

WYNN RESORTS LTD  
Form POS AM  
May 20, 2004  
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As filed with the Securities and Exchange Commission on May 20, 2004

Registration Nos. 333-111064, 333-111064-01

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**UNITED STATES**  
**SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20549

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**POST-EFFECTIVE AMENDMENT NO. 2**

**to**

**FORM S-3**

**REGISTRATION STATEMENT**

*UNDER*

*THE SECURITIES ACT OF 1933*

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**WYNN RESORTS, LIMITED**

(Exact Name of Registrant as Specified in Its Charter)

Nevada  
(State or Other Jurisdiction of Incorporation or Organization)

46-0484987  
(IRS Employer Identification No.)

3131 Las Vegas Boulevard South, Las Vegas, Nevada 89109, (702) 770-7555

(Address, Including Zip Code, and Telephone Number, Including Area Code, of Registrant's Principal Executive Offices)

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and Other Registrant

(See Table of Other Registrants Listed Below)

**Ronald J. Kramer**

**Wynn Resorts, Limited**

**3131 Las Vegas Boulevard South, Las Vegas, Nevada 89109, (702) 770-7555**

(Name, Address, Including Zip Code, and Telephone Number, Including Area Code, Of Agent For Service)

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*With Copies To:*

**Marc H. Rubinstein**  
**Wynn Resorts, Limited**  
**3131 Las Vegas Boulevard South**  
**Las Vegas, Nevada 89109**  
**(702) 770-7555**

**Jerome L. Coben**  
**Skadden, Arps, Slate, Meagher & Flom LLP**  
**300 South Grand Avenue, Suite 3400**  
**Los Angeles, California 90071**  
**(213) 687-5000**

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**APPROXIMATE DATE OF COMMENCEMENT OF PROPOSED SALE TO THE PUBLIC:** From time to time after this Registration Statement becomes effective.

If the only securities being registered on this Form are being offered pursuant to dividend or interest reinvestment plans, please check the following box. "

If any of the securities being registered on this Form are to be offered on a delayed or continuous basis pursuant to Rule 415 under the Securities Act of 1933, other than securities offered only in connection with dividend or interest reinvestment plans, check the following box. x

If this form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, please check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. "

If this form is a post-effective amendment filed pursuant to Rule 462(c) under the Securities Act, check the following box and list the Securities Act registration number of the earlier effective registration statement for the same offering. "

If delivery of the prospectus is expected to be made pursuant to Rule 434, please check the following box. "

**THE REGISTRANTS HEREBY AMEND THIS REGISTRATION STATEMENT ON SUCH DATE OR DATES AS MAY BE NECESSARY TO DELAY ITS EFFECTIVE DATE UNTIL THE REGISTRANTS SHALL FILE A FURTHER AMENDMENT WHICH SPECIFICALLY STATES THAT THIS REGISTRATION STATEMENT SHALL THEREAFTER BECOME EFFECTIVE IN ACCORDANCE WITH SECTION 8(a) OF THE SECURITIES ACT OF 1933 OR UNTIL THE REGISTRATION STATEMENT SHALL BECOME EFFECTIVE ON SUCH DATE AS THE COMMISSION, ACTING PURSUANT TO SAID SECTION 8(a), MAY DETERMINE.**

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**TABLE OF OTHER REGISTRANTS**

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<b>Exact Name of Registrant as Specified in its Charter*</b>	<b>State or Other Jurisdiction of Incorporation or Organization</b>	<b>IRS Employer Identification No.</b>
Wynn Resorts Funding, LLC	Nevada	57-1175569

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\* The address and telephone number of the principal executive offices of Wynn Resorts Funding, LLC are the same as those of Wynn Resorts, Limited.

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**EXPLANATORY NOTE**

The purpose of this Post-Effective Amendment No. 2 to the Registration Statement on Form S-3 of Wynn Resorts, Limited (333-111064) and Wynn Resorts Funding, LLC (333-111064-01) is to amend the table under the caption "Selling Securityholders" in the prospectus to add the names of selling securityholders who have requested inclusion in the prospectus since March 17, 2004, the date Post-Effective Amendment No. 1 to the Registration Statement was filed, and to update certain other disclosure in the table.

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**The information in this prospectus is not complete and may be changed. The selling securityholders may not sell these securities until the registration statement filed with the Securities and Exchange Commission is effective. This prospectus is not an offer to sell these securities and it is not soliciting offers to buy these securities in any state where the offer or sale is not permitted.**

**PROSPECTUS**

Subject to completion, dated May 20, 2004

**Wynn Resorts, Limited**

**\$250,000,000**

**6% Convertible Subordinated Debentures due 2015 and  
Shares of Common Stock Issuable Upon Conversion of the Debentures**

On July 7, 2003, Wynn Resorts, Limited consummated a private offering of \$200 million aggregate principal amount of its 6% Convertible Subordinated Debentures due 2015. Subsequently, on July 30, 2003, Wynn Resorts, Limited completed the sale of an additional \$50 million aggregate principal amount of the debentures as a result of the full exercise of an option granted to the initial purchasers. Selling securityholders will use this prospectus to resell the debentures, the guarantees associated with the debentures and the shares of our common stock issuable upon conversion of the debentures.

The debentures bear interest at a rate of 6% per annum. We will pay interest on the debentures on July 15 and January 15 of each year. The debentures mature on July 15, 2015. We may not redeem the debentures prior to July 20, 2007. The debentures have been issued only in denominations of \$1,000 and any integral multiple thereof. Holders may require us to repurchase the debentures for cash upon a change of control.

After the original issuance of the debentures, we contributed a portion of the proceeds from the sale of the debentures to our wholly owned subsidiary, Wynn Resorts Funding, LLC (the Guarantor), which purchased and pledged as security for the debentures U.S. government securities in an amount sufficient to pay scheduled interest payments on the debentures up to and including July 15, 2006. We also pledged the membership interests of the Guarantor to secure our obligations under the indenture governing the debentures. Other than these pledges of U.S. government securities and membership interests of the Guarantor, the debentures are our subordinated unsecured obligations and are junior in right of payment to all existing and future senior debt of Wynn Resorts. At March 31, 2004, Wynn Resorts had \$1.6 billion of senior indebtedness outstanding, including \$1 billion available for borrowing under our credit facilities and \$150.5 million available for borrowing under our FF&E facility.

The debentures are convertible at any time before the maturity date into shares of our common stock at an initial conversion price of \$23.00 per share. The conversion price is subject to certain adjustments upon the occurrence of specified events. The initial conversion price is equivalent to a conversion rate of approximately 43.4782 shares per \$1,000 principal amount of debentures. Our common stock is quoted on The Nasdaq National Market under the symbol WYNN. The last reported bid price of our common stock on May 19, 2004 was \$39.58 per share.

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**Investing in the debentures and our common stock issuable upon conversion of the debentures involves risks. See Risk Factors beginning on page 8.**

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We will not receive any of the proceeds from the sale of the debentures or the shares of common stock by the selling securityholders. The debentures and the shares of common stock may be offered by the selling securityholders in negotiated transactions or otherwise, at market prices prevailing at the time of sale or at negotiated prices. The timing and amount of any sale are within the sole discretion of the selling securityholders. In addition, the shares of common stock may be offered from time to time through ordinary brokerage transactions on the Nasdaq National Market. See Plan of Distribution.

**Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved of these securities or determined if this prospectus or any accompanying prospectus supplement is truthful or complete. Any representation to the contrary is a criminal offense.**

Neither the Nevada Gaming Commission, the Nevada State Gaming Control Board, nor any other gaming authority has passed upon the adequacy or accuracy of this prospectus or any accompanying prospectus supplement or the investment merits of the debentures offered hereby or the shares of our common stock issuable upon conversion of the debentures. Any representation to the contrary is unlawful.

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**The date of this prospectus is May , 2004.**

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Unless the context otherwise requires, all references in this prospectus to Wynn Resorts, the Company, we, us or our, or similar terms, refer to Wynn Resorts, Limited and its consolidated subsidiaries, or, with respect to periods prior to September 24, 2002, to Valvino Lamore, LLC and its consolidated subsidiaries, as the predecessor company of Wynn Resorts, all references to Wynn Las Vegas entities refer to our wholly owned subsidiaries, Valvino Lamore, LLC, Wynn Las Vegas, LLC and Wynn Las Vegas Capital Corp. and their consolidated subsidiaries (other than Desert Inn Improvement Co. and Wynn Completion Guarantor, LLC), and all references to the Wynn Macau Companies refer to Wynn Resorts (Macau), S.A. and each of its direct and indirect parent companies (other than Wynn Resorts).

**WHERE YOU CAN FIND MORE INFORMATION**

We are subject to the informational reporting requirements of the Securities Exchange Act of 1934, as amended (the Exchange Act), and in accordance with these requirements file reports, proxy statements and other information with the SEC. The reports, proxy statements and other information may be inspected and copied at the public reference facilities of the SEC, Room 1024, Judiciary Plaza, 450 Fifth Street, N.W., Washington, D.C. 20549. Please call the SEC at 1-800-SEC-0330 for further information about the public reference room. Wynn Resorts' filings with the SEC are also available to the public from the SEC's internet site at <http://www.sec.gov>.

**INCORPORATION BY REFERENCE**

We are incorporating by reference specified documents that we file with the SEC, which means that:

incorporated documents are considered part of this prospectus;

we are disclosing important information to you by referring you to those documents; and

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information that we file in the future with the SEC automatically will update and supersede earlier information contained or incorporated by reference in this prospectus.

We are incorporating by reference in this prospectus the following documents filed with the SEC:



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our annual report on Form 10-K for the fiscal year ended December 31, 2003, filed on March 15, 2004;

our quarterly report on Form 10-Q for the fiscal quarter ended March 31, 2004, filed on May 5, 2004;

our current reports on Form 8-K, filed on April 20, 2004; May 5, 2004; May 12, 2004; May 13, 2004; and May 20, 2004;

the description of our common stock set forth in our Registration Statement on Form 8-A, filed on October 7, 2003 (File No. 000-50028); and

all other documents that we file with the SEC pursuant to Section 13(a), 13(c), 14 or 15(d) of the Exchange Act after the date of this prospectus and prior to termination of the offering of the securities hereunder (other than current reports furnished under Item 9 or Item 12 of Form 8-K).

You should rely only on the information contained or incorporated by reference in this prospectus. We have not authorized anyone to provide you with any additional information. Any statement contained in this prospectus, or a document incorporated or deemed to be incorporated by reference in this prospectus, will be deemed to be modified or superseded for purposes of this prospectus to the extent that a statement contained in this prospectus or any other subsequently filed document that is deemed to be incorporated by reference into this prospectus modifies or supersedes the statement. Any statement so modified or superseded will not be deemed, except as so modified or superseded, to constitute a part of this prospectus.

The documents incorporated by reference in this prospectus are available from us upon request. We will provide a copy of any and all of the information that is incorporated by reference in this prospectus to any person, without charge, upon written or telephonic request. Exhibits to SEC filings will not be sent, however, unless those exhibits have specifically been incorporated by reference in this prospectus. Requests for such copies should be directed to the following:

Wynn Resorts, Limited

3131 Las Vegas Boulevard South

Las Vegas, Nevada 89109

(702) 770-7555

Attention: Vice President-Investor Relations

Except as provided above, no other information, including information on our internet site (<http://www.wynnresorts.com>), is incorporated by reference in this prospectus.

**SPECIAL NOTE REGARDING FORWARD-LOOKING STATEMENTS**

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This prospectus, including the documents incorporated by reference herein, contains statements that are forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended (the Securities Act ) and Section 21E of the Exchange Act, including, but not limited to, statements relating to our business strategy and development activities, including our opportunity in Macau, as well as other capital spending, financing sources, the effects of regulation (including gaming and tax regulations), expectations concerning future operations, margins, profitability and competition.

Any statements contained in this prospectus that are not statements of historical fact may be deemed to be forward-looking statements. Without limiting the generality of the foregoing, in some cases you can identify forward-looking statements by terminology such as may, will, should, would, could, believe, expect, anticipate, estimate, intend, plan, continue or the negative of these terms or other comparable terms. Forward-looking information involves important risks and uncertainties that could significantly affect anticipated results in the future and, accordingly, such results may differ from those expressed in any forward-looking statements made by us. These risks and uncertainties include, but are not limited to, those relating to:

competition in the casino/hotel and resorts industry;

completion of our Wynn Las Vegas casino resort on time and within budget;

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doing business in foreign locations such as Macau (including the risks associated with Macau's developing gaming regulatory framework);

new development and construction activities of competitors;

our dependence on Stephen A. Wynn and existing management;

leverage and debt service (including sensitivity to fluctuations in interest rates);

levels of travel, leisure and casino spending;

general domestic or international economic conditions;

pending or future legal proceedings;

changes in federal or state tax laws or the administration of such laws;

changes in gaming laws or regulations (including the legalization of gaming in certain jurisdictions);

applications for licenses and approvals under applicable jurisdictional laws and regulations (including gaming laws and regulations);

the impact that an outbreak of an infectious diseases, such as severe acute respiratory syndrome, may have on the travel and leisure industry; and

the consequences of the war in Iraq and other military conflicts in the Middle East and any future security alerts and/or terrorist attacks such as the attacks that occurred on September 11, 2001.

Further information on potential factors that could affect our financial condition, results of operations and business are included in our filings with the SEC.

You should not place undue reliance on any forward-looking statements, which are based only on information currently available to us. We undertake no obligation to publicly release any revisions to such forward-looking statements to reflect events or circumstances after the date of this prospectus.

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**SUMMARY**

*This summary highlights information contained in other parts of this prospectus or incorporated by reference herein and does not contain all of the information that may be important to you. We urge you to read this entire prospectus carefully, including the financial data and related notes and the Risk Factors section beginning on page 8 before making an investment decision. You should read this summary together with the more detailed information contained elsewhere in this prospectus and in our financial statements and accompanying notes and the other information incorporated by reference herein.*

**Wynn Resorts, Limited**

Wynn Resorts, Limited, a Nevada corporation, was formed in June 2002 and consummated its initial public offering in October 2002. Our efforts have been devoted principally to the design, development, financing and construction of a new resort casino/hotel project in Las Vegas named Wynn Las Vegas and the design and pre-construction efforts related to our anticipated casino/hotel project in Macau, made possible by our concession agreement with the government of Macau.

**Wynn Las Vegas**

We, through our wholly owned indirect subsidiary Wynn Las Vegas, LLC, are constructing and will own and operate Wynn Las Vegas, which we have designed to be the preeminent luxury hotel and destination casino resort in Las Vegas. Wynn Las Vegas is the concept of Stephen A. Wynn, one of Wynn Resorts' principal stockholders and its Chairman of the Board and Chief Executive Officer. Mr. Wynn was previously Chairman of the Board, President and Chief Executive Officer of Mirage Resorts, Incorporated and its predecessor from 1973 to 2000. In that role, he was responsible for the development of Bellagio, The Mirage, Treasure Island at The Mirage and the Golden Nugget in Las Vegas, Nevada, as well as the Atlantic City Golden Nugget in New Jersey and Beau Rivage in Biloxi, Mississippi.

Wynn Las Vegas is being constructed on Las Vegas Boulevard, also commonly known as the Las Vegas Strip or the Strip, on the site of the former Desert Inn Resort & Casino, at the northeast corner of the intersection of the Strip and Sands Avenue, one-half block north of The Venetian and Treasure Island at The Mirage, and across the Strip from the Fashion Show Mall. When opened, we expect Wynn Las Vegas to feature approximately 2,700 luxurious guest rooms, a casually elegant casino of approximately 111,000 square feet, 18 distinctive dining outlets, an exclusive on-site 18-hole championship golf course and a new water-based entertainment production.

We expect Wynn Las Vegas, including the new golf course construction, to cost approximately \$2.6 billion to design, construct, develop, equip and open, including the cost of approximately 217 acres of land, capitalized interest on indebtedness of the Wynn Las Vegas entities, pre-opening expenses and all financing fees. Ground-breaking for Wynn Las Vegas occurred on October 31, 2002, with an opening to the general public scheduled for April 2005. The overall scope and general design of Wynn Las Vegas is complete and the construction of the project is currently on schedule and within budget. We continue to evaluate and refine certain elements of the project design and are implementing certain project design changes that are included in the project budget and that will not significantly extend the construction schedule. We are also actively exploring certain additions on the Wynn Las Vegas site as well as the development of our adjacent parcel of approximately 20 acres fronting the Strip. These additional developments might be initiated before the opening of Wynn Las Vegas. We expect to complete the project on time and on budget. However, there are significant risks associated with any major construction project, and unexpected developments may occur; therefore, we cannot assure you that the funds available will be sufficient for the construction, development and opening of Wynn Las Vegas or that it will be completed by April 2005.



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### **Wynn Macau**

In June 2002, our 82.5% owned indirect subsidiary, Wynn Resorts (Macau), S.A. ( Wynn Macau, S.A. ), entered into a 20-year concession agreement with the government of Macau to construct and operate one or more casino gaming properties in the Macau Special Administrative Region of the People's Republic of China ( Macau ). Macau is located in southeast China bordering the South China Sea, approximately 37 miles southwest of Hong Kong. Macau has been an established gaming market for at least 40 years and, according to the Innovation Group, a gaming research company, casinos in Macau reportedly generated approximately \$3.5 billion in gaming revenues in 2003. Wynn Macau, S.A. currently is one of three concessionaires and one sub-concessionaire permitted to operate a casino gaming business in Macau.

We have invested approximately \$23.8 million in Wynn Macau, S.A. to date. In addition, we have loaned \$10 million to Wynn Macau, S.A., bearing interest at 6.25% and payable on demand. We will invest additional capital in the Wynn Macau Companies as part of the financing of the Macau opportunity. We have additional capital available from a portion of the net proceeds we received from our initial public offering (including as a result of the exercise of the overallotment option in connection therewith), the net proceeds of our original issuance of the debentures and our public offering of common stock consummated on May 12, 2004. The minority investors in the Wynn Macau Companies are obligated, subject to certain limitations, to make additional capital contributions in proportion to their economic interests to fund the construction, development and other activities of the Wynn Macau Companies. The Wynn Macau Companies' first casino resort in Macau is referred to herein as Wynn Macau.

We are continuing work on the design of Wynn Macau, as well as our efforts to lease the land and obtain the financing to be used for Wynn Macau. Wynn Macau, S.A. has engaged the services of architects and designers, has selected a prime construction contractor and is in discussions to arrange the additional financing that would be required to complete Wynn Macau, however, we have not yet finalized the budget for its construction and development. We will not begin construction of Wynn Macau, other than preparatory construction work, until a number of objectives and conditions are met, including obtaining sufficient financing to commence construction of Wynn Macau, and obtaining the ability to extend credit to gaming customers and enforce gaming debts in Macau (which are not currently permitted under Macau law). In February 2004, legislative changes relating to credit extension and the collection of gaming debts were introduced in the Macau Legislative Assembly, and the legislation was referred to committee. Although we expect the legislation to be enacted in the second quarter of 2004, we cannot assure you that any of the proposed legislative changes will be enacted. We are also seeking to obtain, prior to commencing casino operations, determinations from the Macau government with respect to certain tax treatment, but cannot assure you that we will obtain the requested tax treatment determinations. In addition, we cannot assure you that we will be able to obtain sufficient financing for Wynn Macau.

### **Company Information**

We are a holding company, with no operations of our own, and our cash flow needs and ability to fund debt service obligations are primarily dependent on our subsidiaries. Our subsidiaries, other than the Guarantor, have no obligation to pay any amounts due on the debentures or to provide us with funds for our payment obligations. Our subsidiaries currently have no material operations or earnings, and the debt agreements of the Wynn Las Vegas entities contain significant restrictions on those entities' ability to distribute funds to us. See Risk Factors Risks Related to the Securities As a holding company, we will depend primarily on our subsidiaries to fund our debt service obligations under the debentures, and our subsidiaries may not provide us with sufficient funds to meet those obligations.

Our principal executive offices are located at 3131 Las Vegas Boulevard South, Las Vegas, Nevada 89109, telephone (702) 770-7555. The address of our internet site is <http://www.wynnresorts.com>, which provides a hyperlink to a third party SEC filing website that posts filings we make with the SEC as soon as reasonably practicable, where such filings can be reviewed without charge.



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**Recent Developments**

On May 12, 2004, we sold 7,000,000 shares of our common stock in an underwritten public offering. The net proceeds from the offering, after deducting discounts and commissions and estimated expenses, were approximately \$267.9 million. We intend to use a portion of the proceeds from the offering to redeem approximately \$122.4 million in aggregate principal amount of the outstanding 12% Second Mortgage Notes due 2010 of Wynn Las Vegas, LLC and Wynn Las Vegas Capital Corp. We intend to use the remaining net proceeds from the offering to help finance Wynn Macau and for general corporate purposes, including possibly financing potential future acquisitions or other investments. Deutsche Bank Securities Inc. acted as sole book-running manager of the offering. J.P. Morgan Securities Inc., Banc of America Securities LLC and Bear, Stearns & Co. Inc. acted as co-managers.



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**THE OFFERING**

The following is a brief summary of the terms of this offering. For a more complete description of the debentures, see Description of the Debentures in this prospectus.

<b><i>Debentures</i></b>	250,000,000 aggregate principal amount of 6% Convertible Subordinated Debentures due 2015.
<b><i>Maturity of Debentures</i></b>	July 15, 2015.
<b><i>Interest</i></b>	6% per annum on the principal amount, payable semiannually in arrears on July 15 and January 15 of each year.
<b><i>Conversion Rights</i></b>	You will have the option to convert your debentures, in whole or in part, into shares of our common stock at any time prior to maturity, unless previously purchased by us in connection with a redemption or at your option upon a change of control, at the conversion price.

At the initial conversion price of \$23.00, for each \$1,000 of aggregate principal amount of debentures converted, we will deliver approximately 43.4782 shares of our common stock. Upon conversion, we may elect to deliver cash in lieu of shares of common stock or a combination of cash and shares of common stock. If we elect to deliver cash or a combination of cash and shares of common stock in lieu of cash upon conversion, we will give you notice of this intent within two business days of your election to convert. The amount of cash to be delivered in lieu of the common stock will be determined based on a three trading day average commencing on the third trading day after your election to convert.

The conversion price and the number of shares delivered on conversion are subject to adjustment upon certain events including, without limitation, if we make distributions or dividends prior to July 20, 2007 to all or substantially all of the holders of our common stock to the extent that such dividend or distribution is payable in cash.

<b><i>Guarantee</i></b>	The Guarantor has guaranteed the debentures on a senior secured basis (the subsidiary guarantee ). The Guarantor is a limited liability company formed in connection with the original issuance of the debentures that has no business or assets other than the securities deposited as contemplated under the caption Description of the Debentures Security. Wynn Resorts, as the parent company of the Guarantor, has also unconditionally guaranteed (the parent guarantee, and together with the subsidiary guarantee, the Guarantee ), on an unsecured subordinated basis, the obligations of the Guarantor under the subsidiary guarantee, as and when due, regardless of the right of setoff or counterclaim that the Guarantor may have or assert other than the defense of payment. The parent guarantee does not in any way increase or add to the obligations that we owe under the debentures and the subsidiary guarantee. The indenture governing the debentures provides that the Guarantee will be released at such time as the security for the Guarantor's obligation is terminated. See Description of Debentures Guarantee.
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***Security***

Wynn Resorts contributed approximately \$44.0 million of the net proceeds from the sale of the debentures to the Guarantor, which purchased U.S. government securities that we expect will be sufficient upon receipt of scheduled principal and interest payments thereon to provide for the payment in full of the scheduled interest payments on the debentures up to and including July 15, 2006 when due. See Description of the Debentures Security. The Guarantor has pledged such U.S. government securities as security for its guarantee for the exclusive benefit of the holders of the debentures (and not for the benefit of any of our other creditors). We have pledged the membership interests of the Guarantor for the benefit of the holders of the debentures (and not for the benefit of any of our other creditors) to secure our obligations under the indenture governing the debentures. We were responsible for determining the sufficiency of the U.S. government securities pledged as described above. The debentures are not otherwise secured.

***Ranking***

Your right to payment under these debentures is our general subordinated unsecured (except as set forth in Description of the Debentures Security ) obligation and will rank:

junior in right of payment to all of the existing and future senior indebtedness of Wynn Resorts, including its guarantees of \$1.6 billion principal amount of secured indebtedness of the Wynn Las Vegas entities;

equally with any existing and future subordinated indebtedness; and

effectively subordinated to any existing and future indebtedness and liabilities of our subsidiaries.

At March 31, 2004, we had approximately \$1.8 billion of indebtedness outstanding, of which \$1.6 billion would have been senior indebtedness, including \$1 billion available for borrowing under our credit facilities and \$150.5 million available for borrowing under our FF&E facility. Other than the Guarantee, at the parent level, we do not currently have any secured indebtedness.

***Sinking Fund***

None.

***Redemption of Debentures at Our Option***

We may redeem all or a portion of the debentures at any time on or after July 20, 2007 at the redemption prices set forth in this prospectus under the caption, Description of the Debentures Optional Redemption. Holders may convert their debentures after they are called for redemption at any time prior to the close of business on the redemption date. In the event that a holder elects to convert debentures in connection with the redemption, the notice of redemption will inform the holder of our election to deliver shares of our common stock or to pay cash or a combination of cash and common stock. See Description of the Debentures Optional Redemption.

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***Gaming Redemption***

The debentures are subject to redemption requirements imposed by gaming laws and regulations of gaming authorities in Nevada or other jurisdictions. See Description of the Debentures Mandatory Disposition Pursuant to Gaming Laws.

***Nevada Regulatory Requirement***

The registration of the debentures, the Guarantee and the common stock issuable upon conversion of the debentures pursuant to this registration statement qualifies as a public offering under Nevada law and requires us to make an application or obtain a ruling from the Nevada State Gaming Control Board Chairman. The Nevada State Gaming Control Board Chairman has issued an administrative ruling that it was not necessary for us to submit an application for prior approval of the registration of the debentures, the Guarantee and shares of our common stock.

***Change of Control***

Upon a change of control (as defined in the indenture governing the debentures) of Wynn Resorts occurring at any time, each holder may require us to purchase all or a portion of such holder's debentures for cash at a price equal to 100% of the issue price of the debentures to be purchased plus accrued and unpaid interest, if any, to, but excluding, the date of purchase. See Description of the Debentures Purchase of Debentures at the Option of Holders upon a Change of Control.

A change of control includes, among other things, the occurrence of any event that constitutes a change of control pursuant to (i) the indenture governing our subsidiaries' 12% second mortgage notes due 2010, (ii) our subsidiaries' credit facilities effective October 30, 2002 for construction financing and working capital for Wynn Las Vegas and (iii) our subsidiaries' FF&E facility to provide financing and refinancing for furniture, fixtures and equipment to be used at Wynn Las Vegas, each as may be amended from time to time, and the occurrence of any event that constitutes a change of control or similar term pursuant to any agreement to refinance any such indebtedness and any other indebtedness with a principal amount in excess of \$100 million.

***Use of Proceeds***

We will not receive any of the proceeds upon the resale of the debentures or the common stock by any selling securityholder.

***DTC Eligibility***

The debentures were issued in book-entry form and are represented by one or more permanent global certificates deposited with a custodian for and registered in the name of a nominee of DTC in New York, New York. Beneficial interests in any such securities are shown on, and transfers are effected only through, records maintained by DTC and its direct and indirect participants, and any such interest may not be exchanged for certificated securities, except in limited circumstances. See Description of the Debentures Book-Entry System.

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***Trading***

We do not intend to list the debentures on any national securities exchange. The debentures initially sold to qualified institutional buyers are eligible for trading in the PORTAL market. However, the debentures resold pursuant to this prospectus will no longer be eligible for trading in the PORTAL market. There may not be an active or liquid market for the debentures.

***Trading Symbol for Our Common Stock***

Our common stock is listed on the Nasdaq National Market under the symbol WYNN.

***Risk Factors***

See **Risk Factors** and other information included in, and incorporated by reference into, this prospectus for a discussion of factors you should carefully consider before deciding to invest in the debentures.

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**RISK FACTORS**

*You should carefully consider the risks described below and the risks incorporated by reference into this prospectus before making an investment decision. The risks and uncertainties described below and incorporated by reference herein are not the only ones facing our company. Additional risks and uncertainties not presently known to us or that we currently deem immaterial may also impair our business operations. If any of these risks actually occurs, our business, financial condition and results of operations could be materially adversely affected. In that case, the value of the debentures and our common stock could decline substantially.*

**Risks Related to the Securities**

*As a holding company, we will depend primarily on our subsidiaries to fund our debt service obligations under the debentures, and our subsidiaries may not provide us with sufficient funds to meet those obligations.*

As a holding company with no operations of our own, our cash flow needs, and therefore our ability to fund our debt service obligations under the debentures, are primarily dependent upon our subsidiaries, including the Wynn Las Vegas entities and the Wynn Macau Companies. Before the opening of Wynn Las Vegas, which is expected to occur in April 2005, and the possible opening of Wynn Macau, which continues to be subject to certain conditions, we will have no material operations or earnings. While approximately \$302.5 million in unrestricted cash was available at the holding company level as of March 31, 2004 and while, to the extent such funds are not required to be applied to the construction of Wynn Las Vegas in accordance with the debt obligations of the Wynn Las Vegas entities, we may receive up to \$50 million from the completion guarantor after the completion of Wynn Las Vegas, there can be no assurance that such funds will be available to pay scheduled interest payments on the debentures when they become due.

Although the Wynn Las Vegas entities will be permitted to distribute funds to us to cover certain corporate overhead, and, following completion of Wynn Las Vegas, will be permitted to pay limited management fees to us under certain conditions (including achieving agreed-upon financial ratios), we do not expect to have any significant cash flow at the holding company level from the Wynn Las Vegas entities for a considerable period of time, which may extend beyond July 15, 2006 (the end of the three-year period for which scheduled interest payments on the debentures are secured). In addition, in the event we go forward with Wynn Macau, we expect that any financial arrangements entered into by the Wynn Macau Companies will contain similar restrictions on distributions to us. If we decide not to go forward with Wynn Macau, we do not expect to receive any distributions from the Wynn Macau Companies. Further, our subsidiaries are separate and distinct legal entities and, other than the Guarantor, have no obligation to pay any amounts due on the debentures or to provide us with funds for our payment obligations, whether by dividends, distributions, loans or other payments.

As a result of these restrictions and the likelihood that our subsidiaries will not have significant cash flow for a considerable period of time, we may not have sufficient funds available to service the debt obligations of the debentures beyond the three year period for which scheduled interest payments on the debentures are secured.

*Your right to receive payment is junior to certain of our existing and future indebtedness.*

The debentures are unsecured and subordinated in right of payment to all of our existing and future senior indebtedness, including our guarantees of \$1.6 billion principal amount of secured indebtedness of the Wynn Las Vegas entities. As a result, in the event of bankruptcy,

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liquidation or reorganization or upon acceleration of the debentures due to an event of default under the indenture governing the debentures, and in specific other events, our assets will be available to pay obligations on the debentures only after all senior indebtedness has been paid in full in cash or other payment satisfactory to the holders of senior indebtedness. There may not be sufficient assets remaining to pay amounts due on any or all of the debentures then outstanding. Furthermore, we are a holding company and conduct substantially all of our operations through our subsidiaries, none of whom (other than the Guarantor) are guaranteeing our obligations under, or have any obligations to pay any amounts due on,

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the debentures. As a result, the debentures will be effectively subordinated to all of the indebtedness and other liabilities of our subsidiaries (other than the Guarantor). Our rights and the rights of our creditors, including holders of the debentures, to participate in the assets of any of our subsidiaries (other than the Guarantor) upon their liquidation or recapitalization will generally be subject to the prior claims of those subsidiaries creditors. At March 31, 2004, our subsidiaries had approximately \$503.6 million of outstanding liabilities and had assets constituting approximately 82% of our consolidated assets.

In the event of a bankruptcy, liquidation or reorganization relating to us, holders of the debentures will participate with trade creditors and all other holders of subordinated indebtedness in the assets remaining after we have satisfied all of the senior indebtedness. However, because the indenture governing the debentures requires that cash, securities or other property otherwise distributable to holders of the debentures in a bankruptcy or similar proceeding be paid to holders of senior indebtedness instead, holders of the debentures may receive less, ratably, than holders of trade payables in any such proceeding. In any of these cases, we may not have sufficient funds to pay all of the our creditors, and holders of debentures may receive less, ratably, than the holders of senior indebtedness.

If we fail to deliver our common stock upon conversion of a debenture and thereafter because we are the subject of bankruptcy proceedings, a holder's claim for damages arising from our failure could also be subordinated to all of our existing and future indebtedness.

As of March 31, 2004, the debentures are effectively subordinated to approximately \$1.6 billion of senior indebtedness, including \$1 billion available for borrowing under our credit facilities and \$150.5 million available for borrowing under our FF&E facility.

*The indenture governing the debentures does not restrict our ability to incur additional indebtedness or to take other actions that could negatively impact holders of the debentures.*

We are not restricted under the terms of the indenture governing the debentures from incurring additional indebtedness, including senior indebtedness. In addition, the limited covenants applicable to the debentures do not require us to achieve or maintain any minimum financial results relating to our financial position or results of operations. Our ability to recapitalize, incur additional indebtedness and take a number of other actions that are not limited by the terms of the debentures or the indenture governing the debentures could have the effect of diminishing our ability to make payments on the debentures when due.

*We may not have the ability to repurchase the debentures in cash upon the occurrence of a change of control.*

Holders of the debentures have the right to require us to repurchase the debentures upon the occurrence of a change of control. We may not have sufficient funds to make the required repurchase in cash at such time or the ability to arrange necessary financing on acceptable terms. In addition, our ability to repurchase the debentures in cash may be limited by law or the terms of other agreements relating to our indebtedness outstanding at the time. For more information, see Description of the Debentures Purchase of Debentures at the Option of Holders upon a Change of Control.

*As a holder of the debentures or a holder of the common stock issuable upon conversion of the debentures, you may be required to comply with registration, licensing, qualification or other requirements under gaming laws or dispose of your securities.*

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The gaming authority of any jurisdiction in which we currently or in the future conduct or propose to conduct gaming may require that a holder of the debentures or a holder of the common stock issuable upon conversion of the debentures be registered, licensed, qualified or found suitable, or comply with any other requirement under applicable gaming laws. If you purchase or otherwise accept an interest in the debentures, by the terms of the indenture governing the debentures, you will agree to comply with all of these requirements,



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including your agreement to register or apply for a license, qualification or a finding of suitability, or comply with any other requirement, within the required time period, as provided by the relevant gaming authority. If you fail to apply to be, or fail to become, registered, licensed or qualified, or are found unsuitable or fail to comply with any other requirement of a gaming authority, then we will have the right, at our option, to:

require you to sell your debentures or beneficial interest in the debentures within 30 days after you receive notice of our election, or any earlier date that the relevant gaming authority may request or prescribe; or

redeem your debentures (possibly within less than 30 days following the notice of redemption if requested or prescribed by the gaming authority) at a price equal to the lesser of:

your cost;

100% of the principal amount of the debentures, plus accrued and unpaid interest, if any, to the redemption date or the date of any failure to comply, whichever is earlier; and any other amount required by applicable law or by order of any gaming authority.

We will notify the indenture trustee in writing of any redemption as soon as practicable. We will not be responsible for any costs or expenses you may incur in connection with your registration, application for a license, qualification or a finding of suitability, or your compliance with any other requirement of a gaming authority. The indenture governing the debentures will also provide that as soon as you are required to sell your debentures as a result of a gaming authority action, you will, to the extent required by applicable gaming laws, have no further right:

to exercise, directly or indirectly, any right conferred by the debentures; or

to receive from us any interest, dividends or any other distributions or payments, or any remuneration in any form, relating to the debentures, except the redemption price we refer to above.

See Description of Debentures Mandatory Disposition Pursuant to Gaming Laws.

In addition, our articles of incorporation provide that, to the extent a gaming authority determines that you or your affiliates are unsuitable or to the extent deemed necessary or advisable by the board of directors, we may redeem shares of our common stock that you or your affiliates own or control. The redemption price will be the amount, if any, required by the gaming authority or, if the gaming authority does not determine the price, the sum deemed to be the fair value by the board of directors. If we determine the redemption price, the redemption price will not exceed the closing price of the common stock on the principal national securities exchange on which the common stock is listed on the trading date on the day before the redemption notice is given. If the common stock is not listed on a national securities exchange, the redemption price will not exceed the closing sale price of the common stock as quoted on the Nasdaq National Market or SmallCap Market, or if the closing price is not reported, the mean between the bid and asked prices, as quoted by any other generally recognized reporting system. The redemption price may be paid in cash, by promissory note, or both, as required, and pursuant to the terms established by, the applicable gaming authority and, if not, as we elect. However, if the gaming authorities were to find you or your affiliate unsuitable to own our voting securities, it could also determine that you or your affiliate is unsuitable to hold a promissory note for the purchase of such voting securities by us, and could determine not to approve the issuance of the promissory note to you or your affiliate.

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*The price of our common stock, and therefore the price of the debentures, may fluctuate significantly, which may make it difficult for you to resell the debentures, or the common stock issuable upon conversion of the debentures, when you want or at prices you find attractive.*

The price of shares of our common stock on the Nasdaq National Market constantly changes. We expect that the market price of our common stock will continue to fluctuate. Because the debentures are convertible into shares of our common stock, volatility or depressed prices for our common stock could have a similar effect on

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the trading price of the debentures. Holders who receive common stock upon conversion also will be subject to the risk of volatility and depressed prices of our common stock.

Our stock price can fluctuate as a result of a variety of factors, many of which are beyond our control. These factors include:

announcements by us or our competitors of significant contracts, acquisitions, joint marketing relationships, joint ventures or capital commitments;

developments in construction of Wynn Las Vegas or Wynn Macau;

developments generally affecting the casino/hotel and resorts industries;

announcements by third parties of significant claims or proceedings against us;

changes in government regulations and governmental approval of gaming activities;

changes in expectations as to our future financial performance, including financial estimates by securities analysts and investors;

future sales of our equity or equity-linked securities; and

general domestic and international economic conditions.

General market fluctuations, industry factors and general economic and geopolitical conditions and events, such as economic slowdowns or recessions, consumer confidence in the economy, recent terrorist attacks and ongoing military conflicts, also could cause our stock price to decrease.

In addition, the stock market in general has experienced extreme volatility that has often been unrelated to the operating performance of a particular company. These broad market fluctuations also may adversely affect the market price of our common stock.

***An active trading market for the debentures may not develop or continue.***

The debentures were a new issue of securities. Although the debentures initially sold to qualified institutional buyers are eligible for trading in the PORTAL market, the debentures resold pursuant to this prospectus will no longer be eligible for trading in the PORTAL market. We do not intend to list the debentures on any national securities exchange or automated quotation system. We cannot assure you that an active or sustained trading market for the debentures will develop or continue or that holders will be able to sell their debentures at prices they desire.

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Moreover, even if holders are able to sell their debentures, we cannot assure you as to the price at which any sales will be made. Future trading prices of the debentures will depend on many factors, including, among other things, prevailing interest rates, our operating results, the price of our common stock and the market for similar securities. Historically, the market for convertible debt has been subject to disruptions that have caused volatility in prices. It is possible that the market for the debentures will be subject to disruptions, which may have a negative effect on the holders of the debentures, regardless of our prospects or financial performance.

*Conversion of the debentures will dilute the ownership interest of existing stockholders.*

The conversion of some or all of the debentures will dilute the ownership interests of existing stockholders. Any sales in the public market of the common stock issuable upon such conversion, or the perception that such sales could occur, could materially adversely affect the prevailing market price for our common stock and could impair our future ability to raise capital through an offering of equity or equity-linked securities. In addition, the existence of the debentures may encourage short selling by market participants because the conversion of the debentures could depress the price of our common stock.

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*The substantial number of shares of common stock that will be eligible for sale in the near future could cause the market price of our common stock to decline.*

A substantial number of shares of our common stock were issued by us in private transactions not involving a public offering and are therefore treated as restricted securities for purposes of Rule 144 under the Securities Act. On June 20, 2003, we entered into a strategic business alliance with Société des Bains de Mer et du Cercle des Etrangers à Monaco, a société anonyme Monegasque organized under the laws of the Principality of Monaco ( SBM ), and in connection therewith we sold 3,000,000 shares of our common stock to SBM for \$45 million in a privately negotiated, all cash transaction. In return, SBM has agreed, subject to certain exceptions, to refrain from transferring its shares prior to April 1, 2005, and will be entitled to certain registration rights thereafter. As of March 31, 2004, we had outstanding approximately 43,000,000 such restricted shares of common stock, approximately 40,000,000 of which are held by certain of our affiliates and 3,000,000 of which are held by SBM. If these affiliated holders comply with the applicable holding periods, volume limits and other conditions prescribed in Rule 144 under the Securities Act, these unregistered shares of common stock may be freely tradable. In addition, as of March 31, 2004, there were 2,038,000 shares of common stock reserved and subject to issuance upon exercise of outstanding options, warrants or other convertible rights (including 25,000 shares of common stock subject to option grants that have been approved by the board of directors but not yet granted). Lastly, we have granted our Chairman and Chief Executive Officer, Stephen A. Wynn, demand and piggyback registration rights with respect to any shares of our common stock he purchases from Aruze USA.

No predictions can be made as to the effect, if any, that the issuance and availability for future market sales of shares of our common stock will have on the market price of our common stock prevailing from time to time. Sales of substantial amounts of our common stock (including shares issued upon the conversion of convertible securities), or the perception that such sales could occur, could materially adversely affect the prevailing market price for our common stock and could impair our future ability to raise capital through an offering of equity or equity-linked securities.

*The trading prices for the debentures will be directly affected by the trading prices for our common stock, which is impossible to predict.*

The price of our common stock could be affected by possible sales of our common stock by investors who view the debentures as a more attractive means of equity participation in Wynn Resorts and by hedging or arbitrage trading activity that may develop involving the common stock. The arbitrage could, in turn, affect the trading prices of the debentures.

*Bankruptcy laws may delay or otherwise impede the trustee's ability to foreclose on the collateral securing the debentures.*

We pledged 100% of the membership interests in the Guarantor to the trustee to secure our obligations under the indenture governing the debentures. Federal bankruptcy law could substantially delay or prevent the ability of the trustee under the indenture, whom we refer to as the trustee, to foreclose upon the collateral securing the debentures. If we and our subsidiaries become debtors in cases under the United States Bankruptcy Code, there can be no assurance:

whether any payments under the debentures would be made;

whether or when the trustee could foreclose upon or sell the collateral;

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whether the term or other conditions of the debentures or any rights of the holders could be altered in a bankruptcy case without the trustee's or your consent; or

whether or to what extent holders of the debentures would be compensated for any delay in payment or decline in the collateral's value.

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**RATIO OF EARNINGS TO FIXED CHARGES**

Our earnings were insufficient to cover our fixed charges by \$16.9 million, \$17.7 million, \$46.1 million and \$139.3 million for the period from inception to December 31, 2000, and for the years ended December 31, 2001, 2002 and 2003, respectively. Earnings were insufficient to cover fixed charges by \$29.9 million and \$40.2 million for the quarter ended March 31, 2003 and 2004, respectively. For purposes of these calculations, earnings consist of income from continuing operations before provision for income taxes and before fixed charges. Fixed charges include interest expense and a portion of rental expense deemed a reasonable approximation of the interest factor.

**USE OF PROCEEDS**

We will not receive any of the proceeds upon the resale of the debentures or the common stock by any selling securityholder.

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**DESCRIPTION OF THE DEBENTURES**

The debentures were issued under an indenture among us, Wynn Resorts Funding, LLC and U.S. Bank National Association, as trustee. The pledges referred to below under the caption "Security" are governed by a pledge and security agreement and a collateral pledge and security agreement (collectively, the "pledge agreements"), which define the terms of the pledges that will secure the payment of scheduled interest payments on the debentures when due, up to and including the interest payment due on July 15, 2006.

The following summary does not purport to be complete, and is subject to, and is qualified in its entirety by reference to, all of the provisions of the debentures, the indenture, the registration rights agreement and the pledge agreements. We urge you to read the indenture, the registration rights agreement and the pledge agreements and the form of the debentures, which you may obtain from us upon request. Wherever particular provisions or defined terms of the indenture or the form of debenture are referred to, these provisions or defined terms are incorporated into this prospectus by reference. As used in this description, all references to "Wynn Resorts," "our company," "we," "us" or "our" mean Wynn Resorts, Limited, excluding, unless otherwise expressly stated or the context otherwise requires, its subsidiaries.

**General**

The debentures are subordinated unsecured (except as described under "Security" below) obligations of Wynn Resorts and are subordinate in right of payment as described under "Subordination of Debentures." The debentures are convertible into our shares of common stock as described under "Conversion Rights." The debentures are limited to \$250,000,000 aggregate principal amount and will mature on July 15, 2015, unless earlier converted into common stock, redeemed at our option, or purchased by us at your option upon a change of control.

Interest on the debentures accrues at the rate per annum shown on the cover page of this prospectus and is payable semiannually in arrears on July 15 and January 15 of each year. Interest on the debentures accrues from July 7, 2003 or, if interest has already been paid, from the date it was most recently paid. Any payment required to be made on any day that is not a business day will be made on the next succeeding business day. The payment made on the next succeeding business day will be treated as though it were paid on the original due date. We will make each interest payment to the holders of record of the debentures at the close of business on the immediately preceding July 1 and January 1, whether or not such day is a business day. Interest payable upon redemption will be paid to the person to whom principal is payable. Interest on the debentures will be computed on the basis of a 360-day year comprised of twelve 30 day months. Interest will cease to accrue on a debenture upon its maturity, conversion or purchase by us.

Debentures may be presented for conversion at the office of the conversion agent, and for exchange or registration of transfer at the office of the registrar, each such agent initially being the trustee. We will pay the principal of, and interest on, the debentures at the office or agency maintained by us in the Borough of Manhattan in New York City. We reserve the right to pay interest to holders of the debentures by check mailed to the holders at their registered addresses. However, a holder of debentures with an aggregate principal amount in excess of \$1,000,000 will be paid by wire transfer in immediately available funds. Except under limited circumstances, the debentures will be issued only in fully registered book-entry form, without coupons, and will be represented by one or more global notes. The debentures shall be issued only in denominations of \$1,000 of principal amount and any integral multiple of \$1,000. There will be no service charge for any registration of transfer or exchange of debentures. We may, however, require holders to pay a sum sufficient to cover any tax, assessment or other governmental charge payable in connection with any transfer or exchange.

The indenture does not contain any restriction on us or our subsidiaries regarding the payment of dividends, the incurrence of indebtedness or the repurchase of securities, and does not contain any financial covenants. Other than as described under "Purchase of Debentures at the Option of



Holders upon a Change of Control,

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the indenture contains no covenants or other provisions that afford protection to holders of debentures in the event of a highly leveraged transaction.

### **Guarantee**

Our wholly owned subsidiary Wynn Resorts Funding, LLC (the "Guarantor") has guaranteed the debentures on a senior secured basis (the "subsidiary guarantee"). The Guarantor is a limited liability company formed in connection with the initial issuance of the debentures that has no business or assets other than the securities deposited as contemplated under the caption "Security" below. The indenture prohibits, until such time as the pledge agreements are terminated, the Guarantor from incurring any indebtedness (other than the guarantee of the debentures) or other liabilities, conducting any business other than holding and maintaining the securities deposited as contemplated under the caption "Security" below, amending its organizational documents and issuing any equity interests. We have also unconditionally guaranteed (the "parent guarantee," and together with the subsidiary guarantee, the "Guarantee"), on an unsecured subordinated basis, the obligations of the Guarantor under the subsidiary guarantee, as and when due, regardless of the right of setoff or counterclaim that the Guarantor may have or assert other than the defense of payment. The parent guarantee does not in any way increase or add to the obligations that we will owe under the debentures and the subsidiary guarantee. The indenture provides that the Guarantee will be released at such time as the pledge agreements are terminated.

### **Security**

We contributed approximately \$44.0 million of the net proceeds from the original issuance of the debentures to the Guarantor, which used such proceeds to purchase U.S. government securities in an amount that we believe will be sufficient upon receipt of scheduled interest and principal payments of such securities to provide for payment in full when due of scheduled interest payments on the debentures up to and including the interest payment due on July 15, 2006. If at any time the value of the collateral exceeds 100% of the amount sufficient to provide payment in full of such secured scheduled cash interest payments, the excess collateral may be released from the securities account upon the Guarantor's request. If at any time the value of the collateral is less than 100% of the amount sufficient to provide payment in full of the remaining secured scheduled cash interest payments, the Guarantor will deposit funds into the securities account in an amount equal to such difference.

The Guarantor has pledged such U.S. government securities as security for its guarantee for the exclusive benefit of the holders of the debentures (and not for the benefit of any of our other creditors). Immediately prior to an interest payment date, the collateral agent will release from the securities account to the trustee proceeds sufficient to pay the interest then due on the debentures. A failure to pay interest on the debentures when due for any scheduled interest payment date on or prior to July 15, 2006 will constitute an immediate event of default under the indenture, with no grace period.

Wynn Resorts has pledged its 100% member's interest in the Guarantor to the collateral agent to secure its obligations under the indenture and the collateral documents. The U.S. government securities held by the Guarantor, the securities account and Wynn Resorts' member's interest in the Guarantor are collectively referred to as the "Collateral."

The pledged U.S. government securities and the other Collateral, among other things, secure the repayment of the principal amount on the debentures until such time as the collateral pledge and security agreement is terminated. If prior to July 15, 2006:

an event of default under the debentures occurs and is continuing; and

the trustee or the holders of 25% in aggregate principal amount of the debentures accelerate the debentures by declaring the principal amount of the debentures to be immediately due and payable (by written consent, at a meeting of debenture holders or otherwise), except for the occurrence of an event

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of default relating to our bankruptcy, insolvency or reorganization, upon which the debentures will be accelerated automatically,

then the proceeds from the pledged U.S. government securities will be promptly released for payment to debenture holders, subject to the automatic stay provisions of bankruptcy law, if applicable, and subject to the prompt distribution of proceeds from the securities account as follows:

an amount equal to any accrued and unpaid interest would be distributed from the securities account in payment of accrued interest; and

the balance of the proceeds of the securities account would be distributed in payment of a portion of the principal amount of the debentures and liquidated damages, if any, due on the debentures.

However, if any event of default is cured prior to the acceleration of the debentures by the trustee or holders of the debentures referred to above, the trustee and the holders of the debentures will not be able to accelerate the debentures as a result of that event of default and no proceeds from the pledged U.S. government securities will be released for payment to debenture holders.

For example, if the first two interest payments were made when due but the third interest payment was not made when due and the debenture holders promptly exercised their right to declare the principal amount of the debentures to be immediately due and payable prior to the Company curing such failure to pay interest, then, assuming automatic stay provisions of bankruptcy law are inapplicable and the proceeds of the pledged U.S. government securities are promptly distributed from the securities account,

an amount equal to the interest payment due on the third interest payment would be distributed from the securities account in payment of accrued interest; and

the balance of the proceeds of the securities account would be distributed in payment of a portion of the principal amount of the debentures and liquidated damages, if any, due on the debentures.

Once we make the interest payment due on the debentures on or about July 15, 2006, all of the remaining pledged U.S. government securities, if any, will be released to the Guarantor from the securities account and distributed to us.

**Ranking**

Except to the extent described above under Security, the debentures are subordinated, unsecured obligations of Wynn Resorts and are junior in right of payment to all existing and future senior debt of Wynn Resorts, including its guarantees of \$1.6 billion principal amount of our subsidiaries' secured indebtedness. The debentures rank equally with all existing and future subordinated indebtedness of Wynn Resorts. See

Subordination of Debentures. In addition, the debentures are effectively subordinated to our subsidiaries' indebtedness and liabilities, including trade payables. As of March 31, 2004, our subsidiaries had approximately \$1.7 billion of total indebtedness and liabilities to which the debentures were effectively subordinated. As of March 31, 2004, we and our subsidiaries had \$1.8 billion of total indebtedness outstanding, including \$1 billion available for borrowing under our subsidiaries' credit facilities and \$150.5 million available for borrowing under our subsidiaries' FF&E facility. See Capitalization. The debentures do not contain any limitation on the amount of indebtedness ranking senior to or on a parity with the indebtedness evidenced by the debentures that we may hereafter incur.

**Conversion Rights**

You may convert your debentures, in whole or in part, into shares of our common stock at any time prior to the close of business on the business day immediately preceding the final maturity date of the debentures, subject to prior redemption of the debentures at our option or upon a change of control. The initial conversion rate for the debentures is equal to 43.4782 shares of common stock per \$1,000 principal amount of debentures, subject to adjustment as described below, which represents an initial conversion price of approximately \$23.00 per share.

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On conversion of a debenture, a holder will not receive, except as described below, accrued interest on the principal amount of the debentures. Our delivery to the holder of the full number of shares of common stock into which the debenture is convertible, together with any cash payment for such holder's fractional shares, or cash or a combination of cash and shares of common stock in lieu thereof, will be deemed:

to satisfy our obligation to pay the principal amount of the debenture; and

to satisfy our obligation to pay the accrued cash interest, if any, attributable to the period from the issue date through the conversion date.

As a result, the accrued cash interest, if any, is deemed paid in full rather than cancelled, extinguished or forfeited.

In lieu of delivery of shares of our common stock upon notice of conversion of any debentures (for all or any portion of the debentures), we may elect to pay holders surrendering debentures an amount in cash per debenture (or a portion of a debenture) equal to the Applicable Stock Price multiplied by the conversion rate in effect on the conversion date. The Applicable Stock Price is equal to the average of the Sale Prices (as defined below) of our common stock over the three-Trading Day (as defined below) period starting the third Trading Day following the conversion date of the debentures appropriately adjusted to take into account the occurrence, during such three-Trading Day period, of certain events with respect to the common stock listed under Conversion Rate Adjustments. We will inform the holders through the trustee no later than two business days following the conversion date of our election to deliver shares of our common stock or to pay cash in lieu of delivery of such shares, unless we have already informed holders of our election in connection with our optional redemption of the debentures as described under

Optional Redemption. If we elect to deliver all of such payment in shares of our common stock, the shares will be delivered through the conversion agent no later than the third business day following the determination of the Applicable Stock Price. If we elect to pay all or a portion of such payment in cash, the payment, including any delivery of our common stock, will be made to holders surrendering debentures no later than the tenth business day following the applicable conversion date. If an event of default, as described under Events of Default below (other than a default in a cash payment upon conversion of the debentures), has occurred and is continuing, we may not pay cash upon conversion of any debentures or portion of a debenture (other than cash for fractional shares).

If you have submitted your debentures for redemption upon a change of control, you may convert your debentures only if you withdraw your redemption election. You may convert your debentures in part so long as the part is \$1,000 principal amount or an integral multiple of \$1,000. If any debentures are converted during the period after a record date for an interest payment date but before the opening of business on the next interest payment date, then the debentures must be accompanied by funds equal to the interest payable for such period on that interest payment date on the converted principal amount, unless we have specified a redemption date following a change of control during that period.

We will not issue fractional shares of common stock upon conversion of debentures. Instead, we will pay cash equal to the Sale Price on the business day prior to the conversion date. You will not receive any cash payments representing accrued interest upon conversion unless you convert on an interest payment date.

To convert your debenture into common stock you must do the following (or comply with DTC procedures for doing so in respect of your beneficial interest in debentures evidenced by a global debenture held by DTC):

complete and manually sign the conversion notice on the back of the debenture or facsimile of the conversion notice and deliver this notice to the conversion agent;

surrender the debenture to the conversion agent;

if required, furnish appropriate endorsements and transfer documents;

if required, pay all transfer or similar taxes; and

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if required, pay funds equal to interest payable on the next interest payment date.

The date you comply with these requirements is the conversion date under the indenture.

## **Conversion Rate Adjustments**

The conversion price will be adjusted for:

dividends or distributions on shares of our common stock payable in shares of our common stock or other capital stock of Wynn Resorts;

subdivisions, combinations or certain reclassifications of shares of our common stock;

distributions to all holders of our shares of common stock of our assets (including shares of capital stock, of or similar equity interests in, a subsidiary or other business unit of ours) or debt securities or certain rights to purchase our securities (excluding any consideration paid in connection with a tender offer described in the bullet below, any cash dividends subject to a Pre-Dividend Adjustment (as defined below) and any other cash dividends or cash distributions, other than, with respect to any consecutive 12-month period, the amount, if any, by which the aggregate amount of all cash dividends and distributions occurring during such 12-month period (other than cash dividends for which a Pre-Dividend Adjustment was made) together with cash or other consideration payable in respect of certain tender offers for our common stock consummated in such 12-month period exceeds on a per share basis 10% of the Sale Price on the day preceding the date of declaration of such dividend or other distribution); and

any successful completion of a tender offer made by us or any of our subsidiaries for our common stock that involved the payment of aggregate consideration in an amount that (together with cash or other consideration payable in respect of certain tender offers for our common stock consummated, and all other cash distributions to all or substantially all holders of our common stock made (other than cash dividends for which a Pre-Dividend Adjustment was made), in the 12 months preceding the expiration of such expired tender offer) exceeded an amount equal to 10% of the product of the Sale Price on the last day of such expired tender offer and the number of shares of common stock outstanding at the expiration of such expired tender offer.

In the event that we pay a dividend or make a distribution on shares of our common stock in accordance with the third bullet above, the conversion price will be adjusted based on the market value of the securities so distributed relative to the market value of our common stock, in each case based on the average Sale Prices of those securities for the 10 Trading Days commencing on and including the fifth Trading Day after the date on which ex-dividend trading commences for such dividend or distribution on Nasdaq, the New York Stock Exchange or such other national or regional exchange or market on which the securities are then listed or quoted.

In addition, prior to July 20, 2007, we will adjust the conversion rate (a Pre-Dividend Adjustment ) if we declare a dividend or distribution to all or substantially all of the holders of our common stock, to the extent that such dividend or distribution is payable in cash. If we declare such a dividend or distribution, the conversion rate shall be increased to equal the number determined by multiplying the conversion rate in effect immediately prior to such date of determination by the following ratio:

(Pre-Dividend Sale Price)



(Pre-Dividend Sale Price Dividend Adjustment Amount)

The Pre-Dividend Sale Price will be calculated as the average Sale Price for the three consecutive Trading Days ending on the date immediately preceding the ex-dividend date for such dividend or distribution. The Dividend Adjustment Amount will be calculated as the full amount of the dividend or distribution to the extent payable in cash applicable to one share of common stock.

No adjustment to the conversion rate or the ability of a holder of a debenture to convert will be made if Wynn Resorts provides that holders of debentures will participate in the transaction without conversion or in

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certain other cases. In addition, if we adopt a stockholder rights plan, in lieu of an adjustment to the conversion ratio, the debentures will become entitled to receive upon conversion, in addition to the common stock issuable, any associated rights to the same extent as holders of our common stock generally.

The indenture permits us to increase the conversion rate from time to time.

In the event of:

a taxable distribution to holders of shares of common stock that results in an adjustment of the conversion price; or

a decrease in the conversion price at our discretion,

the holders of the debentures may, in certain circumstances, be deemed to have received a distribution subject to federal income tax as a dividend. See [United States Federal Income Tax Consequences](#).

The **Sale Price** of the common stock on any date means the closing sale price per share (or if no closing sale price is reported, the average of the bid and ask prices or, if more than one in either case, the average of the average bid and the average ask prices) on such date as reported in composite transactions for the Nasdaq or the principal United States securities exchange on which the common stock is traded or, if the common stock is not listed on Nasdaq or a United States national or regional securities exchange, as reported by the National Quotation Bureau Incorporated.

**Trading Day** means a day during which trading in securities generally occurs on Nasdaq or, if the common stock is not listed on Nasdaq, on the principal national or regional securities exchange on which the common stock is then listed or, if the common stock is not listed on a national or regional securities exchange, on the principal other market on which the common stock is then traded.

Other than with respect to a Pre-Dividend Adjustment, we will not be required to make any adjustment to the conversion rate until the cumulative adjustments amount to 1.0% or more of the conversion rate. Any adjustment not made will be taken into account in subsequent adjustments. We will compute all adjustments to the conversion rate and will give notice of any adjustments by issuing a press release and publishing such information on our website.

### **Purchase of Debentures at the Option of Holders upon a Change of Control**

If a change of control occurs, you will have the right to require us to purchase all or any part of your debentures not previously called for redemption 30 business days after the occurrence of such change of control for cash at a purchase price equal to 100% of the principal amount of the debentures, plus accrued and unpaid interest, up to, but excluding, the purchase date. Debentures submitted for purchase must be in integral multiples of \$1,000 principal amount. We will mail to the trustee and to each holder a written notice of the change of control within 10 business days after the occurrence of such change of control. This notice shall state certain specified information, including:

information about the date of and events causing the change of control;

the change of control purchase price and the change of control purchase date;

information about the holders' right to convert the debentures;

the holders' right to require us to purchase the debentures;

the procedures required for exercise of the purchase option upon the change of control; and

the name and address of the paying and conversion agents.

You must deliver written notice of your exercise of this purchase right to the paying agent prior to the close of business on the business day prior to the change of control purchase date. The written notice must specify the

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debentures for which the purchase right is being exercised. If you wish to withdraw this election, you must provide a written notice of withdrawal to the paying agent at any time prior to the close of business on the business day prior to the change of control purchase date.

A change of control is:

(1) any transaction or event (whether by means of an exchange offer, liquidation, tender offer, consolidation, merger, combination, reclassification, recapitalization or otherwise) in connection with which all or substantially all of our common stock is exchanged for, converted into, acquired for or constitutes solely the right to receive, consideration (excluding cash payments for fractional shares) that consists of something other than all or substantially all common equity that:

is listed on, or immediately after the transaction or event will be listed on, a United States national securities exchange, or

is approved, or immediately after the transaction or event will be approved, for quotation on Nasdaq or any similar United States system of automated dissemination of quotations of securities prices; or

(2) the occurrence of any event that constitutes a change of control pursuant to (i) the indenture governing our subsidiaries 12% second mortgage notes due 2010, (ii) our subsidiaries credit facilities effective October 30, 2002 for construction financing for Wynn Las Vegas and (iii) our subsidiaries FF&E facility to provide financing and refinancing for furniture, fixtures and equipment to be used at Wynn Las Vegas, each as may be amended from time to time, and the occurrence of any event that constitutes a change of control or similar term pursuant to any agreement to refinance any such indebtedness and any other indebtedness with a principal amount in excess of \$100 million.

We will under the indenture:

comply with the provisions of Rule 13e-4 and Rule 14e-1, if applicable, under the Exchange Act;

file a Schedule TO or any successor or similar schedule, if required, under the Exchange Act; and

otherwise comply with all federal and state securities laws in connection with any offer by us to purchase the debentures upon a change of control.

This change of control purchase feature may make more difficult or discourage a takeover of us and the removal of incumbent management. We are not, however, aware of any specific effort to accumulate shares of our common stock or to obtain control of us by means of a merger, tender offer, solicitation or otherwise. In addition, the change of control purchase feature is not part of a plan by management to adopt a series of anti-takeover provisions. Instead, the change of control purchase feature is a result of negotiations between us and the initial purchasers of the debentures.

We could, in the future, enter into certain transactions, including recapitalizations, that would not constitute a change of control but would increase the amount of debt, including senior indebtedness, outstanding or otherwise adversely affecting a holder. Neither we nor our subsidiaries are prohibited from incurring debt, including senior indebtedness, under the indenture. The incurrence of significant amounts of

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additional debt could adversely affect our ability to service our debt, including the debentures.

Certain of our debt agreements that we may enter into in the future may prohibit our redemption or repurchase of the debentures and provide that a change of control constitutes an event of default.

If a change of control were to occur, we may not have sufficient funds to pay the change of control purchase price for the debentures tendered by holders. In addition, we may in the future incur debt that has similar change of control provisions that permit holders of this future debt to accelerate or require us to repurchase this future debt upon the occurrence of events similar to a change of control. We may not purchase any debenture at any

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time when the subordination provisions of the indenture otherwise would prohibit us from making such repurchase. Our failure to repurchase the debentures upon a change of control where holders have properly exercised their repurchase rights will result in an event of default under the indenture, whether or not the purchase is permitted by the subordination provisions of the indenture. Any such default may, in turn, cause a default under existing or future Senior Indebtedness. See [Subordination of Debentures](#) below.

**Optional Redemption**

There is no sinking fund for the debentures. On or after July 20, 2007, we will be entitled to redeem the debentures at any time as a whole, or from time to time in part, on at least 30 but no more than 60 days' notice, at the redemption prices set out below, together with accrued and unpaid interest to, but excluding, the date fixed for redemption. However, if a redemption date is an interest payment date, the semi-annual payment of interest becoming due on such date shall be payable to the holder of record as of the relevant record date and the redemption price shall not include such interest payment.

The table below shows redemption prices of a debenture per \$1,000 principal amount if redeemed during the periods described below.

<u>Period</u>	<u>Redemption Price</u>
July 20, 2007 through July 14, 2008	103.600%
July 15, 2008 through July 14, 2009	103.000%
July 15, 2009 through July 14, 2010	102.400%
July 15, 2010 through July 14, 2011	101.800%
July 15, 2011 through July 14, 2012	101.200%
July 15, 2012 through July 14, 2013	100.600%
On or after July 15, 2013	100.000%

If we do not redeem all of the debentures, the trustee will select the debentures to be redeemed in principal amounts of \$1,000 or whole multiples of \$1,000 by lot, on a pro rata basis, or in accordance with any other method the trustee considers fair and appropriate. If any debentures are to be redeemed in part only, a new debenture or debentures in principal amount equal to the unredeemed principal portion thereof will be issued. If a portion of a holder's debentures is selected for partial redemption and the holder converts a portion of its debentures, the converted portion will be deemed to be taken from the portion selected for redemption.

Holders may convert their debentures after they are called for redemption at any time prior to the close of business on the redemption date. In the event that a holder elects to convert debentures in connection with the redemption, the notice of redemption will inform the holder of our election to deliver shares of our common stock or to pay cash or a combination of cash and common stock.

**Mandatory Disposition Pursuant to Gaming Laws**

Notwithstanding any other provision hereof, if any gaming authority requires a holder or beneficial owner of debentures to be licensed, qualified or found suitable under any applicable gaming law and the holder or beneficial owner (1) fails to apply for a license, qualification or finding of suitability within 30 days after being requested to do so (or such lesser period as required by the gaming authority), or (2) is notified by a gaming

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authority that it will not be licensed, qualified or found suitable, we will have the right, at our option, to:

- (1) require the holder or beneficial owner to dispose of its debentures within 30 days (or such lesser period as required by the gaming authority) following the earlier of:
  - (a) the termination of the period described above for the holder or beneficial owner to apply for a license, qualification or finding of suitability; or

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- (b) the receipt of the notice from the gaming authority that the holder or beneficial owner will not be licensed, qualified or found suitable by the gaming authority; or
- (2) redeem the debentures of the holder or beneficial owner at a redemption price equal to:
  - (a) the price determined by the gaming authority; or
  - (b) if the gaming authority does not determine a price, the lesser of:
    - (i) the principal amount of the debentures plus accrued and unpaid interest, if any; and
    - (ii) the price that the holder or beneficial owner paid for the debentures,

in each case, together with accrued and unpaid interest on the debentures, if any, to the earlier of (1) the date of redemption or such earlier date as is required by the gaming authority or (2) the date of the finding of unsuitability by the gaming authority, which may be less than 30 days following the notice of redemption.

Immediately upon a determination by a gaming authority that a holder or beneficial owner of debentures will not be licensed, qualified or found suitable, the holder or beneficial owner will not have any further rights with respect to the debentures to:

- (1) exercise, directly or indirectly, through any person, any right conferred by the debentures; or
- (2) receive any interest or any other distribution or payment with respect to the debentures, or any remuneration in any form from us for services rendered or otherwise, except the redemption price of the debentures.

We are not required to pay or reimburse any holder or beneficial owner of debentures who is required to apply for such license, qualification or finding of suitability for the costs relating thereto. Those expenses will be the obligation of the holder or beneficial owner.

**Consolidation, Merger, Sale or Conveyance**

The indenture provides that we may not consolidate with or merge into any other entity or convey, transfer or lease our properties and assets substantially as an entirety to any entity, unless:

we are the surviving corporation or the successor is a U.S. domestic corporation, limited liability company, partnership, trust or other entity, and expressly assumes our obligations on the debentures and under the indenture;

immediately after giving effect to the transaction, no default or event of default shall have occurred and be continuing; and



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we have delivered to the trustee an officers certificate and an opinion of counsel each stating that such transaction complies with these requirements.

In case of any such consolidation, merger, conveyance or transfer, the successor entity will succeed to and be substituted for us as obligor on the debentures, with the same effect as if it had been named in the indenture as our company.

The covenant described above includes a phrase relating to the conveyance, transfer, or lease of our properties and assets substantially as an entirety . There is no precise, established definition of the phrase substantially as an entirety under applicable law. In interpreting this phrase, courts among other things, make a subjective determination as to the portion of assets conveyed, considering many factors, including the value of assets conveyed, the proportion of an entity s income derived from the assets conveyed and the significance of those assets to the ongoing business of the entity. To the extent the meaning of such phrase is uncertain, uncertainty will exist as to whether or not this covenant applies.

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### **Subordination of Debentures**

Except to the extent described under **Security** above, the payment of principal of and interest (including liquidated damages, if any) on the debentures is subordinated in right of payment, as set forth in the indenture, to the prior payment in full in cash or cash equivalents of all Senior Indebtedness whether outstanding on the date of the indenture or thereafter incurred. The debentures also are effectively subordinated to all indebtedness and other liabilities, including trade payables and lease obligations, if any, of our subsidiaries. In the event of any insolvency or bankruptcy case or proceeding, or any receivership, liquidation, reorganization or other similar case or proceeding in connection therewith, relating to us or to our assets, or any liquidation, dissolution or other winding-up of us, whether voluntary or involuntary, or any assignment for the benefit of creditors or other marshaling of assets or liabilities of us, the holders of Senior Indebtedness will be entitled to receive payment in full in cash or cash equivalents of all Senior Indebtedness, or provision shall be made for such payment in full, before the holders of debentures will be entitled to receive any payment or distribution of any kind or character (other than Permitted Payments); and any payment or distribution of our assets of any kind or character, whether in cash, property or securities (other than Permitted Payments) by set-off or otherwise, to which the holders of the debentures or the trustee would be entitled but for the provisions of the indenture relating to subordination shall be paid by the liquidating trustee or agent or other person making such payment or distribution directly to the holders of Senior Indebtedness or their representatives ratably according to the aggregate amounts remaining unpaid on account of the Senior Indebtedness to the extent necessary to make payment in full of all Senior Indebtedness remaining unpaid, after giving effect to any concurrent payment or distribution to the holders of such Senior Indebtedness.

No payment or distribution of any of our assets of any kind or character, whether in cash, property or securities other than Permitted Payments, may be made by or on our behalf on account of principal of or interest or liquidated damages, if any, on the debentures or on account of the purchase, redemption or other acquisition of debentures upon the occurrence of any Payment Default until such Payment Default shall have been cured or waived in writing or shall have ceased to exist or such Designated Senior Indebtedness shall have been discharged or paid in full in cash or cash equivalents.

No payment or distribution of any of our assets of any kind or character, whether in cash, property or securities (other than Permitted Payments) may be made by or on our behalf on account of principal of or interest or liquidated damages, if any, on the debentures or on account of the purchase, redemption or other acquisition of debentures during a Payment Blockage Period arising as a result of a Non-Payment Default.

The Payment Blockage Period will commence upon the date of receipt by the trustee of written notice from the trustee or such other representative of the holders of the Designated Senior Indebtedness in respect of which the Non-Payment Default exists and shall end on the earliest of:

- (1) 179 days thereafter (provided that any Designated Senior Indebtedness as to which notice was given shall not theretofore have been accelerated);
- (2) the date on which such Non-Payment Default is cured, waived or ceases to exist;
- (3) the date on which such Designated Senior Indebtedness is discharged or paid in full; or
- (4) the date on which such Payment Blockage Period shall have been terminated by written notice to the trustee or us from the trustee or such other representative initiating such Payment Blockage Period;

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after which we will resume making any and all required payments in respect of the debentures, including any missed payments. In any event, not more than one Payment Blockage Period may be commenced during any period of 365 consecutive days. No Non-Payment Default that existed or was continuing on the date of the commencement of any Payment Blockage Period will be, or can be made, the basis for the commencement of a subsequent Payment Blockage Period, unless such Non-Payment Default has been cured or waived for a period of not less than 90 consecutive days subsequent to the commencement of such initial Payment Blockage Period.

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In the event that, notwithstanding the provisions of the preceding four paragraphs, any payment or distribution shall be received by the trustee or any holder of the debentures which is prohibited by such provisions, then and in such event such payment shall be held in trust for the benefit of, and paid over and delivered by such trustee or holder to the trustee or any other representatives of holders of Senior Indebtedness, as their interest may appear, for application to Senior Indebtedness. After all Senior Indebtedness is paid in full and until the debentures are paid in full, holders of the debentures shall be subrogated (equally and ratably with all other indebtedness that is equal in right of payment to the debentures) to the rights of holders of Senior Indebtedness to receive distributions applicable to Senior Indebtedness to the extent that distributions otherwise payable to the holders of the debentures have been applied to the payment of Senior Indebtedness. See Events of Default below.

Capital Lease Obligation means, at the time any determination thereof is to be made, the amount of the liability in respect of a capital lease that would at that time be required to be capitalized on a balance sheet in accordance with GAAP.

Designated Senior Indebtedness means any of our Senior Indebtedness, the principal amount of which is \$50.0 million or more and that has been designated as Designated Senior Indebtedness.

Hedging Obligations means, with respect to any specified person, the obligations of such person under (1) interest rate swap agreements, interest rate cap agreements and interest rate collar agreements and (2) other agreements or arrangements designed to protect such person against fluctuations in interest rates.

Indebtedness means, with respect to any specified person, any indebtedness of such person, whether or not contingent, but without duplication:

- (1) in respect of borrowed money;
- (2) evidenced by bonds, notes, debentures or similar instruments or letters of credit (or reimbursement agreements in respect thereof);
- (3) in respect of banker's acceptances;
- (4) representing Capital Lease Obligations;
- (5) representing the balance deferred and unpaid of the purchase price of any property, except any such balance that constitutes an accrued expense or trade payable; or
- (6) representing any Hedging Obligations,

if and to the extent any of the preceding items (other than letters of credit and Hedging Obligations) would appear as a liability upon a balance sheet of the specified person prepared in accordance with GAAP. In addition, the term Indebtedness includes all Indebtedness of others secured by a Lien on any asset of the specified person (whether or not such Indebtedness is assumed or guaranteed by the specified person) and, to the extent not otherwise included, the guarantee by the specified person of any Indebtedness of any other person.

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The amount of any Indebtedness outstanding as of any date shall be:

- (1) the accreted value of the Indebtedness, in the case of any Indebtedness issued with original issue discount;
- (2) the principal amount of the Indebtedness, together with any interest on the Indebtedness that is more than 30 days past due, in the case of any other Indebtedness;
- (3) in the case of a guarantee of Indebtedness, the maximum amount of the Indebtedness guaranteed under such guarantee; and

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- (4) in the case of Indebtedness of others secured by a Lien on any asset of the specified Person, the lesser of:
- (a) the face amount of such Indebtedness (plus, in the case of any letter of credit or similar instrument, the amount of any reimbursement obligations in respect thereof), and
  - (b) the fair market value of the asset(s) subject to such Lien.

**Lien** means, with respect to any asset, any mortgage, lien, pledge, charge, security interest or encumbrance of any kind in respect of such asset, whether or not filed, recorded or otherwise perfected under applicable law, including any conditional sale or other title retention agreement, any lease in the nature thereof, any option or other agreement to sell or give a security interest in and any filing of or agreement to give any financing statement under the Uniform Commercial Code (or equivalent statutes) of any jurisdiction.

**Non-Payment Default** means any default or event of default with respect to any Designated Senior Indebtedness other than any Payment Default pursuant to which the maturity thereof may be accelerated.

**Payment Default** means a default in payment, whether at scheduled maturity, upon scheduled installment, by acceleration or otherwise, of principal of, or premium, if any or interest on Designated Senior Indebtedness beyond any applicable grace period.

**Permitted Junior Securities** means any payment or distribution in the form of equity securities or subordinated securities of us or any successor obligor that, in the case of any such subordinated securities, are subordinated in right of payment to all Senior Indebtedness that may at the time be outstanding to at least the same extent as the debentures are so subordinated.

**Permitted Payments** means (i) payments of principal of or liquidated damages, if any, or interest on the debentures as described under **Security** above and (ii) any payments or distributions in the form of Permitted Junior Securities.

**Senior Indebtedness** means the principal of, interest on, fees, costs and expenses in connection with and other amounts due on Indebtedness of the Company, whether outstanding on the date of the Indenture or thereafter created, incurred, assumed or guaranteed by the Company, unless, in the instrument creating or evidencing or pursuant to which such Indebtedness is outstanding, it is expressly provided that such Indebtedness is not senior in right of payment to the debentures.

Notwithstanding the foregoing, **Senior Indebtedness** shall not include:

indebtedness or other obligations of Wynn Resorts that by their terms rank equal or junior in right of payment to the debentures;

indebtedness of Wynn Resorts that by operation of law is subordinate to any of Wynn Resorts' general unsecured obligations;

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accounts payable or other liabilities owed or owing by Wynn Resorts to trade creditors, including guarantees thereof or instruments evidencing such liabilities;

amounts owed by Wynn Resorts for compensation to employees or for services rendered to Wynn Resorts;

Wynn Resorts' indebtedness to any subsidiary or any other affiliate of Wynn Resorts or any of such affiliate's subsidiaries, as outstanding on the date hereof;

capital stock of Wynn Resorts;

indebtedness evidenced by any guarantee of any indebtedness ranking equal or junior in right of payment to the debentures; and

indebtedness which, when incurred and without respect to any election under Section 1111(b) of Title 11 of the United States Code, is without recourse to Wynn Resorts.

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Except for payments contemplated under Security above, the debentures are also effectively subordinated to all liabilities, including trade payables and lease obligations, if any, of our subsidiaries. Any right by us to receive the assets of any of our subsidiaries upon the liquidation or reorganization thereof, and the consequent right of the holders of the debentures to participate in these assets, will be effectively subordinated to the claims of that subsidiary's creditors (including trade creditors) except to the extent that we are recognized as a creditor of such subsidiary, in which case our claims would still be subordinate to any security interests in the assets of such subsidiary and any indebtedness of such subsidiary senior to that held by us.

Our subsidiaries are separate and distinct legal entities and, other than the Guarantor, have no obligation, contingent or otherwise, to pay any amounts due pursuant to the debentures or to make any funds available therefor, whether by dividends, loans or other payments. In addition, the payment of dividends and the making of loans and advances to us by our subsidiaries may be subject to statutory, contractual or other restrictions and are dependent upon the earnings or financial condition of those subsidiaries and subject to various business considerations. As a result, we may be unable to gain access to the cash flow or assets of our subsidiaries.

## **Events of Default**

The indenture defines an event of default as one or more of the following:

- (1) on or before July 15, 2006, default in payment of any interest or liquidated damages upon any of the debentures when due and payable, whether or not such payment is prohibited by the subordination provisions in the indenture;
- (2) after July 15, 2006, default in payment of any interest or liquidated damages upon any of the debentures when due and payable, whether or not such payment is prohibited by the subordination provisions in the indenture, if such failure continues for 30 days;
- (3) default in payment of the principal amount, redemption price, or change of control purchase price with respect to any debenture when such payment becomes due and payable, whether or not such payment is prohibited by the subordination provisions in the indenture;
- (4) failure by Wynn Resorts or any of its subsidiaries to comply with any of its other agreements in the debentures or the indenture upon receipt of notice of such default and Wynn Resorts' failure to cure such default, cause such default to be cured, or obtain a waiver thereof, within 60 days after receipt by Wynn Resorts of such notice;
- (5) the failure of Wynn Resorts or any of its subsidiaries to make any payment by the end of any applicable grace period after maturity of Indebtedness, in an amount (taken together with amounts under (6)) in excess of \$20 million and continuance of such failure; provided, that if any such failure shall cease or be cured, waived, rescinded or annulled, then the event of default by reason thereof shall be deemed not to have occurred;
- (6) the acceleration of Indebtedness of Wynn Resorts or any of its subsidiaries in an amount (taken together with amounts under (5)) in excess of \$20 million because of a default with respect to such Indebtedness, without, in the case of (5) or (6), such Indebtedness having been discharged or such acceleration having been cured, waived, rescinded or annulled, for a period of 60 days after written notice to Wynn Resorts by the trustee or to Wynn Resorts and the trustee by the holders of not less than 25% in aggregate principal amount of the debentures then outstanding; provided, that if any such acceleration shall cease or be cured, waived, rescinded or annulled, then the event of default by reason thereof shall be deemed not to have occurred;



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- (7) final non-appealable judgments not covered by insurance aggregating in excess of \$20 million rendered against Wynn Resorts or any of our subsidiaries, which judgments are not stayed, bonded or discharged within 60 days;
  
- (8) the bankruptcy, insolvency or reorganization of Wynn Resorts or any of its significant subsidiaries;

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- (9) failure by Wynn Resorts or the Guarantor for 30 days after receipt of written notice from the trustee to comply with its agreements contained in the pledge agreement and the guarantee; and
- (10) either of the pledge agreements or the guarantee cease to be in full force and effect, or enforceable, prior to the expiration in accordance with such agreement or guarantee's terms.

If an event of default, other than an event of default described in clause (8) above, shall have happened and be continuing, either the trustee or the holders of not less than 25% in aggregate principal amount of the debentures then outstanding may declare the principal amount of the debentures as of the date of such declaration plus accrued interest, if any, through the date of such declaration to be immediately due and payable. If an event of default described in clause (8) above shall occur, the principal amount of the debentures as of the date on which such event occurs plus accrued interest, if any, through the date on which such event occurs shall automatically become and be immediately due and payable.

After acceleration, the holders of a majority in aggregate principal amount of the debentures may, under certain circumstances, rescind and annul such acceleration if all events of default, other than the non-payment of accelerated principal or other specified amount, have been cured or waived.

Prior to the declaration of the acceleration of the debentures, the holders of a majority in aggregate principal amount of the debentures may waive, on behalf of all of the holders of the debentures, any default and its consequences, except an event of default described in paragraphs (1), (2) or (3) above, a default in respect of a provision that cannot be amended without the consent of all of the holders of the debentures or a default that constitutes a failure to convert any debentures into shares of common stock. Other than the duty to act with the required care during an event of default, the trustee is not obligated to exercise any of its rights or powers at the request of the holders unless the holders shall have offered to the trustee reasonable indemnity. Generally, the holders of a majority in aggregate principal amount of the debentures have the right to direct the time, method and place of conducting any proceeding for any remedy available to the trustee or exercising any trust or power conferred on the trustee.

A holder does have any right to institute any proceeding under the indenture, or for the appointment of a receiver or a trustee, or for any other remedy under the indenture, unless:

- (1) the holder has previously given to the trustee written notice of a continuing event of default with respect to the debentures;
- (2) the holders of a least 25% in aggregate principal amount of the debentures have made a written request and have offered reasonable indemnity to the trustee to institute the proceeding;
- (3) such holder or holders offer to the trustee security or indemnity satisfactory to the trustee against any loss, liability or expense; and
- (4) the trustee has failed to institute the proceeding and has not received direction inconsistent with the original request from the holders of a majority in aggregate principal amount of the debentures within 60 days after the original request.

Holders may, however, sue to enforce the payment of the principal amount plus accrued and unpaid interest, redemption price, change of control purchase price or liquidated damages with respect to any debenture on or after the due date or to enforce the right, if any, to convert any debenture without following the procedures listed in (1) through (3) above.

We will furnish the trustee an annual statement by our officers as to whether or not we are in default in the performance of the indenture and, if so, specifying all known defaults.

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### **Modification of the Indenture**

We and the trustee may, without the consent of the holders of the debentures, enter into supplemental indentures for, among others, one or more of the following purposes:

to evidence the succession of another corporation to our company, and the assumption by such successor of our obligations under the indenture and the debentures;

to add to our covenants, or surrender any of our rights, or add any rights for the benefit of the holders of debentures;

to cure any ambiguity, omission, defect or inconsistency in the indenture, to correct or supplement any provision in the indenture, or to make any other provisions with respect to matters or questions arising under the indenture, so long as the interests of holders of debentures are not adversely affected in any material respect under the indenture;

to evidence and provide for the acceptance of any successor trustee with respect to the debentures or to facilitate the administration of the trust thereunder by the trustee in accordance with such indenture;

to provide any additional events of default;

to increase the conversion rate, provided the increase will not adversely effect the interests of holders of debentures in any material respect; and

to modify the provisions of the indenture or the pledge agreements relating to the pledge of securities as contemplated under Security above in a manner that does not adversely affect the interests of the holders of debentures;

provided that any amendment described in the third bullet point above made solely to conform the provisions of the indenture to the description of the debentures contained in this prospectus will not be deemed to adversely affect the interests of holders of the debentures.

With certain exceptions, the indenture or the rights of the holders of the debentures may be modified by us and the trustee with the consent of the holders of a majority in aggregate principal amount of the debentures then outstanding, but no such modification may be made without the consent of the holder of each outstanding debenture affected thereby that would:

change the maturity of any payment of principal of, or any premium on, any debentures, or reduce the principal amount or the interest rate of any debenture, or change any place of payment where, or the coin or currency in which, any debenture or any premium is payable, or impair the right to institute suit for the enforcement of any such payment on or after the maturity thereof (or, in the case of redemption or repayment, on or after the redemption date or the repayment date, as the case may be) or adversely affect the conversion or repurchase provisions in the indenture;

reduce the percentage in principal amount of the outstanding debentures, the consent of whose holders is required for any such modification, or the consent of whose holders is required for any waiver of compliance with certain provisions of the indenture or

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certain defaults thereunder and their consequences provided for in the indenture;

modify any of the provisions of certain sections of the indenture, including the provisions summarized in this paragraph, except to increase any such percentage or to provide that certain other provisions of the indenture cannot be modified or waived without the consent of the holder of each outstanding debenture affected thereby; or

release the Guarantor from any of its obligations under the guarantee other than in accordance with the terms of the indenture and pledge agreement.

In addition to the foregoing, any amendment to, or waiver of, the provisions of the indenture relating to subordination that adversely affects the rights of the holders of the debentures will require the consent of the holders of at least 75% in aggregate principal amount of debentures then outstanding.

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### **Discharge of the Indenture**

We may satisfy and discharge our obligations under the indenture by delivering to the trustee for cancellation all outstanding debentures or by depositing with the trustee, the paying agent or the conversion agent, if applicable, after the debentures have become due and payable, whether at stated maturity, or any redemption date, or a change of control purchase date, or upon conversion or otherwise, cash or common stock (as applicable under the terms of the indenture) sufficient to pay all of the outstanding debentures and paying all other sums payable under the indenture by our company.

### **Transfer and Exchange**

We have appointed the trustee as the paying agent and conversion agent, acting through its corporate trust office. We reserve the right to:

vary or terminate the appointment of the paying agent or conversion agent;

act as the paying agent;

appoint additional paying agents or conversion agents; or

approve any change in the office through which any paying agent or conversion agent acts.

### **Purchase and Cancellation**

All debentures surrendered for payment, redemption, registration of transfer or exchange or conversion shall, if surrendered to any person other than the trustee, be delivered to the trustee. All debentures delivered to the trustee shall be cancelled promptly by the trustee. No debentures shall be authenticated in exchange for any debentures cancelled as provided in the indenture.

We may, to the extent permitted by law, purchase debentures in the open market or by tender offer at any price or by private agreement. Any debentures purchased by us may, to the extent permitted by law, be reissued or resold or may, at our option, be surrendered to the trustee for cancellation. Any debentures surrendered for cancellation may not be reissued or resold and will be promptly cancelled. Any debentures held by us or one of our subsidiaries shall be disregarded for voting purposes in connection with any notice, waiver, consent or direction requiring the vote or concurrence of note holders.

### **Replacement of Debentures**

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We will replace mutilated, destroyed, stolen or lost debentures at the holder's expense upon delivery to the trustee of the mutilated debentures, or evidence of the loss, theft or destruction of the debentures satisfactory to us and the trustee. In the case of a lost, stolen or destroyed note, indemnity satisfactory to the trustee and us may be required at the expense of the holder of such note before a replacement note will be issued.

### **Concerning the Trustee**

U.S. Bank National Association serves as the trustee under the indenture. The trustee is permitted to deal with us and any of our affiliates with the same rights as if it were not trustee. However, under the Trust Indenture Act, if the trustee acquires any conflicting interest and there exists a default with respect to the debentures, the trustee must eliminate such conflict or resign.

The holders of a majority in principal amount of all outstanding debentures have the right to direct the time, method and place of conducting any proceeding for exercising any remedy or power available to the trustee. However, any such direction may not conflict with any law or the indenture, may not be unduly prejudicial to the rights of another holder or the trustee and may not involve the trustee in personal liability.

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### **Governing Law**

The indenture and the debentures are governed by and construed in accordance with the laws of the State of New York including, without limitation, Section 5-1401 of the New York General Obligations Law.

### **Book-Entry System**

The debentures are currently represented by one or more global securities. Each global security has been deposited with, or on behalf of, DTC and be registered in the name of a nominee of DTC. Except under circumstances described below, the debentures will not be issued in definitive form.

DTC has advised us that it is:

- a limited purpose trust company organized under the laws of the State of New York, and a member of the Federal Reserve System;
- a clearing corporation within the meaning of the Uniform Commercial Code; and
- a clearing agency registered pursuant to the provisions of Section 17A of the Exchange Act.

DTC was created to hold securities for persons that have accounts with DTC or its nominee ( participants ) and to facilitate the clearance and settlement of securities transactions between participants through electronic book-entry changes to the accounts of its participants. Participants include securities brokers, dealers, banks, trust companies and clearing corporations and other organizations. Some of the participants or their representatives, together with other entities, own DTC. Indirect access to the DTC system is available to others such as banks, brokers, dealers and trust companies that clear through or maintain a custodial relationship with a participant, either directly or indirectly.

Upon the issuance of a global security, DTC credits on its book-entry registration and transfer system the accounts of persons designated by the initial purchasers with the respective principal amounts at maturity of the debentures represented by the global security. Ownership of beneficial interests in a global security are limited to participants or persons that may hold interests through participants. Owners of beneficial interests in the debentures represented by the global securities hold their interests pursuant to the procedures and practices of DTC. Ownership of beneficial interests in a global security are shown on, and the transfer of that ownership will be effected only through, records maintained by DTC or its nominee (with respect to interests of persons other than participants). The laws of some states require that certain purchasers of securities take physical delivery of such securities in definitive form. Such limits and such laws may impair the ability to transfer beneficial interests in a global security.

So long as DTC or its nominee is the registered owner of a global security, DTC or its nominee, as the case may be, will be considered the sole owner or holder of the debentures represented by that global security for all purposes under the indenture. Except as provided below, owners of beneficial interests in a global security are not entitled to have debentures represented by that global security registered in their names, will not receive or be entitled to receive physical delivery of debentures in definitive form and are not considered the owners or holders thereof under the indenture. Beneficial owners are not holders and are not entitled to any rights provided to the holders of debentures under the global securities or



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the indenture. Principal and interest payments, if any, on debentures registered in the name of DTC or its nominee will be made to DTC or its nominee, as the case may be, as the registered owner of the relevant global security. Neither Wynn Resorts, the Guarantor, the trustee, any paying agent nor the registrar for the debentures will have any responsibility or liability for any aspect of the records relating to or payments made on account of beneficial interests in a global security or for maintaining, supervising or reviewing any records relating to such beneficial interests.

We have been informed that DTC's practice is to credit participants' accounts on that payment date with payments in amounts proportionate to their respective beneficial interests in the principal amount of the relevant

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global security as shown on the records of DTC or its nominee, unless DTC has reason to believe that it will not receive payment on that payment date. We also expect that payments by participants to owners of beneficial interests in a global security held through such participants will be governed by standing instructions and customary practices, as is now the case with securities held for the accounts of customers in bearer form or registered in street name, and will be the responsibility of such participants.

DTC has advised us that it will take any action permitted to be taken by a holder of debentures, including the presentation of debentures for transfer, only at the direction of one or more participants to whose account with DTC interests in the debentures are credited, and only in respect of the principal amount of the debentures represented by the debentures as to which the participant or participants has or have given such direction.

If DTC is at any time unwilling or unable to continue as a depository and a successor depository is not appointed by us within 90 days, if we decide to discontinue use of the system of book-entry transfer through DTC (or any successor depository) or if an event of default under the indenture has occurred and is continuing, we will issue debentures in definitive form in exchange for the entire global security for the debentures. In any such instance, an owner of a beneficial interest in a global security will be entitled to physical delivery in definitive form of debentures represented by such global security equal in principal amount to such beneficial interest and to have such debentures registered in its name. Debentures so issued in definitive form will be issued as registered debentures in denominations of \$1,000 principal amount and integral multiples thereof, unless otherwise specified by us.

Although DTC is expected to follow the foregoing procedures in order to facilitate transfers of interests in the global security among the participants of DTC, it is under no obligation to perform or continue to perform these procedures, and such procedures may be discontinued at any time. Neither Wynn Resorts, the Guarantor, the trustee, any paying agent nor the registrar for the debentures will have any responsibility or liability for the performance by DTC or its participants or indirect participants of their respective obligations under the rules and procedures governing their operations.

## **Registration Rights**

We and the Guarantor have entered into a registration rights agreement with the initial purchasers of the debentures. A holder who sells debentures or shares of common stock issued upon conversion of the debentures pursuant to this registration statement generally will be required to be named as a selling securityholder in the related prospectus, deliver a prospectus to purchasers and be bound by certain provisions of the registration rights agreement that are applicable to such holder, including certain indemnification provisions, and will be subject to certain civil liability provisions under the Securities Act.

In the registration rights agreement, we agreed to use our commercially reasonable best efforts to keep this registration statement effective until the earlier of (i) the date when holders are able to sell all of the debentures and shares of common stock issuable upon conversion of the debentures immediately without restriction pursuant to the volume limitation provisions of Rule 144 under the Securities Act or otherwise, (ii) the sale pursuant to the shelf registration statement of all the debentures and all of the shares of common stock issuable upon conversion of the debentures, (iii) July 3, 2005 and (iv) the date no debentures or shares of common stock issuable upon conversion of the debentures are outstanding, subject to certain permitted exceptions.

We and the Guarantor will be permitted to suspend the use of this prospectus under certain circumstances relating to pending corporate developments for a period not to exceed 45 days in any three-month period and not to exceed an aggregate of 90 days in any 12-month period. We and the Guarantor will pay predetermined liquidated damages as described herein ( liquidated damages ) to holders of debentures, if a shelf

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registration statement is not timely filed or made effective or shall cease to be effective or fail to be usable or if the prospectus is unavailable for the periods in excess of those permitted above. Such liquidated damages shall accrue until such failure to file or become effective or unavailability is cured, in respect of any debentures at a

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rate per year equal to 0.25% for the first 90-day period after the occurrence of such event and 0.50% thereafter of the aggregate principal amount thereof as of the end of any such period. So long as the failure to file or become effective or unavailability continues, we and the Guarantor will pay liquidated damages in cash semi-annually in arrears, with the first semi-annual payment due on the first interest payment date, as applicable, following the date on which such liquidated damages begin to accrue. If a holder has converted some or all of its debentures into common stock, the holder will be entitled to receive equivalent amounts based on the aggregate principal amount of the debentures converted. When such registration default is cured, accrued and unpaid liquidated damages will be paid in cash to the record holder as of the date of such cure.

The summary herein of certain provisions of the registration rights agreement is subject to, and is qualified in its entirety by reference to, all the provisions of the registration rights agreement, a copy of which is available from us upon request.

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**DESCRIPTION OF CAPITAL STOCK**

The following is a description of our capital stock and certain provisions of our articles of incorporation, bylaws and agreements with our stockholders as well as certain provisions of applicable law. The following is only a summary and is qualified by applicable law and by the provisions of our articles of incorporation, bylaws and such other agreements, copies of which are available as set forth under the caption entitled "Where You Can Find More Information."

**General**

We are authorized to issue 400,000,000 shares of common stock, \$0.01 par value per share, and 40,000,000 shares of undesignated preferred stock, \$0.01 par value per share. The following is a summary of the rights of our common stock and preferred stock. For more detailed information, see our articles of incorporation and bylaws, which are included as exhibits to the registration statement of which this prospectus forms a part, and the provisions of applicable Nevada law.

**Common Stock**

As of March 31, 2004, there were 82,168,484 shares of common stock outstanding. In addition, as of March 31, 2004, there were 2,038,000 shares of common stock reserved and subject to issuance upon exercise of outstanding options, warrants or other convertible rights (including 25,000 shares of common stock subject to option grants that have been approved by the board of directors but not yet granted).

Except as otherwise provided by our articles of incorporation or Nevada law, the holders of common stock are entitled to one vote per share on all matters to be voted upon by the stockholders. Subject to preferences that may be applicable to any outstanding preferred stock and except as otherwise provided by our articles of incorporation or Nevada law, the holders of common stock are entitled to receive ratably such dividends, if any, as may be declared from time to time by the board of directors out of funds legally available for that purpose. In the event of our liquidation, dissolution or winding up, the holders of common stock are entitled to share ratably in all assets remaining after payment of liabilities, subject to prior distribution rights of preferred stock, if any, then outstanding. A merger, conversion, exchange or consolidation of us with or into any other person or sale or transfer of all or any part of our assets (which does not in fact result in our liquidation and distribution of assets) will not be deemed to be a voluntary or involuntary liquidation, dissolution or winding up of our affairs. The holders of common stock have no preemptive or conversion rights or other subscription rights. There are no redemption or sinking fund provisions applicable to the common stock.

**Preferred Stock**

The board of directors has the authority, without action by the stockholders, to designate and issue preferred stock in one or more series and to designate the rights, preferences and privileges of each series, which may be greater than the rights of the common stock. It is not possible to state the actual effect of the issuance of any shares of preferred stock upon the rights of holders of the common stock until the board of directors determines the specific rights of the holders of such preferred stock. However, the effects might include, among other things:

restricting dividends on the common stock;

diluting the voting power of the common stock;

impairing the liquidation rights of the common stock; or

delaying or preventing a change in control of us without further action by the stockholders.

As of March 31, 2004, there were no shares of preferred stock authorized or outstanding.

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### **Prohibitions on the Receipt of Dividends, the Exercise of Voting or Other Rights or the Receipt of Other Remuneration**

The articles of incorporation of Wynn Resorts prohibit anyone who is an unsuitable person or an affiliate of an unsuitable person from:

receiving dividends or interest with regard to its capital stock;

exercising, directly or indirectly, voting or other rights conferred by its capital stock (and such capital stock shall not be included in the shares of capital stock of Wynn Resorts entitled to vote); and

receiving any remuneration in any form from it or an affiliated company for services rendered or otherwise.

These prohibitions commence on the date that a gaming authority serves notice of a determination of unsuitability or the board of directors determines that a person or its affiliate is unsuitable and continue until the securities are owned or controlled by persons found suitable by a gaming authority and/or the board of directors to own them. An unsuitable person is any person who is determined by a gaming authority to be unsuitable to own or control any of Wynn Resorts' capital stock or to be connected or affiliated with a person engaged in gaming activities or who causes Wynn Resorts or any affiliated company to lose or to be threatened with the loss of, or who, in the sole discretion of Wynn Resorts' board of directors, is deemed likely to jeopardize our or any of our affiliates' application for, right to the use of, or entitlement to, any gaming license.

Gaming authorities include all international, foreign, federal, state, local and other regulatory and licensing bodies and agencies with authority over the conduct of gaming and gambling activities, or the use of gaming devices, equipment and supplies in the operation of a casino or other enterprise. Affiliated companies are those companies indirectly affiliated or under common ownership or control with Wynn Resorts, including without limitation, subsidiaries, holding companies and intermediary companies (as those terms are defined in gaming laws of applicable gaming jurisdictions) that are registered or licensed under applicable gaming laws. The articles of incorporation define ownership or control to mean ownership of record, beneficial ownership as defined in Rule 13d-3 of the Exchange Act, or the power to direct and manage, by agreement, contract, agency or other manner, the management or policies of a person or the disposition of our capital stock.

### **Redemption of Securities Owned or Controlled by an Unsuitable Person or an Affiliate**

Wynn Resorts' articles of incorporation provide that capital stock of Wynn Resorts that is owned or controlled by an unsuitable person or an affiliate of an unsuitable person is redeemable by Wynn Resorts, out of funds legally available for that redemption, by appropriate action of the board of directors to the extent required by the gaming authorities making the determination of unsuitability or to the extent deemed necessary or advisable by Wynn Resorts. From and after the redemption date, the securities will not be considered outstanding and all rights of the unsuitable person or affiliate will cease, other than the right to receive the redemption price. The redemption date will be the date specified by the board of directors on which the capital stock owned by an unsuitable person or an affiliate of an unsuitable person is to be redeemed. The redemption price will be the price, if any, required to be paid by the gaming authority making the finding of unsuitability or if the gaming authority does not require a price to be paid, the sum deemed to be the fair value of the securities by the board of directors. If determined by Wynn Resorts, the price of capital stock will not exceed the closing price per share of the shares on the principal national securities exchange on which the shares are then listed on the trading date on the day before the redemption notice is given. If the shares are not then listed, the redemption price will not exceed the closing sales price of the shares as quoted on the Nasdaq National Market or SmallCap Market, or if the closing price is not then reported, the mean between the bid and asked prices, as quoted by any other generally recognized reporting system. Wynn Resorts' rights of redemption are not exclusive of any other rights that it may have or later acquire under any agreement, its bylaws or otherwise. The redemption price for shares of unvested restricted stock will be a nominal amount pursuant to the applicable restricted stock agreement. The redemption

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price may be paid in cash, by promissory note, or both, as required by the applicable gaming authority or, if not, as Wynn Resorts elects.



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The articles of incorporation of Wynn Resorts require any unsuitable person and any affiliate of an unsuitable person to indemnify Wynn Resorts and its affiliated companies for any and all costs, including attorneys' fees, incurred by Wynn Resorts and its affiliated companies as a result of the unsuitable person's or affiliate's ownership or control or failure to promptly divest itself of any capital stock, securities of or interests in Wynn Resorts.

### **Buy-Out of Aruze USA Stock**

Stephen A. Wynn, Kazuo Okada, Aruze USA and Aruze Corp. have entered into a buy-sell agreement which provides that upon certain events, including if any gaming application of Aruze USA, Aruze Corp. or Mr. Okada is recommended for denial by the Nevada gaming authorities, is denied by Nevada gaming authorities, or is requested to be withdrawn by Mr. Okada, Aruze USA and/or Aruze Corp., or if a gaming application of Aruze USA, Aruze Corp. or Mr. Okada concerning Aruze USA's ownership of the Company's stock is not filed within 90 days after the filing of the Company's application, Mr. Wynn shall have 60 days to elect to purchase some or all of the shares owned by Aruze USA in the Company for a price equal to the lesser of (1) the fair market value of the shares as of the date Mr. Wynn elects to purchase such shares or (2) Aruze USA's investment amount as determined pursuant to the buy-sell agreement. Pursuant to the buy-sell agreement, Mr. Wynn may pay this purchase price with a promissory note. If Mr. Wynn chooses to purchase less than all of the shares owned by Aruze USA, pursuant to an agreement between the Company and Mr. Wynn, the Company has the right to require him to purchase all of the shares owned by Aruze USA in accordance with the terms of the buy-sell agreement. The Company has granted Mr. Wynn certain demand registration rights and piggyback registration rights with respect to any shares he purchases from Aruze USA under these buy-out arrangements.

### **Nevada Anti-Takeover Law and Certain Charter and Bylaw Provisions**

Provisions of Nevada law and our articles of incorporation and bylaws could make the following more difficult:

acquisition of us by means of a tender offer;

acquisition of us by means of a proxy contest or otherwise; or

removal of our incumbent officers and directors.

These provisions, summarized below, are expected to discourage certain types of coercive takeover practices and inadequate takeover bids. These provisions are also designed to encourage persons seeking to acquire control of us to first negotiate with our board of directors. Our bylaws may be adopted, repealed, altered, amended by our board of directors or the vote of at least 66<sup>2</sup>/<sub>3</sub>% of the outstanding voting power, voting as a single class.

*Classified Board of Directors.* Wynn Resorts' articles of incorporation and bylaws provide for its board of directors to be divided into three classes of directors serving staggered three-year terms, with as near as possible to one-third, and at least one-fourth, of the board of directors being elected each year. In addition, Wynn Resorts' articles of incorporation require the vote of 66<sup>2</sup>/<sub>3</sub>% of the outstanding stock entitled to vote in the election of directors to amend the classified board provision. As a result, at least two annual meetings of stockholders may be necessary to change a majority of the directors.

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*Stockholder Meetings.* Wynn Resorts' bylaws provide that subject to the rights, if any, of the holders of the preferred stock, only a majority of the authorized number of directors, the chairman of the board or the chief executive officer (or should there be no chairman and no chief executive officer, by the president) may call special meetings of stockholders.

*Requirements for Advance Notification of Stockholder Nominations and Proposals.* Wynn Resorts' bylaws establish advance notice procedures with respect to stockholder proposals and the nomination of candidates for election as directors, other than nominations made by or at the direction of the board of directors or a committee of the board of directors.

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*No Action by Written Consent.* Wynn Resorts' articles of incorporation and bylaws provide that stockholders may only take action at an annual or special meeting of stockholders and may not act by written consent.

*Sale of All or Substantially All of Our Assets.* Wynn Resorts' bylaws require a two-thirds approval of the directors for the sale of all or substantially all of our assets.

*Nevada Control Share Laws.* Wynn Resorts may become subject to Nevada's laws that govern the acquisition of a controlling interest of issuing corporations. These laws will apply to Wynn Resorts if it has 200 or more stockholders of record, at least 100 of whom have addresses in Nevada, unless its articles or bylaws in effect on the tenth day after the acquisition of a controlling interest provide otherwise. These laws provide generally that any person that acquires a controlling interest acquires voting rights in the control shares, as defined, only as conferred by the stockholders of the corporation at a special or annual meeting. In the event control shares are accorded full voting rights and the acquiring person has acquired at least a majority of all of the voting power, any stockholder of record who has not voted in favor of authorizing voting rights for the control shares is entitled to demand payment for the fair value of its shares.

A person acquires a controlling interest whenever a person acquires shares of a subject corporation that, but for the application of these provisions of the Nevada Revised Statutes, would enable that person to exercise (1) one-fifth or more, but less than one-third, (2) one-third or more, but less than a majority or (3) a majority or more, of all of the voting power of the corporation in the election of directors. Once an acquirer crosses one of these thresholds, shares which it acquired in the transaction taking it over the threshold and within the 90 days immediately preceding the date when the acquiring person acquired or offered to acquire a controlling interest become control shares.

These laws may have a chilling effect on certain transactions if our articles of incorporation or bylaws are not amended to provide that these provisions do not apply to us or to an acquisition of a controlling interest, or if our disinterested stockholders do not confer voting rights in the control shares.

*Nevada Regulatory Approvals.* Once Wynn Resorts becomes a registered company under Nevada's gaming laws, it will be required to obtain the approval of the Nevada Gaming Commission with respect to a change of control. In addition, persons seeking to acquire control will be required to meet the requirements of the Nevada gaming authorities before assuming control. These requirements may have the effect of preventing, delaying or making an acquisition of Wynn Resorts more difficult.

*No Cumulative Voting.* Our articles of incorporation and bylaws do not provide for cumulative voting in the election of directors.

*Undesignated Preferred Stock.* The authorization of undesignated preferred stock makes it possible for our board of directors to issue preferred stock with voting or other rights or preferences that could impede the success of any attempt to change control of us. These and other provisions may have the effect of deferring hostile takeovers or delaying changes in control or management of us.

*Indemnification of Directors and Officers.* Wynn Resorts' articles of incorporation and bylaws provide that it will indemnify its directors and officers to the maximum extent permitted by Nevada law, including in circumstances in which indemnification is otherwise discretionary under Nevada law. In addition, Wynn Resorts has entered into separate indemnification agreements with its directors and officers that require Wynn Resorts, among other things, to indemnify such directors and officers against certain liabilities that may arise by reason of their status or service, other than liabilities arising from willful misconduct of a culpable nature. Wynn Resorts also intends to maintain director and officer liability

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insurance, if available on reasonable terms. These indemnification provisions and the indemnification agreements may be sufficiently broad to permit indemnification of Wynn Resorts' directors, officers and controlling persons for liabilities, including reimbursement of expenses incurred, arising under the Securities Act. To the extent that Wynn Resorts' directors,

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officers and controlling persons are indemnified under the provisions contained in Wynn Resorts' articles of incorporation, bylaws, Nevada law or contractual arrangements against liabilities arising under the Securities Act, we have been advised that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in the Securities Act and is therefore unenforceable.

**Transfer Agent and Registrar**

The transfer agent and registrar for our common stock is American Stock Transfer & Trust.

**Listing**

Our common stock is quoted on the Nasdaq National Market under the symbol WYNN.

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**UNITED STATES FEDERAL INCOME TAX CONSEQUENCES**

The following is a summary of the material United States federal income tax consequences of an investment in debentures and common stock received upon a conversion of debentures. This summary is based upon existing United States federal income tax law, which is subject to change or different interpretations, possibly with retroactive effect. This summary does not discuss all aspects of United States federal income taxation which may be important to particular investors in light of their individual investment circumstances, such as debentures held by investors subject to special tax rules (e.g., financial institutions, insurance companies, broker-dealers and tax-exempt investors (including foreign tax-exempt organizations and foreign private foundations)) or to persons that will hold debentures as part of a straddle, hedge, conversion, constructive sale, or other integrated security transaction for United States federal income tax purposes or that have a functional currency other than the United States dollar, all of whom may be subject to tax rules that differ significantly from those summarized below. In addition, this summary does not discuss any state, local, or non-United States tax considerations. This summary assumes that investors will hold their debentures, and common stock received pursuant to a conversion of debentures, as capital assets (generally, property held for investment) under the Internal Revenue Code of 1986 (the Code). Each prospective investor is urged to consult his tax advisor regarding the United States federal, state, local, and non-United States income and other tax considerations of an investment in debentures.

For purposes of this summary, a U.S. Holder is a beneficial owner of debentures that is, for United States federal income tax purposes, (i) an individual who is a citizen or resident of the United States, (ii) a corporation, partnership, or other entity created in, or organized under the law of, the United States or any State or political subdivision thereof, (iii) an estate the income of which is includible in gross income for United States federal income tax purposes regardless of its source, or (iv) a trust (A) the administration of which is subject to the primary supervision of a United States court and which has one or more United States persons who have the authority to control all substantial decisions of the trust, or (B) that was in existence on August 20, 1996, was treated as a United States person on the previous day, and elected to continue to be so treated. A beneficial owner of debentures, or common stock received upon a conversion of debentures, that is not a U.S. Holder is referred to herein as a Non-U.S. Holder.

We treat debentures as indebtedness for United States federal income tax purposes and the summary below assumes that the debentures are characterized as indebtedness for United States federal income tax purposes.

**U.S. Holders**

**Interest**

Payments of interest on debentures made to a U.S. Holder will be subject to tax as ordinary income when received or accrued in accordance with such holder's method of tax accounting for United States federal income tax purposes.

**Market Discount**

If a holder acquires debentures at a price that is less than the stated redemption price at maturity, the holder may be deemed to have acquired debentures with market discount. A holder who acquires debentures with market discount that is more than a statutorily-defined de minimis amount will generally be required to recognize ordinary income upon a taxable disposition of debentures in an amount equal to the lesser of (i) the amount of gain recognized or (ii) accrued market discount not previously included in income. Such market discount will accrue ratably or, at

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the election of the holder, under a constant yield method over the remaining term of debentures. A holder will also be required to defer the deduction of a portion of any interest paid or accrued on indebtedness incurred to purchase or carry debentures acquired with market discount. Alternatively, a holder may elect to include market discount in income currently as it accrues on all market discount instruments acquired by such holder in the taxable year of the election and thereafter, in which case the foregoing rules will not apply. A holder will not recognize income for any accrued market discount attributable to debentures surrendered for conversion into our common stock. Upon disposition of such common stock received, however, any gain will be treated as ordinary income to the extent of such accrued market discount not previously included in income.

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### **Bond Premium**

If a holder acquires debentures at a price that is greater than the stated redemption price at maturity, the holder will generally be treated as having acquired the debentures with bond premium. The amount of such premium will be included in the adjusted tax basis of debentures which may result in a capital loss upon sale, exchange, redemption, repurchase, or other disposition of debentures. In lieu of the foregoing, the holder may elect to amortize such premium, as an offset to interest accrued or received on debentures, using a constant yield method over the remaining term of debentures.

### **Conversion of Debentures Solely for Common Stock**

If a holder converts debentures, and we deliver solely common stock in the conversion, a holder will generally not recognize gain or loss except to the extent of cash received in lieu of a fractional share of our common stock. A holder will generally recognize capital gain (except to the extent of accrued market discount not previously included in income as described above) or loss, for United States federal income tax purposes, equal to the difference between the amount of cash received and the adjusted tax basis in such fractional share. Such gain or loss will generally be long-term if the holder's holding period in respect of debentures is more than one year. A holder's tax basis in the common stock received upon conversion should generally equal such holder's adjusted tax basis in debentures tendered in the conversion, less the tax basis allocated to any fractional share for which cash is received. A holder's holding period in the common stock received upon conversion of debentures will generally include the holding period of debentures so converted.

### **Conversion of Debentures for Common Stock and Cash**

If a holder converts debentures, and we deliver a combination of cash and common stock in satisfaction of our conversion obligation, a holder will generally not recognize loss, but will generally recognize capital gain (except to the extent of accrued market discount not previously included in income as described above), if any, on debentures so converted in an amount equal to the lesser of the amount of (i) gain realized (i.e., the excess, if any, of the fair market value of the common stock received upon the exchange plus cash received over the adjusted tax basis in debentures tendered in exchange therefor) or (ii) cash received. Such gain will generally be long-term if the holder's holding period in respect of such debentures is more than one year. A holder's tax basis in the common stock received should generally equal the adjusted tax basis in debentures tendered in exchange therefor, decreased by the cash received, and increased by an amount of gain recognized. A holder's holding period in the common stock received upon conversion of debentures will generally include the holding period of debentures so converted.

### **Sale, Exchange, Conversion Solely for Cash, or other Disposition of Debentures or Common Stock**

Upon the sale, exchange, conversion solely for cash, or other disposition of debentures (other than a conversion of debentures into our common stock, or our common stock and cash, as described above) or our common stock previously received pursuant to a conversion of debentures, a holder will generally recognize capital gain (except to the extent of accrued market discount not previously included in income as described above) or loss equal to the difference between (i) the amount of cash and the fair market value of any property received upon such disposition and (ii) the holder's adjusted tax basis in debentures or common stock previously received pursuant to a conversion of debentures. Such gain or loss will be long-term if the holder's holding period in respect of such debentures is more than one year.

### **Conversion, Sale, or Other Disposition of Debentures Amounts Received Attributable to Accrued But Unpaid Interest**



Common stock, cash, or a combination thereof received upon a conversion, sale, or other disposition of debentures which is attributable to accrued but unpaid interest on debentures will be excluded from the amount

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realized upon such disposition. Any such cash or common stock received will be deemed to be a payment in respect of such accrued but unpaid interest and, in the case of a cash method holder, will be subject to tax as ordinary interest income upon receipt. The holder's tax basis in any common stock received will be equal to the amount of the interest income attributable thereto and the holding period of the common stock will commence with the date of receipt.

## **Constructive Dividends**

If at any time we make a distribution of property to our stockholders that would be subject to tax as a dividend for United States federal income tax purposes and, in accordance with the anti-dilution provisions of debentures, the conversion rate of debentures is increased, including any such adjustments pursuant to dividends paid or distributions made by us prior to July 20, 2007, such increase may be deemed to be the payment of a taxable dividend, for United States federal income tax purposes, to holders of debentures. For example, an increase in the conversion rate in the event of distributions of our debt instruments, or our assets, or an increase in the event of an extraordinary cash dividend, generally will result in deemed dividend treatment to holders of debentures, but an increase in the event of stock dividends or the distribution of rights to subscribe for our common stock generally will not.

## **Distributions Paid on Common Stock**

Cash distributions, if any, paid on our common stock generally will be treated as dividend income to the extent of our current or accumulated earnings and profits as determined for United States federal income tax purposes. Cash distributions in excess of our current and accumulated earnings and profits will be treated as a tax-free return of capital to the extent of the holder's adjusted tax basis in the common stock and thereafter as capital gain from the sale or exchange of such common stock. Dividends received by a corporate U.S. Holder may be eligible for a dividends received deduction. Dividends received by certain noncorporate U.S. Holders, including individuals, will generally be subject to tax at the lower applicable capital gain rate, provided certain holding period requirements are satisfied.

## **Non-U.S. Holders**

## **Interest**

Payments of interest on debentures made to a Non-U.S. Holder will not be subject to United States federal income or withholding tax provided that (i) such holder is not a controlled foreign corporation that is related to us through stock ownership and (ii) the statement requirements set forth in section 871(h) or 881(c) of the Code are satisfied, as discussed below. Notwithstanding the above, a Non-U.S. Holder that is engaged in the conduct of a United States trade or business will be subject to (i) United States federal income tax on a net income basis on interest that is effectively connected with the conduct of such trade or business and (ii) if the Non-U.S. Holder is a corporation, a United States branch profits tax equal to 30% of its effectively connected earnings and profits as adjusted for the taxable year, unless the holder qualifies for an exemption from such tax or a lower tax rate under an applicable treaty.

The statement requirement referred to in the preceding paragraph generally will be satisfied if the beneficial owner of debentures certifies on Internal Revenue Service Form W-8BEN, under penalties of perjury, that it is not a United States person and provides its name and address or otherwise satisfies applicable documentation requirements.

**Dividends and Constructive Dividends**

Dividends paid or constructive dividends deemed paid (see U.S. Holders Constructive Dividends above) to a Non-U.S. Holder generally will be subject to United States federal withholding tax at a 30% rate subject to

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reduction (a) by an applicable treaty if the Non-U.S. Holder provides an Internal Revenue Service Form W-8BEN certifying that it is entitled to such treaty benefits or (b) upon the receipt of an Internal Revenue Service Form W-8ECI from a Non-U.S. Holder claiming that the payments are effectively connected with the conduct of a United States trade or business. Notwithstanding the above, a Non-U.S. Holder that is engaged in the conduct of a United States trade or business will be subject to (i) United States federal income tax on a net income basis on the receipt of a dividend or a constructive dividend that is effectively connected with the conduct of such trade or business and (ii) if the Non-U.S. Holder is a corporation, a United States branch profits tax as described above.

### **Conversion of Debentures for Common Stock**

Upon conversion of debentures solely for common stock, a Non-U.S. Holder will generally not be subject to United States federal income tax. See [Sale, Exchange or Redemption of Debentures or Common Stock Received upon Conversion of Debentures](#) below, however, regarding the taxation of cash received, including cash received in lieu of a fractional share of common stock, upon a conversion. See [Interest](#) above regarding the taxation of shares received in respect of accrued but unpaid interest on debentures.

### **Sale, Exchange or Redemption of Debentures or Common Stock Received Upon Conversion of Debentures**

A Non-U.S. Holder generally will not be subject to United States federal income tax on gain recognized on a sale, exchange, redemption, a conversion of debentures for stock and cash, or other disposition of debentures or common stock received upon conversion of debentures (including the receipt of cash in lieu of a fractional share) unless (i) the gain is effectively connected with the conduct of a trade or business within the United States by the Non-U.S. Holder, (ii) in the case of a Non-U.S. Holder who is a nonresident alien individual, such holder is present in the United States for 183 or more days during the taxable year and certain other requirements are met, or (iii) we are a United States real property holding corporation (a USRPHC) and, in the case of a disposition of our common stock, our common stock is not regularly traded on an established securities market at the time of disposition, and other conditions described below are not met. Any such gain that is effectively connected with the conduct of a United States trade or business by a Non-U.S. Holder will be subject to United States federal income tax on a net income basis and, if such Non-U.S. Holder is a corporation, may also be subject to the 30% United States branch profits tax described above.

Because for United States federal income tax purposes we believe that we are, and anticipate that we will likely continue to be a USRPHC, a Non-U.S. Holder could be subject to tax on any gain realized on a disposition of our debentures or common stock and to a 10% withholding tax (creditable against such tax liability) on the gross amount realized ( FIRPTA tax and withholding ). In the case of a disposition of our common stock, we believe that our common stock is presently regularly traded on an established securities market because it is traded on the Nasdaq National Market and is regularly quoted by brokers and/or dealers making a market in our common stock. If our common stock is regularly traded at the time of disposition, withholding generally will not be required and, provided that the Non-U.S. Holder is not otherwise subject to tax under clauses (i) or (ii) in the immediately preceding paragraph, a Non-U.S. Holder who did not own more than 5% of the value of our common stock, actually or constructively, at any time during the shorter of the five-year period preceding the disposition or the Non-U.S. Holder's holding period, should not be subject to United States federal income tax on any gain realized on the disposition of our common stock. It is possible, however, that, because of our concentrated ownership, our common stock will not be considered regularly traded despite being quoted on the Nasdaq National Market and regularly quoted by market makers. As a result, a Non-U.S. Holder could be subject to FIRPTA tax and withholding on a disposition of our debentures or common stock.

### **Information Reporting and Backup Withholding**

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Information returns will be filed annually with the Internal Revenue Service and provided to each Non-U.S. Holder with respect to any payments on debentures or our common stock and the proceeds from their sale or other disposition that are subject to withholding tax or that are exempt from United States withholding tax

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pursuant to an income tax treaty or other reason. Copies of these information returns also may be made available under the provisions of a specific treaty or agreement to the tax authorities of the country in which the Non-U.S. Holder resides. Under certain circumstances, the Code imposes a backup withholding obligation. Interest, dividends, or constructive dividends paid to a Non-U.S. Holder of debentures or common stock generally will be exempt from backup withholding if the Non-U.S. Holder provides a properly executed Internal Revenue Service Form W-8BEN or otherwise establishes an exemption.

The payment of the proceeds from the disposition of debentures or our common stock to or through the United States office of any broker, United States or foreign, will be subject to information reporting and possible backup withholding unless the owner certifies as to its non-United States status under penalties of perjury or otherwise establishes an exemption, provided that the broker does not have actual knowledge or reason to know that the holder is a United States person or that the conditions of any other exemption are not, in fact, satisfied. The payment of the proceeds from the disposition of debentures or our common stock to or through a non-United States office of a non-United States broker will not be subject to information reporting or backup withholding unless the non-United States broker has certain types of relationships with the United States (a United States related person ). In the case of the payment of the proceeds from the disposition of debentures or common stock to or through a non-United States office of a broker that is either a United States person or a United States related person, the Treasury regulations require information reporting (but not backup withholding) on the payment unless the broker has documentary evidence in its files that the owner is a Non-U.S. Holder and the broker has no knowledge or reason to know otherwise.

Backup withholding is not an additional tax. Any amounts withheld under the backup withholding rules from a payment to a Non-U.S. Holder may be refunded or credited against the Non-U.S. Holder's United States federal income tax liability, if any, if the Non-U.S. Holder provides, on a timely basis, the required information to the Internal Revenue Service.

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**SELLING SECURITYHOLDERS**

The debentures were originally issued by us and sold by Deutsche Bank Securities and SG Cowen (the "initial purchasers") in transactions exempt from the registration requirements of the Securities Act to persons reasonably believed by the initial purchasers to be "qualified institutional buyers" as defined by Rule 144A under the Securities Act. The selling securityholders may from time to time offer and sell pursuant to this prospectus any or all of the debentures listed below and the shares of common stock issued upon conversion of such debentures. When we refer to the "selling securityholders" in this prospectus, we mean those persons listed in the table below, as well as the pledgees, donees, assignees, transferees, successors and others who later hold any of the selling securityholders' interests.

The table below sets forth the name of each selling securityholder, the principal amount at maturity of debentures that each selling securityholder may offer pursuant to this prospectus and the number of shares of common stock into which such debentures are convertible. Unless set forth below, to our knowledge, none of the selling securityholders has, or within the past three years has had, any material relationship with us or any of our predecessors or affiliates or beneficially owns in excess of 1% of the outstanding common stock.

The principal amounts of the debentures provided in the table below is based on information provided to us by each of the selling securityholders on or before May 19, 2004, and the percentages are based on \$250,000,000 principal amount at maturity of debentures outstanding. The number of shares of common stock that may be sold is calculated based on the current conversion price of \$23.00 per share.

Since the date on which each selling securityholder provided this information, each selling securityholder identified below may have sold, transferred or otherwise disposed of all or a portion of its debentures in a transaction exempt from the registration requirements of the Securities Act. Information concerning the selling securityholders may change from time to time and any changed information will be set forth in amendments to the registration statement or supplements to this prospectus to the extent required. In addition, the conversion ratio, and therefore the number of shares of our common stock issuable upon conversion of the debentures, is subject to adjustment. Accordingly, the number of shares of common stock issuable upon conversion of the debentures may increase or decrease.

The selling securityholders may from time to time offer and sell any or all of the securities under this prospectus. Because the selling securityholders are not obligated to sell the debentures or the shares of common stock issuable upon conversion of the debentures, we cannot estimate the amount of the debentures or how many shares of common stock that the selling securityholders will hold upon consummation of any such sales.

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<u>Name of Selling Security Holder</u>	<u>Principal Amount at Maturity of Debentures Owned(1)</u>	<u>Amount of Debentures Offered Hereby(1)</u>	<u>Percentage of Debentures Outstanding</u>	<u>Number of Shares of Common Stock Owned(2)</u>	<u>Number of Shares of Common Stock That May Be Sold(2)</u>	<u>Percentage of Common Stock Outstanding(3)</u>
Akela Capital Master Fund, Ltd.	8,500,000	8,500,000	3.4	369,564	369,564	0.45
Arbitex Master Fund, L.P.	3,000,000	3,000,000	1.2	130,434	130,434	0.16
Argent Classic Convertible Arbitrage Fund, L.P.	600,000	600,000	0.2	26,086	26,086	0.03
Argent Classic Convertible Arbitrage Fund (Bermuda) Ltd.	1,200,000	1,200,000	0.5	52,173	52,173	0.06
Argent LowLev Convertible Arbitrage Fund LLCx	300,000	300,000	0.1	13,043	13,043	0.02
Argent LowLev Convertible Arbitrage Fund Ltd.	1,200,000	1,200,000	0.5	52,173	52,173	0.06
BAMCO, Inc., on behalf of its investment advisory clients	32,000,000	32,000,000	12.8	9,555,087	1,391,302	1.67
Barclays Global Investors Diversified Alpha Plus Funds c/o Forest Investment Management, LLC	150,000	150,000	*	6,521	6,521	**
BNP Paribas Equity Strategies, SNC	431,000	431,000	0.2	18,739	18,739	0.02
BP Amoco PLC Master Trust	848,000	848,000	0.3	36,869	36,869	0.05
Canyon Capital Arbitrage Master Fund, Ltd.	6,000,000	6,000,000	2.4	260,869	260,869	0.32
Canyon Value Realization Fund, L.P.	3,000,000	3,000,000	1.2	130,434	130,434	0.16
Canyon Value Realization Fund (Cayman), Ltd.	8,200,000	8,200,000	3.3	356,521	356,521	0.43
Canyon Value Realization Mac 18, Ltd. (RMF)	1,200,000	1,200,000	0.5	52,173	52,173	0.06
CNH CA Master Account, L.P.	1,000,000	1,000,000	0.4	43,478	43,478	0.05
CooperNeff Convertible Strategies (Cayman) Master Fund, L.P.	426,000	426,000	0.2	18,521	18,521	0.02
DBAG LONDON	13,000,000	13,000,000	5.2	565,216	565,216	0.68
Deutsche Bank Securities Inc.	10,790,000	10,790,000	4.3	469,129	469,129	0.57
Durango Investments, L.P.	5,000,000	5,000,000	2.0	217,391	217,391	0.26
Equitec Group LLC	1,000,000	1,000,000	0.4	43,478	43,478	0.05
Forest Fulcrum Fund LP	937,000	937,000	0.4	40,739	40,739	0.05
Forest Global Convertible Fund, Ltd., Class A-5	2,475,000	2,475,000	1.0	107,608	107,608	0.13
Forest Multi-Strategy Master Fund SPC, on behalf of its Multi-Strategy Segregated Portfolio	750,000	750,000	0.3	32,608	32,608	0.04
GLG Global Convertible Fund	3,250,000	3,250,000	1.3	141,304	141,304	0.17
GLG Global Convertible UCITS Fund	1,250,000	1,250,000	0.5	54,347	54,347	0.07
GLG Market Neutral Fund	10,000,000	10,000,000	4.0	434,782	434,782	0.53
Grace Convertible Arbitrage Fund, Ltd.	4,000,000	4,000,000	1.6	173,912	173,912	0.21
Highbridge International LLC	15,000,000	15,000,000	6.0	652,173	652,173	0.79
Hotel Union & Hotel Industry of Hawaii Pension Plan	331,000	331,000	0.1	14,391	14,391	0.02
LLT Limited	300,000	300,000	0.1	13,043	13,043	0.02
Lyxor Master Fund	100,000	100,000	*	4,347	4,347	**
Lyxor/Forest Fund Ltd. c/o Forest Investment Management LLC	2,025,000	2,025,000	0.8	88,043	88,043	0.11
Marsico Capital Management, LLC	20,000,000	20,000,000	8.0	5,534,215	869,564	1.05
Morgan Stanley & Co., Incorporated	10,000,000	10,000,000	4.0	6,538,670	434,782	0.53
Morgan Stanley Convertible Securities Trust	530,000	530,000	0.2	23,043	23,043	0.03
National Bank of Canada c/o Putnam Lovell NBF Securities Inc.	4,675,000	4,675,000	1.9	203,260	203,260	0.25
Newport Alternative Income Fund	660,000	660,000	0.3	28,695	28,695	0.04
Nisswa Master Fund Ltd.	2,000,000	2,000,000	0.8	86,956	86,956	0.11
OIP Limited	1,800,000	1,800,000	0.7	78,260	78,260	0.10
Polygon Global Opportunities Master Fund	14,000,000	14,000,000	5.6	608,694	608,694	0.74
RBC Alternative Assets LP c/o Forest Investment Management LLC	97,000	97,000	*	4,217	4,217	**
Relay 11 Holdings Co. c/o Forest Investment Management LLC	225,000	225,000	*	9,782	9,782	0.01
Silvercreek II Limited	1,930,000	1,930,000	0.8	83,912	83,912	0.10
Silvercreek Limited Partnership	4,110,000	4,110,000	1.6	178,695	178,695	0.22
Singlehedge U.S. Convertible Arbitrage Fund	82,000	82,000	*	3,565	3,565	**
Sphinx Convertible Arb Fund SPC	304,000	304,000	0.1	13,217	13,217	0.02
	113,000	113,000	*	4,913	4,913	**



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Sphinx Convertible Arbitrage SPC c/o Forest Investment Management LLC						
SSI Blended Market Neutral L.P.	530,000	530,000	0.2	23,043	23,043	0.03
SSI Hedged Convertible Market Neutral L.P.	878,000	878,000	0.4	38,173	38,173	0.05
Sturgeon Limited	61,000	61,000	*	2,652	2,652	**
Sunrise Partners Limited Partnership	25,000,000	25,000,000	10.0	1,086,955	1,086,955	1.31
Tempo Master Fund, LP	8,000,000	8,000,000	3.2	347,825	347,825	0.42
The Northwestern Mutual Life Insurance Company General Account	7,950,000	7,950,000	3.2	345,651	345,651	0.42
The Northwestern Mutual Life Insurance Company Group Annuity Separate Account	200,000	200,000	*	8,695	8,695	0.01
Tribeca Investments Ltd	25,000,000	25,000,000	10.0	1,086,955	1,086,955	1.31
Univest Convertible Arbitrage Fund c/o Forest Investment Management LLC	53,000	53,000	*	2,304	2,304	**
Viacom Inc. Pension Plan Master Trust	29,000	29,000	*	1,260	1,260	**
Whitebox Convertible Arbitrage Partners LP	27,000,000	27,000,000	10.8	1,173,911	1,173,911	1.41
Whitebox Diversified Convertible Arbitrage Partners LP	5,000,000	5,000,000	2.0	217,391	217,391	0.26
Xavex Convertible Arbitrage 10 Fund	200,000	200,000	*	8,695	8,695	0.01
Xavex Convertible Arbitrage 4 Fund c/o Forest Investment Management L.L.C.	150,000	150,000	*	6,521	6,521	**
Zurich Institutional Benchmark Master Fund LTD	100,000	100,000	*	4,347	4,347	**
Zurich Institutional Benchmarks Master Fund Ltd. c/o Forest Investment Management LLC	225,000	225,000	*	9,782	9,782	0.01
Zurich Institutional Benchmarks Master Fund Ltd.	2,080,000	2,080,000	0.8	90,434	90,434	0.11

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- \* Represents less than 0.1% of the Debentures outstanding.
- \*\* Represents less than 0.01%.
- (1) Amounts may include debentures purchased in one or more transactions pursuant to Rule 144 of the Securities Act from a group of unidentifiable sellers, which may include one or more of the selling security holders previously, or currently, listed in this table.
- (2) Assumes conversion of all of the holder's debentures at a conversion rate of 43.4782 shares of common stock per \$1,000 principal amount at maturity of the debentures. This conversion rate is subject to adjustment, however, as described under Description of the Debentures Conversion Rights. As a result, the number of shares of common stock issuable upon conversion of the debentures may increase or decrease in the future.
- (3) Calculated based on Rule 13d-3(d)(i) of the Exchange Act, using 82,168,484 common shares outstanding as of May 3, 2004. In calculating this amount for each holder, we treated as outstanding the number of shares of common stock issuable upon conversion of all that holder's debentures, but we did not assume conversion of any other holder's debentures.

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**PLAN OF DISTRIBUTION**

The debentures and the underlying common stock are being registered to permit the resale of such securities by the holders of such securities from time to time after the date of this prospectus. We will not receive any of the proceeds from the sale by the selling securityholders of the debentures or the common stock. We will bear the fees and expenses incurred in connection with our obligation to register the debentures and the underlying common stock. However, the selling securityholders will pay all underwriting discounts, commissions and agent's commissions, if any.

The selling securityholders may offer and sell the debentures and the common stock into which the debentures are convertible from time to time in one or more transactions at fixed prices, at prevailing market prices at the time of sale, at varying prices determined at the time of sale or at negotiated prices. These prices will be determined by the selling securityholder or by agreement between such holder and underwriters or dealers who may receive fees or commissions in connection with such sale. Such sales may be effected by a variety of methods, including the following:

in market transactions;

in privately negotiated transactions;

through the writing of options;

in a block trade in which a broker-dealer will attempt to sell a block of securities as agent but may position and resell a portion of the block as principal to facilitate the transaction;

if we agree to it prior to the distribution, through one or more underwriters on a firm commitment or best-efforts basis;

through broker-dealers, which may act as agents or principals;

directly to one or more purchasers;

through agents; or

in any combination of the above or by any other legally available means.

In connection with the sales of the debentures and the common stock into which the debentures are convertible or otherwise, the selling securityholders may enter into hedging transactions with broker-dealers, which may in turn engage in short sales of the offered securities, short and deliver the debentures and the common stock into which the debentures are convertible to close out such short positions, or loan or pledge the debentures and the common stock into which the debentures are convertible to broker-dealers that in turn may sell such securities.

If a material arrangement with any underwriter, broker, dealer or other agent is entered into for the sale of any debentures and the common stock into which the debentures are convertible through a secondary distribution or a purchase by a broker or dealer, or if other material changes are

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made in the plan of distribution of the debentures and the common stock into which the debentures are convertible, a prospectus supplement will be filed, if necessary, under the Securities Act disclosing the material terms and conditions of such arrangement. The underwriter or underwriters with respect to an underwritten offering of debentures and the common stock into which the debentures are convertible and the other material terms and conditions of the underwriting will be set forth in a prospectus supplement relating to such offering and, if an underwriting syndicate is used, the managing underwriter or underwriters will be set forth on the cover of the prospectus supplement. In connection with the sale of the debentures and the common stock into which the debentures are convertible, underwriters will receive compensation in the form of underwriting discounts or commissions and may also receive commissions from purchasers of debentures and underlying common stock for whom they may act as agent. Underwriters may sell to or through dealers, and such dealers may receive compensation in the form of discounts, concessions or commissions from the underwriters or commissions from the purchasers for whom they may act as agent.

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To our knowledge, there are currently no plans, arrangements or understandings between any selling securityholders and any underwriter, broker-dealer or agent regarding the sale of the debentures or the underlying common stock by the selling securityholders. Selling securityholders may decide not to sell all or a portion of the debentures or the underlying common stock offered by them pursuant to this prospectus or may decide not to sell debentures or the underlying common stock under this prospectus. In addition, any selling securityholder may transfer, devise or give the debentures or the underlying common stock by other means not described in this prospectus. Any debentures or underlying common stock covered by this prospectus that qualify for sale pursuant to Rule 144 or Rule 144A of the Securities Act may be sold under Rule 144 or Rule 144A rather than pursuant to this prospectus.

The selling securityholders and any underwriters, broker-dealers or agents participating in the distribution of the debentures and the common stock into which the debentures are convertible may be deemed to be underwriters within the meaning of the Securities Act, and any profit on the sale of the debentures or common stock by the selling securityholders and any commissions received by any such underwriters, broker-dealers or agents may be deemed to be underwriting commissions under the Securities Act. If the selling securityholders were deemed to be underwriters, the selling securityholders may be subject to statutory liabilities including, but not limited to, those of Sections 11, 12 and 17 of the Securities Act and Rule 10b-5 under the Exchange Act.

The selling securityholders and any other person participating in the distribution will be subject to the applicable provisions of the Exchange Act and the rules and regulations under the Exchange Act, including, without limitation, Regulation M, which may limit the timing of purchases and sales of any of the debentures and the common stock into which the debentures are convertible by the selling securityholders and any other relevant person. Furthermore, Regulation M may restrict the ability of any person engaged in the distribution of the debentures and the common stock into which the debentures are convertible to engage in market-making activities with respect to the particular debentures and the common stock into which the debentures are convertible being distributed. All of the above may affect the marketability of the debentures and the common stock into which the debentures are convertible and the ability of any person or entity to engage in market-making activities with respect to the debentures and the common stock into which the debentures are convertible.

Under the securities laws of certain states, the debentures and the common stock into which the debentures are convertible may be sold in those states only through registered or licensed brokers or dealers. In addition, in certain states the debentures and the common stock into which the debentures are convertible may not be sold unless the debentures and the common stock into which the debentures are convertible have been registered or qualified for sale in the state or an exemption from registration or qualification is available and complied with.

We have agreed to indemnify the selling securityholders against certain civil liabilities, including certain liabilities arising under the Securities Act, and the selling securityholders will be entitled to contribution from us in connection with those liabilities. The selling securityholders will indemnify us against certain civil liabilities, including liabilities arising under the Securities Act, and will be entitled to contribution from the selling securityholders in connection with those liabilities.

We are permitted to suspend the use of this prospectus under certain circumstances relating to corporate developments, public filings with the SEC and similar events for a period not to exceed 45 days in any three-month period and not to exceed an aggregate of 90 days in any 12-month period. If the duration of such suspension exceeds any of the periods above-mentioned, we have agreed to pay liquidated damages. See

Description of Debentures Registration Rights.

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**LEGAL MATTERS**

Certain legal matters regarding the debentures will be passed upon for us by Skadden, Arps, Slate, Meagher & Flom LLP (and affiliated partnerships), Los Angeles, California. Certain matters of Nevada law, including the validity of the common stock offered hereby, will be passed upon for us by Schreck Brignone, Las Vegas, Nevada.

**EXPERTS**

The consolidated financial statements incorporated in this prospectus by reference from Wynn Resorts' Annual Report on Form 10-K have been audited by Deloitte & Touche LLP, independent auditors, as stated in their report which is incorporated herein by reference and has been so incorporated in reliance upon the report of such firm given upon their authority as experts in accounting and auditing.

**Table of Contents****PART II****INFORMATION NOT REQUIRED IN PROSPECTUS****Item 14. Other Expenses of Issuance and Distribution**

The following table sets forth the fees and expenses payable by the Registrant in connection with the registration and sale of the securities being registered hereby. All of such fees and expenses, except the SEC registration fee are estimated.

SEC Registration Fee	\$ 20,225
Accounting Fees and Expenses	\$ 20,000
Legal Fees and Expenses	\$ 100,000
Printing Expenses	\$ 55,000
Miscellaneous	\$ 9,775
Total	\$ 205,000

**Item 15. Indemnification of Directors and Officers**

The Nevada Revised Statutes provide that a corporation may indemnify its officers and directors against expenses actually and reasonably incurred in the event an officer or director is made a party or threatened to be made a party to an action (other than an action brought by or in the right of the corporation as discussed below) by reason of his or her official position with the corporation provided the director or officer (1) is not liable for the breach of any fiduciary duties as a director or officer involving intentional misconduct, fraud or a knowing violation of the law or (2) acted in good faith and in a manner he or she reasonably believed to be in the best interests of the corporation and, with respect to any criminal actions, had no reasonable cause to believe his or her conduct was unlawful. A corporation may indemnify its officers and directors against expenses, including amounts paid in settlement, actually and reasonably incurred in the event an officer or director is made a party or threatened to be made a party to an action by or in the right of the corporation by reason of his or her official position with the corporation, provided the director or officer (1) is not liable for the breach of any fiduciary duties as a director or officer involving intentional misconduct, fraud or a knowing violation of the laws or (2) acted in good faith and in a manner he or she reasonably believed to be in the best interests of the corporation. The Nevada Revised Statutes further provides that a corporation generally may not indemnify an officer or director if it is determined by a court that such officer or director is liable to the corporation or responsible for any amounts paid to the corporation as a settlement, unless a court also determines that the officer or director is entitled to indemnification in light of all of the relevant facts and circumstances. The Nevada Revised Statutes require a corporation to indemnify an officer or director to the extent he or she is successful on the merits or otherwise successfully defends the action.

Wynn Resorts' bylaws provide that it will indemnify its directors and officers to the maximum extent permitted by Nevada law, including in circumstances in which indemnification is otherwise discretionary under Nevada law. In addition, Wynn Resorts has entered into separate indemnification agreements with its directors and officers that require Wynn Resorts, among other things, to indemnify such directors and officers against certain liabilities that may arise by reason of their status or service other than liabilities arising from willful misconduct of a culpable nature. Wynn Resorts also intends to maintain director and officer liability insurance, if available on reasonable terms.

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**Item 16. Exhibits**

**Exhibit**

<u>No.</u>	<u>Description</u>
4.1	Second Amended and Restated Articles of Incorporation of Wynn Resorts, Limited. (1)
4.2	Third Amended and Restated Bylaws of Wynn Resorts, Limited, as amended. (2)
4.3	Indenture, dated as of July 7, 2003, governing the 6% Convertible Subordinated Debentures due 2015 by and among Wynn Resorts, Limited, as obligor, Wynn Resorts Funding, LLC, as guarantor and U.S. National Bank Association, as Trustee (including the Form of 6% Convertible Subordinated Debenture due 2015 and Form of Notation of Guarantee). (3)
4.4	Registration Rights Agreement, dated as of July 7, 2003, by and among Wynn Resorts, Limited, Wynn Resorts Funding, LLC, Deutsche Bank Securities Inc. and SG Cowen Securities Corporation. (3)
4.5	Collateral Pledge and Security Agreement, dated as of July 7, 2003, by and between Wynn Resorts Funding, LLC, as the pledgor, and U.S. Bank National Association, as collateral agent and trustee. (3)
4.6	Supplement No. 1, dated as of July 30, 2003, to the Collateral Pledge and Security Agreement dated as of July 7, 2003, by and between Wynn Resorts Funding, LLC, as pledgor and U.S. Bank National Association, as collateral agent and trustee. (3)
4.7	Pledge and Security Agreement, dated as of July 7, 2003, by and between Wynn Resorts, Limited, as pledgor, and U.S. Bank National Association, as trustee and collateral agent. (3)
5.1	Opinion of Skadden, Arps, Slate, Meagher & Flom LLP (4)
5.2	Opinion of Schreck Brignone (4)
* 12	Statement re: Computation of Ratio of Earnings to Fixed Charges
* 23.1	Consent of Independent Accountant
23.2	Consent of Skadden, Arps, Slate, Meagher & Flom LLP (included in Exhibit 5.1) (4)
23.3	Consent of Schreck Brignone (included in Exhibit 5.2) (4)
24.1	Powers of Attorney of officers and directors of Wynn Resorts, Limited (included on signature page of this Registration Statement) (4)
24.2	Powers of Attorney of officers of manager of Wynn Resorts Funding, LLC (included on the signature page of this Registration Statement) (4)
25	Statement of Eligibility on Form T-1 under the Trust Indenture Act of 1939, as amended, of U.S. Bank National Association, trustee under the Indenture. (5)

\* Filed herewith.

- (1) Previously filed with Amendment No. 4 to the Form S-1 filed by Wynn Resorts, Limited on October 7, 2002 (File No. 333-90600).
- (2) Previously filed with the Quarterly Report on Form 10-Q filed by Wynn Resorts, Limited on December 9, 2002.
- (3) Previously filed with the Quarterly Report on Form 10-Q filed by Wynn Resorts, Limited on August 14, 2003.
- (4) Previously filed with the Form S-3 filed by the Registrants on December 10, 2003 (File Nos. 333-111064 and 333-111064-01).
- (5) Previously filed with the Amendment No. 1 to Form S-3 filed by the Registrants on February 2, 2004 (File Nos. 333-111064 and 333-111064-01).



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**Item 17. Undertakings**

(A) The undersigned registrant hereby undertakes:

(1) To file, during any period in which offers or sales are being made, a post-effective amendment to this registration statement:

(i) To include any prospectus required by Section 10(a)(3) of the Securities Act of 1933;

(ii) To reflect in the prospectus any facts or events arising after the effective date of the registration statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in the registration statement. Notwithstanding the foregoing, any increase or decrease in volume of securities offered (if the total dollar value of securities offered would not exceed that which was registered) and any deviation from the low or high end of the estimated maximum offering range may be reflected in the form of prospectus filed with the SEC pursuant to Rule 424(b) if, in the aggregate, the changes in volume and price represent no more than 20 percent change in the maximum aggregate offering price set forth in the Calculation of Registration Fee table in the effective registration statement and

(iii) To include any material information with respect to the plan of distribution not previously disclosed in the registration statement or any material change to such information in the registration statement.

(2) That, for the purpose of determining any liability under the Securities Act of 1933, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

(3) To remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.

(B) The undersigned registrant hereby undertakes that, for purposes of determining liability under the Securities Act of 1933, each filing of the registrant's annual report pursuant to Section 13(a) or Section 15(d) of the Securities Exchange Act of 1934 (and, where applicable, each filing of an employee benefit plan's annual report pursuant to Section 15(d) of the Securities Exchange Act of 1934) that is incorporated by reference in the registration statement shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

(C) Insofar as indemnification for liabilities arising under the Securities Act of 1933 may be permitted to directors, officers and controlling persons of the registrant pursuant to the provisions described in Item 15 Indemnification of Directors and Officers above, or otherwise, the registrant has been advised that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in the Securities Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the registrant of expenses incurred or paid by a director, officer or controlling person of the registrant in the successful defense of any action, suit, or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate

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jurisdiction the question whether such indemnification by it is against public policy as expressed in the Securities Act and will be governed by the final adjudication of such issue.

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**D. Boone Wayson**

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Director

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**Elaine P. Wynn**

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Director

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**Stanley R. Zax**

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Director

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**Allan Zeman**

\*By: /s/ MARC H. RUBINSTEIN

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**Marc H. Rubinstein**

**Attorney-in-fact**



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