

## **SURROUNDING COMMUNITY AGREEMENT**

This **SURROUNDING COMMUNITY AGREEMENT**, the “Agreement”, dated as of April 24, 2014, the “Effective Date”, is between and among **Mohegan Sun Massachusetts, LLC**, a Delaware limited liability company, with its principal place of business at One Mohegan Sun Boulevard, Uncasville, CT 06382, “Mohegan”, and the **City of Malden**, Massachusetts, a municipality duly existing and operating in the Commonwealth of Massachusetts, having its principal place of business at Malden Government Center, 200 Pleasant Street, Malden, MA 02148, the “City” and/or “City of Malden”. Mohegan as used in this Agreement shall also mean Mohegan’s successors, transferees, and/or assigns. Mohegan and the City are together herein referred to as the “Parties”.

### **RECITALS**

1. Mohegan has entered into a binding agreement pursuant to which Mohegan will hold a long term lease of an approximately 40-acre parcel of land located off Winthrop Avenue in the City of Revere, Massachusetts, the “Property”, on which Mohegan has proposed to construct and thereafter own and operate a first class resort-style gaming establishment and related amenities, the “Project”, as more particularly described in Exhibit A.
2. Mohegan has filed a “Phase 2” application with the Massachusetts Gaming Commission, the “Commission”, seeking a license to operate a Category 1 gaming establishment, a “Gaming License”, at the Property, pursuant to the provisions of M.G.L. c. 23K.
3. The City recognizes that the proposed Project is anticipated to bring significant new investment to the region and provide new permanent employment opportunities for residents of the region.
4. The City recognizes that the proposed Project is anticipated to promote small businesses and the tourism industry and is anticipated to have a positive economic impact throughout the region and the Commonwealth of Massachusetts.
5. The Parties acknowledge the potential regional traffic impacts resulting from the Project. In recognition of the City’s regional importance and impacts from the construction and development of the Project, Mohegan has designated the City a Surrounding Community pursuant to 205 CMR § 125.01. The Parties have entered into this Agreement to evidence the obligations of Mohegan to the City as a community in proximity to the Project.
6. Pursuant to M.G.L c. 23K, a portion of the gaming licensing fees, and a portion of the state taxes on the Project’s “Gross Gaming Revenue”, as that term is defined and used in M.G.L. c. 23K, following the date that any stage of the Project opens for gaming to the general public, the “Opening”, are to be allocated to a state community mitigation fund, the “Community Mitigation Fund”. Upon Mohegan's receipt of a Gaming License, the City would have the ability to apply for payments from the Community Mitigation Fund to address the Project’s potential impacts. Notwithstanding the City's ability to apply for payments from said fund, the Parties hereby agree to be bound by the following terms and conditions.

## **TERMS AND CONDITIONS**

In acknowledgment of the aforementioned recitals, and for good and valuable consideration as defined herein, the Parties mutually acknowledge, understand and agree to the following terms and conditions.

### **SECTION 1. IMPACTS OF THE PROJECT**

#### **A. STIPULATIONS OF KNOWN IMPACTS**

1. The Parties intend that this Section 1.A shall be deemed to be the “stipulations of known impacts” that are required to be included in this Agreement pursuant to Section 15(9) of M.G.L. c. 23K.

2. The Project is expected to increase the number of vehicles using certain public ways in the City and other highways and roads in the vicinity of the Project. The projects identified in this Agreement regarding infrastructure improvements will help to mitigate such impacts and assist with improvement to traffic conditions. A listing of the potential roadway traffic impacts is more particularly set forth in Exhibit B. In Mohegan's Host Community Agreement with the City of Revere, the “Revere HCA”, executed pursuant to Section 15(8) of M.G.L. c. 23K, Mohegan has committed to numerous infrastructure improvements to roadways of regional concern that also will provide benefit to traffic conditions in the City.

3. The Project may have an impact on municipal services which may require additional expenditures by the City in order to provide such services. Mohegan's payments made pursuant to this Agreement are expected to provide the City with adequate resources to address and mitigate any such impacts.

4. The Project may have an impact on problem or compulsive gambling in the City. Mohegan's commitments under this Agreement and the relevant sections of M.G.L. c. 23K providing financial and other resources necessary to address problem or compulsive gambling will mitigate such impacts.

#### **B. ADDITIONAL IMPACTS**

1. The Parties acknowledge that there may be additional impacts associated with the Project that are unknown as of the Effective Date. The Parties intend that any additional impacts of the Project that are not sufficiently mitigated through this Agreement shall be mitigated through state or municipal permitting processes that may be necessary to carry out the Project and through the Community Mitigation Fund.

2. Consistent with the regulations promulgated by the Commission as of the Effective Date, which are designed to protect surrounding communities from significant and material adverse impacts occurring after the execution of mitigation agreements, and more

specifically 205 CMR 127.00, Mohegan and the City shall, if reasonably necessary under the circumstances, negotiate in good faith an amendment to this Agreement if a triggering event as defined in 205 CMR 127.02 occurs.

3. Notwithstanding Section 1.B.2 of this Agreement and consistent with the provisions of 205 CMR 127.06, Mohegan and the City shall also negotiate in good faith any amendments to this Agreement under the conditions as expressly set forth elsewhere in this Agreement.

## **SECTION 2. RESPONSIBILITIES AND UNDERTAKINGS BY MOHEGAN**

### **A. INFRASTRUCTURE IMPROVEMENTS.**

1. Mohegan and the City contemplate on an on-going basis both through this Agreement and through state and municipal permitting processes, certain public and private infrastructure improvements, which shall include all of those improvements, the "Infrastructure Improvements", agreed to by Mohegan in its Revere HCA and its Surrounding Community Agreement with the City of Chelsea and any other Surrounding Community Agreement that may be entered into by Mohegan.

2. The Parties acknowledge that the Infrastructure Improvements described in this Section 2.A require the approval of various state and municipal agencies other than the City and that Mohegan's completion of any Infrastructure Improvement shall be subject to the receipt of each such required approval. Nothing in this Agreement shall be deemed to provide the City approval rights over the Infrastructure Improvements.

3. Not later than six (6) months following the date Mohegan obtains a third party financing for the Project, the "Financing Date", which shall be after the date Mohegan obtains a Gaming License, Mohegan shall begin a study of traffic mitigation solutions at Wellington Circle in the City of Medford according to a scope of work established in cooperation with the Department of Conservation and Recreation and others. Mohegan shall expend approximately \$450,000.00 on the study.

### **B. ANNUAL IMPACT PAYMENT TO THE CITY OF MALDEN**

Beginning ninety (90) days after the Project opens for gaming to the general public, the "Opening", and annually on such date thereafter for so long as the Gaming License shall continue in effect, Mohegan shall pay to the City an Annual Impact Payment, with the first Annual Impact Payment in the amount of Six Hundred Thousand Dollars (\$600,000.00). Thereafter, the Annual Impact Payment shall be set according to the following schedule based on the gross gaming revenue, "GGR", at the Project in any one year:

- For GGR up to \$850,000,000, the Annual Impact Payment shall be Six Hundred Thousand Dollars (\$600,000.00).

- For GGR between \$850,000,001 and \$925,000,000, the Annual Impact Payment shall be Six Hundred Twenty Five Thousand Dollars (\$625,000);
- For GGR between \$925,000,001 and \$975,000,000, the Annual Impact Payment shall be Six Hundred Fifty Thousand Dollars (\$650,000);
- For GGR between \$975,000,001 and \$1,000,000,000, the Annual Impact Payment shall be Six Hundred Seventy Five Thousand Dollars (\$675,000); and
- For GGR above \$1,000,000,001, the Annual Impact Payment shall be Seven Hundred Thousand Dollars (\$700,000).

For the purposes of this Agreement, gross gaming revenue "GGR" shall have the same meaning as given to such term in M.G.L. c. 23K, and shall also specifically include, to the extent permitted by the Commonwealth at any time in the future, gross revenues attributable to Mohegan's Gaming License or the Project and received by Mohegan, its successors, or its controlled affiliates from internet-based gaming, sports betting or any other forms of gaming authorized by laws enacted after the Effective Date.

The purpose of this Annual Impact Payment is to enable the City to address any anticipated, material impacts which may occur following the completion of the Project, including, but not limited to addressing infrastructure, roadway, traffic and increased public safety and first responder impact as well as other improvements. Notwithstanding anything herein to the contrary, the Annual Impact Payment to the City shall remain in the exclusive custody and control of the City, and shall be used and applied at the City's sole discretion and determination toward any impact, infrastructure, improvement and/or mitigation measures which the City in its sole discretion deems necessary and suitable.

### C. COMMUNITY PROMOTION

1. Mohegan will use reasonable efforts to promote the City's hotels, restaurants, arts, entertainment and cultural institutions, collectively referred to as the "City Amenities". Such promotional activities shall include but not be limited to: (i) the provision of joint marketing opportunities to the City Amenities; and (ii) the provision of brochures or any other similar promotional materials as agreed upon by the Parties that promote the City Amenities.

2. On an annual basis, Mohegan, together with its affiliates, tenants and operators, shall utilize best efforts to purchase not less than Fifty Million Dollars (\$50,000,000.00) in goods and services from vendors and companies with a principal place of business located within a fifteen (15) mile radius of Revere City Hall, 281 Broadway, Revere, Massachusetts 02151, which vendors and companies are hereafter referred to as "Regional Businesses"; said Regional Businesses shall include business located within the City of Malden. Mohegan shall meet with Regional Businesses regarding any opportunities to open satellite businesses within the Project. Mohegan shall work with the City to hold vendor fairs that provide City businesses with information concerning providing goods and services to the Project. Mohegan shall also work in consultation with the City to arrange meetings between City of Malden businesses and

Mohegan's purchasing and sourcing team. Mohegan's obligations under this section shall be subject to the availability of such goods and services on commercially reasonable terms.

3. Mohegan shall use best efforts to enroll City Amenities in partnership programs that incentivize employees and patrons of the Project to utilize City Amenities, including Mohegan's "Mohegan Sun Momentum" rewards program or any successor rewards program, collectively "Incentive Programs". Mohegan shall host one or more events in the City of Malden to explain the Incentive Programs to City Amenities and/or other establishments in the City.

4. In addition, Mohegan will create and implement a marketing program for the utilization of minority business enterprises, women business enterprises and veteran business enterprises to participate as vendors in the provision of goods and services procured by Mohegan and any businesses operated as part of the Project. Mohegan shall consult with the Chamber of Commerce in the City and such other business groups or associations as the City may reasonably request to identify opportunities in furtherance of the objectives set forth in this section.

**D. COMPULSIVE GAMBLING SERVICES**

Mohegan shall provide the City with access to the Project's on-site compulsive gambling facility and associated compulsive gambling counseling services.

**E. ACCESS TO COMMUNITY MITIGATION FUNDS**

Sections 59(2)(c) and 61 of M.G.L. c. 23K, Section 93 of Chapter 194 of the Massachusetts Acts of 2011, and 205 CMR § 125.01(4) provide Surrounding Communities access to a Community Mitigation Fund administered by the Commission. Mohegan hereby agrees to support the City's requests for funds from the Community Mitigation Fund if Mohegan is awarded a Gaming License, notwithstanding any payments made by Mohegan to the City pursuant to the provisions herein.

**F. EMPLOYMENT OPPORTUNITIES**

1. Mohegan shall use reasonable efforts to ensure that at least seventy-five percent (75%) of the total permanent workforce for the Project shall be individuals who reside within a fifteen (15) mile radius of Revere City Hall, 281 Broadway, Revere, Massachusetts 02151, including individuals who reside within the City of Malden;

2. The Parties acknowledge that the establishment of a resort destination casino at the Property is an important public policy initiative that requires the involvement of the entire community and adjoining communities. In that regard, Mohegan agrees to work with the City to promote opportunities at the facility and devise a network of training and recruitment partners. In particular, Mohegan agrees to hold one or more employee fairs in the City of Malden.

3. Mohegan covenants to use best efforts to expand access to employment opportunities for minorities, women, veterans, and other disadvantaged groups and to generally expand local employment opportunities.

4. Mohegan agrees to work with the City on an annual basis to identify prospective, qualified Malden employees to effectuate the terms and conditions herein.

### **SECTION 3. UNDERTAKINGS OF THE CITY OF MALDEN**

#### **A. COOPERATION WITH MOHEGAN**

The City will informally advise Mohegan and actively participate, cooperate with, and not oppose Mohegan's efforts to obtain from the appropriate municipal, state and federal bodies and agencies, all such permits, licenses and approvals as may be necessary to carry out the Project, including without limitation the Gaming License required under M.G.L. c. 23K. Such participation and cooperation shall not be exclusive, and the Parties acknowledge as of the Effective Date herein that the City has entered into another Surrounding Community Agreement pertaining to another project seeking approval of a gaming development.

#### **B. ANCILLARY NEEDS**

The City will make reasonable efforts to support Mohegan's ancillary needs related to the Project, including without limitation: ensuring cooperation with local hotels; employee parking; and construction lay down space.

### **SECTION 4. GENERAL PROVISIONS**

#### **A. RECITALS**

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

#### **B. BINDING AGREEMENT**

This Agreement is binding upon and enforceable against, and inures to the benefit of, the Parties hereto and their successors and assigns, including, without limitation, any successor owner or owners of the Project, but excluding mortgagees of the Project or those claiming through mortgagees of the Project, unless said mortgagee obtains title to the Property and proceeds with the development of a gaming establishment on such property.

#### **C. TRANSFER OF INTERESTS**

Mohegan shall have continually the right to grant a mortgage or mortgages on all or any portion of the Property, and to transfer its interest herein to any such mortgagee, to the purchaser at a foreclosure sale or otherwise in connection with the exercise of remedies under any such mortgage. In addition, Mohegan shall have the right to transfer or assign its rights and interests under this Agreement, provided that:

(a) at the time of such transfer or assignment, Mohegan has made all payments then due and payable under this Agreement;

(b) if a Gaming License has been issued for the Project or any portion of the Property, the transfer or assignment is in connection with a transfer or assignment of such Gaming License and such transfer or assignment is permitted or has been approved pursuant to M.G.L. c. 23K;

(c) the successor or assignee shall expressly assume and agree to perform and comply with all of the covenants and agreements of this Agreement; and

(d) Mohegan shall deliver to the City within fourteen (14) calendar days after such transfer or assignment, a copy of the instrument or instruments evidencing any such assignment to and assumption by the successor or assignee.

The liability of Mohegan and its successors, transferees or assigns (including, without limitation, mortgagees) arising under this Agreement shall be limited solely to the interests of Mohegan in the Project. No trustee, officer, director, manager, member, owner, agent, representative or employee of Mohegan or its successors, transferees or assigns, or any person or entity directly or indirectly holding any interests in any of the foregoing from time to time, or any such person's or entity's separate assets or property shall have or be subject to any personal or individual liability with respect to any obligation or liability hereunder; nor shall any person or entity be answerable or liable hereunder in any equitable proceeding or order beyond the extent of its interest in the Project. No holder of a mortgage on any or all of the buildings or portions of the Project, as the case may be, shall be liable to perform, or be liable in damages for failure to perform, any of the obligations of Mohegan unless such holder acquires title to the Project by foreclosure or deed in lieu of foreclosure and/or pursues the completion of the Project in accordance with the provisions hereof.

#### **D. NOTICES**

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

City: Mayor of Malden  
Office of the Mayor  
Malden Government Center  
200 Pleasant Street  
Malden, Massachusetts 02148  
Attention: The Honorable Gary Christenson

with copies to: City of Malden City Solicitor  
Office of the City Solicitor  
Malden Government Center  
200 Pleasant Street  
Malden, Massachusetts 02148  
Attention: Kathryn M. Fallon, Esq.

Mohegan: Mohegan Sun Massachusetts, LLC  
One Mohegan Sun Boulevard  
Uncasville, CT 06382  
Attention: President

with a copy to: Mohegan Gaming Advisors  
One Mohegan Sun Boulevard  
Uncasville, CT 06382  
Attention: General Counsel

Or at any other such address as from time to time the Parties may advise in writing. Notice shall be deemed to have been given if delivered in hand on the date of delivery, on the date of delivery if via courier or overnight delivery service, or on the date of acceptance of receipt if served via certified mail. Delivery to the City shall be during normal business days and hours of operation.

**E. SEVERABILITY**

If any term or provision of this Agreement, or the application thereof to any person or circumstance, shall to any extent be determined to be invalid and unenforceable, the remainder of this Agreement, or the application of such terms to persons or circumstances other than those to which it is invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and shall be enforced to the extent permitted by law.

**F. GOVERNING LAW**

This Agreement shall be governed and construed by the laws of the Commonwealth of Massachusetts, without regard to conflict of law principles. Any dispute shall be resolved in the Courts of the Commonwealth of Massachusetts or of the United States for the District of Massachusetts.

**G. AMENDMENTS**

This Agreement may be amended only by mutual agreement and by a written instrument signed by the duly authorized representatives of the Parties.



H. TERM

The term of this Agreement (“Term”) shall commence on the Effective Date and expire on the earlier of: (a) the expiration or earlier termination of the Gaming License, including any extensions thereof and subject to any assignment or reissuance thereof to a successor owner or operator of the Project; (b) the date on which Mohegan notifies the City that Mohegan has been rejected as an applicant by the Commission during any phase of the Commission’s licensing process, with any appeals having been decided against Mohegan and/or all appeal periods applicable to the licensing process having expired; or (c) the date on which Mohegan notifies the City that an applicant other than Mohegan, or any of Mohegan’s successors or assigns has received a Gaming License for so called “Region A”, as those terms are defined and used in M.G.L. c. 23K, with all appeals having been decided in that applicant’s favor and/or all appeal periods applicable to the license having expired, provided that Mohegan has not previously been awarded a Gaming License for Region A.

I. EXECUTION IN COUNTERPARTS / MULTIPLE ORIGINALS

This Agreement shall be executed in duplicate originals.

J. ENFORCEMENT

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

K. OBLIGATIONS CONDITIONED UPON RECEIPT OF A GAMING LICENSE

Notwithstanding anything to the contrary herein, neither Mohegan nor the City shall be obligated to perform any of the obligations set forth in Section 2 of this Agreement (including, but not limited to, the Annual Impact Payment, mitigation obligations, employment obligations, or any other requirements set forth in Section 2) unless and until Mohegan receives a Gaming License, with all appeals having been decided in Mohegan’s favor and/or all appeal periods applicable to the license having expired.

L. DISPUTE RESOLUTION

1. Unless an alternative means of dispute resolution is mutually elected by both of the Parties as provided herein, the Parties reserve the right, either in law or equity, by suit, and complaint in the nature of specific performance, or other proceeding, to enforce or compel performance of any or all provisions of this Agreement.
2. The Parties may seek to resolve a dispute regarding this Agreement, a “Dispute”, if (i) a Party gives a written dispute notice to the other Party setting forth the grounds for the Dispute, a “Dispute Notice”, and (ii) the Party receiving the Dispute Notice gives written notice to the other Party consenting to resolve the Dispute.

3. Within ten (10) days of the date of the Dispute Notice, the Parties shall meet to negotiate in good faith to resolve the Dispute described in the Dispute Notice.

M. ORGANIZATIONAL STATUS


Mohegan acknowledges and agrees that it shall notify the City promptly and in writing in the event of any change in its organizational status and/or standing under the laws and regulations of its State of Incorporation and under the laws and regulations of the Commonwealth of Massachusetts. Mohegan agrees to remain in good standing and maintain adherence to all laws, regulations and requirements applicable to licenses and permits issued to Mohegan pursuant to M.G.L. c. 23K and related regulations.

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

**CITY OF MALDEN**

By:   
Gary Christenson, Mayor

**MOHEGAN SUN MASSACHUSETTS,  
LLC**

By:   
Mitchell Etes, Manager

## Exhibit A

### Description of the Project

The Project will be developed on a 39.9-acre site located off Furlong Drive and Winthrop Avenue in the City of Revere (identified below) on property owned by Sterling Suffolk Racecourse, LLC. Currently located on the site are horse barns and other structures used to support the Suffolk Downs thoroughbred horse racing track. The Project provides for more than 927,000 square feet of total built space that includes an approximately 171,812 square foot gaming floor with approximately 5,000 gaming positions. These gaming positions include more than 4,000 slot machines, 100 table games and a 20-table poker room.

The Project's program also features more than 100,000 square feet of retail space and retail circulation and more than a dozen restaurants. There will be two hotels with approximately 500 hotel rooms – one hotel serving the gaming space, and a boutique hotel to accommodate conference attendees and other guests. The Project also contains 44,000 square feet of conference/meeting/flex/entertainment space that when configured as an entertainment venue can hold approximately 1,000 patrons.

The Project will incorporate state-of-the-industry green building elements, will be at least LEED-gold certified, and is striving for LEED-platinum status. The Project is being developed to limit building coverage to 50% of the lot area, with approximately 40% of the site designed to be open space. It is expected that approximately 7,800,000 patrons will visit annually. The Project will support about 2,500 construction jobs and about 4,000 permanent jobs.

### Approximate Project Location



## **Exhibit B**

### **Summary of Expected Roadway Use in the City**

- Route 1, which crosses into and out of the northeast corner of Malden, is the only corridor in Malden expected to carry regional (external) Resort trips to/from the North and West.
- The projected Friday PM peak hour two-way Resort trips on this corridors is approximately 190.
- The increase due to Resort trips on Route 1 in Malden reflects less than 5% change compared to existing traffic volumes.
- These regional (external) Resort trips on Route 1 would be through trips rather than trips joining or leaving Route 1 in Malden.
- Approximately 17% public transit use is projected for patrons from Malden.
- During the critical Friday PM peak hour, approximately 33 two-way patron trips from Malden are projected, generating approximately 14 two-way vehicle trips.
- The impact of 14 two-way vehicle trips over the entire local roadway network in Malden is expected to be negligible.