

**HOST COMMUNITY AGREEMENT**

**By and Between the Town of Millbury, Massachusetts  
and  
Mass Gaming & Entertainment, LLC**

This Agreement ("Agreement") is made and entered into as of July <sup>23<sup>rd</sup></sup>, 2013 (the "Effective Date"), by and between the Town of Millbury, Massachusetts ("Town" or "Millbury"), a municipality in the Commonwealth of Massachusetts, and Mass Gaming & Entertainment, LLC ("MGE").

**RECITALS**

The following are the recitals underlying this Agreement:

MGE, directly or through an affiliate, has acquired and/or plans to acquire property totaling approximately 35 acres, located on the south side of McCracken Road between Main Street/Blackstone River Road and Greenwood Street in Millbury, MA as generally shown on Exhibit A (the "Project Site"). MGE, in its sole discretion, can elect to not acquire or sell part of the Project Site not required in its judgment for the Project (as defined below).

MGE plans to submit to the Massachusetts Gaming Commission (the "Commission") a so-called Phase II application for a Category 2 gaming license to develop a gaming facility to contain up to one thousand two hundred and fifty (1,250) slot machines on the Project Site and related facilities in a facility of approximately 110,000 square feet of interior floor area and being as ultimately approved by the Millbury Planning Board (the "Project").

The Town believes that the Project will bring economic development to the Town, creating new jobs for residents and new sources of income for the Town, and accordingly, the Town desires to support MGE in the development of the Project.

MGE desires to mitigate impacts from the development and operation of a gaming establishment through the means described herein in accordance with Chapter 194 of the Acts and Resolves of 2011 (the "Massachusetts Gaming Act" or "Act"), which established Chapter 23K of the Massachusetts General Laws.

Subject to a Town-wide referendum ballot to authorize the operation in the Town of a gaming establishment licensed by the Massachusetts Gaming Commission, MGE and the Town desire to enter into this Agreement to set forth the conditions to have a gaming establishment located within the Town, in satisfaction of G.L. c.23K, § 15(8).

Accordingly, the Parties for good and valuable consideration, the receipt of which is hereby acknowledged, enter into this Agreement to effectuate the purposes set forth above and to be bound by the provisions set forth below:

**Section 1. Definitions**

Any capitalized term used herein that is not otherwise defined in this Agreement and that is defined in Section 2 of Chapter 23K of the General Laws shall be given such definition as of the date of this Agreement for purposes of this Agreement.

The term "Commencement of Operations" shall mean the first date upon which a Category 2 gaming establishment is open to the general public for business at the Project Site.

The term "Gross Gaming Revenue" shall mean the total of all sums actually received by MGE from gaming operations less the total of all sums paid out as winnings to patrons; provided, however, that the total of all sums paid out as winnings to patrons shall not include the cash equivalent value of any merchandise or thing of value included in a jackpot or payout; and provided further, that Gross Gaming Revenue shall not include any amount received by MGE from simulcast wagering or from credit extended or collected by MGE for purposes other than gaming; provided further, that the issuance to or wagering by patrons of the Gaming Establishment of any promotional gaming credit shall not be included for the purposes of determining Gross Gaming Revenue, nor shall food and beverage or other sources of revenue be included for the purposes of determining Gross Gaming Revenue. In the event the definition of Gross Gaming Revenue set forth in G.L. c.23K, §2 is modified, the parties shall endeavor in good faith to negotiate and establish a protocol for reporting of Gross Gaming Revenue as is defined in this Agreement and which definition shall in all events remain in effect for the purposes of this Agreement. If the Town reasonably deems it necessary to retain consultants in connection with such negotiations, MGE agrees to pay the costs of such consultants, pursuant to the budget and approval process set forth in Section 2.A hereof.

**Section 2. Payments to the Town****A. Project Planning Payments**

MGE has agreed to pay all the Town's reasonable costs (including but not limited to planning and peer review costs and legal fees) of determining the impacts of the Project during the permitting process for the Project and negotiating this Agreement and related agreements, as well as other costs incurred by the Town in connection therewith (including but not limited to costs incurred in connection with holding a ballot election, communicating with/appearing before the Commission in connection with MGE's license application, and participating in other permitting activities and proceedings relative to the Project); provided, however, the Town shall obtain prior written approval from MGE before incurring costs for which the Town shall expect MGE to pay, which approval shall be expeditiously granted unless the proposed costs are unreasonable or excessive.

The parties have agreed that such funding will be made through MGE's initial license application fee to the Commission and such further payments as may be necessary to cover the Town's costs. The parties agree to cooperate in ensuring timely payment by MGE of all such costs of the Town. Such payments may be made through the letter of authorization and grant agreement process established by the Commission and/or through such alternative payment arrangements as may be agreed upon by the parties. MGE recognizes that its obligations hereunder will not be affected by any action/inaction of the Commission in failing to timely fund the Town's costs. In such event, the parties will make alternative arrangements to have such costs paid by MGE, either directly to the Town or directly to the independent consultants/vendors retained by the Town.

B. Initial Payment

Within thirty (30) days of the latter of: (i) the issuance of the Category 2 gaming license to MGE; and (ii) the issuance of all local, state, federal and other governmental approvals and permits deemed necessary or advisable by MGE for construction and operation of the Project (and the passage of all appeal periods), but in all events prior to commencing construction of the Project, MGE shall pay to the Town an Initial Payment in the amount of Five Hundred Thousand Dollars (\$500,000).

C. Annual Payments

1. Community Benefit Payments

MGE shall pay to the Town an "Annual Community Benefit Payment" equal to one and one-quarter percent (1.25%) of annual Gross Gaming Revenue in excess of One Hundred and Seventy-Five Million Dollars (\$175,000,000). Said amount shall be paid in arrears within thirty (30) days after each anniversary of the first day of the first full month following the Commencement of Operations, based upon the Gross Gaming Revenue of the Project during the prior Fiscal Year. Notwithstanding the foregoing, Gross Gaming Revenue received by MGE in the partial month in which Commencement of Operations occurs (if any) shall be included in the Gross Gaming Revenue for the first Fiscal Year, and for the first Fiscal Year only the threshold of \$175,000,000.00 shall be increased by the product of the number of days in said partial month from and after the Commencement of Operations multiplied by \$479,452.06.

2. Real and Personal Property Taxes

MGE shall be assessed and billed real and personal property taxes ("Project Taxes") in the normal course of the Town's business operations, and shall pay such assessments as required by law. For purposes of this Agreement, the term "Project Taxes" shall not include motor vehicle excise taxes or personal property taxes assessed to third-party tenants of the Project or meals taxes.

### 3. Impact Fee

Subject in all events to the provisions of Section 2(C)(4) and Section 2(C)(5) of this Agreement, MGE shall pay an annual community impact fee to the Town in the sum of One Million Two Hundred and Fifty Thousand Dollars (\$1,250,000) (the "Impact Fee"). The Impact Fee shall continue for as long as a commercial gaming facility continues to operate upon the Project Site. Such payments shall be paid to the Town in equal quarterly amounts on January 1, April 1, July 1, and October 1, of each year, with the first payment due on the first such date following the Commencement of Operations. Beginning in the fourth Fiscal Year (as defined below) after Commencement of Operations, this payment shall increase at the rate of two and one-half percent (2.5%) per annum.

### 4. Minimum Payments

If in any Fiscal Year the combined Impact Fee and Project Taxes assessed to the Project are less than Three Million Two Hundred and Fifty Thousand Dollars (\$3,250,000) (the "Minimum Annual Payment") MGE shall pay an amount equal to the difference between the Minimum Annual Payment and the actual combined payment within thirty (30) days after the end of that Fiscal Year.

### 5. Maximum Payments

There also shall be an annual limit on the combined payments of the Project Taxes and the Impact Fee, which shall equal Three Million Two Hundred and Fifty Thousand Dollars (\$3,250,000), escalated at the rate of two and one-half percent (2.5%) per annum commencing after the first Fiscal Year (the "Maximum Annual Payment"). Thus, in the second Fiscal Year of operations of the Project, the Maximum Annual Payment shall be Three Million Three Hundred and Thirty-One Thousand Two Hundred and Fifty Dollars (\$3,331,250), which amount shall increase by two and one-half percent (2.5%) in the third Fiscal Year of operations and in each Fiscal Year thereafter.

If, in any Fiscal Year, the combined Project Taxes and Impact Fee would exceed the Maximum Annual Payment, MGE may reduce its Impact Fee payments and its Community Benefit Payment accordingly, after providing the Town with thirty (30) days written notice of its claim of excess payments, which notice shall include a detailed accounting of its excess payment claim. The Town shall be entitled to receive from MGE such additional documentation regarding the excess payment claim as it may reasonably request. If payments to the Town in excess of the Maximum Annual Payment already have been made, then MGE shall receive a corresponding credit against future Impact Fee and Community Benefit Payments, subject to the notice and documentation provisions set forth above. However, if in any Fiscal Year, the Project Taxes exceed the Maximum Annual Payment, MGE acknowledges that it shall be required to pay the Project Taxes without regard to the Maximum Annual Payment, and MGE shall not in such circumstances be entitled to a credit against any future year's Impact Fee or

Community Benefit Payments due solely to the Project Taxes exceeding the Maximum Payment.

#### 6. Future Development

Any future development of the Project Site resulting in total interior square footage (excepting structured parking) above one hundred and thirty thousand square feet (130,000 s.f.) shall be subject to assessment and taxation in the normal course of the Town's business, absent further written agreement, and the taxes assessed on such additional development shall be excluded from the Minimum Annual Payment and Maximum Annual Payment set forth above. The Town agrees that all taxes shall be applied uniformly to all owners and operators of commercial and industrial property in the Town of Millbury and that no special or unique tax shall be assessed against the Project or indoor commercial amusements and recreation operations.

In the event the Commission permits an increase in the number of slot machines above one thousand two hundred and fifty (1,250), any such additional machines shall be separately assessed as personal property of MGE and the taxes so assessed shall be excluded from the Minimum Annual Payment and Maximum Annual Payment set forth above, and the revenue therefrom shall be included in the calculation of Gross Gaming Revenue for purposes of Section 2(C)(1). In the event the Commission permits the addition of table games at the Project Site, further written agreement with the Town shall be required before such table games are added to the Project Site.

#### 7. Definition of Fiscal Year

For the purposes of this Section 2, the first year shall be measured from the first day of the first full month following the Commencement of Operations, and each subsequent year shall start on the respective anniversary date ("Fiscal Year"). All references to "month" in this Agreement refer to a calendar month. For the calculations within this subsection, (i) Project Taxes shall be charged to the Fiscal Year in which the due date occurs irrespective of when payment is made and (ii) the Impact Fee payments shall be charged to the Fiscal Year in which the quarterly due dates as specified in subsection (3) occur irrespective of when payment is made and (iii) Community Benefit Payments shall be charged to the Fiscal Year on which they were calculated irrespective of when payment is made.

D. Meals Tax Revenues. MGE acknowledges that it will be responsible for collecting and remitting to the Town any local meals taxes. MGE agrees to assess and collect such taxes from its customers and remit payment to the Town in accordance with applicable law.

E. Motor Vehicle Excise Taxes. MGE shall principally garage all vehicles owned by it and used in connection with the Project in the Town, so that excise taxes shall be paid to the Town consistent with applicable law.

F. Permit Fees. MGE agrees to pay to the Town all permitting, inspection, connection, usage and other municipal fees in connection with the development, maintenance, repair, expansion and operation of the Project, including but not limited to building permit fees. MGE explicitly acknowledges that such fees, as established by the Town's promulgated fee schedules, policies and practices, are valid fees and waives any claim to the contrary. In the event such permitting fees are insufficient to meet the Town's actual and demonstrable costs (including use of existing staff time and payment of necessary consultants), MGE agrees to pay one half (1/2) of all such additional costs incurred by the Town above and beyond such permitting fees, provided that MGE shall be entitled to receive from the Town documentation of such excess expenses.

G. Late Payment Penalty. MGE acknowledges that time is of the essence with respect to its timely payment of the amounts required hereunder and shall pay a penalty of fourteen percent (14%) per annum on any required payment not timely paid in accordance with the terms hereof provided that, with the exception of Project Taxes, the Town provides on the first three occasions when such payment is late written notice five (5) business days in advance of assessing such late penalty and MGE shall not owe a late payment penalty if MGE pays the outstanding amount within such five (5) business day period. In the event that such late payment penalty is assessed, a full month's interest shall be assessed for each partial month that such payment is overdue.

### **Section 3. Workforce Development; Local Hiring Preference**

#### **A. Construction Jobs**

Subject to the Act, MGE will work in a good faith, legal and non-discriminatory manner with the Project's construction manager to give preferential treatment to qualified Millbury residents for contracting, subcontracting and servicing opportunities in the development and construction of the Project.

#### **B. Permanent Jobs**

Subject to the Act, in seeking to fill vacancies at the Project, MGE will work in a good faith, legal and non-discriminatory manner to give priority to properly qualified residents of the Town.

Prior to beginning the process of hiring employees (other than senior management, including directors and vice presidents) for the Project, MGE shall advertise and hold at least two events at venues to be reasonably approved by the Town, at which it will publicize its hiring needs and explain to attendees the process by which they may seek to be hired in connection with the Project.

### **Section 4. Total Investment/Project Development**

MGE shall make at least the minimum capital investment required under the Act.

Upon ballot approval of this Agreement by the Town, MGE shall use all reasonable efforts to promptly apply for, pursue and obtain a Category 2 license from the Commission.

**Section 5. Project Demand on Town Services and Transportation Improvements**

MGE hereby agrees and commits to make and fund all town utility services and transportation improvements required due to the construction and operation of the Project as may be required by the Town of Millbury Planning Board, in consultation with Town staff and the Planning Board's consultant(s), in connection with MGE's application for a zoning special permit and site plan approval for the Project, provided that MGE is apprised of such improvements prior to the deadline by which it must post its Category 2 licensing fee with the Commission. Such requirements and conditions of the Planning Board prior to the time of posting such licensing fee are specifically incorporated herein by reference.

If MGE is required to upgrade sewer service or other public utilities, MGE acknowledges that it shall pay all fees and assessments required of such improvements in accordance with such rates and schedules as are of general applicability in the Town.

MGE will construct and maintain space within the Project for use by the Millbury Police Department of a size in MGE's discretion but in all events not less than 350 square feet to be designed in consultation with and to the reasonable specifications of the Town's Chief of Police, and shall make such space available for use by the Millbury Police Department in consultation with the Town's Chief of Police, subject in all events to the rules and regulations of the Commission. MGE may, in its discretion, engage Millbury police details to provide external security for the project and to supplement MGE's own security force. MGE will provide the Town with a detailed security and public safety plan prior to Commencement of Operations. In preparing such security plan, MGE shall meet with the Town's Chief of Police and Fire Chief and shall give good faith consideration to their reasonable and appropriate suggestions and requests relative to staffing and other security matters, including the hours and number of police details to be employed.

If, after Commencement of Operations, the Town reasonably believes that adjustments to MGE's security and/or public safety plans are necessary, due to reasons including but not limited to the number of calls for service to the Project Site, the Town may provide written notice of same to MGE. Within ten (10) days of its receipt of such notice, MGE shall meet with the Town in good faith to negotiate what additional measures may be necessary and appropriate to address the Town's stated concerns, including but not limited to the revision of MGE's security and/or public safety plans, purchase of additional security equipment and/or increase in the number of police details employed by MGE. If, within thirty (30) days (or such further period as the parties may agree upon in writing), the parties are unable to resolve the dispute, the Town may make written demand for the costs incurred by it in responding to calls for service to the Project

Site during the preceding six (6) months, provided that MGE's obligation herein shall not exceed Fifty Thousand Dollars (\$50,000) in any Fiscal Year.

**Section 6. Responsible Gaming**

MGE recognizes that, while gaming is an enjoyable leisure and entertaining activity for most, there is a small percentage of the population that may not game responsibly. MGE will implement a responsible gaming plan at the Project, the chief goal of which shall be to ensure that those people who cannot game responsibly get the help they need and to make sure that people who can game responsibly understand the importance of gaming responsibly.

MGE will accomplish the responsible gaming goals by complying with all applicable regulations of the Commission. The Town acknowledges that it does not have the jurisdiction to mandate any specific requirements relative to any gaming operations and that exclusive jurisdiction for same is with the Commission.

**Section 7. Town Obligations**

In consideration of the mitigation measures to be undertaken by MGE, and in further recognition of the many benefits the Project will bring to the Town, Millbury shall do the following:

A. Consistent with the Act, the Town shall schedule a Town-wide election so that qualified Millbury residents can vote on a ballot question to support or reject the Project.

B. The Town shall exercise best efforts to petition the Commission for monies made available under the Act, including, but not limited to, those monies in the Community Mitigation Fund and the Transportation Infrastructure Development Fund.

C. Upon ballot approval of this Agreement, the Town agrees to work in good faith with MGE to assist MGE in obtaining in a prompt and efficient manner all licenses, approvals and permits from the Town and other governmental bodies deemed necessary or advisable by MGE in connection with the construction and operation of the Project. Nothing herein shall impair the Town in its enforcement of duly promulgated bylaws and regulatory requirements.

**Section 8. Agreement Not Transferrable or Assignable**

MGE may transfer or assign its rights or obligations under this Agreement to any transferee or assignee of the Category 2 gaming license to operate the Project as approved by the Commission. Prior to seeking Commission approval for such transfer or assignment, MGE shall give written notice and shall provide to the Town all non-confidential documentation to be submitted to the Commission in support of such request for transfer or assignment. MGE hereby acknowledges the Town's standing to appear



before the Commission in opposition to such transfer or assignment in the event that the Town reasonably determines in its discretion that such transfer or assignment would not be in the Town's best interests. The Town shall be bound by this Agreement regardless of any such transfer or assignment. Any assignee of or successor in interest to MGE shall likewise be bound by the terms of this Agreement to the fullest extent allowed by law.

The Town acknowledges and agrees that this Agreement (and all documents, agreements, understandings and arrangements relating to the transaction contemplated hereby) may be pledged or otherwise collaterally assigned by MGE, its successors or assigns at any time and on one or more occasions in order to provide security to a lender, mezzanine lender or equity holder in connection with a financing or equity contribution.

#### **Section 9. Choice of Law/Forum Selection**

This Agreement shall be governed by, and construed in accordance with, the laws of the Commonwealth of Massachusetts, without regard to the conflict of laws provisions in such state. Any dispute arising under or in connection with this Agreement shall be within the exclusive jurisdiction of the Massachusetts Superior Court for Suffolk County. If the Town is the prevailing party in any such action, it shall recover its litigation costs (including counsel fees and expert witness fees) from MGE.

Notwithstanding the foregoing provisions for forum selection, the parties to this Agreement agree that before resorting to any formal dispute resolution process concerning any dispute arising from or in any way relating to this Agreement, they will first engage in good faith negotiations in an effort to find a solution that serves their respective and mutual interests. If the parties engage the services of a professional mediator, the cost of such services shall be borne equally by MGE and the Town.

#### **Section 10. Indemnification**

MGE agrees to and shall indemnify and hold harmless the Town from and against any and all claims, actions, proceedings or demands brought against the Town, its agents, departments, officials, employees, insurers or successors, by any third party in connection with this Agreement, or exercise of its rights or obligations hereunder, or the issuance of Town permits and approvals for the Project, and any costs incurred by the Town in connection with defending legal challenges of Town actions taken in good faith in pursuit of any of the foregoing (collectively "Claims"), to the extent that any such Claims are premised upon the gross negligence or willful misconduct of MGE; provided, however, that MGE shall not be obligated to the Town in any manner for indemnification of the Town for any Claims which are determined to not be the result of the gross negligence or willful misconduct of MGE. In the event that both the Town and MGE are asserted to have been grossly negligent or to have committed willful misconduct giving rise to the Claims, then MGE shall only be liable to the Town for indemnification of a judgment against the Town as provided for herein if the trier of fact in such matter determines that the gross negligence or willful misconduct of MGE was greater than fifty (50%) percent responsible for the damages asserted by the third party in such Claims, but shall in any event reimburse the Town for all defense costs (including reasonable counsel fees) incurred in defending the Claims. MGE shall have the right to reasonably approve the identity of counsel selected by the Town to

provide the defense of any Claims in which the Town asserts a right to indemnification pursuant to this Section 10, and MGE shall be entitled to have additional counsel selected by MGE engaged in the defense of such action, at MGE's sole cost. Subsequent to the reasonable approval by MGE of the counsel selected by the Town, MGE agrees, within thirty (30) days of written notice by the Town, to reimburse the Town for any and all costs and fees incurred in defending itself with respect to any Claims covered by this Section.

#### 11. Miscellaneous

A. No Third Party Beneficiaries. No provisions of this Agreement shall be construed in any manner so as to create any rights in any third parties not party to this Agreement. The Agreement shall be interpreted solely to define specific duties and responsibilities between the Town and MGE, and shall not provide any basis for claims of any other individual, partnership, corporation, organization or municipal entity.

B. Exercise of Rights and Waiver. The failure of any party to exercise any right under this Agreement shall not, unless otherwise provided or agreed to in writing, be deemed a waiver thereof; nor shall a waiver by any Party of any provisions hereof be deemed a waiver of any future compliance therewith, and such provisions shall remain in full force and effect.

C. Severability. In the event that any clause, provisions or remedy in this Agreement shall, for any reason, be deemed invalid or unenforceable, the remaining clauses and provisions shall not be affected, impaired or invalidated and shall remain in full force and effect.

D. Headings and Construction. The section headings in this Agreement are inserted for convenience of reference only and shall in no way affect, modify, define, or be used in construing the text of the agreement. Where the context requires, all singular words in the Agreement shall be construed to include their plural and all words of neuter gender shall be construed to include the masculine and feminine forms of such words.

E. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Agreement.

F. Time of the Essence. The parties agree and acknowledge that time is of the essence under this Agreement.

G. Reporting/Documentation: MGE agrees to make such reports and provide such documentation as the Town may from time to time reasonably request to ensure compliance with the provisions of this Agreement.

#### Section 12. Notices

Any notices, consents, demands, requests approvals or other communications issued under this Agreement shall be made in writing and shall be delivered by hand,

overnight delivery service or certified mail (return receipt requested), to the other party at the following addresses or at such other address as may be provided in writing to each party:

If to the Town:       Town of Millbury  
                          Office of the Town Manager  
                          127 Elm Street  
                          Millbury, MA 01527

With copy to:       Jonathan M. Silverstein  
                          Kopelman and Paige, P.C.  
                          101 Arch Street, 12<sup>th</sup> Floor  
                          Boston, MA 02110

If to MGE:           Mass Gaming & Entertainment, LLC  
                          900 N. Michigan Avenue, Suite 900  
                          Chicago, IL 60611  
                          ATTN: Legal Department

With copy to:       Peter Keenan, Esquire  
                          Law Office of Peter F. Keenan, Jr.  
                          18 Canal Street  
                          Millbury, MA 01527

**Section 13.   Term**

The term of this Agreement shall commence on the Effective Date and shall terminate on the earliest of:

A.     Any date upon which a Category 2 gaming license is issued to another applicant by the Commission and therefore MGE is denied a Category 2 gaming license to be operated within the Town;

B.     Any date upon which MGE provides written notice that it elects to abandon efforts to obtain a Category 2 gaming license to be located in Millbury.

C.     Any date upon which MGE elects to not construct or permanently cease operations of the Project; or

D.     Any date upon which the Category 2 gaming license which previously was issued to MGE is revoked, rescinded or expires without having been renewed.

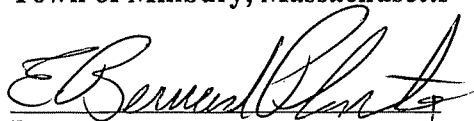
In the event this Agreement is terminated, notwithstanding any other provisions of this Agreement MGE and the Town shall have no further obligations to each other under this Agreement, except MGE shall pay the following: (i) costs incurred by the Town for which MGE is obligated to pay under Section 2(A) of this Agreement; (ii) prorated

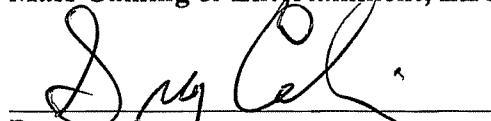
portions of any annual payments due under Section 2 (C) calculated to the date of termination and (iii) any applicable penalties under Section 2(G). Such termination of this Agreement shall not absolve MGE of responsibility for any lawfully assessed taxes or regulatory fees in connection with the Project or the Project Site.

IN WITNESS WHEREOF, the Parties hereto have duly executed this Agreement to be effective as of the date first above written.

**Town of Millbury, Massachusetts**

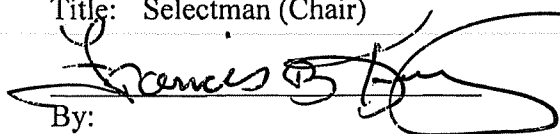
**Mass Gaming & Entertainment, LLC**





By:  
Title: Selectman (Chair)

By:  
Title: CEO

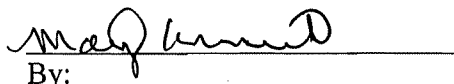


By:  
Title: Selectman

By:  
Title: Selectman



By:  
Title: Selectman



By:  
Title: Selectman

EXHIBIT

