**Americas Credit Derivatives Determinations Committee Statement – May 17, 2022**

**MGM Growth Properties Operating Partnership LP Successor Determination**

**DC Issue Number 2022050201**

The Americas DC considered the General Interest Question relating to MGM Growth Properties Operating Partnership LP (**MGM LP**) (DC Issue Number 2022050201) under the 2014 ISDA Credit Derivatives Definitions (the **2014 Definitions**) as published by the International Swaps and Derivatives Association, Inc., and Resolved on May 17, 2022 that, as a result of an exchange offer involving VICI Properties L.P. (**VICI LP**) and VICI Note Co. Inc. (**VICI Note Co**, and together with VICI LP, the **VICI Issuers**), each of the VICI Issuers became a Successor to MGM LP under the 2014 Definitions[[1]](#footnote-1) on April 29, 2022.

The Americas DC is providing the following statement in connection with its Successor determination.

1. Summary of EVENTS

On August 4, 2021, MGM LP, certain related MGM entities including MGM Growth Properties LLC (**MGM LLC**) and certain VICI entities entered into a master transaction agreement (the **Transaction Agreement**), which provided for, among other things:

The merger of MGM LLC with and into a merger subsidiary (**REIT Merger Sub**), with REIT Merger Sub being the surviving entity (the **REIT Merger**)[[2]](#footnote-2);

The merger of REIT Merger Sub with and into MGM LP, with MGM LP being the surviving entity[[3]](#footnote-3) (the **Partnership Merger**, and together with the REIT Merger, the **Mergers**); and

The potential exchange of existing MGM debt (including MGM LP debt) for new VICI debt (the **Exchange**).[[4]](#footnote-4)

Pursuant to the terms and conditions of an Offering Memorandum dated September 13, 2021, the VICI Issuers initiated the Exchange via certain exchange offers and related consent solicitations for "any and all outstanding notes" of MGM LP (**MGM LP Notes**).[[5]](#footnote-5) Consistent with the Transaction Agreement, such exchange offers and related consent solicitations were announced in connection with, and were conditioned upon the completion of, the Mergers.[[6]](#footnote-6)

On April 14, 2022, VICI extended the expiration date of the Exchange, in order to ensure that "the Mergers may be consummated on or before the Settlement Date".[[7]](#footnote-7)

On April 28, 2022, VICI LP announced that the VICI Issuers had accepted for exchange more than 95% of the outstanding principal amount of MGM LP Notes[[8]](#footnote-8):

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| **Title of Series of MGP Notes** |  | **CUSIPs** | |  |  | **Series of VICI Exchange Notes** |  | **Aggregate Principal Amount Outstanding** | |  |  | **MGP Notes Tendered** | | | | | |  |
|  |  |  | |  |  |  |  |  | |  |  | **Principal Amount** | |  |  | **Percentage** | |  |
| 5.625% Senior Notes due 2024 |  |  | 55303WAA5 / 55303XAC9 / U5930AAA6 |  |  | VICI 5.625% Senior Notes due 2024 |  | $ | 1,050,000,000 |  |  | $ | 1,024,169,000 |  |  |  | 97.54 | % |
| 4.625% Senior Notes due 2025 |  |  | 55303XAK1 / U5930BAD8 |  |  | VICI 4.625% Senior Notes due 2025 |  | $ | 800,000,000 |  |  | $ | 799,368,000 |  |  |  | 99.92 | % |
| 4.500% Senior Notes due 2026 |  |  | 55303XAB1 |  |  | VICI 4.500% Senior Notes due 2026 |  | $ | 500,000,000 |  |  | $ | 480,524,000 |  |  |  | 96.10 | % |
| 5.750% Senior Notes due 2027 |  |  | 55303XAG0 / 55303XAJ4 / U5930BAC0 |  |  | VICI 5.750% Senior Notes due 2027 |  | $ | 750,000,000 |  |  | $ | 729,466,000 |  |  |  | 97.26 | % |
| 4.500% Senior Notes due 2028 |  |  | 55303XAD7 / 55303XAF2 / U5930BAB2 |  |  | VICI 4.500% Senior Notes due 2028 |  | $ | 350,000,000 |  |  | $ | 349,325,000 |  |  |  | 99.81 | % |
| 3.875% Senior Notes due 2029 |  |  | 55303XAL9 / U5930BAE6 |  |  | VICI 3.875% Senior Notes due 2029 |  | $ | 750,000,000 |  |  | $ | 727,114,000 |  |  |  | 96.95 | % |

On April 29, 2022:

* + - 1. VICI LP and MGM LP announced that April 29, 2022, was the closing date of the Mergers; and
      2. The new VICI notes were issued on such date in exchange for the MGM LP debt that was the subject of the Exchange.[[9]](#footnote-9)

1. Relevant Obligations of MGM LP

Based on Eligible Information, the Americas DC did not identify any material debt of MGM LP that was outstanding as of the settlement date of the Exchange (April 29, 2022) other than the MGM LP Notes that were the subject of the Exchange.[[10]](#footnote-10)

1. Approach under the 2014 Definitions

Under the 2014 Definitions, the determination of a Successor focuses on the proportion of "Relevant Obligations" that an entity "succeeds" to on a given date.

Pursuant to the Exchange, MGM LP notes were exchanged for new VICI notes, which were issued on April 29, 2022. Therefore, the Americas DC identified April 29, 2022 as the relevant potential Succession Date for purposes of the 2014 Definitions.[[11]](#footnote-11)

1. Analysis under the 2014 Definitions

Under the 2014 Definitions, an entity "succeeds" to a Reference Entity and its Relevant Obligations when it "(i) assumes or becomes liable for such Relevant Obligations whether by operation of law or pursuant to any agreement […] or (ii) issues Bonds or incurs Loans (the "Exchange Bonds or Loans") that are exchanged for Relevant Obligations, and in either case the Reference Entity is not thereafter a direct obligor or a provider of a Relevant Guarantee with respect to such Relevant Obligations or such Exchange Bonds or Loans, as applicable".[[12]](#footnote-12) "Relevant Obligations" are defined to mean "the Obligations of the Reference Entity which fall within the Obligation Category "Bond or Loan" and which are outstanding immediately prior to the Succession Date".[[13]](#footnote-13) The term "Obligation" may include "obligations of the Reference Entity (either directly or as provider of a Relevant Guarantee)".[[14]](#footnote-14)

Because Relevant Obligations are determined "immediately prior to the Succession Date" (in this case, April 29, 2022), the Americas DC determined that all MGM LP Notes that were outstanding immediately prior to April 29, 2022 constituted Relevant Obligations of MGM LP, and that any MGM LP Notes that were tendered and accepted in the Exchange Offer in exchange for new VICI notes were succeeded to by the VICI Issuers. As described in Section 1 above, more than 95% of the MGM LP Notes were therefore succeeded to by the VICI Issuers.

Section 2.2(h) of the 2014 Definitions provides, in relevant part, that "[i]f two or more entities (each, a "Joint Potential Successor") jointly succeed to a Relevant Obligation (the "Joint Relevant Obligation") either directly or as a provider of a Relevant Guarantee, then (i) if the Joint Relevant Obligation was a direct obligation of the Reference Entity, it shall be treated as having been succeeded to by the Joint Potential Successor (***or Joint Potential Successors, in equal parts***) which succeeded to such Joint Relevant Obligation as direct obligor or obligors" (emphasis added). Because the MGM LP Notes were direct obligations of MGM LP, and because the VICI Issuers are co-issuers with respect to the new VICI notes and therefore "direct obligors" in respect of such new VICI notes, the Americas DC determined that each VICI Issuer should be considered to have succeeded to the exchanged MGM LP Notes "in equal part".

Given the above, the Americas DC determined that (i) each VICI Issuer had succeeded to more than 25% of the Relevant Obligations of MGM LP, (ii) less than 25% of the Relevant Obligations of MGM LP remained with MGM LP, and (iii) therefore Section 2.2(a)(iii) of the 2014 Definitions applied. As a result, each of the VICI Issuers were determined to be Successors, and the provisions of Section 2.2(n) of the 2014 Definitions[[15]](#footnote-15) applied to outstanding Credit Derivative Transactions that specified MGM LP as the Reference Entity.

1. Each capitalized term used but not defined in this Statement shall have the meaning given to it in (a) the DC Rules or (b) the 2014 Definitions, as applicable. [↑](#footnote-ref-1)
2. *See* Section 2.1(b) of the Transaction Agreement, available as Ex. 2.1 of the SEC Form 8-K filed by MGM LP on April 29, 2022, available [here](https://www.sec.gov/Archives/edgar/data/0001656936/000119312521236902/d130281dex21.htm). [↑](#footnote-ref-2)
3. MGM LP changed its name to VICI Properties 2 L.P. after the Partnership Merger. *See* SEC Form 8-K filed by VICI LP on April 29, 2022, available [here](https://www.sec.gov/ix?doc=/Archives/edgar/data/1705696/000119312522134159/d291163d8k.htm), at "Introductory Note". For simplicity, this DC Statement refers to the original Reference Entity as "MGM LP" notwithstanding this name change. For a description of the Partnership Merger, see Section 2.1(c) of the Transaction Agreement, available as Ex. 2.1 of the SEC Form 8-K filed by MGM LP on April 29, 2022, available [here](https://www.sec.gov/Archives/edgar/data/0001656936/000119312521236902/d130281dex21.htm). [↑](#footnote-ref-3)
4. *See* Section 8.24 of the Transaction Agreement, available as Ex. 2.1 of the SEC Form 8-K filed by MGM LP on April 29, 2022, available [here](https://www.sec.gov/Archives/edgar/data/0001656936/000119312521236902/d130281dex21.htm). [↑](#footnote-ref-4)
5. *See* VICI press release ("VICI Properties Inc. Announces Extension of Exchange Offers"), dated April 14, 2022, available [here](https://www.businesswire.com/news/home/20220414005716/en/VICI-Properties-Inc.-Announces-Extension-of-Exchange-Offers). [↑](#footnote-ref-5)
6. *Id*. [↑](#footnote-ref-6)
7. *Id*. [↑](#footnote-ref-7)
8. See April 28, 2022 Press Release, available as Exhibit 99.1 to the SEC Form 8-K filed by VICI LP on April 29, 2022, available [here](https://www.sec.gov/Archives/edgar/data/1705696/000119312522134159/d291163dex991.htm). [↑](#footnote-ref-8)
9. *See* SEC Form 8-K filed by VICI LP on April 29, 2022, available [here](https://www.sec.gov/ix?doc=/Archives/edgar/data/1705696/000119312522134159/d291163d8k.htm) ("On April 29, 2022, [the VICI Issuers] completed their previously announced private exchange offers to certain eligible holders (collectively, the "Exchange Offers") for any and all outstanding [MGM LP Notes]"). Note that the issuance date (April 29, 2022) of the new VICI Notes was also confirmed with VICI LP Investor Relations. [↑](#footnote-ref-9)
10. MGM LP was a party to a credit agreement dated as of April 25, 2016 (the **Credit Agreement**), with USD 90 million in outstanding borrowings that were repaid on April 29, 2022 (*i.e.*, the closing date of the Mergers and the settlement date of the Exchange), with the Credit Agreement terminated on the same date. See the Form 8-K filed by MGM LP on April 29, 2022, available [here](https://www.sec.gov/ix?doc=/Archives/edgar/data/1691299/000119312522134266/d266204d8k.htm); see also the Form 8-K filed by MGM LP on February 18, 2020, available [here](https://content.edgar-online.com/ExternalLink/EDGAR/0001193125-20-040600.html?hash=cc68efa623d23b632f57ee883a7fcd71d1f4bcabf425250ebe9db9f612483ddd&dest=d850473dex105_htm#d850473dex105_htm) (including the fifth amendment to the Credit Agreement and identifying MGM LP as "Borrower"). Note that even if such debt were considered to be outstanding immediately prior to April 29, 2022, the existence of this agreement would not alter the Successor determination below, given the amount of outstanding MGM note debt immediately prior to April 29, 2022. [↑](#footnote-ref-10)
11. *See* Section 2.2(j) of the 2014 Definitions (describing the "Succession Date" as the "legally effective date of an event in which one or more entities succeed to some or all of the Relevant Obligations of the Reference Entity"); *see also* Section 2.2(d) of the 2014 Definitions (defining succession as occurring when an entity other than the Reference Entity "***issues*** Bonds or incurs Loans (the "Exchange Bonds or Loans") that are exchanged for Relevant Obligations […]" (emphasis added)). The Americas DC has generally treated the settlement date of an exchange as the Succession Date for purposes of the 2014 Definitions. [↑](#footnote-ref-11)
12. Section 2.2(d) of the 2014 Definitions. [↑](#footnote-ref-12)
13. Section 2.2(f) of the 2014 Definitions. [↑](#footnote-ref-13)
14. Section 3.1(a) of the 2014 Definitions. [↑](#footnote-ref-14)
15. These provisions require, among other things, division of the existing Credit Derivative Transaction into multiple new Credit Derivative Transactions (in this case, one for each VICI Issuer), with the Floating Rate Payer Calculation Amount (*i.e.*, the notional) of the existing Credit Derivative Transaction distributed equally among such new Credit Derivative Transactions. [↑](#footnote-ref-15)