



**CITY OF SALEM, MASSACHUSETTS**

Kimberley Driscoll  
Mayor

April 1, 2014

Jesse Alderman  
Foley Hoag LLP  
Seaport West  
155 Seaport Blvd  
Boston, MA 02210-2600

Dear Attorney Alderman:

Enclosed please find two signed Mohegan Sun agreements. Please execute one and send signed original back to my office.

Sincerely,

A handwritten signature in black ink that reads "Kimberley Driscoll". The signature is written in a cursive style.

Kimberley Driscoll  
Mayor

## SURROUNDING COMMUNITY AGREEMENT

This **SURROUNDING COMMUNITY AGREEMENT** (the “Agreement”), dated as of February \_\_, 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 (the “Applicant” or the “Developer,” hereinafter referred to as the “Developer”), and the **City of Salem**, Massachusetts, acting by and through its Mayor, a municipality duly existing and operating in the Commonwealth of Massachusetts, having its principal place of business at Salem City Hall, 93 Washington Street, Salem, MA 01970 (“City”). The “Developer” as used in this Agreement shall also mean the Developer’s successors and/or assigns. The Developer and the City are together the “Parties” and individually are each a “Party”.

### **RECITALS**

Reference is made to the following facts:

1. The Developer has entered into a binding agreement pursuant to which the Developer 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 it 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. The Developer 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 (the “Project”) pursuant to the provisions of M.G.L. chapter 23K (“Chapter 23K”).
3. The City recognizes that the proposed Project will bring significant new investment to the region, and will provide new permanent employment opportunities for residents of the region (all as specified below).
4. The City has determined that in addition to the new jobs, new funds, and direct investment at the Property, the proposed Project will promote small businesses and the tourism industry and have a positive economic impact throughout the region (including the City) and the Commonwealth of Massachusetts and that the proposed Project is consistent with regional plans in accordance with section 9(a)(18) of Chapter 23K.
5. The Parties acknowledge the potential regional traffic impacts resulting from the Project. In recognition of the City’s regional importance and impact from the construction and development of the gaming establishment, the Developer 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 the Developer to the City as a community in proximity to the Project.

6. Pursuant to Chapter 23K, a portion of the licensing fees and state taxes on the Project’s “Gross Gaming Revenue”, as that term is defined and used in Chapter 23K, would be, following the date that any stage of the Project opens for gaming to the general public (the “Opening”), allocated to a state community mitigation fund (the “Community Mitigation Fund”). Upon the Developer’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.

## **AGREEMENT**

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

### **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 Chapter 23K.

2. The Project is expected to increase the number of vehicles using certain state and local roads in the vicinity of the Project. In the Developer’s Host Community Agreement with the City of Revere (the “Revere HCA”) executed pursuant to Section 15(8) of Chapter 23K, the Developer has committed to numerous infrastructure improvements to roadways of regional concern that also will provide benefit to traffic conditions 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. The Developer’s payments made under this Agreement will provide the City with adequate resources to mitigate any such impacts and the City acknowledges and agrees that such payments adequately mitigate all such impacts.

4. The Project may have an impact on problem or compulsive gambling in the City. The Developer’s commitments under this Agreement and the relevant sections of Chapter 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 “Additional Impacts”). 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 Gaming 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 (specifically 205 CMR 127.00), the Developer 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, the Developer and the City shall also negotiate in good faith amendments to this Agreement (if any) under the conditions as expressly set forth elsewhere in this Agreement.

## **SECTION 2. RESPONSIBILITIES AND UNDERTAKINGS BY THE DEVELOPER**

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

1. The Developer 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 the Developer 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 Developer.

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 the Developer'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.

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

Beginning on the later of July 15, 2017 or ninety (90) days after the Opening and annually on such date thereafter for so long as the Gaming License shall continue in effect, the Developer shall pay, to the attention of the City, an amount equal to Fifty thousand dollars (\$50,000) as an Annual Impact Payment.

### **C. COMMUNITY PROMOTION**

1. The Developer will use reasonable efforts to promote the City's hotels, restaurants, arts, entertainment and cultural institutions (collectively "City Amenities"). Such promotional activities shall include but not be limited to: (i) the provision of joint marketing opportunities to 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, the Developer (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 within a fifteen (15) mile radius of Revere City Hall, 281 Broadway, Revere, Massachusetts 02151 (“Regional Businesses”). The Developer shall meet with Regional Businesses regarding any opportunities to open satellite businesses within the Project. The Developer shall work with the City to hold vendor fairs that provide City businesses with information concerning providing goods and services to the Project. The Developer’s obligations under this section shall be subject to the availability of such goods and services on commercially reasonable terms.
3. The Developer shall use best efforts to enroll City Amenities in partnership programs that incentivize employees and patrons of the Project to utilize City Amenities, including the Developer’s Mohegan Momentum rewards program or any successor (collectively “Incentive Programs”).
4. If demand can be demonstrated, Developer agrees to explore making available its ground shuttle and transportation programs to key Salem destinations.
5. In addition, the Developer 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 the Developer and any businesses operated as part of the Project, and agrees to establish a working relationship with Destination Salem. The Developer 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.

The Parties acknowledge that the Developer has conducted public outreach about the Project in the City in accordance with Section 15(9) of Chapter 23K.

**D. COMPULSIVE GAMBLING SERVICES**

The Developer shall provide the City with access to the Project’s on-site compulsive gambling facility and associated compulsive gambling counseling services (collectively “Compulsive Gambling Services”).

**E. ACCESS TO COMMUNITY MITIGATION FUNDS**

Sections 59(2)(c) and 61 of Chapter 23K, Chapter 93 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. The Developer hereby agrees to support the City’s requests for funds from the Community Mitigation Fund if the Developer is awarded a Gaming License.

F. EMPLOYMENT OPPORTUNITIES AT THE RESORT

1. The Developer 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.
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, the Developer agrees to work with the City to promote opportunities at the facility and devise a network of training and recruitment partners.
3. The Developer 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.

**SECTION 3. UNDERTAKINGS OF THE CITY OF SALEM**

A. COOPERATION WITH THE DEVELOPER

As time is of the essence, the City will informally advise the Developer concerning, and will actively expedite, cooperate with and publicly support, the Developer'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 Chapter 23K. Such support need not be exclusive to any other project seeking approval of gaming development.

B. ANCILLARY NEEDS

The City shall make good faith efforts to support the Developer'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. REGULATIONS OF THE COMMISSION

If either Party reasonably determines that a new or amended regulation or policy of the Commission would materially negatively affect such Party's rights or obligations under this Agreement, then such Party may notify the other Party of such determination and the Parties shall negotiate in good faith an amendment or amendments to this Agreement to mitigate or address the impact of such regulation or policy.

D. AMENDMENTS TO STATUTES GOVERNING THIS AGREEMENT

If any Party reasonably determines that an amendment to Chapter 23K or any other general law, special act or any other statutory provision governing this Agreement would materially negatively affect such Party's rights or obligations under this Agreement, then such Party may notify the other Party of such determination and the Parties shall negotiate in good faith an amendment to this Agreement to mitigate or address the impact of such statutory provision.

E. TRANSFER OF INTERESTS

The Developer 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, the Developer 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, the Developer 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 Chapter 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 to be performed by the Developer; and
- (d) the Developer shall deliver to the City prior to or promptly 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 the Developer or its successors or assigns (including, without limitation, mortgagees) arising under this Agreement shall be limited solely to the interests of the Developer in the Project, and no trustee, officer, director, manager, member, owner, agent, representative or

employee of the Developer, or their respective successors 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 the Developer hereunder unless and until such holder acquires title to the Project by foreclosure or deed in lieu of foreclosure and pursues the completion of the Project in accordance with the provisions hereof.

#### F. 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 the Developer, 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 Salem Office of the Mayor Salem City Hall 93 Washington Street Salem, Massachusetts 01970 Attention: The Honorable Kimberley Driscoll
With copies to:	Salem City Solicitor Legal Department Salem City Hall 93 Washington Street Salem, Massachusetts 01970 Attention: Elizabeth Rennard, Esq.
Developer:	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



Any such notice shall be deemed to have been given on the date received or refused during normal business hours. The City specifically acknowledges that the Developer may change its designated street address.

G. 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.

H. GOVERNING LAW

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

I. AMENDMENTS

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

J. 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 Developer notifies the City that the Developer 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 the Developer and/or all appeal periods applicable to the licensing process having expired; or (c) the date on which the Developer notifies the City that an applicant other than the Developer (or any of the Developer’s successors or assigns) has received a Gaming License for so called “Region A”, as those terms are defined and used in Chapter 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 the Developer has not previously been awarded a Gaming License for Region A.

K. EXECUTION IN COUNTERPARTS / MULTIPLE ORIGINALS

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

L. 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.

M. OBLIGATIONS CONDITIONED UPON RECEIPT OF A GAMING LICENSE

Notwithstanding anything to the contrary herein, neither the Developer nor the City shall be obligated to perform any of the obligations set forth in Sections 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 the Developer receives a Gaming License, with all appeals having been decided in the Developer's favor and/or all appeal periods applicable to the license having expired.

N. 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.

4. In the event that a Dispute is unresolved within sixty (60) days of the date of a Dispute Notice, such Dispute shall be submitted for arbitration by a single arbitrator (the "Arbitrator") qualified the American Arbitration Association (the "AAA"). The Dispute shall be arbitrated in Boston, Massachusetts, before an arbitrator selected pursuant to the AAA's arbitration selection process. Upon such Dispute being submitted to the AAA for resolution, the AAA and the arbitrator shall assume exclusive jurisdiction over the Dispute. The proceedings before the Arbitrator shall be governed by the rules and regulations of the AAA, and the award and determination of the Arbitrator shall be binding and conclusive upon the Parties, and the Parties herewith agree to abide by the Arbitrator's determination.

5. The arbitrator in arriving at his decision shall consider the pertinent facts and circumstances as presented in evidence and be governed by the terms and provisions of this Agreement and applicable law. To the extent any provisions of this Agreement are inconsistent with the AAA Rules, this Agreement shall control.

6. The arbitrator shall not have authority to make an award of equitable relief.


2/6/14

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

**CITY OF SALEM**

By:   
Kimberley Driscoll, Mayor

**MOHEGAN SUN MASSACHUSETTS, LLC**

By:   
Mitchell Etes, Manager