



City of Gardner - *Executive Department*

Mayor Michael J. Nicholson

June 13, 2024

Hon. Elizabeth J. Kazinskas, Council President
And City Councilors
Gardner City Hall, Rm 121
95 Pleasant Street
Gardner, MA 01440

RE: A Vote to Authorize the Mayor to Enter into a Host Community Agreement between the City of Gardner and Bay State Racing, LLC

Dear Madam President and Councilors,

On May 6, 2024, the Administration received a request from Bay State Racing, LLC to enter into a host community agreement (HCA) for the siting of a race track at 827 Green Street (commonly referred to as the Carl Dahl House, Andrews Park, LeBlanc Farm, Evergreen Grove, etc.).

This matter relates to Item #11317, currently on the City Council Agenda, and the final product can only be entered into if Item #11317 is adopted.

Upon receiving the May 6, 2024 request, I forwarded this matter to our Assistant City Solicitor, Atty Vincient Pusateri, who has overseen the process since then and assisted in the negotiations between my office and the applicant.

This document shows the current standing of where the City and Bay State Racing have gotten to in the negotiation process.

I respectfully request that the City Council vote to authorize the Mayor to enter into the Host Community Agreement on behalf of the City. However, I also wish to note that since the document has not been entered into yet, any suggestions on what could be added to the agreement are welcome for consideration as well.

Respectfully submitted,

Michael J. Nicholson
Mayor, City of Gardner

ORDERED – THAT

WHEREAS, Baystate Racing, LLC (“Baystate”) proposes to locate and operate an Equine Center consistent with Massachusetts General Laws Chapters, 128, 128A, and 128C, as such licenses, permits and approvals may be issued by the Commonwealth of Massachusetts; and

WHEREAS, Baystate anticipates that as a result of the Equine Center’s operation, the local economy will create additional business for local farms, restaurants and local businesses; and

WHEREAS, the City and Baystate want to ensure any and all impacts to the City are compensated by way of a Host Community Agreement; and

WHEREFORE, in consideration of the foregoing, the Company and the City wish to enter into a Host Community Agreement.

NOW THEREFORE IT IS ORDERED that the Honorable Mayor Michael J. Nicholson be hereby authorized for and on behalf of said City to execute and deliver any and all documents and take any and all acts necessary, convenient, and helpful to facilitate and execute the Agreement as attached or in form substantially similar thereto.

HOST COMMUNITY AGREEMENT

FOR THE SITING OF A RACETRACK IN THE CITY OF GARDNER

**By and Between the City of Gardner, Massachusetts
and
Baystate Racing, LLC**

This Host Community Agreement (“Agreement”) is made and entered into as of July __, 2024 (the “Effective Date”), by and between the City of Gardner, Massachusetts, acting by and through its Mayor, in reliance upon all of the representations made herein, a Massachusetts municipal corporation with a principal address of City Hall, 95 Pleasant Street, Gardner, MA 01440, (the “City” or “Gardner”), and Baystate Racing, LLC, a Massachusetts limited liability company, with a business address at Post Office Box 2311, Framingham, MA 01703 (“Baystate” and, collectively with the City, the “Parties”).

RECITALS

WHEREAS, Baystate wishes to locate and operate an Equine Center providing for the breeding, housing, riding, showing, studying, treatment, training, retirement, and racing of horses and other equestrian- and agricultural-related uses, which also includes wagering on live and simulcast horse racing as authorized by Massachusetts General Laws 128A and 128C the Commonwealth of Massachusetts (the “Equine Center”) at the former 117-acre Andrews Park (827 Green Street in Gardner) (the “Site”) in accordance with and pursuant to Massachusetts General Laws Chapters, 128, 128A, and 128C, as such licenses, permits and approvals may be issued by the Commonwealth of Massachusetts (the “Commonwealth”) in accordance with its laws and regulations and by the City in accordance with its Zoning Bylaws and other applicable local statutes, bylaws and regulations; and

WHEREAS, Baystate anticipates that as a result of the Equine Center’s operation, the local economy will create additional business for local farms, restaurants and local businesses; and

WHEREAS, the City and Baystate want to ensure ongoing collaboration and communication amongst the parties, Baystate will establish an Oversight Committee and agrees to report to the Mayor and Council before June 1 of each year on the operation of the Equine Center the year before and plans for operations for the year ahead, including the number of race days, non-racing operations, parking, marketing, and hiring of vendors and employees.

WHEREAS, the City recognizes the development of the Equine Center at the Site will benefit the City and its citizens through increased economic development, additional employment opportunities for residents, bringing in an estimated \$460,000 per year in new revenue and benefits when fully operational, and further that the Equine Center operation will enhance and protect the agricultural designation of the site, accordingly the City desires to support Baystate in the development of the Equine Center at the Site; and

WHEREAS, Baystate recognizes that 3,093 residents of the City, according to the most recent U.S. Census reports, live at or below the poverty line and will work to employ and assist these individual and families as permitted by law to reduce the number of individuals and families below the poverty level in City; and

WHEREAS, Baystate anticipates that as a result of the Equine Center's operation, the City will incur additional expenses and impacts on the City's roads and other infrastructure systems, law enforcement, fire protection services, inspectional services, permitting and consulting services, as well as unforeseen impacts, both quantifiable and unquantifiable on the City; and provided further that Baystate is committed to paying the cost of such expenses and impacts; and

WHEREAS, Baystate intends to provide certain benefits to the City in the event that (a) the City issues applicable licenses, permits and approvals for the operation of the Equine Center, (b) Baystate or its affiliates receives all necessary licenses, permits and approvals from the Massachusetts Gaming Commission to operate the live and simulcast horse racing with wagering; and (c) Baystate or its affiliates receives all other necessary licenses, permits and approvals from the Commonwealth and the City to construct and operate the Equine Center; and

WHEREAS, Baystate commits to never seek or apply for so-called casino or Class III gaming in the City of Gardner; and

WHEREAS, Baystate stipulates that the Site is located in a zoning district that prohibits operating under a licensed issued pursuant to the Massachusetts Sports Wagering Act. G.L. c. 23N and 23K.

WHEREAS, a majority of the registered voters of Worcester County voting on the question described in Massachusetts General Laws, Chapter 128A, Section 14 regarding horse racing meetings, voted in the November general election in 1974 in the affirmative when said question was last submitted to them, and therefore Worcester County has authorized the licensing of horse racing therein at which the pari-mutuel system of betting shall be permitted; and

WHEREAS, the City Council, after a public hearing held after seven days' notice had been given by posting on the City website and publishing in Gardner News, has approved the location of a racetrack at the Site such that the Massachusetts Gaming Commission may issue a license for racing meetings at the Equine Center pursuant to Massachusetts General Laws, Chapter 128A, Section 13A.

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

1. Recitals

The above Recitals are true and accurate and are incorporated herein and made a part of this Agreement.

2. Payments to the City, Support of the City

In the event that Baystate or its affiliates obtains the requisite licenses and/or approvals as may be required for the operation of the Equine Center from the Massachusetts Gaming Commission, and receives any and all other licenses, permits and approvals necessary for the construction and operation of the Equine Center from the Commonwealth and the City, and at the expiration of any final appeal period related thereto, such licenses, permits and approvals allow Baystate and its affiliates to locate, occupy and operate the Equine Center in the City, then Baystate agrees to provide the following "Annual Payments" each municipal fiscal year that it conducts live racing and so licensed to fully operate to the City (expected to commence July 1, 2025):

A. Annual Community Impact Fee

Baystate anticipates that the City will incur additional expenses and impacts on the City's road and other infrastructure systems, law enforcement, fire protection

services, inspectional services, and permitting and consulting services, as well as unforeseen impacts, both quantifiable and unquantifiable, on the City. Accordingly, in order to mitigate the financial impact on the City and use of City resources, Baystate agrees to pay an “Annual Community Impact Fee” to the City, in the amount and under the terms as follows:

1. Baystate shall make monthly payments to the Commonwealth in the amount of one and one-half percent (1.5%) of simulcast revenue as provided for in Massachusetts General Laws Chapter 128C, Section 4. Said amount to be collected by the Commonwealth and paid to the City along with its local aid disbursements. It is estimated that said fee, when fully operational, will be approximately \$240,000 per year.
2. The City shall use the Annual Community Impact Fee as it deems appropriate in its sole discretion.

B. Additional Costs, Payments and Reimbursements

1. Initial Community Benefit Payment: Within thirty (30) days after receipt of all licenses and permits necessary to operate the Equine Center but in any event before undertaking any horse racing wagering operations, Baystate shall pay to the City an initial community benefit payment in the amount of Fifty thousand dollars (\$50,000).
2. Permit and Connection Fees: Baystate hereby acknowledges and accepts, and waives all rights to challenge, contest or appeal, the City’s building permit application fees and all other local charges and fees generally applicable to other commercial developments in the City and the PILOT payment except as provided for herein.
3. Equine Center Consulting Fees and Costs: In addition to the Annual Community Impact Fee, Baystate shall reimburse the City for any and all reasonable consulting costs and fees related to any land use applications concerning the Equine Center, negotiation of this Agreement and any other related agreements, and any reviews concerning the Equine Center, including planning, engineering, legal and/or environmental professional consultants and any related reasonable disbursements at standard rates charged by the above-referenced consultants in relation to the Equine Center not otherwise covered by this agreement.
4. Other Costs: Baystate shall reimburse the City for the actual costs incurred by the City in connection with holding public meetings and forums substantially devoted to discussing the Equine Center and/or reviewing the Equine Center and for any and all reasonable consulting costs and fees related to the monitoring and enforcement of the terms of this Agreement, including, but not limited to independent financial auditors and legal fees.
5. Meals Tax Revenues: Baystate shall be responsible to collect and remit to the Commonwealth on behalf of the City any local meals taxes with respect to the Equine Center in accordance with applicable law. It is estimated that said tax will be approximately \$10,000 per year from increased sales in local restaurants, food trucks and concessions.

6. Motor Vehicle Excise Taxes: Baystate shall principally garage all vehicles owned by it or its affiliates and used in connection with the Equine Center in the City, so that excise taxes shall be paid to the City consistent with applicable law.
7. Late Payment Penalty: Baystate acknowledges that time is of the essence with respect to its timely payment of all funds required under Section 2 of this Agreement. In the event that any such payments are not fully made with thirty (30) days of the date they are due, Baystate shall be required to pay the City a late payment penalty equal to five percent (5%) of such required payment. Baystate shall pay an additional penalty equal to five percent (5%) of the required payment to be made directly to City for each thirty days that accrues without full payment.
8. Real & Personal Property Taxes: Baystate understands and accepts that its property will be assessed and taxed in accordance with state law and will pay all such tax bills in a timely fashion. Provided, however, that in lieu of said payment, Baystate shall, as a Payment In Lieu Of Taxes, be at least \$230,000 per municipal fiscal year.
 This amount shall increase, after the first five years, each year thereafter by the percent increase to the real estate tax levy, not including new growth, up to two and one half (2.5%) percent per year.
 Every five (5) years the City may appraise the value of the property. After the appraisal the PILOT fee will be adjusted to the higher of either, 1) the new appraised amount multiplied by the then tax rate per \$1,000.00 or 2) the amount as provided for herein. Should the product of the new appraisal multiplied by the tax rate per thousand be greater than the PILOT amount calculated pursuant to the terms of this agreement and if the applicant disagrees with the City's appraisal, then Baystate shall obtain its own appraisal for the property. Thereafter, if the parties are unable to agree on the amount of the PILOT the appraiser for the City and the appraiser for the Baystate shall select a third appraiser, by mutual agreement, who shall resolve the dispute.

C. Public Amenities

The Baystate shall complete, as components of its project, a series of infrastructure and public improvements in connection with the project, including, without limitation:

1. Community Events: Baystate shall work with the community to host at least one event per year at the Equine Center for the benefit of the community, such as fundraisers for local charities, athletic teams, and schools, and for celebration of community.
2. Local Preference: Baystate shall develop a program for preferential access to at Festivals conducted at the Equine Center for Gardner residents.
3. Education & Mentoring Program: Baystate shall work with local schools to develop an "Ag in the Classroom" program for students and a mentoring program to provide jobs for local graduates of agricultural schools.
4. North Central Pathway: Baystate shall provide easy access from the trail to the Equine Center.

5. Tree Replacement Program: Baystate shall cause 500 trees to be planted throughout Gardner consistent with a program approved by the Mayor.
6. Infrastructure: Baystate shall be solely responsible for any necessary cost incurred in connection with improvements to the public works infrastructure of the public ways, water supply and city sewer system which are incurred in connection with developing the Equine Center and the operation of the equine Center on race days

D. Annual Charitable/Non-Profit Contributions

In addition to any funds specified herein, Baystate shall annually contribute to public local charities/non-profit organizations in the City, or a regional non-profit organization that directly benefits residents of the City, in an amount no less than twenty thousand dollars (\$20,000), said charities/non-profit organizations to be determined by Baystate upon recommendation of the City in its reasonable discretion. The charitable/non-profit contribution shall be made annually beginning

on the first anniversary following the Commencement of Operations at the Equine Center, and shall continue for the term of this Agreement. This amount shall increase after the first five years by an amount equal to one (1%) percent of the previous year's payment each year thereafter.

E. Commencement of Baystate Payments to City

Not including one-time payments to the City, annual payments to the City shall commence in the fiscal year in which Baystate first conducts live racing in accordance with M.G.L. c. 128A at the Equine Center. For example, this is expected to occur on October of 2025, so annual payments to the City would commence in fiscal year commencing on July 1, 2025.

3. **Vehicular Access To and From the Project**

A. Traffic Plan & Improvements

Baystate, as part of its project review by the Planning Board, at its sole expense shall study the local traffic impacts of the proposed project and present a plan to mitigate any such impacts to the City. Baystate shall fund and cause the permitting, design, and construction, in coordination with federal, state and municipal regulations, of any said improvements to the project as outlined in the foregoing plan.

B. Transportation, Marketing & Parking Management Plans

Baystate shall develop, in coordination with state and municipal officials, a transportation and parking management plan for all Race days at the Equine Center to ensure that impacts from said events are properly managed. Said plan will be formulated with the input of the police chief, fire chief, and planning board chair, and then presented to the Mayor for his approval at least thirty (30) days in advance of the first Race day and will be updated on an annual basis to both reaffirm the original plan and improve operations, as identified, and needed.

C. Traffic Peer Reviewer

If asked, Baystate will reimburse the City for the cost incurred in connection with hiring an independent traffic/transportation engineering consultant to review Baystate's proposed transportation and parking plan, and provide commentary, recommendations, and general advice to the City during the review of the Traffic and Parking Plan.

D. Setup, Removal & Cleanup

Baystate shall, at its sole expense, pay for the setup, removal and cleanup of the site and surrounding area after each racing day. In addition, Baystate shall pay for all necessary police and fire details, DPW personnel, or other related municipal cost associated with the operations of the race day. Baystate shall commence setup of the site no sooner than seven days before the start of a race, shall cleanup the site and surrounding area within one day of the conclusion of a race, and shall remove all temporary facilities within seven days of the close of each race.

4. **Local Permit Review**

Baystate acknowledges that, in accordance with the City's Zoning Bylaws, the operation of the Equine Center is subject to the issuance of a permit and or decision(s) by city agencies. Nothing in this Agreement is intended to or shall have the effect of binding or otherwise

limiting the discretion of the local officials to conduct such reviews and impose such conditions as it deems appropriate in connection with its review of Baystate's application for a permit and or a decision(s). Any permit, decision(s) or license required for the Equine Center and issued by any City board, committee, commission or official, including any amendments or changes to said City permits, decision(s) or licenses approved by any such board, committee, commission or official, shall be enforceable by the City consistent with any regulatory or administrative enforcement remedies that may be available to the City.

Notwithstanding the Zoning Ordinance, the Applicant agrees to submit to the Planning Board for a site plan review including but not limited to the traffic plan.

5. **Operational Issues**

A. Limitation on Race Days

Baystate agrees that no more than twenty (20) Race days shall be held at the Equine Center per calendar year. Further, Baystate agrees, prior to filing its annual application for a Racing Meeting License, to review the number of live race days it will request with the City. The parties recognize that the number of race days are subject to approval by the Massachusetts Gaming Commission.

Subject to the approval of the Massachusetts Gaming Commission, over the next five years, Baystate shall seek approval to race only on the following number of weekends (days) each year:

- 2025: One Weekend (three days)
- 2026: Two Weekends (six days)
- 2027: Two Weekends (six days)
- 2028: Three Weekends (nine days)
- 2029: Three Weekends (nine days)

Baystate shall work with the City to select dates that minimize conflicts with other local events, subject to the approval of the Massachusetts Gaming Commission.

6. **Treatment of Horses**

Baystate has emphasized the importance of the care and treatment of horses in connection with the Equine Center. To this end, Baystate shall establish and implement best in trade management practices to ensure the highest possible level of care, treatment and protection of horses kept, trained and/or raced at the Equine Center. Baystate shall establish a Racing Oversight Board, which shall be charged with establishing and ensuring compliance with these best in trade management practices. Baystate shall at least annually report to the City on the steps it has taken to ensure compliance with this provision. Baystate shall include one individual appointed by the Mayor of the City of Gardner on Baystate's Racing Oversight Board. Upon request, the Racing Oversight Board or its chair shall attend a meeting of the Council to review and discuss Baystate's compliance with this section.

Baystate shall forthwith advise the City of the initiation of any investigation by the Massachusetts Gaming Commission (MGC) or any other state or federal regulatory body into the poor treatment of horses by Baystate or at the Equine Center and, upon completion of such investigation, shall forthwith advise the City of the results thereof.

Baystate shall collect all horse manure, store it in a covered container or facility, and dispose of it off site. In addition, Baystate shall strictly follow all related regulations.

7. **Responsible Gaming in Gardner**

Baystate recognizes that, while gaming is an enjoyable leisure and entertaining activity for most, there is a percentage of the population that cannot game responsibly. Therefore, Baystate will implement a “Responsible Gaming Plan” at the Equine Center on Race days, the goal of which shall be to ensure that those people who cannot game responsibly get the help they need.

Baystate will accomplish the Responsible Gaming Plan goals by: (1) educating its employees and providing information to patrons about the odds of betting and how to make responsible gaming decisions; (2) promoting responsible gaming at Race day operations; (3) supporting public awareness of responsible gaming; and (4) prominently displaying and providing educational materials at the Equine Center on Race days to educate customers regarding the risk of problem gambling and available services to obtain treatment.

8. **Local Vendors and Employment**

Prior to the Commencement of Operations at the Site, Baystate shall organize and conduct two separate information sessions and job fairs for veterans and City residents, and shall publicize both events through local City website and newspapers, social media and by posting notice of the same at various locations in the City. Baystate shall also use good faith efforts to offer job skills assessments and provide guidance for interested persons to receive training to qualify for certain positions at the Equine Center.

To the extent such practice and its implementation are consistent with federal, state, and local statutes, bylaws and regulations, Baystate will make every effort, in a legal and non-discriminatory manner, to give priority to local businesses, suppliers, contractors, builders and vendors in the provision of goods and services for the “non-initial” construction, maintenance and continued operation of the Equine Center when such contractors and suppliers are properly qualified and price competitive and shall use best faith efforts to hire City residents and utilize women-owned, minority-owned, and veteran-owned vendors within the City. Baystate also shall use best faith efforts to offer job skills assessments and provide guidance for interested persons to receive training to qualify for certain positions at the Equine Center.

In addition to the information sessions and job fairs mentioned above, Baystate’s efforts shall include actively soliciting bids from vendors through local advertisements and direct contact, advertising any job expansion or hiring of new permanent full-time employees first to City residents a minimum of two (2) weeks before advertising through all typical regional employment advertising outlet coordination with the local Chamber of Commerce and such other reasonable measures as the City may from time to time request.

Baystate’s annual report to the Mayor and City Council in accordance with Section 14 of this Agreement shall include information concerning the number of City residents employed at the Equine Center.

In coordination with Gardner businesses, Baystate shall actively promote Gardner farms, restaurants, businesses and other attractions, both on its website and in prominent locations within the Equine Center.

9. Local Taxes

At all times during the term of this Agreement, property, both real and personal, owned, leased or operated by Baystate or its affiliates shall be treated as taxable, and all applicable real estate and personal property taxes for that property shall be paid either directly by Baystate or its affiliates and Baystate shall not object or otherwise challenge the taxability of such property with respect to such taxes.

10. Security and Safety

To the extent requested by the City's Police Department, and subject to the requirements of state and local authorities, Baystate shall work with the City's Police Department in reviewing and approving security plans prior to the Commencement of Operations, including determining the placement of security cameras. Unless prohibited by the Massachusetts Gaming Commission or Massachusetts State Police, the City's Police Department shall be given access to video feeds from all security cameras.

Baystate agrees to cooperate with the City's Police Department, including but not limited to periodic meetings to review operational concerns, security, cooperation in investigations, and communications with the City's Police Department of any suspicious activities at or in the immediate vicinity of the Equine Center.

Baystate shall pay for police and fire details to staff Race days as deemed appropriate by the Fire Chief and Police Chief. The Equine Center shall be open to the Police Department for inspection at any time, with or without notice.

Baystate agrees and acknowledges that annual inspections of the Equine Center by the City's Police Department, Fire Department, Building Department and Board of Health shall be a condition of continued operation in City and agrees to cooperate with the City's Police Department, Fire Department, Building Department and Board of Health in providing access for scheduled inspections of the Equine Center.

11. Nature of Baystate's Obligations

The obligations of Baystate set forth in this Agreement are specifically contingent upon (a) Baystate or its affiliates receiving all necessary licenses, permits and approvals from the Massachusetts Gaming Commission to operate the live and simulcast horse racing with wagering aspects of the Equine Center; and (b) Baystate or its affiliates receiving all other necessary licenses, permits and approvals from the Commonwealth and the City to construct and operate the Equine Center. If, for any reason, Baystate and its affiliates have not received all such local and state licenses, permits and approvals necessary to construct and operate said Equine Center within 48 months after the date of this Agreement, not including months with an intervening force majeure event, then either party may, in its sole discretion, upon notice to the other, terminate this Agreement, whereupon neither the City nor Baystate shall have any further obligations or liabilities hereunder, provided, however, that Baystate shall be required to pay any consulting or other costs incurred by the City prior to such notice in connection with the Equine Center. If Baystate does so terminate this Agreement, then the City shall not be responsible for the return of any funds provided to it by Baystate.

This Agreement does not affect, limit, or control the authority of City boards, commissions, and departments to carry out their respective powers and duties to decide upon and to issue,

or deny, applicable licenses, permits and other approvals under the statutes and regulations of the Commonwealth, the General Bylaws and Zoning Bylaws of the City, or applicable regulations of those boards, commissions, and departments or to enforce said statutes, bylaws and regulations. The City, by entering into this Agreement, is not hereby required or obligated to issue such licenses, permits and approvals as may be necessary for the Equine Center to operate in the City, or to refrain from enforcement action against Baystate and/or the Equine Center for violation of the terms of said licenses, permits and approvals or said statutes, bylaws, and regulations.

12. Support

The City agrees to support the adoption of the requisite licenses, permits and approvals for the operation of the Equine Center. The City further agrees to submit to the Massachusetts Gaming Commission, or such other state licensing, registering or monitoring authority, as the case may be, the required certifications relating to Baystate's (or its affiliate's) application for a license or certificate of registration to operate the Equine Center where such compliance has been properly met, but makes no representation or promise that it will act on any other license, permit or approval request, including, but not limited to any zoning application submitted for the Equine Center, in any particular way other than by the City's normal and regular course of conduct and in accordance with its rules and regulations and any statutory guidelines governing them.

13. Term

Except as expressly provided herein, this Agreement shall take effect on the date set forth above, and shall be applicable for as long as Baystate, its affiliates, their successors or their assigns operates the Equine Center at the Site and is licensed by the Massachusetts Gaming Commission to operate the live and simulcast horse racing with wagering aspects of the Equine Center.

14. Annual Reporting

Baystate shall file an annual written report with the City Council each year, on or before June 1, for the purpose of reporting on compliance with each of the terms of this Agreement during the preceding calendar year and shall, at the request of the City Council, appear at a regularly or specially scheduled meeting to discuss such annual report.

15. Successors/Assigns

This Agreement is binding upon the Parties hereto, their successors, assigns and legal representatives. Baystate shall not transfer or assign its rights or obligations under this Agreement without prior written authorization of the City, which will not unreasonably be withheld, delayed or conditioned. Baystate shall provide the City with information relating to any such successor in advance of any such transaction, including any information required by the Massachusetts Gaming Commission. Any assignee of or successor in interest to Baystate shall be bound by the terms of this Agreement to the fullest extent allowed by law. The provisions of this paragraph shall also apply to any transfer, sale or conveyance of Baystate of a controlling interest therein. The City may consider a prospective owner's documented violations by regulators owing to its failing to protect the health and wellbeing of horses and financial condition when considering to give its approval.

16. Notices

Any and all notices, consents, demands, requests, approvals or other communications required or permitted under this Agreement, shall be in writing and delivered by hand or by other reputable delivery service, and shall be deemed given when so delivered.

To City: Mayor, City of Gardner
City Hall
95 Pleasant Street
Gardner, MA 01440

Copy to:

To Baystate: Brian Falk
Mirick, O'Connell, DeMallie & Lougee, LLP
1800 West Park Drive, Suite 400
Westborough, MA 01581-3926

Copy to:

John Stefanini
Baystate Racing, llc
Post Office Box 2311
Framingham, MA 01703

17. Severability

If any term or condition of this Agreement or any application thereof shall to any extent be held invalid, illegal or unenforceable by a court of competent jurisdiction, the validity, legality, and enforceability of the remaining terms and conditions of this Agreement shall not be deemed affected thereby unless the City or Baystate would be substantially or materially prejudiced. Further, Baystate agrees that it will not challenge, in any jurisdiction, the enforceability of any provision included in this Agreement; and to the extent the validity of this Agreement is challenged by Baystate in a court of competent jurisdiction, Baystate shall pay for all reasonable fees and costs incurred by the City in enforcing this Agreement.

18. Governing Law

This Agreement shall be governed by, construed and enforced in accordance with the laws of the Commonwealth of Massachusetts, and the Parties submit to the jurisdiction of any of its appropriate courts for the adjudication of disputes arising out of this Agreement.

19. **Indemnification**

Excluding any Claims (as herein defined) caused by the gross negligence or intentional misconduct of the City, Baystate shall indemnify, defend, and hold the City harmless from and against any and all claims, demands, liabilities, actions, causes of actions, defenses, proceedings, subpoenas, document requests and/or costs and expenses, including attorney's fees (collectively, the "Claims"), brought against or initiated as to the City, its agents, departments, officials, employees, insurers and/or successors, by any party, including any private or public entity, arising from or relating to the Equine Center. Such indemnification shall include, but shall not be limited to, all reasonable fees and reasonable costs of attorneys and consultants of the City's choosing incurred in defending or responding to such Claims. Baystate agrees, within thirty (30) days of written notice by the City, to reimburse the City for any and all costs and fees incurred in defending itself from or responding to such Claims. To the extent that any of the City's insurance policies provide coverage for any Claim to which indemnity is being sought hereunder alleging negligence or intentional misconduct of the City, the City shall first submit the Claim to its insurance carrier before seeking indemnity from Baystate, and Baystate shall only be required to indemnify the City to the extent there is no coverage or insufficient coverage.

20. **Entire Agreement**

This Agreement, including all documents incorporated herein by reference, constitutes the entire integrated agreement between Baystate and the City with respect to the matters described herein. This Agreement supersedes all prior agreements, negotiations and representations, either written or oral, and it shall not be modified or amended except by a written document executed by the Parties hereto.

21. **Amendments/Waiver**

The failure of any party to exercise any right under this Agreement shall not, unless otherwise provided or agreed to in writing, be deemed a waiver thereof; nor shall a waiver by any party of any provisions hereof be deemed a waiver of any future compliance therewith, and such provisions shall remain in full force and effect.

22. **Headings**

The article, section, and/or paragraph headings in this Agreement are for convenience of reference only, and shall in no way affect, modify, define or be used in interpreting the text of this Agreement. Where the context requires, all singular words in the Agreement shall be construed to include their plural and all words of neuter gender shall be construed to include the masculine and feminine forms of such words.

23. **Counterparts**

This Agreement may be signed in any number of counterparts all of which taken together, shall constitute one and the same instrument, and any party hereto may execute this Agreement by signing one or more counterparts.

24. **Signatures**

Each party hereto, and their respective successors and assigns agree that the execution of this Agreement by electronic means (including by use of DocuSign (or similar) and/or by use of digital signatures) and/or the delivery of an executed copy of this Agreement by e-

mail shall be legal and binding and shall have the same full force and effect as if an original executed copy of this Agreement had been delivered.

25. No Joint Venture

The Parties hereto agree that nothing contained in this Agreement or any other documents executed in connection herewith is intended or shall be construed to establish the City and Baystate, or the City and any other successor, affiliate or corporate entity as joint ventures or partners.

26. Nullity

This Agreement shall be null and void in the event that Baystate does not construct the Equine Center in the City or relocates the Equine Center out of the City. Further, in the case of any relocation out of the City, Baystate agrees that an adjustment of annual Payments due to the City hereunder shall be calculated based upon the period of occupation of the Equine Center within the City, but in no event shall the City be responsible for the return of any funds provided to it by Baystate.

27. Third-Parties

Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the City or Baystate.

28. Representation of Authority

Each person signing this Agreement hereby represents and warrants that he or she has the full authority and is duly authorized and empowered to execute this Agreement on behalf of the party for which he or she signs.

29. Force Majeure

Baystate shall not be considered to be in default in the performance of its obligations under this Agreement to the extent that performance of any such obligation is prevented or delayed by a “Force Majeure Event” (as defined below). If Baystate is prevented or delayed in the performance of any such obligation by a Force Majeure Event, it shall provide reasonable notice to the City of the circumstances preventing or delaying performance and the expected duration thereof, if known. For the purposes of this Agreement, a “Force Majeure Event” is any circumstance not within the reasonable control, directly or indirectly, of the Party affected and includes, but is not limited to, the following: strikes or other significant labor disputes; significant supply shortages; pandemics, adverse weather conditions and other acts of nature; acts of God, fire, other substantial property damage or any condition that prevents or significantly interferes with the operations of the Equine Center; significant subsurface conditions; riot or civil unrest; the forced closure of all gaming establishments by the Commonwealth of Massachusetts or the Massachusetts Gaming Commission; and actions or failures to act of any governmental authority or agency. A Force Majeure Event may justify delay of performance of one or more payment obligations hereunder but shall not justify excusal of performance.

30. Enforcement.

It is expressly understood and agreed, by and between Baystate and City, that if Baystate shall neglect, fail or refuse to substantially comply with any nonpayment term herein, then Baystate does hereby agree, as a part of consideration for the City's execution of this Agreement, after 30 days written notice from the City Council specifying in detail said lack of substantial compliance and the resolution sought by City, and if after another 30 days written notice outlining reasons for the continued lack of substantial compliance and a public hearing by the City Council, then to pay to the City one thousand dollars (\$1,000) per day per violation, not as a penalty but as liquidated damages for such breach of contract, for each and every calendar day that Baystate shall be in default after receipt of the initial notice of such default from the City. The said amount is fixed and agreed upon by and between Baystate and the City because of the impracticability of fixing and ascertaining the actual damages the City would in such event sustain, and said amount is agreed to be the amount of damages which the City would sustain and said amount shall be deducted by the City from periodic payments. Nothing herein shall limit the City's ability to pursue injunctive relief, specific performance or any other remedy available at law or in equity.

{ INTENTIONALLY BLANK }

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement under seal on the day and year first written above.

CITY OF GARDNER

BAYSTATE RACING LLC

By: Michael J. Nicholson
Title: Mayor

By: Sagi Genger
Title: Manager

True Copy attested by

By: Titi Siriphan
Title: City Clerk