

## SURROUNDING COMMUNITY AGREEMENT

This SURROUNDING COMMUNITY AGREEMENT ("Agreement") is made and entered into this 30th day of December, 2013, by and between the TOWN OF FOXBOROUGH, a municipal corporation with its offices at 40 South Street, Foxborough, MA 02035, acting by and through its Board of Selectmen, (the "Town"), and SPRINGFIELD GAMING AND REDEVELOPMENT, LLC, a Delaware limited liability company, with its principal office at 825 Berkshire Boulevard, Wyomissing, PA 19610 ("SF Gaming") (collectively with the Town, the "Parties").

WHEREAS *M.G.L. c.23K*, establishes and provides for expanded gaming in the Commonwealth consistent with the terms and requirements set forth therein;

WHEREAS SF Gaming has acquired the option to purchase certain land and improvements situated on approximately 88.9 acres located at 301 Washington Street, Plainville, Massachusetts (the "Premises");

WHEREAS SF Gaming has filed an application (the "Application") for a "Category 2 gaming license" as defined by *M.G.L. c.23K, §2* (the "License"), to construct and operate a gaming establishment with no table games and not more than 1,250 slot machines, together with ancillary entertainment and dining amenities to be located at the Premises (the "Project");

WHEREAS, under *M.G.L. c.23K, §15*, an applicant for a License to own and operate a gaming establishment must enter into an agreement with each of the Surrounding Communities (as defined by *M.G.L. c.23K, §2*) of the proposed gaming establishment, which shall set forth stipulations of responsibilities between each Surrounding Community and the applicant;

WHEREAS the Town is concerned, without limitation, that after the Commencement of Operation (as that term is hereinafter defined), that the Project will increase traffic related accidents on the roads of the Town, criminal activities directly related to the Project, and that one or more citizens of the Town will develop problem gambling and that the Project may have other adverse impacts on the Town's resources, citizens and character, and SF Gaming believes these adverse consequences will not occur;

WHEREAS the Parties intend to address the potential impacts that will result from the development and operation of the gaming establishment at the Premises;

WHEREAS the Town has been designated as a Surrounding Community as that term is defined in Chapter 194 of the Acts and Resolves of 2011 (the "Act"), which established Chapter 23K of the Massachusetts General Laws and by entering into this Agreement, the Town may be able to obtain funds from the Community Mitigation Fund created under Section 61 of the Act to mitigate any future negative impacts that may develop after the Commencement of Operations; and

WHEREAS, as provided and limited herein, SF Gaming intends to hold the Town harmless against any substantial adverse costs directly attributable to the construction or operation of the Project; and

WHEREAS, in furtherance of those goals, and in satisfaction of the requirements of M.G.L. c.23K, the Parties are entering into this Agreement to set forth their mutual understandings in effectuating the purposes set forth above.

NOW, THEREFORE, in consideration of the covenants and mutual promises contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto, intending to be bound hereby, agree as follows:

1. Definitions.

- (i) Any term used herein that is defined by Section 2 of Chapter 23K of the *Massachusetts General Laws* shall be given such definition for the purposes of this Agreement.
- (ii) The term "Commencement of Operations" shall mean the first date upon which the Project is open to the public with any slot machines in operation.

2. Project Description.

- (i) SF Gaming will substantially comply with: (a) all material commitments regarding the design, construction and operation of the Project that are made to the Massachusetts Gaming Commission ("MGC") as part of SF Gaming's Category 2 license application, or subsequently amended and approved by the MGC; and (b) all material requirements of the gaming license regarding the design, construction and operation of the Project.
- (ii) No satellite parking or other ancillary facilities associated with the Project shall be constructed within the Town of Foxborough by SF Gaming or its affiliates.

3. Town Obligations.

- (i) The Town covenants and agrees that, prior to seeking access to and use of the escrow fund established herein, it shall petition, or cause to be petitioned, the Massachusetts Gaming Commission for monies made available under M.G.L. c. 23K, including, but not limited to, those monies in the Community Mitigation Fund established by M.G.L. c.23K, §61, for the purpose of offsetting the Town's costs as set forth in the escrow fund and for the purposes related to the construction and operation of the Project including education, transportation, infrastructure, housing, environmental, public safety and public health costs, and that any monies received by the Town from the Commission pursuant to any such petition shall be subtracted from SF Gaming's corresponding obligation under this Agreement to provide funding for such costs.

4. Project Mitigation.

- (i) Upon Commencement of Operations, SF Gaming shall fund an Escrow Account in the amount of Two Hundred Fifty Thousand (\$250,000.00) Dollars to be held jointly by the then town manager of Foxborough and SF Gaming (the "Escrow Account"). Any interest earned on the account shall be the property of SF Gaming.
- (ii) Beginning within thirty (30) days after the Commencement of Operations, and upon the first and second anniversaries of the Commencement of Operations, the Town shall track, determine and report to SF Gaming the impacts upon the Town's Human Services department due to incoming calls and/or visits from residents suffering from problem/ compulsive gaming directly and verifiably as a result of their patronage at the Project, together with the Town's determination of the actual cost to the Town of funding a Human Services social worker, or equivalent, to handle such impact. The Town, in its discretion, may determine that referral of such persons to third parties is in the best interests of such persons.
- (iii) Beginning upon the Commencement of Operations, and upon the first and second anniversaries of the Commencement of Operations, the Town will track, determine and report to SF Gaming the impacts on the Town due to incidents of Driving Under the Influence ("DUI") and other criminal activity directly and verifiably attributable to the Project, together with the Town's determination of the actual cost to the Town of funding additional public safety personnel to handle such impact.
- (iv) Notwithstanding the establishment of the Escrow Account hereunder, SF Gaming shall provide reasonable assistance, cooperation and support for the Town's application for available grants and other funding mechanisms, including but not limited to, the Community Mitigation Fund and/or other funds established pursuant to the Act.
- (v) In the event that funds under the Community Mitigation Fund, and/or other funds established pursuant to the Act, are not readily available to the Town after best efforts by the Town to access these funds, and upon agreement of SF Gaming with the Town's determination, the Escrow Account will be used to pay to the Town directly the costs associated with subparagraphs, (ii) and (iii) herein. If SF Gaming does not agree with the Town's determination of damage or cost to mitigate such damage, the Parties will seek agreement on a neutral third party to make such a determination; or, if they are unable to agree upon a neutral third party, the Parties will submit the issue to binding arbitration in Boston, Massachusetts under the rules for Commercial Arbitration of the American Arbitration Association, utilizing "baseball style" submissions.
- (vi) Any funds withdrawn from the Escrow Account shall be replenished by SF Gaming within thirty (30) days of withdrawal. If, at the second anniversary of the Commencement of Operations, the Town has not

demonstrated actual and verifiable increased Human Services or Public Safety personnel costs directly attributable to the Project, the Escrow Account will be terminated and the funds returned to SF Gaming. If at the second anniversary of the Commencement of Operations, the Town is receiving funds for either or both of the matters referenced in subparagraphs 4(ii) and or 4(iii) above, the Escrow Account will be terminated provided, however, that the Town, annually thereafter, shall provide the required impact information and continued payments, either increased or decreased, as the case may be, shall be required as provided above. Notwithstanding the termination of the Escrow Account hereunder, the Town reserves the right to seek payments from SF Gaming at any time after the Commencement of Operations for damages and/or costs incurred by the Town which are directly and verifiably attributable to the Project.

- (vii) The Parties intend the Project mitigations set forth in this Section, together with the impact studies and contingent obligations set forth in Section 6 of this Agreement, to satisfy the requirement of a community impact fee, as set forth *M.G.L. c.23K, §15(9)*.
- (viii) SF Gaming shall submit jointly with the Town a Letter of Authorization in the amount of \$16,500.00 in accordance with 205 CMR 114.03 (2) for the payment of funds used or to be used by the town for legal fees incurred by the Town for purposes related to the Project.

5. Offsetting Benefits.

- (i) SF Gaming shall, prior to the Commencement of Operations, work in good faith with the Town to advertise and hold at least one job fair for Town residents at a venue to be approved by the Town, at which SF Gaming will publicize its employment needs and take applications to be hired in connection with the Project;
- (ii) To the extent not inconsistent with its obligations under Section 3.A of the Host Community Agreement entered into with the Town of Plainville, SF Gaming shall instruct its general contractor to give preferential treatment to qualified Foxborough residents in hiring decisions made in connection with Project construction;
- (iii) SF Gaming shall give preferential treatment to qualified Foxborough vendors for the operation of the Project;
- (iv) SF Gaming shall cross-market and promote mutually agreed upon Foxborough businesses following Commencement of Operations; and
- (v) SF Gaming shall work with any live-entertainment venues within Foxborough on non-compete and cross-marketing agreements.

6. Assessment and Mitigation of Traffic Impacts.

- (i) SF Gaming and the Town shall jointly select a reputable and unbiased third party transportation-engineering firm (“Consultant”) to assess verifiable and incremental impacts to traffic and public safety along Cedar Street (Route 106), Mirimichi Road and Spruce Street within the Town caused directly by the Project. This information shall be generated by two individual studies; the first study shall be measured immediately prior to the Project’s pre-opening. This study shall serve as the baseline of existing traffic conditions and Level of Service at the indicated intersections. The second study (“Impact Study”) shall be performed within 30 days of the first anniversary of Commencement of Operations. The cost of such Consultant’s services and any studies and reports are to be paid by SF Gaming. These studies shall perform traffic counting, turning movement counts and analysis of Level of Service at Cedar Street (Route 106), Mirimichi Road and Spruce Street. The two studies shall compare traffic volumes, turning count movement and Level of Service at the indicated intersections and note any changes. SF Gaming agrees to pay for the design and implementation of all mitigation of all net impacts directly attributable to the Project based upon the recommendations of the Consultant. The Town and SF Gaming shall collaborate and cooperate with the Consultant during the design process to assure mutually agreeable mitigation measures and design consistent with all state and local requirements concerning roadway construction.
- (ii) The parties each acknowledge and agree that there are other developments in and around the subject intersections currently being developed and permitted (retail, residential, etc.) NOT associated with SF gaming, that may reasonably be expected to be under construction or completed during the licensing permitting and construction of the Project, the impact of which will not be attributable to the Project. In order to account for this change in the baseline study, it is understood that the Consultant may be required to perform additional necessary counting measures to isolate and quantify non-related impact to the intersections. The cost of this additional data collection, if required and analysis shall be at the sole cost and expense of SF Gaming.

7. Assessment and Mitigation of Impacts on Town Water Supply.

- (i) At the first anniversary of the Commencement of Operations, if it has been determined that SF Gaming’s average daily water usage during the prior year has exceeded 45,000 gallons per day and that Plainville’s water withdrawals from the Taunton River Basin exceed its Baseline water withdrawal volume, as established by the Department of Environmental Protection, by at least the amount of SF Gaming’s increase, then a third-party study will be commissioned to assess the net impacts of SF

Gaming's water usage on the Town and recommend mitigation actions, which SF Gaming will be responsible for funding.

8. Administrative Provisions.

- (i) SF Gaming shall, on a periodic basis, upon the request of the Town, attend municipal meetings organized by the Town, at which it will address questions regarding the Project; and
- (ii) SF Gaming intends to support a variety of local charities and civic organizations. In the aggregate, the subsidiaries of Penn National Gaming, Inc. (the ultimate parent of SF Gaming) contributed approximately \$11.8 million to local causes in 2012. SF Gaming personnel intend to serve on local civic and municipal boards and help support organizations benefiting environmental causes.
- (iii) SF Gaming agrees to consult with the Town before undertaking any material expansions of the Project and to amend this Agreement as reasonably necessary and mutually agreed to account for such expansions prior to their commencement; provided, however, that the Parties shall not execute any Agreement amendment that does not provide for studies and mitigations of the Project, including any proposed or existing expansion thereof, substantially equivalent to those set forth in Section 6 of this Agreement.
- (iv) This Agreement shall become effective on the date upon which it is fully executed by the Parties, unless lawfully terminated by either Party, so long as SF Gaming (or any parent, subsidiary or related entity) owns, controls or operates a valid Category 2 gaming license for the Premises. Nothing in this Agreement shall be construed to require the Project to stay open for any particular term. The non-breaching party may terminate this Agreement if a breach is not cured within 30 days of written notice.
- (v) Any notice required hereunder shall be made in writing and delivered by hand delivery or by facsimile or e-mail transmission, with a copy to follow by first class mail to the addresses given below. Notices shall be deemed given on the date delivered.

If to the Town:

Board of Selectmen  
Town of Foxborough  
Town Hall  
40 South Street  
Foxborough, MA 02035

And to:

Richard A. Gelerman, Esq.

Lisa V. Whelan, Esq.  
Gelman and Cabral, LLC  
30 Walpole Street  
Norwood, MA 02062

If to SF Gaming:

825 Berkshire Boulevard  
Wyomissing, Pennsylvania 19610  
Attention: Office of the General Counsel

- (vi) 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 SF Gaming, and shall not provide any basis for claims of any other individual, partnership, corporation, organization, or municipal entity.
- (vii) Neither Party may assign any interest in this Agreement, and shall not transfer any interest in this Agreement by novation or assignment, without the prior written consent of the non-assigning Party, which consent shall not be unreasonably delayed or denied; provided, however, that (i) there shall be no prohibition on the transfer of any interest in the Premises; (ii) a change of control of SF Gaming shall not be deemed an assignment hereunder, and (iii) SF Gaming may delegate any of its duties and obligations hereunder and may assign any of its rights and privileges hereunder, only to a successor licensee at the Premises or any successor entity or any one or more affiliates, or survivor entities in connection with a merger, consolidation, roll up, or reorganization that is wholly owned by SF Gaming, Penn National Gaming, Inc. ("Penn"), or Delvest Corp., or a survivor entity in connection with a merger, consolidation, roll up, or reorganization, each of which shall thereupon be treated as SF Gaming for all purposes under this Agreement with respect to the duties or obligations so delegated or the rights or privileges so assigned, and the term "SF Gaming" shall thereafter be deemed to refer to such affiliate with respect to the duties or obligations so delegated or the rights or privileges so assigned. For the purposes of clarity, SF Gaming or Penn shareholders receiving a distribution from SF Gaming or Penn would have no liability, duties or obligations delegated to them under this Agreement.
- (viii) None of the provisions of 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 purposes of effecting 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 or commitments of any kind on behalf of the other Party,

or to use the name of the other Party in any publication or advertisements, except with the written consent of the other Party. Subject to the payment of all reimbursable costs to the Town, prior to the opening of the gaming establishment, SF Gaming may terminate this Agreement and/or withdraw its gaming application without further liability to the Town.

- (ix) SF Gaming shall not be considered to be in default in the performance of its obligations under this Agreement to the extent that performance of any such obligation is impaired by a Force Majeure Event. If SF Gaming is prevented or delayed in the performance of any such obligation by a Force Majeure Event, it shall provide reasonable notice to the Town of the circumstances preventing or delaying performance and the expected duration thereof, if known. For the purposes of this Agreement, a Force Majeure Event is any circumstance not within the reasonable control, directly or indirectly, of the Party affected and includes, but is not limited to the following: strikes or other significant labor disputes; changes in applicable law; litigation affecting any Party, the Premises, or the operations at the Premises; significant supply shortages; adverse weather conditions and other acts of nature; acts of God, fire, other substantial property damage or any condition that prevents or significantly interferes with the operations of SF Gaming's gaming establishment; significant subsurface conditions; riot or civil unrest; the suspension or loss of SF Gaming's Category 2 gaming license; the forced closure of all gaming establishments by the Commonwealth of Massachusetts or the Massachusetts Gaming Commission; and actions or failures to act of any governmental authority or agency.
- (x) This Agreement and any Exhibits hereto constitute the entire agreement between the parties. No agents, representative, employee or officer of the Town or SF Gaming has authority to make, or has made, any statement, agreement or representation, oral or written, in connection with this Agreement which in any way can be deemed to modify, add to or detract from, or otherwise change or alter its terms and conditions. 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 any of its terms shall be valid or binding unless accomplished by a written amendment signed by all Parties in accordance with the terms herein.
- (xi) This Agreement shall not be amended except upon written consent of all Parties hereto.
- (xii) This Agreement shall be governed by and construed under the laws of the Commonwealth of Massachusetts in effect on the date of the execution of such document, without giving effect to any choice of law or conflict of law provision or rule. The Parties hereby irrevocably submit to the

exclusive jurisdiction of the Federal Courts of Massachusetts. In the event no federal jurisdiction exists or if the parties mutually agree in writing, the forum shall be the Superior Court of Norfolk County, Massachusetts, and such courts shall have sole and exclusive jurisdiction over any matter brought under, or by reason of this Agreement.

- (xiii) This Agreement shall be binding upon the Parties hereto and their respective permitted successors and assigns and shall inure to the benefit of the Parties hereto and their respective permitted successors and assigns.
- (xiv) The Parties agree that in no event shall either party be liable for indirect, special, consequential or punitive damages or any damages arising out of or related to this Agreement.
- (xv) The Parties acknowledge that they were represented by separate and independent counsel in connection with the review, negotiation and drafting of this Agreement and that this Agreement shall not be subject to the principle of construing its meaning against the party that drafted same. Each Party acknowledges that, with respect to this Agreement, it relied solely on its own judgment and advisors in entering into this Agreement without relying in any manner on any statements, representations or recommendations of the other Party, that it understands and accepts the implications of this Agreement, and that it voluntarily entered into this Agreement.
- (xvi) This Agreement shall be executed in any number of counterparts which, taken together, shall constitute one and the same agreement. To evidence the fact that it has executed this Agreement, a Party may send a copy of its executed counterpart to the other Party by facsimile or electronic transmission. In such event, such Party shall forthwith deliver to the other Party an original counterpart of this Agreement executed by such Party.
- (xvii) If any provision of this Agreement is found to be or rendered void, invalid or unenforceable by any court of law, for any reason, such determination shall be construed as narrowly as possible, and the balance of the Agreement shall be deemed to be amended to the minimum extent necessary, so as to secure the purposes thereof.

*[Remainder of page intentionally left blank]*

IN WITNESS WHEREOF, and intending to be bound hereby, the Parties hereto have caused this Agreement to be duly executed on their behalf by their authorized officers and applicably attested, all as of the day and year first above written.

ATTEST:

SPRINGFIELD GAMING AND REDEVELOPMENT, LLC,  
a Delaware limited liability company

By: Tammyh Alcott  
Witness

By: Robert S. Appolito  
Name: Robert S. Appolito  
Title: see 17m

ATTEST:

TOWN OF FOXBOROUGH

By: Jill G. Gen  
Witness

By: Mark Sullivan  
Name: Mark Sullivan  
Title: Chairman, Board of Selectmen