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BEFORE THE
CALIFORNIA GAMBLING CONTROL COMMISSION
STATE OF CALIFORNIA

PRECEDENTIAL DECISION 2016-01

The following part of the adopted decision below is designated precedential, pursuant to Government Code section 11425.60 and Title 4, California Code of Regulations Section 12572

In the Matter of the Accusation and Statement of Issues Against:

GARDEN CITY, INC., doing business as CASINO M8TRIX (GEGE-000410);

ERIC G. SWALLOW (GEOW-001330);

PETER V. LUNARDI III (GEOW-001331);

JEANINE LYNN LUNARDI (GEOW-003119); and

THE LUNARDI FAMILY LIVING TRUST, dated August 27, 2008 (GEOW-003259).

1887 Matrix Boulevard
San Jose, CA 95110

OAH No. 2014060129

BGC Case No. HQ2014-00001AL

DECISION AFTER ORDER OF NONADOPTION

DECISION

Factual Findings

37. In any event it was decided to establish limited liability companies in Nevada that would receive payments from Garden City pursuant to, software licenses, royalty or services agreements. The payments would be “a way to get money out to the owners through services rendered.” Bellotti stated that they were not intended to be distributions of earnings. Bellotti defines a distribution as a payment to a stockholder of current or prior earnings. His understanding was that the software was designed by Respondent and the games were designed

1 by the Lunardis and Respondent. Lunardi in contrast testified that the LLCs were a way of taking
2 distributions from Garden City and he did not participate in any software development.

3 38. The affiliated entities were formed in late 2008. Profitable Casino, LLC, was
4 solely owned by Respondent, and Belotti and Respondent testified it was intended to receive
5 payments for licenses for casino operating software. Potere, LLC, was solely owned by Lunardi,
6 and was intended to receive payments for consulting services provided by Lunardi. Dolchee,
7 LLC, was originally owned jointly by the Lunardi Trust and the Swallow Trust, and would
8 receive payments for gaming royalties. In 2011, the Swallow Trust's share was transferred to
9 Respondent as an individual. The fees were income to the entities, and taxable.

10 39. Each of the three entities contracted with Garden City to receive \$400,000 or more
11 per month, ostensibly for services rendered.

12 40. the amounts received were as follows:

Year	Dolchee	Profitable Casino	Potere
2009	\$7,880,000	\$5,000,000	\$5,000,000
2010	\$7,182,000	\$2,775,000	\$2,775,000
2011	\$11,400,000	\$2,850,000	\$2,850,000
2012	\$11,900,000	\$3,325,000	\$3,325,000
2013	\$8,900,000	\$3,300,000	\$3,300,000
Totals	\$47,262,000	\$17,250,000	\$17,250,000

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21 41. The amounts paid to the three entities were not dependent upon invoices or written
22 documentation; they were based on available cash flow. The amounts paid were decided upon by
23 Respondent and Lunardi, following a discussion of how much money they thought should be
24 taken out of Garden City and given to them. None of the three LLCs has ever applied for or held
25 a state gambling license.

26 ***

27 73. In short, Respondent's misrepresentation regarding the games and software
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1 licensing between Garden City and Dolchee establishes Respondent's indifference to the GCA
2 and the requirement that all persons receiving profits or distributions be licensed as owners.
3 Respondent misrepresented the nature of the payments from Garden City to Dolchee to mask
4 distributions in violation of the GCA, the Penal Code and to avoid licensure.

5 ***

6 77. Respondent offered evidenced and argued that the payments made by Garden City
7 to Profitable Casino were based to some extent upon the value of the software. However,
8 Respondent offered no credible and independent evidence that established the value of that
9 software. Indeed, neither Respondent nor Belotti testified as to the value of this software.
10 Lunardi additionally testified that the payments he and Respondent received were not based upon
11 the value of the services or royalties they provided to Garden City but were instead distributions.
12 Furthermore, CFO Kumar gave a statement that said the owners would take distributions.

13 ***

14 79. Ultimately, these payments from Garden City to Profitable Casino, Dolchee, and
15 Potere were related party transactions where Respondent was both the buyer and seller. Under
16 the GCA such valuations must be looked at with tremendous skepticism as Section 19850 states
17 in pertinent part that any person who receives "any percentage or share of the money or property
18 played, for keeping, running, or carrying on any controlled game in this state, shall apply for and
19 obtain from the commission, and shall thereafter maintain, a valid state gambling license..."

20 80. While the evidence established that some portion of the payments from Garden
21 City to Profitable Casino was based upon the value of the software, the majority of the payments
22 were clearly based upon the payment of distributions. Respondent misrepresented the nature of
23 the payments from Garden City to Profitable Casino to mask distributions to unlicensed entities in
24 violation of the GCA, the Penal Code and to avoid licensure.

25 ***

26 90. Respondent contends that he is not responsible for any efforts in the GT Report,
27 but this contention is not persuasive. Respondent was the source of his agents' false information
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1 which Grant Thornton then used to produce a report containing significant errors and calculations
2 of market value that lacked a factual basis. He knew the information they were using was faulty,
3 if not an outright fabrication, but made no corrections and submitted the GT Report to the
4 Commission with the intent to assuage any concerns the Commission may have had about Garden
5 City paying distributions to unlicensed entities in violation of the GCA, the Penal Code and to
6 avoid licensure.

7 ***

8 132. As stated in Findings 82-90, it was proven that the submission of the GT Report to
9 the Commission constituted a false representation by Respondent. The failure to provide a true
10 and correct response to the Complainant also constitutes a failure to respond to the request as a
11 false representation is akin to no response.

12 ***

13 145. First, Complainant alleges that Respondent represented to the Commission that an
14 accounting firm had provided the pricing model that was used to determine what to charge
15 Garden City for Profitable Casino's software and Dolchee's games. Respondent's representation
16 was false as both Belotti and Grant Thornton obtained their information from Respondent.

17 ***

18 154. There was ample evidence presented which demonstrated the obfuscation of
19 Garden City's finances in relation to Profitable Casino and Dolchee, as well as Respondent's
20 business dealings with Secure Stone and ultimately TV Services. The failure to document
21 transactions in writing, the dissembling of financial relationships, and the lies regarding related
22 party transactions are all imprudent and unusual for closely regulated and quintessential cash
23 businesses such as gambling enterprises. Indeed, the simple fact that the record established that
24 these payments were distributions, and Respondent was unable to provide anything clearly and
25 definitively to the contrary is itself an "imprudent and unusual business" practice given Section
26 19850, 19852, and Penal Code 337j. Ultimately, each and every one of these practices
27 demonstrates "conduct that is inimical to the public health, safety, or welfare" and constitutes
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1 activities and practices that “pose a threat to the public interest” of California.

2 ***

3 162. The facts set forth in Findings ****, 67-90, 99-127, 131-135, 137-138, 145, and
4 152-155 demonstrate that Respondent committed violations of the GCA, Penal Code, and
5 conducted operations in a manner that was inimical to the public health, safety, and welfare.

6 ***

7 164. The GCA places a mandate upon the Commission in reviewing and overseeing
8 applicants, licensees, and gaming operations. Everyone that receives a percentage or share of
9 revenue from a cardroom must be licensed, and where that person is a non-natural person, all
10 constituent natural persons connected to the owner must be licensed and endorsed. Furthermore,
11 receiving a percentage or share of revenue from a cardroom without being licensed is a
12 misdemeanor under the Penal Code.

13 165. The process of reviewing applicants, licensees, and gaming operations requires full
14 and true disclosure of business practices, relationships, and personal finances. Accurate
15 knowledge of these matters assists in the assessment of honesty and integrity, and of possible
16 threats to the effective regulation of controlled gambling. The misrepresentations and
17 withholding of information by Respondent, as well as the actions taken to conceal unlicensed
18 entities, are critically important to the Commission’s decision making process and are thus
19 material to the decision of whether Respondent is suitable for licensure. This is true regardless of
20 whether the information was related to an application or license addressed in this matter, or a
21 separate application or disciplinary matter. This standard is apparent from a plain reading of the
22 GCA.

23 ***

24 **Legal Conclusions**

25 18. Section 19859, subdivision (b), provides that applicants are disqualified from
26 licensure by supplying information about a material fact that is untrue or misleading. Cause for
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1 license revocation and denial of licensure exists pursuant to this provision by reason of the facts
2 set forth in Findings 67-90, 99-106, and 164-165.

3 19. Furthermore, Respondent's egregious conduct in fabricating a network of self-
4 dealing and unlicensed affiliates including Dolchee, Profitable Casino, and Secure Stone
5 undermines the public health, safety, and welfare. As was established above, Respondent, by
6 providing inaccurate valuation information to Belotti and Grant Thornton regarding Profitable
7 Casino, Dolchee and Potere, attempted to hide distributions from Garden City's books under the
8 guise of inflated licensing, royalty, and service agreements. Beyond limited amounts to Dolchee
9 and Profitable Casino; the millions that flowed to these unlicensed entities were distributions.

10 20. The GCA lays out strict licensing requirements for owners of cardrooms under
11 Section 19850, and for non-natural persons under Section 19852. Any entity that receives a
12 percentage or share of revenue must be licensed. Furthermore, as referenced by the Complainant
13 in its briefing, Penal Section 337j prohibits the sharing of gambling profits with unlicensed
14 entities. Such profit sharing with unlicensed entities is a misdemeanor crime. As the
15 Complainant did not plead a violation of Penal Code Section 337j separately in the ASI as a basis
16 for denial or revocation, the Commission does not do so now. However, Respondent's conduct in
17 providing false and misleading information to the Complainant establishes conduct consistent
18 with an effort to violate this Penal Code section.

19
20 **THIRD CAUSE: FAILURE TO PROVIDE INFORMATION AND DOCUMENTATION**
21 **REQUESTED BY THE CHIEF**

22
23 21. Section 19859, subdivision (b), provides that applicants are disqualified from
24 licensure if they do not provide information requested or fail to reveal facts material to
25 qualification. Cause for license revocation and denial of licensure exists pursuant to this provision
26 by reason of the facts set forth in Findings 107-127, 131-135, and 164-165.

1 22. As established above, Respondent’s efforts to avoid full and complete disclosure
2 of his finances, relationships, and agreements reflects an intent to mask prohibited transactions
3 with unlicensed entities and confounds the purpose of the GCA.
4

5 FOURTH CAUSE: UNQUALIFIED FOR LICENSURE
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7 23. Section 19857, subdivisions (a) and (b), provides two independent criteria upon
8 which the Commission views an application. Subdivision (a) requires the Commission to look at
9 the applicant’s character, honesty and integrity. Subdivision (b) requires the Commission be
10 assured that the applicant’s activities, habits, and associations do not pose a threat to the state or
11 the effective regulation of controlled gambling.

12 24. Cause for license revocation and denial of licensure exists under both of these
13 subdivisions by reason of the facts set forth above in Findings ****, 67-90, 99-127, 131-135, and
14 164-165.
15

16 FIFTH CAUSE: DISQUALIFIED FOR LICENSURE
17

18 25. Section 19823, subdivision (a), provides that the Commission is responsible for
19 “assuring that licenses . . . are not issued to, or held by, persons whose operations are conducted
20 in a manner that is inimical to the public health, safety, or welfare.” The matters set forth in
21 Findings ****, 67-90, 99-127, 131-135, 137-138, 145, 152-155, and 162-165 provide cause to
22 conclude that Respondent is disqualified for licensure pursuant to this requirement.

23 ***

24 30. Before the Commission is a licensee who took advantage of opportunities created
25 by the GCA to invest in and operate a cardroom. The business quickly experienced considerable
26 financial success. But instead of paying close attention to the legal requirements to operate, and
27 doing his best to comply, Respondent took deliberate steps in contravention of the law. The most
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1 blatant of these was Respondent's creation of four separate LLCs, including Dolchee, Profitable
2 Casino, Potere, and Secure Stone, LLC.

3 31. In regards to the first three LLCs, the record establishes that they were created to
4 funnel distributions from Garden City to LLCs in Nevada which does not have an income tax.
5 The Commission does not pass judgment on whether this practice is an inherent violation of the
6 GCA. However, when an applicant and owner misrepresents the nature of his cardroom's
7 financial relationships, makes distributions to unlicensed entities, and misrepresents
8 corresponding material facts, he obstructs the statutory oversight of both the Complainant and
9 Commission and confounds the very purposes of the GCA. Respondent's conduct collectively
10 was a clear violation of the GCA.

11 ***

12 34. While many of the specific allegations in the ASI were not substantiated by the
13 evidence, the record is more than sufficient to support the removal of Respondent as a GCA
14 licensee in California. Respondent failed to establish his suitability. (Section 19856(a))
15 Respondent showed a lack of good character, honesty, and integrity by his violations. (Section
16 19857(a)) License revocation and denial of Respondent's pending application is also required for
17 the following reasons:

- 18 a. The protection of the public interest. (Section 19857(b));
- 19 b. The protection of effective regulation and control of controlled gambling. (Section
20 19857(b))
- 21 c. The mitigation of unsuitable and illegal practices in the conduct of controlled
22 gambling. (Section 19857(b))
- 23 d. The mitigation of unsuitable and illegal practices in the carrying on of the business
24 and financial arrangements related to controlled gambling (Section 19857(b))
- 25 e. Respondent further failed to established eligibility and qualification for licensure
26 ((Section 19859(a))

1 f. Respondent failed to provide information material to qualification. ((Section
2 19859(b))

3 g. Respondent provided untrue or misleading information related to qualification
4 criteria. (Section 19859(b))

5 35. The GCA provides that the Commission may impose penalties or fines against
6 licensees. Section 19930, subdivision (c), establishes the maximum fine to be imposed on a
7 license holder such as Respondent: “[N]o fine imposed shall exceed [\$20,000] for each separate
8 violation of any provision of this chapter or any regulation adopted thereunder.” Section (c)
9 provides no such limitation for penalties. It is apparent that the legislature authorized fines per
10 violation with a limit to remedy specific behavior whereas penalties were not correspondingly
11 limited. Instead, penalties were meant to further other purposes of the GCA. These remedies
12 appear to be disjunctive, allowing the Commission to impose one but not the other, at least in
13 addressing any particular action.

14 ***

15 38. The conduct addressed above is a gross violation of the GCA when each allegation
16 is taken separately but is amplified when taken as a whole. Dolchee and Profitable Casino were
17 unlicensed entities and received distributions up until the Complainant enacted its emergency
18 order. The GCA and the Penal Code is replete with requirements for entities receiving
19 distributions to be licensed and against unlicensed entities receiving distributions.¹ The receipt of
20 revenue from a cardroom is a fundamental characteristic of ownership and control and without
21 Commission review of these persons, the whole purpose of the GCA fails.² As stated above, fines
22 are best implemented to punish specific acts in violation of the GCA, whereas Respondent’s
23 conduct can only be viewed as globally out of compliance with the GCA and addressed as such.
24 As the legislature has stated under Section 19971, the GCA is “an exercise of the police power of
25 the state for the protection of the health, safety, and welfare of the people of the State of
26 California, and shall be liberally construed to effectuate those purposes.” It is through this lens

27 ¹ See Section 19850, 19852, 19882, 19892 19855, and 19901; See also Penal Code 337j

28 ² See Section 19801(g) – (k), 19823, etc.

1 the Commission deems it appropriate to apply a penalty in addressing Respondent's rather than
2 discreet fines.

3 39. Both the Complainant and Respondent discussed whether a monetary penalty
4 would be appropriate under *People ex. Rel. Lockyer v. RJ Reynolds Tobacco Co.* (2006) 37
5 Cal.4th 707. That case stated that the inquiry must look at “(1) the defendant’s culpability; (2) the
6 relationship between the harm and the penalty; (3) the penalties imposed in similar statutes; and
7 (4) the defendant’s ability to pay.” *Id.* at 728-729. The Complainant requests a penalty based on
8 Respondent being unqualified and disqualified for licensure. The Complainant requests a penalty
9 in the amount of \$11 million which would amount to 20 percent of a contract for the sale of his
10 shares in Garden City. Respondent argues that the Commission cannot impose monetary
11 penalties, and that even if it could no person was injured or property damaged by Respondent’s
12 conduct and that past penalties make this amount inconsistent. Respondent concludes that his
13 alleged impermissible conduct had nothing to do with the moneys he received. The Respondent’s
14 arguments are unpersuasive and unsupported by the facts.

15 40. The GCA gives the Commission broad discretion in assessing penalties to protect
16 the public health, safety, and welfare and ensure compliance with the GCA. To that end, the
17 Commission has adopted regulation CCR Section 12554(d)(7) which allows the Commission to:

18 Order the holder to pay a monetary penalty in lieu of all or a portion of a
19 suspension. Within the guidelines of Business and Professions Code sections
20 19930, subdivision (c), and 19943, subdivision (b):

21 (A) If the respondent is an owner licensee of a gambling establishment,
22 the monetary penalty shall be equivalent of fifty percent of the average
23 daily gross gaming revenue, but not less than \$300, for the number of days
24 for which the suspension is stayed.

25
26 41. Section 12554(d)(7) demonstrates that a large monetary penalty is
27 sometimes appropriate and authorized under the GCA. It is also relevant in determining
28

1 the scope of penalty appropriate in this instance against Respondent. In 2008, prior to the
2 creation of the LLCs, Garden City had a net income of \$9,316,650. Despite testimony
3 that the operation was successful, when the payments to the LLCs began in 2009, 2010,
4 2011, and 2012, Garden City's net income plunged to \$37,105 and \$618,273 in 2009 and
5 2010, and even went into the red, (\$127,296), and (\$23,999) for 2011 and 2012. The
6 difference was undoubtedly the distributions paid to the unlicensed entities.

7 42. Gross Revenue from 2009, 2010, 2011 and 2012 was \$46,819,116;
8 \$43,559,057; \$42,153,238; and \$47,072,909 respectively. This amounts to total gross
9 revenue for these four years of \$179,604,320. If a penalty in lieu of suspension under
10 Section 12554(d)(7) were applied to Garden City for these four years, assuming averaged
11 equal daily revenue, the Commission could impose a penalty in lieu of suspension in the
12 amount of \$89,802,160. Respondent as one half owner of Garden City would be liable
13 for half that amount or \$44,901,080.

14 43. Ultimately, this amount reflects a possible outer bound for a penalty for
15 Respondent's conduct but it is not narrowly tailored. Specifically, a penalty in light of
16 the forgoing causes of action must be related to Respondent's poor character and
17 integrity, the threat to public safety, as well as the egregious conduct in misrepresenting,
18 lying, and concealing his financial transactions with unlicensed entities. Over the four
19 years from 2009 through 2013, Garden City paid Profitable Casino, Dolchee and Potere a
20 total of \$81,762,000. The portion paid through these affiliates to Respondent was
21 \$40,881,000. As established above, these millions of dollars were paid to unlicensed
22 entities in violation of the GCA and the Penal Code. Even assuming arguendo that
23 portions of these millions were meritoriously paid for services, licensing, or royalty
24 agreements, the balance of these payments would be distributions to unlicensed entities.

25 44. Respondent's arguments that no harm has occurred is thoroughly without
26 merit. Gambling is a closely regulated industry which requires applicants and licensees
27 operate under a strict regulatory scheme controlling "all persons, locations, practices,
28

1 associations, and activities” related to gambling enterprises. (*See* Section 19801(h))

2 Moreover, Section 19801(i) states:

3 (i) All gambling operations, all persons having a significant involvement in
4 gambling operations, all establishments where gambling is conducted, and all
5 manufacturers, sellers, and distributors of gambling equipment must be licensed
6 and regulated to protect the public health, safety, and general welfare of the
7 residents of this state as an exercise of the police powers of the state.

8
9 45. Simply stated, Respondent’s egregious conduct is harm to the public trust and
10 public at large that gambling operations are strictly regulated. Moreover, the harm caused by
11 Respondent accrues to each and every local jurisdiction where controlled gambling occurs with
12 the expectation that it is closely and securely regulated and to each GCA compliant gambling
13 operation, owner, and employee throughout the state which refrains from engaging in this
14 deceptive and illegal conduct and who stand to be unfortunately negatively associated. This harm
15 rests squarely on Respondent’s shoulders as he provided the false information to Belotti, to Grant
16 Thornton, to Complainant, and ultimately to the Commission. Respondent further new that he
17 was flouting the GCA as was reflected by the testimony and evidence. Respondent did not
18 simply make a good faith mistake. Respondent was a savvy businessman who was poised to take
19 over another cardroom before his conduct came to light and who hired people to help him in his
20 deception.

21 46. To determine otherwise would embolden and encourage other cardrooms that “full
22 and true disclosure” is optional, and that misrepresentations and concealing unlicensed entities is
23 acceptable and profitable. Moreover, it would encourage others to test the boundaries of the GCA
24 and invite games of “catch me if you can.” Letting an applicant lie, misrepresent, omit,
25 obfuscate, and dissemble information at the expense of the Complainant’s investigatory efforts
26 and Commission suitability determinations confounds the purposes of the GCA.

1 47. Additionally, Respondent's arguments that that the monies paid to the affiliates
2 would not have changed had these entities been licensed puts the cart before the horse. These
3 were unlicensed entities who by the strict language of the GCA and the Penal Code should have
4 received no distributions as receiving this money is a violation of the GCA and an indeed a crime.
5 Whether they should and indeed could have been licensed in accordance with the GCA is
6 speculation and indeed problematic considering Respondent's imprudent and unusual business
7 practices. Ultimately, the Complainant and the Commission cannot be in the position under the
8 GCA of playing catch up with every financial transaction a Respondent can create in the
9 gambling context.

10 48. Respondent also makes arguments that a large penalty would be unfair and
11 disproportionate to both the amounts the Lunardi's were required to pay under the settlement
12 agreement as well as past Commission fines and penalties. As for the Lunardi's settlement, the
13 record established clearly that Respondent was far more culpable than Lunardi which justifies
14 disparate treatment. As for past fines and penalties, Respondent is correct that a large penalty
15 would be different in magnitude than past fines and penalties. This however does not mean there
16 is any inconsistency with the underlying justification previously used to apply those fines and
17 penalties and the penalty against Respondent. Rather, it is a testament to Respondent's egregious
18 conduct, the scope and hubris of which this body has never seen before which requires this
19 response.

20 49. In light of the egregious failings under the GCA and conduct, the Commission
21 determines that a large penalty based on the amount of payments to unlicensed entities in the
22 amount of \$13,672,000 is appropriate to vindicate the harm caused, ensure maintenance of the
23 public trust, and encourage compliance with the GCA. The Commission reduces the potential
24 penalty of \$40,881,000, the total amounts paid to Dolchee (owing to Respondent) and Profitable
25 Casino during the period of 2009 to 2013, by two thirds, in light of evidence that *some* of the
26 monies paid to Dolchee and Profitable Casino may have been legitimate despite Respondent's
27 woefully inadequate accounting. This resulting amount is less than a potential maximum penalty
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1 but is sufficient to ensure compliance with the GCA and maintain the public trust that gambling is
2 effectively and safely regulated.

3 50. Furthermore, there is ample evidence that Respondent has the ability to pay. As
4 was established in the record, Respondent stands to receive a windfall from the sale of his share
5 of Garden City. Testimony from one purchaser placed the purchase price at \$50 million plus \$5
6 million for a five year noncompetition covenant. The penalty imposed is roughly 25% percent of
7 this amount. This also does not take into account the millions that Respondent would be entitled
8 to receive from Garden City's operations since the implementation of the Complainant's
9 emergency order.

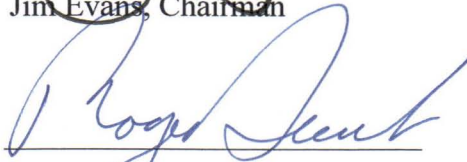
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11 Approved at Commission Meeting of May 26, 2016

12 This Precedential Decision is effective June 27, 2016.

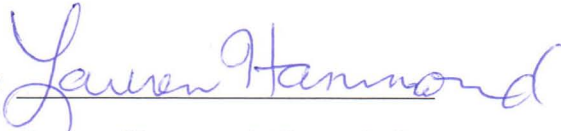
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15 Dated: 5/26/16

Signature: 
Jim Evans, Chairman


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18 Dated: 5/26/16

Signature: 
Roger Dunstan, Commissioner

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21 Dated: 5/26/16

Signature: 
Lauren Hammond, Commissioner

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Signature: 
Trang To, Commissioner

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