

**SURROUNDING COMMUNITY AGREEMENT**

This surrounding community agreement (this “Agreement”) is entered into this \_\_\_ day of April, 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 doing business as MGM Springfield, and the Town of Longmeadow, Massachusetts (the “Community”), a municipality in the Commonwealth of Massachusetts, with an address at Town Hall, 20 Williams Street, Longmeadow, MA (MGM and the Community hereinafter collectively the “Parties” or individually a “Party”).

**RECITALS**

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”) for a resort casino (so-called Category 1) project in downtown Springfield, Massachusetts (the “Project”).

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” (a “Surrounding Community”), either voluntarily by the gaming license applicant or by the Commission acting pursuant to 205 CMR 125.00 (the “Surrounding Community Regulation”).

WHEREAS, on February 18, 2014, the Commission designated the Community as a Surrounding Community, following its review of MGM’s entire application, MGM’s detailed plan of construction, independent evaluations, pertinent information received from the Community, MGM, the host community, and the public, and any additional information that the Commission determined to be beneficial in making its determination.

WHEREAS, on February 18, 2014, the Commission issued a Determination of Surrounding Community Status Pursuant to 205 CMR 125.01(2), which was not restricted in scope on potential impacts to the Community from MGM’s proposed gaming establishment, and instead concluded that the Community meets the requirements for Surrounding Community designation.

WHEREAS, the Community’s willingness to enter this Agreement is based on the representation of MGM as to the scope of the Project as stated herein, in MGM’s Opposition to the Community’s Petition for Surrounding Community Designation, and in MGM’s RFA-1 and RFA-2 applications for the Project, and MGM represents that its application for a Gaming

License from the Commission is based on a Project restricted in scope to that stated herein and therein.

WHEREAS, Section 15 of the Gaming Act requires an applicant to identify the infrastructure costs of Surrounding Communities incurred in direct relation to the construction and operation of a gaming establishment, to commit to a community mitigation plan for Surrounding Communities, and to agree to a surrounding community agreement with each Surrounding Community, which includes a community impact fee and stipulations of responsibilities between the applicant and the Surrounding Community, including stipulations of known impacts from the development and operation of the gaming establishment.

### **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 Mitigation Payment of \$850,000.00 for Projected Upfront Significant and Adverse Impacts. Within thirty (30) days of the Commission's award of the Gaming License to MGM, MGM agrees to pay to the Community a one-time, upfront payment in the sum of Eight Hundred Fifty and 00/100 Thousand Dollars (\$850,000.00), based upon the projected significant and adverse impacts to the Community from the opening and operation of the Project (the "Upfront Mitigation Payment"), specifically to address traffic and roadway infrastructure impacts that have been studied and determined by the Community, an independent peer review undertaken by the Pioneer Valley Planning Commission, and the Commission's independent consultants. The Upfront Mitigation Payment shall be in addition to, and not set off by, the payment and reimbursement of past consultants and legal advisors described in Section 2 below. The Community agrees that except as expressly set forth in this Agreement, neither the Community nor any of the Community's consultants and legal advisors (collectively, "Advisors"), shall have the right to pursue payment from MGM or any of its affiliates, directly or indirectly (i.e., through the Commission), for any services provided to or at the request of the Community related to the Project. Except as explicitly set forth herein in this Agreement, the Community, on its own behalf, and on behalf of its Advisors, hereby waives any right to reimbursement from MGM or any MGM affiliate for consulting or legal fees related to Project review. The Upfront Mitigation Payment shall not be subject to setoff or reduction for any reason.

2. Payment of Past Consultants and Legal Advisors. Notwithstanding anything otherwise provided in this Agreement, at the time of the execution hereof, the Community may provide MGM with invoices evidencing legal and consulting fees and expenses the Community

has incurred for the time period through the date of this Agreement in connection with evaluating potential impacts from the Project, seeking designation from the Commission as a Surrounding Community, and negotiating a potential surrounding community agreement (including through arbitration). MGM shall promptly pay such invoices, to the extent not already paid by the Community, and MGM shall promptly reimburse the Community for such fees and expenses, to the extent already paid, which obligation shall survive the termination of this Agreement and irrespective of whether or not the Commission awards the Gaming License to MGM (“Consultant/Legal Reimbursement”). The Consultant/Legal Reimbursement shall not be subject to setoff or reduction for any reason.

3. Guaranteed Minimum Annual Payments. The Parties agree that, commencing with the opening of the first component of the Project to the general public (the “Opening”) and continuing on each twelve (12) month anniversary after the Opening (the “Anniversary Date”) through the expiration of MGM’s initial Gaming License (the “Term”), MGM shall annually pay to the Community the sum of Two Hundred Seventy-Five and 00/100 Thousand Dollars (\$275,000.00), subject to an automatic increase of two-and-a-half (2.5%) percent per annum, which payments are acknowledged to be reimbursement of expenses for the Community’s participation in the Look Back Studies as described herein, for the Community to monitor traffic conditions on its roadways, for the Community to monitor public safety conditions, and for the Community to mitigate significant and adverse impacts within the Community, consisting of projected traffic and roadway infrastructure impacts and public safety personnel and response cost impacts (collectively, the “Annual Payments”). The Annual Payments shall be made within ninety (90) days of the Opening and within ninety (90) days of each Anniversary Date, for the Term of this Agreement. The Annual Payments shall not be subject to setoff or reduction for any reason.

4. Public Safety. MGM shall collaborate and work cooperatively in good faith with the Community to address public safety issues caused by the development and operation of the Project, including but not limited to drunken driving issues, vehicular accidents, and other public safety matters.

5. Baseline Study of Surrounding Community Conditions. MGM and the Community mutually agree, at MGM’s expense, to engage a neutral, qualified and independent third party for the category of study set forth in Exhibit A (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 said 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 and the Community 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"). MGM and 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 MGM's operations in connection with or related to the Project, the Community's operations, and the Parties' relevant personnel, respectively. Each Party agrees that any of the documentation, data and other materials furnished to the Third Party shall also be available to the other Party, upon request and without delay or redaction.

6. Retroactive "Look Back" Studies.

(a) The 1<sup>st</sup> Year Look Back Study. The Parties agree, at MGM's expense, to engage the Third Party to conduct an additional study fifteen (15) months following the 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 Opening through the first Anniversary Date (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 as a result of the Project. The results of the 1<sup>st</sup> Year Look Back Study will be set forth by the Third Party in a report setting forth the Third Party's findings (the "1<sup>st</sup> Year Study Report"). The Third Party shall complete a draft of the 1<sup>st</sup> Year Study Report within ninety (90) days of engagement, unless the Parties mutually agree to an extension. 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 sixty (60) days to review and provide comments to said draft 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, including the receipt and consideration 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. The Parties further agree, at MGM's expense, to engage the Third Party to conduct an additional study five (5) years and three (3) months following the 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 Opening (the "5 Year 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 subsequent to the Opening. The results of the 5<sup>th</sup> Year Look Back Study will be set forth by the Third Party in a report setting forth the Third Party's findings (the "5<sup>th</sup> Year Study Report"). The Third Party shall complete a draft of the 5<sup>th</sup>

Year Study Report within ninety (90) days of engagement, unless the Parties mutually agree to an extension. 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 sixty (60) days to review and provide comments to said draft 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, including the receipt and consideration 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.

7. 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. The Parties agree that the Third Party should be neutral and independent and qualified in the areas for 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, subject to the prior approval of the Parties. The Parties shall have full and unfettered access to the Third Party throughout the course of its engagement, provided the each Party shall notify the other party of any communication or contact with the Third Party during the course of the Third Party’s engagement.

8. Determination of Adverse Impact Amounts. Upon the respective issuance of the final 1<sup>st</sup> Year Study Report and 5<sup>th</sup> Year Study Report (individually, the “Study Report” and collectively, the “Study Reports”), the Parties will work in good faith to mutually agree upon the dollar value of the significant and adverse impact on the Community, if any, based on each such Study Report (the “Adverse Impact Amount”). It is the Parties’ intent to determine any impact mitigation cost in excess of the Annual Payments, if any, as identified in the applicable Study Report, provided that, for any transportation infrastructure related impact, MGM’s obligation shall be no less than twenty (20%) percent of the cost of said impact mitigation cost (subject to the provisions of Section 9 below). If the Parties cannot agree on the Adverse Impact Amount, then, no later than the forty-fifth (45<sup>th</sup>) day following the issuance of the final Study Report, the Community shall present to MGM a written offer setting forth the amount proposed to be the Adverse Impact Amount and the reasons supporting such offer (the “Community’s Offer”). Within fifteen (15) days of receipt of that offer, MGM shall either (i) accept the Community’s Offer as the Adverse Impact Amount for that corresponding Study Report, in which case such offer shall become the Adverse Impact Amount for that Study Report or (ii) present a written counter offer proposed to be the Adverse Impact Amount for that Study Report and the reasons supporting such offer (“MGM’s Counter Offer”). Upon receipt of MGM’s Counter Offer, the Community will have fifteen (15) days within which to accept or reject it. If the Community

accepts MGM's Counter Offer, such counter offer shall become the Adverse Impact Amount resulting from the Study Report. If the Community rejects MGM's Counter Offer, the Parties shall follow the dispute procedure set forth in Section 14 below.

9. Payment of Adverse Impact Amounts. (a) Priority of Reimbursement Obligations. Following issuance of the 1<sup>st</sup> Year Study Report, the Parties hereby agree that the Community shall look exclusively to the Annual Payments for satisfaction of the first One Hundred Thirty Seven Thousand, Five Hundred and 00/100 Dollars (\$137,500.00) of the Adverse Impact Amount arising out of the 1<sup>st</sup> Year Study Report. Following issuance of the 5<sup>th</sup> Year Study Report, the Parties hereby agree that the Community shall look exclusively to the Annual Payments for satisfaction of the first Six Hundred Eighty-Seven Thousand Five Hundred and 00/100 Dollars (\$687,500.00) of the Adverse Impact Amount arising out of the 5<sup>th</sup> Year Study Report. The Parties further agree that MGM shall provide reasonable assistance, cooperation and support for the Community if it seeks state funding established by M.G.L. c. 23K, §§ 58-64, as applicable (the "State Mitigation Funds"), for any adverse impacts of the Project. To the extent that the Community receives funding for traffic/transportation mitigation from one of the State Mitigation Funds after MGM has paid any Adverse Impact Amount beyond the Annual Payment, and the basis for said mitigation funding is identical to the identified impact(s) in the 1<sup>st</sup> or 5<sup>th</sup> Year Study Reports, MGM shall be entitled to a credit toward any future Adverse Impact Amount payment obligations in excess of its Annual Payment obligation.

(b) Payment of Adverse Impact Amount. MGM shall pay the unfunded Adverse Impact Amount, if any, in excess of the Annual Payment and any funding the Community has received from the State Mitigation Funds and/or any other mitigation funding, within thirty (30) days of the determination of said amount pursuant to Section 8 above and, to the extent that such amount is deemed to be an annual obligation, shall continue to make such payment annually thereafter until said unfunded Adverse Impact Amount has been paid in full or until the end of the Term, whichever occurs first. The Parties further acknowledge that if the Adverse Impact Amount from a Study Report is determined to be less than the Annual Payment plus any funding the Community has received from the State Mitigation Funds, MGM shall have no further monetary obligations to the Community beyond the Annual Payments during the period up to the completion of the next Study Report and determination of an Adverse Impact Amount from that next Study Report.

10. Assignment. This Agreement may not be assigned or transferred by either Party without the prior written consent of the other Party; provided, however, with timely written notice to the Community: (i) MGM may assign this Agreement to an acquirer of all, or substantially all, of its assets or equity interests, provided that such acquirer is deemed suitable to operate the Project by the Commission and MGM shall remain responsible for, and shall

remain capable of performing, the obligations hereunder in the event that such acquirer shall neglect, fail or refuse to perform in accordance with this Agreement; and (ii) MGM may assign this Agreement to any affiliate so long as such assignment does not relieve MGM of any obligation hereunder and provided MGM shall remain capable of performing said obligations. In the event of any assignment or transfer, the Community may require MGM and/or such assignee or transferee to provide a sufficient performance guarantee to ensure compliance with the obligations hereunder. MGM recognizes and agrees that, in the event of the filing of a voluntary or involuntary bankruptcy petition involving MGM or if the Commission exercises its authority under Section 22 of the Gaming Act to protect the interests of the Commonwealth, the Community may reopen this Agreement and/or petition the Commission to require MGM or an assignee, transferee or successor of the Gaming License to execute a new surrounding community agreement in accordance with the Gaming Act and the Surrounding Community Regulation.

11. 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. The termination of this Agreement shall not relieve MGM of the obligation to reimburse the Community for any consultant or legal fees incurred prior thereto or for any other payment obligations that have arisen, or have been deemed to have arisen, prior thereto.

12. Entire and Final 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.

13. 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.

14. Remedies. In the event that either of the Parties seeks the enforcement of the terms of this Agreement or seeks damages for a breach of any obligations hereunder, it is specifically understood and agreed that any and all such claims shall be submitted to final and binding arbitration to take place in Hampden County, Massachusetts, pursuant to the

applicable rules of the American Arbitration Association, and that the prevailing Party shall recover its costs and reasonable attorney's fees incurred in such arbitration proceeding. Notwithstanding, the Parties shall have the right to commence litigation or other legal actions or proceedings with respect to any claims solely relating to enforcement of the dispute resolution provisions of this Agreement, or to enforce or vacate a decision and/or award arising from an arbitration under this Section, in either case to be held in a court of competent jurisdiction located within Hampden County, Massachusetts. The authority of the arbitrator selected herein shall be restricted to interpretation and reasonable application of the provisions of this Agreement.

15. 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.

16. 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.

17. 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.

18. Reopener.

(a) Nothing contained herein shall be construed as a waiver of the Community's right to reopen this Agreement under 205 CMR 127.02.

(b) The Parties agree that "a significant and material adverse impact," for purposes of 205 CMR 127.02(3), shall include but not be limited to circumstances under which MGM or its designee, transferee, or assignee modify or expand the scope of construction or operation of the Project, or expand or increase the facilities and/or amenities contemplated by the Project.

(c) This Agreement may be reopened for further negotiation at the end of the Term, at the request of either Party, if the Gaming License is renewed.

19. Notices. Any notice required hereunder shall be made in writing and delivered by hand delivery or via certified mail, return receipt requested. Notice shall be deemed given on the date delivered:

If to the Community:

Select Board  
Town of Longmeadow  
Town Hall  
20 Williams Street  
Longmeadow, MA 01106

*with courtesy copies to:*

Town Manager  
Town of Longmeadow  
Town Hall  
20 Williams Street  
Longmeadow, MA 01106

Michael C. Lehane, Esquire and Brandon H. Moss, Esquire  
Murphy, Hesse, Toomey & Lehane, LLP  
300 Crown Colony Drive, Suite 410  
Quincy, MA 02169

If to MGM:

Blue Tarp reDevelopment, LLC d/b/a MGM Springfield  
1441 Main Street, Suite 1137  
Springfield, MA 01103

*with a courtesy copy to:*

Frank P. Fitzgerald, Esquire and Seth N. Stratton, Esquire  
Fitzgerald Attorneys at Law  
46 Center Square  
East Longmeadow, MA 01028

20. Waiver. The failure of either Party to enforce any provision of this Agreement will not constitute a waiver of future enforcement of that or any other provision.

21. Binding Effect. This Agreement shall be binding on the Parties and their respective assigns, successors (including the holder of the Gaming License for the Project), representatives, agents, designees, officials, principals, managers, servants, and employees.

22. 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:**

THE TOWN OF LONGMEADOW

BLUE TARP reDEVELOPMENT, LLC

By: \_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

Its: \_\_\_\_\_

Dated: \_\_\_\_\_

Dated: \_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

Dated: \_\_\_\_\_

## EXHIBIT "A"

### **A. Study Scope**

The objective of the Initial Study, 1<sup>st</sup> Year Look Back Study, and 5<sup>th</sup> Year Look Back Study (the "Studies") shall be to assess the dollar value of any significant and adverse impact of the Project on the Community on the basis of traffic/transportation infrastructure. In determining such assessment the Studies shall consider the following:

#### Potential Areas of Study

- a. Traffic and Traffic Improvement Needs Related to Travel to and from the Project Site, including but not limited to the following roadways:
  - i. I-91 (including traffic diversion from I-91 to Route 5 and congestion/backup on the Community's roadways as a result of the "Longmeadow Curve");
  - ii. Longmeadow Street at Converse Street;
  - iii. Longmeadow Street at Forest Glen Road;
  - iv. Longmeadow Street at Bliss Road;
  - v. Longmeadow Street at Englewood Road;
  - vi. Converse Street at Laurel Street;
  - vii. Converse Street at Dwight Road;
  - viii. Williams Street at Dwight Road/Maple Street;
  - ix. Longmeadow Street to South (seven (7) signals);
  - x. Shaker Road at Williams Street;
  - xi. Shaker Road at Maple Road; and
  - xii. Additional monitoring locations as reasonably requested by the Community.

### **B. Content of Study Reports**

Consistent with the Study Scope set forth above, the 1<sup>st</sup> Year Study Report and 5<sup>th</sup> Year Study Report shall include, without limitation, the following:

1. Any significant and adverse impacts on the Community attributed to the Project and the estimated costs to the Community to mitigate such impact ("Estimated Mitigation Costs"); and
2. A determination of whether any Estimated Mitigation Costs are one-time costs or recurring costs and, if recurring costs, whether they are expected to increase or decrease over the Term.