

SURROUNDING COMMUNITY AGREEMENT

THIS AGREEMENT (the “Agreement”) is by and between Mohegan Sun Massachusetts, LLC, a Delaware limited liability company with its principal place of business at One Mohegan Sun Boulevard, Uncasville, CT 06382 (the “Developer”), and the Town of Winthrop, Massachusetts, acting by and through its Town Manager, pursuant to Section 4-2(p) of the Town Charter, having its principal place of business at 1 Metcalf Square, Winthrop, Massachusetts 02152 (the “Town”), dated as of May 23, 2014 (the “Effective Date”). Hereinafter, the “Developer” shall also mean the Developer’s successors and/or assigns. Hereinafter the Developer and the Town are together the “Parties” and individually a “Party.”

RECITALS

Reference is made to the following facts:

1. The Developer has entered into a binding agreement pursuant to which 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”).
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 pursuant to the provisions of M.G.L. chapter 23K (“Chapter 23K”).
3. The Town recognizes that the proposed Project will bring significant new investment to the region (including the Town), and provide new permanent employment opportunities for residents of the Town and other local communities (all as specified below).
4. The Town 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 Town) and the Commonwealth of Massachusetts.
5. The Town has concluded that the proposed use of the Property as a category 1 gaming establishment is consistent with the Town’s economic plans and priorities all in accordance with Section 9(a)(18) of Chapter 23K.
6. The Developer has designated the Town 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 Town as well as the benefits to the Town, as a community in proximity to the Project. This Agreement is a surrounding community agreement contemplated by Section 15(9) of Chapter 23K.
7. 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 Town would have the ability to apply for payments from the Community Mitigation Fund to address the Project’s potential impacts.

8. The Town will support the Developer’s application for a Gaming License for the Project as the preferred application in proximity to the Town for a license to operate any gaming establishment under Chapter 23K.

AGREEMENT

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 public ways (highways and 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, and its surrounding community agreements with other municipalities executed pursuant to Section 15(9) of Chapter 23K, the Developer has committed to numerous infrastructure improvements to and studies of roadways of local and regional concern that will provide benefit to traffic conditions in the Town.

3. The Project may have an impact on municipal services and require additional expenditures by the Town in order to provide such services. The Developer’s payments to the Town under this Agreement will provide the Town with adequate resources to mitigate any such impacts and the Town 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 Town. 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), if a triggering event (as defined in 205 CMR 127.02) occurs, the Developer and the Town shall negotiate in good faith an amendment to this Agreement if reasonably necessary to mitigate the effect of the material adverse impact on the Town.

3. Notwithstanding Section 1.B.2 of this Agreement and consistent with the provisions of 205 CMR 127.06, the Developer and the Town 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 contemplates 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 Town 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 Town approval rights over the Infrastructure Improvements; provided that nothing in this Agreement shall constitute a waiver or abrogation of any rights the Town may have under statutes, regulations or ordinances governing infrastructure improvements.

B. PAYMENTS TO THE TOWN

1. 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 an amount equal to Two Million Dollars (\$2,000,000) as a Community Impact Fee, as contemplated by Section 15(9) of Chapter 23K. The Community Impact Fee shall be paid as follows:

- a. An annual payment of One Million Six Hundred Thousand Dollars (\$1,600,000.00) to a special fund, trust, or other vehicle created by the Town in its sole discretion for the purpose of holding monies received from the Developer (“the Mitigation Trust”). None of the payments received by the Town pursuant to this Agreement shall be deposited in the Town’s general fund. Funds in the Mitigation Trust shall be used solely for mitigation of impacts on the Town from

the development or operation of the Project. In particular, the funds in the Mitigation Trust are to be used as follows:

- i. At least Two Hundred Fifty Thousand Dollars (\$250,000) annually for recreational capital projects, including, but not limited to, the completion of the Town's "harbor-walk";
 - ii. At least Four Hundred Thousand Dollars (\$400,000) annually for the Town's police department, for such expenses as two additional police shifts from 8:00 AM to 4:00 PM;
 - iii. At least Three Hundred Fifty Thousand Dollars (\$350,000) for the Town's fire department;
 - iv. At least Five Hundred Thousand Dollars (\$500,000) to the Town's public school system;
 - v. At least One Hundred Thousand Dollars (\$100,000) annually to be used as a subsidy for the Town's water ferry service, provided, however, that in the event that the Town no longer operates or subsidizes a water ferry service, the funds allocated to the water ferry shall be dedicated to the purposes provided for in Section 2.B.1.a(vi); and
 - vi. The remaining balance of the annual payment to the Mitigation Trust, if any, and any balance in the Mitigation Trust carried over from prior years, may be used and applied in the Town's sole discretion and determination toward any infrastructure improvement, Town service, and/or other measure, project or cost undertaken or incurred to mitigated impacts of the Project;
- b. An annual payment of One Hundred Thousand Dollars (\$100,000) to the Viking Pride Foundation, or a similar organization in event Viking Pride Foundation ceases to exist, to be used as funding for supplemental youth programs in the Town;
 - c. An annual payment of One Hundred Thousand Dollars (\$100,000) to Community Action Programs Inner City, Inc. ("CAPIC"), or a similar organization in the event CAPIC ceases to exist, for social services, including a job readiness program; and
 - d. An annual payment of Two Hundred Thousand Dollars (\$200,000) to be divided equally among any Business Improvement Districts formed in accordance with M.G.L. c. 400 for business development, promotion and marketing for such business districts; provided that if no such district exists at the time a payment is due under this Section 2.B, the payment called for by this Section 2.B.1.d shall be made to the Mitigation Trust.

C. COMMUNITY PROMOTION

1. The Developer will use reasonable efforts to promote the Town’s hotels, restaurants, arts, entertainment and cultural institutions (collectively, the “Town Amenities”). Such promotional activities shall include but not be limited to: (i) the provision of joint marketing opportunities to the Town Amenities; and (ii) the provision of brochures or any other similar promotional materials as agreed upon by the Parties that promote the Town 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) 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 entirety of the Town is within that radius. The Developer shall meet with Regional Businesses regarding any opportunities to open satellite businesses within the Project. The Developer shall work with the Town to hold vendor fairs that provide Town businesses with information concerning providing goods and services to the Project. The Developer shall also work with the Town to arrange meetings between Winthrop businesses and the Developer’s purchasing and sourcing team. The Developer’s obligations under this section to make purchases shall be subject to the availability of such goods and services on commercially reasonable terms.

3. The Developer shall use best efforts to enroll Town Amenities in partnership programs that incentivize employees and patrons of the Project to utilize Town Amenities, including the Developer’s Mohegan Sun Momentum rewards program or any successor (collectively “Incentive Programs”).

4. 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. The Developer shall consult with the Chamber of Commerce in the Town and such other business groups or associations as the Town may reasonably request to identify opportunities in furtherance of the objectives set forth in this section.

D. COMPULSIVE GAMBLING SERVICES

The Developer shall provide the Town with access to the Project’s on-site compulsive gambling facility and associated compulsive gambling counseling services and shall make the services available to the Town’s residents.

E. ACCESS TO COMMUNITY MITIGATION FUNDS

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

F. OTHER FINANCIAL OBLIGATIONS

The Developer shall reimburse the Town for the reasonable costs incurred by the Town in negotiating this Agreement.

G. EMPLOYMENT OPPORTUNITIES AT THE RESORT

1. The Developer shall use best 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. The entirety of the Town is within that radius.

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 Town to promote employment opportunities at the facility and devise a network of training and recruitment partners. In particular, Developer agrees to hold one or more employee job fairs in the Town.

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 TOWN

A. COOPERATION WITH THE DEVELOPER

As time is of the essence, the Town 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. Without limiting the generality of the foregoing, within 30 days of the execution of this agreement, the Town shall send a letter to the Commission expressing the Town's support for the Project.

B. ANCILLARY NEEDS

The Town 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.

C. MATERIAL TERM

The Town acknowledges that its covenants and obligations under this Section 3 and Recital 8 above constitute material terms of this Agreement without which the Developer would not be willing to enter into this Agreement. Any breach of those provisions by the Town constitutes a material breach of this Agreement.

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 either 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 Town 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 or the successor or assign 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 must be in writing, signed by a duly authorized officer or representative of the Town or the Developer, as the case may be, and shall be (i) hand delivered, (ii) delivered by nationally recognized overnight delivery service, or (iii) 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:

Town: Town Council of Winthrop
1 Metcalf Square
Winthrop, Massachusetts 02152
Attention: The Council President

with a copy to: Town Manager of Winthrop
1 Metcalf Square
Winthrop, Massachusetts 02152

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 Town 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 shall commence on the Effective Date and expire on the earlier of (a) the expiration or earlier termination of the Developer's 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 Town 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 Town 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 Town shall be obligated to perform any of the obligations set forth in Sections 2 of this Agreement (including, but not limited to, Community Impact Fees, mitigation obligations, employment obligations, or any other requirements set forth in Section 2) with the exception of the reimbursement of the Town's costs as provided in Section 2F, unless and until the Developer receives a Gaming License under Chapter 23K, 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, 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. Without waiving the rights reserved in Section 4.N.1, a Party may seek to resolve a dispute regarding this Agreement (a "Dispute") without litigation by sending a written dispute notice to the other Party referencing this Section 4.N.2 and setting forth the grounds for the Dispute (a "Dispute Notice").

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

[Signatures to follow on the next page]

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.

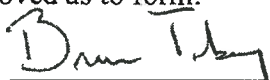
Mohegan Sun Massachusetts, LLC

By: 

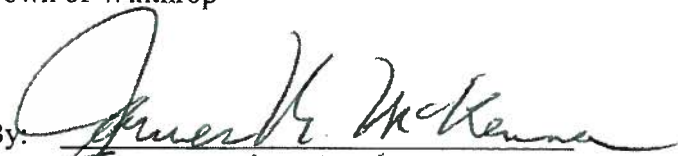
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Town of Winthrop

Approved as to form:

By: 

Town Counsel (Special)

By: 

James M. McKenna
Town Manager