

FORM PTO-1594
(Rev. 6-93) **md 9-10-99**
OMB No. 0651-0011 (exp. 4/94)

RECO

09-13-1999



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U.S. DEPARTMENT OF COMMERCE
Patent and Trademark Office

Tab settings **==**

101144128

To the Honorable Commissioner of Patents and Trademarks: Please record the attached original documents or copy thereof.

1. Name of conveying party(ies):

Majestic Star Casino, LLC

- ☐ Individual(s) ☐ Association
☐ General Partnership ☐ Limited Partnership
☐ Corporation-State
☒ Other Indiana limited liability company

Additional name(s) of conveying party(ies) attached? ☐ Yes ☐ No

3. Nature of conveyance:

- ☐ Assignment ☐ Merger
☒ Security Agreement ☐ Change of Name
☐ Other _____

Execution Date: August 2, 1999

2. Name and address of receiving party(ies)

Name: Foothill Capital CorporationInternal Address: Suite 1500Street Address: 11111 Santa Monica Blvd.City: Los Angeles State: CA ZIP: 90025

- ☐ Individual(s) citizenship _____
☐ Association _____
☐ General Partnership _____
☐ Limited Partnership _____
☒ Corporation-State California
☐ Other _____

If assignee is not domiciled in the United States, a domestic representative designation is attached: ☐ Yes ☒ No

(Designations must be a separate document from assignment)

Additional name(s) & address(es) attached? ☐ Yes ☒ No

4. Application number(s) or patent number(s):

A. Trademark Application No.(s)

See schedule "A" attached

B. Trademark Registration No.(s)

See schedule "A" attached

Additional numbers attached? ☒ Yes ☐ No

5. Name and address of party to whom correspondence concerning document should be mailed:

Name: Brobeck Phleger & Harrison LLPInternal Address: Suite 2100Street Address: 550 South Hope Street

c/o Kai Williamson

City: Los Angeles State: CA ZIP: 900716. Total number of applications and registrations involved: 27. Total fee (37 CFR 3.41).....\$ 65.00☒ Enclosed☐ Authorized to be charged to deposit account

8. Deposit account number:

(Attach duplicate copy of this page if paying by deposit account)

09/13/1999 DCATES 00000056 2157290

DO NOT USE THIS SPACE

1. Signature and signature.

To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is a true copy of the original document.

Kai Williamson

Name of Person Signing

Signature

09/08/99

Date

10

Total number of pages including cover sheet, attachments, and document:

Mail documents to be recorded with required cover sheet information to:
Commissioner of Patents & Trademarks, Box AssignmentsTRADEMARK
REEL: 001957 FRAME: 0078

Schedule A
to
Trademark Security Agreement

Dated as of August 2, 1999

Trademarks

None

Service Marks

<u>Service mark</u>	<u>Date of Registration</u>	<u>Registration No.</u>
MAJESTIC STAR	May 12, 1998	2,157,290

Trademark and Service Mark Applications

None, except:

<u>Service mark</u>	<u>Application Date</u>	<u>Serial No.</u>
THE MAJESTIC STAR CASINO M (and design)	2/1/96	75/052416



TRADEMARK SECURITY AGREEMENT

THIS TRADEMARK SECURITY AGREEMENT ("Agreement") is made as of August 2, 1999, by and between The Majestic Star Casino, LLC, an Indiana limited liability company ("Grantor"), and Foothill Capital Corporation (the "Lender").

WITNESSETH:

WHEREAS, Grantor and the Lender have entered into that certain Loan and Security Agreement dated as of even date herewith (as the same may hereafter be modified, amended, restated or supplemented from time to time, the "Loan Agreement"), pursuant to which Grantor and the Lender have agreed to certain terms for the benefit of Grantor;

WHEREAS, pursuant to the Loan Agreement, Grantor has granted a security interest in certain of its assets to the Lender for the benefit of the Lender; and

WHEREAS, Lender has required Grantor to execute and deliver this Agreement (i) in order to secure the prompt and complete payment, observance and performance of the Secured Obligations and (ii) as a condition precedent to the Loan Agreement.

NOW, THEREFORE, in consideration of the premises set forth herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Grantor agrees as follows:

1. Defined Terms.

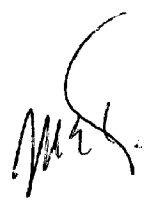
(a) Unless otherwise defined herein, each capitalized term used herein that is defined in the Loan Agreement is used with the meaning ascribed to such term in the Loan Agreement.

(b) The words "hereof," "herein" and "hereunder" and words of like import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement, and section references are to this Agreement unless otherwise specified.

(c) All terms defined in this Agreement in the singular shall have comparable meanings when used in the plural, and vice versa, unless otherwise specified.

2. Incorporation of Premises. The premises set forth above are incorporated into this Agreement by this reference thereto and are made a part hereof.

3. Incorporation of the Loan Agreement. The Loan Agreement and the terms and provisions thereof are hereby incorporated herein in their entirety by this reference thereto. In the event of any conflict or inconsistency between the provisions of this Agreement and those of the Loan Agreement, including, without limitation, any conflicts or inconsistencies in any definitions herein or therein, the provisions and definitions of the Loan Agreement shall govern.



4. Security Interest in Trademarks. To secure the complete and timely payment, performance and satisfaction of all of the Secured Obligations, Grantor hereby grants to the Lender, a lien and security interest, subject only to Permitted Liens, with power of sale to the extent permitted by applicable law, in all of Grantor's right, title and interest in and to the types and items of property described below, and all proceeds (as defined in the UCC) thereof whether now owned or existing and hereafter acquired or arising:

(i) trademarks, registered trademarks, trademark applications, service marks, registered service marks and service mark applications, including, without limitation, the trademarks, registered trademarks, trademark applications, service marks, registered service marks and service mark applications listed on Schedule A attached hereto and made a part hereof, and (a) all renewals thereof, (b) all income, royalties, damages and payments now and hereafter due and/or payable under and with respect thereto, including, without limitation, payments under all licenses entered into in connection therewith and damages and payments for past or future infringements or dilutions thereof, (c) the right to sue for past, present and future infringements and dilutions thereof, (d) the goodwill of Grantor's business symbolized by the foregoing and connected therewith, and (e) all of Grantor's rights corresponding thereto throughout the world (all of the foregoing trademarks, registered trademarks and trademark applications, and service marks, registered service marks and service mark applications, together with the items described in clauses (a)-(e) in this paragraph 4(i), are sometimes hereinafter individually and/or collectively referred to as the "Trademarks"); and

(ii) rights under and interests in any trademark license agreements or service mark license agreements with any other party, whether Grantor is a licensee or licensor under any such license agreement, including, without limitation, those trademark license agreements and service mark license agreements listed on Schedule B attached hereto and made a part hereof, together with any goodwill connected with and symbolized by any such trademark license agreements or service mark license agreements (all of the foregoing are hereinafter referred to collectively as the "Licenses"). Notwithstanding the foregoing provisions of this Section 4, the Licenses shall not include any license agreement in effect as of the date hereof which by its terms prohibits the grant of the security contemplated by this Agreement; provided, however, that upon the termination of such prohibitions for any reason whatsoever, the provisions of this Section 4 shall be deemed to apply thereto automatically, and such license agreement shall constitute a License subject to the lien and security interest granted herein.

5. Future Agreements. As long as no Event of Default has occurred and is continuing, nothing set forth herein or in any other Loan Document is intended or shall be construed to prevent the Grantor from entering into license agreements pertaining to the Trademarks; provided that Grantor will not, without the Lender's prior written consent, enter into any agreement, including, without limitation, any license agreement, which is inconsistent with this Agreement, and Grantor further agrees that it will not take any action, and will use its best efforts not to permit any action to be taken by others, including, without limitation, licensees, or fail to take any action, which would in any respect affect the validity or enforcement of the rights transferred to the Lender under this Agreement or the rights associated with the Trademarks or Licenses.



6. New Trademarks and Licenses. Grantor represents and warrants that as of the date hereof, (a) the Trademarks listed on Schedule A include all of the trademarks, registered trademarks, trademark applications, service marks, registered service marks and service mark applications now owned or held by Grantor, (b) the Licenses listed on Schedule B include all of the trademark license agreements and service mark license agreements under which Grantor is the licensee or licensor and (c) no liens, claims or security interests other than Permitted Liens in such Trademarks and Licenses have been granted by Grantor to any Person (other than the Lender) which remain valid and effective. If, prior to the termination of this Agreement, Grantor shall (i) obtain rights to any new or additional trademarks, registered trademarks, trademark applications, service marks, registered service marks or service mark applications, (ii) become entitled to the benefit of any new or additional trademarks, registered trademarks, trademark applications, trademark licenses, trademark license renewals, service marks, registered service marks, service mark applications, service mark licenses or service mark license renewals whether as licensee or licensor, or (iii) enter into any new trademark license agreement or service mark license agreement, the provisions of paragraph 4 above shall automatically apply thereto, and the same shall be subject to the security interest granted herein. Grantor shall give to the Lender written notice of events described in clauses (i), (ii) and (iii) of the preceding sentence promptly after the occurrence thereof, but in any event not less frequently than on a quarterly basis. Promptly after the occurrence of each such event Grantor shall (and Lender is hereby authorized to, at Grantor's expense, but is not required to) modify this Agreement unilaterally (i) by amending Schedule A to include new and additional trademarks, registered trademarks, trademark applications, service marks, registered service marks and service mark applications and by amending Schedule B to include additional trademark license agreements and service mark license agreements, which are Trademarks or Licenses under paragraph 4 above or under this paragraph 6, and (ii) by filing, in addition to and not in substitution for this Agreement, a duplicate original of this Agreement identifying on Schedule A or B thereto, as the case may be, such new or additional trademarks, registered trademarks, trademark applications, service marks, registered service marks and service mark applications, and trademark license agreements and service mark license agreements. The party making a filing pursuant to the preceding sentence shall promptly provide a copy of it to the other party.

7. Royalties. Grantor hereby agrees that the use by the Lender of the Trademarks and Licenses as authorized hereunder in connection with the Lender's exercise of its rights and remedies under paragraph 15 or pursuant to the Loan Agreement or any other Loan Document shall be coextensive with Grantor's rights thereunder and with respect thereto and without any liability for royalties or other related charges from the Lender to Grantor.

8. Right to Inspect; Further Assignments and Security Interests. The Lender may at all reasonable times (and at any time when an Event of Default exists) have access to, examine, audit, make copies (at Grantor's expense) and extracts from and inspect Grantor's premises and examine Grantor's books, records and operations relating to the Trademarks and Licenses; provided, that in conducting such inspections and examinations, the Lender shall use reasonable efforts not to disturb unnecessarily the conduct of Grantor's ordinary business operations. Grantor agrees (i) not to sell or assign its respective interests in, or grant any license under, the Trademarks or the Licenses without the prior and express written consent of the Lender, (ii) to maintain the quality of such products as of the date hereof, and (iii) not to change



the quality of such products in any material respect without the Lender's prior and express written consent.

9. Nature and Continuation of the Lender's Security Interest; Termination of the Lender's Security Interest. This Agreement is made for collateral security purposes only. This Agreement shall create a continuing security interest in the Trademarks and Licenses and shall terminate only when the Secured Obligations (other than contingent indemnity obligations) have been paid in full in cash and the Loan Agreement has been terminated. When this Agreement has terminated, the Lender shall promptly execute and deliver to Grantor, at Grantor's expense, all termination statements and other instruments as may be necessary or proper to terminate the Lender's security interest in the Trademarks and the Licenses, subject to any disposition thereof which may have been made by the Lender pursuant to this Agreement or the Loan Agreement.

10. Duties of Grantor. Grantor shall have the duty, to the extent desirable in the normal conduct of Grantor's business, to: (a) prosecute diligently any trademark application or service mark application that is part of the Trademarks pending as of the date hereof or hereafter until the termination of this Agreement, and (b) make application for trademarks or service marks. Grantor further agrees to use its best efforts to maintain in full force and effect the Trademarks and the Licenses that are or shall be necessary in the operation of Grantor's business. Any expenses incurred in connection with the foregoing shall be borne by Grantor. Lender shall not have any duty with respect to the Trademarks and Licenses. Without limiting the generality of the foregoing, Lender shall not be under any obligation to take any steps necessary to preserve rights in the Trademarks or Licenses against any other parties, but the Lender may do so at its option from and after the occurrence of an Event of Default, and all expenses incurred in connection therewith shall be for the sole account of Grantor and shall be added to the Secured Obligations secured hereby.

11. The Lender's Right to Sue. From and after the occurrence of an Event of Default, the Lender shall have the right, but shall not be obligated, to bring suit in its own name to enforce the Trademarks and the Licenses and, if the Lender shall commence any such suit, Grantor shall, at the request of the Lender, do any and all lawful acts and execute any and all proper documents required by the Lender in aid of such enforcement. Grantor shall, upon demand, promptly reimburse the Lender for all costs and expenses incurred by the Lender in the exercise of its rights under this paragraph 11 (including, without limitation, reasonable fees and expenses of attorneys and paralegals for the Lender).

12. Waivers. The Lender's failure, at any time or times hereafter, to require strict performance by Grantor of any provision of this Agreement shall not waive, affect or diminish any right of the Lender thereafter to demand strict compliance and performance therewith nor shall any course of dealing between Grantor and the Lender have such effect. No single or partial exercise of any right hereunder shall preclude any other or further exercise thereof or the exercise of any other right.

13. Severability Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but the provisions of this Agreement are severable, and if any clause or provision shall be held invalid



and unenforceable in whole or in part in any jurisdiction, then such invalidity or unenforceability shall affect only such clause or provision, or part hereof, in such jurisdiction, and shall not in any manner affect such clause or provision in any other jurisdiction, or any other clause or provision of this Agreement in any jurisdiction.

14. Amendments, Etc. Neither this Agreement nor any provision hereof may be modified, amended or waived except by the written agreement of the parties as provided in the Loan Agreement. Notwithstanding the foregoing, Lender may re-execute this Agreement or modify, amend or supplement the Schedules hereto in accordance with the terms hereof. Any such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given.

15. Cumulative Remedies; Power of Attorney. Grantor hereby irrevocably designates, constitutes and appoints the Lender (and all Persons designated by the Lender in its sole and absolute discretion) as Grantor's true and lawful attorney-in-fact, and authorizes the Lender and any of the Lender's designees, in Grantor's or the Lender's name, to take any action and execute any instrument which the Lender may deem necessary or advisable to accomplish the purposes of this Agreement, including, without limitation, from and after the occurrence of an Event of Default and the giving by the Lender of notice to Grantor of the Lender's intention to enforce its rights and claims against Grantor, to (i) endorse Grantor's name on all applications, documents, papers and instruments necessary or desirable for the Lender in the use of the Trademarks or the Licenses, (ii) assign, pledge, convey or otherwise transfer title in or dispose of the Trademarks or the Licenses to anyone on commercially reasonable terms, (iii) grant or issue any exclusive or nonexclusive license under the Trademarks or, to the extent permitted, under the Licenses, to anyone on commercially reasonable terms, and (iv) take any other actions with respect to the Trademarks or the Licenses as the Lender deems in its own best interest. Grantor hereby ratifies all that such attorney shall lawfully do or cause to be done by virtue hereof. This power of attorney is coupled with an interest and shall be irrevocable until all of the Secured Obligations shall have been paid in full in cash and the Loan Agreement shall have been terminated. Grantor acknowledges and agrees that this Agreement is not intended to limit or restrict in any way the rights and remedies of the Lender under the Loan Agreement, but rather is intended to facilitate the exercise of such rights and remedies.

The Lender shall have, in addition to all other rights and remedies given it by the terms of this Agreement, all rights and remedies allowed by law and the rights and remedies of a secured party under the UCC. Upon the occurrence of an Event of Default and the election by the Lender to exercise any of its remedies under the UCC with respect to the Trademarks and Licenses, Grantor agrees, at the demand of the Lender, to assign, convey and otherwise transfer title in and to the Trademarks and the Licenses and the goodwill associated therewith to the Lender or any transferee of the Lender and to execute and deliver to the Lender or any such transferee all such agreements, documents and instruments as may be necessary, in the Lender's sole discretion, to effect such assignment, conveyance and transfer. All of the Lender's rights and remedies with respect to the Trademarks and the Licenses, whether established hereby, by the Lender Agreement, by any other agreements or by law, shall be cumulative and may be exercised separately or concurrently. Notwithstanding anything set forth herein to the contrary, but subject in all respects to the Intercreditor Agreement, it is hereby expressly agreed that upon the occurrence of an Event of Default, the Lender may exercise any of the rights and remedies



provided in this Agreement, the Loan Agreement and any of the other Lender Documents. Grantor agrees that any notification of intended disposition of any of the Trademarks and Licenses required by law shall be deemed reasonably and properly given if given at least five (5) Business Days before such disposition; provided, however, that the Lender may give any shorter notice that is commercially reasonable under the circumstances.

16. Intercreditor Arrangement. The parties hereto acknowledge and agree, for the benefit of the Trustee under the Indenture, that, during any period that amounts are outstanding under the Indenture, the exercise of the rights and remedies of the Lender hereunder are or will be subject to the terms of the Intercreditor Agreement. In the event of any inconsistency between the terms hereof and the Intercreditor Agreement, the Intercreditor Agreement shall control.

17. Successors and Assigns. This Agreement shall be binding upon Grantor and its successors and assigns, and shall inure to the benefit of Lender and its nominees, successors and assigns. Grantor's successors and assigns shall include, without limitation, a receiver, trustee or debtor-in-possession of or for Grantor; provided, however, that Grantor shall not voluntarily assign or transfer its rights or obligations hereunder without the Lender's prior written consent.

18. Governing Law. This Agreement shall be construed and enforced and the rights and duties of the parties shall be governed by in all respects in accordance with the internal laws (as opposed to conflict of laws provisions) of the State of California.

19. Notices. All notices or other communications hereunder shall be given in the manner prescribed in the Loan Agreement for the giving of notices.

20. Section Titles. The section titles herein are for convenience of reference only, and shall not affect in any way the interpretation of any of the provisions hereof.

21. Execution in Counterparts. This Agreement may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement.

22. Merger. This Agreement represents the final agreement of the Grantor and the Lender with respect to the matters contained herein and may not be contradicted by evidence of prior or contemporaneous agreements, or subsequent oral agreements, between the Grantor and the Lender.

23. Gaming Laws.

(a) The Lender acknowledges, understands and agrees that the Gaming Laws may impose certain licensing or transaction approval requirements prior to the exercise of the rights and remedies granted to it under the Agreement with respect to the Trademarks subject to the Gaming Laws.




(b) If any consent under the Gaming Laws is required in connection with the taking of any of the actions which may be taken by the Lender in the exercise of its rights hereunder, then Grantor agrees to use its best efforts to secure such consent and to cooperate with the Lender in obtaining any such consent. Upon the occurrence and during the continuation of any Event of Default, Grantor shall promptly execute and/or cause the execution of all applications, certificates, instruments, and other documents and papers that the Lender may be required to file in order to obtain any necessary approvals under the Gaming Laws, and if Grantor fails or refuses to execute such documents, the Lender or the clerk of the court with jurisdiction may execute such documents on behalf of Grantor.

(c) Notwithstanding any other provision of this Agreement to the contrary, nothing in this Agreement shall (i) effect any transfer of any ownership interest (within the meaning of 68 Indiana Administrative Code 5) in Grantor, or (ii) effect any transfer, sale, purchase, lease or hypothecation of, or any borrowing or loaning of money against, or any establishment of any voting trust agreement or other similar agreement with respect to (all within the meaning of Indiana Code 4-33-4-21), any certificate of suitability or any owner's license heretofore or hereafter issued to any person, including Grantor, under any of the Gaming Laws, including Indiana Code 4-33.

A handwritten signature in black ink, appearing to be 'MEL' or similar, located in the bottom right corner of the page.

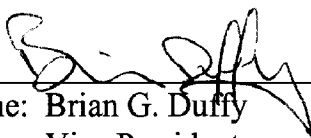
IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement
as of the day and year first above written.

THE MAJESTIC STAR CASINO, LLC,
an Indiana limited liability company

By: 
Name: Michael Kelly
Title: Chief Operating and Financial Officer

Accepted and agreed to as of the day and year
first above written

FOOTHILL CAPITAL CORPORATION,
a California corporation

By: 
Name: Brian G. Duffy
Title: Vice President