



MASSACHUSETTS GAMING COMMISSION MEETING

Wednesday, September 4, 2013

9:30 am

Boston Convention and Exhibition Center

415 Summer Street, Room 151B

Boston, MA



Massachusetts Gaming Commission



UPDATED

NOTICE OF MEETING and AGENDA

September 4, 2013 Meeting

Pursuant to the Massachusetts Open Meeting Law, G.L. c. 30A, §§ 18-25, notice is hereby given of a meeting of the Massachusetts Gaming Commission. The meeting will take place:

Wednesday, September 4, 2013
9:30 a.m.

Boston Convention and Exhibition Center
415 Summer Street, Room 151B
Boston, MA

PUBLIC MEETING - #76

1. Call to order
2. Approval of Minutes
 - a. August 22, 2013
3. Ombudsman Report – John Ziemba and Catherine Blue, General Counsel
 - a. Host Community Discussion – Boston and Wynn MA, LLC and Wynn Resorts
 - b. Plainridge/Plainville
 - i. Citizen Notification
 - ii. Penn National Gaming Option and Host Community Agreement
4. Administration – Rick Day, Executive Director
 - a. General Administrative Update
 - i. Procurement Recommendations - VOTE
 - ii. Evaluation Teams Update – Jennifer Pinck
5. Workforce, Supplier and Diversity Development – Jill Griffin, Director
 - a. Supplier Task Force Update
6. Legal Report - Catherine Blue, General Counsel and Todd Grossman, Deputy General Counsel
 - a. Small Business Impact Statement (SBIS), relative to proposed changes in 205CMR 3.29 and 205 CMR 4.52, Medications & Prohibited Substances - VOTE
 - b. Phase 3 Regulations Update
 - i. Process
 - ii. Policy

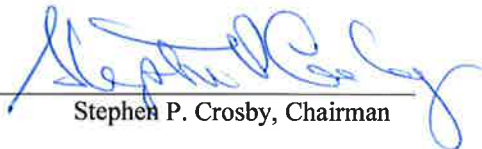


Massachusetts Gaming Commission

7. Other business – reserved for matters the Chair did not reasonably anticipate at the time of posting.

I certify that on this date, this Notice was posted as “Gaming Commission Meeting” at www.massgaming.com and emailed to: regs@sec.state.ma.us, melissa.andrade@state.ma.us, brian.gosselin@state.ma.us.

9/3/13
(date)


Stephen P. Crosby, Chairman

Date Posted to Website: September 3, 2013 at 1:30 p.m.



Massachusetts Gaming Commission



Meeting Minutes

Date: August 22, 2013

Time: 9:30 a.m.

Place: Division of Insurance
1000 Washington Street
1st Floor, Meeting Room 1-E
Boston, Massachusetts

Present: Commissioner Stephen P. Crosby, Chairman
Commissioner James F. McHugh
Commissioner Bruce Stebbins
Commissioner Enrique Zuniga

Absent: Commissioner Gayle Cameron

Clicking on the time posted in the margin will link directly to the appropriate section of the video.

Call to Order

See transcript page 2.

9:28 a.m. Chairman Crosby opened the 75th public meeting.

Approval of Minutes

See transcript page 2.

9:28 a.m. Commissioner McHugh stated that the minutes for the August 9 meeting are ready for approval.

Motion made by Commissioner McHugh that the minutes of August 9, 2013 be accepted with one minor typographical correction. Motion seconded by Commissioner Stebbins. The motion passed unanimously by a 4-0-0 vote.

Seafood Industry Presentation

See transcript pages 3-49.

- 9:29 a.m. Director Griffin introduced representatives from the Division of Marine Fisheries. They will be assisting with the statewide taskforce to provide resources to licensees and facilitate cooperation between licensees and local small businesses.
- 9:32 a.m. Paul Diodati, Story Reed, and Laura Ramsden presented information to the commission about the seafood industry in the Commonwealth.

Administration

Report by Executive Director Day. See transcript pages 49-85.

- 10:13 a.m. Executive Director Day provided an overview of hiring processes and other matters within the Commission. Pinck & Co, the Commission's new project manager, will provide a plan for the RFA-2 application review early in September. Executive Director Day will introduce the Commission's economic policy advisors at the next meeting. The Commission has narrowed its CIO candidates to five individuals for further screening. The CFO finalist is currently undergoing the background check process.
- 10:16 a.m. Executive Director Day provided an overview of the master schedule. The Commission is starting to plan around a possible schedule for gaming establishment construction in order to ensure that all other tasks are completed in time. Chairman Crosby requested that the staff provide more details on how they envision every the process panning out, in particular the timing of regulations and when policy questions will be before the Commission.
- 10:49 a.m. The commission took a brief recess.

Racing Division

Report by Director Durenberger. See transcript pages 85-113.

- 11:00 a.m. Director Durenberger provided the Commission with a redline version of the proposed amendments to 205 CMR 3.29 and 4.52 for adopting the model rules on medication and veterinary practices. The changes would incorporate the schedule of controlled therapeutic medications and introduce a point system that will attach to occupational licenses for medication violations. The Commission discussed the best method of incorporating the model rules.
- 11:25 a.m. *Motion made by Commissioner McHugh to adopt proposed changes to 205 CMR 3.29 and 4.52 as presented and with the additional language in section (2)(f)(i) in order to incorporate the model rules by reference as they exist "at the time of the violation." Motion seconded by Commissioner Stebbins. The motion passed unanimously by a 4-0-0 vote.*
- 11:27 a.m. Director Durenberger presented the draft application for a license to conduct horse racing pursuant to Chapter 128A. The Commission received no public comments on the application form. Applications under the updated form will be due on October 4.

11:29 a.m. *Motion made by Commissioner Zuniga to adopt the recommendations set forth in the memo and to adopt the application form as presented. Motion seconded by Commissioner McHugh. The motion passed unanimously by a 4-0-0 vote.*

Ombudsman Report

See transcript pages 113-155.

- 11:30 a.m. Ombudsman Ziemba brought up for discussion the issue of how to answer public and applicant questions that come to Commission staff. There are three potential options. First, staff could handle all questions that arise. Second, the Commission could answer questions in a public meeting. Third, the Commission can make fact based decisions during an adjudicatory proceeding. The Commission made no firm decision on which method is best, but agreed that different questions may require different procedures for response.
- 11:51 a.m. Ombudsman Ziemba discussed the status of the discussions between Boston and Everett concerning whether the City of Boston qualifies as a host community. The legal department will research whether the Commission has the power to hold an adjudicatory hearing and make a determination binding on the parties. As a preliminary matter, the staff will invite the representatives from Boston and Everett to discuss the issue.
- 12:03 p.m. The Commission has sent out notices to potential surrounding communities, both those communities in close geographic proximity to an applicant's proposal and those further away, in order to inform the communities of the of the process and deadlines.
- 12:05 p.m. The Town of Tewksbury rejected Penn National's proposed zoning change that would have allowed the developer to construct a slots parlor on the property. Consequently, Penn National is considering a new location and the scheduled host community referendum needs to be cancelled. The staff will continue discussions with the Secretary of the Commonwealth regarding the proper procedure for cancellation.
- 12:09 p.m. Ombudsman Ziemba stated that the Commission has been receiving an increased number of inquiries regarding involuntary disbursements. The Commission wanted to once again remind applicants that they will be judged in part on their outreach efforts and cooperation with communities.
- 12:13 p.m. Chairman Crosby stated that the Commission will hold an executive session pursuant to G.L. c. 30A, §21(a)(3), § 21(a)(5), G.L. c. 30A, § 21(a)(7), G.L. c. 66, G.L. c. 4, § 7, and G.L. c. 4, § 26(f) to discuss the KG Urban litigation. The Commission will not reconvene in open session at the end of the executive session.

Motion made by Commissioner Stebbins to enter into executive session. Motion seconded by Commissioner Zuniga. The motion passed 4-0-0 by roll call vote.

12:14 p.m. Meeting moved to executive session.

List of Documents and Other Items Used at the Meeting

1. Agenda for August 22, 2013
2. August 9, 2013 Meeting Minutes
3. Statewide Marine Fisheries Presentation
4. Master Schedule
5. Proposed Changes to 205 CMR 3.29 and 4.52: Medications and Prohibited Substances
6. August 20, 2013 Letter RE: Amendment of 205 CMR
7. Draft Application for License to Hold or Conduct A Racing Meeting

/s/ Catherine Blue
Catherine Blue
Assistant Secretary

HOST COMMUNITY AND GAMING ESTABLISHMENT DEFINITIONS

“Host community”, a municipality in which a gaming establishment is located or in which an applicant has proposed locating a gaming establishment.

“Gaming establishment”, the premises approved under a gaming license which includes a gaming area and any other nongaming structure related to the gaming area and may include, but shall not be limited to, hotels, restaurants or other amenities.

SURROUNDING COMMUNITY DEFINITION

“Surrounding communities”, municipalities in proximity to a host community which the commission determines experience or are likely to experience impacts from the development or operation of a gaming establishment, including municipalities from which the transportation infrastructure provides ready access to an existing or proposed gaming establishment.

EXCERPT FROM M.G.L. C. 23K §15.13

(13) have received a certified and binding vote on a ballot question at an election in the host community in favor of such license; provided, however that a request for an election shall take place after the signing of an agreement between the host community and the applicant; provided further, that upon receipt of a request for an election, the governing body of the municipality shall call for the election to be held not less than 60 days but not more than 90 days from the date that the request was received; provided further, that the signed agreement between the host community and the applicant shall be made public with a concise summary, approved by the city solicitor or town counsel, in a periodical of general circulation and on the official website of the municipality not later than 7 days after the agreement was signed by the parties; provided further, that the agreement and summary shall remain on the website until the election has been certified; provided further, that the municipality that holds an election shall be reimbursed for its expenses related to the election by the applicant within 30 days after the election; provided further, that the commission shall deny an application for a gaming license if the applicant has not fully reimbursed the community; provided further, that, for the purposes of this clause, unless a city opts out of this provision by a vote of the local governing body, if the gaming establishment is proposed to be located in a city with a population of at least 125,000 residents as enumerated by the most recent enumerated federal census, "host community" shall mean the ward in which the gaming establishment is to be located for the purpose of receiving a certified and binding vote on a ballot question at an election;



Suffolk Downs Proposal



Source: Suffolk Downs website

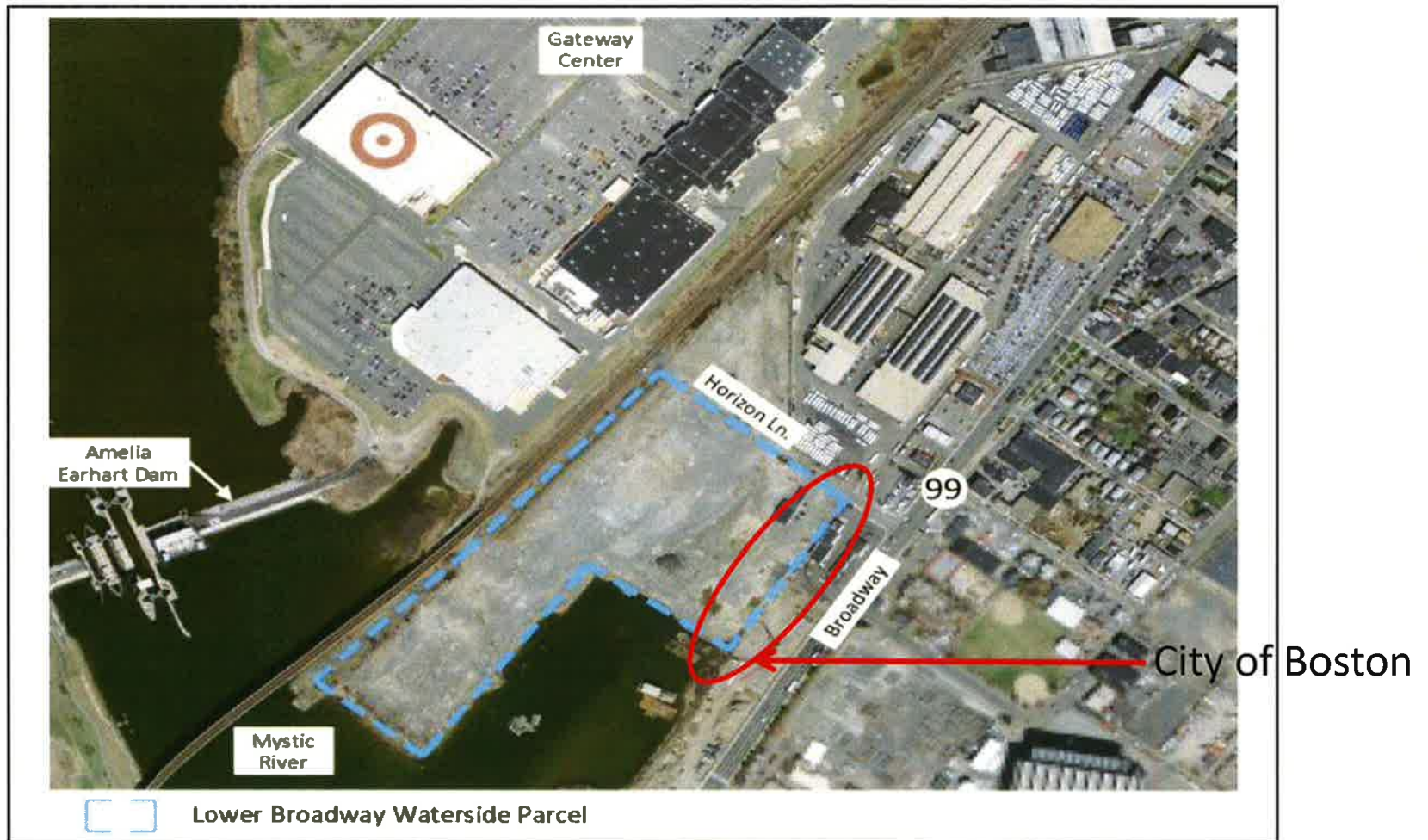
Ariel View of Monsanto Chemical Site



Boston parcel of
former Monsanto
Chemical site

Source: City of Boston Assessing Department

Wynn Proposed Site- March 27, 2013



Source: Office of the Mayor of Everett

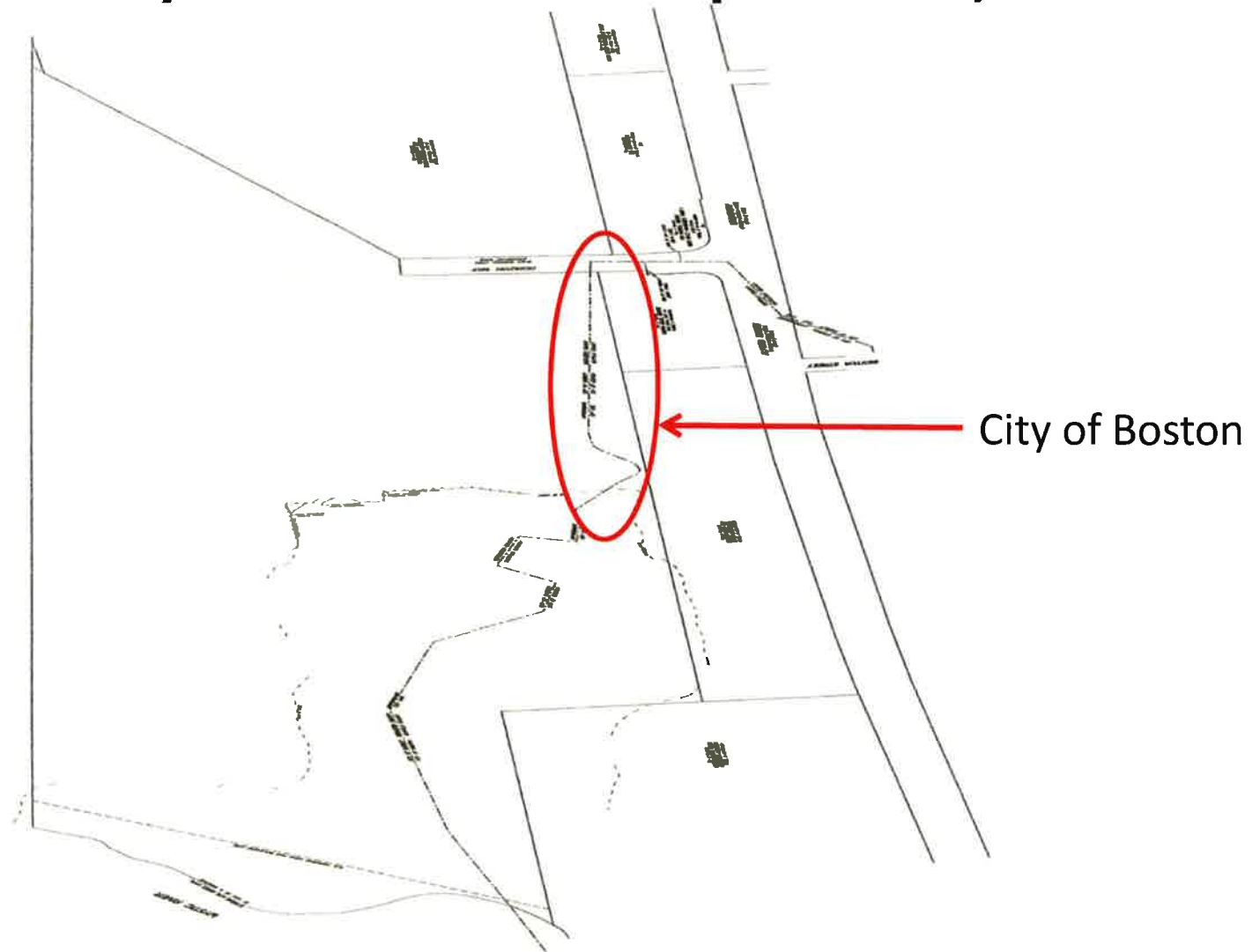
Wynn Proposal



City of Boston

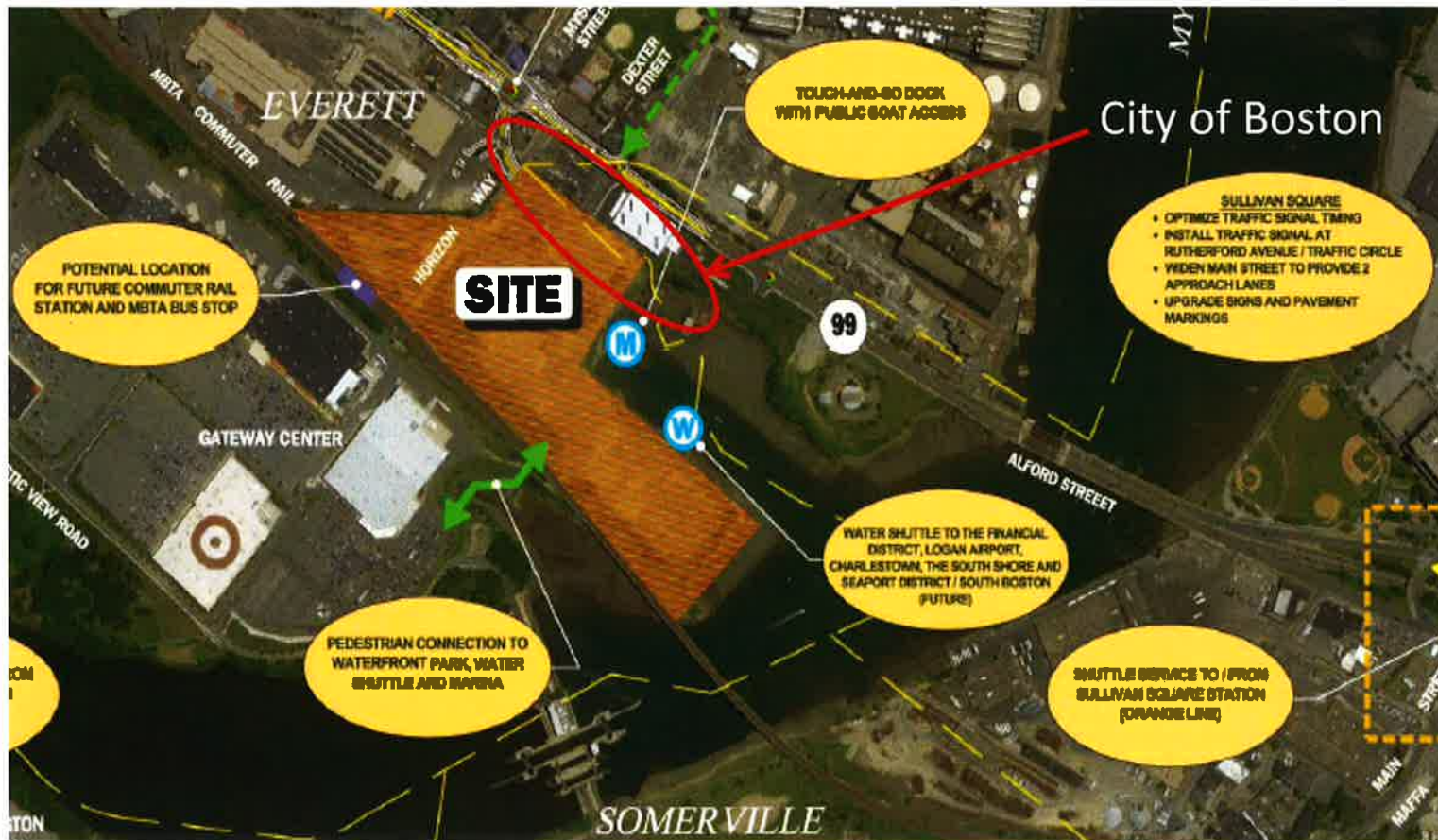
Source: Wynn Everett brochure

Wynn Proposed Site- April 19, 2013



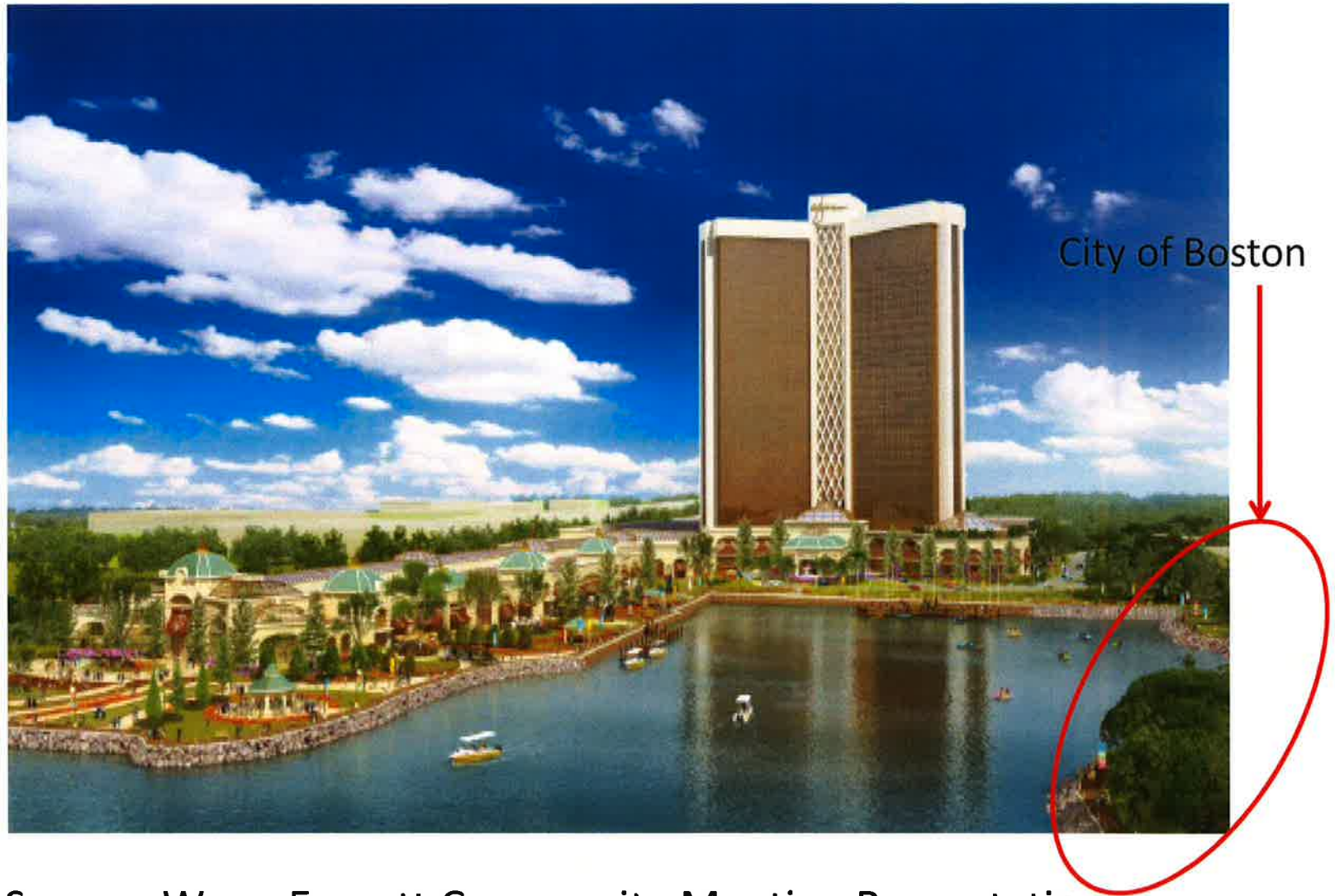
Source: Wynn-Everett Host Community Agreement, Exhibit A- Project Site Plan Described as the “Monsanto Chemical Site”

Wynn Proposed Site- May 21, 2013



Source: Wynn Everett Community Meeting Presentation

Wynn Proposed Site- May 21, 2013



Source: Wynn Everett Community Meeting Presentation

Wynn Proposed Site- May 21, 2013



City of
Boston

Source: Wynn Everett Community Meeting Presentation

Wynn Proposed Site- June 13, 2013



Source: Wynn 3-D model, Boston Globe

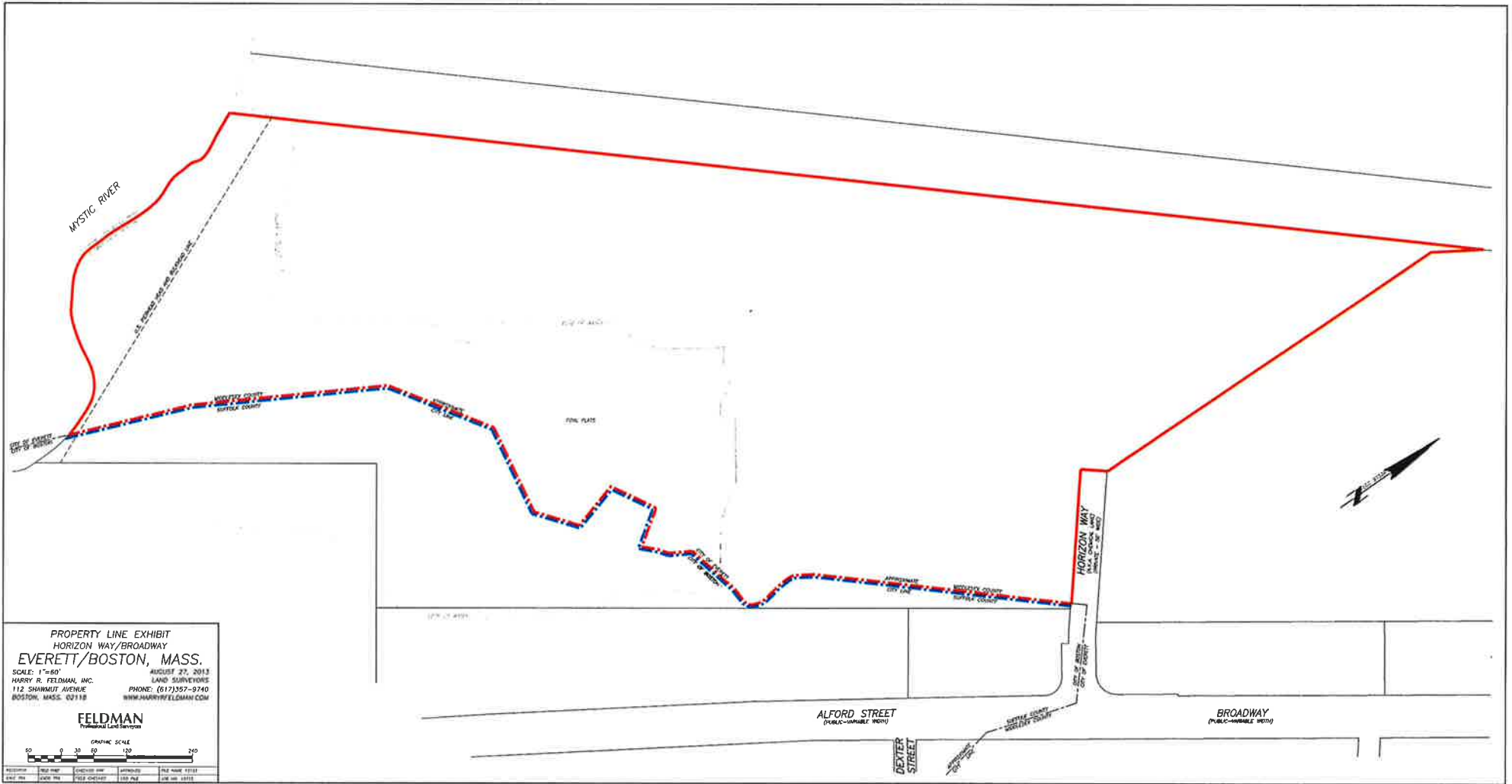
**Chapter 194 of the Acts of 2011:
An Act Establishing Expanded Gaming in the Commonwealth**

DEFINITIONS [c.23K §2]

“Host community,” a municipality *in which a gaming establishment is located* or *in which an applicant has proposed locating* a gaming establishment.

“Surrounding communities,” municipalities *in proximity to a host community* which the commission determines experience or are likely to experience impacts from the development or operation of a gaming establishment, *including municipalities from which the transportation infrastructure provides ready access to an existing or proposed gaming establishment.*

“Gaming establishment,” the *premises* approved under a gaming license which includes a gaming area and any other nongaming *structure* related to the gaming area and may include, but shall not be limited to, hotels, restaurants or other amenities.



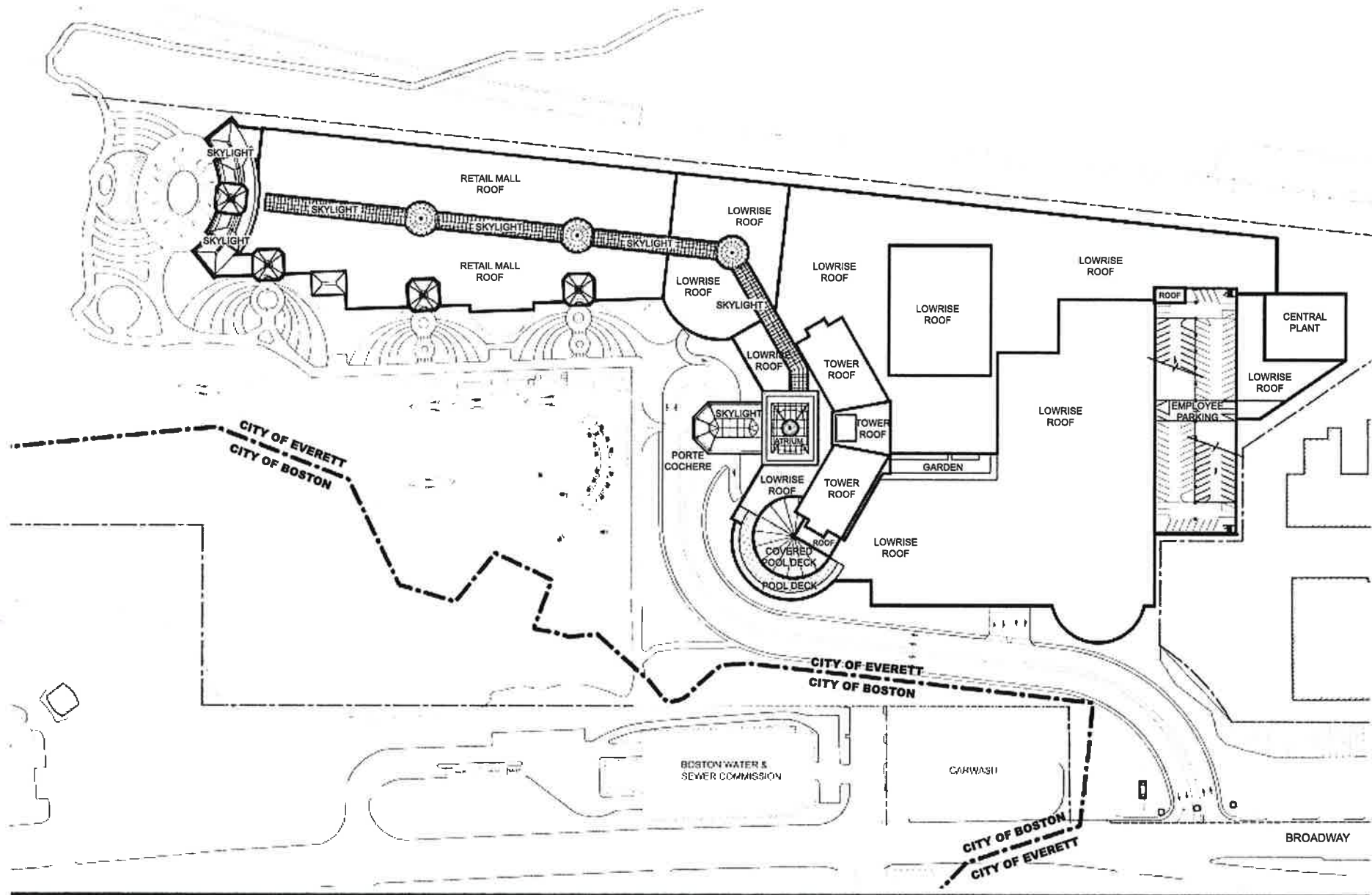
PROPERTY LINE EXHIBIT
 HORIZON WAY/BROADWAY
 EVERETT/BOSTON, MASS.
 SCALE: 1"=60'
 HARRY R. FELDMAN, INC. LAND SURVEYORS
 112 SHAWMUT AVENUE PHONE: (617)357-9740
 BOSTON, MASS. 02118 WWW.HARRYFELDMAN.COM

FELDMAN
 Professional Land Surveyors

AUGUST 27, 2013

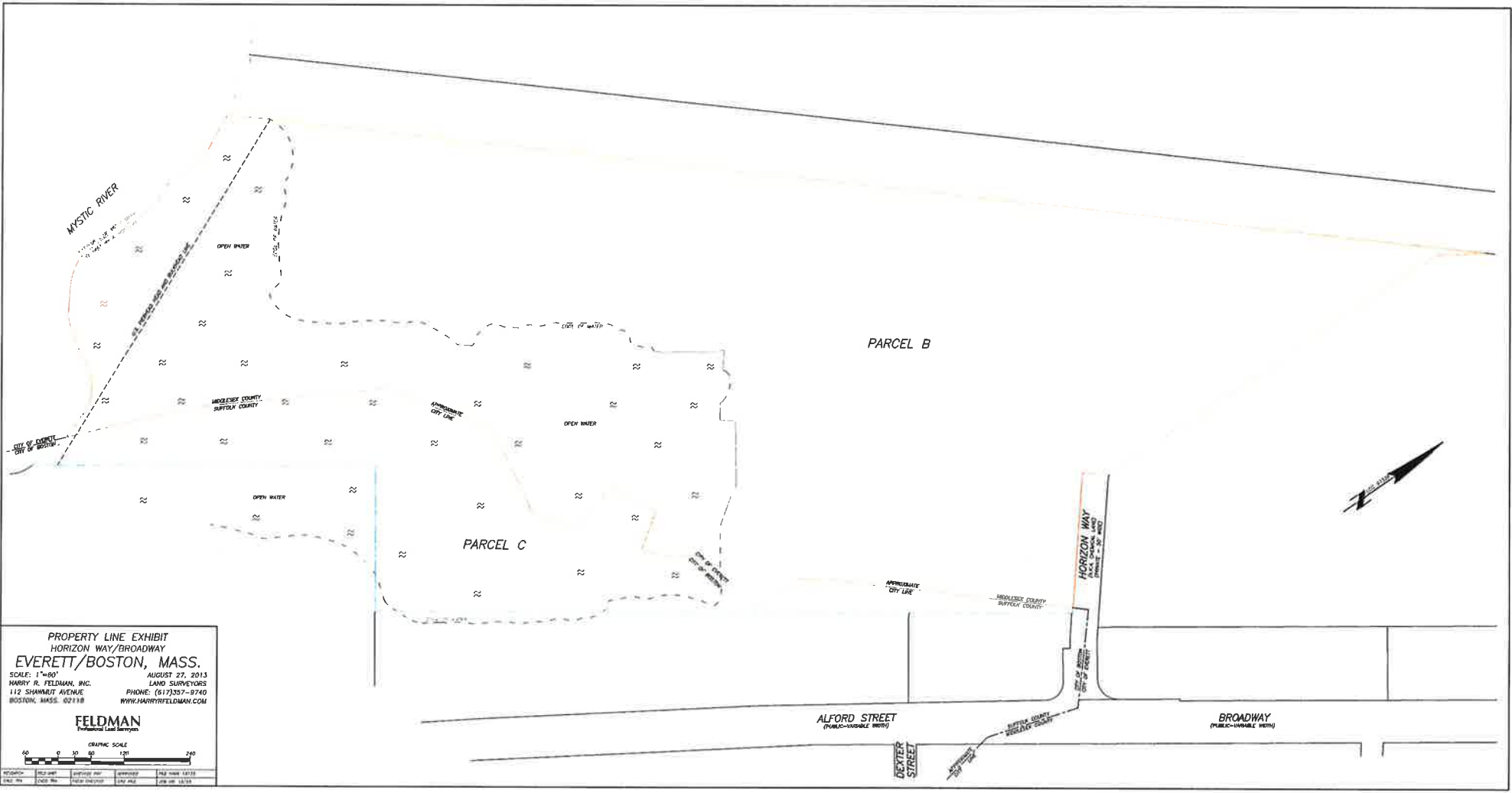
GRAPHIC SCALE
 0 30 60 120 240

REVISION	DATE	BY	CHECKED BY	APPROVED BY	FILE NAME



Wynn
EVERETT
 Everett, Massachusetts





PROPERTY LINE EXHIBIT
 HORIZON WAY/BROADWAY
EVERETT/BOSTON, MASS.
 SCALE: 1"=60' AUGUST 27, 2013
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FELDMAN
 Professional Land Surveyors

GRAPHIC SCALE
 0 30 60 120 240

NO. OF STAKES	NO. OF ANGLES	NO. OF BEARINGS	NO. OF DISTANCES	NO. OF POINTS
148	148	148	148	148

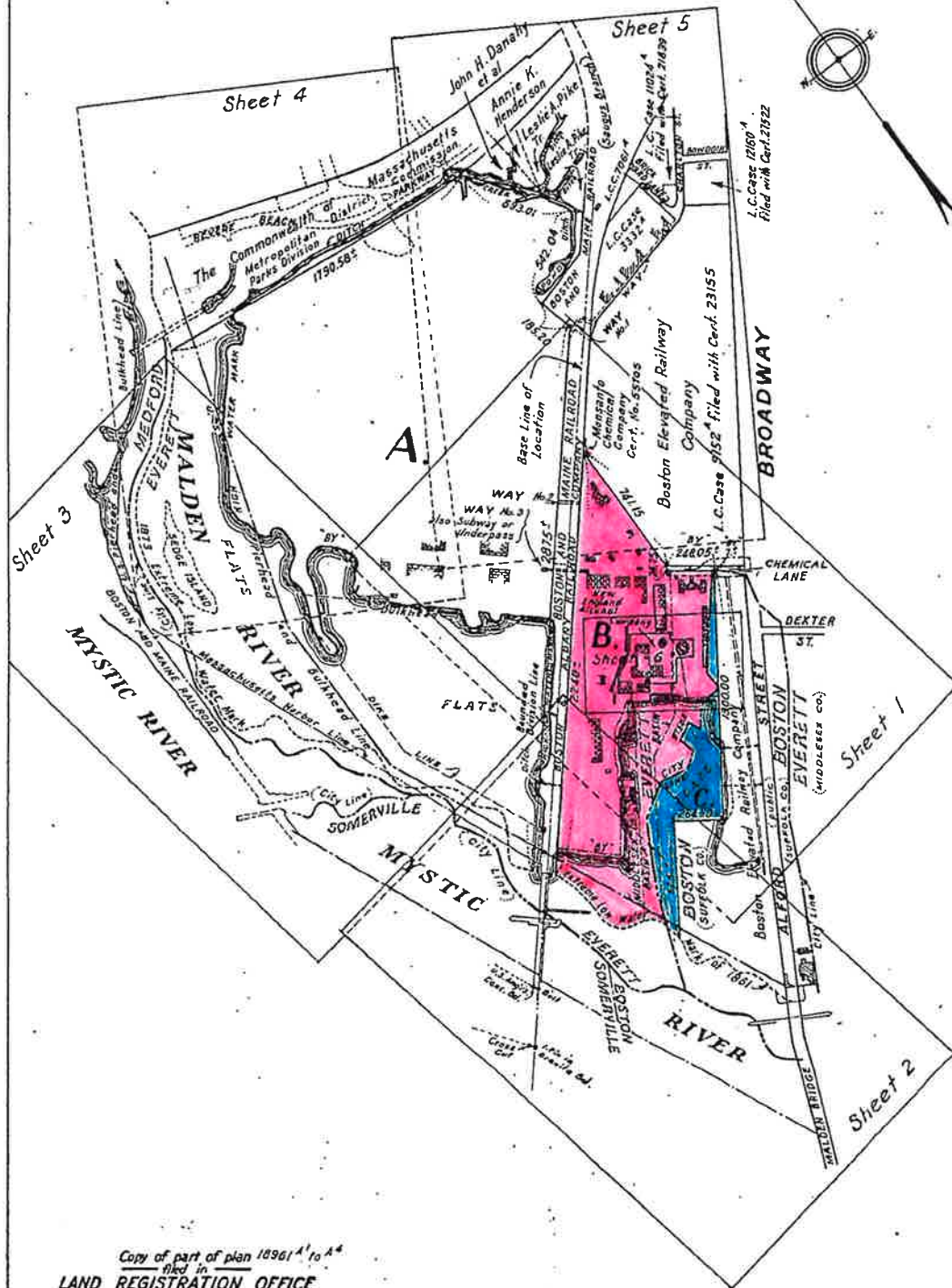
18691 A

KEY SHEET
BOSTON

PLAN OF LAND IN BOSTON (Charlestown) AND EVERETT

William S. Crocker, Civil Engineer

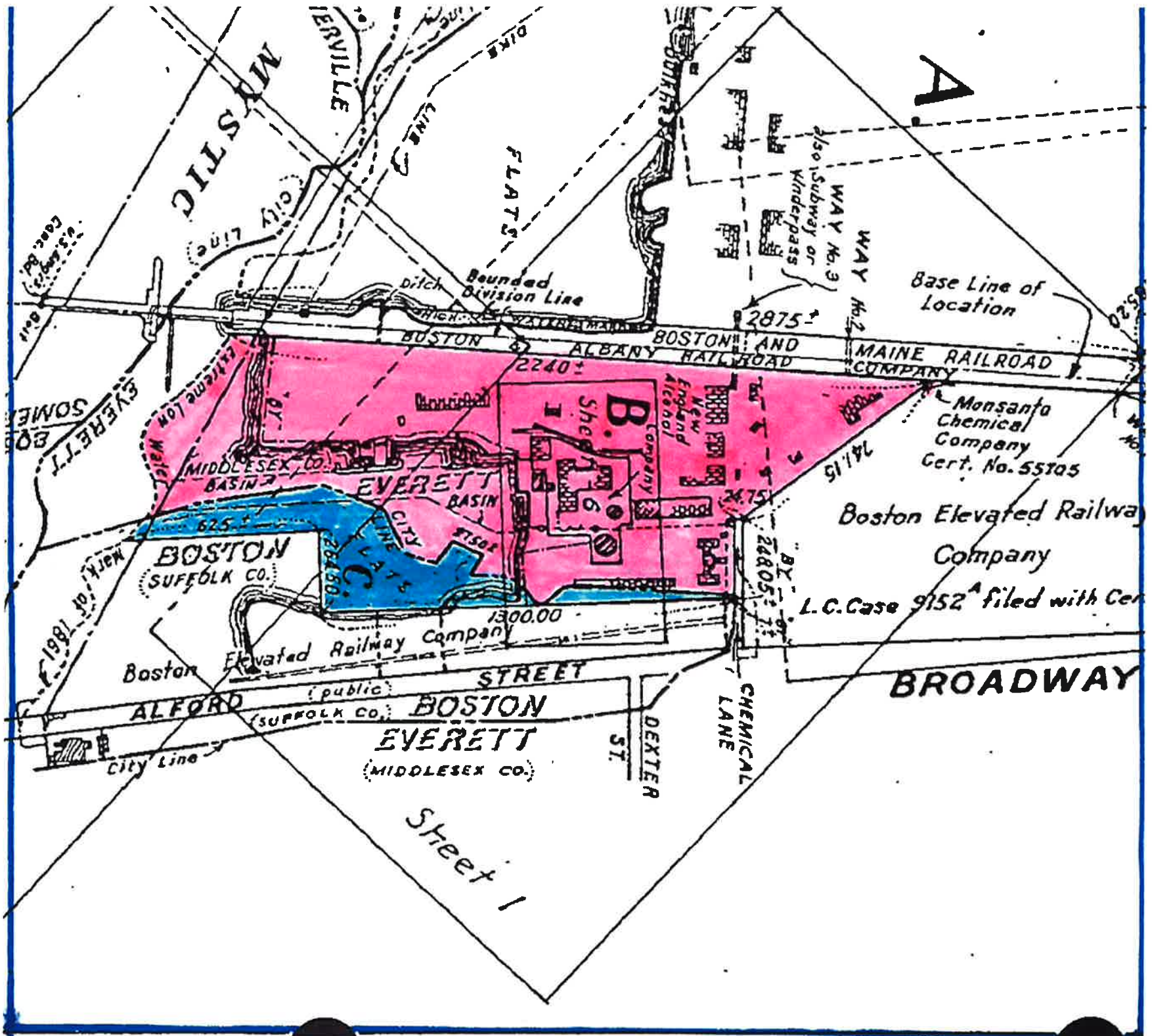
June 1942



Copy of part of plan 18691 A¹ to A⁴
 filed in
LAND REGISTRATION OFFICE
 FEB. 11, 1943
 Scale of this plan 600 feet to an inch
 W. T. Fairclough, Engineer for Court

Additional Data on file

31-F-C-2





Proposed Conceptual Site Plan
Figure 3-3

Reilly, Janice (MGC)

Subject: FW: Gaming Law question

From: Crosby, Steve (MGC) [mailto:steve.crosby@massmail.state.ma.us]
Sent: Friday, August 23, 2013 9:37 PM
To: Mary-Ann Greanier
Cc: McHugh, James (MGC); Ziemba, John S (MGC); Grossman, Todd (MGC); Blue, Catherine (MGC)
Subject: RE: Gaming Law question

Thank you for your comments. We will take them under consideration.

-----Original Message-----

From: Mary-Ann Greanier [mailto:mgreanier@comcast.net]
Sent: Friday, August 23, 2013 3:55 PM
To: Crosby, Steve (MGC)
Subject: Gaming Law question

Dear Chairman Crosby,

As I read the Gaming Act, it clearly states that the Applicant must sign the Host Community Agreement 60 days prior to the holding of a voter referendum. If the Applicant does not sign the HCA 60 days prior to the referendum, the application is incomplete, regardless of the vote. There is no subjective determination needed as to whether the Applicant signed the agreement 60 days before the vote; either it happened or it did not.

There is no HCA between Penn National (or any other eligible developer) and the Town of Plainville that meets the standard of being signed by July 12th, which would be 60 days before September 10, 2013. It just doesn't exist. Consequently, the vote now scheduled for September 10 in Plainville is meaningless.

Penn National and the Town of Plainville cannot unilaterally circumvent the 60-day law. The 60-day law is crystal clear; it says "an election shall take place [60 days] after the signing of an agreement between the Host Community and the Applicant." In Plainville, the Applicant that signed the host community agreement 60 days before the election was Plainridge, not Penn National. And they are no longer an Applicant. How, then, can the HCA continue to exist, sans Applicant? How can Penn National take over a document to which it was not party, from an entity no longer eligible to be an Applicant? The application is dead.

I understand that, once a license is granted, the business can be bought by another owner. But I do not read anywhere in the law that a non-Applicant can "sign over" an application to another developer.

Penn National Gaming cannot become the Applicant because it has not met and cannot meet the requirements of the legislation and regulations regarding timely signing of a Host Community Agreement. Period.

Granted, I am no expert in the Gaming Law. A group of citizens in Plainville is in consultation with an attorney who is researching my assumptions in preparation for legal action, should that become necessary. We hope to resolve this without going to court, however.

If the Gaming Commission can shed any light on this matter, we would be most appreciative.

Best regards,
Mary-Ann Greanier
Plainville, MA 02762



TOWN OF PLAINVILLE

Office of the

BOARD OF SELECTMEN

September 3, 2013

Stephen Crosby, Chairman
Massachusetts Gaming Commission
84 State Street, 10th Floor
Boston, MA 02109
ATTENTION: John Ziemba, Ombudsman

Re: Notice to Voting Households Pursuant to 205 CMR 115.05(6)(b)

Dear Chairman Crosby:

The Town of Plainville has executed a Host Community Agreement with Ourway Realty, LLC, d/b/a Plainridge Racecourse, regarding a Category 2 Gaming License to operate a gaming establishment with not more than 1,250 slot machines at 301 Washington Street. This evening the Board of Selectmen authorized Ourway Realty to assign its rights and obligations under the Host Community Agreement to Springfield Gaming and Redevelopment, LLC, a subsidiary of Penn National Gaming, Inc. Penn is bound by the terms of the Host Community Agreement to the fullest extent allowed by law.

The Board of Selectmen voted to formally approve the holding of an election on September 10, 2013, prior to a negative determination of suitability of Ourway Realty, LLC. The Town of Plainville intends to move forward with the election, especially given the assignment of the Host Community Agreement to Springfield Gaming and Redevelopment, LLC. It is the Board's understanding that a determination of suitability regarding Springfield and its qualifiers by the Commission will not be determined until after September 10th.

For the Commission's approval, a draft notice to mail to voting households in Plainville is attached. We believe that the notice meets the requirements set forth in 205 CMR 115.05(6)(b). Upon the Commission's approval, it will be mailed to voting households in Plainville and posted on the Town of Plainville website. The notice will also be published in the Sun Chronicle, a newspaper of general circulation in the Town. Additionally, the Town had previously scheduled a Forum on the Host Community Agreement for September 5th. We will use that opportunity to update citizens on the assignment of the HCA to Penn as well as allow Penn to introduce themselves after the conclusion of the forum.

If you have any questions or concerns regarding this matter, please do not hesitate to contact me.

Sincerely,

Joseph E. Fernandes
Town Administrator



TOWN OF PLAINVILLE

Office of the
BOARD OF SELECTMEN

September 5, 2013

Dear Plainville Voter:

As you may know, the Board of Selectmen, on behalf of the Town, has executed a Host Community Agreement ("Agreement") with Ourway Realty, LLC, dba: Plainridge Racecourse, regarding a Category 2 Gaming License to operate a gaming establishment with not more than 1,250 slot machines at 301 Washington Street. Subsequent to the execution of the Agreement the Massachusetts Gaming Commission issued, on August 5, 2013, a determination that Ourway Realty, LLC, had "failed to demonstrate its suitability and qualifications by clear and convincing evidence" resulting in a negative determination of suitability in accordance with 205 CMR 115.05(2). Consequently, the Board of Selectmen has authorized Ourway Realty, LLC to assign its rights and obligations under the Host Community Agreement to Springfield Gaming and Redevelopment, LLC, a subsidiary of Penn National Gaming, Inc. ("Penn"). A summary of the Host Community Agreement's primary terms is included with this letter. Penn is bound by the terms of the Agreement to the fullest extent allowed by law and if the upcoming referendum passes, they intend to apply for a Category 2 gaming license. A copy of the full Host Community Agreement and the Board's vote authorizing the assignment are available on the Town's website which is: <http://www.plainville.ma.us>. The Host Community Agreement is also available on the Gaming Commission website: <http://www.massgaming.com>.

Penn is a publicly traded company that presently operates twenty-eight facilities in nineteen jurisdictions, including Florida, Illinois, Indiana, Iowa, Kansas, Louisiana, Maine, Maryland, Mississippi, Missouri, Nevada, New Jersey, New Mexico, Ohio, Pennsylvania, Texas, West Virginia, and Ontario. Penn is also the largest owner of parimutuel racetracks in the country, many of which also have the addition of slot machines.

The following outlines the process set forth by the Massachusetts Gaming Commission for applicants seeking a gaming license in the Commonwealth. Ultimately, the decision whether or not to host this proposed development will be decided by the voters of Plainville on Tuesday, September 10, 2013, when a ballot question election will be held to determine the public's support for the project.

The Massachusetts Gaming Commission's regulation, relative to the scheduling of a local election required by the gaming legislation, states that a municipality may hold an election prior to the applicant being deemed suitable and eligible by the Gaming Commission only if two conditions are met: 1) the governing body of a city or town, in this case the Plainville Board of Selectmen, formally approves of holding an election prior to a positive determination of suitability and eligibility having been issued to the applicant, which the Board did on July 18, 2013; and 2) a public awareness notice is mailed to voting households in the host community regarding the application status of the developer and informs voters about the Commission's standards and procedures for determining suitability.

The Board of Selectmen unanimously authorized the election to be held as a ballot question of whether to approve a gaming facility in the Town of Plainville, thereby satisfying the first condition of the Commission's regulation. This letter serves to inform you, a voting household in the Town of Plainville, on the application status of Penn National Gaming/Springfield Gaming and Redevelopment, LLC.

The Commonwealth's application process for awarding a category 2 license has two phases. "Phase 1" of the application includes investigations conducted by the Commission, its consultants, and members of the Massachusetts State Police to determine "suitability and eligibility". As part of this investigation, the Commission reviews such things as the integrity, honesty, good character, and reputation of the applicant; the financial stability, integrity, and background of the applicant; the business practices and business ability of the applicant to establish and maintain a successful gaming establishment; and the history of compliance with gaming licensing requirements in other jurisdictions of the applicant. **A final determination on Phase 1 of the application has not been completed and may not be issued prior to the election.** As indicated above, the Commission will make its determination of suitability and eligibility after completing a thorough background investigation of the applicant, its principal operating officers, and investors. Additionally, the Commission will not permit the applicant or its principal operating officers or investors to proceed with the application unless it determines that they are suitable to operate a gaming facility in Massachusetts.

Phase 2 of the application process involves the Commission's review of the details of the development itself, its location, design and amenities, how it will operate, and how the applicant will mitigate the impact in the respective host community. Phase 2 will begin after the applicant successfully completes Phase 1, receives a majority of support from the voters in the host community on a ballot question, and submits its Phase 2 application to the Commission, among other minor requirements.

At the present time, Penn National Gaming/Springfield Gaming and Redevelopment, LLC has filed its Phase 1 application, paid the fee required by the Commission, and is undergoing the required investigations. If the Commission determines Penn National Gaming/Springfield Gaming and Redevelopment, LLC to be a suitable applicant and their development receives a majority of votes at the September 10, 2013 election, Penn National Gaming/Springfield Gaming and Redevelopment, LLC will be permitted to continue the process and submit their Phase 2 application to the Commission on or before October 4, 2013, the deadline set by the Commission to submit Phase 2 applications for the Category 2 license.

Again the election on this matter is scheduled for Tuesday, September 10th at the Beatrice Wood School, 72 Messenger Street. Polls open at 7 AM and close at 8 PM. Please do not hesitate to contact any member of the Board of Selectmen and/or the Town Administrator Joseph Fernandes with any questions regarding this important matter.

Very truly yours, the members of the Board of Selectmen,

Robert Fennessy, Chairman
Rob Rose
Andrea Soucy

Summary of Key-Points Within the Plainridge Host Community Agreement

Financial

- Plainridge to pay for all consulting and legal costs incurred by the Town as part of the licensing process subject to budgetary review
- Plainridge to pay \$1,500,000 in real and personal property taxes upon full commencement of gaming. The tax payment will increase 2 ½ % per year, and increase further upon the construction of any additional space beyond 170,000 square feet.
- Plainridge to pay the Town \$100,000 annually as a Community Impact Fee. The Community Impact Fee will be increased proportionally if slot machine count is ever permitted to exceed 1,250.
- Plainridge to pay the following Host Community Payments:
 - \$2,700,000 annually for the first five (5) years of full operation which will be increased proportionally if slot machine count is permitted to exceed 1,250 during this period.
 - 1.5% of Gross Gaming Revenue during years six through ten (6-10) which is estimated to equate to approximately \$2,300,000 annually
 - 2.0% of Gross Gaming Revenue starting in year eleven (11) and thereafter which is estimated to equate to approximately \$3,300,000 annually
- Plainridge will continue to pay Live Racing and Simulcasting Payments directly to Plainville in the event the State of Massachusetts discontinues to assess the current 0.35% tax.
- Plainridge agrees to the validity and payment of all building permit fees which are estimated to be \$816,000.

Employment

- 300 estimated construction related positions
- 400 estimated full-time positions once full operations commence
- Employment preference to be given to qualified Plainville residents
- Plainridge to schedule a dedicated hiring event for Plainville residents

Transportation

- Traffic improvements to be consistent with requirements of the Planning Board's Special Permit

Responsible Gaming

- Plainridge will implement a Responsible Gaming Plan which will incorporate:
 - Education of employees and patrons on odds of games and responsible gaming decisions
 - Promotion of responsible gaming in daily operations
 - Support of public awareness of responsible gaming

Miscellaneous

- Agreement allows for "Initial Limited Operations" if allowed by the Massachusetts Gaming Commission. All transportation improvements and requirements of the Planning Board's Special Permit would have to be met first.
- "Initial Limited Operations" defined as anything less than 800 slot machines.
- If the "Initial Limited Operations" option is exercised, the Town will be paid 1.5% of Gross Gaming Revenue during that period.
- During the "Initial Limited Operations" period, property and personal property tax would be \$500,000

SPECIMEN BALLOT



OFFICIAL BALLOT TOWN OF PLAINVILLE SPECIAL TOWN ELECTION SEPTEMBER 10, 2013

Ellen M. Robertson
Town Clerk

A. To vote, complete the arrow(s) ← pointing to your choice(s), like this: ←

QUESTION ONE

Shall the Town of Plainville permit the operation of a gaming establishment licensed by the Massachusetts Gaming Commission to be located at Plainridge Racecourse, 301 Washington Street, Plainville?

YES ←

NO ←

A "YES" vote would allow the owner of Plainridge Racecourse to apply to the Massachusetts Gaming Commission for a license to operate a gaming facility in accordance with a Host Community Agreement executed between the Town and the Racecourse's owner. The primary terms of the Agreement are set forth below.

A "NO" vote would prohibit the operation of such a gaming facility and prevent the applicant from submitting a final application to the Massachusetts Gaming Commission.

SUMMARY OF KEY-POINTS WITHIN THE PLAINRIDGE HOST COMMUNITY AGREEMENT

Financial

- Plainridge to pay for all consulting and legal costs incurred by the Town as part of the licensing process subject to budgetary review
- Plainridge to pay \$1,500,000 in real and personal property taxes upon full commencement of gaming. The tax payment will increase 2 ½ % per year, and increase further upon the construction of any additional space beyond 170,000 square feet.
- Plainridge to pay the Town \$100,000 annually as a Community Impact Fee. The Community Impact Fee will be increased proportionally if slot machine count is ever permitted to exceed 1,250.
- Plainridge to pay the following Host Community Payments:
 - \$2,700,000 annually for the first five (5) years of full operation which will be increased proportionally if slot machine count is permitted to exceed 1,250 during this period.
 - 1.5% of Gross Gaming Revenue during years six through ten (6-10) which is estimated to equate to approximately \$2,300,000 annually
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 - Support of public awareness of responsible gaming

Miscellaneous

- Agreement allows for "Initial Limited Operations" if allowed by the Massachusetts Gaming Commission. All transportation improvements and requirements of the Planning Board's Special Permit would have to be met first.
- "Initial Limited Operations" defined as anything less than 800 slot machines.
- If the "Initial Limited Operations" option is exercised, the Town will be paid 1.5% of Gross Gaming Revenue during that period.
- During the "Initial Limited Operations" period, property and personal property tax would be \$500,000

September 3, 2013

Stephen Crosby, Chair
Massachusetts Gaming Commission
84 State Street, 10th Floor
Boston, MA 02109

Re: Request of Springfield Gaming and Redevelopment, LLC ("SRG") to Approve the Assignment and Assumption of the Host Community Agreement Executed Between Plainridge and the Town of Plainville to SRG

Dear Chair Crosby:

Springfield Gaming and Redevelopment, LLC ("SGR"), the applicant and a subsidiary of Penn National Gaming, Inc. ("Penn"), respectfully requests the Commission's approval of the assignment of the host community agreement ("HCA") executed between Ourway Realty, LLC ("Ourway") d/b/a Plainridge Racecourse ("Plainridge"), and the Town of Plainville ("Plainville") to SGR and the assumption of that agreement by SGR. Approving this request will:

- allow a Phase 1 Applicant to compete for the Category 2 License in the Phase 2 Application process;
- ensure that Plainville, which worked diligently in negotiating a host community agreement for the benefit of its community and in making sure that a Category 2 License in its community would have much more of a positive impact upon its community than a negative one, is able to compete with other towns for the significant financial and job creation benefits that a Category 2 License brings to a host community;,
- if the Category 2 License is granted to SGR, enable Standardbred Harness Racing to continue in Massachusetts, resulting in the open space, secondary employment, cultural and other attendant benefits of racing (notably, Penn intends to apply for a racing license following an award of the Category 2 license); and
- most significantly, allow for greater competition for the lone Category 2 license, which is an oft-expressed goal of the Commission and is to the substantial benefit of the residents of the Commonwealth.

On January 2, 2013, SGR submitted its Phase 1 Application to the Commission. The Commission has scheduled a suitability hearing regarding SGR's Phase 1 Application for September 18, 2013.

Ourway submitted its Phase 1 Application on December 18, 2012. . It entered into a HCA with Plainville on July 8, 2013. It had its suitability hearing before the Commission on July 25, 2013, thereafter, on August 5, 2013, the Commission issued a decision of negative suitability. In the hopes of keeping harness racing alive in Massachusetts and honoring its commitment to Plainville, Ourway sought to sell certain of its assets to another Phase 1 Applicant.

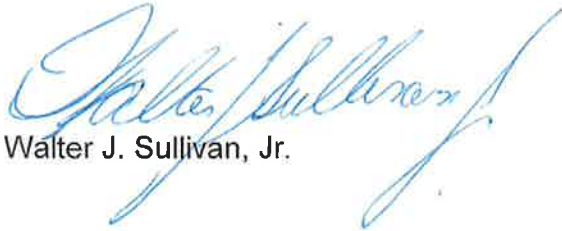
Penn is committed to investing in Massachusetts, and, through SGR, has negotiated and executed an option to purchase the real property and certain of the assets of Ourway for the purpose of competing for the Category 2 License. The redacted option agreement is attached as "Exhibit 1." In accordance with section 8 of the HCA, SGR has entered into an assignment and assumption of all of Ourway's rights and obligations under the HCA with Ourway. The Assignment and Assumption is attached as "Exhibit 2." Further, in accordance with said section 8 of the HCA, the Town of Plainville, by and through its Board of Selectmen, has consented to the assignment of the HCA from Ourway to Penn. A copy of the executed Consent is attached as "Exhibit 3." If the voters of Plainville vote on September 10th, to have a Category 2 License at 301 Washington Street, Plainville, SGR intends to file its Phase 2 Application with the Commission on or before October 4th, with the intent of building a Category 2 establishment and continue live harness racing at 301 Washington Street, Plainville.

As the Commission is aware, assignment transfers the rights and obligations of a contract from an original party to an agreement to a new party. Massachusetts law is clear that, as a common law rule, an assignee of a contract "stands in the shoes" of the assignor. *Graves Equip., Inc. v. M. DeMatteo Construction Co.*, 397 Mass. 110, 112 (1986); see also *Chicorp Financial Services v. Univ. of Massachusetts*, 1994 Mass. Super. LEXIS 718, *27 ("It is well established an assignee of contract rights stands in the shoes of the assignor. The assignee's rights are subject to all the terms and conditions of the contract between the [counterparty to the contract] and the assignor..."). Therefore, an assignment and assumption agreement would have the effect of putting SGR in the shoes of Ourway with respect to all rights and obligations of the host community agreement..

The Commission's negative suitability determination regarding Ourway was clearly devastating to the residents of Plainville, the employees of Plainridge, the horse farmers, who depend on Plainridge, and the numerous other individuals and businesses that support the proposed Category 2 facility and/or are dependent on Plainridge, and who shared no responsibility for the incidents giving rise to the Commission's negative determination concerning Ourway. The proposed assignment and assumption would at least renew the possibility for these individuals and businesses that the proposed facility may be considered in the competition for issuance of the Category 2 license.

Thank you for your consideration of this request. If you have any questions or concerns regarding the request, please do not hesitate to contact me.

Sincerely,

A handwritten signature in blue ink, appearing to read "Walter J. Sullivan, Jr.", written in a cursive style.

Walter J. Sullivan, Jr.

EXECUTION COPY

OPTION AND PURCHASE AGREEMENT

THIS OPTION AND PURCHASE AGREEMENT (this "**Agreement**"), effective as of September 3, 2013 (the "**Effective Date**"), by and between OURWAY REALTY, LLC, D/B/A PLAINRIDGE RACEOURSE, a Massachusetts limited liability company (together with its successors and assigns), ("**Seller**"), and SPRINGFIELD GAMING AND REDEVELOPMENT, LLC, a Delaware limited liability company ("**Buyer**").

RECITALS

WHEREAS, Seller owns and operates a harness racing and simulcasting business known as Plainridge Racecourse (including all related activities, the "**Business**") situated on approximately 88.9 acres located at 301 Washington Street, Plainville, Massachusetts;

WHEREAS, the Business is subject to a state license (the "**Harness Racing License**") issued annually by the Massachusetts Gaming Commission (the "**MGC**") and the Harness Racing License currently held by Seller expires on December 31, 2013;

WHEREAS, in 2011 Massachusetts enacted legislation authorizing the creation of up to three resort casinos (each a Category I facility) and one slot facility (the Category II facility) in Massachusetts, the license-granting authority for and oversight of which was given to the MGC;

WHEREAS, in 2012 Seller initiated its application for the Category II license to the slot facility (the "**Category II License**") which facility was intended to be built and opened on the Land on the Real Property; and

WHEREAS, Seller and the Town of Plainville, Massachusetts entered into that certain ~~Host Community Agreement, dated July 8, 2013 (the "**Host Community Agreement**") as required by the MGC for an application for the Category II License;~~

WHEREAS, Seller discontinued pursuing its application for a Category II License in July 2013;

WHEREAS, Buyer independently initiated its application for a Category II License from the MGC in order to develop and license a slot facility in Massachusetts which would include up to one thousand two hundred fifty (1,250) slot machines and ancillary entertainment and dining amenities (the "**Project**"); and

WHEREAS, Seller desires to grant to Buyer, and Buyer desires to obtain from Seller, an option to purchase the Property (as defined below) from Seller on the terms and conditions set forth herein (the "**Option**").

NOW THEREFORE, for One Hundred Dollars (\$100), the mutual covenants (including payment covenants) set forth in this Agreement, and for such other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by both parties, Buyer and Seller hereby agree as follows:

1. "**Property**" means, collectively, each of the following whether or not specifically described herein (and to the extent such Property exists and is owned by Seller at the Closing pursuant to the terms of this Agreement):

- (a) Fee simple title, as reflected on the Title Commitment (with all Title Objections which Seller is required to remove pursuant to the provisions of Section 6(d) below so removed), subject to any Permitted Encumbrances in accordance with Section 6(d), consisting of approximately eighty-eight and nine-tenths (88.9) acres as more fully described in **Exhibit "A"** attached hereto and incorporated herein and all appurtenances and hereditaments thereto (the "**Land**");
- (b) All buildings, structures (surface and subsurface) and other improvements located on or affixed to the Land and all fixtures on the Land which constitute real property (the "**Improvements**", along with the Land, the "**Real Property**"); provided; that such Real Property shall be conveyed to Buyer in accordance with the terms and conditions of Section 7 of this Agreement;
- (c) All leases, subleases, licenses, concessions and similar agreements (if any, including in each case all amendments, supplements and addenda thereto and any guaranties or credit enhancements with respect to such agreements) granting to any other person the right to use or occupy any portion of the Real Property, together with all security deposits held by Seller thereunder (if any);
- (d) All rights, privileges, grants and easements appurtenant to or burdening Seller's interest in the Land or Improvements, if any, including all of Seller's right, title and interest, if any, in and to all easements, licenses, covenants and other rights-of-way, water rights, air rights, development rights, zoning rights, variances and all other estates, rights, titles, interests, servitudes, tenements, and appurtenances in connection with, in relation to, or used in connection with the beneficial use and enjoyment of the Real Property (the "**Additional Rights**");
- (e) Any other property interests or rights held by Seller in connection with the ownership of the Real Property;
- (f) All fixtures, furniture, furnishings, equipment, machinery, tools, vehicles, appliances, racing equipment, art work and all other items of personal property owned by Seller and used in connection with the Property;
- (g) All china, glassware and silverware, linens, uniforms, engineering, maintenance, cleaning supplies, and all other business supplies and materials which are owned by Seller, located on the Land;

- (h) All intellectual property rights, trademarks, copyrights, patents, logos websites, computer hardware, software, telecommunications and information technology systems which are owned by Seller (other than any of the foregoing specifically related to "Plainridge Racecourse");
- (i) All food and beverages which are located on the Land;
- (j) All merchandise located at the Land, purchased by Seller, delivered and paid for prior to the earlier of the Closing Date or December 31, 2013, and held for sale to customers of the Business;
- (k) All leases and purchase money security agreements for any equipment, machinery, vehicles, or furniture located on the Land and/or used for the Business, together with all deposits thereunder (any such deposits, together with the deposits described in clause (l) below and any other deposits made by Seller in connection with its ownership and maintenance of the Real Property, the "**Deposits**");
- (l) All licenses, permits, consents, authorizations, approvals, registrations and certificates issued by any governmental authority (including all racing, food and beverage, liquor and any related permits and/or licenses) which are held by Seller with respect to the Property, and any other license for the construction, use or operation of the Real Property, together with any deposits made by Seller;
- (m) All property surveys, environmental assessments or audits, geophysical, soils, seismic, geologic, environmental (including with respect to the impact of materials used in the construction or renovation of the Improvements) reports, studies and certificates pertaining to the Real Property and owned by Seller;
- (n) All interests held by Seller in building plans and specifications, blue prints, architectural plans, engineering diagrams and similar items which relate to the Real Property or which were prepared in support of Seller's Category II License application to the extent transferable to the Buyer; and
- (o) All third party warranties and guaranties held by Seller with respect to any the Real Property.

Buyer acknowledges and agrees that no Property relating to the Business (other than the Real Property, Improvements and Property appurtenant thereto) shall be included in the definition of "Property" unless Buyer obtains its own independent Harness Racing License effective no later than January 1, 2014 and executes an interim operations agreement with Seller permitting Buyer to independently establish and maintain its own harness racing and simulcast operations on the Land (the "**Temporary Operations Agreement**") on or before December 15, 2013. If Buyer does not receive its own independent Harness Racing License on or prior to January 1, 2014 and does not execute the Temporary Operations Agreement on or before December 15, 2013, Seller may dispose of any Property associated solely with the

Business (but in no instance the Real Property, Improvements or the Land) and any such disposition shall not affect the Purchase Price. The Temporary Operations Agreement shall provide for the Buyer to operate a harness racing track, simulcasting operations and ancillary uses on the Land on terms and conditions, including fees, to be agreed upon by the Parties. Seller shall not be entitled to participate in any profits from Buyer's operations nor shall Seller be responsible for losses or have any input into the operations. The Temporary Operations Agreement shall terminate upon the earlier to occur of (i) the Closing Date, (ii) termination of this Agreement, and (iii) Buyer's termination of the Option Agreement in its sole discretion. In addition, Buyer acknowledges and agrees that the term "Property" shall not include any cash or cash equivalents held by Seller.

2. Option Grant: Seller hereby grants to Buyer, and Buyer hereby obtains from Seller, an option to purchase all or any portion of the Property on the terms and conditions set forth in this Agreement commencing on the Effective Date and continuing through midnight of March 31, 2014 (the "**Option Period**"). Prior to the issuance by the MGC of a final, non-appealable Category II License, Buyer shall have the option to extend the Option Period for up to two (2) one-year periods upon payment of an extension fee equal to [REDACTED] (the "**Extension Fee**"). Such option to extend the Option Period must be exercised by written notice delivered at least ten (10) days prior to the expiration of the then-defined Option Period. The Extension Fee shall be earned by Seller upon Buyer's exercise of the extension and shall not be deemed to be a credit to the Purchase Price. During the extension period until the earlier to occur of Closing and Buyer's termination of the Option, Buyer shall pay all real and personal property taxes associated with the Real Property and other such non-discretionary charges as well as mutually agreed upon other charges, which shall include all basic security, maintenance and utility fees as may be legally required or as otherwise agreed to in the Temporary Operations Agreement and consistent with the requirements of Section 9 hereof during any extension period elected by Buyer) (and which in any case are expected to be substantially lower than current operating costs) (the "**Baseline Property Fees**"). The Baseline Property Fees shall be paid, at Seller's option, directly by Buyer promptly upon notice from Seller or by reimbursement of Seller promptly upon proof of payment from Seller. For avoidance of doubt, Seller shall be permitted to terminate the Business on or prior to December 31, 2013, and will terminate the Business on or prior to December 31, 2013 in the event Buyer elects to enter into a Temporary Operations Agreement on or before December 15, 2013 and obtains a Harness Racing License effective as of January 1, 2014; provided, if Buyer does not so enter into a Temporary Operations Agreement, Seller may dispose of any Property associated solely with the Business (but in no instance the Real Property, the Improvements or the Land) and any such disposition shall not affect the Purchase Price.

3. Exercise: Buyer may, in its sole discretion, exercise the Option by written notice to Seller (the "**Buyer Closing Notice**") or terminate the Option by written notice to Seller at any time (the "**Buyer Termination Notice**"); in order to be effective, the Buyer Closing Notice must be delivered to Seller prior to the expiration of the Option Period, as such period may be extended as provided in Section 2. In addition, the Option Period will automatically expire sixty (60) days following the date the issuance of a Category II License becomes final

and non-appealable. In the event Buyer fails to deliver to Seller the Buyer Closing Notice on or before the expiration of the Option Period, withdraws or makes a public announcement not to pursue its application for a Category II License, or sends a Buyer Termination Notice on or before the expiration of the Option Period, or in the event the Option Period automatically terminates as provided above, this Agreement shall terminate and be of no further force or effect, subject to the survival provisions set forth below. Buyer retains the right to accept or reject any asset or liability included in the definition of "Property" at Buyer's sole and absolute discretion; provided, however, that except as provided herein, Buyer's election to accept or reject any asset or liability shall have no impact on the Purchase Price. For purposes of clarity, the award of the Category II License to Buyer shall not require Buyer to exercise the Option.

4. Purchase Price; Additional Option Fee:

- (a) If Buyer elects to exercise the Option pursuant to this Agreement, the purchase price for the Property (the "**Purchase Price**") shall consist of:
- (i) [REDACTED] (the "**Closing Payment**") payable by Buyer to Seller on the Closing Date; and
 - (ii) Contingent consideration (the "**Contingent Consideration**") equal to [REDACTED]. For purposes of this Agreement, the term Fiscal Quarter shall refer to the calendar quarters commencing on each of January 1, April 1, July 1, and October 1. The Closing Payment and each Contingent Payment are non-refundable. The obligation to pay any Contingent Consideration must be assumed by any successor or assign of Buyer's of the Project (or the management of the Project).
- (b) Upon payment of the Closing Payment, all right, title and interest to the Property shall transfer to Buyer notwithstanding any Contingent Consideration that may be due in the future or any amounts held in escrow pursuant to the terms of this Agreement.
- (c) The Purchase Price shall be allocated among the Land, the Improvements, the licenses, and the Property for local, state and federal tax purposes as to be mutually agreed, provided that, no party shall have the right to object to the allocation proposed by Buyer unless the proposed allocation would result in an adverse financial impact on such Party. The allocation represents an arm's length agreement based on the Parties' best judgment as to the fair market value of the Land, the Improvements and the personal property, respectively. The Parties shall file all federal, state and local tax returns and related tax documents consistent with the mutually agreed allocation.
- (d) Seller acknowledges and agrees that it shall have no role whatsoever (whether voting, input, consent, consultation, employment, vendor or otherwise) in connection with the operation or management of the Project by Buyer (including any racing or simulcasting operations in which Buyer may engage at the Land) or the development

of the Project after the Closing Date (or if Buyer elects to operate the Property pursuant to the Temporary Operations Agreement).

(e) Each party acknowledges and agrees that their respective interests with respect to the Property and any activities associated therewith may not in all instances be aligned and that neither party owes to the other party, nor its members, partners, shareholders, officers, or directors any fiduciary duties or other obligations.

(f) [REDACTED]

(g) [REDACTED]

5. Holdback: To secure Seller's indemnification obligations under Section 8(b) of this Agreement, at Closing, the Closing Payment (and each subsequent payment of Contingent Consideration) (the "**Holdback Amount**") shall be placed in escrow with First American Title Insurance Company pursuant to an escrow agreement ("**Escrow Agreement**") mutually agreeable between Seller and Buyer. Upon the earliest to occur of [REDACTED] (the "**Release Date**"), the Closing Payment shall be paid by Escrow Agent to Buyer within two (2) Business Days thereof, provided, that Escrow Agent shall continue to hold an amount equal to ten percent (10%) of the Closing Payment in escrow for an additional period of two hundred seventy days following the Closing Date, half of such amount to be released on the date that is one hundred thirty-five (135) days following the Closing Date. In the event that Buyer has any indemnification claim under Section 8(b) of this Agreement, Escrow Agent shall release the amount of such indemnification claim to Buyer upon Buyer's notice to Escrow Agent in accordance with the terms of the Escrow Agreement. Notwithstanding the foregoing, an amount sufficient for Seller to pay any transfer tax, conveyance fees, documentary stamps, or other similar taxes and fees specifically related to the conveyance of the Real Property will be released from the holdback of the Closing Payment on the Closing Date.

6. Rights of Buyer During Option Period:

(a) During the Option Period and through the Closing Date if Buyer timely exercises the Option, Seller shall take no material or public action with respect to Buyer's development of the Project, the Referendum, or Buyer's application for a Gaming License without advance consultation with and written permission from Buyer; provided, however, that nothing in the foregoing shall be construed to prevent or limit Seller's compliance with the requirements or requests of state or regulatory agencies, including those of the MGC, with or without advance consultation with Buyer. During the Option Period and through the Closing Date if Buyer timely exercises the Option, Seller covenants and agrees to cooperate with Buyer with respect to Buyer's application for a Category II License to be used at the Land as reasonably requested by Buyer, at Buyer's sole cost and provided that such cooperation does not interfere with Seller's operation of the Business.

- (b) As soon as reasonably practicable and in any event within thirty (30) business days following the Effective Date hereof, Seller shall provide or make available (on a rolling basis at Seller's option) to Buyer true, correct and complete copies of the following with respect to the Real Property, in each case to the extent such materials are already extant and under the control of Seller: environmental audits and inspections, physical inspection reports, maintenance information, warranties, impact studies, service and other contracts, engineering reports, hydrology reports, drainage information, grading information, soil reports, topography information, utility reports and information, building plans and specifications, certificates of occupancy, plats, prior surveys, site plans, tax assessments and tax bills for the past two (2) years, utility bills for the past two (2) years, governmental and quasi-governmental notices, and a schedule of all lawsuits pending or threatened in writing to which Seller is or expects to be a party.
- (c) During the Option Period, Buyer and its agents shall have the right to access the Real Property during normal business hours, and upon at least two (2) business days advance notice to Seller for the purpose of conducting due diligence. Such access and due diligence shall be performed in a manner designed to cause minimal interference with the Land, Improvements or Business operations and any information to which Buyer and its agents may have access shall be subject to the confidentiality obligations set forth in this Agreement.
- (d) Within sixty (60) days following the Effective Date, Buyer shall provide Seller with written notice of any title defects (the "**Title Objections**") identified by Buyer (the "**Title Objection Notice**") in the Title Commitment (as defined below). Within twelve (12) days of Seller's receipt of the Title Objection Notice, Seller shall provide Buyer with written notice (the "**Title Response Notice**") to Buyer setting forth the Title Objections which Seller elects to remove; provided, however, except as expressly provided below, Seller shall have no obligation whatsoever to expend or agree to expend any funds, to undertake or agree to undertake any obligations, or otherwise to attempt to cure or agree to attempt to cure any objections relating to the Property. Notwithstanding anything to the contrary contained herein, if Buyer elects to exercise its Option pursuant to this Agreement, Seller shall be obligated to repay and remove as an encumbrance against the Real Property title any monetary liens, mechanics liens, mortgages and financing statements. Within five (5) days after receiving the Title Response Notice, Buyer may, by written notice to Seller (the "**Title Election Notice**"), either (A) elect to add any of the Title Objections that Seller has chosen not to remove to the Permitted Encumbrances (as hereinafter defined), and to accept title to the Property subject only to the Permitted Encumbrances or (B) attempt to negotiate an abatement to the Purchase Price with Seller or (C) terminate this Agreement by written notice to Seller, whereupon this Agreement shall terminate and Seller and Buyer shall be relieved of all further obligations hereunder except those obligations which expressly survive any such termination.
- (e) If Buyer is at any time prior to its exercise of the Option not satisfied with any diligence findings or fitness for purpose of the Property in its sole discretion, Buyer

may terminate this Agreement by sending Seller written notice of Buyer's election to terminate, whereupon this Agreement shall terminate and Seller and Buyer shall be relieved of all further obligations hereunder except those obligations which expressly survive any such termination. Subject to the limitations set forth below, Buyer may conduct any reasonable due diligence it may desire at its expense, including, and subject to the provisions of clause (c) above:

- Physical Inspection. Buyer may obtain physical inspections of the Property;
- Title. Buyer shall obtain a title commitment ("**Title Commitment**") from a nationally recognized title company of its choosing (the "**Title Company**").
- Survey. An ALTA survey of the Property may be ordered by the Buyer. Any survey shall be certified to Seller, Buyer, and Title Company.
- Environmental Site Assessment. An Environmental Site Assessment of the Property may be obtained by the Buyer.
- Soil and Drainage Inspection. Buyer may obtain soil and drainage inspections and tests concerning the Land.

During the Option Period, Buyer may conduct such other inspections and reviews of soil, surveying, governmental approvals and permits, zoning, title, leases, financial information, service agreements, management contracts, and other agreements related to the Real Property, together with all other tests, inspections and investigations of the Real Property that Buyer deems necessary, in Buyer's sole discretion. Seller shall provide such cooperation and access as shall be reasonably necessary for Buyer to promptly perform such due diligence, in each case subject to the provisions of clause (c) above. All tests, inspections and investigations completed by Buyer or Buyer's agents or contractors shall be at Buyer's sole cost and expense and shall be completed in a manner so as to not unreasonably interfere with the Business. Buyer agrees to promptly repair any damage to the Property caused by Buyer's entry onto the Land to complete these tests and investigations.

- (f) Unless and until Buyer exercises the Option and pays Seller the Closing Payment in full, Buyer shall not seek to modify the zoning regulations applicable to the Real Property without Seller's prior written consent, which Seller may withhold if Seller determines, in its discretion, that the modification could reduce the value of all or any portion of the Property or the Business, including any modification that (i) removes or conditions any use that is currently allowed on the Property (whether such use is currently allowed as of right or subject to site plan review or the issuance of a special permit) or (ii) imposes development restrictions on the Property that are more stringent than currently exist.
- (g) Seller grants to Buyer a non-exclusive, royalty free limited license to use Seller's trade name "Plainridge Racecourse" and all related intellectual property rights

(including, without limitation, all trademarks, copyrights, patents, websites, computer hardware, software, telecommunications and information technology systems (the "**Trade Name**") to further the objectives of the Temporary Operations Agreement. As licensee of the Trade Name, Buyer shall have the right to use the Trade Name for all purposes it deems necessary in obtaining a Category II License for the Project, including but not limited to, proceedings, submissions and dealings with the MGC, the Commonwealth of Massachusetts and the Town of Plainville.

7. Conveyance of Title: If the Option is exercised by Buyer, Seller shall convey good and marketable fee simple title to the Real Property to Buyer as reflected on the Title Commitment (with all Title Objections which Seller is required to remove pursuant to the provisions of Section 6(d) above so removed), or its designees, at Closing (as defined below) by a duly and validly executed, recordable quitclaim deed in the form attached hereto as **Exhibit "C"** (the "**Deed**") free and clear of all liens, assessments, encumbrances, leases and claims or rights of use or possession except the those appearing in the Title Commitment and subject to any title defects which are not required to be removed by Seller pursuant to Section 6(d) (collectively, the "**Permitted Encumbrances**"). Seller may, at the time of Closing, use the Purchase Price (or a portion thereof) to clear the title of any or all encumbrances or interests that Seller is required remove. Taxes payable on the Real Property through the earlier of the Closing Date or December 31, 2013 shall be the responsibility of Seller; if Buyer elects to extend the Option Period, Real Property taxes shall be payable by Buyer through the expiration of the Option Period or earlier termination thereof.

8. Closing:

- (a) If the Buyer exercises the Option, the closing (the "**Closing**") for the delivery of the Deed and other instruments contemplated by this Agreement and payment of the Closing Payment shall be on a date within twenty (20) days after delivery of the Buyer Closing Notice (the "**Closing Date**") or on such later date as the Parties mutually agree, provided, however, if that date falls on a Saturday, Sunday or a legal holiday, then the Closing Date shall be on the next business day. The Closing shall be held at such time and place as the parties hereto shall mutually agree.
- (b) In the event that Seller defaults in or otherwise avoids performance under this Agreement and such default is not cured (or, if such default is not curable by nature, the consequences of the same remedied in all material respects) within thirty (30) days following written notice thereof, Buyer shall have the right to elect any one or more of the following remedies: (i) seek specific performance for conveyance of the Property on the terms and conditions set forth in this Agreement, (ii) seek recovery against Seller for all losses, expenses, damages, claims, and liabilities incurred by Buyer (including, without limitation, litigation costs), and (iii) terminate this Agreement by notice to Seller and thereupon all obligations of the parties under this Agreement shall terminate other than any party's covenants and agreements contained herein which by the specific terms of this Agreement are stated to survive any expiration or termination of this Agreement. Seller shall indemnify Buyer for all losses, costs, expenses, damages, claims, and liabilities (including, without limitation,

litigation costs) arising out of or related to (aa) any breach of this Agreement by Seller, including, without limitation, a breach of Seller's representations and warranties contained herein, and (bb) [REDACTED]. Notwithstanding anything to the contrary contained herein, other than with damages attributable to Seller's fraud and any damages arising out of clause (bb) of the preceding sentence and the cost of curing any Title Objections which Seller is obligated to cure and does not cure, for which no limit on Seller's liability shall apply, Seller's liability shall be limited to the then current Holdback Amount in escrow at the time Buyer first is aware of the circumstances giving rise to such breach or claim. In the event of a claim under this indemnification, Buyer shall give prompt written notice thereof to Seller and Seller shall have sole and exclusive control over the defense and settlement of such claim, provided that no settlement will be entered into without Seller's prior written consent, not to be unreasonably withheld, conditioned or delayed. Seller shall defend against such claim with counsel of Seller's choice, subject to Buyer's reasonable approval of such counsel. Buyer shall reasonably cooperate in the defense of such claim (at Seller's sole cost and expense) and shall not settle or compromise such claim without Seller's prior written approval, and shall not take any other actions which would compromise or detrimentally affect Seller's defense of such claim.

- (c) In addition to any other condition precedent in favor of Buyer as may be expressly set forth elsewhere in this Agreement, Buyer's obligation to purchase the Property after providing a Buyer Closing Notice is subject to the fulfillment of the conditions set forth below on or before the Closing Date, which may be waived in whole or in part by Buyer only by written notice:
- (i) Seller shall have performed and complied in all material respects with the terms of this Agreement to be performed and complied with by Seller prior to or at the Closing;
 - (ii) On the Closing Date, Seller's representations and warranties set forth in this Agreement shall be true, complete and correct in all material respects;
 - (iii) The Host Community Agreement shall have been assigned to Buyer pursuant to the Assignment and Assumption Agreement attached as **Exhibit "E"** hereto and approved by the Town of Plainville and the MGC;
 - (iv) No Material Change shall have occurred before the Closing with respect to the Real Property that has not been approved in writing by Buyer. "Material Change" shall mean a material and adverse change in the value, use, occupancy, or physical condition of the Real Property or a change in law preventing use of the Real Property for a Category II gaming facility;
 - (v) The Title Company (or another nationally recognized title insurance company) shall deliver a title policy to Buyer at Buyer's cost reflecting the same condition of title to the Real Property (with all matters that Seller agreed

to remove in its Title Response Notice having been removed) as set forth in the Title Commitment subject to the Permitted Encumbrances; and

- (vi) The MGC shall have issued a final, non-appealable Gaming License to Buyer that is acceptable to Buyer in its sole and absolute discretion.

In the event of a failure of any of the foregoing conditions, Buyer, in its sole discretion, may terminate this Agreement without further liability to either party subject to those provisions which expressly survive any such termination. For purpose of clarity, prior to delivery of a Buyer Closing Notice, Buyer may terminate this Agreement at any time.

- (e) In addition to any other condition precedent in favor of Seller as may be expressly set forth elsewhere in this Agreement, Seller's obligation to sell the Property after receiving a Buyer Closing Notice is subject to the fulfillment of the conditions set forth below on or before the Closing Date, which may be waived in whole or in part by Seller only by written notice:
 - (i) Buyer shall have performed and complied in all material respects with the terms of this Agreement and the Temporary Operations Agreement (if executed) to be performed and complied with by Buyer prior to or at the Closing; and
 - (ii) On the Closing Date, Buyer's representations and warranties set forth in this Agreement shall be true, complete and correct in all material respects.
- (f) At the Closing, Seller shall deliver or cause to be delivered, at Seller's sole expense, each of the following items, each executed and acknowledged to the extent appropriate:
 - (i) The Deed;
 - (ii) A bill of sale for all personal property being conveyed to Buyer;
 - (iii) An affidavit sworn to by the Seller that Seller is not a foreign person or entity within the meaning of Section 1445 of the Internal Revenue Code of 1986, and all amendments thereto and all regulations issued thereunder;
 - (iv) A Title Affidavit in a form reasonably required by the Title Company as to the absence of mechanics' liens and parties-in-possession;
 - (v) A duly executed closing statement specifying the Purchase Price, prorations, adjustments and costs in connection with the transaction;
 - (vi) A certificate or registration of title for any vehicle or other personal property included in the Property which requires such certification or registration;
 - (vii) An assignment of the Host Community Agreement;
 - (vii) A Non-Compete Agreement from each required party in accordance with Section 17 hereof.
 - (viii) Payment of the Deposits as provided under Section 4;
 - (ix) Any and all other items contemplated to be delivered at the Closing by Seller by the terms of this Agreement.

- (g) At Closing, Buyer shall deliver to Seller the following items:
- (i) Immediately available funds in United States currency in an amount equal to the Closing Payment;
 - (ii) A duly executed closing statement specifying the Purchase Price, prorations, adjustments and costs in connection with the transaction;
 - (iii) Such documents as may be required by the Buyer's title company; and
 - (iv) Any and all other items contemplated by the terms of this Agreement.
- (h) The following shall be prorated between Seller and Buyer as of 12:01 a.m. on the earlier of the Closing Date or December 31, 2013 (the earlier such date, the "**Pro Ration Date**"): (i) real estate taxes and assessments; (ii) utilities; and (iii) such other items of expense in accordance with customary apportionments between sellers and buyers of businesses and commercial real estate in Plainville, Massachusetts. Seller shall be responsible for all such expenses for the period ending as of the Pro Ration Date, inclusive; Buyer shall be responsible for all such expenses thereafter. Notwithstanding the foregoing, Seller shall pay all transfer taxes, documentary stamps, or any other conveyance fees in connection with the conveyance of the Real Property, and Buyer shall pay all transfer taxes and assignment fees incurred in connection with the transfer of any contracts or personal property.

9. Conduct of the Business:

- (a) From the Effective Date until the Closing or earlier termination of this Agreement, and except as otherwise provided under this Agreement including as provided under Section 1 and 2(a) Seller shall keep the Property in its current condition and repair (reasonable wear and tear excepted), including, (i) maintain Seller furniture, fixtures and equipment, at levels maintained in the ordinary course of business, (ii) perform maintenance and repairs for the Real Property and Seller tangible personal property in the ordinary course of business, (iii) maintain insurance coverages consistent with the current levels for the Real Property, (iv) maintain all licenses and permits related to or the Real Property; provided that any reasonable, documented expenses incurred by Seller to comply with the terms of this Section 9 after the expiration of the Option Period but prior to Closing shall be reimbursed in full by Buyer. For avoidance of doubt, except as may be provided in the Temporary Operations Agreement, no Property (other than Real Property) maintained and used for the Business are subject to the terms of this Section 9 as of January 1, 2014. To the extent of any breach of Seller's covenants set forth in clauses (iii) and (iv) above, Buyer shall have the right to immediately cure such breach or threatened breach and Buyer shall be entitled to credit Buyer's the reasonable, documented costs and expenses (exclusive of internal costs) incurred in order to cure the breach against the Purchase Price.
- (b) From the Effective Date until the Closing or earlier termination of this Agreement, Seller shall not, without thirty days prior written notice to Buyer and receipt of Buyer's prior written consent which shall not be unreasonably withheld, conditioned or delayed, (i)

amend, extend, renew or terminate any existing tenant lease, contract, license or permit (except in the ordinary course of business), (ii) enter into any new tenant lease, contract, license or permit, (iii) commit to, make or pay for any structural alterations, additions or capital expenditures, except as required by applicable law, as required for maintenance and repair or due to any emergency, or as required by any existing contract, or (iv) change or attempt to change the current zoning of the Property in a way which would interfere with or have a reasonably foreseeable detrimental impact on Buyer's application for a Category II License or development of a Project on the Land; provided, however, that nothing in the foregoing shall be construed as requiring Seller to continue any commitments required for the Business beyond December 31, 2013 unless otherwise required under the Temporary Operations Agreement.

10. Broker: Each Party represents and warrants that no broker or agent has been engaged with respect to this transaction. Seller agrees to indemnify Buyer and hold Buyer harmless against any liability, loss, cost, damage, claim and expense (including, but not limited to, reasonable attorneys' fees and costs of litigation) which Buyer shall ever incur because of any claim of any broker or agent claiming through Seller, whether or not meritorious, for any such fee or commission. Buyer agrees to indemnify Seller and hold Seller harmless against any liability, loss, cost, damage, claim and expense (including, but not limited to, reasonable attorneys' fees and costs of litigation) which Seller shall ever incur because of any claim of any broker or agent claiming through Buyer, whether or not meritorious, for any such fee or commission.

11. Seller and Buyer Obligations and Representations:

- (a) During the Option Period, Seller agrees to the following:
- (i) Seller will not directly or indirectly offer or advertise the Property for sale or lease, nor show it to any prospective purchaser or tenant;
 - (ii) Seller will not, without Buyer's prior written consent (not to be unreasonably withheld, conditioned, or delayed), enter into any contract or lease or assume any obligation that will adversely affect Seller's ownership or occupation of the Property or create any lien, easement or encumbrance on the Property;
 - (iii) Seller will timely pay in full all taxes and other obligations on the Real Property if and as they become due during the Option Period for the period commencing on January 1, 2014; provided that Buyer shall pay directly or reimburse Seller for such amounts as required under Section 2 of this Agreement;
 - (iv) Seller will comply in all material respects with all applicable laws that affect the Property;
 - (v) Seller will use commercially reasonable efforts to cooperate, at Buyer's expense, with all reasonable requests by Buyer to take actions prior to the

Closing which facilitate the closing of this transaction, the Referendum, the development of the Buyer's Project (without having any material participation or control over decisions in such development), and the application for the Gaming License (without having any material participation or control over decisions in such application);

- (vi) Seller will take no action which could reasonably foreseeably adversely impact the validity or enforceability of this Agreement, the value of the Real Property, the Referendum, or Buyer's application for the Category II License;
 - (vii) Seller will take no zoning or other zoning-related action that would adversely affect the intended development of, or the prospect for, development of the Project at the Real Property as a Category II casino; and
 - (viii) Seller will maintain the Property consistent with its past practices subject to any decision by Seller to terminate the Business as of December 31, 2013; and
 - (ix) Seller shall make available to Buyer true, correct and complete copies of all books and records reasonably requested by Buyer which are used in connection with the Business and access to which is reasonably required by Buyer if it elects to enter into the Temporary Operating Agreement or exercises the Option.
 - (x) Seller will terminate the Business on or before December 31, 2013.
 - (xi) Seller shall deliver to Buyer within two weeks following the Referendum, a true, correct and complete schedule of, and copies of, all licenses and permits relating to the Real Property in effect.
- (b) Seller shall promptly notify Buyer if any of the following occurs during the Option Period, or if Buyer exercises the Option, until the Closing:
- (i) unless otherwise required or requested by the applicable agency or authority, any written notice or other communication from any governmental or regulatory agency or authority in connection with the transactions contemplated by this Agreement;
 - (ii) any actions, suits, claims, investigations or proceedings commenced or, to the knowledge of Seller, threatened in writing against Seller, which could be expected to materially interfere with the consummation of any of the transactions contemplated by this Agreement; and
 - (iii) any fact, event, transaction or circumstance, as soon as practical after it becomes known to Seller, that (x) adversely affects or could be reasonably expected to adversely affect the ability of Seller to maintain in full force and effect title to the Property or convey good and marketable fee simple title as

reflected on the Title Commitment (with all Title Objections which Seller is required to remove pursuant to the provisions of Section 6(d) above so removed) to the Property to Buyer as contemplated subjected to Permitted Encumbrances pursuant to Section 6 of this Agreement, or (y) results or is reasonably expected to result in a material adverse effect to the Property or to prevent, materially delay or materially adversely affect the consummation of the transactions contemplated by this Agreement.

- (c) If, at any time during the Option Period, Seller commits a material breach of any agreement affecting the Property or violates any material applicable laws, rules, regulations, conditions or restrictions, including the payment of any taxes or penalties (each a "**Violation**"), Seller agrees (i) to promptly notify Buyer of such Violation, (ii) that Buyer may, in Buyer's sole discretion, take all such action as Buyer deems necessary to cure such Violation on behalf of Seller and (iii) to promptly reimburse Buyer for all costs and expenses incurred in the event Buyer elects to take any action permitted by the preceding section (ii) hereof (or in the event of a breach of this reimbursement obligation, permits Buyer, at its election, to credit the costs against the Purchase Price). Seller shall further notify Buyer of any written government notice or communication related to the Real Property or any new legal actions related to the Real Property.
- (d) As of the Effective Date and at all times during the Option Period, or if Buyer exercises the Option, until the Closing, Seller represents and warrants as follows:
- (i) As of the Effective Date, to Seller's best knowledge, Seller is the sole owner of the Real Property and has good and marketable title to the Real Property. As of the Closing Date, Seller is the sole owner of the Real Property and has good and marketable title to the Real Property as reflected on the Title Commitment (with all Title Objections which Seller is required to remove pursuant to the provisions of Section 6(d) above so removed), which shall be free and clear of all liens and encumbrances required to be removed pursuant to Section 6(d).
 - (ii) Seller has not granted any right of first refusal, right of first offer, option, ownership interest, profit participation, revenue participation, equity interest, or similar right or interest in the Property that will survive Closing.
 - (iii) Seller has full right, power and authority to enter into this Agreement, and to sell, convey and transfer the Property to Buyer in accordance with the terms and provisions of this Agreement. Each person executing this Agreement on behalf of Seller represents and warrants that such person is duly authorized to act on behalf of Seller in executing this Agreement, and that this Agreement constitutes a valid and legally binding obligation of Seller enforceable against Seller in accordance with its terms.

- (iv) Seller has not made, nor anticipates making, a general assignment for the benefit of creditors, filed any voluntary petition in bankruptcy or, to Seller's knowledge, suffered the filing of an involuntary petition by Seller's creditors, suffered the appointment of a receiver to take possession of all, or substantially all, of Seller's assets, suffered the attachment or other judicial seizure of all, or substantially all, of Seller's assets, admitted in writing its inability to pay its debts as they generally come due or made an offer of settlement, extension or composition to its creditors generally (except with respect to outstanding amounts of less than \$500,000 in the aggregate due under certain contracts which will be paid or settled by Seller prior to Closing such that there will be no additional amounts due thereunder at Closing).
- (v) As of the Closing Date, Seller has not received or will have resolved in writing any written notice of any pending or threatened actions, lawsuits, delinquent taxes or government actions relating to the Real Property.
- (vi) As of the Closing Date, and to Seller's knowledge as of the Effective Date, Seller owns good and marketable fee simple title to the Property as reflected on the Title Commitment (with all Title Objections which Seller is required to remove pursuant to the provisions of Section 6(d) above so removed) subject to the Permitted Encumbrances and in accordance with Section 6 of this Agreement.
- (vii) Seller has and will continue to insure the Property through Closing for liability in a commercially reasonable manner.
- (viii) The execution, delivery and performance of this Agreement, and the consummation of the transaction contemplated hereby, will not result in any breach of, or constitute any default under, any agreement or other instrument to which Seller is a party or by which Seller or the Real Property is bound, and will not result in the imposition of any lien or encumbrance against the Real Property.
- (ix) Except as may be contemplated under this Agreement and the Temporary Operations Agreement, there are no service contracts, utility agreements, maintenance agreements and other contracts or agreements currently in effect with respect to the Real Property (except those that terminate on or before December 31, 2013 or that may be terminated upon not more than 30 days' notice without premium or penalty).
- (x) There are no leases, subleases, concession agreements or other rental, transfer or occupancy arrangements allowing for the occupancy of the Property or permit any party the use thereof except as may be required to stable and maintain horses in conjunction with the Business.

- (xi) Seller has not received any written notice of violation from any federal, state, municipal or other governmental instrumentality, or written notice of any violation, suspension, revocation or non renewal of any license or permit issued in connection with the use of the Real Property.
- (xii) Seller is not a "foreign person" as defined in Section 1445 of the Internal Revenue Code of 1986, and all amendments thereto and all regulations issued thereunder.
- (xiii) Neither Seller nor, to Seller's actual knowledge, its affiliates, is in violation of the Anti-Money Laundering and Anti-Terrorism Laws. Neither Seller nor, to Seller's actual knowledge, its affiliates, is acting, directly or indirectly, on behalf of terrorists, terrorist organizations or narcotics traffickers, including those persons or entities that appear on the Annex to the Executive Order, or are included on any relevant lists maintained by the Office of Foreign Assets Control of U.S. Department of Treasury, U.S. Department of State, or other U.S. government agencies, all as may be amended from time to time. Neither Seller nor, to Seller's actual knowledge, its affiliates or, without inquiry, any of its brokers or other agents, in any capacity in connection with the sale of the Property (A) conducts any business or engages in making or receiving any contribution of funds, goods or services to or for the benefit of any person included in the lists referenced above, (B) deals in, or otherwise engages in any transaction relating to, any property or interests in property blocked pursuant to the Executive Order, or (C) engages in or conspires to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in any Anti-Money Laundering and Anti-Terrorism Laws. To Seller's actual knowledge, neither Seller, nor any person controlling or controlled by Seller, is a country, territory, individual or entity named on a Government List, and the monies used by Seller in connection with this Agreement and amounts committed with respect hereto, were not and are not derived from any activities that contravene any applicable anti-money laundering or anti-bribery laws and regulations (including funds being derived from any person, entity, country or territory on a list maintained by the federal government or engaged in any unlawful activity defined under Title 18 of the United States Code, Section 1956(c)(7)).
- (xiv) As of the Closing Date only, no work has been performed on behalf of Seller which has not been paid for or which could give rise to any mechanic's or materialmen's lien being filed against the Property.
- (xv) As of the Effective Date, the only Deposit of Seller is a cash performance bond of \$300,000 on deposit with the Town of Plainville for Landscaping and Seller has not made any Deposit subsequent to the Effective Date without the written consent of Buyer.

- (xvi) Attached hereto as Schedule 10(d)(xvi) is a true, correct and complete list of all personal property of the Seller's having a fair market value in excess of twenty-five thousand dollars (\$25,000) exclusive of cash and cash equivalents.
- (xvii) Seller has provided Buyer with a true, correct and complete copy of the special permit obtained by Seller from the Town of Plainville for the development of the Real Property.
- (xviii) **REDACTED**

For purposes of this Section 11, the terms "knowledge of Seller" and "Seller's knowledge" shall mean the actual knowledge, after due inquiry, of Stanley Fulton, Alfred Ross, the President of Seller (or if no President of Seller exists at Closing, the managing member of Seller). Seller's representations and warranties set forth in this Section 11, shall survive Closing for a period of nine (9) months.

- (e) As of the Effective Date and at all times during the Option Period, or if Buyer exercises the Option, Buyer represents and warrants as follows:
 - (i) Buyer has full right, power and authority to enter into this Agreement, and to acquire the Property in accordance with the terms and provisions of this Agreement. Each person executing this Agreement on behalf of Buyer represents and warrants that such person is duly authorized to act on behalf of Buyer in executing this Agreement, and that this Agreement constitutes a valid and legally binding obligation of Buyer enforceable against Buyer in accordance with its terms.
 - (ii) The execution, delivery and performance of this Agreement, and the consummation of the transaction contemplated hereby, will not result in any breach of, or constitute any default under, any agreement or other instrument to which Buyer is a party or by which Buyer is bound.
 - (iii) Buyer will timely pay in full, or at Seller's option, reimburse Seller promptly in full for, all Baseline Property Expenses incurred by Seller on or after December 31, 2013 (or if the Closing Date occurs prior to December 31, 2013, the Closing Date) and until the earlier to occur of Closing, the expiration of the Option Period, and the termination of this Agreement. If Buyer at any times breaches or threatens to breach the terms of this Section, Buyer agrees (aa) that Seller may, in its discretion, take all such action as Seller deems necessary to cure such breach and (bb) to promptly reimburse Seller for all costs and expenses incurred in the event Seller elects to take any action permitted by this section.
 - (iv) Neither Buyer nor, to Buyer's actual knowledge, its affiliates, is in violation of the Anti-Money Laundering and Anti-Terrorism Laws. Neither Buyer nor, to

Buyer's actual knowledge, its affiliates, is acting, directly or indirectly, on behalf of terrorists, terrorist organizations or narcotics traffickers, including those persons or entities that appear on the Annex to the Executive Order, or are included on any relevant lists maintained by the Office of Foreign Assets Control of U.S. Department of Treasury, U.S. Department of State, or other U.S. government agencies, all as may be amended from time to time. Neither Buyer nor, to Buyer's actual knowledge, its affiliates or, without inquiry, any of its brokers or other agents, in any capacity in connection with the purchase of the Property (A) conducts any business or engages in making or receiving any contribution of funds, goods or services to or for the benefit of any person included in the lists referenced above, (B) deals in, or otherwise engages in any transaction relating to, any property or interests in property blocked pursuant to the Executive Order, or (C) engages in or conspires to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in any Anti-Money Laundering and Anti-Terrorism Laws. Neither Buyer, nor any person controlling or controlled by Buyer, is a country, territory, individual or entity named on a Government List, and the monies used by Buyer in connection with this Agreement and amounts committed with respect hereto, were not and are not derived from any activities that contravene any applicable anti-money laundering or anti-bribery laws and regulations (including funds being derived from any person, entity, country or territory on a list maintained by the federal government or engaged in any unlawful activity defined under Title 18 of the United States Code, Section 1956(c)(7)).

Buyer's representations and warranties set forth in this Section 11 shall survive Closing for a period of nine (9) months.

12. Risk of Loss; Condemnation:

(a) In the event of material damage to or destruction of all or any portion of the Real Property by wind, water, fire or other casualty, Seller will promptly notify Buyer of the nature and extent of such damage or destruction and whether or not Seller intends to repair or replace the affected Property. In such event, Buyer, in its sole discretion, within ten (10) days of such notice, may terminate this Agreement. Notwithstanding the foregoing, if Buyer has exercised the Option prior to the date on which it receives notice of the damage from Seller and agrees in writing not to terminate the Agreement, then, upon receipt of the Closing Payment, Seller shall assign the insurance proceeds for the Property damage to Buyer at the Closing.

(b) Promptly upon obtaining actual knowledge of any threatened or filed condemnation proceeding against all or any portion of the Property, Buyer and Seller will notify the other party of such proceeding. In such event, Buyer, in its sole discretion, may terminate this Agreement; provided, however, that in the event Buyer has exercised the Option prior to the date on which it receives actual knowledge or notice of the condemnation

proceedings and agrees in writing not to terminate the Agreement, then, upon receipt of the Closing Payment, Seller shall assign the condemnation proceeds to Buyer at the Closing.

13. Recording of Option and Purchase Agreement: This Agreement shall not be recorded in any Registry of Deeds or other office or place of public record; provided however, a memorandum of this Agreement shall be recorded against the Property in the form attached hereto as **Exhibit "B"** (the "**Memorandum of Option**") within three (3) business days following the execution hereof. If Buyer does not exercise the Option as provided herein within the Option Period, this Agreement shall automatically terminate and be of no further force and effect.

14. Termination of Option: Notwithstanding any other provision contained in this Agreement to the contrary, Buyer (in its sole and exclusive discretion) may terminate this Agreement at any time during the Option Term by delivering to Seller a Buyer Termination Notice. In such event, each party's rights and obligations under this Agreement shall terminate except as expressly provided for in the survival provisions of this Agreement.

15. Confidentiality: Neither Party shall:

- (a) disclose to any person or entity (other than, on terms of non-disclosure and restrictions on use consistent with those set forth in these sections (a) and (b)), the other party and its respective representatives, attorneys, accountants, professional advisors, investors, financial institutions, and agents or those designated in writing by the other party, in each case who have a 'need to know' the information for purposes contemplated by this Agreement) in any manner, directly or indirectly, any confidential or proprietary information or data related to the other party or its business (including information relating to third parties with whom the party does business), whether of a technical or commercial nature, obtained pursuant to negotiation or execution of this Agreement or the effectuation of the activities or transactions contemplated by this Agreement (such information, "**Confidential Information**"); or
- (b) use, or permit any person or entity (other than the other party and its respective representatives, attorneys, accountants, professional advisors, investors, financial institutions and agents or those designated in writing by the other party) to use, in any manner, directly or indirectly any such information or data, except to perform its obligations and exercise its rights hereunder.
- (c) The foregoing obligations of non-disclosure and restrictions on use shall not apply to information as is at the time of its disclosure or access generally known or available to the public and which did not become so known or available through any breach of any provision of this section by a party. In addition, a party shall not be in breach of this Section for (i) disclosures of information to the extent required or requested by applicable law, court order, government agency, gaming/regulatory practice or legal proceeding (including the rules and regulations of the Securities and Exchange Commission, any state securities commission or any gaming or racing laws) or any

listing agreement with, or the rules and regulations of, the NASDAQ Stock Market or the National Association of Securities Dealers, Inc.; or (iv) disclosures reasonably necessary in connection with recording the Option.

Buyer and Seller shall consult with each other prior to making any public statements with respect to this Agreement and the transactions contemplated hereby and, except as otherwise provided above, neither party shall make any public statements, including any press releases, with respect to this Agreement and the transactions contemplated hereby, without the prior written consent of the other party, which consent shall not be unreasonably withheld. Buyer further agrees that, without the prior written consent of Seller, Buyer may neither use Seller's name or the name of any of Seller's affiliates in any press release, marketing materials or any other publicly available media. The provisions of this paragraph shall not be deemed breached if disclosure is required or requested by applicable law or court order or otherwise consented to by the non-disclosing party or where disclosure is made of previously disclosed or published information.

16. Regulatory Compliance. Each of the Parties shall comply with all applicable laws, rules, and regulations with respect to the transactions contemplated hereby.

17. Covenant Not to Compete. In exchange for Buyer's agreement to proceed to Closing, Seller, Stanley Fulton, Alfred Ross, and any other owner of more than ten percent (10%) of Seller (each, a "**Principal Owner**"), at Closing, shall deliver to Buyer a Non-Compete Agreement in form and substance acceptable to the parties, providing that such person or entity will not, directly or indirectly, until the tenth (10th) Contingent Consideration Payment Date, own, operate, manage, develop, open, invest in (other than stock traded in a public market), sponsor, or promote, any casino gaming facility, slot facility, or horse or harness racing facility within a 200 mile radius of the Land (the "**Geographic Area**"), or advertise or promote within the Geographic Area a competing casino gaming facility, or slot facility; provided; however; nothing in this Section 17 shall restrict Alfred Ross from sponsoring and racing horses in his own capacity.

18. Governing Law; Jurisdiction; Miscellaneous:

- (a) This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts without regard to principles of conflicts of law. With respect to any provision of this Agreement finally determined by a court of competent jurisdiction to be unenforceable, such court shall have jurisdiction to reform such provision so that it is enforceable to the maximum extent permitted by applicable law, and both Seller and Buyer shall abide by such court's determination. In the event that any provision of this Agreement cannot be reformed, such provision shall be deemed to be severed from this Agreement, but every other provision of this Agreement shall remain in full force and effect and the Parties shall negotiate in good faith to agree upon and implement replacement terms that most closely preserve the economic costs and benefits inherent in the impossible or unenforceable provision(s). In the event of a dispute under this Agreement, Buyer and Seller agree that the

appropriate forum for any such disputes shall be a Federal Court of competent jurisdiction located in Boston, Massachusetts.

- (b) Except as otherwise expressly set forth in this Agreement, each Party will pay its own (and its representative's) fees and expenses incurred in connection with the negotiation, preparation, execution and delivery of this Agreement and the negotiation of the transaction documents. In the event of litigation between the Parties, the Court shall have discretion to order that the substantially prevailing Party shall be entitled to be awarded fees, costs and expenses incurred in respect of such litigation. In the event that a Court of competent jurisdiction shall deem any litigation to be subject to summary dismissal (and such determination is not reversed on appeal), frivolous or brought in bad faith, the prevailing Party shall be entitled to be awarded all fees, costs and expenses incurred in respect of such litigation.
- (c) The Principal Owners shall be deemed third party beneficiaries with respect to any payments to be made by the Buyer hereunder. Subject to the foregoing, nothing in this Agreement shall be construed as implying or intending any third party beneficiaries to this Agreement.
- (d) Each party acknowledges that it has had the opportunity to have counsel review this Agreement. The Parties have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises, this Agreement will be construed as if drafted jointly by the Parties and no presumption or burden of proof will arise favoring any Party by virtue of the authorship of any of the provisions of this Agreement.
- (e) Any notices required hereunder shall be in writing, shall be transmitted by nationally recognized overnight courier, by email attachment or by electronic facsimile, in each case with reasonable confirmation of delivery or refusal of delivery. Delivery shall be deemed to have occurred on the first business day following the date of such reasonable confirmation., Notices shall be addressed to the Parties as follows:

- (i) If intended to Seller, to:

Ourway Realty, LLC
301 Washington Street
Plainville, MA 02762
Attention: President

- (ii) If intended to Buyer, to:

Penn National Gaming, Inc.
825 Berkshire Boulevard
Wyomissing, Pennsylvania 19610

Attention: Office of General Counsel
Fax:

with copy to:

Kasowitz, Benson, Torres & Friedman LLP
1633 Broadway
New York, New York 10019
Attn: Wallace L. Schwartz, Esq.
Fax: (212) 500-3487

- (f) This Agreement may be executed in counterparts each of which shall be considered an original. Any signature page that is faxed or transmitted electronically shall be effective as an original signature page. Any signature page to any counterpart may be detached from such counterpart without impairing the legal effect of the signatures thereon and thereafter attached to another counterpart identical thereto except having attached to it additional signature pages.
- (g) This Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof and shall supersede all prior negotiations, understandings and agreements of the Parties relative to the subject matter of this Agreement. For avoidance of doubt, except as expressly provided herein, the Temporary Operations Agreement is a separate agreement herefrom enforceable on its terms.
- (h) Nothing contained herein shall create a joint venture or partnership between Buyer and Seller, or an agency principal relationship.
- (i) This Agreement is solely for the benefit of Buyer and Seller and, except as set forth above with respect to Principal Owners, nothing contained in this Agreement shall be deemed to confer upon anyone other than Buyer and Seller any right to insist upon or to enforce the performance or observance of any of the obligations contained herein or therein. All conditions to the obligations of Buyer and Seller to consummate the transactions contemplated by this Agreement are imposed solely and exclusively for the benefit of each such party as provided therein and no other Person shall have standing to require satisfaction of such conditions in accordance with their terms or be entitled to assume that Buyer or Seller will refuse to consummate the transactions contemplated by this Agreement in the absence of strict compliance with any or all thereof and no other Person shall under any circumstances be deemed to be a beneficiary of such conditions, any or all of which may be freely waived in whole or in part by Buyer or Seller (as applicable) if, in each party's sole discretion, such party deems it advisable or desirable to do so.
- (j) The headings herein are inserted as a matter of convenience only, and do not define, limit, or describe the scope of this Agreement or the intent of the provisions hereof. All references herein to the word "including" shall be deemed to be references to "including, without limitation."

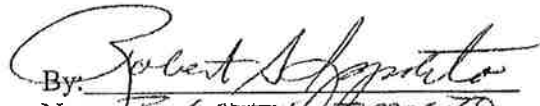
- (k) Time is of the essence under this Agreement.
- (l) Buyer and Seller each acknowledge and agree that this Agreement is a legally binding document.
- (m) This Agreement cannot be amended except as agreed to in writing by the parties.
- (n) This Agreement may not be assigned or transferred, directly or indirectly, by either Party without the prior written consent of the other which consent shall not be unreasonably withheld, delayed or conditioned; provided, however, this Agreement may be assigned by Buyer without Seller's consent to any affiliate of Buyer that is financially and otherwise capable of performing Buyer's obligations under this Agreement. Subject to the foregoing, this Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective legal representatives, successors and assigns. In the event Buyer assigns its rights and obligations under this Agreement, such assignment shall include all post-Closing obligations of Buyer hereunder.
- (o) The following shall survive any termination of this Agreement: (i) payment obligations incurred as of any termination of this Agreement, or which with the passage of time would become due following any such termination, (ii) each party's obligations with respect to the restrictions on use and disclosure of Confidential Information shall survive any termination of this Agreement, and (iii) provisions which by their nature continue in effect for a period of up to one year following the Agreement's termination.
- (p) This Agreement is subject to the review of the MGC any other Massachusetts regulatory authority, body, or any agency which has, or may at any time after the date hereof have, jurisdiction over the gaming activities at the Project, or any successor to any such authority, body or agency. Buyer and Seller and their respective affiliates, to the extent reasonably necessary, in connection with any review of this Agreement by the MGC shall execute and deliver any further documents or instruments, including amendments to this Agreement, as may be required and which do not alter the terms of this Agreement in a manner unfavorable to either party or which imposes an undue burden on a party.

[REMAINDER OF PAGE INTENTIONALLY BLANK]

Seller and Buyer execute this Agreement on the date(s) shown, intending to bind themselves and their respective heirs, personal representatives, executors, successors and assigns.

BUYER:

SPRINGFIELD GAMING AND
REDEVELOPMENT, LLC,
Delaware limited liability company,

By: 
Name: Robert S. Appolito
Title: Secretary of Western Mass.
Gaming Ventures LLC, sole
Member

SELLER:

OURWAY REALTY, LLC,
a Massachusetts limited liability company

By: _____
Name:
Title:

PRINCIPAL OWNER:

The undersigned joins this Agreement for the
purpose of ratifying and assuming the
obligations arising under Section 17:

Alfred Ross, an individual

Stanley Fulton, an individual

Seller and Buyer execute this Agreement on the date(s) shown, intending to bind themselves and their respective heirs, personal representatives, executors, successors and assigns.

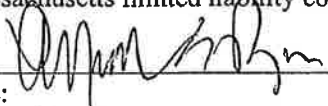
BUYER:

SPRINGFIELD GAMING AND
REDEVELOPMENT, LLC,
a Delaware limited liability company

By: _____
Name:
Title:

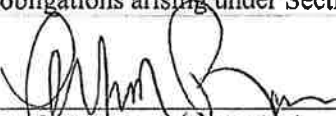
SELLER:

OURWAY REALTY, LLC,
a Massachusetts limited liability company

By:  _____
Name:
Title: *mgr.*

PRINCIPAL OWNER:

The undersigned joins this Agreement for the purpose of ratifying and assuming the obligations arising under Section 17:



Alfred Ross, an individual

Stanley Fulton, an individual

Seller and Buyer execute this Agreement on the date(s) shown, intending to bind themselves and their respective heirs, personal representatives, executors, successors and assigns.

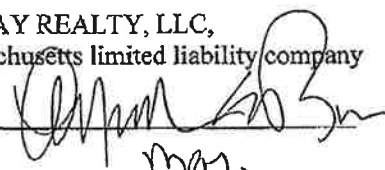
BUYER:

SPRINGFIELD GAMING AND
REDEVELOPMENT, LLC,
Delaware limited liability company,

By: _____
Name:
Title:

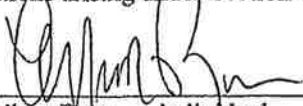
SELLER:

OURWAY REALTY, LLC,
a Massachusetts limited liability company

By: 
Name: mgr.
Title:

PRINCIPAL OWNER:

The undersigned joins this Agreement for the
purpose of ratifying and assuming the
obligations arising under Section 16:


Alfredbert Ross, an individual



Stanley Fulton, an individual

EXHIBIT "A"
LEGAL DESCRIPTION OF PROPERTY

A certain parcel of land situated in said Plainville, bounded and described as follows:

Northwesterly, Northerly, Northwesterly and Northerly by the Southeasterly, Southerly, Southeasterly and Southerly lines of Interstate Route-495, No Access, thirty one hundred one and 12/100 (3101.12) feet:

Northeasterly, two hundred fifty nine and 90/100 (25.90) feet, and

Southeasterly, about ninety one (91) feet, by land now or formerly of the City of Attleboro;

Southerly, Southeasterly, Easterly, Southeasterly and Easterly, by Lake Mitimichi;

Southeasterly by Haynes Road, about two hundred nine and 79/100 (209.79) feet;

Northwesterly, twenty two and 69/100 (22.69) feet;

Westerly, one hundred nine and 82/100 (109.82) feet;

Southerly, one hundred (100) feet, and

Easterly, one hundred sixty and 88/100 (160.88) feet, by land now or formerly of Reservoir Estates Inc.;

Southwesterly by said Haynes Road, one hundred ninety one and 13/100 (191.13) feet;

Northwesterly, thirty seven and 36/100 (37.36) feet;

Westerly, one hundred twenty two and 55/100 (122.55) feet; and

Southerly, one hundred twenty (120) feet, by land now or formerly of said Reservoir Estates, Inc.;

Westerly by land now or formerly of Richard Freitas et al, two hundred eighty six and 49/100 (286.49) feet;

Southerly by lands of sundry adjoining owners, shown on plan filed with Certificate No. 110963, nine hundred twenty four (924) feet;

Easterly by land now or formerly of Richard A. Laliberte, three hundred thirty (330) feet;

Southeasterly by said Haynes Road, two hundred eighty eight and 98/100 (288.98) feet; and

Southwesterly by land now or formerly of F.E. Daddaria, fourteen hundred forty six and 07/100 (1446.07) feet.

EXHIBIT A
LEGAL DESCRIPTION – CONTINUED

All of said boundaries, except the water lines, are determined by the Land Court to be located as shown on the following plans which comprise lot number 12 on a plan drawn by Ralph I. Maloon, Surveyor, dated December 12, 1974, as modified and approved by said Court, filed in the Land Registration Office as No. 39078A, a copy of a portion of which is filed in Norfolk Registry District with Certificate No. 110964, Sheet 1, Book 555; and a parcel on a plan drawn by Ralph I. Maloon, Surveyor, dated December 12, 1974, as modified and approved by said Court, filed in the Land Registration Office as No. 39077A, a copy of a portion of which is filed in Norfolk Registry District with Certificate No. 110963, Sheets 1 and 2, Book 555.

Together with the rights, if any, created by a Commonwealth of Massachusetts Taking, dated May 12, 1965, recorded with Norfolk Registry of Deeds at Book 4254, Page 076 (RTE 495).

EXHIBIT "B"
MEMORANDUM OF OPTION

MEMORANDUM OF OPTION AND PURCHASE AGREEMENT

Reference is hereby made to that certain Option and Purchase Agreement dated as of September 3, 2013 by and Ourway Realty, LLC ("Seller") and Western Mass. Gaming Ventures, LLC ("Buyer") involving certain property in Plainville, Middlesex County, Massachusetts (the "Agreement").

In the Agreement, Seller grants Buyer an option to purchase (the "Option") subject to the terms and conditions contained therein. Notice is hereby given of the following essential terms of such Option:

- SELLER:** Ourway Realty, LLC, a Massachusetts limited liability company, having an address of c/o 301 Washington Street Plainville, Massachusetts 02762.
- BUYER:** Springfield Gaming and Redevelopment, LLC, a Delaware limited liability company, having an address of c/o Penn National Gaming, Inc., 825 Berkshire Boulevard, Wyomissing, PA 19610
- PROPERTY SUBJECT TO OPTION:** The property that is subject to the Option is approximately 88.9 acres located at 301 Washington Street, Plainview, Norfolk County, Massachusetts which is more particularly described in Exhibit A attached hereto and made a part hereof (the "Property").
- OPTION PERIOD:** Unless terminated earlier in accordance with the provisions of the Agreement, the Option shall be for a period commencing on the date hereof and expiring on March 31, 2014. Buyer has the right to extend the expiration date of the Option to March 31, 2016, subject to the terms of the Agreement.
- CLOSING:** If Buyer exercises the Option, the closing of the conveyance of the Property to Buyer shall occur on the date which is 20 days after the delivery of the Buyer Closing Notice (as defined in the Agreement) or on such later date as Seller and Buyer may mutually agree.
- BINDING EFFECT:** In the event Buyer does not exercise the Option by the applicable deadlines set forth in the Agreement or the Option otherwise lapses or terminates in accordance with the terms of the Agreement, the termination of the Option may be confirmed by either (i) an instrument in recordable form executed by both

Seller and Buyer confirming the termination of the Option or (ii) an affidavit in recordable form executed by Seller stating that the Option has been duly terminated.

ADDITIONAL TERMS:

The Agreement contains additional terms and conditions which are not enumerated in this Memorandum. Nothing in this Memorandum shall modify or amend the Agreement and, in the event of any inconsistency between the terms of the Agreement and the terms of this Memorandum, the terms of the Agreement shall govern.

This Memorandum may be executed in any number of multiple counterparts each of which, when taken together, shall constitute but one and the same instrument.

[Remainder of Page Intentionally Left Blank]

EXECUTED under seal as of the 3rd day of September, 2013.

SELLER:

OURWAY REALTY, LLC,
a Massachusetts limited liability company

By: _____

Name:

Title:

BUYER:

SPRINGFIELD GAMING AND
REDEVELOPMENT, LLC, Delaware limited
liability company

By: _____

Name:

Title:

STATE OF _____)
) ss.
COUNTY OF _____)

September 3, 2013

Before me, the undersigned notary public, personally appeared the above named _____, the _____ of Ourway Realty, LLC, whose name is signed on the preceding document, and such person acknowledged to me that he/she signed such document voluntarily, for its stated purpose. The identity of such person was proved to me through satisfactory evidence of identification, which was photographic identification with signature issued by a federal or state governmental agency, oath or affirmation of a credible witness, or personal knowledge of the undersigned.

Notary Public
My Commission Expires:

STATE OF _____)
) ss.
COUNTY OF _____)

September 3, 2013

Before me, the undersigned notary public, personally appeared the above named _____, the _____ of Springfield Gaming and Redevelopment, LLC, whose name is signed on the preceding document, and such person acknowledged to me that he/she signed such document voluntarily, for its stated purpose. The identity of such person was proved to me through satisfactory evidence of identification, which was photographic identification with signature issued by a federal or state governmental agency, oath or affirmation of a credible witness, or personal knowledge of the undersigned.

Notary Public
My Commission Expires:

EXHIBIT A

Legal Description of Property

A certain parcel of land situated in said Plainville, bounded and described as follows:

Northwesterly, Northerly, Northwesterly and Northerly by the Southeasterly, Southerly, Southeasterly and Southerly lines of Interstate Route-495, No Access, thirty one hundred one and 12/100 (3101.12) feet:

Northeasterly, two hundred fifty nine and 90/100 (25.90) feet, and

Southeasterly, about ninety one (91) feet, by land now or formerly of the City of Attleboro;

Southerly, Southeasterly, Easterly, Southeasterly and Easterly, by Lake Mitimichi;

Southeasterly by Haynes Road, about two hundred nine and 79/100 (209.79) feet;

Northwesterly, twenty two and 69/100 (22.69) feet;

Westerly, one hundred nine and 82/100 (109.82) feet;

Southerly, one hundred (100) feet, and

Easterly, one hundred sixty and 88/100 (160.88) feet, by land now or formerly of Reservoir Estates Inc.;

Southwesterly by said Haynes Road, one hundred ninety one and 13/100 (191.13) feet;

Northwesterly, thirty seven and 36/100 (37.36) feet;

Westerly, one hundred twenty two and 55/100 (122.55) feet; and

Southerly, one hundred twenty (120) feet, by land now or formerly of said Reservoir Estates, Inc.;

Westerly by land now or formerly of Richard Freitas et al, two hundred eighty six and 49/100 (286.49) feet;

Southerly by lands of sundry adjoining owners, shown on plan filed with Certificate No. 110963, nine hundred twenty four (924) feet;

Easterly by land now or formerly of Richard A. Laliberte, three hundred thirty (330) feet;

Southeasterly by said Haynes Road, two hundred eighty eight and 98/100 (288.98) feet; and

EXHIBIT A

LEGAL DESCRIPTION – CONTINUED

Southwesterly by land now or formerly of F.E. Daddaria, fourteen hundred forty six and 07/100 (1446.07) feet.

All of said boundaries, except the water lines, are determined by the Land Court to be located as shown on the following plans which comprise lot number 12 on a plan drawn by Ralph I. Maloon, Surveyor, dated December 12, 1974, as modified and approved by said Court, filed in the Land Registration Office as No. 39078A, a copy of a portion of which is filed in Norfolk Registry District with Certificate No. 110964, Sheet 1, Book 555; and a parcel on a plan drawn by Ralph I. Maloon, Surveyor, dated December 12, 1974, as modified and approved by said Court, filed in the Land Registration Office as No. 39077A, a copy of a portion of which is filed in Norfolk Registry District with Certificate No. 110963, Sheets 1 and 2, Book 555.

Together with the rights, if any, created by a Commonwealth of Massachusetts Taking, dated May 12, 1965, recorded with Norfolk Registry of Deeds at Book 4254, Page 076 (RTE 495).

EXHIBIT "C"
QUITCLAIM DEED

QUITCLAIM DEED

OURWAY REALTY LLC, D/B/A PLAINRIDGE RACECOURSE, a Massachusetts limited liability company, having an address at 301 Washington Street, Plainville, Massachusetts 02762, for consideration of Forty Two Million and 00/100 Dollars (\$42,000,000.00) paid, grants to SPRINGFIELD GAMING AND REDEVELOPMENT, LLC, a Delaware limited liability company having an address of c/o Penn National Gaming, Inc., 825 Berkshire Boulevard, Wyomissing, Pennsylvania 19610, Attention: General Counsel, with QUITCLAIM COVENANTS, the land and improvements thereon legally described in Exhibit A attached hereto and incorporated herein by this reference.

This conveyance is made subject to and with the benefit of all restrictions, easements and encumbrances that are of record, so far as the same may be in force and applicable, and to the lien of real estate taxes not yet due and payable.

Executed under seal as the _____ day of _____, 201__.

OURWAY REALTY LLC

By: _____

Name:

Title:

STATE OF _____)

) ss.

COUNTY OF _____)

_____, 201__

Before me, the undersigned notary public, personally appeared the above named _____, whose name is signed on the preceding document, and such person acknowledged to me that he/she signed such document voluntarily, for its stated purpose. The identity of such person was proved to me through satisfactory evidence of identification, which was photographic identification with signature issued by a federal or state governmental agency, oath or affirmation of a credible witness, or personal knowledge of the undersigned.

Notary Public

My Commission Expires: _____

EXHIBIT A
LEGAL DESCRIPTION

A certain parcel of land situated in said Plainville, bounded and described as follows:

Northwesterly, Northerly, Northwesterly and Northerly by the Southeasterly, Southerly, Southeasterly and Southerly lines of Interstate Route-495, No Access, thirty one hundred one and 12/100 (3101.12) feet:

Northeasterly, two hundred fifty nine and 90/100 (25.90) feet, and

Southeasterly, about ninety one (91) feet, by land now or formerly of the City of Attleboro;

Southerly, Southeasterly, Easterly, Southeasterly and Easterly, by Lake Mitimichi;

Southeasterly by Haynes Road, about two hundred nine and 79/100 (209.79) feet;

Northwesterly, twenty two and 69/100 (22.69) feet;

Westerly, one hundred nine and 82/100 (109.82) feet;

Southerly, one hundred (100) feet, and

Easterly, one hundred sixty and 88/100 (160.88) feet, by land now or formerly of Reservoir Estates Inc.;

Southwesterly by said Haynes Road, one hundred ninety one and 13/100 (191.13) feet;

Northwesterly, thirty seven and 36/100 (37.36) feet;

Westerly, one hundred twenty two and 55/100 (122.55) feet; and

Southerly, one hundred twenty (120) feet, by land now or formerly of said Reservoir Estates, Inc.;

Westerly by land now or formerly of Richard Freitas et al, two hundred eighty six and 49/100 (286.49) feet;

Southerly by lands of sundry adjoining owners, shown on plan filed with Certificate No. 110963, nine hundred twenty four (924) feet;

Easterly by land now or formerly of Richard A. Laliberte, three hundred thirty (330) feet;

Southeasterly by said Haynes Road, two hundred eighty eight and 98/100 (288.98) feet; and

Southwesterly by land now or formerly of F.E. Daddaria, fourteen hundred forty six and 07/100 (1446.07) feet.

EXHIBIT A
LEGAL DESCRIPTION – CONTINUED

All of said boundaries, except the water lines, are determined by the Land Court to be located as shown on the following plans which comprise lot number 12 on a plan drawn by Ralph I. Maloon, Surveyor, dated December 12, 1974, as modified and approved by said Court, filed in the Land Registration Office as No. 39078A, a copy of a portion of which is filed in Norfolk Registry District with Certificate No. 110964, Sheet 1, Book 555; and a parcel on a plan drawn by Ralph I. Maloon, Surveyor, dated December 12, 1974, as modified and approved by said Court, filed in the Land Registration Office as No. 39077A, a copy of a portion of which is filed in Norfolk Registry District with Certificate No. 110963, Sheets 1 and 2, Book 555.

Together with the rights, if any, created by a Commonwealth of Massachusetts Taking, dated May 12, 1965, recorded with Norfolk Registry of Deeds at Book 4254, Page 076 (RTE 495).

EXHIBIT "D"
EBITDA CALCULATION

- (a) EBITDA Definition. EBITDA shall mean earnings before interest, taxes, depreciation and amortization derived from the net income of Buyer at the facility (which shall include all revenues from operations on the Land or related to the Project), calculated in accordance with generally accepted accounting principles with respect to net income in effect at the time, including a reduction for a corporate assessment fee (which assessment must be of the same type assessed by Buyer's ultimate parent on its other operating subsidiaries at substantially similar properties in size, scope and geography), including, without limitation, audit expenses, legal fees, and insurance) or for employees of the Buyer or its affiliates substantially dedicated to the Project. EBITDA will specifically exclude (i) any rent paid by Buyer to its affiliates if the Project is subject to a sale-leaseback with an affiliate, (ii) any amounts payable for fees and services pursuant to any transaction between Buyer and its affiliates which are substantially above market rate terms.
- (b) Delivery of EBITDA Notices and Financial Statements. Upon each Contingent Consideration Payment Date, Buyer shall deliver to the Seller or its duly appointed representative (the "**Seller Representative**") a notice (the "**EBITDA Notice**") setting forth in reasonable detail Buyer's calculation of EBITDA. Each EBITDA Notice shall be accompanied by a certificate of a duly authorized officer of Buyer stating that the EBITDA Notice was prepared in accordance with this Agreement. In addition, within 60 days following the end of the first four full Fiscal Quarters following the opening of the Project's operations to the public at the Land and on each anniversary thereof, Buyer shall deliver to the Seller a balance sheet, statement of operations, and statement of cash flows for the Buyer, which shall be maintained on a stand-alone basis and shall be reviewed or audited by an independent accounting firm (the "**Annual Financial Statements**"). The Seller Representative will have 120 days following Buyer's delivery of the Annual Financial Statements to review and respond to the Annual Financial Statements, during which period Buyer will grant the Seller Representative and its Representatives reasonable access during normal business hours to the books and records of the Buyer, including work papers (if any) prepared by Buyer's independent accountants (subject to compliance with Buyer's independent accountants' customary procedures for release) with respect to such Annual Financial Statements.
- (c) Review Period. Unless the Seller Representative has delivered to Buyer a written letter of its disagreement with any EBITDA Notice delivered during the period covered by the Annual Financial Statements (a "**Notice of Disagreement**") on or prior to the 121st day following Buyer's delivery of such Annual Financial Statements to the Seller Representative, each such EBITDA Notice during the fiscal year covered by the Annual Financial Statements will become final on the 121st day following Buyer's delivery of such Annual Financial Statements to the Seller Representative, provided however, that the Seller and Seller's representative shall have a continuing one-year right to dispute

prior EBITDA Notices that may contain errors uncovered by restatements of any financial statements, or which were subject of fraud.

(d) Meeting to Resolve Proposed Adjustments. As soon as reasonably practicable, but in no event later than 20 days, after the Seller Representative's delivery of an Notice of Disagreement, Buyer and the Seller Representative will meet and endeavor to resolve any disagreements in the calculation of EBITDA. If Buyer and the Seller Representative reach agreement in writing on such adjustments, the Contingent Payment Amounts delivered during the applicable fiscal year will be modified to reflect the adjustments accorded pursuant to this Section.

(e) Resolution by Arbitration.

(i) If Buyer and the Seller Representative do not resolve to their mutual satisfaction all disputed adjustments in an EBITDA Notice of Disagreement within 25 days (or such longer period agreed to in writing by Buyer and the Seller Representative) following the meeting provided for in Section (d) above, any disputes will be settled by the Boston, Massachusetts office of an independent accounting firm not engaged by the Buyer or its affiliates at any time during the preceding three-year period and mutually agreed upon by the parties (agreement not to be unreasonably withheld or delayed) (the "Arbitrator") in accordance with the provisions of this Section (e).

(ii) On or prior to the 40th day (or such later date that is the same number of days following such day equal to the number of days by which the 25-day period provided for in above is extended by Buyer and the Seller Representative) following the meeting provided for in Section (d), above, Buyer will furnish the Arbitrator with a copy of this Agreement, the Annual Financial Statements, the EBITDA Notice, the related EBITDA Notice of Disagreement and any other relevant correspondence between the Parties. Buyer and the Seller Representative will also give the Arbitrator: (A) position papers outlining such Party's respective arguments and supporting documentation for such Party's position; and (B) access to the books and records of the Buyer and its subsidiaries, including any work papers or other schedules prepared by such Party's accountants (subject to compliance with such Party's accountants' customary procedures for release) relating to the preparation of the applicable EBITDA Notices, the Annual Financial Statements and the related Notice of Disagreement.

(iii) The Arbitrator's engagement will be limited to determining the amount of the Contingent Payment due to the Seller under this Agreement for the applicable fiscal year. The fees and expenses of the Arbitrator shall be borne by the party requesting the Arbitrator's review, unless the findings reveal that the EBITDA Notice was incorrect by greater than ten percent (10%).

- (iv) The Arbitrator's determination will be conclusive and binding upon the parties and may be entered and enforced in any court of competent jurisdiction.

EXHIBIT "E"
ASSIGNMENT AND ASSUMPTION

ASSIGNMENT AND ASSUMPTION OF HOST COMMUNITY AGREEMENT

OURWAY REALTY, LLC

(Assignor)

and

SPRINGFIELD GAMING AND REDEVELOPMENT, LLC

(Assignee)

Dated: As of [____], 201_

ASSIGNMENT AND ASSUMPTION OF HOST COMMUNITY AGREEMENT

THIS ASSIGNMENT AND ASSUMPTION OF HOST COMMUNITY AGREEMENT (this "Assignment"), dated as of [____],¹ made by OURWAY REALTY, LLC, doing business as Plainridge Racecourse, a [____] having an office at [____] ("Assignor") and SPRINGFIELD GAMING AND REDEVELOPMENT, LLC a Delaware limited liability company having an office at 825 Berkshire Boulevard, Wyomissing, PA 19610 ("Assignee").

W I T N E S S E T H :

WHEREAS, pursuant to that certain Option and Purchase Agreement (the "Agreement"), dated as of [September____], 2013, between Assignor and Assignee, Assignor agreed to sell and Assignee agreed to purchase land and certain assets located in the Town of Plainville, Massachusetts, as described on Exhibit A attached hereto and made a part hereof, on the terms and subject to the conditions set forth therein, together with certain other assets of Assignor; and

WHEREAS, the Agreement contemplates that as consideration for the execution of the Agreement, (i) Assignor will immediately assign to Assignee all of Assignor's right, title and interest in and to that certain Host Community Agreement (as the same may have been amended, the "Host Community Agreement"), dated July 8, 2013, between Assignor and The Town of Plainville, Massachusetts, a municipality in the Commonwealth of Massachusetts, attached hereto as Exhibit B, and all of Assignor's rights and obligations arising thereunder, and (ii) Assignee will accept such assignment and assume such rights and obligations; and

WHEREAS, the execution of the Agreement is occurring as of the date hereof.

NOW, THEREFORE, in consideration of the premises and other good and valuable consideration, the mutual receipt and legal sufficiency of which the parties hereto hereby acknowledge, Assignor and Assignee hereby agree as follows:

~~1. *Definitions.* Capitalized terms used and not otherwise defined herein shall have the respective meanings ascribed thereto in the Agreement.~~

2. *Assignment.* Assignor hereby assigns to Assignee (i) all of Assignor's right, title and interest in and to the Host Community Agreement, and (ii) all of Assignor's duties and obligations to the extent accruing under the Host Community Agreement from and after the date hereof.

3. *Assumption.* Assignee hereby accepts the assignment, and assumes the duties and obligations, described in Section 2 hereof.

4. *Amendment.* This Assignment may not be amended, modified, or terminated except by an instrument, in writing, executed by the parties hereto.

5. *Successors.* This Assignment is binding upon and shall inure to the benefit of the parties hereto and their respective legal representatives, successors and assigns.

¹ The closing date under the Option Agreement.

6. *Further Assurances.* Each of Assignor and Assignee agree to execute, acknowledge (where appropriate) and deliver such other or further instruments of transfer or assignment as the other party may reasonably require to confirm the foregoing assignment and assumption, or as may be otherwise reasonably requested by Assignee or Assignor to carry out the intent and purposes hereof.

7. *Contingency.* This assignment is contingent upon the Town of Plainville consenting to the assignment of the host community agreement to Assignee. If the Town of Plainville does not consent to the assignment, this assignment is null and void.

8. *Governing Law.* This Assignment shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts without regard to principles of conflicts of law.

9. *Counterparts.* This Assignment may be executed in any number of counterparts, which together shall constitute one single agreement of the parties hereto.

[REMAINDER OF PAGE INTENTIONALLY BLANK]

IN WITNESS WHEREOF, the parties have hereunto set their hands the day and year first written above.

ASSIGNOR:

OURWAY REALTY, LLC,
a Massachusetts limited liability company

By: _____

Name:

Title:

ASSIGNEE:

SPRINGFIELD GAMING AND
REDEVELOPMENT, LLC,
a Delaware limited liability company

By: _____

Name:

Title:

EXHIBIT A
The Land

EXHIBIT B
Host Community Agreement

SCHEDULE 10(D)(XVI)

Assets

1. 2004 John Deere model 6420 4WD tractor
2. 2001 John Deere model 6330 tractor with cab



MEMORANDUM

DATE: August 29, 2013
TO: Commissioners
FROM: Eileen Glovsky/Commissioner Bruce Stebbins
SUBJECT: Recommendation for Economic Development Consultant

Recommendation: That the Gaming Commission accept the proposal submitted by HLT Advisory, Inc. and pursue contract negotiations and detailed scoping of the services described in their response to the RFR MGC-EDC-2013 for advisory services, dated August 7, 2013.

Furthermore the PMT recommends the Commission pre-qualify the Center for Policy Analysis and the team of REMI/Spectrum Gaming to provide services to the Commission if needed.

Finally, the PMT recommends the Commission extend the pre-qualification of the same firms to provide services to any host and/or surrounding community that may so choose as part of their efforts to negotiate and/or evaluate agreements with applicants (subject to executing a letter of agreement with the respective applicant).

Description of the Procurement Process

The Commission issued a Request for Response (RFR) for individuals, a collaboration of individuals or firms or a single entity to assist the Commission in the evaluation and assessment of the economic development aspects of the gaming proposals from qualified applicants on June 28, 2013.

The Commission conducted a "bidders" conference on July 9, 2013. Attendance in person or by phone was encouraged, but not required. The deadline to submit written questions to the Commission was July 12, 2013 and responses to those questions were posted on July 22, 2013.

The deadline for submission of responses was originally August 12 and amended to August 7, 2013 on July 12, 2013.

Conflicts of Interest: As part of the RFR, the Commission asked bidders to disclose all current, on-going work and past work (going back to 10 years) for any of the current applicants for gaming licenses.

Phase I Review: Eileen Glovsky conducted a "Phase I" review of all responses. This review was designed and undertaken to ensure compliance with administrative provisions of the RFR, and verify the inclusion of mandatory forms (or attestation to complete mandatory forms if selected as the successful bidder). Respondents are not scored on the Phase I review.

General Counsel was asked to review all disclosures of potential conflicts of interest.



Massachusetts Gaming Commission

Phase II Review: This phase consists of the review and evaluation of the technical proposal. The evaluation criteria were clearly noted in the RFR as follows:

• 10%	Similar Past Experiences
• 20%	Knowledge and experience assessing the economic impacts of gaming facilities and/or large scale resort real estate developments
• 35%	Approach, strategy, recommendations and staff qualifications relating to the scope of services envisions by this RFR
• 10%	Most advantageous to the MGC, combination of best-of-breed services with comprehensiveness of proposal
• 5%	Supplier Diversity Program or DBE Certification

This RFR was scored with 80% of the points available for the technical proposal and 20% for the cost. The total points for this RFR equaled 100; 80 for technical and 20 for cost.

Phase III Review: Respondents were instructed to submit a cost proposal in a separately sealed envelope. After the review of the technical proposal was completed (after the oral presentation), the procurement team moved on to review the cost proposals.

Evaluation of the Technical Proposal

The procurement management team (PMT) was led by Commissioner Bruce Stebbins. Additional team members were Dr. Lynne Brown (lecturer at Brandeis and former Vice President and Economic Advisor at the Federal Reserve Bank of Boston), and Gordon Carr, an economic development consultant to the Commission. Eileen Glovsky was present at all the meetings to facilitate documentation, Jill Griffin, Director of Workforce, Supplier and Diversity Development attended all of the oral presentations and due to time constraints, Jennifer Pinck attended one of the oral presentations.

The PMT assigned scores on the criteria stipulated above on the following scale:

Scoring Criteria:

0 = Non Responsive

1 = Provides no evidence of meeting needs of MGC

2 = Provides some evidence of meeting needs of MGC

3 = Provides adequate evidence of meeting needs of MGC but does not excel in any way

4 = Provides evidence of meeting all MGC's needs and excels in a few areas

5 = Provides evidence of a response that far exceeds MGC's needs in most areas

Each member of the PMT was responsible for reading and scoring all responses prior to the Phase II meeting that was held on August 14, 2013. Each response was carefully reviewed and discussed to arrive at consensus scores at that meeting. Consensus scores were then weighted appropriately.



The PMT invited three respondents to make oral presentations. Invitees were instructed to bring no more than 5 people to the presentation and to restrict their presentation to 40 minutes, allowing for 20 minutes for questions. The presentations took place on August 28, 2013. The procurement team reviewed respondent scores and made adjustments in response to the oral presentations as appropriate.

The cost proposals were opened and reviewed to determine how to appropriately compare costs. While each respondent presented their costs differently, it was possible to determine an overall cost for comparison. The most advantageous cost received 20 points, with other respondents receiving points based on the percentage above the most advantageous cost. (For example, if the lowest hourly rate was \$200, that vendor would receive 20 points. An hourly cost of \$300 would get 10 points as it was 50% higher than the lowest rate).

The total points received, 80 out of a possible 100, determined the most advantageous proposal was that of HLT Advisory.

Conclusion

It was not the intent of the Commission to award both the Financial Advisory and Economic Development contracts to the same vendor (and there was no overlap between procurement teams), but there are definite advantages to having HLT as the single consultant. The interaction between economic development and applicant finances was noted by all respondents at both sets of oral presentations. HLT has strong, relevant work in both areas and is well versed in representing government entities in the evaluation of gaming agreements. HLT impressed the team with their assessment of the challenge of reviewing the impact of gaming on workforce and career pathways. The team presented for Economic Development has direct experience in terms of economic impact evaluation and the role of gaming on hospitality and tourism.



Massachusetts Gaming Commission

Our Team & Commitment to MGC

Direct Client Experience:

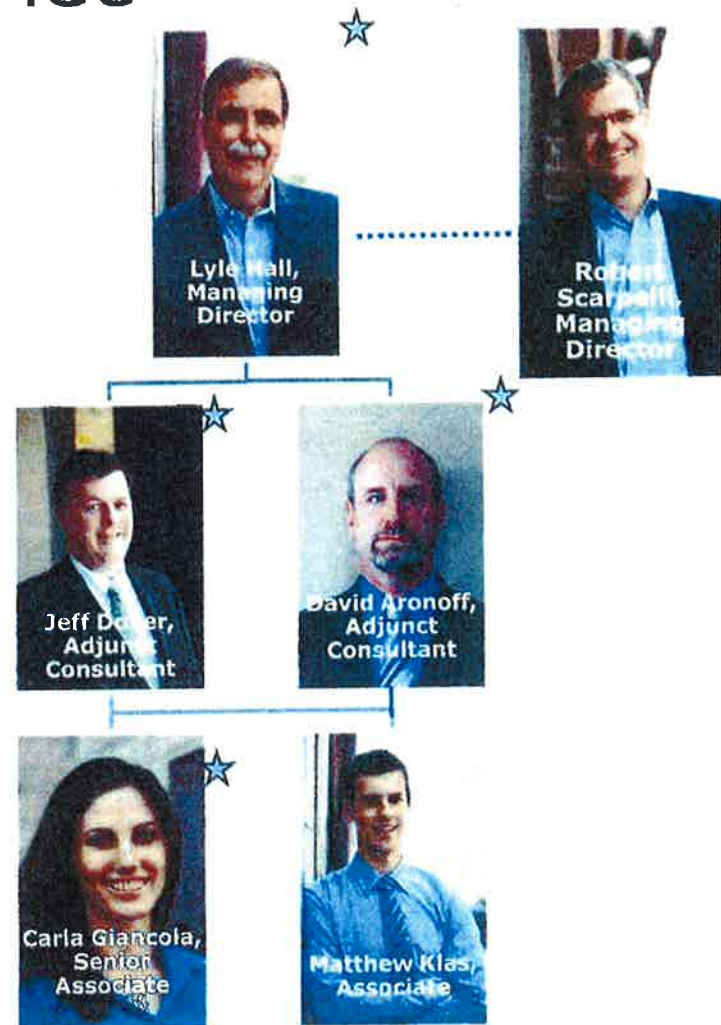
- Combined 40 yrs of providing continuous advice to government gaming entities
- Significant gaming "RFA" process experience

Direct Industry Experience:

- Government/Public Policy
- Economic Impact/Development

Capable Professionals:

- Financial analysis and modelling, market assessments, business plan analysis, funding plans





MEMORANDUM

DATE: August 29, 2013
TO: Commissioners
FROM: Eileen Glovsky/Commissioner James McHugh
SUBJECT: Recommendation for Building, Site Design and Mitigation Consultant

Recommendation: That the Gaming Commission accept the proposal submitted by the McFarland Johnson team for advisory services for Category 2 evaluations.

Furthermore, the Procurement Team recommends that as a condition of awarding the contract to McFarland Johnson, that members of the team will cease work for Mohegan until the team has completed all work for the Commission, or December 31, 2013, whichever comes later.

The Commission will post a procurement to secure similar services for Category 1 evaluations by September 6, 2013.

Description of the Procurement Process

The Commission issued a Request for Response (RFR) for individuals, a collaboration of individuals or firms or a single entity to assist the Commission in reviewing applicant building, site design and mitigation proposals on June 21, 2013.

The Commission conducted a "bidders" conference on July 1, 2013. Attendance in person or by phone was encouraged, but not required. The deadline to submit written questions to the Commission was July 5, 2013 and responses to those questions were posted on July 12, 2013.

The deadline for submission of responses was August 2, 2013.

Conflicts of Interest: As part of the RFR, the Commission asked bidders to disclose all current, on-going work and past work (going back to 10 years) for any of the current applicants for gaming licenses.

Phase I Review: Eileen Glovsky conducted a "Phase I" review of all responses. This review was designed and undertaken to ensure compliance with administrative provisions of the RFR, and verify the inclusion of mandatory forms (or attestation to complete mandatory forms if selected as the successful bidder). Respondents are not scored on the Phase I review.

General Counsel was asked to review all disclosures of potential conflicts of interest.

Phase II Review: This phase consists of the review and evaluation of the technical proposal. The evaluation criteria were clearly noted in the RFR as follows:



Massachusetts Gaming Commission

• 10%	Similar Past Experiences
• 10%	Knowledge and experience in planning and development of large scale resort real estate developments
• 10%	Knowledge and experience in the construction of large scale multi-use projects
• 35%	Approach, strategy, recommendations and staff qualifications relating to the scope of services envisions by this RFR
• 10%	Most advantageous to the MGC, combination of best-of-breed services with comprehensiveness of proposal
• 5%	Supplier Diversity Program or DBE Certification

This RFR was scored with 80% of the points available for the technical proposal and 20% for the cost. The total points for this RFR equaled 100; 80 for technical and 20 for cost.

Phase III Review: Respondents were instructed to submit a cost proposal in a separately sealed envelope. After the review of the technical proposal was completed (after the oral presentation), the procurement team moved on to review the cost proposals.

Evaluation of the Technical Proposal

The procurement management team (PMT) was led by Commissioner Bruce Stebbins. Additional team members were Commissioner Jim McHugh and John Nunnari from the AIA volunteering his time to assist the Commission. Eileen Glovsky was present at the Phase II scoring meetings and Jordan Harris attended the oral presentations in Eileen’s absence. Margaret Wood from Pinck attended the oral presentations.

The PMT assigned scores on the criteria stipulated above on the following scale:

Scoring Criteria:

- 0 = Non Responsive
- 1 = Provides no evidence of meeting needs of MGC
- 2 = Provides some evidence of meeting needs of MGC
- 3 = Provides adequate evidence of meeting needs of MGC but does not excel in any way
- 4 = Provides evidence of meeting all MGC's needs and excels in a few areas
- 5 = Provides evidence of a response that far exceeds MGC's needs in most areas

Each member of the PMT was responsible for reading and scoring all responses prior to the Phase II meeting that was held on August 13, 2013. Each response was carefully reviewed and discussed to arrive at consensus scores at that meeting. Consensus scores were then weighted appropriately.

The PMT invited four respondents to make oral presentations. Invitees were instructed to bring no more than 5 people to the presentation and to restrict their presentation to 40 minutes, allowing for 20 minutes for questions. The presentations took place over two days, on August 20 and 21st, 2013.



The procurement team reviewed respondent scores and made adjustments in response to the oral presentations as appropriate.

The PMT engaged in a discussion prior to opening the cost proposals. While there was a clear leader at this point, this was a vendor who had disclosed business that the Commission believed could present a conflict of interest if engaged to evaluate both slots and casino proposals. The PMT ultimately decided that, pending scoring of the cost proposals, this vendor could be engaged to evaluate slots applications and the Commission would reissue a RFR for evaluation of casino applications.

The cost proposals were opened and reviewed to determine how to appropriately compare costs. Hourly rates for Senior Principal-in-charge and Senior project staff were averaged and compared. The most advantageous cost received 20 points, with other respondents receiving points based on the percentage above the most advantageous cost. (For example, if the lowest hourly rate was \$200, that vendor would receive 20 points. An hourly cost of \$300 would get 10 points as it was 50% higher than the lowest rate).

The total points received, 84 out of a possible 100, determined the most advantageous proposal was that of McFarland Johnson.

Conclusion

McFarland Johnson presented a comprehensive team approach that was found to be most advantageous to the Commission by partnering with Green International Affiliates (MBE), Epstein Joslin Architects and AKF Group. McFarland Johnson is a 115 person, multi-disciplined firm (mechanical, electrical, plumbing, fire protection, civil, structural and transportation design services) that has provided service to federal, state and local governments in addition to private industry. The McFarland Johnson team has been involved with the expansion of the Mohegan Sun Casino in Connecticut since 1998. This experience was deemed valuable for the evaluation of slot parlors, but given the expectation that Mohegan Sun will submit a Category 1 application, conflicted this firm out of the Category 1 evaluation process.



Massachusetts Gaming Commission



McFarland Johnson

Innovative Solutions / Sustainable Results

225 Cedar Hill Street • Suite 200 • Marlborough, MA 01752
Phone: 978-204-4812
www.mjinc.com

August 2, 2013

Massachusetts Gaming Commission
84 State Street
Suite 720
Boston, MA 02109

Attn: Ms. Eileen Glovsky
Director of Administration

**Ref: Request for Responses (RFR) for Building, Site Design, and Mitigation Advisory Services
MGC-BSD-2013**

Dear Ms. Glovsky:

McFarland Johnson (MJ) in association with Epstein Joslin Architects, Inc. (EJ), City Point Partners (CPP) and Green International Affiliates, Inc. (GIA) is pleased to submit our Team's response to the Request for Responses (RFR), for Building, Site Design and Mitigation Advisory Services, MGC-BSD-2013. The MJ Team offers extensive qualifications and expertise in the areas that were identified in the RFR.

Our experience combined with our understanding of the Massachusetts Gaming Commission's mission to create a fair, transparent, and participatory process makes the MJ Team uniquely and strongly qualified to undertake each of the review categories outlined in the RFR. Moreover, the MJ Team of professionals has the ability to leverage its experience on a regional and local level and offer those lessons learned and best practices from other similar and relevant projects to the Massachusetts Gaming Commission (MGC).

The MJ Team presented in this response offers comprehensive services and complementary expertise to provide the MGC with maximum value. Each Team member is a Massachusetts firm, MJ from Marlborough, EJ from Cambridge, CPP from Boston and GIA from Westford. The MJ Team is uniquely comprised of two (2) member firms that are part of the state's Diversity Program with CPP as a certified WBE and GIA as a certified MBE.

Finally, the MJ Team provides MGC with the "value added" that only a comprehensive team like ours can deliver. Our Team has the capabilities and resources to respond to each of the six (6) service categories being procured, with the additional benefit that we are also offering the construction administration and oversight services. In short, our Team provides the "One Stop Shopping" that allows MGC to have one team of professionals to call upon for all of your needs.

The approach of the MJ Team as outlined in this response leverages extensive experience, sufficient resources, certified professionals, and a committed corporate backing, from each of the member firms, to meet MGC's needs with cost-effective and time sensitive services. Our Team's approach is founded upon extensive experience with planning and design in the gaming community, our architectural and engineering capabilities, our staff strength and depth of resources, our Team's experience in sustainable planning and design, and our understanding of Massachusetts at both a local and a state level.

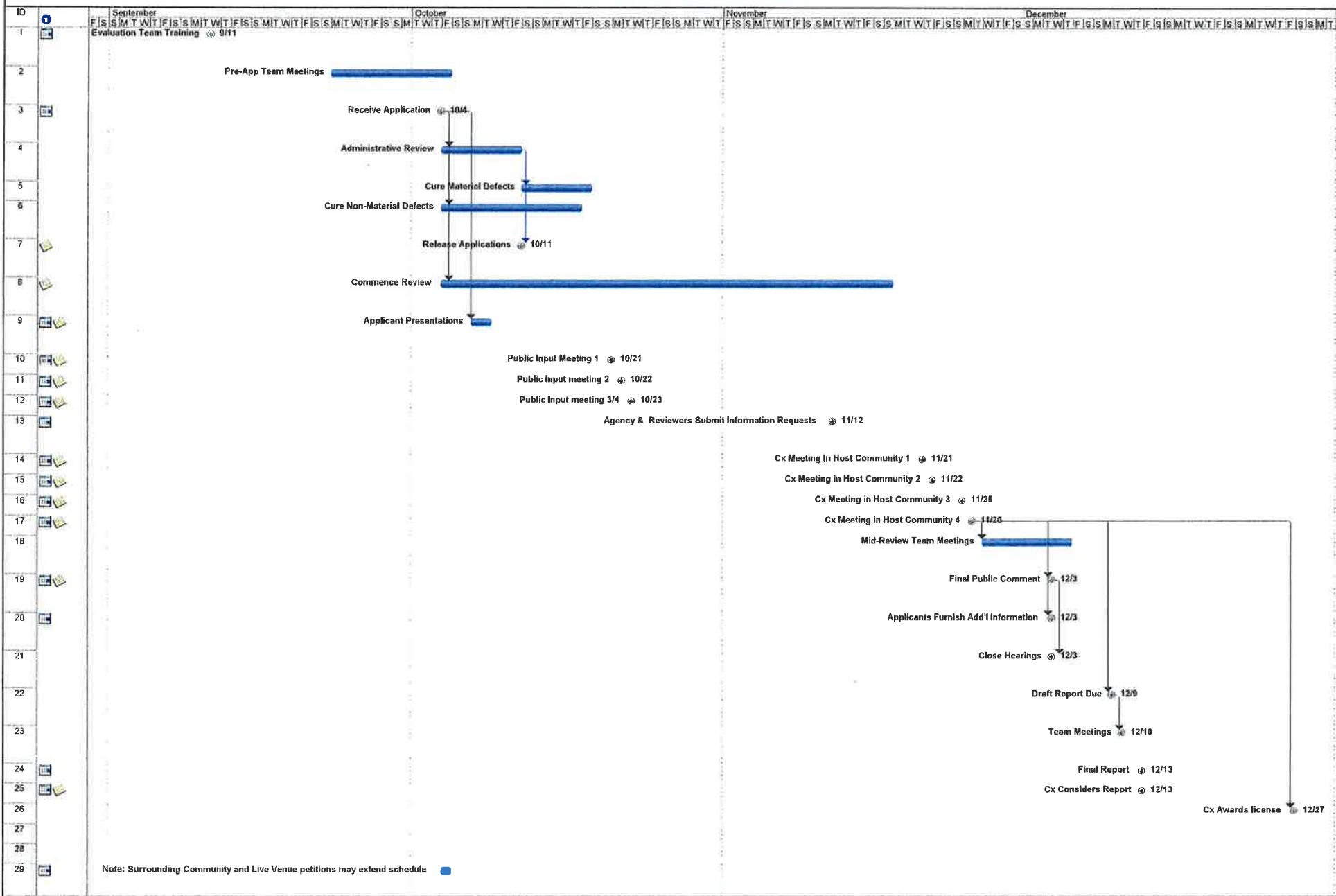
We look forward to your favorable review of our submission and the opportunity to respond to any questions or comments that you may have. Please do not hesitate to contact me directly should you require any additional information.

Regards,

McFarland Johnson

Pompeo Casale, P.E.
Area Operations Manager

DRAFT APPLICATION REVIEW SCHEDULE





Summary of Review Process Massachusetts Gaming Commission



DRAFT

LEVEL ONE: APPLICATION REVIEW BY THE COMMISSION

		APPLICANTS			
		A	B	C	D
CATEGORIES	I. GENERAL				
	II. FINANCIAL				
	III. ECONOMIC DEVELOPMENT				
	IV. BUILDING & SITE DESIGN				
	V. MITIGATION				
Summary Evaluation					

LEVEL ONE: CATEGORY SUMMARY EVALUATION BY COMMISSIONER TEAMS



CATEGORIES

I. General

II. Financial

III. Economic
Development

IV. Building
& Site Design

V. Mitigation

APPLICANTS

A

A

A

A

A

A

B

B

B

B

B

B

C

C

C

C

C

C

D

D

D

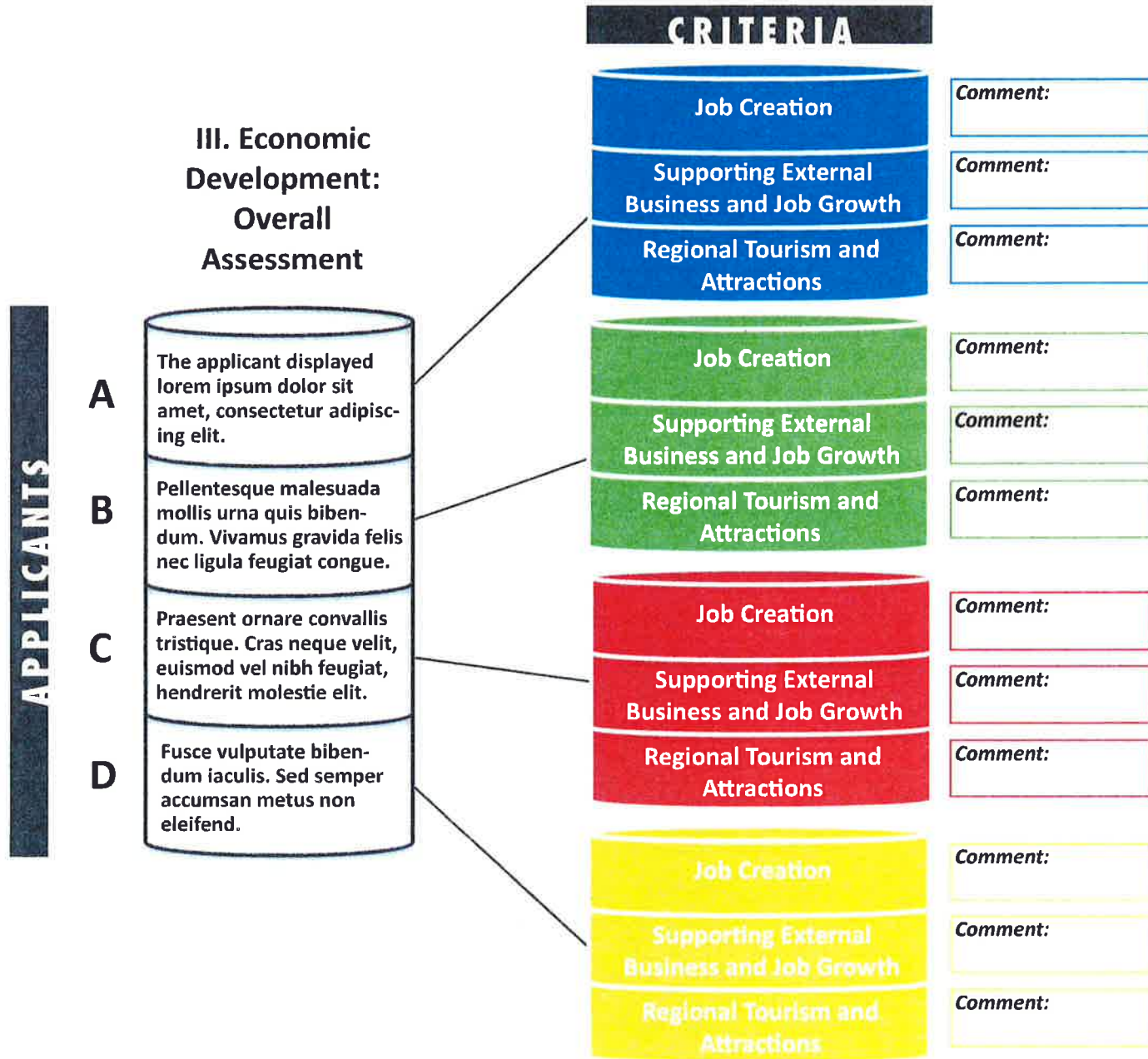
D

D

D

Summary
Evaluation

LEVEL TWO: ECONOMIC DEVELOPMENT CRITERIA SUMMARY



LEVEL THREE: ECONOMIC DEVELOPMENT SUB-CRITERIA ASSESSMENT

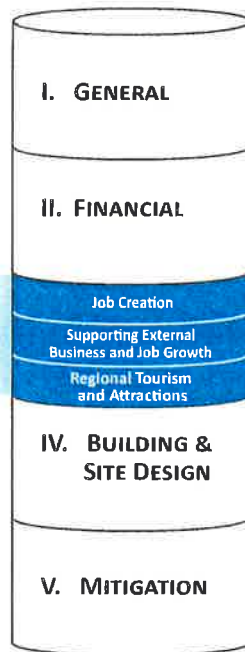


SUB-CRITERIA		FINDINGS-ASSESSMENT	
3-01:	Demonstrate plan for workforce development as set forth in memoranda of understanding	Comments	●
3-02:	Provide strategy as to how applicant will focus on job opportunities and training in areas and demographics of high unemployment and underemployment.	Comments	○
3-04:	Provide documentation that outlines applicant's employee retention record at other operational sites.	Comments	⊖
3-09:	Describe plans for promoting local businesses in host and surrounding communities	Comments	●
3-10:	Describe plans for contracting with local business owners for provision of goods and services.	Comments	●
3-13:	Implement marketing program that IDs specific goals for utilization of (i) minority, women and veteran businesses as design contractors	Comments	◐
3-14:	Provide Local agreements designed to expand casino draw.	Comments	●
3-11:	Provide plans for planned attractions and amenities beyond hotel, casino, restaurants and in-house entertainment to draw customers.	Comments	⊖
3-05:	Provide documentation that outlines applicant's record of success in meeting these objectives at other operational sites.	Comments	○

KEY	
○	Insufficient
⊖	Sufficient
◐	Very Good
●	Outstanding

REVIEW ARCHITECTURE

Applicant
A



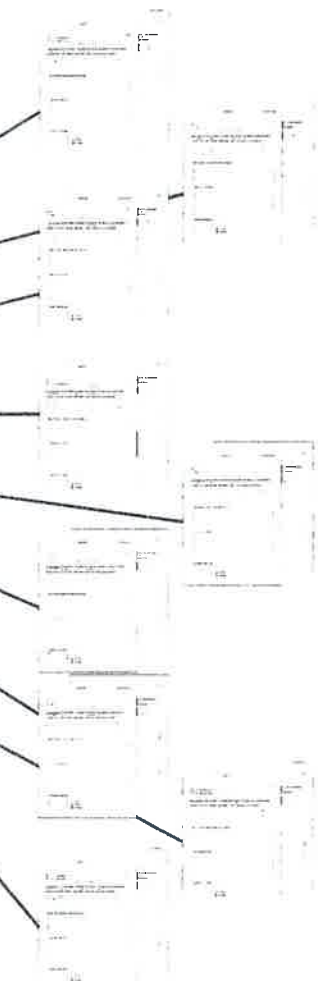
III. ECONOMIC DEVELOPMENT

SUB-CATEGORY


- 3-01:** Demonstrate plan for workforce development as set forth in memoranda of understanding
- 3-02:** Provide strategy as to how applicant will focus on job opportunities and training in areas and demographics of high unemployment and underemployment.
- 3-04:** Provide documentation that outlines applicant's employee retention record at other operational sites.
- 3-09:** Describe plans for promoting local businesses in host and surrounding communities
- 3-10:** Describe plans for contracting with local business owners for provision of goods and services.
- 3-13:** Implement marketing program that IDs specific goals for utilization of (i) minority, women and veteran businesses as design contractors
- 3-14:** Provide Local agreements designed to expand casino draw.
- 3-11:** Provide plans for planned attractions and amenities beyond hotel, casino, restaurants and in-house entertainment to draw customers.
- 3-05:** Provide documentation that outlines applicant's record of success in meeting these objectives at other operational sites.

FINDINGS-ASSESSMENT

- Reviewer's Assessment
- Reviewer's Assessment
- Reviewer's Assessment
- Reviewer's Assessment
- Reviewer's Assessment
- Reviewer's Assessment
- Reviewer's Assessment
- Reviewer's Assessment
- Reviewer's Assessment



LEVEL THREE: COMPARISON OF CRITERIA ACROSS APPLICANTS

CRITERIA	APPLICANT	SUB-CRITERIA	FINDINGS - ASSESMENT
	A	3-01	Reviewer's Assessment/Findings ○
		3-02	Reviewer's Assessment/Findings ⊖
		3-03	Reviewer's Assessment/Findings ○
	B	3-01	Reviewer's Assessment/Findings ●
		3-02	Reviewer's Assessment/Findings ○
		3-03	Reviewer's Assessment/Findings ⊖
	C	3-01	Reviewer's Assessment/Findings ⊖
		3-02	Reviewer's Assessment/Findings ⊖
		3-03	Reviewer's Assessment/Findings ●
	D	3-01	Reviewer's Assessment/Findings ⊖
		3-02	Reviewer's Assessment/Findings ⊖
		3-03	Reviewer's Assessment/Findings ●

KEY	
○	Insufficient
⊖	Sufficient
◐	Very Good
●	Outstanding

REVIEWERS' SUMMARIES

3-31-R

Applicant _____
Reviewer _____

Review: Job Creation

3-31 Employees: State the number of employees to be employed at the proposed gaming establishment, including detailed information on the pay rate and benefits for employees, and describe how the applicant proposes to ensure that it provides a high number of quality jobs in the gaming establishment.

Please provide a written description of the applicant's response to this question [Box I] and provide a brief overview of your assessment and statement of findings [Box II]. Please also provide a rating of the quality of the submission with one of the four ratings detailed below [Box III]. The response provided in this box will be released to the public.

I. Description of Applicant Approach / Response

II. Statement of Findings

III. Quality of Submission

- Insufficient
- Sufficient
- Very Good
- Outstanding

4-32-R

Applicant _____
Reviewer _____

Review: Compatability with Surroundings

4-32 Site Improvements: Describe the landscape and lighting and other site improvements and how they will integrate the gaming establishment complex with its surroundings.

Please provide a written description of the applicant's response to this question [Box I] and provide a brief overview of your assessment and statement of findings [Box II]. Please also provide a rating of the quality of the submission with one of the four ratings detailed below [Box III]. The response provided in this box will be released to the public.

I. Description of Applicant Approach / Response

II. Statement of Findings

III. Quality of Submission

- Insufficient
- Sufficient
- Very Good
- Outstanding

DRAFT

MASSACHUSETTS GAMING COMMISSION

Introductory Meeting of Our Evaluation Teams (90 Minutes)

September 11, 2013

1. Welcome and Introduction by MGC Chairman Stephen Crosby
 - a. Introduction of Commissioners
 - b. Overview of MGC Timeline and our Mission Statement

2. Introduction of Rick Day, Executive Director
 - a. Introduction of Key Staff and Evaluation Team Assignments
 - b. Introduction of Consulting Professionals
 - i. Finance, HLT
 - ii. Economic Development, *TBD*
 - iii. Site Design and Mitigation, *TBD*
 - c. Review of Key Operational Requirements
 - i. Confidentiality requirements
 - ii. Refer press calls to Elaine Driscoll
 - d. Introduction of Legal Team
 - i. Catherine Blue – Any reminders and notes for evaluation team participants
 - e. Introduction of Project Coordinator, Pinck & Co (PCI)
 - i. Comments by Jennifer Pinck

3. Review of Evaluation Timeline and Schedule for Pre-Application Evaluation Team Meetings(Pinck & Co)
 - a. Overall Evaluation Schedule
 - i. Incorporation of public input
 - ii. Public Meetings
 - b. Framework for Review Process and Documentation
 - c. Expected deliverables from evaluation teams
 - d. Confirm roles for Evaluation Team members
 - i. Technical Reviewers [consulting professionals/staff/agencies]
 - ii. Commissioner Lead + Outside Experts [for each category]
 - iii. Massachusetts Gaming Commission
 - e. Confirm dates/topics for Pre-Application Evaluation Team meetings

4. Wrap-Up



WORKFORCE, SUPPLIER AND DIVERSITY DEVELOPMENT REPORT TO COMMISSIONERS

VENDOR AND SUPPLIER TASKFORCE

SEPTEMBER 4, 2013



MASSGAMING VENDOR AND SUPPLIER TASKFORCE

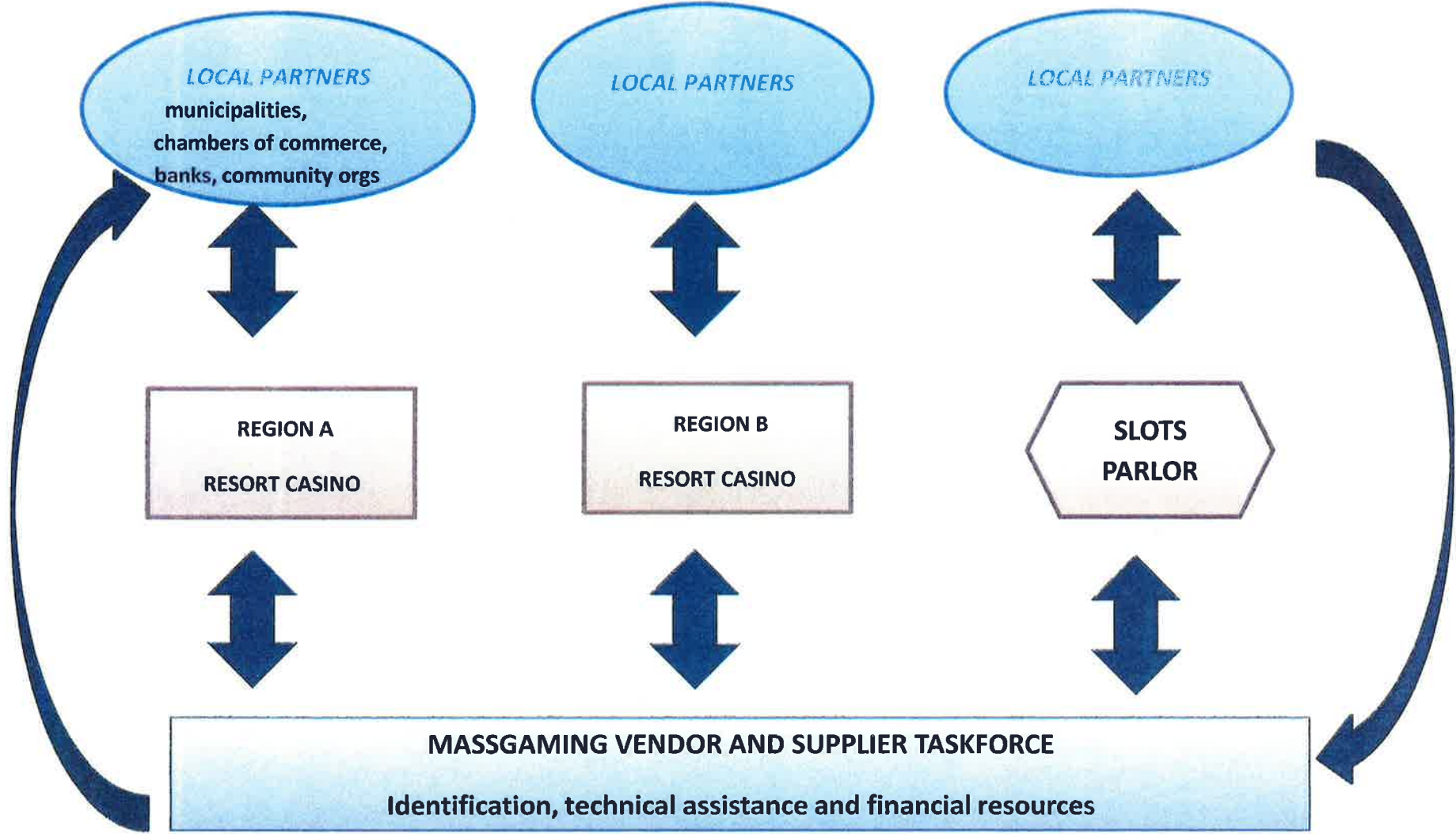
Mission

MassGaming is committed to maximizing vendor and supplier opportunities for Massachusetts small businesses, to serve potential casino gaming licensees; including those businesses certified or classified as minority business enterprises, women business enterprises and veteran business enterprises,

VENDOR & SUPPLIER TASKFORCE

Goal

Help casino applicants engage with Massachusetts small businesses and maximize the impact on the Commonwealth's economy through the coordination of existing small business support services, capacity building initiatives and partnerships with stakeholders



PARTNERSHIP FOCUS ON THREE CATEGORIES

BUSINESS IDENTIFICATION –

Identify potential MA businesses based on identified applicant need, especially in area where there may be gaps in local economy.

TECHNICAL ASSISTANCE –

assist small businesses with technical support and identify programs to help small business maximize their growth opportunity.

FINANCING ASSISTANCE –

partner to review and respond to the financial needs of potential small business vendors.

POTENTIAL TASKFORCE MEMBERS

The Associated Industries of Massachusetts (AIM)

Center for Women in Enterprise

Greater New England Minority Supplier

Development Council

Mass Development

Massachusetts Growth Capital Corporation

Massachusetts Offices of Access and Opportunity

Massachusetts Supplier Diversity Office

Massachusetts Office of Small Business and
Entrepreneurship

Massachusetts Chapter of the National Federation of
Independent Business (NFIB)

Massachusetts Department of Veteran Services

Massachusetts Office of Business Development,

Retailers Association of Massachusetts (RAM)

Massachusetts Farm Bureau

Massachusetts Chamber of Commerce Executives Assoc.

Massachusetts Division of Fisheries and Marine Wildlife

Service Corps of Retired Executives (SCORE),

The Massachusetts Small Business Development Center

The United States Small Business Administration (SBA)



LOCAL PARTNERS

Local Partners may include

Chambers of commerce

Municipalities

Economic development organizations

Business groups

Community organizations

NEXT STEPS

DISCUSSION





Sample Invite Letter

August 30, 2013

Mark Sylvia, Commissioner
Massachusetts Department of Energy Resources
100 Cambridge Street, Suite 1020
Boston, Massachusetts 02114

By email to mark.sylvia@state.ma.us

Dear Commissioner Sylvia:

Please accept our invitation to join us as a member of MassGaming's Vendor and Supplier Taskforce as we work to ensure that the Commonwealth receives the maximum economic development benefit and Massachusetts businesses become capable and qualified suppliers and vendors to the casino industry. With a goal of working to fulfill the priority focus on job creation and promoting local small business in the 2011 Act Establishing Expanded Gaming in Massachusetts, the Massachusetts Gaming Commission is inviting state agencies, small business assistance providers and other stakeholders to join us in this effort. ***The first meeting is scheduled to take place on Friday, September 12, 2013 at 10:00 am at 84 State Street.***

The taskforce will build on a meeting last Fall convened by Chairman Crosby and Commissioner Stebbins that focused on finding ways to support the preparation of small business owners across the state to become capable and qualified suppliers and vendors to the casino industry in Massachusetts. In addition to introducing the taskforce to several new commission staff, the next meeting will explore ways in which the commission could partner with state agencies to coordinate support services to small businesses, provide information to applicants and maximize the economic development potential of the potential Resort Casinos and Slot Parlor.

Please contact Ellen Cassidy at 617-979-8412 or ellen.cassidy@state.ma.us to confirm your attendance.

Sincerely,

Jill Griffin
Director of Workforce, Supplier and Diversity Development



Massachusetts Gaming Commission



SMALL BUSINESS IMPACT STATEMENT

The Massachusetts Gaming Commission hereby files this SBIS in accordance with G.L. c.30A, s.2 relative to the following proposed changes to its regulations. The changes involve medication, testing, and associated penalties. This is reflected in changes to 205 CMR 3.29 and 205 CMR 4.52: *Medications and Prohibited Substances*. The proposed new rules reflect updates recently approved by the Association of Racing Commissioners International (ARCI) and do several important things for the industry including, but not limited to:

- Finding any occupational licensee found to have administered prohibited substances to a racehorse subject to penalty;
- Preventing the transfer of horses in a suspended trainer's care to his or her spouse during the period of suspension;
- Incorporating a schedule of controlled therapeutic medications and associated threshold and treatment restriction windows.
- Incorporating a "point" penalty scheme assigned to occupational licensees who incur multiple medication violations.

Accordingly, the Commission addresses the following points:



Massachusetts Gaming Commission

84 State Street, 10th Floor, Boston, Massachusetts 02109 | TEL 617.979.8400 | FAX 617.725.0258 | www.massgaming.com

1. The Commission has identified the following groups of small businesses that may be impacted by the proposed regulations: licensed racehorse trainers, thoroughbred and standardbred racehorse owners, and veterinarians whose practices include racehorses. In 2012 there were approximately 2,750 licensed trainers, owners, and veterinarians.
2. The regulations impose no additional administrative requirements upon the small businesses therefore the Commission does not anticipate that the effected small businesses will need to hire additional staff or substantially alter their current practices to comply with the regulation changes.
3. The proposed regulations do not establish a performance or design standard.
4. The Commission is unaware of any regulations of other agencies or commissions within the commonwealth that the newly proposed regulations will conflict with. Any internally conflicting provisions have been addressed.
5. The proposed regulations will help ensure a uniform playing field within the racing industry, therefore encouraging more participants. The regulations will also encourage public confidence in the sport which may also increase participation within the industry.

Respectfully submitted,



Jennifer Durenberger
Director of Racing
Massachusetts Gaming Commission

Massachusetts Gaming Commission



MEMORANDUM

TO: Massachusetts Gaming Commission
FROM: Rick Day, Executive Director
David Acosta, Director of Licensing
Todd Grossman, Deputy General Counsel
RE: Policy questions pertaining to employee and vendor licensing
DATE: August 30, 2013

In an effort to educate the process of drafting regulations relative to the licensing and/or registration of key gaming employees, gaming employees, gaming service employees, and vendors, the following policy questions, some of which were first raised during the initial phase of the Commission's policy review process, warrant discussion:

- Will an applicant for a key gaming employee license, gaming employee license, and vendors, or an applicant for gaming service employee registration be allowed to apply directly to the Commission or will licensing/registrations be required to originate through the gaming establishment?
- Will licensure as a key gaming employee or gaming employee be based on suitability only, or skills and education as well?
- What will the Commission's role in the licensing process be, i.e.- will it delegate approval authority to staff? Will it differ for key gaming employee applicants, gaming employee applicants, temporary licenses, gaming service employee registrants, and vendors?
- Will the Commission license gaming schools or work with DPL to license applicants under the existing trade school program? Will certification by a school be a prerequisite of licensure for certain positions or will discretion be afforded to the employer? Will the community college program be treated as a gaming school/trade school in the ordinary course?
- How will the licensing/registration fees be calculated?
- What will the licensing/registration/renewal process entail, i.e.- will on-line applications be accepted, will on-line payment (check or credit card) be accepted?

As you will recall, the Commission previously determined that the initial term of licensure for key gaming employees and gaming employees will be three years; the three year period will be reevaluated at the end of the first three year term.



Massachusetts Gaming Commission

In the past the Commission has assigned similar policy topics for research and recommendation prior to a final decision at a subsequent meeting.

For scheduling purposes, approximately 60 days should be allotted to move a draft regulation entirely through the promulgation process including filing with the Local Government Advisory Committee, filing notice of public hearing and SBIS with the Secretary of the Commonwealth, publication of the notice in periodicals, conducting a public hearing, considering public comments, voting on final language, and final filing of regulations and SBIS with the Secretary for publication in the *Massachusetts Register*. (See attached schedule).

REGULATION PROMULGATION SCHEDULE/CHECKLIST

- DATE - send notice to Local Government Advisory Committee at the addresses below (35 days prior to hearing):

Ms. Marilyn Contreas
Department of Housing &
Community Development
100 Cambridge Street
Suite 300
Boston, MA 02114

Mr. John Robertson
Mass. Municipal Association
One Winthrop Square
Boston, MA 02110

- DATE - Notices- (21 days prior to public hearing)
- Ads noticing public hearing sent to daily newspaper(s) and trade publications
 - send proposed regs to interested parties (*if any*) with notice of Hearing.
Consider posting proposed regs on website

- DATE -Notice (including redline) to the Secretary of State's Office - (21 days prior to public hearing) [The Notice must also appear in the *Massachusetts Register* at least one week prior to hearing so please check the Register publication calendar for submission deadlines to make sure that you meet this deadline.]

***Note-** notice must contain small business impact statement- See G.L. c.30A, §§2 and 3:

"That small business impact statement shall include, but not be limited to, the following:

(1) an estimate of the number of small businesses subject to the proposed regulation;

(2) projected reporting, recordkeeping and other administrative costs required for compliance with the proposed regulation;

(3) the appropriateness of performance standards versus design standards;

(4) an identification of regulations of the promulgating agency, or of another agency or department of the commonwealth, which may duplicate or conflict with the proposed regulation; and

(5) an analysis of whether the proposed regulation is likely to deter or encourage the formation of new businesses in the commonwealth”

DATE -Public hearing
-Review suggestions and make any changes to proposed version of regulations.
-Consider offering a public comment period of at least 1 week.

DATE -final regulations filed with Secretary of State for publication in DATE *Register* (must be done online and via hard copy- any changes from the originally filed proposal must be made on the “long form” provided by the SoS).

***Note-** notice must contain small business impact statement- See G.L. c.30A, §5:

“Prior to the adoption of a proposed regulation, an agency shall file an amended small business impact statement, which considers, without limitation, whether any of the following methods of reducing the impact of the proposed regulation on small businesses would hinder achievement of the purpose of the proposed regulation:

(1) establishing less stringent compliance or reporting requirements for small businesses;

(2) establishing less stringent schedules or deadlines for compliance or reporting requirements for small businesses;

(3) consolidating or simplifying compliance or reporting requirements for small businesses;

(4) establishing performance standards for small businesses to replace design or operational standards required in the proposed regulation;

(5) an analysis of whether the proposed regulation is likely to deter or encourage the formation of new businesses in the commonwealth; and

(6) minimizing adverse impact on small businesses by using alternative

regulatory methods.”

- DATE -final regulations published in *Register*. (*The regulations do not go in to effect until they have been published in the Register.*)