

January 16, 2009

City of Las Vegas  
400 Stewart Avenue  
Las Vegas, NV 89101  
Attn: City Council

Ladies and Gentlemen:

We (the "Developer") and you (the "City") have entered into a Disposition and Development Agreement dated July 2, 2008 (the "DDA"). Terms not otherwise defined herein have the meanings ascribed to them in the DDA.

The DDA concerns the development of certain parcels of land in the City, including the Lady Luck Site and certain of the properties situated in the area bounded by Casino Center Drive, U.S. Highway 95, 4<sup>th</sup> Street and Stewart Avenue (the area bounded by Casino Center Drive, U.S. Highway 95, 4<sup>th</sup> Street and Stewart Avenue is herein the "TID Site"). The Developer is requesting that the City form a Tourism Improvement District (the "TID") under Chapter 271A of Nevada Revised Statutes ("NRS") whose boundaries generally consist of the TID site. The purpose of this letter is to provide the City with certain information to assist it in making the findings it is required to make under Chapter 271A of NRS in order to form the TID.

Developer intends to proceed with the development of the Lady Luck Site and achieve the requirements of the Lady Luck Threshold in a timely fashion, so as to satisfy the condition precedent described in Section 8.02 of the DDA to acquisition of the ENA Conveyance Site.

In addition, Developer intends to proceed with the acquisition and development of the ENA Conveyance Site in a timely fashion, in the manner described in and in full compliance with the requirements of Section 8.04 of the DDA and Exhibit I thereto. That development is described as the "Mixed-Use Development" in the report entitled *"Proposed Tourism Improvement District, An Analysis of Selected Regulatory Requirements"* prepared by Applied Analysis, dated November 30, 2008.

Developer has the financial ability to carry out the development of the Lady Luck Site and the acquisition and development of the ENA Conveyance Site as described in the preceding two paragraphs, as further evidenced by the attached two "COMMITMENT TO FUND EQUITY AND MORTGAGE LOAN" letters from CIM Fund III, L.P. Developer and CIM Fund III L.P. have furnished information about

- (i) the cost of the development of the Lady Luck Site and the acquisition and development of the ENA Conveyance Site as described in the preceding two paragraphs carrying and
- (ii) their respective financial conditions that demonstrate the financial ability of the Developer and CIM Fund III, L.P. as described in this paragraph to Keyser Marston Associates, Attn. Timothy C. Kelly (the "Reviewer"). Developer understands that the

Reviewer will review this information and provide a statement to the City based on this information to assist the City in confirming the financial ability of Developer and CIM Fund III, L.P. to carry out the development of the Lady Luck Site and the acquisition and development of the ENA Conveyance Site as described in the preceding two paragraphs.

Nothing in this letter shall amend or waive any rights or responsibilities set forth in the DDA, or impose any additional obligations not expressly set forth in the DDA, and all such rights are reserved.

Thank you very much for your assistance on this project.

Sincerely,

CIM/LL Manager, LLC

By: 

Title: Nicholas V. Morosoff  
Secretary

cc: Office of Business & Development, Attn: Scott Adams, Director

**CIM FUND III, L.P.**  
**COMMITMENT TO FUND EQUITY AND MORTGAGE LOAN**

January 16, 2009

CIM/LL Manager, LLC  
6922 Hollywood Blvd., 9<sup>th</sup> Floor  
Los Angeles, CA 90028

Re: Property Name: Lady Luck Hotel & Casino

Ladies and Gentlemen:

CIM Fund III, L.P. ("CIM FUND" or the "Lender") is pleased to issue this Commitment (this "Commitment") to CIM/LL Manager, LLC (the "Developer") to make (i) an equity contribution to Developer (the "Equity Contribution") and (ii) a first mortgage loan (the "Loan") to be secured by the property described in Exhibit A (the "Property") on the terms and conditions set forth herein, in Exhibits A and B attached hereto and made a part hereof and in the Final Approval Letter (defined below), if issued.

CIM FUND agrees to make, or cause to be made, the Equity Contribution and the Loan to an entity or entities primarily affiliated with the Developer (the "Borrower") provided that the items set forth below are satisfied.

CIM Fund's agreement to fund the Equity Contribution and the Loan is contingent upon its receipt and approval of the following:

1. The City of Las Vegas (the "City") shall not have improperly withheld issuance of any and all building permits (including without limitation excavation, grading and building permits, referred to collectively as the "Permits") required for the commencement and continuation of construction of the hotel and casino rehabilitation on the Property (the "Project"), and such issuance shall not be prevented or delayed by any moratorium on the issuance of any or all Permits.
2. The Title Company has irrevocably committed to issue a Lender's Title Policy.
3. Developer shall have obtained a take out commitment from a permanent lender reasonably acceptable to Lender in an amount no less than the amount of the Loan.

Notwithstanding anything contained in this Commitment to the contrary, under no circumstances shall Developer or Borrower be entitled to specific performance of this Commitment or any term or condition hereof. Developer specifically acknowledges for itself and on behalf of

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Borrower that it has an adequate remedy at law in the event of any breach of this Commitment by Lender.

This Commitment shall expire and be of no further force and effect on the Outside Closing Date (as defined in Exhibit A), by which time the Loan must be closed subject to all of the terms and conditions contained herein and in the Final Approval Letter, if issued.

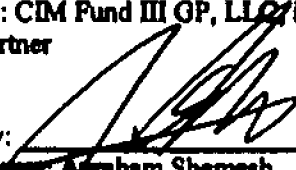
The provisions of this Commitment cannot be waived or modified unless such waiver or modification is in writing and signed by both CIM FUND and the Developer. The Loan Commitment and related materials submitted to CIM FUND shall survive the issuance of this Commitment.

This Commitment may be executed in one or more counterparts each of which shall constitute an original document and all of which together shall constitute one document. Developer has executed this Commitment for itself and on behalf of Borrower, and there are no third party beneficiaries to this Commitment.

Your signature below will evidence your acceptance of the terms of this Commitment.

Very truly yours,

CIM FUND III, L.P.  
by: CIM Fund III GP, LLC its general partner

By:   
Name: Abraham Shemesh  
Title: Treasurer

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This Commitment is hereby  
confirmed and accepted

as of JAN 21, 2009

CIM/LL Manager, LLC

By: 

Name: Nicholas V. Morosoff

Title: Secretary



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CIM LL Manager Equity and Loan Commitment-LL

## **EXHIBIT A**

### **The Property**

**Name:** Lady Luck Hotel and Casino

**Use:** Extensive rehabilitation of existing Lady Luck Hotel and Casino. Current improvements consist of 631 hotel rooms, 50,000 square feet of casino space and 22,000 square feet of retail space.

**Land Area:** 6.27 acres.

**Approved Development Cost Estimate:** \$117,821,075 (includes hard costs, plus soft costs equal to 20% of hard costs)

**Equity Amount:** The excess of the Approved Development Cost Estimate over the Loan Amount

**Loan Amount:** An amount of up to 60% of the Approved Development Cost Estimate.

**Loan Term:** Five years from the first day of the first calendar month following the Closing Date, or such other term as agreed upon by Developer and Lender.

**Interest Rate:** 2.25% over the 90 day LIBOR rate, or such other interest rate as agreed upon by Developer and Lender. Interest on the Loan will be payable monthly in arrears and shall be computed on the basis of the actual number of days elapsed in the period for which such interest is payable by a daily rate based on a 360 day year.

**Regularly Scheduled P&I Payment:** After the construction period, the regularly scheduled monthly principal and interest payment will be calculated by Lender based on a constant stream of level monthly payments of principal and interest which would be sufficient to fully amortize the Loan over thirty (30) years from the end of the construction period.

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## **EXHIBIT B**

### **Summary of Terms**

- Borrower:** The borrower identified below (the "Borrower") will be a newly-formed, single purpose, bankruptcy remote entity including a managing member that is also a single purpose entity (Bankruptcy remote status will require a non-consolidation opinion and an independent director) formed exclusively for the purpose of owning and operating the Property which meets the requirements set forth on the BRE/SPE Addendum attached hereto.
- Loan Constant:** The Loan Constant shall be (i) the sum of twelve (12) Regularly Scheduled P&I Payments divided by (ii) the Loan Amount.
- Collateral:** First lien on the land and all improvements located at the property described in Exhibit A. First security assignment of all leases, rents and contracts affecting the Property. First lien on all personal property, fixtures and equipment of the Borrower on or used in connection with the Property.
- Closing Date:** The Closing Date will be the date the Loan is actually funded, which shall occur on or before the Outside Closing Date.
- Outside Closing Date:** December 31, 2010
- Prepayment:** The Borrower may not prepay the Proposed Loan other than pursuant to the terms hereof.
- Loan Documentation:** It is understood that the mortgage loan documents, including, but not limited to, the promissory note, mortgage and related collateral documents required by Lender (collectively, the "Loan Documents"), must be on Lender's forms without substantial changes to enable the Loan to be eligible for inclusion in a possible securitization pool. The Loan must meet standards for the commercial mortgage securitization market as determined by CIM FUND from time to time. Borrower and Developer must assure compliance in this regard.
- Title Insurance Policy and Financing Statement Certificate:** Applicant shall deliver to Lender a preliminary title report and, at closing, a full-coverage mortgagee's title insurance policy, issued by Old Republic Title Company or another company approved by Lender together with such endorsements as may be required by Lender. The form and content of the title insurance policy shall be satisfactory to Lender. In addition, Applicant will deliver to Lender satisfactory judgement, tax lien, UCC and bankruptcy searches in those jurisdictions and against those individuals and entities required by Lender. Applicant shall pay all title insurance and search costs. .
- Recording Costs:** Borrower shall pay all recording costs, mortgage taxes, transfer taxes, intangible taxes, documentary stamps, filing fees and any other costs as may be necessary to effect the recording of the mortgage instrument, filing and recording of financing statements and recording of any other necessary instruments.

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| <b>Ongoing Escrow:</b>          | Starting on the Closing Date, Borrower shall deposit with Lender escrows to assure adequate accrual of funds to pay real estate taxes, insurance, ongoing maintenance reserves, and leasing commissions and tenant improvements, all in amounts deemed adequate by Lender, but not less than such minimum amounts as may be noted in Exhibit A.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
| <b>Required Information:</b>    | Borrower or Developer shall provide all items outlined in (a) through (t) in the Commitment in form and substance satisfactory to Lender not less than five business days prior to the Rate Lock Date.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
| <b>Current As-built Survey:</b> | Borrower shall deliver to Lender a current as-built ALTA/ACSM survey of the Property, certified within 30 days of closing, with such detail as required by Lender. The survey must be prepared by a state-licensed surveyor and be acceptable to Lender in all respects. Borrower shall pay all survey costs.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
| <b>Expenses:</b>                | Borrower and/or Developer shall pay expenses of closing the Loan including, but not limited to, Borrower's legal fees, CIM Fund's legal fees and expenses as described above, costs of all third party studies (including accounting, environmental, engineering and appraisal), title insurance costs and all recording and filing fees and taxes.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| <b>Secondary Financing:</b>     | No additional financing of any type will be allowed on the Property, the Borrower or constituent interests in the Borrower.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
| <b>Reporting Requirements:</b>  | <p>During the Loan Term, Borrower and all indemnitors and guarantors of the Loan shall keep adequate books and records of account in accordance with GAAP and furnish to Lender the following, all as more particularly set forth in the Loan Documents:</p> <ul style="list-style-type: none"> <li>(i) On a monthly basis, rent rolls and property operating statements for the immediately preceding month or such prior period as Lender shall require, or if the Loan has been securitized or sold as a whole loan by Lender, quarterly and annual rent rolls and property operating statements;</li> <li>(ii) annual property operating statements and operating budgets;</li> <li>(iii) quarterly and annual balance sheets and profit and loss statements for the Property; and</li> <li>(iv) such other additional financial and management information as Lender may require from time to time.</li> </ul> |
| <b>Assumability:</b>            | An assumption of the Loan will be permitted on a three-time basis after the first year of the Loan Term, on payment of a one percent (1%) fee for the first assumption and a one-half percent (0.5%) fee for the 2nd and 3rd assumptions, and subject to Lender's approval of the transferees. Notwithstanding the above, an assumption will be permitted during the first 12                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |

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months if the Borrower provides the Lender with 90 days written notice.

**Sale of Loan or  
Securities:**

In the event the Loan is securitized or sold as a whole loan, Borrower agrees to meet with representatives of the national credit rating agencies and prospective purchasers and investors to discuss the business and operations of the Property and to cooperate with the reasonable requests of such representatives, purchasers, investors and CIM FUND.

**Indemnity and  
Guaranty:**

The Loan Documents shall contain an environmental indemnity and a guaranty of recourse obligations from Borrower and Developer, each of which shall be satisfactory in all respects to CIM FUND.

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## **EXHIBIT C**

### **SPE Addendum**

CDM Fund's requirements for borrowing entity structures are set forth below.

#### **A. SINGLE ASSET ENTITY ("SAE")**

An SAE Borrower is a newly formed limited partnership, limited liability company or a corporation. The Borrower owns the encumbered real estate and incidental personal property necessary for the operation of such real estate. The CDM FUND mortgage is the Borrower's only debt (other than liabilities incurred by the Borrower in the ordinary course of its business that are related to the ownership of the real estate) and the Borrower agrees to the "separateness covenants" outlined in CDM Fund's standard mortgage. The separateness covenants must also be included in the Borrower's formation documents. On loans under \$5 million, a single asset entity (SAE) is desired. For loans from \$5 million up to \$10 million, an SAE is required.

#### **B. SINGLE PURPOSE ENTITY ("SPE")**

An SPE will have one of two structures: (i) a limited partnership Borrower with a sole corporate general partner or (ii) a limited liability company Borrower with a sole corporate managing member. The Borrower meets all the requirements for an SAE above. In addition, the corporate general partner or managing member, as applicable, must in its formation documents agree to, among other things (a) the separateness covenants referred to above and (b) to limit its activities to the management of the Borrower. For loans from \$10 million up to \$15 million, an SPE is required.

#### **C. BANKRUPTCY REMOTE SPE**

A Borrower that is a bankruptcy remote, single purpose entity (SPE) meets all the requirements of an SPE above. In addition, (i) the corporate managing member or general partner must have at least one independent director, (ii) the unanimous consent of the directors is required for certain actions related to the general partner/managing member and Borrower which pertain to bankruptcy and other matters as set forth in the following paragraph and (iii) Borrower's counsel delivers a substantive non-consolidation opinion acceptable to CDM FUND.

The unanimous consent of the directors is required with respect to the general partner or managing member and the Borrower to (i) file, or consent to the filing of, a bankruptcy or insolvency petition or otherwise institute insolvency proceedings or otherwise seek relief under any laws relating to the relief from debts or the protection of debtors generally; (ii) seek or consent to the appointment of a receiver, liquidator, assignee, trustee, sequestrator, custodian or any other similar official for the general partner/managing member or the Borrower; (iii) make any assignment for the benefit of creditors of the general partner/managing member or the Borrower; or (iv) take any action in furtherance of any of the foregoing.

A bankruptcy remote SPE is required on all loans of \$15 million and above.

#### **D. SEPARATENESS COVENANTS**

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The mortgage sets forth the separateness covenants agreed to by the Borrower and to the extent required and applicable, its general partner or managing member, in order to maintain its SPS status.

The Borrower covenants and agrees that it does not and shall not and further (A) if Borrower is a limited partnership, its corporate general partner does not and shall not or (B) if Borrower is a limited liability company, its corporate managing member does not and shall not:

1. engage in any business or activity other than the ownership, operation and maintenance of the property, and activities incidental thereto;
2. acquire or own any material assets other than (i) the property, and (ii) such incidental personal property as may be necessary for the operation of the property;
3. merge into or consolidate with any person or entity or dissolve, terminate or liquidate in whole or in part, transfer or otherwise dispose of all or substantially all of its assets or change its legal structure, without in each case lender's consent;
4. fail to preserve its existence as an entity duly organized, validly existing and in good standing (if applicable) under the laws of the jurisdiction of its organization or formation, and qualification to do business in the state where the property is located, if applicable, or without the prior written consent of lender, amend, modify, terminate or fail to comply with the provisions of Borrower's partnership agreement, article or certificate of incorporation, articles of organization or similar organizational documents, as the case may be;
5. own any subsidiary or make any investment in, any person or entity without the consent of lender;
6. commingle its assets with the assets of any of its members, general partners, affiliates, principals, or any other person or entity, nor fail to hold all of its assets in its own name;
7. incur any debt, secured or unsecured, direct or contingent (including guaranteeing any obligation), other than the debt, except for trade payables in the ordinary course of its business of owning and operating the property, provided that such debt is not evidenced by a note and is paid when due;
8. become insolvent and fail to pay its debts and liabilities from its assets as the same shall become due;
9. fail to maintain its records, books of account and bank accounts separate and apart from those of the members, partners, principals and affiliates of Borrower, the affiliates of a member, partner or principal of Borrower, and any other person or entity;
10. enter into any contract or agreement with any member, general partner, principal or affiliate of Borrower, guarantor or indemnitor, or any member, general partner, principal or affiliate thereof, except upon terms and conditions that are intrinsically fair, commercially reasonable and substantially similar to those that would be available on an arms-length basis with third parties other than any member, general partner, principal or affiliate of the borrower, guarantor or indemnitor, or any member, general partner, principal or affiliate thereof;
11. seek the dissolution or winding up in whole, or in part, of Borrower;
12. fail to correct any known misunderstandings regarding the separate identity of Borrower;
13. hold itself out to be responsible for the debts of another person;
14. make any loans or advances to any third party, including any member, general partner, principal or affiliate of Borrower, or any member, general partner, principal or affiliate thereof, nor buy or hold evidence of indebtedness issued by any other person or entity (other than cash and investment-grade securities);
15. fail to file its own tax returns, not file a consolidated federal income tax return with any other entity;

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16. fail either to hold itself out to the public as a legal entity separate and distinct from any other entity or person or to conduct its business solely in its own name in order not (i) to mislead others as to the identity with which such other party is transacting business, or (ii) to suggest that Borrower is responsible for the debts of any third party (including any member, general partner, principal or affiliate of Borrower, or any member, general partner, principal or affiliate thereof);
17. fail to maintain adequate capital for the normal obligations reasonably foreseeable in a business of its size and character and in light of its contemplated business operations;
18. share any common logo with or hold itself out as or be considered as a department or division of (i) any general partner, principal, member or affiliate of Borrower, (ii) any affiliate of a general partner, principal or member of Borrower, or (iii) any other person or entity;
19. fail to maintain separate financial statements, showing its assets and liabilities separate and apart from those of any other person or entity;
20. have its assets listed on the financial statement of any other entity;
21. fail to observe all applicable organizational formalities;
22. fail to pay the salaries of its own employees (if any) from its own funds;
23. fail to maintain a sufficient number of employees in light of its contemplated business operations;
24. fail to allocate fairly and reasonably any overhead expenses that are shared with an affiliate, including paying for office space and services performed by any employee of an affiliate;
25. fail to use separate stationery, invoices, and checks bearing its own name;
26. pledge its assets for the benefit of any other person or entity, other than, with respect to the Borrower, in connection with the mortgage loan;
27. [with respect to a bankruptcy remote SPE, fail at any time to have at least one independent director not at the time of initial appointment, or at any time while serving as a director of the general partner/managing member, and has not been at any time during the preceding five (5) years: (a) a stockholder, director (with the exception of serving as the Independent Director of the general partner/managing member), officer, employee, partner, attorney or counsel of the general partner/managing member, the Borrower or any affiliate of either of them; (b) a customer, supplier or other person who derives any of its purchases or revenues from its activities with the general partner/managing member, the Borrower or any affiliate of either of them; (c) a person or other entity controlling or under common control with any such stockholder, partner, customer, supplier or other person; or (d) a member of the immediate family of any such stockholder, director, officer, employee, partner, customer, supplier or other person. (As used herein, the term "control" means the possession, directly or indirectly, of the power to direct or cause the direction of management, policies or activities of a person or entity, whether through ownership of voting securities, by contract or otherwise.))]

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**CIM FUND III, L.P.**

**COMMITMENT TO FUND EQUITY AND MORTGAGE LOAN**

January 16, 2009

CIM/LL Manager, LLC  
6922 Hollywood Blvd., 9<sup>th</sup> Floor  
Los Angeles, CA 90028

Re: Property Name: Las Vegas ENA  
Conveyance Site

Ladies and Gentlemen:

CIM Fund III, L.P. ("CIM FUND" or the "Lender") is pleased to issue this Commitment (this "Commitment") to CIM/LL Manager, LLC (the "Developer") to make (i) an equity contribution to Developer (the "Equity Contribution") and (ii) a first mortgage loan (the "Loan") to be secured by the property described in Exhibit A (the "Property") on the terms and conditions set forth herein, in Exhibits A and B attached hereto and made a part hereof and in the Final Approval Letter (defined below), if issued.

CIM FUND agrees to make, or cause to be made, the Equity Contribution and the Loan to an entity or entities primarily affiliated with the Developer (the "Borrower") provided that the items set forth below are satisfied.

CIM Fund's agreement to fund the Equity Contribution and the Loan is contingent upon its receipt and approval of the following:

1. The City of Las Vegas (the "City") shall have satisfied all Conditions Precedent to Developer's Purchase of the ENA Site, as defined in the Disposition Development Agreement between the City and the Developer, dated July 2, 2008 (the "DDA").
2. Developer, or any permitted nominee, assignee or successor in interest, shall have satisfied all Conditions Precedent to Developer's Purchase of ENA Conveyance Site, as defined in the DDA.
3. The City of Las Vegas (the "City") shall not have improperly withheld issuance of any and all building permits (including without limitation excavation, grading and building permits, referred to collectively as the "Permits") required for the commencement and continuation of construction of the mixed use project to be developed on the Property (the "Project"), and such issuance shall not be prevented or delayed by any moratorium on the issuance of any or all Permits.
4. The Title Company has irrevocably committed to issue a Lender's Title Policy.

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Borrower that it has an adequate remedy at law in the event of any breach of this Commitment by Lender.

This Commitment shall expire and be of no further force and effect on the Outside Closing Date (as defined in Exhibit A), by which time the Loan must be closed subject to all of the terms and conditions contained herein and in the Final Approval Letter, if issued.

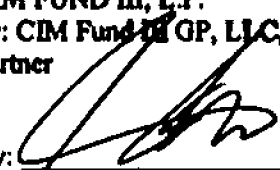
The provisions of this Commitment cannot be waived or modified unless such waiver or modification is in writing and signed by both CIM FUND and the Developer. The Loan Commitment and related materials submitted to CIM FUND shall survive the issuance of this Commitment.

This Commitment may be executed in one or more counterparts each of which shall constitute an original document and all of which together shall constitute one document. Developer has executed this Commitment for itself and on behalf of Borrower, and there are no third party beneficiaries to this Commitment.

Your signature below will evidence your acceptance of the terms of this Commitment.

Very truly yours,

CIM FUND III, L.P.  
by: CIM Fund III GP, LLC, its general partner

By:   
Name: Avraham Shemesh  
Title: Treasurer

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This Commitment is hereby  
confirmed and accepted  
as of JAN 21, 2009

CIM/LL Manager, LLC

By:   
Name: Nicholas V. Morosoff  
Title: Secretary 

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## **EXHIBIT A**

### **The Property**

**Name:** Las Vegas ENA Conveyance Site

**Use:** Mixed Use Project including (a) 200,000 square feet of retail, (b) 142,500 square feet of office, (c) a 500 room hotel, and (d) up to 30,000 square feet of gaming.

**Land Area:** 5.49 acres.

**Approved Development Cost Estimate:** \$311,939,377 (includes land acquisition, hard costs, plus soft costs equal to 20% of hard costs)

**Equity Amount:** The excess of the Approved Development Cost Estimate over the Loan Amount.

**Loan Amount:** An amount of up to 60% of the Approved Development Cost Estimate.

**Loan Term:** Five years from the first day of the first calendar month following the Closing Date, or such other term as agreed upon by Developer and Lender.

**Interest Rate:** 2.25% over the 90 day LIBOR rate, or such other interest rate as agreed upon by Developer and Lender. Interest on the Loan will be payable monthly in arrears and shall be computed on the basis of the actual number of days elapsed in the period for which such interest is payable by a daily rate based on a 360 day year.

**Regularly Scheduled P&I Payment:** After the construction period, the regularly scheduled monthly principal and interest payment will be calculated by Lender based on a constant stream of level monthly payments of principal and interest which would be sufficient to fully amortize the Loan over thirty (30) years from the end of the construction period.

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## **EXHIBIT B**

### **Summary of Terms**

- Borrower:** The borrower identified below (the "Borrower") will be a newly-formed, single purpose, bankruptcy remote entity including a managing member that is also a single purpose entity (Bankruptcy remote status will require a non-consolidation opinion and an independent director) formed exclusively for the purpose of owning and operating the Property which meets the requirements set forth on the BRE/SPE Addendum attached hereto.
- Loan Constant:** The Loan Constant shall be (i) the sum of twelve (12) Regularly Scheduled P&I Payments divided by (ii) the Loan Amount.
- Collateral:** First lien on the land and all improvements located at the property described in Exhibit A. First security assignment of all leases, rents and contracts affecting the Property. First lien on all personal property, fixtures and equipment of the Borrower on or used in connection with the Property.
- Closing Date:** The Closing Date will be the date the Loan is actually funded, which shall occur on or before the Outside Closing Date.
- Outside Closing Date:** June 2, 2015
- Prepayment:** The Borrower may not prepay the Proposed Loan other than pursuant to the terms hereof.
- Loan Documentation:** It is understood that the mortgage loan documents, including, but not limited to, the promissory note, mortgage and related collateral documents required by Lender (collectively, the "Loan Documents"), must be on Lender's forms without substantial changes to enable the Loan to be eligible for inclusion in a possible securitization pool. The Loan must meet standards for the commercial mortgage securitization market as determined by CIM FUND from time to time. Borrower and Developer must assure compliance in this regard.
- Title Insurance Policy and Financing Statement Certificates:** Applicant shall deliver to Lender a preliminary title report and, at closing, a full-coverage mortgagee's title insurance policy, issued by Old Republic Title Company or another company approved by Lender together with such endorsements as may be required by Lender. The form and content of the title insurance policy shall be satisfactory to Lender. In addition, Applicant will deliver to Lender satisfactory judgement, tax lien, UCC and bankruptcy searches in those jurisdictions and against those individuals and entities required by Lender. Applicant shall pay all title insurance and search costs. .
- Recording Costs:** Borrower shall pay all recording costs, mortgage taxes, transfer taxes, intangible taxes, documentary stamps, filing fees and any other costs as may be necessary to effect the recording of the mortgage instrument, filing and recording of financing statements and recording of any other necessary

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instruments.

|                                 |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
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| <b>Ongoing Escrow:</b>          | Starting on the Closing Date, Borrower shall deposit with Lender escrows to assure adequate accrual of funds to pay real estate taxes, insurance, ongoing maintenance reserves, and leasing commissions and tenant improvements, all in amounts deemed adequate by Lender, but not less than such minimum amounts as may be noted in Exhibit A.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
| <b>Required Information:</b>    | Borrower or Developer shall provide all items outlined in (a) through (i) in the Commitment in form and substance satisfactory to Lender not less than five business days prior to the Rate Lock Date.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
| <b>Current As-built Survey:</b> | Borrower shall deliver to Lender a current as-built ALTA/ACSM survey of the Property, certified within 30 days of closing, with such detail as required by Lender. The survey must be prepared by a state-licensed surveyor and be acceptable to Lender in all respects. Borrower shall pay all survey costs.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
| <b>Expenses:</b>                | Borrower and/or Developer shall pay expenses of closing the Loan including, but not limited to, Borrower's legal fees, CIM Fund's legal fees and expenses as described above, costs of all third party studies (including accounting, environmental, engineering and appraisal), title insurance costs and all recording and filing fees and taxes.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
| <b>Secondary Financing:</b>     | No additional financing of any type will be allowed on the Property, the Borrower or constituent interests in the Borrower.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
| <b>Reporting Requirements:</b>  | <p>During the Loan Term, Borrower and all indemnitors and guarantors of the Loan shall keep adequate books and records of account in accordance with GAAP and furnish to Lender the following, all as more particularly set forth in the Loan Documents:</p> <ul style="list-style-type: none"><li>(i) On a monthly basis, rent rolls and property operating statements for the immediately preceding month or such prior period as Lender shall require, or if the Loan has been securitized or sold as a whole loan by Lender, quarterly and annual rent rolls and property operating statements;</li><li>(ii) annual property operating statements and operating budgets;</li><li>(iii) quarterly and annual balance sheets and profit and loss statements for the Property; and</li><li>(iv) such other additional financial and management information as Lender may require from time to time.</li></ul> |
| <b>Assumability:</b>            | An assumption of the Loan will be permitted on a three-time basis after the first year of the Loan Term, on payment of a one percent (1%) fee for the first assumption and a one-half percent (0.5%) fee for the 2nd and 3rd assumptions, and subject to Lender's approval of the transferees. Not                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |

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withstanding the above, an assumption will be permitted during the first 12 months if the Borrower provides the Lender with 90 days written notice.

**Sale of Loan or Securities:**

In the event the Loan is securitized or sold as a whole loan, Borrower agrees to meet with representatives of the national credit rating agencies and prospective purchasers and investors to discuss the business and operations of the Property and to cooperate with the reasonable requests of such representatives, purchasers, investors and CIM FUND.

**Indemnity and Guaranty:**

The Loan Documents shall contain an environmental indemnity and a guaranty of recourse obligations from Borrower and Developer, each of which shall be satisfactory in all respects to CIM FUND.

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## **EXHIBIT C**

### **SPE Addendum**

CIM Fund's requirements for borrowing entity structures are set forth below.

#### **A. SINGLE ASSET ENTITY ("SAE")**

An SAE Borrower is a newly formed limited partnership, limited liability company or a corporation. The Borrower owns the encumbered real estate and incidental personal property necessary for the operation of such real estate. The CIM FUND mortgage is the Borrower's only debt (other than liabilities incurred by the Borrower in the ordinary course of its business that are related to the ownership of the real estate) and the Borrower agrees to the "separateness covenants" outlined in CIM Fund's standard mortgage. The separateness covenants must also be included in the Borrower's formation documents. On loans under \$5 million, a single asset entity (SAE) is desired. For loans from \$5 million up to \$10 million, an SAE is required.

#### **B. SINGLE PURPOSE ENTITY ("SPE")**

An SPE will have one of two structures: (i) a limited partnership Borrower with a sole corporate general partner or (ii) a limited liability company Borrower with a sole corporate managing member. The Borrower meets all the requirements for an SAE above. In addition, the corporate general partner or managing member, as applicable, must in its formation documents agree to, among other things (a) the separateness covenants referred to above and (b) to limit its activities to the management of the Borrower. For loans from \$10 million up to \$15 million, an SPE is required.

#### **C. BANKRUPTCY REMOTE SPE**

A Borrower that is a bankruptcy remote, single purpose entity (SPE) meets all the requirements of an SPE above. In addition, (i) the corporate managing member or general partner must have at least one independent director, (ii) the unanimous consent of the directors is required for certain actions related to the general partner/managing member and Borrower which pertain to bankruptcy and other matters as set forth in the following paragraph and (iii) Borrower's counsel delivers a substantive non-consolidation opinion acceptable to CIM FUND.

The unanimous consent of the directors is required with respect to the general partner or managing member and the Borrower to (i) file, or consent to the filing of, a bankruptcy or insolvency petition or otherwise institute insolvency proceedings or otherwise seek relief under any laws relating to the relief from debts or the protection of debtors generally; (ii) seek or consent to the appointment of a receiver, liquidator, assignee, trustee, sequestrator, custodian or any other similar official for the general partner/managing member or the Borrower; (iii) make any assignment for the benefit of creditors of the general partner/managing member or the Borrower; or (iv) take any action in furtherance of any of the foregoing.

A bankruptcy remote SPE is required on all loans of \$15 million and above.

#### **D. SEPARATENESS COVENANTS**

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The mortgage sets forth the separateness covenants agreed to by the Borrower and to the extent required and applicable, its general partner or managing member, in order to maintain its SPE status.

The Borrower covenants and agrees that it does not and shall not and further (A) if Borrower is a limited partnership, its corporate general partner does not and shall not or (B) if Borrower is a limited liability company, its corporate managing member does not and shall not:

1. engage in any business or activity other than the ownership, operation and maintenance of the property, and activities incidental thereto;
2. acquire or own any material assets other than (i) the property, and (ii) such incidental personal property as may be necessary for the operation of the property;
3. merge into or consolidate with any person or entity or dissolve, terminate or liquidate in whole or in part, transfer or otherwise dispose of all or substantially all of its assets or change its legal structure, without in each case lender's consent;
4. fail to preserve its existence as an entity duly organized, validly existing and in good standing (if applicable) under the laws of the jurisdiction of its organization or formation, and qualification to do business in the state where the property is located, if applicable, or without the prior written consent of lender, amend, modify, terminate or fail to comply with the provisions of Borrower's partnership agreement, article or certificate of incorporation, articles of organization or similar organizational documents, as the case may be;
5. own any subsidiary or make any investment in, any person or entity without the consent of lender;
6. commingle its assets with the assets of any of its members, general partners, affiliates, principals, or any other person or entity, nor fail to hold all of its assets in its own name;
7. incur any debt, secured or unsecured, direct or contingent (including guaranteeing any obligation), other than the debt, except for trade payables in the ordinary course of its business of owning and operating the property, provided that such debt is not evidenced by a note and is paid when due;
8. become insolvent and fail to pay its debts and liabilities from its assets as the same shall become due;
9. fail to maintain its records, books of account and bank accounts separate and apart from those of the members, partners, principals and affiliates of Borrower, the affiliates of a member, partner or principal of Borrower, and any other person or entity;
10. enter into any contract or agreement with any member, general partner, principal or affiliate of Borrower, guarantor or indemnitor, or any member, general partner, principal or affiliate thereof, except upon terms and conditions that are intrinsically fair, commercially reasonable and substantially similar to those that would be available on an arms-length basis with third parties other than any member, general partner, principal or affiliate of the borrower, guarantor or indemnitor, or any member, general partner, principal or affiliate thereof;
11. seek the dissolution or winding up in whole, or in part, of Borrower;
12. fail to correct any known misunderstandings regarding the separate identity of Borrower;
13. hold itself out to be responsible for the debts of another person;
14. make any loans or advances to any third party, including any member, general partner, principal or affiliate of Borrower, or any member, general partner, principal or affiliate thereof, nor buy or hold evidence of indebtedness issued by any other person or entity (other than cash and investment-grade securities);
15. fail to file its own tax returns, not file a consolidated federal income tax return with any other entity;

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16. fail either to hold itself out to the public as a legal entity separate and distinct from any other entity or person or to conduct its business solely in its own name in order not (i) to mislead others as to the identity with which such other party is transacting business, or (ii) to suggest that Borrower is responsible for the debts of any third party (including any member, general partner, principal or affiliate of Borrower, or any member, general partner, principal or affiliate thereof);
17. fail to maintain adequate capital for the normal obligations reasonably foreseeable in a business of its size and character and in light of its contemplated business operations;
18. share any common logo with or hold itself out as or be considered as a department or division of (i) any general partner, principal, member or affiliate of Borrower, (ii) any affiliate of a general partner, principal or member of Borrower, or (iii) any other person or entity;
19. fail to maintain separate financial statements, showing its assets and liabilities separate and apart from those of any other person or entity;
20. have its assets listed on the financial statement of any other entity;
21. fail to observe all applicable organizational formalities;
22. fail to pay the salaries of its own employees (if any) from its own funds;
23. fail to maintain a sufficient number of employees in light of its contemplated business operations;
24. fail to allocate fairly and reasonably any overhead expenses that are shared with an affiliate, including paying for office space and services performed by any employee of an affiliate;
25. fail to use separate stationery, invoices, and checks bearing its own name;
26. pledge its assets for the benefit of any other person or entity, other than, with respect to the Borrower, in connection with the mortgage loan;
27. [with respect to a bankruptcy remote SPB, fail at any time to have at least one independent director not at the time of initial appointment, or at any time while serving as a director of the general partner/managing member, and has not been at any time during the preceding five (5) years: (a) a stockholder, director (with the exception of serving as the Independent Director of the general partner/managing member), officer, employee, partner, attorney or counsel of the general partner/managing member, the Borrower or any affiliate of either of them; (b) a customer, supplier or other person who derives any of its purchases or revenues from its activities with the general partner/managing member, the Borrower or any affiliate of either of them; (c) a person or other entity controlling or under common control with any such stockholder, partner, customer, supplier or other person; or (d) a member of the immediate family of any such stockholder, director, officer, employee, partner, customer, supplier or other person. (As used herein, the term "control" means the possession, directly or indirectly, of the power to direct or cause the direction of management, policies or activities of a person or entity, whether through ownership of voting securities, by contract or otherwise.))]

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