

SURROUNDING COMMUNITY AGREEMENT

By and Between the Town of Pembroke, Massachusetts

and

Mass Gaming & Entertainment, LLC

This Surrounding Community Agreement (the “**Agreement**”) is made and entered into as of November __, 2015 (the “**Effective Date**”), by and between the Town of Pembroke, Massachusetts, a municipality of the Commonwealth of Massachusetts with its offices at 100 Center Street, Pembroke, MA 02359 (the “**Town**”), and Mass Gaming & Entertainment, LLC, a Delaware limited liability company with its principal office at 900 North Michigan Avenue, Chicago, Illinois 60611 (“**MGE**”) (each a “**Party**”, both collectively, the “**Parties**”).

WHEREAS, MGE is in the process of applying to the Massachusetts Gaming Commission (the “**Commission**”) for a Category 1 gaming license as defined by Chapter 23K of the General Laws of the Commonwealth of Massachusetts (“**Chapter 23K**” or the “**Act**”), to construct and operate a gaming establishment and ancillary hotel, dining, entertainment, and other amenities (collectively, the “**Project**”) to be built on a portion of the Brockton Fairground off Belmont Street in Brockton, Massachusetts (the “**Property**”);

WHEREAS, the Town and MGE anticipate that the Project will create regional benefits for Brockton and its surrounding and adjacent communities, including the Town, and Chapter 23K provides a mechanism for the applicant for a Category 1 gaming license to enter into an agreement with a Surrounding Community, setting forth a Community Impact Fee for the Surrounding Community and all stipulations of responsibilities between the Surrounding Community and the applicant;

WHEREAS, in addition to any payments to be provided by MGE under this Agreement, the Town has the right to seek and intends to seek monies available to the Town under the Act, including but not limited to, those monies in the Community Mitigation Fund; and

WHEREAS, in furtherance of these goals, and in satisfaction of the requirements of Chapter 23K, the Parties are entering this Agreement to set forth their mutual understandings (including the Town’s support of the Project) in effectuating the purposes set forth above.

NOW, THEREFORE, in consideration of the promises, terms, conditions, agreements, and mutual covenants contained in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

Section 1. Definitions.

Any term used in this Agreement that is defined in Section 2 of Chapter 23K shall be given such definition for purposes of this Agreement unless a different definition is expressly provided herein.

1.1 “Annual Community Impact Fee” means an annual Community Impact Fee in the amount of \$5,000.00 (Five Thousand Dollars).

1.2 “Community Impact Fee” means the payment to the Town called for by Section 15(9) of the Chapter 23K.

1.3 “Open for Business to the General Public” means that the Project’s gaming area (as defined in the Act) is open for business to the general public.

Section 2. Community Impact Fee.

On or before the date the Project is first Open for Business to the General Public, on a date of MGE’s choosing, MGE will make the first Annual Community Impact Fee payment to the Town; MGE will make subsequent Annual Community Impact Fee payments to the Town on the anniversaries of the day the Project is first Open for Business to the General Public. The Town intends to use the Annual Community Impact Fees to defray the costs of water quality testing of Silver Lake and other interconnected water resources. If such testing reveals impacts to the water quality of the Town’s water resources that the Town believes result from the withdrawal of water by the City of Brockton to provide water to the Project, the Town will look exclusively to the Community Mitigation Fund for mitigation funds and will not seek further impact mitigation from MGE. MGE’s obligation to pay Annual Community Impact Fees to the Town will continue until the expiration or earlier termination of MGE’s initial Category 1 gaming license or any renewal thereof.

Section 3. Reimbursement of Consulting and Legal Fees

Within thirty (30) days after the execution of this Agreement, MGE shall reimburse the Town for up to Five Thousand Dollars (\$5,000.00) in third-party, out-of-pocket consulting and legal fees incurred by the Town in connection with evaluating the impacts, if any, of the Project on the Town and with negotiating this Agreement and advising the Town regarding the same, for which the Town provides MGE with copies of third-party invoices, provided that the Town need not provide MGE with the portions of invoices from the Town’s legal counsel containing descriptions of the work performed.

Section 4. Town Obligations

In consideration of the mitigation measures that MGE will undertake, and in further recognition of the benefits the Project will bring to the Town, the Town will do the following:

4.1 Not Oppose MGE’s license application

The Town will not oppose MGE in its application for a Category 1 gaming license from the Commission. Nothing herein shall be construed to preclude any Town resident or employee from exercising his or her personal, constitutional rights of expression or to petition government.

4.2 No new taxes or fees targeting the Project

The Town will not attempt, directly or indirectly, to adopt or implement, nor will the Town accept, any taxes, fees, or other assessments specific or unique, by language or effect, to a gaming establishment, its customers, employees, tenants, vendors, suppliers, or owners that do not generally apply to non-gaming businesses in the Town. Nothing herein shall prevent the Town from seeking

or accepting any grant or other funds from the Commonwealth of Massachusetts available to municipalities under the Act, including from the Community Mitigation Fund.

Section 5. Term.

The term of this Agreement commences on the Effective Date and will end on the earliest of:

- A. Any date on which MGE provides written notice that it elects to abandon efforts to obtain a Category 1 gaming license for the Project;
- B. Any date on which the Commission has issued a Category 1 gaming license for Region C to another applicant and MGE has provided written notice that it has decided to discontinue pursuit of a Category 1 gaming license for the Project;
- C. Any date on which MGE provides written notice that it elects not to construct, or to permanently cease operations of, the Project;
- D. Any date upon which the Category 1 gaming license previously issued to MGE for the Project is revoked, rescinded, or expires without having been renewed; or
- E. By the mutual agreement of the Parties to terminate the Agreement.

Section 6. Notices.

Any notices given under this Agreement must be made in writing and delivered by hand, nationally-recognized overnight delivery service, or certified mail, postage pre-paid (return receipt requested), and will be effective upon receipt for hand or overnight delivery, and three days after mailing for mailed notice, to the other Party at the following addresses:

If to the Town:

Town of Pembroke
Board of Selectmen
100 Center Street
Pembroke, MA 02359
Attn: Town Administrator

With a copy to:

Kopelman and Paige, PC
101 Arch Street, 12th Floor
Boston, MA 02110
Attn: Jonathan M. Silverstein, Esq.

If to MGE:

Mass Gaming & Entertainment, LLC
900 N. Michigan Avenue, Suite 1600
Chicago, IL 60611
Attention: Legal Department

With a copy to:

Dain, Torpy, Le Ray, Wiest & Garner, P.C.
745 Atlantic Avenue, 5th Floor
Boston, MA 02111
Attention: Charles N. Le Ray, Esq.

After the Project is first Open for Business to the General Public, with a 2nd copy to:

[Name of Category 1 gaming establishment to be provided by MGE]
[Street address to be provided by MGE]
Brockton, MA 02301
Attention: General Manager

Any party may change its notice address(es) hereunder by giving notice to the other of the new notice address(es) as provided by this section.

Section 7. Limitation on Liability.

The Parties agree that neither Party shall be liable for indirect, special, consequential, or punitive damages arising out of or related to this Agreement.

Section 8. No Third Party Beneficiaries.

No provision 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 of and between the Town and MGE, and shall not provide any basis for claims of any other individual, partnership, corporation, organization, municipal entity, or any other third party.

Section 9. Transferability/Assignment

MGE may transfer or assign, subject to the Act and the Commission's regulations, its rights and obligations under this Agreement to any transferee or assignee of the Category 1 gaming license to operate the Project as approved by the Commission, provided that the transferee or assignee assumes all obligations and liabilities hereunder. The Town will be bound by this Agreement regardless of any such transfer or assignment. Any transferee or assignee of MGE will likewise be bound by this Agreement to the fullest extent allowed by law. For the avoidance of doubt, after any transfer or assignment of the Agreement in accordance with the terms of this Section 9, MGE shall have no further obligations under this Agreement provided that MGE has paid and performed all of its obligations up to the date of assignment or transfer.

The Town acknowledges and agrees MGE and its successors or assigns may, at any time and on one or more occasions, to provide security to a lender, mezzanine lender, or equity holder in connection with a financing or equity contribution, pledge or otherwise collaterally assign this Agreement and all documents, agreements, understandings, and arrangements relating to the transaction contemplated by this Agreement. The Town will, to the extent permitted by law, within ten (10) business days after receiving such a request, execute any commercially reasonable and customary instruments that do not deviate from its rights or increase its obligations, provided that MGE shall within thirty (30) days after receipt of invoices (which need not include the portions containing descriptions of the legal work performed) reimburse the Town for any reasonable legal fees incurred in reviewing and evaluating such request(s).

The Town shall not transfer or assign, in whole or in part, its obligations or benefits under this Agreement.

Section 10. Miscellaneous.

10.1 Integration. This Agreement constitutes the entire agreement between the Parties with respect to the subject hereof. No agent, representative, employee, or officer of the Town or MGE has authority to make, or has made, any statement, agreement, or representation, oral or in writing, in connection with this Agreement which in any way can be deemed to modify, add to, or detract from, or otherwise change or alter the terms and conditions of this Agreement. No negotiations between the Parties, nor any custom or usage, shall be permitted to modify or contradict any of the terms and conditions of this Agreement. No modifications, alterations, or changes to this Agreement or to any of its terms and conditions shall be valid or binding unless memorialized by a written amendment signed by both Parties in accordance with the terms and conditions of this Agreement.

10.2 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which together shall constitute a single instrument. Facsimile or electronically-scanned signatures shall be considered as valid signatures as of the date thereof.

10.3 Construction of Agreement. The Parties each acknowledge that they were represented by separate and independent counsel in connection with the drafting, review, and negotiation of this Agreement, and that this Agreement shall not be subject to the principle of construing its meaning, or the meaning of any part of the Agreement, against the Party that drafted the same. Each Party acknowledges that it relied solely on its own judgment, legal counsel, and other advisors in entering this Agreement, without relying in any manner on any statements, representations, or recommendations of the other Party other than as expressly set forth in this Agreement, that it understands and accepts the implications of this Agreement, and that it voluntarily entered into this Agreement.

10.4 Amendment. This Agreement shall not be amended except upon the written consent of both Parties.

10.5 Governing law; Jurisdiction. This Agreement shall be governed by, and construed in accordance with, the laws of the Commonwealth of Massachusetts, including without limitation Chapter 23K and the Commission's rules and regulations, without regard to the Commonwealth's

conflict of laws provisions. Any dispute arising under or in connection with this Agreement shall be within the exclusive jurisdiction of the Massachusetts Superior Court for Suffolk County.

THE PARTIES HEREBY WAIVE TRIAL BY JURY IN ANY ACTION, PROCEEDING, OR COUNTERCLAIM BROUGHT BY EITHER OF THE PARTIES AGAINST THE OTHER ON ANY MATTERS WHATSOEVER ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS AGREEMENT, THE RELATIONSHIP OF MGE AND THE TOWN, AND/OR ANY CLAIM OF INJURY OR DAMAGE, AND ANY EMERGENCY STATUTORY OR ANY OTHER STATUTORY REMEDY.

Notwithstanding the foregoing provisions for forum selection, the Parties 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 agree to engage the services of a professional mediator or arbitrator, MGE and the Town will bear the cost of such services equally, and the non-prevailing Party in any mediation, arbitration, or litigation between the Parties shall promptly reimburse the prevailing Party for the prevailing Party's reasonable costs, including attorneys' fees.

10.6 Relationship of the Parties. Nothing in this Agreement is intended to create, nor shall be deemed or construed to create, any relationship between the Parties other than that of independent parties contracting with each other for the purpose of affecting the provisions of this Agreement. The Parties are not, and will not be construed to be, in a relationship of joint venture or partnership. Neither Party has the authority to make any statements, representations, promises, or commitments of any kind on behalf of the other Party. Neither Party may use the name of the other Party in any press statement announcing or concerning this Agreement, except with the written consent of the other Party, which consent shall not be unreasonably withheld, conditioned, or delayed.

10.7 Force Majeure. MGE shall not be in default in its performance of its obligations under this Agreement to the extent that performance is impaired by a Force Majeure event. If MGE is delayed or prevented in the performance of any obligation under this Agreement by a Force Majeure event, it will provide reasonable notice to the Town of the circumstances delaying or preventing performance and the expected duration thereof, if known.

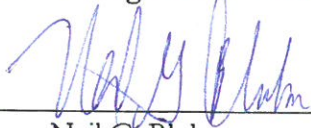
10.8 Exercise of Rights and Waivers. The failure of any party to exercise any right under this Agreement shall not, unless otherwise provided or agreed to in writing, be deemed a waiver thereof; nor shall a waiver by any Party of any provisions hereof be deemed a waiver of any future compliance therewith,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

10.9 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 vice versa, and all words of neuter gender shall be construed to include the masculine and feminine forms of such words.

[signatures on following page]


IN WITNESS WHEREOF, the Parties have duly executed this Agreement as of the Effective Date set forth above.

Mass Gaming & Entertainment, LLC




By: Neil G. Bluhm
Title: Chairman

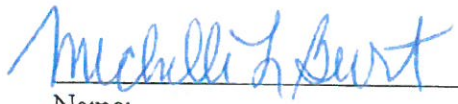
**Town of Pembroke, Massachusetts
acting by and through its Board of Selectmen**



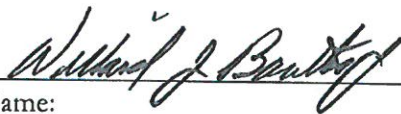
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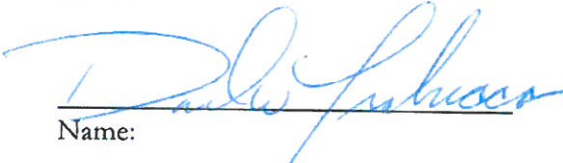
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