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PETITION OF MGM MIRAGE FOR
APPROVAL OF A STIPULATION OF
SETTLEMENT AND A
DIVESTITURE TRUST AGREEMENT

THE COMMISSION IS CONSIDERING TODAY WHETHER TO APPROVE A STIPULATION OF SETTLEMENT BETWEEN MGM MIRAGE AND THE DIVISION THAT THEY HAVE PROPOSED TO RESOLVE THE REOPENED 2005 BORGATA CASINO LICENSE RENEWAL HEARING. THE DIVISION ESSENTIALLY INITIATED THE REOPENING LAST MAY BY ISSUING A SPECIAL REPORT ON MGM'S JOINT VENTURE PROJECT TO DEVELOP AND OPERATE A CASINO IN MACAU. ALTHOUGH THE QUALIFICATION OF BORGATA AND ITS BOYD GAMING HOLDING COMPANIES ARE NOT AN ISSUE IN THAT MATTER, THEY NEVERTHELESS HAVE ALSO SIGNED THE STIPULATION FOR THE LIMITED PURPOSE OF CLOSING THE 2005 RENEWAL HEARING, AND UNDERTAKING THEIR OBLIGATION TO ABIDE BY

THE RESTRICTIONS ON COMMUNICATING WITH MGM AS SET FORTH IN A DIVESTITURE TRUST AGREEMENT. SINCE THAT TRUST AGREEMENT IS AN ESSENTIAL PART OF THE STIPULATION, MGM IS SEEKING ITS APPROVAL AS WELL.

OUR ROLE IN THIS MATTER IS A LIMITED ONE. ALTHOUGH WE HAVE BEEN AND REMAIN FULLY PREPARED TO HAVE THE REOPENED 2005 HEARING TRIED TO CONCLUSION, THE PARTIES FOR THEIR OWN REASONS SEEK TO AVOID LITIGATING A MATTER THAT HAS THE POTENTIAL TO BE CONTENTIOUS AND PROTRACTED.

IN BROAD TERMS, THE SETTLEMENT PROVIDES THAT MGM WILL IRREVOCABLY PLACE ITS INTEREST IN BORGATA IN TRUST, UNDER THE AUSPICES OF A TRUSTEE WHO MUST MEET, AMONG OTHER THINGS, THE HIGHEST STANDARDS FOR QUALIFICATION AS A

CASINO KEY EMPLOYEE. TO FILL THAT CRITICAL ROLE, MGM, IN CONSULTATION WITH THE DIVISION, HAS SELECTED FORMER STATE SUPREME COURT CHIEF JUSTICE JAMES ZAZZALI. WE ARE GRATEFUL FOR HIS WILLINGNESS TO SERVE.

AS PROVIDED IN THE TRUST AGREEMENT, MGM'S INTEREST MUST BE SOLD WITHIN 30 MONTHS OF THE TRUST BECOMING EFFECTIVE. IN THE FIRST 18 MONTHS, MGM HAS THE RIGHT TO MARKET AND SELL ALL OR ANY PART OF ITS INTEREST AS IT BEST SEES FIT, BUT IN THE LAST YEAR OF THE TRUST IT LOSES THAT RIGHT TO THE TRUSTEE, WHO THEN UNDERTAKES TO SELL THE ENTIRE INTEREST BEFORE THE 30 MONTHS END.

OTHER THAN MARKETING ITS INTEREST DURING THOSE FIRST 18 MONTHS, MGM PLANS TO RELINQUISH ALL RIGHTS INCIDENT TO THE PROPERTY, INCLUDING

ANY ABILITY TO INFLUENCE OR CONTROL THE AFFAIRS OF BORGATA. AFTER THE TRUST IS DISSOLVED AND THE PROCEEDS DISTRIBUTED TO MGM, THE COMPANY, ITS AFFILIATES AND THEIR PRINCIPALS WILL BE BARRED FOR 30 MONTHS FROM REAPPLYING FOR LICENSURE OR QUALIFICATION IN NEW JERSEY. UPON TRANSFERRING ITS INTEREST TO THE TRUST AND RECEIVING COMMISSION APPROVAL OF THE STIPULATION OF SETTLEMENT, MGM, ITS AFFILIATES AND THEIR RESPECTIVE PRINCIPALS WILL NO LONGER BE REQUIRED TO QUALIFY IN CONNECTION WITH THE BORGATA.

ALTHOUGH MGM WILL ADMIT NO LIABILITY OR CULPABILITY FOR THE MATTERS RAISED IN THE SPECIAL REPORT OR OTHERWISE, THE ENTIRE SPECIAL REPORT WILL BECOME PUBLIC, EXCEPT TO THE EXTENT THAT THE COMMISSION GRANTS MGM'S REDACTION

REQUEST, WHICH, TO ITS CREDIT, HAS BEEN NARROWLY DRAWN.

IS THIS A PERFECT SOLUTION? NO COMPROMISE IS, BUT SO LONG AS THE COMMISSION IS SATISFIED THAT THE ESSENTIAL PURPOSES AND POLICIES OF THE ACT ARE NOT OFFENDED BY THE PRACTICALITIES THAT THIS OUTCOME AFFORDS, I AS ONE COMMISSIONER BELIEVE THAT WE MAY PROCEED, SECURE IN THE KNOWLEDGE THAT THE ATTORNEY GENERAL'S OFFICE, THROUGH THE DIVISION, FAVORS THIS RESULT AND CONCURS IN THE NECESSARY WAIVERS OF THE QUALIFICATION REQUIREMENT THAT MGM IS ASKING US TO GRANT.

SINCE A DRAFT RESOLUTION, WHICH HAS BEEN SHARED WITH THE PARTIES, ADDRESSES ALL THE RELIEF REQUESTED IN THE PETITION, REPEATING THOSE ITEMS HERE IS UNNECESSARY. HOWEVER, IT

DOES BEAR NOTING THAT BORGATA LEASES FROM AN MGM AFFILIATE SEVERAL LAND PARCELS NECESSARY FOR THE SMOOTH OPERATION OF ITS CASINO HOTEL. THAT LAND, PLUS THE RELATED LEASES, WILL ALSO BE PUT IN THE TRUST AND, FOR THE MOST PART, WILL BE SOLD DURING THE 30-MONTH TIMETABLE SPECIFIED IN THE TRUST AGREEMENT.

ACCORDINGLY, BASED ON AND CONSISTENT WITH MY PREVIOUS REMARKS, I MOVE THAT THE COMMISSION ADOPT THE PROPOSED RESOLUTION APPROVING THE STIPULATION AND TRUST AGREEMENT AND GRANTING THE OTHER RELIEF SPECIFIED IN THE RESOLUTION IN ACCORDANCE WITH THE FINDINGS AND RULINGS, AND SUBJECT TO THE CONDITIONS, IN THE RESOLUTION.