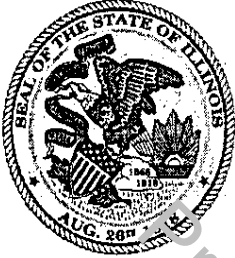




1811540009

Illinois Anti-Predatory Lending Database Program

Certificate of Exemption



Report Mortgage Fraud 844-768-1713

Doc# 1811540009 Fee \$86.00

RHSP FEE:\$9.00 RPRF FEE: \$1.00

KAREN A. YARBROUGH

COOK COUNTY RECORDER OF DEEDS

DATE: 04/25/2018 01:30 PM PG: 1 OF 25

The property identified as: PIN: 13-24-400-006-0000

Address:

Street: 3401 N. California Avenue

Street line 2:

City: Chicago

State: IL

ZIP Code: 60618

Lender: Deutsche Bank Trust Company Americas

Borrower: Williams Electronic Games, Inc.

Loan / Mortgage Amount: \$325,000,000.00

This property is located within the program area and is exempt from the requirements of 765 LCS 77/70 et seq. because it is commercial property.

Handwritten checklist: S y, P 25, S ✓, M ✓, SC ✓, E ✓, INT ✓

Certificate number: 90473348-04CB-43B9-9CC4-919FC571937C

Execution date: 4/3/2018

Return to:
Katrina Haynes
First National Financial Title Service, Inc.
120 Interstate North Parkway, Suite # 108
Atlanta, GA 30339
770-916-4353

UNOFFICIAL COPY

1L251802052J

This document was prepared by:

Cahill Gordon & Reindel LLP
80 Pine Street
New York, New York 10005
Attention: Joshua Cohn, Esq.

Permanent Tax Index Number:
See Exhibit A

Property Addresses:
3401 N. California Avenue
Chicago, IL 60618-5809
and
2704 W. Roscoe Street
Chicago, IL 60618

Space above this line for recording data.

MORTGAGE ASSIGNMENT OF LEASES AND RENTS,
SECURITY AGREEMENT AND FIXTURE FILING

From

WILLIAMS ELECTRONICS GAMES, INC.

To

DEUTSCHE BANK TRUST COMPANY AMERICAS,
As Collateral Agent

Dated: As of April 13, 2018
Premises: 3401 N. California Avenue
Chicago, IL 60618-5809
and
2704 W. Roscoe Street
Chicago, IL 60618
County: Cook

Property of Cook County Clerk's Office

UNOFFICIAL COPY

THIS MORTGAGE, ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT AND FIXTURE FILING dated and effective as of April 13, 2018 (this "Mortgage"), by WILLIAMS ELECTRONICS GAMES, INC., a Delaware corporation, having an office at 3401 N. California Avenue, Chicago, IL 60618, (the "Mortgagor"), to DEUTSCHE BANK TRUST COMPANY AMERICAS, having an office at 60 Wall Street, MS: NYC60-1630 New York, NY 10005 (the "Mortgagee"), as Collateral Agent (as defined in the Collateral Agreement) for the Secured Parties (as defined in the Collateral Agreement).

WITNESSETH THAT:

WHEREAS, pursuant to the Indenture dated as of February 14, 2018 (as amended, supplemented or otherwise modified from time to time, the "Indenture") among Scientific Games International, Inc., a Delaware corporation (the "Issuer"), the Guarantors (as defined therein) party thereto (each of the foregoing including the Issuer, individually a "Credit Party," and, collectively, the "Credit Parties"), and Deutsche Bank Trust Company Americas, a New York banking corporation, as trustee (the "Indenture Trustee"), the Issuer has issued €325,000,000 aggregate principal amount of 3.375% Senior Secured Notes due 2026 (together with any Additional Securities issued under the Indenture, the "Notes"). Capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the Indenture;

WHEREAS, the Issuer is a member of an affiliated group of companies that includes the Mortgagor;

WHEREAS, the Mortgagor will receive substantial benefits from the execution, delivery and performance of the obligations under the Indenture, the Notes and any Additional Pari Passu Agreement (as defined in the Collateral Agreement) and is, therefore, willing to enter into this Mortgage;

WHEREAS, it is a condition that the Mortgagor execute and deliver this Mortgage and all other applicable Security Documents (as defined in the Collateral Agreement) to the Mortgagee for the benefit of the Mortgagee and the other Secured Parties;

WHEREAS, from time to time after the date hereof, the Issuer may, subject to the terms and conditions of the Indenture and the Security Documents, incur Additional Pari Passu Lien Obligations (as defined in the Collateral Agreement) (including Additional Securities issued under the Indenture), that the Issuer desires to secure by the Mortgaged Property on a pari passu basis with the Notes as further provided under the Intercreditor Agreement; and

WHEREAS, the Indenture and the Purchase Agreement also require the granting by the Credit Parties of mortgages, deeds of trust and/or deeds to secure debt (the "Other Mortgages") that create liens (or convey security title to) and security interests in certain real and personal property other than the Mortgaged Property to secure the Obligations (as hereinafter defined).

Granting Clauses

NOW, THEREFORE, IN CONSIDERATION OF the foregoing and in order to secure the due and punctual payment and performance of the Obligations for the benefit of the Secured Parties, the Mortgagor hereby grants, conveys, mortgages, assigns and pledges to the Mortgagee, a mortgage lien

UNOFFICIAL COPY

on and a security interest in, all the following described property (the "Mortgaged Property") whether now owned or held or hereafter acquired:

(1) the land more particularly described on Exhibit A hereto (the "Land"), together with all rights appurtenant thereto, including all right, title and interest of Mortgagor in and to the easements over certain other adjoining land granted by any easement agreements, covenant or restrictive agreements and all air rights, mineral rights, water rights, oil and gas rights and development rights, if any, relating thereto, and also together with all of the other easements, rights, privileges, interests, hereditaments and appurtenances thereunto belonging or in any way appertaining and all of the estate, right, title, interest, claim or demand whatsoever of the Mortgagor therein and in the streets and ways adjacent thereto, either in law or in equity, in possession or expectancy, now or hereafter acquired (the "Premises");

(2) all buildings, improvements, structures, paving, parking areas, walkways and landscaping now or hereafter erected or located upon the Land (the "Improvements");

(3) all materials, supplies, equipment, apparatus and other items of personal property now owned or hereafter acquired by the Mortgagor and now or hereafter attached to, installed in or used in connection with any of the Improvements or the Land, and water, gas, electrical, telephone, storm and sanitary sewer facilities and all other utilities whether or not situated in easements (the "Fixtures");

(4) all right, title and interest of the Mortgagor in and to all apparatus, movable appliances, building materials, equipment, fittings, furnishings, furniture, machinery and other articles of tangible personal property of every kind and nature, and replacements thereof, now or at any time hereafter placed upon or used in any way in connection with the use, enjoyment, occupancy or operation of the Improvements or the Premises, including all of the Mortgagor's books and records relating thereto and including all pumps, tanks, goods, machinery, tools, equipment, lifts (including fire sprinklers and alarm systems, fire prevention or control systems, cleaning rigs, air conditioning, heating, boilers, refrigerating, electronic monitoring, water, loading, unloading, lighting, power, sanitation, waste removal, entertainment, communications, computers, recreational, window or structural, maintenance, truck or car repair and all other equipment of every kind), restaurant, bar and all other indoor or outdoor furniture (including tables, chairs, booths, serving stands, planters, desks, sofas, racks, shelves, lockers and cabinets), bar equipment, glasses, cutlery, uniforms, linens, memorabilia and other decorative items, furnishings, appliances, supplies, inventory, rugs, carpets and other floor coverings, draperies, draper rods and brackets, awnings, venetian blinds, partitions, chandeliers and other lighting fixtures, freezers, refrigerators, walk-in coolers, signs (indoor and outdoor), computer systems, cash registers and inventory control systems, and all other apparatus, equipment, furniture, furnishings, and articles used in connection with the use or operation of the Improvements or the Premises, it being understood that the enumeration of any specific articles of property shall in no way result in or be held to exclude any items of property not specifically mentioned (the property referred to in this subparagraph (4), the "Personal Property");

(5) all right, title and interest of the Mortgagor in and to all general intangibles owned by the Mortgagor and relating to design, development, operation, management and use of the Premises or the Improvements, all certificates of occupancy, zoning variances, building, use or other permits, approvals, authorizations and consents obtained from and all materials prepared for filing or filed with any governmental agency in connection with the development, use, opera-

UNOFFICIAL COPY

tion or management of the Premises and Improvements, all construction, service, engineering, consulting, leasing, architectural and other similar contracts concerning the design, construction, management, operation, occupancy and/or use of the Premises and Improvements, all architectural drawings, plans, specifications, soil tests, feasibility studies, appraisals, environmental studies, engineering reports and similar materials relating to any portion of or all of the Premises and Improvements, and all payment and performance bonds or warranties or guarantees relating to the Premises or the Improvements, all to the extent assignable (the "Permits, Plans and Warranties");

(6) all right, title and interest of the Mortgagor in and to all now or hereafter existing leases or licenses (under which the Mortgagor is landlord or licensor) and subleases (under which the Mortgagor is sublandlord), concession, management, mineral or other agreements of a similar kind that permit the use or occupancy of the Premises or the Improvements for any purpose in return for any payment, or the extraction or taking of any gas, oil, water or other minerals from the Premises in return for payment of any fee, rent or royalty (collectively, "Leases"), and all agreements or contracts for the sale or other disposition of all or any part of the Premises or the Improvements, now or hereafter entered into by the Mortgagor, together with all charges, fees, income, issues, profits, receipts, rents, revenues or royalties payable thereunder ("Rents");

(7) all right, title and interest of the Mortgagor in and to all real estate tax refunds and all proceeds of the conversion, voluntary or involuntary, of any of the Mortgaged Property into cash or liquidated claims ("Proceeds") including Proceeds of insurance maintained by the Mortgagor and condemnation awards, any awards that may become due by reason of the taking by eminent domain or any transfer in lieu thereof of the whole or any part of the Premises or the Improvements or any rights appurtenant thereto, and any awards for change of grade of streets, together with any and all moneys now or hereafter on deposit for the payment of real estate taxes, assessments or common area charges levied against the Mortgaged Property, unearned premiums on policies of fire and other insurance maintained by the Mortgagor covering any interest in the Mortgaged Property or required by the Notes Documentation or any Additional Pari Passu Agreement; and

(8) all right, title and interest of the Mortgagor in and to all extensions, improvements, betterments, renewals, substitutes and replacements of and all additions and appurtenances to, the Land, the Premises, the Improvements, the Personal Property, the Permits, Plans and Warranties and the Leases, hereinafter acquired by or released to the Mortgagor or constructed, assembled or placed by the Mortgagor on the Land, the Premises or the Improvements, and all conversions of the security constituted thereby, immediately upon such acquisition, release, construction, assembling, placement or conversion, as the case may be, and in each such case, without any further mortgage, deed of trust, conveyance, assignment or other act by the Mortgagor, all of which shall become subject to the lien of this Mortgage as fully and completely, and with the same effect, as though now owned by the Mortgagor and specifically described herein.

TO HAVE AND TO HOLD the Mortgaged Property unto the Mortgagee, its successors and assigns, for the benefit of the Secured Parties, forever, subject only to Permitted Liens (as defined below) and to satisfaction and release as provided in Section 3.04.

UNOFFICIAL COPY

ARTICLE I

Representations, Warranties and Covenants of Mortgagor

The Mortgagor agrees, covenants, represents and/or warrants as follows:

SECTION 1.01. Title, Mortgage Lien.

(a) The Mortgagor has good fee simple title to the Premises and Improvements and good title to the balance of the Mortgaged Property, subject only to Permitted Liens.

(b) The execution and delivery of this Mortgage are within the Mortgagor's corporate or other organizational powers and have been duly authorized by all necessary corporate or other organizational and, if required, stockholder action. This Mortgage has been duly executed and delivered by the Mortgagor and constitutes a legal, valid and binding obligation of the Mortgagor, enforceable in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium or other laws affecting creditors' rights generally and subject to general principles of equity, regardless of whether considered in a proceeding in equity or at law.

(c) The execution, delivery and recordation of this Mortgage (i) do not require any consent or approval of, registration or filing with, or any other action by, any Governmental Authority, except such as have been obtained or made and are in full force and effect and except filings necessary to perfect the lien of this Mortgage, (ii) will not violate any applicable law or regulation or the charter, by-laws or other organizational documents of the Mortgagor or any order of any Governmental Authority, (iii) will not violate or result in a default under any indenture, agreement or other instrument binding upon Mortgagor or its assets, or give rise to a right thereunder to require any payment to be made by Mortgagor, and (iv) will not result in the creation or imposition of any Lien on any asset of Mortgagor, except the lien of this Mortgage.

(d) This Mortgage and the Uniform Commercial Code Financing Statements described in Section 1.09 of this Mortgage, when duly recorded in the applicable public records will create a valid, perfected and enforceable lien upon and security interest in all of the Mortgaged Property.

(e) The Mortgagor will forever warrant and defend its title to the Mortgaged Property, the rights of the Mortgagee therein under this Mortgage and the validity and priority of the lien of this Mortgage thereon against the claims of all persons and parties except those having rights under Permitted Liens to the extent of those rights.

SECTION 1.02. Indenture. The Mortgagor expressly covenants and agrees to pay when due, and to timely perform, or to cause the other Credit Parties to pay when due, and to timely perform, the Obligations in accordance with the terms of the Notes Documentation or any Additional Pari Passu Agreement.

SECTION 1.03. Payment of Taxes and Other Obligations.

(a) The Mortgagor will pay and discharge from time to time prior to the time when the same shall become delinquent, and before any interest or penalty accrues thereon or attaches thereto, all taxes and other obligations with respect to the Mortgaged Property or any part thereof or upon the Rents from the Mortgaged Property or arising in respect of the occupancy, use or possession thereof.

UNOFFICIAL COPY

(b) In the event of the passage of any state, Federal, municipal or other governmental law, order, rule or regulation subsequent to the date hereof (i) deducting from the value of real property for the purpose of taxation any lien or encumbrance thereon or in any manner changing or modifying the laws now in force governing the taxation of this Mortgage or debts secured by mortgages or deeds of trust (other than laws governing income, franchise and similar taxes generally) or the manner of collecting taxes thereon or (ii) imposing a tax to be paid by the Mortgagee, either directly or indirectly, on this Mortgage, Notes Documentation or any Additional Pari Passu Agreement, or requiring an amount of taxes to be withheld or deducted therefrom, the Mortgagor will promptly (A) notify the Mortgagee of such event, (B) enter into such further instruments as the Mortgagee may determine are reasonably necessary or desirable to obligate the Mortgagor to make any additional payments necessary to put the Secured Parties in the same financial position they would have been if such law, order, rule or regulation had not been passed and (C) make such additional payments to the Mortgagee for the benefit of the Secured Parties.

SECTION 1.04. Maintenance of Mortgaged Property. The Mortgagor will maintain the Improvements and the Personal Property in the manner required by the Indenture.

SECTION 1.05. Insurance. The Mortgagor will keep or cause to be kept the Improvements and the Personal Property insured against such risks, and in the manner, described in the Indenture.

SECTION 1.06. Casualty and Condemnation. The Mortgagor shall give the Mortgagee prompt written notice of any casualty or other damage to the Mortgaged Property or any proceeding for the taking of the Mortgaged Property or any portion thereof or interest therein under power of eminent domain or by condemnation or any similar proceeding.

SECTION 1.07. Assignment of Leases and Rents.

(a) The Mortgagor hereby irrevocably and absolutely grants, transfers and assigns all of its right title and interest in all Leases to Mortgagee, together with any and all extensions and renewals thereof for purposes of securing and discharging the payment and performance by the Mortgagor of the Obligations. The Mortgagor has not assigned or executed any assignment of, and will not assign or execute any assignment of, any Leases or the Rents payable thereunder to anyone other than Mortgagee.

(b) All Leases shall be subordinate to the lien of this Mortgage. The Mortgagor will not enter into, modify or amend any Lease if such Lease, as entered into, modified or amended, will not be subordinate to the lien of this Mortgage.

(c) Subject to Section 1.07(d), the Mortgagor has assigned and transferred to Mortgagee all of the Mortgagor's right, title and interest in and to the Rents now or hereafter arising from each Lease heretofore or hereafter made or agreed to by the Mortgagor, it being intended that this assignment establish, subject to Section 1.07(d), an absolute transfer and assignment of all Rents and all Leases to the Mortgagee and not merely to grant a security interest therein. Subject to Section 1.07(d), the Mortgagee may in the Mortgagor's name and stead (with or without first taking possession of any of the Mortgaged Property personally or by receiver as provided herein) operate the Mortgaged Property and rent, lease or let all or any portion of any of the Mortgaged Property to any party or parties at such rental and upon such terms as the Mortgagee shall, in its sole discretion, determine, and may collect and have the benefit of all of such Rents arising from or accruing at any time thereafter or that may thereafter become due under any Lease.

UNOFFICIAL COPY

(d) So long as an Event of Default shall not have occurred and be continuing, the Mortgagee will not exercise any of its rights under Section 1.07(c), and the Mortgagor shall receive and collect the Rents accruing under any Lease; but after the occurrence and during the continuance of any Event of Default, the Mortgagee may, at its option, receive and collect all Rents and enter upon the Premises and Improvements through its officers, agents, employees or attorneys for such purpose and for the operation and maintenance thereof. The Mortgagor hereby irrevocably authorizes and directs each tenant, if any, and each successor, if any, to the interest of any tenant under any Lease, respectively, to rely upon any notice of a claimed Event of Default sent by the Mortgagee to any such tenant or any of such tenant's successors in interest, and thereafter to pay Rents to the Mortgagee without any obligation or right to inquire as to whether an Event of Default actually exists and even if some notice to the contrary is received from the Mortgagor, who shall have no right or claim against any such tenant or successor in interest for any such Rents so paid to the Mortgagee. Each tenant or any of such tenant's successors in interest from whom the Mortgagee or any officer, agent, attorney or employee of the Mortgagee shall have collected any Rents, shall be authorized to pay Rents to the Mortgagor only after such tenant or any of their successors in interest shall have received written notice from the Mortgagee that the Event of Default is no longer continuing, unless and until a further notice of an Event of Default is given by the Mortgagee to such tenant or any of its successors in interest.

(e) The Mortgagee will not become a mortgagee in possession so long as it does not enter or take actual possession of the Mortgaged Property. In addition, the Mortgagee shall not be responsible or liable for performing any of the obligations of the landlord under any Lease, for any waste by any tenant, or others, for any dangerous or defective conditions of any of the Mortgaged Property, for negligence in the management, upkeep, repair or control of any of the Mortgaged Property or any other act or omission by any other person.

(f) The Mortgagor shall furnish to the Mortgagee, within 30 days after a written request by the Mortgagee to do so, a written statement containing the names of all tenants, subtenants and concessionaires of the Premises or Improvements, the terms of any Lease, the space occupied and the rentals and/or other amounts payable thereunder.

SECTION 1.08. Restrictions on Transfers and Encumbrances. The Mortgagor shall not directly or indirectly sell, convey, alienate, assign, lease, sublease, license, mortgage, pledge, encumber or otherwise transfer, create, consent to or suffer the creation of any lien, charge or other form of encumbrance upon any interest in or any part of the Mortgaged Property, or be divested of its title to the Mortgaged Property or any interest therein in any manner or way, whether voluntarily or involuntarily (other than resulting from a condemnation), or engage in any common, cooperative, joint, time-sharing or other congregate ownership of all or part thereof; provided that the Mortgagor may, in the ordinary course of business and in accordance with reasonable commercial standards, enter into easement or covenant agreements that relate to and/or benefit the operation of the Mortgaged Property and that do not materially and adversely affect the value, use or operation of the Mortgaged Property.

SECTION 1.09. Security Agreement This Mortgage is both a mortgage of real property and a grant of a security interest in personal property, and shall constitute and serve as a "Security Agreement" within the meaning of the uniform commercial code as adopted in the state wherein the Premises are located ("UCC"). The Mortgagor has hereby granted unto the Mortgagee a security interest in and to all the Mortgaged Property described in this Mortgage that is not real property, and prior to or simultaneously with the recording of this Mortgage, the Mortgagor has filed or will file UCC financing statements, and will file continuation statements prior to the lapse thereof, at the appropriate offices in the jurisdiction of formation of the Mortgage to perfect the security interest granted by this Mortgage in all

UNOFFICIAL COPY

the Mortgaged Property that is not real property. The Mortgagor hereby appoints the Mortgagee as its true and lawful attorney-in-fact and agent, for the Mortgagor and in its name, place and stead, in any and all capacities, to execute any document and to file the same in the appropriate offices (to the extent it may lawfully do so), and to perform each and every act and thing reasonably requisite and necessary to be done to perfect the security interest contemplated by the preceding sentence. The Mortgagee shall have all rights with respect to the part of the Mortgaged Property that is the subject of a security interest afforded by the UCC in addition to, but not in limitation of, the other rights afforded the Mortgagee hereunder and under the Collateral Agreement.

SECTION 1.10. Filing and Recording. The Mortgagor will cause this Mortgage, the UCC financing statements referred to in Section 1.09, any other security instrument creating a security interest in or evidencing the lien hereof upon the Mortgaged Property and each UCC continuation statement and instrument of further assurance to be filed, registered or recorded and, if necessary, refiled, re-recorded and re-registered, 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 perfect the lien hereof upon, and the security interest of the Mortgagee in, the Mortgaged Property until this Mortgage is terminated and released in full in accordance with Section 3.04 hereof. The Mortgagor will pay all filing, registration and recording fees, all Federal, state, county and municipal recording, documentary or intangible taxes and other taxes, duties, imposts, assessments and charges, and all reasonable expenses incidental to or arising out of or in connection with the execution, delivery and recording of this Mortgage, UCC continuation statements any mortgage supplemental hereto, any security instrument with respect to the Personal Property, Permits, Plans and Warranties and Proceeds or any instrument of further assurance.

SECTION 1.11. Further Assurances. Upon demand by the Mortgagee, the Mortgagor will, at the cost of the Mortgagor and without expense to the Mortgagee, do, execute, acknowledge and deliver all such further acts, deeds, conveyances, mortgages, assignments, notices of assignment, transfers and assurances as the Mortgagee shall from time to time reasonably require for the better assuring, conveying, assigning, transferring and confirming unto the Mortgagee the property and rights hereby conveyed or assigned or intended now or hereafter so to be, or which the Mortgagor may be or may hereafter become bound to convey or assign to the Mortgagee, or for carrying out the intention or facilitating the performance of the terms of this Mortgage, or for filing, registering or recording this Mortgage, and on written demand, the Mortgagor will also execute and deliver and hereby appoints the Mortgagee as its true and lawful attorney-in-fact and agent, for the Mortgagor and in its name, place and stead, in any and all capacities, to execute and file to the extent it may lawfully do so, one or more financing statements, chattel mortgages or comparable security instruments reasonably requested by the Mortgagee to evidence more effectively the lien hereof upon the Personal Property and to perform each and every act and thing requisite and necessary to be done to accomplish the same.

SECTION 1.12. Additions to Mortgaged Property. All right, title and interest of the Mortgagor in and to all extensions, improvements, betterments, renewals, substitutes and replacements of, and all additions and appurtenances to, the Mortgaged Property hereafter acquired by or released to the Mortgagor or constructed, assembled or placed by the Mortgagor upon the Premises or the Improvements, and all conversions of the security constituted thereby, immediately upon such acquisition, release, construction, assembling, placement or conversion, as the case may be, and in each such case without any further mortgage, conveyance, assignment or other act by the Mortgagor, shall become subject to the lien and security interest of this Mortgage as fully and completely and with the same effect as though now owned by the Mortgagor and specifically described in the grant of the Mortgaged Property above, but at any and all times the Mortgagor will execute and deliver to the Mortgagee any and all such further assurances, mortgages, conveyances or assignments thereof as the Mortgagee may reasonably require for the

UNOFFICIAL COPY

purpose of expressly and specifically subjecting the same to the lien and security interest of this Mortgage.

SECTION 1.13. No Claims Against Mortgagee. Nothing contained in this Mortgage shall constitute any consent or request by the Mortgagee, express or implied, for the performance of any labor or services or the furnishing of any materials or other property in respect of the Mortgaged Property or any part thereof, nor as giving the Mortgagor any right, power or authority to contract for or permit the performance of any labor or services or the furnishing of any materials or other property in such fashion as would permit the making of any claim against the Mortgagee in respect thereof.

SECTION 1.14. Fixture Filing.

(a) Certain portions of the Mortgaged Property described in the Granting Clauses of this Mortgage are or will become "fixtures" (as that term is defined in the UCC) on the Land, and this Mortgage, upon being filed for record in the real estate records of the county wherein such fixtures are situated, shall operate also as a financing statement filed as a fixture filing in accordance with the applicable provisions of said UCC upon such portions of the Mortgaged Property that are or become fixtures.

(b) The real property to which the fixtures relate is described in Exhibit A hereto. The record owner of the real property described in Exhibit A hereto is the Mortgagor. The name, type of organization and jurisdiction of organization of the debtor for purposes of this financing statement are the name, type of organization and jurisdiction of organization of the Mortgagor set forth in the preamble of this Mortgage, and the name of the secured party for purposes of this financing statement is the name of the Mortgagee set forth in the preamble to this Mortgage. The mailing address of the Mortgagor/debtor is the address of the Mortgagor set forth in the preamble to this Mortgage. The mailing address of the Mortgagee/secured party from which information concerning the security interest hereunder may be obtained is the address of the Mortgagee set forth in the preamble to this Mortgage.

ARTICLE II

Defaults and Remedies

SECTION 2.01. Events of Default. Any Event of Default under the Notes Documentation or any Additional Pari Passu Agreement shall constitute an Event of Default under this Mortgage.

SECTION 2.02. Demand for Payment. If an Event of Default shall occur and be continuing, then, upon written demand of Mortgagee, the Mortgagor will pay to the Mortgagee, all amounts due hereunder and under the Notes Documentation and any Additional Pari Passu Agreement, and such further amount as shall be sufficient to cover the costs and expenses of collection, including reasonable attorneys' fees, disbursements and expenses actually incurred by the Mortgagee, and the Mortgagee shall be entitled and empowered to institute an action or proceedings at law or in equity for the collection of the sums so due and unpaid, to prosecute any such action or proceedings to judgment or final decree, to enforce any such judgment or final decree against the Mortgagor and to collect, in any manner provided by law, all moneys adjudged or decreed to be payable.

SECTION 2.03. Rights To Take Possession, Operate and Apply Revenues.

(a) If an Event of Default shall occur and be continuing, the Mortgagor shall, upon written demand of the Mortgagee, forthwith surrender to the Mortgagee actual possession of the Mort-

UNOFFICIAL COPY

gaged Property and, if and to the extent not prohibited by applicable law, the Mortgagee itself, or by such officers, employees, agents or attorneys as it may appoint, may then enter and take possession of all the Mortgaged Property without the appointment of a receiver or an application therefor, exclude the Mortgagor and its agents and employees wholly therefrom, and have access to the books, papers and accounts of the Mortgagor.

(b) If the Mortgagor shall for any reason fail to surrender or deliver the Mortgaged Property or any part thereof after such demand by the Mortgagee, the Mortgagee may to the extent not prohibited by applicable law, obtain a judgment or decree conferring upon the Mortgagee the right to immediate possession or requiring the Mortgagor to deliver immediate possession of the Mortgaged Property to the Mortgagee, to the entry of which judgment or decree the Mortgagor hereby specifically consents. The Mortgagor will pay to the Mortgagee, promptly following written demand, all reasonable expenses of obtaining such judgment or decree, including reasonable compensation to the Mortgagee's attorneys and agents with interest thereon at the weighted average rate payable from time to time on the Notes (the "Interest Rate"); and all such expenses and compensation shall, until paid, be secured by this Mortgage.

(c) Upon every such entry or taking of possession, the Mortgagee may, to the extent not prohibited by applicable law, hold, store, use, operate, manage and control the Mortgaged Property, conduct the business thereof and, from time to time, (i) make all necessary and proper maintenance, repairs, renewals, replacements, additions, betterments and improvements thereto and thereon, (ii) purchase or otherwise acquire additional fixtures, personalty and other property, (iii) insure or keep the Mortgaged Property insured, (iv) manage and operate the Mortgaged Property and exercise all the rights and powers of the Mortgagor to the same extent as the Mortgagor could in its own name or otherwise with respect to the same, or (v) enter into any and all agreements with respect to the exercise by others of any of the powers herein granted the Mortgagee, all as may from time to time be directed or determined by the Mortgagee to be in its best interest, and the Mortgagor hereby appoints the Mortgagee as its true and lawful attorney-in-fact and agent, for the Mortgagor and in its name, place and stead, in any and all capacities, to perform any of the foregoing acts. The Mortgagee may collect and receive all the Rents, issues, profits and revenues from the Mortgaged Property, including those past due as well as those accruing thereafter.

(d) Whenever, before any sale of the Mortgaged Property under Section 2.06 or other transfer of the Mortgaged Property consented to by the Mortgagee, all Obligations that are then due shall have been paid and all Events of Default fully cured, the Mortgagee will surrender possession of the Mortgaged Property back to the Mortgagor, its successors or assigns. The same right of taking possession shall, however, arise again if any subsequent Event of Default shall occur and be continuing.

SECTION 2.04. Right to Cure Mortgagor's Failure to Perform. Should the Mortgagor fail in the payment, performance or observance of any term, covenant or condition required by this Mortgage, Notes Documentation or any Additional Pari Passu Agreement (with respect to the Mortgaged Property) which failure is not cured within any applicable notice and cure period, the Mortgagee may, using its reasonable discretion as to timing, pay, perform or observe the same, and all payments made or costs or expenses actually incurred by the Mortgagee in connection therewith shall be secured hereby and shall be, without demand, immediately repaid by the Mortgagor to the Mortgagee with interest thereon at the Interest Rate. The Mortgagee shall be the judge using reasonable discretion of the necessity for any such actions and of the amounts to be paid. The Mortgagee is hereby empowered to enter and to authorize others to enter upon the Premises or the Improvements or any part thereof for the purpose of performing or observing any such defaulted term, covenant or condition without having any obligation to so per-

UNOFFICIAL COPY

form or observe and without thereby becoming liable to the Mortgagor, to any person in possession holding under the Mortgagor or to any other person.

SECTION 2.05. Right to a Receiver. If an Event of Default shall occur and be continuing, the Mortgagee, upon application to a court of competent jurisdiction, shall be entitled as a matter of right to the appointment of a receiver to take possession of and to operate the Mortgaged Property and to collect and apply the Rents. The receiver shall have all of the rights and powers permitted under the laws of the state wherein the Mortgaged Property is located. The Mortgagor shall pay to the Mortgagee promptly following written demand all reasonable expenses, including receiver's fees, reasonable attorney's fees and disbursements, costs and agent's compensation actually incurred pursuant to the provisions of this Section 2.05; and all such expenses shall be secured by this Mortgage and shall be, without demand, immediately repaid by the Mortgagor to the Mortgagee with interest thereon at the Interest Rate.

SECTION 2.06. Foreclosure and Sale.

(a) If an Event of Default shall occur and be continuing, the Mortgagee may elect to sell the Mortgaged Property or any part of the Mortgaged Property by exercise of the power of foreclosure or of sale granted to the Mortgagee by applicable law or this Mortgage. In such case, the Mortgagee may commence a civil action to foreclose this Mortgage, or it may proceed and sell the Mortgaged Property to satisfy any Obligation. The Mortgagee or an officer appointed by a judgment of foreclosure to sell the Mortgaged Property, may sell all or such parts of the Mortgaged Property as may be chosen by the Mortgagee at the time and place of sale fixed by it in a notice of sale, either as a whole or in separate lots, parcels or items as the Mortgagee shall deem expedient, and in such order as it may determine, at public auction to the highest bidder. The Mortgagee or an officer appointed by a judgment of foreclosure to sell the Mortgaged Property may postpone any foreclosure or other sale of all or any portion of the Mortgaged Property by public announcement at such time and place of sale, and from time to time thereafter may postpone such sale by public announcement or subsequently noticed sale. Without further notice, the Mortgagee or an officer appointed to sell the Mortgaged Property may make such sale at the time fixed by the last postponement, or may, in its discretion, give a new notice of sale. Any person, including the Mortgagor or the Mortgagee or any designee or affiliate thereof, may purchase at such sale.

(b) The Mortgaged Property may be sold subject to unpaid taxes and Permitted Liens, and, after deducting all costs, fees and expenses of the Mortgagee (including costs of evidence of title in connection with the sale), the Mortgagee or an officer that makes any sale shall apply the proceeds of sale in the manner set forth in Section 2.08.

(c) Any foreclosure or other sale of less than the whole of the Mortgaged Property or any defective or irregular sale made hereunder shall not exhaust the power of foreclosure or of sale provided for herein; and subsequent sales may be made hereunder until the Obligations have been satisfied, or the entirety of the Mortgaged Property has been sold.

(d) If an Event of Default shall occur and be continuing, the Mortgagee may instead of, or in addition to, exercising the rights described in Section 2.06(a) above and either with or without entry or taking possession as herein permitted, proceed by a suit or suits in law or in equity or by any other appropriate proceeding or remedy (i) to specifically enforce payment of some or all of the Obligations, or the performance of any term, covenant, condition or agreement of this Mortgage, Notes Documentation or any Additional Pari Passu Agreement, or any other right, or (ii) to pursue any other remedy available to the Mortgagee, all as the Mortgagee shall determine most effectual for such purposes.

UNOFFICIAL COPY

SECTION 2.07. Other Remedies.

(a) In case an Event of Default shall occur and be continuing, the Mortgagee may also exercise, to the extent not prohibited by law, any or all of the remedies available to a secured party under the UCC.

(b) In connection with a sale of the Mortgaged Property or any Personal Property and the application of the proceeds of sale as provided in Section 2.08, the Mortgagee shall be entitled to enforce payment of and to receive up to the outstanding amount of the Obligations (including all interest thereon accrued), plus all other charges, payments and costs due under this Mortgage, and to recover a deficiency judgment for any portion of the aggregate principal amount of the Obligations remaining unpaid, with interest.

SECTION 2.08. Application of Sale Proceeds. (a) Subject to the terms of the Intercreditor Agreement and any other intercreditor agreement, the Mortgagor may apply all or any part of proceeds constituting Mortgaged Property and any proceeds of the guarantee set forth in Section 2 of the Collateral Agreement, in payment of the Obligations, and shall make any such application in the following order:

First, to pay incurred and unpaid reasonable, out-of-pocket fees and expenses of the Mortgagee and the Indenture Trustee under the Indenture, the Notes and the Security Documents and of any Additional Pari Passu Agent under any Additional Pari Passu Debt Documents (as defined in the Collateral Agreement);

Second, to (x) the Indenture Trustee, based on the amount of Obligations then outstanding under the Indenture and the Notes, for application as provided in the Indenture and (y) each Additional Pari Passu Agent (as defined in the Collateral Agreement), based on the amount of Obligations then outstanding under the Additional Pari Passu Agreement pursuant to which it is acting as such, for application as provided in such Additional Pari Passu Agreement;

Third, any balance of such proceeds remaining after the Obligations shall have been paid in full, shall be paid over to the Issuer or to whomsoever shall be lawfully entitled to receive the same.

If, despite the provisions of this Section 2.08(a), any Secured Party shall receive any payment or other recovery in excess of its portion of payments on account of the Obligations to which it is then entitled in accordance with this Section 2.08(a), such Secured Party shall hold such payment or recovery in trust for the benefit of all Secured Parties for distribution in accordance with this Section 2.08(a).

(b) Notwithstanding the foregoing, in the event of any determination by a court of competent jurisdiction with respect to any series of Additional Pari Passu Lien Obligations (other than any Notes Obligations) that (i) such series of Additional Pari Passu Lien Obligations is unenforceable under applicable law or is subordinated to any other obligations (other than another series of Obligations), (ii) such series of Additional Pari Passu Lien Obligations does not have an enforceable security interest in any of the Mortgaged Property and/or (iii) any intervening security interest exists securing any other obligations (other than another series of Obligations) on a basis ranking prior to the security interest of such series of Additional Pari Passu Lien Obligations but junior to the security interest of any other series of Obligations (any such condition referred to in the foregoing clause (i), (ii) or (iii) with respect to any series of

UNOFFICIAL COPY

Additional Pari Passu Lien Obligations, an "Impairment" of such series of Additional Pari Passu Lien Obligations), the results of such Impairment shall be borne solely by the holders of such series of Additional Pari Passu Lien Obligations, and the rights of the holders of such series of Additional Pari Passu Lien Obligations (including, without limitation, the right to receive distributions in respect of such series of Additional Pari Passu Lien Obligations) set forth herein shall be modified to the extent necessary so that the effects of such Impairment are borne solely by the holders of such series of Additional Pari Passu Lien Obligations subject to such Impairment. Notwithstanding the foregoing, with respect to any Mortgaged Property for which a third party (other than a holder of another series of Obligations) has a Lien or security interest that is junior in priority to the security interest of any series of Obligations but senior (as determined by appropriate legal proceedings in the case of any dispute) to the security interest of the holder of any other series of Obligations (such third party, an "Intervening Creditor"), the value of any Mortgaged Property or proceeds which are allocated to such Intervening Creditor shall be deducted on a ratable basis solely from the Mortgaged Property or proceeds to be distributed in respect of the series of Obligations with respect to which such Impairment exists.

(c) Each of the Secured Parties hereby agrees not to challenge or question in any proceeding the validity or enforceability of any Security Document (in each case as a whole or any term or provision contained therein) or the validity of any Lien or financing statement in favor of the Mortgagor for the benefit of the Secured Parties as provided in this Mortgage and the other Security Documents, or the relative priority of any such Lien.

In making the determination and allocations required by this Section 2.08, the Mortgagee may conclusively rely upon information supplied by (i) the Indenture Trustee as to the amounts of unpaid principal and interest and other amounts outstanding with respect to the Notes Obligations and (ii) the applicable Additional Pari Passu Agent as to the amounts of unpaid principal and interest and other amounts outstanding with respect to such Additional Pari Passu Lien Obligations and the Mortgagee shall have no liability to any of the Secured Parties for actions taken in reliance on such information.

SECTION 2.09. Mortgagor as Tenant Holding Over. If the Mortgagor remains in possession of any of the Mortgaged Property after any foreclosure sale by the Mortgagee, at the Mortgagee's election the Mortgagor shall be deemed a tenant holding over and shall forthwith surrender possession to the purchaser or purchasers at such sale or be summarily dispossessed or evicted according to provisions of law applicable to tenants holding over.

SECTION 2.10. Waiver of Appraisal, Valuation, Stay Extension and Redemption Laws. The Mortgagor waives, to the extent not prohibited by law, (a) the benefit of all laws now existing or that hereafter may be enacted (i) providing for any appraisal or valuation of any portion of the Mortgaged Property and/or (ii) in any way extending the time for the enforcement or the collection of amounts due under any of the Obligations or creating or extending a period of redemption from any sale made in collecting said debt or any other amounts due to the Mortgagee, (b) any right to at any time insist upon, plead, claim or take the benefit or advantage of any law now or hereafter in force providing for any homestead exemption, stay, statute of limitations, extension or redemption, or sale of the Mortgaged Property as separate tracts, units or estates or as a single parcel in the event of foreclosure or notice of deficiency, and (c) all rights of redemption, valuation, appraisal, stay of execution, notice of election to mature or declare due the whole of or each of the Obligations and marshaling in the event of foreclosure of this Mortgage.

SECTION 2.11. Discontinuance of Proceedings. In case the Mortgagee shall proceed to enforce any right, power or remedy under this Mortgage by foreclosure, entry or otherwise, and such pro-

UNOFFICIAL COPY

ceedings shall be discontinued or abandoned for any reason, or shall be determined adversely to the Mortgagee, then and in every such case the Mortgagor and the 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 proceeding had been taken.

SECTION 2.12. Suits to Protect the Mortgaged Property. The Mortgagee shall have power (a) to institute and maintain suits and proceedings to prevent any impairment of the Mortgaged Property by any acts that may be unlawful or in violation of this Mortgage, (b) to preserve or protect its interest in the Mortgaged Property and in the Rents arising therefrom and (c) to restrain the enforcement of or compliance with any legislation or other governmental enactment, rule or order that may be unconstitutional or otherwise invalid if the enforcement of or compliance with such enactment, rule or order would impair the security or be prejudicial to the interest of Mortgagee hereunder.

SECTION 2.13. Filing Proofs of Claim. In case of any receivership, insolvency, bankruptcy, reorganization, arrangement, adjustment, composition or other proceedings affecting the Mortgagor, the Mortgagee shall, to the extent permitted by law, be entitled to file such proofs of claim and other documents as may be necessary or advisable in order to have the claims of the Mortgagee allowed in such proceedings for the Obligations secured by this Mortgage at the date of the institution of such proceedings and for any interest accrued, late charges and additional interest or other amounts due or that may become due and payable hereunder after such date.

SECTION 2.14. Possession by Mortgagee. Notwithstanding the appointment of any receiver, liquidator or trustee of the Mortgagor, any of its property or the Mortgaged Property, the Mortgagee shall be entitled, to the extent not prohibited by law, to remain in possession and control of all parts of the Mortgaged Property now or hereafter granted under this Mortgage to the Mortgagee in accordance with the terms hereof and applicable law.

SECTION 2.15. Waiver.

(a) No delay or failure by the Mortgagee to exercise any right, power or remedy accruing upon any breach or Event of Default shall exhaust or impair any such right, power or remedy or be construed to be a waiver of any such breach or Event of Default or acquiescence therein; and every right, power and remedy given by this Mortgage to the Mortgagee may be exercised from time to time and as often as may be deemed expedient by the Mortgagee. No consent or waiver by the Mortgagee to or of any breach or Event of Default by the Mortgagor in the performance of the Obligations shall be deemed or construed to be a consent or waiver to or of any other breach or Event of Default in the performance of the same or of any other Obligations by the Mortgagor hereunder. No failure on the part of the Mortgagee to complain of any act or failure to act or to declare an Event of Default, irrespective of how long such failure continues, shall constitute a waiver by the Mortgagee of its rights hereunder or impair any rights, powers or remedies consequent on any future Event of Default by the Mortgagor.

(b) Even if the Mortgagee (i) grants some forbearance or an extension of time for the payment of any sums secured hereby, (ii) takes other or additional security for the payment of any sums secured hereby, (iii) waives or does not exercise some right granted herein or under the Notes Documentation or any Additional Pari Passu Agreement, (iv) releases a part of the Mortgaged Property from this Mortgage, (v) agrees to change some of the terms, covenants, conditions or agreements of the Notes Documentation or any Additional Pari Passu Agreement, (vi) consents to the filing of a map, plat or replat affecting the Premises, (vii) consents to the granting of an easement or other right affecting the Premises or (viii) makes or consents to an agreement subordinating the Mortgagee's lien on the Mortgaged Proper-

UNOFFICIAL COPY

ty hereunder; no such act or omission shall preclude the Mortgagee from exercising any other right, power or privilege herein granted or intended to be granted in the event of any breach or Event of Default then made or of any subsequent default; nor, except as otherwise expressly provided in an instrument executed by the Mortgagee, shall this Mortgage be altered thereby. In the event of the sale or transfer by operation of law or otherwise of all or part of the Mortgaged Property, the Mortgagee is hereby authorized and empowered to deal with any vendee or transferee with reference to the Mortgaged Property secured hereby, or with reference to any of the terms, covenants, conditions or agreements 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 liabilities, obligations or undertakings.

SECTION 2.16. Waiver of Trial by Jury. To the fullest extent permitted by applicable law, the Mortgagor and the Mortgagee each hereby irrevocably and unconditionally waive trial by jury in any action, claim, suit or proceeding relating to this Mortgage and for any counterclaim brought therein. The Mortgagor hereby waives all rights to interpose any counterclaim in any suit brought by the Mortgagee hereunder (other than compulsory counterclaims) and all rights to have any such suit consolidated with any separate suit, action or proceeding.

SECTION 2.17. Remedies Cumulative. No right, power or remedy conferred upon or reserved to the Mortgagee by this Mortgage is intended to be exclusive of any other right, power or remedy, and each and every such right, power and remedy shall be cumulative and concurrent and in addition to any other right, power and remedy given hereunder or now or hereafter existing at law or in equity or by statute.

ARTICLE III

Miscellaneous

SECTION 3.01. Partial Invalidity. In the event any one or more of the provisions contained in this Mortgage shall for any reason be held to be invalid, illegal or unenforceable in any respect, such validity, illegality or unenforceability shall, at the option of the Mortgagee, not affect any other provision of this Mortgage, and this Mortgage shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein or therein.

SECTION 3.02. Notices. All notices, requests and demands to or upon the Mortgagee or Mortgagor hereunder shall be effected in the manner provided for in Section 12.02 of the Indenture; provided that any such notice, request or demand to or upon any Guarantor shall be addressed to such Guarantor at its notice address set forth on Schedule 1 of the Collateral Agreement or at such other address pursuant to notice given in accordance with Section 12.02 of the Indenture and any such notice, request or demand to or upon any Additional Pari Passu Agent shall be addressed to such Additional Pari Passu Agent at its notice address set forth in the applicable Additional Pari Passu Joinder Agreement (as defined in the Collateral Agreement).

SECTION 3.03. Successors and Assigns. All of the grants, covenants, terms, provisions and conditions herein shall run with the Premises and the Improvements and shall apply to, bind and inure to, the benefit of the permitted successors and assigns of the Mortgagor and the successors and assigns of the Mortgagee.

UNOFFICIAL COPY

SECTION 3.04. Satisfaction and Cancellation.

(a) When all Obligations have been paid in full and no Obligations shall be outstanding, the Mortgagee shall cause the Mortgaged Property to be released from the Liens created hereby, and this Mortgage and all obligations (other than those expressly stated to survive such termination) of the Mortgagee and Mortgagor hereunder, and all rights to the Mortgaged Property shall revert to the Mortgagor. At the request and sole expense of Mortgagor following any such termination, the Mortgagee shall promptly deliver to Mortgagor any Mortgaged Property held by the Mortgagee hereunder, and execute and deliver to Mortgagor such documents as Mortgagor shall reasonably request to evidence such termination. The Liens securing the Notes Obligations will be released, in whole or in part, as provided in Section 11.02 and Section 11.07 of the Indenture. The Liens securing Additional Pari Passu Liens Obligations of any series will be released, in whole or in part, as provided in the Additional Pari Passu Agreement governing such obligations.

(b) At any time that Mortgagor desires that the Mortgagee take any action to acknowledge or give effect to any release of Mortgaged Property pursuant to the foregoing Section 3.04(a), Mortgagor shall deliver to the Mortgagee (and the relevant subagent, if any, designated hereunder) a certificate signed by an officer of Mortgagor stating that the release of the respective Mortgaged Property is permitted pursuant to such Section 3.04(a) and such other certifications relating to such release that the Mortgagee may reasonably request, upon which the Mortgagee may conclusively rely. The Mortgagee shall have no liability whatsoever to any other Secured Party as the result of any release of Mortgaged Property in accordance with, or which the Mortgagee believes to be in accordance with, this Section 3.04.

SECTION 3.05. Definitions. As used in this Mortgage, the singular shall include the plural as the context requires and the following words and phrases shall have the following meanings: (a) “including” shall mean “including but not limited to”; (b) “provisions” shall mean “provisions, terms, covenants and/or conditions”; (c) “lien” shall mean “lien, charge, encumbrance, security interest, mortgage or deed of trust”; (d) “obligation” shall mean “obligation, duty, covenant and/or condition”; and (e) “any of the Mortgaged Property” shall mean “the Mortgaged Property or any part thereof or interest therein”. Any act that the Mortgagee is permitted to perform hereunder may be performed at any time and from time to time by the Mortgagee or any person or entity designated by the Mortgagee. Any act that is prohibited to the Mortgagor hereunder is also prohibited to all lessees of any of the Mortgaged Property. Each appointment of the Mortgagee as attorney-in-fact for the Mortgagor under this Mortgage is irrevocable, with power of substitution and coupled with an interest. Subject to the applicable provisions hereof, the Mortgagee has the right to refuse to grant its consent, approval or acceptance or to indicate its satisfaction, in its sole discretion, whenever such consent, approval, acceptance or satisfaction is required hereunder.

The following terms shall have the following meanings:

“Event of Default” shall have the meaning assigned to such term in the Collateral Agreement.

“Notes Obligations” shall have the meaning assigned to such term in the Collateral Agreement.

“Obligations” shall have the meaning assigned to such term in the Collateral Agreement.

UNOFFICIAL COPY

SECTION 3.06. Multisite Real Estate Transaction. The Mortgagor acknowledges that this Mortgage is (or may be) one of a number of Other Mortgages that secure the Obligations. The Mortgagor agrees that the lien of this Mortgage shall be absolute and unconditional and shall not in any manner be affected or impaired by any acts or omissions whatsoever of the Mortgagee, and without limiting the generality of the foregoing, the lien hereof shall not be impaired by any acceptance by the Mortgagee of any security for or guarantees of any of the Obligations hereby secured, or by any failure, neglect or omission on the part of the Mortgagee to realize upon or protect any Obligation or indebtedness hereby secured or any collateral security therefor including the Other Mortgages. The lien hereof shall not in any manner be impaired or affected by any release (except as to the property released), sale, pledge, surrender, compromise, settlement, renewal, extension, indulgence, alteration, changing, modification or disposition of any of the Obligations secured or of any of the collateral security therefor, including the Other Mortgages or of any guarantee thereof, and the Mortgagee may at its discretion foreclose, exercise any power of sale, or exercise any other remedy available to it under any or all of the Other Mortgages without first exercising or enforcing any of its rights and remedies hereunder. Such exercise of the Mortgagee's rights and remedies under any or all of the Other Mortgages shall not in any manner impair the indebtedness hereby secured or the lien of this Mortgage and any exercise of the rights or remedies of the Mortgagee hereunder shall not impair the lien of any of the Other Mortgages or any of the Mortgagee's rights and remedies thereunder. The Mortgagor specifically consents and agrees that the Mortgagee may exercise its rights and remedies hereunder and under the Other Mortgages separately or concurrently and in any order that it may deem appropriate and waives any rights of subrogation.

SECTION 3.07. No Oral Modification. None of the terms or provisions of this Mortgage may be waived, amended, supplemented or otherwise modified except in accordance with Article 9 of the Indenture and each Additional Pari Passu Agreement.

SECTION 3.08. Intercreditor Relations.

(a) In the event of any conflict between the terms of the Intercreditor Agreement and any other intercreditor agreement and this Mortgage, the terms of such Intercreditor Agreement or any other intercreditor agreement, as applicable, shall govern and control as among the Mortgagee, on the one hand, and any other secured creditor (or agent therefor) party thereto, on the other hand. In the event of any such conflict, Mortgagor may act (or omit to act) in accordance with the Intercreditor Agreement or such other intercreditor agreement, as applicable, and shall not be in breach, violation or default of its obligations hereunder by reason of doing so. Prior to the Discharge of Credit Facility Obligations (as defined in the Intercreditor Agreement), any requirement hereunder to deliver any Mortgaged Property to the Mortgagee shall be deemed satisfied by delivery thereof to the Credit Facility Agent (as defined in the Intercreditor Agreement).

(b) Notwithstanding anything herein to the contrary, (i) the priority of the liens and security interests granted to Mortgagee pursuant to this Mortgage are expressly subject to the Intercreditor Agreement and (ii) the exercise of any right or remedy by Mortgagee hereunder is subject to the limitations and provisions of the Intercreditor Agreement. Pursuant to the Intercreditor Agreement, notwithstanding the order of recording, the lien of this Mortgage is intended to be pari passu with the lien granted to Bank of America, N.A., as collateral agent, and both liens granted to Deutsche Bank Trust Company Americas, as collateral agent, pursuant to mortgages encumbering the Mortgaged Property delivered prior to the date hereof. Notwithstanding anything herein to the contrary, in the event of any conflict between the terms of the Intercreditor Agreement and the terms of this Mortgage regarding the priority of the liens and the security interests granted to Mortgagee or exercise of any rights or remedies by Mortgagee, the terms of the Intercreditor Agreement shall govern.

UNOFFICIAL COPY

ARTICLE IV

Particular Provisions

This Mortgage is subject to the following provisions relating to the particular laws of the state wherein the Premises are located:

SECTION 4.01. Applicable Law Certain Particular Provisions. This Mortgage shall be governed by and construed in accordance with the internal law of the state where the Mortgaged Property is located. The Mortgagor and the Mortgagee agree to submit to jurisdiction and the laying of venue for any suit on this Mortgage in the state where the Mortgaged Property is located. The terms and provisions set forth in Appendix A attached hereto are hereby incorporated by reference as though fully set forth herein. In the event of any conflict between the terms and provisions contained in the body of this Mortgage and the terms and provisions set forth in Appendix A, the terms and provisions set forth in Appendix A shall govern and control.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

UNOFFICIAL COPY

Exhibit A
to Mortgage

Description of the Land

**3401 N. California Avenue
Chicago, IL 60618-5809**

Pin #: 13-24-400-003-0000
13-24-400-006-0000

As to Tract 1:

Parcel 1:

A tract of land, lying West of a line which is 389 feet and 3 inches (measured along the North line of West Roscoe Street) East of the East line of North California Avenue and which runs North from and at right angles to the said North line of West Roscoe Street which tract of land aforesaid is contained in the following described land:

Commencing at a point in the North and South center line of Section 24, Township 40 North, Range 13 East of the Third Principal Meridian, 1238.5 feet North of the South line of said Section running; thence East to a point on or near the West bank of the North branch of the Chicago River and distance from the point of beginning 719.2 feet; thence North 7 degrees 30 minutes West, 303.5 feet to a point West of said North Branch of the Chicago River; thence West 679.2 feet to said North and South center line of said Section 24; thence South along said North and South center line 300 feet to the point of beginning, (excepting from the said tract the west 33 feet taken for North California Avenue and the South 33 feet taken for Roscoe Street), in Cook County, Illinois.

Parcel 3:

The North 56 feet of the South 1594.4 feet of the South East 1/7 section 24, Township 40 North, Range 13 East of the Third Principal Meridian, lying West of the North Branch of the Chicago River as established and used by the Sanitary District of Chicago, and East of a line 308.77 feet East of and parallel with the West line of said South East 1/4 of Section 24, being a part of Lot 17 in the County Clerk's Division of un subdivided lands in the South East 1/4 of said Section 24, in Cook County, Illinois.

**2704 W. Roscoe Street
Chicago, IL 60618**

Pin #: 13-24-400-004

As to Tract 2:

UNOFFICIAL COPY

- A tract of land lying East of a line which is 389 feet 3 inches (measured along the North line of West Roscoe Street) East of the East line of North California Avenue and which runs North from and at right angles to said North line of West Roscoe Street, which tract of land aforesaid is contained in the following described land: commencing at a point in the North and South center line of Section 24, Township 40 North, Range 13, East of the Third Principal Meridian, 1238.5 feet North of the South line of said Section running thence East to a point on or near the West Bank of the North Branch of the Chicago River and distant from the point of beginning, 719.2 feet; thence North 7 degrees 30 minutes West 303.5 feet to a point West of said North Branch of the Chicago River; thence West 679.2 feet to said North and South center line of said Section; thence South and along said North and South center line 300 feet to the point of beginning (except from said tract of land the East 91.9 feet of said premises taken and appropriated for the purpose of straightening said North Branch of the Chicago River and also excepting therefrom the South 33 feet thereof dedicated for street purposes September 12, 1894) in Cook County, Illinois.

Property of Cook County Clerk's Office

UNOFFICIAL COPY

Appendix A
to Mortgage

Local Law Provisions

1. Future Advances. Mortgagor or Secured Parties are obligated under the terms of the Notes Documentation and any Additional Pari Passu Agreement to make advances as provided therein, and Mortgagor acknowledges and intends that all such advances, including future advances whenever hereafter made, shall be secured by the lien of this Mortgage, as provided in Section 15-1302(b)(3) of the Act (as hereinafter defined). Mortgagor covenants and agrees that this Mortgage shall secure the payment of all loans and advances which 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 Mortgagee, Secured Parties or otherwise (but not advances or loans made more than 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 advances is made. The lien of this Mortgage shall be valid as to all Obligations, including future advances, 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. The total amount of the Obligations may increase or decrease from time to time, but the total unpaid principal balance of the Obligations (including disbursements which Mortgagee or Secured Parties may make under this Mortgage or Notes Documentation or any Additional Pari Passu Agreement) at any time outstanding shall not exceed €325,000,000.00. This Mortgage shall be valid and shall have priority over all subsequent liens and encumbrances, including any statutory liens except taxes and assessments levied on the Mortgaged Property or such other liens that shall have priority by operation of law, to the extent of the maximum amount secured hereby.

2. The final maturity date of the Notes is February 15, 2026.

3. Illinois Mortgage Foreclosure Law Mortgagee shall be entitled to the following benefits, among others, pursuant to the Illinois Mortgage Foreclosure Law (735 ILCS 5/15-1101 et seq.) (the "Act"):

(a) Benefits of Act. Mortgagor and Mortgagee shall have the benefit of all of the provisions of the Act, including all amendments thereto which may become effective from time to time after the date hereof. If any provision of the Act which is specifically referred to herein may be repealed, Mortgagee shall have the benefit of such provision as most recently existing prior to such repeal, as though the same were incorporated herein by express reference.

(b) Protective Advances. All advances, disbursements and expenditures made by Mortgagee 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 authorized by this Instrument or by the Act (collectively, "Protective Advances"), shall have the benefit of all applicable provisions of the Act. 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 5/15-1302 of the Act.

(c) 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 Act, 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

UNOFFICIAL COPY

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 Act

(d) Real Estate. Mortgagor acknowledges that the transaction of which this Mortgage is a part is a transaction which does not include either agricultural real estate (as defined in 735 ILCS 5/15-1201 of the Act) or residential real estate (as defined in 735 ILCS 15/1219 of the Act), and, to the full extent permitted by law, Mortgagor hereby voluntarily and knowingly waives its rights to reinstatement and redemption as allowed under 735 ILCS 5/15-1601 of the Act, and to the full extent permitted by law, waives the benefits of all present and future valuation, appraisal, homestead, exemption, stay, extension or redemption (including the equity of redemption) and moratorium laws under any state or federal law.

(e) Conflicts with the Act. In the event that any provision in this Mortgage shall be inconsistent with any provision of the Act, the provisions of the Act 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 the Act. If any provision of this Mortgage shall grant to Mortgagee any rights or remedies upon an Event of Default which are more limited than the rights that would otherwise be vested in Mortgagee under the Act in the absence of said provision, Mortgagee shall be vested with the rights granted in the Act to the full extent permitted by law.

4. Business Purpose. 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 used 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. Maximum Secured. This Mortgage secures the payment of the entire indebtedness secured hereby; provided, however that the total amount secured by this Mortgage shall not exceed an amount equal to €650,000,000.00.

6. Collateral Protection Act. Pursuant to the terms of the Collateral Protection Act (815 ILCS 180/1 et seq.), Mortgagor is hereby notified that unless Mortgagor provides Mortgagee with evidence of the insurance coverage required by this Mortgage, Mortgagee may purchase insurance at Mortgagor's expense to protect Mortgagee's interests in the Premises, which insurance may, but need not, protect the interests of Mortgagor. The coverage purchased by Mortgagee may not pay any claim made by Mortgagor or any claim made against Mortgagor in connection with the Premises. Mortgagor may later cancel any insurance purchased by Mortgagee, but only after providing Mortgagee with evidence that Mortgagor has obtained the insurance as required hereunder. If Mortgagee purchases insurance, the Mortgagor will be responsible for the costs of such insurance, including interest and any other charges imposed in connection with the placement of the insurance, until the effective date of the cancellation or expiration of the insurance. The costs of the insurance may be added to the total obligation secured hereby. The costs of such insurance may be greater than the cost of insurance Mortgagor may be able to obtain for itself.

7. Fixture Filing. This Mortgage constitutes a fixture filing under the Illinois Uniform Commercial Code and any other applicable Uniform Commercial Code, as modified and recodified from time to time, with respect to all personal property and fixtures owned by Mortgagor and now or hereafter affixed or attached to, or installed in, or used in connection with, the Mortgaged Property, whether or not permanently affixed thereto, together with all accessions, replacements and substitutions thereto or therefor and the proceeds thereof, including, without limitation, all Fixtures.

UNOFFICIAL COPY

Mortgagee shall have all the rights with respect to the personal property and fixtures afforded to it by the applicable Uniform Commercial Code, in addition to, but not in limitation of, the other rights afforded Mortgagee by the Notes Documentation or any Additional Pari Passu Agreement. A carbon, photographic or other reproduction of this Mortgage shall be sufficient as a financing statement. Mortgagee shall have the right at any time to file a manually executed counterpart or a carbon, photographic or other reproduction of this Mortgage as a financing statement in either the central or local UCC records of any jurisdiction wherein the Land is located, but the failure of Mortgagee to do so shall not impair (i) the effectiveness of this Mortgage as a fixture filing as permitted by the applicable Uniform Commercial Code, or (ii) the validity and enforceability of this Mortgage in any respect whatsoever. The following information is included for purposes of meeting the requirements of a financing statement:

The name of the Debtor is: Williams Electronics Games, Inc.

The mailing address of Debtor is: 3401 N. California Avenue, Chicago, IL 60618.

The name of the Secured Party is: DEUTSCHE BANK TRUST COMPANY AMERICAS

The address of the Secured Party is: 60 Wall Street, MS: NYC60-1630 New York, NY 10005

The owner of the Land is the Mortgagor.

This financing statement covers all of the Mortgagor's personal property and fixtures (whether now owned or hereafter acquired). The personal property and fixtures includes (i) goods which are or are to become fixtures on the Land, (ii) minerals or the like (including, without limitation, oil and gas) located on the Land, (iii) the Personal Property, and (iv) all proceeds and products of the Personal Property and Fixtures.

Property of Cook County Clerk's Office