

1 KAMALA D. HARRIS
Attorney General of California
2 SARA J. DRAKE
Senior Assistant Attorney General
3 WILLIAM P. TORNGREN
Deputy Attorney General
4 State Bar No. 58493
1300 I Street, Suite 125
5 P.O. Box 944255
Sacramento, CA 94244-2550
6 Telephone: (916) 323-3033
Fax: (916) 327-2319
7 E-mail: William.Torngren@doj.ca.gov
Attorneys for the Complainant

8
9 **BEFORE THE**
10 **CALIFORNIA GAMBLING CONTROL COMMISSION**
11 **STATE OF CALIFORNIA**

12
13
14 **In the Matter of the Accusation and**
Statement of Issues Against:
15
16 **GARDEN CITY, INC., doing business as**
CASINO M8TRIX (GEGE-000410);
17 **ERIC G. SWALLOW (GEOW-001330);**
18 **PETER V. LUNARDI III (GEOW-001331);**
19 **JEANINE LYNN LUNARDI (GEOW-**
20 **003119); and**
21 **THE LUNARDI FAMILY LIVING**
TRUST, dated August 27, 2008 (GEOW-
22 **003259).**
23 **1887 Matrix Boulevard**
San Jose, CA 95110
24 **Respondents.**

OAH No. 2014060129

BGC Case No. HQ2014-00001AL

ACCUSATION AND
STATEMENT OF ISSUES

(Replacing the Accusation filed with Office
of Administrative Hearings on
June 3, 2014)

1 Complainant alleges as follows:

2 **PARTIES**

3 1. Wayne J. Quint, Jr. (Complainant) brings this Accusation and Statement of Issues
4 solely in his official capacity as the Chief of the California Department of Justice, Bureau of
5 Gambling Control (Bureau). It replaces the Accusation previously filed with the Office of
6 Administrative Hearings on June 3, 2014.

7 2. At all times relevant herein, Respondent Garden City, Inc. (Garden City) was a
8 licensed gambling enterprise, California State Gambling License Number GEGE-000410. That
9 license expired on May 31, 2014, subject to the outcome of this Accusation and Statement of
10 Issues. On May 29, 2014, the California Gambling Control Commission (Commission) referred
11 Garden City's renewal application to an evidentiary hearing. Garden City does business as
12 Casino M8trix at 1887 Matrix Boulevard in San Jose, California. It is a 49-table card room.

13 3. Respondent Eric G. Swallow (Swallow), license number GEOW-001330, is a
14 shareholder of Garden City and endorsed on its license. Respondent Peter V. Lunardi III (Peter
15 Lunardi), license number GEOW-001331, was a shareholder of Garden City, is a trustee of
16 Respondent Lunardi Family Living Trust, dated August 27, 2008 (Lunardi Trust), and is
17 endorsed on Garden City's license. Respondent Jeanine Lynn Lunardi (Jeanine Lunardi),
18 license number GEOW-003119, also was a shareholder of Garden City, is a trustee of the
19 Lunardi Trust, and is endorsed on Garden City's license. The Lunardis are husband and wife.
20 On August 12, 2010, the Commission approved the transfer of the Lunardis' shares, and issued
21 license number GEOW-003259, to the Lunardi Trust, which then was endorsed on Garden
22 City's license. Swallow and the Lunardi Trust each own 50 percent of Garden City's stock and
23 constitute all of its shareholders. Their licenses expired on May 31, 2014, subject to the
24 outcome of this Accusation and Statement of Issues. On May 29, 2014, the Commission
25 referred their renewal applications to an evidentiary hearing..

26 4. Collectively, Garden City, Swallow, Peter Lunardi, Jeanine Lunardi, and the Lunardi
27 Trust are referred to as "Respondents" in this Accusation and Statement of Issues.

1 **STATEMENT OF THE CASE**

2 5. This case seeks to discipline Respondents' licenses – by denial of renewal,
3 revocation, suspension, and/or fine as appropriate – for persistent and repeated violations of,
4 and lack of suitability for continued licensing under, the Gambling Control Act (Act) and the
5 regulations adopted pursuant to the Act. As alleged in this Accusation and Statement of Issues,
6 Respondents provided untrue and misleading information to the Bureau and others, failed to
7 provide information requested by the Bureau, engaged in self-dealing to siphon off monies for
8 themselves and reduce reported net income, and benefited from payments prohibited by the Act.
9 The acts and omissions alleged in this Accusation and Statement of Issues are inimical to the
10 public health, safety, and welfare; those acts and omissions demonstrate that Respondents are
11 not persons of good character, honesty, and integrity. Their acts and omissions, as alleged in
12 this Accusation and Statement of Issues, pose a threat to the effective regulation and control of
13 controlled gambling, and create or enhance the dangers of unsuitable, unfair, or illegal
14 practices, methods, and activities in carrying on the business and financial arrangements
15 incidental to the conduct of controlled gambling. Respondents' acts and omissions not only
16 impeded the Bureau's investigation and fact gathering, but also effectively reduced potential
17 payments to charities located in the City of San Jose. Respondents are not suitable or qualified
18 for continued licensure; therefore, each of their licenses should be disciplined.

19 **FACTUAL BACKGROUND**

20 6. Respondents operate, and operated in the past, through a maze of affiliated entities.
21 Money flows between those entities without documentation or relationship to the value of
22 services provided. This is Respondents' standard practice. In response to the Bureau's request
23 for invoices relative to payments involving millions of dollars annually, Swallow responded:

24 There are no invoices. It has been agreed upon by ownership as
25 standard practice to estimate the annual payment for the year per the
26 agreement and then make monthly payments based on available cash
flow to give the Casino [Garden City] operational flexibility.

27 In addition, Respondents' agent has written:
28

1 Whether the money came from companies owned by the individual
2 applicants or the individual applicants makes no difference as they
3 ultimately are the same individuals.

4 Exhibit A, which is attached and incorporated by reference, illustrates the maze of affiliated
5 entities and transactions. It also sets forth the flow of funds, as well as certain entities and
6 persons affiliated with or employed by Respondents.

7 7. Garden City has been licensed as a card room in the City of San Jose since
8 approximately 1976. In 1998, it filed for bankruptcy protection. In 2005, Swallow, Peter
9 Lunardi, and Jeanine Lundardi, along with Dina DiMartino, entered into a stock purchase
10 agreement to acquire Garden City's stock from the bankruptcy trustee under a proposed
11 reorganization plan. On January 5, 2006, the Commission approved the stock purchase
12 agreement. On March 22, 2007, Ms. DiMartino withdrew her state gambling license
13 application. Swallow, Peter Lunardi, and Jeanine Lunardi purchased all issued and outstanding
14 stock in Garden City in 2007. The Commission first endorsed Swallow, Peter Lundardi, and
15 Jeanine Lunardi on Garden City's license on March 1, 2007. In August 2010, Peter Lunardi
16 and Jeanine Lunardi transferred their shares to the Lunardi Trust.

17 8. On May 25, 2007, Dolchee LLC (Dolchee) was formed as a California limited
18 liability company. At all times since formation, its only members have been Swallow and Peter
19 Lunardi. In 2007 and 2008, Dolchee filed for trademarks on "Baccarat Gold." Dolchee has no
20 other trademarks registered in its name with the United States Patent and Trademark Office. On
21 December 31, 2008, Dolchee was converted out of California to be a Nevada limited liability
22 company. By an undated License Agreement made as of January 1, 2009, Dolchee agreed to
23 provide certain denominated games to Garden City for a monthly minimum payment of
24 \$400,000, or \$4.8 million annually. The agreement does not contain any provision for
25 determining any amount above the minimum. Between January 1, 2009, and December 31,
26 2012, Garden City's payments to Dolchee totaled \$38,482,000; during that time period, Garden
27 City always paid more than the minimum annually. Swallow advised the Bureau that no
28 invoices or similar documents exist with respect to the payments exceeding the minimum.

1 9. On July 21, 2008, Profitable Casino LLC (Profitable Casino) was formed as a
2 California limited liability company. Its sole member is Swallow. On December 31, 2008,
3 Profitable Casino was converted out of California to be a Nevada limited liability company. By
4 an undated Application Service Provider Agreement made as of January 1, 2009, Profitable
5 Casino agreed to provide access to certain computer applications to Garden City for a monthly
6 minimum consulting fee of \$400,000, or \$4.8 million annually. Profitable Casino was to
7 invoice Garden City for any fees exceeding the minimum. Between January 1, 2009, and
8 December 31, 2012, Garden City's payments to Profitable Casino totaled \$14,050,000.
9 Swallow advised the Bureau that no invoices or similar documents exist with respect to the
10 payments.

11 10. On December 31, 2008, Potere LLC (Potere) was formed as a Nevada limited
12 liability company. Its sole member is Peter Lunardi. By an undated Vendor Contractor
13 Agreement made as of January 1, 2009, Potere agreed to provide general business consulting to
14 Garden City for a monthly minimum consulting fee of \$400,000, or \$4.8 million annually.
15 Potere was to invoice on a monthly basis for all hours worked and to provide services on
16 Garden City's premises during regular business hours. Between January 1, 2009, and
17 December 31, 2012, Garden City's payments to Potere totaled \$14,050,000, which was equal to
18 the payments made to Profitable Casino. Swallow advised the Bureau that no invoices or
19 similar documents exist with respect to the payments.

20 11. On or about March 8, 2009, Garden City reached a tentative settlement with the City
21 of San Jose. Under the settlement's terms, Garden City agreed to pay to a selected charity
22 \$500,000 annually until June 30, 2011. Thereafter, the annual payment to the selected charity
23 would be the greater of \$125,000 or 5.15 percent of Garden City's net income before interest,
24 taxes, depreciation, and amortization (EBITDA). City of San Jose officials understood that
25 5.15 percent of Garden City's EBITDA would be approximately \$250,000.

26 12. Garden City accounted for its payments to Dolchee, Profitable Casino, and Potere as
27 expenses, and not as dividends or distributions to its owners. As a consequence of expensing
28 those payments, Garden City's net income ranged between approximately minus 0.31 percent

1 and 1.42 percent of its gross gaming revenues between January 1, 2009, and December 31,
2 2012. For three of those four years, Garden City's net income was essentially zero. Other card
3 rooms in California of similar size as Garden City reported net income that averaged
4 approximately 10 percent of gross gaming revenues over the same period.

5 13. On April 1, 2009, Dolchee entered into a licensing agreement for Baccarat Gold with
6 an California tribal casino. The monthly payment under that licensing agreement is \$1,200 per
7 table per month. On June 1, 2009, Dolchee entered into a licensing agreement for Baccarat
8 Gold with a card room other than Garden City. The monthly payment under that licensing
9 agreement is \$1,200 per table per month for a minimum of two tables. On November 17, 2009
10 – 11 months after the effective date of the License Agreement described above in paragraph 8 –
11 a patent for Baccarat Gold was issued to Scott Hayden, who is Garden City's general manager.
12 Mr. Hayden subsequently assigned the patent to Dolchee for no payment.

13 14. On November 25, 2009, Airport Parkway Two LLC (Airport Parkway) was formed
14 as a California limited liability company. Its sole member is Airport Opportunity Fund LLC
15 (Airport Fund), which was formed as a Delaware limited liability company on December 3,
16 2009. Airport Fund's members are the Lunardi Trust and the Eric Swallow and Deborah
17 Swallow Family Trust, dated August 31, 2004 (Swallow Trust), the trustees of which are
18 Swallow and his wife Deborah. Each trust owns a 50-percent interest in Airport Fund. Neither
19 the Swallow Trust nor Deborah Swallow has, or has applied for, a state gambling license.

20 15. On January 20, 2010, Airport Parkway closed an \$8 million real estate purchase.
21 Airport Parkway used approximately \$2 million provided by Dolchee, Profitable Casino, and
22 Potere as a down payment and financed the \$6 million balance with a commercial lender.
23 Subsequently, on March 22, 2011, an additional financing with that same commercial lender
24 closed. The real property was improved with a new eight-story building to house gambling,
25 entertainment, restaurant, meeting, office, and other facilities. The property's address was
26 changed to 1887 Matrix Boulevard.

27 16. As part of Respondents' plan to open a new casino at 1887 Matrix Boulevard, Casino
28 M8trix, Inc. was formed as a Nevada corporation. Its shareholders were Swallow and the

1 Lunardi Trust. Less than a month after its formation, Casino M8trix, Inc. entered into a lease
2 with Airport Parkway to lease 1887 Matrix Boulevard in its entirety for an annual rent of
3 \$7,209,572, which equals \$70.68 per square foot. As part of the March 22, 2011 additional
4 financing, Casino M8trix, Inc. gave a security interest in all of its property to the commercial
5 lender. On September 6, 2011, Casino M8trix, Inc. submitted an initial application for a state
6 gambling license to the Commission. The Bureau initiated an investigation in connection with
7 that application. In April 2012, after learning that the City of San Jose viewed transferring a
8 city gambling license from one entity to another would result in the license's termination,
9 Airport Parkway and Garden City entered into a lease for 1887 Matrix Boulevard that was
10 backdated to January 1, 2011. That lease was substantively identical to what Casino M8tix, Inc.
11 previously executed.

12 17. On January 21, 2010, Team View Player Services, LLC (Team View Player Services)
13 was formed as a California limited liability company. Its sole member is Timothy M. Gustin.
14 On February 22, 2010, Secure Stone, LLC (Secure Stone) was formed as a Delaware limited
15 liability company. Its sole member is Deborah Swallow. Its address is the same as Airport
16 Fund's. On May 1, 2010, pursuant to an agreement dated March 30, 2010, and signed by Peter
17 Lunardi and Mr. Gustin, Team View Player Services agreed to provide third-party proposition
18 player services at Garden City. On the same date, Team View Player Services entered into a
19 contract with Team View Player Associates, LLC (Team View Associates), which was owned
20 solely by Mr. Gustin and which, in turn, entered into an agreement with Secure Stone.

21 18. In November 2010, Team View Associates entered into a contract with Optimum
22 Solutions Consulting, Inc., a Wyoming corporation owned solely by Scott Hayden, who is
23 Garden City's general manager and a key employee. Team View Associates entered into other
24 agreements with entities owned by Mr. Hayden or his family members. Pursuant to those
25 agreements, Team View Associates has paid more than \$850,000 since November 2010.
26 Complainant presently is investigating Mr. Hayden with respect to those payments, as well as
27 other conduct.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

(1) Assuring that licenses, approvals, and permits are not issued to, or held by, unqualified or disqualified persons, or by persons whose operations are conducted in a manner that is inimical to the public health, safety, or welfare.

(2) Assuring that there is no material involvement, directly or indirectly, with a licensed gambling operation, or the ownership or management thereof, by unqualified or disqualified persons, or by persons whose operations are conducted in a manner that is inimical to the public health, safety, or welfare.

(b) For the purposes of this section, “unqualified person” means a person who is found to be unqualified pursuant to the criteria set forth in Section 19857, and “disqualified person” means a person who is found to be disqualified pursuant to the criteria set forth in Section 19859.

24. Business and Professions Code section 19824 provides, in part:

The commission shall have all powers necessary and proper to enable it fully and effectually to carry out the policies and purposes of this chapter, including, without limitation, the power to do all of the following:

* * *

(b) For any cause deemed reasonable by the commission, . . . limit, condition, or restrict any license, permit, or approval, or impose any fine upon any person licensed or approved. The commission may condition, restrict, discipline, or take action against the license of an individual owner endorsed on the license certificate of the gambling enterprise whether or not the commission takes action against the license of the gambling enterprise.

* * *

(d) Take actions deemed to be reasonable to ensure that no ineligible, unqualified, disqualified, or unsuitable persons are associated with controlled gambling activities.

25. Business and Professions Code section 19826 provides, in part:

The department¹ . . . shall have all of the following responsibilities:

* * *

(c) To investigate suspected violations of this chapter or laws of this state relating to gambling

* * *

¹ “Department” refers to the Department of Justice. (Bus. & Prof. Code, § 19805, subd. (h).)

1 (e) To initiate, where appropriate, disciplinary actions as provided in
2 this chapter. In connection with any disciplinary action, the department
3 may seek restriction, limitation, suspension, or revocation of any license or
4 approval, or the imposition of any fine upon any person licensed or
5 approved.

6 26. California Code of Regulations, title 4, section 12554 provides, in part:

7 (a) Upon the filing with the Commission of an accusation by the
8 Bureau recommending revocation, suspension, or other discipline of a
9 holder of a license, registration, permit, finding of suitability, or approval,
10 the Commission shall proceed under Chapter 5 (commencing with section
11 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

12 * * *

13 (d) Upon a finding of a violation of the Act, any regulations adopted
14 pursuant thereto, any law related to gambling or gambling establishments,
15 violation of a previously imposed disciplinary or license condition, or laws
16 whose violation is materially related to suitability for a license,
17 registration, permit, or approval, the Commission may do any one or more
18 of the following:

19 (1) Revoke the license, registration, permit, finding of suitability,
20 or approval;

21 (2) Suspend the license, registration, or permit;

22 * * *

23 (5) Impose any fine or monetary penalty consistent with
24 Business and Professions Code sections 19930, subdivision (c), and
25 19943, subdivision (b)

26 **COST RECOVERY**

27 27. Business and Professions Code section 19930 provides, in part:

28 (b) If, after any investigation, the department is satisfied that a license,
permit, finding of suitability, or approval should be suspended or revoked, it
shall file an accusation with the commission in accordance with Chapter 5
(commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the
Government Code.

* * *

1 (d) In any case in which the administrative law judge recommends that
2 the commission revoke, suspend, or deny a license, the administrative law
3 judge may, upon presentation of suitable proof, order the licensee or
4 applicant for a license to pay the department the reasonable costs of the
5 investigation and prosecution of the case.

6 (1) The costs assessed pursuant to this subdivision shall be fixed
7 by the administrative law judge and may not be increased by the
8 commission. When the commission does not adopt a proposed decision
9 and remands the case to the administrative law judge, the administrative
10 law judge may not increase the amount of any costs assessed in the
11 proposed decision.

12 (2) The department may enforce the order for payment in the
13 superior court in the county in which the administrative hearing was
14 held. The right of enforcement shall be in addition to any other rights
15 that the division may have as to any licensee to pay costs.

16 (3) In any judicial action for the recovery of costs, proof of the
17 commission's decision shall be conclusive proof of the validity of the
18 order of payment and the terms for payment.

19 * * *

20 (f) For purposes of this section, "costs" include costs incurred for any
21 of the following:

22 (1) The investigation of the case by the department.

23 (2) The preparation and prosecution of the case by the Office of
24 the Attorney General.

25 **SPECIFIC STATUTORY AND REGULATORY PROVISIONS**

26 28. Business and Professions Code section 19850 provides, in part:

27 Every person . . . who receives, directly or indirectly, any
28 compensation or reward, or any percentage or share of the money or
property played, for keeping, running, or carrying on any controlled
game in this state, shall apply for and obtain from the commission, and
shall thereafter maintain, a valid state gambling license, key employee
license, or work permit In any criminal prosecution for violation of
this section, the punishment shall be as provided in Section 337j of the
Penal Code.

29 29. Business and Professions Code section 19855 provides, in part:

1 [E]very person who, by statute or regulation, is required to hold a state
2 license shall obtain the license prior to engaging in the activity or
occupying the position with respect to which the license is required.

3 30. Business and Professions Code section 19857 provides:

4 No gambling license shall be issued unless, based on all the
5 information and documents submitted, the commission is satisfied that
the applicant is all of the following:

6 (a) A person of good character, honesty and integrity.

7 (b) A person whose prior activities, criminal record, if any,
8 reputation, habits, and associations do not pose a threat to the public
9 interest of this state, or to the effective regulation and control of
10 controlled gambling, or create or enhance the dangers of unsuitable,
11 unfair, or illegal practices, methods, and activities in the conduct of
controlled gambling or in the carrying on of the business and financial
arrangements incidental thereto.

12 (c) A person that is in all other respects qualified to be licensed as
provided in this chapter.

13 31. Business and Professions Code section 19859 provides, in part:

14 The commission shall deny a license to any applicant who is
15 disqualified for any of the following reasons:

16 (a) Failure of the applicant to clearly establish eligibility and
qualification in accordance with this chapter.

17 (b) Failure of the applicant to provide information,
18 documentation, and assurances required by the Chief, or failure of
the applicant to reveal any fact material to qualification, or the
19 supplying of information that is untrue or misleading as to a material
fact pertaining to the qualification criteria.

20 32. Business and Professions Code section 19866 provides:

21 An applicant for licensing or for any approval or consent required
22 by this chapter, shall make full and true disclosure of all information
to the department and the commission as necessary to carry out the
23 policies of this state relating to licensing, registration, and control of
gambling.

24 33. Business and Professions Code section 19920 provides:

25 It is the policy of the State of California to require that all
26 establishments wherein controlled gambling is conducted in this state
be operated in a manner suitable to protect the public health, safety,
27 and general welfare of the residents of the state. The responsibility for
the employment and maintenance of suitable methods of operation
28 rests with the owner licensee, and willful or persistent use or toleration

1 of methods of operation deemed unsuitable by the commission or by
2 local government shall constitute grounds for license revocation or
other disciplinary action.

3 34. Business and Professions Code section 19922 provides:

4 No owner licensee shall operate a gambling enterprise in violation
5 of any provision of this chapter or any regulation adopted pursuant to
this chapter.

6 35. Business and Professions Code section 19923 provides:

7 No owner licensee shall operate a gambling enterprise in violation
8 of any governing local ordinance.

9 36. Business and Professions Code section 19984, subdivision (a) provides:

10 Notwithstanding any other provision of law, a licensed gambling
11 enterprise may contract with a third party for the purpose of providing
12 proposition player services at a gambling establishment, subject to the
following conditions:

13 (a) Any agreement, contract, or arrangement between a gambling
14 enterprise and a third-party provider of proposition player services
15 shall be approved in advance by the department, and in no event shall
a gambling enterprise or the house have any interest, whether direct or
indirect, in funds wagered, lost, or won.

16 37. California Code of Regulations, title 11, section 2070, subdivisions (a) and (b)
17 provide:

18 It shall be an unsuitable method of operation for a gambling
establishment to:

19 (a) Offer for play any game that is prohibited or made unlawful
20 by statute, local ordinance, regulation or final judgment by a
21 competent court of law; [and]

22 (b) Offer for play any gaming activity which is not authorized by
the Bureau pursuant to the [Gambling Control] Act and these
23 regulations for play at that gambling establishment[.]

24 38. San Jose Municipal Code, title 16, section 16.18.010, subdivision B provides:

25 It shall be illegal for a Cardroom Permittee, Owner, or Employee
26 to permit, allow, or suffer the playing of any Controlled Game except
Permissible Games.

27 39. San Jose Municipal Code, title 16, section 16.18.040, subdivision B, provides:

28 B. No Game shall be played at any permitted Cardroom unless:

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

**SECOND CAUSE FOR DISCIPLINE
AGAINST RESPONDENT GARDEN CITY’S LICENSE
(Prohibited Interests in the Funds Wagered, Lost, or Won by a Third-Party Provider)**

42. Garden City’s license is subject to discipline, pursuant to Business and Professions Code sections 19823, 19857, subdivisions (a) and (b), and 19859, subdivisions (a) and (b). Garden City’s continued licensure is inimical to public health, safety, and welfare. Its prior activities pose a threat to the effective regulation and control of controlled gambling, and create or enhance the dangers of unsuitable, unfair, or illegal practices, methods, and activities in carrying on the business and financial arrangements incidental to the conduct of controlled gambling. Garden City had a direct or indirect interest in funds wagered, lost, or won by Team View Player Services. Specifically, Garden City’s third-party provider contract provided for Team View Player Services to pay \$2,226,000 annually. Of that amount, 50 percent, or \$1,113,000, purportedly was paid for parking, a designated area on the casino floor, and use of casino area for meetings with employees. In fact, Team View Player Services’s employees were not allowed to park on the Casino M8trix property, and Team View Player Services increased their compensation to offset the costs of parking offsite. Moreover, Team View Player Services did, and does, not use the casino area for employee meetings. Team View Player Services’s designated area on the premises is 400 square feet. In sum, Garden City receives more than \$1.1 million annually for renting 400 square feet; that fee is substantially disproportionate to the facilities provided. Business and Professions Code section 19984, subdivision (a) prohibits the receipt of such payments.

**THIRD CAUSE FOR DISCIPLINE
AGAINST ALL RESPONDENTS’ LICENSES
(Prohibited Interests in the Funds Wagered, Lost, or Won by a Third-Party Provider)**

43. Respondents’ licenses are subject to discipline, pursuant to Business and Professions Code sections 19823, 19857, subdivisions (a) and (b), 19859, subdivisions (a) and (b), and 19920. Each Respondent’s continued licensure is inimical to public health, safety, and welfare. Respondents’ prior activities pose a threat to the effective regulation and control of controlled

1 gambling, and create or enhance the dangers of unsuitable, unfair, or illegal practices, methods,
2 and activities in carrying on the business and financial arrangements incidental to the conduct of
3 controlled gambling. Respondents knew of, should have known of, were willfully ignorant of,
4 allowed to occur, assisted, abetted and/or tolerated other Respondents having direct or indirect
5 interests in funds wagered, lost, or won by Team View Player Services as alleged above. In
6 violation of Business and Professions Code section 19920, each Respondent failed to fulfill his,
7 her, or its responsibility to employ and maintain suitable methods of operation by willfully and
8 persistently tolerating methods of operation that allowed receipt of payments prohibited by
9 Business and Professions Code section 19984, subdivision (a).

10 **FOURTH CAUSE FOR DISCIPLINE**
11 **AGAINST RESPONDENT SWALLOW'S LICENSE**
12 **(Providing False or Misleading Information to the Bureau)**

13 44. Swallow's license is subject to discipline, pursuant to Business and Professions Code
14 sections 19823, 19857, subdivisions (a) and (b), and 19859, subdivisions (a) and (b).
15 Swallow's continued licensure is inimical to public health, safety, and welfare. Swallow is not
16 a person of good character, honesty, and integrity and his prior activities pose a threat to the
17 effective regulation and control of controlled gambling, and create or enhance the dangers of
18 unsuitable, unfair, or illegal practices, methods, and activities in carrying on the business and
19 financial arrangements incidental to the conduct of controlled gambling. Swallow, or his
20 agents, supplied untrue or misleading information as to material facts pertaining to his
21 qualification criteria. Specifically, the false or misleading information included, among other
22 things and without limitation, the following:

23 (a) Swallow represented that a written accountant's opinion existed regarding the
24 pricing for certain dealings between Garden City and entities affiliated with or controlled
25 by Swallow. In response to the Bureau's repeated requests, Swallow made misleading
26 statements as to the opinion's existence. No written opinion has been provided.

1 (b) In a license application signed on July 6, 2012, Swallow represented that he was
2 separated from his wife, Deborah Swallow. In July and August 2013, when responding to
3 the Bureau's inquiries, his agents repeated the representation that Swallow was separated
4 from Deborah Swallow; in doing so, they gave differing separation dates. However,
5 Swallow and Deborah Swallow were not separated. Instead, they moved from California
6 to Nevada, lived there in the same house, returned to California, and lived together in the
7 same residence. On October 9, 2013, Deborah Swallow filed for dissolution of their
8 marriage in Los Angeles County Superior Court. In the dissolution matter, both she and
9 Swallow have declared under penalty of perjury that their date of separation was October
10 8, 2013.

11 (c) Swallow's agent represented to the Bureau that payments exceeding \$1.4 million
12 received by Deborah Swallow in 2010 from Secure Stone related to the sale of her dental
13 practice. Those payments did not relate to the sale of her dental practice; the payments
14 came indirectly from Team View Player Services in violation of Business and Professions
15 Code section 19984, subdivision (a).

16 (d) By letter dated July 10, 2013, Swallow's agent represented that Deborah Swallow
17 had "no interest in Casino M8trix" and that her business affairs were independent of
18 Swallow's. Her business affairs were not independent of his in all respects. For example,
19 at the time of the representation, Deborah Swallow was a trustee of the Swallow Trust,
20 which had a 50-percent membership interest in Airport Fund, which in turn was the only
21 member of Airport Parkway, which owns 1887 Matrix Boulevard. Additionally, the
22 Swallow Trust received at least \$3.2 million in indirect payments from Garden City
23 through Dolchee. As a further example of the dependence of their business affairs, filings
24 with the Nevada Secretary of State report that Deborah Swallow's personal property
25 secures repayment of loans made to Casino M8trix, Inc. and Airport Parkway.

26 (e) Swallow represented that certain games and software licensed by his affiliates,
27 Dolchee and Profitable Software, were confidential and proprietary, and had combined
28 fair values exceeding \$90 million. The games and software were not treated as

1 confidential and did not have the fair value represented by Swallow. The total cash
2 investment in developing the games and software was approximately \$15,000. No money
3 had been paid for the patent assignment for Baccarat Gold. That game was provided to
4 other casinos for \$1,200 per table per month. In response to the Bureau's request,
5 Swallow never provided any written confidentiality, nondisclosure, trade secret, or similar
6 agreements between either Dolchee or Profitable Software, on the one hand, and any
7 person who had participated in the development, programming, or maintenance of the
8 games or software, on the other.

9 (f) Swallow represented that the payments made by Garden City to Profitable Casino
10 were based upon the proprietary nature and competitive advantage derived from software
11 provided by Profitable Casino. All or a portion of the payments to Profitable Casino were
12 dividends or distributions paid to Swallow. Nonetheless, they were expensed by Garden
13 City. The payments to Profitable Casino were equal to payments made by Garden City to
14 Potere. No justification or substantiation was required for the payments made to Potere.
15 Those payments were based on Garden City's cash flow and net income; they in effect
16 were dividends or distributions paid to Peter Lunardi that also were expensed by Garden
17 City.

18 (g) Swallow caused a valuation of games and software owned by Dolchee and
19 Profitable Casino to be prepared by Grant Thornton (GT Report) and submitted to the
20 Bureau. The GT Report was false and misleading. Among other things, it represented
21 that Garden City licensed a number of card games from Dolchee, including Baccarat
22 Gold, Double Hand Poker Gold, Pai Gow Tiles Gold, Texas Hold'em Gold, and Omaha
23 Gold (collectively, Dolchee Games) and that those games had unique rules, betting
24 options, and visual layouts, which are variations of some well-known casino games. But
25 only one of those games – Baccarat Gold – was patented or copyrighted. Garden City
26 never has received approvals from the Bureau to play the Dolchee Games known as Pai
27 Gow Tiles Gold, Texas Hold'em Gold, or Omaha Gold. Garden City never has received
28 approvals from the City of San Jose to play any of the Dolchee Games other than Baccarat

1 Gold. The versions of the Dolchee Games, other than Baccarat Gold, approved by the
2 Bureau for play at Garden City did not have any unique rules or betting options.

3 (h) The GT Report represented that Garden City licensed Pai Gow Poker and
4 Ultimate Texas Hold'em games from ShuffleMaster, a well-known provider of table
5 games to California card rooms, and then turned those games over to Dolchee for
6 rebranding. In preparing the valuation, Grant Thornton was acting as an agent of
7 Swallow, who was the source of information that it used. The GT Report was false and
8 misleading with respect to the so-called "rebranding" of ShuffleMaster games. In truth,
9 ShuffleMaster's agreements provide that a "Customer shall not make any modification to
10 the [game], nor shall it remove or reproduce the [game]" Under its ShuffleMaster
11 agreements, Garden City had no power to sublicense the games. In response to the
12 Bureau's requests, Swallow failed to provide any documentation showing modification,
13 rebranding, or sublicensing of games provided by ShuffleMaster or any other vendor.

14 (i) The GT Report represented that between January 1, 2010, and December 31,
15 2012, Garden City made payments totaling \$9,050,000 each to Profitable Casino and
16 Potere. However, during the Bureau's investigation, Swallow represented that for the
17 same period, Garden City's payments totaled \$8,950,000 each to Profitable Casino and
18 Potere.

19 (j) The GT Report represented that in 2010, Garden City made payments totaling
20 approximately \$8.7 million to Dolchee. However, during the Bureau's investigation,
21 Swallow represented that for the same period, Garden City's payments totaled
22 approximately \$7.2 million to Dolchee.

23 (k) The GT Report represented that Dolchee provided gaming analytical software to
24 Garden City. The GT Report concluded that the gaming analytical software's fair value
25 was \$29.5 million. The GT Report was false and misleading with respect to the so-called
26 "gaming analytical software." The agreement between Dolchee and Garden City granted
27 a license to play the Dolchee Games. That agreement provided nothing for, and did not
28 mention, gaming analytical software. In response to the Bureau's request that he "state

1 the reasons for the payments and the amounts of any payments that were not made under
2 the terms of the License Agreement,” Swallow provided no reasons thus indicating that all
3 payments from Garden City to Dolchee were under the agreement’s terms. At the
4 Commission’s February 21, 2013 meeting, Swallow stated that Dolchee developed a
5 baccarat game for use at Garden City, which had paid \$5 million for the right to use that
6 game. Garden City’s financial statements for 2009, 2010, 2011, and 2012 reported the
7 payments to Dolchee as “licensed game fees.” Dolchee’s tax returns listed its principal
8 business activity as “game patent holdings.”

9 (l) In connection with his license application, Swallow provided the Bureau with
10 attachments showing that Airport Parkway’s loan balance on 1887 Matrix Boulevard was
11 \$2,869,702.50. In truth, Airport Parkway had entered into commercial loans exceeding
12 \$23 million that were secured by, among other things, its real and personal property,
13 including any leases for 1887 Matrix Boulevard, as well as all securities owned by
14 Swallow, Peter Lunardi, and Jeanine Lunardi. Additionally, according to filings with the
15 California Secretary of State, Garden City’s personal property secured payment of at least
16 one commercial loan provided to Airport Parkway.

17 **FIFTH CAUSE FOR DISCIPLINE**
18 **AGAINST RESPONDENT SWALLOW’S LICENSE**

19 **(Failure To Provide Information and Documentation Requested by the Chief)**

20 45. Swallow’s license is subject to discipline, pursuant to Business and Professions Code
21 sections 19823, 19857, subdivisions (a) and (b), and 19859, subdivisions (a) and (b).

22 Swallow’s continued licensure is inimical to public health, safety, and welfare. Swallow is not
23 a person of good character, honesty, and integrity and his prior activities pose a threat to the
24 effective regulation and control of controlled gambling, and create or enhance the dangers of
25 unsuitable, unfair, or illegal practices, methods, and activities in carrying on the business and
26 financial arrangements incidental to the conduct of controlled gambling. Swallow, or his
27 agents, failed to provide information and documents requested by the Bureau acting on the
28

1 Complainant's behalf. Specifically, the information and documents requested, but not
2 provided, included, among other things and without limitation, the following:

3 (a) The Bureau requested that Swallow state whether monies provided by his and
4 Peter Lunardi's affiliates in connection with acquisition, construction, or improvement of
5 1887 Matrix Boulevard were gifts, investments, or capital contributions. The amounts
6 totaled more than \$2 million. Swallow failed to provide the requested information.

7 (b) The Bureau requested that Swallow provide copies of any security agreement and
8 financing statement relating to any collateral that was personal property given for each
9 loan made in connection with 1887 Matrix Boulevard's acquisition, construction, or
10 improvement. Swallow failed to provide the requested documents.

11 (c) The Bureau asked Swallow whether any loans entered into in connection with
12 1887 Matrix Boulevard's acquisition, construction, or improvement were collateralized
13 with or secured by any assets or property held by Garden City. The Bureau requested
14 that, if so, Swallow provide copies of all documents relating to the loans. Swallow failed
15 to provide the requested information and documents.

16 (d) The Bureau requested that Swallow provide copies of certain documents relating
17 to loans or indebtedness made or incurred by Casino M8trix, Inc. in connection with 1887
18 Matrix Boulevard's acquisition, construction, or improvement that was secured or
19 collateralized with personal property. Swallow provided some, but not all, documents.

20 (e) The Bureau asked Swallow to provide certain information with respect to games
21 licensed to Garden City for play including, among other things, the name and GEGA
22 number of each game. Swallow failed to provide all information.

23 (f) The Bureau asked Swallow to provide specific information with respect to each
24 game licensed to Garden City by Dolchee. The requested information included the
25 game's name, GEGA number and the date of approval for play, the date the game was
26 first played, and patent information. Swallow failed to provide any of the requested
27 information.

1 (g) The Bureau requested Swallow to provide copies of all documents relating to or
2 evidencing monies that he or any of his affiliates paid to or received from certain entities.
3 Swallow failed to provide any of the requested documents.

4 (h) The Bureau requested Swallow to provide information about, including
5 agreements or invoices underlying, payments received by him or any of his affiliates or
6 immediate family from any third-party provider of proposition player services or any
7 person or entity affiliated with a third-party provider of proposition player services.
8 Swallow failed to provide the requested information and documents.

9 (i) The Bureau requested Swallow to provide the written accountant's opinion that he
10 had represented to the Commission existed. Despite multiple requests, Swallow did not
11 provide the requested written opinion. Ultimately, Swallow advised that the written
12 opinion did not exist as previously represented and, in effect, confirmed that he had
13 provided false or misleading information to both the Bureau and the Commission.

14 (j) The Bureau requested Swallow to provide an accountant's fair market
15 determination of certain transactions with affiliates. The Bureau specifically requested a
16 valuation based upon what a willing buyer or user would pay to a willing seller or vendor
17 dealing at arms' length when neither was acting under compulsion to enter into the subject
18 transactions. Swallow failed to provide the requested fair market valuation. Instead, as
19 alleged in paragraph 44 above, he caused the GT Report, which is false and misleading, to
20 be provided to the Bureau.

21 **SIXTH CAUSE FOR DISCIPLINE**
22 **AGAINST RESPONDENT SWALLOW'S LICENSE**
23 **(Unqualified for Licensure)**

24 46. Swallow's license is subject to discipline, pursuant to Business and Professions Code
25 sections 19823 and 19857, subdivisions (a) and/or (b). Swallow's continued licensure is
26 inimical to public health, safety, and welfare. Swallow is not a person of good character,
27 honesty, and integrity and his prior activities pose a threat to the effective regulation and control
28

1 of controlled gambling, and create or enhance the dangers of unsuitable, unfair, or illegal
2 practices, methods, and activities in carrying on the business and financial arrangements
3 incidental to the conduct of controlled gambling. In addition to the acts and omissions alleged
4 above, Swallow's conduct in his affairs demonstrates that he is unqualified for licensure. That
5 conduct includes, among other things and without limitation, the following:

6 (a) Swallow, directly or through his agents, repeatedly provided false or misleading
7 information to the City of San Jose. This included, without limitation and as an example
8 only, on September 23, 2010, at 9:06 a.m., Swallow sending an email to Deanna Santana,
9 City of San Jose. He attached what he represented to be a "signed contract" and wrote:
10 "Please note the significant amount of money we are spending." The attachment included
11 "Appendix A Hardware Costs," which showed a total of \$358,615.71. Appendix A,
12 however, had been altered by \$300,000 – i.e., from \$58,615.71 to \$358,615.71. Later, at
13 11:20 a.m. on the same day, Swallow emailed instructions to one of Garden City's agents
14 to send the edited Appendix A to the City of San Jose.

15 (b) On May 7, 2012, during a residency audit conducted by the California Franchise
16 Tax Board (FTB), Swallow represented that he was on the board of directors of Garden
17 City but "not a working/licensed on site employee." He also represented that he did not
18 have a license to work on the Garden City premises, had surrendered his employee license
19 in 2008, and was "no longer allowed to work on site." He further represented that he had
20 a settlement agreement with the City of San Jose under which he surrendered the license.
21 He additionally represented that he was not involved in the operations of Garden City and
22 did not spend any time there. Swallow has been licensed continuously by the
23 Commission since 2007. Neither the Commission nor the City of San Jose prevented him
24 from being on Garden City's premises. Moreover, despite these representations to the
25 FTB, Swallow has asserted that he has worked tirelessly to turn Garden City into a
26 successful and profitable endeavor. He further has asserted that he has worked hard to
27 revitalize, and has been a watchful steward of, Garden City by improving and streamlining
28 its business operation, training its workforce, and expanding its customer base.

1 (c) Swallow, directly or through agents, made false and misleading statements to the
2 Commission. Among other things, Swallow represented to the Commission that an
3 accounting firm had provided the pricing model that was used to determine what to charge
4 Garden City for Profitable Casino's software and Dolchee's games. Swallow further
5 represented that he had a written opinion of value from his accountant's firm. These
6 representations were false. Swallow's accountant represented that measures put in place
7 by Swallow and Peter Lunardi increased profits, or "the bottom line," by \$13 million
8 between 2008 and 2009. In truth, the net profits – i.e., the bottom line – declined from
9 approximately \$1.7 million in 2008 to approximately \$37,000 in 2009. That was a 97.8
10 percent decline. As a further example, Swallow represented to the Commission that he
11 had documents evidencing certain consulting services provided by Casino M8trix, Inc. to
12 Dolchee, as well as a contract for the payment of approximately \$6 million by Dolchee for
13 those services. Despite his agreeing to do so, Swallow never provided such documents or
14 contract to the Bureau or the Commission.

15 (d) Swallow, directly or through agents, engaged in patterns and practices that
16 demonstrate a substantial disregard for prudent and usual business controls and oversight.
17 His patterns and practices included creating layers of entities and self-dealing. His
18 patterns and practices also included financial dealings involving millions of dollars that
19 were not documented. Such undocumented transactions include, among others and
20 without limitation, paying consulting fees without written consulting agreements, paying
21 rents without leases, making equity contributions without related written agreements,
22 advancing or providing monies for the benefit of affiliates without notes or similar written
23 agreements, paying out millions of dollars without invoices, engaging in transactions with
24 related parties at unfair and inflated prices, and reporting inaccurate and incomplete
25 information to governmental agencies.

26 (e) Swallow, directly or through agents, submitted fraudulent information to state and
27 federal taxing authorities. Examples include, but are not limited to, matters alleged in this
28 subparagraph. Swallow was designated as Dolchee's "Tax Matters Partner." For 2010,

1 Garden City's financial statements reported payments totaling approximately \$8.7 million
2 to Dolchee, which reported approximately \$6.5 million in gross receipts on its federal tax
3 return – a \$2.2 million or 33.8 percent under-reported difference. On the same return,
4 Dolchee reported that it paid, and therefore deducted, \$3.2 million for “consulting”
5 services. In response to the Bureau's request, Swallow provided information regarding
6 the consulting fees. That information demonstrated that (1) approximately \$500,000 in
7 fees were paid without invoice or written agreement and (2) \$2,750,000 was paid pursuant
8 to a settlement agreement, which did not denominate the payments as being for consulting
9 services. The lawsuit that was settled alleged an entitlement to what in effect were finders
10 fees; such fees properly are amortized, and not expensed. Importantly, Dolchee was not a
11 party to the settlement. In 2011, Garden City's financial statements reported payments
12 totaling \$11.8 million to Dolchee, which reported approximately \$11.4 million in gross
13 receipts on its federal tax return. On the same return Dolchee reported that it paid, and
14 therefore deducted, \$1.1 million for rent and \$5.7 million for “consulting” services. In
15 response to the Bureau's request, Swallow provided information showing that Dolchee
16 funded \$7,650,000 as “Equity Funding Contribution[s]” for 1887 Matrix Boulevard.
17 Swallow also responded that all funds for Casino M8trix, Inc. to pay rent to Airport
18 Parkway came from Dolchee. Casino M8trix, Inc. paid more than \$7.3 million in rent in
19 2011. Neither equity contributions nor monies advanced, loaned, or otherwise provided to
20 another entity to use for its own purposes or benefit are deductible. Moreover, the sum of
21 the “Equity Funding Contributions” and deductions taken on Dolchee's tax return exceed
22 its reported income for 2011 by more than \$3 million or 26.7 percent.

23 (f) Swallow aided, facilitated, turned a blind eye to, or benefited from Team View
24 Player Services's violations of the Act or regulations adopted pursuant to the Act.

25 (g) Swallow aided, facilitated, turned a blind eye to, or benefited from accounting for
26 self-dealing and related party transactions, and the self-dealing itself, that had the effect of
27 minimizing payments to be made to charity pursuant to the settlement reached with the
28 City of San Jose. Through the self-dealing₂₅ and concomitant accounting, Swallow

1 facilitated Garden City's failure to abide by, and perform, the covenant of good faith and
2 fair dealing inherent in its settlement agreement with the City of San Jose.

3 (h) Swallow aided, facilitated, turned a blind eye to, or benefited from acts and
4 omissions that violated San Jose Municipal Code, title 16.

5 (i) Swallow aided, facilitated, turned a blind eye to, or benefited from monies derived
6 from the play or carrying on of a controlled game that were paid indirectly to the Swallow
7 Trust and/or Deborah Swallow, and neither was licensed as required under the Act.

8 **SEVENTH CAUSE FOR DISCIPLINE**
9 **AGAINST RESPONDENT SWALLOW'S LICENSE**

10 **(Disqualified for Licensure)**

11 47. Swallow's license is subject to discipline, pursuant to Business and Professions Code
12 sections 19823 and 19859, subdivision (a). Swallow's continued licensure is inimical to public
13 health, safety, and welfare. Swallow is not a person of good character, honesty, and integrity
14 and his prior activities pose a threat to the effective regulation and control of controlled
15 gambling, and create or enhance the dangers of unsuitable, unfair, or illegal practices, methods,
16 and activities in carrying on the business and financial arrangements incidental to the conduct of
17 controlled gambling. Swallow knew of, should have known of, was willfully ignorant of,
18 allowed to occur, assisted, abetted and/or tolerated the acts and omissions alleged above. He
19 fostered a culture of operating in disregard of the laws applicable to gambling.

20 **EIGHTH CAUSE FOR DISCIPLINE**
21 **AGAINST RESPONDENT PETER LUNARDI'S LICENSE**

22 **(Unqualified for Licensure)**

23 48. Peter Lunardi's license is subject to discipline, pursuant to Business and Professions
24 Code sections 19823 and 19857, subdivisions (a) and/or (b). Peter Lunardi's continued
25 licensure is inimical to public health, safety, and welfare. Peter Lunardi is not a person of good
26 character, honesty, and integrity and his prior activities pose a threat to the effective regulation
27 and control of controlled gambling, and create or enhance the dangers of unsuitable, unfair, or
28 illegal practices, methods, and activities in carrying on the business and financial arrangements

1 incidental to the conduct of controlled gambling. In addition to the acts and omissions alleged
2 above, Peter Lunardi's conduct demonstrates that he is unqualified for licensure. That conduct
3 includes, among other things and without limitation, the following:

4 (a) Peter Lunardi, directly or through agents, engaged in, aided, or accepted the
5 benefits of patterns and practices that demonstrate a substantial disregard for prudent and
6 usual business controls and oversight. Those patterns and practices included creating
7 layers of entities and self-dealing. Those patterns and practices also included financial
8 dealings involving millions of dollars that were not documented. Such undocumented
9 transactions include, among others and without limitation, paying consulting fees without
10 written consulting agreements, paying rents without leases, making equity contributions
11 without related written agreements, advancing or providing monies for the benefit of
12 affiliates without notes or similar written agreements, paying out millions of dollars
13 without invoices, engaging in transactions with related parties at unfair and inflated prices,
14 and reporting inaccurate and incomplete information to governmental agencies.

15 (b) As a member of Dolchee, Peter Lunardi benefited from Swallow, or their agents,
16 submitting fraudulent information to state and federal taxing authorities. Examples
17 include, but are not limited to, matters alleged above in paragraph 46(e). That paragraph
18 is incorporated herein by reference.

19 (c) Peter Lunardi aided, facilitated, turned a blind eye to, or benefited from Garden
20 City's and Swallow's violations of the Act or regulations adopted pursuant to the Act.
21 Peter Lunardi knew or should have known, facilitated, or turned a blind eye to, or
22 benefited, or stood to benefit, from the acts and omissions alleged in paragraphs 44(a),
23 44(e), 44(f), 44(g), 44(h), 44(k), 44(l), 46(a), 46(c), 52, and 53. Those paragraphs are
24 incorporated herein by reference.

25 (d) Peter Lunardi aided, facilitated, turned a blind eye to, or benefited from Team
26 View Player Services's violations of the Act or regulations adopted pursuant to the Act.
27 He signed the contract with Team View Player Services on behalf of Garden City.
28 Through the Lunardi Trust and the distributions or dividends paid through Dolchee and

1 Potere, he benefited, or stood to benefit, from payments received by Garden City that were
2 prohibited by Business and Professions Code section 19984, subdivision (a).

3 (e) Peter Lunardi aided, facilitated, turned a blind eye to, or benefited from the
4 accounting for self-dealing and related party transactions, and the self-dealing itself, that
5 had the effect of minimizing payments to be made to charity pursuant to the settlement
6 reached with the City of San Jose. Through the self-dealing and concomitant accounting,
7 Peter Lundardi facilitated and aided Garden City's failure to abide by, and perform, the
8 covenant of good faith and fair dealing inherent in its settlement agreement with the City
9 of San Jose.

10 (f) Peter Lunardi aided, facilitated, or turned a blind eye to, or benefited from acts and
11 omissions that violated San Jose Municipal Code, title 16. Those acts and omissions are
12 alleged in paragraphs 46(a), 52, and 53 of this Accusation and Statement of Issues and
13 incorporated herein by reference.

14 (g) Peter Lunardi aided, facilitated, or turned a blind eye to monies derived from the
15 play or carrying on of a controlled game that was paid indirectly to the Swallow Trust
16 and/or Deborah Swallow, and neither was licensed as required under the Act.

17 **NINTH CAUSE FOR DISCIPLINE**
18 **AGAINST RESPONDENT PETER LUNDARDI'S LICENSE**
19 **(Disqualified for Licensure)**

20 49. Peter Lunardi's license is subject to discipline, pursuant to Business and Professions
21 Code sections 19823, 19859, subdivision (a), and 19920. Peter Lundardi's continued licensure
22 is inimical to public health, safety, and welfare. Peter Lunardi is not a person of good character,
23 honesty, and integrity and his prior activities pose a threat to the effective regulation and control
24 of controlled gambling, and create or enhance the dangers of unsuitable, unfair, or illegal
25 practices, methods, and activities in carrying on the business and financial arrangements
26 incidental to the conduct of controlled gambling. Peter Lunardi knew of, should have known
27 of, was willfully ignorant of, allowed to occur, assisted, abetted and/or tolerated the acts and
28

1 omissions alleged in paragraphs 43, 44(a), 44(d), 44(e), 44(f), 44(g), 44(h), 44(k), 44(l), 46(a),
2 46(c), 46(d), 46(e), 52, and 53. Those paragraphs are incorporated herein by reference. He
3 fostered a culture of operating in disregard of the laws applicable to gambling.

4 **TENTH CAUSE FOR DISCIPLINE**
5 **AGAINST RESPONDENT JEANINE LUNARDI'S LICENSE**
6 **(Unqualified for Licensure)**

7 50. Jeanine Lunardi's license is subject to discipline, pursuant to Business and
8 Professions Code sections 19823 and 19857, subdivisions (a) and/or (b). Jeanine Lunardi's
9 continued licensure is inimical to public health, safety, and welfare. Jeanine Lunardi is not a
10 person of good character, honesty, and integrity and her prior activities pose a threat to the
11 effective regulation and control of controlled gambling, and create or enhance the dangers of
12 unsuitable, unfair, or illegal practices, methods, and activities in carrying on the business and
13 financial arrangements incidental to the conduct of controlled gambling. In addition to the acts
14 and omissions alleged above, Jeanine Lunardi's conduct in her affairs demonstrates that she is
15 unqualified for licensure. That conduct includes, among other things and without limitation, the
16 following:

17 (a) Jeanine Lunardi, directly or through agents, engaged in, aided, or accepted the
18 benefits of patterns and practices that demonstrate a substantial disregard for prudent and
19 usual business controls and oversight. Those patterns and practices include creating layers
20 of entities and self-dealing. Those patterns and practices also included financial dealings
21 involving millions of dollars that were not documented. Such undocumented transactions
22 include, among others and without limitation, paying consulting fees without written
23 consulting agreements, paying rents without leases, making equity contributions without
24 related written agreements, advancing or providing monies for the benefit of affiliates
25 without notes or similar written agreements, paying out millions of dollars without
26 invoices, engaging in transactions with related parties at unfair and inflated prices, and
27 reporting inaccurate and incomplete information to governmental agencies.

1 (b) Jeanine Lunardi benefited from Swallow, or their agents, submitting fraudulent
2 information to state and federal taxing authorities. Examples include, but are not limited
3 to, matters alleged above in paragraph 46(e). That paragraph is incorporated herein by
4 reference.

5 (c) Jeanine Lundardi aided, facilitated, turned a blind eye to, or benefited from
6 Garden City's and Swallow's violations of the Act or regulations adopted pursuant to the
7 Act. Jeanine Lundardi knew or should have known, facilitated, or turned a blind eye to, or
8 benefited, or stood to benefit, from the acts and omissions alleged in paragraphs 44(f),
9 44(l), 46(a), 52, and 53. Those paragraphs are incorporated herein by reference.

10 (d) Jeanine Lunardi aided, facilitated, turned a blind eye to, or benefited from Team
11 View Player Services's violations of the Act or regulations adopted pursuant to the Act.
12 Through the Lunardi Trust and distributions and dividends paid to Peter Lunardi's
13 affiliates, she benefited, or stood to benefit, from payments received by Garden City that
14 were prohibited by Business and Professions Code section 19984, subdivision (a).

15 (e) Jeanine Lunardi aided, facilitated, turned a blind eye to, or benefited from the
16 accounting for self-dealing and related party transactions, and the self-dealing itself, that
17 had the effect of minimizing payments to be made to charity pursuant to the settlement
18 reached with the City of San Jose. Through the self-dealing and concomitant accounting,
19 Jeanine Lundardi facilitated and aided Garden City's failure to abide by, and perform, the
20 covenant of good faith and fair dealing inherent in its settlement agreement with the City
21 of San Jose.

22 (f) Jeanine Lunardi aided, facilitated, turned a blind eye to, or benefited from acts
23 and omissions that violated San Jose Municipal Code, title 16. Those acts and omissions
24 are alleged in paragraphs 46(a), 52, and 53 of this Accusation and Statement of Issues and
25 incorporated herein by reference.

1 Lunardi Trust assisted and facilitated transactions that were fraudulently reported to federal and
2 state taxing authorities. The Lunardi Trust also allowed the play of games at Garden City that
3 were not approved by the Bureau or City of San Jose. Such play constituted an unsuitable
4 gaming activity (Cal. Code Regs., tit. 11, § 2070, subd. (b)) and violates the City of San Jose's
5 laws.

6 **THIRTEENTH CAUSE FOR DISCIPLINE**
7 **AGAINST RESPONDENT GARDEN CITY'S LICENSE**
8 **(Unqualified for Licensure)**

9 53. In addition to discipline for having a direct or indirect interest in the funds wagered,
10 lost, or won by a third-party provider, Garden City's license is subject to discipline, pursuant to
11 Business and Professions Code sections 19823 and 19857, subdivisions (a) and (b). Garden
12 City's continued licensure is inimical to public health, safety, and welfare. Its prior activities
13 pose a threat to the effective regulation and control of controlled gambling, and create or
14 enhance the dangers of unsuitable, unfair, or illegal practices, methods, and activities in
15 carrying on the business and financial arrangements incidental to the conduct of controlled
16 gambling. Pursuant to Business and Professions Code section 19852, subdivision (a), Garden
17 City is not eligible for continued licensure because its shareholders, officers, and directors are
18 disqualified from holding a state gambling license. Additionally, Garden City's owners
19 conducted its business in substantial disregard of prudent and usual business controls and
20 oversight. Garden City assisted and facilitated transactions that were fraudulently reported to
21 federal and state taxing authorities. Garden City also allowed the play of games that were not
22 approved by the Bureau or City of San Jose. Such play constituted an unsuitable gaming
23 activity (Cal. Code Regs., tit. 11, § 2070, subd. (b)) and violates the City of San Jose's laws.
24
25
26
27
28

1 **PRAYER**

2 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
3 and that following the hearing, the Commission issue a decision:

4 1. Revoking or suspending, and denying renewal of, California State Gambling License
5 Number GEGE-000410, issued to Garden City, Inc., doing business as Casino M8trix;

6 2. Fining Garden City, Inc., doing business as Casino M8trix, in an amount according to
7 proof and to the maximum extent allowed by law;

8 3. Revoking or suspending, and denying renewal of, California State Gambling License
9 Number GEOW-001330, issued to Eric Swallow;

10 4. Fining Eric Swallow in an amount according to proof and to the maximum extent
11 allowed by law;

12 5. Revoking or suspending, and denying renewal of, California State Gambling License
13 Number GEOW-001331, issued to Peter Lunardi;

14 6. Fining Peter Lunardi in an amount according to proof and to the maximum extent
15 allowed by law;

16 7. Revoking or suspending, and denying renewal of, California State Gambling License
17 Number GEOW-003119, issued to Jeanine Lunardi;

18 8. Fining Jeanine Lunardi in an amount according to proof and to the maximum extent
19 allowed by law;

20 9. Revoking or suspending, and denying renewal of, California State Gambling License
21 Number GEOW-003259, issued to the Lunardi Family Living Trust, dated August 27, 2008;

22 10. Fining the Lunardi Family Living Trust, dated August 27, 2008, in an amount
23 according to proof and to the maximum extent allowed by law;

24 11. Awarding Complainant the costs of investigation and costs of bringing this
25 Accusation and Statement of Issues before the Commission, pursuant to Business and
26 Professions Code section 19930, subdivisions (d) and (f), in a sum according to proof; and

27 12. Taking such other and further action as the Commission may deem appropriate.
28

1 Dated: March 27, 2015



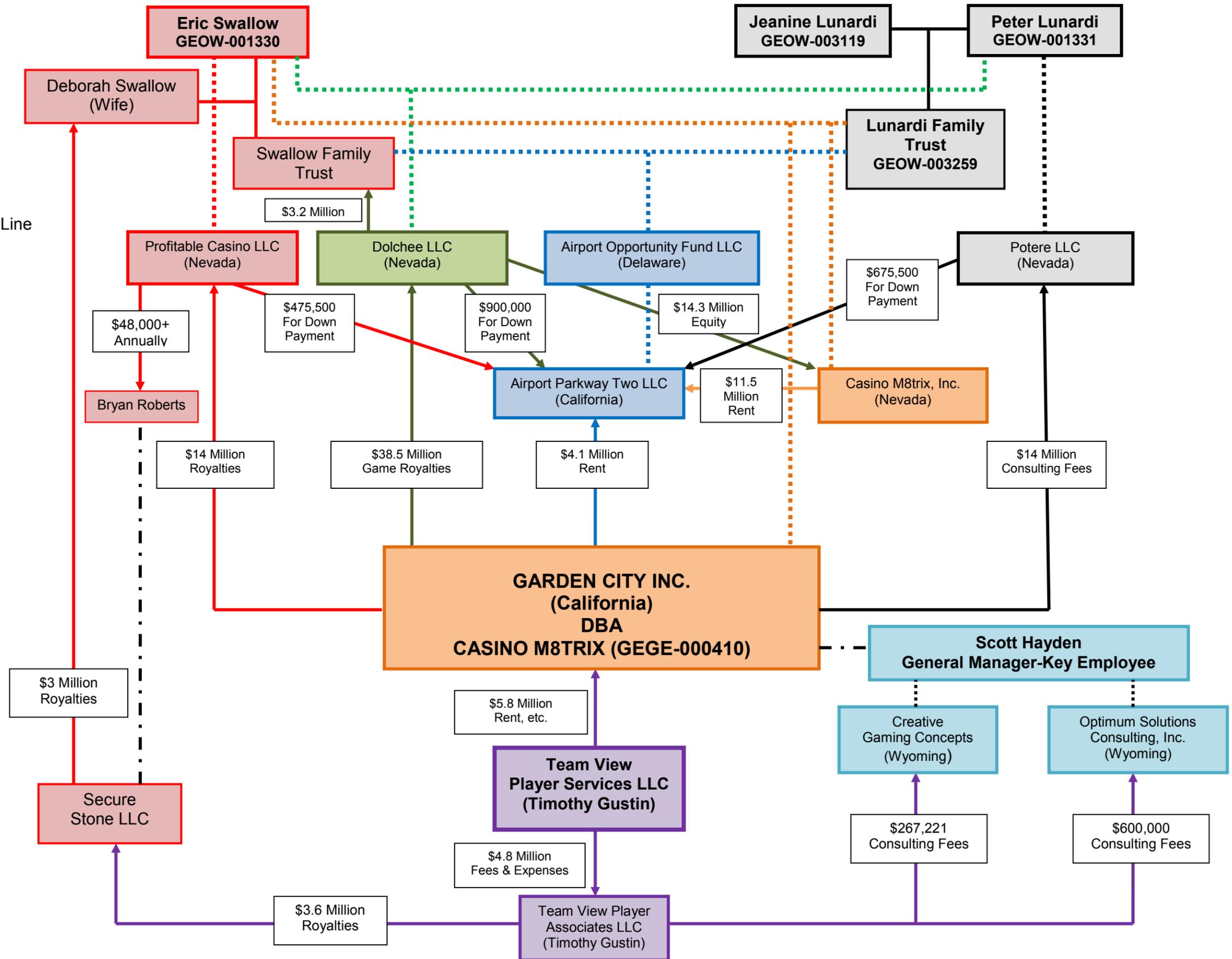
2 WAYNE J. QUINT, JR., Chief
3 Bureau of Gambling Control
4 California Department of Justice

5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT A

**Relationships and Cash Flows
2010-2012**

Key:
 Ownership: Dotted Line
 Cash Flow: Solid Line
 Employment or Other: Broken Line



DECLARATION OF SERVICE BY E-MAIL

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter.

On March 27, 2015, I served the attached **ACCUSATION AND STATEMENT OF ISSUES (Replacing the Accusation filed with Office of Administrative Hearings on June 3, 2014)** by transmitting a true copy via electronic mail as follows:

Law Offices of Tracey Buck-Walsh
Tracey S. Buck-Walsh
175 Foss Creek Circle
Healdsburg, CA 95448
E-mail: tracey@tbwlaw.com

*Attorneys for Respondents Peter V. Lunardi, III,
Jeanine Lynn Lunardi and The Lunardi Family
Living Trust dated August 27, 2008*

Bernard Greenfield
Greenfield Draa & Harrington LLP
55 S. Market Street, Suite 1500
San Jose, CA 95113
(408) 995-5600
BGreenfield@greenfield.com

*Attorneys for Respondents Peter V. Lunardi, III, et
al.*

Allen Ruby
Skadden, Arps, Slate, Meagher & Flom LLP
524 University Avenue, Suite 1100
Palo Alto, CA 94301
E-mail: allen.ruby@skadden.com

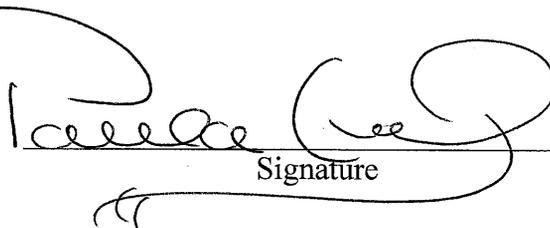
Attorneys for Respondent Eric G. Swallow

Michael St. Denis
Professional Corporation
25550 Hawthorne Boulevard, Suite 118
Torrance, CA 90505
E-mail: mike@mikestdenislaw.com

*Attorneys for Respondent Garden City, Inc., dba
M8trix*

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on March 27, 2015, at Sacramento, California.

Paula Corral
Declarant


Signature