

COUNTY COUNCIL OF PRINCE GEORGE'S COUNTY, MARYLAND

2014 Legislative Session

Resolution No. CR-68-2014
Proposed by The Chairman (by request – County Executive)
Introduced by Council Members Franklin, Toles, Davis, Patterson
Co-Sponsors _____
Date of Introduction June 30, 2014

RESOLUTION

A RESOLUTION concerning

Community Benefit Agreement

For the purpose of approving the Community Benefit Agreement between Prince George's County and MGM National Harbor, LLC.

WHEREAS, Section 10-309 of the County Code, as enacted by CB-7-2014, requires a development agreement, negotiated between a video lottery operator and the County Executive, to contain provisions regarding County based business participation, County based minority business participation, and the employment of County residents during the construction and operation of a video lottery facility; and

WHEREAS, Section 10-309 of the County Code, as enacted by CB-7-2014, requires a development agreement, negotiated between a video lottery operator and the County Executive, to contain provisions regarding a Video Lottery Facility Compliance and Reporting Plan; and

WHEREAS, Section 10-309 of the County Code, as enacted by CB-7-2014, requires approval of the development agreement, negotiated between a video lottery operator and the County Executive, by Resolution of the County Council prior to the issuance of use and occupancy permits for the video lottery facility; and

WHEREAS, the Community Benefit Agreement shall satisfy the development agreement requirements pursuant to Section 10-309 of the County Code, as enacted by CB-7-2014.

NOW, THEREFORE, BE IT RESOLVED by the County Council of Prince George's County, Maryland, that the Community Benefit Agreement as negotiated between Prince George's County, Maryland and MGM National Harbor, LLC, attached hereto as "Attachment A", be and the same is hereby approved.

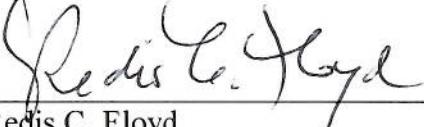
Adopted this 23rd day of July, 2014.

COUNTY COUNCIL OF PRINCE
GEORGE'S COUNTY, MARYLAND

BY:


Mel Franklin
Chairman

ATTEST:


Redis C. Floyd
Clerk of the Council

APPROVED:

DATE: 8-1-2014

BY: 
Rushern L. Baker, III
County Executive

COMMUNITY BENEFIT AGREEMENT

BETWEEN

PRINCE GEORGE'S COUNTY, MARYLAND

AND

MGM NATIONAL HARBOR, LLC

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COMMUNITY BENEFIT AGREEMENT

This Community Benefit Agreement (“Agreement”) is dated as of June 9, 2014 (the “Effective Date”) by and between Prince George’s County, Maryland, a body corporate and politic (the “County”), acting through its duly authorized County Chief Executive Officer, having its principal place of business at County Administration Building, 14741 Governor Oden Bowie Drive, Upper Marlboro, Maryland, and MGM National Harbor, LLC (“MGM”), having its principal place of business at 120 Waterfront Street, Suite 500, Oxon Hill, Maryland. Capitalized terms used and defined elsewhere in this Agreement are defined in Article I, unless specified elsewhere in the Agreement. Each of the County and MGM are referred to herein as a “Party” and collectively as the “Parties”.

RECITALS

WHEREAS, Article XIX of the Maryland Constitution and the 2012 County referendum, resulting in amendments to Title 9 of the State Government Article of the Annotated Code of Maryland, specifically Section 1A-36(h)(1)(vi) (the “Act”), provide for the establishment and licensing of a gaming facility in Prince George’s County, Maryland; and

WHEREAS, on February 6, 2013, the Maryland Video Lottery Facility Location Commission (the “VLFLC”) formally solicited proposals from applicants seeking award of a video lottery operation license for Prince George’s County (“Video Operation License”), as detailed in the VLFLC’s Request For Proposals #2013-0101 (the “RFP”); and

WHEREAS, following extensive review and consideration of timely filed and accepted responses to the RFP, including MGM’s proposal submitted on May 10, 2013 (the “Proposal”), the VLFLC awarded the Video Operation License to MGM; and

WHEREAS, Section 9-1A-10(a)(3) of the Act allows the county in which a video lottery facility will be located to impose local business, local minority business participation and local employment requirements to the extent authorized by local law and permitted by the United States Constitution; and

WHEREAS, the County and MGM desire to commit herein to a comprehensive plan to carry out the agreed upon provisions to benefit County residents, as well as local and minority business enterprises;

NOW, THEREFORE, for and in consideration of the promises herein exchanged and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

ARTICLE I

DEFINITIONS

The terms defined in this Article I shall have the meanings indicated for purposes of this Agreement. Definitions that are expressed by reference to the singular or plural number of a term shall also apply to the other number of that term. Capitalized terms used primarily in a single Article or Section of this Agreement are defined in that Article or Section. The definitions for County Based Business Participation, County Based Minority Business Participation, Total Purchase Value and Video Lottery Facility Compliance and Reporting Plan have been included solely for reference purposes to Sections 10-308 and 10-309 of Subtitle 10 of the County Code and are not otherwise used in this Agreement.

- 1.1 **“Act”** shall have the meaning ascribed to that term in the Recitals.
- 1.2 **“Additional Charitable Contributions”** shall have the meaning ascribed to that term in Section 6.4.
- 1.3 **“Agreement”** means this Community Benefit Agreement including all exhibits and schedules attached hereto.
- 1.4 **“Best Efforts”** means the efforts that a reasonable commercial enterprise in the business of developing large-scale, mixed-use real estate projects in urban and suburban locations that it intends to own and operate on a long-term basis would use, consistent with good faith business judgment, in order to achieve completion of the applicable project in a timely manner and in accordance with approved budgets.
- 1.5 **“Biddable Goods and Services”** means the purchase of supplies and materials or work involving an expenditure in excess of Twenty-Five Thousand Dollars (\$25,000) following the Public Opening in connection with the Project, except that the following shall be expressly permitted to be excluded: (i) expenditures for the services of individuals possessing a high degree of professional skill where the ability or fitness of the individual plays an important part; (ii) expenditures for the maintenance or servicing of, or provision of repair parts for, equipment that are paid to the manufacturer or authorized service agent of that equipment where the provision of parts, maintenance, or servicing can best be performed by the manufacturer or authorized service agent; (iii) expenditures for the use, purchase or delivery of data processing systems and equipment, networking systems and equipment, telecommunications systems and equipment, and any security related systems and equipment, and any related services; (iv) contracts for the purchase of utilities; (v) any funds expended in an emergency; (vi) expenditures for such goods or services relating to (a) gaming equipment, gaming software, gaming IT infrastructure and such other related items and (b) structural steel, escalators, elevators and such other related items; and (vii) expenditures for goods and services that in cases in which, in MGM’s reasonable commercial judgment, the number of MBEs, CMBEs or LBEs (as applicable) are too few to enable MGM to

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purchase, or that in MGM's reasonable commercial judgment the MBEs, CMBEs or LBEs (as applicable) are not capable of offering or supplying, such goods and services at competitive prices in the quantity and quality, at the date and time, required by MGM.

- 1.6 **“Business Day”** means all weekdays except Saturday and Sunday and those that are official legal holidays of the County, State or the United States government. Unless specifically stated as “Business Days,” a reference to “days” means calendar days.
- 1.7 **“Business Enterprise Utilization and Employment Goals”** means the business enterprise utilization and employment goals subject to MGM's use of Best Efforts set forth in Section 2.2.
- 1.8 **“CBB”** means “County Based Business,” which is a business whose principal place of operation, as determined by the Prince George's County Office of Central Services, is located within the County (including, without limitation, any CMBE).
- 1.9 **“CLB”** shall mean “County Located Business,” which, subject to verification by the Prince George's County Office of Central Services, is a business that:
 - (a) has a County Office or pays applicable County property taxes; and
 - (b) either:
 1. has at least five (5) FTE employees in the County Office for the full duration of the County Office's lease; or
 2. has at least three (3) FTE employees in the County Office, with at least two (2) of the FTE employees being County Residents, for the minimum required duration of the County Office's lease (as specified in the definition for County Office); or
 3. has at least three (3) FTE employees in the County Office, if such business has an ownership interest in the building.
- 1.10 **“CMBE”** means “County Based Minority Business Enterprise,” which is an MBE whose principal place of operation, as determined by the Prince George's County Office of Central Services, is located within the County.
- 1.11 **“Community Foundation”** shall have the meaning ascribed to that term in Section 7.4.
- 1.12 **“Compliance Manager”** is the individual who will be appointed pursuant to the terms of this Agreement as more fully described in Section 5.4.
- 1.13 **“Compliance Plan”** shall have the meaning ascribed to that term in Section 6.1.

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1.14 **“Contractors”** means the General Contractor and all Subcontractors.

1.15 **“County Based Business Participation”** means the Business Enterprise Utilization and Employment Goals applicable to CBBs in Sections 2.2(a) and (c).

1.16 **“County Based Minority Business Participation”** means the Business Enterprise Utilization and Employment Goals applicable to CMBEs in Sections 2.2(a) and (c).

1.17 **“County Code”** means the Prince George’s County Code of Ordinances as currently enacted and as the same may be amended, supplemented or otherwise modified from time to time.

1.18 **“County Office”** means a place of operation of a business physically located within the County that:

- (a) has a lease in which it is obligated for at least three (3) years; or
- (b) has a lease in which it is obligated for at least one (1) year and the place of operation is at least three thousand (3,000) square feet in size; or
- (c) has an ownership interest in such place of operation.

1.19 **“County Residents”** shall have the same meaning as defined under Section 10A-101(a)(14.1) of the County Code.

1.20 **“Default”** shall have the meaning ascribed to that term in Section 6.4.

1.21 **“Dispute”** shall have the meaning ascribed to that term in Section 9.10.

1.22 **“General Contractor” or “GC”** means the entity or individual contracting directly with MGM to assume all or substantially all responsibility to oversee and complete the construction of the Project through the provision of overall management of goods and/or services necessary to complete such construction and the overall management of the entities, businesses and persons engaged in such construction, including but not limited to any and all Subcontractors.

1.23 **“GOMA”** means the Maryland Governor’s Office of Minority Affairs.

1.24 **“Joint Venture”** is a business entity engaged in the joint undertaking of a particular transaction for mutual profit or an association of persons or companies jointly undertaking some commercial enterprise, in which all contribute assets and share risks. A joint venture requires a community of interest in the performance of the subject matter, a right to direct and govern the policy in connection therewith, and duty, which may be altered by agreement, to share both in profit and losses.

1.25 **“LBE”** means **“Local Business Enterprise,”** which is a CBB or CLB (including, without limitation, any CMBE).

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1.26 **“MBE”** means “Minority Business Enterprise,” which is any entity or business that is at least fifty-one percent (51%) owned and controlled by one (1) or more Minority Individuals (or, in the case of any publicly-owned corporation, at least fifty-one percent (51%) of the stock of which is owned by one (1) or more Minority Individuals) and is managed or operated on a daily basis by one (1) of such individuals, and either:

(a) is certified by one of the following authorized third party organizations: (i) MDOT, (ii) Maryland/District of Columbia Minority Supplier Development Council, (iii) Washington Metropolitan Area Transit Authority, (iv) Business Enterprise National Council, or (v) Women Business Enterprise National Council; or

(b) is certified by the Prince George’s County Office of Central Services as a Minority Business Enterprise.

1.27 **“MDOT”** means the Maryland Department of Transportation.

1.28 **“Minority Individuals”** means only individuals who are members of the following groups:

(a) African Americans (Black Americans), which includes persons having origins in any of the Black racial groups of Africa;

(b) Asian-Pacific Americans, which includes persons whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the U.S. Trust Territories of the Pacific Islands (Republic of Palau), the Commonwealth of the Northern Marianas Islands, Macao, Fiji, Tonga, Kiribati, Tuvalu, Nauru, Federated States of Micronesia, or Hong Kong;

(c) Subcontinent Asian Americans, which includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal or Sri Lanka;

(d) Hispanic Americans, which includes persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;

(e) Native Americans, which includes persons who are American Indians, or Native Hawaiians;

(f) Eskimos and Aleuts;

(g) Females, regardless of race, ethnicity or origin;

(h) Veterans and Service Disabled Veterans; and

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(i) Any individual meeting the definition for “economically disadvantaged individual”, “socially disadvantaged individual”, “socially and economically disadvantaged” or “minority group” as set forth in Maryland State Finance And Procurement Code Ann. § 14-301.

1.29 **“Oversight Committee”** is the entity to be established pursuant to this Agreement as described in Section 5.1.

1.30 **“Project”** means the resort facility to be constructed and operated by MGM, which is intended to include a casino, a hotel, restaurants, specialty retail outlets and related amenities, to be located on a portion of the “Beltway Parcel” of the National Harbor development, as more fully described in the Proposal.

1.31 **“Proposal”** shall have the meaning ascribed to that term in the Recitals.

1.32 **“Public Opening”** means the date on which the Project is fully operational and open to members of the general public.

1.33 **“Quarterly Compliance Report”** shall have the meaning ascribed to that term in Section 6.1.

1.34 **“Recommended Corrective Action”** shall have the meaning ascribed to that term in Section 6.3.

1.35 **“RFP”** shall have the meaning ascribed to that term in the Recitals.

1.36 **“State”** means the State of Maryland.

1.37 **“Subcontractor”** means any business, person or entity including material-men, suppliers or vendors, having a direct or indirect contract with MGM or a Contractor to provide goods or perform services as part of the Project.

1.38 **“Term”** shall have the meaning ascribed to that term in Section 9.11.

1.39 **“Total Construction Purchase Value”** means the total dollar value of Project costs incurred by MGM prior to the Public Opening in connection with the construction, design and related procurement during construction of the Project including the procurement of any related equipment, except that the following shall be expressly permitted to be excluded: (i) expenditures for the use, purchase or delivery of data processing systems and equipment, networking systems and equipment, telecommunications systems and equipment, and any security related systems and equipment, and any related services; (ii) expenditures for the purchase of furniture and fixtures; (iii) contracts for the purchase of utilities; (iv) any funds expended in an emergency; (v) expenditures for such goods or services relating to (a) gaming equipment, gaming software, gaming IT infrastructure and such other related items and (b) structural steel, escalators, elevators and such other related items; and (vi) expenditures for goods and services that in cases in which, in MGM’s reasonable commercial judgment, the number of MBEs,

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CMBEs or LBEs (as applicable) are too few to enable MGM to purchase, or that in MGM's reasonable commercial judgment the MBEs, CMBEs or LBEs (as applicable) are not capable of offering or supplying, such goods and services at competitive prices in the quantity and quality, at the date and time, required by MGM.

- 1.40 **"Total Operational Purchase Value"** means the total cost of MGM's annual Biddable Goods and Services.
- 1.41 **"Total Purchase Value"** means either Total Construction Purchase Value or Total Operational Purchase Value, as applicable.
- 1.42 **"Video Lottery Facility Compliance and Reporting Plan"** means the Compliance Plan.
- 1.43 **"Video Operation License"** shall have the meaning ascribed to that term in the Recitals.
- 1.44 **"VLFLC"** shall have the meaning ascribed to that term in the Recitals.

ARTICLE II

BUSINESSES ENTERPRISE UTILIZATION AND EMPLOYMENT GOALS

- 2.1 **Intent and Objective.** The Parties acknowledge that an economic development goal of the Project is to capitalize on the creation of opportunities for MBE, CMBE, LBE and County Residents regarding both construction- and operations-related business opportunities and employment related to the Project.
- 2.2 **Agreement.** In furtherance of the stated intent and objective set forth in this Article, MGM agrees as follows:
 - (a) **Construction-related Business Opportunities.** MGM shall use its Best Efforts to cause at least (i) thirty percent (30%) of the Total Construction Purchase Value to be incurred pursuant to contracts or arrangements made with MBEs; (ii) twelve percent (12%) of the Total Construction Purchase Value to be incurred pursuant to contracts or arrangements made with CMBEs; and (iii) sixteen percent (16%) of the Total Construction Purchase Value to be incurred pursuant to contracts or arrangements made with LBEs (and MGM shall use its Best Efforts to ensure that at least one-half of such LBE amount be from CBBs). For the avoidance of doubt, any CMBE percentage shall be deemed to count toward the overall goal for MBEs. MGM acknowledges its aspiration to achieve (i) thirty-five percent (35%) for MBEs, (ii) fifteen percent (15%) for CMBEs, and (iii) twenty percent (20%) for LBEs. In determining the Total Construction Purchase Value to be incurred pursuant to contracts or arrangements made with MBEs/CMBEs/LBEs, the Parties will use expenditures under contracts or

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arrangements made between MGM and its Contractors and between the General Contractor and its Subcontractors but only to the extent that such expenditures under contracts and arrangements represent expenditures for work performed on the Project by the particular Contractor or goods provided to the Project directly by the Contractor. The intent of such determination is to eliminate contracts or arrangements which represent a “pass-through” situation in which the work performed or goods provided by a Contractor are, in fact, performed or provided by other Contractors who may not qualify as MBEs/CMBEs/LBEs.

- (b) Construction-related Employment. MGM shall use its Best Efforts to cause at least twenty percent (20%) of the total number of hours logged prior to the Public Opening by individuals performing services in connection with the construction of the Project (including administration, maintenance and any other activity that may not contribute to the physical construction of the Project) to be County Residents. MGM acknowledges its aspiration to have thirty percent (30%) of such hours performed by County Residents.
- (c) Operations-related Business Opportunities. MGM shall use its Best Efforts to procure at least twenty percent (20%) of the Total Operational Purchase Value from CMBEs (the “Procurement Goal”); provided, however, that if such Best Efforts do not result in achieving the Procurement Goal (a “Shortfall”), then MGM shall use its Best Efforts to procure the dollar amount of the Shortfall from LBEs (and MGM shall use its Best Efforts to ensure that at least one-half of such LBE amount be from CBBs). MGM acknowledges its aspiration to procure at least thirty percent (30%) of the Total Operational Purchase Value from CMBEs and LBEs.
- (d) Operations-related Employment. Out of all the individuals employed by MGM at the Project following the Public Opening, MGM shall use its Best Efforts to cause at least the following percentages to be County Residents and/or Veterans (including, without limitation, Service Disabled Veterans): (i) forty percent (40%) during the first and second years following the date of Public Opening; (ii) forty-five percent (45%) during the third and fourth years following the date of the Public Opening; and (iii) fifty percent (50%) during the fifth year following the date of the Public Opening and for each year thereafter remaining in the Term. MGM acknowledges its aspiration that at least fifty percent (50%) of all individuals employed by MGM at the Project following the Public Opening will be County Residents.

ARTICLE III

BEST EFFORTS

3.1 General.

- (a) For the avoidance of doubt, the Parties acknowledge and agree that any use of the term “Best Efforts” in this Agreement shall only be defined, applied and interpreted as expressly set forth above in Section 1.4 (and, but only with respect to the Business Enterprise Utilization and Employment Goals, Section 3.1(b)), and it is the express intent of the Parties to supersede any other definition, understanding, application or interpretation (including, without limitation, any understanding or interpretation derived from common law).
- (b) In determining whether MGM has satisfied its Best Efforts obligations with respect to the Business Enterprise Utilization and Employment Goals, the Oversight Committee and/or the Compliance Manager (as applicable) may, in addition to any other relevant factors, consider and take into account whether and to the extent that MGM has performed any of the items set forth in Sections 3.2, 3.3 and 3.4 (as may be applicable either to construction or operations, or both, as the case may be); provided that (x) MGM’s performance or failure to perform any single or particular group of items shall not be conclusive, (y) neither the Oversight Committee nor the Compliance Manager shall be obligated to give equal weight to all items and (z) any determination shall be made in all respects in accordance with and subject to Sections 1.4 and 3.1(a).

3.2 Employment Outreach and Recruitment Efforts.

- (a) Establish procedures to assure that all contracts awarded by MGM and its Contractors for Project construction exercise Best Efforts to achieve the County Resident hiring goals of the Agreement.
- (b) Disseminate information on construction and operations employment needs via the MGM website and advertising through other media, and use of community organizations to recruit local and minority individuals.
- (c) Implement an assertive recruiting plan to create awareness and foster interest in the jobs it provides.
- (d) Work with the following, non-exhaustive, list of entities to target students, the unemployed and the underemployed: Prince George’s County Community College; Bowie State University; University of Maryland College Park; University of Maryland Eastern Shore; Prince George’s County Economic Development Corporation Workforce Development; The Training Source, Inc.; Melwood; and/or Blind Industries and Services of Maryland.

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- (e) Provide a “National Harbor First Choice” recruitment program in partnership with the Prince George’s County Economic Development Corporation Workforce Services Division and other partners that will provide County Residents the first opportunity to learn about and apply for positions.
- (f) Host County-based job fairs and casino career information sessions.
- (g) Provide for online job application processes for easy accessibility.
- (h) After the Public Opening, provide MGM’s employees with copies of an employee handbook containing EEO and LBE/MBE/CMBE policies.
- (i) Maintain regular communications with established and reputable recruiting sources including, but not limited to:
 1. continued establishment of contacts in the County’s community;
 2. utilization of the County workforce development network and other education partners;
 3. active recruitment through the County’s community organizations; and
 4. skill development assistance for people with employment barriers.

3.3 Training and Career Development.

- (a) Provide career development programs including on-the-job training and apprenticeships/internships.
- (b) Conduct training for all businesses that are selected to do work on the Project, which will provide direction and instruction on the specific operations of the Project, such as what contract documents are required, what presentation of licenses are required, what insurance is required, and how to submit payrolls and where, etc.

3.4 Construction and Operations Contracting.

- (a) Access the GOMA and MDOT databases.
- (b) Access MBEs by utilizing the County’s Minority Business Enterprise/Disadvantaged Business Enterprise Database (MBE/DBE Vendor Database), MDOT’s database and MGM’s registered database.
- (c) Access local MBEs who may be registered with national and other local diversity associations of professionals (e.g. the Maryland/DC Minority Supplier Development Council) and other construction industry

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participants with whom MGM Resorts International has relationships, such as the National Minority Contractors Association.

- (d) Disseminate information on contracting opportunities to local MBE professionals, contractors, subcontractors, suppliers and vendors through MGM Resorts International's websites, MGM's website, general media (including general circulation newspapers such as The Washington Post, etc.), minority-focused media, emails and other standard communication methods of MGM opportunities.
- (e) Invite local MBE professionals, contractors, subcontractors, suppliers and vendors to attend in-person MGM outreach sessions advertised through general and special purpose media defined above.
- (f) Utilize MGM Resorts International's centralized supplier diversity database in order to accomplish the goals set forth in Section 2.2(a).
- (g) Contact and encourage bona fide and qualified MBE professionals, contractors, subcontractors, suppliers and vendors to compete for Project opportunities.
- (h) Independently engage community partners, associations, institutions and other stakeholders to gather their input through a community outreach and information program, and facilitated public meetings.
- (i) Designate a liaison officer or employee to administer MGM's LBE/MBE/CMBE program.
- (j) Provide consideration of LBE/MBE/CMBEs in all "make-or-buy" decisions.
- (k) Arrange solicitations, time for the preparation of bids, quantities, specification, and delivery schedules so as to facilitate the participation of LBE/MBE/CMBEs.
- (l) Maintain records showing (i) procedures adopted, including the establishment of a source list of LBE/MBE/CMBE, (ii) awards to LBE/MBE/CMBE, and (iii) specific efforts to identify and award contracts to LBE/MBE/CMBE.
- (m) Promote the segmentation or unbundling of work and/or the creation of Joint Ventures or other methods of job-sharing so as to maximize the opportunity for CMBE/LBEs to participate in Project work, work with lead contractors and others to facilitate such opportunities and, where commercially practicable, give preference to Joint Ventures or contractors using other bona fide methods of job-sharing with CMBE/LBEs.
- (n) Use LBE/MBE/CMBE bid preferences in the award of contracts.

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- (o) Seek and utilize information regarding past performance with respect to achieving diversity goals when considering the selection of a General Contractor, its Subcontractors or other direct engaged contractors.
- (p) Assist with subcontractor bonding by enlisting alternative programs through the General Contractor.
- (q) Reasonably cooperate with the County in studies relating to general hiring practices and procedures for MBE/CMBE/LBE contractors.

ARTICLE IV

ADDITIONAL AGREEMENTS

- 4.1 **Extended Opportunities.** Notwithstanding the Business Enterprise Utilization and Employment Goals set forth in Article II, MGM agrees that no CMBE, LBE, or MBE proposal shall be discouraged, not accepted or rejected because participation levels have been otherwise met.
- 4.2 **Joint Ventures.** In assessing Joint Ventures, the Oversight Committee shall count CMBE, LBE, and MBE participation in only that portion of the total value of the contract with the Joint Venture equal to the percentage of the CMBE, LBE, and/or MBE interest in the Joint Venture.
- 4.3 **Business Opportunities.** MGM shall work with the County Economic Development Corporation, or another County-designated entity, to develop programs to help identify tenant and franchise opportunities for retail, dining and entertainment for County Residents and LBEs.

ARTICLE V

OVERSIGHT COMMITTEE RESPONSIBILITIES

- 5.1 **Establishment and Operation of the Oversight Committee; Reporting.**
 - (a) To determine reporting requirements and monitor and determine compliance with the Business Enterprise Utilization and Employment Goals as more fully set forth herein, the Parties shall create and establish, within sixty (60) calendar days after mutual execution of this Agreement, a Oversight Committee. The obligations, responsibilities and authority of the Oversight Committee shall be solely as set forth in this Agreement.
 - (b) The Oversight Committee shall consist of five (5) members as follows: (i) two (2) individuals appointed by the County Executive; (ii) two (2) individuals appointed by the County Council; and (iii) one (1) individual appointed by MGM. A majority of the members of the Oversight Committee must be present to constitute a quorum at any meeting thereof. All determinations and decisions of the Oversight Committee shall be

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made at a meeting at which quorum is present and by majority vote. The County Executive shall designate one (1) of the appointees to act as chairman of the Oversight Committee (the “Chairman”). All members of the Oversight Committee, except MGM’s representative, shall be individuals employed by the County. Each representative on the Oversight Committee shall serve until they resign from the Oversight Committee or are replaced by the party they represent. Any vacancies on the Oversight Committee shall be filled by the applicable party with such vacancy (e.g. MGM will fill any vacancy existing for its appointment). For the avoidance of doubt, each party with representatives on the Oversight Committee shall be responsible for any costs or expenses related to their respective representatives. The Oversight Committee shall establish such policies and procedures governing its internal affairs as it may deem necessary and appropriate. Each member of the Oversight Committee shall agree in writing to comply with the provisions of Sections 5.6 and 6.6.

- (c) Prior to the Public Opening, the Oversight Committee shall meet regularly at least once each calendar quarter with the Compliance Manager to discuss matters brought before it by the Compliance Manager and such other matters as it may deem appropriate. Following the Public Opening, the Oversight Committee shall meet regularly at least once each calendar year. Special meetings of the Oversight Committee may be held more frequently and called at the direction of any member of the Oversight Committee, upon not less than fifteen (15) Business Days written notice to the other committee members. Any meeting of the Oversight Committee shall be held in the County at such place and time as determined by majority vote, except for special meetings which shall be held in the County at such place and time as set forth in the written meeting notice.

5.2 Duties and Responsibilities of the Oversight Committee. The Oversight Committee shall:

- (a) Under such circumstances as it deems appropriate, grant waivers, exemptions or time extensions of or to the Business Enterprise Utilization and Employment Goals.
- (b) Waive, rescind and/or decrease, as necessary, the goals and policies and procedures concerning the Business Enterprise Utilization and Employment Goals to assure the success of the Project and benefit to the County.
- (c) Review noncompliance issues in collaboration with the Compliance Manager and MGM concerning Business Enterprise Utilization and Employment Goals, and develop recommended methods to correct compliance deficiencies.

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- (d) Review and approve any Recommended Corrective Actions.
- (e) Determine whether Additional Charitable Contributions should be made by MGM as set forth in Section 6.4.
- (f) Select the individual to be retained by the County to serve as Compliance Manager, subject to consultation with MGM at least fifteen (15) Business Days prior to any determination made with respect thereto.
- (g) Subject to Section 5.6, prepare and furnish to the County Council written reports summarizing the Oversight Committee's activities and MGM's compliance with the Compliance Plan as follows: (x) within six (6) months after the first building permit is issued to MGM, on a semi-annual basis, and (y) commencing on July 1, 2017, on an annual basis; provided that such summary shall exclude MGM's proprietary information.

5.3 **Duties and Responsibilities of the Compliance Manager.** The Compliance Manager shall:

- (a) Attend Oversight Committee meetings, develop agendas, summarize Project activity reports, and obtain and submit such other reports and documents as may be requested by the Oversight Committee.
- (b) Work with the Oversight Committee to review the Compliance Plan and, if deficient, make recommendations to MGM for improving the Compliance Plan such that it can be approved by the Oversight Committee.
- (c) Develop monitoring reports with MGM for both business participation and hiring.
- (d) Monitor compliance with the Compliance Plan to include reviewing the Quarterly Compliance Report and inspection of records to the extent provided in Section 6.2.
- (e) Develop guidelines and protocols in conjunction with MGM necessary to educate Subcontractors, vendors and suppliers on what constitutes Best Efforts for MBE and CMBE participation, hiring, accurate completion of reports, scheduled submissions, financing and bonding opportunities, and monitoring.
- (f) Establish and maintain files in support of this Agreement to include but not be limited to copies of all Compliance Plans.
- (g) Maintain a database of MBE, CMBE and LBE firms interested in participating in the Project in order to facilitate MGM's efforts to achieve the Business Enterprise Utilization and Employment Goals.

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- (h) Conduct diligent searches for MBE, CMBE and LBE participants in order to facilitate MGM's efforts to achieve the Business Enterprise Utilization and Employment Goals.
- (i) Provide assistance to Subcontractors to achieve the Business Enterprise Utilization and Employment Goals.
- (j) Provide information to MBE, CMBE and LBE potential bidders on available assistance and resources within the County, the State, the Federal government and private sector regarding financing (working capital) and bonding.

5.4 **Compliance Manager.** The County shall retain and employ under a personal services contract the individual selected by the Oversight Committee (pursuant to Section 5.2(f)) to serve as Compliance Manager having the duties and responsibilities provided in this Agreement. The County shall consult with MGM regarding the Compliance Manager's salary at least fifteen (15) Business Days prior to any determination with respect thereto; provided that, in no event, shall the Compliance Manager's salary exceed the equivalent maximum amount paid to any County employee at Grade 27. MGM shall reimburse the County for: (i) one hundred percent (100%) of such salary commencing on the Compliance Manager's commencement of employment and continuing thereafter until the Public Opening; and (ii) fifty percent (50%) of such salary commencing on the Public Opening and continuing thereafter for the remainder of the Term (unless the Parties mutually agree such position is no longer necessary). The County shall invoice MGM the applicable pro rata portion of such amount on a quarterly basis. The Parties agree that the Compliance Manager shall not be an employee or independent contractor of MGM. The County shall cause the individual selected as the Compliance Manager, as a condition of employment, to sign a document: (i) acknowledging and agreeing that, notwithstanding any reimbursements made by MGM to the County, the County is the sole employer of the Compliance Manager and is solely responsible for any and all obligations arising out of such employment (including, without limitation, salary, work conditions and any and all benefits, taxes, fees and claims related thereto); (ii) waiving any and all claims against MGM arising out of or related to such employment; and (iii) agreeing to comply with the provisions of Sections 5.6 and 6.6 and acknowledging that the Chairman as the sole spokesperson for the Oversight Committee and the Compliance Manager. The County shall provide MGM a signed copy of such document prior to the Compliance Manager's commencement of employment. For the avoidance of doubt, the terms of this Agreement applicable to the Compliance Manager shall apply to the initial Compliance Manager and any replacement thereof.

5.5 **No Interference.** The Parties agree that the responsibilities of the Compliance Manager and the Oversight Committee, as provided in this Agreement, shall under no circumstances be construed as undertaking supervisory or managerial control of the Project or of the means and methods employed by MGM in

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connection with the Project (whether the development, construction or operation thereof) or the Contractors to discharge their responsibilities under their respective agreements. Nothing contained in this Agreement shall be construed to prohibit, limit or otherwise restrict MGM or its employees, agents, contractors or representatives from performing work on the Project (whether in connection with the development, construction or operation thereof), or any portion thereof, at any time.

5.6 **Reports.** The Chairman shall be the sole spokesperson for the Oversight Committee and the Compliance Manager for responding to any inquiries from the County Council or any third party concerning the activities of the Oversight Committee and the Compliance Manager. Reasonably prior to the date of the initial submission, the Oversight Committee and MGM shall mutually agree on the form of report to be submitted pursuant to Section 5.2(g). Any analysis, findings or conclusions contained in any such report (other than raw data) relating to MGM's use of Best Efforts to achieve the Business Enterprise Utilization and Employment Goals shall be clearly articulated and supported by objective, verifiable evidence and, unless a Default is determined pursuant to and in accordance with Section 6.4, MGM shall be deemed to be in compliance with its Best Efforts obligations and the Business Enterprise Utilization and Employment Goals. The Chairman shall consult with MGM prior to disclosing any such report. For the avoidance of doubt, Article VI sets forth the monitoring and compliance rules and procedures of the Oversight Committee and the Compliance Manager.

ARTICLE VI

MONITORING AND COMPLIANCE

6.1 **Compliance Plan.** Within forty-five (45) days after receiving notice of the formation of the Oversight Committee, MGM shall submit to the Compliance Manager and the Oversight Committee a written plan that reasonably demonstrates how MGM intends to comply with its obligations with respect to the Business Enterprise Utilization and Employment Goals under Sections 2.2(a) and 2.2(b) (the "Proposed Compliance Plan"). The Proposed Compliance Plan shall also establish the form, items and detail to be included in a quarterly compliance report (the "Quarterly Compliance Report") to be submitted to the Compliance Manager. Within thirty (30) days of its receipt, the Oversight Committee shall confer with the Compliance Manager on the Compliance Manager's recommendations concerning the Proposed Compliance Plan and either approve the Proposed Compliance Plan or provide to MGM its written objections to the Proposed Compliance Plan. Within fifteen (15) days of MGM's receipt of any such written objections, MGM shall revise the Proposed Compliance Plan in a manner that reasonably satisfies such objections. Upon the Oversight Committee's approval of the Proposed Compliance Plan or a determination of the final provisions of the Proposed Compliance Plan in accordance with the Dispute resolution procedures under Section 9.10, the Proposed Compliance Plan shall be

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deemed the final compliance plan for purposes of this Agreement (the “Compliance Plan”); provided that the Parties shall repeat the foregoing steps in order to update the Compliance Plan with respect to the Business Enterprise Utilization and Employment Goals under Sections 2.2(c) and 2.2(d) with the due date for submitting such proposed update by MGM being July 1, 2015. No later than the fifteenth (15th) day of the first month in each calendar quarter, commencing the calendar quarter immediately following the calendar quarter during which the Proposed Compliance Plan is deemed the final Compliance Plan, MGM shall submit the Quarterly Compliance Report to the Compliance Manager. The Quarterly Compliance Report shall describe in detail MGM’s efforts to comply with the Compliance Plan, including as described in Section 6.2 and, if applicable, a commercially reasonable explanation for expenditures actually excluded under Section 1.5(vii) and/or 1.39(vi) (and in excess of Twenty-Five Thousand Dollars (\$25,000)) during the applicable reporting period. The Quarterly Compliance Report shall be prepared by a third party retained by MGM who shall be reasonably acceptable to the Compliance Manager. MGM will use its Best Efforts to retain a CMBE or LBE as such third party.

- 6.2 **Monitoring and Documentation.** MGM shall document its compliance efforts and shall monitor and document Contractor compliance efforts with the Business Enterprise Utilization and Employment Goals and include such information in its Quarterly Compliance Report. MGM shall in accordance with its established audit policies regularly monitor, verify, and track work performed on the Project by the Contractors through office visits, field visits to observe/document the workforce (e.g. certificate monitoring, monthly compliance reporting, certified payrolls, invoices, daily time and material records, lien waivers, copies of checks, or equipment records). MGM shall keep full and complete records of its efforts to comply with the Business Enterprise Utilization and Employment Goals. All such records shall be reasonably maintained throughout the Term, in accordance with its corporate record retention policy, and shall be made available for reasonable inspection by the Compliance Manager in conjunction with its review of an applicable Quarterly Compliance Report, to the extent such inspection is not restricted by any confidentiality obligations or applicable law or gaming regulations; provided that such inspections shall be held on a mutually agreed date, during regular business hours and following at least fifteen (15) Business Days’ written request from the Compliance Manager detailing the records to be inspected. Upon written request from the Compliance Manager in connection with any such inspection, MGM shall use its Best Efforts to obtain written reports and analyses from the Contractors relating to MGM’s compliance with the Business Enterprise Utilization and Employment Goals.
- 6.3 **Corrective Actions.** Following its receipt of the applicable Quarterly Compliance Report, the Compliance Manager shall (i) determine, based on its commercially reasonable good faith analysis of such Quarterly Compliance Report, whether there has been material noncompliance with the Compliance Plan by MGM such that a failure to achieve one (1) or more of the Business Enterprise Utilization and Employment Goals is reasonably likely and such failure is the

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direct result of MGM's failure to use Best Efforts in connection with such goal(s) ("Potential Noncompliance") and (ii) provide written notice of its determination to MGM. In the event a Potential Noncompliance is determined, and within five (5) Business Days after MGM's receipt of written notice thereof, the Compliance Manager shall meet with MGM to present detailed findings on the applicable Potential Noncompliance, to resolve any factual disputes, and to agree whether corrective actions are necessary and, if so, to agree on the appropriate corrective actions. The Compliance Manager shall prepare a written report of the results of such meeting and its analysis and conclusions generated pursuant to subpart (i) hereinabove, together with the agreed upon corrective actions (if applicable), and shall deliver such report to the Oversight Committee. The Oversight Committee shall review such items provided by the Compliance Manager, the applicable Quarterly Compliance Report and independently analyze MGM's use of Best Efforts to meet such Business Enterprise Utilization and Employment Goal(s) potentially at issue. Only if the Oversight Committee concludes that a Potential Noncompliance exists, then the Oversight Committee shall approve the recommended corrective action (the "Recommended Corrective Actions"). After receipt of the Oversight Committee's determination in writing of the existence of a Potential Noncompliance and provision of Recommended Corrective Actions, MGM shall have a reasonable opportunity to fully implement such Recommended Corrective Actions. MGM shall have the right to submit to the Compliance Manager and the Oversight Committee from time to time an amended Compliance Plan to reflect any material changes that MGM believes are necessary to fulfill its obligations with respect to the Business Enterprise Utilization and Employment Goals, together with an explanation of the reasons for such requested changes. The Oversight Committee shall review the amended Compliance Plan in the same manner as the initial Proposed Compliance Plan and upon the approval by the Oversight Committee or a determination of the final provisions of any such amended Compliance Plan in accordance with the Dispute resolution procedures of Section 9.10, the amended Compliance Plan shall thereafter be deemed the final Compliance Plan for purposes of this Agreement.

6.4 **Default.** In the event that the Oversight Committee determines that MGM has failed to use Best Efforts to comply with the Recommended Corrective Actions, the Oversight Committee shall provide detailed written notice of such failure to MGM, and MGM shall have thirty (30) days from its receipt of such notice to cure or commence to cure and diligently pursue such failure ("Cure Period"). Following the conclusion of such Cure Period, the Oversight Committee shall determine whether MGM has cured such failure. In the event that the Oversight Committee determines that MGM has not cured such failure during the Cure Period, the Oversight Committee shall (i) reduce, modify or waive the applicable Business Enterprise Utilization and Employment Goals; (ii) allow MGM additional time to cure such failure; or (iii) declare MGM to be in default of the applicable Business Enterprise Utilization and Employment Goals (a "Default") and require that MGM contribute an additional amount to the Community Foundation (each an "Additional Charitable Contribution"), as liquidated damages; provided that in no event shall: (x) any single Additional Charitable

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Contribution for any Default exceed Thirty Thousand Dollars (\$30,000); and (y) the aggregate Additional Charitable Contributions during a given consecutive twelve (12) month period during the Term exceed Three Hundred Thousand Dollars (\$300,000). It is the Parties' intent that any such Additional Charitable Contributions be used by the Community Foundation to support organizations focused on building capacity in CMBE and LBE firms. The Parties agree that, in the event of a Default, it would be impractical and extremely difficult to estimate the damages suffered by the County as a result thereof and that under the circumstances existing as of the Effective Date, the payment by MGM of any recommended Additional Charitable Contribution, as liquidated damages, represents a reasonable estimate of the damages that the County will incur as a result thereof. The payment by MGM of any recommended Additional Charitable Contribution, as liquidated damages, is not intended as a penalty, but is intended to constitute liquidated damages to the County.

- 6.5 **Public Opening.** Following the Public Opening, notwithstanding the terms of Section 6.1, the Parties agree that MGM shall only be required to submit an annual report (in such form and substance similar to the Quarterly Compliance Report) for review by the Compliance Manager and Oversight Committee to make any determinations with respect to compliance with the goals described in Sections 2.2(c) and 2.2(d) in accordance with the Compliance Plan and Sections 6.2, 6.3 and 6.4. For the avoidance of doubt, and notwithstanding anything to the contrary, ninety (90) days following the delivery of the applicable Quarterly Compliance Report due after the Public Opening (i.e. the final Quarterly Compliance Report), no determination of noncompliance or finding of Default shall be permitted, and MGM shall have no obligation, with respect to the goals described in Sections 2.2(a) and 2.2(b), provided that such ninety (90) day period shall be extended day for day during the pendency of any Dispute.
- 6.6 **Disclosure.** Except with respect to the reporting obligations set forth in Section 5.2(g), the Parties hereby agree that all reports, documents, summaries, analyses and other materials and any minutes, resolutions, discussions, findings and conclusions made or prepared by, or on behalf of, the Oversight Committee or the Compliance Manager shall be kept confidential, and neither Party shall disclose the same without the prior written consent of the other Party, except to their respective parent or affiliate companies or their respective members, managers, officers, attorneys, accountants, agents, consultants, representatives and advisors who are under an obligation or duty of confidentiality with respect to such Party, or otherwise as required by this Agreement, applicable law, regulation or stock exchange rule or pursuant to a subpoena, court order or other legal proceeding or a request, audit or order of any state governmental authority having jurisdiction over gaming activities. Any statements, releases or other materials disclosed to the public relating to this Agreement or MGM's compliance with its obligations shall require mutual agreement of the Parties. To the extent permitted by applicable law, within five (5) Business Days of receiving any request pursuant to the Maryland Public Information Act (the "MPIA") relating to this Agreement or MGM, the County shall forward each such request to MGM for its review. The

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County shall consult with, and seek the approval of, MGM prior to disclosing any information requested by any such MPIA request. In the event that MGM does not so approve, then provided that MGM promptly (i.e. within any applicable time frame required by the MPIA) petitions a court of proper jurisdiction to determine if such disclosure is required by the MPIA and provides the County a copy of such petition ("MPIA Petition"), the County shall withhold disclosure during the pendency of such court's determination. Notwithstanding the foregoing, in the event the County is not legally permitted to rely on the MPIA Petition in withholding the disclosure, the County shall have the right to comply with any such MPIA request unless, prior to the date such compliance is due as stated in the MPIA, the County receives a copy of an order from a court of competent jurisdiction authorizing or ordering the County not to produce the information requested.

ARTICLE VII

ADDITIONAL COMMITMENTS

7.1 **Thomas Addison School.**

(a) Lease of School. During the construction of the Project and for up to six (6) months after the Public Opening, MGM will lease a 7.3 acre parcel of land and the improvements thereon known as the Thomas Addison School, located at 7100 Oxon Hill Road, Oxon Hill, Maryland (the "School"). The Parties will enter into a separate lease agreement for the School (the "Lease") containing the following terms and conditions:

1. MGM will be permitted to use the School for employee recruitment and training, general office space, construction staging, storage of construction materials, vehicles and equipment, and other uses related to the design, planning and development of the Project.
2. The County will deliver possession of the School to MGM on or before August 1, 2014.
3. MGM will have the right to make such improvements to the School as it deems necessary and appropriate to facilitate its use, including, without limitation, the construction of temporary garages and covers to protect, secure and store its materials, equipment and vehicles. Except for obtaining building permits and other similar requirements (which the County shall not unreasonably withhold or delay), MGM will not need any prior approvals from the County to make improvements to the School for MGM's use of the premises. At the end of the term of the Lease, MGM will remove any temporary structures it constructed, unless the County elects to retain them, and will restore the area

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beneath such structures to the condition that existed at the commencement of the Lease.

4. MGM will not be required to pay more than One Dollar (\$1) per year for any rent, real property taxes or other impositions in connection with MGM's use of the School. MGM will contract separately for the delivery of electricity, telephone, water and similar utilities and shall pay for its consumption of utilities directly to the service provider.

- (b) **School Improvements.** During the term of the Lease and prior to surrendering possession of the School to the County, MGM will make improvements and remediation to the School (the "**School Improvements**"). MGM currently estimates that the value of the School Improvements will be approximately Four Million Dollars (\$4,000,000); provided that, for the avoidance of doubt, MGM shall not be required to spend such amount in completing the School Improvements and the incurrence of any costs associated with the School Improvements shall be determined in MGM's sole discretion. The School Improvements may include, without limitation, improvements and remediation to the building including roof repair or replacement, repairs to the structural condition to the building as of the date of delivery of possession, repair or replacement of the HVAC system or any other building systems, repaving driveways and walkways and similar improvements. The School Improvements will be described in the Lease (or other agreement between MGM and the County) and should include improvements MGM makes to facilitate its use of the School, but exclude temporary improvements that will be removed prior to the date MGM surrenders possession of the School to the County.

- (c) **Condition to Lease.**

1. MGM's obligation to lease the School and to make the School Improvements is conditioned upon the following: (i) the County obtaining title to the School from the Prince George's Board of Education; (ii) MGM's intended use of the School being permitted under applicable zoning regulations; and (iii) the satisfaction of the conditions described in Section 9.12. The Parties acknowledge that possession of the School will be delivered prior to the satisfaction of all of the conditions to performance described in Section 9.12.
2. If, at any time prior to or after delivery of possession of the School to MGM, (i) the Parties determine that any of the conditions described in Section 9.12 will not be satisfied or (ii) MGM determines, in its sole discretion, that the remediation (including, without limitation, environmental, structural or system related)

required at the School prove to be cost prohibitive (as determined by MGM using Best Efforts), MGM will have the right to terminate the Lease and to return possession of the School to the County. In such event, as to be more particularly described in the Lease, MGM shall remove all temporary improvements, if any, and restore the property to the condition that existed prior to the construction of temporary improvements, and MGM shall be released from the obligation to construct any School Improvements that have not already been completed as of the date of the termination of the Lease.

7.2 **High School Culinary Program.** Prior to the Public Opening, MGM will participate in the establishment of a culinary training program in the County (the “**Culinary Program**”) It is intended that the Culinary Program be hosted at Potomac High School. MGM’s participation in the Culinary Program may consist of donating kitchen equipment, providing teaching assistance and/or contributing funds to the program. If for any reason Potomac High School is unable to host the Culinary Program, the County, in consultation with MGM, will be responsible for identifying the individuals or group that will establish and operate the Culinary Program and for selecting the high school to host the Culinary Program.

7.3 **Investment Program.** Subject to applicable law (including, without limitation, federal and state securities and gaming laws, rules and regulations), by January 1, 2015, MGM will design, develop and implement a program (or programs), upon terms and conditions determined solely by MGM, to accept up to One Hundred Million Dollars (\$100,000,000) from investors in the Project (“**Project Investors**”) and, for up to a maximum of Thirty Million Dollars (\$30,000,000) of such amount, MGM will use Best Efforts to give preference to potential Project Investors who are County Residents. In addition, MGM shall consider, in its commercially reasonable discretion, whether to structure any such program (or a component thereof) to provide for “tiers” of investment opportunities designed to allow smaller minimum investment amounts by Project Investors. Notwithstanding the foregoing, only accredited investors (as defined in the Securities Act of 1933, as amended) shall be eligible to be Project Investors.

7.4 **Community Giving.**

(a) No later than the Public Opening, MGM will contribute the aggregate amount of One Million Dollars (\$1,000,000), which shall be allocated as follows: (i) Two Hundred Fifty Thousand Dollars (\$250,000) to be contributed to The Community Foundation of Prince George’s County (the “**Community Foundation**”); (ii) Two Hundred Fifty Thousand Dollars (\$250,000) to be distributed by MGM, in its discretion (following consultation with the County), in order to benefit the County; and (iii) Five Hundred Thousand (\$500,000) to be distributed among the following organizations, at MGM’s sole discretion: Prince George’s County Community College; Bowie State University; University of Maryland-

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College Park; or any other organization or institution located in the County chosen by MGM in its sole discretion in the areas of workforce training and development. Following the Public Opening and for the remainder of the Term, MGM will make annual contributions valued at an aggregate of Four Hundred Thousand Dollars (\$400,000), which shall be allocated as follows (each an "Annual Contribution"): (i) One Hundred Fifty Thousand Dollars (\$150,000) per year to the Community Foundation; and (ii) Two Hundred Fifty Thousand Dollars (\$250,000) to be distributed by MGM, in its discretion (following consultation with the County), in order to benefit the County.

- (b) Commencing upon the Public Opening and continuing throughout the Term, MGM shall encourage its employees at the Project to support and make contributions to the MGM Resorts Foundation.
- 7.5 **Internship Program.** Commencing upon the Public Opening and continuing throughout the Term, MGM will offer at least ten (10) qualifying students the opportunity to participate in the MGM Resorts International College Programs (i.e. the Hospitality Internship Program and Management Associate Program) or other summer internship programs (including opportunities outside of MGM Resorts International group of companies and properties), at MGM's discretion, subject to applicable law and corporate policies, guidelines and procedures. MGM shall use Best Efforts to give preference for up to ten (10) of such students who are enrolled in schools located in the County or who have at least one parent that is a County Resident.
- 7.6 **On the Job Training/Career Advancement Program(s).** Commencing upon the Public Opening and continuing throughout the Term, MGM will provide a program to assist in the supervisory and executive development of its employees, in accordance with its corporate policies, guidelines and procedures.
- 7.7 **Sponsorship of County's Summer Job Program.** Commencing upon the Public Opening and continuing throughout the Term, MGM will sponsor at least twenty-five (25) qualifying County Residents per year to participate in the County's Summer Youth Enrichment Program.
- 7.8 **Construction Contractor Scale-Up Support Program.** Prior to the Public Opening, MGM will develop and implement a scale-up support program as described in Section 3.1.6.4.B on page 84 of the Proposal, which is attached hereto as Schedule 1 (and subject to Section 9.14), which program among other things, will (i) provide extensions of trade credit to qualified and capable CMBE/LBE/MBEs in connection with the construction of the Project and (ii) cause the General Contractor to publicize such program to Subcontractors.
- 7.9 **Procurement Mentoring Program.** MGM will participate in the development of a mentoring program as described in Section 3.1.6.4.B on page 84 of the Proposal, the applicable portion of which is attached hereto as Schedule 1 (and

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subject to Section 9.14), which program among other things will be aimed at small businesses operating in the County or CMBEs seeking to enhance their exposure with respect to the Project.

- 7.10 **Transportation.** MGM will complete the transportation improvements described in Section 3.1.6.1.D(3) (Roadway Improvements) on page 25 of the Proposal, the applicable portion of which is attached hereto as Schedule 2 (and subject to Section 9.14).
- 7.11 **Health Insurance.** Subject to applicable law, following the Public Opening, MGM will provide its qualifying employees with health benefits described in Section 3.1.6.5.C on pages 128 and 130 of the Proposal, the applicable portion of which is attached hereto as Schedule 3 (and subject to Section 9.14).

ARTICLE VIII

INDEMNIFICATION

- 8.1 **Indemnification by MGM.** MGM shall defend, indemnify and hold harmless the County and each of its officers, employees, contractors and agents (collectively, the “Indemnitees” and, individually, an “Indemnitee”) from and against any and all third party liabilities, losses, damages, costs, expenses, claims, obligations, penalties and causes of action (including reasonable attorneys’ fees at the prevailing market rate for such services, subject to Section 8.2) whether based upon negligence, strict liability, statutory liability, absolute liability, product liability, common law, misrepresentation, contract, implied or express warranty or any other principle of law, that are imposed upon, incurred by or asserted against Indemnitees or which Indemnitees may suffer or be required to pay, and which arise out of or relate in any manner to a material breach of MGM’s obligations under this Agreement. Notwithstanding the foregoing, MGM shall not indemnify and shall have no responsibility to any Indemnitee for any matter to the extent caused by any gross negligence or willful misconduct of such Indemnitee.
- 8.2 **Defense Procedures.** If any action or claim contemplated by Section 8.1 is commenced, the Indemnitee shall immediately notify MGM in writing. MGM shall have the right to elect to control the defense and negotiations for settlement of any such actions or claims. In the event MGM makes such election, notice of the same shall be delivered to the Indemnitee as promptly as practicable, but in no event less than five (5) days prior to the date on which a response to such claim is due. Upon such election by MGM, the Indemnitee (x) shall not be permitted to indemnification with respect to attorneys’ fees incurred thereafter and (y) shall fully cooperate with MGM and provide such assistance as MGM shall reasonably request in defense of any claim, demand, action or proceeding. If MGM does not elect (or timely elect) to control, or fails to adequately and actively control and conduct, such defense and negotiations and employ legal counsel in such regard, (i) the Indemnitee may notify MGM in writing that it will employ separate legal counsel, (ii) MGM shall be responsible for payment of the reasonable out-of-

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out-of-pocket fees and expenses of such separate legal counsel and (iii) MGM shall forfeit the right to control and assume the defense of such action on behalf of such Indemnitee. If, in the Indemnitee's reasonable opinion, an ethical conflict of interest arises during MGM's control of the defense and/or negotiations that requires the Indemnitee to obtain its own legal counsel, then the Indemnitee may notify MGM in writing that it will employ separate legal counsel and MGM shall be responsible for payment of the reasonable out-of-pocket fees and expenses of such separate legal counsel. MGM shall fully cooperate with the Indemnitee and provide such assistance as the Indemnitee shall reasonably request in defense of any claim, demand, action or proceeding. Neither MGM nor any Indemnitee shall be liable for any settlement made without its consent.

ARTICLE IX

MISCELLANEOUS PROVISIONS

9.1 **Notices.** Notices shall be given as follows:

(a) Any notice, demand or other communication which any Party may desire or may be required to give to any other Party shall be in writing delivered by (i) hand-delivery, (ii) a nationally recognized overnight courier, or (iii) United States Postal Service or certified mail (but excluding electronic mail, i.e., "e-mail") addressed to a Party at its address set forth below, or to such other address as the Party to receive such notice may have designated to all other Parties by notice in accordance herewith:

If to County: Prince George's County
Office of County Executive
County Administration Building
14741 Governor Oden Bowie Drive
Upper Marlboro, Maryland 20772
Attention: County Executive

with copies to: Prince George's County
Office of Law
County Administration Building
14741 Governor Oden Bowie Drive
Upper Marlboro, Maryland 20772
Attention: County Attorney

and

Taft, Stettinius & Hollister LLP
111 E. Wacker Drive, Suite 2800
Chicago, IL 60601
Attention: Cezar M. Froelich, Esq.

If to MGM: MGM National Harbor, LLC
120 Waterfront Street, Suite 500

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Oxon Hill, MD 20745
Attention: Lorenzo Creighton

with copies to:

MGM Resorts International
Corporate Legal Department
3950 Las Vegas Boulevard South
Las Vegas, NV 89119
Attention: General Counsel

All notices shall be deemed to have been given and received on the date sent, if sent by hand delivery; on the first business day after the date sent, if sent by overnight commercial delivery service; three (3) days after the date sent, if sent by the United States Postal Service, certified mail, return receipt requested, postage prepaid.

9.2 **Non-Action or Failure to Observe Provisions of this Agreement.** The failure of the County or MGM to promptly insist upon strict performance of any term, covenant, condition or provision of this Agreement, or any exhibit hereto, or any other agreement contemplated hereby, shall not be deemed a waiver of any right or remedy that the County or MGM may have, and shall not be deemed a waiver of a subsequent default or nonperformance of such term, covenant, condition or provision.

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9.3 **Applicable Law and Construction.** The laws of the State shall govern the validity, performance and enforcement of this Agreement, without regard to the conflicts of laws principles of the State. Notwithstanding anything to the contrary in this Agreement, MGM's obligation to satisfy or comply with any goals, requirements or obligations set forth in this Agreement (including, without limitation, the Business Enterprise Utilization and Employment Goals), whether or not qualified by MGM's use of Best Efforts, shall be subject in all respects to compliance with, and shall be superseded by, applicable Federal and state law (including, without limitation, gaming laws, rules and regulations). The Parties acknowledge that: (i) the Maryland State Lottery & Gaming Control Commission (the "Commission") has promulgated, and subsequent to the Effective Date of this Agreement, may promulgate regulations under or issue interpretations of or policies or criteria concerning the Act (collectively, the "Commission Requirements"); (ii) Section 5.6.2 of the RFP provides that all terms and conditions contained in the RFP, amendments to the RFP, the Proposal, and the VLFLC's decision statement are incorporated into MGM's operation license (the "License Requirements", and together with the Commission Requirements, the "State Gaming Requirements"); and (iii) the State Gaming Requirements may conflict with, or may not have been contemplated by, the express terms of this Agreement. Accordingly, in the event MGM's performance of any obligation under this Agreement would or could potentially conflict with any State Gaming Requirements or applicable Federal law or regulation, at MGM's sole option, MGM shall either be fully excused from performance of such obligation to the extent of such conflict or such obligation shall be suspended for the period of time, and to the extent necessary, to avoid such conflict.

9.4 **Submission to Jurisdiction.** Except with respect to Disputes as set forth in Section 9.10 below, the Parties expressly agree that the state and federal courts of the State, shall have exclusive jurisdiction and venue over any court actions and legal proceedings arising out of or relating to this Agreement and each Party consents to the jurisdiction of such courts.

9.5 **Complete Agreement.** This Agreement, and all the documents and agreements described or referred to herein, including the exhibits and schedules attached hereto, constitute the full and complete agreement between the Parties with respect to the subject matter hereof, and supersedes and controls in its entirety over any and all prior agreements, understandings, representations and statements whether written or oral by each of the Parties.

9.6 **Holidays.** It is hereby agreed and declared that whenever a notice or performance under the terms of this Agreement is to be made or given on a day other than a Business Day, it shall be postponed to the next following Business Day.

9.7 **Unlawful Provisions Deemed Stricken.** If this Agreement contains any unlawful provisions not an essential part of this Agreement and not being a controlling or material inducement to the making thereof, such provisions shall be deemed of no effect and shall be deemed stricken from this Agreement without

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affecting the binding force of the remainder. In the event any provision of this Agreement is capable of being interpreted simultaneously as valid and invalid, the provision shall be interpreted so as to render it valid.

- 9.8 **Time of the Essence.** All times, wherever specified herein for the performance by MGM of its obligations hereunder, are of the essence of this Agreement.
- 9.9 **Captions.** The captions of this Agreement are for convenience of reference only and in no way define, limit or describe the scope or intent of this Agreement or in any way affect this Agreement.
- 9.10 **Dispute Resolution.** The Parties agree that any dispute, claim, or controversy arising under this Agreement shall be resolved as provided in this Section 9.10 (“Dispute”).
 - (a) **Dispute Notice.** Either Party shall give the other Party written notice of any Dispute (“Dispute Notice”). The Dispute Notice shall set forth the amount of loss, damage, and cost of expense claimed, if any, or the position of the Party with respect to the Dispute.
 - (b) **Good Faith Negotiation.** Within ten (10) Business Days of the Dispute Notice, the Parties shall meet to negotiate in good faith to resolve the Dispute. No time bar defenses shall be available based upon the passage of time during any negotiation called for by this Section.
 - (c) **Mediation.** In the event the Dispute or any portion thereof remains unresolved within thirty (30) Business Days of the Dispute Notice, the Parties shall then attempt to resolve such dispute through a process of mediation administered by the Judicial Arbitration and Mediation Service (“JAMS”). The complaining Party must notify the other Party that a Dispute that cannot be resolved by good faith negotiations exists and then contact JAMS. A designated individual mediator (the “Mediator”) will then be selected in accordance with the rules of JAMS to conduct the mediation and a mediation conference will be scheduled. The Parties shall attempt to settle any dispute by participating in at least ten (10) hours of nonbinding mediation at the offices of the Mediator. The mediation will be a nonbinding conference between the Parties conducted in accordance with the applicable rules and procedures of the JAMS. Neither party may initiate arbitration proceedings with respect to any Dispute until the mediation of such Dispute is complete. Any mediation will be considered complete: (i) if the Parties enter into an agreement to resolve the Dispute; or (ii) with respect to the Party submitting the Dispute to mediation, if the other Party fails to appear at or participate in a reasonably scheduled mediation conference.
 - (d) **Arbitration.** In the event the Dispute is not complete (as described above) or resolved within fifteen (15) Business Days after mediation is commenced, the Dispute shall be arbitrated upon the filing by either Party of a written demand, with written notice to the other Party, to JAMS before a single arbitrator to be

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selected under the JAMS selection process. Arbitration of the Dispute shall be governed by the then current Commercial Arbitration Rules of JAMS. Upon such Dispute being submitted to the arbitrator for resolution, the arbitrator shall arbitrate in accordance with the then current Commercial Arbitration Rules of JAMS. The arbitrator will be required to make a final binding determination with a reasoned opinion, not subject to appeal, within forty-five (45) days of the date of submission. For each issue decided by the arbitrator, the arbitrator shall award the reasonable expenses of the proceeding, including reasonable attorneys' fees, to the prevailing Party with respect to such issue. The arbitrator in arriving at his decision shall consider the pertinent facts and circumstances as presented in evidence and be guided by the terms and provisions of this Agreement and applicable law, and shall apply the terms of this Agreement without adding to, modifying or changing the terms in any respect, and shall apply the laws of the State to the extent such application is not inconsistent with this Agreement. Nothing herein shall prevent either Party to seek injunctive relief in court to maintain the status quo in furtherance of arbitration.

(e) Expertise. The Parties hereby agree that any mediator or arbitrator used in connection with any Dispute relating to construction or development of the Project shall have significant experience and knowledge of construction, project development and related matters.

(f) Confidentiality. The Parties hereby agree to keep any and all settlement, mediation, arbitration or other discussions relating to any Dispute or the terms thereof confidential, and not to disclose the same, except to their respective parent or affiliate companies or their respective members, managers, officers, attorneys, accountants, agents, consultants, representatives and advisors involved in the Dispute or otherwise who have a need to know, or otherwise as mutually agreed by the Parties in writing or as required by applicable law, regulation or stock exchange rule or pursuant to a subpoena, court order or other legal proceeding or a request, audit or order of any state governmental authority having jurisdiction over gaming activities.

(g) Limitation. Any litigation or arbitration of any Dispute under this Agreement must be initiated within one (1) year from the date on which either Party first gave written notice to the other of the existence of such dispute, and any Party who fails to commence litigation or arbitration in accordance with the terms hereof within such one-year period shall be deemed to have waived any of its affirmative rights and claims in connection with such dispute and shall be barred from asserting such rights and claims at any time thereafter. Failure of the grieving party to adhere to the time limits established in this Section 9.10 shall render such dispute null and void. The time limits established herein may be extended only by written consent of the Parties at the particular step where the extension is agreed upon.

(h) Remedies. The Parties agree that the remedies for any Dispute arising under this Agreement shall be strictly limited to such equitable relief as may be

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necessary to compel the specific performance by the breaching Party of its express obligation applicable to such Dispute or direct monetary damages, as applicable; provided that the remedies available to the County arising out of, resulting from or incurred in connection with any Dispute regarding matters arising under or otherwise relating to the Business Enterprise Utilization and Employment Goals for which the County is seeking relief shall be limited, at the election of the County, to the specific performance of MGM's express obligations related thereto (i.e. MGM's obligation to use Best Efforts with respect to such goals) or the payment by MGM of Additional Charitable Contributions, as liquidated damages (as set forth in and subject to Section 6.4). Notwithstanding anything to the contrary contained in this Agreement, to the maximum extent permitted by applicable law, under no circumstances shall either Party be liable for any consequential, indirect, incidental, exemplary, special or punitive damages of any nature, whether such liability is asserted on the basis of contract, warranty, tort (including negligence or strict liability) or otherwise.

(i) Equitable Relief Limitation. Notwithstanding anything to the contrary contained in this Agreement, it is expressly understood and agreed that in the event it is ultimately determined by an arbitrator or court that MGM has committed any breach of this Agreement, the damage, if any, caused to the County thereby will not be irreparable or otherwise sufficient to entitle the County to such equitable relief which could delay, hinder, stop or otherwise interfere with MGM's development, construction or operation of the Project.

(j) Waiver of Jury Trial. By agreeing to the dispute resolution provisions set forth in this Section 9.10, the Parties hereby waive all rights to a trial by jury in any action, counterclaim or proceeding based upon, or related to, the subject matter of this Agreement. This waiver applies to all claims against all Parties to such actions and proceedings, including parties who are not Parties to this Agreement. This waiver is knowingly, intentionally and voluntarily made by the Parties and each acknowledges that neither the other Party hereto, nor any person acting on their behalf has made any representations of fact to induce this waiver of trial by jury or in any way to modify or nullify its effect. The Parties further acknowledge that they have been represented (or have had the opportunity to be represented) in the signing of this Agreement and in the making of this waiver by independent legal counsel, selected of their own free will, and that they have had the opportunity to discuss this waiver with counsel. The Parties further acknowledge that they have read and understand the meaning and ramifications of this waiver provision.

- 9.11 **Term.** This Agreement shall commence on the Effective Date and continue until (i) the Video Operation License expires or is terminated or revoked; (ii) this Agreement terminates earlier pursuant to Section 9.12 below; or (iii) because the Parties mutually agree to its termination (the "Term").
- 9.12 **Termination of this Agreement.** MGM shall have a right to terminate this Agreement, effective upon the County's receipt of written notice thereof, and

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MGM shall have no further obligation or liability to the County, in the event that any of the following conditions are not satisfied: (i) MGM receives all zoning variances or approvals; (ii) all necessary grading and building permits are issued to MGM to facilitate commencing construction of the Project by September 1, 2014 (provided that, if such permits are issued following such date and MGM elects to continue developing and constructing the Project, then MGM shall not be permitted to terminate this Agreement pursuant to this Section 9.12(ii) and this Agreement shall be reinstated); and (iii) any and all conditions necessary for the issuance of a license to operate the casino in accordance with § 1.1.7 and § 5.6.2 of the RFP.

- 9.13 **No Third Party Beneficiaries.** The Parties acknowledge and agree that (i) this Agreement shall not be construed, in whole or in part, to give rise to any rights, claims or benefits to any person, business, firm or entity other than the signatories to this Agreement and MGM Resorts International, and (ii) there are no third-party beneficiaries to this Agreement and no terms or provisions of this Agreement may be enforced by or for the benefit of any person or party not a signatory to this Agreement.
- 9.14 **Amendments.** In the event that any terms, provisions, obligations or commitments of MGM set forth in the Proposal that are expressly referenced in this Agreement are amended, supplemented, waived or otherwise modified from time to time, such commitments referenced in this Agreement automatically shall be deemed to be correspondingly amended, supplemented, waived or otherwise modified, without any further action by the Parties, provided that MGM provides the County with written notice of any such action applicable to this Agreement. Other than as provided in the first sentence of this Section 9.14, this Agreement shall not be amended, supplemented or otherwise modified unless memorialized in an agreement signed by each Party hereto.
- 9.15 **Mutual Drafting.** This Agreement has been negotiated by the County and MGM, and the Agreement, including the exhibits and schedules attached hereto, shall not be deemed to have been negotiated and prepared by the County or MGM, but by each of them.
- 9.16 **Counterparts.** This Agreement may be executed in any number of counterparts, each of which when executed and delivered (whether by original, facsimile or electronic copies) shall be an original, but all such counterparts shall constitute one and the same agreement.

[Signatures appear on the following page]

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IN WITNESS WHEREOF, MGM and the County have executed this Agreement as of the day and year first above written.

PRINCE GEORGE'S COUNTY, MARYLAND


By: LVERN L. COKER III
Name: LVERN L. COKER III
Title: County Executive, Prince George's County

MGM NATIONAL HARBOR, LLC


By: Lorenzo D. Creighton
Name: Lorenzo D. Creighton
Title: President, CEO

Prince George's County Council Agenda Item Summary

Meeting Date: 6/30/2014
Reference No.: CR-068-2014
Draft No.: 1
Proposer(s): County Executive
Sponsor(s): Toles, Franklin, Davis, Patterson
Item Title: A Resolution concerning the Community Benefit Agreement negotiated between Prince George's County, Maryland and MGM National Harbor, LLC

Drafter: Brad W. Frome, Office of the County Executive
Resource Personnel: Brad W. Frome, Office of the County Executive

LEGISLATIVE HISTORY:

Date Presented:		Executive Action:	8/1/2014 S
Committee Referral:	6/30/2014 - C.O.W.	Effective Date:	
Committee Action:	7/23/2014 - FAV		
Date Introduced:	6/30/2014		
Public Hearing:	7/23/2014 - 10:00 AM		
Council Action (1)	7/23/2014 - ADOPTED		
Council Votes:	WC:-, DLD:A, MRF:A, AH:A, ML:N, EO:A, OP:A, IT:A, KT:A		
Pass/Fail:	P		
Remarks:			

AFFECTED CODE SECTIONS:

COMMITTEE REPORTS:

BACKGROUND INFORMATION/FISCAL IMPACT:

(Includes reason for proposal, as well as any unique statutory requirements)

This Resolution approves the Community Benefit Agreement negotiated between Prince George's County, Maryland and MGM National Harbor, LLC, thereby satisfying the development agreement requirements pursuant to Section 10-309 of the County Code as enacted by CB-7-2014

CODE INDEX TOPICS:

INCLUSION FILES:

I-CR-68-2014 Attachment A.pdf
