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VIA EMAIL AND HAND DELIVERY

Chair Cathy M. Judd-Stein
Commissioner Gayle Cameron
Commissioner Eileen O'Brien
Commissioner Bruce Stebbins
Commissioner Enrique Zuniga
Massachusetts Gaming Commission
101 Federal Street, 12th Floor
Boston, MA 02110

Re: Region C

Dear Chair Judd-Stein and Commissioners Cameron, O'Brien, Stebbins, and Zuniga:

We write on behalf of our client, Mass Gaming & Entertainment ("MG&E"), to welcome Ms. Judd-Stein to the Commission, and to express our hope that her appointment will help jumpstart the long-delayed public consideration of the future of gaming in Region C. MG&E looks forward to working with Chair Judd-Stein and the Commission in the weeks and months ahead.

We recognize that the Commission has been busy over the past year attending to the opening of the MGM Casino in Springfield and the Wynn situation, as well as other matters. Unfortunately, in the process, Region C has been neglected and once again left behind. The citizens of Southeastern Massachusetts deserve better. The promise provided by the 2011 Expanded Gaming Act (the "Act") of thousands of new jobs, new revenue, and economic growth was supposed to be for everyone in the Commonwealth, not just those in the Northeastern and Western parts of the state. To date, the only region of the Commonwealth that has failed to reap the benefits of the Act is the Southeast – the very region of the Commonwealth that faces strong gaming competition from Connecticut, and more recently from Rhode Island as well.

On June 6, 2018, *i.e.*, eight months ago, we wrote to the Commission (letter attached as Ex. A) stating that MG&E was ready, willing, and able to pay the Commonwealth the requisite casino license fee of \$85 million, and to begin building a resort casino in Brockton, which would provide thousands of well-paying permanent jobs to the citizens of Brockton and its surrounding communities, as well as substantial payments to the City of Brockton and more than \$60 million in annual tax revenue to the Commonwealth. To enable all this to happen, we requested prompt reconsideration of MG&E's prior license application, and explained in detail why reconsideration, without reopening the RFA process to

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additional prospective applicants, was not only the most expeditious way to proceed, but likewise the most equitable. We won't repeat here the arguments we made then and in subsequent submissions. See also our letters to the Commission dated October 16, 2018, and November 30, 2018, attached as Exs. B & C, without original attachments. Suffice to say, we continue to maintain that there is no legal impediment to prompt reconsideration, and that such reconsideration would be far and away the fastest and best way of finally allowing the citizens of Southeastern Massachusetts to share in the jobs and other economic benefits long ago promised by the gaming legislation of 2011.

Unfortunately, the Commission did not publicly take up our request for reconsideration when it was filed in early June 2018. Instead, the Commission waited until its July 26, 2018 meeting, at which it briefly acknowledged the request, and then immediately postponed any discussion of its substance until the fall. And when the fall arrived, instead of engaging in a substantive discussion of Region C or our request, the Commission posted a series of questions for public comment.

The questions were posted on October 3, 2018, with the comment period closing on November 30, 2018. Most if not all of the questions were purely legal or otherwise ill-suited for public comment. Still, substantial comments were timely submitted, including detailed responses from us on behalf of MG&E to each of the Commission's questions. See attached Ex. C. In our view, there are five key takeaways from the aggregate public comments:

1. There is widespread and deep ongoing support in Brockton for MG&E's request for reconsideration, including from business and union leaders and hundreds of residents.
2. While we submitted statutory and case precedent in support of MG&E's request for reconsideration, no one submitted any legal authority to the contrary.
3. Penn National Gaming submitted a transparently self-interested and hypocritical letter in which it argued that nothing should be done in Region C in the foreseeable future other than market studies, because it asserts the Massachusetts gaming market may already be oversaturated. Penn National failed, however, to mention that at the same time that it was requesting a slow-down approach in Region C (the only region with no licensed casino), it was separately supporting a request for the immediate expansion of its own slots license in Plainville in Region A (which already has a licensed casino) to allow for casino table gaming, a request that would most certainly require legislative change before it could be effectuated.
4. While Penn National and others recommended further study – a euphemism for delay – and expressed concerns regarding oversaturation, MG&E submitted independent market studies that have very recently been performed by The Innovation Group (“ING”), making it clear that notwithstanding recent additions to the gaming market in New England, there remains substantial room for growth. Indeed, ING estimates that “during the first full year of operation of an MG&E casino in Brockton (2022, [assuming a license issues and construction begins in 2019]), aggregate Massachusetts gaming revenue would increase by \$270MM. . . . with an incremental increase in tax revenue of almost \$64MM.” See our 11/30/18 letter to the

Commission (attached as Ex. C) at 7-8, and Ex. C to that letter (ING Report) (attached hereto as Ex. D) at 8-9. Beginning today, MG&E is prepared to pay a license fee of \$85MM, and to invest over \$700MM in developing a resort casino in Brockton, because it believes in the accuracy of ING's market projections. Mere speculation about oversaturation should not be permitted to outweigh the readiness of a developer with a proven record of success to immediately invest the better part of \$1 billion in the Massachusetts economy. We have learned over the years that private capital is far better positioned than the government to make investment determinations. Indeed, if the principals of MG&E did not believe that the Region C market would provide a reasonable economic return on their investment, they would not have sought reconsideration of their license application, but would have abandoned their interest in a Brockton resort casino.

5. The Mashpee Wampanoag Tribe continues to engage in the delusion that it somehow, someday, may be able to build a casino in Region C. The truth of the matter, as United States District Court Judge William Young made clear in July 2016, and as the Department of Interior (DOI) has since affirmed, the Mashpee have no right under federal law to obtain land in trust in Region C, the prerequisite to building a tribal casino. As Judge Young put it, the question is "not a close call." *Littlefield et al. v. U.S. Dep't of the Interior*, 199 F. Supp. 3d 391, 396 (D. Mass. 2016). Instead of recognizing reality, the Mashpee have filed a frivolous appeal of DOI's recent decision against it on remand from Judge Young. And the Mashpee have also initiated a steep, indeed all but impossible, uphill effort to obtain special legislative relief through a bill that would impermissibly do an end-run around Judge Young's and DOI's rulings. Further, the Aquinnah Wampanoag Tribe of Gay Head has made clear in its recent submission to the Commission that it wants in on the Mashpee's fruitless efforts. But even if those efforts were to prove successful – the chance of which is somewhere between zero and none – it would mean years and years of further delay before Region C would see any benefit.

Eight full months have passed since MG&E first submitted its request for reconsideration. During those eight months, the Tiverton Casino in Rhode Island, right next to Fall River and just over the southern border of Region C, has opened, drawing jobs, and tens of millions of dollars in gaming and tax revenue away from the Commonwealth. In addition, the MGM resort casino in Springfield has opened, and, notwithstanding the uproar over Steve Wynn's alleged sexual misconduct, the development of the Encore Resort Casino in Everett has continued apace, and appears to be on schedule to open in June 2019. Only Region C has remained stagnant.

This is not right. Even if one disagrees with everything else we have written, and disagrees with the reconsideration request that MG&E has presented, one would hope that we could all agree that the time for a substantive public discussion of Region C is now long overdue. In our June 6, 2018 letter to the Commission, we noted that, in the summer of 2016, shortly after Judge Young had ruled against the Mashpee, the Commission stated on its website:

At a time deemed appropriate, the Massachusetts Gaming Commission will engage in a public discussion to further our review of what course of



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action will be in the short and long-term best interests of Southeastern
Mass. and the Commonwealth.

We wrote then, and we repeat now, that the appropriate time to engage in that public discussion is now. We sincerely hope that the addition of Chair Judd-Stein to the Commission will enable that public discussion to begin without any further delay.

Very truly yours,

A handwritten signature in blue ink, appearing to read 'David J. Apfel', written in a cursive style.

David J. Apfel

A handwritten signature in blue ink, appearing to read 'Roberto M. Bracerias', written in a cursive style.

Roberto M. Bracerias

cc: Executive Director Edward Bedrosian, Jr.
General Counsel Catherine Blue