

SETTLEMENT AGREEMENT AND RELEASE

BETWEEN

**BLUE TARP reDEVELOPMENT, LLC d/b/a MGM SPRINGFIELD
and**

**COMMONWEALTH OF MASSACHUSETTS
OFFICE OF THE ATTORNEY GENERAL**

PARTIES

This Settlement Agreement and Release ("Agreement") is entered into as of 10/25, 2023 between the Commonwealth of Massachusetts Office of the Attorney General ("Attorney General"); and Blue Tarp reDevelopment, LLC d/b/a MGM Springfield ("MGM"). MGM's principal place of business is One MGM Way, Springfield, MA 01103. Together, the Attorney General, and MGM will be referred to as "the Parties."

PREAMBLE

- A. WHEREAS, at all relevant times, MGM was operating as a gaming entity, licensed by the Massachusetts Gaming Commission ("MGC"), under Chapter 23K of M.G.L.;
- B. WHEREAS, the Attorney General is charged with enforcement of, among other things, various wage and hour laws, including but not limited to, the Wage Act (G.L. c. 149, § 148), the Minimum Wage Law (G.L. c. 151, § 1), the Overtime Law (G.L. c. 151, §§ 1A-1B), and the Earned Sick Time ("EST") Law (G.L. c. 149, § 148C), as well as other related statutes and regulations.
- C. WHEREAS, this Agreement addresses the following "Covered Conduct":
 - 1. The Attorney General investigated the wage and hour practices of MGM. As a result of the investigation, the Attorney General contends that it has identified evidence that MGM violated various Massachusetts wage and hour laws during the time period August 1, 2018 through December 31, 2019. In particular, the Attorney General contends, among other allegations, that:
 - a. MGM failed to make timely payment of wages, which constitutes a violation of G.L. c. 149, § 148;
 - b. MGM failed to pay an overtime rate of one- and one-half times employees' regular hourly rates, which constitutes a violation of G.L. c. 151, §§ 1A-1B;
 - c. MGM failed to pay minimum wage, which constitutes a violation of G.L. c. 149, § 1;

- d. MGM failed to remit the total proceeds of a service charge or tip on patron's bills, which constitutes a violation of G.L. c. 149, § 152A;
 - e. MGM caused, required, or permitted service staff to participate in a tip pool which remits tips to non-service staff, which constitutes a violation of G.L. c. 149, § 152A;
 - f. MGM failed to pay earned sick time, which constitutes a violation of G.L. c. 149, § 148C;
 - g. MGM's conduct described in Paragraph C (1)(a)-(f) constituted 15,124 separate and distinct violations of Massachusetts wage and hour laws, impacting 2,036 unique employees.
- D. WHEREAS, MGM neither admits nor denies the allegations in Paragraph C (1) of the Preamble;
- E. WHEREAS, the Parties wish to avoid the costs and burdens of litigation proceedings and seek to reach an Agreement that will fully and finally settle the Covered Conduct and any and all related claims.

TERMS AND CONDITIONS

NOW, THEREFORE, in reliance on the representations contained herein and in consideration of the mutual promises, covenants, and obligations set forth in this Agreement, and for good and valuable consideration as stated herein, the Parties agree to the following Terms and Conditions:

1. **Full and Final Settlement:** This Agreement is intended to settle and resolve with finality the Covered Conduct. To effectuate such purpose, and in accordance with the mutual covenants and agreements contained herein, and with full authority to enter into this Agreement, the Parties hereby enter into and execute this Agreement and agree to be bound by all of its provisions.
2. **Agreement Effective Upon Signing:** This Agreement shall be final and binding only upon a signing by each representative party hereto and shall be effective on the date it has been signed by all Parties ("Effective Date").
3. **No Admission or Denial of Wrongdoing:** By entering into this Agreement, MGM neither admits nor denies the allegations identified in the Covered Conduct.
4. **Non-Financial Terms:**
 - a. By entering into this Agreement, MGM agrees to abide by all applicable wage and hour laws, both state and federal, as well as other employment-related provisions, including but not limited to, those set forth by chapters 149 and 151 of

the Massachusetts General Laws and the Code of Massachusetts Regulations pertaining to child labor, earned sick time, gratuities, and timely payment of wages, as well as those regulating unemployment insurance payments, workers' compensation insurance and income taxation.

5. **Compliance and Monitoring Program:**

- a. **Compliance Program:** MGM shall establish and implement a compliance program ("Compliance Program") to ensure compliance with applicable wage and hour laws, both state and federal, including the following:
 - i. A compliance committee, which includes representatives from legal, human resources, payroll, and information technology departments;
 - ii. A regular review of MGM's policies and procedures regarding compliance with applicable wage and hour laws, both state and federal;
 - iii. Annual training for all human resources, payroll, and legal personnel concerning applicable wage and hour laws, both state and federal;
 - iv. A written policy for the investigation of employee complaints about wage-and-hour issues, including proposed remedial and corrective actions, where appropriate; and
 - v. Periodic compliance auditing, and monitoring.
- b. **Compliance Period:** The Compliance Program shall continue for a period of two (2) years, beginning on the Effective Date (the "Compliance Period").
- c. **Independent Compliance Reviewer:** MGM agrees to contract with an appropriate independent compliance reviewer (the "Independent Compliance Reviewer") acceptable to the Attorney General and MGM, to perform, at MGM's expense: annual independent on-site and record audits (the "Independent Compliance Audits").
- d. **Annual Independent Compliance Audits:** After the first year of the Compliance Period, the Independent Compliance Reviewer shall conduct an on-site and record audit of MGM's compliance with state wage and hour laws over the preceding twelve (12) months, including M.G.L. Chapter 149, and M.G.L. Chapter 151. The Independent Compliance Reviewer shall conduct such a review every twelve months during the Compliance Period thereafter.
- e. **Reports:** For each Independent Compliance Reviewer on-site and record audit required above, the Independent Compliance Reviewer will prepare a comprehensive written report and provide same to the Attorney General, with a copy to MGM. No fewer than thirty (30) days prior to providing the final report

to the Attorney General and MGM, the Independent Compliance Reviewer will provide MGM with a draft of the report for review and comment. In the event MGM disputes the Independent Compliance Reviewer's draft report, MGM may, during this 30-day period, work with the Independent Compliance Reviewer in an attempt to resolve this dispute. Should such efforts fail to resolve a disagreement between MGM and the Independent Compliance Reviewer, MGM may provide a written submission to the Attorney General stating that it disputes the Independent Compliance reviewer's report, at the time that report is submitted.

- f. Violations: As to any violations of wage and hour law reported to the Attorney General by the Independent Compliance Reviewer, including restitution identified as owed to employees due to unpaid wages, MGM will submit to the Attorney General and to the Independent Compliance Reviewer, within thirty (30) days of the report's submission, proof of payment of restitution to employees; and within sixty (60) days of the report's submission, a plan of correction that identifies steps to be taken to prevent further such violations.
- g. No Admission: The fact that MGM has made payment to employees pursuant to Paragraph 5(f) shall not constitute an admission.

6. **Settlement Amount:**

- a. MGM shall make payment of a Total Settlement Amount of **\$6,839,287.36** to employees and the Attorney General as described in Paragraphs 6(b) – 6(f).
- b. MGM shall make full payment of restitution for employees listed in Appendix A in the amount of **\$461,587.36** (four hundred sixty-one thousand five hundred and eighty-seven dollars and thirty-six cents) within thirty (30) days of the Effective Date of the Agreement. MGM shall mail or make direct deposit payments directly to the current and former employees in amounts listed in Appendix A, less standard withholding, and deductions. Employer shall provide notice to each employee listed in Appendix A that these payments are the result of a settlement with the Attorney General for alleged violations of Massachusetts wage and hour laws. Proof of these payments, in the form of copies of pay slips or other similar records showing all deductions shall be provided to the Attorney General no later than sixty (60) days from the Effective Date of the Agreement.
- c. MGM shall maintain a record of all checks returned to MGM by the U.S. Postal Service or which are otherwise undeliverable. A check for the total gross amount of these returned checks shall be remitted to the Attorney General along with a list containing the name, social security number, date of birth, last known email address, and last known physical address of each employee to whom a returned check was sent. This amount, and the list, shall be provided to the Attorney General no later than one hundred and twenty (120) days from the Effective Date of the Agreement.

- d. MGM shall maintain a record of all restitution checks that were not returned to MGM by the U.S. Postal Service, or were otherwise undeliverable, but remain uncashed for 90 days after issuance. MGM may cancel all such uncashed checks 90 days after issuance. MGM shall calculate and send a check for the total gross amount of uncashed checks to the Attorney General along with a list containing the name, social security number, date of birth, last known email address, and last known physical address of all employees to whom such checks were sent. This amount, and the list, shall be provided no later than one-hundred and eighty (180) days from the Effective Date of the Agreement.
- e. MGM shall make payment of penalty to the Commonwealth via the Attorney General in the amount of \$ **6,377,700.00** (six million three hundred and seventy-seven thousand and seven-hundred dollars and zero cents) within thirty (30) days of the Effective Date of the Agreement.
- f. The method of payment for payments to the Attorney General set forth in Paragraphs 6(a) – 6(g), shall be by credit card online at www.masspays.com/fld or by money order, cashier's check or certified check payable to the Commonwealth of Massachusetts. Payments mailed through the U.S. Post Office should be mailed to: Massachusetts Attorney General's Office, P. O. Box 412985, Boston, MA 02241-2985. Payments sent by courier/overnight mail should be sent to: Bank of America Lockbox Services, Massachusetts Attorney General's Office 412985, MA5-527-02-07, 2 Morrissey Blvd., Dorchester, MA 02125.
- g. Full payment of the Total Settlement Amount by MGM as specified in Paragraphs 6(a) – 6(f) shall constitute full and final settlement of the Covered Conduct.
- h. In the event that the Attorney General or MGM identifies any outstanding restitution associated with the period of time beginning immediately after the Covered Conduct period, and ending at the dates set forth in **Appendix B**, for each type of violation, as provided to the Attorney General's Office (attached), the identifying party shall immediately notify the other party in writing of the outstanding restitution identified ("Date of Notification"). Such restitution shall be paid by MGM within sixty (60) days of the Effective Date of the Agreement, with no further penalties assessed other than the amount described in Paragraph 6(e) as long as restitution is paid by MGM within the sixty (60) day timeframe. Proof of these payments, in the form of copies of pay slips or other similar records showing all deductions shall be provided to the Attorney General no later than thirty (30) days from the date of payment. If MGM does not pay restitution within the sixty (60) day timeframe, the Attorney General, at her discretion, may assess penalties as part of a separate enforcement action, based on her authority under M.G.L. Chapter 149.
- i. Failure to comply with Paragraphs 6(a) – 6(h) shall constitute a material breach of this Agreement (the "Material Breach"). Following a Material Breach, this Agreement shall be voidable by the Attorney General, and shall allow the

Attorney General to pursue enforcement action against the Company, including, but not limited to, any criminal, civil, or administrative proceedings that were available to the Attorney General prior to the entry of this Agreement. The Attorney General agrees that until and unless a Material Breach occurs, it shall not pursue any enforcement action against the Company for any claim relating to the Covered Conduct.

7. **The Release:** In consideration of the execution of this Agreement and the Total Settlement Amount outlined in Paragraph 6 of Terms and Conditions:
 - a. The Attorney General hereby releases MGM, their predecessors, successors, transferees, heirs, and assigns, and their current and former parents, affiliates, subsidiaries, directors, officers, employees, and agents, individually and collectively, from all civil, criminal, or administrative claims or causes of action which were or could have been raised in any civil, criminal, or administrative action or proceeding relating to the Covered Conduct, and from any claims, counterclaims, agreements, contracts, duties, damages, demands, costs, losses, and expenses (including attorneys' fees and litigation costs actually incurred) of any nature whatsoever, in law or in equity, whether statutory or common law, arising in any way from the Covered Conduct, the Attorney General's investigation pertaining to the Covered Conduct, and/or this Agreement.
 - b. The release provided in Paragraph 7(a), "The Release," is limited to civil, criminal, and administrative liability arising from the Covered Conduct, and does not extend to liability arising from any other conduct of MGM.
 - c. This Agreement represents a final settlement between the Parties of the matter, and it shall not bind any private entity or the MGC, or any other state government entity other than the Attorney General. Nor shall this Agreement bind any federal government entity, including the United States.
 - d. MGM hereby releases the Attorney General, their successors, assigns, present or former officers, directors, and employees from all civil or administrative liability, and from any claims, counterclaims, agreements, contracts, duties, damages, demands, costs, losses, and expenses (including attorneys' fees and litigation costs actually incurred) of any nature whatsoever, in law or in equity, whether statutory or common law, arising in any way from the Covered Conduct, the Attorney General's investigation pertaining to the Covered Conduct, and/or this Agreement.
8. **Notice and Opportunity to Cure:** If a Party is alleged to be in breach of this Agreement, that Party shall be notified in writing sufficiently detailed to describe the alleged breach, and shall have thirty (30) days to cure the alleged breach to the other Party's reasonable satisfaction.

9. **No Appeal:** The terms of this Agreement shall not be subject to appeal in any forum. This Agreement is a settlement agreement.
10. **No Civil Citation:** The Attorney General shall not issue MGM a civil citation or its substantial equivalent based on or arising out of the Covered Conduct released under this Agreement.
11. **Voluntary and Freely:** The Parties each represent that this Agreement is freely and voluntarily entered into without any degree of duress or compulsion whatsoever.
12. **Execution of Original Agreement in Triplicate:** This Agreement consisting of six (6) pages (exclusive of signature pages) may be executed in counterparts, each of which shall constitute an original, and all of which shall constitute one and the same Agreement. Facsimiles and electronic copies of signatures shall constitute acceptable, binding signatures for purposes of this Agreement.
13. **Signatories are Authorized to Sign:** Each person who signs this Agreement in a representative capacity warrants that s/he is duly authorized to do so.
14. **Binding on Successors:** This Agreement shall be binding on all successors, transferees, heirs, and assigns of the Parties.
15. **Entire Agreement:** This Agreement constitutes the full and complete agreement between and among the Parties with respect to the subject matters hereof, and supersedes any and all other written or oral communications or agreements related thereto.
16. **Governing Law:** This Agreement shall be governed in all respects by the laws of the Commonwealth of Massachusetts.
17. **Modification:** This Agreement may be modified only in a writing signed by or on behalf of all Parties to this Agreement.

BLUE TARP reDEVELOPMENT, LLC
d/b/a MGM SPRINGFIELD

By: Chris Kelley

Dated: Oct 10, 2023

Blue Tarp reDevelopment, LLC d/b/a MGM Springfield

By: _____

Dated: _____

ANDREA JOY CAMPBELL, ATTORNEY GENERAL

By: Andrew H. Cahill, AAG

Dated: 10/25/23

Andrew H. Cahill, AAG
Office of the Attorney General
Commonwealth of Massachusetts
One Ashburton Place, 18th Floor
Boston, MA 02108

APPENDIX B

Relevant Dates

- a. Tips statutes: February 1, 2020
- b. Earned sick time: November 4, 2020
- c. Minimum wage: April 1, 2021
- d. Overtime: May 24, 2022
- e. Timely payment of wages: August 15, 2022