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Illinois Anti-Predatory Lending Database Program

Certificate of Exemption

Report Mortgage Fraud
800-532-8785



1225444085

Doc#: 1225444085 **Fee:** \$134.00
Eugene "Gene" Moore RHSP Fee: \$10.00
Cook County Recorder of Deeds
Date: 09/10/2012 02:25 PM Pg: 1 of 49

Ref 3 01121131 MAF

The property identified as: **PIN:** 09-34-300-032-0000

Address:

Street: 2980 Des Plaines River Road

Street line 2:

City: Des Plaines

State: IL

ZIP Code: 60018

Lender: Wilmington Trust, National Association

Borrower: Midwest Gaming & Entertainment, LLC

Loan / Mortgage Amount: \$1,500,000.00

This property is located within the program area and is exempt from the requirements of 705 ILCS 77/70 et seq. because it is commercial property.

Certificate number: AC331727-2A15-4211-8700-FBCE55C3D91D

Execution date: 09/07/2012

Near North National Title
222 N. LaSalle
Chicago, IL 60601

49

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Execution Copy

**Recording at the Request of,
and when Recorded Mail Original to:**

Sahra Dalfen, Esq.
Salans LLP
Rockefeller Center
620 Fifth Avenue
New York, NY 10020-2457
Facsimile: (212) 307-3340
Telephone: (212) 632-8340

**FIRST LIEN MORTGAGE, LEASEHOLD MORTGAGE, ASSIGNMENT OF RENTS
AND LEASES, SECURITY AGREEMENT AND FIXTURE FILING**

MADE BY

MIDWEST GAMING & ENTERTAINMENT, LLC,

as Mortgagor,

to

**WILMINGTON TRUST, NATIONAL ASSOCIATION
(as successor by merger to WILMINGTON TRUST FSB),**

**in its capacity as Collateral Trustee for the benefit of the Priority Lien Secured Parties under the
Collateral Trust Agreement,**

as Mortgagee

MORTGAGOR IS THE OWNER OF THE LAND DESCRIBED IN SCHEDULE A.

THIS MORTGAGE COVERS GOODS WHICH ARE OR ARE TO BECOME AFFIXED TO OR FIXTURES ON THE LAND DESCRIBED IN SCHEDULE A HERETO. THIS MORTGAGE IS A FIXTURE FILING AND IS TO BE INDEXED, AMONG OTHER PLACES, IN THE REAL ESTATE RECORDS OF EACH COUNTY OR PARISH (OR, TO THE EXTENT SIMILAR RECORDS ARE MAINTAINED AT THE CITY OR TOWN LEVEL INSTEAD OF THE COUNTY OR PARISH LEVEL, EACH SUCH CITY OR TOWN) IN WHICH SAID LAND OR ANY PORTION THEREOF IS LOCATED.

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SCHEDULE A

DESCRIPTION OF THE LAND

Property of Cook County Clerk's Office

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FIRST LIEN MORTGAGE, LEASEHOLD MORTGAGE, ASSIGNMENT OF RENTS AND LEASES, SECURITY AGREEMENT AND FIXTURE FILING

THIS FIRST LIEN MORTGAGE, LEASEHOLD MORTGAGE, ASSIGNMENT OF RENTS AND LEASES, SECURITY AGREEMENT AND FIXTURE FILING (as amended, increased or modified from time-to-time, this "**Mortgage**") is dated as of September 7, 2012 and effective as of September 7, 2012, by **MIDWEST GAMING & ENTERTAINMENT, LLC**, a Delaware limited liability company (together with all successors and assigns of the Mortgaged Property (as hereinafter defined), "**Mortgagor**"), whose address is 900 North Michigan Avenue, Suite 900, Chicago, Illinois 60611, Attention: Greg Carlin, to **WILMINGTON TRUST, NATIONAL ASSOCIATION** (as successor by merger to **WILMINGTON TRUST FSB**) ("**Mortgagee**"), having an office at 50 South Sixth Street, Suite 1290, Minneapolis, MN 55402, Attention: Renee Kuhl, in its capacity as the collateral trustee under the Collateral Trust Agreement (as hereinafter defined) for the benefit of the Priority Lien Secured Parties (as hereinafter defined).

PRELIMINARY STATEMENTS

A. Midwest Gaming Borrower, LLC, a Delaware limited liability company (the "**Borrower**"), entered into that certain Revolving Credit and Guaranty Agreement (as amended, amended and restated, supplemented or otherwise modified from time to time, the "**Credit Agreement**"), dated as of July 10, 2012, by and among the Borrower, Mortgagor, the other Subsidiary Guarantors (as defined in the Credit Agreement) from time to time party thereto and The PrivateBank and Trust Company (together with its successor and assigns in such capacity, the "**Lender**"), which will provide for a \$20,000,000 revolving credit facility.

B. Pursuant to the Credit Agreement, Mortgagor is required to guarantee the obligations of Borrower under the Credit Agreement and the other Loan Documents.

C. The Borrower and the Mortgagor entered into that certain Collateral Trust Agreement, dated as of April 9, 2010 (as amended, amended and restated, supplemented or otherwise modified from time-to-time, the "**Collateral Trust Agreement**") by and among the Borrower, the Mortgagor, the Mortgagee, the Priority Lien Debt Representatives (as defined therein) from time to time party thereto, the Parity Lien Debt Representatives (as defined therein) from time to time party thereto and the other persons that are or become a party thereto pursuant to the terms thereof, which, among other things, appoints the Mortgagee as the collateral trustee for the present and future holders of the Priority Lien Obligations (as defined therein).

D. Subject to the terms and conditions of Section 3.8 of the Collateral Trust Agreement and the Credit Agreement, Borrower is permitted to enter into one or more additional credit facilities or other debt instruments consisting of Priority Lien Debt (as defined in the Collateral Trust Agreement) (as the same may be amended, amended and restated, supplemented or otherwise modified from time to time, together with all agreements related thereto, the "**Additional Priority Lien Agreements**"), in each case, with banks, financial institutions and other entities as from time to time party thereto in the capacity of providers of financial accommodations thereunder (the "**Additional Priority Lien Parties**").

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E. It is a condition precedent to the making of the extensions of Loans (as defined below) under the Credit Agreement and any Additional Priority Lien Agreements, that Mortgagor shall have secured its obligations under the Credit Agreement, the Collateral Trust Agreement and the other Loan Documents to which Mortgagor is a party, by, among other things, the grant of liens and security interests contemplated by this Mortgage.

NOW, THEREFORE, for good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, and the mutual covenants herein contained, and in order to secure the Obligations (as hereinafter defined), **MORTGAGOR HEREBY COVENANTS AND AGREES WITH AND REPRESENTS AND WARRANTS TO MORTGAGEE AS FOLLOWS:**

DEFINITIONS

As used in this Mortgage, the following terms have the meanings hereinafter set forth:

“**Accounts Receivable**” has the meaning set forth in Section 9-102 of the UCC for the term “account.”

“**Additional Priority Lien Agreements**” has the meaning set forth in the recitals.

“**Additional Priority Lien Parties**” has the meaning set forth in the recitals.

“**Appurtenant Rights**” means all and singular tenements, hereditaments, rights, reversions, remainders, development rights, privileges, benefits, easements (in gross or appurtenant), rights-of-way, licenses, gores or strips of land, streets, ways, alleys, passages, sewer rights, water courses, water rights and powers, riparian rights and powers, and all appurtenances whatsoever and claims or demands of Mortgagor at law or in equity in any way belonging, benefiting, relating or appertaining to the Land, the Project, Mortgagor, the airspace over the Land, the Improvements or any of the Mortgaged Property encumbered by this Mortgage, or which hereinafter shall in any way belong, relate or be appurtenant thereto, whether now owned or hereafter acquired by Mortgagor.

“**Bankruptcy**” means, with respect to any Person, that (i) a court having jurisdiction in the Mortgaged Property shall have entered a decree or order for relief in respect of such Person in an involuntary case under the Bankruptcy Code or under any other applicable bankruptcy, insolvency or similar law now or hereafter in effect, which decree or order has not been stayed; or any other similar relief shall have been granted under any applicable federal or state law; or (ii) an involuntary case shall be commenced against such Person, under the Bankruptcy Code or under any other applicable bankruptcy, insolvency or similar law now or hereafter in effect; or a decree or order of a court having jurisdiction in the Mortgaged Property for the appointment of a receiver, liquidator, sequestrator, trustee, custodian or other officer having similar powers over such Person, or over all or a substantial part of its property, shall have been entered; or there shall have occurred the involuntary appointment of an interim receiver, trustee or other custodian of such Person, for all or a substantial part of its property; or a warrant of attachment, execution or similar process shall have been issued against any substantial part of the property of such Person, and any such event described in this clause (ii) shall continue for 60 days unless dismissed, bonded or discharged; or (iii) such Person shall have an order for relief entered with

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respect to it or shall commence a voluntary case under the Bankruptcy Code or under any other applicable bankruptcy, insolvency or similar law now or hereafter in effect or shall consent to the entry of an order for relief in an involuntary case, or to the conversion of an involuntary case to a voluntary case, under any such law, or shall consent to the appointment of or taking possession by a receiver, trustee or other custodian for all or a substantial part of its property; or such Person shall make any assignment for the benefit of creditors, or shall fail generally, or shall admit in writing its inability, to pay its debts as such debts become due and payable; or (iv) such Person shall, or the members of such Person (or any committee thereof) shall, adopt any resolution or otherwise authorize any action to approve any of the actions referred to in clause (iii) above.

“**Bankruptcy Code**” means Title 11 of the United States Code entitled “Bankruptcy,” as now and hereafter in effect, or any successor statute thereto.

“**Borrower**” has the meaning set forth in the recitals.

“**Business Day**” means any day other than a Saturday, a Sunday or a day on which banks in Chicago or Des Plaines, Illinois are authorized or required by law to close.

“**Collateral Trust Agreement**” has the meaning set forth in the recitals.

“**Construction Costs**” means all or a portion of the hard costs and soft costs of completing erection, construction, alteration or repair of the Project including, but not limited to, (i) architectural and engineering fees, (ii) development consultant fees, (iii) labor, material and equipment costs, (iv) contractor fees, (v) legal expenses, (vi) capitalized interest, (vii) permitting and licensing fees, (viii) FF&E, (ix) taxes, (x) insurance premiums, and (xi) pre-opening expenses. In addition, Construction Costs shall include, but are not limited to, those items set forth on the construction budgets prepared in connection with the Project.

“**Credit Agreement**” has the meaning set forth in the recitals.

“**Estoppel Certificate**” has the meaning set forth in Section 5.7 hereof.

“**Event of Default**” has the meaning set forth in Section 3.1 hereof.

“**Excluded Property**” has the meaning set forth in the granting clause hereof.

“**FF&E**” means all furniture, fixtures, equipment, appurtenances, signage and personal property owned or leased by Mortgagor and now or in the future contained in, used in connection with, attached to, or otherwise useful or convenient to the use, operation, or occupancy of, or placed on, but unattached to, any part of the Site or the items described in clause (1) of the definition of Improvements whether or not the same constitutes real property or fixtures in the State, including all removable window and floor coverings, all furniture and furnishings, heating, lighting, plumbing, ventilating, air conditioning, refrigerating, incinerating and elevator and escalator plants, cooking facilities, vacuum cleaning systems, public address and communications systems, sprinkler systems and other fire prevention and extinguishing apparatus and materials, motors, machinery, pipes, appliances, equipment, fittings, fixtures, and building materials, all gaming and financial equipment, computer equipment, calculators, adding machines, gaming tables, video game and slot machines, and any other electronic equipment of

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every nature used or located on any part of the Site or the items described in clause (1) of the definition of Improvements, together with all venetian blinds, shades, draperies, drapery and curtain rods, brackets, bulbs, cleaning apparatus, mirrors, lamps, ornaments, cooling apparatus and equipment, ranges and ovens, garbage disposals, dishwashers, mantels, and any and all such property which is at any time installed in, affixed to or placed upon the Site or the items described in clause (1) of the definition of Improvements.

“Gaming Authorities” means the applicable gaming board, commission or other Governmental Authority responsible for interpreting, administering and enforcing the Gaming Laws applicable to the Project, the Borrower or Mortgagor, including the Illinois Gaming Board.

“Gaming Laws” means all laws, rules, regulations, orders and other enactments applicable to casino gaming privileges, operations or activities (including with respect to the Project, Borrower or Mortgagor), as in effect from time-to-time, including the policies, interpretations and administration thereof by any Gaming Authorities, including (a) the Illinois Riverboat Gambling Act of 1990, as amended, and all regulations promulgated thereunder, and (b) the Gaming License Application.

“Governmental Authority” means any agency, authority, board, bureau, commission, department, office, public entity, or instrumentality of any nature whatsoever of the United States federal or foreign government, any state, province or any city or other political subdivision or otherwise, whether now or hereafter in existence, or any officer or official thereof, including, without limitation, any Gaming Authority.

“IMFL” means Illinois Mortgage Foreclosure Law, 735 ILCS 5/15-1101, et seq.

“Imposition” means any taxes, assessments, water rates, sewer rates, maintenance charges, other governmental impositions and other charges now or hereafter levied or assessed or imposed against the Mortgaged Property or any part thereof.

“Improvements” means (1) all the buildings, structures, facilities and improvements of every nature whatsoever now or hereafter situated on the Site or any real property encumbered hereby and (2) all fixtures, machinery, signage, appliances, goods, building or other materials, equipment, including without limitation all gaming equipment and devices, and all machinery, equipment, engines, appliances and fixtures for generating or distributing air, water, heat, electricity, light, fuel or refrigeration, or for ventilating or sanitary purposes, or for the exclusion of vermin or insects, or for the removal of dust, refuse or garbage; all wall-beds, wall-safes, built-in furniture and installations, shelving, lockers, partitions, doorstops, vaults, motors, elevators, dumb-waiters, awnings, window shades, venetian blinds, light fixtures, fire hoses and brackets and boxes for the same, fire sprinklers, alarm, surveillance and security systems, computers, drapes, drapery rods and brackets, mirrors, mantels, screens, linoleum, carpets and carpeting, plumbing, bathtubs, sinks, basins, pipes, faucets, water closets, laundry equipment, washers, dryers, ice-boxes and heating units; all kitchen and restaurant equipment, including but not limited to silverware, dishes, menus, cooking utensils, stoves, refrigerators, ovens, ranges, dishwashers, disposals, water heaters, incinerators, furniture, fixtures and furnishings, communication systems, and equipment; all cocktail lounge supplies, including but not limited to bars, glassware, bottles and tables used in connection with the Site; all chaise lounges, hot tubs,

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swimming pool heaters and equipment and all other recreational equipment (computerized and otherwise), beauty and barber equipment, and maintenance supplies used in connection with the Site; all amusement rides and attractions attached to the Site, all specifically designed installations and furnishings, and all furniture, furnishings and personal property of every nature whatsoever now or hereafter owned or leased by Mortgagor or in which Mortgagor has any rights or interest and located in or on, or attached to, or used or intended to be used or which are now or may hereafter be appropriated for use on or in connection with the operation of the Site or any real or personal property encumbered hereby or any other Improvements, or in connection with any construction being conducted or which may be conducted thereon, and all extensions, additions, accessions, improvements, betterments, renewals, substitutions, and replacements to any of the foregoing, and all of the right, title and interest of Mortgagor in and to any such property, which, to the fullest extent permitted by law, shall be conclusively deemed fixtures and improvements and a part of the real property hereby encumbered.

“Insolvent” or **“Insolvency”** means any person or entity that is subject to an “Insolvency or Liquidation Proceeding” as defined in the Collateral Trust Agreement.

“Intangible Collateral” means (a) subject to the absolute assignment contained herein, the Rents; (b) any and all books, records, customer lists, concession agreements, supply or service contracts, licenses, permits, governmental approvals (to the extent such licenses, permits and approvals may be pledged under applicable law), signs, goodwill, casino and hotel credit and charge records, supplier lists, checking accounts, safe deposit boxes (excluding the contents of such deposit boxes owned by persons other than Mortgagor and its subsidiaries), cash, instruments, chattel papers, including inter-company notes and pledges, documents, unearned premiums, deposits, refunds, including but not limited to income tax refunds, prepaid expenses, rebates, tax and insurance escrow and impound accounts, if any, actions and rights in action, and all other claims, including without limitation condemnation awards and insurance proceeds, and all other contract rights and general intangibles resulting from or used in connection with the operation and occupancy of the Mortgaged Property and the Improvements and in which Mortgagor now or hereafter has rights; and (c) general intangibles, vacation license resort agreements or other time share license or right to use agreements, including without limitation all rents, issues, profits, income and maintenance fees resulting therefrom, whether any of the foregoing is now owned or hereafter acquired.

“Land” means the real property situated in the County of Cook, State of Illinois, more specifically described in Schedule A attached hereto and incorporated herein by reference, including any after acquired title thereto.

“Leases” means the Leases and any and all leases, subleases, lettings, licenses, and concessions, affecting the Mortgaged Property that Mortgagor has entered into, taken by assignment, taken subject to, or assumed, or has otherwise become bound by, now or in the future, that give any Person the right to conduct its business on, or otherwise use, operate or occupy, all or any portion of the Site or Improvements and any leases, agreements or arrangements permitting anyone to enter upon or use any of the Mortgaged Property to extract or remove natural resources of any kind, together with all amendments, extensions, and renewals of the foregoing entered into in compliance with this Mortgage, together with all rental, occupancy,

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service, maintenance or any other similar agreements pertaining to use or occupation of, or the rendering of services in connection therewith at the Site, the Improvements or any part thereof.

“**Legal Requirements**” shall mean, as to any Person, the governing documents of such Person, and any law, treaty, rule or regulation or determination of an arbitrator or a court or other Governmental Authority, in each case applicable to or binding upon such Person or any of its Real Property (including Gaming Laws and C-6 zoning classification defined in Articles 6 and 7 of the Des Plaines Zoning Ordinance) or personal property or to which such Person or any of its property of any nature is subject

“**Lender**” has the meaning set forth in the recitals.

“**Lessee(s)**” means any and all tenants, licensees, or other grantees of the Leases and any and all guarantors, sureties, endorsers or others having primary or secondary liability with respect to such Leases

“**Loan Documents**” means the Priority Lien Documents as defined in the Collateral Trust Agreement, including, without limitation, the Credit Agreement, the Loan Documents (as defined in the Credit Agreement), any Additional Priority Lien Agreements, the Collateral Trust Agreement, and this Mortgage.

“**Loans**” shall mean the Revolving Loans and all loans made pursuant to and subject to the terms and conditions of any Additional Priority Lien Agreements.

“**Minor Liens**” means (i) easements, rights-of-way, restrictions, encroachments, and other minor defects or irregularities in title, in each case which do not and will not interfere in any material respect with the ordinary conduct of operations of the Project or of the business operations of the Mortgagor or adversely affect the value of the subject Mortgaged Property in any material way and (ii) any zoning or similar law or right reserved to or vested in any governmental office or agency to control or regulate the use of any real property.

“**Mortgage**” has the meaning set forth in the preamble.

“**Mortgaged Property**” means all of the property described in granting clauses (A) through (O) below, inclusive, and each item of property therein described; provided, however, that such term shall not include the property described in granting clause (P) below.

“**Mortgagee**” has the meaning set forth in the preamble.

“**Mortgagor**” has the meaning set forth in the preamble.

“**Notes**” means, collectively, those certain promissory note(s) to be issued pursuant to the Credit Agreement and any promissory notes that may constitute an Additional Priority Lien Agreement, each as the same may be amended or replaced from time-to-time in accordance with their terms.

“**Obligations**” means the Priority Lien Obligations (as defined in the Collateral Trust Agreement), including, without limitation, (a) the Obligations (as defined in the Credit

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Agreement), and (b) the payment and performance of each covenant and agreement of Mortgagor contained in this Mortgage, the Collateral Trust Agreement, and the other Loan Documents (including the Security Documents) to which Mortgagor is a party.

“**Permitted Dispositions**” means any dispositions permitted by the Credit Agreement or the other Loan Documents.

“**Personal Property**” means all Tangible Collateral, Intangible Collateral, FF&E, the items described in clause (2) of the definition of Improvements and all other personal property now or hereafter owned or leased by Mortgagor or in which Mortgagor has or will have any interest (whether or not such items are stored on the premises or elsewhere), Proceeds of the foregoing and all products, substitutions, and accessions therefor and thereto; provided, however that the term Personal Property shall not include the Excluded Property.

“**Priority Lien Debt**” has the meaning set forth in the Collateral Trust Agreement.

“**Priority Lien Debt Representative**” has the meaning set forth in the Collateral Trust Agreement.

“**Priority Lien Secured Parties**” means the Secured Parties (as defined in the Credit Agreement), the other Priority Lien Secured Parties (as defined in the Collateral Trust Agreement) and the Additional Priority Lien Lenders.

“**Proceeds**” has the meaning assigned to it under the UCC and, in any event, shall include but not be limited to (i) any and all proceeds of any insurance (including without limitation property casualty and title insurance), indemnity, warranty or guaranty payable from time-to-time with respect to any of the Mortgaged Property; (ii) any and all proceeds in the form of accounts, security deposits, tax escrows (if any), down payments (to the extent the same may be pledged under applicable law), collections, contract rights, documents, instruments, chattel paper, liens and security instruments, guarantees or general intangibles relating in whole or in part to the Site or Improvements and all rights and remedies of whatever kind or nature Mortgagor may hold or acquire for the purpose of securing or enforcing any obligation due Mortgagor thereunder; (iii) any and all payments in any form whatsoever made or due and payable from time-to-time in connection with any requisition, confiscation, condemnation, seizure or forfeiture of all or any part of the Mortgaged Property by any Governmental Authority; (iv) subject to the absolute assignment contained herein, the Rents or other benefits arising out of, in connection with or pursuant to any Lease of the Mortgaged Property; and (v) any and all other amounts from time-to-time paid or payable in connection with any of the Mortgaged Property; provided, however, that Mortgagor is not authorized to dispose of any of the Mortgaged Property unless such disposition is a Permitted Disposition.

“**Project**” means the Site as improved with the Improvements.

“**Protective Advances**” has the meaning set forth in Section 4.3 hereof.

“**Real Property**” shall mean all Mortgaged Property and all other real property owned or leased from time to time by any Loan Party.

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“Rents” means all rents, room revenues, income, receipts, issues, profits, revenues and maintenance fees, room, food and beverage revenues, license and concession fees, income, proceeds and other benefits to which Mortgagor may now or hereafter be entitled from the Site, the Improvements, the Leases or any property encumbered hereby or any business or other activity conducted by Mortgagor at the Site or the Improvements.

“Revolving Loans” shall mean the loans made by the Lender pursuant to the terms and conditions of the Credit Agreement.

“Security Agreement” means that certain Amended and Restated First Lien Pledge and Security Agreement dated as of July 10, 2012, by and among Mortgagor, Mortgagee and such other Grantors (as defined in the Security Agreement) from time-to-time a party or parties thereto, as amended, amended and restated, supplemented or otherwise modified from time-to-time.

“Security Documents” means the Priority Lien Security Documents (as defined in the Collateral Trust Agreement) including without limitation, the Collateral Documents as defined in the Credit Agreement.

“Site” means the Land and the Appurtenant Rights.

“Specified Hedging Agreements” means all Specified Hedging Agreements (as defined in the Credit Agreement) between the Borrower and Lender or an Affiliate of Lender and any other agreements related to the Hedging Obligations (as defined in the Collateral Trust Agreement) between the Borrower and Lender or an Affiliate of Lender that constitute Priority Lien Debt (as defined in the Collateral Trust Agreement).

“State” has the meaning set forth in Section 5.9 hereof.

“Tangible Collateral” means all personal property, goods, inventory, equipment, supplies, building and other materials of every nature whatsoever and all other tangible personal property constituting a part or portion of the Project and including all property and materials stored therein in which Mortgagor has an interest and all tools, utensils, food and beverage, liquor, uniforms, linens, housekeeping and maintenance supplies, vehicles, fuel, advertising and promotional material, blueprints, surveys, plans and other documents relating to the Site or Improvements, and all construction materials and all furnishings, fixtures and equipment, including, but not limited to, all FF&E and all equipment and devices which are or are to be installed and used in connection with the operation of the Project, those items of furniture, fixtures and equipment which are to be purchased or leased by Mortgagor, machinery and any other item of personal property in which Mortgagor now or hereafter own or acquire an interest or right, and which are used or useful in the construction, operation, use and occupancy of the Project and all present and future right and interest of Mortgagor in and to any casino operator’s agreement, license agreement or sublease agreement used in connection with the Site or the Improvements.

“UCC” means the Uniform Commercial Code in effect in the State of Illinois from time-to-time; provided, however, in the event that, by reason of mandatory provisions of law, any or all of the perfection or priority of the security interest in any Collateral is governed by the

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Uniform Commercial Code as in effect in a jurisdiction other than the State of Illinois, the term "UCC" shall mean the Uniform Commercial Code as in effect in such other jurisdiction for purposes of the provisions hereof relating to such perfection or priority and for purposes of definitions related to such provisions.

"UCC Collateral" has the meaning set forth in Section 1.17 hereof.

Any capitalized terms used in this Mortgage which are not otherwise defined herein shall have the meaning ascribed to such terms in the Credit Agreement. Upon termination of the Credit Agreement, all terms defined by reference to the Credit Agreement shall continue to have the same meanings given to such terms in the Credit Agreement as in effect immediately prior to such termination. All references herein to provisions of the UCC shall include all successor provisions under any subsequent version or amendment to any Article of the UCC. Except as expressly specified otherwise herein, any reference herein to any Exhibit or Schedule to this Mortgage shall be deemed to refer to such Exhibit or Schedule as amended or supplemented from time to time.

WITNESSETH:

IN CONSIDERATION OF AND AS A CONDITION TO THE EXTENSIONS OF CREDIT AND OTHER ACCOMMODATIONS OF THE PRIORITY LIEN SECURED PARTIES AS SET FORTH IN THE CREDIT AGREEMENT, THE NOTES, THE COLLATERAL TRUST AGREEMENT, THE ADDITIONAL PRIORITY LIEN AGREEMENTS, THE SPECIFIED HEDGING AGREEMENTS AND OTHER LOAN DOCUMENTS, THE RECEIPT AND SUFFICIENCY OF WHICH ARE HEREBY ACKNOWLEDGED, AND FOR THE PURPOSE OF SECURING in favor of Mortgagee (1) the Obligations; and (2) the payment of all sums expended or advanced by the Priority Lien Secured Parties under or pursuant to the terms hereof or to protect the security hereof (including Protective Advances), together with interest thereon as herein provided, Mortgagor, in consideration of the premises, and for the purposes aforesaid, and intending to be legally bound, does hereby GRANT, BARGAIN, SELL, ASSIGN, CONVEY, TRANSFER, MORTGAGE, PLEDGE, GRANT A SECURITY INTEREST IN, SET OVER, AND TRANSFER UNTO MORTGAGEE FOR THE BENEFIT OF THE LENDER, THE ADDITIONAL PRIORITY LIEN PARTIES AND THE OTHER PRIORITY LIEN SECURED PARTIES each of the following:

- (A) All the estate, right, title and interest of Mortgagor of, in and to the Land;
- (B) TOGETHER WITH all the estate, right, title and interest of Mortgagor of, in and to the Improvements;
- (C) TOGETHER WITH all the estate, right, title and interest of Mortgagor of, in and to the Appurtenant Rights;
- (D) TOGETHER WITH all the estate, right, title and interest of Mortgagor of, in and to the Tangible Collateral to the extent permitted by, or not prohibited by applicable law;

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(E) TOGETHER WITH all the right, title and interest of Mortgagor of, in and to the Intangible Collateral to the extent permitted by, or not prohibited by applicable law;

(F) TOGETHER WITH (i) all the estate, right, title and interest of Mortgagor of, in and to all judgments and decrees, insurance proceeds, awards of damages and settlements hereafter made resulting from condemnation proceedings or the taking of any of the property described in granting clauses (A), (B), (C), (D) and (E) hereof or any part thereof under the power of eminent domain, or for any damage (whether caused by such taking or otherwise) to the property described in granting clauses (A), (B), (C), (D) and (E) hereof or any part thereof and Mortgagee is (subject to the terms hereof) hereby authorized to collect and receive said awards and proceeds and to give proper receipts and acquittance therefor, and (subject to the terms hereof) to apply the same toward the payment of the indebtedness and other sums secured hereby, notwithstanding the fact that the amount owing thereon may not then be due and payable; (ii) all proceeds of any sales or other dispositions of the property or rights described in granting clauses (A), (B), (C), (D) and (E) hereof or any part thereof whether voluntary or involuntary, provided, however, that the foregoing shall not be deemed to permit such sales, transfers, or other dispositions except as specifically permitted herein or in the other Loan Documents; and (iii) whether arising from any voluntary or involuntary disposition of the property described in granting clauses (A), (B), (C), (D) and (E), all Proceeds, products, replacements, additions, substitutions, renewals and accessions, remainders, reversions and after-acquired interest in, of and to such property;

(G) TOGETHER WITH and, subject to Section 1.12 below, the absolute assignment of any Leases or any part thereof that Mortgagor has entered into, taken by assignment, taken subject to, or assumed, or has otherwise become bound by, now or in the future, together with all of the following (including all "Cash Collateral" within the meaning of the Bankruptcy Code) arising from the Leases: (a) Rents (subject, however, to the absolute assignment to Mortgagee and the conditional permission herein below given to Mortgagee to collect the Rents), (b) all guarantees, letters of credit, security deposits, collateral, cash deposits, and other credit enhancement documents, arrangements and other measures with respect to the Leases, (c) all of Mortgagor's right, title, and interest under the Leases, including the following: (i) the right to receive and collect the Rents from the lessee, sublessee or licensee, or their successor(s), under any Lease(s) and (ii) the right to enforce against any tenants thereunder and otherwise any and all remedies under the Leases, including Mortgagor's right to evict from possession any tenant thereunder or to retain, apply, use, draw upon, pursue, enforce or realize upon any guaranty of any Lease; to terminate, modify, or amend the Leases; to obtain possession of, use, or occupy, any of the real or personal property subject to the Leases; and to enforce or exercise, whether at law or in equity or by any other means, all provisions of the Leases and all obligations of the tenants thereunder based upon (y) any breach by such tenant under the applicable Lease (including any claim that Mortgagor may have by reason of a termination, rejection, or disaffirmance of such Lease pursuant to any provision of the Bankruptcy Code) and (z) the use and occupancy of the premises demised, whether or not pursuant to the applicable Lease (including any claim for use and occupancy arising under landlord-tenant law of the State or any provision of the Bankruptcy Code). Permission is hereby given to Mortgagor, so long as no Event of Default has occurred and is continuing hereunder, to collect and use the Rents, as they become due and payable, but not more than one (1) month in advance thereof, and to exercise the rights under the Leases. Upon the occurrence of an Event of Default, the permission hereby

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given to Mortgagor to collect the Rents, and to exercise the rights under the Leases, shall automatically terminate, but such permission shall be reinstated upon a waiver of such Event of Default. Mortgagee shall have the right, at any time and from time-to-time, to notify any Lessee of the rights of Mortgagee as provided by this section;

Notwithstanding anything to the contrary contained herein, the foregoing provisions of this Paragraph (G) shall not constitute an assignment for purposes of security but shall constitute an absolute and present assignment of the Rents to Mortgagee, subject, however, to the conditional license given to Mortgagor to collect and use the Rents as hereinabove provided; and the existence or exercise of such right of Mortgagor shall not operate to subordinate this assignment to any subsequent assignment, in whole or in part, by Mortgagor;

(H) TOGETHER WITH all of Mortgagor's right, title and interest in and to any and all maps, plans, specifications, surveys, studies, tests, reports, data and drawings relating to the development of the Site or the Project and the construction of the Improvements, including, without limitation, all marketing plans, feasibility studies, soils tests, design contracts and all contracts and agreements of Mortgagor relating thereto including, without limitation, architectural, structural, mechanical and engineering plans and specifications, studies, data and drawings prepared for or relating to the development of the Site or the Project or the construction, renovation or restoration of any of the Improvements or the extraction of minerals, sand, gravel or other valuable substances from the Site and purchase contracts or any agreement granting Mortgagor a right to acquire any land situated within Cook County, Illinois;

(I) TOGETHER WITH, to the extent permitted or not prohibited by applicable law, all of Mortgagor's right, title, and interest in and to any and all licenses, use permits, permits, variances, special permits, franchises, certificates, rulings, certifications, validations, exemptions, filings, registrations, authorizations, consents, approvals, waivers, orders, rights and agreements (including, without limitation, options, option rights, contract rights now or hereafter obtained by Mortgagor from any Governmental Authority having or claiming jurisdiction over the Land, the FF&E, the Project, or any other element of the Mortgaged Property or providing access thereto, or the operation of any business on, at, or from the Site);

(J) TOGETHER WITH all the estate, right, title and interest of Mortgagor of, in and to all water stock, water permits and other water rights relating to the Site;

(K) TOGETHER WITH all right, title and interest of Mortgagor of, in and to oil and gas and other mineral rights, if any, in or pertaining to the Site and all royalty, leasehold and other rights of Mortgagor pertaining thereto;

(L) TOGETHER WITH any and all monies and other property, real or personal, which may from time-to-time be subjected to the lien hereof by Mortgagee or by anyone on its behalf or with its consent, or which may come into the possession or be subject to the control of Mortgagee pursuant to this Mortgage, the Credit Agreement, the Additional Priority Lien Agreements, the Collateral Trust Agreement or any other Loan Document (including any Security Document), including, without limitation, any Protective Advances under this Mortgage; and all of Mortgagor's right, title, and interest in and to all extensions, improvements, betterments, renewals, substitutes for and replacements of, and all additions, accessions, and

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appurtenances to, any of the foregoing that Mortgagor may subsequently acquire or obtain by any means, or construct, assemble, or otherwise place on any of the Mortgaged Property, and all conversions of any of the foregoing; it being the intention of Mortgagor that all property hereafter acquired by Mortgagor and required by the Credit Agreement, the Additional Priority Lien Agreements, the Collateral Trust Agreement, any other Loan Document (including any Security Document) or this Mortgage to be subject to the lien of this Mortgage or intended so to be shall forthwith upon the acquisition thereof by Mortgagor be subject to the lien of this Mortgage as if such property were now owned by Mortgagor and were specifically described in this Mortgage and granted hereby or pursuant hereto, and Mortgagee is hereby authorized, subject to applicable laws, to receive any and all such property as and for additional security for the obligations secured or intended to be secured hereby. Mortgagor agrees to take any action as may reasonably be necessary to evidence and perfect such liens or security interests, including, without limitation, the execution of any documents necessary to evidence and perfect such liens or security interests:

(M) TOGETHER WITH, to the extent permitted or not prohibited by applicable laws, any and all Accounts Receivable and all royalties, earnings, income, proceeds, products, rents, revenues, reversions, remainders, issues, profits, avails, production payments, and other benefits directly or indirectly derived or otherwise arising from any of the foregoing, all of which are hereby assigned to Mortgagee, who, upon the occurrence and during the continuation of an Event of Default, is authorized to collect and receive the same, to give receipts and acquittances therefor and to apply the same to the Obligations secured hereunder, whether or not then due and payable (it being agreed that so long as no Event of Default is then-continuing, Mortgagor shall be entitled to the use and enjoyment of, and to exercise all such rights, remedies, privileges and benefits with respect to, said collateral);

(N) TOGETHER WITH Proceeds of the foregoing property described in granting clauses (A) through (M) inclusive; and

(O) TOGETHER WITH Mortgagor's rights further to assign, sell, lease, encumber or otherwise transfer or dispose of the property described in granting clauses (A) through (N) inclusive, above, for debt or otherwise, subject, however, to Mortgagor's right to make Permitted Dispositions.

(P) EXPRESSLY EXCLUDING, HOWEVER, the Excluded Assets (as defined in the Credit Agreement) (all such excluded assets, the "**Excluded Property**").

Mortgagor shall warrant and forever defend the above-bargained property in the quiet and peaceable possession of Mortgagee and its respective successors and assigns against all and every person or persons lawfully or otherwise claiming or to claim the whole or any part thereof, except for Permitted Liens.

Mortgagor agrees that any greater title to the Mortgaged Property hereafter acquired by Mortgagor during the term hereof, shall, to the fullest extent permitted by applicable laws, be automatically subject hereto. In such event, this Mortgage shall, without further action or conveyance, automatically and simultaneously with such acquisition, be spread to cover and attach to such acquired estate but without thereby impairing, releasing, or limiting Mortgagee's

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lien on the estate. As so spread and attached, the lien of this Mortgage shall be prior to the lien of any mortgage placed on the acquired estate after the date of this Mortgage. Mortgagor shall execute and (at Mortgagor's expense) record any documents that Mortgagee reasonably requests, including a mortgage spreader agreement, to effectuate the previous sentence.

It is expressly understood and agreed that the indebtedness secured hereby will in no event exceed \$40,000,000. The Revolving Loans, which will in no event exceed \$20,000,000 in principal amount, will have an initial maturity date occurring on July 10, 2014 and the Revolving Loans bear interest at variable rates (based on either the Base Rate or the LIBOR Rate plus, in each case, an applicable margin) determined in accordance with the terms and conditions of the Credit Agreement.

ARTICLE ONE **COVENANTS OF MORTGAGOR**

Mortgagee, the Lender and the other Priority Lien Secured Parties have been induced to enter into the Credit Agreement, the Collateral Trust Agreement and the other Loan Documents and to make advances of Loans thereunder on the basis of the following material covenants, all agreed to by Mortgagor:

1.1 **General Representations, Covenants and Warranties.** Mortgagor represents, covenants and warrants that: (a) Mortgagor has good and marketable title to an indefeasible fee estate in the Land, the Improvements, the Appurtenant Rights, the Tangible Collateral, the Intangible Collateral and other Mortgaged Property free and clear of all Liens other than Permitted Liens, and that it has the right to hold, occupy and enjoy its interest in the Mortgaged Property, and has good right, full power and lawful authority to subject the Mortgaged Property to the Lien of this Mortgage and pledge the same as provided herein and Mortgagee may at all times peaceably and quietly enter upon, hold, occupy and enjoy the entire Mortgaged Property in accordance with the terms hereof and (b) the Land has frontage on, and direct access for ingress and egress to dedicated street(s).

1.2 **Compliance with Legal Requirements.** Except as provided in the Loan Documents, Mortgagor shall comply in all material respects with all Legal Requirements as required under the Credit Agreement and the other Loan Documents.

1.3 **Impositions and Certain Tax Matters.** Except as otherwise permitted by the Loan Documents:

(a) Subject to the last sentence of this Section 1.3(a), Mortgagor shall pay prior to delinquency all Impositions which are (or if not paid, may become) a Lien on all or part of the Mortgaged Property or any interest in it, or which may cause any decrease in the value of the Mortgaged Property or any part of it, except for immaterial Impositions so long as no material portion of the Mortgaged Property is in jeopardy of being seized, levied upon or foreclosed. If any such Imposition becomes delinquent, Mortgagee may require Mortgagor to deliver to Mortgagee within ten (10) days following receipt of Mortgagee's written request, evidence satisfactory to Mortgagee that the Impositions have been paid. However, no such Imposition need be paid if it is not in an amount in excess of \$50,000 at any one time or is being

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contested in good faith by appropriate proceedings promptly instituted and diligently conducted, so long as (x) adequate reserves or other appropriate provisions, as shall be required in conformity with GAAP, shall have been made therefor, (y) such contest operates to suspend collection of the contested Imposition (including the sale of any portion of the Collateral to satisfy such Imposition) and enforcement of any Lien against any of the Mortgaged Property and (z) the failure to so pay could not reasonably be expected to result in a Material Adverse Effect.

(b) Mortgagor shall not suffer to exist, permit or initiate the joint assessment of the real and personal property, or any other procedure whereby the Lien of the real property taxes and the Lien of the personal property taxes shall be assessed, levied or charged to the Land as a single Lien, except as may be required by law.

(c) In the event of the passage of any law deducting from the value of real property for the purposes of taxation any Lien thereon, or changing in any way the taxation of mortgages or obligations secured thereby for state or local purposes, or the manner of collecting such taxes and imposing a tax, either directly or indirectly, on this Mortgage or the other Loan Documents to which Mortgagor is a party, Mortgagor shall pay all such taxes.

1.4 **Insurance.** Mortgagor shall at its sole expense obtain for, deliver to, assign and maintain for the benefit of Mortgagee, during the term of this Mortgage, insurance policies insuring the Mortgaged Property and liability insurance policies, all in accordance with the requirements of the Credit Agreement and the other Loan Documents. All Proceeds from any insurance policies shall be collected, held, handled and disbursed in accordance with the provisions of the Credit Agreement and the other Loan Documents.

1.5 **Condemnation.** Mortgagor hereby collaterally assigns all awards and compensation to which it is entitled for any condemnation or other taking of the Mortgaged Property, or any purchase in lieu thereof, to Mortgagee and authorizes Mortgagee to collect and receive such awards and compensation and to give proper receipts and acquittances therefor, subject to the terms of the Credit Agreement and the other Loan Documents. Promptly upon obtaining knowledge of the institution of any proceedings for the condemnation of the Mortgaged Property or any portion thereof, Mortgagor shall notify Mortgagee of the pendency of such proceedings. So long as any Event of Default has occurred and is then continuing, Mortgagor shall not settle or compromise any claim in connection with any action or proceeding related to any condemnation without the prior written consent of Mortgagee. All such compensation awards, damages, claims, rights of action and Proceeds, and any other payments or relief, and the right thereto, are, whether paid to Mortgagee or Mortgagor or a third party trustee, included in the Mortgaged Property. Mortgagee, after deducting therefrom all its expenses, including reasonable attorneys' fees and expenses, shall apply all Proceeds paid directly to it in accordance with the provisions of the Credit Agreement and the other Loan Documents. All such Proceeds paid directly to Mortgagor shall be applied in accordance with the Credit Agreement and the other Loan Documents.

1.6 **Care of Mortgaged Property.** The Mortgagor will maintain or cause to be maintained in good repair, working order and condition, ordinary wear and tear and condemnation excepted, all material properties used or useful at the Mortgaged Property and

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from time to time will make or cause to be made all appropriate repairs, renewals and replacements thereof.

1.7 Leases.

(a) Mortgagor represents, warrants and covenants that:

(i) as of the date hereof, Mortgagor has not entered into any Leases other than the lease with CRP Holdings B, L.P., as landlord, with respect to the building located at 2305 Mt. Prospect Road, Des Plaines, Illinois (the “Existing Lease”);

(ii) except for the assignment effected hereby and in the other Security Documents and in the Parity Lien Documents (as defined in the Collateral Trust Agreement), Mortgagor has not executed any assignment or pledge of any of the Leases, the Rents, or of Mortgagor’s right, title and interest in the same; and

(iii) this Mortgage does not and will not constitute a violation or default under any Lease, and is and shall at all times constitute a valid lien on Mortgagor’s interests in the Leases.

(b) Mortgagor shall not enter into any Lease, either orally or in writing, unless such Lease is subject and subordinate to the Lien of this Mortgage or is otherwise permitted under the Credit Agreement and the other Loan Documents or approved in writing by Mortgagee.

(c) Mortgagor shall deliver to Mortgagee and each then applicable Priority Lien Debt Representative executed copies of all Leases, other than the Existing Lease.

1.8 Further Encumbrance. Mortgagor agrees that in the event the ownership of the Mortgaged Property or any part thereof becomes vested in a person other than Mortgagor, Mortgagee may, without notice to Mortgagor, deal in any way with such successor or successors in interest with reference to this Mortgage, the other Loan Documents and other Obligations hereby secured without in any way vitiating or discharging Mortgagor’s or any guarantor’s, surety’s or endorser’s liability hereunder or upon the Obligations hereby secured. No sale of the Mortgaged Property and no forbearance to any person with respect to this Mortgage and no extension to any person of the time for payment of the Notes or other payment obligations under the Loan Documents (whether principal and interest payments or otherwise), and other sums hereby secured given by Mortgagee shall operate to release, discharge, modify, change or affect the original liability of Mortgagor, or such guarantor, surety or endorser either in whole or in part.

1.9 Partial Releases of Mortgaged Property.

(a) Mortgagor may from time-to-time, so long as there exists no Event of Default, make a Permitted Disposition of all or a portion of the Mortgaged Property free and clear of the lien of this Mortgage or grant a Permitted Lien on the Mortgaged Property of the type constituting Minor Liens superior to the lien of this Mortgage. In each such case, Mortgagee shall, execute and deliver any instruments necessary or appropriate to effectuate or

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confirm that any such transfer or grant is free from, or senior to, the lien of this Mortgage, as the case may be, provided, however, that Mortgagee shall execute a lien release with respect to any Permitted Disposition or a subordination with respect to any such Permitted Lien only if:

(i) Such transfer, grant, release or subordination is not prohibited by the Credit Agreement, any Additional Priority Lien Agreement, the Collateral Trust Agreement, or the other Loan Documents and all conditions precedent contained in the Credit Agreement, the Additional Priority Lien Agreements, and the Collateral Trust Agreement and the other Loan Documents for such transfer, grant, release or subordination, if any, shall have been satisfied; and

(ii) Mortgagee shall have received a counterpart of the instrument pursuant to which such transfer, grant, release or subordination is to be made, and each instrument which Mortgagee is requested to execute in order to effectuate or confirm such transfer, grant, release or subordination.

(iii) Any consideration received for a transfer to any person empowered to exercise the right of eminent domain shall be subject to Section 1.5 hereof.

1.10 **Further Assurances.** Mortgagor shall forthwith upon the execution and delivery of this Mortgage, and thereafter from time-to-time, cause this Mortgage and each instrument of further assurance to be filed, indexed, registered, recorded, given or delivered in such manner and in such places as may be required by any present or future law in order to publish notice of and fully to protect the lien hereof upon, and the title of Mortgagee to, the Mortgaged Property.

1.11 **Change of Name.** Mortgagor shall not change its corporate (or other entity) or business name, or do business within the State under any name other than such name, or any trade name(s) other than those as to which Mortgagor gives prior written notice to Mortgagee of its intent to use such trade names, or any other business names (if any) specified in the financing statements delivered to Mortgagee for filing in connection with the execution hereof, without, in each case, providing Mortgagee with the additional financing statement(s) and any other similar documents reasonably deemed necessary by Mortgagee to assure that its security interest remains perfected and of undiminished priority in all such Personal Property notwithstanding such name change.

1.12 **Assignment of Leases and Rents.** Subject to applicable law, the assignment of Leases and Rents set out above in granting clause (G) shall constitute an absolute and present assignment to Mortgagee, subject to the license herein given to Mortgagor to collect the Rents, and shall be fully operative without any further action on the part of any party, and specifically Mortgagee shall be entitled upon the occurrence and during the continuance of an Event of Default hereunder to all Rents and to enter upon the Site and the Improvements to collect such Rents, provided, however, that Mortgagee shall not be obligated to take possession of the Mortgaged Property, or any portion thereof. The absolute assignment contained in granting clause (G) shall not be deemed to impose upon Mortgagee any of the obligations or duties of Mortgagor provided in any such Lease (including, without limitation, any liability under the covenant of quiet enjoyment contained in any lease in the event that any lessee shall have been joined as a party defendant in any action to foreclose this Mortgage and shall have been barred

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and foreclosed thereby of all right, title and interest and equity of redemption in the Mortgaged Property or any part thereof).

1.13 **Expenses**. Mortgagor shall, upon demand by Mortgagee, reimburse Mortgagee or any assignee of Mortgagee for all reasonable and documented expenses which have been incurred or which shall be incurred by it in connection with Mortgagee exercising its rights and remedies hereunder or taking any other action contemplated hereby, and shall indemnify Mortgagee and the Indemnitees for the same, all as provided by and in accordance with the expense reimbursement section of the Credit Agreement, Sections 5.10 and 7.11 of the Collateral Trust Agreement and similar provisions in any other Loan Document.

1.14 **Compliance with Permitted Lien Agreements**. Mortgagor shall comply with each and every material obligation contained in any agreement pertaining to a Permitted Lien.

1.15 **Defense of Actions**. Mortgagor shall appear in and defend any action or proceeding affecting or purporting to negatively affect the security hereof or the rights or powers of Mortgagee, and shall pay all reasonable and documented out-of-pocket costs and expenses, including cost of title search and insurance or other evidence of title, preparation of survey, and reasonable attorneys' fees in any such action or proceeding in which Mortgagee may appear or may be joined as a party and in any suit brought by Mortgagee based upon or in connection with this Mortgage or any Loan Document. Nothing contained in this section shall, however, limit the right of Mortgagee to appear in such action or proceeding with counsel of its own choice, either on its own behalf or on behalf of Mortgagor.

1.16 **After-Acquired Property**. To the fullest extent permitted or not prohibited by applicable law, any and all assets or property which would constitute Mortgaged Property hereunder but which is acquired after the date hereof shall nonetheless immediately, without any further conveyance, assignment or act on the part of Mortgagor or Mortgagee, become and be Mortgaged Property hereunder and subject to the lien and security interest of this Mortgage as fully and completely as though specifically described herein, but nothing contained in this Section 1.16 shall be deemed to modify or change the obligations of Mortgagor under Section 1.10 hereof. Notwithstanding the foregoing, if and whenever from time to time Mortgagor shall hereafter acquire any real property or interest therein which constitutes or is intended to constitute part of the Mortgaged Property hereunder, Mortgagor shall comply with the provisions of the Credit Agreement or any other Loan Document relating to after-acquired property and Section 7.1 of the Collateral Trust Agreement.

1.17 **Security Agreement**. This Mortgage shall also be a security agreement between Mortgagor, as "debtor," and Mortgagee, as "secured party," covering that portion of the Mortgaged Property constituting personal property, fixtures and goods which may become fixtures (collectively, the "UCC Collateral") governed by the UCC as the same may be more specifically set forth in any financing statement delivered in connection with this Mortgage, and as further security for the payment and performance of the Obligations, Mortgagor hereby grants to Mortgagee a security interest in such portion of the Mortgaged Property to the fullest extent that the Mortgaged Property may be subject to the UCC. In addition to Mortgagee's other rights hereunder, Mortgagee shall have all rights of a secured party under the UCC. Mortgagor hereby authorizes Mortgagee, and further irrevocably appoints Mortgagee as Mortgagor's attorney-in-fact

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(such agency being coupled with an interest), to, without the obligation to do so, in Mortgagee's name, or in the name of Mortgagor, prepare and file (and if requested by Mortgagee, Mortgagor shall execute and deliver to Mortgagee) all financing statements and such further assurances that may be reasonably required by Mortgagee to establish, create, perfect (to the extent the same can be achieved by the filing of a financing statement) and maintain the validity and priority of Mortgagee's security interests, and Mortgagor shall bear all reasonable and documented costs thereof, including the costs of all UCC searches. Except as otherwise provided in the Loan Documents, if Mortgagee should dispose of any of the Mortgaged Property comprising the UCC Collateral pursuant to the UCC, ten (10) days' prior written notice by Mortgagee to Mortgagor shall be deemed to be reasonable notice; provided, however, Mortgagee may dispose of such property in accordance with the foreclosure procedures of this Mortgage in lieu of proceeding under the UCC. Mortgagee may from time to time file and, if applicable, execute and deliver at Mortgagor's expense, all financing statements, continuation statements, termination statements, amendments, partial releases, or other instruments relating to all financing statements by and between Mortgagor and Mortgagee so long as the same are consistent with the grant of security interest made hereunder. Except as otherwise provided in the Loan Documents, upon the occurrence and during the continuation of an Event of Default, (i) Mortgagee, in addition to any other rights and remedies which it may have, may exercise immediately and without demand to the extent permitted by applicable Legal Requirements, any and all rights and remedies granted to a secured party under the UCC including, without limiting the generality of the foregoing, the right to take possession of the UCC Collateral or any part thereof, and to take such other measures as Mortgagee may deem necessary for the care, protection and preservation of such collateral and (ii) upon request or demand of Mortgagee, Mortgagor shall at its expense, assemble the UCC Collateral and make it available to Mortgagee at a convenient place acceptable to both parties. Mortgagor shall pay to Mortgagee on demand, any and all expenses, including reasonable attorneys' fees and disbursements incurred or paid by Mortgagee in protecting the interest in the UCC Collateral and in enforcing the rights hereunder with respect to such UCC Collateral.

(a) **Relationship to Security Agreement.** Mortgagor is entering into the Security Agreement with Mortgagee with respect to Personal Property. The terms of the Security Agreement shall, with respect to Personal Property and the security interest granted therein, supplement the terms of this Mortgage. With respect to Personal Property only, if and to the extent of any conflict between the terms of this Mortgage and the terms of the Security Agreement, the terms of the Security Agreement shall, to the extent enforceable, control. Nothing, however, in this Section 1.17(a) shall be deemed or construed to impair the rights of Mortgagee to conduct one or more Mortgagor's sales at which real property and Personal Property are sold together pursuant to the laws applicable to the sale of real property. With respect to fixtures, Mortgagee may elect to treat same as either real property or Personal Property and proceed to exercise such rights and remedies applicable to the categorization so chosen. Mortgagee may proceed against the items of real property and any items of Personal Property separately or together in any order whatsoever, without in any way affecting or waiving Mortgagee's rights and remedies under the UCC or its rights and remedies provided under this Mortgage.

(b) **Fixture Filing.** Mortgagor and Mortgagee agree, to the extent permitted by applicable Legal Requirements, that: (i) this Mortgage, upon recording or registration in the

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department of records of the proper office, shall constitute a financing statement filed as a "fixture filing" in accordance with Section 9-401 of the Illinois UCC; (ii) a part of the Mortgaged Property is to become fixtures; (iii) the names and addresses of Mortgagor and Mortgagee are as set forth in the preamble to this Mortgage and (iv) Mortgagor is a Delaware limited liability company.

(c) **Derogation of Real Property.** It is the intention of the parties that the filing of a financing statement in the records normally having to do with personal property shall never be construed as in anyway derogating from or impairing the express declaration and intention of the parties hereto as hereinabove stated that everything used in connection with the production of income from the Mortgaged Property and/or adapted for use therein and/or which is described or reflected in this Mortgage is, and at all times and for all purposes and in all proceedings both legal or equitable (except as set forth in Section 4.5(e)), shall be regarded as part of the real property encumbered by this Mortgage irrespective of whether (1) any such item is physically attached to the Improvements, (2) serial numbers are used for the better identification of certain equipment items capable of being thus identified in a recital contained herein or in any list filed with Mortgagee, or (3) any such item is referred to or reflected in any such financing statement so filed at any time. It is the intention of the parties that the mention in any such financing statement of (A) rights in or to the proceeds of any fire and/or hazard insurance policy, or (B) any award in eminent domain proceedings for a taking or for loss of value, or (C) Mortgagor's interest as lessor in any present or future Lease or rights to Rents, shall never be construed as in any way altering any of the rights of Mortgagee as determined by this Mortgage or impugning the priority of Mortgagee's real property lien granted hereby or by any other recorded document, but such mention in the financing statement is declared to be for the protection of Mortgagee in the event any court or judge shall at any time hold with respect to the matters set forth in the foregoing clauses (A), (B) and (C) that notice of Mortgagee's priority of interest to be effective against a particular class of persons, including but not limited to, the federal government and any subdivisions or entity of the federal government, must be filed in the UCC records.

1.18 Revolving Credit Facility/Future Advances/Additional Priority Lien Debt.

(a) The Credit Agreement contains a revolving credit facility which permits Borrower to borrow certain principal amounts, repay all or a portion of such principal amounts, and reborrow the amounts previously repaid, all upon satisfaction of certain conditions stated in the Credit Agreement. The Lender is obligated under the terms of the Credit Agreement to make advances as provided therein, and Mortgagor acknowledges and intends that all such advances, including future advances whenever hereafter made, shall be a lien from the time this Mortgage is recorded, as provided in Section 15-1302(b)(1) of the IMFL. That portion of the Obligations which comprises the principal amount then outstanding of any Revolving Loans constitutes revolving credit indebtedness secured by a mortgage on real property.

(b) Mortgagor covenants and agrees that this Mortgage shall secure the payment of all Loans and advances made pursuant to the terms and provisions of the Credit Agreement and any Additional Priority Lien Agreements, including, without limitation, (i) the payment of future advances of Loans, including Revolving Loans (including, without limitation, advances to pay for the ongoing development, construction, operation and repair of any part of

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the Project, the financing of which, in whole or in part, this Mortgage was given to secure that may subsequently be made to Mortgagor under the Credit Agreement and any Additional Priority Lien Agreements and all other Obligations incurred from time to time, including obligations under the Specified Hedging Agreements) which may be made after the date hereof; and (ii) the incurrence of Additional Priority Lien Debt which may be made after the date hereof pursuant to Additional Priority Lien Agreements, whether such Loans and advances are made as of the date hereof or at any time in the future, and whether such future advances are obligatory or are to be made at the option of the Lender or the other Priority Lien Secured Parties or otherwise (but not advances or loans made more than twenty (20) years after the date hereof), to the same extent as if such future advances were made on the date of the execution of this Mortgage and although there may be no advances made at the time of the execution of this Mortgage and although there may be no other indebtedness outstanding at the time any advance is made. The lien of this Mortgage shall be valid as to all Obligations, including all advances of the Loans whenever hereafter made under the Credit Agreement, and all future Priority Lien Debt whenever hereafter made under any Additional Priority Lien Agreement, from the time of its filing of record in the office of the Recorder of Deeds of the County in which the Mortgaged Property is located.

(c) Pursuant to Section 3.8 of the Collateral Trust Agreement, Mortgagor may enter into one or more Additional Priority Lien Agreements with one or more Additional Priority Lien Lenders after the date hereof which permits Borrower to borrow certain principal amounts, all upon satisfaction of certain conditions stated in the Collateral Trust Agreement and Additional Priority Lien Agreements.

(d) The total principal amount of the Loans secured by this Mortgage may decrease or increase from time to time but the total unpaid principal balance so secured at any one time shall not exceed \$520,000,000, plus interest thereon, and any and all Protective Advances and all other disbursements made by the Mortgagee for the payment of taxes, special assessments or insurance on the Mortgaged Property, with interest on such disbursements. This Mortgage shall be valid and shall have priority over all subsequent liens and encumbrances, including statutory liens except taxes and assessments levied on the Mortgaged Property, to the extent of the maximum amount secured hereby.

1.19 **Not Agriculture Property.** Mortgagor acknowledges that the Mortgaged Property does not constitute agricultural real estate as defined in Section 15-1201 of IMFL or residential real estate as defined in Section 15-1219 of IMFL.

ARTICLE TWO

CREDIT AGREEMENT PROVISIONS

2.1 **Interaction with Credit Agreement and other Loan Documents; Incorporation by Reference.** To the extent that this Mortgage refers to specific provisions or requirements of the Credit Agreement and the other Loan Documents as applicable to Mortgagor hereunder, including with respect to the meaning of the expressions "payment in full," "paid in full" and any other similar terms or phrases, such provisions and requirements are hereby incorporated by reference in this Mortgage and made applicable to Mortgagor *mutatis mutandis*. Additionally, the rules of construction and/or interpretation set forth in the Credit Agreement (or,

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if the Credit Agreement is no longer in effect, in any other Loan Document) shall be applicable to this Mortgage *mutatis mutandis*. In the event of any conflict or inconsistency between the terms of the Credit Agreement and this Mortgage, then so long as the Credit Agreement is in effect, the terms of the Credit Agreement shall govern and control.

2.2 **Other Collateral**. This Mortgage is one of a number of security agreements to secure the Obligations delivered by or on behalf of Mortgagor pursuant to the Credit Agreement, the Additional Priority Lien Agreements, the Collateral Trust Agreement, the other Loan Documents (including the Security Documents) and the Specified Hedging Agreements. All potential junior Lien claimants are placed on notice that, under any of the Loan Documents (including the Security Documents), other collateral for the Obligations secured hereunder (i.e., collateral other than the Mortgaged Property) may, under certain circumstances, be released without a corresponding reduction in the total principal amount secured by this Mortgage. Such a release would decrease the amount of collateral securing the same indebtedness, thereby increasing the burden on the remaining Mortgaged Property created and continued by this Mortgage. No such release shall impair the priority of the lien of this Mortgage. By accepting its interest in the Mortgaged Property after the date hereof, each and every junior Lien claimant shall be deemed to have acknowledged the possibility of, and consented to, any such release. Nothing in this paragraph shall impose any obligation upon Mortgagee.

ARTICLE THREE **DEFAULTS**

3.1 **Event of Default**. The term "Event of Default," wherever used in this Mortgage, shall mean any of the occurrence and continuance of one or more Events of Default (as such term is defined in the Credit Agreement or any other Loan Document).

ARTICLE FOUR **REMEDIES**

4.1 **Compliance With Gaming Law**. Certain rights, remedies and powers in favor of Mortgagee provided for herein or under any other Loan Document may be exercised only to the extent that the exercise thereof does not violate any applicable provisions of the Gaming Laws and only to the extent that any required approvals (including prior approvals) are obtained from the requisite Gaming Authorities. The parties acknowledge that the provisions of this Section 4.1 shall not be for the benefit of Mortgagor.

4.2 **Acceleration of Maturity**. If an Event of Default occurs and is continuing, Mortgagee may (except that such acceleration shall be automatic if the Event of Default is caused by Mortgagor's Bankruptcy), declare the Obligations to be due and payable immediately, and upon such declaration such principal and interest and other sums shall immediately become due and payable without demand, presentment, notice or other requirements of any kind (all of which Mortgagor waives) notwithstanding anything in this Mortgage or any Loan Document or applicable law to the contrary.

4.3 **Protective Advances**. If Mortgagor fails to make any payment or perform any of its obligations hereunder, including the Obligations, then without thereby limiting Mortgagee's

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other rights or remedies, waiving or releasing any of Mortgagor's obligations, or imposing any obligation on Mortgagee, Mortgagee may, before and during a foreclosure, and before and after judgment of foreclosure, and at any time prior to sale, and, where applicable, after sale, and during the pendency of any related proceedings, either advance any amount owing or perform any or all actions that Mortgagee considers necessary or appropriate to remedy such breach. All such advances shall constitute "Protective Advances" and shall bear interest thereon at the interest rate applicable to overdue principal set forth in the Credit Agreement (or, if the Credit Agreement is no longer in effect, the interest rate applicable to overdue principal set forth in any other Loan Document) from the date incurred until paid by Mortgagor. No sums advanced or performance rendered by Mortgagee shall cure, or be deemed a waiver of any Event of Default or of any notice of default hereunder, or invalidate any act done pursuant hereto or to any such notice. This Mortgage also secures Protective Advances made after the entry of a judgment of foreclosure.

(a) All Protective Advances shall have the benefit of all applicable provisions of the IMFL, including without limitation those provisions of the IMFL hereinbelow referred to:

(i) all advances by Mortgagee in accordance with the terms of this Mortgage or the Credit Agreement or any other Additional Priority Lien Agreement to: (A) preserve, maintain, repair, restore or rebuild the improvements upon the Mortgaged Property; (B) preserve the lien of this Mortgage or the priority thereof; or (C) enforce this Mortgage, as referred to in Subsection (f)(5) of Section 15-1302 of the IMFL;

(ii) payments by Mortgagee of (A) principal, interest or other obligations in accordance with the terms of any senior mortgage or other prior lien or encumbrance; (B) real estate taxes and assessments, general and special and all other taxes and assessments of any kind or nature whatsoever which are assessed or imposed upon the Mortgaged Property or any part thereof; (C) other obligations authorized by this Mortgage; or (D) with court approval, any other amounts in connection with other liens, encumbrances or interests reasonably necessary to preserve the status of title, as referred to in Section 15-1505 of the IMFL;

(iii) advances by Mortgagee in settlement or compromise of any claims asserted by claimants under senior mortgages or any other prior liens;

(iv) attorneys' fees and other costs incurred: (A) in connection with the foreclosure of this Mortgage as referred to in Sections 15-1504(d)(2) and 15-1510 of the IMFL; (B) in connection with any action, suit or proceeding brought by or against the Mortgagee for the enforcement of this Mortgage or arising from the interest of the Mortgagee hereunder; or (C) in preparation for or in connection with the commencement, prosecution or defense of any other action related to this Mortgage or the Mortgaged Property;

(v) Mortgagee's fees and costs, including attorneys' fees, arising between the entry of judgment of foreclosure and the confirmation hearing as referred to in Section 15-1508(b)(1) of the IMFL;

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(vi) expenses deductible from proceeds of sale as referred to in Section 15-1512(a) and (b) of the IMFL;

(vii) expenses incurred and expenditures made by Mortgagee for any one or more of the following: (A) if the Mortgaged Property or any portion thereof constitutes one or more units under a condominium declaration, assessments imposed upon the unit owner thereof; (B) if Mortgagor's interest in the Mortgaged Property is a leasehold estate under a lease or sublease, rentals or other payments required to be made by the lessee under the terms of the lease or sublease; (C) premiums for casualty and liability insurance paid by Mortgagee whether or not Mortgagee or a receiver is in possession, if reasonably required, in reasonable amounts, and all renewals thereof, without regard to the limitation to maintaining of existing insurance in effect at the time any receiver or mortgagee takes possession of the Mortgaged Property imposed by Section 15-1704(c)(1) of the IMFL; (D) repair or restoration of damage or destruction in excess of available insurance proceeds or condemnation awards; (E) payments deemed by Mortgagee to be required for the benefit of the Mortgaged Property or required to be made by the owner of the Mortgaged Property under any grant or declaration of easement, easement agreement, agreement with any adjoining land owners or instruments creating covenants or restrictions for the benefit of or affecting the Mortgaged Property; (F) shared or common expense assessments payable to any association or corporation in which the owner of the Mortgaged Property is a member in any way affecting the Mortgaged Property; (G) if the Loan secured hereby is a construction loan, costs incurred by Mortgagee for demolition, preparation for and completion of construction, as may be authorized by the applicable commitment, loan agreement or other agreement; (H) payments required to be paid by Mortgagor or Mortgagee pursuant to any lease or other agreement for occupancy of the Mortgaged Property and (I) if this Mortgage is insured, payment of FHA or private mortgage insurance required to keep such insurance in force.

(b) This Mortgage shall be a lien for all Protective Advances as to subsequent purchasers and judgment creditors from the time this Mortgage is recorded pursuant to Subsection (b)(5) of Section 15-1302 of the IMFL. All Protective Advances shall, except to the extent, if any, that any of the same is clearly contrary to or inconsistent with the provisions of the IMFL, apply to and be included in:

(i) any determination of the amount of indebtedness secured by this Mortgage at any time;

(ii) the indebtedness found due and owing to the Mortgagee in the judgment of foreclosure and any subsequent supplemental judgments, orders, adjudications or findings by the court of any additional indebtedness becoming due after such entry of judgment, it being agreed that in any foreclosure judgment, the court may reserve jurisdiction for such purpose;

(iii) if right of redemption has not been waived by this Mortgage, computation of amounts required to redeem, pursuant to Sections 15-1603(d)(2) and 1603(e) of the IMFL;

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(iv) determination of amounts deductible from sale proceeds pursuant to Section 15-1512 of the IMFL;

(v) application of income in the hands of any receiver or mortgagee in possession; and

(vi) computation of any deficiency judgment pursuant to Sections 15-1508(b)(2), 15-1508(e) and 15-1511 of the IMFL.

4.4 Institution of Equity Proceedings. If an Event of Default occurs and at such time is continuing, Mortgagee may institute an action, suit or proceeding in equity for specific performance of this Mortgage or any other Loan Document (including any Security Document) to which Mortgagor is a party, all of which shall be specifically enforceable by injunction or other equitable remedy. Mortgagor waives any defense based on laches or any applicable statute of limitations.

4.5 Mortgagee's Power of Enforcement.

(a) If an Event of Default occurs and is continuing, Mortgagee shall be entitled, at its option and in its sole and absolute discretion, if and to the extent permitted by applicable law, to prepare and record on its own behalf a written declaration of default and demand for sale to cause the Mortgaged Property to be sold to satisfy the obligations hereof.

(b) After the lapse of such time as may then be required by law following the recordation of such written declaration, and notice of sale having been given as then required by law, Mortgagee without demand on Mortgagor, shall, if and to the extent permitted by applicable law, sell the Mortgaged Property or any portion thereof at the time and place fixed by it in said notice and at the place designated by law, either as a whole or in separate parcels and in such order as it may determine, at public auction to the highest bidder, of cash in lawful money of the United States payable at the time of sale. Mortgagee may, for any cause it deems expedient, postpone the sale of all or any portion of said property until it shall be completed and, in every case, notice of postponement shall be given by public announcement thereof at the time and place last appointed for the sale and from time-to-time thereafter Mortgagee may postpone such sale by public announcement at the time fixed by the preceding postponement. Mortgagee shall execute and deliver to the purchaser its deed, bill of sale, or other instrument conveying said property so sold, but without any covenant or warranty, express or implied. The recitals in such instrument of conveyance of any matters or facts shall be conclusive proof of the truthfulness thereof. Any Person, including Mortgagee, may bid at the sale.

(c) To the extent permitted by applicable law, after deducting all documented costs, fees and expenses of Mortgagee and of this Mortgage, including, without limitation, costs of evidence of title and reasonable attorneys' fees and other legal expenses of Mortgagee in connection with a sale, Mortgagee shall apply the proceeds of such sale to payment of all sums expended under the terms hereof not then repaid, with accrued interest at the rate applicable to overdue principal set forth in the Credit Agreement (or, if the Credit Agreement is no longer in effect, in any other Loan Document) to the payment of all other sums then secured hereby and the remainder, if any, to the person or persons legally entitled thereto.

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(d) If any Event of Default occurs and is continuing, Mortgagee may, either with or without entry or taking possession of the Mortgaged Property, and without regard to whether or not the indebtedness and other sums secured hereby shall be due and without prejudice to the right of Mortgagee thereafter to bring an action or proceeding to foreclose or any other action for any default existing at the time such earlier action was commenced, proceed by any appropriate action or proceeding: (1) to enforce payment of the Notes or other obligations under the Loan Documents and Specified Hedging Agreements (whether principal and interest payments or otherwise), to the extent permitted by law, or the performance of any term hereof or any other right; (2) to foreclose this Mortgage in any manner provided by law for the foreclosure of mortgages or deeds of trust on real property and to sell, as an entirety or in separate lots or parcels, the Mortgaged Property or any portion thereof pursuant to the laws of the State or under the judgment or decree of a court or courts of competent jurisdiction, and Mortgagee shall be entitled to recover in any such proceeding all documented costs and expenses incident thereto, including reasonable attorneys' fees, appraisers' fees, receiver's costs and expenses, insurance, taxes, outlays for documentary and expert evidence, costs for preservation of the Mortgaged Property, stenographer's charges, publication costs and costs of procuring all abstracts of title, title searches and examinations, guarantee policies and similar data and assurances with respect to title as Mortgagee may deem to be reasonably necessary either to prosecute such suit or to evidence to bidders at any sale which may be had pursuant to such decree the true condition of the title to or value of the Mortgaged Property or for any other reasonable purpose; (3) to exercise any or all of the rights and remedies available to it under the Loan Documents; and (4) to pursue any other remedy available to it. Mortgagee shall take action either by such proceedings or by the exercise of its powers with respect to entry or taking possession, or both, as Mortgagee may determine.

(e) The remedies described in this Section 4.5 may be exercised with respect to all or any portion of the Personal Property, either simultaneously with the sale of any real property encumbered hereby or independent thereof. Mortgagee shall at any time be permitted to proceed with respect to all or any portion of the Personal Property in any manner permitted by the UCC. Mortgagor agrees that Mortgagee's inclusion of all or any portion of the Personal Property (and all personal property that is subject to a security interest in favor, or for the benefit, of Mortgagee) in a sale or other remedy exercised with respect to the real property encumbered hereby, as permitted by the UCC, is a commercially reasonable disposition of such property.

(f) Mortgagor shall have the burden of proving that any sale pursuant to this Section 4.5 or pursuant to the UCC was conducted in a commercially unreasonable manner.

4.6 Mortgagee's Right to Enter and Take Possession, Operate and Apply Income.

(a) If an Event of Default occurs and is continuing, (1) Mortgagor, upon demand of Mortgagee, shall forthwith surrender to Mortgagee the actual possession and, if and to the extent permitted by law, Mortgagee itself, or by such officers or agents as it may appoint, may enter and take possession of all the Mortgaged Property including the Personal Property, without liability for trespass, damages or otherwise, and may exclude Mortgagor and its agents and employees wholly therefrom and may have joint access with Mortgagor to the books, papers and accounts of Mortgagor; and (2) Mortgagor shall pay monthly in advance to Mortgagee on

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Mortgagee's entry into possession, or to any receiver appointed to collect the Rents, all Rents then due and payable.

(b) If Mortgagor shall for any reason fail to surrender or deliver the Mortgaged Property, the Personal Property or any part thereof after Mortgagee's demand, Mortgagee may obtain a judgment or decree conferring on Mortgagee the right to immediate possession or requiring Mortgagor to deliver immediate possession of all or part of such property to Mortgagee and Mortgagor hereby specifically consents to the entry of such judgment or decree. Mortgagor shall pay to Mortgagee, upon demand, all reasonable and documented costs and expenses of obtaining such judgment or decree and reasonable compensation to Mortgagee, its attorneys and agents, and all such costs, expenses and compensation shall, until paid, be secured by the lien of this Mortgage.

(c) Upon every such entering upon or taking of possession, Mortgagee may hold, store, use, operate, manage and control the Mortgaged Property and conduct the business thereof, and, from time to time in its sole and absolute discretion and without being under any duty to so act:

(i) make all necessary and proper maintenance, repairs, renewals, replacements, additions, betterments and improvements thereto and thereon and purchase or otherwise acquire additional fixtures, personalty and other property;

(ii) insure or keep the Mortgaged Property insured;

(iii) manage and operate the Mortgaged Property and exercise all the rights and powers of Mortgagor in its name or otherwise with respect to the same;

(iv) enter into agreements with others to exercise the powers herein granted to Mortgagee, all as Mortgagee from time to time may determine; and, subject to the absolute assignment of the leases and rents to Mortgagee, Mortgagee may collect and receive all the Rents, including those past due as well as those accruing thereafter; and shall apply the monies so received by Mortgagee in such priority as Mortgagee may determine to (A) the payment of the Obligations, including interest and principal due and payable on the Notes or the other Loan Documents, (B) the deposits for taxes and assessments and insurance premiums due, (C) the cost of insurance, taxes, assessments and other proper charges upon the Mortgaged Property or any part thereof; (D) the compensation, expenses and disbursements of the agents, attorneys and other representatives of Mortgagee; and (E) any other charges or costs required to be paid by Mortgagor under the terms hereof; and

(v) rent or sublet the Mortgaged Property or any portion thereof for any purpose permitted by this Mortgage.

Mortgagee shall surrender possession of the Mortgaged Property and the Personal Property to Mortgagor only when amounts under any of the terms of the Loan Documents or this Mortgage, shall have been paid and all defaults made good. The same right of taking possession, however, shall exist if any subsequent Event of Default shall occur and be continuing.

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4.7 **Separate Sales.** To the extent permitted by applicable Legal Requirements, upon the occurrence and during the continuation of an Event of Default, the Mortgaged Property may be sold in one or more parcels and in such manner and order as Mortgagee, in its sole discretion, may elect, it being expressly understood and agreed that the right of sale arising out of any Event of Default shall not be exhausted by any one or more sales.

4.8 **Leases.** Mortgagee is authorized to foreclose this Mortgage subject to the rights of any tenants of the Mortgaged Property, and the failure to make any such tenants parties defendant to any such foreclosure proceedings and to foreclose their rights shall not be, nor be asserted by Mortgagor to be, a defense to any proceedings instituted by Mortgagee to collect the sums secured hereby or to collect any deficiency remaining unpaid after the foreclosure sale of the Mortgaged Property, or any portion thereof. Unless otherwise agreed by Mortgagee in writing, all Leases executed subsequent to the date hereof, or any part thereof, shall be subordinate and inferior to the lien of this Mortgage.

4.9 **Purchase by Mortgagee.** Upon any foreclosure sale (whether judicial or non-judicial), Mortgagee may bid for and purchase the property subject to such sale and, upon compliance with the terms of sale, may hold, retain and possess and dispose of such property in its own absolute right without further accountability.

4.10 **Waiver of Appraisal, Valuation, Stay, Extension and Redemption Laws.** Mortgagor agrees to the full extent permitted by law that if an Event of Default occurs, neither Mortgagor nor anyone claiming through or under it shall or will set up, claim or seek to take advantage of any appraisal, valuation, stay, extension or redemption laws now or hereafter in force, in order to prevent or hinder the enforcement or foreclosure of this Mortgage or the absolute sale of the Mortgaged Property or any portion thereof or the final and absolute putting into possession thereof, immediately after such sale, of the purchasers thereof, and Mortgagor for itself and all who may at any time claim through or under it, hereby waives, to the full extent that it may lawfully so do, the benefit of all such laws, and any and all right to have the assets comprising the Mortgaged Property marshaled upon any foreclosure of the lien hereof and agrees that Mortgagee or any court having jurisdiction to foreclose such lien may sell the Mortgaged Property in part or as an entirety. Mortgagor hereby expressly waives any and all rights of redemption and reinstatement under Section 15-1601(b) of the IMFL, on its own behalf, on behalf of all persons claiming or having an interest (direct or indirect) by, through or under Mortgagor and on behalf of each and every person acquiring any interest in or title to the Mortgaged Property subsequent to the date hereof, it being the intent hereof that any and all such rights of redemption of Mortgagor and such other persons, are and shall be deemed to be hereby waived to the full extent permitted by applicable law.

4.11 **Receiver.** In addition to any provision of this Mortgage authorizing the Mortgagee to take or be placed in possession of the Mortgaged Property, or for the appointment of a receiver, Mortgagee shall have the right, if an Event of Default occurs and is continuing, in accordance with Sections 15-1701 and 15-1702 of the IMFL, to be placed in possession of the Mortgaged Property or at its request to have a receiver appointed, and such receiver, or Mortgagee, if and when placed in possession, shall have, in addition to any other powers provided in this Mortgage, all rights, powers, immunities, and duties as provided for in Sections 15-1701 and 15-1703 of the IMFL. Mortgagee may, if and to the extent permitted by applicable

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law, have a receiver appointed without notice to Mortgagor or any third party, and Mortgagee may waive any requirement that the receiver post a bond. Mortgagee shall have the power to designate and select the Person who shall serve as the receiver and to negotiate all terms and conditions under which such receiver shall serve. Any receiver appointed on Mortgagee's behalf may be an Affiliate of Mortgagee. The Mortgagee may also request that the Illinois Gaming Board, to the extent permitted by applicable Legal Requirements, petition the applicable court of competent jurisdiction for the appointment of a receiver or a licensed third party management company to conduct gaming operations following the foreclosure of this Mortgage. The expenses, including receiver's fees, attorneys' fees and expenses, costs and agent's compensation, incurred pursuant to the powers herein contained shall be secured by this Mortgage. The right to enter and take possession of and to manage and operate the Mortgaged Property and to collect all Rents, whether by a receiver or otherwise, shall be cumulative to any other right or remedy available to Mortgagee under this Mortgage or the other Loan Documents or otherwise available to Mortgagee and may be exercised concurrently therewith or independently thereof. Mortgagee shall be liable to account only for such Rents (including, without limitation, security deposits) actually received by Mortgagee, whether received pursuant to this section or any other provision hereof. Notwithstanding the appointment of any receiver or other custodian, Mortgagee shall be entitled as pledgee to the possession and control of any cash, deposits, or instruments at the time held by, or payable or deliverable under the terms of this Mortgage to, Mortgagee.

4.12 **Suits to Protect the Mortgaged Property.** Mortgagee shall have the power and authority to institute and maintain any suits and proceedings as Mortgagee, in its sole and absolute discretion, may deem advisable (a) to prevent any impairment of the Mortgaged Property by any acts which may be unlawful or in violation of this Mortgage, (b) to preserve or protect its interest in the Mortgaged Property, or (c) to restrain the enforcement of or compliance with any legislation or other Legal Requirements that may be unconstitutional or otherwise invalid, if the enforcement of or compliance with such enactment, rule or order might impair the security hereunder or be prejudicial to Mortgagee's interest.

4.13 **Proofs of Claim.** In the case of any receivership, Insolvency, Bankruptcy, reorganization, arrangement, adjustment, composition or other judicial proceedings affecting Mortgagor, or, to the extent the same would result in an Event of Default hereunder, any Subsidiary, or any guarantor, co-maker or endorser of any of Mortgagor's obligations or its property, Mortgagee, to the extent permitted by law, shall be entitled to file such proofs of claim or other documents as it may deem to be necessary or advisable in order to have its claims allowed in such proceedings for the entire amount due and payable by Mortgagor under the Notes or any other Loan Document (including any Security Document) or any Specified Hedging Agreements, at the date of the institution of such proceedings, and for any additional amounts which may become due and payable by Mortgagor after such date.

4.14 **Mortgagor to Pay the Obligations on Any Default in Payment; Application of Monies by Mortgagee.**

(a) In case of a foreclosure sale of all or any part of the Mortgaged Property and of the application of the proceeds of sale to the payment of the sums secured hereby, Mortgagee shall be entitled to enforce payment from Mortgagor of any additional amounts then

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remaining due and unpaid with respect to the Obligations and to recover judgment against Mortgagor for any portion thereof remaining unpaid, with interest at the rate applicable to overdue principal as set forth in the Credit Agreement (or, if the Credit Agreement is no longer in effect, in any other Loan Document).

(b) Mortgagor hereby agrees, to the extent permitted by applicable Legal Requirements, that no recovery of any such judgment by Mortgagee or other action by Mortgagee and no attachment or levy of any execution upon any of the Mortgaged Property or any other property shall in any way affect the Lien and security interest of this Mortgage upon the Mortgaged Property or any part thereof or any Lien, rights, powers or remedies of Mortgagee hereunder, but such Lien, rights, powers and remedies shall continue unimpaired as before.

(c) Except as provided in Sections 1.4 and 1.5, any monies collected or received by Mortgagee under this Mortgage shall be applied in accordance with Section 3.4 of the Collateral Trust Agreement.

(d) The provisions of this section shall not be deemed to limit or otherwise modify the provisions of any guaranty of the indebtedness evidenced by the Loan Documents or the Specified Hedging Agreements.

4.15 Delay or Omission; No Waiver. No delay or omission of Mortgagee or any Priority Lien Secured Party to exercise any right, power or remedy upon any Event of Default shall exhaust or impair any such right, power or remedy or shall be construed to waive any such Event of Default or to constitute acquiescence therein. Every right, power and remedy given to Mortgagee whether contained herein or in the other Loan Documents or otherwise available to Mortgagee may be exercised from time-to-time and as often as may be deemed expedient by Mortgagee.

4.16 No Waiver of One Default to Affect Another No waiver of any Event of Default hereunder shall extend to or affect any subsequent or any other Event of Default then existing, or impair any rights, powers or remedies consequent thereon. If Mortgagee, any then applicable Priority Lien Debt Representative, or the required percentage of the Additional Priority Lien Lenders (as determined pursuant to the Additional Priority Lien Agreements), to the extent applicable under the Additional Priority Lien Agreements, (a) grants forbearance or an extension of time for the payment of any sums secured hereby; (b) takes other or additional security for the payment thereof; (c) waives or does not exercise any right granted in the Notes, the Credit Agreement, the Additional Priority Lien Agreements, the Collateral Trust Agreement, this Mortgage, or any other Loan Document (including any Security Document); (d) releases any part of the Mortgaged Property from the lien or security interest of this Mortgage or any other instrument securing the Obligations; (e) consents to the filing of any map, plat or replat of the Site (to the extent such consent is required); (f) consents to the granting of any easement on the Site (to the extent such consent is required); or (g) makes or consents to any agreement changing the terms of this Mortgage or any other Loan Document subordinating the lien or any charge hereof, no such act or omission shall release, discharge, modify, change or affect the original liability of Mortgagor under the Notes, this Mortgage or any other Loan Document (including any Security Document) or otherwise, or any subsequent purchaser of the Mortgaged Property or any part thereof or any maker, co-signer, surety or guarantor. No such act or omission shall

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preclude Mortgagee from exercising any right, power or privilege herein granted or intended to be granted in case of any Event of Default then existing or of any subsequent Event of Default, nor, except as otherwise expressly provided in an instrument or instruments executed by Mortgagee, shall the lien or security interest of this Mortgage be altered thereby, except to the extent expressly provided in any releases, maps, easements or subordinations described in clause (d), (e), (f) or (g) above of this Section 4.16. In the event of the sale or transfer by operation of law or otherwise of all or any part of the Mortgaged Property, Mortgagee, without notice to any person, firm or corporation, is hereby authorized and empowered to deal with any such vendee or transferee with reference to the Mortgaged Property or the indebtedness secured hereby, or with reference to any of the terms or conditions hereof, as fully and to the same extent as it might deal with the original parties hereto and without in any way releasing or discharging any of the liabilities or undertakings hereunder, or waiving its right to declare such sale or transfer an Event of Default as provided herein. Notwithstanding anything to the contrary contained in this Mortgage or any other Loan Document (including any Security Document), (1) in the case of any non-monetary Event of Default, Mortgagee and the other Priority Lien Secured Parties may continue to accept payments due hereunder without thereby waiving the existence of such or any other Event of Default and (2) in the case of any monetary Event of Default, Mortgagee and the other Priority Lien Secured Parties may accept partial payments of any sums due hereunder without thereby waiving the existence of such Event of Default if the partial payment is not sufficient to completely cure such Event of Default.

4.17 Discontinuance of Proceedings; Position of Parties Restored. If Mortgagee shall have proceeded to enforce any right or remedy under this Mortgage by foreclosure, entry of judgment or otherwise and such proceedings shall have been discontinued or abandoned for any reason, or such proceedings shall have resulted in a final determination adverse to Mortgagee, then and in every such case Mortgagor and Mortgagee shall be restored to their former positions and rights hereunder, and all rights, powers and remedies of Mortgagee shall continue as if no such proceedings had occurred or had been taken.

4.18 Remedies Cumulative. No right, power or remedy, including without limitation remedies with respect to any security for the Obligations, conferred upon or reserved to Mortgagee by this Mortgage or any other Loan Document (including any Security Document) is exclusive of any other right, power or remedy, but each and every such right, power and remedy shall be cumulative and concurrent and shall be in addition to any other right, power and remedy given hereunder or any other Loan Document (including any Security Document), now or hereafter existing at law, in equity or by statute, and Mortgagee shall be entitled to resort to such rights, powers, remedies or security as Mortgagee shall in its sole and absolute discretion deem advisable.

4.19 Interest After Event of Default. If an Event of Default shall have occurred and is continuing, all sums outstanding and unpaid under the Notes, this Mortgage and the other Loan Documents and the Specified Hedging Agreements shall, at Mortgagee's option, bear interest at the rate applicable to overdue principal set forth in the Credit Agreement (or, if the Credit Agreement is no longer in effect, in any other Loan Document) until such Event of Default has been waived. Mortgagor's obligation to pay such interest shall be secured by this Mortgage.

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4.20 **Foreclosure; Expenses of Litigation.** If Mortgagee forecloses, reasonable attorneys' fees and expenses for services in the supervision of said proceedings shall be allowed to Mortgagee as part of the foreclosure costs. In the event of foreclosure of the lien hereof, there shall be allowed and included as additional indebtedness all reasonable and documented expenditures and expenses which may be paid or incurred by or on behalf of Mortgagee for attorneys' fees, appraiser's fees, outlays for documentary and expert evidence, stenographers' charges, publication costs, and costs (which may be estimated as to items to be expended after foreclosure sale or, in the instance of judicial foreclosure, entry of the decree) of procuring all such abstracts of title, title searches and examinations, title insurance policies and guarantees, and similar data and assurances with respect to title as Mortgagee may deem reasonably advisable either to prosecute such suit or to evidence to a bidder at any sale which may be had pursuant to such decree the true condition of the title to or the value of the Mortgaged Property or any portion thereof. All expenditures and expenses of the nature in this section mentioned, and such expenses and fees as may be incurred in the protection of the Mortgaged Property and the maintenance of the lien and security interest of this Mortgage, including the fees of any attorney employed by Mortgagee in any litigation or proceeding affecting this Mortgage or any other Loan Document (including any Security Document), the Mortgaged Property or any portion thereof, including, without limitation, civil, probate, appellate and bankruptcy proceedings, or in preparation for the commencement or defense of any proceeding or threatened suit or proceeding, shall be immediately due and payable by Mortgagor, with interest thereon at the rate applicable to overdue principal set forth in the Credit Agreement (or, if the Credit Agreement is no longer in effect, in any other Loan Document), and shall be secured by this Mortgage.

4.21 **Deficiency Judgments.** To the fullest extent permitted by applicable law, if after foreclosure of this Mortgage or Mortgagee's sale hereunder, there shall remain any deficiency with respect to any Obligations, and Mortgagee shall institute any proceedings to recover such deficiency or deficiencies, all such amounts shall continue to bear interest at the rate applicable to overdue principal set forth in the Credit Agreement (or, if the Credit Agreement is no longer in effect, in any other Loan Document). Mortgagor waives any defense to Mortgagee's recovery against Mortgagor of any deficiency after any foreclosure sale of the Mortgaged Property. Mortgagor expressly waives any defense or benefits that may be derived from any statute granting Mortgagor any defense to any such recovery by Mortgagee. In addition, Mortgagee shall be entitled to recovery of all of its reasonable and documented costs and expenditures (including without limitation any court imposed costs) in connection with such proceedings, including its reasonable attorneys' fees and expenses, appraisal fees and the other costs, fees and expenditures referred to in Section 4.20 above. This provision shall survive any foreclosure or sale of the Mortgaged Property, any portion thereof and/or the extinguishment of the lien hereof.

4.22 **Compliance with IMFL.** In the event that any provision in this Mortgage shall be inconsistent with any provision of the IMFL, the provisions of IMFL shall take precedence over the provisions of this Mortgage, but shall not invalidate or render unenforceable any other provision of this Mortgage that can be construed in a manner consistent with IMFL. If any provision of this Mortgage shall grant to Mortgagee any rights or remedies upon default by Mortgagor which are more limited than the rights that would otherwise be vested in Mortgagee under IMFL in the absence of said provision, Mortgagee shall be vested with the rights granted in IMFL to the full extent permitted by law. Without limiting the generality of the foregoing, all

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expenses incurred by Mortgagee to the extent reimbursable under Sections 15-1510 and 15-1512 of IMFL, whether incurred before or after any decree or judgment of foreclosure, and whether enumerated in this Mortgage, shall be added to the indebtedness secured by this Mortgage or by the judgment of foreclosure.

4.23 Waiver of Jury Trial. EACH OF MORTGAGOR, AND BY ITS ACCEPTANCE HEREOF, MORTGAGEE, HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT TO TRIAL BY JURY OF ANY CLAIM, DEMAND, ACTION OR CAUSE OF ACTION ARISING UNDER ANY LOAN DOCUMENT OR IN ANY WAY CONNECTED WITH OR RELATED OR INCIDENTAL TO THE DEALINGS OF MORTGAGOR AND MORTGAGEE OR ANY OF THEM WITH RESPECT TO ANY LOAN DOCUMENT, OR THE TRANSACTIONS RELATED THERETO, IN EACH CASE WHETHER NOW EXISTING OR HEREAFTER ARISING, AND WHETHER FOUNDED IN CONTRACT OR TORT OR OTHERWISE; AND EACH OF MORTGAGOR, AND BY ITS ACCEPTANCE HEREOF, MORTGAGEE, AGREES AND CONSENTS THAT ANY SUCH CLAIM, DEMAND, ACTION OR CAUSE OF ACTION SHALL BE DECIDED BY COURT TRIAL WITHOUT A JURY, AND THAT MORTGAGOR AND MORTGAGEE MAY FILE AN ORIGINAL COUNTERPART OR A COPY OF THIS SECTION 4.23 WITH ANY COURT AS WRITTEN EVIDENCE OF THE CONSENT OF MORTGAGOR AND MORTGAGEE TO THE WAIVER OF THEIR RIGHT TO TRIAL BY JURY.

4.24 Exculpation of Mortgagee The acceptance by Mortgagee of the assignment contained herein with all of the rights, powers, privileges and authority created hereby shall not, prior to entry upon and taking possession of the Mortgaged Property by Mortgagee, be deemed or construed to make Mortgagee a "mortgagee in possession"; nor thereafter or at any time or in any event obligate Mortgagee to appear in or defend any action or proceeding relating to the Leases, the Rents or the Mortgaged Property, or to take any action hereunder or to expend any money or incur any expenses or perform or discharge any obligation, duty or liability under any Lease or to assume any obligation or responsibility for any security deposits or other deposits except to the extent such deposits are actually received by Mortgagee, nor shall Mortgagee, prior to such entry and taking, be liable in any way for any injury or damage to person or property sustained by any Person in or about the Mortgaged Property.

4.25 Insurance Policies. Wherever provision is made in this Mortgage, the Credit Agreement or other Loan Documents for insurance policies to bear mortgage clauses or other loss payable clauses or endorsements in favor of Mortgagee, or to confer authority upon Mortgagee to settle or participate in the settlement of losses under policies of insurance or to hold and disburse or otherwise control use of insurance proceeds, from and after the entry of judgment of foreclosure, all such rights and powers of the Mortgagee shall continue in the Mortgagee as judgment creditor or mortgagee until confirmation of sale.

ARTICLE FIVE MISCELLANEOUS PROVISIONS

5.1 Heirs, Successors and Assigns Included in Parties. Whenever one of the parties hereto is named or referred to herein, the heirs, successors and assigns of such party shall

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be included and all covenants and agreements contained in this Mortgage, by or on behalf of Mortgagor or Mortgagee shall bind and inure to the benefit of its heirs, successors and assigns, whether so expressed or not.

5.2 **Addresses for Notices, Etc.** Any notice, report, demand or other instrument authorized or required to be given or furnished under this Mortgage to Mortgagor or Mortgagee shall be deemed given or furnished (a) when addressed to the party intended to receive the same, at the address of such party set forth below, and delivered by hand at such address or (b) three (3) days after the same is deposited in the United States mail as first class certified mail, return receipt requested, postage paid, whether or not the same is actually received by such party:

Mortgagee: Wilmington Trust, National Association
50 South Sixth Street, Suite 1290
Minneapolis, MN 55402
Attention: Renee Kuhl
Facsimile: (612) 217-5651
Telephone: (612) 217-5635

With a copy to: Salans LLP
Rockefeller Center
620 Fifth Avenue
New York, NY 10020-2457
Attention: Sahra Dalfen, Esq.
Facsimile: (212) 307-3340
Telephone: (212) 632-8340

Mortgagor: Midwest Gaming & Entertainment, LLC
900 North Michigan Avenue
Suite 900
Chicago, IL 60611
Attention: Greg Carlin
Facsimile: (312) 915-2881
Telephone: (312) 915-2882

With copies to: Kirkland & Ellis LLP
300 North LaSalle
Chicago, Illinois 60654
Facsimile: (312) 862-2200
Telephone: (312) 862-5275
Attention: Rachel S. Brown, Esq.

5.3 **Change of Notice Address.** Any Person may change the address to which any such notice, report, demand or other instrument is to be delivered or mailed to that person, by furnishing written notice of such change to the other parties, but no such notice of change shall be effective unless and until received by such other parties.

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5.4 **Headings.** The headings of the articles, sections, paragraphs and subdivisions of this Mortgage are for convenience of reference only, are not to be considered a part hereof, and shall not limit or expand or otherwise affect any of the terms hereof.

5.5 **Invalid Provisions to Affect No Others.** In the event that any of the covenants, agreements, terms or provisions contained herein or in the Notes, the Credit Agreement, the Additional Priority Lien Agreements, the Collateral Trust Agreement or any other Loan Document (including the Security Documents) shall be invalid, illegal or unenforceable in any respect, the validity of the lien hereof and the remaining covenants, agreements, terms or provisions contained herein or in the Notes, the Credit Agreement, the Additional Priority Lien Agreements, the Collateral Trust Agreement and other Loan Documents (including the Security Documents) shall be in no way affected, prejudiced or disturbed thereby. To the extent permitted by law, Mortgagor waives any provision of law which renders any provision hereof prohibited or unenforceable in any respect.

5.6 **Changes and Priority Over Intervening Liens.** Neither this Mortgage nor any term hereof may be changed, waived, discharged or terminated orally, or by any action or inaction, but only by an instrument in writing signed by the party against which enforcement of the change, waiver, discharge or termination is sought. To the extent permitted by applicable law, any agreement hereafter made by Mortgagor and Mortgagee relating to this Mortgage shall be superior to the rights of the holder of any intervening lien or encumbrance.

5.7 **Estoppel Certificates.** Within ten (10) Business Days after Mortgagee's written request, Mortgagor shall from time-to-time execute a certificate, in recordable form (an "**Estoppel Certificate**"), stating, except to the extent it would be inaccurate to so state: (a) the current amount of the Obligations secured hereunder and all elements thereof, including principal, interest, and all other elements; (b) that Mortgagor has no defense, offset, claim, counterclaim, right of recoupment, deduction, or reduction against any of the Obligations secured hereunder; (c) that none of the Loan Documents (including the Security Documents) have been amended, whether orally or in writing; (d) that Mortgagor has no claims against Mortgagee of any kind; (e) that any power of attorney granted to Mortgagee is in full force and effect; and (f) such other matters relating to this Mortgage or any other Loan Document (including any Security Document) and the relationship of Mortgagor and Mortgagee as Mortgagee shall request. In addition, the Estoppel Certificate shall set forth the reasons why it would be inaccurate to make any of the foregoing assurances.

5.8 **Waiver of Setoff and Counterclaim; Other Waivers.** All Obligations shall be payable without setoff, counterclaim or any deduction whatsoever. Mortgagor hereby waives the right to assert a counterclaim (other than a compulsory counterclaim) in any action or proceeding brought against it by Mortgagee and/or any Priority Lien Secured Party under the Loan Documents, or arising out of or in any way connected with this Mortgage or the other Loan Documents (including the Security Documents) or the Obligations.

5.9 **Governing Law.** THIS MORTGAGE AND THE RIGHTS AND OBLIGATIONS OF THE MORTGAGOR, MORTGAGEE, AND THE PRIORITY LIEN SECURED PARTIES HEREUNDER SHALL BE CONSTRUED IN ACCORDANCE WITH, AND GOVERNED BY, THE LAWS OF THE STATE OF ILLINOIS (WITHOUT REGARD

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TO CONFLICT OF LAWS PROVISIONS THAT WOULD RESULT IN THE APPLICATION OF LAWS OTHER THAN THE LAW OF THE STATE OF ILLINOIS); PROVIDED, HOWEVER, THAT (A) FOR PERSONAL PROPERTY, THE PERFECTION, EFFECT OF PERFECTION OR NON-PERFECTION AND PRIORITY OF THE SECURITY INTEREST SHALL BE SUBJECT TO ANY MANDATORY CHOICE OF LAW RULES IN THE UCC; (B) MORTGAGOR AGREES THAT TO THE EXTENT DEFICIENCY JUDGMENTS ARE AVAILABLE UNDER THE LAWS OF THE STATE AFTER A FORECLOSURE (JUDICIAL OR NON-JUDICIAL) OF THE MORTGAGED PROPERTY, OR ANY PORTION THEREOF, OR ANY OTHER REALIZATION THEREON BY MORTGAGEE OR ANY LENDER UNDER THE LOAN DOCUMENTS, MORTGAGEE OR SUCH LENDER, AS THE CASE MAY BE, SHALL HAVE THE RIGHT TO SEEK SUCH A DEFICIENCY JUDGMENT AGAINST MORTGAGOR IN THE STATE; AND (C) MORTGAGOR AGREES THAT IF MORTGAGEE OR ANY LENDER UNDER THE LOAN DOCUMENTS OBTAINS A DEFICIENCY JUDGMENT IN ANOTHER STATE AGAINST MORTGAGOR, THEN MORTGAGEE OR SUCH LENDER, AS THE CASE MAY BE, SHALL HAVE THE RIGHT TO ENFORCE SUCH JUDGMENT IN THE STATE TO THE EXTENT PERMITTED UNDER THE LAWS OF THE STATE, AS WELL AS IN OTHER STATES.

5.10 **Discharge.** Upon the indefeasible payment in full in cash of the Obligations and the termination of all obligations of Mortgagee and the Priority Lien Secured Parties under the Loan Documents, then this Mortgage and the lien and security interest created hereby shall be of no further force and effect and all right, title and interest in and to the Mortgaged Property shall revert to Mortgagor. Mortgagee, at the request and the expense of Mortgagor, shall promptly execute a satisfaction, termination and release of mortgage and such other documents as may be reasonably requested by Mortgagor to evidence the discharge and satisfaction of this Mortgage and the release of Mortgagor from its obligations hereunder.

5.11 **Right of Entry.** Mortgagee may make or cause to be made entry upon and inspections of the Mortgaged Property or any part thereof in person or by agent as provided in the Credit Agreement and the other Loan Documents.

5.12 **Corrections.** Mortgagor shall, upon reasonable request of Mortgagee, promptly correct any defect, error or omission which may be discovered in the contents of this Mortgage (including, but not limited to, in the exhibits and schedules attached hereto) or in the execution or acknowledgement hereof, and shall execute, acknowledge and deliver such further instruments and do such further acts as may be reasonably necessary or as may be reasonably requested by Mortgagee to carry out more effectively the purposes of this Mortgage, to subject to the lien and security interest hereby created any of Mortgagor's properties, rights or interest covered or intended to be covered hereby, and to perfect and maintain such lien and security interest.

5.13 **Statute of Limitations.** To the fullest extent allowed by the law, the right to plead, use or assert any statute of limitations as a plea or defense or bar of any kind, or for any purpose, to any debt, demand or obligation secured or to be secured hereby, or to any complaint or other pleading or proceeding filed, instituted or maintained for the purpose of enforcing this Mortgage or any rights hereunder, is hereby waived by Mortgagor.

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5.14 **Subrogation**. Should the proceeds of any Loan or advance made by Mortgagee, the Lender or any Additional Priority Lien Parties under the Credit Agreement or any other Loan Document, repayment of which is hereby secured, or any part thereof, or any amount paid out or advanced by Mortgagee, the Lender or any Additional Priority Lien Parties under the Credit Agreement or any other Loan Document, be used directly or indirectly to pay off, discharge, or satisfy, in whole or in part, any prior or superior lien or encumbrance upon the Mortgaged Property, or any part thereof, then, as additional security hereunder, Mortgagee shall be subrogated to any and all rights, superior titles, liens, and equities owned or claimed by any owner or holder of said outstanding liens, charges, and indebtedness, however remote, regardless of whether said liens, charges, and indebtedness are acquired by assignment or have been released of record by the holder thereof upon payment.

5.15 **Reinstatement**. This Mortgage, the obligations of Mortgagor hereunder, and the liens, rights, powers and remedies of Mortgagee hereunder, shall continue to be effective, or be automatically reinstated, as the case may be, if at any time any amount applied to the payment of any of the Obligations is rescinded or must otherwise be restored or returned to Mortgagor, or any other Person (or paid to the creditors of any of them, or to any custodian, Receiver, or other officer with similar powers with respect to any of them, or with respect to any part of their property) upon the Insolvency, Bankruptcy, dissolution, liquidation or reorganization of Mortgagor, or any such Person, or upon or as a result of the appointment of a custodian, Receiver, trustee or other officer with respect to any of them, or with respect to any part of their property, or otherwise, all as though such payment had not been made.

5.16 **No Waiver**. The exercise of the privileges granted in this Mortgage to perform Mortgagor's obligations under the agreements which constitute part of the Mortgaged Property shall in no event be considered or constitute a waiver of any right which Mortgagee may have at any time, after an Event of Default shall have occurred and be continuing, to declare the Obligations to be immediately due and payable.

5.17 **Extension, Rearrangement or Renewal of Obligations**. It is expressly agreed that any of the Obligations at any time secured hereby may be from time-to-time extended for any period, or with the consent of Mortgagor rearranged or renewed, and that any part of the security herein described, or any other security for the Obligations, may be waived or released, without altering, varying or diminishing the force, effect or lien or security interest of this Mortgage; and the lien and security interest granted by this Mortgage shall continue as a prior lien and security interest on all of the Mortgaged Property not expressly so released until the Obligations are fully paid and this Mortgage is terminated in accordance with the provisions hereof; and no other security now existing or hereafter taken to secure the payment of the Obligations or any part thereof or the performance of any obligation or liability of Mortgagor whatsoever shall in any manner impair or affect the security given by this Mortgage; and all security for the payment of the Obligations or any part thereof and the performance of any obligation or liability shall be taken, considered and held as cumulative.

5.18 **Forcible Detainer**. If and to the extent permitted by applicable law, Mortgagor agrees for itself and all Persons claiming by, through or under it, that subsequent to foreclosure hereunder in accordance with this Mortgage and applicable Legal Requirements, if Mortgagor shall hold possession of the Mortgaged Property or any part thereof, Mortgagor or the Persons so

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holding possession shall be guilty of trespass; and any such Person (including Mortgagor) failing or refusing to surrender possession upon demand shall be guilty of forcible detainer and shall be liable to Mortgagee or any purchaser in foreclosure, as applicable, for reasonable rental on said premises, and shall be subject to eviction and removal in accordance with applicable Legal Requirements.

5.19 **Waiver of Stay or Extension.** To the extent permitted to be waived by applicable Legal Requirements, Mortgagor shall not at any time insist upon or plead or in any manner whatever claim the benefit or advantage of any stay, extension or moratorium law now or at any time hereafter in force in any locality where the Mortgaged Property or any part thereof may or shall be situated, nor shall Mortgagor claim any benefit or advantage from any law now or hereafter in force providing for the valuation or appraisal of the Mortgaged Property or any part thereof prior to any sale thereof to be made pursuant to any provision of this Mortgage or to a decree of any court of competent jurisdiction, nor after any such sale shall Mortgagor claim or exercise any right conferred by any law now or at any time hereafter in force to redeem the Mortgaged Property so sold or any part thereof; and Mortgagor hereby expressly waives all benefit or advantage of any such law or laws and the appraisal of the Mortgaged Property or any part thereof, and covenants that Mortgagor shall not hinder or delay the execution of any power herein granted and delegated to Mortgagee but that Mortgagor shall permit the execution of every such power as though no such law had been made.

5.20 **Application of Payment.** In the event that any part of the Obligations cannot lawfully be secured hereby, or in the event that the lien and security interest hereof cannot be lawfully enforced to pay any part of the Obligations, or in the event that the lien or security interest created by this Mortgage shall be invalid or unenforceable as to any part of the Obligations, then all payments on the Obligations shall be deemed to have been first applied to the complete payment and liquidation of that part of the Obligations which is not secured by this Mortgage and the unsecured portion of the Obligations shall be completely paid and liquidated prior to the payment and liquidation of the remaining secured portion of the Obligations.

5.21 **Reduction of Secured Amount.** In the event that the amount secured by this Mortgage is less than the Obligations, then the amount secured shall be reduced only by the last and final sums that Mortgagor repays with respect to the Obligations and shall not be reduced by any intervening repayments of the Obligations unless arising from the Mortgaged Property. So long as the balance of the Obligations exceeds the amount secured, any payments of the Obligations shall not be deemed to be applied against, or to reduce, the portion of the Obligations secured by this Mortgage. Such payments shall instead be deemed to reduce only such portions of the Obligations as are secured by other collateral located outside of the state in which the Mortgaged Property is located or as are unsecured.

5.22 **Renewal; Etc.** Mortgagee may at any time and from time-to-time renew or extend this Mortgage, or alter or modify the same in any way, or waive any of the terms, covenants or conditions hereof in whole or in part and may release any portion of the Mortgaged Property or any other security, and grant such extensions and indulgences in relation to the Obligations as Mortgagee may determine, without the consent of any junior lienor or encumbrancer and without any obligation to give notice of any kind thereto and without in any manner affecting the priority of the lien and security interest hereof on any part of the Mortgaged

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Property; provided that nothing in this Section 5.22 shall grant Mortgagee the right to alter or modify this Mortgage without the consent of Mortgagor unless otherwise specifically permitted in this Mortgage.

5.23 **Compliance With Usury Law.** The Loan Documents are intended to be performed in accordance with, and only to the extent permitted by, all applicable Legal Requirements. It is expressly stipulated and agreed to be the intent of Mortgagor and Mortgagee at all times to comply with the applicable Illinois law governing the maximum rate or amount of interest payable on or in connection with the Obligations (or applicable United States federal law to the extent that it permits Mortgagee to contract for, charge, take, reserve or receive a greater amount of interest than under Illinois law). If any applicable Legal Requirement is ever judicially interpreted so as to render usurious any amount called for under the Loan Documents, or contracted for, charged, taken, reserved or received with respect to the extension of credit evidenced by the Loan Documents or if acceleration of the maturity of the Obligations or if any prepayment by Mortgagor results in Mortgagor having paid any interest in excess of that permitted by applicable Legal Requirements, then it is Mortgagor's and Mortgagee's express intent that all excess amounts theretofore collected by Mortgagee be credited on the principal balance due under the Loan Documents (or, if the Loan Documents have been or would thereby be paid in full, refunded to Mortgagor), and the provisions of the Loan Documents immediately be deemed reformed and the amounts thereafter collectible thereunder reduced, without the necessity of the execution of any new document, so as to comply with the applicable Legal Requirement, but so as to permit the recovery of the fullest amount otherwise called for hereunder and thereunder. The right to accelerate maturity of Obligations does not include the right to accelerate any interest which has not otherwise accrued on the date of such acceleration, and Mortgagee does not intend to collect any unearned interest in the event of acceleration. All sums paid or agreed to be paid to Mortgagee for the use, forbearance or detention of the Obligations shall, to the extent permitted by applicable Legal Requirements, be amortized, prorated, allocated and spread throughout the full term of the Obligations until payment in full so that the rate or amount of interest on account of the Obligations does not exceed the applicable usury ceiling. The proceeds of the indebtedness secured hereby shall be used solely for business purposes and in furtherance of the regular business affairs of Mortgagor, and the entire principal obligation secured by this Mortgage constitutes (i) a "business loan" as that term is defined in, and for all purposes of, 815 ILCS 205/4 (1) (c), and (ii) a "loan secured by a mortgage on real estate" within the purview and operation of 815 ILCS 205/4(1)(l).

5.24 **Entire Agreement.** This Mortgage, together with any other agreement executed in connection herewith, is intended by the parties as a final expression of their agreement and is intended as a complete and exclusive statement of the terms and conditions thereof.

5.25 **Time.** Time is of the essence of this Mortgage.

5.26 **Third Party Rights.** Nothing in this Mortgage, expressed or implied, is intended or shall be construed to confer upon, or give to any Person, other than Mortgagor, Mortgagee and the other Priority Lien Secured Parties, any security, rights, remedies or claims, legal or equitable, under or by reason hereof, or any covenant or condition hereof; and this Mortgage and the covenants and agreements herein contained are and shall be held to be for the sole and exclusive benefit of Mortgagor, Mortgagee and the other Priority Lien Secured Parties.

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5.27 **Homestead.** Mortgagor hereby waives and renounces all homestead and exemption rights provided by the constitution and the laws of the United States and of any state, in and to the Mortgaged Property as against the collection of the Obligations, or any part hereof.

5.28 **Context.** In this Mortgage, whenever the context so requires, the neuter includes the masculine and feminine, and the singular includes the plural, and vice versa.

5.29 **Calendar Days.** Unless otherwise specified herein, any reference to “days” in this Mortgage shall be deemed to mean “calendar days.”

5.30 **Interpretation.** As used in this Mortgage unless the context clearly requires otherwise: The terms “herein” or “hereunder” and similar terms without reference to a particular section shall refer to the entire Mortgage and not just to the section in which such terms appear; the term “lien” shall also mean a security interest, and the term “security interest” shall also mean a lien.

5.31 **Suretyship Waivers.** The waivers and agreements of Mortgagor (as guarantor thereunder) set forth in the Credit Agreement (or similar waivers and agreements in any other Loan Document), shall apply to the provisions hereof *mutatis mutandis* and shall be deemed incorporated herein by this reference.

5.32 **Scope of Liability.**

(a) Notwithstanding anything to the contrary in this Agreement, but subject to clauses (b), (c) and (d) below, no present or future Constituent Member (as defined in Section 5.32(e) below) in the Borrower, nor any present or future shareholder, officer, director, partner, employee, trustee, member, affiliate, beneficiary, advisor, principal, participant or agent of or in the Borrower or any Constituent Member in the Borrower, shall have any personal liability, directly or indirectly, under or in connection with this Agreement or any instrument or certificate executed in connection with this Agreement or any amendment(s) or modification(s) to any of the foregoing made at any time or times, heretofore or hereafter.

(b) For purposes of this Agreement, neither the negative capital account of any Constituent Member in the Borrower, nor any obligation of any Constituent Member in the Borrower, to restore a negative capital account or to contribute or advance capital to the Borrower or to any Constituent Member in the Borrower, shall at any time be deemed to be the property or an asset of the Borrower or any such other Constituent Member (and neither any Lender nor any of its successors or assigns shall have any right to collect, enforce or proceed against with respect to any such negative capital account or such Constituent Member's obligation to restore, contribute or advance capital to the applicable limited liability company or partnership).

(c) In no way shall this Section 5.32 in any way affect or diminish or constitute a waiver, release or discharge of a Constituent Member to the extent of its actions for (i) any specific written obligation, covenant, or agreement set forth in any Loan Document made by any of the Constituent Members (including any equity pledge agreement and any security granted by any of the Constituent Members in support of the Obligations of such Persons under any Loan Document or as security for the Obligations) or (ii) any right or remedy of any Priority

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Lien Secured Party with respect to, and each of the Constituent Members shall remain fully liable to the extent that it would otherwise be liable under applicable law for its own actions with respect to, any fraud, willful misrepresentation or willful misconduct or conversion, willful misappropriation of any earnings, revenues, rents, issues, profits or proceeds from or of the Mortgaged Property that should or would have been paid as provided herein or paid or delivered to any Priority Lien Secured Party (or any assignee or beneficiary thereof or successor thereto) towards any payment required under the Credit Agreement or any other Loan Document.

(d) The foregoing shall not bar an action for specific performance against a Constituent Member to cause any Loan Party to perform any obligation or comply with any provision under this Agreement or another Loan Document; provided any such action shall be solely for specific performance and shall not otherwise entail any other claim or liability against any such Constituent Member (including, without limitation, any claim for damages of any type or other claim relating to any matter other than (i) the taking of action by such Constituent Member necessary to give effect to a judgment of specific performance obtained against a Company and (ii) any claim for which such Constituent Member has liability pursuant to another provision of this Section).

(e) For purposes of this Section 5.32, "Constituent Member" shall mean any Person that is a partner or member of the Borrower, or in or of any partner in or member of the Borrower, or any Person that, directly or indirectly through one or more limited liability companies, partnerships, corporations or other entities, is a partner in or member of the Borrower or of any partner in or member of the Borrower.

5.33 **Concerning Mortgagee.** The Mortgagee has been appointed as Collateral Trustee pursuant to the Collateral Trust Agreement. The actions of the Mortgagee hereunder are subject to the provisions of the Collateral Trust Agreement.

(a) The Mortgagee shall be deemed to have exercised reasonable care in the custody and preservation of the Mortgaged Property in its possession if such Mortgaged Property is accorded treatment substantially equivalent to that which the Mortgagee, in its individual capacity, accords its own property consisting of similar instruments or interests, it being understood that neither the Mortgagee nor any of the Priority Lien Secured Parties shall have responsibility for taking any necessary steps to preserve rights against any person with respect to any Mortgaged Property.

(b) The Mortgagee shall be entitled to rely upon any written notice, statement, certificate, order or other document or any telephone message believed by it to be genuine and correct and to have been signed, sent or made by the proper person, and, with respect to all matters pertaining to this Mortgage and its duties hereunder, upon advice of counsel selected by it.

(c) If any portion of the Mortgaged Property also constitutes collateral granted to the Mortgagee for the benefit of the Priority Lien Secured Parties under any other deed of trust, mortgage, security agreement, pledge or instrument of any type, in the event of any conflict between the provisions hereof and the provisions of such other deed of trust, mortgage, security agreement, pledge or instrument of any type in respect of such collateral, the Mortgagee, at the

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direction of the Priority Lien Secured Parties, shall select which provision or provisions shall control.

[SIGNATURE PAGE FOLLOWS]

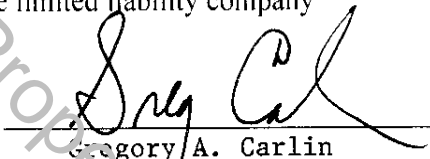
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IN WITNESS WHEREOF, Mortgagor has executed this First Lien Mortgage, Leasehold Mortgage, Assignment of Rents and Leases, Security Agreement and Fixture Filing on the day and year first above written.

MORTGAGOR:

MIDWEST GAMING & ENTERTAINMENT, LLC,
a Delaware limited liability company

By: 
Name: Gregory A. Carlin
Title: Chief Executive Officer

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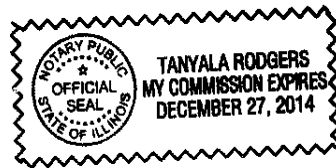
STATE OF Illinois)
) ss.
COUNTY OF Cook)

I, the undersigned, a Notary Public, in and for the County and State aforesaid, DO HEREBY CERTIFY, that Gregory A. Carlin, personally known to me to be the Chief Executive Officer of Midwest Gaming & Entertainment, LLC, a Delaware limited liability company, and personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that as such Chief Executive Officer, he/she signed and delivered the said instrument, pursuant to authority given by the Sole Member of said limited liability company, as his/her free and voluntary act, and as the free and voluntary act and deed of said limited liability company for the uses and purposes therein set forth.

Given under my hand and official seal, this 4th day of September, 2012.

Tanyala Rodgers

Notary Public Commission expires 12/27/14



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SCHEDULE A

DESCRIPTION OF LAND

THE EASTERLY 205.12 FEET OF THAT PART OF THE SOUTHWEST $\frac{1}{4}$ OF SECTION 34, TOWNSHIP 41 NORTH, RANGE 12, EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE WEST LINE OF THE SOUTHWEST $\frac{1}{4}$ OF SAID SECTION 34 WHICH IS 1186.06 FEET SOUTH OF THE NORTHWEST CORNER OF SAID $\frac{1}{4}$ SECTION, THENCE EASTERLY ON A LINE FORMING AN ANGLE OF 87 DEGREES 31 MINUTES 20 SECONDS, MEASURED FROM NORTH TO EAST, WITH THE WEST LINE OF THE SOUTHWEST $\frac{1}{4}$ OF SECTION 34 AFORESAID, 440.37 FEET TO THE CENTER LINE OF RIVER ROAD; THENCE SOUTHEASTERLY ALONG THE CENTER LINE OF RIVER ROAD, 130.72 FEET; THENCE WESTERLY PARALLEL WITH THE NORTHERLY LINE OF THE TRACT DESCRIBED, 479.96 FEET TO THE WEST LINE OF THE SOUTHWEST $\frac{1}{4}$ OF SECTION 34 AFORESAID; THENCE NORTH ALONG SAID LINE, 126.30 FEET TO THE POINT OF BEGINNING, IN COOK COUNTY, ILLINOIS.

EXCEPT THAT PART THEREOF TAKEN FOR DES PLAINES RIVER ROAD BY ORDERS ENTERED IN CIRCUIT COURT OF COOK COUNTY, ILLINOIS, CASE NO. 2010 L 050494, COPIES OF WHICH ORDERS WERE RECORDED JUNE 3, 2010 AS DOCUMENT 1015418087, JUNE 8, 2010 AS DOCUMENT 1015913069 AND JUNE 23, 2011 AS DOCUMENT 1117418048, IN COOK COUNTY, ILLINOIS.

Property Address: 2980 Des Plaines River Road, Des Plaines Illinois 60018, also known as 2980 S. River Road, Des Plaines, Illinois 60018.

PIN: 09-34-300-032-0000

Schedule A to First Lien Mortgage (Midwest Gaming)