

## **SURROUNDING COMMUNITY AGREEMENT**

This surrounding community agreement (this "Agreement") is entered into this \_\_\_ day of \_\_\_\_\_, 2014 (the "Effective Date") by and between Blue Tarp reDevelopment, LLC ("MGM"), a Massachusetts limited liability company, with an office address of 1441 Main Street, Suite 1137, Springfield, MA, owner and developer of the MGM Springfield project in Springfield, Massachusetts and West Springfield, Massachusetts (the "Community", the "Town" or "West Springfield"), a municipality in the Commonwealth of Massachusetts (MGM and the Community hereinafter collectively the "Parties" or individually a "Party").

### **RECITALS**

WHEREAS MGM is an affiliate of MGM Resorts International (NYSE: MGM) ("MGM Resorts").

WHEREAS, the MGM Springfield project is a destination casino resort planned for downtown Springfield, Massachusetts expected to cost approximately \$800 million and include 1,000,000 square feet (the "Project"). When constructed, it is anticipated to be the largest private development in Western Massachusetts history. The Project is anticipated to have 250 hotel guest rooms, a 125,000 square foot casino, 54 market rate apartments, a 15-lane bowling alley, a 12-screen luxury movie theatre, an outdoor park and seasonal skating rink, and dozens of shops and restaurants, in addition to large open outdoor public spaces.

WHEREAS, the Project is anticipated to employ 2,000 construction workers and, upon completion, 3,000 permanent workers.

WHEREAS, MGM has submitted RFA-1 and RFA-2 applications under Chapter 23k (the "Gaming Act") to the Massachusetts Gaming Commission (the "Commission"), seeking approval to proceed with an application for issuance of the sole Western Massachusetts gaming license (the "Gaming License").

WHEREAS, the Gaming Act provides a mechanism by which communities, other than the host community, that are proximate to the Project and are expected to be significantly and adversely impacted by the Project, have an opportunity to mitigate such adverse impacts on their respective communities through designation as a "Surrounding Community".

WHEREAS, pursuant to 205 CMR 125.00 (the "Surrounding Community Regulation"), MGM has designated West Springfield as a Surrounding Community, thereby recognizing that the West Springfield will experience significant adverse impacts as a result of the Project...

## AGREEMENT

NOW THEREFORE, for valuable consideration, the sufficiency and receipt of which are hereby acknowledged by the Parties, and in consideration of the mutual promises and covenants contained herein, the Parties agree as follows:

1. Upfront Payment of \$665,000 for a Community Grant plus Reimbursement of Consulting and Legal Fees. Within thirty (30) days of the Commission's award of the Gaming License to MGM, MGM shall pay to the Community Six Hundred and Sixty-Five Thousand Dollars (\$665,000.00), representing the design and permitting costs (but not the construction costs) for reconstruction of Memorial Avenue in West Springfield. In addition, within thirty (30) days of the effective date of this agreement, MGM shall reimburse the Town for the actual, reasonable expenses incurred by the Town for the payment of any consultants or legal advisors, whether internal or external (collectively, its "Advisors" or "the Community's Advisors") providing services related to or in any way arising from the Community's review of the Project ("Project Review"), including without limitation participation in the arbitration proceeding giving rise to this agreement. MGM's payment for Project Review fees shall be reduced by the amount of any previous grants to the Town for this purpose.

2. Guaranteed Minimum Annual Payments. The Parties agree that, commencing with the opening of the Project to the public (i.e., the date on which MGM begins to collect revenue under the terms of the Gaming License) (the "Grand Opening") and for each year following the Grand Opening through the expiration of MGM's initial gaming license and any extensions thereof (the "Term"), MGM shall pay to the Community: (i) Three Hundred and Seventy-Five Thousand Dollars annually (\$375,000.00) (the "Annual Mitigation Payment"); and (ii) a total of Seven Hundred and Fifty Thousand Dollars (\$750,000.00) in annual payments pursuant to the schedule further detailed below which are acknowledged to be reimbursement of expenses for participation in the Look Back Studies, as defined below (the "Annual Study Cost Reimbursement"). The Annual Study Cost Reimbursement shall be paid as follows: (i) Fifty Thousand Dollars (\$50,000.00) in the first year following the Grand Opening; (ii) One Hundred Thousand Dollars (\$100,000.00) in the second year following the Grand Opening; (iii) Fifty Thousand Dollars (\$50,000.00) in each of the third through fifth years following the Grand Opening; (iv) One Hundred Thousand Dollars (\$100,000.00) in the sixth year following the Grand Opening; and (v) Fifty Thousand Dollars (\$50,000.00) in the seventh through thirteenth years following the Grand Opening. The Annual Mitigation Payment and Annual Study Cost Reimbursement (together, the "Annual Payments") shall be made within ninety (90) days of the Grand Opening, and on each twelve month anniversary, as long as such payments are due hereunder, and shall be adjusted annually by the CPI Adjustment Factor applied to host community impact fee payments, as defined in §1(gg) of and as set forth in Exhibit A to the Host Community Agreement between MGM and the City of Springfield.

3. Baseline Study of Surrounding Community Conditions. MGM shall, at its own expense, engage a neutral, qualified and independent third party (the “Third Party”) to perform a comprehensive study (the “Initial Study”) of the current conditions existing in the Community pursuant to the study scope and other requirements set forth on Exhibit A (the “Study Scope”). MGM shall make clear to the Third Party that MGM is not the client of the Third Party and that the obligations of the Third Party are to impartially and fully evaluate all matters within the Study Scope. MGM shall request that the Third Party commence the Initial Study no later than sixty (60) days after the issuance of the Gaming License to MGM and complete the Initial Study within ninety (90) days of commencing the Initial Study (the “Initial Study Period”). The Community shall cooperate with all of the Third Party’s reasonable requests for information in connection with the Initial Study, including but not limited to providing the Third Party with documentation, data and access to relevant municipal personnel.

MGM shall not be entitled to review and comment on any drafts of the written report(s) to be produced by the Third Party prior to such drafts being provided to the Community. The Community shall have the opportunity to review and comment upon any report(s) of the Third Party prior to it being finalized.

4. Retroactive “Look Back” Studies.

(a) The 1<sup>st</sup> Year Look Back Study. MGM shall, at its own expense, engage the Third Party to conduct an additional study fifteen (15) months following the Grand Opening (the “1<sup>st</sup> Year Look Back Study”). The 1<sup>st</sup> Year Look Back Study will be based on data collected by the Third Party within the Study Scope from the first twelve (12) months following the Grand Opening (the “Initial Look Back Period”). The 1<sup>st</sup> Year Look Back Study will analyze the areas within the Study Scope to determine the dollar value of any significant and adverse impact the Community has experienced during the Initial Look Back Period. The results of the 1<sup>st</sup> Year Look Back Study will be set forth by the [TBD 3d Party] in a report setting forth [TBD 3d Party]’s findings (the “1<sup>st</sup> Year Study Report”).

MGM shall not be entitled to review and comment on any drafts of the written report(s) to be produced by the Third Party prior to such drafts being provided to the Community. Prior to issuance of the 1<sup>st</sup> Year Study Report, however, the Parties agree that the Third Party shall first provide to each of the Parties a draft of its report, and provide each of the Parties thirty (30) days to review and provide comments to the report (respectively, “Community’s 1<sup>st</sup> Year Study Comments” and “MGM’s 1<sup>st</sup> Year Study Comments”, collectively the “1<sup>st</sup> Year Study Comments”). Within thirty (30) days following the expiration of that review period and receipt

of the 1<sup>st</sup> Year Study Comments, if any, the Third Party will issue to the Parties its 1<sup>st</sup> Year Study Report.

(b) The 5<sup>th</sup> Year Look Back Study. MGM further shall, at its own expense, engage the Third Party to conduct an additional study five (5) years and three (3) months following the Grand Opening (the "5<sup>th</sup> Year Look Back Study"). The 5<sup>th</sup> Year Look Back Study will be based on data collected by the Third Party within the Study Scope from the five (5) year period following the Grand Opening (the "Full Look Back Period"). The 5<sup>th</sup> Year Look Back Study will analyze the areas within the Study Scope to determine the dollar value of any significant and adverse impact the Community has experienced during the Full Look Back Period. The results of the 5<sup>th</sup> Year Look Back Study will be set forth by the [TBD 3d Party] in a report setting forth the Third Party's findings (the "5<sup>th</sup> Year Study Report"). Prior to issuance of the 5<sup>th</sup> Year Study Report, however, the Parties agree that the Third Party shall first provide to each of the Parties a draft of its report, and provide each of the Parties thirty (30) days to review and provide comments to the report (respectively, "Community's 5<sup>th</sup> Year Study Comments" and "MGM's 5<sup>th</sup> Year Study Comments", collectively the "5<sup>th</sup> Year Study Comments"). Within thirty (30) days following the expiration of that review period and receipt of the Parties' 5<sup>th</sup> Year Study Comments, if any, the Third Party will issue to the Parties its 5<sup>th</sup> Year Study Report.

5. The Third Party Role. The Parties agree that notwithstanding MGM's agreement to fund the Third Party for the Initial Study, the 1<sup>st</sup> Year Look Back Study, and the 5<sup>th</sup> Year Look Back Study, the Third Party shall conduct such studies independently pursuant to this Agreement. MGM shall select the Third Party in good faith, in consultation with the Community and upon mutual agreement of MGM, on the one hand, and a majority of the Abutters (as defined in Section 8 below). The Parties agree that the Third Party should be neutral and independent and qualified in the area of economic development and impacts thereof (both positive and adverse), including traffic, land use, public safety, business impacts, social impacts and any other matters within the Study Scope. In the reasonable discretion of the Third Party, the Third Party may subcontract with other experts and/or consultants as reasonably necessary to ensure the breadth of expertise necessary and appropriate to study the full range of potential impacts on the Community. The Community shall have full and unfettered access to the Third Party throughout the course of its engagement.

6. Determination of Net Adverse Impact Amounts.

(a) Year One Net Adverse Impact Amount. Upon issuance of the 1<sup>st</sup> Year Study Report, the Parties will work in good faith to mutually agree upon the dollar value of the net significant and adverse impact on the Community, if any, based on the 1<sup>st</sup> Year Study Report (the "Year One Net Adverse Impact Amount"). If the Parties cannot agree on the Year One Net Adverse

Impact Amount, then, no later than the forty-fifth (45<sup>th</sup>) day following the issuance of the 1<sup>st</sup> Year Study Report, the Community shall present to MGM a written offer setting forth the amount proposed to be the Year One Net Adverse Impact Amount and the reasons supporting such offer (the "Community's Year One Offer"). Within fifteen (15) days of receipt of that offer, MGM shall either (i) accept the Community's Year One Offer as the Year One Net Adverse Impact Amount, in which case such offer shall become the Year One Net Adverse Impact Amount or (ii) present a written counter offer proposed to be the Year One Net Adverse Impact Amount and the reasons supporting such offer ("MGM's Year One Counter Offer"). Upon receipt of MGM's Year One Counter Offer, the Community will have fifteen (15) days within which to accept or reject it. If the Community accepts MGM's Year One Counter Offer, such counter offer shall become the Year One Net Adverse Impact Amount. If the Community rejects MGM's Year One Counter Offer, the Parties shall follow the arbitration procedure set forth in subsection 6(c) below.

(b) Year Five Net Adverse Impact Amount. Upon issuance of the 5<sup>th</sup> Year Study Report, the Parties will work in good faith to mutually agree upon the dollar value of the net significant and adverse impact on the Community, if any, based on the 5<sup>th</sup> Year Study Report (the "Year Five Net Adverse Impact Amount"). If the Parties cannot agree on the Year Five Net Adverse Impact Amount, then, no later than the forty-fifth (45<sup>th</sup>) day following the issuance of the 5<sup>th</sup> Year Study Report, the Community shall present to MGM a written offer setting forth the amount proposed to be the Year Five Net Adverse Impact Amount and the reasons supporting such offer (the "Community's Year Five Offer"). Within fifteen (15) days of receipt of that offer, MGM shall either (i) accept the Community's Year Five Offer as the Year Five Net Adverse Impact Amount, in which case such offer shall become the Year Five Net Adverse Impact Amount or (ii) present a written counter offer proposed to be the Year Five Net Adverse Impact Amount and the reasons supporting such offer ("MGM's Year Five Counter Offer"). Upon receipt of MGM's Year Five Counter Offer, the Community will have fifteen (15) days within which to accept or reject it. If the Community accepts MGM's Year Five Counter Offer, such counter offer shall become the Year Five Net Adverse Impact Amount. If the Community rejects MGM's Year Five Counter Offer, the Parties shall follow the arbitration procedure set forth in subsection 6(c) below.

(c) Arbitration of Net Adverse Impact Amounts. The Parties agree that to the extent they are not able to agree upon the Year One Net Adverse Impact Amount or the Year Five Net Adverse Impact Amount (collectively, the "Net Adverse Impact Amounts"), the Net Adverse Impact Amounts shall be determined by an arbitration hearing held in Hampden County, Massachusetts. Said arbitration shall be conducted by a three person panel (unless the parties agree on the identity of a single arbitrator), with each Party choosing one member of the arbitration panel, and each of those selections agreeing on the third member. Each party shall

notify the other party of its choice of arbitrator within thirty (30) days following the rejection of MGM's Year One Counter Offer or Year Five Counter Offer, as the case may be. With respect to the Year One Adverse Impact Amount, the arbitrator shall select either the Community's Year One Offer or MGM's Year One Counter Offer, unless either party chooses to make a last and best offer prior to the conclusion of the Arbitration proceedings, in which case the other party shall have the right to make its own last and best offer prior to the arbitrator rendering its decision. With respect to the Year Five Net Adverse Impact Amount, the arbitration panel shall select either the Community's Year Five Offer or MGM's Year Five Counter Offer, unless either party chooses to make a last and best offer prior to the conclusion of the Arbitration proceedings, in which case the other party shall have the right to make its own last and best offer prior to the arbitrator rendering its decision. The arbitration shall be subject to the rules of the American Arbitration Association. Each Party shall bear its own costs of the arbitration, except that the fees of the arbitrators shall be borne by MGM. The Parties agree that the decision of the arbitration panel, which shall be rendered within thirty (30) days of the date of the arbitration hearing, shall be final, binding and non-appealable.

7. Payment of Net Adverse Impact Amounts.

(a) Priority of Reimbursement Obligations. The Parties hereby agree that the Community shall look exclusively to the Annual Mitigation Payment for satisfaction of the first Three Hundred and Seventy-Five Thousand Dollars (\$375,000.00) of the Net Adverse Impact Amounts. The Parties further agree that the Community shall next exercise good faith efforts to secure state funding for any remaining Net Adverse Impact Amounts through the Community Mitigation Fund established by M.G.L. c. 23k, §61, as applicable (the "State Mitigation Fund"). To the extent that any Net Adverse Impact Amounts remain unfunded after application of the Annual Mitigation Payment and any funding received from the State Mitigation Fund, MGM agrees to pay the balance to the Community as set forth below. To the extent that the Community receives funding from one of the State Mitigation Fund after MGM has paid any Net Adverse Impact Amount beyond the Annual Mitigation Payment, MGM shall be entitled to a credit toward any future Net Adverse Impact Amount payment obligations in excess of its Annual Mitigation Payment obligation.

(b) Payment of Year One Net Adverse Impact Amount. MGM shall pay the unfunded Year One Net Adverse Impact Amount, if any, in excess of the Annual Mitigation Payment and any funding the Community has received from the State Mitigation Fund, within thirty (30) days of the determination of said amount pursuant to Section 6 above and, to the extent that such amount is deemed to be an annual obligation, shall continue to make such payment annually thereafter until the determination of the Year Five Net Adverse Impact Amount. The Parties further acknowledge that if the 1<sup>st</sup> Year Look Back Study demonstrates a net positive impact, or the Year One Net Adverse Impact Amount is determined to be less than the Annual Mitigation Payment plus any funding the Community has received from the State Mitigation Fund, MGM shall have no further monetary obligations to the Community beyond the Annual Payments during the period up to the determination of the Year Five Net Adverse Impact Amount.

(c) Payment of Year Five Net Adverse Impact Amount. MGM shall pay the unfunded Year Five Net Adverse Impact Amount, if any, in excess of the Annual Mitigation Payment and any funding the Community has received from the State Mitigation Fund, within thirty (30) days of the determination of said amount pursuant to Section 6 above and, to the extent that such amount is deemed to be an annual obligation, shall continue to make such payment annually thereafter through the remainder of the Term. The Parties, further acknowledge that if the 5<sup>th</sup> Year Look Back Study demonstrates a net positive impact, or the Year Five Net Adverse Impact Amount is determined to be less than the Annual Mitigation Payment plus any funding the Community has received from the State Mitigation Fund, MGM shall have no further monetary obligations to the Community beyond the Annual Payments, except in the event this agreement is reopened in accordance with 205 CMR 127.

8. Assignment. This Agreement may not be assigned or transferred by either Party without the prior written consent of the other Party; provided, however: (i) MGM may assign this Agreement to an acquirer of all, or substantially all, of its assets or equity interests; and (ii) MGM may assign this Agreement to any affiliate so long as such assignment does not relieve MGM of any obligation hereunder.

9. Term and Termination. This Agreement shall continue for the Term as defined above or until terminated by the mutual written agreement of all of the Parties. The Parties agree that their respective obligations and commitments hereunder are subject to such Party's compliance with the terms and conditions of this Agreement, and that in the event such Party materially breaches such obligations, the non-breaching Party shall have the right to terminate this Agreement. Upon written notice to the Community, MGM shall have the right to terminate (with or without cause) on the date on which (i) MGM provides notice to Community that it is no longer eligible to receive or continue to pursue a Gaming License; or (ii) following the approval of MGM for a Gaming License, such Gaming License is no longer effective. Such termination shall not relieve MGM of the obligation to reimburse the Community for any consultant fees incurred prior thereto or for any other payment obligations that have arisen prior thereto.

10. Entire Agreement. This Agreement contains all of the terms, promises, conditions and representations, made or entered into by and among the Parties, supersedes all prior discussions, agreements and memos, whether written or oral between and among the Parties, and constitutes the entire understanding of the Parties and shall be subject to modification or change only in writing and signed by all Parties.

11. Compliance with Laws. The Parties shall perform all of their respective obligations under the Agreement in compliance with all applicable laws, ordinances, regulations, or codes. This Agreement shall be governed by, and construed according to, the laws of the Commonwealth of Massachusetts, without regard to any choice of law provisions thereof which would require application of the laws of another jurisdiction.

12. Execution in Counterparts. This Agreement may be signed upon any number of counterparts with the same effect as if the signatures on all counterparts are upon the same instrument.

13. Severability; Captions. In the event that any clause or provision of this Agreement should be held to be void, voidable, illegal, or unenforceable, the remaining portions of this



Agreement shall remain in full force and effect. Headings or captions in this Agreement are added as a matter of convenience only and in no way define, limit or otherwise affect the construction or interpretation of this Agreement.

14. Interpretation. This Agreement shall be given a fair and reasonable interpretation of the words contained in it without any weight being given to whether a provision was drafted by one Party or its counsel.

15. Authority. Each Party represents and warrants to the other Parties that it has full power and authority to make this Agreement and to perform its obligations hereunder and that the person signing this Agreement on its behalf has the authority to sign and to bind that Party.

**ACKNOWLEDGED AND AGREED TO BY:**

**Community:**

**MGM:**

TOWN OF WEST SPRINGFIELD

BLUE TARP reDEVELOPMENT, LLC

By: Edward C. Sullivan By: Michael C. Mathis  
Michael C. Mathis

Its: Mayor Its: Authorized Signatory

Dated: 5-8-14 Dated: May 8, 2014

**(AS REQUIRED BY 205 CMR 125.01(6)(C)(10))**

## EXHIBIT "A"

### **A. Study Scope**

Each of the Initial Study, 1<sup>st</sup> Year Look Back Study, and 5<sup>th</sup> Year Look Back Study (the "Studies") shall assess the dollar value of any significant and adverse impact of the Project on a Surrounding Community, after offsetting for the dollar value of any positive impacts of the Project on such community. In determining such assessment the Studies shall consider the following:

1. Potential Areas of Adverse Impact
  - a. Construction impacts, including without limitation heavy truck travel through West Springfield, code enforcement and other public safety expenses resulting from new or temporary residence in the Town by construction-related employees; noise, dust and other environmental impacts resulting from construction of the Project.
  - b. Net Substitution of Existing Commercial/Retail Activity
  - c. Traffic Improvement Needs Reasonably Related to Travel to and from the Project Site based upon traffic analysis conducted by, or at the direction of, the Pioneer Valley Planning Commission (PVPC), similar in scope and process as that conducted by PVPC
  - d. Utility Infrastructure Needs Reasonably Related to the Project
  - e. Crime Rates and Public Safety
  - f. Residential Real Estate Values
  - g. Public Education
  - h. Public Health, including but not limited to addiction
  - i. Additional Municipal Administrative Burdens, including but not limited to code enforcement.
2. Potential Areas of Positive Impact and Mitigation
  - a. Increase in municipal revenue resulting from additional Commercial/Retail Activity
  - b. Increase in municipal revenue resulting Tourism and Community Business Development
  - c. Increase in municipal revenue resulting Local Vendor/Supplier Spending in the Community
  - d. Improved traffic and infrastructure directly attributable to MGM or MGM Tax Revenues Pursuant to M.G.L. c. 23k to the extent that such amounts are not in place of other state funding currently received by the Community as of the date of this Agreement;
  - e. Crime Rates and Public Safety

- f. Increase in municipal revenue resulting from increased Residential Real Estate Values
- g. Receipt of MGM Tax Revenues Pursuant to M.G.L. c. 23k or any other third party funding, whether private or public, state or federal, which otherwise offsets or mitigates or is available to mitigate the specific potential adverse impact to the extent that such amounts are not in place of other state funding currently received by the Community as of the date of this Agreement (“Other Mitigation Funding”);
- h. Increase in municipal revenue resulting from employment of Residents