



## **MASSACHUSETTS GAMING COMMISSION MEETING**

June 12, 2014  
10:30 a.m.

**Hynes Convention Center**  
900 Boylston Street, Room 200  
Boston, MA



Massachusetts Gaming Commission



## NOTICE OF MEETING and AGENDA

June 12, 2014

Pursuant to the Massachusetts Open Meeting Law, G.L. c. 30A, §§ 18-25, notice is hereby given of a meeting of the Massachusetts Gaming Commission. The meeting will take place:

**Thursday, June 12, 2014**

10:30 a.m.

**Hynes Convention Center**

900 Boylston Street, Room 200

Boston, MA

### **PUBLIC MEETING - #124**

1. Call to order
2. Approval of Minutes
  - a. May 29, 2014
3. Region A Fundamental Inconsistency Petitions - Region A –Catherine Blue, General Counsel
4. Category 1 Region B Evaluation Deliberations (if necessary)
5. Administration – Rick Day, Executive Director
  - a. General Update
  - b. FY15 Budget Follow up Discussion - D. Lennon, CFAO
  - c. Master Licensing Schedule – Region C - K. Wells, Investigations and Enforcement Bureau, Director; J. Ziemba, Ombudsman; C. Blue, General Counsel
  - d. Penn National Gaming Response – Gaming Positions – J. Glennon, CIO
6. Licensing Division – David Acosta, Director
  - a. Emergency Regulations Amendments – Vendor Secondary – L. Lillios, Deputy General Counsel - VOTE
7. Legal Division – Catherine Blue, General Counsel and Loretta Lillios, Deputy General Counsel
  - a. Delegation of authority to IEB for determining petitions for waiver of qualification by institutional investors.
  - b. Delegation of authority to Catherine Blue and Loretta Lillios to act as hearing officers.



Massachusetts Gaming Commission

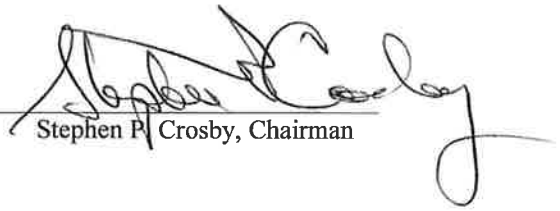
- 8. Other business – reserved for matters the Chair did not reasonably anticipate at the time of posting.

Any items not addressed on Thursday, June 12<sup>th</sup> will be discussed on Friday, June 13<sup>th</sup> in Springfield.

I certify that on this date, this Notice was posted as “Gaming Commission Meeting” at [www.massgaming.com](http://www.massgaming.com) and emailed to: [regs@sec.state.ma.us](mailto:regs@sec.state.ma.us), [melissa.andrade@state.ma.us](mailto:melissa.andrade@state.ma.us).

6/9/14  
(date)

**Date Posted to Website:** June 10, at 10:30 a.m.

  
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Stephen P. Crosby, Chairman

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Massachusetts Gaming Commission




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## Meeting Minutes

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**Date/Time:** May 29, 2014 – 10:30 a.m.

**Place:** Boston Convention and Exhibition Center  
415 Summer Street, Room 107A  
Boston, Massachusetts

**Present:** Commissioner Stephen P. Crosby, Chairman  
Commissioner Gayle Cameron  
Commissioner James F. McHugh  
Commissioner Bruce Stebbins  
Commissioner Enrique Zuniga

**Absent:** None

Clicking on the time posted in the margin will link directly to the appropriate section of the video.

### **Call to Order**

See transcript page 2.

10:30 a.m. Chairman Crosby called to order the 122nd public meeting.

### **Approval of Minutes**

See transcript pages 2-4.

10:30 a.m. Commissioner McHugh stated that the minutes for May 15 are ready for approval.

*Motion made by Commissioner McHugh that the minutes of May 15, 2014 be accepted subject to the two corrections discussed and any mechanical or typographical corrections that may later be made. Motion seconded by Commissioner Stebbins. The motion passed unanimously.*

### **Design Excellence**

See transcript pages 4-30.

10:32 a.m. John Nunnari, on behalf of the American Institute of Architects, presented his comments on the process for reviewing the design of the three Category 1 proposals.

**Administration**

See transcript pages 30-124.

- 11:02 a.m. Executive Director Day presented a proposed schedule for deliberations and making the licensing determination in Region B.
- 11:07 a.m. Executive Director Day, Jennifer Pinck, Bill Perry, John Rauen, Mike McGrew, and Emil Giordano presented to the Commission the preliminary schedule for the construction of the Plainridge Park Casino.
- 11:41 a.m. *Motion made by Commissioner McHugh that the Commission preliminarily approve the project schedule presented for the Plainridge Park Casino, with the understanding that the Commission will vote for a final approval of the schedule on June 26, 2014. Motion seconded by Commissioner Cameron. The motion passed unanimously.*
- 11:43 a.m. The Commission took a brief recess.
- 11:55 a.m. Executive Director Day and Director Lennon provided an overview of the Commission's draft budget for fiscal year 2015.
- 12:53 p.m. The Commission took a recess for lunch.
- 1:33 p.m. Chairman Crosby discussed making a change in the section relative to the \$600 tax withholding contained in the letter that the Commission sent to the legislature. It was agreed that the change would be made and the letter recirculated.

**Racing Division**

See transcript pages 124-167.

- 1:37 p.m. Director Durenberger presented an administrative update relative to construction at Plainridge, website enhancements, regulatory initiatives, and the race horse development fund.
- 1:44 p.m. Director Durenberger presented her memo on horse welfare values and the public comments that the Commission has received. She recommended that the Commission adopt the resolution included in the packet and endorse the guidelines.
- 2:21 p.m. Director Durenberger provided a brief overview of the National Racing Regulatory Compact and the future discussions she plans to have.
- 2:22 p.m. Director Durenberger discussed Suffolk Down's request to amend the live racing schedule and informed the Commission that she has approved the request.

**Legal Division**

See transcript pages 168-196.

- 2:23 p.m. Director Wells and Attorney Lillios presented the 205 CMR 141 draft regulations on surveillance and the 205 CMR 142 draft regulations on administrative searches. Both regulations are being posted for informal public comment.
- 2:39 p.m. Deputy General Counsel Grossman discussed the legal division's research relative to whether the provisions of the banking laws would affect a gaming licensee's ability to place ATMs in the gaming establishment.
- 2:41 p.m. General Counsel Blue discussed the legal division's research relative to the state of the law to determine the standard of review for disadvantaged business enterprises and research relative to enforcement mechanisms.
- 2:53 p.m. Chairman Crosby left the meeting. The Commission took a brief recess.

### **Ombudsman Report**

See transcript pages 197-246.

- 3:10 p.m. Ombudsman Ziembra provided an update on the master licensing schedule for Region A and the current progress in reaching surrounding community agreements.
- 3:22 p.m. Ombudsman Ziembra presented a joint request from Wynn MA, LLC and the City of Chelsea for a variance from the Commission's arbitration regulations to provide an additional 7 days to complete the arbitration process as a supplement to the flexible 14 days that staff has already provided.
- 3:25 p.m. *Motion made by Commissioner Stebbins that the Commission grant a variance as requested by the city of Chelsea and Wynn MA, LLC to the time constraints of section 125.01(6)(c) to allow the arbitrator to issue his report on June 9, 2014. Motion seconded by Commissioner Zuniga. The motion passed unanimously with a 4-0 vote.*
- 3:26 p.m. The Commission discussed the decision making process in Region A.
- 4:04 p.m. Meeting adjourned.

### **List of Documents and Other Items Used**

1. Massachusetts Gaming Commission May 29, 2014 Notice of Meeting and Agenda
2. Massachusetts Gaming Commission May 15, 2014 Meeting Minutes
3. May 27, 2014 AIA Massachusetts Memorandum Regarding Request Seeking Public Comment: Design for Category 1 Applications
4. Emails Regarding Public Comments on Building Design of Category 1

5. Plainridge Park Casino Project Summary Schedule Submitted to MGC May 27, 2014
6. Preliminary Schedule Review – Perry and Associates, LLC
7. May 27, 2014 Massachusetts Gaming Commission Memorandum Regarding FY15 Initial Budget Recommendation with attachments
8. May 29, 2014 MGC Division of Racing Memorandum Regarding Welfare Initiatives with Attachments
9. May 22, 2014 Suffolk Downs Letter Regarding Live Racing Schedule
10. DRAFT 205 CMR 141
11. DRAFT 205 CMR 139
12. DRAFT 205 CMR 142
13. Massachusetts Gaming Commission 5-21-2014 Licensing Schedule Update
14. Wynn MA, LLC and City of Chelsea Variance Request

/s/ Catherine Blue  
Catherine Blue  
Assistant Secretary

**Summary of Somerville Objections to Wynn BAFO**

6/12/14

Subject	Wynn BAFO Term	Somerville Objection	Citations	Staff Recommendation
<b>Impact of Reaching Agreement</b>	<p><b>General Recitations:</b></p> <p>“And whereas, Somerville may be impacted by the development of the Project, and the Act and regulations relating thereto, including 205 CMR 125.00 <i>et seq.</i>, permit Wynn to enter surrounding community agreements to address surrounding community impact as well as demonstrate advancement of the Act <u>and public support for its proposed development...</u>”</p>	<p><b>Exhibit C, p. 1:</b></p> <p>“The City contends that the emphasized language above must be struck as neither the Gaming Act nor regulations thereto necessitate that a surrounding community agreement require or serve as demonstration of ‘public support’.”</p>	<p><b>None cited.</b></p>	<p>Not fundamentally inconsistent with c.23K.</p> <p>The standard of review pursuant to commission recommendations is whether a provision is fundamentally inconsistent with c. 23K.</p> <p>This language is part of the general recitations and does not require the municipality to publicly support the applicant’s project.</p>
<b>Duty to Work with Applicant</b>	<p><b>General Recitations:</b></p> <p>“And whereas, Wynn desires to mitigate any adverse ... and Somerville desires to mitigate any anticipated adverse impacts from the development and operation of the Project through the means described herein, <u>and to work proactively with Wynn to capitalize on the unique nature of Somerville’s community resources...</u>”</p>	<p><b>Exhibit C, p. 1:</b></p> <p>“The City contends that the emphasized language above must be struck as neither the Gaming Act nor regulations thereto necessitate that a surrounding community agreement require or serve as demonstration of ‘public support’ or that the City will ‘work proactively’ with an applicant relative to a proposed gaming establishment.”</p>	<p><b>None cited.</b></p>	<p>Not fundamentally inconsistent with c.23K.</p> <p>The standard of review pursuant to commission recommendations is whether a provision is fundamentally inconsistent with c. 23K.</p> <p>This language is part of the general recitations and does not require the municipality to publicly support the applicant’s project. In addition, the purpose of a surrounding community agreement is for both the municipality and the applicant to work proactively to mitigate impacts.</p>
<b>Cross-Promotion</b>	<p><b>Section 1.2:</b></p>	<p><b>Exhibit C, p. 2:</b></p>	<p><b>None cited.</b></p>	<p>Not fundamentally inconsistent with c.23K.</p>



**Summary of Somerville Objections to Wynn BAFO**

6/12/14

Subject	Wynn BAFO Term	Somerville Objection	Citations	Staff Recommendation
	<p>"The Parties acknowledge and agree that the proximity of the Project to the Assembly Row and Assembly Square developments and <u>the desire to cross-promote the projects ...</u> "</p>	<p>Same as with respect to duty to cooperate with applicant above.</p>		<p>The standard of review pursuant to commission recommendations is whether a provision is fundamentally inconsistent with c. 23K.</p> <p>This language does not require the municipality to cross promote Assembly Row, Assembly Square and the applicant's project. It is suggestion which the parties could agree to.</p>
<p><b>Acknowledgment of Mitigation</b></p>	<p><b>Section 1.3:</b></p> <p>"The Project may have an impact on municipal services and require additional expenditures by Somerville in order to provide such services. Wynn's payments to Somerville under this Agreement will provide Somerville with adequate resources to mitigate any such impacts <u>and Somerville acknowledges and agrees that such payments adequately mitigate all such impacts.</u>"</p>	<p><b>Exhibit C, p. 2:</b></p> <p>"The Gaming Act does not require Somerville to make such an acknowledgment that payments will 'adequately mitigate all such impacts' and regulations (i.e. 205 CMR 127) allow for the parties to reopen an agreement in the event of certain triggering events."</p>	<p><b>205 CMR 127</b>, regarding reopening of mitigation agreements, is cited generally.</p>	<p>Fundamentally inconsistent with c.23K.</p> <p>The standard of review pursuant to commission recommendations is whether a provision is fundamentally inconsistent with c. 23K.</p> <p>205 CMR 127 provides for the reopening of mitigation agreements under certain circumstances. This language could be read to negate the rights provided under 205 CMR 127.</p>
<p><b>Obligations Contingent on Grant of "Unconditional" License</b></p>	<p><b>Sections 2.1, 2.2, 5.1, 5.2, 5.3, 5.4, 5.5, 6.2, and 9.3</b></p> <p>Making obligations contingent "upon the receipt of an unconditional, non-</p>	<p><b>Exhibit C, p. 2:</b></p> <p>"The City contends that the use of the phrase 'unconditional' license is not consistent with the Gaming Act and regulations."</p>	<p><b>G.L. c. 23K, § 21(a):</b></p> <p>"The commission shall prescribe the form of the gaming license, which shall include, but not be limited to, the following license conditions for each licensee."</p>	<p>Fundamentally inconsistent with c.23K.</p> <p>The standard of review pursuant to commission recommendations is whether a provision is fundamentally inconsistent with c. 23K.</p> <p>Chapter 23K provides that licenses may be</p>

## Summary of Somerville Objections to Wynn BAFO

6/12/14

Subject	Wynn BAFO Term	Somerville Objection	Citations	Staff Recommendation
	appealable License..."			issued with conditions as required by the Commission. At a minimum, all licenses are issued with the conditions required by statute.
<b>Duty to Cooperate on Transportation Projects</b>	<p><b>Section 5.5:</b></p> <p>"The Parties acknowledge <u>and agree</u> that Wynn intends to implement a water transportation program to service the Project. <u>The Parties will work together in good faith to facilitate water transportation connections between Somerville and, in particular, the Assembly Row and Assembly Square developments, and the Project.</u>"</p>	<p><b>Exhibit C, p. 2-3:</b></p> <p>"Nothing in the Gaming Act or regulations thereto requires that the City agree to any measure Wynn may propose with respect to transportation to the Project. Any such proposed service is subject to all applicable permitting requirements. Further, an obligation to facilitate transportation connections between the City and the Project cannot be imposed upon the City without the City's approval, and a mitigation agreement cannot require the City to work together or support the Applicant's efforts."</p>	<b>None cited.</b>	<p>Not fundamentally inconsistent with c.23K.</p> <p>The standard of review pursuant to commission recommendations is whether a provision is fundamentally inconsistent with c. 23K.</p> <p>This language does not require the municipality to facilitate water transportation connections; rather it requires the parties to work in good faith toward that goal. Chapter 23K does not prohibit the parties from working in good faith on any issues.</p>
<b>Duty to Utilize Best Efforts to Apply for Funds</b>	<p><b>Section 7.1:</b></p> <p>"Somerville, in coordination with Wynn, <u>shall exercise best efforts</u> to petition the Massachusetts Gaming Commission for monies made available under the Act, including, but not limited to, those monies in the Community Mitigation Fund and the Transportation Infrastructure Fund."</p>	<p><b>Exhibit C, p. 3:</b></p> <p>"While a community may apply to receive funds under various funds established by MGL c. 23K, nothing therein can be construed so as to require a community to 'exercise best efforts' to do so. The obligation imposed in this paragraph is similar to other provisions Wynn seeks to elicit Somerville's support by way of its best and final offer and is wholly inconsistent with the Gaming Act and purposes of a surrounding community agreement."</p>	<b>None cited.</b>	<p>Fundamentally inconsistent with c.23K.</p> <p>The standard of review pursuant to commission recommendations is whether a provision is fundamentally inconsistent with c. 23K.</p> <p>Municipalities may, but are not required to, apply for funding from the Community Mitigation Fund. Chapter 23K, however, requires that funding for known impacts be addressed as fully as possible in the surrounding community agreement without reliance on the Community Mitigation Fund.</p>

**Summary of Somerville Objections to Wynn BAFO**

6/12/14

Subject	Wynn BAFO Term	Somerville Objection	Citations	Staff Recommendation
<p><b>Capped Reimbursement</b></p>	<p><b>Section 8.1:</b>            “In accordance with the terms of 205 CMR 114.03(2)(a), Wynn agrees to reimburse Somerville for actual, documented out-of-pocket expenses ... Notwithstanding, ... in no event shall Wynn's obligation hereunder exceed ...[\$150,000].”</p>	<p><b>Exhibit C, p. 3-4:</b>            “Chapter 23K does not limit the amount that a gaming licensee must reimburse for consultant and legal expenses of a community and does not apply only to ‘negotiation’ of such an agreement, but also the execution thereof.”</p>	<p><b>None cited by Somerville.</b>   <b>205 CMR 114.03(2)(a), cited in BAFO:</b>            “Based on a letter of authorization to the commission signed by authorized representatives of an applicant and a host or surrounding municipality or by an applicant and a regional planning agency, the commission may, at any time and from time to time, make community disbursements to that host or surrounding municipality or regional planning agency from available amounts paid by that applicant to the commission for community disbursements. If the total amount of payments authorized by an applicant exceeds the initial \$50,000 amount the applicant shall immediately pay to the commission all such additional amounts authorized by such letters of authorization for community disbursements. If the applicant fails to pay any such additional amount to the commission within 30 days after notification from the commission of insufficient funds, the application shall be rejected.”</p>	<p>Not fundamentally inconsistent with c.23K.</p> <p>The standard of review pursuant to commission recommendations is whether a provision is fundamentally inconsistent with c. 23K.</p> <p>Chapter 23K does not prohibit the parties from agreeing to a cap on the amount that an applicant must reimburse for consulting and legal expenses.</p>
<p><b>Reopener</b></p>	<p><b>Section 9.14:</b>            “In addition, consistent with the regulations promulgated by the Commission and, in particular, 205 CMR 127.00</p>	<p><b>Exhibit C, p. 4:</b>            “The intent and requirements of this clause in paragraph 9.14 is vague and ambiguous. To the extent that Wynn seeks to link the reopening procedures set forth in 205 CMR</p>	<p><b>205 CMR 127</b>, regarding reopening of mitigation agreements, is cited generally.</p>	<p>Not fundamentally inconsistent with c.23K.</p> <p>The standard of review pursuant to commission recommendations is whether a provision is</p>

### Summary of Somerville Objections to Wynn BAFO

6/12/14

Subject	Wynn BAFO Term	Somerville Objection	Citations	Staff Recommendation
	Reopening Mitigation Agreements, Wynn and Somerville shall negotiate in good faith to determine whether an amendment to this Agreement is necessary if a 'triggering event' ( as defined in 205 CMR 127.02) occurs."	127 to the studies referenced earlier in Paragraph 9.14, that is plainly inconsistent with 205 CMR 127. Further, to the extent Wynn seeks to modify the terms set forth in 205 CMR 127 relative to the rights of a party which believes a triggering event has occurred, such limitations are also inconsistent with 205 CMR 127."		fundamentally inconsistent with c. 23K.  It is not fundamentally inconsistent with c.23K for the parties to agree to negotiate in good faith regarding an amendment to the agreement.

COMMONWEALTH OF MASSACHUSETTS  
Massachusetts Gaming Commission

Suffolk, s.s.

*In the Matter of:*

Wynn MA, LLC  
and  
City of Somerville

**CITY OF SOMERVILLE'S FUNDAMENTAL INCONSISTENCY PETITION**

The City of Somerville ("City") hereby files this Fundamental Inconsistency Petition ("Petition"), in accordance with 205 CMR 125.01 (6) (c), as the best and final offer submitted in this matter by the Wynn MA, LLC ("Wynn") contains a term or terms that are fundamentally inconsistent with a provision or with the purposes of G.L. c. 23K.

In support of the City's Petition, attached hereto are the following exhibits:

(A) Best and Final Offer of Wynn is attached as Exhibit A;

(B) Best and Final Offer of City is attached as Exhibit B;

(C) List of all of the terms that the City believes are fundamentally inconsistent with a provision or with the purposes of G.L. c. 23K, the reason such terms are fundamentally inconsistent with a provision or with the purposes of G.L. c. 23K, and any evidence supporting the objecting party's position, attached hereto as Exhibit C; and

(D) As of this date, no documents have been filed with the arbitrator(s) during the arbitration.

WHEREFORE, the City requests that if Wynn's best and final offer is selected by the arbitrator(s), then this Honorable Commission:

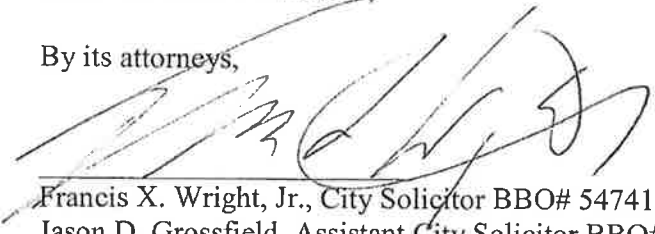
(1) hold a hearing to review whether the term or terms listed herein by the City are fundamentally inconsistent with a provision or with the purposes of G.L. c. 23K,

(2) determine that Wynn's best and final offer selected by the arbitrator(s) contains a term or terms that are fundamentally inconsistent with a provision or with the purposes of G.L. c. 23K; and

(3) modify, cause to be modified or remove the terms that are fundamentally inconsistent with a provision or with the purposes of G.L. c. 23K.

Respectfully submitted,  
CITY OF SOMERVILLE

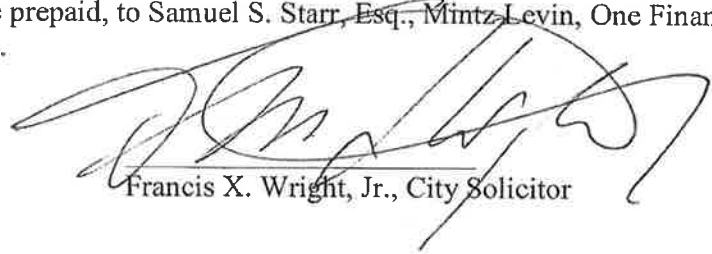
By its attorneys,



Francis X. Wright, Jr., City Solicitor BBO# 547410  
Jason D. Grossfield, Assistant City Solicitor BBO# 666122  
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CERTIFICATE OF SERVICE

This certifies that on May 5, 2014, a true copy of the above document was e-mailed and mailed, postage prepaid, to Samuel S. Starr, Esq., Mintz Levin, One Financial Center, Boston, MA 02111.



Francis X. Wright, Jr., City Solicitor

## SURROUNDING COMMUNITY AGREEMENT

**By and Between the City of Somerville, Massachusetts and Wynn MA, LLC**

This Surrounding Community Agreement (this "Agreement") is made and entered into as of May [ ], 2014 (the "Effective Date"), by and between the City of Somerville, Massachusetts ("Somerville"), a municipal corporation organized under the laws of the Commonwealth of Massachusetts, with principal offices located at 93 Highland Ave Somerville, MA 02143, acting by and through its Mayor, and Wynn, MA LLC ("Wynn"), a limited liability company organized under the laws of the State of Nevada, with principal address and offices located at 3131 Las Vegas Boulevard South, Las Vegas, Nevada 89109. Hereafter, the parties may also be collectively referred to as the "Parties".

### GENERAL RECITALS

Pursuant to Chapter 194 of the Acts and Resolves of 2011, and Commonwealth of Massachusetts General Laws Chapter 23K, the Massachusetts Gaming Act (the "Act"), Wynn has applied to the Massachusetts Gaming Commission (the "Commission") for a Category 1 gaming license to develop a luxury hotel and destination resort on the site (the "Project Site") depicted in Exhibit A in Everett, Massachusetts (the "Project");

And whereas, Somerville may be impacted by the development of the Project, and the Act and regulations relating thereto, including 205 CMR 125.00 *et seq.*, permit Wynn to enter surrounding community agreements to address surrounding community impact as well as demonstrate advancement of the Act and public support for its proposed development;

And whereas, Wynn desires to mitigate any adverse impacts from the development and operation of the Project through the means described herein in accordance with the Act, and Somerville desires to mitigate any anticipated adverse impacts from the development and operation of the Project through the means described herein, and to work proactively with Wynn to capitalize on the unique nature of Somerville's community resources;

Accordingly, in consideration of the terms and conditions set forth herein and to effectuate the purposes set forth above the Parties enter this Agreement and hereby agree to be bound by the terms and conditions set forth herein.

### TERMS AND CONDITIONS

#### 1. Stipulations of Known Impacts

**1.1.** The Parties intend that this Section 1 shall be deemed the "stipulations of known impacts" that are required to be included in this Agreement pursuant to Section 15(9) of Chapter 23K.

**1.2.** The Parties acknowledge and agree that the proximity of the Project to the Assembly Row and Assembly Square developments and the desire to cross-promote the projects may result in additional pedestrian and vehicular traffic in Somerville. The projects identified in the provisions in this Agreement regarding infrastructure improvements will mitigate such impacts and remedy longstanding background traffic conditions.

**1.3.** The Project may have an impact on municipal services and require additional expenditures by Somerville in order to provide such services. Wynn's payments to Somerville under this Agreement will provide Somerville with adequate resources to mitigate any such impacts and Somerville acknowledges and agrees that such payments adequately mitigate all such impacts.

## **2. Business Impact**

**2.1.** The Parties recognize and agree that the Project is likely to provide certain opportunities for the local business community and, in particular, Assembly Row and Assembly Square. The Parties will work together to communicate with the local business community to ensure that the community is best prepared to take advantage of these opportunities. In furtherance thereof, contingent upon the receipt of an unconditional, non-appealable License, Wynn has agreed to pay to Somerville an annual payment of One Hundred Fifty Thousand Dollars (\$150,000.00), which amount shall be due on or before the ninetieth (90<sup>th</sup>) day following the opening of the Project to the general public and on each annual anniversary thereof. The annual payment shall continue for as long as Wynn, or any parent, subsidiary or related entity, owns, controls or operates a commercial gaming facility at the Project Site. The purpose of this annual payment is to enable Somerville, in coordination with Wynn, to develop initiatives to prepare local businesses to take advantage of the opportunities provided by the Project.

**2.2.** In recognition of the above, and contingent upon the receipt of an unconditional, non-appealable License, the Parties have agreed as follows:

**2.2.A.** On an annual basis, subject to its obligations to the City of Everett, Wynn shall make a good faith effort to utilize local contractors and suppliers for the construction and future operations of the Project and shall afford such opportunities to local vendors when such contractors and suppliers are properly qualified and price competitive. Such efforts shall include actively soliciting bids from Somerville vendors through local advertisements, coordination with the Somerville Chamber of Commerce and such other reasonable measures as Somerville may from time to time request. In furtherance thereof, following the opening of the Project to the public, on an annual basis, Wynn agrees to use good faith efforts to purchase at least Ten Million Dollars (\$10,000,000.00) of goods and services from vendors with a principal place of business in Somerville. Wynn will conduct a business-to-business workshop in Somerville to familiarize community businesses with the full range of vendor opportunities related to Project and assist local businesses to become "Wynn certified" in order to participate in this local purchasing program. Wynn certification represents a Wynn specific vendor qualification program that requires vendors to be pre-qualified, which may include but not be limited to background checks and other screening methods utilized to qualify vendors. Wynn shall, on at least an annual basis, consult with the Somerville Chamber of Commerce and such other business groups or associations as Somerville may reasonably request to identify opportunities in furtherance of the objectives set forth in this Section. Wynn shall, on an annual basis upon request by Somerville, meet with Somerville and provide an accounting of its expenditures within Somerville under this Section 2.2.A. Notwithstanding anything herein to the contrary, Wynn's obligations under this Section 2.2.A. shall be subject to the availability of such goods and services at a level of quality that is consistent with the Project specifications and on commercially reasonable terms.

**2.2.B.** Wynn agrees that it will include as part of its rewards, frequent guest, loyalty and/or similar programs offered by Wynn to use vouchers and gift certificates to Somerville businesses. Wynn commits to purchase and issue at least Twenty Five Thousand Dollars (\$25,000.00) in such vouchers and gift certificates annually from local businesses for use in its employee and customer loyalty programs. The first annual purchase of the above vouchers and gift certificates by Wynn shall occur ninety (90) days after the opening of the Project to the general public and on each annual anniversary thereof.

**2.3.** In recognition of the unique cultural, historical and entertainment attractions near the Project, Wynn has developed a proprietary concierge program for the purpose of cross-marketing these attractions. Somerville has agreed to participate in this cross-marketing venture for the purpose of promoting its local businesses and other attractions. Prior to the opening of the Project, the Parties will work together and in coordination with Somerville's Chamber of Commerce to include Somerville businesses in the Concierge Program so that they may benefit from the Project.



### **3. Jobs Program**

**3.1.** The Parties acknowledge that Somerville desires to help its community members and residents who are interested in attaining employment at the Project. The Parties agree that Somerville's demographic is an appropriate, suitable, desirable and employable work force for the Project, and therefore it is mutually beneficial to provide a structured program to educate Somerville's residents about available employment opportunities.

**3.2.** In recognition of the above, the Parties agree as follows:

**3.2.A.** Wynn will work in a good faith, legal and non-discriminatory manner with the Project's construction manager to give preferential treatment to qualified Somerville residents for contracting, subcontracting and servicing opportunities in the development and construction of the Project. Following the engagement of a construction manager, Wynn shall, in coordination with Somerville, advertise and hold at least one event for Somerville residents at venues to be approved by Somerville, at which it will publicize its construction needs and explain to attendees the process by which they may seek to be hired in connection with the construction of the Project.

**3.2.B.** Prior to beginning the process of hiring employees (other than internally) for the Project, Wynn shall, in coordination with Somerville, advertise and hold at least one event for Somerville residents at venues to be approved by Somerville, at which it will publicize its hiring needs and explain to attendees the process by which they may seek to be hired in connection with the Project. In addition, Wynn will work with non-profit entities to develop a job readiness training program that will be available to residents of Somerville. In seeking to fill vacancies at the Project, Wynn will give preference to properly qualified residents of Somerville, to the extent that such a practice and its implementation is consistent with Federal, State or Municipal law or regulation.

**3.2.C.** Notwithstanding anything herein to the contrary, in recognition of Wynn's host community agreement with the City of Everett and Wynn's surrounding community agreement with the City of Malden, the Parties acknowledge and agree that the preference provided in this Section 3 shall be secondary to the preferences provided by Wynn in such agreements. In addition, the Parties acknowledge and agree that the preferences provided in this Section 3 shall be on a pooled basis with any other community that enters into a surrounding community agreement with Wynn.

**3.2.D.** Wynn agrees to work with Somerville on an annual basis to identify prospective, qualified Somerville employees to effectuate the terms and conditions herein.

### **4. Responsible Gaming**

**4.1.** The Parties shall coordinate in good faith to promote responsible gaming and to develop resources available to residents of Somerville to address problem gambling. In furtherance thereof, Wynn agrees that it will use commercially reasonable efforts to not send any marketing materials to residents of Somerville who have opted to participate in Wynn's self-exclusion or self-limitation programs that enable individuals to opt out of receiving marketing materials. In addition, Wynn shall provide Somerville and its residents with access to any compulsive gambling services associated with the Project and shall make available to Somerville its resources and employees as may be reasonably necessary to publicize the services and conduct any educational programs. Further, to address any unanticipated adverse impacts, Wynn agrees to reasonably support for Somerville's requests to the Commission or other state agencies for grants from the Community Mitigation Fund established under the Act.

### **5. Transportation Impacts**

**5.1.** Based on the trip distribution pattern for the Project and a review of both the local and regional transportation system, Wynn studied the following intersections in Somerville and contingent upon the receipt by Wynn of an unconditional, non-appealable License, Wynn agreed to complete all necessary improvements as determined in accordance with the MEPA process:

1. I-93 Southbound Off-ramp/I-93 Northbound On-ramp/Mystic Avenue (Route 38), Somerville;
2. I-93 Northbound Off-ramp/McGrath Highway (Route 28), Somerville;
3. Mystic Avenue (Route 38)/McGrath Highway (Route 28), Somerville;
4. Mystic Avenue (Route 38)/I-93 Southbound On-ramp Diverge, Somerville;
5. Broadway/McGrath Highway (Route 28), Somerville; and
6. Mystic Avenue (Route 38)/I-93 Northbound On-ramp Diverge, Somerville.

**5.2.** The Parties acknowledge and agree that a comprehensive traffic solution for Sullivan Square, located adjacent to Somerville, which is already severely impacted as a result of other developments, is highly advisable and beneficial to Somerville and other neighboring communities. In recognition thereof and contingent upon the receipt by Wynn of an unconditional, non-appealable License, the Parties agree that Wynn will work with Somerville and other interested neighboring communities to implement improvements to Sullivan Square estimated at approximately Six Million Dollars (\$6,000,000). Wynn shall implement all such improvements in accordance with the Massachusetts Environmental Policy Act ("MEPA"). In addition, Wynn will cooperate with efforts by Somerville and other interested neighboring communities to seek funding from the Transportation Infrastructure and Development Fund (estimated to be capable of yielding in excess of \$200 million) for a permanent solution for Sullivan Square.

**5.3.** The Parties acknowledge and agree that a comprehensive traffic solution for Wellington Circle, which is already severely impacted as a result of other developments, including, without limitation, Stations Landing and Assembly Row, is highly advisable and beneficial to Somerville and other neighboring communities. In recognition thereof and contingent upon the receipt by Wynn of an unconditional, non-appealable License, the Parties agree that Wynn will work with Somerville and other interested neighboring communities to commission a permanent improvements study of the Wellington Circle, and Wynn will fund such study. Following the results of the permanent improvements study, Wynn will fund up to twenty-five percent (25%) of the concept design (up to One Million Five Hundred Thousand Dollars (\$1,500,000.00)). Following the completion of the study and design, Wynn will cooperate with efforts by Somerville and other interested neighboring communities to seek funding from the Transportation Infrastructure and Development Fund (estimated to be capable of yielding in excess of \$200 million) for a permanent solution for Wellington Circle. Pending completion of the study and design, Wynn will fund and undertake interim improvements to Wellington Circle in accordance with MEPA.

**5.4.** The Parties acknowledge and agree that the proximity of the Project to the Assembly Row and Assembly Square developments and the desire to cross-promote the projects may result in additional pedestrian and vehicular traffic in Somerville. As a result, the Parties recognize and agree that there may be a need for increased police, fire, traffic and public works personnel to maintain roadway safety due to increased use. In recognition of the above, and contingent upon the receipt of an unconditional, non-appealable License, Wynn has agreed to pay to Somerville an annual payment of Two Hundred Fifty Thousand Dollars (\$250,000.00), which amount shall be due on or before the ninetieth (90<sup>th</sup>) day following the opening of the Project to the general public and on each annual anniversary thereof. The annual payment shall continue for as long as Wynn, or any parent, subsidiary or related entity, owns, controls or operates a commercial gaming facility at the Project Site. The purpose of this payment is to enable Somerville to fund staffing and other public safety initiatives related to increased pedestrian and vehicular traffic in Somerville and additional costs, if any, incurred in mutual aid responses to the Project. In addition, to facilitate pedestrian and bicycle access, Wynn has committed to increase access and capacity trails and park land along the Mystic River and Broadway. Wynn will coordinate the signage on the Project to create continuity for pedestrian and bicycle use of such pathways and will participate in regional efforts to enhance and develop such path ways.

**5.5.** The Parties acknowledge and agree that Wynn intends to implement a water transportation program to service the Project. The Parties will work together in good faith to facilitate water transportation connections between Somerville and, in particular, the Assembly Row and Assembly Square developments, and the Project. In furtherance thereof, contingent upon the receipt of an unconditional, non-appealable License, Wynn has agreed to pay to Somerville an annual payment of One Hundred Fifty Thousand Dollars (\$150,000.00), which amount shall be due on or before the ninetieth (90<sup>th</sup>) day following the opening of the Project to the general public and on each annual anniversary thereof. The annual payment shall continue for as long as Wynn, or any parent, subsidiary or related entity, owns, controls or operates a commercial gaming facility at the Project Site. The purpose of this annual payment is to enable Somerville to make certain improvements to facilitate water transportation and to fund staffing and other public safety initiatives related to increased use of water transportation. In addition, Wynn will participate in regional discussions regarding a walk/bike connection across the Mystic River to be built on or in the direct vicinity of the dam structure and will consider, in good faith, contributing, with other neighboring communities and businesses, to the design and construction of a connection.

**5.6.** Except with Somerville's express permission, Wynn will not use any location in Somerville as a satellite pick-up/drop-off site to and from the Project for its employees generally; provided, however, Wynn, in coordination with Somerville, may provide transportation for employees who are residents of Somerville. In addition, Wynn will not have stops for so-called "line-runs," or regularly scheduled bus or shuttle routes, in Somerville, provided that, subject to meeting legal requirements, Wynn will be able to provide transportation to patrons which whom it has established a relationship and will be able to provide transportation home to any patron residing in Somerville.

**5.7.** Except with Somerville's express permission, neither Wynn nor any of its affiliates, successors or assigns shall construct a satellite parking or other facility associated with the Project within Somerville.

**5.8.** In an effort to limit the number of casino visitors leaving the facility who should not be operating a motor vehicle, as part of its training program, Wynn agrees to incorporate a training program (e.g., TIPS (Training Intervention Procedures and Services Program)) for alcohol servers and other employees.

## **6. Somerville Community Fund**

**6.1.** The Parties recognize the importance of supporting the Somerville community and share a mutual desire to utilize this Agreement to provide ongoing support to the many important non-profit organizations throughout Somerville.

**6.2.** In recognition of the above, and contingent upon the receipt of an unconditional, non-appealable License, Wynn has agreed to pay to Somerville an annual payment of One Hundred Thousand Dollars (\$100,000.00), which amount shall be due on or before the ninetieth (90<sup>th</sup>) day following the opening of the Project to the general public and on each annual anniversary thereof. The annual payment shall continue for as long as Wynn, or any parent, subsidiary or related entity, owns, controls or operates a commercial gaming facility at the Project Site. The Mayor of Somerville agrees to establish a Committee tasked with reviewing requests for assistance from qualified organizations and making determinations on the awarding of any portion of this payment. The purpose of this payment is to support the community's broad range of cultural events, street fairs, art shows, festivals and related activities that promote the community's heritage, quality of life, recreational and cultural activities.

## **7. Other Obligations**

**7.1.** Somerville, in coordination with Wynn, shall exercise best efforts to petition the Massachusetts Gaming Commission for monies made available under the Act, including, but not limited to, those monies in the Community Mitigation Fund and the Transportation Infrastructure Fund.

7.2. Wynn shall, on a periodic basis, upon the reasonable request of Somerville, attend meetings organized by Somerville, at which it will address questions regarding the Project.

## **8. Reimbursement of Consulting and Legal Fees**

8.1. In accordance with the terms of 205 CMR 114.03(2)(a), Wynn agrees to reimburse Somerville for actual, documented out-of-pocket expenses incurred by Somerville with respect to the negotiation of this Agreement. The foregoing obligation is contingent upon the receipt by Wynn a Letter of Authorization (in accordance with 205 CMR 114.03(2) to be filed by Somerville which shall include a full and complete copy of each consulting agreement entered into by Somerville or its representative pursuant to which Somerville is seeking reimbursement. Notwithstanding the foregoing, in no event shall Wynn's obligation hereunder exceed One Hundred Fifty Thousand Dollars (\$150,000).

## **9. Additional Terms and Conditions**

9.1. **Term.** This Agreement shall remain in effect for such time as Wynn maintains, operates and controls the Project pursuant to the License.

9.2. **Definitions.** All definitions contained in the Act and regulations promulgated thereto are incorporated herein by reference as if fully set forth herein and shall be applicable hereto where relevant.

9.3. **Non-Transferrable - Non-Assignable.** Neither Wynn nor Somerville may transfer or assign its rights or obligations under this Agreement without the prior written consent of the other Party. In the event of a sale, transfer, assignment and/or conveyance of an unconditional, non-appealable License by Wynn to an unrelated entity, the Parties agree that this surrounding community agreement shall be treated consistently with all other surrounding community agreements as prescribed and required by the Commission in granting such transfer or assignment.

9.4. **Captions and Headings.** The captions and headings in this Agreement are inserted for convenience of reference only and in no way shall affect, modify, define, limit or be used in construing the scope or intent of this Agreement or any of the provisions hereof. Where the context requires, all singular works in the Agreement shall be construed to include their plural and all words of neuter gender shall be construed to include the masculine and feminine forms of such words.

9.5. **Severability.** If any term of this Agreement or the application thereof to any person or circumstance shall, to any extent, be determined by a court of competent jurisdiction to be invalid or unenforceable, the remaining provisions of this Agreement, or the application of such term to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and this Agreement shall otherwise remain in full force and effect.

9.6. **Amendments-Modifications.** No amendment or modification of this Agreement shall be deemed valid unless mutually agreed upon and duly authorized by the Parties and effectuated by a written amendment signed by the Parties.

9.7. **Amendments-Modifications to the Act and Gaming Regulations.** The Parties acknowledge that from time to time following commencement of this Agreement that additional regulations may be promulgated, and/or statutes and regulations may be amended from time to time. The Parties agree to be bound by said amended and/or modified regulations and statutes, and further agree to renegotiate any terms and conditions contained herein which may be substantially and materially modified by any said amended and/or modified regulations and statutes.

9.8. **Compliance with Massachusetts and Federal Laws.** In the performance of this Agreement, Wynn agrees to comply with and shall use reasonable efforts to cause all agents, contractors, subcontractors and suppliers to comply

with all applicable laws, ordinances, regulations and orders from time to time in effect relating to nondiscrimination, equal employment opportunity, contract compliance and affirmative action.

**9.9. Organizational Status in State of Organization and in the Commonwealth of Massachusetts.** Wynn acknowledges that it shall notify Somerville promptly in writing in the event of any change in its organizational status and/or standing under the laws and regulations of its State of Incorporation and under the laws and regulations of the Commonwealth of Massachusetts. Wynn agrees to remain in good standing and maintain adherence to all laws, regulations and requirements applicable to licenses and permits issued to Wynn pursuant to the Act.

**9.10. Notices.** All notices required or permitted to be given hereunder shall be in writing and delivered by hand or courier service; by a nationally-recognized delivery service, by mailing, postage prepaid via certified mail, to the following addresses, or to other addresses as may be furnished by the parties from time to time in writing hereafter: In the case of notice to Somerville:

To: [insert]

with copies to: [insert]

In the case of notice to Wynn:

To: Wynn MA, LLC  
 c/o Wynn Resorts, Limited  
 3131 Las Vegas Blvd. South  
 Las Vegas, NV 89109  
 Attn: Kim Sinatra, Sr. VP and General Counsel

and in the case of either Party, to such other address as shall be designated by written notice given to the other Party in accordance with this section. Any such notice shall be deemed given when so delivered by hand, by courier delivery on date of service, or if mailed, when delivery receipt is signed by the party designated herein as accepting notice. Service to Somerville shall not be deemed effective unless accomplished during normal business hours and days of operation of Somerville. Each Party shall ensure that the other party is notified in writing immediately of any changes in the contact and address information above.

**9.11. Failure and Waiver.** Failure of either Party to require strict performance of the terms and conditions herein shall not be deemed a waiver of any rights and remedies available to such Party, and shall not be deemed a waiver of subsequent default or nonperformance of said terms or conditions in the future. No actual waiver by a Party of performance of any terms, conditions or obligations under this Agreement shall be effective unless agreed upon and in writing signed by such Party. No waiver of either Party to require strict performance of any terms and conditions shall constitute a waiver of such Party's right to demand strict compliance with the terms and conditions of this Agreement.

**9.12. Notice of Default and Rights in the Event of Default.** Each Party shall have thirty (30) days from receipt of written notice of failure, violation or default to cure said failure, violation or default. If such failure, violation or default cannot in good faith be cured within such thirty (30) day period, the defaulting Party shall notify the other Party immediately in writing and diligently pursue curing said default to completion. Except as expressly provided herein, the rights and remedies of the Parties, whether provided by law or by this Agreement, shall be cumulative, and the exercise by a Party of any one or more of such remedies shall not preclude the exercise by it, at the same or different times, of any other such remedies for the same default or breach or of any of its remedies for any other default or breach by the other Party.

**9.13. Governing Law and Forum in Event of Dispute.** This Agreement shall be subject to, governed under, and construed in accordance with the laws and regulations of the Commonwealth of Massachusetts, including any amendments thereto which may occur from time to time following execution of this Agreement, and said laws and regulations shall govern the validity, enforcement of terms, conditions, rights and obligations, and performance of this Agreement. The Parties further agree that any legal proceedings whether in law or equity arising hereunder shall be instituted in the Commonwealth of Massachusetts Middlesex County Superior Court. The prevailing Party in any action shall recover its litigation costs (including attorneys' fees and expert witness fees). Notwithstanding the foregoing provisions for forum selection, the Parties agree that before resorting to any formal dispute resolution process concerning any dispute arising from or in any way relating to this Agreement, the Parties will first engage in good faith negotiations in an effort to find a solution that services their respective and mutual interests.

**9.14. Studies and Triggering Events.** Section 71 of the Act requires the Commission to establish an annual research agenda to assist in understanding the social and economic effects of casino gambling in Massachusetts and to minimize the harmful impacts. Section 71 identifies three essential elements of this research agenda: (1) understanding the social and economic effects of expanded gambling, (2) implementing a baseline study of problem gambling and the existing prevention and treatment programs that address its harmful consequences, and (3) obtaining scientific information relative to the neuroscience, psychology, sociology, epidemiology and etiology of gambling. In furtherance thereof, the Commission has commissioned a \$3.6 million baseline study to be conducted by the University of Massachusetts Amherst School of Public Health and Health Science on the social and economic impacts of casino gambling in Massachusetts. Additional studies will be undertaken once the gaming establishments are open for the specific purpose of determining impacts. In addition, consistent with the regulations promulgated by the Commission and, in particular, 205 CMR 127.00 Reopening Mitigation Agreements, Wynn and Somerville shall negotiate in good faith to determine whether an amendment to this Agreement is necessary if a "triggering event" (as defined in 205 CMR 127.02) occurs.

**9.15. Escalation of Payments.** Beginning with the sixteenth (16<sup>th</sup>) annual payment made by Wynn to Somerville, the annual payments identified on Exhibit B attached hereto and incorporated herein by this reference shall increase by five percent (5%), as set forth in Exhibit B. Thereafter, during the term of this Agreement, such five percent (5%) increase shall be applied to the applicable annual payments after the payment of every five (5) annual payments as more specifically set forth in Exhibit B.

IN WITNESS WHEREOF, the parties, by and through the signatories below, acknowledge they are duly authorized and have the full power, right and authority to enter into, execute, deliver, and perform the terms and conditions of this Agreement, and hereto have hereunto set their hands and seals on this [\_\_\_] day of May, 2014.

City of Somerville:

Wynn MA, LLC

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Mayor Joseph A. Curtatone

**Exhibit A**

[INSERT SITE MAP]



FIGURE 1-30

FIGURE 1-30



Exhibit B

Beginning with the sixteenth (16<sup>th</sup>) annual payment, each of the annual payments set forth herein shall increase by five percent (5.0%) as set forth below:

	First 15 Payments	Subsequent Five Payments, Beginning with 16 <sup>th</sup> Annual Payment
Business Development Fund	\$150,000.00	\$157,500.00
Public Safety Payment	\$250,000.00	\$262,500.00
Non-Profit Contribution	\$100,000.00	\$105,000.00
Water Transportation	\$150,000.00	\$157,500.00
TOTAL	\$650,000.00	\$682,500.00

Thereafter, during the term of this Agreement, after the payment of five additional payments, each of the annual payments set forth hereunder shall increase by five percent (5.0%) as set forth in the example below:

	20th Annual Payment	Subsequent Five Payments, Beginning with 21st Annual Payment
Business Development Fund	\$157,500.00	\$165,375.00
Public Safety Payment	\$262,500.00	\$275,625.00
Non-Profit Contribution	\$105,000.00	\$110,250.00
Water Transportation	\$157,500.00	\$165,375.00
TOTAL	\$682,500.00	\$716,625.00

**SURROUNDING COMMUNITY AGREEMENT**

**By and Between the City of Somerville, Massachusetts and Wynn MA, LLC**

This Surrounding Community Agreement (this "Agreement") is made and entered into as of \_\_\_\_\_, 2014 (the "Effective Date"), by and between the City of Somerville, Massachusetts ("Somerville" or "City"), a municipal corporation organized under the laws of the Commonwealth of Massachusetts, with principal offices located at 93 Highland Avenue, Somerville, Massachusetts, County of Middlesex, acting by and through its Mayor, and Wynn, MA LLC, a subsidiary of Wynn Resorts, Limited ("Wynn"), duly organized under the laws of the State of Nevada, with principal address and offices located at 3131 Las Vegas Boulevard South, Las Vegas, Nevada 89109. Hereafter, the parties may also be collectively referred to as the "Parties".

**GENERAL RECITALS**

Pursuant to Chapter 194 of the Acts and Resolves of 2011, and Commonwealth of Massachusetts General Laws Chapter 23K, the Massachusetts Gaming Act (the "Act"), Wynn has applied to the Massachusetts Gaming Commission (the "Commission") for a Category 1 gaming license ("License") to develop a hotel, resort-style casino and gaming establishment on an approximately 33.9 acre site located on Horizon Way and Lower Broadway (Rt. 99) in Everett, Massachusetts (the "Project Site") depicted in Exhibit A (the "Project");

And whereas, Somerville shares a border with the City of Everett, Massachusetts, and will be impacted by the development of the Project, and Wynn assented to Somerville's petition to be designated as a "surrounding community" pursuant to 205 CMR § 125.01, and the Commission designated Somerville as a "surrounding community";

And whereas, under section 15 of the Act, an applicant for a License must enter into an agreement with each "surrounding community" of the proposed gaming establishment, and the Parties have entered into this Agreement for the purposes set forth in the Act and regulations relating thereto, including 205 CMR 125.00 *et seq.*, to address surrounding community impact;

And whereas Wynn desires to mitigate any adverse impacts from the development and operation of the Project through the means described herein in accordance with the Act, and Somerville desires that any and all adverse impacts from the construction, development and operation of the Project be mitigated;

Accordingly, in consideration of the terms and conditions set forth herein and to effectuate the purposes set forth above the Parties enter this Agreement and hereby agree to be bound by the terms and conditions set forth herein.

## TERM AND CONDITIONS

### I. Reimbursement of Consulting and Legal Fees

Within sixty (60) days of the execution of this Agreement, Wynn agrees to pay to Somerville up to the amount of two hundred and fifty thousand Dollars (\$250,000.00), (the "Upfront Fees Payment"), for the payment of any prior or existing consultants or legal advisors, whether internal or external (collectively, its "Advisors") providing services related to or in any way arising from the City's review of the Project, and the negotiation, arbitration, and execution of this Agreement. The City will provide Wynn with invoices or other documentation relative to incurred fees. Notwithstanding anything to the contrary, this obligation is expressly not contingent upon Wynn obtaining the License and shall survive termination of this Agreement. As to any of the above reimbursed fees, the City agrees it will not seek additional funds from the Commission, will not submit a Letter of Authorization, or an Application for Involuntary Disbursement to the Commission.

### II. Annual Community Impact Fee

The Parties agree that, commencing with the opening of any stage of the Project to the public (i.e., the date on which Wynn begins to collect revenue under the terms of the License) (the "Opening") and for each year following the Opening for as long as a gaming facility operates at the Project Site, Wynn shall pay to the City:

- (i) One million five hundred thousand Dollars annually (\$1,500,000.00) (the "Annual Mitigation Payment"). This amount shall increase at the rate of two percent (2%) per annum.

The Parties acknowledge that the City shall be free to direct the Annual Mitigation Payment to any use it deems appropriate and shall not be restricted to use the funds for any purpose set forth herein. The Annual Mitigation Payment shall be made within thirty (30) days of the Opening, and on each twelve month anniversary thereafter, as long as such payments are due hereunder. This payment is in addition to any other payment or other mitigation provided herein, and is intended to compensate the City for various impacts attributable to the Project.

The Parties recognize and acknowledge that the City may hereafter petition the Commonwealth of Massachusetts and/or the Massachusetts Gaming Commission for funds, including those funds available under the Massachusetts Gaming Act, specifically including, but not limited to, those funds in the Community Mitigation Fund. Wynn shall not oppose any such petition made by the City. The parties agree that the receipt of any such funds shall not in any way affect the Community Impact Fee.

### III. Traffic Impacts

- a. Sullivan Square and Wellington Circle Improvements.

Wynn agrees to use best efforts in order that: (1) Sullivan Square area improvements are implemented prior to the Opening; and (2) Wellington Circle improvements are implemented prior to the Opening.

**b. Traffic Mitigation Payment**

In addition to any other payments, and contingent upon the receipt of a final, non-appealable License by Wynn, Wynn agrees to pay to Somerville the reasonable and customary cost of the following traffic mitigation measures. For each phase, Somerville shall submit invoices or other documentation to Wynn and Wynn shall pay the requested amount to Somerville within sixty (60) days of receipt. Said traffic mitigation measures are as follows:

The impacts of the proposed Wynn casino on Somerville traffic will result in the City's need to adjust the existing camera operated signal systems at these locations:

Assembly Square Drive at Mystic  
 Assembly Square Drive at Broadway/Lombardi  
 Fellsway at Middlesex Ave  
 Fellsway at Grand Union Blvd  
 Broadway at Franklin St  
 Washington St at Innerbelt Road

And re-designing intersection geometry and provide an upgraded camera operated signal system at these locations:

Broadway at McGrath Highway  
 Broadway at Blakely  
 Mystic Ave at Fellsway (9<sup>th</sup> most dangerous intersection in Mass)

In order to adequately handle the increased traffic at these 9 (nine) intersections the City will hire an engineering firm of its choice to complete a design and engineering set that seeks to balance the level of service degradation that will be felt by the increased traffic with the City's existing goal of becoming the most walkable, bikeable, transit accessible city in the United States. Once design and engineering work has resulted in a set of plans, specifications and estimates (PS&Es) to the City's satisfaction the work will be bid. The lowest MassDOT pre-qualified construction firm will be awarded a construction contract. In addition to the construction work, an outside field engineer or "clerk of the works" will be hired to oversee all construction.

Once work is complete on the intersections as detailed above, a detailed annual maintenance plan will be instituted to provide for the continual monitoring and adjustment of the signal system, pavement and pavement markings to insure the best function of the intersections.

Wynn shall bear the full financial burden of the work as detailed above.

**c. Parking; Pick-Up/Drop-Off; Bus Routes**

Wynn will not use any location in the City as a satellite pick-up/drop-off site to and from the Project Site for employees generally, provided that the Wynn may provide transportation for employees who are residents of the City.

Wynn will not have stops for so-called “line-runs,” or regularly scheduled bus routes, in the City, provided that, subject to meeting legal requirements, Wynn will be able to provide transportation to patrons with whom it has established a relationship and will be able to provide transportation home to any patron.

No satellite parking or other facility associated with the Project shall be constructed within the City by Wynn or its affiliates, successors, assigns, or contractors.

**d. Trucks and Buses Shall Avoid the City**

Wynn shall require in writing that all its contractors, vendors and suppliers – both during construction and operation of the Project – avoid using any road, except I-93, Route 38 and Route 28/McGrath Highway, through the City to access the Project Site with any vehicles with a gross vehicle weight in excess of 6,000 lbs. Wynn shall also use reasonable efforts to require that all buses or vans visiting the Project avoid using any road, except I-93, Route 38 and Route 28/McGrath Highway, through the City to access the Project Site.

**e. Route Signage**

The parties agree that signage on I-93 should not direct visitors to the Project to take any road in Somerville except, Route 38 and Route 28/McGrath Highway.

**f. Wynn Website and Promotional Materials; Directions**

Wynn agrees that in its promotional materials and on all Wynn and Project websites directions to Project Site will not include any road in Somerville, except I-93, Route 38 and Route 28/McGrath Highway. The parties agree to work together to use best efforts to cause leading mapping software or website (i.e. Google Maps, MapQuest) to similarly route visitors.

**IV. Public Safety and Mutual Aid Impact**

**a. Public Safety and Mutual Aid Response Cost Reimbursement**

Following the receipt of a final, non-appealable License, Wynn agrees to reimburse the City for the direct and demonstrable costs to the City associated with public safety (police, fire and ambulance) and other mutual or inter-municipal aid (i.e. DPW, Health, etc.) calls and response actions incurred as a result of the Project, including but not limited to: (a) costs incurred in mutual aid responses to the Project Site; or (b) police, fire or ambulance responses or actions involving patrons of the project who had left the project site within the one (1) hour preceding the incident giving rise to such response action. This section shall also include any calls and response actions associated with patrons of the Project Site relating in any way to drunk driving.

Within ninety (90) days following such response incident, the City shall give Wynn written notice of its request for reimbursement therefor, which notice shall include reasonable documentation of the costs for which the City seeks reimbursement, including documentation of the identity of responding public safety officials, personnel costs to such officials (*i.e.* salaries, overtime premiums, and disability benefits), the number of hours of such officials' time spent on such incident, the City's equipment costs (*e.g.*, damage to or loss of City equipment), use of fuel and other expendable supplies, and other related costs and expenses. Wynn shall reimburse the City for such costs within thirty (30) days after receiving such notice, unless it sooner provides written notice to the City that it disputes such costs. In the event of such a dispute, the parties shall endeavor in good faith to reach an amicable resolution. Failing resolution, such dispute shall be governed by the provisions by the dispute provisions set forth below in this Agreement.

**b. Impact Payment for Purchase of Equipment**

Contingent upon the receipt of a final, non-appealable License by Wynn, Wynn shall reimburse the City, fifty percent (50%) of the cost to the City of purchasing a suitably equipped public safety watercraft, said equipment to be of type and design to be specified by the City. The amount due from Wynn to the City under this paragraph shall not exceed one hundred and sixty thousand Dollars (\$160,000). Wynn shall reimburse the City for such costs no later than sixty (60) days from receipt from the City of an invoice or other documentation evidencing the purchase of said equipment by the City.

**V. Business and Economic Development Impact**

**a. Impact Payment**

The Parties recognize and agree that the Project is likely to impact the local business community. In furtherance thereof, contingent upon the receipt of a final, non-appealable License, in addition to any other payments, Wynn shall pay to Somerville the following amounts (collectively, the "Business Mitigation Payment"), contingent upon the receipt of a final, non-appealable License, for the purpose of mitigating the impact on businesses and economic development, to develop initiatives to prepare local businesses to take advantage of the opportunities provided by the Project, and to offset the anticipated loss of revenue from restaurant sales:

A one time, upfront, non-refundable payment of five hundred thousand Dollars (\$500,000.00) to be used for the establishment of a flexible loan fund to be made available specifically to restaurant operators for working capital purposes, which amount shall be due on or before the thirtieth (30th ) day following the Opening of the Project;

A one time, upfront, non-refundable payment of fifty thousand Dollars (\$50,000.00), to a local, Somerville-based non-profit entity or entities serving Somerville residents to support job readiness training program assistance, which shall be made no later than 180 days before the Opening of the Project; and

An annual payment of two hundred thousand Dollars (\$200,000.00), which amount shall be due on or before the thirtieth (30<sup>th</sup>) day following the Opening of the Project and on each annual anniversary thereof. The annual payment shall continue for as long as a gaming facility is located at the Project Site. The purpose of this annual payment is to enable Somerville to offset the anticipated loss of revenue including the local meals tax.

**b. Vendor Preference**

On an annual basis, subject to its obligations to the City of Everett, Wynn shall make a good faith effort to utilize local contractors and suppliers for the construction and future operations of the Project and shall afford such opportunities to local vendors when such contractors and suppliers are properly qualified and price competitive. Such efforts shall include actively soliciting bids from Somerville vendors through local advertisements, coordination with the Somerville Chamber of Commerce and such other reasonable measures as the City may from time to time request. In furtherance thereof, Wynn agrees to use good faith efforts to purchase at least Ten Million Dollars (\$10,000,000.00) of goods and services from vendors with a principal place of business in Somerville. Wynn shall work with Somerville to hold one (1) or more vendor fairs that provide Somerville businesses with information concerning the process of providing goods and services to the Project. Wynn will conduct a business-to-business workshop in the City to familiarize community businesses with the full range of vendor opportunities represented by the proposed development. Wynn will publish and distribute publically an annual report that provides a detailed accounting of all its expenditures on goods and services provided by community vendors. Wynn shall, on at least an annual basis, consult with the Somerville Chamber of Commerce and such other business groups or associations as Somerville may reasonably request to identify opportunities in furtherance of the objectives set forth in this section. Wynn shall, upon reasonable request, meet with Somerville to provide updates on Wynn's efforts to comply with this section. Notwithstanding anything herein to the contrary, Wynn's obligations under this section shall be subject to the availability of such goods and services at a level of quality that is consistent with the Project specifications and on commercially reasonable terms.

Wynn agrees to work with and assist local businesses to become "Wynn certified" in order to participate in this local purchasing program. Wynn certification represents a Wynn specific vendor qualification program that requires vendors to be pre-qualified, which may include but not be limited to background checks and other screening methods utilized to qualify vendors.

In addition, Wynn will create and implement a marketing program for the utilization of minority business enterprises, women business enterprises and veteran business enterprises to participate as vendors in the provision of goods and services procured by Wynn and any businesses operated as part of the Project.

**c. Rewards Program and Somerville Businesses**

Wynn agrees that it will include as part of its rewards, frequent guest, loyalty and/or similar programs offered by Wynn to use vouchers and gift certificates to Somerville businesses. Wynn commits to purchase and issue at least Twenty Five Thousand Dollars (\$25,000.00) in such

vouchers and gift certificates annually from businesses in Somerville for use in its customer loyalty programs. Contingent upon the receipt of a final, non-appealable License, the first annual purchase of the above vouchers and gift certificates by Wynn shall occur ninety (90) days after the Opening of the Project and on each annual anniversary thereof. The annual payment shall continue for as long as a gaming facility is located at the Project Site.

#### **d. Jobs Program**

The Parties acknowledge that Somerville desires to help its community members and residents who are interested in attaining employment at the Project. The Parties agree that Somerville's demographic is an appropriate, suitable, desirable and employable work force for the Project, and therefore it is mutually beneficial to provide a structured program to educate Somerville's residents about available employment opportunities. In recognition of the above, the Parties agree as follows:

Wynn will work in a good faith, legal and non-discriminatory manner with the Project's construction manager to give preferential treatment to qualified Somerville residents for contracting, subcontracting and servicing opportunities in the development and construction of the Project. Following the engagement of a construction manager, Wynn shall, in coordination with Somerville, advertise and hold at least one event for Somerville residents at venues to be approved by Somerville, at which it will publicize its construction needs and explain to attendees the process by which they may seek to be hired in connection with the construction of the Project.

Prior to beginning the process of hiring employees (other than internally) for the Project, Wynn shall advertise and hold at least one event for Somerville residents at venues to be approved by Somerville, at which it will publicize its hiring needs and explain to attendees the process by which they may seek to be hired in connection with the Project. In seeking to fill vacancies at the Project, Wynn will give preference to properly qualified residents of Somerville, to the extent that such a practice and its implementation is consistent with Federal, State or Municipal law or regulation.

Notwithstanding anything herein to the contrary, in recognition of Wynn's host community agreement with the City of Everett and Wynn's surrounding community agreement with the City of Malden, the Parties acknowledge and agree that the preference provided in this section shall be secondary to the preference provided by Wynn in its host community agreement and surrounding community agreement with City of Malden. In addition, the Parties acknowledge and agree that the preferences provided in this section shall be on a pooled basis with any other community that voluntarily enters into a surrounding community agreement with Wynn.

Wynn agrees to work with Somerville on an annual basis to identify prospective, qualified Somerville employees to effectuate the terms and conditions herein.

#### **e. Regional Marketing and Tourism**



Wynn will promote the City's hotels, restaurants, arts, entertainment, cultural institutions, and other local businesses (collectively, the "City Amenities"). Such promotional activities shall include but not be limited to: (i) the provision of joint marketing opportunities to the City Amenities; and (ii) the provision of brochures or any other similar promotional materials as agreed upon by the Parties that promote the City Amenities. Wynn shall use best efforts to enroll City Amenities in partnership programs that incentivize employees and patrons of the Project to utilize City Amenities.

#### **f. Reporting Requirements**

Wynn shall provide the City with an annual report, ninety (90) days after the Opening of the Project and on each annual anniversary thereof, on the performance of all obligations under this Section, including but not limited to the number of Somerville businesses, residents, City Amenities, etc. which Wynn has hired, contracted, promoted, or as otherwise provided for in this Section.

### **VI. Housing Market Impact**

The Parties recognize and agree that the Project is likely to impact the pricing of housing in Somerville, and more specifically, create greater demand on the availability of affordable housing for low and moderate income individuals and families in the City. In furtherance thereof, contingent upon the receipt of a final, non-appealable License, Wynn has agreed to pay to Somerville, specifically Somerville's Affordable Housing Trust Fund, five (5) equal annual installments of five hundred and sixty thousand Dollars (\$560,000) each, which amount shall be due on or before the thirtieth (30<sup>th</sup>) day following the Opening of the Project and on each annual anniversary thereof, or, in the alternative, shall make an equivalent contribution toward the creation of no less than sixty-seven (67) affordable housing units in Somerville by a mutually agreed upon method such as: acquisition of land in Somerville for development of new affordable housing units; direct financial assistance to a developer for the creation of new affordable housing units in Somerville; and/or some other similar method to be pursued in association with the regional planning agency, MAPC, or other regional and local intermediaries. The purpose of this annual payment is to assist in Somerville's efforts to provide affordable housing in Somerville.

### **VII. Impacts on Open Space**

The Parties recognize and agree that the Project will have a visible impact on public open space and recreational facilities on both sides of the river, including significantly changing the on-water and riverside experience of persons enjoying active and passive recreational opportunities including walking, biking, fishing, bird sighting, boating, performing arts, games and organized sports. To mitigate such impacts and create greater access and enjoyment of the Mystic River waterfront, Wynn will provide funding, contingent upon the receipt of a final, non-appealable License that will enhance the public's enjoyment of the river and the riverside recreation facilities as follows:

In conjunction with efforts by the Commonwealth of Massachusetts, Wynn will reimburse the City and/or the Commonwealth of Massachusetts in an amount equivalent to fifteen percent (15%) of the overall cost of the design and construction of improvements to the existing riverfront park that directly faces the project from the opposing side of the Mystic River known as Draw 7 Park. Wynn shall reimburse the City and/or Commonwealth for such costs no later than sixty (60) days from receipt of an invoice or other documentation evidencing the incurrence of costs associated with such improvements; and

Wynn will use best efforts to support, cooperate, and collaborate with the Commonwealth of Massachusetts Department of Conservation and Recreation, the US Army Corps of Engineers, and the City on a pedestrian and bicycle connection across the Mystic River in keeping with Wynn's commitments to increase pedestrian and bicycle access to the site as detailed in the transportation section of the Wynn Everett Draft EIR.

### **VIII. Air Quality Impacts**

The parties recognize that the Project may have impacts on air quality due to increased traffic to and from the Project using Somerville roads. For the purpose of mitigating such impact, contingent upon the receipt of a final, non-appealable License, Wynn will pay to the City:

An annual payment of ten thousand Dollars (\$10,000), which amount shall be due on or before the thirtieth (30<sup>th</sup>) day following the Opening of the Project and on each annual anniversary thereof. The annual payment shall continue for as long as a gaming facility is located at the Project Site. The purpose of this annual payment is for air quality monitoring analysis.

### **IX. Funding Requests**

Wynn shall support the City's applications for available grants and other funding mechanisms, including but not limited to the Community Mitigation Fund and other funds established and/or funded pursuant to the Act.

### **X. Responsible Gaming**

Wynn recognizes that, while gaming is an enjoyable leisure and entertaining activity for most, there is a small percentage of the population that may not game responsibly. Therefore, Wynn will implement a Responsible Gaming Plan at the Project, the chief goal of which shall be to ensure that those people who cannot game responsibly get the help they need and to make sure that people who can game responsibly understand the importance of gaming responsibly. Wynn will accomplish the responsible gaming goals at the Project by: (1) educating its employees and providing information to patrons about the odds of games and how to make responsible gaming decisions; (2) promoting responsible gaming in daily operations; and (3) supporting public awareness of responsible gaming.

In furtherance thereof, Wynn agrees that it will not send any marketing materials to residents of Somerville who have opted to participate in Wynn's self-exclusion or self-limitation programs which enable individuals to opt out of receiving marketing materials.

Wynn shall provide the City and its residents with access to an on-site compulsive gambling facility and/or associated compulsive gambling counseling services, and shall make such services available to City residents.

#### **XI. Additional Impacts**

The Parties acknowledge that there may be impacts that are unknown or difficult to anticipate now, but that may be meaningful or become significant and apparent once the Project has been completed and is operational.

Consistent with the regulations promulgated by the Commission which are designed to protect surrounding communities from significant and material adverse impacts occurring after the execution of mitigation agreements (specifically 205 CMR 127.00), Wynn and the City shall negotiate in good faith an amendment to this Agreement if a triggering event (as defined in 205 CMR 127.02) occurs. Nothing in this Agreement shall be considered a waiver of the City's rights under 205 CMR 127.

Consistent with the provisions of 205 CMR 127.06, Wynn and the City shall also negotiate in good faith amendments to this Agreement (if any) under the conditions as expressly set forth elsewhere in this Agreement.

The parties agree to negotiate in good faith in the event that the Project be expanded or amended in a manner that materially differs from the terms of the Wynn's application for a License with the Commission on file as of the Effective Date of this Agreement; to address any and all unanticipated, material impacts which may occur following the completion of the Project, including, but not limited to, unknown mitigation measures necessitated by the completion and operation of the Project, as well as mitigation measures contemplated herein which may in time become less than satisfactory to address and resolve mitigation necessary as a result of said development and operation. Wynn agrees, upon the written request of Somerville, to meet with Somerville officials within 30 (thirty) days.

#### **XII. Other Responsibilities of Wynn**

Wynn shall, on a periodic basis, upon the request of the City, attend municipal meetings organized by the City, at which it will address questions regarding the Project.

#### **XIII. Municipality Obligations**

Somerville may petition the Massachusetts Gaming Commission for monies made available under the Act, including, but not limited to, those monies in the Community Mitigation Fund and the Transportation Infrastructure Fund for purposes which Somerville solely determines

mitigates impacts from the proposed gaming establishment, and will provide reasonable notice to Wynn of any such petition if Wynn is awarded the License.

### **Additional Term and Conditions**

#### **XIV. Term.**

The term of this Agreement (“Term”) shall commence on the Effective Date and expire on the earlier of: (a) the expiration or earlier termination of the License, including any extensions thereof and subject to any assignment or reissuance thereof to a successor owner or operator of the Project; (b) the date on which Wynn notifies the City that the Wynn has been rejected as an applicant by the Commission during any phase of the Commission’s licensing process, with any appeals having been decided against Wynn and/or all appeal periods applicable to the licensing process having expired; or (c) the date on which Wynn notifies the City that an applicant other than the Wynn (or any of Wynn’s successors or assigns) has received a License for so called “Region A”, as those terms are defined and used in Chapter 23K, with all appeals having been decided in that applicant’s favor and/or all appeal periods applicable to the license having expired, provided that Wynn has not previously been awarded a Gaming License for Region A.

#### **XV. Binding Agreement**

This Agreement is binding upon and enforceable against, and inures to the benefit of, the Parties hereto and their successors and assigns (including, without limitation, any successor owner or owners of the Project, but excluding mortgagees of the Project or those claiming through mortgagees of the Project, unless said mortgagee obtains title to the Property and proceeds with the development or operation of a gaming establishment on such property).

#### **XVI. Definition.**

All definitions contained in the Act and regulations promulgated thereto are incorporated herein by reference as if fully set forth herein and shall be applicable hereto where relevant.

#### **XVII. Non-Transferrable - Non-Assignable.**

Neither Wynn nor Somerville may transfer or assign its rights or obligations under this Agreement without the prior written consent of the other Party. In the event of a sale, transfer, assignment and/or conveyance of the License by Wynn to an unrelated entity, the Parties agree that this surrounding community agreement shall be treated consistently with all other surrounding community agreements as prescribed and required by the commission in granting such transfer or assignment.

#### **XVIII. Captions and Headings.**

The captions and headings in this Agreement are inserted for convenience of reference only and in no way shall affect, modify, define, limit or be used in construing the scope or intent of this Agreement or any of the provisions hereof. Where the context requires, all singular works in the

Agreement shall be construed to include their plural and all words of neuter gender shall be construed to include the masculine and feminine forms of such words.

**XIX. Severability.**

If any term of this Agreement or the application thereof to any person or circumstance shall, to any extent, be determined by a court of competent jurisdiction to be invalid or unenforceable the remaining provisions of this Agreement, or the application of such term to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and this Agreement shall otherwise remain in full force and effect.

**XX. Amendments-Modifications.**

No amendment or modification of this Agreement shall be deemed valid unless mutually agreed upon and duly authorized by the Parties and effectuated by a written amendment signed by the Parties.

**XXI. Compliance with Massachusetts and Federal Law.**

In the performance of this Agreement, Wynn agrees to comply with and shall use reasonable efforts to cause all agents, contractors, subcontractors and suppliers to comply with all applicable laws, ordinances, regulations and orders in effect relating to nondiscrimination, equal employment opportunity, contract compliance and affirmative action.

**XXII. Organizational status in state of Organization and in the Commonwealth of Massachusetts.**

Wynn acknowledges that it shall notify Somerville promptly in writing in the event of any change in its organizational status and/or standing under the laws and regulations of its state of Incorporation and under the laws and regulations of the Commonwealth of Massachusetts. Wynn agrees to remain in good standing and maintain adherence to all laws, regulations and requirements applicable to licenses and permits issued to Wynn pursuant to the Act.

**XXIII. Notices.**

All notices and other communications required or permitted under this Agreement shall be in writing, signed by a duly authorized officer or representative of the City or the Wynn, as the case may be, and shall be (i) delivered by nationally recognized overnight delivery service, or (ii) mailed by certified or registered mail, return receipt requested, postage prepaid, to the Parties at the following addresses or such other addresses as each may have specified to the other by such a notice:

City: Mayor of Somerville  
Office of the Mayor  
Somerville City Hall  
93 Highland Avenue  
Somerville, Massachusetts 02143

with copies to: City of Somerville City Solicitor  
Office of the City Solicitor  
Law Department  
Somerville City Hall  
93 Highland Avenue  
Somerville, Massachusetts 02143

Wynn: Wynn MA, LLC c/o Wynn Resorts, Limited  
3131 Las Vegas Blvd. South  
Las Vegas, NV 89109  
Attn: Kim Sinatra, Sr. VP and General Counsel

and in the case of either Party, to such other address as shall be designated by written notice given to the other Party in accordance with this section. Any such notice shall be deemed given when so delivered by hand, by courier delivery on date of service, or if mailed, when delivery receipt is signed by the party designated herein as accepting notice. Service to Somerville shall not be deemed effective unless accomplished during normal business hours and days of operation of the City. Each Party shall ensure that the other party is notified in writing immediately of any changes in the contact and address information above.

#### **XXIV. Failure and Waiver.**

Failure of either Party to require strict performance of the terms and conditions herein shall not be deemed a waiver of any rights and remedies available to such Party, and shall not be deemed a waiver of subsequent default or nonperformance of said terms or conditions in the future. No actual waiver by a Party of performance of any terms, conditions or obligations under this Agreement shall be effective unless agreed upon and in writing signed by such Party. No waiver of either Party to require strict performance of any terms and conditions shall constitute a waiver of such Party's right to demand strict compliance with the terms and conditions of this Agreement.

#### **XXV. Notice of Default and Rights in the Event of Default.**

Each Party shall have thirty (30) days from receipt of written notice of failure, violation or default to cure said failure, violation or default. If such failure, violation or default cannot in good faith be cured within such thirty (30) day period, the defaulting Party shall notify the other Party immediately in writing and diligently pursue curing said default to completion. Except as expressly provided herein, the rights and remedies of the Parties, whether provided by law or by this Agreement, shall be cumulative, and the exercise by a Party of anyone or more of such remedies shall not preclude the exercise by it, at the same or different times, of any other such

remedies for the same default or breach or of any of its remedies for any other default or breach by the other Party.

**XXVI. Governing Law and Forum in Event of Dispute.**

This Agreement shall be subject to, governed under, and construed in accordance with the laws and regulations of the Commonwealth of Massachusetts, including any amendments thereto which may occur from time to time following execution of this Agreement, and said laws and regulations shall govern the validity, enforcement of terms, conditions, rights and obligations, and performance of this Agreement. The Parties further agree that any legal proceedings whether in law or equity arising hereunder shall be instituted in the Commonwealth of Massachusetts Middlesex County Superior Court. Nothing in this Agreement shall be construed to prohibit Somerville from instituting actions or proceedings in law or equity. The prevailing Party in any action shall recover its litigation costs (including attorneys' fees and expert witness fees). Notwithstanding the foregoing provisions for forum selection, the Parties agree that before resorting to any formal dispute resolution process concerning any dispute arising from or in any way relating to this Agreement, the Parties will first engage in good faith negotiations in an effort to find a solution that services their respective and mutual interests.

**XXVII. Use of Mitigation Payments.**

Notwithstanding anything herein to the contrary, all payments made by Wynn to City pursuant to the terms of this Agreement shall remain in the exclusive custody and control of the City, and shall be used and applied at the City's sole discretion and determination toward any impact, infrastructure, improvement, and/or mitigation measures related to the Project that the City deems necessary and suitable.

**XXVIII. Execution in Counterparts.**

This Agreement may be signed upon any number of counterparts with the same effect as if the signatures on all counterparts are upon the same instrument.

**XXIX. Interpretation.**

This Agreement shall be given a fair and reasonable interpretation of the words contained in it without any weight being given to whether a provision was drafted by one Party or its counsel.

**XXX. Enforcement.**

It is the intention of the Parties that the provisions of this Agreement may be enforced only by the Parties hereto, and that no other person or persons shall be authorized to undertake any action to enforce any provisions hereof without the prior written consent of the Parties.

**XXXI. Authority.**

Each Party represents and warrants to the other Parties that it has full power and authority to make this Agreement and to perform its obligations hereunder and that the person signing this Agreement on its behalf has the authority to sign and to bind that Party.

IN WITNESS WHEREOF, the parties, by and through the signatories below, acknowledge they are duly authorized and have the full power, right and authority to enter into, execute, deliver, and perform the terms and conditions of this Agreement, and hereto have hereunto set their hands and seals on this \_\_th day of \_\_\_\_\_, 2014.

**CITY OF SOMERVILLE**

**WYNN MA, LLC**

By: \_\_\_\_\_  
Joseph A. Curtatone, Mayor

By: \_\_\_\_\_  
Name, Title



**EXHIBIT A- PROJECT SITE**



Wynn Everett  
Everett, Massachusetts

Figure 1-1  
USGS LOCUS  
Source: US Geological Survey, 1993

- 3. Paragraph 1.2; Page 4: Paragraph 5.4.** “The Parties acknowledge and agree that the proximity of the Project to the Assembly Row and Assembly Square developments and the desire to cross-promote the projects...”

See rationale as stated in item number 2 above.

- 4. Paragraph 1.3.** “The Project may have an impact on municipal services and require additional expenditures by Somerville in order to provide such services. Wynn's payments to Somerville under this Agreement will provide Somerville with adequate resources to mitigate any such impacts and Somerville acknowledges and agrees that such payments adequately mitigate all such impacts.”

The Gaming Act does not require Somerville to make such an acknowledgment that payments will “adequately mitigate all such impacts” and regulations (i.e. 205 CMR 127) allow for the parties to reopen an agreement in the event of certain triggering events.

- 5. Various Pages (i.e. Page 2, Paragraph 2.1).** Wynn has made various obligations under its proposed Best and Final Offer “contingent upon the receipt of an unconditional, non-appealable License.”

The City contends that the use of the phrase “unconditional” license is not consistent with the Gaming Act and regulations. MGL c. 23K, s. 21(a) expressly provides that the Gaming Commission “shall prescribe the form of the gaming license, which shall include, but not be limited to, the following license conditions for each licensee...”

- 6. Paragraph 5.5.** “The Parties acknowledge and agree that Wynn intends to implement a water transportation program to service the Project. The Parties will work together in good faith to facilitate water transportation connections between

**EXHIBIT “C”**

The City contends that the following terms are fundamentally inconsistent with a provision or with the purposes of G.L. c. 23K. For each respective term, the reason such terms are fundamentally inconsistent with a provision or with the purposes of G.L. c. 23K, and any evidence supporting the objecting party’s position are referenced below.

1. **Page 1:** And whereas, Somerville may be impacted by the development of the Project, and the Act and regulations relating thereto, including 205 CMR 125.00 et seq., permit Wynn to enter surrounding community agreements to address surrounding community impact as well as demonstrate advancement of the Act and public support for its proposed development;

The City contends that the emphasized language above must be struck as neither the Gaming Act nor regulations thereto necessitate that a surrounding community agreement require or serve as demonstration of “public support”.

2. **Page 1:** And whereas, Wynn desires to mitigate any adverse...and Somerville desires to mitigate any anticipated adverse impacts from the development and operation of the Project through the means described herein, and to work proactively with Wynn to capitalize on the unique nature of Somerville’s community resources;

The City contends that the emphasized language above must be struck as neither the Gaming Act nor regulations thereto necessitate that a surrounding community agreement require or serve as demonstration of “public support” or that the City will “work proactively” with an applicant relative to a proposed gaming establishment.

Somerville and, in particular, the Assembly Row and Assembly Square developments, and the Project.”

Nothing in the Gaming Act or regulations thereto require that the City agree to any measure Wynn may propose with respect to transportation to the Project. Any such proposed service is subject to all applicable permitting requirements. Further, an obligation to facilitate transportation connections between the City and the Project cannot be imposed upon the City without the City’s approval, and a mitigation agreement cannot require the City to work together or support the Applicant’s efforts.

- 7. Paragraph 7.1.** “Somerville, in coordination with Wynn, shall exercise best efforts to petition the Massachusetts Gaming Commission for monies made available under the Act, including, but not limited to, those monies in the Community Mitigation Fund and the Transportation Infrastructure Fund.”

While a community may apply to receive funds under various funds established by MGL c. 23K, nothing therein can be construed so as to require a community to “exercise best efforts” to do so. The obligation imposed in this paragraph is similar to other provisions Wynn seeks to elicit Somerville’s support by way of its best and final offer and is wholly inconsistent with the Gaming Act and purposes of a surrounding community agreement.

- 8. Paragraph 8.1.** “ In accordance with the terms of 205 CMR 114.03(2)(a), Wynn agrees to reimburse Somerville for actual, documented out-of-pocket expenses...Notwithstanding,...in no event shall Wynn’s obligation hereunder exceed...[\$150,000].”

Chapter 23K does not limit the amount that a gaming licensee must reimburse for consultant and legal expenses of a community and does not apply only to “negotiation” of such an agreement, but also the execution thereof.

**9. Paragraph 9.14.** “...In addition, consistent with the regulations promulgated by the Commission and, in particular, 205 CMR 127.00 Reopening Mitigation Agreements, Wynn and Somerville shall negotiate in good faith to determine whether an amendment to this Agreement is necessary if a "triggering event"(as defined in 205 CMR 127.02) occurs.”

The intent and requirements of this clause in paragraph 9.14 is vague and ambiguous. To the extent that Wynn seeks to link the reopening procedures set forth in 205 CMR 127 to the studies referenced earlier in Paragraph 9.14, that is plainly inconsistent with 205 CMR 127. Further, to the extent Wynn seeks to modify the terms set forth in 205 CMR 127 relative to the rights of a party which believes a triggering event has occurred, such limitations are also inconsistent with 205 CMR 127.



MASSACHUSETTS GAMING  
COMMISSION

2014 JUN -9 PM 4: 24

April 30, 2014

Catherine Blue, Esq.  
General Counsel  
Massachusetts Gaming Commission  
84 State Street, Suite 720  
Boston, Massachusetts 02109

Re: Wynn MA LLC surrounding community arbitration with City of Somerville, MA

Dear Attorney Blue:

Enclosed for filing is the Arbitration Panel's *Report and Arbitral Award* in this matter. Many thanks for your help in this regard.

Best Regards,

John J. Carr  
ADR Specialist  
JAMS, The Resolution Experts  
One Beacon Street, Suite 2210  
Boston, MA 02108

COMMONWEALTH OF MASSACHUSETTS  
MASSACHUSETTS GAMING COMMISSION

SURROUNDING COMMUNITY ARBITRATION BETWEEN  
THE CITY OF SOMERVILLE AND WYNN MA, LLC

REPORT AND ARBITRAL AWARD

This Report and Arbitral Award is filed with the Massachusetts Gaming Commission (the “Commission”) and issued to the parties under 205 CMR 125.01 (6) (c) 7., as amended. The parties to the arbitration are Wynn MA, LLC (the “Applicant” or “Wynn”) and the City of Somerville (the “Surrounding Community”, “Somerville” or “the City”).

Somerville, the most densely populated city in New England, has approximately 75,000 residents. Somerville and Everett, where the Wynn casino will be located, share a boundary within the Mystic River.

Wynn is the developer of a proposed casino and resort project on an approximately 33.9 acre site located in Everett, of which 8.3 acres are below mean high water on the Mystic River. The project site is currently undeveloped and deemed a “brownfield”, having previously been the site of a chemical plant. The proposed project is to consist of a luxury hotel with approximately 500 rooms, a gaming area, retail space, food and beverage outlets, convention and meeting space, a spa and gym and a nightclub. The project is anticipated to cost approximately \$1.6



billion and provide approximately 4,000 construction jobs and 4,000 permanent jobs.

The majority of the western side of the Wynn property is within 150 feet of the Somerville line; its closest point is 76 feet from Somerville. By road, the project site is 1.2 miles from the Somerville line. Several routes access the project site from Somerville, including Mystic Avenue, Route 28, Broadway, Cambridge Street, and Interstate 93. The most direct connections from Somerville to the project site are via Broadway and the I-93 Sullivan Square/Broadway exit through Sullivan Square to Route 99.

### **Procedural Background**

Under the Gaming Act, Wynn must enter into signed agreements with surrounding communities in proximity to its proposed gaming establishment. G.L. c. 23K, Section 15(9). To be designated as a surrounding community, the Gaming Commission considers the community's proximity to the gaming establishment; whether the transportation infrastructure in the community will be significantly and adversely impacted; whether the community will be significantly and adversely impacted by the development and/or operation of the gaming establishment; and whether the community will be significantly and adversely impacted by any other relevant potential impacts. *See* 205 CMR 125.01(2)(b).

On January 23, 2014, Wynn assented to Somerville's designation as a Surrounding Community. The Commission confirmed that designation on March 20, 2014.

Once a community is designated a Surrounding Community, the parties must enter into an agreement that includes a "community impact fee for (the) surrounding community and all stipulations of responsibilities between (the) surrounding community and the applicant, including stipulations of *known* impacts from the development and operation of a gaming establishment." G.L. c. 23K, section 15 (9) (emphasis added). If the parties are unable to reach a surrounding community agreement within 30 days from the surrounding community designation, the parties must engage in binding arbitration as set forth in 205 CMR 125.01(6)(c), as amended.

The 30-day statutory negotiation period for Somerville and Wynn began March 20, 2014 and ended April 22, 2014, without the parties reaching a surrounding community agreement. As a result, on April 23, 2014, Wynn filed with the Commission a Notice of Intent to Commence Arbitration with Somerville. On April 25, 2014, Somerville filed its Notice of Intent to Commence Arbitration. That same day, each party gave notice of its respective party-selected neutral arbitrator. The Applicant designated Paul E. George, Esquire, and Somerville designated Douglas I. Foy, Esquire.

On April 29, 2014, as required by 205 CMR 125.01(6)(c)3, as amended, the parties exchanged respective best and final offers ("BAFOs") pursuant to G.L. c. 23K section 15(9). On May 15, 2014, the party-selected arbitrators notified the Gaming

Commission's General Counsel of their selection of the third neutral arbitrator, the Hon. Margaret R. Hinkle (Ret.), who chairs the arbitration panel.

On May 21, 2014, counsel for the parties and the Panel established a scheduling protocol consistent with the need to issue this Report and Award by June 9, 2014, the date approved by the Commission's ombudsman, John S. Ziemba. The parties and the Panel recognize that the binding arbitration process utilized in this proceeding is necessarily expedited under the Gaming Act, G.L. c. 23K, its regulations, 205 CMR 125.01(6)(c), as amended, and the Handbook for Binding Arbitration Between an Applicant for a Gaming Establishment License and a Surrounding Community to Reach a Surrounding Community Agreement (December 19, 2013) ("the Arbitration Handbook").

Consistent with the schedule set during the May 21 conference, the arbitral hearing commenced on May 30, 2014 and continued on successive days between June 2-5, 2014. During the four-day arbitration, the Panel heard testimony from 10 witnesses and reviewed 56 exhibits and a stipulation of fact. At the outset of the hearing, on the morning of May 30, 2014, the Panel, together with representatives of the City and Wynn, conducted a site visit of several hours duration. During the visit, the Panel travelled through proximate areas in the cities of Everett, Somerville, Medford and the Charlestown section of Boston.

From the arbitral process, and its deliberations thereafter, the Panel issues this Report and Final Arbitral Award, all pursuant to G.L. c. 23K and 205 CMR 125.01 (6)(c), as amended. In reaching its decision, the Panel has been aided by the

excellence of the pre-hearing briefs submitted by counsel for the parties and the eloquent closing arguments made after the evidence concluded.

### **Discussion and Report**

Chapter 23K requires that a surrounding community agreement include a “community impact fee” and “stipulations of known impacts.” G.L. c. 23K section 15(9). From the BAFOs submitted by the parties, the Panel is obligated to select the BAFO that is the most fair and reasonable. *See* 205 CMR 125.01, Arbitration Handbook at p. 7. In other words, the purpose of the arbitration is “to arrive at a fair and reasonable agreement between the applicant and the surrounding community”. Arbitration Handbook at pp. 6, 7.

It should also be noted that the Panel is obligated to select one of the BAFOs *without any modification*. The Panel members cannot make any adjustment to the best and final offer they select. This lack of authority arises from the fact that the original version of 205 CMR 125.01(6)(c)6 has been amended to strike the provision that afforded arbitrators the right to make adjustments to the selected BAFO when necessary to ensure that the Panel’s Report was consistent with the gaming statute.

As a threshold matter, each BAFO “shall be in the form of an executable surrounding community agreement.” 205 CMR 125.01(6)(c)3., as amended. Each BAFO meets that requirement.

In meeting its goal of selecting one of the BAFOs without any modification, the Panel considered and weighed, from the credible evidence provided during the arbitral hearing, the 12 specific factors listed on pages 7 and 8 of the Arbitration Handbook. In making its selection, the arbitrators also considered surrounding community agreements provided by the parties, including in particular the three signed agreements between Wynn and Cambridge, Malden and Medford and those between Mohegan Sun Massachusetts, LLC and Somerville, Winthrop, Malden and Cambridge.

As noted, under the Gaming Act, Wynn is required to stipulate to known impacts and to pay to mitigate those impacts. *See* G.L. c. 23K, Section 15 (9). The parties agree that there will be impacts in certain areas---most notably in the area of traffic and municipal services. But the parties disagree as to the nature of the appropriate mitigation payments. Some of the disagreements are immaterial; others are significant.

To the undersigned arbitrators, the most convincing factor in making its award is that Somerville's BAFO seeks payments from Wynn in several areas which, from the credible evidence at the arbitral hearing, do not appear to be reasonably linked to significant and adverse impacts directly attributable to the Wynn casino.

For example, Somerville seeks an annual community impact fee of \$1.5 million, increasing at the rate of two percent annually, for "*any use* it deems appropriate". (emphasis added). Nothing in Somerville's BAFO links use of this annual payment to adverse impacts from the Wynn casino. Moreover, there was testimony at the arbitral hearing that this fee was intended in part to compensate

Somerville for economic development losses attributable to the Wynn casino, an assertion that, in the view of the undersigned arbitrators, was not sufficiently substantiated.

As a further example, Somerville's BAFO also seeks \$2.8 million in payments for alleged impacts from the Wynn casino on the Somerville housing market. Specifically, Somerville proposes that Wynn pay the City's Affordable Housing Trust five annual installments of \$560,000 or make an equivalent contribution toward the creation of 67 affordable housing units. The Panel applauds Somerville's affordable housing efforts and all its community goals set forth in the April, 2012 SomerVision plan. However, the undersigned members of the Panel conclude that the City did not demonstrate at the arbitral hearing that its proposed mitigation for affordable housing was reasonably related to the Wynn casino.

The parties also presented varying positions regarding mitigation payments for traffic impacts. There was credible testimony at the arbitral hearing regarding the current, significant traffic congestion at Sullivan Square, Charlestown. There was also testimony about forthcoming developments in the vicinity of Sullivan Square that may further impact traffic conditions.

Each BAFO contains traffic mitigation provisions, and the Wynn BAFO specifically provides for approximately \$6 million in improvements at Sullivan Square. That said, the Panel recognizes that comprehensive mitigation of traffic issues at Sullivan Square---a need apparent to many today---will require a governmental commitment beyond that of Somerville and Wynn.

The City's BAFO seeks to have Wynn bear the "full financial burden" of designated work at nine Somerville traffic intersections. Somerville's BAFO specifies that the City is to hire an engineering firm to "complete a design and engineering set that seeks to balance the level of service degradation that will be felt by the increased traffic with the City's existing goal of becoming the most walkable, bikeable, transit accessible city in the United States". By contrast, in its BAFO, Wynn agrees to complete "all necessary improvements as determined in accordance with the MEPA process" with respect to six intersections that its experts believe may be adversely affected.

Both BAFOs recognize the need to compensate Somerville businesses for impacts from the Wynn project. Wynn's BAFO provides for an annual payment of \$150,000 to "enable Somerville, in coordination with Wynn, to develop initiatives to prepare local businesses to take advantage of the opportunities provided by the Project". By contrast, Somerville seeks a one time Wynn payment of \$500,000 for establishment of a flexible loan fund for restaurant operators---an initiative that does not appear from the credible evidence to be reasonably linked to a significant and adverse impact of the Wynn casino; \$50,000 for a City non-profit entity to support job readiness training program assistance, and an annual payment of \$200,000 to "offset the anticipated loss of revenue including the local meals tax."

In sum, the undersigned members of the Panel find that the dollar amounts proposed by Wynn appear more likely than those proposed by Somerville to mitigate the known impacts on Somerville caused by the Everett casino. Thus, from

the evidence we found credible, we conclude that Wynn proposes the more fair and reasonable BAFO.

### **Final Award**

After deliberation, the undersigned arbitrators select the Best and Final Offer of Wynn MA, LLC, which is attached to this Report as Exhibit A. Its terms are hereby incorporated by reference in and made a part of this report, as required by 205 CMR 125.01(6)(c)7., as amended.

  
Margaret R. Hinkle, Arbitrator

  
Paul E. George, Arbitrator

Dated: May 9, 2014



## DISSENT

Respectfully, I dissent. The Somerville BAFO is by far the best supported by the evidence and the most equitable. It should be selected.

### **Background**

Wynn Resorts proposes to build a 5 star, destination resort casino on an abandoned industrial site in Everett, adjacent to the Mystic River. The resort will create 4000 jobs [Wynn Ex. 53, p.37], and will attract, by Wynn's estimates, 20,000 patrons a day [Testimony of Wynn witness Christopher Gordon]. Wynn notes that this will be their first "Urban Wynn". [Wynn Ex. 83, p.11].

The City of Somerville borders the Everett casino site. Wynn acknowledges that Somerville is .01 miles from the site. [Wynn Ex. 83, p.16]. Somerville's residential neighborhoods, both in East Somerville and in the newly developing Assembly Square, are the nearest residential neighborhoods to the casino site. Somerville, a City of 75,000 residents and 4 square miles, is the most densely populated city in New England, and may be the most densely populated city of 2 and 3 story homes in the world. [Testimony of Somerville witness George Proakis].

The primary dispute between the parties revolves around the impacts on traffic and affordable housing in Somerville caused by the casino.

As the majority notes, the parties acquitted themselves admirably throughout this intense and truncated proceeding, which included a site visit, four days of hearings, and thousands of pages of written submissions.

### **Traffic**

The Wynn casino will be heavily automobile and bus dependent. Wynn witnesses concede that up to 90% of the 20,000 patrons a day, and a majority of the 4000 employees, will drive or be driven to the casino. [Wynn Ex. 55, p.20]. In the case of the employees, they will be required to park at remote locations, where they will be gathered with other employees who arrive by transit, foot, or bike, and then all employees will be bused to the casino site. A vast majority of those patrons and employees will pass through Sullivan Square to access the site. Thus, for example, 2/3 of all patrons will access the casino via Rt 99, the main road leading to the resort, and will pass through Sullivan Square on their way to and from the site. [Wynn Ex. 53, p.28; Testimony of Wynn witness Keri Pyke].

All parties concede that Sullivan Square is a severely congested and challenging intersection. In traffic engineering parlance, it is often at Level of Service F (LOS F), which means it is performing at the worst rating for an intersection, with travel delays exceeding 80 seconds. (Intersections are rated from LOS A to F, based on the delay times required to transit the intersection). [Wynn Ex. 55, p.6]. Interestingly, on the site visit to the resort location taken by the arbitration panel and the parties, on a Friday morning at 10 AM, our bus took roughly 5 minutes to move down the congested Exit 28 ramp from Interstate 93 into Sullivan Square, and several minutes more to make it through the intersection to Rt. 99 on the other side. Clearly, Sullivan Square was performing at Level of Service F that day, even at an off-peak hour on a sunny Friday morning in May.

Of course, the Wynn Resort is not the cause of the current traffic problems in Sullivan Square, but by choosing to locate adjacent to that intersection, and rely on it for primary access to its resort, Wynn will be adding significant additional vehicle pressure to Sullivan Square. It is this additional pressure, and the impacts it will impose on Somerville streets, that forms the basis for Somerville's BAFO request concerning traffic.

Wynn presented a competent traffic engineer to assess the traffic impacts of the Wynn resort. She testified that her models indicated that traffic volumes on Rt. 99 (a primary spoke of Sullivan Square and the front door to the casino) would increase from 1 hour a day of peak traffic at present to 14 hours a day of peak traffic after the resort opens. [Wynn Ex. 55, p.25]. The peak traffic volumes on Rt. 99 will also increase by approximately 50%. [Wynn Ex. 55, p. 25]. The Wynn traffic expert also conceded that her models do not capture the diversion or spillover effects onto local streets of traffic backups in Sullivan Square. [Testimony of Wynn witness Keri Pyke]. "Diversions" occur when drivers, faced with intersection delays, seek alternate routes through local streets. In other words, drivers will not sit patiently and wait 80 seconds, let alone 5 minutes, to make it through an intersection. Certainly Boston drivers will not! Instead, they will divert to other neighboring routes in an attempt to bypass the congestion. Indeed, in a world of navigation apps and the navigation devices found in today's cars, drivers will be encouraged to divert and instructed in how to do so. Unlike the traffic models used by Wynn, more sophisticated traffic models, known as sensitivity or microscopic models, capture

these diversion effects and attempt to calculate the effects of congestion on surrounding local streets and intersections.

During the BAFO negotiations, Somerville asked Wynn to perform such a sensitivity analysis. Wynn refused. (Note that during the arbitration proceedings, Wynn indicated that they would perform such microscopic modeling at an unspecified future date, but presented no such models in the proceeding.)

Somerville then elected to retain transportation experts at MIT to conduct the sensitivity analysis. The MIT analysis concluded there would be significant traffic impacts on Somerville's neighborhood streets and intersections as a result of the Wynn Resort, due to spillover and diversion effects from increased traffic congestion in Sullivan Square and other major surrounding intersections.

[Somerville Ex. 8]. Based on that analysis, Somerville identified impacts on 9 specific intersections, and sought in its BAFO reimbursement for the cost of remedying those impacts through adjustment of the traffic light sequences, or in three cases, potentially revising the geometry of the particular intersections. [Somerville BOFA, Ex. 1; Testimony of Somerville Witness Hayes Morrison].

The majority notes that Wynn has agreed to fund \$6M of unspecified improvements to Sullivan Square. Nowhere in the record are those proposed improvements detailed, nor is there any analysis of their purported effect. More importantly, Wynn's own traffic expert acknowledged that such an investment would not "fix" Sullivan Square [testimony of Wynn witness Keri Pyke]. On the contrary, Ms. Pyke concluded that an investment of upwards of \$200M would be needed to "fix" Sullivan Square. No one suggests that such an investment is

forthcoming. Indeed, it is precisely because no one can assume that Sullivan Square will be "fixed" before the Wynn casino goes into operation that Somerville's concern for the operation of its 9 intersections becomes of critical importance.

The majority also notes that Wynn has offered to mitigate 6 intersections near Sullivan Square, but those intersections do not include the 9 of greatest concern to Somerville. As to those 9, Wynn has refused to mitigate 7 of them [Wynn Ex. 55, p. 49], and has indicated that it will mitigate the remaining 2 only if required to do so by MEPA. [Wynn Ex. 55, pp. 43 and 47]. If the Gaming Act and the Commission wished to defer to some future, unspecified MEPA decision, I assume they would have so stated. They did not. Instead, the independent, surrounding community negotiations and arbitration proceedings are created precisely to give certainty, now, to the impact mitigation required of the casino proponent. If we are instead to defer to future MEPA proceedings, these surrounding community proceedings would be rendered moot, and should, at a minimum, be suspended until the MEPA decisions are in hand and the parties can assess their effect.

In summary, Somerville identified and sustained its burden of proving significant traffic impacts to 9 intersections that require mitigation. These were well supported and reasonable BAFO requests, aimed at mitigating traffic impacts that will be inflicted on Somerville by the Wynn Resort. Wynn, in its BAFO, refused all such mitigation for 7 of the identified intersections, and offered to mitigate the remaining 2 only if required to do so by an indeterminate future MEPA decision.

The Somerville BAFO regarding significant traffic impacts is well supported by the evidence and finely tuned to accomplish the necessary mitigation. The Somerville BAFO should be selected.

### **Affordable Housing**

In its BAFO, Somerville seeks mitigation for the impacts on affordable housing in the City as a result of the Wynn resort. Wynn denies that there will be any such impacts. Somerville's evidence and BAFO are far more persuasive and well reasoned, and should be selected.

To its credit, and despite its existing density, Somerville has carefully reflected on how it should grow, add housing, protect affordable housing, add transit service, and evolve as a community. After a lengthy public process, Somerville adopted, in April, 2012, SomerVision [Somerville Ex. 21], which sets out the City's goals as a community, including its goals to be as walkable, transit oriented, and affordable as possible.

Needless to say, Wynn is not required to endorse or even agree with Somerville's community goals, or with its SomerVision. However, to the degree that the Wynn Resort impedes or harms Somerville's reasonable pursuit of its municipal goals, that is an impact that under the Gaming Act should be addressed, and if significant, mitigated.

In furtherance of its stated community goals, Somerville has campaigned to increase transit service to the City. Prior to 2003, Somerville had four transit corridors running through its city (two commuter rail lines, the Red Line, and the

Orange Line), but had only one transit stop (at Davis Square), and a second just over the city line in Boston at Sullivan Square. Only 15% of Somerville residents lived within a half mile walk of those transit stations. [Somerville Ex. 7; Testimony of Somerville witness George Proakis]. Since 2003, Somerville has successfully required the developers of Assembly Square to build a new Orange Line station at that location, and persuaded the Commonwealth to commit to extending the Green Line through Somerville to Medford, adding 5 additional transit stops in the City. The Assembly Square station opens in a few months. On completion of the Green Line stations, 85% of Somerville residents will be within a half mile walk of a transit station. [Somerville Ex. 7, p. 5] It is important to note that transit service makes housing more affordable by reducing the transportation cost burden on households.

Somerville has also aggressively and directly addressed the challenge of affordable housing. Like Boston and Cambridge, it has adopted an inclusionary zoning ordinance that requires any residential development of greater than 8 units to include affordable units. [Testimony of Somerville witness Dana LeWinter]. Somerville also imposes linkage payments of \$5.15 per gross square foot on all development in the city of greater than 30,000 square feet. [Id.; Somerville Ex. 15, p. 34]. Those linkage payments fund an Affordable Housing Trust which is used to assist and support the construction of affordable housing in the City. [Id.]

Somerville retained the Metropolitan Area Planning Council (MAPC) to assess the impact of the Wynn Resort on affordable housing in Somerville. The MAPC is, of course, the leading regional planning organization for metro-Boston, and

one of the organizations that the Gaming Commission encourages be consulted in surrounding community negotiations.

The MAPC concluded that the 4000 new jobs located at the Wynn resort, on Somerville's border, would have a significant and damaging impact on affordable housing in Somerville in several ways. The new jobs would drive up the demand for affordable housing units nearby, to the extent that the new employees were in lower wage positions, and would increase inflationary pressure on housing prices in Somerville for higher wage positions at the resort. MAPC based its conclusions on its detailed knowledge of the housing market in Somerville, and in eastern Massachusetts. It recommended that 67 units of affordable housing be constructed to offset the impacts of the Wynn resort. [Somerville Ex. 15; Testimony of Somerville witness Dana LeWinter]

Wynn attempted to rebut the MAPC analysis by asserting that NO employee working at the new casino would seek housing in Somerville, but rather, that the 4000 new workers would come from the ranks of the unemployed already living in the area. [Testimony of Wynn witness Christopher Gordon; Testimony of Wynn witness Suzanne Leckert]. Wynn also relied on analyses of casino locations in Mississippi, Detroit, Atlantic City, Newport (RI), and New Orleans that purported to show no impact on housing prices in the surrounding areas. [Id.; Wynn Ex. 53 at 39]. None of those other casino locations were particularly analogous to the housing conditions characterizing metro-Boston (not surprisingly, since this is the first "Urban Wynn"), and certainly did not reflect the unusually dense and vibrant housing market that characterizes Somerville.



Somerville proposed in its BAFO that Wynn pay a sum of \$560K per year for 5 years into the Somerville Affordable Housing Trust, an amount sufficient to subsidize the construction of the 67 units of affordable housing recommended by the MAPC. [Somerville Ex. 15; Testimony of Somerville witness Dana LeWinter]. Wynn, denying any impact on housing in Somerville, offered no mitigation in its BAFO. It is worth noting that had the Wynn casino been located in Somerville, .01 mile away, Somerville would have imposed on the casino a linkage payment of \$12.5 Million, payable in equal increments over 5 years, to offset the impacts on affordable housing in the City. [Testimony of Somerville witness Dana LeWinter; Somerville Ex. 15, p. 36]. The Somerville BAFO and request seems quite modest in comparison. Given the demonstrated and significant impact on affordable housing in Somerville from the Wynn resort, the Somerville BAFO should be selected.

### **Conclusion**

Somerville has demonstrated that significant impacts to traffic and affordable housing will occur as a result of the Wynn resort. Its BAFO carefully outlines reasonable mitigation for those impacts. Wynn denies any impact on either matter, and offers no mitigation. On this basis alone, the Somerville BAFO should be selected and the arbitration resolved in the City's favor.

### **Comment on the Larger Context of Surrounding Community Mitigation**

The Gaming Act, and the carefully crafted guidelines and rules that the Commission has adopted, are designed to protect host and surrounding communities from the negative impacts of a gaming establishment located within or nearby those communities. The process is also designed to prevent dramatically different treatment of similarly situated communities confronted with similar impacts from a gaming establishment. In other words, the surrounding community process is intended to prevent the arbitrary result that otherwise occurs when a new development is located on the border of two towns, where the "host" gets all the benefits, and the "neighbor" gets all the burdens. Cast in this light, the Somerville BAFO looks even more reasonable, and the Wynn BAFO looks unreasonably paltry.

As noted above, the Somerville BAFO requests specific, one time payments to mitigate traffic and affordable housing impacts. The Wynn BAFO offers no such payments. The Somerville BAFO also requests a one time payment of \$550K to mitigate negative impacts on Somerville restaurants and businesses resulting from competition by the 8 new Wynn restaurants, an impact clearly established by Somerville's economic expert [Somerville Ex. 13, Technical Memorandum from FXM Associates]. The Wynn BAFO offers no such payment.

The remaining difference between the BAFOs concerns annual payments. Somerville requests an annual payment of approximately \$1.71M to mitigate the public safety, air quality, park, and economic impacts visited on Somerville by the

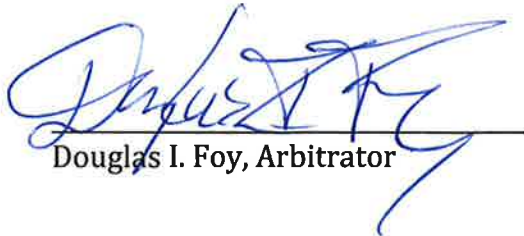
Wynn resort. [Wynn Ex. 83, p. 29]. Wynn offers in its BAFO \$650K in annual payments to cover those impacts. [Id.].

A recent surrounding community agreement struck between the Town of Winthrop and the proposed Mohegan Sun resort is relevant, and enlightening. [Somerville Ex. 22]. Winthrop faces similar challenges to those faced by Somerville: it borders the proposed Revere site, and will be burdened by the economic, public safety, traffic and affordable housing impacts that resort will cause. Winthrop also has one quarter the population of Somerville (18,000 vs. 75,000 citizens), is twice as large geographically (8 square miles vs. 4 square miles), and is thus one-eighth as densely populated as Somerville. The Mohegan Sun surrounding community agreement calls for a \$2M annual payment to Winthrop to offset the impacts caused by the casino. [Id., p. 3].

Also note that Everett, the host community here, will be receiving \$20-30 Million in annual payments from the Wynn resort. Somerville, 200 yards away from the Everett site and bearing many of the same impacts or more, would receive \$650,000 a year under the Wynn BAFO.

Everett \$20-30 Million; Winthrop \$2 Million; Somerville \$650K? Surely this is not the carefully balanced and equitable treatment of surrounding community impacts that the Gaming Act and the Commission contemplate. Somerville's request for \$1.71M annually is rather modest in light of the treatment of Everett and Winthrop. It is certainly reasonable and equitable.

For all of these reasons, the Somerville BAFO is far more equitable and finely tuned to the significant impacts imposed by the Wynn casino, and should be selected as the prevailing BAFO in this arbitration.



Douglas I. Foy, Arbitrator

Date: June 9, 2014

**SURROUNDING COMMUNITY AGREEMENT**

**By and Between the City of Somerville, Massachusetts and Wynn MA, LLC**

This Surrounding Community Agreement (this "Agreement") is made and entered into as of May [ ], 2014 (the "Effective Date"), by and between the City of Somerville, Massachusetts ("Somerville"), a municipal corporation organized under the laws of the Commonwealth of Massachusetts, with principal offices located at 93 Highland Ave Somerville, MA 02143, acting by and through its Mayor, and Wynn, MA LLC ("Wynn"), a limited liability company organized under the laws of the State of Nevada, with principal address and offices located at 3131 Las Vegas Boulevard South, Las Vegas, Nevada 89109. Hereafter, the parties may also be collectively referred to as the "Parties".

**GENERAL RECITALS**

Pursuant to Chapter 194 of the Acts and Resolves of 2011, and Commonwealth of Massachusetts General Laws Chapter 23K, the Massachusetts Gaming Act (the "Act"), Wynn has applied to the Massachusetts Gaming Commission (the "Commission") for a Category 1 gaming license to develop a luxury hotel and destination resort on the site (the "Project Site") depicted in Exhibit A in Everett, Massachusetts (the "Project");

And whereas, Somerville may be impacted by the development of the Project, and the Act and regulations relating thereto, including 205 CMR 125.00 *et seq.*, permit Wynn to enter surrounding community agreements to address surrounding community impact as well as demonstrate advancement of the Act and public support for its proposed development;

And whereas, Wynn desires to mitigate any adverse impacts from the development and operation of the Project through the means described herein in accordance with the Act, and Somerville desires to mitigate any anticipated adverse impacts from the development and operation of the Project through the means described herein, and to work proactively with Wynn to capitalize on the unique nature of Somerville's community resources;

Accordingly, in consideration of the terms and conditions set forth herein and to effectuate the purposes set forth above the Parties enter this Agreement and hereby agree to be bound by the terms and conditions set forth herein.

**TERMS AND CONDITIONS**

**1. Stipulations of Known Impacts**

**1.1.** The Parties intend that this Section 1 shall be deemed the "stipulations of known impacts" that are required to be included in this Agreement pursuant to Section 15(9) of Chapter 23K.

**1.2.** The Parties acknowledge and agree that the proximity of the Project to the Assembly Row and Assembly Square developments and the desire to cross-promote the projects may result in additional pedestrian and vehicular traffic in Somerville. The projects identified in the provisions in this Agreement regarding infrastructure improvements will mitigate such impacts and remedy longstanding background traffic conditions.

**1.3.** The Project may have an impact on municipal services and require additional expenditures by Somerville in order to provide such services. Wynn's payments to Somerville under this Agreement will provide Somerville with adequate resources to mitigate any such impacts and Somerville acknowledges and agrees that such payments adequately mitigate all such impacts.

## **2. Business Impact**

**2.1.** The Parties recognize and agree that the Project is likely to provide certain opportunities for the local business community and, in particular, Assembly Row and Assembly Square. The Parties will work together to communicate with the local business community to ensure that the community is best prepared to take advantage of these opportunities. In furtherance thereof, contingent upon the receipt of an unconditional, non-appealable License, Wynn has agreed to pay to Somerville an annual payment of One Hundred Fifty Thousand Dollars (\$150,000.00), which amount shall be due on or before the ninetieth (90<sup>th</sup>) day following the opening of the Project to the general public and on each annual anniversary thereof. The annual payment shall continue for as long as Wynn, or any parent, subsidiary or related entity, owns, controls or operates a commercial gaming facility at the Project Site. The purpose of this annual payment is to enable Somerville, in coordination with Wynn, to develop initiatives to prepare local businesses to take advantage of the opportunities provided by the Project.

**2.2.** In recognition of the above, and contingent upon the receipt of an unconditional, non-appealable License, the Parties have agreed as follows:

**2.2.A.** On an annual basis, subject to its obligations to the City of Everett, Wynn shall make a good faith effort to utilize local contractors and suppliers for the construction and future operations of the Project and shall afford such opportunities to local vendors when such contractors and suppliers are properly qualified and price competitive. Such efforts shall include actively soliciting bids from Somerville vendors through local advertisements, coordination with the Somerville Chamber of Commerce and such other reasonable measures as Somerville may from time to time request. In furtherance thereof, following the opening of the Project to the public, on an annual basis, Wynn agrees to use good faith efforts to purchase at least Ten Million Dollars (\$10,000,000.00) of goods and services from vendors with a principal place of business in Somerville. Wynn will conduct a business-to-business workshop in Somerville to familiarize community businesses with the full range of vendor opportunities related to Project and assist local businesses to become "Wynn certified" in order to participate in this local purchasing program. Wynn certification represents a Wynn specific vendor qualification program that requires vendors to be pre-qualified, which may include but not be limited to background checks and other screening methods utilized to qualify vendors. Wynn shall, on at least an annual basis, consult with the Somerville Chamber of Commerce and such other business groups or associations as Somerville may reasonably request to identify opportunities in furtherance of the objectives set forth in this Section. Wynn shall, on an annual basis upon request by Somerville, meet with Somerville and provide an accounting of its expenditures within Somerville under this Section 2.2.A. Notwithstanding anything herein to the contrary, Wynn's obligations under this Section 2.2.A. shall be subject to the availability of such goods and services at a level of quality that is consistent with the Project specifications and on commercially reasonable terms.

**2.2.B.** Wynn agrees that it will include as part of its rewards, frequent guest, loyalty and/or similar programs offered by Wynn to use vouchers and gift certificates to Somerville businesses. Wynn commits to purchase and issue at least Twenty Five Thousand Dollars (\$25,000.00) in such vouchers and gift certificates annually from local businesses for use in its employee and customer loyalty programs. The first annual purchase of the above vouchers and gift certificates by Wynn shall occur ninety (90) days after the opening of the Project to the general public and on each annual anniversary thereof.

**2.3.** In recognition of the unique cultural, historical and entertainment attractions near the Project, Wynn has developed a proprietary concierge program for the purpose of cross-marketing these attractions. Somerville has agreed to participate in this cross-marketing venture for the purpose of promoting its local businesses and other attractions. Prior to the opening of the Project, the Parties will work together and in coordination with Somerville's Chamber of Commerce to include Somerville businesses in the Concierge Program so that they may benefit from the Project.

### **3. Jobs Program**

**3.1.** The Parties acknowledge that Somerville desires to help its community members and residents who are interested in attaining employment at the Project. The Parties agree that Somerville's demographic is an appropriate, suitable, desirable and employable work force for the Project, and therefore it is mutually beneficial to provide a structured program to educate Somerville's residents about available employment opportunities.

**3.2.** In recognition of the above, the Parties agree as follows:

**3.2.A.** Wynn will work in a good faith, legal and non-discriminatory manner with the Project's construction manager to give preferential treatment to qualified Somerville residents for contracting, subcontracting and servicing opportunities in the development and construction of the Project. Following the engagement of a construction manager, Wynn shall, in coordination with Somerville, advertise and hold at least one event for Somerville residents at venues to be approved by Somerville, at which it will publicize its construction needs and explain to attendees the process by which they may seek to be hired in connection with the construction of the Project.

**3.2.B.** Prior to beginning the process of hiring employees (other than internally) for the Project, Wynn shall, in coordination with Somerville, advertise and hold at least one event for Somerville residents at venues to be approved by Somerville, at which it will publicize its hiring needs and explain to attendees the process by which they may seek to be hired in connection with the Project. In addition, Wynn will work with non-profit entities to develop a job readiness training program that will be available to residents of Somerville. In seeking to fill vacancies at the Project, Wynn will give preference to properly qualified residents of Somerville, to the extent that such a practice and its implementation is consistent with Federal, State or Municipal law or regulation.

**3.2.C.** Notwithstanding anything herein to the contrary, in recognition of Wynn's host community agreement with the City of Everett and Wynn's surrounding community agreement with the City of Malden, the Parties acknowledge and agree that the preference provided in this Section 3 shall be secondary to the preferences provided by Wynn in such agreements. In addition, the Parties acknowledge and agree that the preferences provided in this Section 3 shall be on a pooled basis with any other community that enters into a surrounding community agreement with Wynn.

**3.2.D.** Wynn agrees to work with Somerville on an annual basis to identify prospective, qualified Somerville employees to effectuate the terms and conditions herein.

### **4. Responsible Gaming**

**4.1.** The Parties shall coordinate in good faith to promote responsible gaming and to develop resources available to residents of Somerville to address problem gambling. In furtherance thereof, Wynn agrees that it will use commercially reasonable efforts to not send any marketing materials to residents of Somerville who have opted to participate in Wynn's self-exclusion or self-limitation programs that enable individuals to opt out of receiving marketing materials. In addition, Wynn shall provide Somerville and its residents with access to any compulsive gambling services associated with the Project and shall make available to Somerville its resources and employees as may be reasonably necessary to publicize the services and conduct any educational programs. Further, to address any unanticipated adverse impacts, Wynn agrees to reasonably support for Somerville's requests to the Commission or other state agencies for grants from the Community Mitigation Fund established under the Act.

### **5. Transportation Impacts**

**5.1.** Based on the trip distribution pattern for the Project and a review of both the local and regional transportation system, Wynn studied the following intersections in Somerville and contingent upon the receipt by Wynn of an unconditional, non-appealable License, Wynn agreed to complete all necessary improvements as determined in accordance with the MEPA process:

1. I-93 Southbound Off-ramp/I-93 Northbound On-ramp/Mystic Avenue (Route 38), Somerville;
2. I-93 Northbound Off-ramp/McGrath Highway (Route 28), Somerville;
3. Mystic Avenue (Route 38)/McGrath Highway (Route 28), Somerville;
4. Mystic Avenue (Route 38)/I-93 Southbound On-ramp Diverge, Somerville;
5. Broadway/McGrath Highway (Route 28), Somerville; and
6. Mystic Avenue (Route 38)/I-93 Northbound On-ramp Diverge, Somerville.

**5.2.** The Parties acknowledge and agree that a comprehensive traffic solution for Sullivan Square, located adjacent to Somerville, which is already severely impacted as a result of other developments, is highly advisable and beneficial to Somerville and other neighboring communities. In recognition thereof and contingent upon the receipt by Wynn of an unconditional, non-appealable License, the Parties agree that Wynn will work with Somerville and other interested neighboring communities to implement improvements to Sullivan Square estimated at approximately Six Million Dollars (\$6,000,000). Wynn shall implement all such improvements in accordance with the Massachusetts Environmental Policy Act ("MEPA"). In addition, Wynn will cooperate with efforts by Somerville and other interested neighboring communities to seek funding from the Transportation Infrastructure and Development Fund (estimated to be capable of yielding in excess of \$200 million) for a permanent solution for Sullivan Square.

**5.3.** The Parties acknowledge and agree that a comprehensive traffic solution for Wellington Circle, which is already severely impacted as a result of other developments, including, without limitation, Stations Landing and Assembly Row, is highly advisable and beneficial to Somerville and other neighboring communities. In recognition thereof and contingent upon the receipt by Wynn of an unconditional, non-appealable License, the Parties agree that Wynn will work with Somerville and other interested neighboring communities to commission a permanent improvements study of the Wellington Circle, and Wynn will fund such study. Following the results of the permanent improvements study, Wynn will fund up to twenty-five percent (25%) of the concept design (up to One Million Five Hundred Thousand Dollars (\$1,500,000.00)). Following the completion of the study and design, Wynn will cooperate with efforts by Somerville and other interested neighboring communities to seek funding from the Transportation Infrastructure and Development Fund (estimated to be capable of yielding in excess of \$200 million) for a permanent solution for Wellington Circle. Pending completion of the study and design, Wynn will fund and undertake interim improvements to Wellington Circle in accordance with MEPA.

**5.4.** The Parties acknowledge and agree that the proximity of the Project to the Assembly Row and Assembly Square developments and the desire to cross-promote the projects may result in additional pedestrian and vehicular traffic in Somerville. As a result, the Parties recognize and agree that there may be a need for increased police, fire, traffic and public works personnel to maintain roadway safety due to increased use. In recognition of the above, and contingent upon the receipt of an unconditional, non-appealable License, Wynn has agreed to pay to Somerville an annual payment of Two Hundred Fifty Thousand Dollars (\$250,000.00), which amount shall be due on or before the ninetieth (90<sup>th</sup>) day following the opening of the Project to the general public and on each annual anniversary thereof. The annual payment shall continue for as long as Wynn, or any parent, subsidiary or related entity, owns, controls or operates a commercial gaming facility at the Project Site. The purpose of this payment is to enable Somerville to fund staffing and other public safety initiatives related to increased pedestrian and vehicular traffic in Somerville and additional costs, if any, incurred in mutual aid responses to the Project. In addition, to facilitate pedestrian and bicycle access, Wynn has committed to increase access and capacity trails and park land along the Mystic River and Broadway. Wynn will coordinate the signage on the Project to create continuity for pedestrian and bicycle use of such pathways and will participate in regional efforts to enhance and develop such path ways.



**5.5.** The Parties acknowledge and agree that Wynn intends to implement a water transportation program to service the Project. The Parties will work together in good faith to facilitate water transportation connections between Somerville and, in particular, the Assembly Row and Assembly Square developments, and the Project. In furtherance thereof, contingent upon the receipt of an unconditional, non-appealable License, Wynn has agreed to pay to Somerville an annual payment of One Hundred Fifty Thousand Dollars (\$150,000.00), which amount shall be due on or before the ninetieth (90<sup>th</sup>) day following the opening of the Project to the general public and on each annual anniversary thereof. The annual payment shall continue for as long as Wynn, or any parent, subsidiary or related entity, owns, controls or operates a commercial gaming facility at the Project Site. The purpose of this annual payment is to enable Somerville to make certain improvements to facilitate water transportation and to fund staffing and other public safety initiatives related to increased use of water transportation. In addition, Wynn will participate in regional discussions regarding a walk/bike connection across the Mystic River to be built on or in the direct vicinity of the dam structure and will consider, in good faith, contributing, with other neighboring communities and businesses, to the design and construction of a connection.

**5.6.** Except with Somerville's express permission, Wynn will not use any location in Somerville as a satellite pick-up/drop-off site to and from the Project for its employees generally; provided, however, Wynn, in coordination with Somerville, may provide transportation for employees who are residents of Somerville. In addition, Wynn will not have stops for so-called "line-runs," or regularly scheduled bus or shuttle routes, in Somerville, provided that, subject to meeting legal requirements, Wynn will be able to provide transportation to patrons which whom it has established a relationship and will be able to provide transportation home to any patron residing in Somerville.

**5.7.** Except with Somerville's express permission, neither Wynn nor any of its affiliates, successors or assigns shall construct a satellite parking or other facility associated with the Project within Somerville.

**5.8.** In an effort to limit the number of casino visitors leaving the facility who should not be operating a motor vehicle, as part of its training program, Wynn agrees to incorporate a training program (e.g., TIPS (Training Intervention Procedures and Services Program)) for alcohol servers and other employees.

## **6. Somerville Community Fund**

**6.1.** The Parties recognize the importance of supporting the Somerville community and share a mutual desire to utilize this Agreement to provide ongoing support to the many important non-profit organizations throughout Somerville.

**6.2.** In recognition of the above, and contingent upon the receipt of an unconditional, non-appealable License, Wynn has agreed to pay to Somerville an annual payment of One Hundred Thousand Dollars (\$100,000.00), which amount shall be due on or before the ninetieth (90<sup>th</sup>) day following the opening of the Project to the general public and on each annual anniversary thereof. The annual payment shall continue for as long as Wynn, or any parent, subsidiary or related entity, owns, controls or operates a commercial gaming facility at the Project Site. The Mayor of Somerville agrees to establish a Committee tasked with reviewing requests for assistance from qualified organizations and making determinations on the awarding of any portion of this payment. The purpose of this payment is to support the community's broad range of cultural events, street fairs, art shows, festivals and related activities that promote the community's heritage, quality of life, recreational and cultural activities.

## **7. Other Obligations**

**7.1.** Somerville, in coordination with Wynn, shall exercise best efforts to petition the Massachusetts Gaming Commission for monies made available under the Act, including, but not limited to, those monies in the Community Mitigation Fund and the Transportation Infrastructure Fund.

7.2. Wynn shall, on a periodic basis, upon the reasonable request of Somerville, attend meetings organized by Somerville, at which it will address questions regarding the Project.

## **8. Reimbursement of Consulting and Legal Fees**

8.1. In accordance with the terms of 205 CMR 114.03(2)(a), Wynn agrees to reimburse Somerville for actual, documented out-of-pocket expenses incurred by Somerville with respect to the negotiation of this Agreement. The foregoing obligation is contingent upon the receipt by Wynn a Letter of Authorization (in accordance with 205 CMR 114.03(2) to be filed by Somerville which shall include a full and complete copy of each consulting agreement entered into by Somerville or its representative pursuant to which Somerville is seeking reimbursement. Notwithstanding the foregoing, in no event shall Wynn's obligation hereunder exceed One Hundred Fifty Thousand Dollars (\$150,000).

## **9. Additional Terms and Conditions**

9.1. **Term.** This Agreement shall remain in effect for such time as Wynn maintains, operates and controls the Project pursuant to the License.

9.2. **Definitions.** All definitions contained in the Act and regulations promulgated thereto are incorporated herein by reference as if fully set forth herein and shall be applicable hereto where relevant.

9.3. **Non-Transferrable - Non-Assignable.** Neither Wynn nor Somerville may transfer or assign its rights or obligations under this Agreement without the prior written consent of the other Party. In the event of a sale, transfer, assignment and/or conveyance of an unconditional, non-appealable License by Wynn to an unrelated entity, the Parties agree that this surrounding community agreement shall be treated consistently with all other surrounding community agreements as prescribed and required by the Commission in granting such transfer or assignment.

9.4. **Captions and Headings.** The captions and headings in this Agreement are inserted for convenience of reference only and in no way shall affect, modify, define, limit or be used in construing the scope or intent of this Agreement or any of the provisions hereof. Where the context requires, all singular works in the Agreement shall be construed to include their plural and all words of neuter gender shall be construed to include the masculine and feminine forms of such words.

9.5. **Severability.** If any term of this Agreement or the application thereof to any person or circumstance shall, to any extent, be determined by a court of competent jurisdiction to be invalid or unenforceable, the remaining provisions of this Agreement, or the application of such term to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and this Agreement shall otherwise remain in full force and effect.

9.6. **Amendments-Modifications.** No amendment or modification of this Agreement shall be deemed valid unless mutually agreed upon and duly authorized by the Parties and effectuated by a written amendment signed by the Parties.

9.7. **Amendments-Modifications to the Act and Gaming Regulations.** The Parties acknowledge that from time to time following commencement of this Agreement that additional regulations may be promulgated, and/or statutes and regulations may be amended from time to time. The Parties agree to be bound by said amended and/or modified regulations and statutes, and further agree to renegotiate any terms and conditions contained herein which may be substantially and materially modified by any said amended and/or modified regulations and statutes.

9.8. **Compliance with Massachusetts and Federal Laws.** In the performance of this Agreement, Wynn agrees to comply with and shall use reasonable efforts to cause all agents, contractors, subcontractors and suppliers to comply

with all applicable laws, ordinances, regulations and orders from time to time in effect relating to nondiscrimination, equal employment opportunity, contract compliance and affirmative action.

**9.9. Organizational Status in State of Organization and in the Commonwealth of Massachusetts.** Wynn acknowledges that it shall notify Somerville promptly in writing in the event of any change in its organizational status and/or standing under the laws and regulations of its State of Incorporation and under the laws and regulations of the Commonwealth of Massachusetts. Wynn agrees to remain in good standing and maintain adherence to all laws, regulations and requirements applicable to licenses and permits issued to Wynn pursuant to the Act.

**9.10. Notices.** All notices required or permitted to be given hereunder shall be in writing and delivered by hand or courier service; by a nationally-recognized delivery service, by mailing, postage prepaid via certified mail, to the following addresses, or to other addresses as may be furnished by the parties from time to time in writing hereafter: In the case of notice to Somerville:

To: [insert]

with copies to: [insert]

In the case of notice to Wynn:

To: Wynn MA, LLC  
 c/o Wynn Resorts, Limited  
 3131 Las Vegas Blvd. South  
 Las Vegas, NV 89109  
 Attn: Kim Sinatra, Sr. VP and General Counsel

and in the case of either Party, to such other address as shall be designated by written notice given to the other Party in accordance with this section. Any such notice shall be deemed given when so delivered by hand, by courier delivery on date of service, or if mailed, when delivery receipt is signed by the party designated herein as accepting notice. Service to Somerville shall not be deemed effective unless accomplished during normal business hours and days of operation of Somerville. Each Party shall ensure that the other party is notified in writing immediately of any changes in the contact and address information above.

**9.11. Failure and Waiver.** Failure of either Party to require strict performance of the terms and conditions herein shall not be deemed a waiver of any rights and remedies available to such Party, and shall not be deemed a waiver of subsequent default or nonperformance of said terms or conditions in the future. No actual waiver by a Party of performance of any terms, conditions or obligations under this Agreement shall be effective unless agreed upon and in writing signed by such Party. No waiver of either Party to require strict performance of any terms and conditions shall constitute a waiver of such Party's right to demand strict compliance with the terms and conditions of this Agreement.

**9.12. Notice of Default and Rights in the Event of Default.** Each Party shall have thirty (30) days from receipt of written notice of failure, violation or default to cure said failure, violation or default. If such failure, violation or default cannot in good faith be cured within such thirty (30) day period, the defaulting Party shall notify the other Party immediately in writing and diligently pursue curing said default to completion. Except as expressly provided herein, the rights and remedies of the Parties, whether provided by law or by this Agreement, shall be cumulative, and the exercise by a Party of any one or more of such remedies shall not preclude the exercise by it, at the same or different times, of any other such remedies for the same default or breach or of any of its remedies for any other default or breach by the other Party.

**9.13. Governing Law and Forum in Event of Dispute.** This Agreement shall be subject to, governed under, and construed in accordance with the laws and regulations of the Commonwealth of Massachusetts, including any amendments thereto which may occur from time to time following execution of this Agreement, and said laws and regulations shall govern the validity, enforcement of terms, conditions, rights and obligations, and performance of this Agreement. The Parties further agree that any legal proceedings whether in law or equity arising hereunder shall be instituted in the Commonwealth of Massachusetts Middlesex County Superior Court. The prevailing Party in any action shall recover its litigation costs (including attorneys' fees and expert witness fees). Notwithstanding the foregoing provisions for forum selection, the Parties agree that before resorting to any formal dispute resolution process concerning any dispute arising from or in any way relating to this Agreement, the Parties will first engage in good faith negotiations in an effort to find a solution that services their respective and mutual interests.

**9.14. Studies and Triggering Events.** Section 71 of the Act requires the Commission to establish an annual research agenda to assist in understanding the social and economic effects of casino gambling in Massachusetts and to minimize the harmful impacts. Section 71 identifies three essential elements of this research agenda: (1) understanding the social and economic effects of expanded gambling, (2) implementing a baseline study of problem gambling and the existing prevention and treatment programs that address its harmful consequences, and (3) obtaining scientific information relative to the neuroscience, psychology, sociology, epidemiology and etiology of gambling. In furtherance thereof, the Commission has commissioned a \$3.6 million baseline study to be conducted by the University of Massachusetts Amherst School of Public Health and Health Science on the social and economic impacts of casino gambling in Massachusetts. Additional studies will be undertaken once the gaming establishments are open for the specific purpose of determining impacts. In addition, consistent with the regulations promulgated by the Commission and, in particular, 205 CMR 127.00 Reopening Mitigation Agreements, Wynn and Somerville shall negotiate in good faith to determine whether an amendment to this Agreement is necessary if a "triggering event" (as defined in 205 CMR 127.02) occurs.

**9.15. Escalation of Payments.** Beginning with the sixteenth (16<sup>th</sup>) annual payment made by Wynn to Somerville, the annual payments identified on Exhibit B attached hereto and incorporated herein by this reference shall increase by five percent (5%), as set forth in Exhibit B. Thereafter, during the term of this Agreement, such five percent (5%) increase shall be applied to the applicable annual payments after the payment of every five (5) annual payments as more specifically set forth in Exhibit B.

IN WITNESS WHEREOF, the parties, by and through the signatories below, acknowledge they are duly authorized and have the full power, right and authority to enter into, execute, deliver, and perform the terms and conditions of this Agreement, and hereto have hereunto set their hands and seals on this [\_\_\_\_] day of May, 2014.

City of Somerville:

Wynn MA, LLC

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Mayor Joseph A. Curtatone

**Exhibit A**

[INSERT SITE MAP]

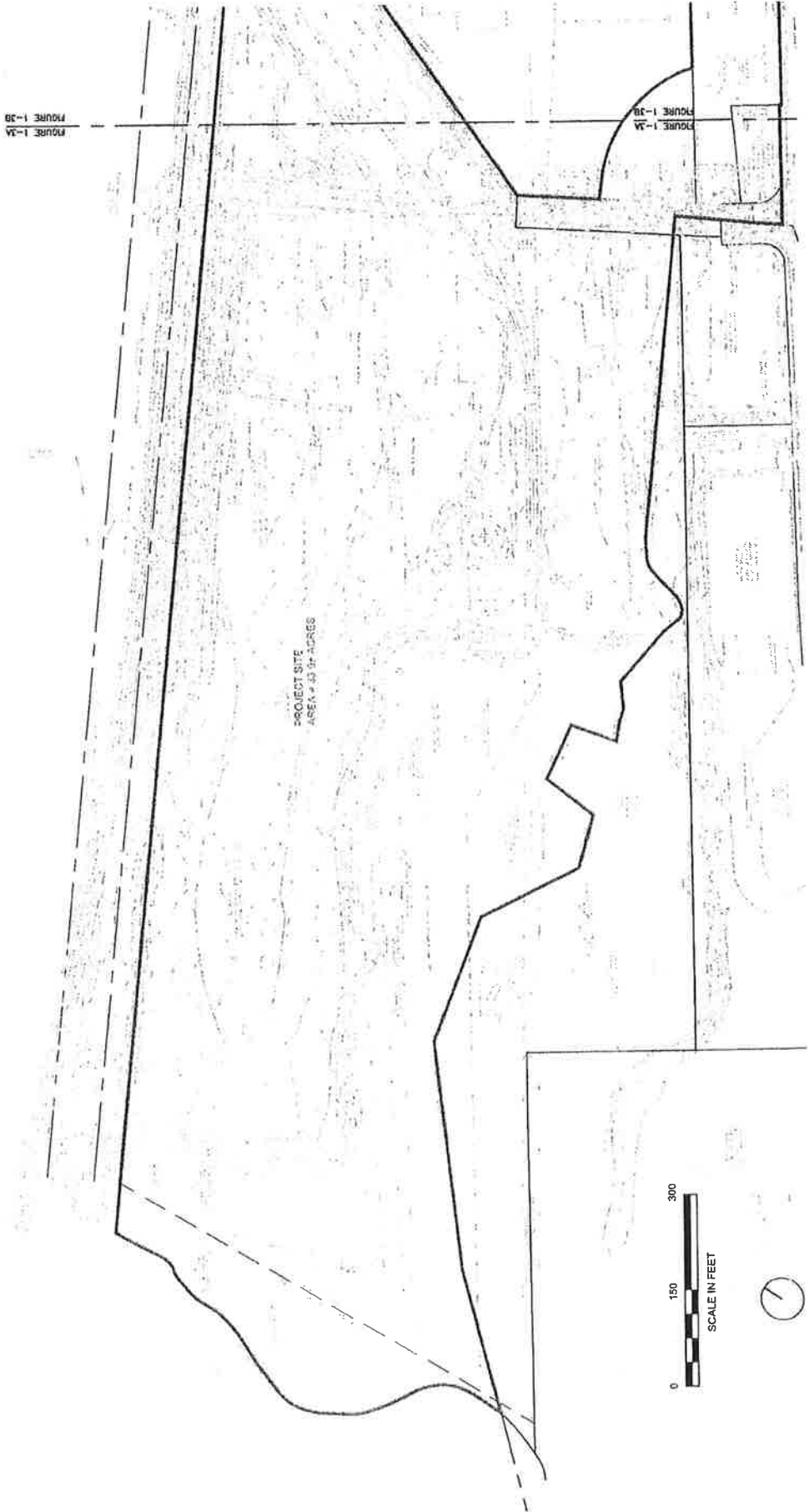


Figure 1-3  
Existing Site Conditions (1 of 2)  
Source: Feldman Professional Land Surveyors, 2013

Exhibit B

Beginning with the sixteenth (16<sup>th</sup>) annual payment, each of the annual payments set forth herein shall increase by five percent (5.0%) as set forth below:

	First 15 Payments	Subsequent Five Payments, Beginning with 16 <sup>th</sup> Annual Payment
Business Development Fund	\$150,000.00	\$157,500.00
Public Safety Payment	\$250,000.00	\$262,500.00
Non-Profit Contribution	\$100,000.00	\$105,000.00
Water Transportation	\$150,000.00	\$157,500.00
TOTAL	\$650,000.00	\$682,500.00

Thereafter, during the term of this Agreement, after the payment of five additional payments, each of the annual payments set forth hereunder shall increase by five percent (5.0%) as set forth in the example below:

	20th Annual Payment	Subsequent Five Payments, Beginning with 21st Annual Payment
Business Development Fund	\$157,500.00	\$165,375.00
Public Safety Payment	\$262,500.00	\$275,625.00
Non-Profit Contribution	\$105,000.00	\$110,250.00
Water Transportation	\$157,500.00	\$165,375.00
TOTAL	\$682,500.00	\$716,625.00

## 4 – NO DOCUMENTS



## **5(a) – NO DOCUMENTS**



# MASSACHUSETTS GAMING COMMISSION

Central Management System  
Digital Regulation – using data to regulate

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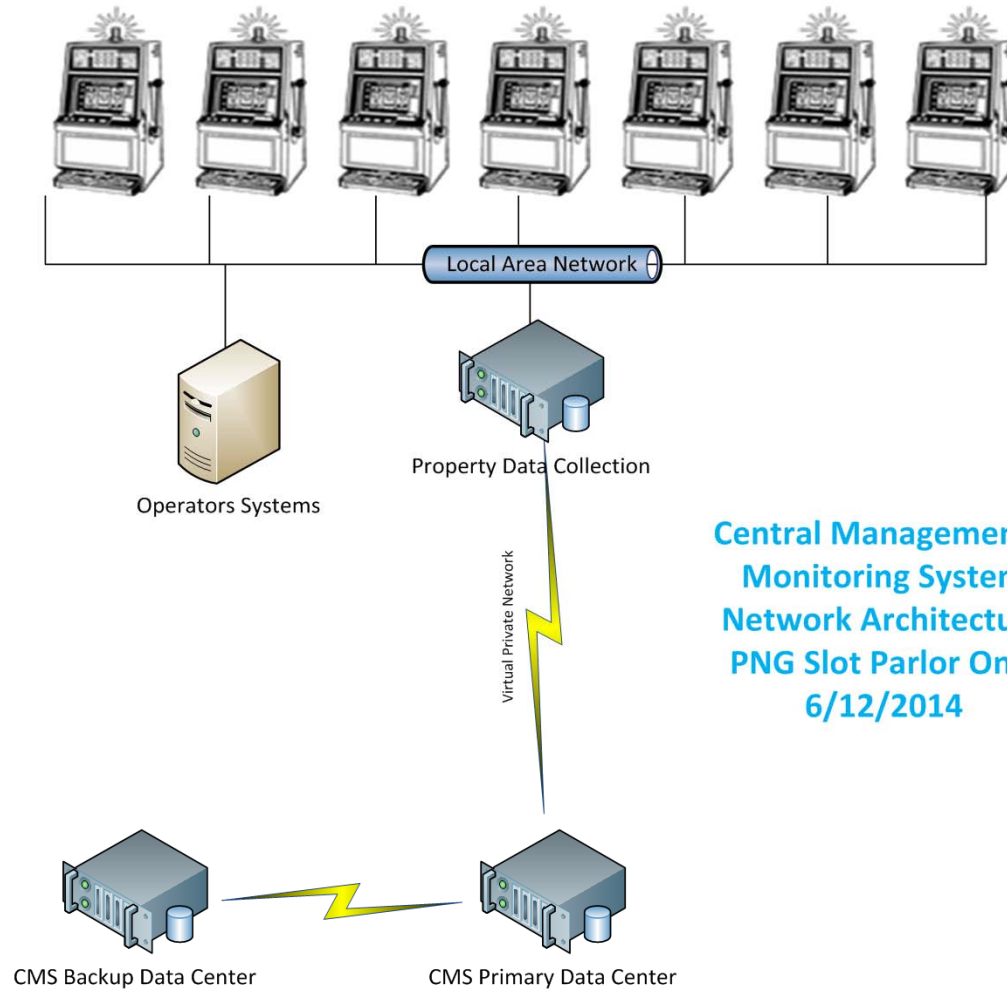
# CENTRAL MANAGEMENT / MONITORING SYSTEM

## DIGITAL REGULATION – USING DATA TO REGULATE

- Since January 2014 a three member MGC Central Management System (CMS) Procurement Management Team (PMT) representing Finance and Accounting, Licensing, and Information Technology has been conducting due diligence into the options for a technology based regulatory model for MGC.
- These “systems” capture Electronic Gaming Device (EGD) data in each facility, and replicate / concatenate that data in a central location from numerous facilities.
- The PMT has met with three vendors and visited a location where regulators use a CMS to regulate (Ohio, Delaware, and Rhode Island).
- Penn National Gaming recommended in a May 22 letter that MGC not use a CMS as a component of our regulatory model.
- Staffing models – Using a CMS would require a 24x7 Network Operations Center with 2-3 FTE’s per shift. CMS operations in a 3-4 venue scenario would require approximately 12-15 FTE’s. A non-CMS (field audit and use of property systems) would require approximately 6 Gaming Lab Field Support Technicians and 6 Internal Field Auditors.

# CENTRAL MANAGEMENT / MONITORING SYSTEM

## DIGITAL REGULATION – USING DATA TO REGULATE



Banks of Electronic Gaming Devices (EGD) are connected to the gaming facility local area network. If the operator has SAS based devices a SMIB (System Management Interface Board) may be required at each EGD to split the data feed.

Data from each EGD is sent to the Central Management System and the operators management system. On premise CMS servers collect the real time data and periodically replicate to the remote CMS Data Center.

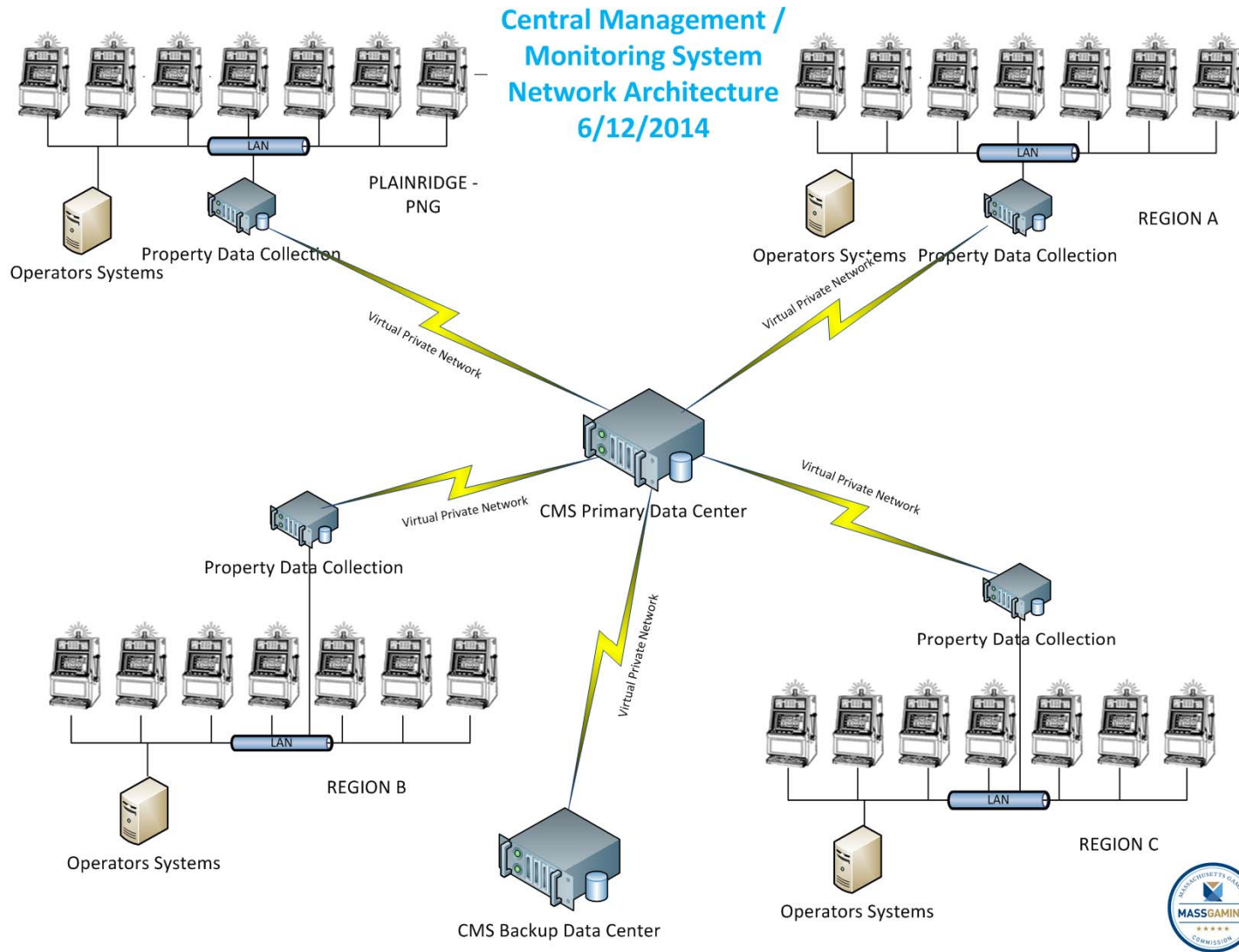
**Central Management /  
Monitoring System  
Network Architecture  
PNG Slot Parlor Only  
6/12/2014**

Data from facility is maintained in primary and secondary locations by the CMS Vendor.



# CENTRAL MANAGEMENT / MONITORING SYSTEM

## DIGITAL REGULATION – USING DATA TO REGULATE



# CENTRAL MONITORING SYSTEM

The CMS Procurement Management team recommends the Commission consider the use of a central monitoring system for regulating the slots operations of licensees. The central monitoring system performs the following high level functions:

- Verifies the location of each physical asset and the software operating in the asset
- Verifies only approved software is operating on a gaming floor
- Allows for post audit of game play and payouts of specific machines and software packages
- Provides a daily statement of dollars played and paid by individual machine to calculate daily taxes due to the Commonwealth
- Generates a daily or weekly tax bill/statement

# FINANCIAL OVERSIGHT

To verify revenue the Commonwealth will use multiple sources to provide financial oversight of the licensee operations including but not limited to:

- Daily comparison of CMS reports to licensee slots accounting system reports
- Required licensee annual audit and review of audited financials by investigations and enforcement bureau
- Development and promulgation of internal control regulations for financial and cash operations of licensees
- Review of internal controls and regular testing by gaming agents MGC finance staff

# CENTRAL MANAGEMENT SYSTEM

## Accounting

- Flexible Accounting periods and business day configuration
- Flexible Commission and taxation configuration
- Accounting / Reporting based on gross meter snapshots
- The difference between two consecutive daily checkpoint snapshots is the net meter amount
- Net meters are used to calculate derivative accounting meters
- Game meters – Game meters are also recorded. This allows for verification of performance on a game by game basis for multi-game machines. This also allows for verifying theoretical vs. actual payout on a game by game (paytable by paytable)



# CENTRAL MANAGEMENT SYSTEM

## Real Time Monitoring

- Events are logged locally to an premise site controller / server and uploaded to the central system periodically.
- Monitoring the status of EGMs along with alarms (events), hand pays and real time meters.
- Meters can be configured to be sent to the central system on a near real time basis.
- Monitored events can be configured by severity. Critical events can be uploaded to the central system immediately and called out on the Real Time Monitor in the Network Operations Center. Other events, such as game idle can be ignored.
- Graphical view of the casino floor with EGD's - monitor and report each EGD on the floor individually, by group or as a whole.
- Alarms and colors designate status and events on individual EGD's

# CENTRAL MANAGEMENT SYSTEM

## Real Time Monitoring (continued)

CMS Monitors Electronic Gaming Devices (EGD) for exceptions and conditions including:

### EGD is in **Disabled** status:

- Signature check failed
- Paytable check failed
- Invalid RAM Clear
- EGD is reporting zero meters

### EGD is in **Not Connected** status:

- System Management Interface Board (SMIB) has lost communication with the EGD
- Site Controller has lost communication with the SMIB

Specific critical events are pro-actively reviewed including: Memory Faults, Logic Door Open, Life to Date Meters Reset

# CENTRAL MANAGEMENT SYSTEM

## Finance and IEB Reporting

- Monitoring Reports – Meters, Meter Exceptions, and Events
- Accounting Reports – Accounting and Financial Data, Money Reconciliation
- Audit Reports – Changes to EGM and System Configuration
- Statistical Reports – Theoretical vs. Actual
- Performance Reports – Weekly, Monthly, Averages
- Voucher Reports
- Payout Reporting – Jackpots, local, progressive, wide area
- Slot Accounting – Ticket in / Ticket out (TITO)
- Forensic Reporting – Point in time events for IEB Investigations (Patron complaints, video surveillance follow-up, etc.)

# CENTRAL MANAGEMENT SYSTEM

## Addendum - SAS & G2S Protocols

Feature	G2S	SAS
Meter Collection	Available	Available
Configuration	Extended	Limited
Event Collection	Extended	Limited
Validations/TITO	Available	Available
Downloading	Available	No Support
Player User Interface	Available	No Support/Additional HW Req
Responsible Gaming	Available	No Support
Marketing Messages	Available	No Support
Protocol Security	PKI	Limited
Player Centric Applications	No SMIB	SMIB Required
Future Protocol Support	On-Going	NO SUPPORT/SUNSET

Row Labels	FY15 Initial Rec	Change	FY15 Current Rec	Change Notes
<b>10500001 Mass. Gaming Commission</b>				
<b>Budget</b>				
AA-REGULAR EMPLOYEE COMPENSATION	4,975,166.60	297,884.38	5,273,050.98	Addition of one counsel and two financial investigators
BB-REGULAR EMPLOYEE RELATED EXPEN	80,900.00	-	80,900.00	
CC-SPECIAL EMPLOYEES	131,412.50	-	131,412.50	
DD-PENSION & INSURANCE RELATED EX	1,348,548.83	82,454.40	1,431,003.23	Fringe costs for three FTEs
EE-ADMINISTRATIVE EXPENSES	503,569.71	-	503,569.71	
GG-ENERGY COSTS AND SPACE RENTAL	633,157.52	-	633,157.52	
HH-CONSULTANT SVCS (TO DEPTS)	6,060,200.00	(380,338.78)	5,679,861.22	Decrease from consultants for costs of one counsel and two financial investigators. If hire dates are missed money can be moved back to consultants.
JJ-OPERATIONAL SERVICES	2,935,016.31	-	2,935,016.31	
KK-EQUIPMENT PURCHASE	161,500.00	-	161,500.00	
LL-EQUIPMENT LEASE-MAINTAIN/REPAR	33,458.00	-	33,458.00	
MM-PURCHASED CLIENT/PROGRAM SVCS	35,000.00	-	35,000.00	
PP-STATE AID/POL SUB	3,841,814.00	-	3,841,814.00	
UU-IT Non-Payroll Expenses	3,816,811.00	-	3,816,811.00	
<b>Budget Total</b>	<b>24,556,554.47</b>	<b>-</b>	<b>24,556,554.47</b>	
<b>Revenue</b>				
Gaming Control Fund Beginning Balance	14,000,000.00	-	14,000,000.00	
Gaming Employee License Fees	82,500.00	-	82,500.00	
Gaming Service Employee Initial License	75.00	-	75.00	
Grant Collections	700,000.00	-	700,000.00	
Key Gaming Employee	197,500.00	-	197,500.00	
Non-Gaming Vendor	12,000.00	-	12,000.00	
Region A Slot Machine Fee	1,860,000.00	(377,096.00)	1,482,904.00	Assuming award date of 9/12 and \$600 pro-rated for 291 days
Region B Slot Machine Fee	1,800,000.00	-	1,800,000.00	
Region C Phase 1 Investigation Collections	400,000.00	-	400,000.00	
Region C Phase 2 Category 1 Collections	800,000.00	-	800,000.00	
Slots Parlor Slot Machine Fee Phase II Slot	750,000.00	-	750,000.00	
Subcontractor ID Initial License	200.00	-	200.00	
Temporary License Initial License	100.00	-	100.00	
Transfer of Licensing Fees to CMF	(17,500,000.00)	-	(17,500,000.00)	
Vendor Gaming Primary	900,000.00	-	900,000.00	
Vendor Gaming Secondary	150,000.00	-	150,000.00	
Veterans Initial License	100.00	-	100.00	
<b>Revenue Total</b>	<b>4,152,475.00</b>	<b>(377,096.00)</b>	<b>3,775,379.00</b>	
<b>Assessment</b>			<b>20,781,175.47</b>	



May 22, 2014

John R. Glennon  
Chief Information Officer  
Massachusetts Gaming Commission  
84 State Street 10<sup>th</sup> Floor  
Boston, MA 02109

Re: Central Server Issues

Mr. Glennon,

This week several representatives of Penn National Gaming, Inc. (“Penn”) had the opportunity to speak with Executive Director Day regarding several regulatory matters including the use of a Central Server by the Massachusetts Gaming Commission (“MGC”). Mr. Day suggested that I contact you directly regarding our concerns about utilizing a central server. Several casino jurisdictions have opted to require that all casinos operating in their state connect all individual slot machines to a central server that is owned, operated and overseen by the state or a vendor selected by the state (typically SciGames or G-Tech). States that adopted a central server model typically did so in order to conform to the enabling vehicle for gaming in that state (constitutional mandate and/or existing gambling or lottery laws). The reality, supported by Penn’s experience in a number of jurisdictions, is that a central server does not enhance regulatory control and oversight of a casino in contrast to what can be achieved in a non-central server environment. This conclusion is further supported by the fact that the “traditional” gaming markets (Las Vegas and Atlantic City) operate as models of integrity and regulatory stability without the expense or drawbacks of a central system. Our first hand experience strongly suggests that there are material drawbacks to a central server system. Set forth below is an explanation as to why a central server has been utilized in certain jurisdictions and the resulting pitfalls and drawbacks:

1. With the exception of Pennsylvania, the states with central servers are states with “video lottery terminals (VLTS)” and not “slot machines”. In many of these states, gaming could only be expanded as an extension of the lottery, which already operated through its own central server. Accordingly, lottery regulations required a central server for VLTs. As for Pennsylvania, there was no constitutional amendment authorizing casino gaming and slot machines were legalized outside of the lottery framework. That being the case, we believe that the central server was implemented to mirror the lottery model in order to reduce challenges to the new legislation.

2. Massachusetts Category 1 and Category 2 licensees operate over a wide geographic area. Experience dictates that all computer systems occasionally break down. In a

central server environment, if the central server fails, the state runs the risk of bringing down the casino floor at all licensees at once. Losing casino revenue from all casinos in the state at once, even for a few hours, can have a material and adverse impact on casino revenue and, in turn, on local and state tax receipts. In contrast, an individual server environment, problems at one casino are isolated and cannot affect the operation of another, such that system problems are contained and damage is minimized.

3. Reconciliation between the central server and the property controlled casino management system is time consuming, creates the need for additional state and operator personnel and provides little or no added value. It does not obviate the need for gaming commission personnel to be at the casino property, as Pennsylvania discovered after its implementation. Whether in a central server or property controlled casino management environment, all data is derived from the same source: the set of meters associated with each game. In a central server environment, time is required to reconcile detail between property and state data with little or no ultimate impact to revenue recognition.

4. The cost of a central server is generally in excess of several million dollars and over \$200,000 annually for continued maintenance and support. These costs must be carried by the licensees pursuant to M.G.L. c 23K, § 56. Further, M.G.L. c. 23K, § 57 (which is funded through section § 56) establishes the Massachusetts Gaming Control Fund, the financing mechanism for the MGC's operational activities. c. 23k, § 57 states that all available monies in the fund that are unexpended at the end of each fiscal year shall be available for expenditure in the subsequent fiscal year. Funds not spent on costs associated with maintenance and support could be better put to use for the Commission's operational needs, rather than supporting a central server system that provides no additional regulatory value or game integrity.

5. Most gaming jurisdictions, including the major gaming jurisdictions, do not operate in a central server environment and we are unaware of these states having any greater problems with revenue collections, game integrity and regulatory oversight than those states that do. The central system is not any safer. The data obtained by the central server is the same data that is sent by a casino's slot machines to its property controlled casino management system.

6. Such property controlled casino management systems are manufactured by major publicly traded gaming suppliers licensed all over the world and they are built to be fair, accurate, and with redundant functionality to prevent fraud and ensure that they are accurately recording casino activity. All such systems must be approved by the applicable state or private gaming laboratory before they are placed on the gaming floor and meet their respective requirements and testing. These reliable property controlled casino management systems combined with robust written (and auditable) procedures and internal controls in place for all elements of slot monitoring, including accounting, security, surveillance, cage, drop/count and slot operations, to ensure the integrity of each individual game and the casino floor as a whole. These controls are also regularly audited by internal, external and state auditors and are further subject to Sarbanes Oxley control and IT processes. Further, there is also a separation of functions among departments, which further bolsters game integrity.

7. All of these safeguards are spelled out in written internal controls and procedure manuals. Internal control requirements can be set forth in the gaming law (New Jersey for

example) and then detailed in the regulations promulgated under the gaming law. Set forth below are just a few of the areas which would be governed by internal controls and regulation:

a. The “drop” of actual cash and tickets received is highly controlled through security escorts, controlled drop keys, constant surveillance monitoring, and separation of duties for drop personnel. Certain procedures require the presence of state gaming commission personnel.

b. There are secure count room procedures including controlled access, heavy surveillance coverage, separation of duties for count personnel, requirements to wear pocket-less jump suits and other controls.

c. Ongoing reconciliation is performed by accounting of actual funds counted by the count team to actual funds expected based on casino management system reports. Significant discrepancies are investigated.

d. Onsite state gaming commission personnel have read only real time access to the casino management system and can run system generated reports. Regulators also can and frequently do have casino accounting departments run reports for them.

e. Multiple audit layers ensure the accuracy and integrity of slot machines. Accounting (Revenue Audit) performs a daily review and reconciliation of gaming revenue. Following the initial review, Internal Audit conducts periodic examinations of the review and reconciliation process. A third party CPA firm performs periodic reviews and M.G.L. c. 23K, § 65 requires at least an annual state gaming commission audit of the accounts, programs, activities and functions of all gaming licensees.

f. Standard slot protection procedures are in place such as: open door signals to surveillance, the requirement to swipe employee card before entering a slot, the requirement to complete a machine entry access log (MEAL) any time personnel enter a slot, strict control of sensitive slot keys, separation of duties for jackpot payoffs including security presence and surveillance notification, and the cash for the jackpot itself has to be generated by cage personnel or a tightly controlled jackpot kiosk.

8. Currently Mississippi, Nevada, New Jersey, Illinois, Indiana, Iowa, Missouri, Ohio (Ohio Casino Control Commission) and Michigan do not operate in a central server environment. All of these states have strong regulatory frameworks in place to ensure proper accounting of casino revenue and the maintenance of game integrity. At no time, despite the fact that the acts and the regulations with respect to gaming in all of those jurisdictions are continuously updated and revised, has there been an effort to require a central monitoring system, nor has the lack of one been criticized.

9. In fact, the contrary has been true. The Meadows casino in Pennsylvania (a central server state) was previously fined based on several incidents in which a few patrons of The Meadows allegedly conspired to manipulate a slot machine. The patrons received false jackpots totaling \$400,000. The scheme was detected by on-site personnel of the Pennsylvania Gaming Control Board observing the patrons, not by the central server.



10. Instead of a central state operated server, Indiana and certain other jurisdictions require a property controlled casino management system they refer to as a “central server” for each property. Although all casinos currently utilize such a property controlled casino management system, Massachusetts could actually explicitly “require” it, to further ensure that there will always be that additional reconciliation mechanism.

11. One of the selling points of a central server environment is the ability of state personnel to remotely shut down individual slot machines from the state’s central location. The state, however, can achieve the identical control and result with a property controlled casino management system by simply ordering the operator (on penalty of fines or other sanctions) to shut down any machine. Furthermore, even without a central server, state regulators will have ongoing, real time, 24 hour access to each operator’s casino central management system at each property, whenever they want such access.

12. Category 1 and 2 licensees can be “up and running” more quickly without the technical complexity of two systems (the operator’s casino management system and the state’s central server system). This is critical in light of the state’s revenue generation goals.

In summary, requiring a central server imposes a significant unnecessary cost on the licensee, greater risk of a statewide casino shutdown, and unnecessary back of house reconciliation activity without enhancing either regulatory control or the integrity of the casino floor. The central system does not make the gaming environment any “safer.” Legislation, regulation, internal controls and a casino’s property controlled casino management system currently provide, without the additional cost of a central server, safeguards that are at least, if not more, effective than a central system to protect the integrity of gaming in both major and smaller gaming jurisdictions across the United States.

Regards,



Frank T. Donaghue  
Penn National Gaming, Inc.

CC: Rick Day, Executive Director Massachusetts  
Gaming Commission

## ON-SITE, PROPERTY MONITORING SYSTEMS BEST REGULATORY OPTION FOR MASSACHUSETTS

### OVERVIEW

Comprehensive monitoring of slot machine gaming is critical for the integrity of gaming and gaming regulation in the Commonwealth of Massachusetts. In order to provide proper oversight and regulation, a monitoring system must generate the necessary activity reports and audits while allowing regulators immediate real time, 24-hour access. Monitoring system options include: (1) a single, state-wide central-monitoring operating system – utilized almost exclusively in VLT states; and (2) an on-site, property based system – utilized in states with Las Vegas style slot machines.

### CENTRAL SYSTEM IS REDUNDANT

Massachusetts Category 1 and Category 2 licensees will operate Las Vegas style slot machines and NOT VLT machines. Licensees will utilize on-site property monitoring systems irrespective of whether a central system is employed by the state. While the cost of a central system will vary depending on the desired functionality, the number of slot machines in a given state, and several other factors, it is very likely that such a system in Massachusetts would cost at least several million dollars to purchase, hundreds of thousands of dollars to install and subsequently hundreds of thousands of dollars per year to maintain (excluding state labor costs), all of which must be carried by the operator.

### ON-SITE SYSTEMS PROVIDE SAFEGUARDS

- On-site systems are reliable with no shortcomings reported by other states.
- The Commission will have full regulatory authority over on-site system requirements as well as oversight on internal controls of each casino.
- Data derived from on-site systems, combined with auditable procedures in accounting, security, surveillance and slot operations, will ensure the integrity of each individual game and the casino floor as a whole.
- Gaming regulators will have immediate, real time 24-hour access to all information from the on-site system.
- A central system will not enhance regulatory oversight or control.

### SIMILAR GAMING JURISDICTIONS USE ON-SITE PROPERTY BASED SYSTEMS

Indiana, Michigan, Illinois, Iowa, Mississippi, Nevada, Ohio (Ohio Casino Control Commission) and New Jersey all ensure proper regulation and accounting of casino revenue and game integrity through the use of on-site systems. These systems provide the necessary regulatory tools without strapping the states or the operators with a costly and redundant central system.

### CENTRAL SYSTEMS CAN CREATE PROBLEMS

Reconciliation between a central system and the on-site system is time consuming, and creates the need for additional state and operator personnel. It does not remove the need for Commission staff to be at the casinos, as Pennsylvania discovered after its implementation. If a central system goes down then all casinos are affected and tax revenues are at risk.

## **Massachusetts Gaming Commission (MGC)**

### **Scope of Work to Create a High Performance Organization**

This document identifies the Scope of the Services relating to the establishment of certain performance management and time-critical processes, procedures, policies and capabilities. These services are designed to promote and enhance organizational high performance as MGC seeks to achieve its mission.

Consulting services and technical assistance and support to MGC will be coordinated with the Staff High Performance Team and provided relating to following major workstreams:

1. Personnel Processes & Employee Accountability System
2. Goals and Objectives
3. Expand the Strategic Action Plan
4. Bring MGC in Line with the Tools of Performance Management

Specifically, this scope of services includes providing consulting services, training and technical advice and assistance relating to the four workstreams and related activities as listed and described below. Ultimately, the design of this project is intended to create ownership, knowledge, and skills in Commission staff to implement and sustain the systems and processes necessary to sustain a high performance organization.

#### **Workstream #1: Personnel Processes & Employee Accountability System**

##### **Description:**

- This work component will create a roadmap for all HR Processes and Systems as well as integrate the MGC Performance Management goals and measures with an employee accountability system and process.
- The existing organization structure will be assessed with a view towards transitioning from an agency focused on granting initial licenses to gaming establishments to an agency focused on regulation of licensees. The structure will also be assessed against the strategy, goals and measures developed during workstreams 2, 3, and 4 of this project.
- All personnel policy requirements will be reviewed to determine fit with existing state policy and non-appropriated peer agencies with similar funding. A plan will be developed for adopting state policies or developing MGC-specific ones such as background checks and a code of conduct.
- An HR Technology Plan will be developed which determines the fit of MGC requirements to HRCMS and the Success Factors system that supports ACES.

##### **Work Steps**

- Conduct a thorough review of the overall human resource organizational structure, policies and practices. The methodology will include interviews with management and current employees to identify current policies, procedures, and practices as well as an in depth study of policies and records. Specific compliance assessments will occur including, but not limited to: Americans with Disabilities Act, COBRA, Affirmative Action/EEO, FLSA, HIPPA, personnel records management, insurances, personnel policies, recruitment and promotional processes, and overall employee relations policies. Obtain and review policy and organization from two comparable agencies.

## **Massachusetts Gaming Commission (MGC)**

### **Scope of Work to Create a High Performance Organization**

- Develop a policy manual format and a master list of personnel policies and procedures to be developed for MGC. This would include but not be limited to the policies currently available in the existing employee handbook, sourcing/recruitment, background checks, intake/orientation, job classification, training, mentoring, compensation management, employee accountability/performance appraisal and management, career development, succession planning, etc. Review components already in place.
- Compare and evaluate the level of fit with MGC requirements, best practices, existing state personnel policies and procedures, and policies from two peer agencies selected by the MGC. Develop a fit analysis highlighting unique requirements of MGC that must be developed in-house. Draft and provide MGC with recommended policies for review and consideration by MGC.
- Review existing organization structure and prepare recommendations for evolving as MGC becomes a regulatory agency.
- Review existing hiring practices and make recommendations designed to increase the diversity in recruitment pools and improve the current process.
- Determine MGC HR system requirements and assess level of fit to existing state systems (HRCMS and SAP's Success Factors HR Suite). Develop IT strategy for HR.
- Review alternatives for near-term systems support of key processes such as the recruitment process and employee evaluation, make recommendations and implement as appropriate.
- Develop high-level roadmap for all HR processes and systems showing required tasks and dependencies and arraying it out in a schedule.
- Prepare draft position descriptions and provide recommendations for a classification plan using the commonly used methodology for the classification of public positions.
- Review 3-5 evaluation systems and make a recommendation regarding which systems(s) most closely meets the employee accountability goals of the MGC. This review will include the Commonwealth's existing ACES system, private software systems, and systems familiar to the consultants from other professional work assignments.

#### **Deliverables: HR Processes Roadmap including:**

1. A policy manual format and a master list of HR policies and procedures including source of material.
2. A draft of each personnel policy or revision to existing policies to conform with federal and state law, comparison to peer agencies and best practices.
3. Prepare draft position descriptions for the MGC and analyze compensation rates and prepare recommendations.
4. Draft of organizational structure recommendations that support the future regulatory role of the Commission.
5. A report outlining best practices in employee performance evaluation, assessing several against those best practices and the needs of the MGC, and recommending a system to be used by the MGC.

## Massachusetts Gaming Commission (MGC) Scope of Work to Create a High Performance Organization

6. HR IT Strategy.
7. Improvements to HR Processes.

### Duration / Timing

- Months 1 through 4
  - Policy Manual format and master list- 1 month
  - Draft of each personnel policy and position descriptions for the MGC and analyze compensation rates and prepare recommendations - 2 months
  - A report outlining best practices in employee performance evaluation and recommending a system to be used by the MGC and HR improvements- 3 months
  - HR IT strategy- 4 Months
  - Draft of the proposed organizational structure - due at the completion of Workstream #2 (Goals and Objectives)

### Cost

The cost for the scope of work within Workstream #1 (Personnel Processes & Employee Accountability System) is \$260,000.

## **Massachusetts Gaming Commission (MGC)**

### **Scope of Work to Create a High Performance Organization**

#### **Workstream #2: Goals and Supporting Goals**

##### **Description:**

- This work component results in a set of primary goals and supporting goals. It answers the question: What are all the outcomes MGC wants to achieve?
- Primary goals define the commission's highest-level outcomes. Supporting goals identify all the supporting outcomes required to achieve primary goals.
- When goals and supporting goals are defined as outcomes and success is measured against them, the commission and MGC executives can see what is going right and what is not. They can identify where problems lie and what needs to be done to fix them.

##### **Work Steps**

- Research 23K to identify statutory goals and examine at least three peer agencies' strategic plans, goals, objectives and measures, approved by the Commission, to inform development of Commission goals and supporting goals.
- Conduct facilitated meeting(s) and/ or interviews with commissioners and executive team to confirm existing mission, values, and develop a vision, primary and supporting goals. Comprehensively identify logically related supporting goals (i.e. supporting outcomes) required to achieve primary goals, integrating national best practices as appropriate.
- Circulate for feedback, review with key MGC personnel, and revise as necessary.
- Finalize primary and supporting goals, obtain approvals as needed and document and train Commission staff in development and modification of goals and supporting goals .
- Incorporate organizational goals into employee accountability system.
- Work with employees to ensure understanding, ownership and utilization of goals and supporting goals and the accountability system.
- Incorporate organizational goals and supporting goals into draft of proposed organizational structure recommendations.

##### **Deliverables**

- A report that documents the process and summarizes the supporting information that resulted in the primary goals and supporting goals and present the report to the Commission and staff. This deliverable also serves as an input to the next phase of work (Strategic Plan)
- Train and ensure Commission staff have practical experience in using goals and the adopted accountability system.
- Develop a proposed vision to describe what the organization hopes to achieve or its future state based on the facilitated meetings and interviews
- Draft of proposed organizational structure recommendations

## Massachusetts Gaming Commission (MGC) Scope of Work to Create a High Performance Organization

### Duration / Timing

- 3 Months
- Months 3 through 5
  
- **Cost**
- The cost for the scope of work within Workstream #2 (Goals and Supporting Goals) is \$86,000.

## **Massachusetts Gaming Commission (MGC)**

### **Scope of Work to Create a High Performance Organization**

#### **Workstream #3: Expand the Strategic Action Plan**

##### **Description:**

- Integrates the goals and supporting goals developed above with MGC's existing strategic plan to establish a comprehensive strategic direction for the commission.
- Continues the logical hierarchy by identifying all actions needed to achieve each supporting goal, resulting in a hierarchy of goals, supporting goals and actions which, when results are measured, will not just identify problems but spotlight exactly where they lie.
- Includes the development of an implementation plan that comprehensively delineates all actions needed for achieving the strategic plan, providing a tool for achieving goals but also for ensuring that important actions are not missed.
- Documents and addresses critical success factors that address the ability of MGC personnel to successfully accept and embrace using results measurement and evidence-based decision making to manage the organization, find and fix problems and conduct business.

##### **Work Steps**

- Comprehensively identify logically related actions (specific projects, initiatives or activities) required to achieve each supporting goal, integrating national best practices as appropriate.
- Identify measures and targets for each goal and supporting goal.
- Develop implementation plan delineating goals, supporting goals and actions, timeline, duration, assignments, milestones, and critical path.
- Establish project management regime to manage implementation plan execution.
- Document Critical Success Factors and execute activities to address them as needed.
- Integrate actions into employee accountability system as appropriate.
- Review organizational compartment with goals hierarchy and make recommendations as appropriate.

##### **Deliverables**

- Expanded Strategic Plan (mission, vision, values, goals, supporting goals, actions, measures and targets for goals and supporting goals)
- Comprehensive Implementation Plan and staff training needed to implement and continue the plan.

##### **Duration / Timing**

- 5 Months
- Months 4 through 8

##### **Cost**

- The cost for the scope of work within Workstream # (Expand the Strategic Action Plan) is \$375,000.



## **Massachusetts Gaming Commission (MGC)**

### **Scope of Work to Create a High Performance Organization**

#### **Workstream #4: Bring MGC in line with performance management tools**

##### **Description:**

- This scope of work adds measures for actions to those developed in the strategic plan for goals and supporting goals.
- Establish clear lines of accountability for goals, supporting goals and actions. Develop processes for collecting and analyzing performance data.
- Create templates and formats for dashboards and performance reports.
- Develop processes for using data to find and fix problems and manage operations as well as tracking and managing remedial actions.
- Develop a performance training program and a plan for MGC performance management operations.

##### **Work Steps**

- Assign individual responsibility for achieving an “owner” responsible for each primary goal.
- Create specific measures and targets for each action.
- Develop dashboard and performance report templates.
- Develop data collection and analysis processes.
- Establish processes and capabilities for reporting performance data.
- Develop performance accountability meeting processes and protocols to use objective data to find and fix problems and manage the organization.
- Develop project management regime for managing execution of strategic plan, achieving goals, supporting goals and actions, monitoring milestones, tracking progress, and taking corrective actions as needed.
- Develop processes and capabilities for tracking and reporting back to management the status of remedial steps identified in accountability meetings.
- Execute activities addressing Critical Success Factors including training in performance management, communication, celebration of success, etc., as needed.

##### **Deliverables**

- Performance Management Implementation Plan
- Dashboard and Performance report templates
- Accountability meeting processes, protocols and schedule
- Project management regime
- Training modules and schedule
- Performance Management toolkit and workbook

## Massachusetts Gaming Commission (MGC) Scope of Work to Create a High Performance Organization

- Critical Success Factors deliverables as needed (e.g. internal communications, personal recognition).

### Duration / Timing

- 6 Months
- **Cost**
- The cost for the scope of work within Workstream #4 (Bring MGC in line with performance management tools) is \$495,000.

### Duration and Timing Summary Information

The table below provides a project Gantt chart graphically depicting the duration and timing of the four workstreams. The timing (i.e. months of the year) will vary depending on start date, but duration will remain the same.

Massachusetts Gaming Commission High Performance Project PROJECT GANTT CHART																							
MO #	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	
MONTH	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	
<b>WORKSTREAM</b>																							
Accountability System																							
Goals and Objectives																							
Expand Strategic Action Plan																							
Bring MGC in line w PM Tools																							

### Key Personnel

Biographies of key project personnel are attached below.



**REGION C**  
**HOST COMMUNITY AGREEMENT DEADLINE**

<b>Application Date</b>	<b>Referendum Deadline Assuming 10-Day Election Certification</b>	<b>60 Days Prior to Referendum</b>	<b>90 Days Prior to Referendum</b>
Tuesday, September 23, 2014	Friday, September 12	Monday, July 14	Saturday, June 14

Walter J. Sullivan, Jr.  
wsullivan@preti.com  
Direct Dial: (617) 226-3882

June 11, 2014

Stephen Crosby, Chair  
Massachusetts Gaming Commission  
84 State Street, 10th Floor  
Boston, MA 02109

**Re: Clairvest Group Inc. and Claremont Companies, Inc. Request the Commission Reopen Region C for a Category 1 Gaming License – Resort Casino – Rerelease Phase 1 Application for Region C**

Dear Chair Crosby:

Clairvest Group Inc. (“Clairvest”) and Claremont Companies, Inc. (“Claremont”), collectively “The Group,” requests that the Commission reopen the application process to build a resort-casino in Region C - rerelease phase 1 application for Region C.

The Group had planned, together with an approved applicant, to submit a Phase 2 application for the Region C license to build a resort-casino in Bridgewater, Massachusetts, at the intersection of two major highways, Route 24 and Interstate Route 495. However, based on the Commission’s recent decision regarding the variance request with respect to capital investment, the applicant decided not to compete for the category 1 license for Region C. The Group wants to compete for the resort-casino license, as it has the resources and what it believes to be the best location to make the development a success.

Clairvest is a Canadian-based private equity management firm that was founded in 1987. It invests its capital and capital from private equity funds in entrepreneurial corporations, and manages approximately \$1.4 billion. To date, Clairvest has made investments in 38 different companies, and has been invested in 20 individual gaming establishments in the jurisdictions of British Columbia, Alberta, New Brunswick, Indiana, New Jersey, Illinois and the country of Chile. It has the capital and expertise required to build a first class resort-casino in Massachusetts.

Claremont is a privately owned and closely held real estate investment, development and asset management firm. It is headquartered in Bridgewater, Massachusetts. Claremont’s real estate investment portfolio consists of large scale apartment complexes, multi-family homes, office building, retail centers and hotels. Together with Clairvest it has the development expertise to build a first class resort-casino in Massachusetts.

PRETI FLAHERTY

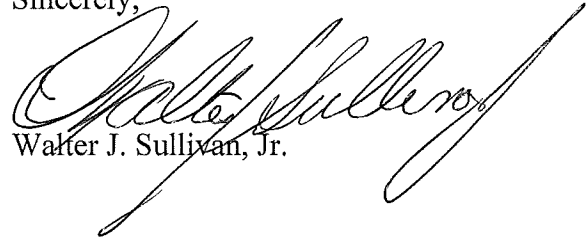
June 11, 2014

Page 2

The Group believes there currently are no viable applicants for a casino license in Region C, and as such the Group requests that the Commission exercises its authority, and put the Region C license back out to bid, and re-release phase 1 application for Region C. Putting the Region C license back out to bid would ensure the most gaming and entertainment revenue and the greatest number of jobs for the Commonwealth and Region C. It would also be in the best interest of the citizens of the Commonwealth and the region, as well as the cities and towns of the region. A Bridgewater resort-casino would ensure both temporary and permanent jobs, as well as benefit existing business in the area and create new business, since the Commonwealth would have a viable and sustainable resort-casino that can not only repatriate dollars back to the Commonwealth, but also be well positioned to create destination dollars with its proximate to a major interstate and state highway.

Thank you for your consideration of this request. If you have any questions or concerns regarding the request, please do not hesitate to contact me.

Sincerely,

A handwritten signature in cursive script, appearing to read "Walter J. Sullivan, Jr.", written in black ink.

Walter J. Sullivan, Jr.

WJS:dc  
Enclosure



# SLOT MACHINES AND GAMING POSITIONS

MASSACHUSETTS GAMING COMMISSION



# 1,250 CAP FOR SLOTS PARLOR

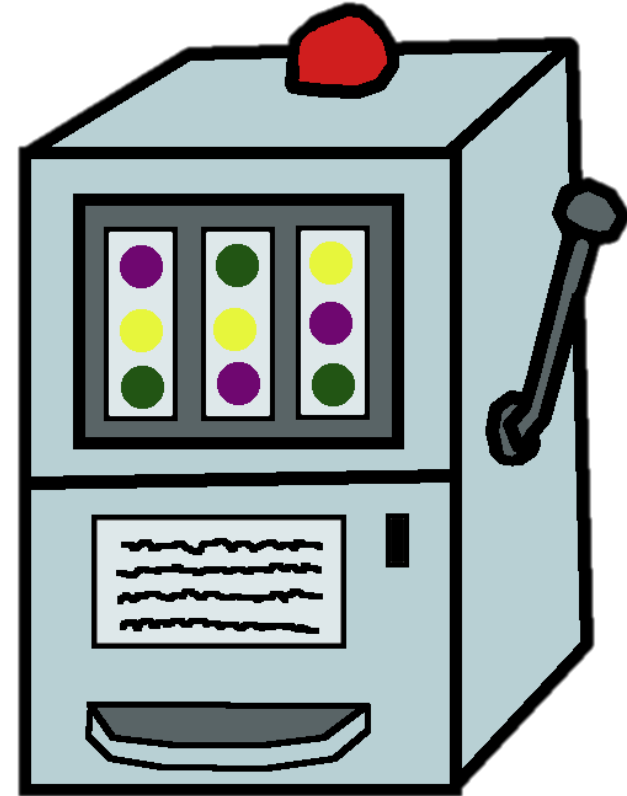
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"Category 2 license", a license issued by the commission that permits the licensee to operate a gaming establishment with no table games and **not more than 1,250 slot machines**. G.L. c. 23K, § 2

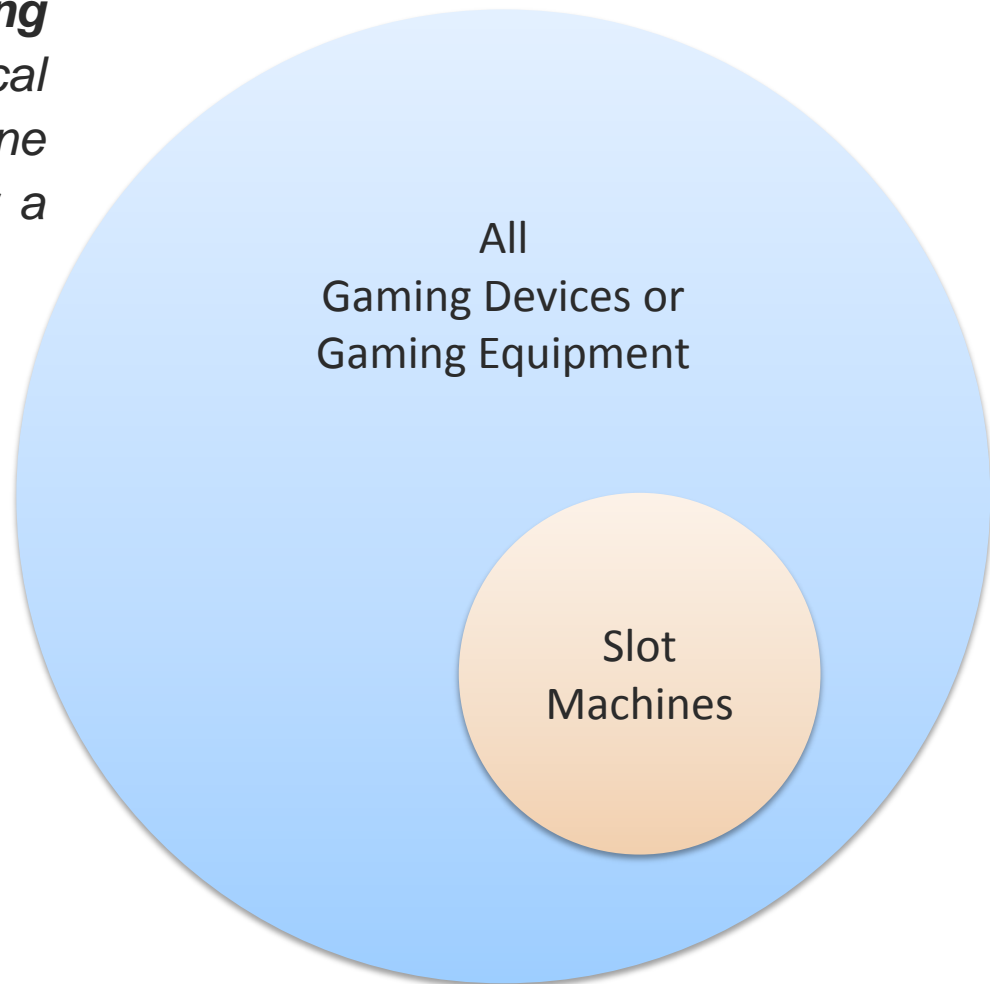


# SLOT MACHINE

*"Slot machine", a mechanical, electrical or other device, contrivance or machine which, upon insertion of a coin, token or similar object therein, or upon payment of any consideration whatsoever, is available to play or operate, the play or operation of which, whether by reason of the skill of the operator or application of the element of chance, or both, may deliver or entitle the individual playing or operating the machine to receive cash, or tokens to be exchanged for cash, or to receive merchandise or any other thing of value, whether the payoff is made automatically from the machine or in any other manner, except that the cash equivalent value of any merchandise or other thing of value shall not be included in determining the payout percentage of a slot machine. G.L. c. 23K, § 2*



**"Gaming device" or "gaming equipment"**, an electronic, electrical or mechanical contrivance or machine used in connection with gaming or a game. G.L. c. 23K, § 2

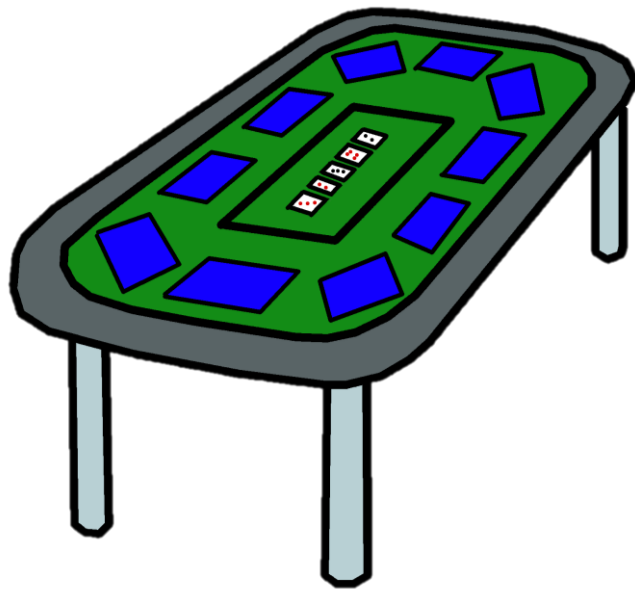


# ELECTRONIC TABLE GAME

**Not defined in G.L. c. 23K**

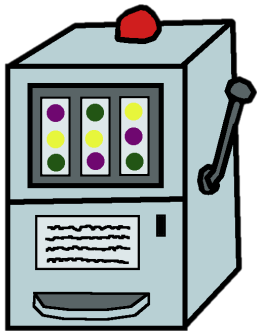
**Proposed 205 CMR 143.09(2):**

*An electronic table game shall be considered a slot machine in accordance with M.G.L. c. 23K, § 2 unless the simulation requires the intervention of a gaming employee prior to the final determination of winnings.*



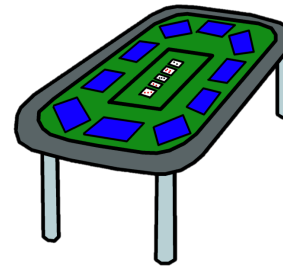
*"Gaming position", a designated seat or standing position where a patron of a gaming establishment can play a game. G.L. c. 23K, § 2*

## Traditional Slot Machine



- 1 Device
- 1 Player
- 1 Gaming Position**

## Electronic Table Game

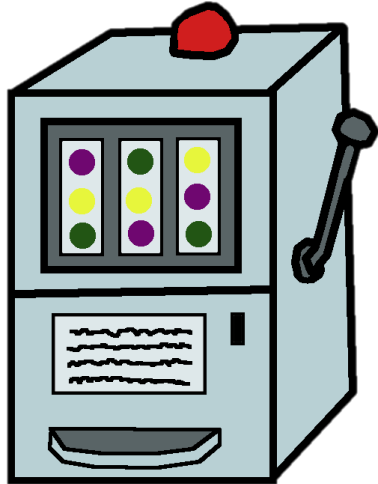


- 1 Device
- 10 Players
- 10 Gaming Positions**

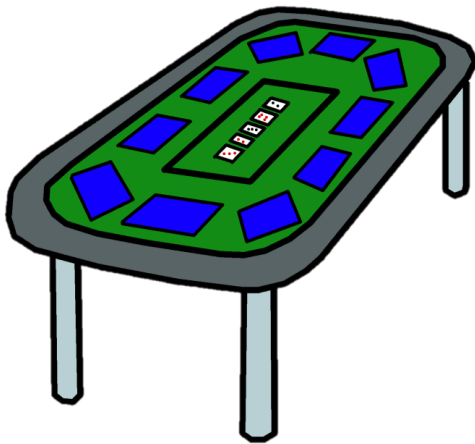


- 1 Device
- 5 Players
- 5 Gaming Positions**

# WHAT IS A SLOT MACHINE?



= 1 Slot Machine



= 10 Slot Machines?  
or  
1 Slot Machine?


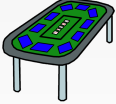

# POSSIBLE IMPLICATIONS

Definition 1:

1 Gaming Position = 1 Slot Machine

Definition 2:

1 Table Game = 1 Slot Machine

Device	QTY Installed	Gaming Positions	Slot Machines	
			Definition 1:	Definition 2:
	12 devices	$60 = \left( \begin{matrix} 12 \\ \text{Devices} \end{matrix} \right) \times \left( \begin{matrix} 5 \\ \text{Positions per Device} \end{matrix} \right)$	60	12
	8 devices	$80 = \left( \begin{matrix} 8 \\ \text{Devices} \end{matrix} \right) \times \left( \begin{matrix} 10 \\ \text{Positions per Device} \end{matrix} \right)$	80	8
	1,110 devices	$1,110 = \left( \begin{matrix} 1,110 \\ \text{Devices} \end{matrix} \right) \times \left( \begin{matrix} 1 \\ \text{Position per Device} \end{matrix} \right)$	1,110	1,110
<b>Total</b>	<b>1,130 devices</b>	<b>1,250 positions</b>	<b>1,250</b>	<b>1,130</b>

\* Slots parlor can install more devices with definition 2

- **Sliding Scale**
  - Table Game with 1-5 Positions = 1 Slot Machine
  - Table Game with 6-10 Positions = 2 Slot Machines
  - Table Game with 11-15 Positions = 3 Slot Machines
- **Cap on Gaming Positions**
  - 1 Table Game = 1 Slot Machine
  - Keep legislative cap of 1,250 on number of slot machines
  - Create regulatory cap of 1,350 on number of gaming positions
- **Pre-Category 1 Period**
  - Before first Category 1 Casino Opens → 1 Table Game = 1 Slot Machine
  - After first Category 1 Casino Opens → Create regulatory cap of 1,250 positions



May 22, 2014

Stephen Crosby, Chairman  
 Massachusetts Gaming Commission  
 84 State Street, 10<sup>th</sup> Floor  
 Boston, MA 02109

**Re: 205 CMR 143.01(3)**

Dear Chairman Crosby,

On behalf of Penn National Gaming, Inc. (Penn), I am writing to recommend a modification to proposed regulation 205 CMR 143.01(3). The proposed modification would provide that each designated seat or standing position at an electronic table game is a “gaming position” but that each such electronic table game constitutes only one slot machine under ch. 23K, § 2. We believe that the proposed regulation is consistent with the statutory scheme and has the benefit of increasing the daily taxes paid by the category 2 licensee to the Commonwealth under § 55 of ch. 23K while, at the same time, increasing proportionally the share of the annual fees paid by the category 2 licensee under § 56 of ch. 23K. Our proposed modification (with new language italicized) is as follows:

205 CMR 143.01(3) “For purposes of M.G.L. c.23k and 205 CMR each gaming position, as defined by M.G.L. c.23K, § 2, at a slot machine shall be considered a separate slot machine, *except for gaming positions at electronic table games. For the purposes of M.G.L c.23K, § 56, each designated seat or standing position where a patron of a gaming establishment can play a multiplayer electronic table game will constitute a gaming position.*” (Additional language italicized)

Statutory and Regulatory Background:

Section 2 of ch. 23K defines a “gaming position” as a designated seat or standing position where a patron of a gaming establishment can play a game. See M.G.L c.23K, §2. “Slot machine” is defined as “a mechanical, electrical or other device, contrivance or machine which, upon insertion of a coin, token or similar object therein, or upon payment of any consideration whatsoever, is available to play or operate, the play or operation of which, whether by reason of the skill of the operator or application of the element of chance, or both, may deliver or entitle the individual playing or operating the machine to receive cash, or tokens to be exchanged for cash, or to receive merchandise or any other thing of value, whether the payoff is made automatically from the machine or in any other manner, except that the cash equivalent value of any merchandise or other thing of value shall not be included in determining the payout percentage of a slot machine.” *Id.*



Draft regulation 205 CMR 143 provides that “an electronic table game shall be considered a slot machine in accordance with M.G.L. c. 23K, § 2 unless the simulation requires the intervention of a gaming employee prior to the final determination of winnings.” *Id.* at 143.09 (2). The draft regulation further provides that “for purposes of M.G.L. c.23K and 205 CMR each gaming position, as defined by M.G.L. c.23k, § 2, at a slot machine shall be considered a separate slot machine.” 205 CMR 143.01(3).

Penn suggests the revision to 205 CMR 143 based on the following factors:

1. The Proposed Regulatory Revision Falls within MGC’s Regulatory Authority

Under the proposed modification, each electronic table game would be considered an individual slot machine for the purposes of M.G.L. c. 23k, § 2k’s limit of 1,250 slot machines and each designated seat or standing position where a patron of a gaming establishment can play an electronic table game would be considered a separate “gaming position” for the purposes of the annual fees assessed under § 56. The proposed modification would allow Penn to weigh the cost of the increase in its proportional share of annual assessments under § 56 against the increased revenue that would result from adding gaming positions, and to add an appropriate number of gaming positions in accordance with that economic calculation. This also would have the effect of increasing the daily taxes paid to the Commonwealth under § 55, which imposes taxes on the licensee totaling 49% of its gross gaming revenue. M.G.L. c.23k, § 55 (b) and (c). Because Chapter 23k does not impose a cap on the number of gaming positions, the proposed modification is firmly within the Commission’s regulatory discretion. *See* M.G.L. c.23k, §2 (limiting the Category 2 licensee to “1,250 slot machines,” with no reference to “gaming positions”). Adopting Penn’s proposed definition also will allow the Commission to increase the daily tax revenue paid to the Commonwealth under § 55, while maintaining the statutory number of slot machines noted in M.G.L. c. 23k § 2.

2. The Proposed Modification is Consistent with the Statutory Definition of “Slot Machine”

The proposed modification would recognize that electronic tables are “slot machines” under § 2, but also would clarify that each gaming position at an individual slot machine does not count as a separate slot machine for purposes of calculating the total number slot machines allowed category 2 licensees. We believe that if the legislature had intended § 2 to limit the total number of gaming positions (rather than the number of slot machines), it would have expressly said so. In § 56, for example, the legislature required a financial assessment based on the number of gaming positions in an establishment, not the number of slot machines or tables. Had it intended § 2 to govern the number of gaming positions, it easily could have done so by making explicit reference to the same term, just as it did in § 56. *See Commonwealth v. Galvin*, 388 Mass. 326, 330, 446 N.E.2d 391 (1983) (“[W]here the Legislature has employed specific language in one paragraph, but not in another, the language should not be implied where it is not present.”); *Alliance to Protect Nantucket Sound, Inc. v. Dep’t of Pub. Utilities*, 461 Mass. 166, 182-83 (2011) (“[W]e have given agencies broad discretion to interpret statutes that they enforce, lending ‘substantial deference’ to their interpretations.”) (citing *City Council of Agawam v. Energy Facilities Siting Bd.*, 437 Mass. 821, 828, 776 N.E.2d 1002, 1007 (2002)).<sup>1</sup> The

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<sup>1</sup> The reference in § 2’s definition of the term “slot machine” to “the individual playing or operating” the game simply expresses the requirement that the machine pay something of value to a player and should not be construed to silently impose a limit on gaming positions. *See* M.G.L. c.4, § 6 (“Words importing the singular number may

proposed modification to the regulation thus is well within the Commission's authority and consistent with the language and legislative intent behind M.G.L. c.23k, § 2.

### 3. The Proposed Modification is Consistent with Other Jurisdictions

Other jurisdictions have adopted specific provisions differentiating electronic table games for purposes of gaming positions or game counts. Illinois Administrative code defines the term gaming position for the purposes of adhering to the 1,200 gaming position limit dictated by 230 ILCS 10/7(h). Specifically, EGDs are counted as 9/10s of a position. *See* Illinois Administrative Code 86 3000.606.(a) ("Positions for games utilizing Electronic Gaming Devices will be determined as 90 percent of the total number of devices available for play.") New Mexico state regulations also differentiate electronic table games from standard slot machines by including a proportional representation metric. Specifically, multi-station games shall not comprise more than three (3) percent of the total possible allowed gaming machines on the gaming floor and for game count purposes, each multi-station game having up to five (5) player terminals shall count as one (1) gaming machine, each multi-station game having between six (6) and ten (10) player terminals shall count as two (2) gaming machines and each multi-station game having between eleven (11) and fifteen (15) gaming machines shall count as three (3) gaming machines. 15.1.10.24(D)(4) NMAC. Penn contends that the suggested revision adheres to Massachusetts statute while following gaming position definitions found in other jurisdictions.

Based on the discussion above, Penn proposes that the Commission revise 205 CMR 143 to provide that each electronic table game constitutes a single slot machine for the purposes of M.G.L. c.23k, § 2, with each designated seat or standing position at an electronic table game constituting a "gaming position" for the purposes of M.G.L. c.23K, § 56. This modification, which is well within the Commission's regulatory authority, will permit Penn to add an appropriate number of gaming positions for electronic table games, thus increasing the daily tax revenue that is paid to the Commonwealth in proportion to Penn's gross gaming revenue. Finally, if approved, Penn expects to have approximately 10-15 electronic table games at Plainridge Park Casino.

Frank T. Donaghue



Vice President Regulatory Affairs &  
Chief Compliance Officer

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extend and be applied to several persons or things, words importing the plural number may include the singular . . . ."); *see also Alliance*, 461 Mass. at 183 (deferring to agency's determination that statute requiring solicitation of proposals (plural) permitted solicitation of a single proposal); *Comm'r of Corporations & Taxation v. Thayer, Bradley Co.*, 291 Mass. 197, 201, 197 N.E. 47, 49 (1935) (permitting joinder of actions for taxes assessed for two separate years where statute referred to "tax or excise" in its singular form).

## 205 CMR: MASSACHUSETTS GAMING COMMISSION

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## 205 CMR 134.00: LICENSING AND REGISTRATION OF EMPLOYEES, VENDORS, JUNKET ENTERPRISES AND REPRESENTATIVES, AND LABOR ORGANIZATIONS

## Section

- 134.01: Key Gaming Employee Licensees
- 134.02: Gaming Employee Licensees
- 134.03: Gaming Service Employees
- 134.04: Vendors
- 134.05: Labor Organizations
- 134.06: Junket Enterprises and Junket Representatives: Reserved)
- 134.07: Forms
- 134.08: Submission of Application
- 134.09: Investigation, Determination, and Appeals for Gaming Establishment Employees and Vendors
- 134.10: Affirmative License Standards for the Licensing of Employees and Vendors of the Gaming Establishment
- 134.11: Affirmative Registration Standards for the Registration of Employees and Vendors of the Gaming Establishment and Labor Organizations
- 134.12: Temporary Licenses
- 134.13: Fingerprinting
- 134.14: Identification
- 134.15: Fees
- 134.16: Term of Licenses
- 134.17: Renewals
- 134.18: Duties of Applicants and Licensees
- 134.19: Disciplinary Action

134.01: Key Gaming Employee Licensees

No individual shall be employed by or perform services for a gaming licensee as a key gaming employee, as defined by M.G.L. c. 23K, § 2, unless the individual has been licensed in accordance with M.G.L. c. 23K, §30 and 205 CMR 134.00. There shall be two categories of key gaming employee licensees: key gaming employee- executive and key gaming employee-standard.

(1) An individual holding one of the following positions at a gaming establishment, and any person in a similar or equivalent position, regardless of job title, whose employment relates to gaming shall be designated as a key gaming employee- executive:

- (a) Assistant General Manager;
- (b) Chief Internal Audit Officer;
- (c) Gaming Manager;
- (d) Chief Financial Officer;
- (e) Chief of Security;
- (f) General Manager;
- (g) Chief Surveillance Officer;
- (h) Chief Compliance Officer;
- (i) Principal executive Officer;
- (j) Principal operating Officer;
- (k) Principal accounting Officer;
- (l) Chief Information Officer;

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## 134.01: continued

(m) Other executive level employees who are not identified as a key gaming employee-standard in accordance with 205 CMR 134.01(2) as determined by the commission.

(2) An individual holding one of the following positions at a gaming establishment, and any person in a similar or equivalent position, regardless of job title, whose employment relates directly to a gaming establishment shall be designated as a key gaming employee- standard:

- (a) Controller;
- (b) Electronic gaming device or slot machines manager;
- (c) Human resources manager;
- (d) Information technology manager;
- (e) Pit boss;
- (f) Shift supervisor of table games, of a slot department, credit department, security, surveillance, accounting department, cage, or player development;
- (g) Credit manager;
- (h) Cage manager;
- (i) Hotel Manager;
- (j) Entertainment Director;
- (k) Food & Beverage Manager;
- (l) Other managerial employees who are not identified as a key gaming employee-executive in accordance with 205 CMR 134.01(1), but who are empowered to make discretionary decisions which impact gaming establishment operations, or as determined by the commission.

(3) Any individual who is a qualifier [of a gaming licensee](#) but who does not perform any of the duties of the positions identified in 205 CMR 134.01(1)(a) or (b) does not have to become licensed as a key gaming employee. Such individual does have to be approved as a qualifier and issued a positive determination of suitability in accordance with 205 CMR 111.00: *Phase 1 Application Requirements*, 115.00: *Phase 1 Suitability Determination, Standards and Procedures*, and 116.00: *Persons Required to Be Licensed or Qualified*. An individual who has been issued a positive determination of suitability in accordance with 205 CMR 111.00: *Phase 1 Application Requirements* and who will be performing the responsibilities requiring licensure as a key gaming employee shall apply for licensure in accordance with 205 CMR 134.08(2) subject to the term limitation of 205 CMR 134.16(4).

134.02: Gaming Employee Licensees

No individual shall be employed by or perform services for a gaming licensee as a gaming employee, as defined by M.G.L. c. 23K, § 2, unless the individual has been licensed in accordance with M.G.L. c. 23K, § 30 and 205 CMR 134.00. An individual holding one of the following positions at a gaming establishment, and any person in a similar or equivalent position, regardless of job title, whose employment relates directly to a gaming establishment shall be designated as a gaming employee:

- (a) Boxpersons;
- (b) Cashiers;
- (c) Change personnel;
- (d) Clerks;
- (e) Count room personnel;
- (f) Data processing personnel;
- (g) Dealers and croupiers;

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## 134.02: continued

- (h) Floorpersons;
- (i) Gaming Hosts;
- (j) Internal audit and accounting personnel whose duties include reviewing, verifying, and recording gaming revenue entries, the processing or control of active accounting documents related to gaming activity, or that have access to active accounting documents related to gaming activity;
- (k) An individual who is directly connected to the operation or maintenance of a slot machine or game taking place in a gaming establishment (whether employed by the gaming licensee or a vendor licensed in accordance with 205 CMR 134.00);
- (l) Personnel authorized to extend complimentary services, including employees performing functions similar to those performed by a junket representative;
- (m) Junket representative employed by the gaming licensee or affiliate of the gaming license or a junket enterprise licensed as a gaming vendor in accordance with 205 CMR 134.00;
- (n) Personnel authorized to issue credit;
- (o) Personnel authorized to issue promotional play including persons who identify patrons or groups of patrons who shall receive complimentary based on actual patron play, authorize such complimentary, or determine the amount of such complimentary;
- (p) Personnel with security administrator access to a slot machine tracking system;
- (q) Security personnel, including guards and game observers, or an employee with knowledge of security procedures of the gaming establishment;
- (r) Surveillance personnel, including surveillance equipment maintenance and repair technicians (whether employed by the gaming licensee or a vendor licensed in accordance with 205 CMR 134.00);
- (s) Any employee who conducts or participates in the conduct of gaming, who participates in the transfer or handling of chips, tokens or money, or who participates in audit or accounting functions;
- (t) Any employee whose has access to a restricted area of a gaming establishment;
- (u) A person who supervises a person required to be licensed as a gaming employee in accordance with 205 CMR 134.02;
- (v) An employee of a gaming establishment whom the Bureau deems necessary to be licensed to ensure compliance with the M.G.L. c. 23K and 205 CMR and to protect the public and ensure the credibility and integrity of gaming in the Commonwealth.

134.03: Gaming Service Employees

An individual employed in a gaming establishment who is not classified as a key gaming employee in accordance with 205 CMR 134.01, or a gaming employee in accordance with 205 CMR 134.02, shall be designated as a gaming service employee and shall register in accordance with 205 CMR 134.09 prior to engaging in the provision of employment services. An individual employed by a vendor of a gaming establishment for work in a gaming establishment shall be considered a gaming service employee unless otherwise specified in 205 CMR 134.02.

134.04: Vendors

No person shall conduct business with a gaming licensee as a vendor to a gaming establishment unless such person has been licensed as a gaming vendor, as defined by M.G.L. c. 23K, § 2, or registered as a non-gaming vendor, as defined by M.G.L. c. 23K, § 2, in accordance with 205 CMR 134.00. A person shall be considered to be conducting business upon commencement of performance of a contract or provision of a good or service.

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134.04: continued

A subcontractor to a vendor shall not be required to obtain licensure or registration under 205 CMR 134.00. For purposes of 205 CMR 134.00 a subcontractor shall be considered a person that contracts with a licensed or registered vendor to provide goods or services necessary to fulfill the licensed or registered vendor's contract with a gaming licensee. As part of the application process, vendors shall be required to identify all of its known or anticipated subcontractors and shall have a continuing duty to update the Bureau relative to the identification of any new subcontractors, by submission of the Subcontractor Identification Form as provided in 205 CMR 134.07(11). The Bureau may, at its discretion, require the submission of additional information and documents, including but not limited to the Subcontractor Information Form as provided in 205 CMR 134.07(11).

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(1) Gaming Vendors.

(a) Gaming Vendors- Primary. A person who conducts business with a gaming applicant or gaming licensee on a regular or continuing basis for provision of goods or services which directly relates to gaming, as defined by M.G.L. c. 23K, § 2, including, but not limited to a person who does any of the following, shall be designated as a gaming vendor-primary:

1. Manufactures, sells, leases, supplies, or distributes devices, machines, equipment (except gaming table layouts), accessories, or items that meet at least one of the following conditions:
  - a. are designed for use in a gaming area as defined by M.G.L. c. 23K, § 2;
  - b. are designed for use in a simulcast wagering area;
  - c. are used in connection with a game in the gaming area;
  - d. have the capacity to affect the calculation, storage, collection, electronic security, or control of the gaming revenues from a gaming establishment.
2. provides maintenance services or repairs gaming or simulcast wagering equipment, including slot machines;
3. acts as a junket enterprise; or
4. provides items or services that the Commission has determined are used in or are incidental to gaming or to an activity of a gaming facility.

Exception. Any person, by submission of a written petition, may request a determination from the commission that the person providing goods or services deemed by the Bureau to meet a description contained in 205 CMR 134.04(1)(a) need not be licensed as a Gaming Vendor-primary on the grounds that they are not providing services on a regular or continuing basis or that they do not directly relate to gaming.

(b) Gaming Vendors- Secondary. Any person who regularly conducts over \$250,000 in gross sales with any one gaming licensee within a 12 month period or a person who conducts over \$100,000 in gross sales with any one gaming licensee within a three month period, and who does not otherwise qualify for designation as a Gaming Vendor-primary in accordance with 205 CMR 134.04(1)(a)1., may be designated a Gaming Vendor-secondary by the Commission regardless of the type of goods or services being provided. This designation may be made either by virtue of submission of a *Business Entity Disclosure Form- Gaming Vendor-secondary* application by the vendor in anticipation of meeting the monetary threshold, or in accordance with 205 CMR 134.04(3).

(2) Non-gaming Vendors. A person who offers to a gaming establishment or gaming licensee goods or services which are not directly related to gaming, as defined by M.G.L. c. 23K, § 2, including, but not limited to any of the following, shall be designated as a non-gaming vendor:

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134.04: continued

- (1) construction company;
- (2) vending machine provider;
- (3) linen supplier;
- (4) garbage handler;
- (5) maintenance company;
- (6) limousine service company;
- (7) food purveyor;
- (8) supplier of alcoholic beverages;
- (9) a person that sells, distributes, tests, or repairs antique slot machines as described in M.G.L. c. 271, § 5A;
- (10) suppliers of gaming table layouts.

(3) The Division of Licensing shall determine upon review of the agreement submitted in accordance with 205 CMR whether a registered non-gaming vendor has met the conditions provided in 205 CMR 134.04(1)(b). If the Division of Licensing determines that the non-gaming vendor registrant has met the threshold it shall forward notice of such to the vendor of its obligation to submit an application for licensure as a gaming vendor-secondary. Within 45 days of service of the notice, the registrant shall either submit a completed *Business Entity Disclosure Form- Gaming Vendor- Secondary* as set forth in 205 CMR 134.07(7) for licensure as a gaming vendor-secondary, discontinue providing the goods or services it is contracted to provide, file for an exemption in accordance with 205 CMR 134.04(6), or file a written request to the Division of Licensing for reconsideration from the determination requiring filing of an application for licensure as a gaming vendor-secondary on the grounds that they are not providing goods or services on a regular or continuing basis.

(4) Gaming Vendor Qualifier.

- (a) The following persons shall be designated as a gaming vendor qualifier and must establish their qualifications for licensure in accordance with 205 CMR 134.09 and 134.10:
1. If the gaming vendor applicant is a sole proprietor: The owner.
  2. If the gaming vendor applicant is a corporation:
    - a. Each officer;
    - b. Each inside director and those outside directors serving on the audit or compliance committees;
    - c. Any person owning more than 5% of the common stock of a company applying for licensure as a gaming vendor as provided by 205 CMR 134.04(1)(a), or a holding, intermediary or subsidiary company of such company;
    - d. Any person who will act as a sales representative or regularly engage in the solicitation of business from a licensed gaming establishment;
    - e. In the judgment of the Bureau any person with significant and substantial responsibility for the applicant's business in the Commonwealth.
  3. If the applicant is a limited liability corporation:
    - a. Each Member;
    - b. Each transferee of a Member's interest;
    - c. Each Manager;
    - d. In the judgment of the Bureau any person with significant and substantial responsibility for the applicant's business in the Commonwealth.
  4. If the applicant is a limited partnership:
    - a. Each General Partner;
    - b. Each Limited Partner;
    - c. In the judgment of the Bureau any person with significant and substantial respon-

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sibility for the applicant's business in the Commonwealth.

5. If the applicant is a partnership:
    - a. Each Partner;
    - b. In the judgment of the Bureau any person with significant and substantial responsibility for the applicant's business in the Commonwealth.
  - (b) In all cases, any person who, in the opinion of the commission or Bureau, can exercise control or provide direction to a gaming vendor or applicant for a gaming vendor license or holding, intermediary or subsidiary companies thereof may be designated a Gaming Vendor qualifier.
  - (c) Other Qualifiers. The commission or Bureau may, at its discretion, require other persons that have a business association of any kind with the applicant for a gaming vendor license to be licensed as a gaming vendor qualifier. These persons include, but are not limited to an affiliate or holding, intermediary or subsidiary companies of the applicant for a gaming vendor license.
  - (d) An applicant may appeal any determination made by the Bureau in accordance with 205 CMR 134.04(4) to the commission by filing a petition on a form prescribed by the commission. The commission shall decide the appeal at a public hearing on the matter at which it may allow representatives of the petitioner and Bureau to testify.
- (5) Waiver. Upon written petition, the commission may waive the requirement to be licensed as a gaming vendor qualifier for:
- (a) institutional investors holding up to 15% of the stock of the gaming vendor or applicant for a gaming vendor license, or holding, intermediary or subsidiary company thereof, upon a showing by the person seeking the waiver that it purchased the securities for investment purposes only and does not have any intention to influence or affect the affairs or operations of the gaming vendor or applicant for a gaming vendor license or a holding, intermediary or subsidiary company thereof. Provided, however, any institutional investor granted a waiver which subsequently determines to influence or affect the affairs or operations of the gaming vendor or applicant for a gaming vendor license, or a holding, intermediary thereon shall provide not less than 30 days' notice to the commission of such intent and shall file an application and be subject to the licensing requirements of 205 CMR 134.00 before taking any action that may influence or affect the affairs of the gaming vendor or applicant for a gaming vendor license or a holding, intermediary or subsidiary company. Any person holding over 15% of a gaming vendor or applicant for a gaming vendor license, or a holding, intermediary or subsidiary company thereof, shall be required to apply for a license before doing business in the Commonwealth; or
  - (b) Any person who, in the opinion of the Bureau or the commission, cannot exercise control or provide direction to a gaming vendor or applicant for a gaming vendor license or a holding, intermediary or subsidiary company thereof. Provided, however, a person who is not an institutional investor and who holds more than 5% of the common stock of a company, or holding, intermediary or subsidiary company of such a company may not petition for waiver in accordance with 205 CMR 134.04(5)(b).
- (6) Exemptions. For purposes of 205 CMR 134.04 the following persons engaged in the following fields of commerce who provide goods or services to a gaming applicant or gaming licensee, and that are not otherwise required to be licensed as a key gaming employee, gaming employee, or gaming service employee, shall not be deemed to be conducting business for purposes of M.G.L. c. 23K, § 31 and accordingly shall not be required to obtain licensure or registration as a vendor:



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## 134.04: continued

- (a) insurance companies and insurance agencies;
- (b) television, radio, newspaper, internet or other similar media outlets used for advertising purposes;
- (c) transactions with a governmental entity;
- (d) professional legal, accounting, and financial services;
- (e) physicians;
- (f) labor organizations, unions, or affiliates registered in accordance with 205 CMR 134.00;
- (g) utility companies;
- (h) telecommunications companies;
- (i) training seminars, publication subscriptions, conference registration or membership dues for professional associations intended to directly contribute to the work performance or professional development of an employee;
- (j) non-profit charitable corporations or organizations, provided that no consideration is received for the contribution;
- (k) court order or stipulation of settlement or for settlement of guest losses or guest refunds
- (l) payments for freight charges to freight transporters select by the vendor for delivering goods;
- (m) professional entertainers and/or celebrity appearances;
- (n) any other person that, by submission of a written petition, can demonstrate to the commission that registration as a non-gaming vendor is not necessary to protect the public interest.

134.05: Labor Organizations

- (1) Each labor organization, union or affiliate seeking to represent employees who are employed at a gaming establishment shall register with the Commission in accordance with 205 CMR 134.05.
- (2) Within 30 days of the date on which it begins organizing activities directed at the employees who are employed in a gaming establishment, a labor organization, union or affiliate shall file with the Bureau a labor organization registration statement in accordance with 205 CMR 134.08. Organizing activities shall include, without limitation, soliciting membership by means of any direct personal contact, or any public notices such as the posting or distribution of fliers, posters or advertisements.
- (3) Each officer, agent or principal employee of the labor organization, union or affiliate shall file a Labor Organization Individual Disclosure Form in accordance with 205 CMR 134.08 at the time the pertinent labor organization, union or affiliate registers or should register, or within 30 days of the date on which the individual is elected, appointed or hired, whichever is later, or within such additional time as the Bureau may, upon a showing of good cause, permit.
- (4) Notwithstanding 205 CMR 134.05 a Labor Organization Individual Disclosure Form need not be filed by an officer, agent or principal employee of a national or international labor organization who exercises no authority, discretion or influence over the operation of such labor organization with regard to any employment matter relating to employees who are employed in a Massachusetts gaming establishment provided that the Bureau may direct such officer to file such form or to provide any other information in the same manner and to the same extent as may be required of any other officer of a labor organization which is required to register.

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134.05: continued

(5) Neither a labor organization, union, or affiliate, nor its officers who are not otherwise licensed or registered as a key gaming employee, gaming employee, gaming service employee, gaming vendor, gaming vendor qualifier, or non-gaming vendor, may hold any financial interest in a gaming establishment whose employees are represented by the labor organization, union, or affiliate.

(134.06: Junket Enterprises and Junket Representatives: Reserved)

134.07: Forms

(1) Multi-jurisdictional Personal History Disclosure Form for Key Gaming Employees- Executive and Gaming Vendor Qualifiers. The *Multi-jurisdictional Personal History Disclosure Form For Key Gaming Employees- Executive and Gaming Vendor Qualifiers* shall contain the following information:

- (a) Name, including maiden name and any aliases or nicknames and applicable dates of use;
- (b) Date of birth;
- (c) Physical description;
- (d) Current address and residence history;
- (e) Social Security Number, which information is voluntarily provided in accordance with 5 U.S.C. § 552a;
- (f) Citizenship and, if applicable, information regarding resident alien status, including information regarding passports;
- (g) Marital history, spouse, dependents and other family data;
- (h) The gaming licensee or qualifier, gaming vendor licensee or qualifier or holding company, as applicable, with which the qualifier is affiliated, and the nature of the qualifier's position with or interest in such entity;
- (i) Telephone number at the current place of employment, and home number;
- (j) Email address;
- (k) Employment history of the qualifier and qualifier's immediate family;
- (l) Education and training;
- (m) Record of military service;
- (n) Government positions and offices presently or previously held, and the offices, trusteeships, directorships or fiduciary positions presently or previously held with any business entity;
- (o) Trusteeships or other fiduciary positions held by the qualifier and the qualifier's spouse, and any denial or suspension of, or removal from, such positions;
- (p) Current memberships in any social, labor or fraternal union, club or organization;
- (q) Licenses and other approvals held by or applied for by the qualifier or, where specified, the qualifier's spouse, in the Commonwealth of Massachusetts or any other jurisdiction, as follows:
  1. Any professional or occupational license held by or applied for the by the qualifier or the qualifier's spouse;
  2. Motor vehicle registrations and operator licenses held by or applied for the by the qualifier or the qualifier's spouse, and any revocation or suspension thereof;
  3. Possession or ownership of any pistol or firearm, or any application for any firearm permit, firearm dealer's license, or permit to carry a pistol or firearm;
  4. Any license, permit, approval or registration required to participate in any lawful gambling operation in the Commonwealth of Massachusetts or any jurisdiction held by or applied for by the qualifier; and
  5. Any denial, suspension or revocation by a government agency of a license, permit or

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- certification held by or applied for by the qualifier or the qualifier's spouse, or any entity in which the qualifier or the qualifier's spouse was a director, officer, partner or any owner of a 5% or greater interest.
- (r) Any interest in or employment presently or previously held by the qualifier with any entity which has applied for a permit, license, certificate or qualification in connection with any lawful gambling or alcoholic beverage operation in the Commonwealth of Massachusetts or any other jurisdiction; and any current employment or other association by the qualifier's family with the gambling or alcoholic beverage industries in the Commonwealth of Massachusetts or any other jurisdiction;
- (s) Civil, criminal and investigatory proceedings in any jurisdiction, as follows:
1. Any arrest, indictment, charge, or conviction of the applicant;
  2. Any instance where the applicant has been named as a co-conspirator in a criminal proceeding or held as a material witness;
  3. Any appearance before, investigation by or request to take a polygraph examination by any governmental agency, court, committee, grand jury or investigatory body, and any refusal to comply with a request to do so;
  4. Any pardons, dismissals, suspensions or deferrals of any criminal investigation, prosecution, or conviction;
  5. Lawsuits to which the applicant was or is a party;
  6. Any citation or charge for a violation of a statute, regulation or code or any jurisdiction, other than a criminal disorderly persons, petty disorderly persons or motor vehicle violation; and
  7. Any use, distribution, or possession of any narcotic, hallucinogenic, drug, barbiturate, amphetamine or other substance listed in M.G.L. c. 94C other than pursuant to a valid prescription issued by a licensed physician.
- (t) Any exclusion or barring from any casino, gaming establishment or gambling/gaming related entity in any jurisdiction;
- (u) Financial data, as follows:
1. All assets and liabilities of the applicant, and the applicant's spouse and dependent children as indicated on the net worth statement and supporting schedules in a format prescribed by the commission, including cash, bank accounts, notes payable and receivable, real estate and income taxes payable, loans, accounts payable and any other indebtedness, contingent liabilities, securities, real estate interests, real estate mortgages and liens, life insurance, pension funds, vehicles and other assets;
  2. Bank accounts, including any right of ownership in, control over or interest in any foreign bank account, and safe deposit boxes;
  3. Real estate interests held by the applicant or the applicant's spouse or dependent children;
  4. Businesses owned;
  5. Copies of federal tax returns and related information;
  6. Judgments or petitions for bankruptcy, insolvency or liquidation concerning the qualifier or any business entity in which the qualifier held a 5% or greater interest, other than a publicly traded corporation, or in which the qualifier served as an officer or director;
  7. Any business entity in which the qualifier was an owner, director or officer which has been placed under some form of governmental administration or monitoring;
  8. Any garnishment or attachment of wages, charging order or voluntary wage execution, including the amount, court, nature of the obligation and the holder of the obligation;
  9. Any repossessions of real or personal property;
  10. Any guarantees, co-signatures or insuring of payments of financial obligations of

## 205 CMR: MASSACHUSETTS GAMING COMMISSION

134.07: continued

any persons or business entities;

11. Status as executor, administrator or fiduciary of any estate;

12. Life insurance policies on the applicant's life which name someone other than the applicant's family as a beneficiary;

13. Positions held, assets held, or interest received in any estate or trust;

14. Whether the applicant has ever been bonded for any purpose or been denied any type of bond, including the nature of the bond and if applicable, the reason for denial;

15. Insurance claims in excess of \$100,000.00 by the applicant or the applicant's spouse or dependent children;

16. Referral or finder's fees in excess of \$10,000.00;

17. Loans in excess of \$10,000.00 made or received by the applicant, the applicant's spouse or dependent children;

18. Gifts in excess of \$10,000.00 given or received by the applicant or the applicant's immediate family;

19. Brokerage or margin accounts with any securities or commodities dealer;

20. Currency exchanges in an amount greater than \$10,000.00;

21. Information regarding any instance where the applicant or any entity in which the applicant was a director, officer or holder of a 5% or greater interest has traded in foreign currencies or in a foreign commodities exchange, sold or purchased discounted promissory notes or other commercial paper, or been a party to any leasing arrangements in excess of \$50,000.00; and

22. Information regarding any ownership interest or financial investment by the applicant in any entity which holds or is an applicant for a license issued by the commission, or in any gambling venture which does not require licensure by the commission, including persons providing or reasonably anticipated to provide the applicant with support in the financing of such investment or interest; the extent and nature of the applicant's involvement in the management and operation of the entity; whether the applicant has or has agreed to assign, pledge or hypothecate such interest or investment, the nature and terms of any such transaction and a copy of any such agreement.

(v) The name, address, occupation and phone number of persons who can attest to the qualifier's good character and reputation;

(w) A signed, dated Statement of Truth affidavit.

(2) Massachusetts Supplement Form For Key Gaming Employees- Executive and Gaming Vendor Qualifiers. *The Massachusetts Supplement Form For Key Qualifiers Gaming Employees- Executive and Gaming Vendor Qualifiers* shall contain the following information:

(a) Name, including maiden name and any aliases or nicknames and applicable dates of use;

(b) Date of birth;

(c) Physical description;

(d) Current address, mailing and home, if different;

(e) Home, cell, and work telephone numbers;

(f) Social Security Number, which information is voluntarily provided in accordance with 5 U.S.C. § 552a;

(g) Whether any civil judgments have been obtained against the applicant pertaining to antitrust or security regulation;

(h) The gaming license applicant or holding company, as applicable, with which the applicant is affiliated, and the nature of the applicant's position with or interest in such entity;

(i) Citizenship and, if applicable, resident alien status, including any employment authorization with expiration date; country of which the applicant is a citizen, place of birth,

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port of entry to the United States, and name and addresses of sponsor(s) upon the applicant's arrival;

(j) Whether during the last ten years any entity in which the applicant has been a director, officer, principal employee or a holder of 5% or more interest has:

1. Made or been charged with (either itself or through third parties acting for it) bribes or kickbacks to any government official, domestic or foreign, to obtain favorable treatment or to any company, employee or organization to obtain a competitive advantage;
2. Held a foreign bank account or has had authority to control disbursements from a foreign bank account;
3. Maintained a bank account or other account, whether domestic or foreign, which is not reflected on the books or records of the business or which is in a name other than the name of the business;
4. Donated, loaned or used funds or property for the use or benefit or in opposing any government, political party, candidate or committee either domestic or foreign;
5. Compensated any of its directors, officers or employees for time and expenses incurred in performing services for the benefit of or in opposing any government or political party domestic or foreign; or
6. Made any loans, donations or other disbursement to its directors, officers or employees for the purpose of making political contributions or reimbursing such individuals for political contributions whether domestic or foreign;
7. Copies of federal and foreign tax returns and related information for the last five years;
8. The name, address, occupation and phone number of persons who can attest to the qualifier's good character and reputation;
9. A signed, dated and notarized release authorization which shall direct all courts, law enforcement agencies, probation departments, military organizations, selective service boards, employers, education institutions, banks, financial and other institutions and all governmental agencies, federal, state and local, both foreign and domestic, to release any and all information pertaining to the qualifier as requested by the commission, the bureau or a contractor investigator;
10. A signed, dated Statement of Truth;
11. A waiver of liability as to the Commonwealth of Massachusetts and its instrumentalities and agents for any damages resulting from any disclosure and publication of information acquired during the license or investigation process; and
12. Consent to fingerprinting, photographing, supplying of handwriting exemplars, and any lawful inspection, search, or seizure of the applicant, licensee, or registrant while present in a gaming establishment, and/or their personal effects present in a gaming establishment conducted in accordance with 205 CMR.

(3) Key Gaming Employee- Standard Application Form. A Key Gaming Employee- Standard Application Form shall contain the following information:

- (a) Name, including maiden name and any aliases or nicknames along with applicable dates of usage;
- (b) Date and place of birth;
- (c) Physical description;
- (d) Current address and telephone number, and residence history for the past ten years;
- (e) Social Security Number, which information is voluntarily provided in accordance with § 7 of the Privacy Act, 5 U.S.C. § 552a;
- (f) Citizenship and, if applicable, resident alien status, including any employment authorization and expiration date, country of which the applicant is a citizen, place of birth,

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port of entry to the United States, and name and address of sponsor(s) upon the applicant's arrival;

- (g) Reason for filing the Key Gaming Employee- Standard Application Form;
- (h) Marital history and other family data;
- (i) Employment history, including any gaming-related employment, for the past ten years;
- (j) Education and training;
- (k) Record of military service;
- (l) Licenses and other approvals held by or applied for by the applicant or, where specified, the applicant's spouse, in the Commonwealth of Massachusetts or any other jurisdiction, including:
  1. Any license, permit, approval or registration required to participate in any lawful gambling operation in the Commonwealth of Massachusetts or any jurisdiction;
  2. Any denial, suspension or revocation by a government agency in the Commonwealth of Massachusetts or any other jurisdiction of a license, permit, approval or registration held by or applied for by the applicant or the applicant's spouse; and
  3. Motor vehicle registrations and operator licenses held by or applied for by the applicant or the applicant's spouse, and any revocation or suspension thereof.
- (m) Civil, criminal and investigatory proceedings in any jurisdictions, as follows:
  1. Any arrest, indictment, charge, or conviction of the applicant;
  2. Any appearance before, investigation by or request to take a polygraph examination by any governmental agency, court, committee, grand jury or investigatory body;
  3. Lawsuits to which the applicant was or is a party in the past ten years; and
  4. Whether any civil judgments have been obtained against the applicant pertaining to antitrust or security regulation.
- (n) Financial data, as follows:
  1. All assets and liabilities of the applicant, and the applicant's spouse and dependent children as indicated on the net worth statement and supporting schedules in a format prescribed by the Commission, including cash, bank accounts, notes payable and receivable, real estate and income taxes payable, loans, accounts payable, credit card debt and any other indebtedness, contingent liabilities, securities, real estate interests, real estate mortgages and liens, life insurance, pension funds, vehicles and other assets;
  2. Bank accounts, including any right of ownership in, control over or interest in any foreign bank account during the last ten year period as well as with regard to safe deposit boxes;
  3. Real estate interests held by the applicant or the applicant's spouse or dependent children in the past ten years regardless of whether such interest was held under a recorded or unrecorded instrument;
  4. Any business in which the applicant has held an ownership interest for the past 20 years;
  5. Copies of federal and state tax returns and related information for the last five years;
  6. Judgments or petitions for bankruptcy or insolvency concerning the applicant or any business entity in which the applicant held a 5% or greater interest, other than a publicly traded corporation, in the past 20 years or in which the applicant served as an officer or director;
  7. Any garnishment or attachment of wages, charging order or voluntary wage execution, during the past ten-year period including the amount, court, nature of the obligation and the name and address holder of the obligation;
  8. Positions held or interest received in any estate or trust during the last ten-year period;

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9. Insurance claims in excess of \$100,000 by the applicant or the applicant's spouse or dependent children filed within the past ten-year period;
  10. Loans in excess of \$10,000 made or received by the applicant, the applicant's spouse or dependent children in the last ten-year period;
  11. During the last five-year period, any gifts in excess of \$10,000, either individually or in the aggregate, given or received, whether tangible or intangible, by the applicant or the applicant's immediate family in any one-year period; and
  12. Referral or finder's fees in excess of \$10,000 in the past ten years.
- (o) The name, address, occupation and phone number of persons who can attest to the applicant's good character and reputation;
  - (p) Consent to fingerprinting, photographing, supplying of handwriting exemplars, and any lawful inspection, search, or seizure of the applicant, licensee, or registrant while present in a gaming establishment, and/or their personal effects present in a gaming establishment conducted in accordance with 205 CMR;
  - (q) A signed, dated and notarized release authorization which shall direct all courts, law enforcement agencies, probation departments, military organizations, selective service boards, employers, education institutions, banks, financial and other institutions and all governmental agencies, federal, state and local, both foreign and domestic, to release any and all information pertaining to the applicant as requested by the commission, the bureau or a contractor investigator; and
  - (r) A signed, dated Statement of Truth.
- (4) Gaming Employee License Form. The *Gaming Employee License Form* shall contain the following information:
- (a) Name and address of the applicant;
  - (b) Detailed employment history;
  - (c) Education and training;
  - (d) Record of military service;
  - (e) Government positions and offices presently or previously held, and offices, trusteeships, directorships or fiduciary positions presently or previously held with any business entity;
  - (f) Licenses, registrations, permits, certification and other approvals held by or applied for in the Commonwealth of Massachusetts or any other jurisdiction;
  - (g) Any denial, suspension or revocation by a governmental agency of a license, registration, permit or certification held by or applied for the applicant or any entity in which the applicant a director, officer, partner or an owner of a 5% or greater interest;
  - (h) Any interest in or employment presently or previously held by the applicant with an entity which has applied for a permit, license, certificate or qualification in connection with any lawful gambling or alcoholic beverage operation in the Commonwealth of Massachusetts or any other jurisdiction;
  - (i) Any arrest, indictment, charge, or conviction of the applicant;
  - (j) Civil litigation history where the applicant was or is a party;
  - (k) Gaming regulatory history;
  - (l) All governmental financial liens or judgments, including state tax liens, delinquent child support obligations, defaulted student loans, unemployment judgments, unpaid motor vehicle surcharges, welfare judgments, bankruptcy or insolvency findings, wage garnishments;
  - (m) Whether any civil judgments have been obtained against the applicant pertaining to antitrust or security regulation;
  - (n) Consent to fingerprinting, photographing, supplying of handwriting exemplars, and any lawful inspection, search, or seizure of the applicant, licensee, or registrant while present in a gaming establishment, and/or their personal effects present in a gaming establishment

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conducted in accordance with 205 CMR;

(o) A signed, dated and notarized release authorization which shall direct all courts, law enforcement agencies, probation departments, military organizations, selective service boards, employers, education institutions, banks, financial and other institutions and all governmental agencies, federal, state and local, both foreign and domestic, to release any and all information pertaining to the applicant as requested by the commission, the bureau or a contractor investigator; and

(p) A signed, dated and notarized Statement of Truth.

(5) Gaming Service Employee Registration Form. A *Gaming Service Employee Registration Form* shall contain the following information:

(a) Name, including maiden name and any aliases and nicknames;

(b) Date of birth;

(c) Physical description;

(d) Current address and residence history for the past five years;

(e) Social Security Number, which information is voluntarily provided in accordance with § 7 of the Privacy Act, 5 U.S.C. § 552a;

(f) Citizenship, and, if applicable, resident alien status, including any employment authorization and expiration date; country of which the applicant is a citizen, place of birth, port of entry to the United States and name and address of sponsor(s) upon the applicant's arrival;

(g) Last three jobs, and any gaming-related employment during the last ten years;

(h) Any license, permit, approval or registration held by or applied for by the applicant and required to participate in any gaming operation in any jurisdiction;

(i) Any license, permit, approval or registration held by the applicant to work in the gaming industry that was suspended, revoked or denied or had any disciplinary action taken against in any jurisdiction;

(j) Any arrest, indictment, charge, or conviction of the applicant;

(k) All governmental financial liens or judgments, including state tax liens, delinquent child support obligations, defaulted student loans, unemployment judgments, unpaid motor vehicle surcharges, and/or welfare judgments;

(l) Consent to fingerprinting, photographing, supplying of handwriting exemplars, and any lawful inspection, search, or seizure of the applicant, licensee, or registrant while present in a gaming establishment, and/or their personal effects present in a gaming establishment conducted in accordance with 205 CMR;

(m) A signed, dated Statement of Truth; and

(n) A signed, dated and notarized Release Authorization which shall direct all courts, law enforcement agencies, probation departments, selective service boards, employers, educational institutions, banks, financial and other institutions and all governmental agencies, federal, state and local both foreign and domestic, to release any and all information pertaining to the applicant as requested by the Commission and/or the Bureau.

(6) Business Entity Disclosure Form - Gaming Vendor- Primary. A *Business Entity Disclosure Form Gaming Vendor- Primary (BED GVP)* shall contain the following information:

(a) The current or former official and trade names used and the dates of use;

(b) The current post office address and, if a corporation, the name of the state under the laws of which it was incorporated, the location of its principal place of business and the names and addresses of its directors and stockholders;

(c) The former business addresses within the last ten-year period and dates of use;

(d) The business telephone number;



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- (e) The name, title and telephone number of the contact person;
- (f) Whether the application is for initial licensure or retention of that license and, if retention, the license number and date of last submission;
- (g) The business form and, as appropriate, a copy of the certificate of incorporation, charter, bylaws, partnership agreement and all amendments, trust agreement or other documentation relating to the legal organization of the enterprise;
- (h) If a publicly traded corporation, the stock exchange its stock is traded on and its symbol;
- (i) The Federal Employer Identification Number;
- (j) A description of the present and any former business engaged in or intended to be engaged in by the vendor and any parent, holding, intermediary or subsidiary company within the past five years and similar information for former businesses for the past ten years;
- (k) A description of the nature, type, number of shares, terms, conditions, rights and privileges of all classes of stock issued by the vendor, if any, and the amount outstanding of each, or which the vendor plans to issue;
- (l) The identity of every person having a direct or indirect interest in the business and the nature of such interest; provided, however, that if the disclosed entity is a trust, the application shall disclose the names and addresses of all beneficiaries; provided further, that if the disclosed entity is a partnership, the application shall disclose the names and addresses of all partners, both general and limited; and provided further, that if the disclosed entity is a limited liability company, the application shall disclose the names and addresses of all members;
- (m) The name, address, date of birth (if appropriate), class of non-voting stock, number and percentage of shares held by each person or entity having a beneficial interest in any non-voting stock;
- (n) The name, home address, date of birth, current title or position and, if applicable, number of shares and class of stock and percentage of ownership for the following persons:
  1. Each officer, director or trustee;
  2. Each partner whether general, limited or otherwise;
  3. A sole proprietor;
  4. Each natural person or entity that directly or indirectly holds any beneficial or ownership interest of 5% or more of the entity completing the form;
  5. Each sales representative or other person who will regularly solicit business from a casino licensee;
  6. Each management person who supervises a regional or local office which employs sales or junket representatives or other persons who regularly solicit business from a casino hotel;
  7. Any other person not otherwise specified in 205 CMR 134.07(6)(n)1. through 6. who has signed or will sign any agreement with a gaming licensee;
  8. Each natural person who indirectly holds any beneficial or ownership interest of 10% or more of an applicant for a junket enterprise license; and
  9. If a junket enterprise, each junket representative who will deal directly with gaming licensees and their employees.
- (o) A flow chart which illustrates the ownership of any other vendor which holds an interest in the filing vendor;
- (p) The name, last known address, date of birth, position, dates the position was held, and reason for leaving for any former officers or directors who held such office during the preceding ten years;
- (q) The annual compensation of each partner, officer, director and trustee;
- (r) The name, home address, date of birth, position, length of time employed and the amount of compensation of each person, other than the persons identified in 205

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CMR 134.07(6)(m), who is currently expected to receive annual compensation of more than \$300,000;

(s) A description of all bonus, profit sharing, pension, retirement, deferred compensation or similar plans in existence or to be created by the vendor;

(t) If the vendor is a partnership, a description of the interest held by each partner, whether limited or general, amount of initial investment, amount of additional contribution, amount and nature of any anticipated future investments, degree of control of each partner, percentage of ownership of each partner, and method of distributing profits to each partner;

(u) A description of the nature, type, terms, covenants, and priorities of all outstanding debt and the name, address and date of birth of each debt holder or security holder, type and class of debt instrument held, original debt amount and current debt balance;

(v) A description of the nature, type, terms and conditions of all securities options;

(w) Within the last ten years, the following information for each account held by a bank, savings and loan association or other financial institution, whether foreign or domestic, in the name of the vendor or its nominee or which is otherwise under the direct or indirect control of the vendor:

1. The name and address of the financial institution;
2. The type of account;
3. The account numbers; and
4. The dates held.

(x) A description of the ten highest value contracts or agreements in effect during the preceding 12 months to which it is a party including name, address and nature of the contract or goods or service provided;

(y) A description of any civil, criminal, administrative and investigatory proceedings in any jurisdiction in which the vendor or its subsidiaries have been involved as follows:

1. Any arrest, indictment, charge or conviction for any criminal or disorderly persons offense;
2. Any criminal proceeding in which the business or its subsidiaries has been a party or has been named as an unindicted co-conspirator;
3. Existing civil litigation if damages are reasonably expected to exceed \$100,000, except for claims covered by insurance;
4. Any judgment, order, consent decree or consent order entered against the vendor pertaining to a violation or alleged violation of the federal antitrust, trade regulation or securities laws or similar laws of any state, province or country; and
5. Any judgment, order, consent decree or consent order entered against the vendor pertaining to a violation or alleged violation of any other state or federal statute, regulation or code which resulted in the imposition of a fine or penalty of \$50,000 or more.

(z) Within the last ten years, for the vendor and any holding or intermediary company, information regarding any judgments or petitions by or against it for bankruptcy or insolvency and any relief sought under any provision of the Federal Bankruptcy Act or any state insolvency law, and any receiver, fiscal agent, trustee, reorganization trustee, or similar officer appointed for the property or business of the vendor or its parent, any holding, intermediary or subsidiary company;

(aa) Within the last ten years, whether the vendor has had any license or certificate denied, suspended or revoked by any government agency in the Commonwealth of Massachusetts or any other jurisdiction, the nature of such license or certificate, the agency and its location, the date of such action, the disposition, the reasons therefore, and the facts related thereto;

(bb) Whether the vendor has ever applied for a license, permit or authorization to participate

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in any lawful gaming operation in the Commonwealth of Massachusetts or any other jurisdiction, the agency and its location, date of application, the nature of the license permit or authorization, number and expiration date;

(cc) Within the last ten years, whether the vendor or any director, officer, partner, employee or person acting for or on behalf of the vendor has made bribes or kickbacks to any employee, company, organization or government official, foreign or domestic, to obtain favorable treatment or to obtain a competitive advantage;

(dd) The names and addresses of any current or former directors, officers, partners, employees or third parties who would have knowledge or information concerning 205 CMR 124.07(6)(aa);

(ee) A copy of each of the following:

1. Annual reports for the past five years;
2. If the enterprise is a corporation registered under the Securities Act of 1933 or the Securities Exchange Act of 1934, any annual reports prepared within the last five years on Form 10K pursuant to the Securities Exchange Act of 1934;
3. An audited financial statement for the last fiscal year, including, without limitation, an income statement, balance sheet and statement of sources and application of funds, and all notes to such statements and related financial schedules;
4. Copies of all annual financial statements, whether audited or unaudited, prepared in the last five fiscal years, any exceptions taken to such statements by an independent auditor and the management response thereto; and an independent audit report of all financial activities and interests including, but not limited to, the disclosure of all contributions, donations, loans or any other financial transactions to or from a gaming entity or operator in the past five years;
5. Any current report prepared due to a change in control of the vendor, an acquisition or disposition of assets, a bankruptcy or receivership proceeding, a change in the vendor's certifying accountant or any other material event, or, if the vendor is registered with the SEC, a copy of the most recently filed Form 8K;
6. The most recent Proxy or Information Statement filed pursuant to § 14 of the Securities Exchange Act of 1934; and
7. Registration Statements filed in the last five years pursuant to the Securities Act of 1933.

(ff) An organizational chart of the vendor, including position descriptions and the name of the person holding each position;

(gg) Copies of all Internal Revenue Forms 1120 (corporate income tax return), all Internal Revenue Forms 1065 (partnership return) or all Internal Revenue Forms 1040 (personal return) filed for the last five years;

(hh) A copy of a business registration certificate or other proof of valid business registration in Massachusetts;

(ii) A Subcontractor ~~Identification—Information~~ Form completed in accordance with 205 CMR

134.07(11), if so authorized by the Bureau;

(jj) In addition to the information above, a completed BED GVP shall include the following documents, which shall be dated and signed by the president, chief executive officer, partners, general partner, sole proprietor or other authorized person and notarized:

1. A Statement of Truth;
2. A Release Authorization directing all courts, law enforcement agencies, probation departments, selective service boards, employers, educational institutions, banks, financial and other institutions and all governmental agencies, federal, state and local, both foreign and domestic, to release any and all information pertaining to the vendor as

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requested by the Commission; and

3. An acknowledgment of receipt of notice regarding confidentiality, and non-refundability of filing fees.

(7) Business Entity Disclosure Form - Gaming Vendor- Secondary. A *Business Entity Disclosure Form Gaming Vendor- Secondary (BED GVS)* shall contain the following information:

- (a) The current or former official and trade names used and the dates of use;
- (b) The current post office address and, if a corporation, the name of the state under the laws of which it was incorporated, the location of its principal place of business and the names and addresses of its directors and stockholders;
- (c) The former business addresses within the last ten-year period and dates of use;
- (d) The business telephone number;
- (e) The name, title and telephone number of the contact person;
- (f) Whether the application is for initial licensure or retention of that license and, if retention, the license number and date of last submission;
- (g) The business form and, as appropriate, a copy of the certificate of incorporation, charter, bylaws, partnership agreement and all amendments, trust agreement or other documentation relating to the legal organization of the business;
- (h) If a publicly traded corporation, the stock exchange its stock is traded on and its symbol;
- (i) The Federal Employer Identification Number;
- (j) A description of the nature, type, number of shares, terms, conditions, rights and privileges of all classes of stock issued by the vendor, if any, and the amount outstanding of each, or which the vendor plans to issue;
- (k) The identity of every person having a direct or indirect interest in the business and the nature of such interest; provided, however, that if the disclosed entity is a trust, the application shall disclose the names and addresses of all beneficiaries; provided further, that if the disclosed entity is a partnership, the application shall disclose the names and addresses of all partners, both general and limited; and provided further, that if the disclosed entity is a limited liability company, the application shall disclose the names and addresses of all members;
- (l) The name, home address, date of birth, current title or position and, if applicable, number of shares and class of stock and percentage of ownership for the following persons:
  1. Each officer, director or trustee;
  2. Each partner whether general, limited or otherwise;
  3. A sole proprietor;
  4. Each natural person or entity that directly or indirectly holds any beneficial or ownership interest of 5% or more of the entity completing the form;
  5. Each sales representative or other person who will regularly solicit business from a gaming licensee;
  6. Any other person not otherwise specified in 205 CMR 134.07(7)(l)1. through 5. who has signed or will sign any agreement with a gaming licensee.
- (m) The annual compensation of each partner, officer, director and trustee;
- (n) The name, home address, date of birth, position, length of time employed and the amount of compensation of each person, other than the persons identified in 205 CMR 134.07(7)(l), who is currently expected to receive annual compensation of more than \$300,000;
- (o) If the vendor is a partnership, a description of the interest held by each partner, whether limited or general, amount of initial investment, amount of additional contribution, amount and nature of any anticipated future investments, degree of control of each partner,

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- percentage of ownership of each partner, and method of distributing profits to each partner;
- (p) A description of the nature, type, terms, covenants, and priorities of all outstanding debt and the name, address and date of birth of each debt holder or security holder, type and class of debt instrument held, original debt amount and current debt balance;
- (q) A description of the nature, type, terms and conditions of all securities options;
- (r) Within the last ten years, the following information for each account held by a bank, savings and loan association or other financial institution, whether foreign or domestic, in the name of the vendor or its nominee or which is otherwise under the direct or indirect control of the vendor:
1. The name and address of the financial institution;
  2. The type of account;
  3. The account numbers; and
  4. The dates held.
- (s) A description of any civil, criminal, administrative and investigatory proceedings in any jurisdiction in which the vendor or its subsidiaries have been involved as follows:
1. Any arrest, indictment, charge or conviction for any criminal or disorderly persons offense;
  2. Any criminal proceeding in which the business or its subsidiaries has been a party or has been named as an unindicted co-conspirator;
  3. Existing civil litigation if damages are reasonably expected to exceed \$100,000, except for claims covered by insurance;
  4. Any judgment, order, consent decree or consent order entered against the vendor pertaining to a violation or alleged violation of the federal antitrust, trade regulation or securities laws or similar laws of any state, province or country; and
  5. Any judgment, order, consent decree or consent order entered against the vendor pertaining to a violation or alleged violation of any other state or federal statute, regulation or code which resulted in the imposition of a fine or penalty of \$50,000 or more.
- (t) Within the last ten years, for the vendor and any holding or intermediary company, information regarding any judgments or petitions by or against it for bankruptcy or insolvency and any relief sought under any provision of the Federal Bankruptcy Act or any state insolvency law, and any receiver, fiscal agent, trustee, reorganization trustee, or similar officer appointed for the property or business of the vendor or its parent, any holding, intermediary or subsidiary company;
- (u) Within the last ten years, whether the vendor has had any license or certificate denied, suspended or revoked by any government agency in the Commonwealth of Massachusetts or any other jurisdiction, the nature of such license or certificate, the agency and its location, the date of such action, the disposition, the reasons therefore, and the facts related thereto;
- (v) Whether the vendor has ever applied for a license, permit or authorization to participate in any lawful gaming operation in the Commonwealth of Massachusetts or any other jurisdiction, the agency and its location, date of application, the nature of the license permit or authorization, number and expiration date;
- (w) Within the last ten years, whether the vendor or any director, officer, partner, employee or person acting for or on behalf of the vendor has made bribes or kickbacks to any employee, company, organization or government official, foreign or domestic, to obtain favorable treatment or to obtain a competitive advantage;
- (x) The names and addresses of any current or former directors, officers, partners, employees or third parties who would have knowledge or information concerning 205 CMR 134.07(7)(w);
- (y) A copy of each of the following:

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1. Annual reports for the past five years;
  2. If the enterprise is a corporation registered under the Securities Act of 1933 or the Securities Exchange Act of 1934, any annual reports prepared within the last five years on Form 10K pursuant to the Securities Exchange Act of 1934;
  3. An audited financial statement for the last fiscal year, including, without limitation, an income statement, balance sheet and statement of sources and application of funds, and all notes to such statements and related financial schedules;
  4. Copies of all annual financial statements, whether audited or unaudited, prepared in the last five fiscal years, any exceptions taken to such statements by an independent auditor and the management response thereto; and an independent audit report of all financial activities and interests including, but not limited to, the disclosure of all contributions, donations, loans or any other financial transactions to or from a gaming entity or operator in the past five years;
  5. Any current report prepared due to a change in control of the vendor, an acquisition or disposition of assets, a bankruptcy or receivership proceeding, a change in the vendor's certifying accountant or any other material event, or, if the vendor is registered with the SEC, a copy of the most recently filed Form 8K;
  6. The most recent Proxy or Information Statement filed pursuant to § 14 of the Securities Exchange Act of 1934; and
  7. Registration Statements filed in the last five years pursuant to the Securities Act of 1933.
- (z) An organizational chart of the vendor, including position descriptions and the name of the person holding each position;
- (aa) Copies of all Internal Revenue Forms 1120 (corporate income tax return), all Internal Revenue Forms 1065 (partnership return) or all Internal Revenue Forms 1040 (personal return) filed for the last five years;
- (bb) A copy of a business registration certificate or other proof of valid business registration in Massachusetts;
- (cc) A Subcontractor ~~Identification~~ Information Form completed in accordance with 205 CMR 134.07(11), if so authorized by the Bureau;
- (cc) In addition to the information above, a completed BED GVS shall include the following documents, which shall be dated and signed by the president, chief executive officer, partners, general partner, sole proprietor or other authorized person and notarized:
1. A Statement of Truth;
  2. A Release Authorization directing all courts, law enforcement agencies, probation departments, selective service boards, employers, educational institutions, banks, financial and other institutions and all governmental agencies, federal, state and local, both foreign and domestic, to release any and all information pertaining to the vendor as requested by the commission; and
  3. An acknowledgment of receipt of notice regarding confidentiality and non-fundability of filing fees.
- (8) Non-gaming Vendor Registration Form. A *Non-gaming Vendor Registration Form* shall contain the following information:
- (a) Any official or trade name used by the non-gaming vendor;
  - (b) The current address and telephone number of the non-gaming vendor;
  - (c) The nature of the non-gaming vendor's business and the type of goods and services to be provided to a gaming licensee;
  - (d) The Federal Employer Identification Number;

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(e) The name, residence address, social security number, and date of birth of each of the following persons:

1. The sales representative(s) or other person(s) who solicit(s) business from a gaming licensee or applicant and such person's immediate supervisors; and
2. Any person authorized to sign any agreement with the gaming licensee or applicant on behalf of the vendor; and
3. The name(s), address(es) and percentage of ownership held by each entity or person directly owning more than five percent of the enterprise.

(f) A Subcontractor ~~Identification-Information~~ Form completed in accordance with 205 CMR

134.07(11), if so authorized by the Bureau.

(g) Consent to fingerprinting, photographing, and the supplying of handwriting exemplars signed by any individual identified in accordant to 205 CMR 134.07(8)(e).

(h) A Release Authorization directing all courts, law enforcement agencies, probation departments, selective service boards, employers, educational institutions, banks, financial and other institutions and all governmental agencies, federal, state and local, both foreign and domestic, to release any and all information pertaining to the vendor as requested by the Commission.

(9) Labor Organization Registration Statement. A *Labor Organization Registration Statement* shall contain the following information:

- (a) The name of the registrant as shown on its charter or in its constitution;
- (b) The current business addresses of the registrant, including the address, telephone and fax numbers of any office where matters pertaining to employees of a gaming licensee will be conducted;
- (c) The name, title, email address, telephone and fax numbers of a primary contact person;
- (d) Whether the submission is an initial or biennial renewal registration;
- (e) The names of the registrant's parent organization and all affiliates of the registrant or its parent organization, whether chartered by the parent organization or governed by the same constitution or bylaws;
- (f) The name and nature of the actual or probable involvement of any affiliate which represents or is seeking to represent employees who are employed in a gaming establishment or which is involved or seeking to be involved in the control or direction of such representation;
- (g) Financial data, including information concerning any financial interests held in a gaming establishment; and
- (h) The name, address and, where applicable, date of birth, title or position and authority or responsibility, of the following persons or entities:
  1. Any pension or welfare system maintained by the registrant;
  2. Each officer and agent of any pension or welfare system maintained by the registrant;
  3. Each officer and officer-elect of the registrant;
  4. Each agent authorized to represent the registrant in Massachusetts; and
  5. Each principal employee of the registrant.
- (i) A notarized Statement of Truth, which shall be dated and signed by the registrant's president or other authorized officer;
- (j) A waiver of liability as to the Commonwealth of Massachusetts and its instrumentalities and agents for any damages resulting to the registrant from any disclosure or publication of information acquired during the investigation process;

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(10) Labor Organization Individual Disclosure Form. A *Labor Organization Individual Disclosure Form* shall contain the following information:

- (a) Name, including maiden name and any aliases or nicknames;
- (b) Title or position with the labor organization;
- (c) Date and place of birth;
- (d) Physical description;
- (e) Current address and home telephone number, email address, and residence history for the past year;
- (f) Social Security Number, which information is voluntarily provided in accordance with § 7 of the Privacy Act, 5 U.S.C. § 552a;
- (g) Citizenship and, if applicable, information concerning resident alien status;
- (h) Full name of the labor organization represented;
- (i) Telephone number and email address at current place of employment;
- (j) Employment history:
  - 1. All positions held with a labor organization, union or affiliate, whether or not compensated, for the past five years; and
  - 2. Last three jobs, indicating any gaming-related positions;
- (k) Licenses or other approvals held or applied for which are required to participate in any lawful gambling operation in the Commonwealth of Massachusetts or any jurisdiction;
- (l) A signed, dated and notarized Statement of Truth;
- (m) A waiver of liability as to the Commonwealth of Massachusetts and its instrumentalities and agents for any damages resulting to the officer, agent or principal employee from any disclosure or publication of information acquired during the investigation process.

(11) Subcontractor Identification—Information Form. A Subcontractor Identification Information Form shall contain the following information:

- (a) ~~A list of all known and anticipated subcontractors including the~~ The official or trade name (for purposes of 205 CMR 134.07(11) a subcontractor shall be considered a person that contracts with a licensed or registered vendor to provide goods or services necessary to fulfill the licensed or registered vendor's contract with a gaming licensee);
- (b) The current address, telephone number, email address, and any website for the subcontractor;
- (c) The nature of the subcontractor's business and the type of goods and services to be provided to the vendor including the term and value of the contract;
- (d) The Federal Employer Identification Number of the subcontractor;
- (e) The name, residence address, social security number, and date of birth of each of any person authorized to sign any agreement with the vendor on behalf of the subcontractor; and
- (f) Consent to fingerprinting, photographing, and the supplying of handwriting exemplars signed by any individual identified in accordance with 205 CMR 134.07(11);
- (g) The name(s), address(es) and percentage of ownership held by each entity or person directly owning more than 5% of the enterprise;
- (h) A Release Authorization directing all courts, law enforcement agencies, probation departments, selective service boards, employers, educational institutions, banks, financial and other institutions and all governmental agencies, federal, state and local, both foreign and domestic, to release any and all information pertaining to the subcontractor as requested by the commission.

134.08: Submission of Application

- (1) An application for the initial issuance of a key gaming employee license in accordance with 205 CMR 134.01, a gaming employee license in accordance with 205 CMR 134.02, a gaming



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service employee registration in accordance with 205 CMR 134.03, a gaming vendor license in accordance with 205 CMR 134.04(1), a non-gaming vendor registration in accordance with 205 CMR 134.04(2), a Gaming Vendor qualifier license in accordance with 205 CMR 134.04(1)(c), a Labor Organization registration in accordance with 205 CMR 134.05, and officers, agents, and principal employees of a Labor Organization in accordance with 205 CMR 134.05 shall include all of the following:

(a) A completed application form as follows:

1. An applicant for a key gaming employee-executive license shall file a Multi-jurisdictional Personal History Disclosure Form For Key Gaming Employees-executive ~~and Gaming Vendor Qualifiers~~ as set forth in 205 CMR 134.07(1) and a Massachusetts Supplement Form For Key Gaming Employees- executive ~~and Gaming Vendor Qualifiers~~ as set forth in 205 CMR 134.07(2);

2. An applicant for a key gaming employee- standard license shall file a Key Gaming Employee-standard Application Form as set forth in 205 CMR 134.07(3);

3. An applicant for a gaming employee license shall file a Gaming Employee License Form as set forth in 205 CMR 134.07(4);

4. An applicant for a gaming service employee registration shall file a Gaming Service Employee Registration Form as set forth in 205 CMR 134.07(5);

5. An applicant for a gaming vendor-primary license shall file a Business Entity Disclosure Form- Gaming Vendor-primary as set forth in 205 CMR 134.07(6);

6. An applicant for a Gaming Vendor-secondary license shall file a Business Entity Disclosure Form- Gaming Vendor-secondary as set forth in 205 CMR 134.07(7);

7. An applicant for a non-gaming vendor registration shall file a Non-gaming Vendor Registration Form as set forth in 205 CMR 134.07(8);

8. A gaming vendor-primary qualifier (individual) shall file a Key Gaming Employee-standard

Application Form as set forth in 205 CMR 134.07(2);

9. A gaming vendor-secondary qualifier (individual) shall file a Gaming Employee Application Form as set forth in 205 CMR 134.07(4);

9~~10~~. A gaming vendor-primary qualifier (entity) shall file a Business Entity Disclosure Form- Gaming Vendor-primary as set forth in 205 CMR 134.07(6);

11. A gaming vendor-secondary qualifier (entity) shall file a Business Entity Disclosure Form – Gaming Vendor-Secondary as set forth in 205 CMR 134.07(7)

~~10~~12. A Labor Organization shall file a Labor Organization Registration Statement as set

forth in 205 CMR 134.07(9);

~~11~~13. Officers, agents, and principal employees of a Labor Organization shall file a Labor

Organization Individual Disclosure Form as set forth in 205 CMR 134.07(10).

(b) A passport style photograph of the applicant, taken within the preceding 12 months;

(c) Proof of fingerprinting in accordance with 205 CMR 134.13;

(d) The documents required for identification by 205 CMR 134.14

(e) Any applicable fee required by 205 CMR 134.15.

(f) (For Gaming Employees and Gaming Service Employees) Proof of an offer of employment from a gaming licensee pending licensure or registration of the applicant.

(2) Notwithstanding 205 CMR 134.08(1)(a), a qualifier for a gaming vendor license may, if authorized by the Bureau, file licensing information, including but not limited to, for publicly traded

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companies, copies of their public securities filings and/or audited consolidated financial statements for a period as determined by the Bureau, in lieu of the form identified in 205 CMR 134.08(1)(a).

(3) An applicant for a key gaming employee license who has previously been issued a positive determination of suitability by the Commission as part of an RFA-1 investigation may file supplemental licensing information that updates their previous filing submitted as part of the qualifier suitability investigation as directed by the Division of Licensing in lieu of the full application identified in 205 CMR 134.08(1)(a).

(34) Each applicant shall file a complete application pursuant to 205 CMR 134.08(1) with the Bureau by mail, in person at the address specified on the application form, or via the Commission's website. The Bureau shall not accept an incomplete application.

(45) Reciprocity for Vendors. If an applicant for a gaming vendor license or non-gaming vendor registration is licensed or registered in another jurisdiction within the United States with comparable license and registration requirements, as determined by the Bureau, and is in good standing in all jurisdictions in which it holds a license or registration, the commission may enter into a reciprocal agreement with the applicant, upon the recommendation of the Bureau, to allow for an abbreviated licensing or registration process and issue a gaming vendor license or registration in accordance with 205 CMR 134.00; provided, however, as part of any such an agreement that the commission shall reserve its rights to investigate the qualifications of an applicant at any time and may require the applicant to submit to a full application for a gaming vendor license or provide further information for registration. The reciprocal agreement shall identify the nature of the investigation to be conducted prior to issuance of the requested license or registration including, but not limited to, such provisos as the review of any investigatory reports from any jurisdictions in which the applicant is approved to conduct business, interviewing of any witnesses, and the filing of all required Massachusetts business filings.

(56) Scope of Duties. An employee of a gaming establishment may, where otherwise qualified, engage in the following duties without further licensure by the commission:

- (a) A person who is licensed as a Key Gaming Employee-executive may, where otherwise qualified, engage in the performance of duties of a Key Gaming Employee-standard, gaming employee or gaming service employee.
- (b) A person who is licensed as a Key Gaming Employee-standard may, where otherwise qualified, engage in the performance of duties of a gaming employee or gaming service employee.
- (c) A person who is licensed as a gaming employee may engage in the performance of duties of a gaming service employee.

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134.09: Investigation, Determination, and Appeals for Gaming Establishment Employees and Vendors

(1) Upon receipt of an application for a key gaming employee license in accordance with 205 CMR 134.01, a gaming employee license in accordance with 205 CMR 134.02, a gaming service employee registration in accordance with 205 CMR 134.03, a gaming vendor license in accordance with 205 CMR 134.04(1), a non-gaming vendor registration in accordance with 205 CMR 134.04(42), a gaming vendor qualifier license in accordance with 205 CMR 134.04(4), or a Labor Organization in accordance with 205 CMR 134.05 the Division of Licensing shall conduct a review of each application for administrative completeness and

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then forward the application to the Bureau which shall conduct an investigation of the applicant. In the event an application is deemed incomplete, the Division of Licensing may either request supplemental information from the applicant or forward the application to the commission with a recommendation that it be denied. For individuals, the investigation shall include obtaining and reviewing criminal offender record information from the Department of Criminal Justice Information Services (DCJIS) and exchanging fingerprint data and criminal history with the Massachusetts Department of State Police and the United States Federal Bureau of Investigation. The investigation shall be conducted for purposes of determining whether the applicant is suitable to be issued a license or registration in accordance with 205 CMR 134.10 and 134.11.

In determining the weight to be afforded any information bearing on suitability in accordance with 205 CMR 134.10 and 134.11, the Division of Licensing, Bureau, or commission, as applicable, shall consider: the relevance of the information to employment in a gaming establishment or doing business with a gaming establishment in general, whether there is a pattern evident in the information, and whether the applicant is likely to be involved in gaming related activity. Further, the information will be considered in the light most favorable to the applicant unless the information cannot be so viewed pursuant to M.G.L. c. 23K or the information obtained does not otherwise support such view. For purposes of 205 CMR 134.00 and M.G.L. c. 23K, § 16 an adjudication of delinquency shall not be considered a conviction. Such a finding may, however, be considered for purposes of determining the suitability of an applicant. Records of criminal appearances, criminal dispositions, and/or any information concerning acts of delinquency that have been sealed shall not be considered for purposes of making a suitability determination in accordance with 205 CMR 134.00 and M.G.L. c. 23K.

(a) Keys Gaming Employee- Executive, Key Gaming Employee- Standard, and Gaming Employees. Upon completion of the investigation conducted in accordance with 205 CMR 134.09(1) the Bureau shall either approve or deny the application for a key gaming employee- executive license, key gaming employee-standard license or a gaming employee license pursuant to 205 CMR 134.10. If the application for a Key Gaming Employee-standard license or Gaming Employee license is approved, the Bureau shall forward a written approval to the Division of Licensing which shall issue a license to the applicant on behalf of the Commission. If the Bureau approves the application for a Key Gaming Employee-executive, the decision shall be forwarded to the Commission as a recommendation along with the application materials for review and issuance of the license. If the application is denied, the Bureau shall forward the recommendation for denial and reasons therefor to the Division of Licensing which shall issue a written decision to the applicant explaining the reasons for the denial. The decision shall include an advisory to the applicant that they may appeal the decision to the Bureau in accordance with 205 CMR 134.09(2). If the denial is based upon information contained in the individual's criminal record the decision shall also include an advisory that the individual will be provided with a copy of their criminal record upon request and that they may challenge the accuracy of any relevant entry therein. The decision may be served via first class mail or via email to the addresses provided by the applicant on the application.

(b) Gaming Service Employees. The Division of Licensing shall issue a gaming service employee registration to the applicant on behalf of the Commission in accordance with 205 CMR 134.11(1). In the event that the Bureau determines upon completion of the investigation conducted in accordance with 205 CMR 134.09(1) that the applicant should be disqualified from holding a registration or is otherwise unsuitable in accordance with 205 CMR 134.11, it shall forward the results of the investigation to the Division of Licensing which shall issue a written notice to the registrant revoking the registration. The notice shall include an advisory to the applicant that they shall immediately cease employment at the

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gaming establishment and may request an appeal hearing before the Bureau in accordance with 205 CMR 134.09(2). If the denial is based upon information contained in the individual's criminal record the decision shall also include an advisory that the individual will be provided with a copy of their criminal record upon request and that they may challenge the accuracy of any relevant entry therein. The notice may be served via first class mail or via email to the addresses provided by the applicant on the application.

(c) Gaming Vendors and Gaming Vendor Qualifiers. Upon completion of the investigation conducted in accordance with 205 CMR 134.09(1) the Bureau shall either approve or deny the application for a gaming vendor license pursuant to 205 CMR 134.10. If the Bureau approves the application for a Gaming Vendor license and any associated applications for Gaming Vendor qualifier licenses, the decisions shall be forwarded to the Commission as a recommendation along with the application materials for review and issuance of the license. If an application for a Gaming vendor qualifier license is approved by the Bureau subsequent to the issuance of the Gaming Vendor license by the commission, the Bureau shall forward a written approval to the Division of Licensing which shall issue a license to the applicant on behalf of the Commission. If the application is denied, the Bureau shall forward the recommendation for denial and reasons therefor to the Division of Licensing which shall issue a written decision to the applicant explaining the reasons for the denial. The decision shall include an advisory to the applicant that they may appeal the decision to the Bureau in accordance with 205 CMR 134.09(2). If the denial is based upon information contained in a person's criminal record the decision shall also include an advisory that the person will be provided with a copy of their criminal record upon request and that they may challenge the accuracy of any relevant entry therein. The decision may be served via first class mail or via email to the addresses provided by the applicant on the application.

(d) Non-gaming Vendors. The Division of Licensing shall issue a non-gaming vendor registration to the applicant on behalf of the Commission in accordance with 205 CMR 134.11(1). In the event that the Bureau determines upon completion of the investigation conducted in accordance with 205 CMR 134.09(1) that the applicant should be disqualified from holding a registration or is otherwise unsuitable in accordance with 205 CMR 134.11, it shall forward the results of the investigation to the Division of Licensing which shall issue a written notice to the registrant revoking the registration. The notice shall include an advisory to the applicant that they shall immediately cease doing business with the gaming establishment and may request an appeal hearing before the Bureau in accordance with 205 CMR 134.09(2). If the denial is based upon information contained in the person's criminal record the decision shall also include an advisory that the person will be provided with a copy of their criminal record upon request and that they may challenge the accuracy of any relevant entry therein. The notice may be served via first class mail or via email to the addresses provided by the applicant on the application.

(e) Labor Organizations. The Bureau shall issue a Labor Organization registration to the applicant on behalf of the Commission in accordance with 205 CMR 134.11(1).

(2) If an application for a key gaming employee license, gaming employee license, gaming service employee registration, gaming vendor license, non-gaming vendor registration, or gaming vendor qualifier license is denied or revoked in accordance with 205 CMR 134.09(1) the applicant may appeal the decision and request a hearing before the Bureau within 30 days of service of the decision. The request for an appeal hearing must be in writing on a form provided by the Bureau and contain an explanation of the basis for the appeal.

(3) The Bureau shall appoint a hearing officer to preside over the appeal hearing requested by an applicant in accordance with 205 CMR 134.09(2). The hearing will be conducted in accordance with M.G.L. c. 30A and 801 CMR 1.02: *Informal/Fair Hearing Rules*. An audio

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recording of the hearing shall be taken. The hearing officer shall issue a written decision to the applicant. The hearing officer may affirm the denial of the application or revocation of the registration, reverse the decision and recommend that the license or registration be issued, or recommend that the license or registration be issued with conditions. The hearing officer may recommend any condition that is reasonably calculated to ensure faithful performance of the employee's duties or vendor's obligations. The decision shall include an advisory to the applicant that they may appeal the decision to the commission in accordance with 205 CMR 134.09(5). The decision may be served via first class mail or via email to the addresses provided by the applicant on the application.

- (4) After a hearing conducted in accordance with 205 CMR 134.09(3) the following shall apply:
  - (a) If the hearing officer recommends that a Key Gaming Employee-standard license, Gaming Employee license, gaming service employee registration, Gaming vendor qualifier, or non-gaming vendor registration be issued, the Division of Licensing shall issue a license or registration to the applicant on behalf of the Commission.
  - (b) If the hearing officer recommends that the application for a Key Gaming Employee-executive or Gaming vendor license be issued, the decision shall be forwarded to the Commission as a recommendation along with the application and appeal materials for review and issuance of the license.
- (5) If an application for a key gaming employee license, gaming employee license, gaming service employee registration, gaming vendor license, non-gaming vendor registration, or gaming vendor qualifier is denied or approved with conditions in accordance with 205 CMR 134.09(3) the applicant may appeal the decision and request a hearing before the commission within 30 days of service of the decision. The request for an appeal hearing must be in writing on a form provided by the commission and contain an explanation of the basis for the appeal. The hearing will be conducted at a public meeting solely on the record of the administrative proceedings conducted by the Bureau in accordance with 205 CMR 134.09(3). The Bureau shall forward a copy of the administrative record of the proceeding to the commission promptly upon receipt of the notice of appeal.
- (6) After the hearing conducted in accordance with 205 CMR 134.09(5) the commission shall issue a written decision to the applicant. The commission may affirm the denial of the application or revocation of the registration, reverse the decision and order that the license or registration be issued, order that the license or registration be issued with conditions or remand the matter to the Bureau for further proceedings. The commission may impose any condition that is reasonably calculated to ensure faithful performance of the employee's duties or vendor's obligations.
- (7) In reviewing the Bureau's decision in accordance with 205 CMR 134.09(6), the commission may consider whether the decision or any condition imposed is:
  - (a) In excess of the statutory or regulatory authority or jurisdiction of the commission; or
  - (b) Based upon an error of law; or
  - (c) Made upon unlawful procedure; or
  - (d) Unsupported by substantial evidence; or
  - (e) Arbitrary or capricious, an abuse of discretion, or otherwise not in accordance with law.
- (8) The decision of the commission made in accordance with 205 CMR 134.09(6) and (7) shall be final and an applicant shall not be entitled to further review.

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134.10: Affirmative License Standards for the Licensing of Employees and Vendors of the Gaming Establishment

- (1) An applicant for a key gaming employee license, gaming employee license, gaming vendor license, and a gaming vendor qualifier license shall establish its individual qualifications for licensure by clear and convincing evidence.
- (2) In determining whether an applicant for licensure is suitable for purposes of being issued a key gaming employee license, gaming employee license, gaming vendor license, or gaming vendor qualifier license, or having any of these licenses renewed, the Bureau shall evaluate and consider the overall reputation of the applicant including, without limitation:
  - (a) the integrity, honesty, good character and reputation of the applicant;
  - (b) the financial stability, integrity and background of the applicant;
  - (c) whether the applicant has a history of compliance with gaming licensing requirements in other jurisdictions;
  - (d) whether the applicant, at the time of application, is a defendant in litigation;
  - (e) whether the applicant is disqualified from receiving a license under 205 CMR 134.10(3);
  - (f) whether the applicant has been convicted of a crime of moral turpitude;
  - (g) whether and to what extent the individual has associated with members of organized crime and other persons of disreputable character;
  - (h) the extent to which the individual has cooperated with the Bureau in connection with the background investigation;
  - (i) (for vendors) the integrity, honesty, and good character of any subcontractor.
- (3) The Bureau and Commission shall deny an application for a key gaming employee license, gaming employee license, gaming vendor license, or gaming vendor qualifier license if the applicant:
  - (a) has been convicted of a felony or other crime involving embezzlement, theft, fraud or perjury;
  - (b) submitted an application for a license under M.G.L. c. 23K, § 30 and 205 CMR 134.00 that intentionally contains false or misleading information;
  - (c) committed prior acts which have not been prosecuted or in which the applicant was not convicted but form a pattern of misconduct that makes the applicant unsuitable for a license;or
  - (d) has affiliates or close associates that would not qualify for a license or whose relationship with the applicant may pose an injurious threat to the interests of the commonwealth in awarding a gaming license to the applicant.
- (4) Rehabilitation.
  - (a) An applicant for a Key gaming employee license, gaming employee license or a gaming vendor qualifier license may provide proof of rehabilitation from a criminal conviction as part of the application for licensure.
  - (b) An applicant for a Key gaming employee license may not appeal a decision made by the Bureau to the Commission in accordance with 205 CMR 134.09(6) that was based upon a disqualifying prior conviction in accordance with 205 CMR 134.10(3)(a) on the basis that they wish to demonstrate rehabilitation.
  - (c) An applicant for a Gaming employee license or gaming vendor qualifier license may appeal a decision made by the Bureau based upon a disqualifying prior conviction in accordance with 205 CMR 134.10(3)(a) on the basis that they wish to demonstrate rehabilitation only if the conviction occurred before the ten year period immediately preceding the date of submission of the application for licensure or registration.
  - (d) In its discretion, the Bureau and/or Commission may issue a Gaming employee license

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or Gaming vendor qualifier license to an applicant who can affirmatively demonstrate the applicant's rehabilitation. In considering the rehabilitation of an applicant the Bureau and Commission shall consider the following:

1. the nature and duties of the position of the applicant;
2. the nature and seriousness of the offense or conduct;
3. the circumstances under which the offense or conduct occurred;
4. the date of the offense or conduct;
5. the age of the applicant when the offense or conduct was committed;
6. whether the offense or conduct was an isolated or repeated incident;
7. any social conditions which may have contributed to the offense or conduct; and
8. any evidence of rehabilitation, including recommendations and references of persons supervising the applicant since the offense or conduct was committed.

(e) Any applicant may appeal a decision made by the Bureau based upon a conviction for a crime of moral turpitude as set forth in 205 CMR 134.10(2)(f). In its discretion, the Bureau and Commission may issue a Key gaming employee license, Gaming employee license, or gaming vendor qualifier license to an applicant who can affirmatively demonstrate the applicant's rehabilitation. In considering the rehabilitation of an applicant, the Bureau and Commission shall consider the factors outlined in 205 CMR 134.10(4)(d).

(f) An applicant for a license or registration shall be at least 18 years of age at the time of application.

134.11: Affirmative Registration Standards for the Registration of Employees and Vendors of the Gaming Establishment and Labor Organizations

(1) Upon submission of an administratively complete application for registration as a gaming service employee, non-gaming vendor, or Labor Organization by an applicant the Bureau shall issue the registration on behalf of the Commission in accordance with 205 CMR 134.09(1). A registration may be subsequently revoked if it is determined that the applicant is disqualified in accordance with 205 CMR 134.11(2) or unsuitable for any criteria identified in 205 CMR 134.11(3).

(2) The Bureau and Commission shall deny and/or revoke a registration as a gaming service employee or non-gaming vendor registrant if the individual applicant or individual identified in 205 CMR 134.07(8)(e):

- (a) has been convicted of a felony or other crime involving embezzlement, theft, fraud or perjury;
- (b) submitted an application for a license under M.G.L. c. 23K, § 30 and 205 CMR 134.00 that intentionally contains false or misleading information;
- (c) committed prior acts which have not been prosecuted or in which the applicant was not convicted but form a pattern of misconduct that makes the applicant unsuitable; or
- (d) has affiliates or close associates that would not qualify for a license or whose relationship with the applicant may pose an injurious threat to the interests of the commonwealth in awarding a gaming license to the applicant.

(3) In determining whether an applicant for registration is suitable for purposes of being issued a gaming service employee registration or non-gaming vendor registration, or having a registration renewed, the Bureau may evaluate and consider the overall reputation of the applicant including, without limitation:

- (a) the integrity, honesty, good character and reputation of the applicant;

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- (b) the financial stability, integrity and background of the applicant;
- (c) whether the applicant has a history of compliance with gaming licensing requirements in other jurisdictions;
- (d) whether the applicant, at the time of application, is a defendant in litigation;
- (e) whether the applicant is disqualified from receiving a license under 205 CMR 134.11(2);
- (f) whether the applicant has been convicted of a crime of moral turpitude;
- (g) whether and to what extent the individual has associated with members of organized crime and other persons of disreputable character;
- (h) the extent to which the individual has cooperated with the Bureau in connection with the background investigation;
- (i) (for vendors) the integrity, honesty, and good character of any subcontractor.

(4) Rehabilitation.

(a) The holder of a Gaming service employee registration or non-gaming vendor registration may appeal a decision made by the Bureau based upon a disqualifying prior conviction in accordance with 205 CMR 134.11(2) on the basis that they wish to demonstrate rehabilitation only if the conviction occurred before the ten year period immediately preceding application for licensure or registration.

(b) In its discretion, the Bureau and/or Commission may issue a Gaming service employee registration or a non-gaming vendor registration to an applicant who can affirmatively demonstrate the applicant's rehabilitation. In considering the rehabilitation of an applicant the Bureau and Commission shall consider the following:

1. the nature and duties of the position of the applicant;
2. the nature and seriousness of the offense or conduct;
3. the circumstances under which the offense or conduct occurred;
4. the date of the offense or conduct;
5. the age of the applicant when the offense or conduct was committed;
6. whether the offense or conduct was an isolated or repeated incident;
7. any social conditions which may have contributed to the offense or conduct; and
8. any evidence of rehabilitation, including recommendations and references of persons supervising the applicant since the offense or conduct was committed.

(c) Any applicant may appeal a decision made by the Bureau based upon a conviction for a crime of moral turpitude as set forth in 205 CMR 134.11(3). In its discretion, the Bureau and Commission may issue a Gaming service employee registration or non-gaming vendor registration to an applicant who can affirmatively demonstrate the applicant's rehabilitation. In considering the rehabilitation of an applicant, the Bureau and Commission shall consider the factors outlined in 205 CMR 134.11(4)(b).

(5) An applicant for a registration shall be at least 18 years of age at the time of application.

(6) The Bureau may deny an application for registration as a non-gaming vendor if it determines that the applicant formed the applicant entity for the sole purpose of circumventing 205 CMR 134.04(1)(b).

134.12: Temporary Licenses

(1) Upon petition to the Commission by a gaming licensee, the Commission may issue a temporary license to an applicant for a key gaming employee license, a gaming employee license,



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or a gaming vendor license if:

- (a) the applicant for a key gaming employee license, a gaming employee license, or a gaming vendor license has filed a completed application with the commission; and
  - (b) the gaming licensee certifies, and the Commission finds, that the issuance of a temporary license is necessary for the operation of the gaming establishment and is not designed to circumvent the normal licensing procedures.
- (2) Unless otherwise stated by the Commission, a temporary license issued in accordance with 205 CMR 134.12 shall expire six months from the date of its issuance and may be renewed, at the discretion of the Commission, for an additional six-month period.
- (3) Standard of Review. A Temporary license may be issued upon a finding that the license is reasonably likely to be issued upon completion of the investigation.

134.13: Fingerprinting

Each applicant for a key gaming employee license, gaming employee license, gaming service employee registration, gaming vendor license, or non-gaming vendor registration shall be fingerprinted under the supervision of the Commission. The Commission may, for good cause shown, permit an applicant to alternatively submit three sets of classifiable fingerprints on fingerprint impression cards provided by the Commission.

134.14: Identification

- (1) Every individual applicant for a license or registration shall establish his or her identity to a reasonable certainty.
- (2) An individual applicant for a license or registration may establish their identity pursuant to 205 CMR 134.14(1) by providing either:
- (a) One of the following authentic documents:
    - 1. A current and valid United States passport;
    - 2. A Certificate of United States Citizenship, or a Certificate of Naturalization, issued by the United States Department of Homeland Security, Citizenship and Immigration Services (USCIS); or
    - 3. A current and valid identification card issued by the USCIS containing a photograph or fingerprints and identifying information such as name, date of birth, sex, height, color of eyes and address; or
  - (b) A certified copy of a birth certificate issued by a state, county or municipal authority in the United States bearing an official seal, and any one of the following authentic documents:
    - 1. A current and valid driver's license containing a photograph or identifying information such as name, date of birth, sex, height, color of eyes and address;
    - 2. A current and valid identification card issued to persons who serve in the United States military or their dependents by the United States Department of Defense containing a photograph or identifying information such as name, date of birth, sex, height, color of eyes and address;
    - 3. A current and valid student identification card containing a photograph, an expiration date, the seal or logo of the issuing institution, and the signature of the card holder;
    - 4. A current and valid identification card issued by a federal, state or local government agency containing a photograph or identifying information such as name, date of birth, sex, height, color of eyes and address; or
  - (c) A current and valid foreign passport with an employment authorization issued by the

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USCIS, and any one of the following authentic documents:

1. A current and valid driver's license containing a photograph or identifying information such as name, date of birth, sex, height, color of eyes and address;
2. A current and valid identification card issued to persons who serve in the United States military or their dependents by the United States Department of Defense containing a photograph or identifying information such as name, date of birth, sex, height, color of eyes and address;
3. A current and valid student identification card containing a photograph, an expiration date, the seal or logo of the issuing institution, and the signature of the card holder;
4. A current and valid identification card issued by a federal, state or local government agency containing a photograph or identifying information such as name, date of birth, sex, height, color of eyes and address.

(3) Any individual whose current legal name is different from the name on his or her certified birth certificate (for example, maiden name) must show legal proof of the name change. Such proof includes a certified marriage or civil union certificate, divorce decree or court order linking the new name with the previous name, provided that, a divorce decree may be used as authority to resume using a previous name only if it contains the new name and permits a return to use of the previous name.

(4) Any individual required to establish his or her identity pursuant to 205 CMR 134.14 who is not a United States citizen shall also be required to demonstrate that he or she is authorized to work in the United States.

(5) Any individual may request that the commission change the name designated on his or her application, license or registration by establishing identity pursuant to 205 CMR 134.14 or by providing a certified copy of certificate of marriage, a divorce decree or court order from this or any other state, which evidences the requested name change.

134.15: Fees

(1) The following non-refundable initial fees shall be paid at the time of application for licensure, registration, or renewal:

- (a) Key Gaming Employee. Initial fee: \$1000.00, submitted with the application. The applicant shall be billed for the efforts of the Commission and the Bureau on matters directly related to the applicant that exceed the initial fee at hourly rates to be set by the Commission pursuant to M.G.L.c. 23K, § 30(i) including payment for all unusual or out of pocket expenses incurred by the Commission. Timely Renewal fee: \$1000.00.
- (b) Gaming Employee. Initial fee: \$300.00 Renewal fee: \$300.00.
- (c) Gaming Service Employee. Initial fee: \$75.00 Renewal fee: \$75.00.
- (d) Gaming Vendor-primary. Initial fee: \$15,000.00, submitted with the application. The applicant shall be billed for the efforts of the Commission and the Bureau on matters directly related to the applicant that exceed the initial fee at hourly rates to be set by the Commission pursuant M.G.L. c. 23K, § 30(i) including payment for all unusual or out of pocket expenses incurred by the Commission. Timely Renewal fee: \$15,000.00.
- (e) Gaming Vendor-secondary. Initial fee \$5,000.00 Renewal fee \$5,000.00.
- (f) Gaming Vendor-qualifier. No individual fee. The fee shall be included as part of the application fee for the Gaming vendor. Any additional fees resulting from the investigation of a gaming vendor qualifier shall be assessed to the gaming vendor in accordance with 205 CMR 134.15(2).

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- (g) Non-gaming Vendor. Initial fee: \$100.00 Renewal fee: \$100.00.
- (h) Labor Organization. Initial fee: \$200.00 Renewal fee: \$200.00.
- (i) Replacement/Name or Address Changes. \$10.00.
- (j) Late Fee. a 10% late fee will be assessed to the initial application fee if a renewal application is not received by the Commission by the due date.

(2) The application fee for a license or registration may be increased to the extent that the cost of the background investigation relating to an applicant exceeds the application fee set forth in 205 CMR 134.15(1). The commission shall advise the applicant in writing that an additional application fee is required and the manner in which the additional fee was calculated. Once an applicant is directed to submit an additional application fee, the commission will take no additional steps with respect to the application until the increased application fee is paid. In the event that an application fee is not promptly paid without just cause, the application may be denied.

(3) All fees must be submitted to the Bureau in the form of a certified check, cashier's check, personal check or electronic funds transfer payable to the Commonwealth of Massachusetts.

(4) A processing fee of \$30 will be assessed for return of dishonored checks.

(5) Payroll Deduction. Licensing fees for applicants for a Gaming Employee license in accordance with 205 CMR 134.15(1)(b) and a Gaming Service Employee registration in accordance with 205 CMR 134.15(1)(c) shall be submitted on behalf of the applicant by the gaming establishment or vendor with which the individual is employed. The gaming establishment or vendor may recover the cost of the fee by way of deduction from the individual's periodic salary payment.

134.16: Term of Licenses

(1) Licenses and registrations issued in accordance with 205 CMR 134.00 shall be valid for the following terms:

- (a) Key Gaming Employees. Key Gaming employee licenses shall be for an initial term of three years. The initial term of a key gaming employee license shall expire and be renewable on the last day of the month on the third anniversary of the issuance date. Key gaming employee license renewals shall be for a term of three years.
- (b) Gaming Employees. Gaming employee licenses shall be for an initial term of three years. The initial term of a gaming employee license shall expire and be renewable on the last day of the month on the third anniversary of the issuance date. Gaming employee license renewals shall be for a term of three years.
- (c) Gaming Service Employees. Gaming service employee registrations shall be for an initial term of five years. The initial term of a Gaming service employee registration shall expire and be renewable on the last day of the month on the fifth anniversary of the issuance date. Gaming service employee registration renewals shall be for a term of five years.
- (d) Gaming Vendors and Gaming Vendor Qualifiers. Gaming vendor licenses and gaming vendor qualifier licenses shall be for an initial term of three years. The initial term of a Gaming vendor license and gaming vendor qualifier license shall expire and be renewable on the last day of the month on the third anniversary of the issuance date. Gaming vendor license and gaming vendor qualifier license renewals shall be for a term of three years.
- (e) Non-gaming Vendors. Non-gaming vendor registration shall be for an initial term of five years. The initial term of a Non-gaming vendor license shall expire and be renewable

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on the last day of the month on the fifth anniversary of the issuance date. Non-gaming vendor registration renewals shall be for a term of five years.

(f) Labor Organizations. Labor organization registrations shall be for an initial term of one year. The initial term of a Labor organization registration shall expire and be renewable on the last day of the month on the first anniversary of the issuance date.

(2) Notwithstanding 205 CMR 134.16(1), licenses and registrations issued in accordance with 205 CMR 134.00 may be issued with a conditional expiration date to coincide with any employment authorization issued by the United States which is less than the term of the license or registration. A license or registration that is issued with such a conditional expiration date may be extended upon the presentation of proof of United States citizenship or authorization to work in the United States beyond the previous expiration date. Provided, however, no expiration date shall be extended beyond the term for which such a license would have been issued in accordance with 205 CMR 134.16(1).

(3) If a licensee or registrant has, in accordance with 205 CMR 134.17, made timely and sufficient application for a renewal, their license or registration shall not expire and the applicant shall remain in good standing until the Bureau has issued a decision on the application. If a renewal application is received after the renewal date and the license expires before the Commission issues a new license, the person shall not be employable nor conduct business with the gaming establishment until a new license is issued.

(4) A license for a person for whom a positive determination of suitability was issued in accordance with 205 CMR 115.05(3) as part of the RFA-1 process and who filed an application in accordance with 205 CMR 134.08(2) in lieu of the complete application for the position for which they seek licensure shall be issued nunc pro tunc to the date of the suitability finding.

(5) All licenses and registrations issued in accordance with 205 CMR 134.00 shall be valid for employment with any Massachusetts gaming licensee.

134.17: Renewals

(1) At a minimum of 150 days prior to expiration, each Key gaming employee licensee, gaming employee licensee, gaming vendor licensee, and gaming vendor qualifier licensee shall submit a new and updated application in accordance with 205 CMR 134.08.

(2) At a minimum of 30 days prior to expiration, each gaming service employee registrant and non-gaming vendor registrant shall submit a new and updated application in accordance with 205 CMR 134.08.

(3) It shall be the responsibility of the licensee or registrant to ensure that their license or registration is current.

134.18: Duties of Applicants and Licensees

(1) All applicants, licensees, and registrants shall have the continuing duty to provide any assistance or information required by the commission or the Bureau and to cooperate in any inquiry or investigation conducted by the commission or the Bureau. Refusal to answer or produce information, evidence or testimony by an applicant, licensee, or registrant may result in denial of the application or suspension or revocation of the license or registration.

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(2) No applicant, licensee, registrant shall willfully withhold information from, or knowingly give false or misleading information to, the commission or the Bureau. If the commission or Bureau determines that an applicant, or a close associate of an applicant, has willfully provided false or misleading information, such applicant shall not be eligible to receive a license or registration under 205 CMR 134.00. Any licensee or registrant who willfully provides false or misleading information shall have its license conditioned, suspended or revoked by the commission.

134.19: Disciplinary Action

(1) Grounds for Disciplinary Action. Any license or registration issued under 205 CMR 134.00 may be conditioned, suspended, or revoked, if the commission finds that a licensee or registrant has:

- (1) been arrested or convicted of a crime while employed by a gaming establishment and failed to report the charges or the conviction to the commission;
- (2) failed to comply with M.G.L. c. 23K, § 13; or
- (3) failed to comply with any provision of M.G.L. c. 23K or 205 CMR pertaining to licensees and registrants.

(2) Complaints. Any person may file a complaint against any person licensed or registered in accordance with 205 CMR 134.00. All complaints relative to a licensee or registrant must be in writing on a form provided by the Commission. All complaints must be received by the Commission within one year of the date of the alleged wrongdoing. The Commission or Bureau may itself initiate a complaint at any time notwithstanding the date of the alleged wrongdoing.

(3) Basis of Complaint. A complaint must allege wrongdoing by a licensee or registrant in the form of a violation of 205 CMR 134.19(1) and/or M.G.L. c. 23K.

(4) Review and Investigation of Complaints. Every complaint filed shall be reviewed by the commission or its designee. A hearing may be convened, the complaint may be forwarded to the Bureau, or the complaint may be dismissed in the discretion of the commission or its designee. The Bureau may, if it elects, investigate a complaint prior to scheduling a hearing. In its discretion, the Bureau may resolve informal patron complaints without formal investigation, notification of parties, or convening a hearing. Failure of a complainant to cooperate in the investigation may be grounds for dismissal of a complaint.

(5) Notice of Hearing. If the Bureau determines that a hearing shall be held to resolve a complaint, reasonable notice shall be provided to the complainant and the licensee or registrant. Mailing of notice to the address on record with the Commission, or emailing the notice to the address provided by the licensee or registrant on their application for licensure or registration, shall be deemed satisfactory notice. The notice of hearing shall contain:

- (a) The name of the complainant;
- (b) The date, time and place of said hearing;
- (c) The location of the incident giving rise to the complaint.

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(6) Hearing. Hearings convened pursuant to 205 CMR 134.19 shall be conducted pursuant to 801 CMR 1.02: *Informal/Fair Hearing Rules* and M.G.L. c. 30A. Any party may be represented by legal counsel. All parties shall be permitted to present an opening statement, testify on their own behalf, cross-examine all witnesses, present any relevant witness testimony, present any relevant documentary evidence, and offer a closing argument. The Bureau may question any witness and include any records kept by the commission as exhibits. The Bureau may conclude the hearing at any time and issue a decision based on the evidence presented.

If a licensee or registrant does not appear for the hearing, the Bureau may conduct a hearing in his or her absence and render a decision based upon the evidence presented, but only after making a finding that the licensee was provided notice as required by 205 CMR 134.19(5).

The Bureau may designate a hearing officer to convene a hearing and either make a recommendation or issue a decision on its behalf.

(7) Subpoenas. The Bureau may issue a subpoena in accordance with M.G.L. c. 30A, § 12 requiring the attendance and testimony of witnesses and the production of any evidence, including books, records, correspondence or documents, relating to any matter in question in the proceeding.

(8) Decisions and Discipline of License and Registration Holders. The Bureau shall issue a written decision after the hearing. Decisions shall be issued in a reasonably prompt manner. The Bureau may suspend a license or registration for a fixed period of time, revoke a license or registration permanently, or issue a reprimand the licensee or registrant. In conjunction with or in *lieu* of these disciplinary measures, the Bureau may assess a fine pursuant to M.G.L. c. 23K, § 36, and recoup the costs of investigation. Any license or registration that is suspended or revoked shall be forwarded to the Bureau immediately. A person whose license is revoked may apply in writing to the commission for reinstatement no sooner than five years from the date of the revocation.

(9) Appeals.

(a) Any person aggrieved by a decision of the hearing officer may, in writing, request review of said decision by the commission. The filing of such a petition shall not serve to stay any disciplinary action taken by the hearing officer.

(b) The commission may review such decision at its discretion. Such review is an administrative review that shall be based solely on the administrative record and is not to be construed as a second hearing on the same complaint(s). After review, the commission may either deny the petition or remand the matter to the hearings officer for further proceedings as directed. The filing of an appeal with the commission shall serve to toll the timing provisions of M.G.L. c. 30A, § 14 until such time as a final decision is rendered by the commission.

(c) Any person aggrieved by a decision of the hearings officer or the commission may appeal such decision in conformance with M.G.L. c. 30A, § 14.

## REGULATORY AUTHORITY

205 CMR 134.00: M.G.L. c. 23K, §§ 3, 12, 16, 30 and 31.

**7(a) – NO DOCUMENTS**

**7(b) – NO DOCUMENTS**