: December 4, 2017 Hearing Time: 1:30 p.m.

Plaintiffs Desert Palace Inc. ("Caesars Palace"), Paris Las Vegas Operating Company, LLC ("Paris"), PHWLV, LLC ("Planet Hollywood"), and Boardwalk Regency Corporation d/b/a Caesars Atlantic City ("CAC," and collectively with Caesars Palace, Paris, and Planet Hollywood, "Plaintiffs" or "Caesars") hereby submit this reply in support of their amended motion to remand the claims removed by LLTQ Enterprises, LLC, LLTQ Enterprises 16, LLC (collectively, with LLTQ Enterprises, LLC, "LLTQ"), FERG, LLC, FERG 16, LLC (collectively, with FERG, LLC, "FERG"), Moti Partners, LLC, and Moti Partners 16, LLC (collectively, with Moti Partners, LLC,

"MOTI," and collectively, with LLTQ and FERG, the "Removing Parties").[1] Adv. No. 17-01237-led, Dkt. No. 34; Adv. No. 17-01238-led, Dkt. No. 43.

INTRODUCTION

The Removing Parties' objection to Plaintiffs' Amended Motion to Remand turns on the flawed premise that Count I of the Nevada Action—which seeks a declaration that Caesars properly terminated the Seibel Agreements under state law—"stands alone" while Counts II and III "relate solely to the terms of the Pub Agreements" and therefore "never should have left the Chapter 11 Cases." But Plaintiffs' claims in the Nevada Action are interrelated and cannot simply be carved into separate pieces to attempt to create jurisdiction.

Count I of the Nevada Action seeks a declaration under state law that Caesars properly terminated the Seibel Agreements in its discretion because Mr. Seibel and the Seibel-Affiliated Entities are not and never were "suitable" under state gaming regulations and/or because Mr. Seibel and his entities never disclosed his criminal conduct to Caesars as required under the Seibel Agreements. Based in part on the finding in Count I, Counts II and III seek declarations that Caesars does not have any current or future obligations or commitments to Mr. Seibel or the Seibel-Affiliated Entities under state law, including with respect to restrictive covenants in the LLTQ and FERG Agreements. For example, if the Nevada state court concludes the agreements were properly terminated because Mr. Seibel and the Seibel-Affiliated Entities are "unsuitable," the restrictive covenants would likewise be unenforceable because Caesars cannot enter into a future contractual relationship with Unsuitable Persons.[2] Similarly, if the Nevada state court determines the agreements were properly terminated on non-disclosure grounds, Caesars has the right to terminate "its relationship with [LLTQ and FERG]" in its entirety. Given the interrelationship among the

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[1] Capitalized terms not defined herein shall have the meanings set forth in Plaintiffs' Amended Motion to Remand. Adv. No. 17-01237-led, Dkt. No. 34; Adv. No. 17-01238-led, Dkt. No. 43.

[2] Caesars also intends to challenge the enforceability of the restrictive covenants on additional state law grounds in Nevada state court, including that they are unenforceable agreements to agree. *City of Reno v. Silver State Flying Serv., Inc.*, 84 Nev. 170, 175, 438 P.2d 257, 261 (1968). Despite Defendants' hyperbole, the Bankruptcy Court has not addressed the merits of the claims that Plaintiffs are asserting in the Nevada Action and instead only remarked on both sides' positions in the course of ruling on discovery disputes.

counts and the fact that the Court already has remanded the majority of the case—including the key contract termination count—to Nevada state court, the Court should remand the remaining counts.

In addition to being the logical approach given the related nature of the claims, the Removing Parties have not met their burden of showing this Court has jurisdiction over the Removed Claims. ***First***, this Court lacks "arising under" jurisdiction because the Nevada Action is a state law declaratory judgment action that does not involve a cause of action created or determined by the Bankruptcy Code. Contrary to the Removing Parties' arguments, the fact that certain issues may overlap between the bankruptcy and state court proceedings is not enough to confer jurisdiction on this Court. ***Second***, there is no "arising in" jurisdiction because the Nevada Action could easily and does exist outside of bankruptcy. The Nevada Action seeks declarations under state law regarding Plaintiffs' contractual rights and obligations—the same causes of actions that the parties stipulated to remand with respect to the remaining Defendants. ***Third***, the Removed Claims are not sufficiently "related to" the Caesars Debtors' bankruptcy cases to confer jurisdiction because they do not satisfy the "close nexus" test for post-confirmation suits. ***Fourth***, there is no basis to exercise supplemental jurisdiction. This Court cannot use the jurisdiction of the Bankruptcy Court over the Caesars Debtors' bankruptcy to assert jurisdiction over the Removed Claims in the Nevada Action. The Removing Parties fail to support such a novel use of supplemental jurisdiction, which would be contrary to Ninth Circuit precedent. ***Fifth***, the factors cited by the Removing Parties do not support severance and/or transfer. As noted, the litigation in the Nevada Action is directly connected to the Removed Claims.

There is simply no basis for the Court to assert jurisdiction over the Removed Claims. Accordingly, the Court should grant Plaintiffs' Motion to Remand.

ARGUMENT

I. The Court Should Decide Plaintiffs' Motion to Remand Instead of the Removing Parties' Motion to Transfer.

At the hearing on the Removing Parties' Motion to Transfer, the Court suggested additional briefing may be helpful regarding which motion it should decide: Plaintiffs' Motion to Remand or the Removing Parties' Motion to Transfer. As set forth in Plaintiffs' Objection to the Motions to

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Transfer, the Court should follow the typical practice within the Ninth Circuit and decide whether to remand the Removed Claims to Nevada state court rather than transferring them to the Bankruptcy Court. Adv. No. 17-01237-led, Dkt. No. 29 at 4-6. The Removing Parties do not dispute that courts generally decide remand before or to the exclusion of a motion to transfer. But they argue the Court should transfer the Removed Claims "to the 'home' court of the bankruptcy to decide the remand motion" because Plaintiffs' motion raises "questions of bankruptcy jurisdiction and removal issues" that the Bankruptcy Court is better equipped to address than this Court. LLTQ/FERG Reply Br., Adv. No. 17-01238-led, Dkt. No. 48 at 4; MOTI Reply Br., Adv. No. 17-01237-led, Dkt. No. 38 at 4.

Plaintiffs acknowledge there are "rare circumstances" where a court should transfer claims to a different court to decide remand, including where there are "difficult questions" with respect to "related to [bankruptcy] jurisdiction." *Pac. Inv. Mgmt. Co. LLC v. Am. Int'l Grp., Inc.*, 2015 WL 3631833, at *4 (C. D. Cal. June 10, 2015). But this is not one of those "rare circumstances." Based on the parties' stipulation, the Court has already remanded the majority of the claims asserted in the Nevada Action to Nevada state court. The only question now is whether the remaining counts should be remanded as well. As set forth below, the answer is yes. The jurisdictional analysis is straightforward and does not require specialized knowledge about the underlying bankruptcy proceedings. The Caesars Debtors have now emerged from chapter 11 bankruptcy and the confirmed plan addresses how Defendants' claims will be paid to the extent they are owed anything. This Court does not need to interpret or even review the confirmed plan and no discovery is necessary to decide the Motion to Remand. The Removed Claims simply seek straightforward declarations under Nevada state law regarding contract issues that are governed by state law and do not present "difficult questions."

Contrary to the Removing Parties' suggestions, courts do not automatically transfer claims to the "home bankruptcy court" to decide jurisdictional questions. For example, in *Laird v. Gianulias*, a reorganized debtor removed a state law contract claim on the grounds that the claim arose from or related to its bankruptcy proceeding and moved to transfer the claim to the court that had heard its bankruptcy case. 2013 WL 4851620 at *1 (N. D. Cal. Aug. 12, 2013). Plaintiff moved

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to remand. *Id*. Faced with competing motions to remand and transfer and questions regarding bankruptcy jurisdiction, the court concluded that "because there is a significant dispute as to whether this Court has jurisdiction over the state law claims asserted … the better course is to determine the motion to remand prior to the motion to transfer." *Id*. at *4; *see also Kamana O'Kala, LLC v. Lite Solar, LLC*, 2017 WL 1100568, at *4 (D. Or. Feb. 13, 2017) (considering remand first even though contractual disputes in an adversary proceeding "form the basis of some of the claims at issue in this [state court] action."); *Hall v. Chrysler Grp. LLC*, 2011 WL 13220725, at *1 (C.D. Cal. Sept. 29, 2011) (deciding remand before transfer motion despite claims that liability depended on construction of agreements in bankruptcy dissolving one entity and forming another).

The cases cited by the Removing Parties do not hold otherwise. Nearly all of them are decades old. None are from the Ninth Circuit. They rely on the "'conduit' court theory," which "treats the local bankruptcy court as a mere conduit with little role in determining where the removed lawsuit should be heard." *In re Scanware, Inc.*, 411 B.R. 889, 896 (Bankr. S.D. Ga. 2009) (citing *Frelin v. Oakwood Homes Corp.*, 292 B.R. 369, 380 (Bankr. E.D. Ark. 2003)). But numerous courts have rejected this approach because of "strong statutory and logical support for the proposition that the local bankruptcy court should decide '*whether any* bankruptcy court should hear a proceeding before it determines which bankruptcy court should hear it.'" *Id*. (quoting *Frelin*, 292 B.R. at 379); *see In re AG Indus., Inc.*, 279 B.R. 534, 540 (Bankr. S.D. Ohio 2002) (rejecting "conduit court" theory and remanding case); *In re 1111 Prospect Partners, L.P.*, 204 B.R. 222, 226 (Bankr. D. Kan. 1996) (rejecting conduit approach); *Lone Star Indus., Inc. v. Liberty Mut. Ins.*, 131 B.R. 269, 273 (D. Del. 1991) (rejecting automatic transfer to "home" bankruptcy court). The Court in *Laird* also distinguished the Removing Parties' key cases on the grounds that they related to whether a district court should abstain from hearing the case under 28 U.S.C. § 1334(c) and not whether original jurisdiction exists under 28 U.S.C. § 1334(b)—the issue presented here. *See* 2013 WL 4851620, at * 3 (distinguishing *Wedlo* and *Convent Guardian Corp.*).

In short, the Court should follow the typical Ninth Circuit practice and decide Plaintiffs' Motion to Remand. Regardless of the outcome of that motion, the Removing Parties' motion to transfer will be moot. If the Court grants the motion to remand, the Removed Claims will be

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remanded to Nevada state court. And if the Court denies the motion to remand, Plaintiffs agree the Removed Claims should be transferred to the Bankruptcy Court.

II. This Court Lacks Jurisdiction Over Plaintiffs' State Law Claims.

Under Ninth Circuit precedent, the Removing Parties have the burden of establishing proper removal and federal jurisdiction. *Gaus v. Miles, Inc.*, 980 F.2d 564, 566 (9th Cir. 1992). Removal statutes are also "'strictly construe[d]' against removal jurisdiction"; if there are any doubts as to jurisdiction, the case should be remanded. *Nev. v. Bank of Am. Corp.*, 672 F.3d 661, 667 (9th Cir. 2012) (*citing Syngenta Crop Prot., Inc. v. Henson*, 537 U.S. 28, 32 (2002)). The Removing Parties suggest these well-settled standards do not apply because Caesars' precedent does not "involve bankruptcy cases." LLTQ/FERG and MOTI Obj., Adv. No. 17-01237, Dkt. No. 47 at 4. But these cases are routinely cited by bankruptcy courts for these black letter law principles. *See*, *e.g.*, *In re Int'l Mfg. Grp., Inc.,* 574 B.R. 717, 719 (Bankr. E.D. Cal. 2017) (citing *Gaus* for the proposition that removal statutes are "strictly construed" and "any doubt as to the right of removal" should lead to remand); *Fed. Home Loan Bank of Chi. v. Banc of Am. Sec. LLC,* 448 B.R. 517, 523 (C.D. Cal. 2011) (citing *Gaus* for the proposition that "[t]he strong presumption against removal means the removing party bears the burden of establishing federal jurisdiction and that removal was proper"). The Removing Parties bear the burden of establishing proper removal and jurisdiction in this Court.

A. The Removing Parties Failed to Establish "Arising Under" or "Arising In" Jurisdiction.

Claims "arise under title 11" if they "involve a cause of action created or determined by a statutory provision of title 11." *In re Harris*, 590 F.3d 730, 737 (9th Cir. 2009). Claims "arise in a case under title 11" when they are "not based on any right expressly created by title 11, but nevertheless would have no existence outside of the bankruptcy." *In re Eastport Assocs.*, 935 F.2d 1071, 1076-77 (9th Cir. 1991) (citation omitted). Here, Plaintiffs' claims for declaratory relief under Nevada state law do not involve causes of action created or determined by the Bankruptcy Code and they plainly can and do exist outside of bankruptcy. *See* Mot. to Remand, Adv. No. 17-01238-led, Dkt. No. 38 at 9-10.

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The Removing Parties, however, argue that Plaintiffs' state law claims arise under the Bankruptcy Code because "the underlying causes of action will be determined by sections 365 and/or 503 of the Bankruptcy Code." LLTQ/FERG and MOTI Obj. at 5. Not so. Plaintiffs' state law claims simply ask the Nevada state court for declaratory relief confirming that Plaintiffs properly terminated the Seibel Agreements as a matter of state law and, based on the termination and other state law theories, Plaintiffs have no current or future obligations to Defendants. These claims are not based on and will not be determined by a provision of title 11. *See In re Eastport Assocs*, 935 F.2dat 1077 (no "arising under" or "arising in" jurisdiction because "[t]he suit for declaratory judgment . . . could just as easily have been brought in state court, regardless of whether Eastport was in bankruptcy"); *In re Ray*, 624 F.3d 1124, 1133-35 (9th Cir. 2010) (no jurisdiction because the "breach of contract action [] could have existed entirely apart from the bankruptcy proceeding and did not necessarily depend upon resolution of a substantial question of bankruptcy law"). Defendants' cases do not even support their novel approach to arising under jurisdiction. *See, e.g., In re Franklin*, 802 F.2d 324, 326 (9th Cir. 1986) (explaining that "arising under" jurisdiction depends on "if such an action requiring a bankruptcy judge to determine the effect of a prior order of the bankruptcy court arises under title 11"). The Removing Parties also cite *In re Waters Asbestos & Supply Co., Inc.*, but that case involved a third-party plaintiff seeking to establish the liability of a trustee and a bankruptcy estate. 225 B.R. 196, 197 (D. Idaho 1998). In contrast to the situation here, that case involved an agreement between the defendants and the trustee whereby the trustee agreed to reimburse the defendants. *Id*.

The Removing Parties also claim for the first time that Plaintiffs' state law declaratory judgment claims "arise in" a case under title 11 because they have "no existence outside of a bankruptcy case." LLTQ/FERG and MOT Obj. at 6. Since each of Plaintiffs' causes of action were brought pursuant to Nevada statute and exist outside of bankruptcy, the Removed Claims do not arise in a case under Title 11. *See In re Eastport*, 935 F.2d at 1077. In fact, LLTQ and FERG have objected to Plaintiffs raising these issues in the chapter 11 proceedings. They argued in the Bankruptcy Proceedings that Caesars' "fraudulent inducement claim, like the issue of whether the Termination was proper in the first instance, is not presently before [the Bankruptcy Court] and

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should be resolved in separate proceedings (likely in state and federal district court)." *See In re Caesars Entm't Operating Co., Inc.*, No. 15-1145(ABG), Dkt. No. 6906 at 1, attached as Exhibit A to Pls.' Obj. to Defs.' Motions to Transfer.

B. The Removing Parties Failed to Establish "Related To" Jurisdiction.

Because the Nevada Action was commenced after the Bankruptcy Court confirmed the Caesars Debtors' plan of reorganization, "related to" jurisdiction is only appropriate if the Removed Claims have a "close nexus to the bankruptcy plan or proceeding." *In re Pegasus Gold Corp.*, 394 F.3d 1189, 1194 (9th Cir. 2005). The Removed Claims do not satisfy this heightened standard because they do not require a court to interpret or enforce a provision of Caesars' plan of reorganization. Mot. to Remand at 10-12.

The Removing Parties' arguments miss the mark. The fact that the Caesars Debtors' plan of reorganization states that the Bankruptcy Court retains jurisdiction over certain matters is insufficient to create jurisdiction over the Removed Claims. In fact, the express terms of the plan limit the retention of jurisdiction "to the extent legally permissible." *See In re Caesars Entm't Operating Co., Inc.*, No. 15-1145 (ABG), Dkt. No. 6334, at Article XI, attached as Exhibit B to Pls.' Mot. to Remand. Courts cannot create jurisdiction for themselves through such provisions. *In re Consol. Meridian Funds*, 511 B.R. 140, 145 (W.D. Wash. 2014) (explaining that "neither the parties nor the court have the power to confer federal jurisdiction by agreement or consent"); *In re Nobel Grp., Inc.*, 529 B.R. 284, 291 (Bankr. N.D. Cal. 2015) ("Subject matter jurisdiction 'cannot be conferred by consent' of the parties. Where a court lacks subject matter jurisdiction over a dispute, the parties cannot create it by agreement, even in a plan of reorganization." (citing *In re Resorts Int'l, Inc.*, 372 F.3d 154, 161 (3d Cir. 2004)). The Removing Parties are also incorrect that a lesser showing is required to establish related to jurisdiction because the Removed Claims purportedly arose pre-confirmation. As the Removing Parties concede, there is a "bright-line" test to determine if the "close nexus" test applies. But that test looks at when the "proceeding" in question arose. Thus, "[i]f the *proceeding* arises post-confirmation, a 'close nexus' is required to give rise to 'related to' jurisdiction." LLTQ/FERG Reply Br. at 10, citing *Consol. Meridian Funds*,

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511 B.R. at 144. Because the relevant proceeding—the Nevada Action—was commenced after the Caesars Debtors' plan was confirmed, the "close nexus" test applies.

Nor are declaratory judgment actions like the Nevada Action core proceedings that would give rise to jurisdiction. Mot. to Remand at 10. Defendants argue, however, that the Removed Claims are "inextricably bound" to the Bankruptcy Proceedings and therefore are core. But the authorities they cite do not support their argument given the nature of the claims asserted in Counts II and III. *See In re DeLorean Motor Co.*, 155 B.R. 521, 525 (B.A.P. 9th Cir. 1993) (state law claim was "core" only where (a) it was "the functional equivalent of an action against the trustee," (b) "inextricably tied to the determination of an administrative claim," and (c) "similarly tied to questions concerning the proper administration of the estate"); *In re Eastport*, 935 F.2d at 1077 (because declaratory judgment action "could just as easily have been brought in state court, regardless of whether Eastport was in bankruptcy[,]" the "adversary proceeding is not a core proceeding"). Finally, *In re Harris Pine Mills* held that state law claims asserted against the bankruptcy trustee and his agents were based on acts "inextricably intertwined" with the trustee's sale of estate property and, consequently, those claims constituted core proceedings that fell within the scope of 28 U.S.C. § 157(b)(2)'s catchall provisions. 44 F.3d 1431, 1434 (9th Cir. 1995). But Counts II and III are not inextricably tied to questions concerning the proper administration of the estate.

C. Supplemental Jurisdiction Is Inapplicable Here.

Having failed to establish that the Court has subject matter jurisdiction, the Removing Parties argue that the Court can exercise supplemental jurisdiction. But they cite no support for their novel theory that this Court has supplemental jurisdiction over the Removed Claims because the Bankruptcy Court has jurisdiction over the Bankruptcy Proceeding. There is none.

A party can only invoke supplemental jurisdiction over "*other claims* that are so related to claims *in the action* within [the court's] original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution." 28 U.S.C. § 1367(a) (emphasis added). The express statutory terms limit supplemental jurisdiction to other claims in an action where the court already has jurisdiction. For example, in *In re Pegasus Gold Corp.*, the Ninth

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Circuit held that supplemental jurisdiction was proper for a party's state tort and contract claims with a "tangential relationship to the underlying bankruptcy proceeding." 394 F.3d at 1195. The court asserting supplemental jurisdiction, however, was the same court that had jurisdiction over the bankruptcy proceeding. *Id*. at 1192-93. Thus, a court must have jurisdiction over some part of the action before it can exercise supplemental jurisdiction with respect to additional claims. *See*, *e.g.*, *Morales v. Prolease PEO, LLC*, 2011 WL 6740329, at *4 (C.D. Cal. Dec. 22, 2011) ("The plain terms of the supplemental jurisdiction statute indicate that the court must have original jurisdiction of at least one cause of action in the case before it can exercise supplemental jurisdiction over other claims. '[T]he supplemental jurisdiction statute does not allow a party to remove an otherwise unremovable action to federal court for consolidation with a related federal action.'") (citation omitted); *Alford v. Lacoste*, 2011 WL 11249, at *1 (D. Or. Jan. 3, 2011) ("The plain language of the statute makes clear that supplemental jurisdiction is unwarranted in this case. District courts are directed to extend supplemental jurisdiction to related claims within a single action, and not to separate actions."); *Halmekangas v. State Farm Fire & Cas. Co.*, 603 F.3d 290, 294 n. 15 (5th Cir. 2010) (noting that supplemental jurisdiction applies to "claims that are within the same civil action").

Here, supplemental jurisdiction is not a basis for this Court to assert jurisdiction over the Removed Claims because it does not have jurisdiction over any other claims in the Nevada Action.

III. The Court Should Remand for Equitable Reasons.

Even if this Court concluded it had jurisdiction, it should still remand the remaining counts of the Nevada Action to Nevada state court. The equities favor Plaintiffs as they try to extricate themselves from a relationship with a business partner who was involved in criminal conduct and failed to disclose it to Plaintiffs. Many of the factors courts typically consider are present and favor remand. Mot. to Remand at 12-15.

The Removing Parties' contentions that severance and/or transfer favor judicial economy and avoid prejudice ring hollow. LLTQ/FERG and MOTI Obj. at 10-12. The Removing Parties admit that Caesars' termination of all agreements with the Seibel Entities stems from the same acts: Mr. Seibel's criminal conduct and non-disclosure to Caesars that he was an "unsuitable" person

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under every agreement. The Removing Parties claim that the Removed Claims are based on "wholly separate contracts" and are "separate and apart from the claims being asserted against the other defendants" is unconvincing. First, each defendant in the Nevada Action is an affiliate of Mr. Seibel, and Mr. Seibel had contractual rights and obligations under the MOTI, FERG, LLTQ, GRB and TPOV Agreements. Second, the provisions of the Seibel Agreements are largely identical. For example, the MOTI, FERG, LLTQ, GRB, and TPOV Agreements contain near identical provisions regarding "suitability" requirements, which go to the heart of the Nevada Action. Third, Mr. Seibel's actions apply to every agreement, whether those agreements are with the Removing Parties or not. Mr. Seibel himself has brought litigation in Nevada state and district court regarding the termination of other agreements.

Contrary to the Removing Parties' arguments, remand will prevent inconsistent results. As explained, Mr. Seibel's criminal conduct and nondisclosure to Caesars of the same forms the basis of Caesars' decision to terminate all agreements with the Seibel Entities. And the propriety of the decision to terminate could impact the enforceability of the restrictive covenants. Given the interrelated nature of these claims, Counts I, II, and III should all be litigated in the Nevada Court. Similarly, if this Court transfers Count I against MOTI, the Illinois Bankruptcy Court may decide the propriety of the termination of that agreement while the Nevada state court will decide the propriety of termination of all other agreements despite the fact that the same facts underlie all terminations. To avoid the possibility that the same acts applied to the same contract terms may be found proper in one court and improper in another, the Court should remand the Removed Claims so that all of Plaintiffs' claims will be decided in the Nevada Action.

The Removing Parties' hyperbolic claims that Plaintiffs are forum shopping is incorrect. The Removing Parties themselves argued that "Plaintiffs' 'fraudulent inducement claim, like the issue of whether the Termination [of the agreements with LLTQ and FERG] was proper in the first instance, is not presently before [the Bankruptcy Court] and should be resolved in separate proceedings (likely in state and federal district court).'" *See In re Caesars Entm't Operating Co., Inc.*, No. 15-1145(ABG), Dkt. No. 6906 at 1. As the Removing Parties note, Caesars explicitly informed the LLTQ/FERG Defendants they were "willing to initiate an adversary proceeding if

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necessary" to resolve certain issues relating to fraudulent inducement. LLTQ/FERG Reply Br. at 7. Given the Removing Parties' arguments, Plaintiffs filed the Nevada Action to try to resolve these issues in a single forum. There is no forum shopping here. Indeed, if the Court disagrees that the Removed Claims should be remanded to Nevada state court, Plaintiffs already indicated they do not object to transferring the Removed Claims to the Bankruptcy Court.

CONCLUSION

As set forth above and in the Motion, this Court lacks jurisdiction over Plaintiffs' claims and consequently removal to this Court was improper. Even if this Court finds jurisdiction, analysis of the relevant equities requires remand of Plaintiffs' claims. Accordingly, Plaintiffs' Motion to Remand should be granted.

DATED this 17th day of November 2017.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of PISANELLI BICE PLLC and that, on this 17th day of November 2017, I caused to be served via the Court's CM/ECF service system a true and correct copy of the above **PLAINTIFFS' REPLY IN SUPPORT OF MOTION TO REMAND** to all persons on the CM/ECF service list.

/s/ Cinda Towne
An employee of PISANELLI BICE PLLC

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EXHIBIT Z

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UNITED STATES BANKRUPTCY COURT

DISTRICT OF NEVADA

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INTRODUCTION

The Removing Parties' objection to Plaintiffs' Amended Motion to Remand turns on the flawed premise that Count I of the Nevada Action—which seeks a declaration that Caesars properly terminated the Seibel Agreements under state law—"stands alone" while Counts II and III "relate solely to the terms of the Pub Agreements" and therefore "never should have left the Chapter 11 Cases." But Plaintiffs' claims in the Nevada Action are interrelated and cannot simply be carved into separate pieces to attempt to create jurisdiction.

Count I of the Nevada Action seeks a declaration under state law that Caesars properly terminated the Seibel Agreements in its discretion because Mr. Seibel and the Seibel-Affiliated Entities are not and never were "suitable" under state gaming regulations and/or because Mr. Seibel and his entities never disclosed his criminal conduct to Caesars as required under the Seibel Agreements. Based in part on the finding in Count I, Counts II and III seek declarations that Caesars does not have any current or future obligations or commitments to Mr. Seibel or the Seibel-Affiliated Entities under state law, including with respect to restrictive covenants in the LLTQ and FERG Agreements. For example, if the Nevada state court concludes the agreements were properly terminated because Mr. Seibel and the Seibel-Affiliated Entities are "unsuitable," the restrictive covenants would likewise be unenforceable because Caesars cannot enter into a future contractual relationship with Unsuitable Persons.[2] Similarly, if the Nevada state court determines the agreements were properly terminated on non-disclosure grounds, Caesars has the right to terminate "its relationship with [LLTQ and FERG]" in its entirety. Given the interrelationship among the

[1] Capitalized terms not defined herein shall have the meanings set forth in Plaintiffs' Amended Motion to Remand. Adv. No. 17-01237-led, Dkt. No. 34; Adv. No. 17-01238-led, Dkt. No. 43.

[2] Caesars also intends to challenge the enforceability of the restrictive covenants on additional state law grounds in Nevada state court, including that they are unenforceable agreements to agree. *City of Reno v. Silver State Flying Serv., Inc.*, 84 Nev. 170, 175, 438 P.2d 257, 261 (1968). Despite Defendants' hyperbole, the Bankruptcy Court has not addressed the merits of the claims that Plaintiffs are asserting in the Nevada Action and instead only remarked on both sides' positions in the course of ruling on discovery disputes.

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counts and the fact that the Court already has remanded the majority of the case—including the key contract termination count—to Nevada state court, the Court should remand the remaining counts.

In addition to being the logical approach given the related nature of the claims, the Removing Parties have not met their burden of showing this Court has jurisdiction over the Removed Claims. ***First***, this Court lacks "arising under" jurisdiction because the Nevada Action is a state law declaratory judgment action that does not involve a cause of action created or determined by the Bankruptcy Code. Contrary to the Removing Parties' arguments, the fact that certain issues may overlap between the bankruptcy and state court proceedings is not enough to confer jurisdiction on this Court. ***Second***, there is no "arising in" jurisdiction because the Nevada Action could easily and does exist outside of bankruptcy. The Nevada Action seeks declarations under state law regarding Plaintiffs' contractual rights and obligations—the same causes of actions that the parties stipulated to remand with respect to the remaining Defendants. ***Third***, the Removed Claims are not sufficiently "related to" the Caesars Debtors' bankruptcy cases to confer jurisdiction because they do not satisfy the "close nexus" test for post-confirmation suits. ***Fourth***, there is no basis to exercise supplemental jurisdiction. This Court cannot use the jurisdiction of the Bankruptcy Court over the Caesars Debtors' bankruptcy to assert jurisdiction over the Removed Claims in the Nevada Action. The Removing Parties fail to support such a novel use of supplemental jurisdiction, which would be contrary to Ninth Circuit precedent. ***Fifth***, the factors cited by the Removing Parties do not support severance and/or transfer. As noted, the litigation in the Nevada Action is directly connected to the Removed Claims.

There is simply no basis for the Court to assert jurisdiction over the Removed Claims. Accordingly, the Court should grant Plaintiffs' Motion to Remand.

ARGUMENT

I. The Court Should Decide Plaintiffs' Motion to Remand Instead of the Removing Parties' Motion to Transfer.

At the hearing on the Removing Parties' Motion to Transfer, the Court suggested additional briefing may be helpful regarding which motion it should decide: Plaintiffs' Motion to Remand or the Removing Parties' Motion to Transfer. As set forth in Plaintiffs' Objection to the Motions to

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Transfer, the Court should follow the typical practice within the Ninth Circuit and decide whether to remand the Removed Claims to Nevada state court rather than transferring them to the Bankruptcy Court. Adv. No. 17-01237-led, Dkt. No. 29 at 4-6. The Removing Parties do not dispute that courts generally decide remand before or to the exclusion of a motion to transfer. But they argue the Court should transfer the Removed Claims "to the 'home' court of the bankruptcy to decide the remand motion" because Plaintiffs' motion raises "questions of bankruptcy jurisdiction and removal issues" that the Bankruptcy Court is better equipped to address than this Court. LLTQ/FERG Reply Br., Adv. No. 17-01238-led, Dkt. No. 48 at 4; MOTI Reply Br., Adv. No. 17-01237-led, Dkt. No. 38 at 4.

Plaintiffs acknowledge there are "rare circumstances" where a court should transfer claims to a different court to decide remand, including where there are "difficult questions" with respect to "related to [bankruptcy] jurisdiction." *Pac. Inv. Mgmt. Co. LLC v. Am. Int'l Grp., Inc.*, 2015 WL 3631833, at *4 (C. D. Cal. June 10, 2015). But this is not one of those "rare circumstances." Based on the parties' stipulation, the Court has already remanded the majority of the claims asserted in the Nevada Action to Nevada state court. The only question now is whether the remaining counts should be remanded as well. As set forth below, the answer is yes. The jurisdictional analysis is straightforward and does not require specialized knowledge about the underlying bankruptcy proceedings. The Caesars Debtors have now emerged from chapter 11 bankruptcy and the confirmed plan addresses how Defendants' claims will be paid to the extent they are owed anything. This Court does not need to interpret or even review the confirmed plan and no discovery is necessary to decide the Motion to Remand. The Removed Claims simply seek straightforward declarations under Nevada state law regarding contract issues that are governed by state law and do not present "difficult questions."

Contrary to the Removing Parties' suggestions, courts do not automatically transfer claims to the "home bankruptcy court" to decide jurisdictional questions. For example, in *Laird v. Gianulias*, a reorganized debtor removed a state law contract claim on the grounds that the claim arose from or related to its bankruptcy proceeding and moved to transfer the claim to the court that had heard its bankruptcy case. 2013 WL 4851620 at *1 (N. D. Cal. Aug. 12, 2013). Plaintiff moved

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to remand. *Id*. Faced with competing motions to remand and transfer and questions regarding bankruptcy jurisdiction, the court concluded that "because there is a significant dispute as to whether this Court has jurisdiction over the state law claims asserted … the better course is to determine the motion to remand prior to the motion to transfer." *Id*. at *4; *see also Kamana O'Kala, LLC v. Lite Solar, LLC*, 2017 WL 1100568, at *4 (D. Or. Feb. 13, 2017) (considering remand first even though contractual disputes in an adversary proceeding "form the basis of some of the claims at issue in this [state court] action."); *Hall v. Chrysler Grp. LLC*, 2011 WL 13220725, at *1 (C.D. Cal. Sept. 29, 2011) (deciding remand before transfer motion despite claims that liability depended on construction of agreements in bankruptcy dissolving one entity and forming another).

The cases cited by the Removing Parties do not hold otherwise. Nearly all of them are decades old. None are from the Ninth Circuit. They rely on the "'conduit' court theory," which "treats the local bankruptcy court as a mere conduit with little role in determining where the removed lawsuit should be heard." *In re Scanware, Inc.*, 411 B.R. 889, 896 (Bankr. S.D. Ga. 2009) (citing *Frelin v. Oakwood Homes Corp.*, 292 B.R. 369, 380 (Bankr. E.D. Ark. 2003)). But numerous courts have rejected this approach because of "strong statutory and logical support for the proposition that the local bankruptcy court should decide '*whether any* bankruptcy court should hear a proceeding before it determines which bankruptcy court should hear it.'" *Id*. (quoting *Frelin*, 292 B.R. at 379); *see In re AG Indus., Inc.*, 279 B.R. 534, 540 (Bankr. S.D. Ohio 2002) (rejecting "conduit court" theory and remanding case); *In re 1111 Prospect Partners, L.P.*, 204 B.R. 222, 226 (Bankr. D. Kan. 1996) (rejecting conduit approach); *Lone Star Indus., Inc. v. Liberty Mut. Ins.*, 131 B.R. 269, 273 (D. Del. 1991) (rejecting automatic transfer to "home" bankruptcy court). The Court in *Laird* also distinguished the Removing Parties' key cases on the grounds that they related to whether a district court should abstain from hearing the case under 28 U.S.C. § 1334(c) and not whether original jurisdiction exists under 28 U.S.C. § 1334(b)—the issue presented here. *See* 2013 WL 4851620, at * 3 (distinguishing *Wedlo* and *Convent Guardian Corp.*).

In short, the Court should follow the typical Ninth Circuit practice and decide Plaintiffs' Motion to Remand. Regardless of the outcome of that motion, the Removing Parties' motion to transfer will be moot. If the Court grants the motion to remand, the Removed Claims will be

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remanded to Nevada state court. And if the Court denies the motion to remand, Plaintiffs agree the Removed Claims should be transferred to the Bankruptcy Court.

II. This Court Lacks Jurisdiction Over Plaintiffs' State Law Claims.

Under Ninth Circuit precedent, the Removing Parties have the burden of establishing proper removal and federal jurisdiction. *Gaus v. Miles, Inc.*, 980 F.2d 564, 566 (9th Cir. 1992). Removal statutes are also "'strictly construe[d]' against removal jurisdiction"; if there are any doubts as to jurisdiction, the case should be remanded. *Nev. v. Bank of Am. Corp.*, 672 F.3d 661, 667 (9th Cir. 2012) (*citing Syngenta Crop Prot., Inc. v. Henson*, 537 U.S. 28, 32 (2002)). The Removing Parties suggest these well-settled standards do not apply because Caesars' precedent does not "involve bankruptcy cases." LLTQ/FERG and MOTI Obj., Adv. No. 17-01237, Dkt. No. 47 at 4. But these cases are routinely cited by bankruptcy courts for these black letter law principles. *See*, *e.g.*, *In re Int'l Mfg. Grp., Inc.,* 574 B.R. 717, 719 (Bankr. E.D. Cal. 2017) (citing *Gaus* for the proposition that removal statutes are "strictly construed" and "any doubt as to the right of removal" should lead to remand); *Fed. Home Loan Bank of Chi. v. Banc of Am. Sec. LLC,* 448 B.R. 517, 523 (C.D. Cal. 2011) (citing *Gaus* for the proposition that "[t]he strong presumption against removal means the removing party bears the burden of establishing federal jurisdiction and that removal was proper"). The Removing Parties bear the burden of establishing proper removal and jurisdiction in this Court.

A. The Removing Parties Failed to Establish "Arising Under" or "Arising In" Jurisdiction.

Claims "arise under title 11" if they "involve a cause of action created or determined by a statutory provision of title 11." *In re Harris*, 590 F.3d 730, 737 (9th Cir. 2009). Claims "arise in a case under title 11" when they are "not based on any right expressly created by title 11, but nevertheless would have no existence outside of the bankruptcy." *In re Eastport Assocs.*, 935 F.2d 1071, 1076-77 (9th Cir. 1991) (citation omitted). Here, Plaintiffs' claims for declaratory relief under Nevada state law do not involve causes of action created or determined by the Bankruptcy Code and they plainly can and do exist outside of bankruptcy. *See* Mot. to Remand, Adv. No. 17-01238-led, Dkt. No. 38 at 9-10.

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The Removing Parties, however, argue that Plaintiffs' state law claims arise under the Bankruptcy Code because "the underlying causes of action will be determined by sections 365 and/or 503 of the Bankruptcy Code." LLTQ/FERG and MOTI Obj. at 5. Not so. Plaintiffs' state law claims simply ask the Nevada state court for declaratory relief confirming that Plaintiffs properly terminated the Seibel Agreements as a matter of state law and, based on the termination and other state law theories, Plaintiffs have no current or future obligations to Defendants. These claims are not based on and will not be determined by a provision of title 11. *See In re Eastport Assocs*, 935 F.2dat 1077 (no "arising under" or "arising in" jurisdiction because "[t]he suit for declaratory judgment . . . could just as easily have been brought in state court, regardless of whether Eastport was in bankruptcy"); *In re Ray*, 624 F.3d 1124, 1133-35 (9th Cir. 2010) (no jurisdiction because the "breach of contract action [] could have existed entirely apart from the bankruptcy proceeding and did not necessarily depend upon resolution of a substantial question of bankruptcy law"). Defendants' cases do not even support their novel approach to arising under jurisdiction. *See, e.g., In re Franklin*, 802 F.2d 324, 326 (9th Cir. 1986) (explaining that "arising under" jurisdiction depends on "if such an action requiring a bankruptcy judge to determine the effect of a prior order of the bankruptcy court arises under title 11"). The Removing Parties also cite *In re Waters Asbestos & Supply Co., Inc.*, but that case involved a third-party plaintiff seeking to establish the liability of a trustee and a bankruptcy estate. 225 B.R. 196, 197 (D. Idaho 1998). In contrast to the situation here, that case involved an agreement between the defendants and the trustee whereby the trustee agreed to reimburse the defendants. *Id*.

The Removing Parties also claim for the first time that Plaintiffs' state law declaratory judgment claims "arise in" a case under title 11 because they have "no existence outside of a bankruptcy case." LLTQ/FERG and MOT Obj. at 6. Since each of Plaintiffs' causes of action were brought pursuant to Nevada statute and exist outside of bankruptcy, the Removed Claims do not arise in a case under Title 11. *See In re Eastport*, 935 F.2d at 1077. In fact, LLTQ and FERG have objected to Plaintiffs raising these issues in the chapter 11 proceedings. They argued in the Bankruptcy Proceedings that Caesars' "fraudulent inducement claim, like the issue of whether the Termination was proper in the first instance, is not presently before [the Bankruptcy Court] and

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should be resolved in separate proceedings (likely in state and federal district court)." *See In re Caesars Entm't Operating Co., Inc.*, No. 15-1145(ABG), Dkt. No. 6906 at 1, attached as Exhibit A to Pls.' Obj. to Defs.' Motions to Transfer.

B. The Removing Parties Failed to Establish "Related To" Jurisdiction.

Because the Nevada Action was commenced after the Bankruptcy Court confirmed the Caesars Debtors' plan of reorganization, "related to" jurisdiction is only appropriate if the Removed Claims have a "close nexus to the bankruptcy plan or proceeding." *In re Pegasus Gold Corp.*, 394 F.3d 1189, 1194 (9th Cir. 2005). The Removed Claims do not satisfy this heightened standard because they do not require a court to interpret or enforce a provision of Caesars' plan of reorganization. Mot. to Remand at 10-12.

The Removing Parties' arguments miss the mark. The fact that the Caesars Debtors' plan of reorganization states that the Bankruptcy Court retains jurisdiction over certain matters is insufficient to create jurisdiction over the Removed Claims. In fact, the express terms of the plan limit the retention of jurisdiction "to the extent legally permissible." *See In re Caesars Entm't Operating Co., Inc.*, No. 15-1145 (ABG), Dkt. No. 6334, at Article XI, attached as Exhibit B to Pls.' Mot. to Remand. Courts cannot create jurisdiction for themselves through such provisions. *In re Consol. Meridian Funds*, 511 B.R. 140, 145 (W.D. Wash. 2014) (explaining that "neither the parties nor the court have the power to confer federal jurisdiction by agreement or consent"); *In re Nobel Grp., Inc.*, 529 B.R. 284, 291 (Bankr. N.D. Cal. 2015) ("Subject matter jurisdiction 'cannot be conferred by consent' of the parties. Where a court lacks subject matter jurisdiction over a dispute, the parties cannot create it by agreement, even in a plan of reorganization." (citing *In re Resorts Int'l, Inc.*, 372 F.3d 154, 161 (3d Cir. 2004)). The Removing Parties are also incorrect that a lesser showing is required to establish related to jurisdiction because the Removed Claims purportedly arose pre-confirmation. As the Removing Parties concede, there is a "bright-line" test to determine if the "close nexus" test applies. But that test looks at when the "proceeding" in question arose. Thus, "[i]f the *proceeding* arises post-confirmation, a 'close nexus' is required to give rise to 'related to' jurisdiction." LLTQ/FERG Reply Br. at 10, citing *Consol. Meridian Funds*,

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511 B.R. at 144. Because the relevant proceeding—the Nevada Action—was commenced after the Caesars Debtors' plan was confirmed, the "close nexus" test applies.

Nor are declaratory judgment actions like the Nevada Action core proceedings that would give rise to jurisdiction. Mot. to Remand at 10. Defendants argue, however, that the Removed Claims are "inextricably bound" to the Bankruptcy Proceedings and therefore are core. But the authorities they cite do not support their argument given the nature of the claims asserted in Counts II and III. *See In re DeLorean Motor Co.*, 155 B.R. 521, 525 (B.A.P. 9th Cir. 1993) (state law claim was "core" only where (a) it was "the functional equivalent of an action against the trustee," (b) "inextricably tied to the determination of an administrative claim," and (c) "similarly tied to questions concerning the proper administration of the estate"); *In re Eastport*, 935 F.2d at 1077 (because declaratory judgment action "could just as easily have been brought in state court, regardless of whether Eastport was in bankruptcy[,]" the "adversary proceeding is not a core proceeding"). Finally, *In re Harris Pine Mills* held that state law claims asserted against the bankruptcy trustee and his agents were based on acts "inextricably intertwined" with the trustee's sale of estate property and, consequently, those claims constituted core proceedings that fell within the scope of 28 U.S.C. § 157(b)(2)'s catchall provisions. 44 F.3d 1431, 1434 (9th Cir. 1995). But Counts II and III are not inextricably tied to questions concerning the proper administration of the estate.

C. Supplemental Jurisdiction Is Inapplicable Here.

Having failed to establish that the Court has subject matter jurisdiction, the Removing Parties argue that the Court can exercise supplemental jurisdiction. But they cite no support for their novel theory that this Court has supplemental jurisdiction over the Removed Claims because the Bankruptcy Court has jurisdiction over the Bankruptcy Proceeding. There is none.

A party can only invoke supplemental jurisdiction over "*other claims* that are so related to claims *in the action* within [the court's] original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution." 28 U.S.C. § 1367(a) (emphasis added). The express statutory terms limit supplemental jurisdiction to other claims in an action where the court already has jurisdiction. For example, in *In re Pegasus Gold Corp.*, the Ninth

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Circuit held that supplemental jurisdiction was proper for a party's state tort and contract claims with a "tangential relationship to the underlying bankruptcy proceeding." 394 F.3d at 1195. The court asserting supplemental jurisdiction, however, was the same court that had jurisdiction over the bankruptcy proceeding. *Id*. at 1192-93. Thus, a court must have jurisdiction over some part of the action before it can exercise supplemental jurisdiction with respect to additional claims. *See*, *e.g.*, *Morales v. Prolease PEO, LLC*, 2011 WL 6740329, at *4 (C.D. Cal. Dec. 22, 2011) ("The plain terms of the supplemental jurisdiction statute indicate that the court must have original jurisdiction of at least one cause of action in the case before it can exercise supplemental jurisdiction over other claims. '[T]he supplemental jurisdiction statute does not allow a party to remove an otherwise unremovable action to federal court for consolidation with a related federal action.'") (citation omitted); *Alford v. Lacoste*, 2011 WL 11249, at *1 (D. Or. Jan. 3, 2011) ("The plain language of the statute makes clear that supplemental jurisdiction is unwarranted in this case. District courts are directed to extend supplemental jurisdiction to related claims within a single action, and not to separate actions."); *Halmekangas v. State Farm Fire & Cas. Co.*, 603 F.3d 290, 294 n. 15 (5th Cir. 2010) (noting that supplemental jurisdiction applies to "claims that are within the same civil action").

Here, supplemental jurisdiction is not a basis for this Court to assert jurisdiction over the Removed Claims because it does not have jurisdiction over any other claims in the Nevada Action.

III. The Court Should Remand for Equitable Reasons.

Even if this Court concluded it had jurisdiction, it should still remand the remaining counts of the Nevada Action to Nevada state court. The equities favor Plaintiffs as they try to extricate themselves from a relationship with a business partner who was involved in criminal conduct and failed to disclose it to Plaintiffs. Many of the factors courts typically consider are present and favor remand. Mot. to Remand at 12-15.

The Removing Parties' contentions that severance and/or transfer favor judicial economy and avoid prejudice ring hollow. LLTQ/FERG and MOTI Obj. at 10-12. The Removing Parties admit that Caesars' termination of all agreements with the Seibel Entities stems from the same acts: Mr. Seibel's criminal conduct and non-disclosure to Caesars that he was an "unsuitable" person

under every agreement. The Removing Parties claim that the Removed Claims are based on "wholly separate contracts" and are "separate and apart from the claims being asserted against the other defendants" is unconvincing. First, each defendant in the Nevada Action is an affiliate of Mr. Seibel, and Mr. Seibel had contractual rights and obligations under the MOTI, FERG, LLTQ, GRB and TPOV Agreements. Second, the provisions of the Seibel Agreements are largely identical. For example, the MOTI, FERG, LLTQ, GRB, and TPOV Agreements contain near identical provisions regarding "suitability" requirements, which go to the heart of the Nevada Action. Third, Mr. Seibel's actions apply to every agreement, whether those agreements are with the Removing Parties or not. Mr. Seibel himself has brought litigation in Nevada state and district court regarding the termination of other agreements.

Contrary to the Removing Parties' arguments, remand will prevent inconsistent results. As explained, Mr. Seibel's criminal conduct and nondisclosure to Caesars of the same forms the basis of Caesars' decision to terminate all agreements with the Seibel Entities. And the propriety of the decision to terminate could impact the enforceability of the restrictive covenants. Given the interrelated nature of these claims, Counts I, II, and III should all be litigated in the Nevada Court. Similarly, if this Court transfers Count I against MOTI, the Illinois Bankruptcy Court may decide the propriety of the termination of that agreement while the Nevada state court will decide the propriety of termination of all other agreements despite the fact that the same facts underlie all terminations. To avoid the possibility that the same acts applied to the same contract terms may be found proper in one court and improper in another, the Court should remand the Removed Claims so that all of Plaintiffs' claims will be decided in the Nevada Action.

The Removing Parties' hyperbolic claims that Plaintiffs are forum shopping is incorrect. The Removing Parties themselves argued that "Plaintiffs' 'fraudulent inducement claim, like the issue of whether the Termination [of the agreements with LLTQ and FERG] was proper in the first instance, is not presently before [the Bankruptcy Court] and should be resolved in separate proceedings (likely in state and federal district court).'" *See In re Caesars Entm't Operating Co., Inc.*, No. 15-1145(ABG), Dkt. No. 6906 at 1. As the Removing Parties note, Caesars explicitly informed the LLTQ/FERG Defendants they were "willing to initiate an adversary proceeding if

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necessary" to resolve certain issues relating to fraudulent inducement. LLTQ/FERG Reply Br. at 7. Given the Removing Parties' arguments, Plaintiffs filed the Nevada Action to try to resolve these issues in a single forum. There is no forum shopping here. Indeed, if the Court disagrees that the Removed Claims should be remanded to Nevada state court, Plaintiffs already indicated they do not object to transferring the Removed Claims to the Bankruptcy Court.

CONCLUSION

As set forth above and in the Motion, this Court lacks jurisdiction over Plaintiffs' claims and consequently removal to this Court was improper. Even if this Court finds jurisdiction, analysis of the relevant equities requires remand of Plaintiffs' claims. Accordingly, Plaintiffs' Motion to Remand should be granted.

DATED this 17th day of November 2017.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of PISANELLI BICE PLLC and that, on this 17th day of November 2017, I caused to be served via the Court's CM/ECF service system a true and correct copy of the above **PLAINTIFFS' REPLY IN SUPPORT OF MOTION TO REMAND** to all persons on the CM/ECF service list.

/s/ Cinda Towne
An employee of PISANELLI BICE PLLC

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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. PHWLV, 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 **DEFENDANT DNT ACQUISTION, LLC'S REPLY MEMORANDUM OF LAW IN FURTHER SUPPORT OF MOTION TO DISMISS, OR, IN THE ALTERNATIVE TO STAY** This document applies to: A-17-760537-B **Hearing Date: April 4, 2018** **Hearing Time: 9:00**

Defendants DNT ACQUISITION, LLC, appearing derivatively by one of its two members, R Squared Global Solutions, LLC ("DNT"), hereby submits its reply memorandum of law in further support of its motion (the "Motion") to dismiss or, in the alternative, to stay the claims against DNT in the complaint filed on August 25, 2017, seeking only declaratory relief (the "Complaint") by Plaintiffs ("Plaintiffs").

INTRODUCTION

In their opposition, Plaintiffs argue that the claims asserted against DNT should not be dismissed, despite the fact that the same disputed issues have been pending in the Illinois Bankruptcy Court for many months, because only the present action can provide "comprehensive relief" to all the parties. (Opp. 22.) Plaintiffs' inappropriate attempt to maneuver claims involving six (6) different Agreements with ten (10) different parties concerning six (6) different Restaurants into a single action should not be permitted.

Plaintiffs' argument that the first-to-file rule should be disregarded because only this Court can provide "comprehensive relief" to the parties is misguided. Although the Defendant entities once had a connection to Defendant Seibel, that connection does not overcome the significant differences between the parties, the Agreements, and the relevant issues. For instance, while Plaintiffs claim that DNT made false disclosures prior to entering into the DNT Agreement (Comp. ¶ 38), no similar disclosure was made in connection with the TPOV, LLTQ or FERG Agreements. (*Id.* at ¶¶ 55, 65, 87.) While Plaintiffs claim that Seibel's conduct was the basis for terminating the Agreements (Comp. ¶ 5), prior to termination Seibel had assigned his ownership interest in R Squared Global, the entity that was a member in DNT. (Comp. ¶ 112.) That is different from, for instance, the GR BURGR Restaurant as Seibel had not assigned his interest in that entity prior to the termination. (Comp. ¶ 116.) Moreover, unlike the Serendipity Restaurant (the subject of the MOTI Agreement), which was closed, and the GR BURGR Restaurant, which Plaintiffs claim has been "rebranded", the Old Homestead Restaurant, which was the subject of the DNT Agreement, remains open to this day. By way of further contrast, the Old Homestead Restaurant that is the subject of the DNT Agreement does not involve Mr. Ramsay, unlike numerous other Restaurants at issue in this action. These are but some of the important differences between the various Defendants and their respective Agreements and Restaurants which belie Plaintiffs' claim that "comprehensive relief" can be efficiently achieved in this Court.

Moreover, Plaintiffs' opposition does not dispute that the claims asserted against DNT were first filed in Bankruptcy Court and have been pending there since DNT filed its proofs of claim in 2015. Nor does Plaintiffs' opposition dispute that DNT's Admin Claim filed in November 2017 was required to be filed in Bankruptcy Court under the Bankruptcy Code and the Bankruptcy Court's Third Amended

Plan. Plaintiffs also do not dispute that these are contested matters pending before the Bankruptcy Court that this court simply cannot decide under the Bankruptcy Code.

In addition, the caselaw relied upon by Plaintiffs that is intended to overcome the first-to-file rule is inapposite as it concerns instances in which the second-filed case was filed days after the first action, not years as is the case here regarding DNT. *See discussion infra.* Plaintiffs also argue that they are not involved in forum shopping, once again arguing that because this action provides for "comprehensive relief" they are shielded from such an argument. (Opp. 21.) However, the indisputable fact remains that it was only after the Illinois Bankruptcy Court expressed strong misgivings about Plaintiffs' legal position that they brought the present action. (DNT Mem. ¶ 10.)

Accordingly, lacking any valid basis to disregard the first-to-file rule, DNT's motion should be granted.

ARGUMENT

I. This Action Does Not Provide an Efficient Forum for Providing "Comprehensive Relief" to the Parties

Plaintiffs' argument that this Court should disregard the first-to-file rule and ignore Plaintiffs' blatant forum shopping is based on the claim that "comprehensive relief" is only available in this forum. (Opp. 21.) That argument is misplaced. First, this action seeks only declaratory relief, but no further relief, such as the actual denial of DNT's claims against Caesars. Those claims and issues are pending in, and are to be determined by, the Illinois Bankruptcy Court. Accordingly, the relief sought herein is not actually "comprehensive." The purported "comprehensive relief" sought in this action is actually an improper and unwieldy effort to cobble together a single action involving multiple different parties, different Agreements, and involving numerous separate and distinct factual and legal issues. In fact, the Bankruptcy Court and only the Bankruptcy Court can comprehensively resolve all disputes between the Debtor Plaintiffs and DNT. This Court should therefore dismiss or stay this action to allow the DNT Claims to proceed in the Bankruptcy Court.

Each Restaurant at issue in this action is governed by a different Agreement with different terms among different parties. For instance, the termination provisions of the DNT Agreement, and in particular, the rights and obligations that survive termination, are different from those in some of the other Agreements. Section 4.3.2(a) of the DNT Agreement states that upon termination "Caesars shall

cease operation of the Restaurant and its use of the Old Homestead Marks …" (Ex. M.) That identical language is not contained in any of the other Agreements. Another difference is that the agreement with MOTI contains significantly different language concerning the "unsuitability" issue than that contained in the DNT Agreement. *Compare* MOTI Agr. ¶ 9.2 (MOTI Motion to Dismiss, Ex. A) with DNT Agr. ¶¶ 1 (Ex. M, definition of "Unsuitable Person") and 11.2. (*Id.*) The bases for termination are also different. Compare MOTI Agr. ¶ 3.2 (MOTI Motion to Dismiss, Ex. A) with DNT Agr. ¶ 4.2. (Ex. M.)

There are numerous other differences among the claims asserted against DNT and the other Defendants. DNT submitted a "Business Information Form" in connection with its agreement with the Debtor Plaintiffs. (Comp. ¶ 38.) Other than MOTI, none of the other Defendants submitted BIF and therefore Plaintiffs' claim in Count II that they were fraudulently induced to enter into Agreements with those other Defendants is subject to entirely different reliance arguments than are present with regard to DNT. (Comp. ¶ 142.) DNT was also provided a period to cure its alleged association with Mr. Seibel, which raises different defenses for DNT that are not at issue with regard to the Defendants, such as TPOV, LLTQ, and FERG, who were not provided such an opportunity to cure. (Comp. ¶¶ 112, 113, 114, 117.) DNT's Old Homestead Restaurant did not involve Mr. Ramsay, while others did.

Rather than creating an efficient single action, Plaintiffs' complaint in this action creates an unwieldy action involving multiple parties to multiple Agreements, each with its own specific terms, facts and circumstances, and seeks to usurp the jurisdiction of the Bankruptcy Court that has been proceeding with these very issues for two years. The matters before the Bankruptcy Court directly concern Plaintiffs' obligations under the DNT Agreement, including Plaintiff's continuous operation of the Restaurant using the Old Homestead Marks, Old Homestead Materials, and Old Homestead Systems. Bankruptcy law controls whether the Plaintiffs must pay for the continued operations of the Restaurant. Further, the DNT Agreement does not qualify or limit the application of the termination provisions, which survive the DNT Agreement's termination and are unrelated to the continued involvement of Seibel or any other person or entity. While this action attempts to cobble together

IN THE SUPREME COURT OF THE STATE OF NEVADA

ROWEN SEIBEL; LLTQ ENTERPRISES, LLC; LLTQ ENTERPRISES 16, LLC; FERG, LLC; FERG 16, LLC; MOTI PARTNERS, LLC; MOTI PARTNERS 16, LLC; TPOV ENTERPRISES, LLC; TPOV 16 ENTERPRISES, LLC; DNT ACQUISITION, LLC, appearing derivatively by one of its two members, R Squared Global Solutions, LLC,

Petitioners

vs.

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

Respondent,

DESERT PALACE, INC.; PARIS LAS VEGAS OPERATING COMPANY, LLC; PHWLV, LLC; and BOARDWALK REGENCY CORPORATION d/b/a CAESARS ATLANTIC CITY,

Real Parties in Interest.

Case Number:

Eighth Judicial District Court
Case No. A-17-760537-B
Dept. 15, Honorable Joseph Hardy

APPENDIX TO PETITION FOR WRIT OF MANDAMUS OR PROHIBITION

VOLUME 13 OF 15

(APP. 3001 – 3250)

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CERTIFICATE OF SERVICE

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

Honorable Joseph Hardy
District Court Judge, Dept. 15
Regional Justice Center
200 Lewis Ave., Las Vegas, NV 89155
Respondent

James J. Pisanelli, Esq.
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/s/ Lisa Heller
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Honorable Laurel E. Davis
United States Bankruptcy Judge

Entered on Docket
December 14, 2017

UNITED STATES BANKRUPTCY COURT

DISTRICT OF NEVADA

* * * * * *

DESERT PALACE, INC.; PARIS LAS VEGAS OPERATING COMPANY, LLC; PHWLV, LLC; BOARDWALK REGENCY CORPORATION dba CAESARS ATLANTIC CITY, Plaintiffs, vs. MOTI PARTNERS, LLC; MOTI PARTNER 16, LLC; J. JEFFREY FREDERICK; ROWEN SEIBEL; LLTQ ENTERPRISES, LLC; LLTQ ENTERPRISES 16, LLC; FERG, LLC; FERG 16 LLC; TPOV ENTERPRISES, LLC; TPOV ENTERPRISES 16, LLC; DNT ACQUISITION, LLC; GR BURGR, LLC, Defendants.	Adv. Proceeding No.: 17-01238-LED **Date: December 4, 2017** **Time: 1:30 p.m.**

FINDINGS OF FACT AND CONCLUSIONS OF LAW[1]

On December 4, 2017, the court held a combined hearing on the "Motion to Transfer Venue of Claims against LLTQ/FERG Defendants" (AECF No. 8) (the "Motion to Transfer

[1] All references to "AECF No." are to the numbers assigned to the documents filed in the above-captioned adversary proceeding as they appear on the docket maintained by the Clerk of Court. All references to "ECF No." are to the numbers assigned to the documents filed in the bankruptcy proceeding as they appear on the docket maintained by the Clerk of Court of the United States Bankruptcy Court for the Northern District of Illinois in Case No. 15-01145. All references to "FRBP" are to the Federal Rules of Bankruptcy Procedure. All references to "FRCP" are to the Federal Rules of Civil Procedure.

Venue") and "Plaintiffs' Amended Motion to Remand" (AECF No. 43) (the "Amended Motion to Remand"). Appearances were noted on the record.

The court has considered the pleadings, arguments of counsel, the case law and statutes applicable to this matter, and the court takes judicial notice of the pleadings filed in the Caesars Bankruptcy Case (defined below) pursuant to Federal Rules of Evidence 201(b). In accordance with FRCP 52, made applicable to adversary proceedings by FRBP 7052, the court makes the following findings of fact and conclusions of law. Any finding of fact that should be a conclusion of law is deemed a conclusion of law; any conclusion of law that should be a finding of fact is deemed a finding of fact.

FINDINGS OF FACT

1. In April 2012, Desert Palace, Inc. ("Desert Palace") and LLTQ Enterprises, LLC entered into a Development and Operation Agreement (the "LLTQ Agreement"). (See ECF No. 1755 at p. 4; ECF No. 1774 at p. 1, ¶ 1).

2. On May 16, 2014, Boardwalk Regency Corporation d/b/a Caesars Atlantic City ("Boardwalk") and FERG, LLC entered into a Consulting Agreement (the "FERG Agreement" and together with the LLTQ Agreement, the "LLTQ/FERG Agreements"). Id.

3. On January 15, 2015, Desert Palace and Boardwalk filed separate voluntary chapter 11 petitions with the U.S. Bankruptcy Court for the Northern District of Illinois (the "Illinois Bankruptcy Court") as Case Nos. 15-01167 and 15-01151, respectively. On that same day, the Illinois Bankruptcy Court entered an order directing joint administration of the Removed Parties' chapter 11 cases, among others, with the lead chapter 11 case filed by Caesars Entertainment Operating Company, Inc. as Case No. 15-01145 (the "Caesars Bankruptcy Case"). (ECF No. 43).

4. On June 8, 2015, the jointly administered debtors (the "Debtors") filed "Debtors' Fourth Omnibus Motion for the Entry of an Order Authorizing the Debtors to Reject Certain Executory Contracts Nunc Pro Tunc to June 11, 2015" in the Caesars

Bankruptcy Case, pursuant to which the Debtors requested rejection of, in pertinent part, the LLTQ/FERG Agreements (the "First Rejection Motion"). (ECF No. 1755) (emphasis in original). The First Rejection Motion remains pending before the Illinois Bankruptcy Court.

5. On November 4, 2015, LLTQ and FERG filed a "Request for Payment of Administrative Expense" in the Caesars Bankruptcy Case relating to alleged post-petition amounts owed by the Removed Parties under the LLTQ/FERG Agreements (the "LLTQ/FERG Administrative Expense Claim"). (ECF No. 2531). The LLTQ/FERG Administrative Expense Claim remains pending before the Illinois Bankruptcy Court.

6. On January 14, 2016, the Debtors filed "Debtors' Motion for the Entry of an Order Authorizing the Debtors to (A) Reject Certain Existing Restaurant Agreements and (B) Enter into New Restaurant Agreements" in the Caesars Bankruptcy Case, pursuant to which the Debtors seek to reject certain agreements entered into with celebrity chef Gordon Ramsay and Gordon Ramsay Holdings Limited regarding, among other things, the operation of Gordon Ramsay Pub & Grill restaurants at Caesars' properties (the "Second Rejection Motion" and together with the First Rejection Motion, the "Rejection Motions"). (ECF No. 3000). In the Second Rejection Motion, the Debtors state that they "entered into separate agreements with restaurateur Rowen Seibel and his affiliates, FERG, LLC and LLTQ Enterprises, LLC . . . to obtain consulting services regarding employee staffing and training, marketing, and various operational matters for the Ramsay Restaurants . . . ." Id. at p. 3, ¶ 3. The Debtors subsequently deemed the LLTQ/FERG Agreements no longer beneficial to their business operations and seek, by the Second Rejection Motion, to reject these affiliated agreements with Gordon Ramsay and enter into a new business relationship with him without LLTQ's and FERG's involvement. The Second Rejection Motion remains pending before the Illinois Bankruptcy Court.

7. On January 17, 2017, the Illinois Bankruptcy Court entered an order (the "Confirmation Order") in the Caesars Bankruptcy Case confirming the Third Amended Joint Plan of Reorganization (the "Confirmed Plan"). (ECF No. 6334).

8. On August 25, 2017, Desert Palace, Paris Las Vegas Operating Company, LLC, PHWLV, LLC, and Boardwalk (collectively, the "Plaintiffs") filed a Complaint in the District Court for Clark County, Nevada (the "State Court") as Case No. A-17-760537-B (the "State Court Case") against Rowen Seibel, J. Jeffrey Frederick, LLTQ Enterprises, LLC, LLTQ Enterprises 16, LLC (together with LLTQ Enterprises, LLC, "LLTQ"), FERG, LLC, FERG 16, LLC (together with FERG, LLC, "FERG"), MOTI Partners, LLC, MOTI Partners 16, LLC (together with MOTI Partners, LLC, "MOTI"), TPOV Enterprises, LLC, TPOV Enterprises 16, LLC (together with TPOV Enterprises, LLC, "TPOV"), DNT Acquisition, LLC ("DNT"), and GR Burgr, LLC ("GRB," and collectively with Rowen Seibel, J. Jeffrey Frederick, LLTQ, FERG, MOTI, TPOV, and DNT, the "Defendants"). (AECF No. 1 at Ex. A).

9. The Complaint alleges three causes of action (the "Removed Claims") seeking declaratory judgments relating to contracts, including the LLTQ/FERG Agreements (collectively, the "Seibel Agreements"),[2] entered into by and among Plaintiffs and the Defendants.

10. Count I of the Complaint seeks a "Declaratory Judgment Against All Defendants Declaring That Caesars Properly Terminated All of the Seibel Agreements."

11. Count II of the Complaint seeks a "Declaratory Judgment Against All Defendants Declaring That Caesars Does Not Have Any Current or Future Obligations to Defendants Under the Seibel Agreements."

[2] The Complaint defines the contracts as the "Seibel Agreements."

12. Count III of the Complaint seeks a "Declaratory Judgment Against All Defendants Declaring that the Seibel Agreements Do Not Prohibit or Limit Existing or Future Restaurant Ventures Between Caesars and Gordon Ramsay."

13. On September 27, 2017,[3] LLTQ and FERG removed the State Court Case to this court pursuant to 28 U.S.C. §§ 1452(a) and 1334(b) and FRBP 9027.[4] (AECF No. 1). LLTQ and FERG argue that the issues made the subject of the Removed Claims are subsumed within the Rejection Motions and the LLTQ/FERG Administrative Expense Claim currently pending in the Caesars Bankruptcy Case.

14. On October 2, 2017, LLTQ and FERG filed a Motion to Transfer Venue, pursuant to which they seek to transfer the Removed Claims to the Illinois Bankruptcy Court.

15. On October 6, 2017, the effective date of the Confirmed Plan occurred. (ECF No. 7482).

16. On October 23, 2017, Plaintiffs filed an objection to the Motion to Transfer Venue (AECF No. 37)[5] and a Motion to Remand (AECF No. 38), pursuant to which Plaintiffs seek to remand the Removed Claims back to the State Court.

17. On October 24, 2017, Plaintiffs filed an amended objection to the Motion to Transfer Venue (AECF No. 42) and the Amended Motion to Remand.

18. On November 1, 2017, LLTQ and FERG filed a reply in support of their Motion to Transfer Venue. (AECF No. 48).

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[3] On September 27, 2017, MOTI filed a Notice of Removal with this court as Case No. 17-01237-LED. The court will address similar motions for removal and/or transfer filed in that adversary proceeding by separate findings of fact and conclusions of law entered therein.

[4] Plaintiffs have not contested the timeliness of the removal.

[5] On October 18, 2017, J. Jeffrey Frederick also filed a limited objection to the Motion to Transfer Venue (AECF No. 36), which has since been resolved and is not currently before the court.

19. On November 7, 2017, LLTQ, FERG, and MOTI (collectively, the "Objectors")[6] filed a joint objection to the Amended Motion to Remand. (AECF No. 55).

20. On November 17, 2017, Plaintiffs filed their reply in support of the Amended Motion to Remand. (AECF No. 60).

21. On November 21, 2017, the Plaintiffs and certain of the Defendants, including LLTQ and FERG, filed a Stipulation to remand certain parties and claims back to the State Court (the "Stipulation"). (AECF No. 61). On that same day, the court entered an "Order Approving Stipulation to Remand Certain Claims," pursuant to which the court remanded back to the State Court "[a]ll claims and counts asserted against TPOV, DNT, GRB, Rowen Seibel, and J. Jeffrey Frederick; and the claims asserted against LLTQ and FERG in Count I." (AECF No. 62 at p. 2, ¶ 2). Pursuant to the court-approved Stipulation, only Counts II and III as to LLTQ and FERG remain pending before this court.

22. At the court's request, on November 28, 2017, the Objectors filed a "Supplemental Brief in Support of Motions to Transfer" (AECF No. 66), and on November 30, 2017, the Plaintiffs filed a "Supplemental Brief Regarding Removal of Claims" (AECF No. 67).

CONCLUSIONS OF LAW

Jurisdiction

A. The court has jurisdiction to enter final orders on the Amended Motion to Remand and Motion to Transfer Venue pursuant to 28 U.S.C. §§ 1412, 1447 and 1452 and FRBP 7087 and 9027. Neither party has argued to the contrary. See Citicorp Sav. of Ill. v. Chapman (In re Chapman), 132 B.R. 153, 160-61 (Bankr. N.D. Ill. 1991) (recognizing the

[6] Objectors filed a joint objection because "[t]he Remand Motions filed in these two adversary proceedings are identical to one another . . . ." (AECF No. 55 at p. 2, n.1).

split in the case law but concluding that the bankruptcy court had authority to enter a final order on a motion to remand).

B. "[A] bankruptcy court's post-confirmation 'related to' jurisdiction is substantially more limited than its pre-confirmation jurisdiction . . . ." Montana v. Goldin (In re Pegasus Gold Corp.), 394 F.3d 1189, 1191 (9th Cir. 2005). "'[T]he essential inquiry appears to be whether there is a close nexus to the bankruptcy plan or proceeding sufficient to uphold bankruptcy court jurisdiction over the matter[,]'" and "matters affecting 'the interpretation, implementation, consummation, execution, or administration of the confirmed plan will typically have the requisite close nexus.'" Id. at 1194 (quoting Binder v. Price Waterhouse & Co., LLP (In re Resorts Int'l, Inc.), 372 F.3d 154, 166-67 (3d Cir. 2004)).

C. Counts II and III seek a declaration regarding the Plaintiff's right to terminate the LLTQ/FERG Agreements under state law, a fact that LLTQ and FERG concede. LLTQ/FERG nevertheless argue that the "unique circumstances" of the Caesars Bankruptcy Case require a different conclusion. (See AECF No. 55 at p. 6). The court disagrees.

D. The disclosure statement approved in the Caesars Bankruptcy Case listed an estimated 1,800 administrative claims that are provided for by either payment in full or other resolution during the post-confirmation period. (ECF No. 4220-1 at p. 105). Any state law issue arising in Counts II and III is distinct from the LLTQ/FERG Administrative Expense Claim. Plaintiffs' counsel further stated at the hearing that the Confirmed Plan provides for a reserve of funds to pay any rejection claims. Consequently, the determination of Counts II and III in the State Court Case will not affect the interpretation, implementation, consummation, execution, or administration of the Confirmed Plan.

E. Language in the Confirmed Plan providing for the Illinois Bankruptcy Court's retention of jurisdiction over administrative claims and rejection motions does not alter this conclusion, as the court's subject matter jurisdiction may not be conferred by the parties'

consent with respect to state law contract claims that do not satisfy the "close nexus" test regarding post-confirmation jurisdiction. Go Global, Inc. v. Rogich (In re Go Global, Inc.), 2016 WL 6901265, at *7 (B.A.P. 9th Cir. Nov. 22, 2016) (citing In re Resorts Int'l, Inc., 372 F.3d at 161) ("[T]o the extent the plan could be construed as reserving jurisdiction to the bankruptcy court to adjudicate that claim, such a reservation would be, by itself, ineffective.").

F. Because this court concludes that there is a not a sufficiently "close nexus" between Counts II and III and the Caesars Bankruptcy Case, the court does not reach the question of supplemental jurisdiction pursuant to 28 U.S.C. § 1367.

G. For all of these reasons, the court lacks jurisdiction over Counts II and III, and both counts shall be remanded back to the State Court.

Remand of Claims

H. Even if the court has jurisdiction, it exercises its discretion to remand Counts II and III back to the State Court. See Pac. Inv. Mgmt. Co., LLC v. OCP Opportunities Fund III, L.P. (In re Enron Corp.), 296 B.R. 505, 508 (C.D. Cal. 2003) (citing 28 U.S.C. § 1452(b)) ("Bankruptcy courts have broad discretion to remand cases over which they otherwise have jurisdiction on any equitable ground.").

I. Pursuant to 28 U.S.C. § 1452(a), a party is authorized to "remove any claim or cause of action in a civil action . . . to the district court for the district where such civil action is pending, if such district court has jurisdiction of such claim or cause of action under section 1334 of this title."

J. Pursuant to 28 U.S.C. § 1452(b), "[t]he court to which such claim or cause of action is removed may remand such claim or cause of action on any equitable ground."

K. "This 'any equitable ground' remand standard is an unusually broad grant of authority. It subsumes and reaches beyond all of the reasons for remand under nonbankruptcy removal statutes." McCarthy v. Prince (In re McCarthy), 230 B.R. 414, 417

(B.A.P. 9th Cir. 1999). "At bottom, the question is committed to the sound discretion of the bankruptcy judge." Id.

L. The court may consider fourteen non-exclusive factors during its discretionary analysis. See Wood v. Bank of N.Y. (In re Wood), 2011 WL 7145617, at *8-9 (B.A.P. 9th Cir. Dec. 12, 2011). "[A]ny one of the relevant factors may provide a sufficient basis for equitable remand . . . ." Fenicle v. Boise Cascade Co., 2015 WL 5948168, at *6 (N.D. Cal. Oct. 13, 2015) (quotations and citations omitted).

M. The first factor involves "the effect or lack thereof on the efficient administration of the estate if the Court recommends [remand] . . . ." In re Wood, 2011 WL 7145617, at *8. The court finds and concludes that remand will not affect the efficient administration of the Caesars Bankruptcy Case because any state law issue arising in Counts II and III is distinct from the LLTQ/FERG Administrative Expense Claim, which is only one of an estimated 1,800 such claims that are provided for by the Confirmed Plan, as well as any rejection claim that is likewise provided for by the Confirmed Plan. See Christensen v. Tucson Estates, Inc. (In re Tucson Estates, Inc.), 912 F.2d 1162, 1169 (9th Cir. 1990) (finding that issues involving state law interpretation of a restrictive covenant's reach "are distinct from the administration of the bankruptcy estate."); In re Go Global, Inc., 2016 WL 6901265, at *7 (holding that the court lacked post-confirmation jurisdiction to decide a cause of action that was not discussed in the disclosure statement or confirmed plan); Machine Zone, Inc. v. Peak Web LLC (In re Peak Web LLC), 559 B.R. 738, 741-42 (Bankr. D. Or. 2016) (finding that the first factor weighed in favor of remand because "reorganization is not dependent on resolution of the [removed] claims."). See also RG Adding L.L.C. v. Carrier Mid-Atlantic HQ (In re Fedders N. Am., Inc.), 2009 WL 2151245, at *1-2 (Bankr. D. Del. July 17, 2009) (abstaining from deciding an action to collect a receivable purchased during the bankruptcy case because, among other things, state law predominates and resolution of this action "will have no effect on the administration of the

estate because the Debtor's plan has been confirmed . . . ."); Sun Healthcare Group, Inc. v. Levin (In re Sun Healthcare Group, Inc.), 267 B.R. 673, 679 (Bankr. D. Del. 2000) (abstaining from hearing the debtor's adversary proceeding involving breach of contract and tortious interference with business relations' claims because, among other things, "there is no impact on the administration of the bankruptcy estate . . . .").

N. The second factor involves the "extent to which state law issues predominate over bankruptcy issues . . . ." In re Wood, 2011 WL 7145617, at *9. As LLTQ and FERG have acknowledged, the court finds and concludes that this factor strongly weighs in favor of remand because Counts II and III involve state law contract issues. See AECF No. 55 at p. 6 (stating that the Removed Claims involve a "state law contract dispute . . . ."); see also In re Peak Web LLC, 559 B.R. at 742 (finding that the second factor weighed in favor of remand because state law issues predominate and "no bankruptcy issues . . . need to be determined before the case can be tried.").

O. The third factor involves whether there are "difficult or unsettled [issues] of applicable law . . . ." In re Wood, 2011 WL 7145617, at *9. Because the parties did not discuss this factor, the court finds and concludes that it is neutral.

P. The fourth factor involves the "presence of a related proceeding commenced in state court or other nonbankruptcy proceeding . . . ." Id. The State Court Case constitutes a related proceeding to which this court has already remanded certain claims and parties pursuant to the Stipulation. See Maya, LLC v. Cytodyn of N. Mexico, Inc. (In re Cytodyn of N. Mexico, Inc.), 374 B.R. 733, 739 (Bankr. C.D. Cal. 2007) (finding this factor weighed in favor of remand even though the state court case may have technically been "extinguished" upon removal). Furthermore, after considering the pleadings and counsels' arguments, the court is convinced that similar issues involving Nevada law permeate all of the Removed Claims, as well as the claims that have already been remanded back to the State Court. Indeed, Plaintiffs' counsel represented to the court that all parties have agreed

that if the Removed Claims are remanded back to the State Court, then the State Court Case will be consolidated with another related Nevada state court matter pending before Judge Joe Hardy as Case No. A-17-751759-B.[7] For all of these reasons, the court finds and concludes that this factor weighs in favor of remand.

Q. The fifth factor involves the "jurisdictional basis, if any, other than § 1334 . . . ." In re Wood, 2011 WL 7145617, at *9. LLTQ and FERG do not argue that any jurisdictional basis exists other than 28 U.S.C. § 1334. Therefore, the court finds and concludes that this factor weighs in favor of remand.

R. The sixth factor involves the "degree of relatedness or remoteness of [the] proceeding to [the] main bankruptcy case . . . ." Id. LLTQ and FERG argue that overlapping facts exist in the Caesars Bankruptcy Case relating to the Rejection Motions and the LLTQ/FERG Administrative Expense Claim. Plaintiffs indirectly refute this, arguing, among other things, that Counts II and III are not "related to" the interpretation or enforcement of the Confirmed Plan in the Bankruptcy Case. The court agrees. Claims objections and contract rejections routinely require a bankruptcy court's interpretation of state law issues, and the existence of overlapping facts does not, standing alone, convert purely state law claims to bankruptcy matters that must be decided by a bankruptcy court. See Butner v. U.S., 440 U.S. 48, 54 (1979) ("Congress has generally left the determination of property rights in the assets of a bankruptcy's estate to state law."). Consequently, the court finds and concludes that this factor weighs in favor of remand.

S. The seventh factor involves "the substance rather than the form of an asserted core proceeding." In re Wood, 2011 WL 7145617, at *9. LLTQ and FERG argue that Counts II and III are core proceedings under 28 U.S.C. §§ 157(b)(2)(A) or 28 U.S.C. §

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[7] Also raising similar issues is a case pending in the U.S. District Court for the District of Nevada, entitled *TPOV Enterprises 16, LLC v. Paris Las Vegas Operating Co., LLC, et al.*, Case No. 2:17-CV-00346-JCM-VCF.

157(b)(2)(O) because they are "inextricably bound" with the Rejection Motions and the LLTQ/FERG Administrative Claim Expense Claim. See Honigman, Miller, Schwartz & Cohn v. Weitzman (In re Delorean Motor Co.), 155 B.R. 521, 525 (B.A.P. 9th Cir. 1993) ("[A] proceeding will not be considered a core matter, even if it falls within the literal language of sections 157(b)(2)(A) or 157(b)(2)(O), if it is a state law claim that could exist outside of bankruptcy and is not inextricably bound to the claims allowance process or a right created by the Bankruptcy Code."). Under Count I, Plaintiffs seek a declaratory judgment that they properly terminated the Seibel Agreements, including the LLTQ/FERG Agreements. The Complaint further states, in pertinent part, that because the Seibel Agreements were properly terminated (an issue conceded by MOTI's counsel), the restrictive covenants in the LLTQ/FERG Agreements are no longer enforceable. (See Complaint at ¶¶ 67-68 and 89-90). These allegations form the gravaman of Counts II and III. By the court-approved Stipulation, however, LLTQ and FERG voluntarily remanded Count I back to the State Court, while inconsistently arguing that Counts II and III are "inextricably bound" with the Rejection Motions and the LLTQ/FERG Administrative Expense Claim. For all of these reasons, the court finds and concludes that this factor weighs in favor of remand because Counts II and III are not core proceedings.

T. The eighth factor relates to "the feasibility of severing state law claims from core bankruptcy matters to allow judgments to be entered in state court with enforcement left to the bankruptcy court . . . ." In re Wood, 2011 WL 7145617, at *9. The court finds and concludes that this factor weighs in favor of remand because any findings made by the State Court on Counts II and III may, to the extent applicable, be utilized by the Illinois Bankruptcy Court with respect to the matters pending before it.

U. The ninth factor involves "the burden on the bankruptcy court's docket . . . ." Id. Plaintiffs cite to a transcript from the Caesars Bankruptcy Case in which U.S. Bankruptcy Judge A. Benjamin Goldgar stated regarding another matter his preference for a

state court to determine a state law issue. See Amended Motion to Remand at p. 14 and Ex. C. The parties also cite other statements by Judge Goldgar to the effect that particular issues should be decided by the bankruptcy court. These comments by Judge Goldgar are not consistent and therefore do not provide a basis upon which to make findings and conclusions regarding this factor. As a result, the court finds and concludes that this factor is neutral.

V. The tenth factor involves "the likelihood that the commencement of the proceeding in bankruptcy court involves forum shopping by one of the parties . . . ." In re Wood, 2011 WL 7145617, at *9. LLTQ and FERG argue that Plaintiffs engaged in forum shopping by filing the State Court Case after receiving unfavorable comments from Judge Goldgar. This contention is not relevant to the tenth factor, which "addresses forum shopping in connection with the initiation of the bankruptcy court proceeding . . . ." Kamana O'Kala, LLC v. Lite Solar, LLC, 2017 WL 1100568, at *7 (D. Or. Feb. 13, 2017). Even if it was relevant, the "court determines that the evidence does not indicate that any party chose . . . its respective forum in an attempt to abuse or manipulate the judicial process." Torres v. NE Opco, Inc. (In re NE Opco, Inc.), 2014 WL 4346080, at *3 (Bankr. C.D. Cal. Aug. 28, 2014). For these reasons, the court finds and concludes that this factor is neutral.

W. The eleventh factor involves "the existence of a right to a jury trial . . . ." In re Wood, 2011 WL 7145617, at *9. LLTQ and FERG state that no jury trial has been demanded, see AECF No. 55 at p. 9. Plaintiffs do not refute this claim. For this reason, the court finds and concludes that this factor weighs slightly against remand.

X. The twelfth factor involves "the presence in the proceeding of nondebtor parties . . . ." In re Wood, 2011 WL 7145617, at *9. Desert Palace, as reorganized debtor, is a separate legal entity from the debtor that was involved in the Caesars Bankruptcy Case. See Confirmed Plan at p. 71, Art. IV, § AA. Furthermore, two of the plaintiffs and nine of

the defendants in the state court action are non-debtor parties who will separately litigate the Removed Claims in state court. As a result, the court finds and concludes that this factor weighs in favor of remand.

Y. The thirteenth factor involves "comity . . . ." In re Wood, 2011 WL 7145617, at *9. "Comity dictates that [Nevada] courts should have the right to adjudicate the exclusively state law claims involving [Nevada]-centric plaintiffs[8] and [Nevada]-centric transactions." Pac. Inv. Mgmt. Co., LLC v. OCP Opportunities Fund III, L.P. (In re Enron Corp.), 296 B.R. 505, 509 (C.D. Cal. 2003). See also Kamana O'Kala, LLC, 2017 WL 1100568, at *7 (finding the thirteenth factor weighed "heavily" in favor of remand "because Kamana's claims arise out of Oregon law, and because Kamana selected the [applicable state] court as the forum for litigation of its claims."); In re NE Opco, Inc., 2014 WL 4346080, at *3 (finding the same "because California courts have an interest in adjudicating Plaintiff's California state law claims."); Brincko v. Rio Props., Inc. (In re Nat'l Consumer Mortg.), 2010 WL 2384217, at *4 (C.D. Cal. June 10, 2010) (transferring venue from the California bankruptcy court to Nevada because, among other reasons, "Nevada has an interest in having the controversy decided within its borders."). For these reasons, the court finds and concludes that this factor weighs strongly in favor of remand.

Z. The fourteenth factor involves "the possibility of prejudice to other parties in the action . . . ." In re Wood, 2011 WL 7145617, at *9. Pursuant to the Complaint's allegations, any ruling on Count I, which LLTQ and FERG voluntarily remanded back to the State Court, will inform the determination of Counts II and III. Plaintiffs' counsel argued that overlapping facts exist regarding "suitability" provisions in the Seibel Agreements and the scope of restrictive covenants. Absent a single forum to decide these issues, Plaintiffs contend that the risk of inconsistent decisions by different courts

[8] According to the Complaint, Boardwalk is the only Plaintiff that is not incorporated in Nevada. (See AECF No. 1-1 at ¶¶ 9-12).

constitutes prejudice. The court agrees. See W. Helicopters, Inc. v. Hiller Aviation, Inc., 97 B.R. 1, 7 (E.D. Cal. 1988) ("In addition to the unnecessary expense and expenditure of duplicative judicial resources, bifurcating this civil claim creates the real danger of inconsistent results. Such a risk should be avoided if there are no countervailing benefits."). Finally, the State Court Case involves two non-debtor plaintiffs and 12 non-debtor defendants. For these reasons, this factor strongly weighs in favor of remand.

AA. In summation, factors 1, 2, 4-8 and 12-14 weigh in favor of remand, factor 11 weighs slightly against remand, and factors 3 and 9-10 are neutral. The court finds and concludes that the ten factors in favor of remand substantially outweigh the one factor weighing slightly against remand. The court, therefore, grants the Amended Motion to Remand and remands Counts II and III back to the State Court. The Motion to Transfer is therefore denied as moot.

CONCLUSION

Pursuant to FRBP 9021, the court will enter separate orders and judgments consistent with these Findings of Fact and Conclusions of Law.

IT IS SO ORDERED.

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# # #

Exhibit D

Honorable Laurel E. Davis
United States Bankruptcy Judge

Entered on Docket
December 14, 2017

UNITED STATES BANKRUPTCY COURT

DISTRICT OF NEVADA

* * * * * *

DESERT PALACE, INC.; PARIS LAS VEGAS OPERATING COMPANY, LLC; PHWLV, LLC; BOARDWALK REGENCY CORPORATION dba CAESARS ATLANTIC CITY, Plaintiffs, vs. MOTI PARTNERS, LLC; MOTI PARTNER 16, LLC; J. JEFFREY FREDERICK; ROWEN SEIBEL; LLTQ ENTERPRISES, LLC; LLTQ ENTERPRISES 16, LLC; FERG, LLC; FERG 16 LLC; TPOV ENTERPRISES, LLC; TPOV ENTERPRISES 16, LLC; DNT ACQUISITION, LLC; GR BURGR, LLC, Defendants.	Adv. Proceeding No.: 17-01237-LED **Date: December 4, 2017** **Time: 1:30 p.m.**

FINDINGS OF FACT AND CONCLUSIONS OF LAW[1]

On December 4, 2017, the court held a combined hearing on the "Motion to Transfer Venue for Claims against MOTI Defendants" (AECF No. 9) (the "Motion to Transfer Venue")

[1] All references to "AECF No." are to the numbers assigned to the documents filed in the above-captioned adversary proceeding as they appear on the docket maintained by the Clerk of Court. All references to "ECF No." are to the numbers assigned to the documents filed in the bankruptcy proceeding as they appear on the docket maintained by the Clerk of Court of the United States Bankruptcy Court for the Northern District of Illinois in Case No. 15-01145. All references to "FRBP" are to the Federal Rules of Bankruptcy Procedure. All references to "FRCP" are to the Federal Rules of Civil Procedure.

and "Plaintiffs' Amended Motion to Remand" (AECF No. 34) (the "Amended Motion to Remand"). Appearances were noted on the record.

The court has considered the pleadings, arguments of counsel, the case law and statutes applicable to this matter, and the court takes judicial notice of the pleadings filed in the Caesars Bankruptcy Case (defined below) pursuant to Federal Rules of Evidence 201(b). In accordance with FRCP 52, made applicable to adversary proceedings by FRBP 7052, the court makes the following findings of fact and conclusions of law. Any finding of fact that should be a conclusion of law is deemed a conclusion of law; any conclusion of law that should be a finding of fact is deemed a finding of fact.

FINDINGS OF FACT

1. In 2009, Desert Palace, Inc. ("Desert Palace") and MOTI Partners, LLC entered into an agreement relating to the development and operation of a Las Vegas restaurant (the "MOTI Agreement"). (AECF No. 1 at ¶ 2; see also AECF No. 1-1 at ¶ 14).

2. On January 15, 2015, Desert Palace filed a voluntary chapter 11 petition with the Bankruptcy Court for the Northern District of Illinois (the "Illinois Bankruptcy Court") as Case No. 15-01167. On that same day, the Illinois Bankruptcy Court entered an order directing joint administration of Desert Palace's chapter 11 case, among others, with the lead chapter 11 case filed by Caesars Entertainment Operating Company, Inc. as Case No. 15-01145 (the "Caesars Bankruptcy Case"). (ECF No. 43).

3. On September 2, 2016, Desert Palace sent MOTI Partners, LLC a letter terminating the MOTI Agreement. (AECF No. 1 at ¶ 6; AECF No. 1-1 at ¶ 110).

4. On November 30, 2016, MOTI Partners, LLC and MOTI Partners, 16, LLC (collectively, "MOTI") filed a "Request for Payment of Administrative Expense" in the Caesars Bankruptcy Case relating to the termination of the MOTI Agreement (the "MOTI Administrative Expense Claim"). (ECF No. 5862). The MOTI Administrative Expense Claim remains pending before the Illinois Bankruptcy Court.

5. On January 17, 2017, the Illinois Bankruptcy Court entered an order (the "Confirmation Order") in the Caesars Bankruptcy Case confirming the Third Amended Joint Plan of Reorganization (the "Confirmed Plan"). (ECF No. 6334).

6. On August 25, 2017, Desert Palace, Paris Las Vegas Operating Company, LLC, PHWLV, LLC, and Boardwalk Regency Corporation d/b/a Caesars Atlantic City (collectively, the "Plaintiffs") filed a Complaint in the District Court for Clark County, Nevada (the "State Court") as Case No. A-17-760537-B (the "State Court Case") against Rowen Seibel, J. Jeffrey Frederick, LLTQ Enterprises, LLC, LLTQ Enterprises 16, LLC (together with LLTQ Enterprises, LLC, "LLTQ"), FERG, LLC, FERG 16, LLC (together with FERG, LLC, "FERG"), MOTI, TPOV Enterprises, LLC, TPOV Enterprises 16, LLC (together with TPOV Enterprises, LLC, "TPOV"), DNT Acquisition, LLC ("DNT"), and GR Burgr, LLC ("GRB," and collectively with Rowen Seibel, J. Jeffrey Frederick, LLTQ, FERG, MOTI, TPOV, and DNT, the "Defendants"). (AECF No. 1 at Ex. A).

7. The Complaint alleges three causes of action (the "Removed Claims") seeking declaratory judgments relating to contracts, including the MOTI Agreement (collectively, the "Seibel Agreements"),[2] entered into by and among Plaintiffs and the Defendants.

8. Count I of the Complaint seeks a "Declaratory Judgment Against All Defendants Declaring That Caesars Properly Terminated All of the Seibel Agreements."

9. Count II of the Complaint seeks a "Declaratory Judgment Against All Defendants Declaring That Caesars Does Not Have Any Current or Future Obligations to Defendants Under the Seibel Agreements."

[2] The Complaint defines the contracts as the "Seibel Agreements."

10. Count III of the Complaint seeks a "Declaratory Judgment Against All Defendants Declaring that the Seibel Agreements Do Not Prohibit or Limit Existing or Future Restaurant Ventures Between Caesars and Gordon Ramsay."

11. On September 27, 2017,[3] MOTI removed the State Court Case to this court pursuant to 28 U.S.C. §§ 1452(a) and 1334(b) and FRBP 9027.[4] (AECF No. 1). MOTI argues that the issues made the subject of the Removed Claims are subsumed within the MOTI Administrative Expense Claim currently pending in the Caesars Bankruptcy Case.

12. On October 2, 2017, MOTI filed a Motion to Transfer Venue, pursuant to which MOTI seeks to transfer the Removed Claims to the Illinois Bankruptcy Court.

13. On October 6, 2017, the effective date of the Confirmed Plan occurred. (ECF No. 7482).

14. On October 23, 2017, Plaintiffs filed an objection to the Motion to Transfer Venue (AECF No. 29)[5] and a Motion to Remand (AECF No. 30), pursuant to which Plaintiffs seek to remand the Removed Claims back to the State Court.

15. On October 24, 2017, Plaintiffs filed their Amended Motion to Remand.

16. On October 24, 2017, the Plaintiffs and some of the Defendants, including MOTI, filed a Stipulation to remand certain parties and claims back to the State Court (the "Stipulation"). (AECF No. 35).

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[3] On September 27, 2017, LLTQ and FERG filed a second Notice of Removal with this court as Case No. 17-01238-LED. The court will address similar motions for removal and/or transfer filed in that adversary proceeding by separate findings of fact and conclusions of law entered therein.

[4] Plaintiffs have not contested the timeliness of MOTI's removal.

[5] On October 18, 2017, J. Jeffrey Frederick also filed a limited objection to the Motion to Transfer Venue (AECF No. 28), which has since been resolved and is not currently before the court.

17. On November 1, 2017, MOTI filed a reply in support of its Motion to Transfer Venue. (AECF No. 38).

18. On November 2, 2017, the court entered an "Order Approving Stipulation to Remand Certain Claims," pursuant to which the court remanded back to the State Court "[a]ll claims and counts asserted against TPOV, DNT, GRB, Rowen Seibel, and J. Jeffrey Frederick; and the claims asserted against LLTQ and FERG in Count I." (AECF No. 39 at p. 2, ¶ 1). At the December 4 hearing, MOTI's counsel clarified that the Count I claim as to MOTI was not remanded and remains with this court.[6]

19. On November 7, 2017, LLTQ, FERG, and MOTI (collectively, the "Objectors")[7] filed a joint objection to the Amended Motion to Remand. (AECF No. 47).

20. On November 17, 2017, Plaintiffs filed their reply in support of the Amended Motion to Remand. (AECF No. 58).

21. At the court's request, on November 28, 2017, the Objectors filed a "Supplemental Brief in Support of Motions to Transfer" (AECF No. 64), and on November 30, 2017, the Plaintiffs filed a "Supplemental Brief Regarding Removal of Claims" (AECF No. 65).

CONCLUSIONS OF LAW

Jurisdiction

A. The court has jurisdiction to enter final orders on the Amended Motion to Remand and Motion to Transfer Venue pursuant to 28 U.S.C. §§ 1412, 1447 and 1452 and FRBP 7087 and 9027. Neither party has argued to the contrary. See Citicorp Sav. of Ill. v. Chapman (In re Chapman), 132 B.R. 153, 160-61 (Bankr. N.D. Ill. 1991) (recognizing the

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[6] Counts II and III are asserted against, among other parties, LLTQ and FERG, and not MOTI.

[7] The Objectors filed a joint objection because "[t]he Remand Motions filed in these two adversary proceedings are identical to one another . . . ." (AECF No. 47 at p. 2, n.1).

split in the case law but concluding that the bankruptcy court had authority to enter a final order on a motion to remand).

B. "[A] bankruptcy court's post-confirmation 'related to' jurisdiction is substantially more limited than its pre-confirmation jurisdiction . . . ." Montana v. Goldin (In re Pegasus Gold Corp.), 394 F.3d 1189, 1191 (9th Cir. 2005). "'[T]he essential inquiry appears to be whether there is a close nexus to the bankruptcy plan or proceeding sufficient to uphold bankruptcy court jurisdiction over the matter[,]'" and "matters affecting 'the interpretation, implementation, consummation, execution, or administration of the confirmed plan will typically have the requisite close nexus.'" Id. at 1194 (quoting Binder v. Price Waterhouse & Co., LLP (In re Resorts Int'l, Inc.), 372 F.3d 154, 166-67 (3d Cir. 2004)).

C. Count I seeks a declaration regarding Desert Palace's right to terminate the MOTI Agreement based upon Nevada state law, a fact that MOTI concedes. MOTI nevertheless argues that the "unique circumstances" of the Caesars Bankruptcy Case require some different conclusion. (See AECF No. 47 at p. 6). The court disagrees.

D. The disclosure statement approved in the Caesars Bankruptcy Case listed an estimated 1,800 administrative claims that are provided for by either payment in full or other resolution during the post-confirmation period. (ECF No. 4220-1 at p. 105). Any state law issue arising in Count I is distinct from the MOTI Administrative Expense Claim. And, MOTI's counsel conceded during the December 4 hearing that Count I is a nullity because Desert Palace had the right to terminate the MOTI Agreement for any reason. Consequently, the determination of Count I in the State Court Case will not affect the interpretation, implementation, consummation, execution, or administration of the Confirmed Plan.

E. Language in the Confirmed Plan providing for the Illinois Bankruptcy Court's retention of jurisdiction over administrative claims does not alter this conclusion, as the

court's subject matter jurisdiction may not be conferred by the parties' consent with respect to state law contract claims that do not satisfy the "close nexus" test regarding post-confirmation jurisdiction. Go Global, Inc. v. Rogich (In re Go Global, Inc.), 2016 WL 6901265, at *7 (B.A.P. 9th Cir. Nov. 22, 2016) (citing In re Resorts Int'l, Inc., 372 F.3d at 161) ("[T]o the extent the plan could be construed as reserving jurisdiction to the bankruptcy court to adjudicate that claim, such a reservation would be, by itself, ineffective.").

F. Because this court finds and concludes that there is a not a sufficiently "close nexus" between Count I and the Caesars Bankruptcy Case, the court does not reach the question of supplemental jurisdiction pursuant to 28 U.S.C. § 1367.

G. For all of these reasons, the court lacks jurisdiction over Count I, which shall be remanded back to the State Court.

Remand of Claims

H. Even if the court has jurisdiction over Count I, the court exercises its discretion to remand Count I back to the State Court. See Pac. Inv. Mgmt. Co., LLC v. OCP Opportunities Fund III, L.P. (In re Enron Corp.), 296 B.R. 505, 508 (C.D. Cal. 2003) (citing 28 U.S.C. § 1452(b)) ("Bankruptcy courts have broad discretion to remand cases over which they otherwise have jurisdiction on any equitable ground.").

I. Pursuant to 28 U.S.C. § 1452(a), a party is authorized to "remove any claim or cause of action in a civil action . . . to the district court for the district where such civil action is pending, if such district court has jurisdiction of such claim or cause of action under section 1334 of this title."

J. Pursuant to 28 U.S.C. § 1452(b), "[t]he court to which such claim or cause of action is removed may remand such claim or cause of action on any equitable ground."

K. "This 'any equitable ground' remand standard is an unusually broad grant of authority. It subsumes and reaches beyond all of the reasons for remand under

nonbankruptcy removal statutes." McCarthy v. Prince (In re McCarthy), 230 B.R. 414, 417 (B.A.P. 9th Cir. 1999). "At bottom, the question is committed to the sound discretion of the bankruptcy judge." Id.

L. The court may consider 14 non-exclusive factors during its discretionary analysis. See Wood v. Bank of N.Y. (In re Wood), 2011 WL 7145617, at *8-9 (B.A.P. 9th Cir. Dec. 12, 2011). "[A]ny one of the relevant factors may provide a sufficient basis for equitable remand . . . ." Fenicle v. Boise Cascade Co., 2015 WL 5948168, at *6 (N.D. Cal. Oct. 13, 2015) (quotations and citations omitted).

M. The first factor involves "the effect or lack thereof on the efficient administration of the estate if the Court recommends [remand] . . . ." In re Wood, 2011 WL 7145617, at *8. The court finds and concludes that remand will not affect the efficient administration of the Caesars Bankruptcy Case because any state law issue involving Count I is distinct from the MOTI Administrative Expense Claim, which is only one of an estimated 1,800 such claims that are provided for by the Confirmed Plan. Furthermore, MOTI's counsel conceded during the December 4 hearing that Count I is a nullity because Desert Palace had the right to terminate the MOTI Agreement for any reason. See Christensen v. Tucson Estates, Inc. (In re Tucson Estates, Inc.), 912 F.2d 1162, 1169 (9th Cir. 1990) (finding that issues involving state law interpretation of a restrictive covenant's reach "are distinct from the administration of the bankruptcy estate."); In re Go Global, Inc., 2016 WL 6901265, at *7 (holding that the court lacked post-confirmation jurisdiction to decide a cause of action that was not discussed in the disclosure statement or confirmed plan); Machine Zone, Inc. v. Peak Web LLC (In re Peak Web LLC), 559 B.R. 738, 741-42 (Bankr. D. Or. 2016) (finding that the first factor weighed in favor of remand because "reorganization is not dependent on resolution of the [removed] claims."). See also RG Adding L.L.C. v. Carrier Mid-Atlantic HQ (In re Fedders N. Am., Inc.), 2009 WL 2151245, at *1-2 (Bankr. D. Del. July 17, 2009) (abstaining from deciding an action to collect a

receivable purchased during the bankruptcy case because, among other things, state law predominates and resolution of this action "will have no effect on the administration of the estate because the Debtor's plan has been confirmed . . . ."); Sun Healthcare Group, Inc. v. Levin (In re Sun Healthcare Group, Inc.), 267 B.R. 673, 679 (Bankr. D. Del. 2000) (abstaining from hearing the debtor's adversary proceeding involving breach of contract and tortious interference with business relations' claims because, among other things, "there is no impact on the administration of the bankruptcy estate . . . .").

N. The second factor involves the "extent to which state law issues predominate over bankruptcy issues . . . ." In re Wood, 2011 WL 7145617, at *9. As MOTI has acknowledged, the court finds and concludes that this factor strongly weighs in favor of remand because Count I involves a state law contract issue. See AECF No. 47 at p. 6 (stating that the Removed Claims involve a "state law contract dispute . . . ."); see also In re Peak Web LLC, 559 B.R. at 742 (finding that the second factor weighed in favor of remand because state law issues predominate and "no bankruptcy issues . . . need to be determined before the case can be tried.").

O. The third factor involves whether there are "difficult or unsettled [issues] of applicable law . . . ." In re Wood, 2011 WL 7145617, at *9. Although the parties did not argue this factor, MOTI's counsel conceded that Desert Palace had the right to terminate the MOTI Agreement for any reason. In light of this concession, the court finds and concludes that this factor weighs in favor of remand.

P. The fourth factor involves the "presence of a related proceeding commenced in state court or other nonbankruptcy proceeding . . . ." Id. The State Court Case constitutes a related proceeding to which this court has already remanded certain claims and parties pursuant to the Stipulation. See Maya, LLC v. Cytodyn of N. Mexico, Inc. (In re Cytodyn of N. Mexico, Inc.), 374 B.R. 733, 739 (Bankr. C.D. Cal. 2007) (finding this factor weighed in favor of remand even though the state court case may have technically been

"extinguished" upon removal). Furthermore, after considering the pleadings and counsels' arguments, the court is convinced that similar issues involving Nevada law permeate all of the Removed Claims, as well as the claims that have already been remanded back to the State Court. Indeed, Plaintiffs' counsel represented to the court that all parties have agreed that if the Removed Claims are remanded back to the State Court, then the State Court Case will be consolidated with another related Nevada state court matter pending before Judge Joe Hardy as Case No. A-17-751759-B.[8] For all of these reasons, the court finds and concludes that this factor weighs in favor of remand.

Q. The fifth factor involves the "jurisdictional basis, if any, other than § 1334 . . . ." In re Wood, 2011 WL 7145617, at *9. MOTI does not argue that any jurisdictional basis exists other than 28 U.S.C. § 1334. Therefore, the court finds and concludes that this factor weighs in favor of remand.

R. The sixth factor involves the "degree of relatedness or remoteness of [the] proceeding to [the] main bankruptcy case . . . ." Id. MOTI argues that overlapping facts exist in the Caesars Bankruptcy Case relating to the MOTI Administrative Expense Claim. Plaintiffs indirectly refute this, arguing, among other things, that Count I is not "related to" the interpretation or enforcement of the Confirmed Plan in the Caesars Bankruptcy Case. The court agrees. Claims objections routinely require a bankruptcy court's interpretation of state law issues, and the existence of overlapping facts does not, standing alone, convert purely state law claims to a bankruptcy matter that must be decided by a bankruptcy court. See Butner v. U.S., 440 U.S. 48, 54 (1979) ("Congress has generally left the determination of property rights in the assets of a bankruptcy's estate to state law."). Consequently, the court finds and concludes that this factor weighs in favor of remand.

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[8] Also raising similar issues is a case pending in the U.S. District Court for the District of Nevada, entitled *TPOV Enterprises 16, LLC v. Paris Las Vegas Operating Co., LLC, et al.*, Case No. 2:17-CV-00346-JCM-VCF.

S. The seventh factor involves "the substance rather than the form of an asserted core proceeding." In re Wood, 2011 WL 7145617, at *9. MOTI argues that Count I is a core proceeding under 28 U.S.C. §§ 157(b)(2)(A) or 28 U.S.C. § 157(b)(2)(O) because it is "inextricably bound" with the MOTI Administrative Claim Expense Claim. See Honigman, Miller, Schwartz & Cohn v. Weitzman (In re Delorean Motor Co.), 155 B.R. 521, 525 (B.A.P. 9th Cir. 1993) ("[A] proceeding will not be considered a core matter, even if it falls within the literal language of sections 157(b)(2)(A) or 157(b)(2)(O), if it is a state law claim that could exist outside of bankruptcy and is not inextricably bound to the claims allowance process or a right created by the Bankruptcy Code."). Pursuant to the MOTI Administrative Expense Claim, MOTI seeks damages based on post-termination events. However, the only issue involved in Count I is Desert Palace's right to terminate the MOTI Agreement under Nevada state law, an issue that MOTI's counsel has conceded is no longer in dispute. Consequently, Count 1 is not "inextricably bound" to the administrative claims process pending before the Illinois Bankruptcy Court. Therefore, the court finds and concludes that this factor weighs in favor of remand.

T. The eighth factor relates to "the feasibility of severing state law claims from core bankruptcy matters to allow judgments to be entered in state court with enforcement left to the bankruptcy court . . . ." In re Wood, 2011 WL 7145617, at *9. The court finds and concludes that this factor weighs in favor of remand because any findings made by the State Court on Count I may, to the extent applicable, be utilized by the Illinois Bankruptcy Court with respect to the matters pending before it.

U. The ninth factor involves "the burden on the bankruptcy court's docket . . . ." Id. Plaintiffs cite to a transcript from the Caesars Bankruptcy Case in which U.S. Bankruptcy Judge A. Benjamin Goldgar stated regarding another matter his preference for a state court to determine a state law issue. See Amended Motion to Remand at p. 14 and Ex. C. The parties also cite other statements by Judge Goldgar to the effect that particular

issues should be decided by the bankruptcy court. These comments by Judge Goldgar are not consistent and therefore do not provide a basis upon which to make findings and conclusions regarding this factor. As a result, the court finds and concludes that this factor is neutral.

V. The tenth factor involves "the likelihood that the commencement of the proceeding in bankruptcy court involves forum shopping by one of the parties . . . ." In re Wood, 2011 WL 7145617, at *9. MOTI argues that Plaintiffs engaged in forum shopping by filing the State Court Case after receiving unfavorable comments from Judge Goldgar. This contention is not relevant to the tenth factor, which "addresses forum shopping in connection with the initiation of the bankruptcy court proceeding . . . ." Kamana O'Kala, LLC v. Lite Solar, LLC, 2017 WL 1100568, at *7 (D. Or. Feb. 13, 2017). Even if it was relevant, the "court determines that the evidence does not indicate that any party chose . . . its respective forum in an attempt to abuse or manipulate the judicial process." Torres v. NE Opco, Inc. (In re NE Opco, Inc.), 2014 WL 4346080, at *3 (Bankr. C.D. Cal. Aug. 28, 2014). For these reasons, the court finds and concludes that this factor is neutral.

W. The eleventh factor involves "the existence of a right to a jury trial . . . ." In re Wood, 2011 WL 7145617, at *9. MOTI states that no jury trial has been demanded, see AECF No. 47 at p. 9. Plaintiffs do not refute this claim. For this reason, the court finds and concludes that this factor weighs slightly against remand.

X. The twelfth factor involves "the presence in the proceeding of nondebtor parties . . . ." In re Wood, 2011 WL 7145617, at *9. Desert Palace, as a reorganized debtor, is a separate legal entity from the debtor that was involved in the Caesars Bankruptcy Case. See Confirmed Plan at p. 71, Art. IV, § AA. Furthermore, two of the plaintiffs and all the defendants in the State Court Case are non-debtors. As a result, the court finds and concludes that this factor weighs in favor of remand.

Y. The thirteenth factor involves "comity . . . ." In re Wood, 2011 WL 7145617, at *9. "Comity dictates that [Nevada] courts should have the right to adjudicate the exclusively state law claims involving [Nevada]-centric plaintiffs[9] and [Nevada]-centric transactions." Pac. Inv. Mgmt. Co., LLC v. OCP Opportunities Fund III, L.P. (In re Enron Corp.), 296 B.R. 505, 509 (C.D. Cal. 2003). See also Kamana O'Kala, LLC, 2017 WL 1100568, at *7 (finding the thirteenth factor weighed "heavily" in favor of remand "because Kamana's claims arise out of Oregon law, and because Kamana selected the [applicable state] court as the forum for litigation of its claims."); In re NE Opco, Inc., 2014 WL 4346080, at *3 (finding the same "because California courts have an interest in adjudicating Plaintiff's California state law claims."); Brincko v. Rio Props., Inc. (In re Nat'l Consumer Mortg.), 2010 WL 2384217, at *4 (C.D. Cal. June 10, 2010) (transferring venue from the California bankruptcy court to Nevada because, among other reasons, "Nevada has an interest in having the controversy decided within its borders."). For these reasons, the court finds and concludes that this factor weighs strongly in favor of remand.

Z. The fourteenth factor involves "the possibility of prejudice to other parties in the action . . . ." In re Wood, 2011 WL 7145617, at *9. Plaintiffs' counsel argued that overlapping facts exist regarding "suitability" provisions in the Seibel Agreements and the scope of restrictive covenants. Absent a single forum to decide these issues, Plaintiffs contend that the risk of inconsistent decisions by different courts constitutes prejudice. The court agrees. See W. Helicopters, Inc. v. Hiller Aviation, Inc., 97 B.R. 1, 7 (E.D. Cal. 1988) ("In addition to the unnecessary expense and expenditure of duplicative judicial resources, bifurcating this civil claim creates the real danger of inconsistent results. Such a risk should be avoided if there are no countervailing benefits."). Finally, the State Court

[9] According to the Complaint, Boardwalk Regency Corporation d/b/a Caesars Atlantic City LLC is the only Plaintiff that is not incorporated in Nevada. (See AECF No. 1-1 at ¶¶ 9-12).

Case involves two non-debtor plaintiffs and 12 non-debtor defendants. For these reasons, the court finds and concludes that this factor strongly weighs in favor of remand.

AA. In summation, factors 1-8 and 12-14 weigh in favor of remand, factor 11 weighs slightly against remand, and factors 9-10 are neutral. The court finds and concludes that the 11 factors in favor of remand substantially outweigh the one factor weighing slightly against remand. The court therefore grants the Amended Motion to Remand and remands Count I back to the State Court. The Motion to Transfer is therefore denied as moot.

CONCLUSION

Pursuant to FRBP 9021, the court will enter separate orders and judgments consistent with these Findings of Fact and Conclusions of Law.

IT IS SO ORDERED.

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# # #

EXHIBIT R

DEVELOPMENT AND OPERATION AGREEMENT

BETWEEN

LLTQ ENTERPRISES, LLC

AND

DESERT PALACE, INC.

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DEVELOPMENT AND OPERATION AGREEMENT

THIS DEVELOPMENT AND OPERATION AGREEMENT (the "Agreement") shall be deemed made, entered into and effective as of this **4th** day of April, 2012 by and between Desert Palace, Inc., a Nevada corporation having its principal place of business at 3570 Las Vegas Boulevard South, Las Vegas, Nevada 89109 ("Caesars") and LLTQ Enterprises, LLC, a Delaware limited liability company having an office at 200 Central Park South, New York, NY 10019 ("LLTQ").

RECITALS

A. Caesars leases that certain real property located at 3570 Las Vegas Boulevard South, Las Vegas, Nevada on which Caesars operates a resort hotel casino known as Caesars Palace ("Caesars Las Vegas" or "Hotel");

B. Caesars desires to design, develop, construct and operate a fine-dining restaurant featuring primarily pub-style food and beverages known as "Gordon Ramsay Pub" (collectively, the "Restaurant") in those certain premises within the Caesars Las Vegas more particularly shown on Exhibit A attached hereto (the "Restaurant Premises"); and

C. Caesars desires to retain LLTQ to perform those services and fulfill those obligations with respect to consultation concerning the design, development, construction and operation of the Restaurant, and LLTQ desires 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 promises 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. DEFINITIONS

As used herein, the following terms have the meanings set forth or referenced below. Other terms may be defined in other Articles and Sections of this Agreement.

"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 or comparable principal of, the specified Person or such other Person. For purposes of this definition, "control", "controlling", "controlled" mean the right to exercise, directly or indirectly, at least five percent (5%) 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 Person. Notwithstanding the foregoing, with respect to Caesars, the term "Affiliate" shall only include Caesars Parent and its direct and indirect controlled subsidiaries and shall not include any shareholder or director of Caesars Parent or any Affiliate of any such shareholder or director of Caesars Parent other than an Affiliate that is Caesars Parent or its direct or indirect controlled subsidiaries. Additionally, with respect to LLTQ, the term "Affiliate" shall include Rowen Seibel and each Affiliate of Rowen Seibel but shall not include (i) any other member of LLTQ that (a) owns less than 40% of the membership interests of LLTQ and is not an Affiliate of Rowen Seibel and (b) is not a Competitor; or (ii) any Affiliate of such member of LLTQ that is described in the preceding clause (i).

"Arbitration Support Action" has the meaning set forth in Section 13.10(c).

"Baseline Amount" means one half of the amount of operating income of restaurant commonly known as 'Bradley Ogden' in Caesars Las Vegas for the twelve (12) complete months ended March 31, 2012, as determined by Caesars in a manner consistent with determination of such operating income for 2011 as disclosed to LLTQ.

"Caesars Parent" means Caesars Entertainment Corporation, a corporation organized under the laws of Delaware of the United States, and its successors and assigns.

"Capital Reserve" has the meaning set forth in Section 7.1.1.

"Capital Reserve Account" has the meaning set forth in Section 7.1.1.

"Capital Return Payment" means an amount equal to (i) LLTQ's unamortized Project Costs, assuming LLTQ's Project Costs were treated as a self-amortizing loan amortized over 60 months, minus (ii) the sum of all payments to LLTQ pursuant to Section 7.1.2.

"Competing Concepts" has the meaning set forth in Section 2.3(a).

"Competitor" shall mean any Person that, or a Person that has an Affiliate that, in each case directly or indirectly, whether as owner, operator, manager, licensor or otherwise, is engaged in the conduct of one or more Gaming Businesses or Hotel Businesses, except for a Person, or an Affiliate of a Person owning not more than a 1% interest in a publicly traded company that is involved in the Gaming Businesses or Hotel Businesses.

"Compliance Committee" has the meaning set forth in Section 10.2.

"Confidential Information" means, as to a party, information about that party and its Affiliates, including information such as business plans, strategies, costing information, prospects and locations, that (i) is furnished by or on behalf of the party to a Recipient or its Representatives, or (ii) otherwise becomes known to a Recipient or it Representatives as a result of the transactions contemplated hereby; provided, that, "Confidential Information" shall not include any information which the Recipient can clearly show (a) is or has become openly known to the public through no fault of the Recipient or its Representatives, (b) was lawfully obtained by the Recipient from a source other than the disclosing party or its Representatives, who the Recipient reasonably believes (after due inquiry) is not subject to any obligation of confidentiality or restriction on use or disclosure to the disclosing party or its Affiliates or any other Person or (c) was developed independently by the Recipient or its Affiliates.

"Dispute" has the meaning set forth in Section 12.1.

"Dispute Notice" has the meaning set forth in Section 12.1.

"Early Termination Payment" means an amount equal to the amount paid or payable to LLTQ pursuant to Sections 7.1.4 and 7.1.6 for the twelve (12) complete months ended at the end of the calendar month immediately prior to the effective date of termination of this Agreement.

"Effective Date" means the later of the date of this Agreement and the date on which Caesars determines, in its sole discretion, that none of the LLTQ Associates is an Unsuitable Person.

"Exchange Act" has the meaning set forth the definition of LLTQ Change of Control.

"Exclusivity Provisions" has the meaning set forth in Section 2.3(a)(ii).

"Excusable Delay" has the meaning set forth in Section 11.3.

"Fiscal Year" means (a) for the first Fiscal Year shall mean the period commencing on the Opening Date and ending on December 31 of the calendar year in which the Opening Date occurs and (b) each subsequent period of twelve (12) months commencing on January 1 and ending on December 31 of any calendar year (or, if earlier, ending on the date of termination of this Agreement).

"Gaming Business" shall mean 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.

"GR Agreement" means the Development, Operation and License Agreement, dated as of the Effective Date, between Caesars and Gordon Ramsay with respect to the Restaurant.

"Gross Restaurant Sales" means all receipts or revenues of the Restaurant from all sources of any kind (subject to the limitations set forth in this Agreement), including the sale of food and beverage, door charges, room rental fees and sale of merchandise computed on an accrual basis in accordance with generally accepted accounting principles consistently applied by Caesars, excluding only (i) federal, state and local excise, sales, use or rent taxes collected from customers from receipts which are included in Gross Restaurant Sales, (ii) gratuities paid to the employees of the Restaurant (or paid to Caesars and paid by Caesars to such employees) by patrons with respect to functions which generate Gross Restaurant Sales, (iii) amounts collected by Caesars from patrons for the account of, and for direct payment to, unrelated third parties providing services specifically for a patron's function which generate Gross Restaurant Sales, such as flowers, music and entertainment, (iv) proceeds paid as a result of an insurable loss (unless paid for the loss or interruption of business and representing payment for damage for loss of income and profits of those Restaurant operations which are intended to generate Gross Restaurant Sales), (v) proceeds of condemnation and eminent domain awards, litigation awards and settlement payments, (vi) any proceeds or other economic benefits of any borrowings or financings of Caesars, (vii) any proceeds or other economic benefit from any sale, exchange or other disposition of all or any part of the Caesars Las Vegas or Restaurant, including any furniture, furnishings, decorations, and equipment, or any other similar items, (viii) funds provided by Caesars, (ix) payments made under any warranty or guaranty and (x) any other receipts or payments that are not standard or typical in the ordinary course of operating a restaurant or that are excluded by Caesars in a manner consistent with the determination of gross revenues of operations of Caesars and its Affiliates similar to the Restaurant. Gross Restaurant Sales shall be reduced by the amount of credit card fees and over-rings, refunds and credits given, paid or returned by Caesars in the course of obtaining Gross Restaurant Sales. In addition to receipts from transactions occurring at the Restaurant, Gross Restaurant Sales shall include, without limitation, all receipts for food, beverages or merchandise delivered from the Restaurant in satisfaction of orders therefor received away from the Restaurant and receipts for food, beverages and merchandise delivered away from the Restaurant in satisfaction of orders received at the Restaurant and receipts for food, beverages and merchandise delivered away from the Restaurant in satisfaction of orders received away from the Restaurant but sold, transferred or solicited with reference to the Restaurant. Notwithstanding the foregoing, Gross Restaurant Sales shall include the menu price of all food, beverages and merchandise offered on a complimentary basis by Caesars to its customers and, unless the promotion was made with the prior consent of LLTQ and Gordon Ramsay, shall include the full menu price of all food, beverages and merchandise provided on a discounted basis to its customers (except that employees of Caesars or its Affiliates shall be entitled to a twenty (20%) percent discount off the full menu price and such twenty (20%) percent discount amount shall not be included in Gross Restaurant Sales).

"Ground Lease" has the meaning set forth in Section 13.19.

"Group" has the meaning set forth in the definition of LLTQ Change of Control.

"Hotel Business" shall mean the ownership, operation or management of one or more hotels, inns, lodges or other overnight facilities.

"Initial Capital Account" is the amount of Project Costs borne by a party under Section 3.2(d) and shall be subject to repayment as set forth in Article 7.

"Mortgages" has the meaning set forth in Section 13.19.

"Net Profits" means, for any period, the amount (which shall be a positive number) by which Gross Restaurant Sales for such period exceed the Operating Expenses for such Period.

"Nevada Courts" has the meaning set forth in Section 13.10(c).

"Opening Date" means the date on which the Restaurant first opens to the general public for business.

"Operating Expenses" means, for any period, (a) the actual expenses incurred during such period in operating the Restaurant in those categories listed on the Profit and Loss Statement, in each case computed on an accrual basis in accordance with generally accepted accounting principles consistently applied by Caesars, plus (b) the License Fee (as defined in the GR Agreement) for such period, plus (c) the Services Fee (as defined in the GR Agreement) for such period, plus (d) all amounts designated as Operating Expenses in the GR Agreement, plus (e) the actual expenses incurred by Caesars during such period for operation of the Restaurant for variable expenses not reflected on such Profit and Loss Statement (including outside hood cleaning, EVS, utilities, accounting, warehouse, receiving and maintenance services), up to $9,200 for the Fiscal Year following the Opening Date, which such limit shall be increased by two percent (2%) from the Fiscal Year's limit on January 1 of each Fiscal Year. All credits and rebates received from sponsors and/or vendors in connection with product or services used at the venue shall be a credit against Operating Expenses. For the avoidance of doubt, Operating Expenses shall not include either party's Project Costs or any amounts paid by LLTQ to Caesars pursuant to Section 2.2.

"Permanent Damage" means any damage by fire or other casualty to the Caesars Las Vegas or Restaurant (a) where the net insurance proceeds are not sufficient to restore and repair the damaged portion of the Caesars Las Vegas or Restaurant substantially to its condition and character just prior to the occurrence of such casualty or (b) where it is not reasonably practicable to restore and repair the Caesars Las Vegas or Restaurant due to restrictions under applicable Law or for other reasons beyond Caesars' reasonable control within three hundred sixty-five (365) days from the damage, in each case as reasonably determined by Caesars.

"Person" means any individual, corporation, proprietorship, firm, partnership, limited partnership, limited liability company, trust, association or other entity, including any governmental authority.

"Project Budget" has the meaning set forth in Section 3.2(b).

"Project Costs" means, (i) with respect to Caesars, all costs and expenses incurred by Caesars or its Affiliates prior to the Opening Date to accomplish the effective and efficient commencement of operations at the Restaurant on the Opening Date in accordance with the Project Budget and as set forth in the GR Agreement, including all hard and soft construction costs, the cost of all furniture, equipment and furnishings, inventories of food and beverages and other operating supplier acquired in preparation for the

opening of the Restaurant, all expenses incurred by such party or any of its Affiliates in performing services and other pre-opening functions, including expenses of business entertainment and reimbursable expenses (but excluding salary, compensation and benefits of such party's or its Affiliates' employees) and any related taxes, the cost of recruitment and related expenses for all employees of the Restaurant and the cost of pre-opening sales, marketing, advertising, promotion and publicity for the Restaurant, including all losses, expenses and reasonable attorneys' fees arising directly or indirectly from any dispute with any third party engaged to design, develop, construct or outfit the Restaurant solely, less the aggregate of all amounts paid by LLTQ to Caesars with respect thereto, and (ii) with respect to LLTQ, the aggregate of all amounts paid by LLTQ to Caesars pursuant to Section 3.2(d) prior to or after the Opening Date with respect to such costs and expenses. For the avoidance of doubt, LLTQ's Project Costs shall not include any amounts paid by LLTQ to Caesars pursuant to Section 2.2.

"Recipient" has the meaning set forth in Section 13.18(a).

"Relative" means, with respect to any Person, such Person's mother, father, spouse, brother, sister and children.

"Representatives" means, with respect to any Person, such Person's employees, agents, independent contractors, representatives and Affiliates.

"Rules" has the meaning set forth in Section 12.1.

"Seibel" has the meaning set forth in Section 2.2(b).

"Seibel Restaurant Visits" has the meaning set forth in Section 6.1.1.

"Senior Management Employee(s)" has the meaning set forth in Section 5.2.

"Substantial Damage" means any damage, other than a Permanent Damage, by fire or other casualty to the Caesars Las Vegas or Restaurant (a) that results in more than twenty percent (20%) of the area of the Caesars Las Vegas or Restaurant, as applicable, being rendered unusable, (b) where the estimated length of time required to restore the Caesars Las Vegas or Restaurant, as applicable, substantially to its condition and character just prior to the occurrence of such casualty shall be in excess of one hundred eighty (180) days or (c) if the estimated cost of restoration and repair of the damage exceeds twenty percent (20%) of the then current replacement cost of the Caesars Las Vegas or Restaurant, as applicable, in each case as determined by Caesars in its reasonable discretion.

"Term" has the meaning set forth Section 4.1.

"Third-Party Claim" has the meaning set forth in Section 13.15.1.

"LLTQ Associates" has the meaning set forth in Section 2.2(a).

"LLTQ Change of Control" means (a) any sale, lease, exchange or other transfer (in one transaction or a series of related transactions) to any Person or group of related Persons (a "Group") as determined under Section 13(d) of the U.S. Securities Exchange Act of 1934, as amended (the "Exchange Act"), of all or substantially all of the direct and indirect assets of LLTQ, (b) the approval by the holders of the equity interests of LLTQ of any plan or proposal for the liquidation or dissolution of such Person, or (c) any Person or Group becoming the beneficial owner (as determined under Section 13(d) under the Exchange Act), directly or indirectly, of thirty-five percent (35%) or more of the aggregate voting power represented by the issued and outstanding equity interests of LLTQ entitled to vote generally or in the

election of directors (or Persons performing similar functions), except for any Person or Group who is such a beneficial owner as of the date hereof.

"Training" has the meaning set forth in Section 5.1.2.

"Union Agreements" has the meaning set forth in Section 5.3.1.

"Unsuitable Person" is 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.

"USCIS" has the meaning set forth in Section 5.6.

"Venture" has the meaning set forth in Section 2.4(a).

2. APPOINTMENT; CONDITIONS; EXCLUSIVITY; CERTAIN RIGHTS.

2.1 Appointment. On the terms and subject to the conditions set forth in this Agreement, Caesars hereby appoints LLTQ, and LLTQ hereby agrees, to perform those services and fulfill those obligations set forth herein as to be performed or fulfilled by LLTQ (collectively, the "Services"). In addition to the terms and conditions more particularly set forth in this Agreement, LLTQ agrees to perform and cause to be performed the Services (a) in good faith and using sound business practice, due diligence and care, (b) using, at a minimum, the same degree of skill and attention that LLTQ or its Affiliates use in performing the same or similar services for its or their own accounts or the accounts of others (and in no event less than a reasonable degree of skill and attention), and (c) with sufficient resources and qualified personnel as are reasonably required to perform the Services in accordance with the standards set forth in this Agreement. For the avoidance of doubt, Rowen Seibel and his Relatives are Affiliates of LLTQ.

2.2 Conditions to Agreement.

(a) Notwithstanding anything to the contrary contained herein, the rights and obligations of each party under this Agreement (other than the obligations under Section 2.3, 2.4 and 8.1 and Article 13 (other than Section 13.16)), is conditioned upon (which conditions may be waived by Caesars in its sole and absolute discretion): (i) submission by LLTQ to Caesars of all information requested by Caesars regarding LLTQ, its Affiliates and the directors, officers, employees, agents, representatives and other associates of LLTQ or any of its Affiliates (collectively, the "LLTQ Associates") to ensure that they are not an Unsuitable Person; (ii) Caesars being satisfied, in its sole discretion, that no LLTQ Associate is an Unsuitable Person; and (iii) the payment by LLTQ to Caesars of one-half of all termination fees and penalties paid by

Caesars and its Affiliates to Lark Creek Café, Inc. (as set forth in an invoice delivered by Caesars to LLTQ).

(b) Notwithstanding any other provision herein, LLTQ and/or the Persons holding an interest in LLTQ shall be permitted to issue, sell, assign or transfer interests in LLTQ to any Person, so long as (i) such Person or any of such Person's Affiliates are not a Competitor of Caesars or any of its Affiliates; (ii) Rowen Seibel ("Seibel") retains voting control of LLTQ and the sole right to make decisions relating to this Agreement on behalf of LLTQ, (iii) Seibel, or his designee reasonably approved by Caesars, is the individual designated by LLTQ representing the interests of LLTQ in interfacing with Caesars relative to this Agreement providing the advice and consultation to Caesars, as contemplated in this Agreement, in connection with the operation of the Restaurant and (iv) each Person holding and/or proposed to hold any interest in LLTQ shall be subject to the internal compliance process of Caesars and/or its Affiliates and is not deemed by Caesars, its Affiliates or any Gaming Regulatory authority as an Unsuitable Person.

2.3 LLTQ Exclusivity.

(a) LLTQ covenants and agrees that, at all times during the Term, LLTQ will not and will cause its Affiliates not to, directly or indirectly, except as contemplated by this Agreement or any other Agreement with Caesars or any of its Affiliates, offer or agree to become engaged in or affiliated or associated with any activities, business or operations utilizing any of the GR Marks or GR Materials (in each case as defined in the GR Agreement), including as an owner, investor, operator, director, officer, manager, agent, consultant, licensor or employee, in each case within Clark County, Nevada in connection with the operation of any establishment similar to the Restaurant i.e., generally in the nature of a pub, bar, café or tavern (the "Exclusivity Provisions").

(b) If this Agreement is terminated by Caesars prior to the end of the Term originally stated herein, and LLTQ is in default or breach of this Agreement at the time of such termination, or the termination is due to the termination of the GR Agreement due to a breach thereof by GR, the Exclusivity Provisions shall continue for a period of eighteen (18) months following such termination.

(c) Notwithstanding the foregoing, owning the securities of any company if the securities of such company are listed for trading on a national stock exchange or traded in the over-the-counter market and LLTQ and its Affiliates' holdings therein represent less than five percent (5%) of the total number of shares or principal amount of other securities of such company outstanding.

2.4 Right of First Refusal.

(a) In addition to the restriction imposed upon LLTQ pursuant to Section 2.3 above, neither LLTQ nor its Affiliates shall, except after compliance with Section 2.4(b) below, engage in or become affiliated or associated with, or offer or agree to become engaged in or affiliated or associated with, any activities, business or operations involving Gordon Ramsay or any of his Affiliates or utilizing any of the GR Marks or General GR Materials (as defined in the GR Agreement) if such activity, business or operation is either (i) located, or contemplated to be located, within Clark County, Nevada or (ii) located, or contemplated to be located, outside of Clark County, Nevada but within a twenty-five (25) mile radius of any existing or publicly announced hotel or gaming facility owned or operated (or to be owned or operated) by Caesars or any of its Affiliates (any such activity, business or operation, a "Venture").

(b) Before LLTQ or any of its Affiliates engages in or becomes affiliated or associated with, or offers or agrees to become engaged in or affiliated or associated with, any Venture, LLTQ shall provide Caesars with an offer, in writing, to participate in such Venture, which offer shall set forth reasonable detail regarding the proposed Venture. If Caesars (or its designated Affiliate) indicates in writing within fifteen (15) days after receipt of such offer its interest in considering such opportunity, LLTQ shall or shall cause its applicable Affiliates to enter into exclusive discussions, negotiations and due diligence with Caesars (or its designated Affiliate) for the succeeding thirty (30) days to determine if mutually agreeable terms of participation in the Venture can be reached. During such period, LLTQ shall or shall cause its applicable Affiliates to provide Caesars (or its designated Affiliate) with all reasonable supporting or other documents it may reasonably request with respect to the Venture.

3. **RESTAURANT LOCATION, DESIGN, DEVELOPMENT AND OPERATION**.

3.1 General. The Restaurant shall be comprised of that approximate square footage indicated on Exhibit A attached hereto. The parties acknowledge that with the consent of the parties the design of the Restaurant and the Restaurant Premises may change following the execution of this Agreement, however, the approximate square footage and placement of the Restaurant within the Restaurant Premises as designed and constructed shall not be materially different than that which is depicted in Exhibit A. At all times during the Term and thereafter Caesars shall retain all right, title and interest in and to the Restaurant Premises.

3.2 Initial Design and Construction.

(a) Planning. Subject to all of the terms and conditions more particularly set forth herein, Caesars and LLTQ shall work closely with respect to, and Caesars shall give consideration to all of LLTQ's reasonable recommendations regarding, the initial design, development, construction and outfitting of the Restaurant, including all furniture, fixtures, equipment, inventory and supplies (the "Restaurant Development Services"); provided, however, that Caesars, after consulting with LLTQ and considering all reasonable recommendations from LLTQ, shall have final approval with respect to all aspects of same but shall at all times act reasonably. 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 LLTQ in the design, development, construction and outfitting of the Restaurant. Restaurant Development Services, and meetings with respect to same, shall take place in Las Vegas, Nevada.

(b) Budgeting. Caesars shall provide LLTQ with copies of all proposed budgets for the Project Costs (each, a "Project Budget"), and afford LLTQ the reasonable opportunity to review each such Project Budget and to make reasonable recommendations on same based upon LLTQ's experience prior to Caesars' adoption and implementation of any such Project Budget. After giving consideration to all reasonable recommendations made to the Project Budget, Caesars shall establish, control, and amend from time to time as necessary, all in Caesars' reasonable discretion, the Project Budget for the initial design, development, construction, and outfitting of the Restaurant. Caesars shall promptly advise LLTQ of, and consult with the LLTQ regarding, any material changes in, modifications to and/or deviations from any Project Budget, with the understanding that Caesars shall make all decisions related to same acting in its reasonable discretion.

(c) Implementation of Initial Design and Construction. Caesars shall be solely responsible for hiring, retaining and authorizing the performance of services by any and all design, development, construction and other professionals engaged in the initial design,

development, construction and outfitting of the Restaurant. At all times during the Term and thereafter, Caesars shall retain all right, title and interest in and to the furniture, fixtures, equipment, inventory, supplies and other tangible and, except as otherwise provided herein, intangible assets used or held for use in connection with the Restaurant.

(d) Costs of Initial Design and Construction. The current Project Budget is $2,000,000. The parties agree that LLTQ shall be obligated to reimburse Caesars $1,000,000 in Project Costs. To the extent the costs and expenses incurred to accomplish the effective and efficient commencement of operations at the Restaurant on the Opening Date exceed $2,000,000, such excess shall be paid for and absorbed one hundred percent (100%) by Caesars, but the amount of such excess that may be included in the Project Costs of Caesars shall not exceed $300,000.

3.3 Subsequent Refurbishment, Redesign and Reconstruction of the Restaurant. If, after the Opening Date, Caesars determines that the Restaurant requires any additional Capital Expenditures, Caesars shall give consideration to all of LLTQ's reasonable recommendations regarding the same; provided, however, that Caesars, after consulting with LLTQ and considering all reasonable recommendations from LLTQ, shall have final approval with respect to all aspects of same. For any such Capital Expenditures that exceed the amount in the Capital Reserve Account, the parties will negotiate in good faith and use commercially reasonable efforts to agree regarding the responsibility for such Capital Expenditures. If the parties cannot agree, Caesars may make the Capital Expenditure and bear the related cost (which cost shall then be recovered under Section 7.1.2 as if the cost were part of the Initial Capital Account) if, in Caesars' sole and absolute discretion, such Capital Expenditure is necessary to maintain the Restaurant in a condition of that which is associated with a first class, gourmet pub.

3.4 General Operation of the Restaurant. Unless expressly provided herein to the contrary, Caesars shall be solely responsible for:

(a) managing the operations, business, finances and Employees of the Restaurant on a day-to-day basis;

(b) maintaining the Restaurant;

(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 Gordon Ramsay pursuant to the GR Agreement; and

(e) providing copies of the Restaurant's unaudited income statement to LLTQ (i) for each month, within fifteen (15) days after the end of each calendar month, (ii) for each quarter, within forty-five (45) days after the end of each calendar quarter and (iii) for each year, within one hundred twenty (120) days following the conclusion of each calendar year.

3.5 Meetings and Personal Appearances. Whenever scheduling any meeting or personal appearance contemplated by this Agreement, Caesars shall make commercially reasonable efforts to take into account the other then-existing commitments of the individual whose appearance is required and give such individual prior notice as far in advance as is possible, of the contemplated date, time and place of each scheduled meeting or appearance. If advised of a conflict, Caesars shall make commercially reasonable efforts to reschedule such meeting or appearance to a date and time closest to the initially proposed scheduled appearance date, it being understood that all such scheduling shall be made by

Caesars based upon the best interest of the Restaurant and LLTQ shall endeavor to make commercially reasonable efforts to meet the appearance schedule proposed by Caesars subject to previously scheduled commitments.

3.6 Additional Obligations. Each of Caesars and LLTQ warrants and undertakes to the other party that it shall: (a) at all times (i) fully comply with all laws, statutes, ordinances, regulations, promulgations and mandates applicable to its obligations hereunder and the operation of the Restaurant and (ii) maintain all applicable business licenses and other licenses and permits relating to its business operations or its obligations hereunder, and in each case any failure to do so shall constitute a breach of this Agreement; and (b) perform its duties hereunder with reasonable care and skill and shall cultivate and maintain good relations with the customers of the Restaurant in accordance with sound commercial principles.

4. TERM.

4.1 Term. The term of this Agreement shall commence on the Effective Date and shall expire on that date that this Agreement is terminated pursuant to the terms hereof (the "Term").

4.2 Termination.

4.2.1 For Convenience. At any time following the third (3rd) anniversary of the Opening Date, the Agreement may be terminated by Caesars upon six (6) months' written notice to LLTQ specifying the date of termination.

4.2.2 Sales Performance. At any time during the sixty (60) days following the third (3rd) anniversary of the Opening Date and the sixty (60) days following the seventh anniversary of the Opening Date, this Agreement may be terminated by Caesars by written notice to LLTQ specifying the effective date of termination if (a) in the case of termination following the third (3rd) anniversary of the Opening Date, the Gross Restaurant Sales for the twelve months prior to such anniversary are not at least Six Million Dollars ($6,000,000.00) or (b) in the case of termination following the seventh (7th) anniversary of the Opening Date, the Gross Restaurant Sales for the twelve (12) months prior to such anniversary are not at least Ten Million Dollars ($10,000,000.00).

4.2.3 GR Agreement Termination. This Agreement shall automatically terminate on the date that is ninety (90) days after any termination of the GR Agreement.

4.2.4 [Reserved]

4.2.5 Unsuitability. This Agreement may be terminated by Caesars upon written notice to LLTQ having immediate effect as contemplated by Section 10.2.

4.2.6 Condemnation and Casualty. This Agreement may be terminated by Caesars upon written notice to LLTQ having immediate effect as contemplated by Article 11.

4.2.7 Change of Control. This Agreement may be terminated by Caesars upon written notice to LLTQ having immediate effect if there is a LLTQ Change of Control involving any Unsuitable Person.

4.2.8 Material Breach.

(a) This Agreement may be terminated by Caesars upon written notice to LLTQ having immediate effect if, following a material breach of this Agreement by LLTQ, Caesars sends written notice of such material breach to LLTQ and LLTQ fails to cure such material breach within thirty (30) days after receipt of such notice.

(b) This Agreement may be terminated by LLTQ upon written notice to Caesars having immediate effect if, following a material breach of this Agreement by Caesars, LLTQ sends written notice of such material breach to Caesars and Caesars fails to cure such material breach within thirty (30) days after receipt of such notice for non-monetary breaches by Caesars and within five (5) days after written notice is given to Caesars for monetary breaches by Caesars (it being understood that Caesars' failure to pay any amount disputed in good faith shall not entitle LLTQ to terminate this Agreement).

4.2.9 Bankruptcy, etc.

(a) This Agreement may be terminated by Caesars upon written notice to LLTQ having immediate effect if LLTQ or Rowen Seibel, (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 LLTQ upon written notice to Caesars having immediate effect if Caesars (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.

4.2.10 LLTQ Termination. LLTQ shall have the right to terminate this Agreement if Caesars materially fails, for a period of twelve (12) consecutive months, to maintain the quality standards of the Hotel in place as of the date of this Agreement, if LLTQ sends written notice to Caesars of LLTQ's intention to so terminate and Caesars fails to cure such failure within thirty (30) days after receipt of such notice.

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 Section 2.3(b), the last sentence of Section 11.2.2 and Articles 12 and 13 (other than Section 13.16) shall survive any termination or expiration of this Agreement.

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

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

(b) Caesars 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;

(c) Caesars shall retain all right, title and interest in and to the Caesars Marks and Materials (as defined in the GR Agreement); 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.

4.3.3 Certain Rights of LLTQ Upon Expiration or Termination. Upon expiration or termination of this Agreement, (a) in the case of termination by Caesars pursuant to Section 4.2.1 or termination pursuant to Section 4.2.3 (as a result of a termination of the GR Agreement by Caesars pursuant to Section 4.2.1 thereof), Caesars shall pay to LLTQ the Early Termination Payment, (b) in the case of termination by Caesars pursuant to Section 4.2.1, 4.2.2 or 4.2.3 or termination by LLTQ pursuant to Section 4.2.8(b) or Section 4.2.10, Caesars shall pay to LLTQ the Capital Return Payment and (c) in the case of termination by Caesars pursuant to Section 4.2.6, Caesars shall pay to LLTQ an amount of compensation or insurance proceeds awarded by any governmental authority or insurance carrier actually received by Caesars with respect to the underlying condemnation or casualty equal to (i) the aggregate of all such amounts actually received by Caesars, divided by (ii) the aggregate of all unamortized Project Costs of both Parties, multiplied by (iii) an amount equal to the Capital Return Payment. At Caesars' sole option, any such payment may be made (i) in twelve equal monthly installments beginning during the month of such termination or (ii) as a lump-sum payment within five (5) business days after the effective date of such termination.

5. RESTAURANT EMPLOYEES.

5.1 General Requirements.

5.1.1 Employees. Subject to the terms of this Article 5, after consulting with and giving consideration to all reasonable recommendations of LLTQ, 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"). Notwithstanding anything herein to the contrary, all Employees, including all Senior Management Employees, 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) the compliance committee requirements applicable to Caesars and its Affiliates, as more particularly set forth in Section 10.2 hereof.

5.1.2 Qualified Training by Caesars. At Caesars' option, exercisable in its sole discretion, all applicants for Employee front-of-house positions that require personal contact with guests of the Restaurant, as well as all cook, pantry, pastry, bakery and other skilled kitchen positions, shall be required to undergo specialized training (the "Training") and, upon the culmination of such specialized

training, pass a test reasonably related to the Training in order to be qualified as an Employee. The Training shall be conducted by Caesars on the Employee's own time and at the Employee's own expense. At Caesars' option, exercisable in its sole discretion, the Training and related test may only be required of individuals who are employees of Caesars at the time of such individual's application for a position as an Employee.

5.2 Senior Management Employees. LLTQ shall advise Caesars as to those individuals whom it recommends to be hired for the following positions at the Restaurant, such advice to be provided within the time frames set forth below.

(a) One full-time equivalent Executive Chef (no later than sixty (60) days before the Opening Date);

(b) One full-time equivalent General Manager (no later than forty-five (45) days before the Opening Date);

(c) Two full-time equivalent Assistant Chefs (no later than thirty (30) days before the Opening Date);

(d) Two full-time equivalent Assistant Managers (no later than twenty (20) days before the Opening Date); and

(e) Two full-time equivalent Sommeliers - one lead and one regular (no later than twenty (20) days and ten (10) days before the Opening Date, respectively).

The initial and any successor Executive Chef, General Manager, Assistant Chefs, Assistant Managers and Sommeliers shall be referred to collectively, as the "Senior Management Employees" and individually, a "Senior Management Employee", with the understanding that said designation is for the purposes of reference for this document only and shall not be deemed to create a requirement or expectation of any particular level of compensation or benefits that may otherwise be available to individuals employed by Caesars having such employment designation. Subject to the terms of this Article 5, after consulting with and giving consideration to all reasonable recommendations of LLTQ, Caesars shall be responsible for, and shall have final approval with respect to, hiring, training, managing, evaluating, promoting, disciplining and firing Senior Management Employees (and any additional or replacement Senior Management Employees as reasonably required by Caesars from time to time). The parties acknowledge and agree that Caesars is under no obligation to hire any individual recommended pursuant to this Section 5.2.

5.3 Union Agreements.

5.3.1 Agreements. LLTQ acknowledges and agrees that all of Caesars' agreements, covenants and obligations and all of LLTQ'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 or any of its Affiliates is or may become a party and that are or may be applicable to the Employees (as the same may be amended or supplemented from time to time, collectively, the "Union Agreements"). LLTQ agrees that all of its agreements, covenants and obligations hereunder, including those obligations to train certain Employees, 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; provided, that, Caesars now and hereafter shall advise LLTQ of the obligations contained in said Union Agreements that are applicable to Employees. Notwithstanding the foregoing, in no event shall LLTQ be

deemed a party to any such Union Agreement whether by reason of this Agreement, the performance of its obligations hereunder or otherwise.

5.3.2 Amendments. LLTQ acknowledges and agrees that from time to time during the Term, Caesars may negotiate and enter into amendments and supplements to the Union Agreements. Each Union Agreement, as so amended or supplemented, may include those provisions agreed to by and between the applicable union and Caesars, in its sole discretion, including provisions for (a) notifying then-existing employees of Caesars in the bargaining units represented by the applicable union 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 5.3.

5.3.3 Conflicts. In the event any agreement, covenant, obligation or right of a party contained herein is, or at any time during the Term shall be, prohibited pursuant to the terms of any Union Agreement, the applicable party shall be relieved of such agreement, covenant, obligation or right, with no continuing or accruing liabilities of any kind, and such agreement, covenant, obligation or right 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. In the event any agreement, covenant, obligation or right under this Agreement is severed from this Agreement pursuant to this Section 5.3.3, Caesars and LLTQ shall thereafter cooperate in good faith to modify this Agreement to provide the parties with continuing agreements, covenants, obligations and rights that are consistent with the requirements and obligations of this Agreement (including the economic provisions contained herein), such Union Agreement and applicable law, rules and regulations.

5.4 Training Support.

5.4.1 Pre-Opening Training. For the period prior to the Opening Date, LLTQ shall advise Caesars as to the training LLTQ recommends be provided to the Senior Management Employees, including working methods, culinary style, culinary philosophy, standard of service, marketing techniques and customer service. After consulting with and giving full and proper consideration to all reasonable recommendations of LLTQ, Caesars shall be responsible for, and shall have final approval with respect to training Senior Management Employees and other Employees.

5.4.2 Refresher Training. As and if reasonably requested by Caesars from time to time during the Term, LLTQ shall advise Caesars as to the training LLTQ recommends be provided for refresher training of such appropriate kitchen and front-of-house Employees as reasonably selected by Caesars, including training with respect to any new food and beverage menus and recipes therefore developed and implemented from time to time during the Term. After consulting with and giving full and proper consideration to all reasonable recommendations of LLTQ, Caesars shall be responsible for, and shall have final approval with respect to such refresher training.

5.5 Evaluations. As reasonably requested by Caesars from time to time during the Term but not more than twice in any one (1) year during the Term, LLTQ shall review, approve and make recommendations with respect to the annual evaluations of the Senior Management Employees as conducted by Caesars; provided, however, Caesars shall have final approval with respect to all aspects of same. Such evaluation services, and meetings with respect to same, shall take place in Las Vegas, Nevada after reasonable advance notice.

5.6 Employment Authorization. Caesars shall be solely responsible for applying for, and shall be solely responsible for all costs and expenses related to obtaining (with the understanding that said

costs shall be deemed to be an Operating 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 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, LLTQ 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.

6. **PROMOTION AND OPERATIONAL PRESENCE**.

6.1 Restaurant Visits.

6.1.1 Seibel Restaurant Visits. From and after the Opening Date, Rowen Seibel shall visit and attend to the Restaurant one (1) time each quarter of each calendar year of the Term (collectively, the "Seibel Restaurant Visits") for five (5) consecutive nights, as reasonably scheduled by Caesars taking into consideration the scheduling requirements described in Section 3.5. During the Seibel Restaurant Visits, Rowen Seibel shall participate with Caesars in a review of Restaurant operations, standards, financial results, marketing and strategy.

6.1.2 Other Las Vegas Deals. If, under the terms of any agreement or agreements with Caesars or an Affiliate of Caesars relating to any food or beverage concept, Rowen Seibel is required to visit Las Vegas, Nevada, the parties will schedule the visits required hereunder and under the other agreement or agreement so that they are contiguous. If the visits under this Agreement and the other agreement or agreements are scheduled to be contiguous, the length of the visit shall be for no more than five (5) consecutive nights unless otherwise agreed by the parties, with such portion of the visit dedicated to the Restaurant and the other concepts as determined by Caesars and its Affiliates.

6.2 Travel Expenses.

6.2.1 Subject to Section 6.2.2:

(a) for each Seibel Restaurant Visit, Caesars or its travel desk shall purchase for Rowen Seibel's use first class round trip airfare between any airport in the metropolitan New York, New York area designated from time to time by Rowen Seibel and Las Vegas McCarran International Airport; provided, however, that, upon approval from Caesars, Rowen Seibel may purchase directly (or have purchased other than by Caesars on his behalf) his airfare from any airport and receive reimbursement from Caesars in an amount equal to the lower of (a) the cost of such airfare and (b) the cost to Caesars for a first class round trip airfare between an airport (the lowest cost) in the metropolitan New York, New York area on the agreed upon date of travel;

(b) the parties shall each endeavor to ensure all such airline tickets are booked reasonably in advance of the departure date;

(c) if a Seibel Restaurant Visit is cancelled for any reason, Caesars shall be entitled to (i) the entire refund or credit, if any, resulting from the cancellation of the airline ticket associated with same, if booked by Caesars, or (ii) a refund of the entire amount paid to Rowen Seibel with respect to the associated airline ticket, if booked by or on behalf of Rowen Seibel; and

(d) during each Fiscal Year (beginning January 1, 2012), Caesars shall provide for Rowen Seibel's use (for use during the Seibel Restaurant Visits and other similar visits required under other agreements with Caesars or any of its Affiliates), at no cost or expense to Rowen Seibel, forty (40) nights in a deluxe room at the Caesars Las Vegas or the property owned by an Affiliate of Caesars known as Caesars Palace (room and all applicable taxes); provided, however, Rowen Seibel shall be responsible for all incidental room charges (subject to a thirty percent (30%) discount) and other expenses incurred during the occupancy of such room.

6.2.2 Neither party shall have any rights or obligations under Section 6.2.1 in the event that, with respect to the applicable Seibel Restaurant Visit, similar arrangements are available for Rowen Seibel's use pursuant to any other agreement between LLTQ or any of its Affiliates, on the one hand, and Caesars or any of its Affiliates, on the other hand.

6.3 General. Any cost or expense to Caesars or its Affiliates associated with the provision of travel accommodations and room charges under this Article 6 allocated to the Restaurant shall be for the account of Caesars, and shall not be a Project Cost or an Operating Expense of the Restaurant.

6.4 Additional Reimbursement. LLTQ may request that expenses incurred by Rowen Seibel in connection with marketing or public relations activities be reimbursed by Caesars. If the President of Caesars (in his or her sole and absolute discretion) agrees to reimburse any such expense, such amount shall be included in the Project Costs of Caesars.

7. RESTAURANT REVENUES AND OPERATING INCOME.

7.1 Net Profits. From and after the Opening Date, the Net Profits in respect of each Fiscal Year will be distributed and retained among the parties as set forth below. The amounts set forth in this Section 7.1 are based on a Fiscal Year equivalent to a calendar year. Accordingly, for the first Fiscal Year and any subsequent Fiscal Year consisting of less than twelve (12) months, the amounts set forth in Sections 7.1.3 through 7.1.5 shall be prorated based on the number of days in such Fiscal Year.

7.1.1 Capital Reserve. Beginning for periods starting on or after the fourth anniversary of the Opening Date, out of any remaining Net Profits after the payment of all amounts due under the GR Agreement, Caesars shall be entitled to retain a capital reserve (the "Capital Reserve") in an amount not to exceed $50,000 per year (the amount of the aggregate Capital Reserve credited by Caesars hereunder less the aggregate amount expended by Caesars under this Section 7.1.1 is the "Capital Reserve Account"); provided, that the Capital Reserve Account shall not exceed $250,000 at any given time. No later than ninety (90) days after the end of each quarter, Caesars shall credit the Capital Reserve Account with the Capital Reserve (if any) for such quarter. After the Opening Date, any Capital Expenditures for the Restaurant paid by Caesars shall reduce the amount of the Capital Reserve Account (but not below zero). Caesars may draw upon the Capital Reserve Account to fund Capital Expenditures in the Restaurant from time to time.

7.1.2 Initial Capital Payback. Out of any Net Profits remaining after the retention and payment of all amounts described in Section 7.1.1, Caesars shall be entitled to retain, and LLTQ shall be entitled to be paid, pro rata, an amount for any month not to exceed 1/60th of their respective Initial Capital Accounts. Should the amount of Net Profits for any period after the retention and payment of all amounts described in Section 7.1.1 be insufficient to cover the full retention and payment contemplated by this Section 7.1.2, Caesars and LLTQ shall be entitled to any remaining Net Profits and any shortfall shall be retained or paid from the Net Profits in any subsequent period before payment of any other amount pursuant to the remaining paragraphs of this Section 7.1.

7.1.3 Retention by Caesars. Out of any Net Profits remaining after the retention and payment of all amounts described in the foregoing Sections 7.1.1 and 7.1.2, Caesars shall be entitled to retain an amount not to exceed the Baseline Amount.

7.1.4 Retention by/Payment to the Parties. Caesars shall be entitled to retain and LLTQ shall be entitled to be paid Net Profits remaining after the retention and payment of all amounts described in the foregoing paragraphs of this Section 7.1 in an amount not to exceed $1,000,000 in the aggregate, which amount shall be split equally by Caesars, on the one hand, and LLTQ, on the other hand.

7.1.5 Retention by Caesars. Out of any Net Profits remaining after the retention and payment of all amounts described in the foregoing paragraphs of this Section 7.1, Caesars shall be entitled to retain an amount not to exceed the Baseline Amount.

7.1.6 Retention by/Payment to the Parties. Caesars shall be entitled to retain and LLTQ shall be entitled to be paid the amount of any Net Profits remaining after the retention and payment of all amounts described in the foregoing paragraphs of this Section 7.1, which amount shall be split equally by Caesars, on the one hand, and LLTQ, on the other hand.

7.2 Timing and Manner of Payments. The amounts payable or retainable pursuant to Section 7.1 shall be payable or retainable, as the case may be, on a calendar quarter basis. Amounts payable to LLTQ under Section 7.1 shall be paid by Caesars no later than thirty (30) days after the end of 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 LLTQ from time to time.

7.3 Calculations. Caesars shall be solely responsible for maintaining and shall maintain, all books and records necessary to calculate the amounts retainable and payable under Section 7.1 and, within thirty (30) days after the end of each quarter during each Fiscal Year shall deliver notice to LLTQ reasonably detailing the calculation of all such amounts. Caesars' calculations shall be conclusive and binding unless, (i) within sixty (60) calendar days' of Caesars' delivery of such notice, LLTQ 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 7.4. Upon receipt of any such notification, Caesars shall review the claimed manifest calculation error and, within thirty (30) calendar days of such notification, advise LLTQ as to the corrected calculation, if any. If LLTQ still disagrees with such calculation, the calculation shall not be binding and LLTQ shall be deemed to have reserved all of its rights related thereto under this Agreement.

7.4 Audit. Subject to the remaining provisions of this Section 7.4, LLTQ shall be entitled at any time, and its sole cost and expense, upon ten (10) calendar days' notice to Caesars, but not more than two (2) times per calendar year, to cause an audit to be made, during normal business hours, by any Person designated by LLTQ 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 the amounts retainable and payable under Section 7.1, which shall not include tax returns of Caesars filed on a consolidated basis, which audit shall be conducted without material disruption or disturbance to Caesars' operations. If such audit discloses that any amount retainable or payable under Section 7.1 was calculated in error, 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 LLTQ's audit within ninety (90) days after conclusion and presentation by LLTQ to Caesars of LLTQ's findings, Caesars shall (in the next quarterly allocation) pay to LLTQ such additional monies necessary to compensate LLTQ. If such audit discloses that the amount owed by Caesars to LLTQ for any Fiscal Year exceeds the amount paid to LLTQ for such year by more than five (5%) percent, Caesars shall pay LLTQ the actual third party costs

of such audit. Caesars may condition any audit under this Section 7.4 on the receipt of a confidentiality undertaking from any Person to whom information will be disclosed in connection with such audit, in form and substance satisfactory to Caesars.

8. OPERATIONS.

8.1 Marketing and Publicity. As reasonably required by Caesars from time to time during the Term, LLTQ shall cause Rowen Seibel to consult with Caesars, and provide Caesars with advice regarding the marketing of the Restaurant. Notwithstanding the foregoing or anything to the contrary contained herein, Caesars shall have the right to make all determinations regarding advertising, sales and promotional materials, press releases and other publicity materials and statements relating to the Restaurant or the transactions contemplated by this Agreement and LLTQ will not, and will cause its Affiliates not to, publish, make or use any such materials or statements without the prior written consent of Caesars. Marketing consultations and meetings with respect to same, shall take place in Las Vegas, Nevada. Throughout the Term Caesars shall, without charge and not as an Operating Expense, market and advertise the Restaurant in a manner reasonably consistent with how other partnered, first class, gourmet restaurants are marketed by Caesars and subject to compliance with Section 9.1 of the GR Agreement.

8.2 Operational Efficiencies. As reasonably required by Caesars from time to time during the Term, LLTQ shall cause Rowen Seibel to consult with Caesars and provide Caesars with advice regarding the Restaurant's food and beverage menus, quality standards, and operational, efficiency and profitability issues; provided, however, that Caesars, after considering all reasonable recommendations received from LLTQ, shall have final approval with respect to all aspects of same. Such operational consulting and advice and meetings with respect to same shall take place in Las Vegas, Nevada.

9. REPRESENTATIONS AND WARRANTIES.

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

(a) Caesars is a corporation duly organized, validly existing, and in good standing under the laws of the jurisdiction of its organization;

(b) 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;

(c) no consent or approval or authorization of any Person is required in connection with Caesars' execution and delivery, and performance of its obligations under, this Agreement;

(d) there are no 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;

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

(f) 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

(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

in connection with any damage or casualty to the Caesars Las Vegas or the Restaurant shall be the sole property of Caesars and LLTQ shall have no right, title or interest in and to same.

11.2.2 Obligation in Connection With a Casualty. If (i) Caesars does not terminate this Agreement the event of a Substantial Damage to the Caesars Las Vegas or the Restaurant within the time periods provided in Section 11.2.1, (ii) restoration and repair of the damage is permitted under applicable Law and the terms of any agreement to which Caesars or any of its Affiliates is a party and (iii) Caesars has received net insurance proceeds sufficient to complete restoration and repair, Caesars shall use commercially reasonable restore and repair the Caesars Las Vegas 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, LLTQ shall have the right to terminate this Agreement upon written notice having immediate effect delivered to Caesars within one hundred twenty (120) days after one hundred eighty (180) days following the date of the damage and Caesars shall have no liability related to the failure of such completion to have occurred.

11.3 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 11.3 shall be deemed waived.

11.4 No Extension of Term. Nothing in this Article 11 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.

12. ARBITRATION.

12.1 Dispute Resolution. Except for a breach by LLTQ of Section 2.3, 2.4 or 13.18, 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 may 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 12.2 hereof.

12.2 Arbitrator(s). If the claim in the Dispute Notice does not exceed Two Hundred Thousand and 00/100 Dollars ($200,000.00), 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 Two Hundred Thousand and 00/100 Dollars ($200,000.00), 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 LLTQ 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.

13. **MISCELLANEOUS**.

13.1 No Partnership or Joint Venture. Nothing expressed or implied by the terms of this Agreement shall make or constitute any 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 LLTQ 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.

13.2 Successors, Assigns and Delagees. No party may assign this agreement or any right, benefit or obligation hereunder, or delegate any obligation hereunder, without the prior written of the other parties (which consent may be withheld in such other parties' sole discretion); provided, however, that Caesars may assign or delegate all or any portion of this Agreement to an Affiliate of Caesars and may assign this Agreement in whole as contemplated by Section 13.4; provided further, that LLTQ may assign this Agreement in its entirety to a Person approved by Caesars (subject to: (i) LLTQ having first provided to Caesars written disclosure regarding such Person; and (ii) the Compliance Committee having issued its necessary approvals, and (iii) the assignee shall affirm in writing its assumption of all obligations of LLTQ under this Agreement other than Seibel Restaurant Visits). Without limiting the foregoing, the parties acknowledge and agree that Caesars is relying upon the skill and expertise of Rowen Seibel in entering into this Agreement and accordingly, the obligations and duties of LLTQ specifically designated hereunder to be performed by Rowen Seibel are personal to Rowen Seibel and are not assignable or delegable by LLTQ or Rowen Seibel to any other Person without the prior written consent of Caesars (which consent may be withheld in Caesars' sole discretion). Subject to the foregoing, this Agreement shall inure to the benefit of and be binding upon the parties and their respective successors and permitted assigns and delagees.

13.3 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 anyone 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 LLTQ's right to any other remedy.

13.4 Divestiture or Transfer of Management Rights of Caesars Las Vegas. Notwithstanding Section 13.2, Caesars may assign this Agreement to any purchaser or other acquirer of the Caesars Las Vegas or to any entity to which Caesars assigns management or operational responsibility of the Caesars Las Vegas. Notwithstanding the foregoing, Section 2.3 and Section 2.4 shall terminate upon consummation of such divestiture or assignment unless otherwise agreed by the acquirer or assignee and LLTQ.

13.5 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 (if confirmation of transmission is received), (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.
One Caesars Palace Drive
Las Vegas, Nevada 89109
Attention: General Counsel

With a copy (which shall not constitute notice) to:

Caesars Entertainment Corporation
One Caesars Palace Drive
Las Vegas, Nevada 89109
Attention: General Counsel

If to LLTQ:

LLTQ Enterprises, LLC
200 Central Park South
New York, NY 10019

With a copy (which shall not constitute notice) to:

Certilman Balin
90 Merrick Avenue
East Meadow, NY11554
United States of America
Attention: Brian K. Ziegler, Esq.

13.6 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.

13.7 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.

13.8 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.

13.9 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.

13.10 Governing Law; Submission to Jurisdiction; Specific Performance.

(a) 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.

(b) Notwithstanding any other provision of this Agreement, the parties acknowledge and agree that monetary damages would be inadequate in the case of any breach by LLTQ of the covenants contained in Section 2.3, 2.4 or 13.18 of this Agreement. Accordingly, Caesars shall be entitled, without limiting its other remedies and without the necessity of proving actual damages or posting any bond, to equitable relief, including the remedy of specific performance or injunction, with respect to any breach or threatened breach of such covenants and each party (on behalf of itself and its Affiliates) consents to the entry thereof. In the event that any proceeding is brought in equity to enforce the provisions of this Agreement, no party hereto shall allege, and each party hereto hereby waives the defense or counterclaim that there is an adequate remedy at law.

(c) Subject to the provisions of Section 13.1, LLTQ 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 12 (each an "Arbitration Support Action") or for any action or proceeding contemplated by Section 13.10(b). Each of the parties hereto irrevocably and unconditionally waives any objection to the laying of venue of any action, suit or proceeding in a Nevada Court arising out of this Agreement including, but not limited to, an Arbitration Support Action or action or proceeding contemplated by Section 13.10(b) 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.

13.11 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. The use of the terms "includes" or "including" shall in all cases herein mean "includes, without limitation" and "including, without limitation", respectively. When an obligation or duty under this Agreement is to be performed by Rowen Seibel, this Agreement shall be interpreted as if such obligation or duty was an obligation or duty of LLTQ for purposes of responsibility for any breach of such obligation or duty.

13.12 Third Persons. Except as provided in Section 13.15 and 13.17, 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.

13.13 Attorneys' 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 aware of its expenses incurred in pursuit or defense of said claim, including attorneys' fees and costs, incurred in such action.

13.14 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.

13.15 Indemnification Against Third Party Claims.

13.15.1 By Caesars. Caesars covenants and agrees to defend, indemnify and save and hold harmless LLTQ, its Affiliates and LLTQ's and its Affiliates' respective stockholders, directors, officers, agents and employees from and against all claims, losses, expenses, obligations, liabilities, liens, demands, charges, litigation and judgments, including court costs and reasonable attorneys' fees, incurred or suffered by them arising directly or indirectly from any claim, action, suit, demand, assessment, investigation, arbitration or other proceeding by or in respect of a any third Person (a "Third-Party Claim") arising out of Caesars' performance of its obligations under or in connection with this Agreement.

13.15.2 By LLTQ. LLTQ covenants and agrees to defend, indemnify and save and hold harmless Caesars and its Affiliates and Caesars' and its Affiliates' respective stockholders, directors, officers, agents and employees from and against all claims, losses, expenses, obligations, liabilities, liens, demands, charges, litigation and judgments, including court costs and reasonable attorneys' fees, incurred or suffered by them arising directly or indirectly from any Third-Party Claim arising out of (a) LLTQ's performance of its obligations under or in connection with this Agreement or (b) to the extent covered by the insurance coverage required to be maintained by LLTQ pursuant to this Agreement, Gordon Ramsay's performance of his obligations under or in connection with the GR Agreement.

13.15.3 Procedures. In connection with any Third Party Claim for which a Person (any of such Persons, an "Indemnified Person") is entitled to indemnification under this Section 13.15, the Indemnified Person asserting a claim for indemnification under this Section 13.15 shall notify the party from which indemnification is being sought (the "Indemnifying Person") of such Third Party Claim and the Indemnifying Person shall, at its sole cost and expense, defend such Third Party Claim or cause the same to be defended by counsel designated by the Indemnifying Person and reasonably acceptable to the Indemnified Person. Notwithstanding the foregoing, the Indemnified Person, at the Indemnifying Person's expense, if the Indemnifying Person does not undertake and duly pursue the defense of such Third Party Claim in a timely manner or, in the case of Caesars, if the Third Party Claim is asserted by any Governmental Authority, may defend such action, suit or proceeding or cause the same to be defended by counsel designated by the Indemnified Person. Neither the Indemnified Person nor the Indemnifying Person shall settle or compromise any Third Party Claim that is the subject of a claim for indemnification under this Section 13.15 without the prior written consent of the other.

13.16 Insurance. LLTQ will maintain at all times during the Term, insurance for claims which may arise from, or in connection with, services performed/products furnished by LLTQ, its agents, representatives, employees or subcontractors with coverage at least as broad and with limits of liability not less than those stated below. Notwithstanding LLTQ's obligation to maintain the coverage described herein, Caesars shall pay for the policy premium related to said coverage, with said premium payment not being treated as an Operating Expense as such is defined herein.

I. Workers Compensation and Employers Liability Insurance: Statutory workers compensation coverage, Employers liability insurance - $1,000,000 each accident, $1,000,000 disease, each employee, $1,000,000 disease, policy limit

II. General Liability Insurance: Limits: $1,000,000 per occurrence, $2,000,000 aggregate / include Products / Completed Operations, Blanket Contractual Liability, Independent Contractor Liability, Broad form property damage, Cross liability, severability of interests, Personal and advertising injury, Medical Expense Coverage, Fire Legal Liability / Damage to Rented Premises

III. Automobile Liability Insurance (if applicable): Liability limits: $1,000,000 combined single limit, $1,000,000 uninsured and underinsured motorist, Covers owned, hired and non-owned Vehicles

IV. Umbrella Liability Insurance: Limits: $3,000,000 per occurrence and aggregate, Provides excess limits over General Liability, Automobile Liability, and Employers Liability coverages, Coverage shall be no more restrictive than the applicable underlying policies

Evidence of Insurance: Before the Effective Date, immediately upon the renewal of any policy required above, and upon request, LLTQ shall provide Caesars and Caesars Operating Company, Inc. ("Caesars") with a Certificate of Insurance in accordance with the foregoing and referencing the services to be provided. Such certificate of insurance is to be delivered to Caesars and in electronic format to Ins_Certs@Caesars.com.

General Terms: All policies of insurance shall (1) provide for cancellation of not less than thirty (30) days prior written notice to Caesars and Caesars, (2) have a minimum A.M. Best rating of A+, (3) be primary and non-contributory with respect to any other insurance or self-insurance program of Caesars or Caesars, and (4) provide a waiver of subrogation in favor of Caesars and Caesars. LLTQ further agrees that any subcontractors engaged by LLTQ will carry like and similar insurance with the same additional insured requirements.

Additional Insured. Insurance required to be maintained by LLTQ pursuant to this Section 13.16 (excluding workers compensation) shall name Caesars and Caesars, including their Affiliates (including their parent, affiliated or subsidiary corporations) and their respective agents, officers, members, directors, employees, successors and assigns, as additional insureds. The coverage for an additional insured shall apply on a primary basis and shall be to the full limits of liability purchased by LLTQ even if those limits of liability are in excess of those required by this contract.

Failure to Maintain Insurance. Failure to maintain the insurance required in this Section 13.16 will constitute a material breach and may result in termination of this Agreement at Caesars' option except if failure to maintain such insurance is caused by Caesars' acts or omissions.

Representation of Insurance. By requiring the insurance as set out in this Section 13.16, Caesars does not represent that coverage and limits will necessarily be adequate to protect LLTQ, and such coverage and limits shall not be deemed as a limitation on LLTQ's liability under the indemnities provided to Caesars in this Agreement, or any other provision of the Agreement.

13.17 Withholding and Tax Indemnification.

(a) LLTQ represents that no amounts due to be paid to LLTQ 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 LLTQ 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 LLTQ 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, LLTQ 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.

(b) Notwithstanding anything to the contrary in this Agreement, LLTQ shall be responsible for and shall indemnify and hold harmless Caesars and its Affiliates against (i) all Taxes (including any interest and penalties imposed thereon) payable by or assessed against Caesars or any of its Affiliates with respect to all amounts payable by Caesars to LLTQ pursuant to this Agreement and (ii) any and all claims, losses, damages, liabilities, costs and expenses (including reasonable attorneys' fees and expenses) suffered or paid by Caesars or any of its Affiliates as a result of or in connection with such Taxes. Caesars shall have the right to reduce any payment payable by Caesars to LLTQ pursuant to this Agreement in order to satisfy any indemnity claim pursuant to this Section 13.17. For purposes of this Section 13.17, the term "Tax" or "Taxes" means all taxes, assessments, charges, duties, fees, levies or other governmental charges, including 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.

13.18 Confidentiality.

(a) Each party agrees that it shall not use, nor shall it induce or permit others to use, any of the Confidential Information of another party for any purpose other than to further the purpose of this Agreement consistent with the terms hereof or as otherwise contemplated hereby. Each party further agrees that it shall not reveal, nor shall it permit or induce others to reveal, any of the Confidential Information of another party to any other Person: (i) except to the Representatives of the receiving party to the extent such Persons require knowledge of the same in connection with the transactions contemplated in this Agreement; (ii) except as required to comply with applicable laws, regulation or legal process (but only after compliance with Section 13.18(b)); and (iii) except as otherwise agreed by the party to which the Confidential Information belongs in writing. Each party receiving, or whose Representatives receive, Confidential Information of another party (a "Recipient") shall inform its Representatives of the proprietary nature of such Confidential Information and shall be responsible for any further disclosure of such Confidential Information by any such Representative unless the Recipient would have been permitted to make such disclosure hereunder. Each Recipient, upon written request following termination of this Agreement, shall destroy any Confidential Information of another party in its or any of its Representative's possession (and certify to the destruction thereof).

(b) In the event that a Recipient or any of its Representatives is requested or required by applicable law, regulation or legal process to disclose any of the Confidential Information of another party, the Recipient will notify the other party promptly in writing so that the other party may seek a protective order or other appropriate remedy, or, in the other party's sole discretion, waive compliance with the terms of this Agreement. The Recipient agrees not to, and agrees to cause its Representatives not to, oppose any action by the other party to obtain a protective order or other appropriate remedy. In the event that no such protective order or other remedy is obtained, or that the other party waives compliance with the terms of this agreement, the Recipient and its respective Representatives will furnish only that portion of the Confidential Information of the other party which the Recipient is advised by its counsel is legally required to be disclosed at that time and the Recipient will exercise its reasonable best efforts to obtain confidential treatment, to the extent available, for such Confidential Information so disclosed.

13.19 Subordination. For the avoidance of doubt, the Agreement does not create in favor of LLTQ any interest in real or personal property or any lien or encumbrance on the Caesars Las Vegas or any ground or similar lease affecting all or any portion of the Caesars Las Vegas (as the same may be

renewed, modified, consolidated, replaced or extended, a "Ground Lease"). LLTQ acknowledges and agrees that Caesars may from time to time assign or encumber all or any part of its interest in the Caesars Las Vegas or any Ground Lease by way of any one or more mortgages, deeds of trust, security agreements or similar instruments (as the same may be renewed, modified, consolidated, replaced or extended, "Mortgages"), assign or encumber all or any part of its interest in this Agreement as security to any holder of a Mortgage or a landlord under a Ground Lease or enter into a Ground Lease. The rights of LLTQ hereunder whether with respect to the Caesars Las Vegas and the revenue thereof or otherwise, be inferior and subordinate to the rights and remedies of the holder of any Mortgage and the landlord under any Ground Lease. For the avoidance of doubt, LLTQ shall have no right to encumber or subject the Caesars Las Vegas or the Restaurant, or any interest of Caesars therein, to any lien, charge or security interest, including any mechanic's or materialman's lien, charge or encumbrance of any kind. LLTQ, at its sole cost and expense, shall promptly cause any and all such liens, charges or security interests to be released by payment, bonding or otherwise (as acceptable to Caesars in its sole discretion) within ten (10) days after LLTQ first has notice thereof. If LLTQ fails to timely take such action, Caesars may pay the claim relating to such lien, charge or security interest and any amounts so paid by Caesars shall be reimbursed by LLTQ upon demand.

13.20 Comps and Reward Points. LLTQ shall be entitled to reasonable comp privileges to be reasonably agreed to by the parties. Caesars shall cause the Restaurant to participate in Caesars' reward points system and the Restaurant shall be entitled to receive the point redemption thresholds in place as of the date of this Agreement for other first class, gourmet restaurants in the Caesars Las Vegas. For purposes of this Agreement, one reward point shall entitle the holder thereof to $1.00 of food or beverage in the Restaurant.

13.21 Intellectual Property Rights. Except with respect to the GR Marks and GR Materials, LLTQ acknowledges and agrees that Caesars shall own: (a) any works, trade names, trademarks, designs, trade dress, service names and service marks, and registrations thereof and applications for registration thereof, and all works of authorship, programs, techniques, processes, formulas, developmental or experimental work, work-in-process, methods or trade secrets and all other materials, work product, intangible assets or other intellectual property rights created or developed by any party for use in association with the Restaurant or otherwise pursuant to this Agreement; (b) any materials that that are created by any party pursuant to this Agreement in which any intellectual property rights of LLTQ or any of its Affiliates are embodied or incorporated, including all photographic or video images, all promotional materials and all marketing materials produced in accordance with this Agreement; and (c) any other works, designs, trademarks, trade names, services marks and registrations thereof, programs, techniques, processes, formulas, developmental or experimental work, work-in-process, plans and specifications and any other materials or work product that were created by Caesars. LLTQ acknowledges and agrees that LLTQ shall not have or obtain any right, title or interest in or to any of such marks or materials.

13.22 Additional Restaurant Projects. If Caesars elects under this Agreement to pursue any venture similar to (i) the Restaurant (i.e., any venture generally in the nature of a pub, bar, café or tavern) or (ii) the "Restaurant" as defined in the development and operation agreement entered into December 5, 2011 between TPOV Enterprises, LLC (an affiliate of LLTQ), on the one hand, and Paris Las Vegas Operating Company, LLC, on the other hand (i.e., any venture generally in the nature of a steak restaurant, fine dining steakhouse or chop house), Caesars and LLTQ shall, or shall cause an Affiliate to, execute a development and operation agreement on the same terms and conditions as this Agreement, subject only to revisions proposed by Caesars or its Affiliate as are necessary to reflect the difference in location between the Restaurant and such other venture (including, for the avoidance of doubt, the Baseline Amount, permitted Operating Expenses and necessary Project Costs).

13.23 Submission of Agreement. Submission of this Agreement to LLTQ does not constitute an offer to contract; this Agreement shall become effective only upon execution and delivery thereof by Caesars to LLTQ. LLTQ acknowledges, understands and agrees that Caesars' willingness to enter into this Agreement is predicated upon successful approval of this Agreement by Caesars' capital committee (the "Capital Committee") (a definition and determination of which shall be in the Capital Committee's sole and exclusive discretion).

[SIGNATURE PAGE TO FOLLOW]

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

Desert Palace, Inc.

By: _____

Name: John Payne

Its: President, Enterprise Shared Services

Date: 4/13/2012

LLTQ Enterprises, LLC

By: Rowen Seibel

Name: Rowen Seibel

Its: Managing Member

Date: 4/4/12

EXHIBIT A

RESTAURANT PREMISES

(SEE ATTACHED)

EXHIBIT S

DANIEL R. MCNUTT (SBN 7815)
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UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

TPOV ENTERPRISES 16, LLC, a Delaware Limited Liability Company, Plaintiff, v. PARIS LAS VEGAS OPERATING COMPANY, LLC, a Nevada limited liability company, Defendant.	Case No.: _____ **COMPLAINT AND DEMAND FOR JURY TRIAL**

Plaintiff TPOV Enterprises 16 LLC ("TPOV 16") hereby complains as follows:

1. This action concerns the highly profitable restaurant formed by the parties, and non-party Gordon Ramsay, and defendant's scheme to cheat plaintiff out of its million dollar investment and millions of dollars in profits. Plaintiff TPOV 16's predecessor in interest invested $1 million in capital related to the development of the restaurant known as "Gordon Ramsay Steak" (hereinafter, the "Steak Restaurant"). The Steak Restaurant has been highly profitable since its opening in early 2012. Defendant now attempts to wrongfully terminate its contract with plaintiff and to unjustly retain for itself all of the profits and return of capital that are due to plaintiff TPOV 16, all the while keeping the Steak Restaurant open.

I. PARTIES AND JURISDICTION.

2. TPOV 16 is a Delaware limited liability company. Its sole manager is Craig Green. TPOV 16's membership interests are wholly owned by GR Pub/Steak Holdings, a Delaware limited liability company which is owned, directly or indirectly, by Brian K. Ziegler and Craig Green, as

Trustees of The Seibel Family 2016 Trust, an irrevocable trust, and by Brian Ziegler and Craig Green, and members of their families, in their individual capacities.

3. Defendant Paris Las Vegas Operating Company, LLC ("Paris") is a Nevada limited liability company. Its principal place of business is in Clark County, Nevada.

4. This Court has jurisdiction pursuant to 28 U.S.C § 1332 because there is complete diversity between the parties and the amount in controversy exceeds $75,000.00.

5. To the extent two or more allegations, causes of action, or forms of relief or damages alleged or requested herein are inconsistent or incompatible, each such allegation or cause of action is pled in the alternative, and each such form of damages or relief is requested in the alternative.

6. For each paragraph, allegation, and claim herein, Plaintiff repeats, re-alleges, and expressly incorporates each and every preceding paragraph, allegation, and claim.

II. THE STEAK RESTAURANT IS CONCEIVED, BUILT, AND PAID FOR JOINTLY BY TPOV 16 AND PARIS.

7. Paris owns the resort hotel casino in Las Vegas, Nevada, known as "Paris Las Vegas."

8. In or around November 2011, TPOV Enterprises, LLC ("TPOV") and Paris entered a Development and Operation Agreement (as subsequently amended, the "TPOV Agreement") for TPOV to provide capital and services for the design, development, construction, and operation of a restaurant inside Paris Las Vegas known as "Gordon Ramsay Steak" (hereinafter, the "Steak Restaurant").

9. Simultaneously, and as a condition of entering the TPOV Agreement, Paris entered into a Development, Operation and License Agreement with celebrity chef, Gordon Ramsay ("Ramsay"), relating to the design, development, construction, and operation of the Steak Restaurant ("Ramsay Agreement"). The TPOV Agreement and Ramsay Agreement, which both concern the Steak Restaurant, expressly reference each other and are a single integrated contract.

10. TPOV and Paris jointly conceived, and built the Steak Restaurant with great success, and the Steak Restaurant remains open to this day. Specifically, TPOV provided Paris with funding of $1,000,000.00 representing approximately 50% of the costs needed in connection with the design,

development, construction, and outfitting of the Steak Restaurant. In exchange, it was agreed that, after reserves and return to TPOV and Paris of their initial capital, net profits from the Steak Restaurant over a baseline amount were to be split 50/50 between TPOV and Paris.

11. Pursuant to the Ramsay Agreement, Gordon Ramsay is required to be paid a fee equal to a percentage of gross restaurant sales from the Steak Restaurant.

12. As a result of the success of the Steak Restaurant, TPOV and Paris have each received millions of dollars annually in the form of capital contribution return payments and profits.

13. As will be thoroughly detailed below, Paris now desires to wrongfully terminate the TPOV Agreement and the vested rights that TPOV 16 has in the Steak Restaurant and to unjustly retain for itself all of the profits and return of capital that are due to TPOV 16. Paris has not terminated, nor sought to terminate, the Ramsay Agreement. Because the TPOV Agreement and Ramsay Agreement are a single, integrated contract, Paris may not terminate the TPOV Agreement without simultaneously terminating the Ramsay Agreement. Nevertheless, Paris did not terminate the Ramsay Agreement and continues to operate the Steak Restaurant with Ramsay.

14. The pretext for Paris to wrongfully retain the profits and return of capital that is owed to TPOV 16 is their baseless assertion that Rowen Seibel is an unsuitable person who is associated with TPOV 16.

15. It is true that Mr. Seibel was a member of the original contracting party and assignor, TPOV. It is also true that Mr. Seibel plead guilty to one count of obstructing or impeding the due administration of the internal revenue laws under 26 U.S.C. § 7212(a). ***However, it is equally true that without any demand from Paris or action from the Nevada Gaming Control Board, TPOV, in an abundance of caution, preemptively did everything possible to protect the business relationship with Paris, including seeing to it that Mr. Seibel divested his interests in the TPOV Agreement by (a) assigning his entire membership interest in TPOV to The Seibel Family 2016 Trust in which he is neither a beneficiary or trustee and (b) causing TPOV to assign its interest in the TPOV Agreement to a newly formed entity TPOV 16 in which Mr. Seibel never had an equity interest or management rights or responsibility further isolating the interests in the TPOV Agreement from***

Mr. Seibel.

16. Critically, at the time of the purported termination of the TPOV Agreement, Mr. Seibel's interest in the assignor, TPOV, as well as the assignee, TPOV 16, was non-existent.

17. At the time of the purported termination, Mr. Seibel had no association whatsoever with either TPOV or TPOV 16.

18. Further, when the TPOV Agreement was purportedly terminated, Paris claimed to reject the transfer between TPOV and TPOV 16. However, Paris had previously expressly recognized the validity of the assignment in its course of performance because Paris followed the directive of the assignment and made all post-assignment payments (until Paris's purported termination) to the assignee, TPOV 16.

19. Paris' basis for terminating the TPOV Agreement, that Mr. Seibel is an Unsuitable Person, is improper and in bad faith. Paris' bad faith termination was part of a broader scheme by Paris, its affiliate Caesars Entertainment Corporation ("Caesars"), their affiliates, and Ramsay to force Mr. Seibel out of a number of restaurants for no compensation and to misappropriate the revenues and profits from these restaurants for themselves so that they did not have to share such revenues and profits from these very successful restaurants with Mr. Seibel.

20. Although it claims Mr. Seibel is "unsuitable," Paris has never been sanctioned, fined, or reprimanded by the Nevada Gaming Control Board, or any other Nevada Gaming Authority, as a result of Mr. Seibel's guilty plea.

21. Neither Mr. Seibel nor TPOV have ever been deemed "unsuitable" by the Nevada Gaming Control Board.

22. Subsequent to the assignment to TPOV 16, the Steak Restaurant has continued to operate and generate significant profits and revenue, which have not been impacted in any way by the assignment.

23. In fact, Paris has not sustained any monetary damages whatsoever as a result of the assignment to TPOV 16 or Mr. Seibel's guilty plea. Rather, through its patent breach, Paris has enriched itself by retaining the monies due and owed to TPOV 16 as a result of the continued

operation of the Steak Restaurant. As detailed below, the continued operation of the Steak Restaurant is, in and of itself, another breach of the Steak Restaurant Agreement by Paris.

24. Additionally, Paris' purported termination of the TPOV Agreement is exposed as nothing more than self-serving hypocrisy because Paris, Caesars, and their affiliates selectively choose to do business, directly or indirectly, with convicted felons and known criminals, including but not limited to, the rapper Clifford Joseph Harris Jr., better known as "T.I.", Chris Brown, 50 Cent, professional boxers, and boxing promoters who have extensive arrest and criminal conviction records, and operators of restaurants or clubs, in spite of indictments and/or serious felony convictions (in some cases on multiple occasions) of such parties without any disciplinary action to Caesars or Paris.

25. The reason for Paris' double standard is rather apparent: by claiming Mr. Seibel is unsuitable and associated with TPOV 16 (which is demonstrably false), Paris thinks that it can enrich itself by keeping the millions of dollars that are owed to TPOV 16; whereas, if Paris or its affiliates terminated its agreements with known criminals, they would lose money through the absence of those entertainment acts and other services.

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

26. The TPOV Agreement required TPOV to make an initial capital contribution of $1,000,000.00 towards the development of the Steak Restaurant (hereinafter, the "Capital Contribution").

27. TPOV made the following Capital Contribution payments to Paris:

Approximate Date of Payment	Amount of Payment
02/15/12	$195,426.00
08/14/12	$589,772.40
09/19/12	$30,920.00
02/04/13	$128,064.40
10/16/13	$55,817.20
TOTAL SUM:	$1,000,000.00

B. The Waterfall Payment Provision in the TPOV Agreement.

28. Article 7 of the TPOV Agreement sets forth the terms for compensating TPOV and

Paris. It contains a waterfall provision specifying the following payments in the following order:

a) Section 7.1.1 permits Paris to retain from the Steak Restaurant's net profits an amount not exceeding $50,000.00 per year as a capital reserve.

b) Of the Steak Restaurant's remaining net profits, and as repayment of the capital contribution of Paris and the Capital Contribution of TPOV, Section 7.1.2 requires that TPOV be paid a monthly sum of 1/60th of their initial capital account, which in the case of TPOV is $16,666.67 (*i.e.*, one-sixtieth of the Capital Contribution).

c) Of the remaining net profits, Section 7.1.3 permits Paris to retain a sum equal to one-half the operating income for the twelve months ended September 30, 2011, of the restaurant that preceded the Steak Restaurant in the space at Paris Las Vegas.

d) Of the remaining net profits, Section 7.1.4 permits Paris to retain and requires that TPOV be paid an "amount not to exceed $1,000,000 in the aggregate, which amount shall be split equally by Paris, on the one hand, and TPOV, on the other hand."

e) Of the remaining net profits, Section 7.1.5 permits Paris to retain a sum equal to one-half the operating income for the twelve months ended September 30, 2011, of the restaurant that preceded the Steak Restaurant in the space at Paris Las Vegas.

f) Section 7.1.6 provides that the net profits remaining after each of the above-referenced payments "shall be split equally by Paris, on the one hand, and TPOV, on the other hand."

g) Under Section 7.2, all payments owed under Article 7 are to be made quarterly.

29. Under Section 7.1.2, the Capital Contribution is to be repaid over five years (*i.e.*, through sixty monthly installments). The TPOV Agreement does not provide for Paris to "prepay" the Capital Contribution. For that reason, the payment provisions in Article 7 were intended to be performed for at least five years.

30. The first payment by Paris to TPOV was on or around October 22, 2012 and the last was on or around April 15, 2016. Because the Capital Contribution is being repaid over a period of five years, it is irrefutable Paris has not repaid the Capital Contribution.

31. In addition to the repayment to TPOV of its Capital Contributions, for all periods that the Steak Restaurant is operating, TPOV is entitled to receive payment of its share of the profits from

the Steak Restaurant due under Article 7 of the TPOV Agreement as referred to above.

C. TPOV Assigned the TPOV Agreement to TPOV 16.

32. The TPOV Agreement, inclusive of its related amendment, permitted interests in TPOV to be assigned and permitted TPOV to assign its interest in the TPOV Agreement. In fact, even the individual obligations of Mr. Seibel were allowed to be assigned to another person.

33. Subsequently and in accordance with the contractually agreed upon rights of assignment, TPOV notified Paris in writing that effective April 13, 2016, (**a**) TPOV's interests in the TPOV Agreement would be assigned to TPOV 16, and (**b**) the direct or indirect membership interests in TPOV held by Mr. Seibel would be assigned to The Seibel Family 2016 Trust, an irrevocable trust.

34. Specifically, the membership interests in TPOV were assigned as follows: "(1) [a]ll of the membership interests in TPOV previously owned, directly or indirectly, by Rowen Seibel shall be transferred to Brian K. Ziegler and Craig Green, as Trustees of The Seibel Family 2016 Trust. Additionally, the new manager of TPOV shall be Craig Green; (2) [t]he Agreement will be assigned to [TPOV 16] of which the sole manager is Craig Green and all of the membership interests are owned, directly or indirectly, by Brian K. Ziegler and Craig Green, as Trustees of The Seibel Family 2016 Trust, Craig Green, Brian Ziegler, Carly Ziegler and Ali Ziegler (the latter two being children of Brian Ziegler and owning in the aggregate less than 1 %); and (3) [a]ll obligations and duties of TPOV and/or Rowen Seibel that are specifically designated to be performed by Rowen Seibel shall be assigned and delegated by TPOV, [TPOV 16] 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). . . . [T]here are no other parties that have any management rights, powers or responsibilities regarding, or equity or financial interests in, [TPOV 16]."

35. Mr. Frederick is a former vice president of food and beverage for Caesars, has approximately twenty years of experience in the culinary industry in Las Vegas, Nevada, and his qualifications to perform Mr. Seibel's prior duties and obligations are beyond reproach. Paris has never objected to the fitness of Mr. Frederick. On the contrary, at or around the time of the

referenced assignments, including the assignment or delegation of duties from Rowen Seibel to J. Jeffrey Fredrick, Paris or its affiliates had engaged Mr. Frederick to perform various restaurant related services for them.

36. Additionally, pursuant to the terms of The Seibel Family Trust 2016 Trust, each beneficiary of The Seibel Family 2016 Trust is precluded from receiving any benefit from the Trust that comes from a business holding a gaming license in the event such beneficiary was found to be an "Unsuitable Person."

37. As a result, under the TPOV Agreement, Paris was not entitled to object to any direct or indirect transfer of an interest in TPOV from Mr. Seibel to The Seibel Family 2016 Trust, nor was it entitled to object to the assignment of the TPOV Agreement from TPOV to TPOV 16.

38. Upon receiving notice of the transfers, Paris did not claim a right to object to the transfers and did not state any objection to the transfers or claim that they were invalid for any reason.

39. Importantly, Paris acknowledged and ratified the assignment by following the directive of the assignment and thereafter making payments under the TPOV Agreement to the assignee, TPOV 16.

40. Then, months after acknowledging and ratifying the assignment to TPOV 16, Paris (which defined itself as "Caesars") sent a letter to TPOV purportedly terminating the TPOV Agreement based on its purported rejection of the transfer to TPOV 16 and to the alleged unsuitability of Mr. Seibel.

41. Critically, at the time of the purported termination of the TPOV Agreement, Mr. Seibel was not associated or affiliated with either the assignor TPOV or the assignee TPOV 16. As detailed above, Mr. Seibel had previously, and properly, assigned his duties under the TPOV Agreement to Mr. Frederick whose qualifications are beyond reproach.

42. Because Paris purportedly terminated the TPOV Agreement pursuant to Section 10.2, the arbitration provisions of the TPOV Agreement are inapplicable.

43. Nothing in the TPOV Agreement provided Paris with the right to object to the assignment of the TPOV Agreement from TPOV to TPOV 16 under the present circumstances.

44. In addition to the fact that Paris had no basis to object to the assignment and the fact

that Paris waived any right to contest the assignment of the TPOV Agreement to TPOV 16 (because it made payments to TPOV 16 without objection and otherwise performed the TPOV Agreement with TPOV 16), Paris' purported termination of the TPOV Agreement was also invalid because under Section 10.2, because TPOV and TPOV 16 have a contractual right to attempt to cure their association with an Unsuitable Person.

45. What is patently clear is that Paris does not have any right to (a) summarily terminate TPOV 16's interest in the Steak Restaurant, (b) steal TPOV's capital contribution and/or (c) deny TPOV 16 (while Paris keeps for itself) TPOV 16's share of the earned profits that are being accrued as a result of the operation of the Steak Restaurant that was jointly conceived and paid for by TPOV 16. The attempt to terminate TPOV's interests in this manner is nothing more than a blatant attempt by Paris to enrich itself at the expense of its business partner.

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

46. The TPOV Agreement and Ramsay Agreement were entered into simultaneously for the purpose of developing, designing, constructing, and operating the Steak Restaurant. Paris would not have entered one such agreement without simultaneously entering the other. The two agreements expressly refer to the other and together form a single, integrated transaction and agreement.

47. The TPOV Agreement does not have a termination date but, with limited exception, contemplates that it would be terminated only if the Ramsay Agreement is simultaneously terminated and the Steak Restaurant closed.

48. Upon expiration or termination of the TPOV Agreement, Paris is permitted to operate another type of restaurant in the premises where the Steak Restaurant is operated, but is not permitted to operate the Steak Restaurant on such premises.

49. Paris has not terminated the Ramsay Agreement. Because the TPOV Agreement and Ramsay Agreement are a single, integrated contract, Paris may not terminate the TPOV Agreement without terminating the Ramsay Agreement. Nevertheless, Paris did not terminate the Ramsay Agreement and continues to operate the Steak Restaurant with Ramsay in violation of the TPOV Agreement.

50. Mr. Seibel, TPOV's former member, introduced Paris to Gordon Ramsay and the parties and/or their affiliates agreed to jointly fund, develop, operate, and share the revenues and profits from the Steak Restaurant and other similar steak restaurants and in connection therewith Paris and its affiliate requested, and TPOV and its affiliates agreed, that with respect to all such steak restaurants involving Ramsay, the terms and conditions of the TPOV Agreement would govern TPOV and Paris (subject to certain adjustments inapplicable to the instant situation). As such, the Steak Restaurant cannot continue to operate without the TPOV Agreement.

E. Paris' Decision to Purport to Terminate the TPOV Agreement Was In Bad Faith

51. Paris' wrongful purported termination of the TPOV Agreement was part of a broader scheme by Paris, Caesars, its affiliates, and Ramsay to force Mr. Seibel out of a number of restaurants and misappropriate the revenues and profits from these restaurants for themselves so that they did not have to share such revenues and profits from of these very successful restaurants with Seibel.

52. In January 2015, Caesars Entertainment Operating Company, Inc. ("CEOC") filed for bankruptcy protection under Chapter 11 in United States Bankruptcy Court, Northern District of Illinois, Eastern Division, together with a number of its subsidiaries and affiliates. Paris was not part of the bankruptcy proceeding. Thereafter, in or around June 2015, Caesars, CEOC, and their affiliated companies, together with Ramsay, began to make concerted efforts to force Mr. Seibel and his affiliates out of restaurant ventures they had together, notwithstanding the fact that in some cases, such as the instant case, Mr. Seibel and/or his affiliated entities had invested 50% of the capital required to develop and open the restaurant and the parties had contractually agreed that restaurants of such type could not be operated without Mr. Seibel's affiliated entity that was the contracting party.

53. For example, in June 2015, CEOC and/or its affiliate Desert Palace, Inc. ("DPI") moved to reject, in the Chapter 11 proceedings, the Development and Operation Agreement between LLTQ Enterprises, LLC ("LLTQ") a former affiliate of Mr. Seibel, and DPI relating to the development and operation of the Gordon Ramsay Pub and Grill at Caesars Palace in Las Vegas for

which LLTQ had invested 50% of the capital required to open the restaurant. When LLTQ challenged the rejection on the basis, among many other reasons, that the agreement between DPI and LLTQ was integrated with the agreement between DPI and Ramsay (and its affiliate) and that DPI could not reject one without the other or keep the restaurant open without LLTQ, DPI sought to reject the corresponding Ramsay agreement and simultaneously obtain court approval for a brand new Ramsay agreement, to the exclusion of LLTQ, that was less beneficial to DPI and its bankruptcy estate than the prior Ramsay agreement. Notwithstanding LLTQ's significant investment, the foregoing acts would rob LLTQ of 50% of the profits from such restaurants to which it was contractually entitled and provide DPI and Ramsay with approximately $2 million per annum that would otherwise be due to LLTQ.

54. CEOC and its affiliate Boardwalk Regency Corporation engaged in a similar scheme to take away the revenue stream of FERG, LLC (a former affiliate of Mr. Seibel) with regard to FERG's interest in the Gordon Ramsay Pub and Grill at Caesars Atlantic City.

55. Another Caesar's affiliate PHWLV, LLC ("Planet Hollywood") engaged in a similar scheme regarding the restaurant, BURGR Gordon Ramsay, (hereinafter, the "BURGR Restaurant") located at Planet Hollywood, Las Vegas.

56. Ramsay and Mr. Seibel are 50% members of a limited liability, company, GR BURGR, LLC ("GRB"), which entered into an agreement with Planet Hollywood regarding the very successful BURGR Restaurant ("GRB Agreement"). As part of their scheme to force Mr. Seibel out and misappropriate the revenues and profits for themselves, among other things, Planet Hollywood and Ramsay agreed, in violation of the GRB Agreement, that Planet Hollywood would pay Ramsay 50% of monies due GRB under the GRB Agreement. Planet Hollywood and Ramsay also conspired and agreed that they would both reject Mr. Seibel's attempt to transfer his interest in GRB to an unrelated entity. Then, after Seibel's conviction became public, Planet Hollywood wrongfully terminated the GRB Agreement on the basis that Mr. Seibel had not transferred his GRB interest and that Mr. Seibel was an "Unsuitable Person." This termination was illusory and in bad faith, and was the sole result of the conspiracy and agreement with Ramsay to force Mr. Seibel out

of the BURGR Restaurant. Based on Planet Hollywood's termination, Ramsay then wrongfully purported to terminate a license agreement with GRB and has filed a dissolution proceeding in Delaware Chancery Court to dissolve GRB based on Mr. Seibel's alleged unsuitability.

57. Planet Hollywood and Ramsay continue to operate the BURGR Restaurant and have been misappropriating the amounts that are due to GRB under the GRB Agreement (of which 50% is due to Mr. Seibel.)

58. As with these other restaurants, Paris's purported termination of the TPOV Agreement was illusory and in bad faith and was done in furtherance of the conspiracy and agreement between Caesars, and it affiliates, including Paris, and Ramsay to force Mr. Seibel out of the Steak Restaurant and misappropriate the revenues and profits for themselves.

59. Specifically, the determination that TPOV and Mr. Seibel are "unsuitable" was made in bad faith.

60. Neither Mr. Seibel nor TPOV nor GRB have been found to be an "Unsuitable Person" by the Nevada Gaming Control Board.

61. Paris has never been sanctioned, fined, reprimanded by the Nevada Gaming Control Board, or any other Nevada Gaming Authority, as a result of Mr. Seibel's prior association with TPOV.

62. Paris has not sustained any monetary damages whatsoever as a result of Seibel's prior association with TPOV.

63. Paris' purported rejection of the assignment of the interests in TPOV to The Seibel Family 2016 Trust and of the assignment of the TPOV Agreement to TPOV 16 were also in bad faith for the following reason. When Paris, after performing in accordance with the assignments for many months, advised TPOV in September 2016 that it was rejecting the assignments, TPOV 16 requested that Paris advise what issues Paris had with such assignments. TPOV 16 (and its affiliates) suggested to Paris that they would work together with Paris (and its affiliates) to make any adjustments necessary so that all parties were comfortable with the assignees. Paris (and its affiliates) ignored the request and suggestion of TPOV 16 (and its affiliates), clearly so that Paris

(and its affiliates) could just attempt to take away the substantial financial interest of TPOV 16 (and its affiliates) in the Steak Restaurant (and other restaurants) to the significant financial gain of Paris (and its affiliates). Such gain to Paris (and its affiliates) would be in excess of $5 million per year, or greater if additional restaurants were opened.

64. The purported basis for this termination was illusory and in bad faith, since while Paris was providing notice of termination allegedly because Mr. Seibel allegedly became an "Unsuitable Person," Caesars and other affiliates of Paris were engaged in relationships and were parties to contracts with notorious criminals with long histories of arrests and convictions, including some for violent crimes, the most recent of which appears to be the rapper T.I. whose name is promoted all over Las Vegas as a method to attract people to the club within a Caesars property where he is performing with the obvious hope of the same also resulting in additional casino activity. Caesars has similarly promoted Chris Brown and 50 Cent, each of whom also has a criminal record. Even more recently, Caesars has openly promoted the former football player Lawrence Taylor on its official social media as part of a meet and greet at the Alto Bar on February 3, 2017. Mr. Taylor pled guilty to tax evasion in 1997 and sexual misconduct in 2011.

65. The purported basis for this termination was illusory and in bad faith, since while Paris was providing notice of termination because Mr. Seibel allegedly became an Unsuitable Person, Caesars and other affiliates of Paris have a long history of contracting with and promoting professional boxers and boxing promoters who had extensive arrest and criminal conviction records to financially gain not just from the boxing matches but also from the additional activity such matches would attract to their casinos.

66. The purported termination was in bad faith because while Paris improperly claims that an association with TPOV 16 could jeopardize its gaming license, Paris and its affiliates, including CEOC and its Global President Tom Jenkin, proudly boast to the world on social media their association with Chris Brown, a known felon with a long criminal record and a history of probation violation. The obvious difference is that association of Paris and/or CEOC with Chris Brown potentially brings substantial revenue to Paris and/or CEOC while by claiming they cannot associate

with TPOV 16, Paris can unjustly try to take TPOV 16's share of the profits of the Steak Restaurant of approximately $2.3 million per year.

67. The purported termination was in bad faith because while Paris improperly claims that an association with TPOV 16 could jeopardize its gaming license, Paris and its affiliates, including CEOC and its Global President Tom Jenkin, proudly boast to the world on social media their association with Gilbert Chagoury who, according to published reports, (a) is not allowed in the United States, having had his visitor's visa denied under terrorism grounds, and (b) has been on a federal terrorist no-fly list.

68. The purported basis for this termination was illusory and in bad faith, since while Paris was providing notice of termination because Mr. Seibel allegedly became an Unsuitable Person, Caesars and other affiliates of Paris have a long history of continuing to do business with persons under similar circumstances. Caesars and Paris have in the past contracted with, or remained in contract with parties to operate restaurants or clubs in spite of indictments and/or felony convictions of such parties without any disciplinary action to Caesars or Paris.

F. Paris May Not Continue to Operate the Steak Restaurant After Its Purported Termination of the TPOV Agreement

69. Of course, while stealing money from TPOV 16, Paris does not deign to attempt to comply with its obligations under the TPOV Agreement. Specifically, that agreement states that in the event that the agreement was validly terminated (which here, it was not), then the Steak Restaurant must cease operations.

70. The TPOV Agreement explicitly defines the Steak Restaurant as "the Restaurant."

71. Upon termination of the TPOV Agreement, Section 4.3.2(a) states Paris is entitled to retain its rights and title to the premises of the Restaurant. However, upon termination, Paris does not keep any interest in "the Restaurant" itself, but rather, only retains rights to the general restaurant premises.

72. To avoid doubt, the TPOV Agreement makes clear that upon termination Paris can operate another type of restaurant within the premises, but not the defined Steak Restaurant.

Specifically, Section 4.3.2(d) states that upon the termination of the TPOV Agreement, "Paris 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." (emphasis added). Notably, this Section uses the general phrase "a restaurant," not the defined term "the Restaurant," to state that Paris can operate a different restaurant within the premises, but not the Steak Restaurant.

73. In order to effectuate the design, construction, and operation of the Steak Restaurant, several contracts were negotiated and executed by the principals of both Plaintiff and Defendant and their respective affiliates in order to create one contractual structure pursuant to which each restaurant would, and does, operate.

74. In addition to the plain, ordinary, and unambiguous language of the TPOV Agreement, in a separate agreement, Caesars and Paris agreed with an affiliate of TPOV that if they were to pursue any venture similar to the Steak Restaurant, i.e. any venture with Gordon Ramsay generally in the nature of a steak restaurant, fine dining steakhouse, or chophouse, then they could only do so with a TPOV affiliate and only on similar terms as the TPOV Agreement.

75. Specifically, in 2012, Caesars, through its affiliate DPI and LLTQ, TPOV's affiliate, entered an agreement (the "LLTQ Agreement") concerning the development, construction, and operation of the restaurant known as "Gordon Ramsay Pub and Grill" (hereinafter, "GR Pub").

76. Section 13.22 of the LLTQ Agreement states: "If Caesars elects under this Agreement to pursue any venture similar to (i) the Restaurant (i.e., any venture generally in the nature of a pub, bar, cafe or tavern) or (ii) ***the 'Restaurant' as defined in the development and operation agreement entered into December 5, 2011 between TPOV Enterprises, LLC*** (an affiliate of LLTQ), on the one hand, and Paris Las Vegas Operating Company, LLC, on the other hand (i.e., any venture generally in the nature of a steak restaurant, fine dining steakhouse or chop house), Caesars and LLTQ shall, or shall cause an Affiliate to, execute a development and operation agreement on the same terms and conditions as this Agreement, subject only to revisions proposed by Caesars or its Affiliate as are necessary to reflect the difference in location between the Restaurant and such other venture (including, for the avoidance of doubt, the Baseline Amount, permitted Operating Expenses and necessary Project Costs)." (emphasis added).

77. Section 13.22 specifically survives termination of the LLTQ Agreement, so even if the LLTQ Agreement was properly terminated (which it was not), Paris could not operate the Steak Restaurant without an LLTQ affiliate.

78. Furthermore, written communications exist in which a representative of Caesars admitted that Caesars and its affiliated entities cannot open and operate any restaurants similar to the Steak Restaurant, the GR Pub, the BURGR Restaurant or other restaurants with British Celebrity chef Gordon Ramsay without the participation of LLTQ or an affiliated entity.

79. Accordingly, the LLTQ Agreement and the TPOV Agreement preclude Paris from terminating the TPOV Agreement and operating the Steak Restaurant without an affiliate of LLTQ. Yet, to this day, the Steak Restaurant remains open for business and generating millions of dollars annually in profits which are contractually owed by Paris to its business partner TPOV 16.

80. As a direct and proximate result of the above-referenced events, Plaintiff has suffered millions of dollars in actual damages and such losses shall continue to accrue pending judgment of this matter. But for the above-referenced events, Plaintiff would not have suffered these injuries, losses, and damages.

81. Plaintiff also is seeking an award of its fees and costs under the fee-award provisions in the TPOV Agreement. The TPOV Agreement states "[t]he prevailing party in any dispute that arises out of or relates to the making or enforcement of the terms of [the TPOV Agreement] shall be entitled to receive an award of its expenses incurred in pursuit or defense of said claim, including attorneys' fees and costs, incurred in such action."

82. TPOV 16 also requests an accounting under Section 7.4 of the TPOV Agreement and the laws of equity. Without an accounting, TPOV 16 may not have adequate remedies at law because the exact amount of monies owed to it could be unknown. The accounts between the parties are of such a complicated nature that an accounting is necessary and warranted. Furthermore, TPOV 16 has entrusted and relied upon Paris to maintain accurate and complete records and to compute the amount of monies due under the TPOV Agreement.

FIRST CAUSE OF ACTION
Breaches of Contracts

83. All preceding paragraphs are incorporated herein.

84. The TPOV Agreement, the Assignment Amendment and related assignments constitute binding and enforceable contracts between Paris and TPOV 16.

85. Paris had no basis under the TPOV Agreement to object to the transfer of Mr. Seibel's interest in TPOV to The Seibel Family 2016 Trust, or the assignment of TPOV's interest in the TPOV Agreement from TPOV to TPOV 16.

86. Paris did not timely object to the aforementioned transfers and/or assignments.

87. By making payments to TPOV 16 and otherwise performing the TPOV Agreement and in accordance with the assignment to TPOV 16, Paris acknowledged the validity and ratified and consented to the assignment to TPOV 16.

88. Paris has waived its right, if any, to contest the assignment, and should be legally estopped from contesting the assignment.

89. Paris breached these agreements by engaging in conduct that includes, but is not limited to, the following:

a) Failing and refusing to repay the Capital Contribution due TPOV 16;

b) Failing and refusing to pay TPOV 16 the monies due and owing under Article 7 of the TPOV Agreement;

c) Purporting to terminate the TPOV Agreement on the alleged unsuitability of Mr. Seibel;

d) Continuing to operate the Steak Restaurant following the purported termination of the TPOV Agreement;

e) Continuing to operate the Steak Restaurant other than pursuant to the TPOV Agreement or another similar agreement with an affiliate of LLTQ;

f) Continuing to operate the Steak Restaurant with Mr. Ramsay;

g) Purportedly terminating the TPOV Agreement due to TPOV 16's alleged association or affiliation with an Unsuitable Person when, in fact, TPOV 16 is not associated or

affiliated with an unsuitable person; *and*

h) Failing and refusing to provide TPOV 16 with a reasonable and good faith opportunity to cure its purported association or affiliation with any unsuitable persons, as contemplated in Section 10.2 of the TPOV Agreement.

90. As a direct and proximate result of the above-referenced events, TPOV 16 has suffered injuries, losses, and damages in excess of $75,000.00. But for the above-referenced events, TPOV 16 would not have suffered these injuries, losses, and damages.

91. TPOV 16 also is seeking an award of its fees and costs under the fee-award provision in the TPOV Agreement.

SECOND CAUSE OF ACTION
Breach of the Implied Covenant of Good Faith and Fair Dealing

92. All preceding paragraphs are incorporated herein.

93. In Nevada, every contract imposes upon the parties an implied covenant of good faith and fair dealing. A party breaches the implied covenant by (**1**) performing a contract in a manner unfaithful to its purpose and that frustrates or denies the justified expectations of the other party; (**2**) interfering with or failing to cooperate with an opposing party with the performance of a contract; (**3**) acting arbitrarily, capriciously, or in bad faith; (**4**) failing to exercise and perform discretionary powers under a contract in good faith; (**5**) unduly delaying performance or payment under a contract; or (**6**) literally complying with the terms of a contract and therefore not technically breaching the contract but nevertheless violating the intent and spirit of the contract.

94. The TPOV Agreement, the Assignment Amendment and related assignments constitute binding and enforceable contracts between Paris and TPOV 16 that impose an implied covenant of good faith and fair dealing upon Paris.

95. Paris breached the implied covenant by engaging in arbitrary, capricious, and bad faith conduct that includes, but is not limited to, the following:

a) Claiming the assignment of the TPOV Agreement from TPOV to TPOV 16 was invalid and unenforceable after having made payments to TPOV 16 under the TPOV Agreement

and otherwise performed the TPOV Agreement and Assignment Amendment with TPOV 16;

b) Claiming TPOV and/or TPOV 16 was an Unsuitable Person due to Mr. Seibel's conduct;

c) Claiming TPOV 16 was directly or indirectly associated or affiliated with an Unsuitable Person without having conducted a reasonable investigation in good faith into the ownership structure of TPOV 16, the identity of TPOV 16's associates and affiliates, and TPOV 16's direct or indirect relationship, if any, with Mr. Seibel;

d) Failing to have its compliance committee research or investigate TPOV 16 and improperly alleging TPOV 16 did not meet the tests of its compliance committee;

e) Failing and refusing to repay the Capital Contribution and attempting to retain the Capital Contribution for itself;

f) Failing and refusing to pay TPOV 16 the monies due and owing under Article 7 of the TPOV Agreement and keeping said amounts for itself;

g) Continuing to operate the Steak Restaurant following the purported termination of the TPOV Agreement;

h) Continuing to operate the Steak Restaurant other than pursuant to the TPOV Agreement or another similar agreement with an affiliate of LLTQ;

i) Continuing to operate the Steak Restaurant with Mr. Ramsay;

j) Purportedly terminating the TPOV Agreement due to TPOV 16's alleged association or affiliation with an Unsuitable Person when, in fact, TPOV 16 is not associated or affiliated with an unsuitable person;

k) Failing and refusing to provide TPOV 16 with a reasonable and good faith opportunity to cure its purported association or affiliation with any Unsuitable Persons, as contemplated in Section 10.2 of the TPOV Agreement;

l) Failing to respond to, and work with, TPOV 16 to arrive at assignees that may have been acceptable to both parties and that would not have resulted in harm to the Steak Restaurant or Paris; *and*

m) Selectively, arbitrarily, and capriciously choosing to do business, directly or indirectly, with certain persons who are known criminals or convicted felons, including but not limited to, the rapper Clifford Joseph Harris Jr., better known as "T.I.", Chris Brown, 50 Cent, people in the boxing industry, and other restaurant operators, or who are dishonest, immoral, infamous, of ill-repute, or potentially or actually unsuitable.

96. As a direct and proximate result of the above-referenced events, TPOV 16 has suffered injuries, losses, and damages exceeding $75,000.00. But for the above-referenced events, TPOV 16 would not have suffered these injuries, losses, and damages.

97. TPOV 16 also is seeking an award of its fees and costs under the fee-award provision in the TPOV Agreement.

THIRD CAUSE OF ACTION
Unjust Enrichment

98. All preceding paragraphs are incorporated herein.

99. By paying the Capital Contribution to Paris and by jointly conceiving, building and operating the Steak Restaurant with Paris and by introducing Paris to Mr. Ramsay, TPOV conferred a benefit upon Paris, and Paris accepted, appreciated, and retained the benefit.

100. Paris has failed and refused to repay the Capital Contribution, as well as, the quarterly profits that have been earned and are due to TPOV 16.

101. It would be unjust, unfair, and inequitable for Paris to be permitted to retain the Capital Contribution and said quarterly and annual profits.

102. It also would be unjust, unfair, and inequitable for Paris not to have to pay reasonable interest on the Capital Contribution and said quarterly and annual profits.

103. Because of the assignment of TPOV's interest in the TPOV Agreement to TPOV 16, TPOV 16 is entitled to be repaid the Capital Contribution and the quarterly and annual profits.

104. As a direct and proximate result of the above-referenced events, TPOV 16 has suffered injuries, losses, and damages exceeding $75,000.00. But for the above-referenced events, TPOV 16 would not have suffered these injuries, losses, and damages.

105. TPOV 16 also is seeking an award of its fees and costs under the fee-award provision in the TPOV Agreement.

FOURTH CAUSE OF ACTION
Declaratory Relief Under NEV. REV. STAT. § 30 and 28 U.S.C. § 2201-2202

106. All preceding paragraphs are incorporated herein.

107. NEV. REV. STAT. § 30.040(1) states, "Any person interested under [a written contract] or whose rights, status or other legal relations are affected by a [contract] may have determined any question of construction or validity arising under the [contract] and obtain a declaration of rights, status or other legal relations thereunder."

108. 28 U.S.C. § 2201(a) states, "In a case of actual controversy within its jurisdiction, . . . any court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought. Any such declaration shall have the force and effect of a final judgment or decree and shall be reviewable as such."

109. 28 U.S.C. § 2202 states, "Further necessary or proper relief based on a declaratory judgment or decree may be granted, after reasonable notice and hearing, against any adverse party whose rights have been determined by such judgment."

110. Paris's actions have created a justiciable controversy, and this controversy is ripe for adjudication as a declaration by this Court.

111. TPOV 16 seeks a declaration concerning the following rights, remedies, duties, and obligations:

a) That (**i**) the assignment of TPOV's interest in the TPOV Agreement to TPOV 16 is valid and enforceable and cannot be challenged, contested, or disputed by Paris; or alternatively, that (**ii**) TPOV 16 is not associated or affiliated with an Unsuitable Person; or alternatively, that (**iii**) TPOV 16's association or affiliation with an Unsuitable Person is subject to being cured and is curable;

b) That TPOV 16 is entitled to full repayment of its Capital Contribution and all

contractually owed profits from the operation of the Steak Restaurant; *and*

c) That Paris is prohibited from operating the Steak Restaurant following the termination of the TPOV Agreement.

112. Plaintiff further requests any additional relief authorized by the law or found fair, equitable, just, or proper by the Court, including but not limited to attorney's fees, costs, and interest under NEV. REV. STAT. § 30.120 or any other law or agreement allowing the same.

FIFTH CAUSE OF ACTION
Accounting

113. All preceding paragraphs are incorporated herein.

114. The TPOV Agreement permits TPOV 16 to request and conduct an audit concerning the monies owed under the agreement.

115. The laws of equity also allow for TPOV 16 to request an accounting of Paris. Without an accounting, TPOV 16 may not have adequate remedies at law because the exact amount of monies owed to it could be unknown.

116. The accounts between the parties are of such a complicated nature that an accounting is necessary and warranted.

117. TPOV 16 has entrusted and relied upon Paris to maintain accurate and complete records and to compute the amount of monies due under the TPOV Agreement.

118. TPOV 16 requests an accounting of the monies owed to it under the TPOV agreement, as well as all further relief found just, fair, and equitable.

III. PRAYER FOR RELIEF.

WHEREFORE, Plaintiff prays for judgment as follows:

A. Monetary damages in excess of $75,000.00;

B. Equitable relief;

C. Declaratory relief;

D. Reasonable attorney's fees, costs, and interest associated with the prosecution of this lawsuit; *and*

E. Any additional relief this Court may deem just and proper.

IV. DEMAND FOR JURY TRIAL.

Pursuant to FED. R. CIV. P. 38, Plaintiff demands a trial by jury on all issues so triable.

DATED February 3, 2017.

CARBAJAL & MCNUTT, LLP

/s/ Dan McNutt
DANIEL R. MCNUTT (SBN 7815)
MATTHEW C. WOLF (SBN 10801)
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Las Vegas, Nevada 89101
Attorneys for Plaintiff

EXHIBIT T

CONSULTING AGREEMENT

BETWEEN

FERG, LLC

AND

BOARDWALK REGENCY CORPORATION

DBA CAESARS ATLANTIC CITY

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CONSULTING AGREEMENT

THIS CONSULTING AGREEMENT (the "Agreement") shall be deemed made, entered into and effective as of this 16th day of May, 2014 by and between Boardwalk Regency Corporation d/b/a Caesars Atlantic City having its principal place of business at 2100 Pacific Avenue, Atlantic City, New Jersey 08401 ("CAC") and FERG, LLC, a Delaware limited liability company having a place of business located at 200 Central Park South, 19th Floor, New York, NY 10019 ("FERG").

RECITALS

A. CAC owns or operates a hotel/casino resort complex located at 2100 Pacific Avenue, Atlantic City, New Jersey 08401, currently known as Caesars Atlantic City ("Hotel"), which is depicted on Exhibit A attached to this Agreement;

B. CAC desires to design, develop, construct and operate a restaurant featuring primarily pub-style food and beverages known as "Gordon Ramsay Pub and Grill" (collectively, the "Restaurant") in those certain premises within the Hotel more particularly shown on Exhibit A attached hereto (the "Restaurant Premises"); and

C. CAC desires to retain FERG to provide consulting services and fulfill those obligations with respect to consultation concerning the design, development, construction and operation of the Restaurant, and FERG desires to be retained by CAC 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 promises 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. DEFINITIONS

As used herein, the following terms have the meanings set forth or referenced below. Other terms may be defined in other Articles and Sections of this Agreement.

"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 or comparable principal of, the specified Person or such other Person. For purposes of this definition, "control", "controlling", "controlled" mean the right to exercise, directly or indirectly, at least five percent (5%) 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 Person. Notwithstanding the foregoing, with respect to CAC, the term "Affiliate" shall only include CAC's Parent and its direct and indirect controlled subsidiaries and shall not include any shareholder or director of CAC's Parent or any Affiliate of any such shareholder or director of CAC's Parent other than an Affiliate that is CAC's Parent or its direct or indirect controlled subsidiaries. Additionally, with respect to FERG, the term "Affiliate" shall include Rowen Seibel and each Affiliate of Rowen Seibel but shall not include (i) any other member of FERG that (a) owns less than 40% of the membership interests of FERG and is not an Affiliate of Rowen Seibel and (b) is not a Competitor; or (ii) any Affiliate of such member of FERG that is described in the preceding clause (i).

"Arbitration Support Action" has the meaning set forth in Section 14.10(c).

"Available Restaurant Proceeds" means, for any period, the amount, if any, by which Total Restaurant Sales for such period exceeds the Operating Expenses for such period.

"Base Fee" has the meaning set forth in Section 8.1(a).

"Baseline Amount" means, the Restaurant Sales for Mia, the restaurant that occupied the Premises prior to the Restaurant, during the trailing twelve (12) month period beginning March 1, 2013 and ending February 28, 2014. A copy of the profit and loss statement for Mia for such twelve (12) month period is attached as Exhibit B hereto. For the avoidance of doubt, the Baseline Amount shall exclude the Comp Sales of Mia.

"CAC's Parent" means Caesars Entertainment Corporation, a corporation organized under the laws of the State of Delaware, and its successors and assigns.

"Capital Expenditures" has the meaning set forth in Section 8.1(b).

"Capital Reserve" has the meaning set forth in Section 8.1(b).

"Capital Reserve Account" has the meaning set forth in Section 8.1(b).

"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: (i) derives twenty percent (20%) or more of its revenues, operating income or net profits from one or more Gaming Businesses; or (ii) has as its primary purpose the conduct of one or more Gaming Businesses.

"Comp Sales" means the menu price of all food, beverages and merchandise offered at or from the Restaurant on a complimentary basis by CAC to its customers. For the avoidance of doubt, the term customer does not include employees of CAC or its Affiliates.

"Confidential Information" means, as to a party, information about that party and its Affiliates, including information such as business plans, strategies, costing information, prospects and locations, that (i) is furnished by or on behalf of the party to a Recipient or its Representatives, or (ii) otherwise becomes known to a Recipient or it Representatives as a result of the transactions contemplated hereby; provided, that, "Confidential Information" shall not include any information which the Recipient can clearly show (a) is or has become openly known to the public through no fault of the Recipient or its Representatives, (b) was lawfully obtained by the Recipient from a source other than the disclosing party or its Representatives, who the Recipient reasonably believes (after due inquiry) is not subject to any obligation of confidentiality or restriction on use or disclosure to the disclosing party or its Affiliates or any other Person or (c) was developed independently by the Recipient or its Affiliates.

"Dispute" has the meaning set forth in Section 13.1.

"Dispute Notice" has the meaning set forth in Section 13.1.

"Early Termination Payment" means an amount equal to one hundred percent (100%) of the amount paid or payable to FERG pursuant to Article 8 for the twelve (12) complete months ended at the end of the calendar month immediately prior to the effective date of termination of this Agreement.

"Effective Date" means the later of the date of this Agreement and the date on which CAC determines, in its sole discretion, that none of the FERG Associates is an Unsuitable Person.

"Exchange Act" has the meaning set forth the definition of FERG Change of Control.

"Exclusivity Provisions" has the meaning set forth in Section 2.3(a).

"Excusable Delay" has the meaning set forth in Section 12.3.

"FERG Associates" has the meaning set forth in Section 2.2.

"FERG Change of Control" means (a) any sale, lease, exchange or other transfer (in one transaction or a series of related transactions) to any Person or group of related Persons (a "Group") as determined under Section l3(d) of the U.S. Securities Exchange Act of 1934, as amended (the "Exchange Act"), of all or substantially all of the direct and indirect assets of FERG, (b) the approval by the holders of the equity interests of FERG of any plan or proposal for the liquidation or dissolution of such Person, or (c) any Person or Group becoming the beneficial owner (as determined under Section 13(d) under the Exchange Act), directly or indirectly, of thirty-five percent (35%) or more of the aggregate voting power represented by the issued and outstanding equity interests of FERG entitled to vote generally or in the election of directors (or Persons performing similar functions), except for any Person or Group who is such a beneficial owner as of the date hereof.

"Fiscal Year" means (a) for the first Fiscal Year the period commencing on the Opening Date and ending on December 31 of the calendar year in which the Opening Date occurs and (b) each subsequent period of twelve months commencing on January 1 and ending on December 31 of any calendar year (or, if earlier, ending on the date of termination of this Agreement).

"Gaming Authority" or "Gaming Authorities" has the meaning set forth in Section 11.2.

"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.

"General GR Materials" means the concept, system, menus and recipes designed for use in connection with the Restaurant that are (a) created by or for Gordon Ramsay or containing trade secrets of Gordon Ramsay as of the Effective Date and (b) as are provided from time to time by Gordon Ramsay to CAC for the purposes of this Agreement.

"Gordon Ramsay Pub and Grill" has the meaning set forth in Recital B.

"GR Agreement" means that certain Development, Operation and License Agreement among Gordon Ramsay, Gordon Ramsay Holdings Limited and Boardwalk Regency Corporation dba Caesars Atlantic City dated concurrently herewith

"GR Marks" means any trademark owned by Gordon Ramsay or Gordon Ramsay Holdings Limited utilizing the "Gordon Ramsay Pub and Grill" name or otherwise used to identify the Restaurant as set forth in the GR Agreement, and ancillary design, menu, uniforms and overall Gordon Ramsay Pub and Grill concept.

"Ground Lease" has the meaning set forth in Section 14.19.

"Initial Capital Investment" has the meaning set forth in Section 3.2(d).

"Incentive Fee" has the meaning set forth in Section 8.1(d).

"Initial Term" has the meaning set forth in Section 4.1.

"Mortgages" has the meaning set forth in Section 14.19.

"New Jersey Courts" has the meaning set forth in Section 14.10(c).

"Opening Date" has the meaning set forth in Section 4.1.

"Operating Expenses" means, for any period, (a) the actual expenses incurred during such period in operating the Restaurant in those categories listed on the Profit and Loss Statement for the Restaurant (utilizing the same categories utilized on the profit and loss statement for Mia), in each case computed on an accrual basis in accordance with generally accepted accounting principles consistently applied by CAC, plus (b) the actual expenses incurred by CAC during such period for operation of the Restaurant for variable expenses not reflected on such Profit and Loss Statement (including outside hood cleaning, EVS, utilities, accounting, warehouse, receiving and maintenance services) up to $9,200 per annum, which such limit shall increase by two percent (2%) per annum. All credits and rebates received by CAC or its Affiliates from sponsors and/or vendors in connection with product or services used at the venue (collectively, "Credits") shall be a credit against (i.e. reduce) Operating Expenses.

"Permanent Damage" means any damage by fire or other casualty to the Hotel or the Restaurant (a) where the net insurance proceeds are not sufficient to restore and repair the damaged portion of the Hotel or the Restaurant substantially to its condition and character just prior to the occurrence of such casualty or (b) where it is not reasonably practicable to restore and repair the Hotel or the Restaurant due to restrictions under applicable Law or for other reasons beyond CAC's reasonable control within three hundred sixty five (365) days from the damage, in each case as reasonably determined by CAC.

"Person" means any individual, corporation, proprietorship, firm, partnership, limited partnership, limited liability company, trust, association or other entity, including any governmental authority.

"Project Budget" has the meaning set forth in Section 3.2(b).

"Project Costs" means all reasonable costs and expenses incurred by CAC or its Affiliates prior to the Opening Date to accomplish the effective and efficient commencement of operations at the Restaurant on the Opening Date in accordance with the Project Budget and as set forth in this Agreement, including all hard and soft construction costs, the cost of all furniture, equipment and furnishings, inventories of food and beverages and other operating supplies acquired in preparation for the opening of the Restaurant, all expenses incurred by CAC or any of its Affiliates in performing pre-opening services and other pre-opening functions, including expenses of business entertainment and reimbursable expenses (but excluding salary, compensation and benefits of the employees of CAC or its Affiliates) and any related taxes, the cost of recruitment and related expenses for all employees of the Restaurant and the cost of pre-opening sales, marketing, advertising, promotion and publicity for the Restaurant, including all losses, expenses and reasonable attorneys' fees arising directly or indirectly from any dispute with any third party engaged to design, develop, construct or outfit the Restaurant solely.

"Recipient" has the meaning set forth in Section 14.18(a).

"Relative" means, with respect to any Person, such Person's mother, father, spouse, brother, sister and children.

"Representatives" means, with respect to any Person, such Person's employees, agents, independent contractors, representatives and Affiliates.

"Restaurant" has the meaning set forth in the Recitals of this Agreement.

"Restaurant Development Services" has the meaning set forth in Section 3.2(a).

"Restaurant Sales" means all receipts or revenues of the Restaurant from all sources of any kind (subject to the limitations set forth in this Agreement), including the sale of food and beverage, door charges, room rental fees and sale of merchandise computed on an accrual basis in accordance with generally accepted accounting principles consistently applied by CAC, excluding only (i) federal, state and local excise, sales, use or rent taxes collected from customers from receipts which are included in Restaurant Sales, (ii) gratuities paid to the employees of the Restaurant (or paid to CAC and paid by CAC to such employees) by patrons with respect to functions which generate Restaurant Sales, (iii) Comp Sales, (iv) amounts collected by CAC from patrons for the account of, and for direct payment to, unrelated third parties providing services specifically for a patron's function which generate Restaurant Sales, such as flowers, music and entertainment, (v) proceeds paid as a result of an insurable loss (unless paid for the loss or interruption of business and representing payment for damage for loss of income and profits of those Restaurant operations which are intended to generate Restaurant Sales), (vi) proceeds of condemnation and eminent domain awards, litigation awards and settlement payments, (vii) any proceeds or other economic benefits of any borrowings or financings of CAC, (viii) any proceeds or other economic benefit from any sale, exchange or other disposition of all or any part of the CAC or Restaurant, including any furniture, furnishings, decorations, and equipment, or any other similar items, (ix) funds provided by CAC, (x) payments made under any warranty or guaranty and (xi) any other receipts or payments that are not standard or typical in the ordinary course of operating a restaurant or that are excluded by CAC in a manner consistent with the determination of gross revenues of operations of CAC and its Affiliates similar to the Restaurant. Restaurant Sales shall be reduced by the amount of credit card fees and over-rings, refunds and credits given, paid or returned by CAC in the course of obtaining Restaurant Sales. In addition to receipts from transactions occurring at the Restaurant, Restaurant Sales shall include, without limitation, all receipts for food, beverages or merchandise delivered from the Restaurant in satisfaction of orders therefor received away from the Restaurant and receipts for food, beverages or merchandise delivered away from the Restaurant in satisfaction of orders received at the Restaurant and receipts for food, beverages or merchandise delivered away from the Restaurant in satisfaction of orders received away from the Restaurant but sold, transferred or solicited with reference to the Restaurant. Notwithstanding the foregoing, Restaurant Sales shall include the full menu price of all food, beverages and merchandise offered on a discounted basis by CAC to its customers and, unless the promotion and alternative pricing was made with the prior written consent of FERG, Restaurant Sales shall include the full menu price of all food, beverages and merchandise provided on a promotional or alternative pricing basis to its customers (except that employees of CAC or its Affiliates shall be entitled to a twenty percent (20%) discount off the full menu price and such twenty percent (20%) discount amount shall not be included in Restaurant Sales). FERG acknowledges and agrees that CAC's Total Rewards program pricing shall be included in Restaurant Sales at the Total Rewards price (not full retail menu price).

"Rules" has the meaning set forth in Section 13.1.

"Seibel Restaurant Visits" has the meaning set forth in Section 7.1.

"Senior Management Employee(s)" has the meaning set forth in Section 5.2.

"Substantial Damage" means any damage, other than a Permanent Damage, by fire or other casualty to the Hotel or Restaurant (a) that results in more than twenty percent (20%) of the area of the Hotel or the Restaurant, as applicable, being rendered unusable, (b) where the estimated length of time required to restore Hotel or the Restaurant, as applicable, substantially to its condition and character just

prior to the occurrence of such casualty shall be in excess of one hundred eighty (180) days or (c) if the estimated cost of restoration and repair of the damage exceeds twenty percent (20%) of the then current replacement cost of the Hotel or the Restaurant, as applicable, in each case as determined by CAC in its reasonable discretion.

"Term" has the meaning set forth Section 4.1.

"Third-Party Claim" has the meaning set forth in Section 14.15(a).

"Total Restaurant Sales" means, for any period, Restaurant Sales plus Comp Sales for that period.

"Training" has the meaning set forth in Section 5.1(b).

"Union Agreement" or "Union Agreements" has the meaning set forth in Section 5.3(a).

"Unsuitable Person" is any Person (a) whose association with CAC 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 CAC 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 CAC 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 CAC 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 CAC 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 CAC 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.

"USCIS" has the meaning set forth in Section 5.6.

"Venture" has the meaning set forth in Section 2.4(a).

2. APPOINTMENT; CONDITIONS; EXCLUSIVITY; CERTAIN RIGHTS.

2.1 Appointment. On the terms and subject to the conditions set forth in this Agreement, CAC hereby appoints FERG and its team, and FERG and/or its team, as applicable, hereby agree, to perform those services and fulfill those obligations set forth herein as to be performed or fulfilled by FERG and/or Rowen Seibel, as applicable (collectively, the "Services"). In addition to the terms and conditions more particularly set forth in this Agreement, FERG each agrees to perform or cause to be performed the Services (a) in good faith and using sound business practice, due diligence and care, (b) using, at a minimum, the same degree of skill and attention FERG, Rowen Seibel or their Affiliates, as the case may be, use in performing the same or similar services for its, his or their own accounts or the accounts of others (and in no event less than a reasonable degree of skill and attention), and (c) with sufficient resources and qualified personnel as are reasonably required to perform the Services in accordance with the standards set forth in this Agreement. For the avoidance of doubt, Rowen Seibel and his Relatives are Affiliates of FERG.

2.2 Conditions to Agreement.

(a) Notwithstanding anything to the contrary contained herein, the rights and obligations of each party under this Agreement (other than the obligations under Sections 2.3, 2.4 and 9.1

and Article 14), are conditioned upon (which conditions may be waived by CAC in its sole and absolute discretion): (a) submission by or on behalf of FERG to CAC of all information requested by CAC regarding FERG, its Affiliates and its directors, officers, employees, agents, representatives and other associates (collectively, the "FERG Associates") to ensure that they are not an Unsuitable Person; and (b) CAC being satisfied, in its sole discretion, that no FERG Associate is an Unsuitable Person. CAC confirms that the conditions set out in this Agreement have been fulfilled prior to the date hereof.

2.3 Exclusivity.

(a) FERG covenants and agrees that, at all times during the Term, FERG will not and will cause its Affiliates not to, directly or indirectly, except as contemplated by this Agreement or any other Agreement with CAC or any of its Affiliates, offer or agree to become engaged in or affiliated or associated with any activities, business or operations utilizing any of the GR Marks or General GR Materials, including as an owner, investor, operator, director, officer, manager, agent, consultant, licensor or employee, in each case within Atlantic County, New Jersey in connection with the operation of any establishment similar to the Restaurant i.e., generally in the nature of a pub, bar, café or tavern (the "Exclusivity Provisions").

(b) If this Agreement is terminated by CAC prior to the end of the Term originally stated herein, and FERG is in default or breach of this Agreement at the time of such termination, or the termination is due to the termination of the GR Agreement due to a breach thereof by GR, the Exclusivity Provisions shall continue for a period of eighteen (18) months following such termination.

(c) Notwithstanding the foregoing, owning the securities of any company if the securities of such company are listed for trading on a national stock exchange or traded in the over-the-counter market and FERG and its Affiliates' holdings therein represent less than five percent (5%) of the total number of shares or principal amount of other securities of such company outstanding shall not be deemed to violate this Section 2.3.

2.4 Right of First Refusal.

(a) In addition to the restriction imposed upon FERG pursuant to Section 2.3 above, neither FERG nor its Affiliates shall, except after compliance with Section 2.4(b) below, engage in or become affiliated or associated with, or offer or agree to become engaged in or affiliated or associated with, any activities, business or operations involving Gordon Ramsay or any of his Affiliates or utilizing any of the GR Marks or General GR Materials (as defined in the GR Agreement) if such activity, business or operation is either (i) located, or contemplated to be located, within Atlantic County, New Jersey or (ii) located, or contemplated to be located, outside of Atlantic County, New Jersey but within a twenty-five (25) mile radius of any existing or publicly announced hotel or gaming facility owned or operated (or to be owned or operated) by CAC or any of its Affiliates (any such activity, business or operation, a "Venture").

(b) Before FERG or any of its Affiliates engages in or becomes affiliated or associated with, or offers or agrees to become engaged in or affiliated or associated with, any Venture, FERG shall provide CAC with an offer, in writing, to participate in such Venture, which offer shall set forth reasonable detail regarding the proposed Venture. If CAC (or its designated Affiliate) indicates in writing within fifteen (15) days after receipt of such offer its interest in considering such opportunity, FERG shall or shall cause its applicable Affiliates to enter into exclusive discussions, negotiations and due diligence with CAC (or its designated Affiliate) for the succeeding thirty (30) days to determine if mutually agreeable terms of participation in the Venture can be reached. During such period, FERG shall

or shall cause its applicable Affiliates to provide CAC (or its designated Affiliate) with all reasonable supporting or other documents it may reasonably request with respect to the Venture.

3. RESTAURANT LOCATION, DESIGN, DEVELOPMENT AND OPERATION.

3.1 General. The Restaurant shall be comprised of that approximate square footage indicated on Exhibit A attached hereto. The parties acknowledge that, with the consent of the parties, the design of the Restaurant and the Restaurant Premises may change following the execution of this Agreement as a result of conditions of construction, budgetary constraints or other reasons provided that the approximate square footage and placement of the Restaurant within the Restaurant Premises as designed and constructed shall not be materially different than that which is depicted on Exhibit A. At all times during the Term and thereafter CAC shall retain all right, title and interest in and to the Restaurant Premises.

3.2 Initial Design and Construction.

(a) Planning. Subject to all of the terms and conditions more particularly set forth herein, CAC shall, after consultation with FERG, be solely responsible for the initial design, development, construction and outfitting of the Restaurant, including all furniture, fixtures, equipment, inventory and supplies (the "Restaurant Development Services"); provided, however, that CAC, after consulting with FERG and considering all reasonable recommendations from FERG, shall have final approval with respect to all aspects of same but shall at all times act reasonably. CAC shall appoint an individual or individuals, who may be changed from time to time by CAC, acting in its sole and absolute discretion, to act as CAC's liaison with FERG in the design, development, construction and outfitting of the Restaurant. Restaurant Development Services, and meetings with respect to same, shall take place in Atlantic City, New Jersey, provided that in no event shall FERG or Rowen Seibel be required to attend such meetings.

(b) Budgeting. CAC shall be solely responsible for all proposed budgets for the Project Costs (each, a "Project Budget"), but CAC shall afford FERG the reasonable opportunity to review each such Project Budget and make reasonable recommendation on same, based on the experience of FERG, prior to CAC's adoption and implementation of any such Project Budget. After giving consideration to all reasonable recommendations made by FERG regarding the Project Budget, CAC shall establish, control, and amend from time to time as necessary, all in CAC's reasonable discretion, the Project Budget for the initial design, development, construction, and outfitting of the Restaurant, except to the extent the same contain any GR Marks.

(c) Implementation of Initial Design and Construction. CAC shall be solely responsible for hiring, retaining and authorizing the performance of services by any and all design, development, construction and other professionals engaged in the initial design, development, construction and outfitting of the Restaurant. At all times during the Term and thereafter, CAC shall retain all right, title and interest in and to the furniture, fixtures, equipment, inventory, supplies and other tangible and, except as otherwise provided herein, intangible assets used or held for use in connection with the Restaurant, except to the extent the same contain any GR Marks.

(d) Costs of Initial Design and Construction. The current Project Budget is $3,500,000, to be provided solely by CAC (the "Initial Capital Investment"). To the extent that the final or actual Project Budget exceeds $3,500,000 such excess shall be paid for and absorbed 100% by CAC, but the amount of such excess that may be included in Project Costs shall not exceed $300,000.

3.3 Subsequent Refurbishment, Redesign and Reconstruction of the Restaurant. If, after the Opening Date, CAC determines that the Restaurant requires any additional capital expenditures, CAC is solely responsible for any capital expenditures.

3.4 Menu Development. Intentionally omitted.

3.5 General Operation of the Restaurant. Unless expressly provided herein to the contrary and subject to the terms of this Agreement, CAC shall be solely responsible for:

(a) managing the operations, business, finances and Employees of the Restaurant on a day-to-day basis;

(b) maintaining the Restaurant;

(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 GR pursuant to the GR Agreement; and

(e) providing copies of the Restaurant's unaudited income statement to FERG (i) for each month within fifteen (15) days after the end of each month, (ii) for each quarter, within forty-five days after the end of each calendar quarter and (iii) for each Fiscal Year, within one hundred twenty (120) days following the conclusion of such Fiscal Year.

3.6 Merchandise. Intentionally omitted.

3.7 Meetings and Personal Appearances. Whenever scheduling any meeting or personal appearance contemplated by this Agreement, CAC shall make commercially reasonable efforts to take into account the other then existing commitments of the individual whose appearance is requested and give such individual reasonable prior notice as far in advance as is possible, of the contemplated date, time and place of each scheduled meeting or appearance. If advised of a conflict, CAC shall make commercially reasonable efforts to reschedule such meeting or appearance to a date and time closest to the initially proposed scheduled appearance date, it being understood that all such scheduling shall be made by CAC based upon the best interest of the Restaurant and FERG shall endeavor to make commercially reasonable efforts to meet the appearance schedule proposed by CAC subject to previously scheduled commitments. In no event shall FERG or any of its team (including Rowen Seibel) be required to attend a meeting or make any personal appearance at the Restaurant or in Atlantic City.

3.8 Additional Obligations. Each of CAC and FERG warrants and undertakes to the other party that it shall:

(a) at all times (a) fully comply with all laws, statutes, ordinances, regulations, promulgations and mandates applicable to its obligations hereunder and the operation of the Restaurant and (b) maintain all applicable business licenses and other licenses and permits relating to its business operations or its obligations hereunder, and in each case any failure to do so shall constitute a breach of this Agreement; and

(b) perform its duties hereunder with reasonable care and skill and shall cultivate and maintain good relations with customers of the Restaurant in accordance with sound commercial principles.

4. **TERM**.

4.1 Term. The initial term of this Agreement shall commence on the Effective Date and shall expire on that date that is ten (10) years from the date on which the Restaurant first opens to the general public for business (the "Opening Date"), unless extended by the parties or unless earlier terminated pursuant to the terms hereof (the "Initial Term"). Upon the mutual agreement of CAC and FERG, the term of this Agreement shall be extended for one additional five (5) year term (together with the Initial Term, the "Term"), which shall be on all of the same terms and conditions as contained herein, provided that if the GR Agreement is extended this Agreement shall automatically be extended. Thereafter, there shall be no additional extensions of the term of this Agreement. In the event a new agreement is executed between CAC and/or its Affiliate and Gordon Ramsay and/or his Affiliate relative to the Restaurant or Restaurant Premises, this Agreement shall be in effect and binding on the parties during the term thereof.

4.2 Termination.

(a) For Convenience. At any time following the third (3rd) anniversary of the Opening Date, the Agreement may be terminated by CAC upon six (6) months written notice to FERG specifying the date of termination.

(b) Sales Performance. At any time during the sixty (60) days following the third (3rd) anniversary of the Opening Date and the sixty (60) days following the sixth (6th) anniversary of the Opening Date, this Agreement may be terminated by CAC by written notice to FERG specifying the effective date of termination if (a) in the case of termination following the third (3rd) anniversary of the Opening Date, the Restaurant Sales for the twelve (12) months prior to such anniversary are not at least Three Million Two Hundred Thousand Dollars ($3,200,000.00) or (b) in the case of termination following the sixth (6th) anniversary of the Opening Date, the Restaurant Sales for the twelve (12) months prior to such anniversary are not at least Three Million Seven Hundred Dollars ($3,700,000.00).

Notwithstanding the provisions of Section 4.2(a) and Section 4.2(b), this Agreement may only be terminated under Section 4.2(a) and/or Section 4.2(b) if CAC simultaneously terminates the GR Agreement and no different or amended agreement is entered into with Gordon Ramsay and/or his Affiliate(s) relative to the Restaurant or the Restaurant Premises. For the avoidance of doubt, the foregoing sentence reflects the understanding of the parties and their Affiliates with respect to any "For Convenience" and "Sales Performance" termination provision in all other agreements between Affiliates of the parties hereto relative to a Gordon Ramsay related or themed restaurant and the substance of such sentence shall be applicable to all such agreements.

(c) Termination of GR Agreement. This Agreement may be terminated by either Party upon no less than ninety (90) days written notice to the other Party if the GR Agreement is terminated and no different or amended agreement is entered into with Gordon Ramsay and/or his Affiliate(s) relative to the Restaurant or Restaurant Premises. The termination shall take effect no earlier than the same date the GR Agreement termination is effective.

(d) [Reserved].

(e) Unsuitability. This Agreement may be terminated by CAC upon written notice to FERG having immediate effect as contemplated by Section 11.2.

(f) Condemnation and Casualty. This Agreement may be terminated by CAC upon written notice to FERG having immediate effect as contemplated by Article 12.

(g) Change of Control. This Agreement may be terminated by CAC upon written notice to FERG having immediate effect if there is a FERG Change of Control to a transferee that is an Unsuitable Person.

(h) Material Breach.

(a) This Agreement may be terminated by CAC upon written notice to FERG having immediate effect if, following a material breach of this Agreement by FERG, CAC sends written notice of such material breach to FERG specifying in reasonable detail, the facts and circumstances underlying the claimed breach (including the provision(s) of the Agreement claimed to have been breached) and FERG fails to cure such material breach within thirty (30) days after receipt of such notice; provided that if FERG shall have taken steps reasonably anticipated to cure such breach within such thirty (30) day period, CAC shall not be permitted to terminate the Agreement unless such cure is not completed within a reasonable time thereafter.

(b) This Agreement may be terminated by FERG upon written notice to CAC having immediate effect if, following a material breach of this Agreement by CAC, FERG sends written notice of such material breach to CAC specifying in reasonable detail, the facts and circumstances underlying the claimed breach (including the provision(s) of the Agreement claimed to have been breached) and CAC fails to cure such material breach within thirty (30) days after receipt of such notice for non-monetary breaches by CAC (provided that if CAC shall have taken steps reasonable anticipated to cure such breach within such thirty (30) day period, CAC 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 CAC for monetary breaches by CAC (it being understood that CAC's failure to pay any amount disputed in good faith shall not entitle FERG to terminate this Agreement).

(i) Bankruptcy, etc.

(a) This Agreement may be terminated by CAC upon written notice to FERG having immediate effect if FERG (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 FERG upon written notice to CAC having immediate effect if CAC (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.

(a) 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 Section 2.3(b), the last sentence of Section 12.2(b) and Articles 13 and 14 (other than Section 14.16) shall survive any termination or expiration of this Agreement.

(b) Certain Rights of CAC Upon Expiration or Termination. Upon expiration or termination of this Agreement:

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

(b) CAC 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;

(c) CAC shall retain all right, title and interest in and to the CAC Marks and Materials (as defined in the GR Agreement); and

(d) CAC 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.

(c) Certain Rights of FERG Upon Expiration or Termination. Upon expiration or termination of this Agreement, (a) in the case of termination by CAC pursuant to Section 4.2(a) or termination pursuant to Section 4.2(c) (as a result of a termination of the GR Agreement by CAC pursuant to Section 4.2(a) thereof), CAC shall pay to FERG the Early Termination Payment.

5. **RESTAURANT EMPLOYEES.**

5.1 General Requirements.

(a) Employees. Subject to the terms of this Article 5, after consulting with and giving full and proper consideration to all reasonable recommendations of FERG, CAC 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"). Notwithstanding anything herein to the contrary, all Employees, including all Senior Management Employees, shall be employees of CAC and shall be expressly subject to (a) CAC's human resources policies and procedures and hiring requirements in existence as of the Effective Date and as modified by CAC from time to time during the Term, and (b) the Compliance Committee requirements applicable to CAC and its Affiliates, as more particularly set forth in Section 11.2 hereof.

(b) Qualified Training by CAC. At CAC's option, exercisable in its sole discretion, all applicants for Employee front-of-house positions that require personal contact with guests of the Restaurant, as well as all cook, pantry, pastry, bakery and other skilled kitchen positions, shall be required to undergo specialized training (the "Training") and, upon the culmination of such specialized training, pass a test reasonably related to the Training in order to be qualified as an Employee. The Training shall be conducted by CAC on the Employee's own time and at the Employee's own expense. At CAC's option, exercisable in its sole discretion, the Training and related test may only be required of individuals who are employees of CAC at the time of such individual's application for a position as an Employee.

5.2 Senior Management Employees. CAC may request advice from FERG as to those individuals whom it recommends to be hired for the following positions at the Restaurant and upon such request, subject to the terms hereof, FERG shall cause its team to, use commercially reasonable efforts to give such advice to be provided within the time frames set forth below.

(a) One full-time equivalent Executive Chef (no later than sixty (60) days before the Opening Date);

(b) One full-time equivalent General Manager (no later than forty-five (45) days before the Opening Date);

(c) Two full-time equivalent Assistant Chefs (no later than thirty (30) days before the Opening Date);

(d) Two full-time equivalent Assistant Managers (no later than twenty (20) days before the Opening Date); and

The initial and any successor Executive Chef, General Manager, Assistant Chefs, Assistant Managers and Sommeliers shall be referred to collectively, as the "Senior Management Employees" and individually, a "Senior Management Employee", with the understanding that said designation is for the purposes of reference for this document only and shall not be deemed to create a requirement or expectation of any particular level of compensation or benefits that may otherwise be available to individuals employed by CAC having such employment designation. Subject to the terms of this Article 5, after consulting with and giving full and proper consideration to all reasonable recommendations of FERG if requested by CAC, CAC shall be responsible for, and shall have final approval with respect to, hiring, training, managing, evaluating, promoting, disciplining and firing Senior Management Employees (and any additional or replacement Senior Management Employees as reasonably required by CAC from time to

time). The parties acknowledge and agree that CAC is under no obligation to hire any individual recommended pursuant to this Section 5.2.

5.3 Union Agreements.

(a) Agreements. FERG acknowledges and agrees that all of CAC's agreements, covenants and obligations and all of FERG's rights and agreements contained herein are subject to the provisions of any and all collective bargaining agreements and related union agreements to which CAC or any of its Affiliates is or may become a party and that are or may be applicable to the Employees (as the same may be amended or supplemented from time to time, collectively, the "Union Agreements"). FERG agrees that all of their agreements, covenants and obligations hereunder, including those obligations to train certain Employees, shall be undertaken in such manner as to be in accordance with and to assist and cooperate with CAC's obligation to fulfill its obligations contained in the Union Agreements; provided, that CAC now and hereafter shall advise Gordon Ramsay and FERG of the obligations contained in said Union Agreements that are applicable to Employees. Notwithstanding the foregoing, in no event shall Gordon Ramsay or FERG be deemed a party to any such Union Agreement whether by reason of this Agreement, the performance of its obligations hereunder or otherwise.

(b) Amendments. FERG acknowledges and agrees that from time to time during the Term, CAC may negotiate and enter into amendments and supplements to the Union Agreements. Each Union Agreement, as so amended or supplemented, may include those provisions agreed to by and between the applicable union and CAC, in its sole discretion, including provisions for (a) notifying then-existing employees of CAC in the bargaining units represented by the applicable union 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 5.3.

(c) Conflicts. In the event any agreement, covenant, obligation or right of a party contained herein is, or at any time during the Term shall be, prohibited pursuant to the terms of any Union Agreement, the applicable party shall be relieved of such agreement, covenant, obligation or right, with no continuing or accruing liabilities of any kind, and such agreement, covenant, obligation or right 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. In the event any agreement, covenant, obligation or right under this Agreement is severed from this Agreement pursuant to this Section 5.3(c), the parties shall thereafter cooperate in good faith to modify this Agreement to provide the parties with continuing agreements, covenants, obligations and rights that are consistent with the requirements and obligations of this Agreement (including the economic provisions contained herein), such Union Agreement and applicable law, rules and regulations.

5.4 Training Support.

(a) Pre-Opening Training. For the period prior to the Opening Date, FERG shall advise CAC as to the training FERG recommends be provided to the Senior Management Employees, including working methods, culinary style, culinary philosophy, standard of service, marketing techniques and customer service. After consulting with and giving full and proper consideration to all reasonable recommendations of FERG and/or its team, CAC shall be responsible for, and shall have final approval with respect to, training Senior Management Employees and other Employees.

(b) Refresher Training. As and if reasonably requested by CAC from time to time during the Term, FERG shall advise CAC as to the training FERG recommends be provided for refresher training of such appropriate kitchen and front-of-house Employees as reasonably selected by CAC,

including training with respect to any new food and beverage menus and recipes therefore developed and implemented from time to time during the Term. After consulting with and giving full and proper consideration to all reasonable recommendations of FERG and/or its team, CAC shall be responsible for, and shall have final approval with respect to such refresher training.

5.5 Evaluations. As reasonably requested by CAC from time to time during the Term but not more than twice in any one (1) year during the Term, FERG shall be entitled to review, approve and make recommendations with respect to the annual evaluations of the Senior Management Employees as conducted by CAC; provided, however, CAC shall have final approval with respect to all aspects of same.

5.6 Employment Authorization. CAC shall be solely responsible for applying for, and shall be solely responsible for all costs and expenses related to obtaining (with the understanding that said costs shall be deemed to be an Operating 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 Senior Management Employees to be employed by CAC at the Restaurant; provided, however, each such Employee shall be required to cooperate with CAC with respect to applying for such work authorization and shall be required to diligently provide to CAC 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, FERG expressly acknowledges that, in the event that CAC is unable to reasonably obtain such work authorization for any Employee, the offer of employment for such Employee shall be revoked.

6. **LICENSE**. Intentionally omitted.

7. **PROMOTION AND OPERATIONAL PRESENCE**.

7.1 Restaurant Visits.

(a) FERG Restaurant Visits. Neither FERG nor any member of its team (including Rowen Seibel) shall be required to visit the Restaurant at any time. In the event that CAC requests, and FERG agrees, in its sole discretion, to have Rowen Seibel or another member of the FERG team visit the Restaurant, (i) the travel expenses to and from Atlantic City shall be at the sole expense of FERG and (ii) CAC shall provide at its expense for FERG's use (and at no cost or expense to FERG), hotel accommodations in a deluxe room at the Hotel; provided, however, that FERG shall be responsible for all incidental room charges (subject to a thirty percent (30%) discount) and other expenses incurred during the occupancy of such room.

7.2 General. Any cost or expense to CAC or its Affiliates associated with the provision of travel accommodations and room charges under this Article 7 shall be for the account of CAC, and shall not be a Project Cost or an Operating Expense of the Restaurant.

7.3 Additional Reimbursement. FERG may request that expenses incurred by FERG or Rowen Seibel in connection with marketing or public relations activities be reimbursed by CAC. If the President of CAC (in his or her sole and absolute discretion) agrees to reimburse any such expense, such amount shall be included in the Operating Expense.

8. **BASE AND INCENTIVE FEES**.

8.1 Base and Incentive Fees.

(a) First, CAC shall pay to FERG a base fee for FERG's services equal to a percentage of Restaurant Sales in any given Fiscal Year pursuant to the following schedule (the "Base Fee"):

(a) For Comp Sales, a quarterly payment equal to 0.9% of Comp Sales;

(b) For Restaurant Sales up to and including the Baseline Amount, a quarterly payment equal to 0.9% of Restaurant Sales;

(c) For Restaurant Sales greater than the Baseline Amount up to and including Two Million Two Hundred Thousand Dollars ($2,200,000.00), a quarterly payment equal to 1.8% of Restaurant Sales;

(d) For Restaurant Sales greater than Two Million Two Hundred Thousand Dollars ($2,200,000.00) up to and including Three Million Three Hundred thousand Dollars ($3,300,000.00), a quarterly payment equal to 2.1% of Restaurant Sales; and

(e) For Restaurant Sales greater than Three Million Three Hundred Thousand Dollars ($3,300,000.00), a quarterly payment equal to 2.4% of Restaurant Sales.

The amounts of the various thresholds referred to above (e.g. the Baseline Amount, the $2,200,000 threshold and the $3,300,000 threshold) shall be pro-rated for any Fiscal Year that is less than a full calendar year.

(b) Next, out of any remaining Available Restaurant Proceeds after application of the payments set out in Section 8.1(a) above, CAC shall be entitled to retain a capital reserve starting after the third anniversary of the Opening Date, in an amount equal to two percent (2%) of Total Restaurant Sales subject to a cap of Fifty Thousand Dollars ($50,000) per Fiscal Year and a maximum of Two Hundred Fifty Thousand Dollars at any given time (the Capital Reserve) (the amount of the aggregate Capital Reserve credited by CAC hereunder less the aggregate amount expended by CAC is the "Capital Reserve Account"). No later than ninety (90) days after the end of each quarter, CAC shall credit the Capital Reserve Account with the Capital Reserve (if any) for such quarter. After the Opening Date, any replacements and capital improvements for the Restaurant which are required to be capitalized under generally accepted accounting principles ("Capital Expenditures") paid by CAC shall reduce the amount of the Capital Reserve Account (but not below zero). CAC may draw upon the Capital Reserve Account to fund Capital Expenditures in the Restaurant from time to time.

(c) Next, out of any remaining Available Restaurant Proceeds after application of the payments set out in Sections 8.1(a) and 8.1(b) above, CAC shall be entitled to retain its Project Costs for the initial Restaurant build out based upon a payback schedule of sixty (60) months following the Opening Date, with a fixed interest rate of five percent (5%) per annum on the unamortized portion thereof. If there are not sufficient positive Available Restaurant Proceeds for CAC to receive the full amount of its Project Costs in any year, the shortfall, together with all interest owing thereon, shall be retained from the Available Restaurant Proceeds in any subsequent period before payment of any other amount pursuant to Section 8.1(a)(d) below.

(d) Next, out of any remaining Available Restaurant Proceeds after application of the payments set forth in Sections 8.1(a), 8.1(b) and 8.1(c) above, at the end of each Fiscal Year, the Parties shall determine the total dollar value of 13.5% of Available Restaurant Proceeds during such Fiscal Year. FERG shall be paid an additional amount (if any) equal to the total dollar value of 13.5% of Available Restaurant Proceeds in excess of the Base Fee (the "Incentive Fee").

8.2 Timing and Manner of Payments. The Base Fee shall be payable on a quarterly basis and shall be paid by CAC no later than thirty (30) days after the end of the quarter to which it relates 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 FERG, from time to time. If the Incentive Fee is due, it shall be paid by CAC to FERG on or before April 15 of the following year.

8.3 Calculations. CAC shall be solely responsible for maintaining and shall maintain, all books and records necessary to calculate the Base Fee and Incentive Fee and, within: (a) thirty (30) days after the end of each quarter during each Fiscal Year shall deliver notice to FERG reasonably detailing the calculation of the Base Fee, and (b) by April 15 after the end of the applicable Fiscal Year shall deliver notice to FERG reasonably detailing the calculation of the Incentive Fee. CAC's calculations shall be conclusive and binding unless: (i) within thirty (30) calendar days' of CAC's delivery of such notice, FERG notifies CAC 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 8.4. Upon receipt of any such notification, CAC shall review the claimed manifest calculation error and, within thirty (30) calendar days of such notification, advise FERG as to the corrected calculation, if any. If FERG still disagrees with such calculation, the calculation shall not be binding and FERG shall be deemed to have reserved all of his rights related thereto under this Agreement.

8.4 Audit. Subject to the remaining provisions of this Section 8.4, FERG shall be entitled at any time, at its sole cost and expense, upon ten (10) calendar days' notice to CAC, but not more than two (2) times per calendar year, to cause an audit to be made, during normal business hours, by any Person designated by FERG and approved by CAC (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 the Base Fee, Incentive Fee and/or the repayment of the Initial Capital Investment, which shall not include tax returns of CAC filed on a consolidated basis, and which audit shall be conducted without material disruption or disturbance to CAC's operations. If such audit discloses that any Base Fee, Incentive Fee and/or the repayment of the Initial Capital Investment was calculated in error, CAC shall be entitled to review such audit materials and to conduct its own audit related to such period. If CAC does not dispute the result of FERG's audit within ninety (90) days after conclusion and presentation by FERG to CAC of FERG's findings, CAC shall (in the next quarterly allocation) pay to FERG such additional monies necessary to compensate FERG. If such audit discloses that the Base Fee or Incentive Fee owed by CAC for any Fiscal Year exceeds the amount paid to FERG for such year more than five percent (5%), CAC or that the amount charged as repayment of the Initial Capital Investment was five (5%) or more less than it should have been, CAC shall pay FERG the actual third party costs of such audit. CAC may condition any audit under this Section 8.4 on the receipt of a confidentiality undertaking from any Person to whom information will be disclosed in connection with such audit, in form and substance satisfactory to CAC.

9. **OPERATIONS**.

9.1 Marketing and Publicity. As reasonably required by CAC from time to time during the Term, FERG shall cause Rowen Seibel to consult with CAC, and provide CAC with advice regarding the marketing of the Restaurant. Notwithstanding the foregoing or anything to the contrary contained herein, CAC shall have the right to make all determinations regarding advertising, sales and promotional materials, press releases and other publicity materials and statements relating to the Restaurant or the

transactions contemplated by this Agreement and FERG will not, and will cause its Affiliates not to, publish, make or use any such materials or statements without the prior written consent of CAC. Marketing consultations and meetings with respect to same, shall take place at such times and such places as the parties agree from time to time. Throughout the Term CAC shall, without charge and not as an Operating Expense, market and advertise the Restaurant in a manner reasonably consistent with how other partnered, first class, gourmet restaurants are marketed by CAC and subject to compliance with Section 9.1 of the GR Agreement.

9.2 Operational Efficiencies. As reasonably required by CAC from time to time during the Term, FERG shall cause Rowen Seibel to consult with CAC and provide CAC with advice regarding the Restaurant's food and beverage menus, quality standards, and operational, efficiency and profitability issues; provided, however, that CAC, after fully and properly considering all reasonable recommendations received from FERG, shall have final approval with respect to all aspects of same. Such operational consulting and advice and meetings with respect to same, shall take place at such times and such places as the parties agree from time to time.

10. REPRESENTATIONS AND WARRANTIES.

10.1 CAC's Representations and Warranties. CAC hereby represents and warrants to FERG that:

(a) CAC is a corporation duly organized, validly existing, and in good standing under the laws of the jurisdiction of its organization;

(b) CAC 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 CAC;

(c) no consent or approval or authorization of any Person is required in connection with CAC's execution and delivery, and performance of its obligations under, this Agreement;

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

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

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

(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; and

10.2 FERG's Representations and Warranties. FERG hereby represents and warrants to CAC that:

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

(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

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 parties not more than fifteen (15) calendar days after the commencement of such delay, otherwise, such party's rights under this Section 12.3 shall be deemed waived.

12.4 No Extension of Term. Nothing in this Article 12 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.

13. ARBITRATION.

13.1 Dispute Resolution. Except for a breach by CAC of Article 6 or Section 14.18 or by Gordon Ramsay or FERG of Section 2.3, 2.3(a), or 14.18(a) or Article 6, as applicable, 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"), any party may serve written notice (a "Dispute Notice") upon the other parties 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, any party may serve on the other parties 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 Atlantic City, New Jersey 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 13.2 hereof.

13.2 Arbitrator(s). If the claim in the Dispute Notice does not exceed Two Hundred Thousand and 00/100 Dollars ($200,000.00), there shall be a single arbitrator nominated by mutual agreement of Gordon Ramsay and/or FERG (as the case may be) and CAC and appointed according to the Rules. If the claim in the Dispute Notice exceeds Two Hundred Thousand and 00/100 Dollars ($200,000.00), the arbitration panel shall consist of three (3) members unless FERG and CAC agree to use a single arbitrator. One of the arbitrators shall be nominated by CAC, one of the arbitrators shall be nominated by FERG 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 FERG, on the one hand, or CAC, on the other hand, fails to timely nominate an arbitrator in accordance with the Rules, or if the two (2) arbitrators nominated by FERG and CAC 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.

14. MISCELLANEOUS.

14.1 No Partnership or Joint Venture. Nothing expressed or implied by the terms of this Agreement shall make or constitute any 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 FERG under this Agreement shall be for services rendered as an independent contractor and, unless otherwise required by law, CAC shall report as such on IRS Form 1099, and all parties shall report this for financial and tax purposes in a manner consistent with the foregoing.