

AGREEMENT

THIS AGREEMENT (this "Agreement") is by and between the **CITY OF BOSTON**, a Massachusetts municipality acting by and through its Mayor, having a principal place of business at 1 City Hall Square, Suite 500, Boston, Massachusetts 02201 (the "City"), and **STERLING SUFFOLK RACECOURSE, LLC**, a Massachusetts limited liability company having a principal place of business at 525 McClellan Highway, East Boston, Massachusetts 02128 ("Suffolk"), dated as of July 10, 2014 (the "Effective Date"). Hereinafter, "Suffolk" shall also mean Suffolk's successors and/or assigns. Hereinafter, Suffolk and the City are together the "Parties" and individually a "Party."

RECITALS

Reference is made to the following facts:

1. Suffolk has entered into a binding agreement with Mohegan Sun Massachusetts, LLC ("Mohegan") pursuant to which Mohegan will hold a long term lease (the "Lease") of an approximately 40-acre parcel of land located off Winthrop Avenue in the City of Revere, Massachusetts (the "Casino Property").
2. Suffolk will act as landlord for the Casino Property pursuant to the binding agreement with Mohegan.
3. Mohegan has proposed to construct and thereafter own and operate a gaming establishment and related amenities at the Casino Property (the "Project").
4. Mohegan is seeking a "Category 1 License" for "Region A", as those terms are defined and used in M.G.L. c. 23K (a "Gaming License"), from the Massachusetts Gaming Commission (the "Commission") to operate the Project at the Casino Property.
5. Mohegan has entered into a Surrounding Community Agreement with the City (the "Mohegan Agreement").
6. Suffolk proposes to continue to operate the historic Suffolk Downs Racetrack on approximately 111 acres, not part of the Casino Property, located in East Boston and the City of Revere (the "Suffolk Downs Racetrack Property").
7. Suffolk will enter into a Recognition Agreement by and between Suffolk, Mohegan and the City which recognizes the City's rights as set forth in the Mohegan Agreement and agrees to not interfere with or disturb the City's rights therein as set forth in such Recognition Agreement.
8. Suffolk and the City have entered into this Agreement to evidence the obligations of Suffolk to the City regarding the Suffolk Downs Racetrack Property.

THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby enter into this Agreement with mutual understandings and agree as follows:

SECTION 1. RESPONSIBILITIES AND UNDERTAKINGS BY SUFFOLK

A. SUFFOLK DOWNS RACETRACK

1. Racetrack Operations. If Mohegan is awarded a Gaming License and Mohegan develops and opens the Project and the current revenue formulas for the Racehorse Development Fund under M.G.L. c. 23K remain unchanged, Suffolk will continue to operate the Suffolk Downs Racetrack throughout the initial fifteen (15) year term of Mohegan's Gaming License to the extent permitted under all applicable laws, regulations, ordinances, permits and licenses.

2. Master Planning. Suffolk shall separately covenant with the Boston Redevelopment Authority ("BRA") to enter into a long term master planning exercise for the Suffolk Downs Racetrack Property. Suffolk shall work with the BRA to develop a master plan (the "Master Plan") within twelve (12) months of the award of a gaming license to Mohegan based upon a master planning process overseen by a Master Planner designated by the BRA. The City acknowledges that planning for renovations to and redevelopment of the racing portions of the Suffolk Dows Racetrack Property may commence in advance of the master planning process in order to facilitate continued racing operations at the Suffolk Downs Racetrack Property, and that from time to time thereafter planning for renovations to and redevelopment of the racing portions may continue to evolve in consultation with the BRA.

3. Approvals as Required for Continued Racetrack Operations. The City and the Boston Redevelopment Authority will accept and process applications for all approvals required to continue racetrack operations at the Suffolk Downs Racetrack.

4. Horse Racing Related Revenues. Nothing in this Agreement shall limit, impact or waive the City's right to receive the local share of racing taxes currently collected by the Commonwealth from Sterling Suffolk pursuant to applicable laws and regulations, as the same may be amended.

B. RECOGNITION AGREEMENT.

Suffolk will enter into a Recognition Agreement in force and substance similar to the attached as Exhibit A hereto. By execution of the Recognition Agreement, Suffolk recognizes Mohegan Sun's rights and duties to the City under the terms of the Mohegan Agreement and agrees not to interfere with any rights or entitlements granted to the City thereunder as set forth in the Recognition Agreement.

C. DISCLOSURE OF BENEFICIAL INTERESTS.

Suffolk shall provide to the City, not later than thirty (30) days from the date of this Agreement, the true names and addresses of all persons who have or will have a direct or indirect beneficial interest (as defined in M.G.L. c. 7C, s. 38) in the Property. The information required

by this paragraph shall include all interests, options, and all other agreements related to rights in the land (including both recorded and non-recorded documentation).

D. REPRESENTATIONS AND WARRANTIES OF SUFFOLK

Suffolk represents and warrants to the City that each of the following statements is true and accurate as of the Effective Date:

1. Suffolk is a duly formed limited liability company organized under the laws of the Commonwealth of Massachusetts and is in good standing and qualified to do business under the laws of the Commonwealth of Massachusetts;
2. Suffolk has taken all actions required by law to approve the execution of this Agreement;
3. Suffolk's entry into this Agreement and/or the performance of Suffolk's obligations under this Agreement do not constitute a violation of any state or federal statute or judicial decision to which Suffolk is subject;
4. There are no pending lawsuits or other actions or proceedings which would prevent or impair the timely performance of Suffolk's obligations under this Agreement;
5. Suffolk has the legal right, power, and authority to enter into this Agreement and to consummate the obligations contemplated hereby, and the execution, delivery and performance of this Agreement have been duly authorized and no other action by Suffolk is requisite to the valid and binding execution, delivery, and performance of this Agreement, except as otherwise expressly set forth herein, and this Agreement is enforceable against Suffolk;
6. The individual executing this Agreement on behalf of Suffolk is authorized to execute this Agreement on behalf of Suffolk; and
7. This Agreement is binding on Suffolk and is enforceable against Suffolk in accordance with its terms, subject to applicable principles of contract, equity and insolvency laws.

SECTION 2. RESPONSIBILITIES AND UNDERTAKINGS BY THE CITY

A. REPRESENTATIONS AND WARRANTIES OF THE CITY

The City represents and warrants to Suffolk that each of the following statements is true and accurate as of the Effective Date:

1. The City is a validly existing municipal corporation and has all requisite power and authority to enter into and perform its obligations under this Agreement, and all other agreements and undertakings to be entered into by the City in connection herewith;
2. This Agreement is binding on the City and is enforceable against the City in accordance with its terms, subject to applicable principles of equity and insolvency laws;

3. The City's entry into this Agreement and/or the performance of the City's obligations under this Agreement do not constitute a violation of any state or federal statute or judicial decision to which the City is subject;
4. There are no pending lawsuits or other actions or proceedings which would prevent or impair the timely performance of the City's obligations under this Agreement; and
5. The individual executing this Agreement on behalf of the City is authorized to execute this Agreement on behalf of the City.

SECTION 3. GENERAL PROVISIONS

A. RECITALS

The Recitals set forth above are incorporated herein by reference as though fully set forth herein.

B. BINDING AGREEMENT

This Agreement is binding upon and enforceable against, and inures to the benefit of, the Parties hereto and their successors and assigns including, without limitation, any successor owner or owners of the Suffolk Downs Racetrack Property, but excluding mortgagees of the Suffolk Downs Racetrack Property or those claiming through mortgagees of the Suffolk Downs Racetrack Property.

C. TIME IS OF THE ESSENCE

All times, wherever specified herein for the performance by Suffolk of its obligations hereunder, are of the essence of this Agreement.

D. NO PARTNERSHIP

No relationship between the City and Suffolk of partnership or joint venture is intended to be created hereby, and any such relationship is hereby disclaimed.

E. RECORDING

The Parties shall cooperate in recording and filing a copy of a customary form of notice of agreement with the Suffolk County Registry of Deeds and Suffolk County Registry District of the Land Court following the award of the Gaming License to Mohegan. Upon the termination of this Agreement, the Parties shall cooperate in recording and filing a customary form of a notice of termination of notice of agreement with the Suffolk County Registry of Deeds and Suffolk County Registry District of the Land Court. The costs of recording the notice of agreement and notice of termination of notice of agreement shall be paid by Suffolk.

F. REPRESENTATIVES AND AGENTS NOT INDIVIDUALLY LIABLE

No member, official, employee, agent, or other authorized representative of the City shall have any personal interest, direct or indirect, in this Agreement, nor shall any such member, official, employee, agent, or representative participate in any decision relating to this Agreement which affects his or her personal interests or the interests of any corporation, partnership, or association in which he or she is, directly or indirectly, interested. No member, official, employee, agent, or other authorized representative of the City shall be personally liable to Suffolk, or any successor in interest, in the event of any default or breach by the City or for any amount which may become due to Suffolk or its successor or on any obligations under the terms of this Agreement. No stockholder, member, indirect or direct owner, director, manager, officer, employee, agent, or other authorized representative of Suffolk shall be personally liable to the City, or any successor in interest, in the event of any default or breach by Suffolk or for any amount which may become due to the City or its successor or on any obligations under the terms of this Agreement.

G. NOTICES

All notices and other communications required or permitted under this Agreement shall be in writing, signed by a duly authorized officer or representative of the City or Suffolk, as the case may be, and shall be (i) delivered by nationally recognized overnight delivery service, or (ii) mailed by certified or registered mail, return receipt requested, postage prepaid, to the Parties at the following addresses or such other addresses as each may have specified to the other by such a notice:

City: Martin J. Walsh, Mayor
City of Boston
1 City Hall Square, Suite 500
Boston, Massachusetts 02201-2013

with copies to: Eugene L. O'Flaherty, Corporation Counsel
City of Boston – Law Department
1 City Hall Square, Suite 615
Boston, MA 02201-2013

Suffolk: Sterling Suffolk Racecourse, LLC
525 McClellan Highway
East Boston, Massachusetts 02128
Attention: William J. Mulrow

with a copy to: DLA Piper LLP (US)
33 Arch Street, 26th Floor
Boston, Massachusetts 02110
Attention: Charles A. Baker III, Esq.

Any such notice shall be deemed to have been given on the date received or refused during normal business hours.

H. SEVERABILITY

If any term or provision of this Agreement, or the application thereof to any person or circumstance, shall to any extent be determined to be invalid and unenforceable, the remainder of this Agreement, or the application of such terms to persons or circumstances other than those to which it is invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and shall be enforced to the extent permitted by law; provided, however, that the City shall have the right to seek special legislation in order to validate any term or provision of this Agreement.

I. GOVERNING LAW

This Agreement shall be governed and construed by the laws of the Commonwealth of Massachusetts, without regard to conflict of law principles.

J. AMENDMENTS

This Agreement may be amended only by a written instrument signed by the Parties.

K. TERM

The term of this Agreement shall commence on the Effective Date and expire on the earlier of (a) the expiration or earlier termination of Mohegan's Gaming License; (b) the date on which Suffolk notifies the City that Mohegan has been rejected as an applicant by the Commission during any phase of the Commission's licensing process, with any appeals having been decided against Mohegan and/or all appeal periods applicable to the licensing process having expired; (c) the date on which Suffolk notifies the City that Mohegan is no longer an applicant for the Gaming License or that an applicant other than Mohegan has received a Category 1 License for Region A, with all appeals having been decided in that applicant's favor and/or all appeal periods applicable to the license having expired, provided that Mohegan has not previously been awarded a Category 1 License for Region A; or (d) the expiration or earlier termination of the Lease.

If this Agreement is terminated or expires pursuant to the terms hereof, then Suffolk is relieved from all obligations under this Agreement, excepting therefrom any obligations that by their terms expressly state they shall survive expiration or termination of this Agreement.

L. EXECUTION IN COUNTERPARTS / MULTIPLE ORIGINALS

This Agreement may be executed in counterparts. All such counterparts shall be deemed to be originals and together, shall constitute but one and the same instrument. The Parties have agreed to execute multiple original copies of this Agreement.

M. ENFORCEMENT

It is the intention of the Parties that the provisions of this Agreement may be enforced only by the Parties hereto, and that no other person or persons shall be authorized to undertake any action to enforce any provisions hereof without the prior written consent of the Parties.

IN WITNESS WHEREOF, the Parties hereto have caused this instrument to be executed in their behalf by their respective officers thereunto duly authorized as of the day and year first above written.

Sterling Suffolk Racecourse, LLC

By: William J. Mulrow
William J. Mulrow, Chair of the Board

City of Boston

By: Martin J. Walsh
Martin J. Walsh
Mayor

Approved as to form:

By: Eugene L. O'Flaherty
Eugene L. O'Flaherty.
Corporation Counsel

EXHIBIT A

Recognition Agreement

[see attached]

RECOGNITION AGREEMENT

This Recognition Agreement (this "Agreement") is by and between the **CITY OF BOSTON**, a Massachusetts municipality acting by and through its Mayor, having a principal place of business at 1 City Hall Square, Suite 500, Boston, Massachusetts 02201 (the "City"), **MOHEGAN SUN MASSACHUSETTS, LLC**, a Delaware limited liability company with its principal place of business at One Mohegan Sun Boulevard, Uncasville, Connecticut 06382 ("Mohegan"), and **STERLING SUFFOLK RACECOURSE, LLC**, a Massachusetts limited liability company having a principal place of business at 525 McClellan Highway, East Boston, Massachusetts 02128 ("Suffolk"), dated as of July 10, 2014 (the "Effective Date").

RECITALS

WHEREAS, the Commonwealth of Massachusetts (the "Commonwealth") on November 22, 2011 enacted "An Act Establishing Expanded Gaming in the Commonwealth," Chapter 194 of the Acts of 2011, principally codified at M.G.L. c. 23K (as may be amended from time to time, and together with any rules, regulations, policies and guidance promulgated thereunder, the "Act");

WHEREAS, the Act reflects the public policies of the Commonwealth with regard to the operation and regulation of expanded gaming as well as the public benefits to the Commonwealth and its citizens expected from a gaming project conducted in accordance with such policies, such as the creation of jobs, the generation of revenues for public purposes, and the increase of tourism and economic development within the Commonwealth;

WHEREAS, Suffolk is the owner of a 161 acre parcel of land (the "Property") located in both the East Boston neighborhood (Ward 1) of the City and in the City of Revere, Massachusetts ("Revere") on which Suffolk operates Suffolk Downs, a thoroughbred horse racing facility licensed by the Commonwealth pursuant to the provisions of M.G.L. c. 128A which is licensed by the Commonwealth to conduct simulcast wagering pursuant to the provisions of M.G.L. c. 128C;

WHEREAS, Mohegan has entered into a binding agreement with Suffolk pursuant to which Mohegan will hold a long term lease of an approximately 40 acre portion of the Property (the "Casino Property") located off Winthrop Avenue in the City of Revere, Massachusetts (the "Lease");

WHEREAS, Mohegan has filed a "Phase 2" application with the Massachusetts Gaming Commission (the "Commission") seeking a license (the "Gaming License") to operate a category 1 gaming establishment at the Casino Property, pursuant to the provisions of M.G.L. chapter 23K;

WHEREAS, the City and Mohegan have entered into that certain Surrounding Community Agreement dated July 10, 2014 setting forth, among other things, certain mitigation agreements and payments to be made or performed by Mohegan (the "Mohegan Agreement");

WHEREAS, the parties desire, pursuant to the provisions set forth in this Agreement, to have Suffolk recognize the existence of the Mohegan Agreement and to confirm that there are no defaults under the existing Lease;

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby enter into this Agreement with mutual understandings and agree as follows:

1. Recognition. Suffolk hereby acknowledges and recognizes that Mohegan has entered into the Mohegan Agreement with the City, and Suffolk agrees not to interfere with any rights or entitlements granted to the City thereunder prior to the expiration or earlier termination of the Lease.

2. No Defaults Under Lease. As of this date, Suffolk and Mohegan acknowledge and agree that the Lease is in full force and effect and that there are no violations of or defaults under the Lease on the part of Suffolk or Mohegan.

3. Notice Requirements. Suffolk shall be obligated to deliver a copy of any notice of any default that could give rise to a termination right, notice of termination or similar document given by Suffolk to Mohegan under the Lease to the City simultaneous with the delivery of such notice to Mohegan. Mohegan shall be obligated to deliver a copy of any notice of any default that could give rise to a termination right, notice of termination or similar document given by Mohegan to Suffolk under the Lease to the City simultaneous with the delivery of such notice to Suffolk.

4. Miscellaneous.

(a) Recitals. The Recitals set forth above are incorporated herein by reference as though fully set forth herein.

(b) No Effect on Lease. Nothing in this Agreement shall be construed to affect or otherwise modify in any manner the provisions of the Lease or to waive any rights Mohegan and Suffolk may now or hereafter have against the other by reason of or in connection with the Lease.

(c) Notice. All notices and other communications required or permitted under this Agreement shall be in writing, signed by a duly authorized officer or representative of the City or Suffolk, as the case may be, and shall be (i) delivered by nationally recognized overnight delivery service, or (ii) mailed by certified or registered mail, return receipt requested, postage prepaid, to the Parties at the following addresses or such other addresses as each may have specified to the other by such a notice:

City: Martin J. Walsh, Mayor
City of Boston
1 City Hall Square, Suite 500
Boston, Massachusetts 02201-2013

with copies to: Eugene L. O'Flaherty, Corporation Counsel
City of Boston – Law Department
1 City Hall Square, Suite 615
Boston, MA 02201-2013

Mohegan: Mohegan Sun Massachusetts, LLC
One Mohegan Sun Boulevard
Uncasville, CT 06382
Attention: Mitchell Etes, Manager

with copies to: Mohegan Gaming Advisors
One Mohegan Sun Boulevard
Uncasville, CT 06382
Attention: David Rome, Vice President and General Counsel

Suffolk: Sterling Suffolk Racecourse, LLC
525 McClellan Highway
East Boston, Massachusetts 02128
Attention: William J. Mulrow

with a copy to: DLA Piper LLP (US)
33 Arch Street, 26th Floor
Boston, Massachusetts 02110
Attention: Charles A. Baker III, Esq.

Any such notice shall be deemed to have been given on the date received or refused during normal business hours.

(d) Binding Agreement. This Agreement is binding upon and enforceable against, and inures to the benefit of, the parties hereto and their successors and assigns including, without limitation, any successor owner or owners of the Property.

(e) Severability. If any term or provision of this Agreement, or the application thereof to any person or circumstance, shall to any extent be determined to be invalid and unenforceable, the remainder of this Agreement, or the application of such terms to persons or circumstances other than those to which it is invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and shall be enforced to the extent permitted by law; provided, however, that the City shall have the right to seek special legislation in order to validate any term or provision of this Agreement.

(f) Governing Law. This Agreement shall be governed and construed by the laws of the Commonwealth of Massachusetts, without regard to conflict of law principles.

(g) Amendments. This Agreement may be amended only by a written instrument signed by the parties.

(h) Execution in Counterparts/Multiple Originals. This Agreement may be executed in counterparts. All such counterparts shall be deemed to be originals and together, shall constitute but one and the same instrument. The parties have agreed to execute multiple original copies of this Agreement.

(i) Enforcement. It is the intention of the parties that the provisions of this Agreement may be enforced only by the parties hereto, and that no other person or persons shall be authorized to undertake any action to enforce any provisions hereof without the prior written consent of the parties.


(j) Authority. Each party represents and warrants to the other that the person or persons executing this Agreement on its behalf has or have authority to do so and that such execution has fully obligated and bound such party to all terms and provisions of this Agreement.

(k) Term. The term of this Agreement shall commence on the Effective Date and expire on the earlier of (a) the expiration or earlier termination of Mohegan's Gaming License; (b) the date on which Suffolk notifies the City that Mohegan has been rejected as an applicant by the Commission during any phase of the Commission's licensing process, with any appeals having been decided against Mohegan and/or all appeal periods applicable to the licensing process having expired; (c) the date on which Suffolk notifies the City that Mohegan is no longer an applicant for the Gaming License or that an applicant other than Mohegan has received a Category 1 License for Region A, with all appeals having been decided in that applicant's favor and/or all appeal periods applicable to the license having expired, provided that Mohegan has not previously been awarded a Category 1 License for Region A; or (d) the expiration or earlier termination of the Lease. If this Agreement is terminated or expires pursuant to the terms hereof, then Suffolk is relieved from all obligations under this Agreement, excepting therefrom any obligations that by their terms expressly state they shall survive expiration or termination of this Agreement.

[Signatures to follow on the next page.]

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed in their behalf by their respective officers thereunto duly authorized as of the day and year first above written.

City of Boston

By: 
Martin J. Walsh
Mayor

Approved as to form:

By: 
Eugene L. O'Flaherty
Corporation Counsel

Mohegan Sun Massachusetts, LLC

By: 
Mitchell Etess, Manager

Sterling Suffolk Racecourse, LLC

By: 
William J. Mulrow, Chair of the Board

