



MASSACHUSETTS GAMING COMMISSION  
PUBLIC MEETING# 335

February 11, 2021  
10:00 a.m.

**VIA CONFERENCE CALL NUMBER: 1-646-741-5292**  
**PARTICIPANT CODE: 111 998 7348**



Massachusetts Gaming Commission



**NOTICE OF MEETING and AGENDA  
February 11, 2021**

**PLEASE NOTE:** Given the unprecedented circumstances resulting from the global Coronavirus pandemic, Governor Charles Baker issued an order to provide limited relief from certain provisions of the Open Meeting Law to protect the health and safety of individuals interested in attending public meetings. In keeping with the guidance provided, the Commission will conduct a public meeting utilizing remote collaboration technology. If there is any technical problem with our remote connection, an alternative conference line will be noticed immediately on our website: [MassGaming.com](http://MassGaming.com).

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, February 11, 2021  
10:00 a.m.**

**Massachusetts Gaming Commission  
VIA CONFERENCE CALL NUMBER: 1-646-741-5292  
PARTICIPANT CODE: 111 998 7348**

All documents and presentations related to this agenda will be available for your review on the morning of February 11, 2021 by [clicking here](#).

**PUBLIC MEETING - #335**

1. Call to order.
2. Approval of Minutes
  - a. October 8, 2020
  - b. October 22, 2020
3. Administrative Update – Karen Wells, Executive Director
  - a. On-site Casino Updates – Loretta Lillios, Deputy Director, Enforcement and Investigations Bureau Director; Bruce Band, Assistant Director, Gaming Agents Division Chief
  - b. MGC- Human Resource Division Presentation, Trupti Banda, HR Manager
4. Independent Monitor Update – Chair Cathy Judd-Stein; Commissioner Eileen O’Brien; Commissioner Gayle Cameron; Commissioner Enrique Zuniga



Massachusetts Gaming Commission

5. Financial Division – Derek Lennon, Chief Financial and Accounting Officer
  - a. Quarterly Budget Update – Derek Lennon, Chief Financial and Accounting Officer; Agnes Beaulieu, Finance and Budget Office Manager; Douglas O’Donnell, Revenue Manager; Commissioner Enrique Zuniga
  
6. Community Affairs Division – Joseph Delaney, Community Affairs Division Chief
  - a. Encore Boston Harbor Quarterly Report – Jacqui Krum. Senior Vice President and General Counsel EBH
  - b. Plainridge Park Casino Quarterly Report – North Grounsell, General Manager PPC
  
7. Commissioner Updates
  
8. Other business – reserved for matters the Chair did not reasonably anticipate at the time of posting.

I certify that on this date, this Notice was posted as “Massachusetts 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).

February 9, 2021

*Cathy Judd-Stein*, Chair

**Date Posted to Website:** February 9, 2021 at 10:00 a.m.



Massachusetts Gaming Commission



## Massachusetts Gaming Commission Meeting Minutes

**Date/Time:** October 8, 2020 – 10:00 a.m.

**Place:** Massachusetts Gaming Commission  
VIA CONFERENCE CALL NUMBER: 1-646-741-5293  
MEETING ID: 111 337 0269

**Present:** Chair Cathy Judd-Stein  
Commissioner Gayle Cameron  
Commissioner Enrique Zuniga  
Commissioner Bruce Stebbins  
Commissioner Eileen O'Brien

**Given the unprecedented circumstances, Governor Charles Baker issued an order to provide limited relief from certain provisions of the Open Meeting Law to protect the health and safety of the public and individuals interested in attending public meetings during the global Coronavirus pandemic. In keeping with the guidance provided, the Commission conducted this public meeting utilizing remote collaboration technology.**

### Call to Order

10:00 a.m. Chair Cathy Judd-Stein called to order public meeting #323 of the Massachusetts Gaming Commission (Commission).

*The Chair confirmed a quorum for the meeting with a Roll Call. The following Commissioners were in attendance:*

*Commissioner Cameron  
Commissioner O'Brien  
Commissioner Zuniga  
Commissioner Stebbins  
Chair Judd-Stein*

### Approval of Meeting Minutes

10:04 a.m. *Commissioner Stebbins moved to approve the minutes from the Commission meeting of July 16, 2020, subject to correction for typographical errors and other nonmaterial matters. Commissioner Zuniga seconded the motion.*

*Roll Call Vote:*

*Commissioner Cameron: Aye.*

*Commissioner O'Brien: Aye.*

*Commissioner Zuniga: Aye.*

*Commissioner Stebbins: Aye.*

*Chair Judd-Stein: Aye.*

*The motion passed unanimously.*

## **Administrative Update**

### **10:04 a.m. Commission Staffing Update**

Executive Director Karen Wells announced that a new Division of Community Affairs will replace the Ombudsman's Office and that Construction Oversight Manager Joe Delaney has been promoted to Chief of the Division of Community Affairs. This division will manage the Community Mitigation Fund (CMF) and oversee the grant contracts. The division will also oversee licensee compliance with license commitments and host community agreements. The Division of Community Affairs will also coordinate licensee quarterly reports, among other reporting for the Commission. Ms. Wells then reviewed Mr. Delaney's credentials with the Commission and publicly acknowledged the outstanding job he has done for the Commission to date.

### **10:09 a.m. Casino Reopening Status**

Interim IEB Director Loretta Lillios stated that there have been no significant changes. She then noted for the Commission that one floor of occupancy has been opened in the MGM hotel for invited guests only. Also, specific services are being offered to guests via Chandler's Steakhouse.

10:10 a.m. IEB Assistant Director and Gaming Agents Division Chief Bruce Band stated that all is going smoothly and has nothing of concern to report. The Chair said that she would like to keep this cadence going with these status reports as part of the Executive Director's report.

## **Investigation and Enforcement Bureau (IEB) / Legal Division**

### **10:15 a.m. Amendments to "Rules of the Games"**

Next, Mr. Band introduced proposed changes to the Rules of the Game as posted on the Commission's website. He stated that these changes are being made for continuity throughout all the games' rules to reduce errors by dealers who work multiple games. Other changes include the modernization of all the new technology used in gaming and social distancing protocols needed during times of a pandemic.

Next, Deputy Gaming Agent Division Chief Burke Cain reviewed a memorandum with the Commission entitled, "Changes to the Rules of the Game," describing general and specific additions, deletions, and clarifications to the rules.

- 10:23 a.m. Regarding Blackjack, Associate General Counsel Carrie Torrisi described separate pieces of litigation filed against MGM and Encore in connection with the rules pertaining to the 6:5 variation of Blackjack. Mr. Cain further explained the variation and the rules.
- 10:30 a.m. Mr. Band then confirmed for the Commission that it is the casino's decision as to when they will be using one Blackjack variation or the other. The Chair stated that bringing the rules up-to-date and modernizing the rules is very important.
- 10:34 a.m. The Chair asked for clarification on the status of the litigation and court decisions. Ms. Torrisi updated the Commission on the dismissal of the state court matter and ongoing federal case.
- 10:34 a.m. *Commissioner Stebbins moved to amend the various rules of the game as posted on the Commission's website in the manner discussed and as included in the Commissioners' Packet. Commissioner Cameron seconded the motion.*  
*Roll Call Vote:*  
*Commissioner Cameron: Aye.*  
*Commissioner O'Brien: Aye.*  
*Commissioner Stebbins: Aye.*  
*Commissioner Zuniga: Aye.*  
*Chair Judd-Stein: Aye.*  
*The motion passed unanimously.*
- 10:36 a.m. **205 CMR 146.13: Blackjack Table; Card Reader Device: Physical Characteristics; Inspections**  
The Commission reviewed a proposed amendment to 205 CMR 146.13 that clarifies that the Blackjack table layout should include an inscription identifying either '3-to-2' or '6-to-5' payout odds.
- 10:36 a.m. Mr. Cain described the changes.
- 10:41 a.m. *Commissioner Cameron moved that the Commission approve the Small Business Impact Statement for 205 CMR 146.13: Blackjack Table; Card Reader Device; Physical Characteristics; Inspections as included in the Commissioners' Packet. Commissioner Zuniga seconded the motion.*  
*Roll Call Vote:*  
*Commissioner Cameron: Aye.*  
*Commissioner O'Brien: Aye.*  
*Commissioner Stebbins: Aye.*  
*Commissioner Zuniga: Aye.*  
*Chair Judd-Stein: Aye.*  
*The motion passed unanimously.*

*Commissioner Cameron further moved that the Commission adopt the version of 205 CMR 146.13: Blackjack Table; Card Reader Device; Physical Characteristics; Inspections, as included in the Commissioners' Packet and authorize the staff to take all steps necessary to begin the regulation promulgation process. Commissioner Stebbins seconded the motion.*

*Roll Call Vote:*

*Commissioner Cameron: Aye.*

*Commissioner O'Brien: Aye.*

*Commissioner Stebbins: Aye.*

*Commissioner Zuniga: Aye.*

*Chair Judd-Stein: Aye.*

*The motion passed unanimously.*

- 11:50 a.m. **Licensee Roulette Renewal Request**  
Ms. Lillios stated that Encore Boston Harbor (Encore) and MGM Springfield (MGM) have renewed their requests to reintroduce roulette at their respective gaming establishments. She then reviewed the identified Minimum Requirements for Roulette's Reintroduction at the Category 1 Gaming Establishments with the Commission.
- 10:50 a.m. The Commission viewed a slide illustrating the way table games are outfitted with plexiglass. The Chair asked whether it is a challenge when a dealer is taller than six feet, as the plexiglass height is six feet. Mr. Band stated that the dealer's proximity to the table typically is not an issue, as they step back from the table to get a view of everything. The Chair later noted that dealers should also have the additional safety precaution of a face shield available to them.
- 10:52 a.m. There was discussion about the placement of bets while the ball was rolling. It was noted that there is a similar concern with craps.
- 10:54 a.m. There was a discussion regarding the distance between the chairs at the tables. The current space is 48 inches with plexiglass and six feet without.
- 10:58 a.m. Ms. Lillios confirmed for Commissioner Stebbins that she would come back to the Commission if the licensees request to add tables to the gaming floor. Commissioner O'Brien asked about rehiring dealers. Ms. Lillios stated that there will be a minimum of 60 rehires by Encore, but the number is uncertain for MGM. She confirmed for the Chair that the rehires will not affect the occupancy number requirements approved by the Commission in June.
- 11:02 a.m. Next, Ms. Lillios reviewed the specific addition of a temporary rule in conjunction with COVID-19, requiring no bets to be placed while the ball is rolling in Roulette.
- 11:05 a.m. *Commissioner Stebbins moved that the Commission adopt the Minimum Requirements for Roulette's Reintroduction at the Category 1 gaming*

*establishments, as those requirements are set forth in the document discussed.  
Commissioner Zuniga seconded the motion.*

*Roll Call Vote:*

*Commissioner Cameron: Aye.  
Commissioner O'Brien: Aye.  
Commissioner Stebbins: Aye.  
Commissioner Zuniga: Aye.  
Chair Judd-Stein: Aye.  
The motion passed unanimously.*

*Commissioner Stebbins further moved to amend the Rules of the Game for  
Roulette as posted on the Commission's website in the manner discussed, and as  
included in the Commissioners' Packet. Commissioner Cameron seconded the  
motion.*

*Roll Call Vote:*

*Commissioner Cameron: Aye.  
Commissioner O'Brien: Aye.  
Commissioner Stebbins: Aye.  
Commissioner Zuniga: Aye.  
Chair Judd-Stein: Aye.  
The motion passed unanimously.*

## **Ombudsman Division**

### **11:10 a.m. Gaming Policy Advisory Committee (GPAC) – Subcommittee Appointments**

Chief of Community Affairs, Joe Delaney reviewed the GPAC subcommittee appointments with the Commission. There was discussion about the work and involvement of Commissioners O'Brien and Cameron on the Public Safety Subcommittee, and Commissioner O'Brien's appointment. There was clarification that Director of Research and Responsible Gaming, Mark Vander Linden, is being reappointed to the Addiction Services Subcommittee. Commissioner Zuniga remarked that there is renewed energy with support of the Chair to activate the Committee.

### **11:13 a.m. Commissioner Zuniga moved that the Commission appoint Commissioner Bruce Stebbins representative to the Community Mitigation Advisory Subcommittee.**

*Commissioner Cameron seconded the motion.*

*Roll Call Vote:*

*Commissioner Cameron: Aye.  
Commissioner O'Brien: Aye.  
Commissioner Stebbins: Abstained.  
Commissioner Zuniga: Aye.  
Chair Judd-Stein: Aye.  
The motion passed 4 – 0.*



*Commissioner Cameron moved that the Commission appoint Commissioner Eileen O'Brien as representative to the Public Safety Subcommittee. Commissioner Stebbins seconded the motion.*

*Roll Call Vote:*

*Commissioner Cameron: Aye.  
Commissioner O'Brien: Abstained.  
Commissioner Stebbins: Aye.  
Commissioner Zuniga: Aye.  
Chair Judd-Stein: Aye.  
The motion passed 4 – 0.*

*Commissioner Zuniga then moved to appoint the Director of Research and Responsible Gaming Mark Vander Linden to the Addiction Services Subcommittee.*

*Commissioner Stebbins seconded the motion.*

*Roll Call Vote:*

*Commissioner Cameron: Aye.  
Commissioner O'Brien: Aye.  
Commissioner Zuniga: Aye.  
Commissioner Stebbins: Aye.  
Chair Judd-Stein: Aye.  
The motion passed unanimously.*

### **Commissioner Updates**

11:14 a.m. Commissioner Zuniga and Commissioner Stebbins offered thanks and congratulations to Mr. Delaney.

The Chair noted an upcoming speaking engagement for Commissioner Cameron. Commissioner Cameron thanked the team for helping to prepare her remarks.

11:18 a.m. *Commissioner Zuniga moved to adjourn. Commissioner Cameron seconded the motion.*

*Roll Call Vote:*

*Commissioner Stebbins: Aye.  
Commissioner O'Brien: Aye.  
Commissioner Zuniga: Aye.  
Commissioner Stebbins: Aye.  
Chair Judd-Stein: Aye.  
The motion passed unanimously.*

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

1. Notice of Meeting and Agenda dated October 8, 2020

2. Draft Commission Meeting Minutes of July 16, 2020
3. Memorandum: Update to the Rules of the Game dated September 8, 2020
4. Game Rules Combined PDF document
5. 205 CMR 146.13: Blackjack Table; Card Reader Device; Physical Characteristics; Inspections – Small Business Impact Statement Draft
6. 205 CMR 146.13: Blackjack Table; Card Reader Device; Physical Characteristics; Inspections – Regulation Cover Sheet
7. 205 CMR 146.13: Blackjack Table; Card Reader Device; Physical Characteristics; Inspections – Draft Regulation
8. Roulette Rules
9. Memorandum: Appointment of Commission Members under the Gaming Policy Advisory Committee dated September 30, 2020

DRAFT



## Massachusetts Gaming Commission Meeting Minutes

**Date/Time:** October 22, 2020 – 10:00 a.m.

**Place:** Massachusetts Gaming Commission  
VIA CONFERENCE CALL NUMBER: 1-646-741-5292  
MEETING ID: 111 332 2046

**Present:** Chair Cathy Judd-Stein  
Commissioner Gayle Cameron  
Commissioner Enrique Zuniga  
Commissioner Bruce Stebbins  
Commissioner Eileen O'Brien

**Given the unprecedented circumstances, Governor Charles Baker issued an order to provide limited relief from certain provisions of the Open Meeting Law to protect the health and safety of the public and individuals interested in attending public meetings during the global Coronavirus pandemic. In keeping with the guidance provided, the Commission conducted this public meeting utilizing remote collaboration technology.**

### Call to Order

10:00 a.m. Chair Cathy Judd-Stein called to order public meeting #324 of the Massachusetts Gaming Commission (Commission).

*The Chair confirmed a quorum for the meeting with a Roll Call. The following Commissioners were present:*

*Commissioner Cameron  
Commissioner O'Brien  
Commissioner Zuniga  
Commissioner Stebbins  
Chair Judd-Stein*

### Approval of Meeting Minutes

10:01 a.m. *Commissioner Stebbins moved to approve the minutes from the Commission meeting of July 30, 2020, subject to correction for typographical errors and other nonmaterial matters. Commissioner Zuniga seconded the motion.*

*Roll Call Vote:*

*Commissioner Cameron: Aye.*

*Commissioner O'Brien: Aye.*

*Commissioner Zuniga: Aye.*

*Commissioner Stebbins: Aye.*

*Chair Judd-Stein: Aye.*

*The motion passed unanimously.*

## **Administrative Update**

10:04 a.m. **Update on Casino COVID-19 Compliance**

Interim IEB Director Loretta Lillios stated that overall operations at the gaming establishments are going smoothly. Casinos are demonstrating compliance with COVID-19 measures. Patron compliance is sound, and casino employees are highly engaged and overall compliant. There are no significant issues to report.

The Encore Boston Harbor spa and other outlets have been open for a couple of weeks. Encore is considering opening its oyster bar next month under state guidelines. MGM has its Chandler's Steakhouse open on weekends, and is continuing with one hotel floor available to guests. Plainridge Park Casino (PPC) full-service restaurant Slacks is set to reopen this weekend. Restaurant service is for adults 21 plus. Local public health officials have been onsite at each of the properties.

10:08 a.m. Commissioner Stebbins asked about occupancy levels. Ms. Lillios replied that they have remained stable, even with the introduction of roulette. Occupancy has remained well below the modified levels authorized by the Commission.

10:08 a.m. Ms. Lillios, with Assistant IEB Director and Gaming Agents Division Chief Bruce Band, and Division of Community Affairs Chief Joe Delaney listed the open restaurants at the three casinos. The Chair noted that each opening will afford more jobs.

10:11 a.m. Mr. Band reported on the number of open roulette tables on Encore and MGM's casino floors. He added that compliance has been excellent.

10:09 a.m. **Host Community Update**

Mr. Delaney reported on the status of local payments by PPC, EBH and MGM to the Commission.

## **Legal Division**

10:15 a.m. **205 CMR 153.00: Community Mitigation Fund (CMF)**

Associate General Counsel Carrie Torrisi reviewed the draft of a new regulation that was developed to codify administration of the CMF and provide express

authority and a process for assessing costs for the administration of the CMF by the Commission.

10:23 a.m. Commissioner Stebbins stated that monies for administrative costs were discussed with the Local Community Mitigation Advisory Committees and the Community Mitigation subcommittee. There was support for this type of use of funds as it is common practice, but the committee members would like to make sure that administrative costs are built into the budget process.

10:24 a.m. Ms. Torrisi confirmed for the Chair that the use of the CMF for emergency needs is new this year. Mr. Delaney stated that this allocation is in place in response to the effects of the pandemic. The emergency fund provision provides flexibility in addressing emergency issues. Details as to how the process is executed will be set forth in the guidelines.

10:27 a.m. *Commissioner Stebbins moved that the Commission approve the Small Business Impact Statement for 205 CMR 153.00: Community Mitigation Fund as included in the Commissioners' Packet. Commissioner Cameron seconded the motion.*

*Roll Call Vote:*

*Commissioner Cameron: Aye.*

*Commissioner O'Brien: Aye.*

*Commissioner Stebbins: Aye.*

*Commissioner Zuniga: Aye.*

*Chair Judd-Stein: Aye.*

*The motion passed unanimously.*

*Commissioner Stebbins further moved that the Commission approve the draft version of 205 CMR 153.00: Community Mitigation Fund as included in the Commissioners' Packet and authorize the staff to begin the formal regulation promulgation process. Commissioner Cameron seconded the motion.*

*Roll Call Vote:*

*Commissioner Cameron: Aye.*

*Commissioner O'Brien: Aye.*

*Commissioner Stebbins: Aye.*

*Commissioner Zuniga: Aye.*

*Chair Judd-Stein: Aye.*

*The motion passed unanimously.*

10:36 a.m. **205 CMR 133.00: Voluntary Self-Exclusion**  
The Commission reviewed draft amendments to this regulation that are designed to ensure uniformity in the process of managing and maintaining the Voluntary Self-Exclusion list, specify who is deemed a "designated agent" and has access to such list, clarify the application's contents, and to refine the qualification requirements for providers of services offered by the Voluntary Self-Exclusion program.

Mr. Vander Linden described each of the proposed amendments throughout the regulation.

10:35 a.m. Commissioner Zuniga stated that these amendments reflect the needs that have arisen for the program. Commissioner Cameron noted that the peer support piece is critical and that it serves to strengthen an already successful program.

10:37 a.m. *Commissioner Cameron moved that the Commission approve the Small Business Impact Statement for 205 CMR 133.00: Voluntary Self-Exclusion as included in the Commissioners' Packet. Commissioner Zuniga seconded the motion.*

*Roll Call Vote:*

*Commissioner Cameron: Aye.*

*Commissioner O'Brien: Aye.*

*Commissioner Stebbins: Aye.*

*Commissioner Zuniga: Aye.*

*Chair Judd-Stein: Aye.*

*The motion passed unanimously.*

*Commissioner Cameron further moved that the Commission approve the draft version of 205 CMR 133.00: Voluntary Self-Exclusion as included in the Commissioners' Packet and authorize the staff to begin the formal regulation promulgation process. Commissioner Zuniga seconded the motion.*

*Roll Call Vote:*

*Commissioner Cameron: Aye.*

*Commissioner O'Brien: Aye.*

*Commissioner Stebbins: Aye.*

*Commissioner Zuniga: Aye.*

*Chair Judd-Stein: Aye.*

*The motion passed unanimously.*

## **Racing Division**

11:50 a.m. **Quarterly Aid Payments**

Dr. Lightbown gave a brief racing update and stated that the Standardbred Mass. Bred races are starting on Monday and will award over \$700,000.00 that day.

Financial Analyst Chad Bourque reviewed the quarterly local aid payment of \$167,562.59 for Q3 of 2020. He provided a breakdown of allocations for the Commission and stated that payments will be made to the appropriate cities and towns with the Commission's authorization.

10:42 a.m. Commissioner Cameron asked for a comparison with pre-pandemic numbers. Mr. Bourque replied that because of how the local aid payment is calculated six months prior, there is little difference for this period, but in the next quarter, the Commission will see a significant drop in the local aid due to the shutdowns. The Chair asked for comparison for next quarter to illustrate this for the Commission.

10:46 a.m. *Commissioner O'Brien moved that the Commission approve the Local Aid Quarterly Distribution for Q3 of 2020 in the amount of \$167,562.59 as described in the memorandum dated October 13, 2020, in the Commissioners' Packet. Commissioner Stebbins seconded the motion.*

*Roll Call Vote:*

*Commissioner Cameron: Aye.*

*Commissioner O'Brien: Aye.*

*Commissioner Stebbins: Aye.*

*Commissioner Zuniga: Aye.*

*Chair Judd-Stein: Aye.*

*The motion passed unanimously.*

10:47 a.m. **Plainridge Park Casino (PPC) Request for Fill-in-Judge**  
PPC Director of Racing Steve O'Toole submitted a request for the approval of Paul Verrette for the position of back up judge. He has already been licensed this year as the Racing Secretary for Plainridge.

Dr. Lightbown recommended that the Commission approve the request of PPC to approve Paul Verrette as alternate Judge, pending satisfactory completion of licensure by the Massachusetts Gaming Commission Division of Racing and satisfactory completion of his background check by the Massachusetts State Police.

11:13 p.m. *Commissioner Cameron moved that the Commission approve Plainridge Park Casino's request to approve Paul Verrette as alternate judge, pending satisfactory completion of licensure by the Massachusetts Gaming Commission Division of Racing and satisfactory completion of his background check by the Massachusetts State Police. Commissioner Stebbins seconded the motion.*

*Roll Call Vote:*

*Commissioner Cameron: Aye.*

*Commissioner O'Brien: Aye.*

*Commissioner Stebbins: Aye.*

*Commissioner Zuniga: Aye.*

*Chair Judd-Stein: Aye.*

*The motion passed unanimously.*

## **Division of Community Affairs**

10:55 a.m. **Community Mitigation Fund (CMF) Policy and Initial Draft Guidelines 2021 Discussion**

Mr. Delaney presented draft 2021 Community Mitigation Fund Guidelines via PowerPoint presentation. There are a series of policy questions that were discussed with the Commissioners and with the Local Community Mitigation Advisory Committees and the Gaming Policy Advisory Community Mitigation subcommittee, resulting in this draft document that was reviewed. This proposal did not include any significant changes for 2021, given the challenges of 2020.

10:56 a.m. Mr. Delaney stated that the application deadline is January 31, 2021. He then noted that the funding target is \$12.5M for FY2021 and described how Region A will be allocated \$6M, Region B \$6M, and the Category 2 casino region \$0.5M. Mr. Delaney then reviewed the grant categories for the Fund.

The Reserve allocations provided for back in 2015 and 2016 contain some unspent funds by some communities, and he suggested that the Commission allow communities until the end of next year (2021) to commit these funds. He will reach out to all the communities to let them know that they have existing funds there. He asked the Commissioners for feedback.

11:01 a.m. Commissioner Stebbins stated that he supports the recommendation, but he would like to have a "best practices" session (suggested by the Chair) to assist communities with their applications. The Commission could invite communities in and have those who have used their reserves creatively advise these communities on how to use their reserve funds effectively. Commissioner Cameron was encouraged by the opportunity to support communities and assess all impacts.

11:07 a.m. Commissioner Zuniga noted that the Commission needs to identify the mechanism to do something with the unused monies as this an ongoing initiative. Commissioner Zuniga said that the Commission needs to consider the potential for any rollover and revert funds that are unallocated. This topic will be reserved for a later discussion. Mr. Delaney agreed that the issue should be reviewed with the expectation that most unallocated rollover funds will be used.

11:10 a.m. Next, Mr. Delaney reviewed Specific Impact Grants and public safety operational costs with the Commission. There was discussion around funding relevant training that would enhance any public safety issues at a casino. The Chair was interested in use of mitigation funds for appropriate training. Commissioner Cameron stated that it is relevant and appropriate to support training, as it is always an issue with the Massachusetts State Police to find the money for training, so this would be welcome.

11:14 a.m. Mr. Delaney then stated that the Hampden County Sheriff's Department's agreement has expired. Any grant awards issued in 2021 should not be considered to provide any guarantee or indication of future funding. He said the notion of earmarking money over the long term is not favorable. By eliminating this section, they need to apply and compete for available funds, like all the other applicants. If the Commission agrees with eliminating this section, the team will send a letter to the Sheriff to let him know this status.

11:17 a.m. Commissioner Zuniga stated that he favors eliminating the aforementioned section and considering them as any other applicant. This would not preclude them from reapplying. Commissioner O'Brien stated her concerns about previous



terms but said that we should eliminate this section and treat them like any other applicant if that is not the case. Commissioner Cameron concurred. Commissioner Stebbins added that when this was discussed with region B LCMAC, this was agreed upon as well.

- 11:20 a.m. Next, Mr. Delaney highlighted a name change from Non-Transportation Planning Grants to Community Planning Grants. He then moved on to describe the Transportation Construction Grants proposed guideline. He stated that there was no cap on the amount of money that the Commission would spend on a project. The Review Team would like to try to make the amount commensurate with the impact of a casino. He suggests a maximum of 25% of the project cost and a waiver requirement if the applicant can demonstrate the cost of the impact exceeding that limit. He asked if the Commission is comfortable with the 25% proposal. Advisory committees did not reach a consensus.
- 11:26 a.m. Commissioner Stebbins noted that there are many opinions on this with the LCMAC and subcommittee feedback. He stated the West Springfield and Chelsea awards were strong applications and demonstrated that their projects were sound and wants to use them as models.
- 11:27 a.m. After some discussion, the Chair stated that she is inclined to stay with 33%. O'Brien noted that she is comfortable with either 25% or 33%. Stebbins indicated that he is satisfied with moving the number to 33%.
- There was a discussion around raising the cap from \$3M to \$4M in grants for transportation construction to afford more flexibility. There was also discussion around raising the \$1M limit for each award, but the Chair and Commissioners ultimately agreed to keep it the same.
- 11:40 a.m. Next, Mr. Delaney reviewed the Workforce Development Grant's proposed guideline. He stated that there needs to be a demonstration of the need for funds due to an impact from the casino. Commissioner Stebbins noted that we want applicants to reflect the condition of the local licensee. Applicants for these grants need to demonstrate that they have had communication with the licensee to identify their needs. For instance, culinary training was identified as a need due to the impact of a casino.
- 11:44 a.m. The Commission then reviewed the proposed guideline for Emergency Mitigation Grants. It was suggested that any impact must be newly identified and be of an emergency nature that would cause significant harm to the community if it were not remedied expeditiously. This proposal was not intended to circumvent the normal Fund processes. All LCMAC and subcommittees are highly in favor of this idea.
- 11:48 a.m. Commissioner Zuniga stated that local communities may be facing layoffs of staff and could come to the Commission to request relief from that. He said that he is

not sure if that is part of the intention of this section. The language is not explicit about that, but he anticipates that the Commission might see these applications in the future rounds. In short, he opined that the Commission could inadvertently be creating an incentive to apply for the emergency grant to avoid layoffs due to lockdowns. The Chair noted that this is a significant observation and should be a topic for future discussion. Commissioner Stebbins pointed out, "unanticipated casino-related impacts" – there is some expectation in planning around how these elements will impact someone's budget, and these items are strictly for completely unanticipated situations by the community.

11:55 a.m. Lastly, Mr. Delaney reviewed the proposed guideline for Rescission of Grants. Before any grant is rescinded, the Commission will notify the grantee and establish a grantee's timeline to either expend that funds or have the grant rescinded. In short, if Grantees do not spend this money, the Commission can take it back.

12:00 p.m. Mr. Delaney will now make edits to the document and post it for public comment for two weeks. He will return to the Commission for final approval of the guidelines on November 19.

### Commissioner Updates

11:16 p.m. **Annual Report Review Questions for Discussion**

Commissioner Zuniga updated the Commission on the draft of the Annual report and asked for feedback for any edits or corrections. He described that it covers the fiscal year that ends on June 30 but wanted to make mention of efforts like the PPC re-licensing which took place after this date.

Next, he noted the usual inclusion of the licensee's operations and statistics. He discussed the closure and reopening of operations and the imposed guidelines' effect on employment.

12:13 p.m. *Commissioner Stebbins moved to adjourn. Commissioner Cameron seconded the motion.*

*Roll Call Vote:*

*Commissioner Cameron: Aye.*

*Commissioner O'Brien: Aye.*

*Commissioner Zuniga: Aye.*

*Commissioner Stebbins: Aye.*

*Chair Judd-Stein: Aye.*

*The motion passed unanimously.*

**List of Documents and Other Items Used**

1. Notice of Meeting and Agenda dated October 22, 2020
2. Draft Commission Meeting Minutes of July 30, 2020
3. 205 CMR 153.00 Community Mitigation Fund Draft Regulation
4. 205 CMR 153.00 Community Mitigation Fund Memorandum
5. 205 CMR 153.00 Community Mitigation Fund Regulation Cover Sheet
6. 205 CMR 153.00 Community Mitigation Fund Small Business Impact Statement
7. 205 CMR 133.00 Voluntary Self-Exclusion Small Business Impact Statement
8. 205 CMR 133.00 Voluntary Self-Exclusion Regulation Cover Sheet
9. 205 CMR 133.00 Voluntary Self-Exclusion Draft Regulation
10. Memorandum: Q3 2020 Local Aid Payments dated October 22, 2020
11. Memorandum: Plainridge Racing Officials request update 2020 dated October 22, 2020
12. MGC Request for Alternate Judge Paul Verrette
13. Memorandum: Community Mitigation Fund Guidelines
14. 2021 Policy Questions
15. Community Mitigation Draft Guidelines

Miller & Chevalier

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## **Independent Compliance Monitor Summary of Phase II Assessment Report**

Alejandra Montenegro Almonte  
February 11, 2021

# Agenda

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- Introduction
  - Goals of Phase II Review
  - General Impact of the COVID-19 Pandemic
  - Summary of review and testing activities
  - Overall observations
- Findings by compliance hallmark
- Concluding observations
- Q&A

# Goals of Phase II Review

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- Phase II review focused on:
  - Evaluation of Company's implementation of the Baseline Assessment Recommendations
  - Continued review and assessment of key elements of Company's HRCP
    - Culture of Compliance and Conduct at the Top
    - Proper Authority, Oversight, and Independence
    - Policies and Procedures
    - Third Party Relationships
    - Training and Guidance
    - Internal Reporting and Investigation
    - Incentives and Discipline
    - Risk-Based Review
    - Monitoring and Testing
    - Controls Environment

# General Impact of the COVID-19 Pandemic

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- Impact of the COVID-19 pandemic on the Company and its operations cannot be overstated
  - Operations ceased at both Encore Boston Harbor (EBH) and Wynn Las Vegas (WLV)
  - Personnel turn-over at senior levels
  - Employee furloughs
  - Resources diverted and deployed to ensuring the health and safety of employees and to stabilizing the Company's operations under extraordinary and unpredictable circumstances
- Impact of COVID-19 pandemic on Monitorship
  - Delay in implementation of certain recommendations
  - All testing conducted remotely
  - Unique opportunity to review intersection of external crisis and management of Monitorship

# Summary of Review and Testing Activities

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- During this review period:
  - **Documents:** The Monitor Team reviewed over 200 documents produced by the Company
  - **Interviews:** The Monitor Team conducted 32 interviews (via video), which included speaking to employees, former employees, Compliance Committee Members and Board members
  - **Onsite Testing:** The Monitor Team did not conduct any onsite testing due to the COVID-19 pandemic



# Overall Observations

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- The Company continues to express general commitment to enhancing its HRCP
- Company still developing its understanding of what that commitment entails and how to operationalize it
  - Policies and procedures
  - Formalization of governance practices
- Cooperation from the Company remains strong

# Culture of Compliance and Conduct at the Top

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- Limited progress on development of strategic communication plan
- Some progress in filling HRCP roles vacated in the last year
  - Chief Global Compliance Officer
  - Senior Vice President Human Resources

# Proper Authority, Oversight, and Independence

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- On-going need to clarify authority, oversight, and independence of the HRCP functions
  - Specifically, a need to evaluate and delineate the roles and responsibilities of key functions responsible for the HRCP (CGCO, GC, SVP HR)
- On-going need to strengthen Compliance Committee with an additional member that has significant HR subject matter expertise

# Policies and Procedures

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- Limited progress in the development and implementation of policy changes recommended in the Baseline Assessment
  - Core policies include:
    - Code of Business Conduct and Ethics
    - the Personal Relationships Policy
    - the Preventing Harassment and Discrimination Policy
- Senior management has committed to continue to build upon the Company's policies and procedure structure

# Third Party Relationships

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- Baseline Assessment Recommendations focused on communication to employees designed to empower them to speak up as well as communication to Patrons regarding standards of behavior
  - Updated policy on Employee Interactions with Third Parties and Guests
- Review of investigation files related to Patron misconduct

# Training and Guidance

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- The Company has continued its training on HRCP policies and procedures, including training of the Board and the Compliance Committee
- Company developing function-specific training
- On-going need to develop methods for testing effectiveness of training programs

# Internal Reporting and Investigation

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- The Company has moved forward on new training initiatives and started to update its investigations policy
- Progress remains to be seen with respect to with respect to communications from senior management and extension of ER hours
- Monitor Team reviewed investigations, including investigations related to allegations against management

# Incentives and Discipline

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- Most significant area of focus was the development of a formal performance evaluation and incentive program
  - Stalled due to the departure of the employee tasked with program development and implementation
- Monitor Team recommended identifying other ways to incentivize and reward behavior consistent with HRCP values
  - The Company will need to build compliance-based incentives into existing programs



# Risk-Based Review

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- The Company developed and implemented a Risk Assessment Procedure designed to identify HR-related risks, including risks related to sexual harassment and discrimination
  - Incorporates applicable government guidance
  - Includes bottom-up risk assessment to identify particularized harassment and discrimination risks faced by the Company
  - Creates an HRCP Steering Committee
  - Requires annual risk assessment and remediation
  - Reporting to Compliance Committee and Audit Committee

# Monitoring and Testing

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- The Company continues active monitoring of sexual harassment and discrimination allegations through reports submitted to the General Counsel
- Progress remains to be made with respect to review of aggregated data and trends

# Controls Environment

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- The Monitor Team has focused on the Company's controls environment over:
  - Engagements with external counsel, specifically conflicts of interest arising from dual representation of the Company and Company personnel
  - Initiation, review, and approval of settlements related to claims of sexual harassment and discrimination
  - Use of confidentiality provisions and mandatory and binding arbitration provisions

# Concluding Observations

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- COVID-19 forced the Company to divert attention and resources away from the development of the HRCP.
- Nevertheless, the Company continues to express a commitment to enhancing its HRCP, specifically with respect to sexual harassment and discrimination.
- As operations continue to normalize, the Monitor Team looks forward to continued engagement from all levels of the Company on these important issues.

# Monitor Team

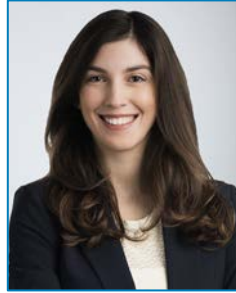
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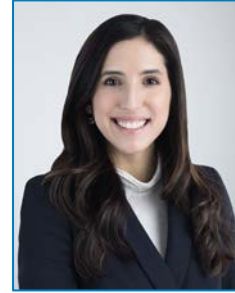
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February 8, 2021

Massachusetts Gaming Commission  
101 Federal Street, 12th Floor  
Boston, MA 02110

Re: Wynn Resorts, Limited and Wynn MA, LLC's (together, the "Company", "we" or "us")  
Preliminary Response to WYNN RESORTS, LIMITED AND WYNN MA, LLC  
INDEPENDENT COMPLIANCE MONITOR PHASE II REPORT dated January 29, 2021  
(the "Monitor's Report" or the "Report")

Dear Chair and Commissioners:

On behalf of Wynn Resorts, Limited and Wynn MA, LLC (collectively, the "Company"), we appreciate the opportunity to comment on the Monitor's Report. First, the Company would like to thank Alejandra Montenegro Almonte and the team at Miller & Chevalier (collectively, the "Monitor") for the comprehensive Report reflecting extensive work performed by the Company since the May 2020 Independent Compliance Monitor Baseline Assessment (the "Baseline Assessment").

As the Report reflects, the COVID-19 pandemic has had a significant impact on our operations. The Baseline Assessment was issued at a time when our North American properties were closed. While we since have reopened, as reflected in the Report, we have dedicated significant resources to our health and safety program at each of our properties for the benefit of our employees and our guests. Our primary focus has been on efforts to protect our employees from the devastating impact of COVID-19. Dedicating the resources necessary to protect our employees from COVID-19 has certainly impacted our ability to fully implement all of the Monitor's recommendations from the Baseline Assessment.<sup>1</sup>

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<sup>1</sup> We are incredibly proud of the employees in the human resource and legal departments upon whom many of the recommendation implementation requirements fall. With significantly reduced pay, they've worked longer hours than ever before, facing first-time ever issues with professionalism and diligence. It is hard to overstate the Herculean efforts the human resource teams have taken to ensure they are contacting each employee who has been diagnosed with or exposed to COVID-19. Personnel from other departments have been assigned to assist with those efforts. Our legal department has responded to evolving regulatory guidance and requirements around COVID-19 with the same tenacity. And in Las Vegas, where it has been encouraged, the human resources team manages surveillance testing of employees on a bi-weekly basis. At both Encore Boston Harbor and Wynn Las Vegas, the human resource departments and the legal departments have had to manage leave issues and the very difficult process of furloughing their fellow employees. All of this was accomplished while continuing to satisfy the responsibilities they had prior to the pandemic. To say that it has been a challenging time is an understatement.

We are pleased however, that even under extraordinary circumstances, we have been able to make progress on nearly all of the Monitor's recommendations. With respect to those few recommendations that we have not yet been able to implement, we remain committed to implementing them. Even though we remain operating in a challenging environment, we know that the recommendations are made with the view of assisting us in enhancing what we believe is an enviable work environment. We will work diligently towards implementing the Monitor's recommendations and will continue to work collaboratively with the Monitor team to address those few findings set forth in the Report which we believe require further clarification to correct inaccuracies or misinterpretation. Thank you for the opportunity to provide these brief comments and maintaining an open dialogue regarding our shared goals.

Sincerely,



Ellen F. Whittlemore  
Executive Vice President, General Counsel and Secretary  
Wynn Resorts, Limited



Jacqui Krum  
Senior Vice President, General Counsel and Secretary  
Wynn MA, LLC

# WYNN RESORTS, LIMITED AND WYNN MA, LLC INDEPENDENT COMPLIANCE MONITOR PHASE II REPORT

January 29, 2021  
Alejandra Montenegro Almonte

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## LIST OF SELECTED TERMS

|   |  |
|---|--|
| <b>ADA</b>  | Americans with Disabilities Act.   |
| <b>Baseline Assessment</b>                        | Independent Compliance Monitor Baseline Assessment Report submitted on May 8, 2020.  |
| <b>CEO</b>  | Chief Executive Officer.   |
| <b>CFO</b>  | Chief Financial Officer.   |
| <b>CGCO</b>                                       | Chief Global Compliance Officer.   |
| <b>Code of Business Conduct</b>                   | Code of Business Conduct and Ethics.   |
| <b>Commission or MGC</b>                          | Massachusetts Gaming Commission.   |
| <b>Company or Wynn</b>                            | Wynn Resorts, Limited and its affiliates Wynn MA, LLC and Wynn Las Vegas, LLC.   |
| <b>Compliance</b>                                 | Compliance Department.   |
| <b>Decision and Order</b>                         | Massachusetts Gaming Commission’s April 30, 2019 Decision and Order, In the Matter of Wynn MA, LLC.  |
| <b>EBH</b>  | Encore Boston Harbor and/or Wynn, MA LLC, unless Wynn, MA LLC is specifically noted.   |
| <b>EEOC</b>                                       | U.S. Equal Employment Opportunity Commission.  |
| <b>ER</b>   | Employee Relations Department.   |
| <b>GC</b>   | General Counsel.   |
| <b>HR</b>   | Human resources or the Human Resources Department.   |
| <b>Human Resources Compliance Program or HRCP</b> | Human resources policies, procedures, and corporate governance structures.   |
| <b>Internal Audit</b>                             | Internal Audit Department.   |
| <b>Investigative Report</b>                       | March 2019 Investigative Report Regarding Ongoing Suitability of Wynn, MA LLC.   |
| <b>Legal</b>                                      | Legal Department.  |
| <b>MCAD</b>                                       | Massachusetts Commission Against Discrimination.   |
| <b>MOD</b>  | Manager on duty.   |
| <b>Monitor</b>                                    | The Independent Compliance Monitor for Wynn MA, LLC, Alejandra Montenegro Almonte.   |
| <b>Monitor Team</b>                               | Alejandra Montenegro Almonte and other Miller & Chevalier attorneys with responsibility for the monitorship include Ann K. Sultan, Katherine E. Pappas, and Nicole D. Gökçebay. Preston L. Pugh joined another law firm in 2020 but continues to work with the Monitor Team as a consultant on Internal Reporting and Investigation. |
| <b>Patron</b>                                     | An individual who visits a property in the Wynn Resorts family for various entertainment-related activities, including use of facilities or staying as an overnight guest.   |
| <b>SVP</b>  | Senior Vice President.   |

|                       |                                      |
|-----------------------|--------------------------------------|
| <b>VP</b>             | Vice President.                      |
| <b>Wynn Las Vegas</b> | Wynn Las Vegas and Encore Las Vegas. |
| <b>Wynn Resorts</b>   | Wynn Resorts, Limited.               |

## I. Introduction and Overview

This Phase II Report (the “Phase II Report”) responds to the requirement of the Massachusetts Gaming Commission (“Commission” or “MGC”) as set forth in April 30, 2019 Decision and Order, *In the Matter of Wynn MA, LLC* (the “Decision and Order”) for the independent compliance monitor (the “Monitor” or “Monitor Team”<sup>1</sup>) to Wynn MA, LLC and its parent, Wynn Resorts Limited (“Wynn Resorts”) (collectively, the “Company”) to “report to the Commission no less than annually” following the submission of the Independent Compliance Monitor Baseline Assessment Report (the “Baseline Assessment”) and to make “additional recommendations to the Company that the monitor deems appropriate on an ongoing basis over the course of its engagement.” Decision and Order at 51.

This Phase II Report summarizes the activities undertaken by the Monitor Team as it continues to assess Wynn’s Human Resources Compliance Program (the “HRCP”). The Report also details the Monitor Team’s evaluation of the Company’s responses to all of the Recommendations contained in the Baseline Assessment and makes additional recommendations for enhancements based on testing and observations from this Phase II review period. The Monitor Team is submitting this Phase II Report simultaneously to the MGC and to the Company.

The Monitor Team cannot overstate the impact that the COVID-19 pandemic has had on the Company and its operations. From March 15, 2020 through today, the Company’s attention and resources have necessarily been diverted to ensuring the health and safety of its employees and to stabilizing its operations under extraordinary and unpredictable circumstances. For nearly four months during the Phase II review period, the Company ceased normal operations. Encore Boston Harbor (“EBH”) was closed from March 15 until July 10, 2020 and Wynn Las Vegas and Encore Las Vegas (collectively, “Wynn Las Vegas”) were closed from March 17 until June 4, 2020. At reopening, the Company’s operations were significantly modified and indeed continue to be adjusted in response to public health guidance and regulations. For example, statewide directives have restricted hours of operation for restaurants and casinos in Massachusetts, requiring EBH to close by 9:30 pm for a period. The EBH hotel has also been affected, including at times closing completely and at other times limiting reservations to certain days of the week. [REDACTED]

It is not often during a monitorship that a company faces a significant crisis that is separate and apart from that which precipitated the monitorship. Here, the Monitor Team has had the unique the opportunity to witness the Company managing both the issues related to the monitorship and those stemming from the COVID-19 pandemic. The COVID-19 pandemic has pushed companies into uncharted territory. Wynn is no exception.

Although the Company’s response to the COVID-19 pandemic falls outside the scope of review, the Monitor Team is compelled to comment on the Company’s pandemic response, in part because it was extraordinary, but also because it reflects the potential of what the Company can accomplish within

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<sup>1</sup> Alejandra Montenegro Almonte of Miller & Chevalier Chartered and other Miller & Chevalier attorneys with responsibility for the monitorship include Ann K. Sultan, Katherine E. Pappas, and Nicole D. Gökçebay (collectively, the “Monitor Team”). Preston L. Pugh joined another law firm in 2020, but continues to work with the Monitor Team as a consultant on Internal Reporting and Investigation.

the scope of the HRCP, especially as operations begin to normalize and the Company is able to resource those efforts fully.

Despite its business being upended, the Company was intentional in its efforts to demonstrate commitment to the safety and well-being of its employees—both through messaging and conduct at its highest levels. For instance, the Monitor Team is aware of at least two separate video messages from the Wynn Chief Executive Officer (“CEO”) directed at Wynn employees. In addition to expressing his support and concern for their well-being, he announced that the Company would continue to pay salary, tips, and benefits for all U.S. employees from April 1 through May 15, 2020. In this way, the Company emerged as an industry leader in support of its employees. The Company has also engaged in extensive internal and external communications advocating for COVID-19 compliance in the industry, having independently engaged public-health experts and published a public Health and Sanitation Program in April 2020.

Consistent with that expressed commitment, over the last ten months, the Company has transformed various aspects of its operations. For example, the Company has met with senior government officials at state and national levels to discuss reopening protocols; instituted social distancing and face covering requirements for employees and guests (“Patrons”); and instituted additional cleaning and occupancy guidelines. The Company has impacted the culture at its properties to be COVID-19 sensitive through signage and other communication.

From the Monitor Team’s perspective, the Company’s ability to effect dramatic changes to its own culture—indeed its environment—and to inculcate sensitivity to COVID-19 risks, resulted from the tone set and conduct demonstrated by the Company’s highest leadership. Through their words and their actions, the Board and executive management communicated unequivocal commitment to protect the health and safety of its employees and to the urgency of complying with new norms. Through interviews, the Monitor Team perceived messaging by leadership instilled a strong sense of ownership and responsibility that cascaded down through the organization as the Company together navigates this uncharted territory. The Monitor Team hopes that executive management and the Board will demonstrate that same level of ownership and commitment to lead the Company in making impactful changes on matters related to the HRCP. The Monitor Team sincerely hopes that as the public health emergency of the pandemic recedes, the Company will put to use the tools and resources that it has developed and the lessons it has learned through the COVID-19 crisis towards the goal of changing culture on matters related to its HRCP as well.

Notwithstanding the challenges faced during the last year and the strain on resources caused by the COVID-19 pandemic, the Company continued to cooperate with the Monitor Team. The Company established weekly calls with the Monitor to provide updates on progress against Baseline Assessment Recommendations and on developments relevant to the scope of our review. The Company made personnel of all levels as well as Board and Compliance Committee members available for virtual interviews and produced 248 documents for review. Because of travel restrictions and health concerns, the Monitor Team was not able to undertake site visits to assess implementation of the recommendations, but where possible received photographic confirmation of changes made. The Monitor Team appreciates these efforts, especially given the circumstances.

In some instances, the Monitor Team saw significant delays in the implementation of Recommendations, particularly in connection to policies and procedures. These delays, caused in part by the strain on the Company resources by COVID-19, nevertheless affected the Monitor Team’s ability to engage in a meaningful review of the Company’s progress toward fulfilling certain Recommendations

made in the Baseline Assessment. As readers of this Phase II Report will see, many of the Recommendations from the Baseline Assessment remain unsatisfied. Thus, many of the recommendations from this Phase II Report reaffirm the Recommendations previously made in the Baseline Assessment. Based on discussions with the Company, we understand that it continues to work towards completing those Recommendations and has committed to doing so within the timelines set forth in this Phase II Report. As in the Baseline Assessment, the Phase II Report identifies both areas of strength in the Company's HRCP and areas requiring continued improvement. Detailed observations and recommendations can be found in the body of the Phase II Report, but some key issues warrant discussion here.

**Culture of Compliance and Conduct at the Top.** As a general matter, the Monitor Team observed limited progress with respect to the Recommendations made in connection with the need for stronger communication by executive and senior leadership on matters related to the HRCP. While we did observe some positive examples of commitment and support from certain Company leadership, such as the launch of a "Speak Up" campaign at EBH, pre-shift messages at EBH focused on key aspects of the HRCP and the production of a video at Wynn Las Vegas including a message from the President on topics related to HRCP, we did not see any progress in the development a strategic communication plan that includes messaging from leaders at the Corporate level. As discussed in our Baseline Assessment, a demonstrated commitment and engagement with the HRCP from the Company's highest levels, is vital to the creation of a culture of compliance. Indeed, the Company has seen that first-hand through the success of its COVID-19 response.

In addition to messaging, commitment to compliance is also demonstrated through the allocation of resources to compliance-related functions. In the last ten months, the Company lost personnel key responsible for its HRCP, including its CGCO, SVP of Human Resources ("HR") – North America, Executive Director, Performance Management, Compensation and Benefits, and Executive Director of Diversity and Inclusion. The Company has recently filled the first two of these positions (after restructuring the SVP of HR role) and is in the process of recruiting for the Executive Director of Diversity and Inclusion. Unfortunately, the pandemic has caused the Company to make budgeting and staff changes throughout the organization, which has put stress on the Company's resources and limited their ability to dedicate resources to HRCP development. Indeed, many of the functions focused on HRCP are now at the front line of COVID-19 protocol implementation.

Going forward the Company will need to focus on enhancing how senior leadership demonstrates its commitment to the HRCP. This will involve planning on how best to communicate its commitment through messaging and engagement with the key elements of the HRCP. This effort is a long-term goal, but an important one. It will also need to continuously evaluate it's resourcing of HRCP-related functions to continue to develop and sustain its program.

**Proper Authority, Oversight, and Independence.** Since the Baseline Assessment, the Company's progress in strengthening the authority, oversight, and independence of its HRCP has slowed. Most significantly, the Company has not engaged in an evaluation and delineation of the roles and responsibility of key functions responsible for its HRCP (the Compliance Committee, Compliance Department ("Compliance"), Legal Department ("Legal"), and HR). Compounding difficulties of HRCP oversight is the fact that the body charged with advising the Company as to its HRCP at this critical juncture in the program's development—the Compliance Committee—continues to lack HR subject matter expertise, expertise which would be a meaningful value-add in helping the Company operationalize its HRCP.

**Policies and Procedures.** In the Baseline Assessment, the Monitor Team observed the Company's significant effort to enhance its HRCP policies and procedures, and also observed that more work was necessary. In the Phase II review period, the Monitor Team did not see significant progress in the development or implementation of policy changes recommended in the Baseline Assessment. While the Company made some progress, it was delayed in providing the updated policies to the Monitor Team, thereby limiting our ability to meaningfully review many of the changes. Nonetheless, the Monitor Team evaluated a few critical HRCP policies, including the Code of Business Conduct and Ethics, the Personal Relationships Policy, and the Preventing Harassment and Discrimination Policy. The Company has committed to continue to build upon its policies and policy structure and the Monitor Team will actively evaluate those efforts as they develop, including the Company's communication and implementation of the policies.

**Third Party Relationships.** Third party relationships—particularly with Patrons—emerged as the Company's highest area of risk in the Baseline Assessment and the Monitor Team made several recommendations to mitigate those risks. The Monitor Team emphasized the need for the Company to communicate its commitment to protecting the safety and welfare of its employees against offending Patrons, regardless of status. Our Baseline Assessment Recommendations focused on communication to employees designed to empower them to speak-up as well as communication to Patrons regarding Company standards of behavior. In this regard, the Monitor Team saw only limited progress. The Company updated its policy on Employee Interactions with Guests and other Third Parties as well its Background Standards and Procedures through which it investigates third parties prior to engagement. However, with regard to communicating standards of behavior to Patrons, the Monitor Team continued to observe confusion from some management personnel as to the practicality of implementing the measures contemplated in our Recommendation. The Monitor Team encourages the Company to think creatively in this regard and perhaps to draw from some of the efforts launched during the Pandemic.

**Training and Guidance.** The Company has continued its training on HRCP policies and procedures, including training of the Board and Compliance Committee. The Monitor Team anticipated to participate in trainings in order to continue to test their effectiveness, but due to the COVID-19 pandemic our testing activities were limited to conducting interviews and reviewing training-related documentation. Overall, the Company implemented recommendations made in the Baseline Assessment under this hallmark with respect to the Board of Directors and Compliance Committee. In addition, the Monitor Team understands that the Company is developing function-specific training for certain employees. However, in other respects, the Company has not advanced its training program. For example, the Company has not identified methods to test its training program, nor has it developed a training plan for roles and functions with responsibility for implementing or enforcing key aspects of the HRCP. The Monitor Team will continue to work with the Company to review the content of its training program and test its effectiveness.

**Internal Reporting and Investigation.** Given the centrality of the Company's internal reporting and investigation procedures to the MGC's Decision Order, the Monitor Team continues to view the Company's internal reporting and investigation procedures, and remediation efforts, as key to the overall success of the HRCP. During the Phase II review period, the Monitor Team had the opportunity to evaluate the Company's implementation of its current process, including in an investigation into allegations against senior management. While the Monitor Team observed some missteps in the investigations process, we are comfortable with the ultimate results of the investigation, which did not substantiate the allegations against the senior managers. Our review of the process reinforced the continued importance of the enhancements recommended by the Monitor Team in the Baseline Assessment to ensure the robustness, effectiveness, and sustainability of the Company's internal



reporting and investigation procedures. The Company provided the Monitor Team with a draft Investigations Policy that evidences their effort to address the Baseline Assessment Recommendations on that core issue. Because the Company has not finalized that Policy, and several other recommendations made in the Baseline Assessment have not been fully satisfied, in part due to the excusable delay in launching a new reporting channel, the Monitor Team will continue its evaluation of these key Recommendations in the next period of review.

**Incentives and Discipline.** In this period of review, the Company's efforts to design and deploy a performance evaluation and incentives program stalled due to the departure of the Executive Director – Performance Management, Compensation and Benefits. As discussed in the Baseline Assessment, that program would have taken into account whether employees are living up to the HRCP values of the Company. While recognizing the unprecedented challenges brought by the pandemic, the Monitor Team remains of the view that incentivizing compliance is a key aspect of a compliance program and will continue to work with the Company to identify opportunities to build compliance-based incentives into existing programs. The Monitor Team likewise believes an updated Progressive Discipline and Performance Policy will enhance the HRCP. The Company did not provide a draft of that Policy to the Monitor Team, so the Monitor Team will evaluate its implementation over the next period of review.

**Risk-Based Review.** Since the Baseline Assessment, the Company has developed and implemented a Risk Assessment Procedure designed to identify HR-related risks, including risks related to sexual harassment and discrimination. The Risk Assessment Procedure adheres to the Monitor Team's Recommendation, including a review and risk rating of each active employee category at the Company. The Procedure requires reporting to the Audit and Compliance Committees and counts on the participation of a cross-functional HRCP Steering Committee, which we discuss below. The Monitor Team commends the Company for its work on this critical aspect of the HRCP. Going forward we will pay close attention to the implementation of the procedure and how the Company responds to the identified risks, specifically through continuous improvements to its HRCP.

In the Baseline Assessment, the Monitor Team also recommended that the Company incorporate an HR-focused risk assessment into its assessments of physical security. The Company has not satisfied this Recommendation. The Monitor Team has reissued the Recommendation and will continue to monitor progress in that regard.

**Monitoring and Testing.** In the Baseline Assessment, we discussed the importance of periodic monitoring and testing to the Company's HRCP program and issued recommendations to streamline and enhance the Company's approach to monitoring and testing. The Company continues active monitoring of sexual harassment discrimination allegations through reports submitted to the General Counsel ("GC"). While the Monitor Team had recommended that the Company reconsider that approach, upon further reflection and discussion with the Company, the Monitor Team agrees that the current review procedures by the GC and the Compliance Committee are working and are sustainable. This reassessment is also informed by the Company's recent approval of a new internal reporting system that will facilitate reporting and analysis of aggregated data and trends. The Monitor Team expects that this tool will improve the quality of the information available to the GC and the Compliance Committee and will alleviate the burden on ER that was observed during the Baseline Assessment.

Since the Baseline Assessment, the Company has made limited progress in its development of monitoring and testing of other core elements of the HRCP. The Monitor Team will continue to review the Company's progress in this regard and encourages the Company to utilize the newly formed HRCP Steering Committee to assist with monitoring and testing activities.

**Controls Environment.** The Monitor Team’s testing activities of the Company’s control environment in Phase II focused on reviewing updates to policies and procedures governing engagement of external counsel, the review and approval procedures applicable to settlement and separation agreements, and the review of template and actual agreements. The Monitor Team observed limited progress with respect to policies and procedures, which we understand were due in part to a misinterpretation of what the Recommendations require. The Company now has greater clarity on the work required and will proceed to implement changes. With respect to agreements, the Company continues to exclude burdensome confidentiality provisions from its agreements and the Monitor Team remains comfortable that the terms used are appropriate. We do however note the use of mandatory arbitration provisions in some employment agreements and have made a recommendation to that effect.

Overall, the Monitor Team perceives that the Company’s progress and engagement with the development of the HRCP have waned since the Baseline Assessment. While the COVID-19 pandemic caused a slow-down in some aspects of the Company’s efforts, the Monitor Team could have seen stronger engagement from the Company on its response and implementation of the Baseline Assessment Recommendations, and more meaningful progress in implementation of Recommendations requiring a lighter lift. As operations normalize, and as the new CGCO and SVP of HR assume their roles, the Monitor Team looks forward to continued engagement from all levels of the Company on these important issues.

## **II. Background**

### **A. Procedural History**

The current Phase II Report follows the Baseline Assessment, which was submitted to the MGC on May 8, 2020.

### **B. Overview of Company Business**

The Baseline Assessment set forth an overview of key aspects of the Company’s business model, corporate structure, and operations. Since the spring of 2020, the Company’s business activities have undergone significant changes and we have identified several developments with respect to the Company and its business that affect the Company’s HRCP risk profile and, thus, bear on the Monitor Team’s overall analysis and evaluation.

#### **1. General Impact of the COVID-19 Pandemic**

Amid government-imposed shutdowns and curtailed hours, the Company adapted to a new, uncertain reality. The Company imposed new sanitation and behavior standards in order to promote the health and safety of Patrons and employees. Temperature checks and COVID-19 tests became an integral part of employee life and the Company’s Employee Relations Department (“ER”) took on the additional responsibility of managing pandemic-related employment issues. The Patron experience dramatically changed as well, with the Company closing certain entertainment venues and enforcing masks and social distancing on property.

Because of reduced operations and lower levels of visitors to properties, EBH and Wynn Las Vegas have significantly reduced their workforces across departments, including HR, although the Company admirably continued to pay salary, tips, and benefits to U.S. employees for much of the spring 2020 shutdown. [REDACTED]



## 2. Senior Management Changes

Since the Baseline Assessment, certain personnel particularly relevant to the Company’s HRCP have left the Company. We note the departures of the Senior Vice President (“SVP”) of HR, the Chief Global Compliance Officer (“CGCO”), Executive Director – Culture and Community, and Executive Director – Performance Management, Compensation, and Benefits. The Monitor Team understands that the Company is seeking to replace some of these personnel and to restructure certain positions, and has already done so for certain functions. In particular:

- ▶ **CGCO:** The CGCO resigned in September 2020. The Company immediately began its search for a replacement candidate and a new CGCO started at Wynn Resorts on January 1, 2021.
- ▶ **SVP of HR:** The SVP of HR – North America (at Wynn Resorts) departed the Company in July 2020. The Company has since restructured the role into that of SVP of HR for Wynn Las Vegas, reporting to the President of Wynn Las Vegas. The Vice President (“VP”) of HR at EBH relocated to Las Vegas and officially began in the new role on January 1, 2021.
- ▶ **Executive Director – Diversity and Inclusion:** The Executive Director of Diversity and Inclusion departed the Company in October 2020. The Monitor Team understands that the Company is not currently seeking to replace this role until the COVID-19 pandemic subsides.
- ▶ **Executive Director – Performance Management, Compensation, and Benefits:** Wynn Resorts’ Executive Director – Performance Management, Compensation, and Benefits departed the Company in August 2020. The Company is not currently seeking to replace this role and we have heard from various employees that there is uncertainty as to whether the new SVP of HR will be taking on some or all of the responsibilities of the role, at least in the short term.
- ▶ **SVP of Communications and Public Affairs (EBH):** EBH’s SVP of Communications and Public Affairs departed the Company in October 2020. The Company is not currently seeking to replace this role.

Personnel changes in key roles, especially during a period of operational fluidity can be disruptive to programmatic development and implementation.

## C. Summary of Review and Testing Activities

Since the Baseline Assessment, the Monitor Team has continued to evaluate and test the Company’s progress in developing and strengthening its HRCP. The Phase II review was guided by the information learned during the Baseline Assessment and encompassed a review of the Company’s implementation of the Recommendations made during the Baseline Assessment. The Monitor Team also continued to consider other issues relevant to the Company’s HRCP.

A key goal of the Phase II review was to test the Company's implementation of the Recommendations from the Baseline Assessment and the Company's own HRCP policies and procedures. In certain cases, the Monitor Team was not able to make an assessment as to the Company's implementation because of delay in implementation. In those cases, we will continue our review immediately following this submission and will provide observations to the Company and to the MGC as appropriate.

During this review period, the Monitor Team reviewed over 200 documents produced by the Company and conducted 32 interviews, which included speaking to employees, former employees, Compliance Committee members, and Board members. Although the Monitor Team requested to attend portions of meetings of the Compliance Committee, the Audit Committee, and the Board related to HRCP matters, the Company did not make the meetings during the preceding quarter available to the Monitor Team. The Monitor Team has discussed this with the GC and the Monitor Team will be attending relevant portions of meetings on February 24 and 25, 2021.

### III. Observations

For each HRCP element noted in the Baseline Assessment, this section discusses (1) the Monitor Team's assessment of the Company's responses to and implementation of the Recommendations in the Monitor Teams's Baseline Assessment; (2) any new Recommendations resulting from the Monitor Team's observations and testing during this Follow-Up Review; and (3) any additional Monitor Team findings based on the Follow-Up Review.

#### A. Culture of Compliance and Conduct at the Top

Since the Baseline Assessment, the Company's leadership, including management, the Compliance Committee, and the Board of Directors has been focused on operating the Company under the strain of the COVID-19 pandemic. Because of this focus, the Monitor Team has not seen the level of engagement we expected from Company leadership as to the HRCP, including in connection with the Recommendations related to the Company's culture of compliance and the conduct of leadership. For instance, a significant number of relevant leaders were not appropriately aware of how the Company was addressing or planned to address Recommendations from the Baseline Assessment.

##### 1. Recommendations

**Baseline Assessment Recommendation CCCT 1:** Develop corporate and property-specific communications plans designed to promote HRCP knowledge, compliance, and culture throughout the organization. Communication should come from all levels of leadership, including the Board, and address the risk-areas discussed in this report as well as those that emerge from the Company's Legal and HR functions based on their monitoring of HRCP issues. Consider leveraging existing communication channels from property Presidents to employees.

##### *Summary Status*

The Company has partially satisfied this Recommendation.

The Monitor Team is aware of a "Speak Up" communications plan at EBH for 2021. According to the plan, EBH will target employees with quarterly communications regarding the reporting of harassment and discrimination issues (see also discussion in Recommendation IRI 1). This plan is certainly a step forward, but with a focus only on reporting, the "Speak Up" plan stops short of

comprehensively addressing the need for an overall communications plan for the Company's HRCP from all levels of the Company. The Monitor Team has not seen corporate- or property-specific communications plans that comprehensively incorporate messaging on HRCP issues coming directly from Company leadership.

The Monitor Team has seen some effort by certain leadership at the Company, including the President of EBH, to communicate with employees regarding HRCP topics on an ad hoc basis. At Wynn Las Vegas, the team is producing a video for employees on sexual harassment topics incorporating a message from the Wynn Las Vegas President. The Monitor Team understands, however, that the video is not part of a larger communications strategy.

### ***Assessment of Work Completed***

Since the onset of the COVID-19 pandemic, the Company has emerged as a leader in the way that it has communicated its support and care for its employees in the context of the pandemic. Although outside the direct scope of our monitorship, the Monitor Team has observed with interest the Company's efforts and creativity in this regard—especially with the engagement of all levels of the Company in these efforts. We understand from discussions with Company personnel and members of the Board of Directors that the success of the Company's COVID-19 response is due in large part to the expressed dedication of the Company's leadership, led by the CEO of Wynn Resorts, to prioritizing the health and safety of its employees through strict adherence to the established COVID-19 protocols. The leadership went further by providing for employees even when it was not possible to operate. The Company positioned itself to be a thought leader in this regard, including through the publication of a Health and Sanitation Program that included many of the key aspects of any thorough compliance program, from tone and culture to communications, training, and controls. The Company then used its plan as the basis for executing on the items outlined, including strategic communications designed to set the tone and culture of the Company with respect to considerations related to the COVID-19 pandemic. This experience can serve as a blueprint for the Company as it moves forward to address the risk of sexual harassment and discrimination at its properties.

While we have not seen a similar strategic planning focused on HRCP-related issues, we have seen a few instances since the Baseline Assessment in which the Company has strategically communicated regarding HRCP matters, including a statement by the CEO of Wynn Resorts regarding racial justice. On June 1, 2020, the Wynn Resorts CEO released the following statement: “[R]acism has no place in our society. The Wynn family is made up of every race, color, and creed—representing the very best of Las Vegas and Boston. Now is a time for us to stand united, come together and work for change.”<sup>2</sup> The President of EBH amplified this statement to the EBH community through his daily message to employees on June 3, 2020.

During this report period, the President of EBH has also continued his practice of sending messages regarding the Company's “Core Behaviors,” in a way that strengthens the Company's culture towards HRCP compliance. For example, on June 17, 2020, the President of EBH wrote: “Being more aware and thoughtful of others and how they feel or how they are doing is important as it relates to our core behavior, Care about Everyone and Everything.”

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<sup>2</sup> Press Release, Wynn Resorts, A Message from Matt Maddox, CEO of Wynn Resorts (June 1, 2020), <https://www.wynnresponsibility.com/letter-from-the-ceo/>.

The Monitor Team has also seen some efforts at HRCP-related communications in Wynn Las Vegas. Specifically, the Monitor Team has been made aware that Wynn Las Vegas is in the process of preparing a training video for employees regarding how to manage Patrons who behave inappropriately.

The ad hoc communications noted above are valuable, but a plan for consistent messaging throughout the Company remains critical for the Company to effect meaningful change on matters related to the HRCP. A comprehensive communications plan or strategy will more effectively telegraph to employees and Patrons that issues related to the HRCP makeup are a part the Company’s core values and with time will embed those values into the Company’s DNA. Moreover, a comprehensive communications plan or strategy will ensure the sustainability of messaging related to the Company’s HRCP in a way that can outlast the monitorship and any individual leaders.

As noted in the Baseline Assessment, communications related to the Company’s HRCP should be part of a greater communications plan, and, in order to particularly strengthen the HRCP, should incorporate specific information related to various aspects of the HRCP. The “Speak Up” communications plan for EBH that the Monitor Team received recently starts to do this: the plan designates quarterly two-week periods in which the Company will promote awareness of reporting (see also discussion at Baseline Assessment Recommendation IRI 1). The plan envisions the use of targeted communications from the President of EBH, visual displays in the back-of-house of the property, and hand-outs. This is a step in the right direction for promoting a culture of speaking up about harassment and discrimination. However, it stops short of a comprehensive HRCP-related communications plan because it does not significantly address HRCP topics aside from reporting. For example, the plan does not lay out substantive communications about any HR policies. Nor does the plan envision communications from leaders throughout the Company (it includes communications from the President of EBH only).

***Follow-Up Recommendations***

In light of the challenges posed by COVID-19, the Monitor Team recommends a modification and an extension to compliance with Baseline Recommendation CCCT 1.

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| <p><b>Phase II Report<br/>Recommendation CCCT 1</b></p> | <p>By March 31, 2021, complete Baseline Assessment Recommendation CCCT 1, enhance the EBH communications plan and develop corporate and Wynn Las Vegas communications plans designed to promote significant HRCP knowledge, compliance, and culture throughout the organization. These should be written plans that are periodically internally reviewed and updated by the Company. The plans should involve communication about HRCP matters coming from various levels of leadership and address the risk areas discussed in the Baseline Assessment, this Report, as well as those that emerge from the Company’s Legal and HR functions based on their monitoring of HRCP issues, and from Internal Audit’s HRCP review.</p> |
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***Additional Considerations/Further Testing***

The Monitor Team will review the Company’s communication plans when they are developed and will assess the effectiveness of communications through focus groups, surveys, and further interviews. With respect specifically to the EBH President’s communications noted above, in this phase

of our assessment, the Monitor Team has not performed testing as to the impact, if any, of those ongoing communications, but recalls from the Baseline Assessment that the President’s messages were generally well-received by employees. We will continue to test employee perceptions through surveys and focus groups (when safe to do so).

**Baseline Assessment Recommendation CCCT 2:** Develop and conduct training for the Compliance Committee on the Company’s HR obligations, the HRCP, and members’ oversight responsibilities with respect to the HRCP.

### ***Summary Status***

The Company has satisfied this Recommendation.

On August 4, 2020, Compliance Committee members received a training titled “Preventing, Reporting, and Addressing Claims of Discrimination, Harassment, and Retaliation” from an external provider. The presentation slides used in the training were shared with the Monitor Team, though the Monitor Team was not invited to attend the training. (See also discussion of this training in Baseline Assessment Recommendation T&G 2.)

Based on the slides of the training as shared with the Monitor Team, the training covered discrimination, including protected characteristics, gender bias, quid pro quo and hostile work environment, sexual harassment, retaliation, the mechanics of reporting and investigations, the Americans with Disabilities Act (“ADA”), and dating in the workplace. However, the training did not appear to cover the details of the Company’s own HRCP or the Compliance Committee members’ oversight responsibilities as required by the Recommendation. We note that the slides reflect a Nevada-centric training, with no mention of Massachusetts regulations. The Monitor Team asked Compliance Committee members whether the training included information specific to Massachusetts regulations or procedures and none of them recalled the inclusion of such.

### ***Assessment of Work Completed***

The August 2020 training provided to the Compliance Committee significantly satisfies the portion of the Monitor Team’s recommendation that the Company provide training to the Compliance Committee on the Company’s HR obligations. Given the Compliance Committee’s oversight responsibility of EBH, the Company missed an opportunity to train the Compliance Committee on applicable Massachusetts regulations. The Monitor Team expects training in the future will cover the nuances of this topic.

Based on ongoing discussions with Compliance Committee members, the Monitor Team is comfortable at this point that Compliance Committee members have been trained on the Company’s general HR obligations and that they understand their oversight responsibilities and the general contours of the Company’s HRCP. The Monitor Team will continue to evaluate these points during the monitorship. In addition, because the Compliance Committee has oversight of EBH harassment and discrimination matters, the Monitor Team recommends that all future trainings incorporate information on Massachusetts-specific regulations and procedures. The Monitor Team makes the same recommendation for future trainings of the Board of Directors and senior non-EBH employees who serve in functions with HRCP-related oversight responsibilities as to EBH (such as the SVP of HR at Wynn Las Vegas, since the restructuring of the SVP of HR – North America role).

### ***Follow-Up Recommendations***

To reflect the oversight of Massachusetts operations by the Compliance Committee, Board of Directors, and certain senior employees at Wynn Resorts and Wynn Las Vegas, the Monitor Team includes a recommendation for a modification to future trainings.

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| <b>Phase II Report<br/>Recommendation CCCT 2</b> | In future HRCP-related trainings of the Compliance Committee, Board of Directors, and senior Wynn Resorts and Wynn Las Vegas personnel with oversight of HRCP-related functions at EBH, include training on relevant Massachusetts-specific HR considerations. |
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### ***Additional Considerations/Further Testing***

None.

## ***2. Additional Observations***

In addition to reviewing the Company's responses to the specific Recommendations in the Baseline Assessment, the Monitor Team continued during this Phase II review period to assess the Company's overall culture of compliance and conduct of leadership. The following sections reflect the Monitor Team's observations on the Company's Board of Directors selection process and its resource allocation for HRCP functions.

### ***Board of Directors***

The Board of Directors, as the highest body of the Company, plays an important role in shaping the direction of the Company on key issues. In this Phase II review period, we reviewed the Company's Board selection process, which coincided with the selection and onboarding of a new Board member, allowing us to observe the process as it developed. The Monitor Team was able to discuss the process with the CEO of Wynn Resorts, the Chair of the Board, and the Chair of the Nominating and Governance Committee, all of whom were heavily involved in the selection process.

Based on our interviews, we understand that the Nominating and Governance Committee of the Board conducted an assessment of the current Board and developed a matrix of required, and desired, skills and characteristics to complement those of the current Board members, including to increase the diversity of the Board. The Company engaged a recruiting firm to identify qualified candidates.

Interviews and the selection criteria reflect that the Board considered skills and competencies that the Monitor Team considers relevant to HRCP-related issues. Meaningfully, in describing the "[c]andidate competencies," of its next Board Member, the Board listed "[s]tellar personal reputation and integrity" as the first requirements. The Board's list of desirable (but not required) qualifications also included "[l]eadership of strengthening culture, diversity and inclusion." The Monitor Team also met with the new Board Member who reported that interviews with Board Members and with management included discussions about the Company's commitment to HR compliance. The discussions appear to have been designed both to express the Company's commitment to HRCP-related issues and to determine whether the candidate was similarly committed to the Company's goals.

Although the new Board Member joined after the Board's August 2020 training on harassment and discrimination, the Company promptly provided him with similar training one-on-one as part of his onboarding process. The Monitor Team understands that such training has now been integrated in the



Company's general onboarding of Board Members. The Company also promptly introduced the new Board Member to personnel in many of the key HRCP-related functions, including employees in Compliance, HR, Legal, and Internal Audit.

The Monitor Team will continue to evaluate the Board's commitment to the Company's HRCP during this monitorship.

### ***Resource Allocation for HRCP Functions***

As noted in the Baseline Assessment, an indicator of the Company's commitment to HRCP objectives is its resource allocation to the functions involved in the design and implementation of the HRCP. With the COVID-19 pandemic, the Company has made budgeting and staff changes throughout the organization and it is therefore difficult to assess how those changes impact the resource allocation to the Company's key HRCP functions—Compliance, HR, and Legal—since the Baseline Assessment. For purposes of this Report, the Monitor Team notes that the Company: (1) has not disproportionately cut resources in Legal, Compliance, or HR (though the Monitor Team has not in this round conducted focus groups to determine how employees in those functions perceive resource allocation to impact their responsibilities and we understand that the Company has diverted personnel attention in HR to COVID-19-related roles); (2) moved quickly to replace the Company's CGCO, who departed in September 2020; and (3) similarly moved quickly to replace the EBH VP of HR who was promoted to SVP of HR at Wynn Las Vegas effective January 1, 2021. Each of these actions demonstrate a commitment by the Company to maintain appropriate resourcing of core HR compliance functions.

At the same time, however, the Company has certain key positions that have remained open, including some that we understand it currently does not intend to fill in the short-term:

- ▶ The position of Employment and Litigation Counsel at EBH has been vacant since January 2020 and will not be replaced in the short-term. The functions covered by this role are currently being filled by other members of the Company's Legal team and outside counsel, in certain circumstances. The Monitor Team understands that this is a temporary arrangement and encourages the Company to fill the position at the earliest time.
- ▶ In August 2020, the Wynn Resorts Executive Director – Performance Management, Compensation, and Benefits resigned. As a result, the Company appears to have discontinued, at least for the time being, its initiative to develop a company-wide performance evaluation approach, an initiative led by the Executive Director.
- ▶ The Company's Executive Director – Diversity and Inclusion, who was primarily responsible for the Company's diversity and inclusion initiatives, left the Company in October 2020. The Monitor Team understands that this role will be replaced, but both the timing and plan for coverage of the Executive Director's responsibilities in the meantime are not solidified.
- ▶ In addition, as discussed further below, the Company has also restructured its most senior HR position from a Corporate position reporting to the Wynn Resorts CEO or Chief Financial Officer ("CFO") to a property-level position reporting to the President of Wynn Las Vegas. This change was made after the departure of the SVP of HR – North America in June 2020. The new SVP of HR for Wynn Las Vegas began in the role on January 1, 2021 and the Monitor Team expects to evaluate the effects of the change of this position on the Company's HRCP in future assessment periods.

Resource allocation plays a large part in the effectiveness of any company HR program over time and is a primary way in which company leadership displays its commitment to compliance. In future phases of our assessment, and particularly once the Company's operations stabilize, the Monitor Team will continue to review resource allocations for HRCP-critical functions throughout the organization.

## **B. Proper Authority, Oversight, and Independence**

Lack of proper authority, oversight, and independence in the Legal, Compliance, and HR functions were key factors in the issues discussed in the Decision and Order. As noted in the Baseline Assessment, since 2018, the Company has made numerous changes to its corporate governance and oversight frameworks as they affect its HRCP. Since the Baseline Assessment, however, the Company's progress in strengthening the authority, oversight, and independence of its HRCP has slowed. The COVID-19 pandemic has had a profound effect on the staffing of roles critical to the Company's HRCP. At the same time, the Company has also not taken advantage of the opportunity to set out a clear vision for the oversight and functioning of its HRCP as it considers the organization and filling of vacant HRCP roles. In addition, the Company has not made progress in onboarding an individual who has HRCP expertise to the Compliance Committee. Thus, the Company continues to lack a clear delineation of roles and responsibilities over its HRCP and specific expertise to oversee the same in its Compliance Committee.

In this Phase II review period, the Monitor Team interviewed current and former Company employees, Board members, and Compliance Committee members, and reviewed Company documentation, including corporate governance documents, policies, and reports of sexual harassment and discrimination matters.

### **1. Recommendations**

**Baseline Assessment Recommendation PAOI 1:** Provide clearer definition and delineation to the roles and responsibilities of functions with HRCP responsibility, including Legal, HR, and Compliance. Further delineation of responsibilities should include:

- ▶ The CGCO's oversight role with respect to the HRCP and identify and document how to increase his authority to oversee the HRCP from a compliance perspective, as well as his independent access to the Audit Committee; and
- ▶ The scope of Wynn Resorts and property level HR responsibility and oversight over the HRCP to empower decision-making at the property level while preserving consistency and corporate oversight.

#### **Summary Status**

The Company has not satisfied this Recommendation.

Since the Baseline Assessment, the Company has revised the Wynn Resorts Compliance Plan to address some of the observations in the Baseline Assessment related to the proper authority, oversight, and independence of its HRCP, specifically regarding (1) meetings between the Compliance Officer and the Audit Committee; and (2) reporting line of the Compliance Officer.

Overall, however, the Company has not set forth the required clear delineation of roles and responsibilities for its functions with HRCP responsibilities. Instead, the Company has represented that a clear delineation of responsibilities already exists and has informed the Compliance Committee as such

in a tracker of Baseline Assessment Recommendations created by the Company to manage its responses to the Baseline Assessment. In that tracker, the Company noted that the Compliance Committee is responsible for HRCP, without engaging with Baseline Assessment Recommendation PAOI 1, which requires the Company to clarify roles and responsibilities and to consider that the CGCO's responsibility over HRCP should be increased and documented.

### ***Assessment of Work Completed***

In the Baseline Assessment, the Monitor Team observed that although the Compliance Officer met with the Chair of the Audit Committee on a quarterly basis, the CGCO's ability to engage with the Audit Committee at their own discretion was not formally memorialized. The Company has since revised the Wynn Resorts Compliance Plan to indicate that the Compliance Officer may meet with the Audit Committee at any time upon request.

In addition, in the Baseline Assessment, we observed a lack of clarity as to the CGCO's reporting lines. In response, the Company has amended the Compliance Plan to clarify that the CGCO reports "directly" to the Compliance Committee and to the GC "for administrative purposes."

- ▶ Authority, oversight, and independence are key to the operation of a compliance program, to ensure that it is properly resourced, monitored, and overall effectiveness in its objectives. In addition, without these elements, a program cannot achieve long-term sustainability. In the Baseline Assessment, we noted that the delineation of responsibility over HRCP matters as among the Compliance Committee, CGCO, Legal, and HR is not as clear as it should be for the proper functioning of HRCP oversight. This continues to be the case as the Company has not, with the exception of the two changes noted directly above, sought to clarify roles and responsibilities over HRCP matters in a formal way. In fact, the lack of clarity of roles and responsibilities has been compounded by recent departures and the restructuring of roles within the Company. As we have noted in other parts of this Phase II Report, for example:
- ▶ The CGCO departed in September 2020 (and a replacement CGCO started in January 2021). The Monitor Team has been informed that the scope of the new CGCO's responsibility may differ from that of his predecessor.
- ▶ The SVP of HR – North America departed in July 2020. The role has since been restructured, including from a corporate (Wynn Resorts) position to a property-level position at Wynn Las Vegas. Interviews demonstrated that there are inconsistent expectations with respect to the responsibilities of the new position as to a few roles, including oversight of HR at EBH and the Monitor Team has not seen documentation that sets out the responsibilities of the changed position.
- ▶ The Executive Director – Diversity and Inclusion departed in October 2020. The Monitor Team has observed confusion within the Company regarding who will be taking over the responsibilities of that function until a replacement is identified.
- ▶ Particularly at a time of change, as is happening now, the clear delineation of roles and responsibilities is important to a well-functioning HRCP. An opportunity to clarify the roles and responsibilities of the CGCO and the new SVP of HR existed, for example, in outlining the functions' responsibilities vis-à-vis the Company's HRCP in job descriptions.

***Follow-Up Recommendations***

We reiterate the importance of Baseline Assessment Recommendation PAOI 1 and provide additional guidance for its satisfaction.

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| <b>Phase II Report<br/>Recommendation PAOI 1</b> | By March 31, 2021, complete Baseline Assessment Recommendation PAOI 1, the Company should conduct a self-evaluation of the roles and responsibilities of Compliance, Legal, and HR as related to HRCP with participation from each of those functions and memorialize the delineation of responsibilities.<br><br>In doing so, the Company should give particular consideration to the responsibilities of the CGCO with respect to the HRCP. |
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***Additional Considerations/Further Testing***

Along with the delineation of responsibilities that is required by this Recommendation, the Monitor Team will continue to assess the effectiveness of the roles responsible for the Company’s HRCP throughout the monitorship. In addition, the Monitor Team’s assessment of the effectiveness of the Board and Compliance Committee in their oversight responsibilities for the HRCP is ongoing. During the Phase II review period, the Monitor Team interviewed Compliance Committee members as well as several Board members, including the Chair of the Audit Committee. Our assessment will continue through further interviews and attending relevant portions of Board and Compliance Committee meetings in February 2021.

**Baseline Assessment Recommendation PAOI 2:** Add an additional member to the Compliance Committee who has substantive and substantial HR expertise.

***Summary Status***

The Company has not satisfied this Recommendation.

The Company has delayed implementation of this Recommendation due to the expenses related to onboarding an additional member of the Compliance Committee. The Company has informed the Monitor Team that it plans to onboard an additional Compliance Committee member after the COVID-19 crisis abates and the Company’s financial situation improves.

***Assessment of Work Completed***

The Company has not taken steps to onboard an additional Compliance Committee member with HRCP experience.

Especially during this critical time of program formation and development, HR subject matter competence on the Compliance Committee is imperative to ensure that the oversight and advisory role of the Committee on matters related to the HRCP is meaningful. Current members of the Compliance Committee have relevant experience and continue to demonstrate engagement on issues of sexual harassment and discrimination, but lack the specific depth of HR expertise that would enable the Compliance Committee to advise and oversee the Company effectively in this respect.

In August 2020, the Company proposed to revise the Wynn Resorts Compliance Plan with respect to future Compliance Committee appointments to add language on the importance of diversity in such considerations: “In considering appointments to the Committee, the Board must select candidates who satisfy the qualification criteria and should consider diversity of background, attributes, and skills in making its selection.” No further information has been provided to the Monitor Team with respect to the qualification criteria for Compliance Committee selection and the Monitor Team is not aware of any concrete steps towards onboarding an additional Compliance Committee member, but the Monitor Team would like to give credit to the Company for recognizing the importance of diversity in HRCP-facing leadership roles at the Company.

***Follow-Up Recommendations***

In recognition of the financial situation of the Company during the COVID-19 pandemic, the Monitor Team reissues Baseline Assessment Recommendation PAOI 2 with a deadline.

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| <p><b>Baseline Assessment Recommendation PAOI 2</b></p> | <p>By June 30, 2021, the Company should add a member to the Compliance Committee who has substantive and substantial HR expertise.</p> |
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***Additional Considerations/Further Testing***

None.

**Baseline Assessment Recommendation PAOI 3:** Develop more specific criteria to guide which harassment and discrimination cases should be highlighted for the attention of the Compliance Committee.

***Summary Status***

The Company has not satisfied this Recommendation, however, based on consideration of further information, including interviews with members of the Compliance Committee, the Board of Directors, and Company leadership, the Monitor Team and Company agree that implementation of this Recommendation can appropriately be delayed until the volume of cases is such that the Compliance Committee can no longer review all cases. Compliance Committee members and the Company have expressed to the Monitor Team that they find it valuable for all sexual harassment and discrimination cases to be reported to the Compliance Committee. The Monitor Team agrees, in particular because the Company’s HRCP, including its investigations and reporting protocols overall, is still under development. In addition, the volume of cases is not currently such that reporting all of them detracts from the Compliance Committee’s ability to focus on the cases most needing the Committee’s attention. The Monitor Team had additionally been concerned that the volume of cases reported creates an undue burden and diversion of resources for those preparing reports, however, that concern is significantly mitigated by the Company’s imminent roll-out of a new case management and reporting system.

Therefore, the Monitor Team is currently withdrawing this Recommendation.

***Assessment of Work Completed***

None.

***Follow-Up Recommendations***

None.

***Additional Considerations/Further Testing***

The Monitor Team expects that the Company will continue to consider the volume of sexual harassment and discrimination cases elevated to the Compliance Committee and make adjustments to reporting as needed to ensure that the Compliance Committee is able to focus appropriately on the cases requiring its attention.

**Baseline Assessment Recommendation PAOI 4:** Assess resource allocation and staff skill-set at EBH, particularly in HR, around the one-year anniversary of the property opening to determine whether and what adjustments should be made.

***Summary Status***

The Company has not satisfied this Recommendation. However, based on consideration of the effect of the COVID-19 pandemic on the Company’s operations, it is the Monitor Team’s view that the Company has to some extent—even if not in form—substantively engaged in this exercise when making staffing decisions during the pandemic and that the further, formal, evaluation contemplated in the initial Recommendation would not be appropriate at this time given the pandemic and operational circumstances. Since the Baseline Assessment, the Company has decreased its employee base [REDACTED], experienced periods of closure, and has pivoted some of its HR focus to health-related Company needs. Thus, a current evaluation would not serve the intended purpose of calibrating skill sets to needs for the long term. However, the Monitor Team continues to see the need for the Company to undertake this exercise at an appropriate time in the future, as well as to adopt a formal performance evaluation system for employees in order to assist with the evaluation on an ongoing basis.

***Assessment of Work Completed***

None.

***Follow-Up Recommendations***

Although self-monitoring of resources is important, recognizing that the COVID-19 pandemic has significantly changed the Company’s operations and staffing needs, the Monitor Team recommends delaying the implementation of Baseline Assessment Recommendation PAOI 3 until operations stabilize.

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| <b>Phase II Report<br/>Recommendation PAOI 2</b> | In consultation with the Monitor Team regarding timing, conduct an evaluation of the resourcing and skill sets of relevant functions, including HR, at EBH. |
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***Additional Considerations/Further Testing***

None.

## C. Policies and Procedures

In the Baseline Assessment, the Monitor Team commended the Company for its efforts to enhance certain elements of its HRCP policies and procedures and noted the need for additional work on several of the policies and for developing the Company’s overarching policy and guidance framework. To that end, the Monitor Team issued eleven recommendations aimed at substantively enhancing and streamlining the Company’s policy universe.

During the Phase II review period, the Company provided the Monitor Team with ten policies. Seven of those policies were subject to Recommendations in the Baseline Assessment:

- ▶ Preventing Harassment and Discrimination Policy;
- ▶ Code of Business Conduct and Ethics;
- ▶ Personal Relationships Policy;
- ▶ Personal Presentation Policy;
- ▶ Company Policy Review Policy;
- ▶ Job Accommodation Request Policy; and
- ▶ Employee Patronization.

The three remaining policies provided to the Monitor Team were relevant to other areas discussed in the Baseline Assessment, but we list them here for completeness:

- ▶ Executive and Board Member Use of Spa and Salon Services;
- ▶ Employee Interaction with Guests and Other Third Parties; and
- ▶ Anti-Human Trafficking Policy.

The Company has not finalized or implemented the policies. The Monitor Team understands that the Company has been focused on pandemic-related communications and policies and acknowledges the burden the pandemic has placed on teams also responsible for implementing policy changes. Nonetheless, the Company’s delay in drafting and implementing policies and procedures impeded the Monitor Team’s ability to properly evaluate what, if any, progress the Company made with respect to its policy and procedure environment—a bedrock of an effective compliance program.

### 1. Recommendations

**Baseline Assessment Recommendation P&P 1:** Update the Preventing Harassment and Discrimination Policy as follows:

- ▶ explicitly state that the Policy applies to management and senior executives;
- ▶ expand the definition of “Protected Characteristic” consistent with MCAD guidance;
- ▶ include additional relevant examples of sexual harassment as well as examples of harassment and discrimination based on other protected characteristics, including age, gender identity, race, national origin, sexual orientation, or religion;

- ▶ instruct employees of the ability to submit anonymous complaints;
- ▶ include information of the new confidential hotline;
- ▶ include physical work addresses of individuals at the Company (e.g., ER, HR) to whom complaints may be made; and
- ▶ include a cross-reference to the Company's Social Media Policy and guidance to help employees understand that certain limited conduct outside the workplace, but with a nexus to employment at the Company may also constitute sexual harassment and a violation of Company policy.

### ***Summary Status***

The Company has not fully satisfied this Recommendation.

The Company adopted most of the recommended enhancements to the Preventing Harassment and Discrimination Policy. The Company did not implement the recommendation regarding the Company's Social Media Policy and, due to issues beyond the Company's control, the Company was not able to launch its new reporting platform.

### ***Assessment of Work Completed***

The Preventing Harassment and Discrimination Policy conforms to the key elements of the Recommendation, fully implementing five of the seven sub-recommendations.

First, the Company broadened the scope of the Policy's application to include "supervisors, managers, [and] executives." Second, the Company expanded the definition of "Protected Characteristic" consistent with Massachusetts Commission Against Discrimination ("MCAD") guidance by adding pregnancy, "active or retired" veteran status, and ancestry as a protected characteristic. With respect to pregnancy, the Monitor Team notes that the Pregnant Workers Fairness Act prohibits discrimination on the basis of both pregnancy and pregnancy-related conditions, such as lactation or the need to express breast milk for a nursing child. Although the Company revised the Policy to include pregnancy as a protected characteristic, among others, it did not include conditions related to pregnancy. The Monitor Team understands that the Company is developing a separate policy on pregnancy accommodation, which it will review and assess in the next phase of review.

Second, the Company added several examples of sexual harassment and discrimination based on other protected characteristics, noting that the examples contained in the Policy "are not intended to be all-inclusive." Examples added include but are not limited to: (1) "[a] supervisor tells an employee or implies that he or she can earn a promotion or salary increase by providing sexual favors or dating the supervisor"; (2) "[a]n employee, supervisor, customer, or vendor interferes with another's physical movements by locking or standing in uncomfortable close proximity"; and (3) "a supervisor makes employment-related decisions (for example, who will get overtime, who can leave work early, which project someone will work on, who will get a raise or promotion) because of the employee's Protected Characteristic." These examples capture both quid pro quo harassment and hostile work environment, with (1) addressing the former and (2)–(3) addressing the latter, consistent with proscribed harassment under Title VII.

Third, the Company revised the section on reporting violations, instructing employees that they can report harassment and discrimination anonymously through the Company's hotline. This instruction



will, of course, need to be updated to reflect the launch of the new reporting hotline. Lastly, the Company also added physical work addresses of individuals at the Company (e.g., ER, HR) to whom complaints may be made, consistent with MCAD guidance and the Baseline Assessment's Recommendations.

The Company made an additional change to the Policy by removing the religious accommodation and disability provisions. Senior management indicated to the Monitor Team that the Company has established a separate policy—the Job Accommodation Request Policy—that will address accommodations for disability, religion, and pregnancy. The Monitor Team agrees with this approach and looks forward to reviewing the new Policy.

While the Company adopted most of the Baseline Assessment's Recommendations on its Preventing Harassment and Discrimination Policy, it did not include a cross-reference to the Company's Social Media Policy. Notwithstanding this omission, and as noted above, the Company included a variety of examples of harassment and discrimination, providing guidance to help employees understand that certain limited conduct outside the workplace, but with a nexus to employment at the Company, may also constitute sexual harassment and a violation of Company policy. Examples include:

- ▶ “[a]n employee tells jokes or stories, posts or distributes materials on social media, or uses profanity that is sexually offensive, has sexual content, or is insulting or derogatory to an individual's Protected Characteristic, or sends, forwards, transmits or distributes such jokes or stories, or materials, via e-mail, text messaging, or any other means.”
- ▶ “[a]n employee sends, forwards, transmits or distributes material, pictures, cartoons, video or media of any kind via e-mail, text messaging, social media, or any other means which disparage, make fun of, or portray an individual's Protected Characteristic in a negative or unflattering manner, or displays such material in their work area or on their computer or other electronic device for others to see or view.”

These examples are instructive: they provide practical scenarios illustrating the improper use of social media and in doing so provide guidance on the kind of conduct outside of the workplace that can constitute a violation of the Company's policy. The Policy would nevertheless benefit from explicit reference to the Company's Social Media Policy, so that employees are able to contextualize the relationship between the Company's Social Media Policy and the Preventing Harassment and Discrimination Policy.

#### ***Follow-Up Recommendations***

The Monitor Team recommends that no later than March 31, 2021, the Company full implement this Recommendation.

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| <p><b>Phase II Report Recommendation P&amp;P 1</b></p> | <p>By March 31, 2021, the Company should amend the Preventing Harassment and Discrimination Policy to:</p> <ul style="list-style-type: none"> <li>▶ include a cross-reference to the Company’s Social Media Policy; and</li> <li>▶ include pregnancy-related conditions as a protected characteristic.</li> </ul> <p>Within four weeks following the launch of the new reporting line, include references to the Company’s new reporting platform, once implemented.</p> |
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***Additional Considerations/Further Testing***

The Monitor Team will assess the Company’s amended Preventing Harassment and Discrimination Policy. The Monitor Team is available to review drafts and final, implemented versions of the Policy. If possible, the Monitor Team will assess the implementation of the Policy through surveys and focus groups.

**Baseline Assessment Recommendation P&P 2:** Pending roll-out of the new reporting platform, engage in proactive messaging to employees, particularly at EBH, about InTouch and the ability that it provides to make confidential reports.

***Summary Status***

The Company has not satisfied this Recommendation.

The Monitor Team understands that due to issues outside of the Company’s control, the Company has not launched the new reporting channel discussed in the Baseline Assessment, but will do so in the near future. The Company has engaged in proactive messaging at EBH regarding the HRCP through pre-shift messages. However, the Monitor Team has not seen evidence of similar messaging at Wynn Las Vegas during the Phase II review period. As discussed in Section F, Internal Reporting and Investigations, the Company is also in the process of finalizing communication campaigns centered around speak up culture at both properties.

***Assessment of Work Completed***

The Company provided the Monitor Team pre-shift messages delivered at EBH addressing HRCP themes. The messages generally promote HRCP values and reflect a sincere effort to leverage existing communication platforms to champion the HRCP. Evaluating those messages with respect to this Recommendation, we must note that none of the messages reviewed by the Monitor Team instruct employees on the Company’s existing reporting channel—Lighthouse—and its ability to intake confidential reports. That said, the pre-shifts messages reviewed, which came from the property President, take a multi-layered approach towards promoting a “speak up” and inclusive culture. For example, one message reminded employees to report “security, safety issues and possible harassment situations” across categories of individuals, including employees and Patrons. Other messages emphasized the importance of reporting violations of the Company’s anti-harassment and anti-discrimination policy to HR or managers and reminded employees of the different ways to engage in bystander intervention should they witness inappropriate behavior. The Monitor Team commends EBH

for these efforts and encourages their continuation along with messaging promoting the Company’s internal reporting channel.

The Monitor Team notes that EBH is rolling out a communication campaign this year that will promote speaking up and reporting and understands that Wynn Las Vegas will also be rolling out a similar campaign. These communications provide opportunities to specifically highlight the existing ability to make confidential reports as well as the new reporting channel, when it launches.

***Follow-Up Recommendations***

The Monitor Team reissues this recommendation, with a target completion date of four weeks after the launch of the new reporting channel.

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| <p><b>Baseline Assessment Recommendation P&amp;P 2</b></p> | <p>Within four weeks of the launch of the new reporting line, the Company should engage in proactive messaging to employees at both properties regarding the new reporting line and the ability that it provides to make confidential reports.</p> <p>[This can be done in connection with Baseline Assessment Recommendation IRI 1 and Baseline Assessment Recommendation IRI 3.]</p> |
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***Additional Considerations/Further Testing***

The Monitor Team will request and evaluate additional pre-shift messages and other communications to employees at EBH and Wynn Las Vegas in the next phase of review. If possible, the Monitor Team will assess the implementation of the recommendation through surveys and focus groups.

**Baseline Assessment Recommendation P&P 3:** Develop and issue the following policies and incorporate references to them throughout the HRCP as appropriate:

- ▶ disability accommodations;
- ▶ religious accommodations; and
- ▶ pregnancy discrimination, harassment, and accommodation.

***Summary Status***

The Company has not fully satisfied this Recommendation.

The Company drafted a Job Accommodation Requests Policy that covers religious, pregnancy, and disability accommodations.

***Assessment of Work Completed***

The Company produced a draft Job Accommodation Requests Policy to the Monitor Team on January 21, 2021, which provided the Monitor Team limited time to conduct a meaningful assessment of the new policy. Monitor Team credits the Company with providing the Policy. From discussions with the Company, we understand that the Policy includes guidance on accommodations for religion, pregnancy,

and disability. The Monitor Team will review the Policy and related materials in the next phase of review.

***Follow-Up Recommendations***

The Monitor Team reissues Baseline Assessment Recommendation P&P 3 with a deadline.

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| <p><b>Baseline Assessment Recommendation P&amp;P 3</b></p> | <p>Develop and issue the following policies and incorporate references to them throughout the HRCP as appropriate:</p> <ul style="list-style-type: none"> <li>▶ disability accommodations;</li> <li>▶ religious accommodations; and</li> <li>▶ pregnancy discrimination, harassment, and accommodation.</li> </ul> |
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***Additional Considerations/Further Testing***

The Monitor Team will evaluate the policy and will provide the Company observations as appropriate. If possible, the Monitor Team will assess the implementation of the recommendation through surveys and focus groups.

**Baseline Assessment Recommendation P&P 4:** Amend the Code of Business Conduct as follows:

- ▶ explicitly emphasize throughout the document that no person is above the Code of Business Conduct, and covered persons should report incidents regardless of who is involved; and
- ▶ include a personal relationship as a potential conflict of interest.

***Summary Status***

The Company has satisfied this Recommendation.

The Company made several revisions to its Code of Business Conduct and Ethics (“Code of Business Conduct”). Regarding the request to emphasize that no person is above compliance with the Code of Business Conduct, the Company revised Section 1.4 Reporting Violations to state that it “applies to all employees, officers, directors, and agents of Wynn Resorts and its affiliates, regardless of title or position.” The revised Code of Business Conduct also emphasizes that employees may make reports to any hotline as well as confidentially to the Audit Committee. The Company also added a new section on preventing harassment and discrimination, prohibiting such behavior “in any form, whether it occurs between coworkers, involves a supervisor, or happens with persons doing business with or for the Company, including guests and vendors.”

Regarding the request to amend the Code of Business Conduct to include personal relationships as a potential conflict of interest, the Company explained the underlying rationale for why it prohibits some romantic and intimate relationships. Specifically, Section 2.6 Personal Relationships now states that certain romantic and intimate relationships are “absolutely prohibited, as they could create impermissible conflicts of interest for both employees involved” and directs the reader to reference Section 3 Conflicts of Interest for further information.

***Assessment of Work Completed***

The Code of Business Conduct conforms to the key elements of the Recommendations. Specifically, the Code of Business Conduct emphasizes that it applies to all employees regardless of rank. It reminds employees that the Code of Business Conduct also applies to Patrons and reminds employees of their ability to make confidential reports. The Code of Business Conduct also articulates the complexities that may arise from intimate relationships in the workplace by identifying the potential for conflicts of interest.

The Monitor Team encourages the Company to consider further enhancing the Code of Business Conduct by making it more engaging and reader friendly. In the Baseline Assessment, the Monitor Team noted that focus groups participants commented that employees may not fully engage with policies because they are long and difficult to read. Baseline Assessment at 51. As currently structured, the Code of Business Conduct is an 18-page document consisting exclusively of text, with bolded headers intended to guide the reader. Although the Code of Business Conduct will invariably contain a significant amount of text, the Company should aim to improve its design consistent and readability consistent with the principled articulated in the Baseline Assessment. *Id.* This approach will also alleviate concerns expressed by management to the Monitor Team of overwhelming employees with policies. Strategically streamlining text and utilizing imagery, color, comment boxes, and other elements of design will both enhance employee engagement with the Code of Business Conduct, draw employee attention to key sections, and avoid overwhelming the reader.

***Follow-Up Recommendations***

The Monitor Team recommends that the Company redesign the Code of Business Conduct to enhance employee engagement.

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| <b>Phase II Report<br/>Recommendation P&amp;P 2</b> | Enhance the Code of Business Conduct and Ethics to encourage employee engagement and awareness, including by improving visual design and readability. |
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***Additional Considerations/Further Testing***

The Monitor Team will request and evaluate the Code of Business Conduct and remains available to review drafts and final, implemented versions of the Code of Business Conduct. If possible, the Monitor Team will assess the implementation of the recommendation through surveys and focus groups.

**Baseline Assessment Recommendation P&P 5:** Review Code of Personal Conduct to identify the core behaviors that are most fundamental to the Company and relaunch the new Code of Personal Conduct to drive awareness and communication around compliance.

***Summary Status***

The Company has not satisfied this Recommendation.

***Assessment of Work Completed***

The Monitor Team has not received any evidence of the requested review and relaunch of the Code of Personal Conduct. The Monitor Team understands that revisions to the Code of Personal

Conduct have been delayed due to issues outside of the Company’s control and that changes to the Code of Personal Conduct will implemented as soon as practicable. The Monitor Team has evaluated the cause for the delay and consider an extension appropriate.

***Follow-Up Recommendations***

The Monitor Team recommends that the Company satisfy this Recommendation and submit documentary evidence of completion to the Monitor Team no later than March 31, 2021.

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| <p><b>Baseline Assessment Recommendation P&amp;P 5</b></p> | <p>By November 30, 2021, review Code of Personal Conduct to identify the core behaviors that are most fundamental to the Company and relaunch the new Code of Personal Conduct to drive awareness and communication around compliance.</p> |
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***Additional Considerations/Further Testing***

The Monitor Team will request and evaluate the Code of Personal Conduct and remains available to review drafts and final, implemented versions of the Code of Personal Conduct. If possible, the Monitor Team will assess the implementation of the recommendation through surveys and focus groups.

**Baseline Assessment Recommendation P&P 6:** Update the Personal Relationships Policy as follows:

- ▶ include a straightforward statement at the outset that addresses the risks a personal relationship poses to the Company and why Company intervention is important;
- ▶ clarify that even where there is consent, or the appearance of consent, consent is fluid and can be revoked by either party at any time, and consequently, issues relating to conflict of interest, sexual harassment, or violations of the Code of Business may still arise; and
- ▶ implement a process to review department-specific policies before they are made available on *The Wire*.

***Summary Status***

The Company has not satisfied this Recommendation.

Although the Monitor Team received a revised Personal Relationships Policy, the revisions do not address the recommendations made in the Baseline Assessment and are largely non-substantive.

***Assessment of Work Completed***

The Personal Relationships Policy does not conform to key elements of the recommendation.

Although the Company revised the Personal Relationships Policy, however, it did not address any of the recommendations made by the Monitor Team. The Monitor Team observed shifts in terminology, including that the Company’s property-specific references have been consolidated into a singular term—Wynn Resorts and that the definition of relatives has collapsed “mother” and “father” into “parent” and “sister” and “brother” into “sibling.” The Monitor Team also notes substantive revisions, including that the Restricted Relationships and Procedures section notifies employees that “[a]ny relationship that may result in a potential conflict of interest is prohibited, regardless of whether

the employees have a direct supervisory relationship” and defines a conflict of interest in this context as situations in which “competing loyalties could cause the employees to pursue a personal benefit for themselves at the expense of Wynn Resorts’ interests.” The new Policy also includes property and Wynn Resorts GCs as the individuals to whom senior management and executives should report a Restricted Relationship.

In addition, the Policy does not sensitize employees to issues of consent or instruct that engaging in personal relationships could result in claims of sexual harassment. *Id.* This is particularly problematic in light of the MGC’s statement in its Decision and Order on this point, which bears repeating:

The fact that many of the allegations and settlements were characterized as “consensual” is of no import. The fact that those in positions of authority actually repeatedly accepted such characterization reflects a complete lack of understanding of the applicable principles of law. The fact that a high-ranking corporate executive is of the belief that a lower ranking employee is consenting to a sexual relationship, i.e., that it appears to be voluntary, does not mean that the relationship was welcome by the employee. In such an instance, the relationship may not be consensual despite the executive’s characterization as such.

Decision and Order at 46-47 (citation omitted).

The MGC’s statement addresses a lack of understanding by former executives of what constitutes actual consent. To respond to that concern, the Policy must do more than define the term “conflict of interest.” It must provide explicit guidance on coercion, abuse of authority, harassment, unfair treatment, and favoritism in the workplace. And it must do so in the context of a discussion on the power dynamics that make personal relationships between persons of authority and lower ranked employees potentially problematic and prone to harassment.

***Follow-Up Recommendations***

The Monitor Team reissues this Recommendation and recommends that the Company submit documentary evidence of completion to the Monitor Team no later than February 28, 2021.

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| <p><b>Baseline Assessment Recommendation P&amp;P 6</b></p> | <p>By February 28, 2021, update the Personal Relationships Policy as follows:</p> <ul style="list-style-type: none"> <li>▶ include a straightforward statement at the outset that addresses the risks a personal relationship poses to the Company and why Company intervention is important;</li> <li>▶ clarify that even where there is consent, or the appearance of consent, consent is fluid and can be revoked by either party at any time, and consequently, issues relating to conflict of interest, sexual harassment, or violations of the Code of Business Conduct may still arise; and</li> <li>▶ implement a process to review department-specific policies before they are made available on <i>The Wire</i>.</li> </ul> |
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### ***Additional Considerations/Further Testing***

The Monitor Team will request and evaluate the revised Personal Relationships Policy and remains available to review drafts and final, implemented versions of the Personal Relationships Policy. If possible, the Monitor Team will assess the implementation of the recommendation through surveys and focus groups.

**Baseline Assessment Recommendation P&P 7:** Review the Personal Presentation Policy to ensure it is consistent with federal and state harassment and discrimination laws and implement a process to review department-specific personal presentation policies before they are enforced.

### ***Summary Status***

The Company has not fully satisfied this Recommendation.

The Company made several revisions its Personal Presentation Policy but the Policy does not conform to the key elements of the recommendation.

### ***Assessment of Work Completed***

The Monitor Team credits the Company with certain revisions to the Policy, such as removing certain grooming and dress requirements. For example, the Company removed the requirements that:

- ▶ “Men’s hair must not be worn in a style that falls below the ears or over the collar.”
- ▶ “Men must keep their hands out of their pockets when walking in a public area.”
- ▶ “Men’s suits should be dark colors and at least one button must be buttoned when the employee is standing or walking around.”
- ▶ “Hosiery must be free from runs and tears and must be clean to show no discoloration or stains on feet.”
- ▶ “Shoes with open toes or open backs, including sandals, flip-flops, and sling backs are not permitted.”

The Company also revised the section on hair-related requirements by providing examples regarding the meaning of the subjective term “[e]xtreme hairstyles and/or colors” to include but not be limited to “fluorescent hair colors, pink, orange, yellow, green, blue, and purple.” Moreover, the Company relaxed its rules with respect to tattoos, which previously required prior authorization by the VP of HR, and now requires prior authorization by an employee’s respective department and VP of HR for face and neck tattoos only.

The Company revised the Policy’s section on department-specific policies relating to grooming and dress. The Policy now allows department-specific personal presentation standards “with the approval of the divisional vice president and the Vice President of Human Resources” and instructs that any deviations from the Company’s Personal Presentation Policy “be based on safety concerns, health code requirements, or the artistic/marketing vision of the department.”

The Monitor Team nonetheless remains concerned that certain provisions of the Policy may be inadvertently creating fertile grounds for harassment and discrimination. For example, while the



Company provided examples of extreme hair colors that would not be permitted, the Company does not define “extreme hairstyles,” or provide examples of such hairstyles independent from color, leaving too much discretion to managers to interpret the term in a way that is insensitive to racial and ethnic issues surrounding hair. Other provisions are equally subjective and ambiguous:

- ▶ “Hair accessories, types, and styles should be appropriate for a business environment and must conform to the specific requirements of each department.”
- ▶ “Beards and goatees, if permitted by department policy, must be well-groomed, closely cropped near the face and must be grown while off work (e.g.,] on vacation).”
- ▶ “Jewelry—must be tasteful and not excessive.”

The Monitor Team appreciates that the Company prides itself in providing five-star service to Patrons, and that personal presentation standards are an important part of realizing that goal. However, it is important that personal presentation standards be precisely defined to ensure that employees and managers have adequate guidance to implement these standards. Words like “tasteful” and “appropriate”—without further guidance—leave the Company particularly vulnerable to harassment and discrimination complaints. Indeed, as noted in the Baseline Assessment, some employees in the Spa and Salon Department expressed frustration with the rigidity of these rules, particularly with respect to hairstyles. Baseline Assessment at 48.

Policies of this nature also underscore the importance of the Company’s religious accommodation policies and procedures. For example, because hair and jewelry can be important expressions of an individual’s religious beliefs, the Company should consider adding a cross reference to its religious accommodation policy and a statement that it will provide reasonable accommodation to employees and provide channels for requesting an accommodation. *Id.*

Based on interviews with senior management, the Monitor Team understands that the Company is establishing a process to review department-specific personal presentation policies before they are enforced, consistent with recommendations made in the Baseline Assessment. To this end, interviewees reported that the Company has established a policy review committee, which—prior to the pandemic—met on a monthly basis, with the goal of reviewing a few policies every month. The Monitor Team understands that the committee consists of representatives from Legal, HR, and Compliance and that department-specific personal presentation policies are generally reviewed on an ad hoc basis.

Senior management also reported that department-specific policies occasionally conflict with Company policy. Here, the Monitor Team emphasizes the importance of establishing a formal process to review department-specific personal presentation standards before they are enforced as recommended in the Baseline Assessment. This will ensure that department-specific standards are aligned with the Company’s global policies.

#### ***Follow-Up Recommendations***

The Monitor Team recommends that the Company satisfy this Recommendation and additionally recommends the following:

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| <p><b>Phase II Report<br/>Recommendation P&amp;P 3</b></p> | <p>By March 31, 2021, update the Personal Presentation Policy to:</p> <ul style="list-style-type: none"> <li>▶ ensure it is consistent with federal and state harassment and discrimination laws;</li> <li>▶ include a cross-reference to the Company’s religious accommodation policy and guidance to help employees understand that it will provide reasonable accommodation to employees and provide channels for requesting an accommodation;</li> <li>▶ provide additional examples and/or guidance to subjective terms regarding hair and grooming requirements; and</li> <li>▶ implement a process to review department-specific personal presentation policies before they are enforced.</li> </ul> |
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***Additional Considerations/Further Testing***

The Monitor Team will request and evaluate the revised Personal Presentation Policy and remains available to review drafts and final, implemented versions of the Personal Presentation Policy. If possible, the Monitor Team will assess the implementation of the recommendation through surveys and focus groups. The Monitor Team will also attend policy review committee meetings and assess the Company’s process for reviewing department-specific procedures.

**Baseline Assessment Recommendation P&P 8:** Make department-specific policies available on *The Wire*.

***Summary Status***

The Company has not satisfied this Recommendation.

The Monitor Team reviewed Wynn Las Vegas’s Employee Policy Guide webpage, which contains an extensive list of the Company’s policies and procedures. The listed policies appear to be global policies that apply across departments only, not department-specific procedures (e.g., personal presentation standards).

The Monitor Team did not receive a similar guide from EBH.

***Assessment of Work Completed***

Senior management expressed concern over making department-specific policies available on *The Wire* because of the confidential nature of some of these policies. The Monitor Team appreciates that concern. Therefore, we clarify that the recommendation’s underlying rationale is to ensure that employees can access all policies that are applicable to them, including department-specific policies and procedures. Moreover, the Monitor Team does not have an express preference for where these policies are housed, so long as they are available and accessible to relevant employees.

Interviewees reported that employees receive hardcopies of department-specific policies and that the Company maintains records verifying receipt of such policies. The Monitor Team and the Company have aligned on this Recommendation, with the understanding that the Company will develop

function-specific portals to house department-specific policies. The Monitor Team will request these policies and Company records in the subsequent phase of review.

***Follow-Up Recommendations***

The Monitor Team revises Baseline Assessment Recommendation P&P 8.

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| <p><b>Phase II Report<br/>Recommendation P&amp;P 4</b></p> | <p>Make department-specific polices available and accessible to employees to whom they apply.</p> |
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***Additional Considerations/Further Testing***

As noted above, the Monitor Team will request department-specific policies and Company records evidencing receipt and acknowledgement by employees.

**Baseline Assessment Recommendation P&P 9:** In the Employee Patronization Policy, clarify from whom employees should seek authorization and under what circumstances patronization of the pool and health spa are authorized.

***Summary Status***

The Company has not satisfied this Recommendation.

***Assessment of Work Completed***

The Company provided a draft of the Employee Patronization Policy to the Monitor Team on January 20, 2021, which provided the Monitor Team limited time to conduct a meaningful assessment of the new Policy. The Monitor Team credits the Company with providing the Policy and will assess its content, including the implementation of this Recommendation in the next phase of review.

***Follow-Up Recommendations***

The Monitor Team reissues Baseline Recommendation P&P 9 with a deadline.

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| <p><b>Baseline Assessment<br/>Recommendation P&amp;P 9</b></p> | <p>By March 31, 2021, in the Employee Patronization Policy, clarify from whom employees should seek authorization and under what circumstances patronization of the pool and health spa are authorized.</p> |
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***Additional Considerations/Further Testing***

The Monitor Team will review and evaluate the draft Employee Patronization Policy. Going forward, the Monitor Team will test the Company’s implementation of the Policy.

**Baseline Assessment Recommendation P&P 10:** Update the Company Policy Review to include:

- ▶ a stated purpose for the policy;
- ▶ a section that defines “policy,” “procedure,” and other keywords;
- ▶ define a process for leveraging the knowledge of relevant departments and subject matter

experts when developing and reviewing policies;

- ▶ define a process for policy development and policy review;
- ▶ a standard format for all Company policies;
- ▶ a comprehensive list of all Company policies and procedures; and
- ▶ incorporate a downstream compliance process for training, monitoring, and audit.

***Summary Status***

The Company has not satisfied this Recommendation.

***Assessment of Work Completed***

The Company provided a draft of the Company Policy Review to the Monitor Team on January 21, 2021, which provided the Monitor Team with limited time to conduct a meaningful assessment of the new Policy. The Monitor Team credits the Company with providing the Policy and will assess its contents, including the implementation of this Recommendation in the next phase of review.

***Follow-Up Recommendations***

The Monitor Team reissues Baseline Recommendation P&P 10 in the next phase of review with a deadline.

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| <p><b>Baseline Assessment<br/>Recommendation P&amp;P 10</b></p> | <p>By March 31, 2021, update the Company Policy Review to include:</p> <ul style="list-style-type: none"><li>▶ a stated purpose for the policy;</li><li>▶ a section that defines “policy,” “procedure,” and other keywords;</li><li>▶ define a process for leveraging the knowledge of relevant departments and subject matter experts when developing and reviewing policies;</li><li>▶ define a process for policy development and policy review;</li><li>▶ a standard format for all Company policies;</li><li>▶ a comprehensive list of all Company policies and procedures; and</li><li>▶ incorporate a downstream compliance process for training, monitoring, and audit.</li></ul> |
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***Additional Considerations/Further Testing***

None.

**Baseline Assessment Recommendation P&P 11:** Adopt a comprehensive communications strategy to disseminate the Preventing Harassment and Discrimination Policy and other equally important policies and procedures.

***Summary Status***

The Company has not satisfied this Recommendation.

***Assessment of Work Completed***

The Monitor Team has not seen evidence of implementation of a communications strategy to disseminate policies and procedures.

The Company has understandably focused its recent efforts on COVID-19-related communications and messaging. To this end, interviewees reported a significant increase of pandemic-related signage and trainings at EBH and Wynn Las Vegas. Interviews with senior management and documents reviewed evidence that the Company is developing broad communication campaigns at EBH and Wynn Las Vegas underscoring the importance of speaking up and reporting instances of harassment and discrimination by Patrons. While the Monitor Team has not seen evidence of a comprehensive communication strategy to disseminate the Preventing Harassment and Discrimination Policy, and other equally important policies and procedures to employees in other departments, the structure of the soon-to-be-launched campaign may provide an opportunity to disseminate these key policies. The Monitor Team notes that a comprehensive communication strategy is an important element of ensuring the sustainability and long-term success of the Company’s HRCP.

***Follow-Up Recommendations***

The Monitor Team reissues this Recommendation and requests documentary evidence of completion by March 31, 2021.

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| <b>Baseline Assessment Recommendation P&amp;P 11</b> | By March 31, 2021, adopt a comprehensive communications strategy to disseminate the Preventing Harassment and Discrimination Policy and other equally important policies and procedures. This strategy may be folded into the communication campaigns already in development at both properties. |
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***Additional Considerations/Further Testing***

The Monitor Team will request and evaluate materials from the new communications strategy and remains available to review drafts and final, implemented versions.

***2. Additional Observations***

The Decision and Order charged the Monitor Team to evaluate the Company’s policy changes by considering, inter alia, “the effectiveness of the Company’s policies, practices and programs under the purview of the independent monitor.” Decision and Order at 51. To this end, our Baseline Assessment made a variety of recommendations intended to enhance the effectiveness of the Company’s HRCP policies. In the present phase of review, the Monitor Team focused on assessing the Company’s implementation of those recommendations, but—due to the pandemic—was unable to test the effectiveness of the Company’s policies by, for example, conducting employee focus groups. However,

based on our review, the Monitor Team recommends that the Company revise its policies and procedures to include section on “scope” and/or “applicability” to make clear at the outset of the policy to whom the document applies.

## **D. Third Party Relationships**

The Company has fully satisfied only two of the eleven Baseline Assessment Recommendations made in connection to third party relationships. Those two recommendations relate to the Company’s Background Standards and Procedures. The remaining nine relate to recommendations designed to mitigate the risk of offending Patron behavior and to address concerns related to engagement of external counsel. Below we assess the Company’s delay in complying with those recommendations and where appropriate, provide further clarity on the basis and intent for the recommendations. The Monitor Team will continue to actively evaluate the Company’s progress on these critical aspects of the HRCP.

### **1. Recommendations**

**Baseline Assessment Recommendation TP 1:** Consolidate all employee interactions policies into a single comprehensive policy. The new policy should not require “egregious” conduct for the removal of a Patron or third party, and should clarify that any behavior of Patrons or other third parties that is inconsistent with the Company’s Preventing Harassment and Discrimination Policy could result in immediate removal. The Company should also develop manager and supervisor training regarding the new comprehensive policy.

#### **Summary Status**

The Company has partially satisfied this Recommendation.

The Company has updated its Employee Interaction with Guests and Other Third Parties Policy (“Employee Interaction with Guests Policy”) and has provided a draft to the Monitor Team for review. The updated draft Employee Interaction with Guests Policy reflects meaningful and substantive changes that address the Monitor Team’s core observations and recommendations.

The Company has not, however, developed manager and supervisor training regarding the new Policy. Therefore, the second part of the Recommendation remains open.

#### **Assessment of Work Completed**

In the Baseline Assessment, the Monitor Team identified offending behavior by Patrons as the Company’s highest risk factor for sexual harassment and discrimination. Baseline Assessment at 54. We noted that EBH and Wynn Las Vegas employees “expressed a need for increased support from the Company with respect to addressing Patron misconduct” and perceived “inconsistency in how the Company defines and responds to inappropriate behavior from certain categories of Patrons and hotel guests.” *Id.* at 55. We also reported that the inconsistent response to Patron misconduct left employees “feeling disempowered to pushback on offending behavior” that “does not align with Company expectations,” *id.*, and that some employees felt they had to tolerate inappropriate conduct in order to maximize tips, *id.* at 54. The draft Employee Interaction with Guests Policy addresses these observations directly.

The draft Employee Interaction with Guests Policy acknowledges the Company’s desire to offer its Patrons “a guest experience unlike any other” and to ensure that Patrons “have a great time.”

However, the draft Policy follows that statement by advising that the Patron experience cannot compromise how employees are treated: “having a great time [sic] whether it’s in our casino, visiting one of our dining outlets, visiting our spas or enjoying our nightlife venues, comes with the expectation that our employees are treated respectfully. Wynn will not tolerate guests that harass or offend our employees.” In the Monitor Team’s view, the acknowledgement that, as a hospitality company, Wynn Resorts must provide a positive Patron experience, followed immediately by an affirmative statement that the Company expects Patrons to treat employees respectfully and that the Company will not tolerate harassing or offending conduct by Patrons, is a positive initial response to perceptions of employees who participated in Baseline Assessment focus groups that the Company places Patron experience above mistreatment of its employee.

The draft Employee Interaction with Guests Policy also acknowledges that some employees “may feel conflicted about reporting inappropriate behavior of a customer that is tipping” and advises that “paying a gratuity does not give a customer permission to act improperly, and you should never feel that you must tolerate such behavior.” The draft Policy tells employees that they “always have the power to speak up and put a stop to guests who say or do things that make [them] feel uncomfortable.” These messages are important and should be continuously and proactively promoted.

Following these introductory policy statements, the draft Policy includes a section on “Employee Guidelines” and a separate section on “Management Responsibilities.” The “Employee Guidelines” section, builds upon the introductory messages and guides employees on what they “must do” when they “feel they have been treated disrespectfully.” The draft Policy provides examples of how an employee can speak to an offending Patron and instructs that “[i]f the employee is not comfortable speaking to the guest, he or she should immediately report the offensive behavior . . . to the Manager on Duty (MOD).” The draft states that the MOD “will determine the offended employee’s comfort to provide further service to the offending guest,” which implies that the employee will have the opportunity not to continue to service. Importantly, the draft Policy states that “[i]f the employee agrees to continue to provide service to the guest and the MOD agrees it is appropriate, the MOD will caution the guest that their behavior is against Wynn policies, must be stopped immediately, and not repeated.” If the conduct continues, the draft Policy instructs the employee to report the Patron immediately to the MOD who will then ask the Patron to leave.

Under “Management Responsibilities,” the draft Policy instructs management on how to respond to observed and reported inappropriate conduct by Patrons. This provision is critically important to ensure uniformity in addressing offending Patrons. Managers are instructed first to speak to the offending Patron to address their behavior. The draft Policy states that certain behaviors “may warrant” requesting that a Patron leave the property. Those behaviors include: “suggestive comments, jokes of a sexual nature, sexual propositions, lewd remarks and threats; requests for any type of sexual favor; obscene gestures; or any other form of communication that is sexual in nature and offensive to the observer/recipient, and physical contact of a sexual nature that may include tickling, kissing and fondling.” The Policy makes clear that actionable conduct is not limited to these examples. The Monitor Team views the enumeration of these behaviors as an important step in changing a culture that—by employees’ own perception—often tolerated certain offending misconduct. Indeed, in the prior version of this Policy the Company, perhaps unwittingly, perpetuated that perception by requiring Patrons and third parties be removed only for “egregious” conduct, as noted in our Recommendation. The draft Policy requires that “[i]n all cases . . . the MOD will follow up with employee to notify them the guest has been addressed.” In cases of sexual misconduct by a Patron against an employee, MODs must report the incident to ER within 24 hours via email along with the following details:

- ▶ Date of Incident;
- ▶ Reported to Department (date);
- ▶ Reported to HR (date);
- ▶ Complainant (Employee Name, EID, Job Title, Department);
- ▶ Charged Party (if identified) (Guest Name, Hotel Room Number (if applicable));
- ▶ Description of Complaint; and
- ▶ Action Taken.

The Monitor Team views these reporting requirements as an important step forward in the Company's efforts to enhance HRCP-related data, to strengthen its ability to proactively monitor trends, and to respond to affected employees.

Overall, the changes to the Employee Interactions with Guests Policy reflect the type of messaging required for the Company to begin to shift employee perception and to empower its employees to defend themselves against offending Patrons. However, in our review of the draft Policy, we identified additional changes to further enhance the messaging. We summarize those changes below:

First, on the assumption that this draft Employee Interaction with Guests Policy is intended to be a consolidation of several other employee interactions policies, we have recommended a statement at the outset of the Employee Interaction with Guests Policy that clearly defines to whom it applies. The current draft includes language in a footnote stating that "[t]his Policy applies to all employees of Wynn, unless otherwise prohibited by the applicable laws of the jurisdiction in which the company is operating." This formulation is not ideal for two main reasons: (1) A footnote is not an effective way to communicate an important message to employees. Such a footnote would also depart from the Company's practice in other policies that include applicability language in the main Policy text; and (2) Any exceptions to the applicability of the Employee Interaction with Guests Policy should be clearly articulated so as not to, at best, confuse employees, and at worst, have a chilling effect. Policies should be accessible and easy for employees to understand. We have therefore recommended that the exception regarding applicable laws be removed or specifically clarified.

Second, a key observation of the Baseline Assessment was a perception from employees who participated in focus groups that the Company tolerates certain offending behavior by high value Patrons. As noted above, the draft Policy includes a statement that "Wynn will not tolerate guests that harass or offend" its employees. That is a strong statement—but, given the deep-seeded perceptions expressed by employees (and some managers) at Wynn Las Vegas and EBH that high value Patrons are treated differently, it is not enough. The draft Policy should include language expressly stating that the Company will not tolerate offending behavior from Patrons—even the Company's more valuable players or VIP Patrons. While it may appear redundant, employees need to see and hear this message repeatedly, especially and precisely in the Policy that communicates to employees how to interact with Patrons.

Third, while the draft Policy implies that employees may stop servicing an offending Patron, it would be helpful to include an explicit statement to that effect so that the Company's expectations are



clear. It would also be helpful to include language assuring employees that they will not be disciplined for speaking-up to an offending Patron or for refusing to continue service to an offending Patron.

Fourth, the draft Policy focuses on sexual harassment. During Baseline Assessment focus groups, the Monitor Team learned of incidents of racial discrimination against employees. It is important, therefore, that the draft Policy be modified to include reference not only to offending behavior that is sexual in nature, but also behavior that is discriminatory against any protected groups.

Fifth, the draft Policy outlines management responsibilities for responding to offending Patrons. As noted above, such guidelines are important for establishing uniformity. To increase the effectiveness of these provisions, we have recommended that the Company include language to empower employees to report managers who fail to fulfill their responsibilities under the Policy. Additionally, we have recommended that the Company include a statement that failure by management to comply with the responsibilities set forth in the Policy will result in discipline up to and including termination.

Sixth, as described above, the draft Policy describes “[t]he types of behavior that may warrant” requesting that a Patron leave a property and instructs managers to call upon Security should a Patron refuse to leave. For consistency, we have recommended that the Legal partner with Security to ensure alignment between trespass guidelines and the guidance provided in this Policy.

Finally, the draft Policy requires managers to report all cases of “sexual misconduct” to ER within 24 hours. For consistency, we have recommended that the Policy include a definition of what constitutes sexual misconduct that must be reported. We encourage the Company to use this opportunity to clarify what employees in focus groups referred to as a “grey area” of misconduct that they perceive is sometimes not appropriately addressed. See Baseline Assessment at 55.

The Monitor Team views the changes reflected in this draft Policy as a first step in addressing the risks and concerns discussed in the Baseline Assessment. However, these efforts must extend beyond policy enhancements and must be accompanied by meaningful changes that permeate all aspects of the Company’s culture, from the top and through all levels of the organization. The Company should complete the remainder of this Recommendation by developing training for managers and supervisors on the Employee Interaction with Guests Policy. In discussing weaknesses in reporting, an interviewee with whom we spoke during Phase II review period commented that in their view the problem regarding tolerance of certain offending behaviors by Patrons “is somewhere in the middle: not the VPs and not the cocktail servers.” The interviewee observed that messaging from middle management might contribute to confusion around reporting. That is an apt observation that makes it crucial for the Company to develop training and messaging directly targeted at middle management. It will also be critical for the Company to ensure—through the Employee Interaction with Guests Policy and related training—that managers and supervisor understand that they will be held accountable for failures to address Patron misconduct.

#### ***Follow-Up Recommendations***

As noted above, the Company has not fully satisfied this Recommendation as it has not yet finalized and implemented the draft Policy and has not developed trainings for managers and supervisors on the Policy. Thus, we have additional recommendations to uncompleted Baseline Assessment Recommendation TP 1, though they primarily relate to the uncompleted aspects of the Recommendation and to the feedback provided on the draft Policy.

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| <b>Phase II Report Recommendation TP 1</b> | By March 31, 2021, incorporate the Monitor Team observations described above and in the Monitor Team comments to the draft Employee Interaction with Guests Policy. |
| <b>Phase II Report Recommendation TP 2</b> | By March 31, 2021, develop manager and supervisor training regarding the Employee Interaction with Guests Policy.   |
| <b>Phase II Report Recommendation TP 3</b> | By March 31, 2021, develop a training roll-out plan for the Employee Interaction with Guests Policy. Training should be completed by July 31, 2021.                 |
| <b>Phase II Report Recommendation TP 4</b> | By March 31, 2021, ensure alignment between the Employee Interaction with Guests Policy and Security Trespass guidance.   |

***Additional Considerations/Further Testing***

Given the importance of this Recommendation, the Monitor Team will continue to test and evaluate how the Company promotes the final Employee Interaction with Guests Policy and how it continues to communicate the core messages of the Policy to employees in both EBH and Wynn Las Vegas. Once the draft Employee Interaction with Guests Policy has been implemented and COVID-19 restrictions loosen, the Monitor Team will conduct additional focus groups to test the effectiveness of the Company’s efforts to message and train on this critical Policy.

**Baseline Assessment Recommendation TP 2:** Develop a communication strategy designed to reinforce messaging regarding the Company’s expectation that employees report offending conduct by Patrons.

***Summary Status***

The Company has not satisfied this Recommendation.

***Assessment of Work Completed***

We have not seen evidence that the Company has developed a communication strategy designed to reinforce messaging related to inappropriate conduct by Patrons. As discussed in the context of Baseline Assessment Recommendation CCCT 1, we have seen evidence of messaging related to the HRCP, specifically at EBH. We have also seen a rough cut of a video for Wynn Las Vegas employees focused on reporting conduct by offending Patrons. The Company intends to produce a similar video for EBH.

As noted elsewhere in this Report, these are steps in the right direction. However, for reasons also stated in other parts of this Report, the Monitor Team stresses the importance of a communication strategy designed to reinforce that employees are not expected to tolerate offending behavior by Patrons and must report it. During this Phase II review period, we observed some confusion within the Company about how to develop such a strategy and about the utility of formalizing such a strategy. As noted, our recommendations are designed to ensure that the improvements made by the Company are sustainable and survive long after the tenure of any current Company leadership and term of this monitorship. Developing a formalized communication strategy that incorporates messaging regarding the Company’s expectation that employees report offending conduct and the other key themes

embedded in the draft Employee Interaction with Guests Policy, will contribute to an enduring culture shift in this respect.

This Recommendation is closely linked to Baseline Assessment Recommendation CCCT 1 (transferred now to Phase II Report Recommendation CCCT 1) and may be satisfied by inclusion in the broader HRCP-related communication plan contemplated in Phase II Report Recommendation CCCT 1.

***Follow-Up Recommendations***

Because the Company has not satisfied this Recommendation, we reissue the Recommendation and request completion by March 31, 2021.

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| <b>Baseline Assessment Recommendation TP 2</b> | By March 31, 2021, develop a communication strategy for 2021 that is designed to reinforce messaging regarding the Company's expectation that employees report offending conduct by Patrons. |
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***Additional Considerations/Further Testing***

The Monitor Team will assess the Company's efforts to complete Baseline Assessment Recommendation TP 2 as well its efforts to implement the communication plan at both EBH and Wynn Las Vegas throughout the year. We encourage the Company to review its efforts to launch communication campaigns around COVID-19 compliance measures and to apply the lessons learned from those efforts to the HRCP.

**Baseline Assessment Recommendation TP 3:** Develop plan to track and monitor data collected from investigations of offending Patrons. The data obtained should be used to inform trainings and updates to relevant policies and procedures.

***Summary Status***

The Company has not fully satisfied this Recommendation.

The Monitor Team has not seen a plan to track and monitor data collected from investigations of offending Patrons. The Monitor Team has seen, however, that incident reports involving sexual harassment by Patrons against employees are included in reports submitted to the Compliance Committee.

***Assessment of Work Completed***

Including incidents of sexual harassment by Patrons against employees in reports to the Compliance Committee is important because it enables the Compliance Committee to fulfill its oversight responsibilities and hold management accountable for the proper implementation of the HRCP. However, the intent of this Recommendation is to enable management and HRCP-related functions—as owners of the HRCP—to monitor and test elements of the HRCP designed to mitigate sexual harassment and discrimination by Patrons. To satisfy this recommendation, the Company will need to identify what data exists related to offending Patrons, and to aggregate and organize that data in order to identify trends that might indicate a weakness in HRCP-related policies, procedures, or controls. Once that is done, the Company will need to develop a process documenting its methodology. In order to avoid redundancies, the Company should consider tasking the newly formed HRCP Steering Committee (also discussed in Baseline Assessment Recommendation RBR 1) with this and other monitoring activities.

***Follow-Up Recommendations***

The Monitor Team reissues its Baseline Assessment Recommendation TP 3.

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| <b>Baseline Assessment Recommendation TP 3</b> | By April 30, 2021, develop a plan to track and monitor data collected from investigations of offending Patrons. |
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***Additional Considerations/Further Testing***

In future phases of the monitorship, the Monitor Team will assess the Company’s plan for tracking and monitoring data, implementation of that plan, analysis of the relevant data, and use of the resulting analysis.

**Baseline Assessment Recommendation TP 4:** Conduct periodic culture surveys and focus groups designed to assess employee experience and perceptions regarding the Company’s response to reports of offending Patrons.

***Summary Status***

The Company has not satisfied this Recommendation.

***Assessment of Work Completed***

The Monitor Team understands that the Company had planned to conduct employee focus groups and surveys to assess employee experiences and perceptions regarding the Company’s response to reports of offending Patrons. Indeed, one interviewee indicated that some meetings were conducted with spa employees at Wynn Las Vegas. The Monitor Team, however, has not seen evidence of further meetings nor of any plans to conduct employee surveys. This is not entirely surprising given the challenges imposed by COVID-19 restrictions, which would make it difficult to host focus groups in an effective manner. The Monitor Team notes that surveys would likely still be feasible, especially if conducted online or provided in a socially-distant manner. However, those efforts would not have been meaningful without other recommended changes being completed and in place for a significant period of time. We encourage the Company to identify ways in 2021 to conduct surveys designed to test Company culture and, when COVID-19 restrictions permit, to resume its plans to meet with employees through focus groups or otherwise.

***Follow-Up Recommendations***

In light of the challenges posed by the COVID-19 pandemic and the delay in implementation of related recommendations, the Monitor Team modifies Baseline Assessment Recommendation TP 4.

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| <b>Phase II Report Recommendation TP 5</b> | By March 31, 2021, submit to the Monitor Team a plan and schedule for conducting culture surveys and focus groups (COVID-19 restrictions permitting) to assess employee experience and perceptions regarding the Company’s response to reports of offending conduct. |
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| <p><b>Phase II Report<br/>Recommendation TP 6</b></p> | <p>By September 30, 2021, conduct culture survey and focus groups (COVID-19 restrictions permitting) to assess employee experience and perceptions regarding the Company’s response to reports of offending conduct and submit results to the Monitor Team.</p> |
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***Additional Considerations/Further Testing***

The Monitor Team will review the Company’s plans and schedule for conducting culture surveys and focus groups and will assess the outcomes of those surveys as well as the Company’s responses to the results. The Monitor Team is available to review draft survey questions, should the Company so desire.

**Baseline Assessment Recommendation TP 5:** Evaluate and develop strategies to communicate standards of behavior to Patrons of EBH and Wynn Las Vegas.

***Summary Status***

The Company has not satisfied this Recommendation.

***Assessment of Work Completed***

The Company has not satisfied this Recommendation because it has not developed a strategy to communicate HRCP standards of behavior to Patrons at EBH or Wynn Las Vegas (aside from communications propelled by and primarily related to the COVID-19 pandemic, such as social distancing guidelines).

Most recently, the COVID-19 pandemic forced Wynn Resorts to implement a whole host of practices, policies, and procedures designed to ensure the health safety of its employees and Patrons. Based on interviews, many of practices, policies, and procedures were unprecedented. Most notably for this Recommendation, the Company engaged in proactive messaging to Patrons regarding standards of behavior now required by the Company. Although the Monitor Team was not able to visit either property during this Phase II review period because of the COVID-19 pandemic, the Monitor Team did view images and hear accounts of signage posted throughout EBH and Wynn Las Vegas, messages played over speakers, and terms and conditions provided at registration. Commending the Company for its public health efforts, one interviewee noted that the Company is “certainly on a positive trajectory” adding that “they learned real quick that you have to react at a moment’s notice to things you don’t expect.” Circumstances led the Company to take steps that the interviewee “never imagined.” These statements and others like it, as well as the Monitor Team’s own observations, demonstrate that in the face of high risk, the Company can and will take all necessary steps to protect the safety of its Patrons and employees. We encourage the Company to view its remarkable response to the COVID-19 pandemic as an opportunity to evaluate and think creatively about its approach to messaging to Patrons in other contexts, including its expectations that Patrons will behave with decorum.

The Monitor Team has not yet observed similarly innovative thinking around communications to Patrons regarding HRCP standards of behavior. Rather, the Monitor Team observed a resistance to direct messaging of Corporate expectations about behavior to Patrons. The sentiment observed by the Monitor Team in this regard is best captured by the words of one interviewee who told us that: “There is a modicum of behavior we expect people to have. We don’t give you rules because we expect you to act a certain way. In a competitive marketplace, to say ‘I expect you not to touch employees’ would be off-

putting.” While this interviewee was perhaps the most direct, the reluctance to communicate standards of behavior to Patrons regarding the HRCP was palpable from a number of interviewees, including certain leaders, who expressed, for example, “We’re in the ‘having fun’ industry so there’s going to be some amount of this . . . .”

The Monitor Team continues to view this Recommendation as an important step in responding to the risks posed by Patrons to Wynn employees—and a step that could be effectuated in a manner consistent with Wynn Resorts’ overall brand. In fact, the Company already controls and promotes certain Patron behaviors through its Security function, which can lead a Patron to be trespassed for inappropriate behavior. The Monitor Team is asking the Company to proactively and openly communicate basic expectations regarding behavior to Patrons in a manner no more obtrusive than those currently in place for COVID-19 safety.

***Follow-Up Recommendations***

The Monitor Team reissues its Baseline Assessment Recommendation TP 5.

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| <p><b>Baseline Assessment Recommendation TP 5</b></p> | <p>By March 31, 2021, develop and submit to the Monitor Team a plan to communicate standards of behavior to Patrons of EBH and Wynn Las Vegas.</p> |
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***Additional Considerations/Further Testing***

The Monitor Team will evaluate the Company’s plans to communicate standards of behavior to Patrons and will evaluate the effectiveness of those plans.

**Baseline Assessment Recommendation TP 6:** Review and update the Business Standards and Procedures to:

- ▶ instruct the investigations department (1) that claims, charges, litigation, or reports of sexual harassment and discrimination allegations may be material to the Company’s consideration of whether to engage a third party, and (2) if detected, should be documented and included as risk factors in the Investigative Report; and
- ▶ to define “materially derogatory” information to include factors related to sexual harassment and discrimination.

***Summary Status***

The Company has satisfied this Recommendation.

The Monitor Team received and reviewed an updated Background Standards and Procedures (“Procedure”) that satisfies all elements of this Recommendation. According to Compliance Committee minutes, revisions to the Procedure were reviewed and approved on August 4, 2020. The revised Procedure went into effect on August 6, 2020.

***Assessment of Work Completed***

Prior to the Baseline Assessment, the Company was already using its third party background screening procedures to identify issues related to sexual harassment and discrimination among third parties. The Monitor Team’s Recommendations, therefore, focused on requiring the Company to

formally document its practice to ensure consistency and uniformity across its screenings. The Monitor Team's Recommendation also sought to ensure that the Company appropriately considers evidence of past sexual harassment and discrimination in its decision of whether to engage a third party.

According to the Procedures, the Company "employs a risk-based methodology in determining the appropriate investigative steps necessary for each investigation, including, without limitation, considering the relationship the [third party] will have with the Company." In Appendix B to the Procedure, the Company enumerates the "baseline investigate steps" required for each category of third-party relationship in which the Company engages. Appendix B, in effect, reflects the Company's assessment of the risk posed by its third parties. Importantly, in response to the Recommendation, the Company revised Appendix B to require a review of "Allegations of Sexual Discrimination and Sexual Harassment" for all categories of third parties that interact with employees or Patrons. The Company also revised the Procedure to require that the Investigations Division include "[r]ecords of litigation or charges involving allegations of sexual discrimination and sexual harassment" as part of its Public Records Review, if "appropriate based upon the status of the Person being investigated." While a record of sexual discrimination or sexual harassment does automatically bar the Company from engaging a third party, the Procedure instructs the Investigations Department, the CGCO, and the GC that "if the Investigations Division discovers that a party to a proposed transaction or relationship has been accused of sexual discrimination and/or harassment, caution may be indicated when there is a heightened risk that the party to the proposed transaction or relationship will be interfacing with the Company's employees, agents, vendors, and/or guests." (Emphasis added). In the Monitor Team's view, these changes appropriately embed risk factors related to sexual harassment and discrimination in the Company's screening of third parties and address the Recommendation.

By formalizing its practices of reviewing third party backgrounds for allegations of sexual harassment and sexual discrimination, the Company has introduced an important control designed specifically to mitigate the risk of sexual harassment and discrimination by third parties against the Company's employees and Patrons. This formalization represents an important step in the maturation of one component of the HRCP and starts to build a foundation for the sustainability of a key control.

#### ***Follow-Up Recommendations***

None.

#### ***Additional Considerations/Further Testing***

Documenting procedures is important, but it is not sufficient. It will be incumbent on the Company to ensure adherence to these enhanced Procedures, including appropriate documentation and evaluation of background information related to sexual harassment and discrimination. The Monitor Team will continue to actively monitor and test compliance with the Procedures as well as the adjudication of risk factors related to sexual harassment and sexual discrimination.

**Baseline Assessment Recommendation TP 7:** Ensure that sources used for background investigations are of the type that would provide access to background information related to claims, charges, litigation, or reports of sexual harassment and discrimination allegations.

#### ***Summary Status***

The Company has satisfied this Recommendation.

As noted in our assessment of the preceding Recommendation, the Company updated the Procedures to require that the Investigations Division include “[r]ecords of litigation or charges involving allegations of sexual discrimination and sexual harassment” as part of its Public Records Review, if “appropriate based upon the status of the Person being investigated.”

#### ***Assessment of Work Completed***

The Company’s inclusion of “[r]ecords of litigation or charges involving allegations of sexual discrimination and sexual harassment” as a requirement of Public Records Review satisfies the Recommendation.

In addition to the reviewing the revised Procedures, and as part of our testing activities, we reviewed sample files of background investigations conducted by the Company. The files reviewed were from June and July 2020, which predate the implementation of the new Procedures. Nevertheless, the files confirm that the Company’s review of public records includes automatic searches of registered “sex offender” databases. The Investigations Division also conducts online searches designed to detect “materially derogatory” information. Standard search terms include specific terms like “scandal,” “assault,” “arrest,” “litigation,” and “lawsuit.” The Monitor Team considers that the sources accessed, and search terms used for background investigations of third parties are appropriately designed to yield information related to past incidents that could signal a potential risk to Wynn employees, including the risk of sexual harassment and discrimination. The Company could consider expanding the list of terms to include “sexual,” “harassment,” and “discrimination.”

#### ***Follow-Up Recommendations***

None.

#### ***Additional Considerations/Further Testing***

None.

**Baseline Assessment Recommendation TP 8:** Revise the Deconflicting Policy to explicitly prohibit external counsel from representing Wynn personnel, including executives and Board members, unless such representation is approved by the Company in writing.

#### ***Summary Status***

The Company has not satisfied this Recommendation.

The Monitor Team has not seen any changes to the Company’s Legal Department Policy for Avoiding Conflicts or to its Billing Guidelines, which together comprise what the MGC has referred to as the Company’s “de-conflicting policies and procedures.” *See also* October 5, 2020 on “Retention of Outside Counsel and Approval of Legal Settlements,” in discussion of Baseline Assessment Recommendation TP 9 below.

#### ***Assessment of Work Completed***

The MGC Decision and Order mandates the Monitor Team to review “all policies and organizational changes adopted by the Company,” including “[u]se of outside counsel and maintenance of and adherence to de-conflicting policies and procedures.” Decision and Order at 50–51. Consistent with that mandate, for the Baseline Assessment, the Monitor Team reviewed the Company’s “Legal Department Policy for Avoiding Conflicts” and the “Billing Guidelines” issued to external counsel. In the



Baseline Assessment, the Monitor Team observed that neither the Company’s Policy for Avoiding Conflicts (the “Deconflicting Policy”) nor the Billing Guidelines recognized the risk of conflicts arising between the Company and its own personnel and therefore did not mitigate the risks that external counsel represent an individual at the Company without advising the Company of such a representation. It is based on that observation that the Monitor Team recommended and continues to recommend the changes set forth in Baseline Assessment Recommendation TP 8.

***Follow-Up Recommendations***

To ensure that the Company takes appropriate steps to address the weaknesses in its Deconflicting Policy, we reissue Baseline Assessment Recommendation TP 8 (with a clarification) and include an additional recommendation that the revised Deconflicting Policy be disseminated in a timely fashion.

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| <p><b>Baseline Assessment Recommendation TP 8</b></p> | <p>By March 31, 2021, revise the Deconflicting Policy to explicitly prohibit external counsel from dually representing Wynn Resorts personnel, including executives and Board members and the Company, unless such representation is approved by the Company in writing.</p> |
| <p><b>Phase II Report Recommendation TP 7</b></p>     | <p>Within 30 days of revising the Deconflicting Policy, disseminate the revised Policy to existing external counsel, and Wynn executives and Board members and submit documentary evidence of the same to the Monitor Team.</p>  |

***Additional Considerations/Further Testing***

The Monitor Team will evaluate the Company’s revised Deconflicting Policy as well as its efforts to communicate the revised Policy to current and future external counsel and Company leadership.

**Baseline Assessment Recommendation TP 9:** Develop internal review procedures for requests by individuals for representation by the Company’s external counsel.

***Summary Status***

The Company has not satisfied this Recommendation.

The Monitor Team has not seen any formal policy or procedures related to requests by individuals for representation by the Company’s external counsel in matters that may be adverse or in conflict with the Company. Instead, the Monitor Team was provided with a memorandum dated October 5, 2020 on “Retention of Outside Counsel and Approval of Legal Settlements” (the “October 2020 Legal Memo”). The October 2020 Legal Memo does not address requests by individuals for representation by external counsel of the Company. Rather, it was issued “[a]s a reminder” from the Wynn Resorts GC to “Senior Vice Presidents and Above” that “the retention of outside counsel to represent Wynn Resorts or any of its affiliates must be authorized in writing (which may be via email) by the General Counsel of Wynn Resorts or the affiliate, as appropriate.”(Emphasis added.)The memorandum lists the contact information of current Wynn Resorts GCs and notes that affiliates that do not have a GC should direct requests to the Executive VP and GC of Wynn Resorts.

The October 2020 Legal Memo also refers to the approval of legal settlements, which is discussed under Baseline Assessment Recommendation TP 10, below.

***Assessment of Work Completed***

The Company has not satisfied Baseline Assessment Recommendation TP 9 because it has not developed internal procedures to govern requests by individuals for representation by Company external counsel. Based on discussions with the Company shortly before the submission of this Report, we understand that the delay implementation of this Recommendation was due to a misunderstanding by the Company of the concerns underlying the Recommendation and of the Monitor Team’s expectations. The Monitor Team has clarified the issue and understands that the Company will develop its policies and procedures accordingly.

To clarify, the Monitor Team designed Baseline Assessment Recommendation TP 9 to mitigate the risk that Company personnel would seek representation from the Company’s external counsel in a matter where the Company’s interests were adverse to or in conflict with those of the individual employee (as was the case in 2006 and 2008 when external counsel to the Company represented the Company’s founder and then-CEO against claims of sexual misconduct brought by former Wynn Resorts employees). As a result, the Monitor Team advised in the Baseline Assessment—and reiterates now—that lack of formal, detailed procedures could result in inadvertent or intentional circumvention of Company policy and controls. Therefore, the Monitor Team stated that the recommended “policy and procedure should be designed to ensure that the Legal Department is aware of the substance of all representations and to minimize the risk that conflicts between representation of the Company and representation of its personnel occur.” Baseline Assessment at 62. To effectively address this Recommendation, the Company must update its existing policies to address requests by Company personnel for personal representation by Company external counsel in matters involving the Company. The updates should consider under what circumstances joint representation of the Company and its personnel might be permitted and in what cases it should not be permitted. It is certainly not uncommon for a company to permit joint representation or to indemnify its officers or senior management in matters where the interests of the company and the individual are not adverse. But those circumstances must be clearly documented so that requests for joint representation can be reviewed appropriately and standards for such uniformly applied and monitored. Absent formal guidance, the risk of a conflict arising or going undetected remains.

***Follow-Up Recommendations***

Because the Company’s October 2020 Legal Memo does not address requests by Company personnel for individual representation by Company counsel, the Monitor Team makes a follow-up recommendation designed to address the omission.

|   |  |
|---|--|
| <p><b>Phase II Report<br/>Recommendation TP 8</b></p> | <p>By March 31, 2021, issue a formal policy that (1) memorializes the procedures set forth in the October 5, 2020 memorandum on the “Retention of Outside Counsel and Approval of Legal Settlements”; and (2) applies to requests by Company personnel for individual representation by Company outside counsel.</p> |
| <p><b>Phase II Report<br/>Recommendation TP 9</b></p> | <p>Ensure that the policy on “Retention of Outside Counsel and Approval of Legal Settlements” is housed in the applicable department-specific portal.</p>  |

***Additional Considerations/Further Testing***

**Baseline Assessment Recommendation TP 10:** Communicate the new representation request review procedures in writing internally and to external counsel. The communication should be designed to ensure that external counsel, officers, and directors of the Company under the procedures are aware of the risks associated with dual representation.

***Summary Status***

The Company has not satisfied this Recommendation.

As noted above, the Company issued a memorandum on October 5, 2020 related to procedures for the engagement of external counsel to represent Wynn Resorts and its affiliates. That memorandum, however, does not address the Company’s policies or procedures applicable to requests by Company personnel for individual representation by Company outside counsel. As a result, the memorandum also does not address the risks associated with dual representation.

***Assessment of Work Completed***

The Company has not communicated procedures related to the engagement of Company external counsel for individual representation because those procedures have not yet been created. Absent such procedures and communication of the same, the Company will not have adequately mitigated of dual representation by external counsel of the Company and its executives.

***Follow-Up Recommendations***

Because the Company has not satisfied Baseline Assessment Recommendation TP 10, the Monitor Team reissues the same recommendation here.

|   |  |
|---|--|
| <b>Baseline Assessment Recommendation TP 10</b> | By March 31, 2021, communicate Company procedures for requests by Company personnel for individual representation by Company outside counsel. The Communication should be disseminated in writing internally and to external counsel. The communication should be designed to ensure that external counsel, officers, and directors of the Company are aware of the risks associated with dual representation. |
|---|--|

***Additional Considerations/Further Testing***

The Monitor Team will review the communication to internal personnel and to external counsel.

**Baseline Assessment Recommendation TP 11:** Draft a policy and procedure for the engagement of external counsel by the Company to ensure that the Legal Department is aware of the substance of all representations and to minimize the risk that conflicts between representation of the Company and representation of its personnel occur.

***Summary Status***

The Company has not fully satisfied this Recommendation.

The Company has not drafted a formal policy or procedure for the engagement of external counsel by the Company. As noted above, the Company's procedures for the engagement of external counsel by the Company is memorialized only in the form of a memorandum dated October 5, 2020 issued to current "Senior Vice Presidents and Above." The memorandum instructs that "the retention of outside counsel to represent Wynn Resorts or any of its affiliates must be authorized in writing (which may be via email) by the General Counsel of Wynn Resorts or the affiliate, as appropriate." The memorandum then lists the contact information of all current Wynn Resorts GCs noting that affiliates that do not have a GC should direct requests to the Executive VP and GC of Wynn Resorts.

#### ***Assessment of Work Completed***

The Company has only partially satisfied this Recommendation. The substance of the October 2020 Legal Memo responds to the Recommendation in so far as it memorializes the Company's procedures regarding engagement of external counsel. However, from a corporate governance standpoint, a memorandum does not carry the same force as a policy or formal procedure. While this may appear to be putting form over substance, it is a well-established principle that policies and procedures are the foundation of a compliance program. They provide a structure through which companies can communicate their expectations, provide clarity to employees regarding roles and responsibilities, and help drive sustainability of sound corporate practices. Equally important, policies and procedures provide a baseline against which to hold employees (and companies themselves) accountable for failing to adhere to practices deemed essential to compliance and risk mitigation. For these reasons, the Monitor Team recommends that the October 2020 Legal Memo be formalized into a formal policy or procedure.

#### ***Follow-Up Recommendations***

For the sake of clarity and efficiency, the Monitor Team will not issue a separate Recommendation here as compliance with Phase II Report Recommendation TP 8 will satisfy Baseline Assessment Recommendation TP 11.

#### ***Additional Considerations/Further Testing***

None.

### **E. Training and Guidance**

In our Baseline Assessment, the Monitor Team discussed and evaluated the changes the Company made to its HR training program prior to the Baseline Assessment. At that time, the Monitor Team found that although the Company had committed significant resources to training its employees and Directors, there was room for improvement.

Largely in light of the COVID-19 pandemic, the Monitor Team's anticipated testing activities were limited to conducting interviews and reviewing training-related documentation. Notwithstanding an inability to attend trainings, the Monitor Team received information sufficient to assess the Company's progress in implementing trainings (future monitorship phases will include testing the effectiveness of the trainings). Overall, the Company has satisfied several, but not all, of the Baseline Assessment Recommendations. As with other topics covered in this Phase II Report, the Monitor Team recognizes that the pandemic has frustrated the implementation of certain recommendations.

## 1. Recommendations

**Baseline Assessment Recommendation T&G 1:** Conduct Board of Director training on Personal Relationships Policy that includes guidance related to the types of relationships covered under the Policy and to issues related to consent and how power imbalances within the organization may affect consent.

### *Summary Status*

The Company has satisfied this Recommendation.

The Monitor Team received and reviewed meeting minutes from the Board of Directors meeting held on August 6, 2020. Those minutes reflect that the Company's external counsel trained the Board on its responsibilities in connection with "the Company's sexual harassment and discrimination prevention efforts." The minutes indicate that external counsel "then provided a training on the Personal Relationships polic[y]" and reminded Board members that the policy applies to them. Although minutes from the Board meeting did not reflect training on issues surrounding consent and how power imbalances can affect consent, Board members confirmed to the Monitor Team that the training they received included a discussion on consent.

According to the Board meeting minutes, the Board was instructed on its responsibility:

■ [REDACTED]

■ [REDACTED]

The Company's VP – Legal, Employment and Labor then provided a training specific to the Company's HRCPP as it relates to sexual harassment and discrimination, specifically the Company's various reporting channels, its process for investigating claims of harassment or discrimination, and other workplace-related claims.

The training also reviewed with the Board the scope of the Company's Preventing Harassment and Discrimination Policy and other related policies, such as the Personal Relationships Policy, emphasizing that the "policies applied not only to employees, but Board members, all executives, vendors and customers."

The minutes reflect that Board members were given the opportunity to ask questions and that their questions were answered.

### *Assessment of Work Completed*

The Monitor Team has seen evidence in the August 6, 2020 Board minutes and heard from Board members that the Company provided training on the topics outlined in this Recommendation.

Although not conducted in response to a specific recommendation, the Monitor Team was pleased to see that the Company continued with its commitment to train Board members on their obligations related to oversight of the HRCPP. Based on the description of the training provided through the Board minutes, it is the Monitor Team's view that the appropriate content was covered. Importantly, based on interviews, it was evident to the Monitor Team that the trainings were well-

received by Board members, with one member noting that the training was “very informative” and “quite engaging.” The Monitor Team encourages the Company to continue its annual Board training on HRCP matters and to identify ways to keep the content fresh and relevant.

#### ***Follow-Up Recommendations***

None.

#### ***Additional Considerations/Further Testing***

In future phases of the monitorship, the Monitor Team will assess the effectiveness of the training provided to the Board of Directors and will continue to work with the Company to evaluate the content of Board training.

**Baseline Assessment Recommendation T&G 2:** Develop and conduct (either directly or through external counsel) training for the Compliance Committee on anti-harassment, anti-discrimination, and on the Company’s HRCP processes.

#### ***Summary Status***

The Company has partially satisfied this Recommendation.

As noted in the discussion of Baseline Assessment Recommendation CCCT 2, the Compliance Committee received training on sexual harassment and discrimination on August 4, 2020. Minutes from the Compliance Committee’s meeting that day reflect that Compliance Committee members participated in a training session on “Preventing & Addressing Claims of Discrimination & Harassment and Anti-Corruption Training.” The Company provided that training slide deck to the Monitor Team for review.

At the outset, the training emphasizes the Company’s commitment to “creating a workplace free from discrimination and harassment” and states that “[d]iscrimination and harassment are illegal and against Company policy.” The training was structured in four separate parts: Equal Employment Opportunity, Harassment, Retaliation, and ADA.

Part one of the training provided an overview of the U.S. Equal Employment Opportunity Commission’s (“EEOC”) standards, starting with the legal distinction between discrimination and harassment. The training then provided examples of discrimination and enumerates the following protected characteristics: race/color, religion, sex/gender, pregnancy (including childbirth and related medical conditions), age, national origin, disability (physical and mental), covered military or veteran’s status, genetic information, sexual orientation, gender identity/expression, and any other classification protected by law. The training included substantive discussion on the following protected characteristics:

- ▶ *Sexual Orientation/Gender Identity.* Here, the training noted the Supreme Court’s June 2020 ruling prohibiting employers from discriminating against employees on account of sexual orientation under Title VII of the Civil Rights Act of 1964, resolving a previously inconsistent standard across the United States. Notwithstanding these developments, the training emphasized that the Company has been “ahead of the curve” in prohibiting discrimination or harassment based on these characteristics.
- ▶ *Religious Accommodation.* On religious accommodation, the training noted the “inherent tension between some forms of religious accommodation and individual rights” and that

“[c]ourts have held that an employer need not accommodate an employee’s religious beliefs if doing so would result in discrimination against his coworkers.”

- ▶ *Gender Bias.* The training defined gender bias as the “[u]nequal treatment of individuals of one sex as compared to the other due to predetermined notions or stereotypes regarding the roles and attributes that society considers appropriate for each sex” and provided examples of how gender bias can manifest itself in the workplace. In this regard, the training stated that “[g]ender bias can cause employers to assign men and women to different positions or give them different responsibilities based upon gender stereotypes” which can give rise to a sex discrimination claim. Lastly, the training also enumerated the difference between sex and gender by, for example, instructing that sex is “generally a biological determination” while gender is a “societal construct.”

Part II of the training addressed harassment, including quid pro quo and hostile work environment. The training provides examples of conduct that may give rise to harassment claims, and examples of what is not harassment. With respect to hostile work environment and sexual harassment specifically, the training stated the following:

- ▶ “Sexual harassment is not just about sexual desire or sexual behavior”;
- ▶ “Sexual harassment is not limited to one gender”; and
- ▶ “Sexual harassment is not limited to individuals of the same sexual orientation.”

The training also instructed the Compliance Committee on the various kinds of conduct that may give rise to harassment claims, such as verbal, visual/non-verbal and physical, and provided examples of each category. Notably, with respect to hostile work environment, the training provided that conduct must be severe or pervasive, consistent with EEOC standards, but noted the Company’s perspective on this element specifically. Based on interviews and review of investigation files across properties, the Monitor Team understands this to mean that the Company takes a stricter approach to dealing with harassment claims, requiring something less than “severe or pervasive” conduct to address and remediate claims.

Part III of the training provided an overview of retaliation, noting that it is “one of the most frequently filed claims with the EEOC.” Moreover, the training explains that it is unlawful to “[r]etaliat[e] against someone who objects to harassment, reports harassment, or reports any other discriminatory treatment,” and instructed the Compliance Committee to “[c]onsider an employee’s protected activity when making any type of employment decision.” Part III also included an overview of the Company’s intake, investigative process, and the mechanics surrounding reporting. With respect to the latter, the training instructed that complaints be funneled to Compliance or ER, except where the alleged harasser is a senior executive, member of Compliance and/or ER or a member of the Board of Directors.

Part IV of the training addressed the ADA, providing a summary of the law and defining the term “disability.” The training also emphasized that the ADA requires a company to “engage in an interactive process to determine whether there is a reasonable accommodation available that would allow the employee or applicant to perform the essential functions of the position.”

Finally, the training concluded with “dating in the workplace,” explaining why certain relationships are of concern for the Company. In this regard, the training pointed to various risks, including conflicts of interest and a potential increase for claims of discrimination by co-workers or the individuals participating in an intimate relationship. Moreover, the training summarized the key

elements of the Company’s Personal Relationships Policy including prohibited relationships, increased scrutiny for certain positions, reporting requirements, and mitigation measures.

***Assessment of Work Completed***

The Compliance Committee’s training appears to be concise, easy to follow, and provides a high-level overview of the general standards. It also provides helpful and relevant examples of harassment and discrimination, with a focus on articulating the nuances between gender and sex. The Monitor Team found it particularly instructive that the training emphasized a wide spectrum of behaviors that can constitute sexual harassment, noting that it is not limited to “sexual desire or sexual behavior,” a single gender, or “individuals of the same sexual orientation.” The training included examples of verbal, visual, and nonphysical forms of harassment and discrimination. Compliance Committee members indicated to the Monitor Team that the training was helpful. Notwithstanding the strengths of the training, further enhancements can be made. In particular:

First, the training did not specifically reflect Massachusetts law. The Monitor Team understands that the Company’s external provider for trainings of this nature is a regional law firm operating primarily in the West and advising on local employment law. However, with the Compliance Committee’s mandate and oversight responsibilities over compliance matters in both Nevada and Massachusetts, the training would benefit from addressing both jurisdictions, with particular attention to where applicable state statutes or procedures differ.

The Monitor Team was particularly struck by the approach reflected in the deck to religious accommodations, which focused on the exceptions to providing a religious accommodation rather than the Company’s obligation. Specifically, while the training acknowledged that religion is a protected characteristic, it did not address the Company’s affirmative obligation to provide a reasonable accommodation to employees who request one. In this regard, the Monitor Team is concerned that the training may have been incomplete, although the issue may have been clarified verbally during the training. Incomplete information could, of course, limit the Compliance Committee’s effective oversight of this subject area. The Monitor Team understands that the Company is planning to draft a separate policy on religious accommodation and the Monitor Team looks forward to reviewing the policy.

***Follow-Up Recommendations***

The Monitor Team suggests the following recommendation to enhance the Company’s harassment and discrimination trainings.

|   |  |
|---|--|
| <b>Phase II Report Recommendation T&amp;G 1</b> | In future harassment and discrimination trainings for individuals who have roles related to EBH, include training on relevant Massachusetts-specific HR considerations. [This Recommendation satisfies Phase II Report Recommendation CCCT 2.] |
|---|--|

***Additional Considerations/Further Testing***

The Monitor Team will continue to evaluate the content of its harassment and discrimination trainings.

**Baseline Assessment Recommendation T&G 3:** Incorporate the following topics into trainings for managers and supervisors:



- ▶ intake and escalation of employee complaints;
- ▶ the Personal Relationships policy, including reporting obligations;
- ▶ social media, including as a potential platform for harassment;
- ▶ the risks of alcohol usage in the workplace;
- ▶ the impact and limitations of off-duty conduct, and
- ▶ how to appropriately process and escalate both formal complaints concerning discrimination and harassment and problematic behaviors they have observed or of which they have been made aware.

**Summary Status**

The Company has not satisfied this Recommendation.

The Monitor Team has not seen evidence of trainings for managers or supervisors focused on the enumerated topics.

**Assessment of Work Completed**

The Company’s Baseline Assessment Recommendation matrix developed for the Compliance Committee indicated that the Company would develop manager and supervisor training for EBH and revise Wynn Las Vegas’s manager and supervisor training in Q4 2020.

However, The Monitor Team has not received revised trainings for managers and supervisors and cannot assess implementation of this Recommendation.

**Follow-Up Recommendations**

Based on the fact that the Company has not satisfied Recommendation, we reissue it here with a deadline.

|  |   |
|--|---|
| <p><b>Baseline Assessment Recommendation T&amp;G 3</b></p> | <p>By April 30, 2021, incorporate the following topics into trainings for managers and supervisors:</p> <ul style="list-style-type: none"> <li>▶ intake and escalation of employee complaints;</li> <li>▶ the Personal Relationships Policy, including reporting obligations;</li> <li>▶ social media, including as a potential platform for harassment;</li> <li>▶ the risks of alcohol usage in the workplace;</li> <li>▶ the impact and limitations of off-duty conduct, and</li> <li>▶ how to appropriately process and escalate both formal complaints concerning discrimination and harassment and problematic behaviors they have observed or of which they have been made aware.</li> </ul> |
|--|---|

***Additional Considerations/Further Testing***

In future phases of review, the Monitor Team will test the effectiveness of trainings for managers and supervisors.

**Baseline Assessment Recommendation T&G 4:** Develop a training plan for ER that includes, at a minimum, annual trainings on all HR subject matters and policies and procedures for which ER is responsible.

***Summary Status***

The Company has not satisfied this Recommendation.

The Monitor Team has not received an updated training plan for ER that includes training on all HR subject matters and policies and procedures for which ER is responsible.

***Assessment of Work Completed***

The Company has continued to provide trainings for ER, but has not developed a comprehensive training plan as required by this recommendation. In May 2020, the Company engaged an external law firm to conduct a two-day training entitled, “Conducting an Effective Internal Investigation, for ER and Security personnel.” Interviews with senior management at EBH indicated that ER continued weekly, internal follow-up sessions for approximately eight weeks after the initial two-day training. The Monitor Team understands that these follow-up sessions consisted of a deep dive into topics covered during the initial two-day training, including tools for assessing credibility and effective notetaking skills. The May 2020 training is discussed in greater detail in Section F, Internal Reporting and Investigations.

The Monitor Team recognizes the Company’s dedication of time and resources to investigations training for ER personnel. To maintain the cadence of trainings and ensure the sustainability and consistency of the Company’s training efforts, the Company should formalize a training plan that incorporates all substantive areas covered by ER and HR.

***Follow-Up Recommendations***

Because the Company has not satisfied this Recommendation, we reissue it here with a deadline.

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|---|---|
| <b>Baseline Assessment Recommendation T&amp;G 4</b> | By March 31, 2021, develop a training plan for ER that includes, at a minimum, annual trainings on all HR subject matter policies and procedures for which ER is responsible and submit documentary evidence of the plan to the Monitor Team. |
|---|---|

***Additional Considerations/Further Testing***

In future phases of review, the Monitor Team will assess the thoroughness, sustainability, and consistency of the Company’s training program.

**Baseline Assessment Recommendation T&G 5:** For front-line employees:

- ▶ develop short, tailored trainings that address gaps in knowledge in position-specific realities;

and

- ▶ develop additional diversity and inclusion training, as part of its formal training program.

### ***Summary Status***

The Company has partially satisfied this Recommendation.

The Monitor Team has seen the Company's Security Academy Training materials, which appears to include guidance regarding sexual assault but does not address sexual harassment and discrimination. The Monitor Team understands that the Company intends to conduct targeted training for cocktail servers. The Monitor Team has not received information from the Company regarding the diversity and inclusion training recommended in the Baseline Assessment.

### ***Assessment of Work Completed***

The Monitor Team was only able to meaningfully assess Wynn Las Vegas's Security Academy training. The draft training for cocktail servers was provided to the Monitor Team too close in time to the submission of this Phase II Report to allow for meaningful assessment. As noted above, the Monitor Team has not received information regarding additional diversity and inclusion training. The COVID-19 pandemic has frustrated efforts to conduct trainings, and the Company is currently without an Executive Director for Diversity and Inclusion, which has complicated efforts to advance diversity and inclusion programs.

We discuss each of the trainings below.

#### ***Security Academy***

The Wynn Las Vegas Security Academy training is a week-long onboarding program for security officers covering a wide variety of topics, many of which are outside the scope of this review. However, the Monitor Team reviewed these materials with attention to whether and how the training addressed the handling of sexual harassment or discrimination by Patrons. In the Baseline Assessment, we made several observations with respect to the Company's handling of inappropriate conduct by Patrons, one of which included feedback from focus groups across properties on the important role that Security plays in addressing misconduct. There are several areas in the Security Academy training that can be strengthened to incorporate guidance in this regard.

The training did not cover sexual harassment or discrimination by Patrons. The training agenda indicated that "sexual assault" would be covered on the second day of the training, but the Monitor Team did not see any slides on the topic. The Monitor Team saw slides addressing how to deal with difficult Patrons, but the substance was primarily geared towards ensuring five-star service and compliance with the Company's COVID-19 rules. The Monitor Team considers this a missed opportunity by the Company, especially given the critical role that Security personnel play in protecting employees from offending Patrons. Indeed, as noted in the Baseline Assessment, focus group participants in Boston and Las Vegas noted an inconsistency in how Security personnel respond to reports of offending conduct by Patrons.

The Monitor Team, therefore, recommends that all future Security Academy trainings specifically include training on how Security should respond to incidents of sexual harassment, discrimination, and assault. The training should provide guidance to Security personnel on how to record and classify incidents of sexual harassment and discrimination. As noted in Section F, Internal Reporting

and Investigation the Monitor Team observed inconsistency in how security incidents involving harassment, discrimination, and assault are classified.

The Security Academy training slides included information on identification processes, including real-time assessment of a Patron’s demographics and background (e.g., gender and race). In our review of the Company’s security incidents, we identified incidents of transgender patrons who expressed feeling discriminated against because of their interaction with Security personnel during routine ID checks. This section of the Security Academy presented a ripe opportunity to include sensitivity training on issues of gender identity. Thus, the Monitor Team recommends that the Company incorporates these issues into its future Security Academy trainings.

*Cocktail Server Training*

Interviewees reported that the Company is developing discrete trainings for cocktail servers, which will consist of instructive videos and sample scripts for how to respond to problematic Patrons. The Company produced drafts of certain training materials to the Monitor Team as drafting of this Phase II Report was underway. The Monitor Team will review and assess these materials and provide observations and recommendations to the Company in the next phase of review.

*Diversity and Inclusion Training*

In the Baseline Assessment, the Monitor Team noted that focus groups across properties requested additional Diversity and Inclusion training. Due to the vacancy in the position of Executive Director – Diversity and Inclusion, the Monitor Team understands that diversity and inclusion initiatives have been delayed. The Company has told the Monitor Team that it is seeking to fill the Executive Director role. The Monitor Team looks forward to reviewing progress on the initiatives.

*Follow-Up Recommendations*

The Monitor Team reformulates Baseline Assessment Recommendation T&G 5 as three separate recommendations.

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|---|--|
| <b>Phase II Report Recommendation T&amp;G 2</b> | Continue to develop short, tailored trainings that address gaps in knowledge in position-specific realities. |
| <b>Phase II Report Recommendation T&amp;G 3</b> | Develop additional diversity and inclusion training as part of the formal training program.                  |
| <b>Phase II Report Recommendation T&amp;G 4</b> | Update future Security Academy training to specifically cover harassment and discrimination.                 |

*Additional Considerations/Further Testing*

In future phases of this monitorship, the Monitor Team will test the content and effectiveness of the Company’s tailored trainings.

**Baseline Assessment Recommendation T&G 6:** Leverage existing communications channels, like pre-shifts, to conduct briefings on a regular basis to reinforce messages from trainings.

### ***Summary Status***

The Company has partially satisfied this Recommendation.

The Monitor Team reviewed several EBH pre-shift messages that demonstrated implementation of this Recommendation but did not receive comparable communications from Wynn Las Vegas. For example:

- ▶ In a July 2020 pre-shift, the President of EBH reminded employees that the Company “will not tolerate any type of harassment whatsoever” and instructed employees to report any violations of the Company’s anti-harassment policy to HR or managers.
- ▶ In an August 2020 pre-shift, the President of EBH elaborated upon the Company’s second Core Behavior: “Treat Everyone with respect and dignity.” The message emphasizes the importance of treating one another with respect and instructs employees to report to their supervisor, manager or the President of EBH himself should they come into contact with or have any concerns with any employees or leaders not treating one another with respect.
- ▶ In an October 2020 pre-shift, the President of EBH called attention to the Company’s anti-harassment training and reminded employees of the various ways they can engage in bystander intervention should they observe harassing and discriminatory behavior. The message provides various examples of bystander intervention in non-legal terms and effectively ties in one of the Company’s core behaviors. The pre-shift implores employees to “care about everyone and everything” and ties this behavior to anti-harassment and discrimination messaging by emphasizing to employees that the behavior applies to all interactions, including between employees.

Based on interviews with senior management at Wynn Las Vegas, the Monitor Team understands that the property President has continued to issue weekly videos to front-line employees. Interviewees reported that some of these videos have been tailored to encourage employees to speak up and confront Patrons who engage in harassment or discrimination. As noted elsewhere in this Phase II Report, the Monitor Team received a rough cut of a video that includes a message from the Wynn Las Vegas President emphasizing the importance of reporting inappropriate Patron behavior.

### ***Assessment of Work Completed***

Overall, the communications reviewed by the Monitor Team, including the ones cited above, conform to key elements of the Recommendation. Specifically, they reinforce elements of the Company’s anti-harassment and anti-discrimination trainings, such as bystander intervention, and encourage employees to speak up and report violations of the Preventing Harassment and Discrimination Policy. Of particular interest to the Monitor Team, and as discussed in our Baseline Assessment, was the disconnect between the Company’s values and its messaging on harassment and discrimination. In this regard, EBH did well to implement multiple pre-shift messages that linked some of the Company’s core behaviors to anti-harassment and anti-discrimination themes. For example, as noted above, core behaviors such as “Care about everything and everything” and “Treat everyone with respect and dignity,” were tied to reinforcing themes from trainings, such as bystander intervention and reporting violations of the Company’s Preventing Harassment and Discrimination Policy.

The Monitor Team will review and provide feedback on the materials for training Wynn Las Vegas cocktail servers and looks forward to receiving information on communications throughout the organization in the next phase of review.

***Follow-Up Recommendations***

Based on the partial satisfaction of this Recommendation, the Monitor Team will maintain the Recommendation that the Company leverage existing communications channels to reinforce training messages.

|   |   |
|---|---|
| <b>Baseline Assessment Recommendation T&amp;G 6</b> | Continue to leverage existing communications channels, like pre-shifts, to regularly reinforce messages from trainings. |
|---|---|

***Additional Considerations/Further Testing***

The Monitor Team will continue to closely monitor the Company’s efforts with respect to Baseline Assessment Recommendation T&G 6 to employ the Company’s existing communications channels to reinforce messages from trainings.

**Baseline Assessment Recommendation T&G 7:** Develop procedures to periodically test and measure the effectiveness of trainings and incorporate feedback into future trainings.

***Summary Status***

The Company has not satisfied this Recommendation.

***Assessment of Work Completed***

The Monitor Team understands that a significant portion of the Company’s training programs have been transitioned online due to the pandemic. Some interviewees indicated that the Company’s online Preventing Harassment and Discrimination training includes questions at the end of each segment that are intended to test employees’ knowledge and understanding of key topics. These interviewees indicated that the online training requires employees to answer a minimum number of questions correctly before advancing to the next segment of the training. Other interviewees indicated that the Company is not testing the effectiveness of its Preventing Harassment and Discrimination training because it has prioritized COVID-19 training across properties.

In addition, based on our review of the Company’s Baseline Recommendation tracking matrix, the Monitor Team understands that the Company will develop surveys for each training via Survey Monkey. However, the Monitor Team has not yet received documentary evidence illustrating that the Company is testing the effectiveness of its HRCP training program through Survey Monkey.

***Follow-Up Recommendations***

Based on the fact that the Company has not satisfied this Recommendation, we reissue it here with a deadline.

|   |   |
|---|---|
| <b>Baseline Assessment Recommendation T&amp;G 7</b> | By April 30, 2021, develop procedures to periodically test and measure the effectiveness of trainings and incorporate feedback into future trainings. |
|---|---|

### ***Additional Considerations/Further Testing***

The Monitor Team will continue to request and assess materials evidencing implementation of this Recommendation in the next phase of review.

### **F. Internal Reporting and Investigation**

The MGC's Decision and Order lays out "substantial evidence that the Company neglected to follow its own corporate policies on a number of occasions," including failures to appropriately report and investigate allegations of misconduct made against a senior executive. Decision and Order at 46. Given the centrality of these issues to the events leading up to the Decision and Order, the Monitor Team continues to view the Company's internal reporting and investigation procedures, and remediation efforts, as key to the overall success of the HRCP. For that reason, the Monitor Team will continue to spend a considerable amount of time evaluating and testing these aspects of the Company's program.

The Monitor Team observed in the Baseline Assessment that the Company had put some effort into enhancing its reporting and investigation procedures but expressed concern that those enhancements did "not go far enough to remediate the issues identified in the Investigative Report and in the Decision and Order or to mitigate the risk that prior compliance issues may recur." Baseline Assessment at 74. Specifically, the MGC found that between 2014 and 2017, multiple senior executives learned of alleged misconduct by the founder but nonetheless "[t]he allegation[s were] not reported to the Employee Relations Department and no investigation was conducted by the Company." Decision and Order at 46. In light of these past violations of reporting policies, the Monitor Team is particularly focused on testing the implementation of controls around investigations regarding senior management.

As noted in other sections of this Phase II Report, the Monitor Team appreciates the significant strain that the COVID-19 pandemic has imposed on the Company's resources, specifically on its Legal and ER teams. We understand that personnel responsible for HRCP matters, including compliance with Monitor Team recommendations, have had to turn their attention to addressing the imminent health and safety risks presented by the pandemic and to operating the Company's COVID-19 protocols. The pandemic also impacted the Monitor Team's ability to assess the Company's improvements in that we were not able to review investigation files in person or speak with line employees. Nonetheless, the Monitor Team was able to request and review select investigation files remotely and to interview personnel with oversight responsibility in the Legal and HR (including ER) functions.

In addition, the Monitor Team had the opportunity to observe and evaluate the Company's handling of an investigation into allegations against senior management. That investigation occurred prior to any changes being made to the Company's investigations policy. Nevertheless, Company representatives demonstrated a general understanding of the need to conduct a thorough and independent investigation into the allegations received. However, the Monitor Team observed certain missteps that, while not affecting the outcome of the investigation, provide an opportunity for the Company to more deeply operationalize the full scope of the lessons learned from its mishandling of past allegations against senior management. The draft Workplace Misconduct Investigations Policy provides further guidance for navigating such allegations, including guidance directly addressing areas of concern for the Monitor Team. The Monitor Team will continue to evaluate the Company's implementation of the enhanced guidance. Ultimately, the Company will have to demonstrate a meaningful commitment to the implementation of that guidance for the Monitor Team to have

complete confidence in the Company's ability to investigate any future claims against senior management.

Recognizing the improvements made in the reporting and investigation processes that preceded the Decision and Order, the Monitor Team observed in the Baseline Assessment that work remains and this further review period has only confirmed that impression.

### **1. Recommendations**

**Baseline Assessment Recommendation IRI 1:** Develop a communication campaign through which senior management at the Wynn Resorts and property levels communicates its support for a speak-up culture. The campaign may be timed with the launch of the Company's new reporting channel.

#### ***Summary Status***

The Company has not fully satisfied this Recommendation.

The Monitor Team understands that due to issues outside of the Company's control, the new reporting channel discussed in the Baseline Assessment has not yet been launched. However, interviews with senior management with a leading role in the HRCP indicate that communication campaigns at both properties are in varied stages of development—with EBH launching its first communications this month—and will be designed to encourage employees to speak up not only about the behavior of their colleagues but also the behavior of Patrons.

As also discussed in Baseline Assessment Recommendation CCCT 1, the Monitor Team reviewed an anti-harassment communication campaign schedule reflecting that employee communications will be rolled out at EBH back of house each quarter through a variety of mediums, including through a message from the President, escalator banners, digital display, napkin holders, wall displays, and one-pagers. Communications will be focused around two themes: "Speak Up; ways for team members to report harassment and discrimination" and "We're in This Together; reporting channels and knowing retaliation is not tolerated." The Monitor Team viewed one of the "Speak Up" posters which we understand currently appears at the employee entrance. The Monitor Team further understands that communications from the President of EBH will be part of the campaign.

Although the Monitor Team did not receive documentary evidence of an equivalent campaign at Wynn Las Vegas, we understand that the property intends to implement one in the future. The Monitor Team was also able to view a draft video communication from the President of Wynn Las Vegas that encourages employees to speak up.

#### ***Assessment of Work Completed***

The Monitor Team understands that the Company is finalizing and launching new communication campaigns at both properties that will include video and print components. The EBH campaign schedule indicates that the themes at that property will include "Speak Up" and "We're in This Together." The signage reviewed by the Monitor Team reflects that harassment may be reported through a number of avenues, including directly to the VP of HR and the Chief Compliance Officer. However, in addition to noting that senior management can receive complaints, the Monitor Team believes that part of the communication campaign should come directly from senior management at both the corporate and property level, to explicitly evidence their support for the speak-up culture. The plan indicates that there will be pre-shift communications from the President of EBH, but the Monitor Team has not been provided with copies of the referenced communications as of the writing of this



Phase II Report. Although Wynn Las Vegas has not yet provided a campaign plan, the Monitor Team has reviewed a draft version of a video focused on reporting harassment from Patrons that includes an introduction from the Wynn Las Vegas President.

Given the delay in the launch of the new reporting channel and the logistics of launching a communication campaign during the pandemic, the Monitor Team recognizes that the Company faced an uncertain environment in considering this Recommendation. EBH has already posted signage encouraging employees who experience or witness harassment from Patrons to speak up and the Monitor Team expects to see communications from leadership in the coming weeks.

As noted in the Baseline Assessment, only 54% of Company employees surveyed prior to the Assessment responded affirmatively when asked whether “senior executives support a culture of compliance, which includes a culture of speaking up against harassment and discrimination.” Baseline Assessment at 77. But the success of any compliance program partially rests on whether employees understand that senior management supports their right to speak up and expects them to do so. In the Monitor Team’s view, too few Company employees currently understand the views of senior management on this critical issue. And our review of a sample of investigation files during the Phase II review period reflect that some employees in Patron-facing roles may not understand or feel empowered to report potentially improper conduct through the available reporting channels. Whether or not the Company is operating at full capacity, it is essential that the Company take concrete steps to change employees’ perceptions in regard to management’s expectations and support for the creation of speak-up culture.

***Follow-Up Recommendations***

In the Monitor Team’s view, acknowledging the significant delay of the reporting channel roll-out but anticipating its imminent occurrence, the communication campaign should no longer be delayed. The Monitor Team therefore reissues this Recommendation with a deadline of April 30, 2021.

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| <p><b>Baseline Assessment Recommendation IRI 1</b></p> | <p>By April 30, 2021, launch a communication campaign through which senior management at the Wynn Resorts and property levels communicate support for a speak-up culture. While the campaign may be timed with the launch of the Company’s new reporting channel, the lack of a new reporting channel should not delay the start of the campaign.</p> <p>[This can be done in connection with Baseline Assessment Recommendation IRI 3 and Baseline Assessment Recommendation P&amp;P 2.]</p> |
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***Additional Considerations/Further Testing***

The Monitor Team will review communication planning documents as well as final versions of communications, whether written or presented through other means, including video. The Monitor Team may also review and provide observations on draft versions of these documents prior to launch.

**Baseline Assessment Recommendation IRI 2:** Ensure that the new reporting channel permits multilingual reporting options to facilitate reports by employees with strong proficiency in languages other than English.

***Summary Status***

The Company has not satisfied this Recommendation.

As described above, the Monitor Team understands that due to issues outside of the Company’s control, the new reporting channel has not yet launched.

***Assessment of Work Completed***

Based on discussions with the Company, the Monitor Team understands that the new reporting channel will permit multilingual reporting.

***Follow-Up Recommendations***

The Monitor Team reissues Baseline Assessment Recommendation 3 with a time parameter for clarity.

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| <b>Baseline Assessment Recommendation IRI 2</b> | Within two weeks of the launch of the new reporting channel, provide documentary evidence to the Monitor Team that the new reporting channel permits multilingual reporting options to facilitate reports by employees with proficiency in languages other than English. |
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***Additional Considerations/Further Testing***

When the new reporting channel is in place, the Monitor Team will review and test the language capabilities of the system. The Monitor Team will also review data reflecting the use of the new reporting channel’s multilingual capabilities in order to ensure that those capabilities are being effectively communicated to Wynn Resorts employees.

**Baseline Assessment Recommendation IRI 3:** Develop and launch a campaign to promote the new reporting channel, including for example, posters, table-top messages, computerized messages on TV screens, and pre-shift communication.

***Summary Status***

The Company has not satisfied this Recommendation.

As described above, the Monitor Team understands that due to issues outside of the Company’s control, the new reporting channel has not yet been launched.

***Assessment of Work Completed***

The anti-harassment communication campaign schedule reflects that in 2021, the campaign will promote reporting channels, including a one-pager regarding “ways to report harassment (linked with QR code on napkin holders).” The Company should consider incorporating promotion of the new reporting channel into this campaign to ensure employees are well aware of it.

***Follow-Up Recommendations***

The Monitor Team reissues Baseline Assessment Recommendation 3 with a time parameter for the communications.

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| <p><b>Baseline Assessment Recommendation IRI 3</b></p> | <p>Within two weeks of the launch of the new reporting channel, launch a campaign to promote the new reporting channel, including, for example, posters, table-top messages, computerized messages on TV screens, and pre-shift communications.</p> <p>[This can be done in connection with Baseline Assessment Recommendation IRI 1 and Baseline Assessment Recommendation P&amp;P 2.]</p> |
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***Additional Considerations/Further Testing***

The Monitor Team will review any communication planning documents as well as final drafts of any communications, whether written or presented through any other communication means, including video. The Monitor Team may also review draft versions of these documents prior to launch.

**Baseline Assessment Recommendation IRI 4:** On at least a trial basis, extend ER availability to cover the current gaps in ER on-site schedule. Inform employees about variations in ER’s schedule and about any subsequent changes.

***Summary Status***

The Company has not satisfied this Recommendation.

As reported in the Baseline Assessment, employees expressed concern regarding ER availability during the overnight (“graveyard”) shift and on weekends and were not aware of existing ER availability outside of regular business hours. This accessibility is important for the success of the HRCP, specifically for ensuring that employees are able to report potentially improper behavior directly to ER regardless of which shift they work.

Interviews and document review reflect that the Company has taken this Recommendation under advisement, although interviewees expressed skepticism about whether there would be any benefit to extending hours at any point in the future. They assert that ER hours were previously extended in Las Vegas and that the additional time was not utilized by enough employees to make the extension worthwhile. The Monitor Team learned of those efforts during the Baseline Assessment, but based on focus group feedback considered it important for the Company to reconsider and retest whether an expansion in hours was warranted.

The Monitor Team understands that extending in-person ER availability during the COVID-19 pandemic may be impractical. Indeed, it is commendable that even during the pandemic the Company has ensured that ER personnel remain available by phone and email, including outside of normal business hours. In particular, ER added on-call hours for COVID-related incidents. However, further work is needed to ensure employee knowledge of this current expanded access to ER, and to ensure expanded access once the pandemic is over.

***Assessment of Work Completed***

As noted above, the Monitor Team understands the COVID-19 pandemic has placed a real strain on the Company’s ER teams. Among other duties, personnel responsible for staffing the in-person ER windows now also have responsibility for COVID-19 protocol-related tasks. In this context, it is

reasonable that the Company did not extend hours during the past review period. However, a trial extension of ER hours, when it is safe to do so, coupled with a communication campaign regarding ER availability, is very much warranted.

The Monitor Team notes that, as set out in the Baseline Assessment, the Company has plans to enhance its ability to track reporting and investigation trends and metrics. The Monitor Team believes this will be helpful, especially if the Company includes in its tracking the flow, number and type of complaints that it receives. For these metrics to truly measure the Company’s progress, and determine whether it is worthwhile to keep ER open for extended hours in the long-term, the Company should extend ER hours to receive complaints during the shifts when employees previously indicated ER was not accessible. Even under present circumstances, the Monitor Team believes that the Company should remind employees about the ways that they can access ER outside of typical working hours.

The pandemic has led ER to move some investigative activities, including interviews, to remote formats, including video and phone. Although some of these changes may not be permanent, the Company should consider the impact of these changes and whether, after the pandemic, it can improve the efficiency of the investigations process. If there are virtual alternatives that will give employees who work outside of regular business hours comfort in their ability to reach an ER counselor during their shift, the Company should weigh those alternatives as it continues to think through ways to make ER accessible to employees across shifts.

***Follow-Up Recommendations***

The Monitor Team has revised Baseline Assessment Recommendation IRI 4 to divide it into two separate action items and has added a deadline for compliance.

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| Phase II Report Recommendation IRI 1 | By February 28, 2021, provide a proposal to extend ER availability to cover the current gaps in the ER on-site schedule.   |
| Phase II Report Recommendation IRI 2 | By March 31, 2021, inform employees about the in-person ER schedule, including any variations or flexible availability outside of business hours, ER availability outside of business hours (including remote access), and about any subsequent changes to the schedule. |

***Additional Considerations/Further Testing***

The Monitor Team will review any communications provided to employees regarding ER availability and, following these communications, will test employee awareness of this availability, particularly on the graveyard and weekend shifts.

In addition, the Monitor Team is available to be briefed or to review materials regarding a data-based consideration of an extension to current ER hours.

**Baseline Assessment Recommendation IRI 5:** Update the Investigations Policy to include clearly defined intake and routing protocols. Those procedures should include the following elements:

- ▶ designation of personnel authorized to receive reports routed through the Company’s

- reporting channels, including their role and responsibility in the intake process;
- ▶ objective criteria to help intake-personnel scope the issues presented and route the complaint to the appropriate personnel for response and potential investigation;
  - ▶ guidance and procedures to wall off from an investigation anyone who is either the subject of an allegation, or may have a conflict that could jeopardize the objectivity of the investigation;
  - ▶ clearly defined guidelines for the intake, routing, and response to complaints against management and senior leadership;
  - ▶ substantive guidance for each of the investigative steps enumerated in the Policy; and
  - ▶ guidance on measures that should be taken to protect confidentiality in investigations, including guidance with respect to what information may and may not be shared with employees in an investigation.

### ***Summary Status***

The Company has not fully satisfied this Recommendation.

The Company is in the process of updating its Investigations Policy and the Monitor Team credits the Company with producing a draft of the new Workplace Misconduct Investigations protocol. The Monitor Team conducted a preliminary review of the draft, which addresses the core elements of the recommendation, but will require additional enhancements prior to finalization. The Monitor Team understands that the Policy will reference the new reporting channel, which has not been launched for the reasons already discussed above.

### ***Assessment of Work Completed***

We reiterate our understanding of the difficulties that COVID-19 has caused for the Company; and the Monitor Team credits the Company's effort to address the recommendations in the draft Policy. However, in light of the events preceding this monitorship, the Company's overall response to recommendations related to the Company's investigations procedures indicates to the Monitor Team that the Company may not have fully internalized the paramount importance of well-defined investigations procedures. The Monitor Team's view is informed primarily by Interviews with personnel serving in key HRCF functions and by the implementation of investigation processes observed by the Monitor Team over the period under review, the latter of which only serves to underscore the importance of these recommendations.

While certain Board members and senior management showed an understanding of the importance of developing and implementing more robust investigation procedures, some individuals with whom we spoke, including in investigation-related functions, expressed reluctance towards the need for investigation guidance beyond the existing materials available to them. The overarching sentiment from those interviewees was that the Company's existing policies were adequate and exceeded industry standards (e.g., because other casinos did not have written investigation policies at all). These statements echo a theme that emerged during our Phase II review period of general resistance to the notion of formalizing policies and procedures. The Monitor Team understands that the introduction of formal policies and procedures in certain areas marks a cultural shift for Wynn Resorts, but nowhere are they more critical than in the context of internal investigations. The Monitor Team,

therefore, urges the Company, especially senior management, to message to all levels of the organization its unequivocal commitment to robust internal investigations processes.

Notwithstanding the concerns expressed by some interviewees in response to the requirements set forth in this Recommendation, the Monitor Team observed effort in the draft to respond to the core issues raised in the Baseline Assessment. Specifically, the Monitor Team credits the draft Workplace Misconduct Investigations protocol with providing clearer guidance and structure to the intake and routing of allegations received by the Company, communications with the complainant and witnesses, document collection, credibility assessment, and reporting and documenting findings. As noted above, the Monitor Team's assessment of the draft Policy report is preliminary, and further review, including of its final version and implementation, will be required.

During the review period, the Monitor Team had the opportunity to continue its review of the implementation of the Company's existing internal investigations protocol, including in the context of an independent investigation into allegations of improper conduct by two senior managers. That investigation in particular provided the Monitor Team a unique opportunity to observe how the Company resources and manages investigations and how it handles potential conflicts of interest. The allegations against the senior managers were not substantiated, and the investigation has now been closed. However, the process allowed Monitor Team to identify additional opportunities for enhancement. We thank the Company for its transparency and cooperation with the Monitor Team in relation to the investigations reviewed.

Investigations undertaken since the submission of the Baseline Assessment brought to the surface several of the issues identified in the Baseline Assessment. The Investigations Policy enhancements described in the Baseline Assessment would strengthen the controls around investigations, and particularly any future investigations into alleged improper conduct by management or senior leadership. The necessity of implementing a policy that addresses these recommendations remains, as discussed below.

In the Baseline Assessment, the Monitor Team noted that it was "critical that the Company define and formalize clear intake and routing procedures to avoid inefficiency, the risk of delayed responses, and mishandling of issues due to a complaint being routed to personnel lacking relevant experience or with a potential interest or conflict in the matter being investigated." Baseline Assessment at 80. The draft Investigations Policy addresses that concern by identifying categories of potential areas of misconduct and designating the department responsible for leading investigations falling within each of those categories. For instance, allegations of "internal accounting and auditing irregularities" will naturally be investigated by the Internal Audit Department ("Internal Audit") and the Finance Department, whereas conflicts of interests would be investigated by Global Compliance. All HRCP issues related to discrimination and harassment would be investigated by ER. Incidents or allegations of sexual misconduct by Patrons, would be investigated by ER and Security/Corporate Investigations. In the Monitor Team's view, the Investigations Policy identifies the common types of allegations that could be received by Wynn and assigns them to the department with the relevant subject matter expertise.

Underlying Baseline Assessment Recommendation IRI 5 and the specific requirements related to intake and routing, was the concern that complaints might be inadvertently routed to personnel with a potential interest or conflict in the matter being investigated. For example, a person that is the subject of a complaint or is otherwise implicated by the allegation in the complaint. The draft Policy addresses routing to avoid conflicts when the complaint is against employees at the CEO, President, Executive VP, or department head-levels but does not generally address the inadvertent routing of a complaint to any

personnel with a potential interest or conflict, regardless of their level of seniority. The Monitor Team further understands that the Company had an established practice with its reporting channel vendor to prevent allegations against individuals on established distribution lists from receiving complaints in which they were implicated. When that vendor was acquired by another company, that practice ceased but has since been reinstated. As the Company prepares to launch a new reporting channel, the Monitor Team expects that the Company will ensure that its internal policies regarding intake and routing continue to be implemented with this new vendor.

Controls surrounding intake and routing are key to mitigate the risk of a subject of a complaint being made aware of the allegations against them. The Monitor Team is aware of more than one instance where an employee was inadvertently made aware of a complaint against them. In one matter,

[REDACTED]

The Monitor Team credits the employee's good faith efforts to avoid conflict and follow existing procedure. However, interviews made clear that the procedure ultimately followed in this investigation was enhanced as the matter was unfolding and only once information contained in the complaint had been received by individuals with a potential conflict. While these missteps did not affect the outcome of any investigation reviewed, a failure to mitigate that risk through implementation of specific controls and guidance will erode the Monitor Team's confidence in the effectiveness of the Investigations Policy.

This Recommendation calls for "guidance and procedures to wall off from an investigation anyone who is either the subject of an allegation, or may have a conflict that could jeopardize the objectivity of the investigation." For a recusal to be effective it must be documented and communicated to avoid inadvertent disclosures. In an investigation reviewed, [REDACTED] recused themselves from the investigation to avoid the appearance of a conflict. [REDACTED]

[REDACTED] But in practice, their recusal was not documented or formally communicated to others with knowledge of the investigation who might have been in a position to inadvertently engage in discussions with or in the presence of the recused individuals. We note that the Monitor Team saw no evidence that the recusals were not respected. Nevertheless, the circumstances underscore the need for guidance regarding when and how individuals with a potential conflict are walled off from investigations.

In addition, the Recommendation calls for "objective criteria to help intake-personnel scope the issues presented and route the complaint to the appropriate personnel for response and potential investigation." A critical step in ensuring the adequacy and integrity of an investigation is defining the key issues presented by an allegation and developing a plan that responds to those issues in a manner proportionate to the risk presented. An investigation policy cannot contemplate every scenario, but must at a minimum contemplate foreseeable scenarios [REDACTED] Absent that, investigation personnel may be compelled to go outside of the established procedures, as occurred in one of the investigations observed. [REDACTED]

[REDACTED] While that decision was made with the best intentions and in good faith—to ensure an unimpeachable investigation—if the Company adopts an ad hoc approach to addressing allegations, it risks undermining

the trustworthiness of the procedure followed and therefore the outcome reached. These circumstances underscore the need for thoughtful implementation of this Recommendation.

Finally, Baseline Assessment Recommendation IRI 5 requires “substantive guidance for each of the investigative steps enumerated in the Policy.” The draft Workplace Misconduct Investigations Policy reflects a concerted effort by the Company to develop such guidance. However, the draft Policy could benefit from clear, written guidance regarding document retention and review—two crucial stages in an investigation, particularly where key evidence may be contained in electronic format on personal or Company devices. While not all investigations will require formal document retention notices or extensive review of documentation, it is not unlikely that many investigations will demand it. Indeed, that was the case in a couple of the investigations reviewed by the Monitor Team. The Company should therefore revisit the Investigations Policy to incorporate guidance regarding when a document retention notice might need to be issued and a process for the collection of electronic devices, including laptops, hard drives, and cell phones. These policy enhancements will strengthen investigations across the board.

***Follow-Up Recommendations***

The Monitor Team reissues this Recommendation and requests that the Company satisfy these Recommendations and submit documentary evidence of completion to the Monitor Team as follows:

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| <p><b>Baseline Assessment Recommendation IRI 5</b></p> | <p>By March 31, 2021, update the Investigations Policy to include clearly defined intake and routing protocols. Those procedures should include the following elements:</p> <ul style="list-style-type: none"> <li>▶ designation of personnel authorized to receive reports routed through the Company’s reporting channels, including their role and responsibility in the intake process;</li> <li>▶ objective criteria to help intake-personnel scope the issues presented and route the complaint to the appropriate personnel for response and potential investigation;</li> <li>▶ guidance and procedures to wall off from an investigation anyone who is either the subject of an allegation, or may have a conflict that could jeopardize the objectivity of the investigation;</li> <li>▶ clearly defined guidelines for the intake, routing, and response to complaints against management and senior leadership;</li> <li>▶ substantive guidance for each of the investigative steps enumerated in the Policy; and</li> <li>▶ guidance on measures that should be taken to protect confidentiality in investigations, including guidance with respect to what information may and may not be shared with employees in an investigation.</li> </ul> |
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| <p><b>Phase II Report<br/>Recommendation IRI 3</b></p> | <p>By March 31, 2021, update the Investigations Policy to include the following additional elements:</p> <ul style="list-style-type: none"> <li>▶ clearly defined guidelines for the retention of electronic data and collection of electronic devices during the course of an investigation; and</li> <li>▶ objective criteria regarding the classification of allegations.</li> </ul> |
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***Additional Considerations/Further Testing***

The Monitor Team will review the new Policy and is available to review drafts of the Policy prior to it being finalized. To test the effectiveness of the new Policy, the Monitor Team will conduct interviews with HR and ER personnel involved in the investigation process and will review a sample of investigation files to analyze the application of the newly established procedures.

**Baseline Assessment Recommendation IRI 6:** Develop and conduct mandatory training on updated investigations policy for all personnel authorized to conduct investigations.

***Summary Status***

The Company has not fully satisfied this Recommendation.

The Monitor Team understands that the Company engaged outside counsel to provide a training in May 2020 on conducting internal investigations. And based on the draft Workplace Misconduct Investigations protocol, it appears that the investigations manual provided by counsel is being incorporated into the Company’s standard procedures. However, it is not clear from interviews how the training will be conducted in the future: whether the Company will continue to bring in outside counsel to conduct this training each year, whether the training will be conducted in-house, or whether the materials used last year will be reused in future years. Further, in light of the updated investigations protocol remaining in draft form during the review period, the Company has not trained personnel on its updated procedures, as this Recommendation requires.

***Assessment of Work Completed***

The Monitor Team has reviewed the training provided to personnel in May 2020. The Monitor Team’s commentary regarding that training can be reviewed below, under Baseline Assessment Recommendation IRI 8. When the Workplace Misconduct Investigations protocol is finalized and the Company determines whether it will move forward with the training provided by outside counsel on a yearly basis, the Monitor Team will be able to assess progress toward satisfaction of this Recommendation.

***Follow-Up Recommendations***

The Monitor Team recommends that the Company satisfy this Recommendation and submit documentary evidence of completion to the Monitor Team by May 15, 2021:

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| <p><b>Baseline Assessment<br/>Recommendation IRI 6</b></p> | <p>By May 15, 2021, develop and conduct mandatory training on updated investigations policy for all personnel authorized to conduct investigations.</p> |
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***Additional Considerations/Further Testing***

The Monitor Team will review the training materials and will attend the mandatory training on the updated investigations policy.

**Baseline Assessment Recommendation IRI 7:** Review HR policies and update language regarding the Company’s reporting channels to ensure consistency across policies.

***Summary Status***

The Company has not satisfied this Recommendation.

As described above, the Monitor Team understands that due to issues outside of the Company’s control, the new reporting channel has not yet been launched.

***Assessment of Work Completed***

Given the lack of a new reporting channel, the Monitor Team has not observed any progress toward completion of this Recommendation. At the same time, the Monitor Team understands that rolling out the new reporting channel remains a high priority for the Company, and the Company has provided regular updates to the Monitor Team regarding the challenges they have faced.

***Follow-Up Recommendations***

The Monitor Team reissues Baseline Assessment Recommendation IRI 7, with a time period for completion.

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| <b>Baseline Assessment Recommendation IRI 7</b> | By four weeks following the launch of the new reporting channel, provide documentary evidence to the Monitor Team that HR policies include updated language regarding the Company’s reporting channels to ensure consistency across policies. |
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***Additional Considerations/Further Testing***

The Monitor Team will review HR policies to ensure language regarding the Company’s new reporting channel is consistent across policies.

**Baseline Assessment Recommendation IRI 8:** Develop and provide regularly-scheduled (at least annual) investigations training to all employees who may be responsible for conducting investigations.

***Summary Status***

The recommendation to provide an investigations training to personnel responsible for conducting investigations has been satisfied for 2020.

In April 2020, the Company engaged outside counsel, who conducted a training titled “Conducting Effective Internal Investigations” on May 5 and 6, 2020. Interviews with management involved in the training reflect that it was well-received. However, it is not clear from interviews and documents reviewed whether this training from outside counsel will occur annually or whether the Company is developing an in-house annual training for employees.

### ***Assessment of Work Completed***

The week the Monitor Team submitted its Baseline Assessment to the MGC, outside counsel conducted the requisite training for a group of personnel at the Las Vegas and Boston properties. This was a proactive step toward standardizing and improving the training received by personnel who are expected to conduct investigations.

The objective of the training, as expressed in the materials reviewed by the Monitor Team, was to “establish why effective investigation skills are important, build skills necessary for effective questioning, develop finesse in dealing with reluctant or difficult witnesses, understand proper methods to assess credibility, [and] important investigation report considerations.” An investigation manual provided as a companion to the training likewise walks through the importance of investigation skills as well as providing substantive guidance on each stage of the investigation including the initial meeting with the employee, scoping the investigation, preparing for and conducting each stage of the investigation including interviews, and implementing the results of the investigation.

Several interviewees provided positive feedback regarding the May 2020 internal investigations training. The interviewees who took the training reported that they learned a lot and said that additional training and guidance would be valuable. As the manual accompanying the training explained, “[t]he investigative process permits your organization to monitor itself—to ensure that its managers, supervisors, and employees comply with both the letter and the spirit of federal and state laws, as well as internal policies and guidelines.” Without objective guidance for conducting investigations, investigations cannot adequately fulfill this self-monitoring function.

The Monitor Team specifically credits the ER team at EBH, who revisited the May training over the eight weeks following the sessions, undertaking a deep dive into each chapter of the manual and considering where it would be helpful to emphasize certain segments to personnel. An interview with relevant personnel reflects that the EBH team is also using lessons learned from the training in onboarding personnel. For example, the manual provided by outside counsel provides guidance on notetaking, and that information has been provided to a new counselor at EBH. However, these ad hoc communications of the portions of the training and manual are no substitute for a formal integration of additional guidance into the Company’s investigation protocol. Therefore, the Monitor Team is pleased that the draft Workplace Misconduct Investigations protocol, discussed in connection with Baseline Assessment Report Recommendation IRI 5, cross-references this manual.

Although the Monitor Team found the training and related materials to be thorough, it was not clear whether each of the investigative steps covered by the training are being implemented by the Company, particularly given the lack of a finalized, updated investigations policy. For example, the manual sets out an appeals process which it describes as one “that could be established for employees to file appeals within the organization.” But the draft Workplace Misconduct Investigations Policy reviewed makes no mention of an appeals process. Furthermore, the draft Policy describes the manual as setting forth guidelines that “may not be applicable in all cases.” It is therefore unclear whether the training will align with the new investigations protocol.

In all, the Monitor Team understands from interviews that the training was well-received, including by management. But it is not clear whether this training by outside counsel will be repeated at regularly-scheduled intervals or whether the Company is developing a separate training for employees responsible for conducting investigations.

### ***Follow-Up Recommendations***

In order to ensure that the Company continues to provide investigations training to relevant personnel, the Monitor Team recommends that the Company create a schedule for doing so.

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| <b>Phase II Report Recommendation IRI 4</b> | By May 15, 2021, provide evidence of a schedule of or plan for annual training for all employees responsible for conducting investigations. |
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### ***Additional Considerations/Further Testing***

The Monitor Team will review any schedule for annual training as well as training materials or any drafts thereof. The Monitor Team would also welcome the opportunity to sit in on the training.

### ***2. Additional Observations***

In addition to reviewing the Investigations Policy, the Monitor Team reviewed security incident reports related to sexual harassment and misconduct, primarily by Patrons. These reports provided the Monitor Team a line of sight in the practices followed by Corporate Investigations into Patron misconduct. One observation that emerged from our review relates to the classification of incidents involving harassment, sexual misconduct, and discrimination. Based on interviews and review of the incident reports, the Monitor Team identified a lack of consistent classification of incidents. Indeed when we asked interviewees how best to define the scope of our request for incident reports related to sexual harassment/misconduct and discrimination, we were advised to use “common terms.” Our review of the files provided indeed reflected the use of common terms but also a misclassification of certain incidents. For example, incidents that clearly related to allegations of sexual harassment or assault were variably classified as “suspicious,” “medical,” or “personal illness incidents”. Without guidance regarding the proper classification of incidents, the Company will be unable to ensure that reports are routed to the proper personnel with experience in investigating the allegations at issue. The Company will also be unable to effectively track metrics related to such allegations. Therefore, the Monitor Team issues a new Recommendation requiring Corporate Security to define and standardize the classification of incidents related to harassment and discrimination.

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| <b>Phase II Report Recommendation IRI 5</b> | Provide evidence that Corporate Security has defined and standardized the classification of incidents related to harassment and discrimination. |
|---|---|

## **G. Incentives and Discipline**

At the time of the Baseline Assessment’s submission, the Company was in the process of designing and implementing a performance management program that would apply to all employees across the organization. The Executive Director who had been driving this initiative left the Company in August 2020, and the position has not been filled. The Company had also planned to leverage its Great Places to Work (“GPTW”) survey to incentivize management compliance with the Company’s HRCP goals but because of the pandemic decided not to administer the survey in 2020. Furthermore, the ongoing pandemic has limited the Company’s ability to reward compliant behavior through financial means. In light of these circumstances, the Monitor Team observes that the Company has lost momentum in its

efforts to design and deploy an incentives program that would have taken into account whether employees are living up to the HRCP values of the Company.

The Monitor Team recognizes the financial hardship the Company has faced during the pandemic and that the Company has not historically operated any performance management program. Nonetheless, incentivizing compliance remains a key aspect of a successful compliance program. The Company should continue to look for opportunities to build compliance-based incentives into existing programs.

### **1. Recommendations**

**Baseline Assessment Recommendation I&D 1:** Integrate standards of behavior related to compliance in its “Employee of the Month” programs.

#### ***Summary Status***

The Company has not satisfied this Recommendation.

Documentation reviewed by the Monitor Team reflects that management represented to the Compliance Committee (in the same Recommendations tracker noted in other sections of this Report) that “compliance and standards of behavior are already inherently integrated into recognition programs.” This view is not borne out by the Monitor Team’s observations during the Phase II review period. Although the Monitor Team has not seen any changes to the Employee of the Month program to date, the Company has committed to implementing this Recommendation.

#### ***Assessment of Work Completed***

The Monitor Team did not observe any progress toward satisfaction of this Recommendation. Although Compliance Committee materials suggested that the “Employee of the Month” program already integrates compliance standards of behavior, interviewees indicated that this is not the case. In addition, some employees in HRCP-related functions expressed confusion as to what sorts of compliant behaviors should merit an award. One employee asserted that the “Employee of the Month” program recognizes people who contribute to Patron services and did not understand the connection to HRCP compliance. Another employee noted that employees are expected to be “100% compliant” and that such behavior is simply “part of the job.” These are common challenges that companies face when developing compliance-focused incentives. With creativity, they can be overcome.

The Company’s existing documentation already provides the groundwork for an incentive and discipline program. The existing template for employment agreements specifically provides that an employee’s failure to follow policies or procedures, including the Company’s Preventing Harassment and Discrimination Policy, is cause for termination. In this way, the Company sets an expectation from the start of employment that non-compliant behavior will be disciplined. The question then becomes how to create incentives to maintain compliant behavior over time.

Programs that reward employees who go above and beyond in providing customer service, like “Employee of the Month,” are well suited to reward HRCP compliant behavior. Employee interactions with Patrons or other third parties provide an opportunity to affirmatively display Company values or to interrupt inappropriate behavior. For example, if a transgender Patron is being questioned at an ID checkpoint and another employee steps in to assist and ensure the Patron is treated with respect, that intervening employee could be rewarded for their actions. Or, an employee could be recognized for intervening in an escalating situation between peers or magnifying diverse voices within the Company.

The Monitor Team notes that Security personnel receive training on capitalizing on interactions with Patrons that provide opportunities for customer service. This training could include examples of how to interrupt bias, as a bystander, in ways that would improve both Patron and employee experiences.

Similarly, the Company should consider whether it has other existing programs that could be used to incentivize compliance. For example, the Monitor Team notes that at EBH, employees have participated in a “Wynn Rewards Quiz.” The Company could consider whether the existing quiz structure provides an avenue to reward knowledge of the HRCP and compliant behavior. The quiz would have the dual function of providing an additional training opportunity as well as rewarding individuals who participate.

The Monitor Team continues to recommend that the Company explicitly integrate standards of behavior related to compliance into its “Employee of the Month” program, including by providing examples of how employees might earn this recognition. The Monitor Team also recommends that the Company consider whether there are any other recognition programs that could incorporate these standards.

***Follow-Up Recommendations***

The Monitor Team reissues this Recommendation with a deadline.

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| <p><b>Baseline Assessment Recommendation I&amp;D 1</b></p> | <p>By March 31, 2021, explicitly integrate standards of behavior related to compliance in its “Employee of the Month” programs.</p> |
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***Additional Considerations/Further Testing***

The Monitor Team will review the standards of behavior integrated into the “Employee of the Month” and would welcome the opportunity to review any draft materials. The Monitor Team will also review the dissemination of this information to employees and decisions related to the “Employee of the Month” program.

**Baseline Assessment Recommendation I&D 2:** Update the Progressive Discipline and Performance policy as follows:

- ▶ provide additional guidance on how to determine appropriate discipline based on a holistic evaluation of circumstances; and
- ▶ clarify roles, responsibilities, and authority with respect to the disciplinary process.

***Summary Status***

The Company has not satisfied this Recommendation.

The Company has not updated the Progressive Discipline and Performance Policy.

***Assessment of Work Completed***

As noted throughout this Report, the Monitor Team acknowledges the strain that the COVID-19 pandemic has imposed on the Company. But certain activities—such as updating written policies and procedures—could have been completed without a significant impact on resources.

### ***Follow-Up Recommendations***

The Monitor Team reissues this Recommendation and requests documentary evidence of completion by no later March 31, 2021.

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| <b>Baseline Assessment Recommendation I&amp;D 2</b> | By March 31, 2021, update the Progressive Discipline and Performance Policy as follows: <ul style="list-style-type: none"><li>▶ provide additional guidance on how to determine appropriate discipline based on a holistic evaluation of circumstances; and</li><li>▶ clarify roles, responsibilities, and authority with respect to the disciplinary process.</li></ul> |
|---|--|

### ***Additional Considerations/Further Testing***

The Monitor Team will review the updated Policy for compliance with this Recommendation. The Monitor Team is also available to review any drafts of the Policy prior to February 28, 2021.

### ***2. Additional Recommendations***

The Monitor Team recognizes that the COVID-19 pandemic has strained Company resources, both financial and as to personnel. In light of these circumstances, the Monitor Team does not expect the Company to roll out a new performance management program that includes incentives for compliant behavior in the coming months. At the same time, the Monitor Team has observed that upon the departure of the Executive Director – Performance Management, Compensation, and Benefits, who was previously driving the effort toward a performance management program, this initiative has ceased, with no concrete plans for moving it forward. For that reason, the Monitor Team specifically recommends that the Company drive this initiative forward by, first, assigning the responsibility for developing the program to an individual with oversight over both properties and, second, creating a work plan to action a performance management program.

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| <b>Phase II Report Recommendation I&amp;D 3</b> | Develop a plan for a performance management program that includes a recognition of compliant behavior by both managers and employees. Provide evidence that responsibility for development of the program has been assigned to an individual with oversight over both properties. |
|---|---|

## **H. Risk-Based Review**

Internal Audit has developed procedures for and carried out a comprehensive HRCR Risk Assessment (the “Risk Assessment”). The Risk Assessment complies with all of the core aspects of the Monitor Team’s recommendations, permitting the Monitor Team to focus on evaluating the consistent implementation of the Risk Assessment procedures in the future.

In the Baseline Assessment, the Monitor Team also recommended improvements to the Security Department’s risk assessment procedures. The Company has not yet complied with those

recommendations. The Monitor Team has therefore reissued its Baseline Assessment Recommendation in that respect.

## **1. Recommendations**

**Baseline Assessment Recommendation RBR 1:** Develop and document risk assessment procedures designed to identify HR risk factors across the Company’s gaming and hotel operations. The procedures should follow a bottom-up approach to ensure that the full scope of operational conditions is reviewed and considered.

### **Summary Status**

The Company has satisfied this Recommendation.

In September 2020, Internal Audit, at the direction of the Compliance Committee, conducted a comprehensive Risk Assessment. The result is a 40-page report that was submitted to the Compliance Committee on October 28, 2020 and to the Audit Committee on November 4, 2020.

The Risk Assessment states that it was designed to “[a]ssist Management in preparing an annual Assessment to properly identify, document, test, and report on the Company’s HRCP, including: . . . [i]dentification of HRCP Company risks and processes[,] . . . [and] in confirming the HRCP policies and procedures which mitigate compliance risk and provide employees with an understanding of workplace expectations.” The Risk Assessment states that it “is a living document which will be updated in conjunction with each evaluation period, prospectively.” Importantly, the document includes regulatory guidance consisting of applicable Federal, Massachusetts, and Nevada laws as well as guidance from the EEOC June 2016 Select Task Force on the Study of Harassment in the Workplace, and from the U.S Department of Justice June 2020 Evaluation of Corporate Compliance Programs.

The Risk Assessment sets forth the process that Internal Audit followed to prepare the initial HRCP Risk Assessment and which it will follow annually. The Risk Assessment reflects that Internal Audit applied both qualitative and quantitative principles to allocate each of the Company’s employee groups into high, medium, and low risk classifications. The quantitative assessment focused on HRCP-related incidents and allegations received by the Company as well as claims filed with the EEOC and its state equivalents. The quantitative assessment also reviewed panic button issues. Qualitatively, the Risk Assessment considered EEOC Task Force Risk Factors and conducted a “bottom-up” analysis of currently active employee categories and badged vendors. Internal Audit assigned judgment-based risk values—High, Medium, and Low—to each active category of employee within the Company and documented those ratings in a clear and detailed chart.

According to the Risk Assessment, the HRCP program elements that will be reviewed annually include:

- ▶ Culture of Compliance and Conduct at the Top;
- ▶ Policies and Procedures;
- ▶ Training and Guidance;
- ▶ Employee and Third-Party Relationships; and
- ▶ any other specific Testing.



Notably, the first four areas will be tested against EEOC guidance to employers. Testing procedures will also include recommendations provided in the Baseline Assessment. Testing will be risk-based and will include management certification, departmental self-evaluation, and internal audit testing. The Risk Assessment provides that any issues noted during testing will be evaluated and classified as being of High, Medium, or Low significance. The Risk Assessment further requires remediation of all issues identified through testing as well as reporting of those issues to the Compliance Committee and Audit Committee for review.

While the Compliance and Audit Committees have primary oversight of Internal Audit activities, the Risk Assessment calls for further support from Management through the creation of an HRCP Steering Committee. The proposed members of that Committee are:

- ▶ Wynn Resorts GC;
- ▶ EBH GC;
- ▶ EBH VP HR;
- ▶ Wynn Las Vegas GC;
- ▶ Wynn Las Vegas VP Security Investigations;
- ▶ Wynn Las Vegas Director ER; and
- ▶ Wynn Las Vegas VP HR.

#### ***Assessment of Work Completed***

The HRCP Risk Assessment submitted to the Monitor Team satisfies the Monitor Team's Recommendation in every respect. The Monitor Team commends the Company, and specifically Internal Audit, for its thoroughness in developing the procedures and the urgency demonstrated in executing the HRCP Risk Assessment itself.

Through the HRCP Risk Assessment, the Company has developed and formalized procedures specifically designed to identify HR risk factors across the Company's gaming and hotel operations at Wynn Resorts, EBH, and Wynn Las Vegas. Critically, while the procedures rely on EEOC risk factors and the Monitor Team's Baseline Assessment as a guide, the procedures take into account the Company's particularized risk profile through a combination of interviews conducted by the Internal Audit team and through the "bottom up" review of each active position at Wynn Resorts, EBH, and Wynn Las Vegas. Those risk ratings are clearly documented in the HRCP Risk Assessment work plan along with the quantitative and qualitative basis for each rating.

This exercise is crucial. As noted in our Baseline Assessment, a risk assessment must be the starting point for designing and evaluating an effective compliance program. The depth and detail provided in the HRCP Risk Assessment will facilitate the development of all other aspects of the HRCP and should be actively relied upon by all functions responsible for the HRCP's design, implementation, and on-going monitoring.

#### ***Follow-Up Recommendations***

None.

***Additional Considerations/Further Testing***

The Monitor Team will continue to evaluate the Company’s implementation of its Risk Assessment procedures as well as how the Company responds to and remediates issues identified during the HRCP Risk Assessment.

**Baseline Assessment Recommendation RBR 2:** Develop and document guidance on how risk mitigation strategies and controls will be documented and monitored.

***Summary Status***

The Company has satisfied this Recommendation.

As discussed above, the HRCP Risk Assessment includes guidance on how issues identified will be reported and remediated. The HRCP Risk Assessment also provides for the monitoring of the mitigation strategies and controls through the oversight provided not only by the Compliance and Audit Committees, but also through the HRCP Steering Committee.

***Assessment of Work Completed***

While the HRCP Risk Assessment does not include detailed guidance specifically on how risk mitigation strategies and controls will be documented and monitored, the HRCP Risk Assessment procedures described above establish a framework that, in the Monitor Team’s view, accomplishes the goals of this Recommendation. Critical to the Monitor Team’s assessment is the formalization of a procedure that integrates risk identification with remediation and reporting. Those elements in concert—and if implemented effectively—will establish a cycle of risk reviews that will necessarily ensure risks are captured, remediated, and monitored.

***Follow-Up Recommendations***

None.

***Additional Considerations/Further Testing***

None.

**Baseline Assessment Recommendation RBR 3:** Develop written guidance for personnel responsible for implementing the risk assessment procedures.

***Summary Status***

The Company has satisfied this Recommendation.

The HRCP Risk Assessment provides a clear and concise methodology for HRCP-focused risk assessments. Specifically, the HRCP Risk Assessment establishes the relevant documentation required to be reviewed and maintained and the level of testing required to be performed. It also provides guidance for the evaluation of issues identified.

***Assessment of Work Completed***

For the reasons described above, the Monitor Team is satisfied with the guidance provided in the HRCP Risk Assessment for personnel tasked with its implementation. An important factor considered by the Monitor Team is the level of skill and experience demonstrated by the Internal Audit personnel

with whom the Monitor Team has spoken, and the sophistication of the documentation received. In addition, the Monitor Team notes the level of care taken to embed regulatory guidance in the HRCP Risk Assessment itself. That context will be critical to assist Internal Audit personnel who may not have a high degree of familiarity with the Company's HRCP to understand the standards against which the HRCP program must be evaluated.

***Follow-Up Recommendations***

None.

***Additional Considerations/Further Testing***

The Monitor Team will request and review Internal Audit work papers used to perform the 2020 Risk Assessment and will request to attend a sample of risk assessment interviews in the next audit cycle.

**Baseline Assessment Recommendation RBR 4:** Develop internal reporting procedures to ensure that senior management, the Compliance Committee, and Audit Committee of the Board receive appropriate information regarding the results of the risk assessment.

***Summary Status***

The Company has satisfied this Recommendation.

As described in Baseline Assessment Recommendation RBR 1, the Risk Assessment requires that all issues identified through the Risk Assessment be reported to the HRCP Steering Committee and to the Compliance and Audit Committees.

***Assessment of Work Completed***

The Monitor Team considers reporting to the Compliance and Audit Committees to be appropriate escalation of issues identified through the HRCP Risk Assessment. Reporting to the HRCP Steering Committee provides an additional layer of oversight that will enhance the impact of the reporting given that members of that Committee are the functions responsible for the design and execution of the HRCP. In that way, the HRCP Risk Assessment establishes an organic process through which risks will be identified, reviewed, and remediated, which is emblematic of a maturing compliance program. The Monitor Team will be interested in the operation of the HRCP Steering Committee as it evolves.

***Follow-Up Recommendations***

None.

***Additional Considerations/Further Testing***

The Monitor Team will request and review reports made to the HRCP Steering Committee and to the Audit and Compliance Committees in order to assess the nature and quality of issues being escalated and oversight of the issues escalated.

**Baseline Assessment Recommendation RBR 5:** In the Company's existing Security Protocol, document the Security Department's risk assessment procedures for identifying conditions that could expose employees to physical harm, including sexual assault.

**Summary Status**

The Company has not satisfied this Recommendation.

The Monitor Team has not seen documentation reflecting the Security Department’s risk assessment procedures for identifying conditions that could expose employees to physical harm, including sexual assault.

**Assessment of Work Completed**

Based on interviews, the Monitor Team understands that the Security Department conducts physical risk assessments of the Wynn Resorts properties and that those assessments do take into consideration the risk of sexual assault. However, the Monitor Team has not seen documentation reflecting how those risk assessments are conducted and the criteria used to determine the nature and degree of risk identified. The Monitor Team has seen a tracker that reflects that these procedures are in the process of being developed and looks forward to receiving them.

**Follow-Up Recommendations**

In light of the fact that the Company has not satisfied the Recommendation, the Monitor Team will reissue the original Recommendation. In acknowledgement of the extraordinary pressure that the Security Department is under as a result of the pandemic, we will recommend completion of this Recommendation by June 30, 2021.

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| <b>Baseline Assessment Recommendation RBR 5</b> | In the Company’s existing Security Protocol, document the Security Department’s risk assessment procedures for identifying conditions that could expose employees to physical harm, including sexual assault. Provide the Monitor Team documentation reflecting the updated Security protocol by June 30, 2021. |
|---|---|

**Additional Considerations/Further Testing**

The Monitor Team will review and evaluate the Security Department risk assessment procedures and interview Security personnel as appropriate.

**Baseline Assessment Recommendation RBR 6:** Review the risk assessment procedures of Internal Audit and evaluate whether and how they can be leveraged to help the Company identify risk factors affecting the effectiveness of the HRCP, especially as it relates to harassment and discrimination based on protected classifications.

**Summary Status**

The Company has satisfied this Recommendation.

The HRCP Risk Assessment provided to the Monitor Team was developed entirely by Internal Audit and relies on Internal Audit personnel for its implementation.

**Assessment of Work Completed**

The HRCP Risk Assessment procedures developed by the Company comply not only with the specific requirements of Baseline Assessment Recommendation RBR 6, but also with the principles

underlying that Recommendation. The Monitor Team commends the Company for its attention and effort in this regard and looks forward to continuing to review the implementation of the HRCP Risk Assessment in future cycles.

***Follow-Up Recommendations***

None.

***Additional Considerations/Further Testing***

None.

**I. Monitoring and Testing**

The Company has made limited progress in its development of monitoring and testing of core elements of the HRCP. The Company continues active monitoring of sexual harassment and discrimination allegations through reports submitted to the GC and considers that level of review to be appropriate for the time being. Upon further reflection, the Monitor Team agrees with that assessment. Importantly, the Company will be streamlining and enhancing its reporting with the implementation of a new channel that will also facilitate analysis of aggregated data and trends. The Company will still need to develop monitoring and testing of aspects of the program beyond investigations.

***1. Recommendations***

**Baseline Assessment Recommendation M&T 1:** Consider approaches to streamlining, including through automated reporting tools, the escalation of sexual harassment claims to the GC.

***Summary Status***

The Company has satisfied this Recommendation.

The Company has evaluated the escalation of sexual harassment claims to the Wynn Resorts GC and determined that the current practice of escalation is appropriate given the importance of these issues and the volume of cases. As noted in Baseline Assessment Recommendation PAOI 3, the Company is in the process of implementing a new internal reporting system that is expected to alleviate the workload of the personnel tasked with preparing the weekly and quarterly reports.

***Assessment of Work Completed***

The Monitor Team appreciates the care taken by the Company to re-evaluate its practice of escalating all sexual harassment claims to the GC. The Monitor Team encourages the Company to continue proactively monitoring sexual harassment and discrimination cases and to periodically evaluate the effectiveness and sustainability of its practices.

***Follow-Up Recommendations***

None.

***Additional Considerations/Further Testing***

The Monitor Team will continue to evaluate the Company's approach to monitoring sexual harassment and discrimination allegations, including the use of the new internal reporting tool.

**Baseline Assessment Recommendation M&T 2:** Develop a monitoring protocol that will facilitate identification of data and trends that could signal opportunities to improve specific aspects of its HRCP. The protocol should include a process for periodic root-cause analysis of the data and trends identified through monitoring and for applying those analyses to propel improvements in its HRCP.

### ***Summary Status***

The Company has not satisfied this Recommendation.

The Monitoring Team has not seen a protocol or other documentation reflecting how the Company will evaluate data and trends to improve specific aspects of its HRCP. The Monitor Team understands that the Company is awaiting implementation of its new internal reporting system, which will facilitate identification of data and trends that the Company can rely on to conduct periodic root-cause analyses of the type contemplated in this Recommendation.

### ***Assessment of Work Completed***

The Monitor Team agrees that the Company's new internal reporting system will be instrumental in facilitating the review of data and trends necessary for the Company to engage in ongoing assessment and continuous improvement of its HRCP and agrees that the Company should wait for that system to be in place to develop a monitoring protocol. However, the new internal reporting system will only provide data and trends related to issues arising through internal investigations. While investigations data is crucial, the Company also has other data points that warrant analysis. For instance, in this Phase II review period, the Monitor Team reviewed data available through the Company's Security Incident management system. That system houses all incidents and investigations in which Security is involved and contains data critical to the HRCP. Similarly, as noted in Section E, Training and Guidance, testing and monitoring the effectiveness of HRCP-related trainings is also important. We raise these specific areas by way of example only. It will be incumbent upon the Company to identify sources of data available at the Company that will allow for timely and effective monitoring and testing of HRCP-related policies, controls, and transactions. These monitoring and testing activities should be owned by the functions responsible for the design and implementation of the HRCP, namely HR, Legal, and Compliance.

As discussed in Baseline Assessment Recommendation RBR 1 above, based on our review of the Company's Risk Assessment, the Monitor Team understands that the Company will be forming an HRCP Steering Committee "[t]o provide further oversight and support to the Company's compliance efforts." According to the Risk Assessment, the HRCP Steering Committee's responsibilities will include "evaluating the relevant Company HRCP assessment methodology, monitoring the established compliance strategy and timeline, assisting in the implementation of compliance procedures, and working with all parties to ensure complete and timely reporting of assessment evaluations to the Compliance and Audit Committees." The HRCP Steering Committee, with its composition and scope, provides a helpful avenue for the type of monitoring and testing activities contemplated in this Recommendation. Indeed, the Risk Assessment procedures contemplate that the HRCP Steering Committee or identified Departmental Management "will conduct agreed upon testing (work-program provided by Internal Audit) for the period under review." This type of self-assessment aligns with the monitoring and testing activities contemplated in this Recommendation and can serve the dual purpose of conducting on-going monitoring and testing of program elements and through that exercise identifying risks and issues of relevance to the self-assessments required by Internal Audit. We note that as of the writing of this Phase II Report, the HRCP Steering Committee had not yet met, and certain members had not been notified of their anticipated participation. The Monitor Team encourages the

Company to launch the HRCP Steering Committee so that it may begin to develop and engage in its own monitoring and testing activities.

***Follow-Up Recommendations***

In light of the pending implementation of the new internal reporting system and the fact that key HRCP-related roles have only recently been filled or remain open, the Monitor Team recommends that the Company begin implementation of this Recommendation within three months of roll-out of the new internal reporting system. The Monitor Team encourages the Company to use that time to identify other data sources and how it will use its data to monitor and test other aspects of the HRCP.

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| <p><b>Baseline Assessment Recommendation M&amp;T 2</b></p> | <p>Within three months of the launch of the new internal reporting system, develop a monitoring protocol that will facilitate identification of data and trends that could signal opportunities to improve specific aspects of its HRCP. The protocol should include a process for periodic root-cause analysis of the data and trends identified through monitoring and for applying those analyses to propel improvements in its HRCP.</p> |
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***Additional Considerations/Further Testing***

The Monitor Team will review the Company’s monitoring protocol as well as the Company’s implementation and use of that protocol, including how it uses the results of its monitoring exercises to build upon its existing program.

**Baseline Assessment Recommendation M&T 3:** Engage in separate, targeted surveys or focus groups to test the effectiveness of the substantive elements of the HRCP.

***Summary Status***

The Company has not satisfied this Recommendation.

Due to COVID-19 restrictions and delays in implementation of certain Recommendations, the Company has not conducted focus groups or surveys.

***Assessment of Work Completed***

As discussed in sections D, Third Party Relationships and E, Training and Guidance, given the challenges imposed by COVID-19 restrictions and due to the delay of certain other recommendations, the Company has not conducted focus groups or surveys. The Monitor Team considers periodic surveys and focus groups to be an effective way to test elements of the HRCP that most directly affect employees and encourages the Company to initiate this aspect of its testing as soon as practicable.

***Follow-Up Recommendations***

In light of the fact that core elements of the HRCP remain under development, the Monitor Team recommends an extension to compliance with Baseline Assessment Recommendation M&T 3.

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| <p><b>Baseline Assessment Recommendation M&amp;T 3</b></p> | <p>By June 30, 2021, engage in separate, targeted surveys or focus groups to test the effectiveness of the substantive elements of the HRCP.</p> |
|--|--|

***Additional Considerations/Further Testing***

The Monitor Team will review the Company’s plans to conduct focus groups as well as the implementation of those plans. The Monitor Team will be particularly interested in focus group results and in the Company’s response to those results.

**J. Controls Environment**

In this section, we discuss the Company’s efforts to enhance its control environment in connection to the review and approval of settlement agreements. Overall, the Company has not fully satisfied the Baseline Assessment Recommendations and will need to continue its efforts in this regard. In addition, the Monitor Team reviewed settlement and separation agreements entered into by the Company to evaluate whether the Company is using overly restrictive confidentiality provisions or mandatory arbitration provisions. As will be discussed below, the Monitor Team considers the terms in settlement and separation to be appropriate and not overly restrictive.

The Monitor Team also reviewed the Company’s standard employment agreements in which we observed the continued use of mandatory and binding arbitration provisions. We discuss the use of those provisions and our Recommendations in Section J.2 below.

***1. Recommendations***

**Baseline Assessment Recommendation CE 1:** Develop policies and procedures for the initiation, review, and approval of settlements related to claims of harassment and discrimination. Those policies and procedures should:

- ▶ include appropriate segregation of duties; and,
- ▶ contemplate and apply to the settlement of claims both *before* and *after* initiation of formal legal proceedings, as well as separations with employees who have made allegations of harassment or discrimination.

***Summary Status***

The Company has not fully satisfied this Recommendation.

The Company has not developed a policy or procedure for the initiation, review, and approval of settlements related to claims of harassment and discrimination. Rather, in the October 2020 Legal Memo (as discussed under Baseline Assessment Recommendations TP 9 and TP 11), the Wynn Resorts GC instructs SVPs and above that “all legal settlements must be approved by the General Counsel of the affiliate entering the settlement.” The memorandum further instructs that “[l]egal settlements of claims for harassment or discrimination must also be approved by the General Counsel of Wynn Resorts.” Additionally, any settlement amount that exceeds the monetary authority of the affiliate GC must be approved by the Wynn Resorts GC or the President of Wynn Resorts. Finally, the memorandum clarifies that “the term ‘legal settlement’ includes the settlement of claims both before and after initiation of formal legal proceedings, as well as allegations resolved in connection with employee separations.”



***Assessment of Work Completed***

The Company’s efforts to comply with Baseline Assessment Recommendation CE 1 suffer from similar deficiencies as those discussed in the context of Baseline Assessment Recommendations TP 9 and TP 11. Specifically, guidance related to a core risk area identified by the MGC has been communicated to employees by memorandum and not formally integrated into the Company’s control environment in the form of a policy or procedure. A Company’s control environment is defined through formal policies and procedures, not through ad hoc communications or instructions. As discussed above, a memorandum does not have equal authority to a formal policy or procedure and, although it can inform employees of certain desired protocols, is inadequate to mitigate the risk that the events set forth in the MGC Decision and Order could recur.

The MGC’s Decision and Order found that in 2005, 2006, and 2008 Senior Executives at Wynn Resorts facilitated (directly or indirectly) the negotiation of settlements with then-current and former female employees who alleged sexual misconduct by the Company’s founder and now former CEO. The 2005 and 2008 settlement payments were made with corporate funds. During the Baseline Assessment, the Monitor Team noted a lack of controls over the review and authorization of settlement agreements and settlement amounts and designed Baseline Assessment Recommendation CE 1 to help the Company address that gap. Without a formal procedure, the risk identified by the MGC and by the Monitor Team remains unaddressed.

***Follow-Up Recommendations***

Because Baseline Assessment Recommendation CE 1 remains incomplete, the Monitor Team reissues the same Recommendation here. The Monitor Team has also added a deadline for completion of this Recommendation.

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| <p><b>Baseline Assessment Recommendation CE 1</b></p> | <p>By April 30, 2021, develop and disseminate policies and procedures for the initiation, review, and approval of settlements related to claims of harassment and discrimination. Those policies and procedures should:</p> <ul style="list-style-type: none"><li>▶ include appropriate segregation of duties; and</li><li>▶ contemplate and apply to the settlement of claims both <i>before</i> and <i>after</i> initiation of formal legal proceedings, as well as separations with employees who have made allegations of harassment or discrimination.</li></ul> |
|---|---|

***Additional Considerations/Further Testing***

The Monitor Team will review the formalized policy and procedures related to settlement agreements and will continue to test the application of the same.

**Baseline Assessment Recommendation CE 2:** Update the Purchasing Authorization Matrix as follows:

- ▶ to incorporate legal settlements and employee separations;
- ▶ to require dual approval of harassment and discrimination settlements; and
- ▶ to include the GC of EBH.

**Summary Status**

The Company has not satisfied this Recommendation, but has presented the Monitor Team documentation that partially satisfies the objectives set forth in this Recommendation.

The Company provided the Monitor Team with Contract Approval Policy and Procedure dated April 13, 2016 (as amended). That document serves as a delegation of authority for the approval of contracts on behalf of Wynn Resorts and any of its subsidiaries. The document states that “[o]nly authorized officers may enter into a contract on behalf of [Wynn Resorts] or any subsidiaries, and only after the contract has been reviewed by authorized executive(s) and the Company or subsidiary legal department.” The document then defines the officers (by title) authorized to execute agreements on the Company’s behalf based on “Expenditure Thresholds.” [REDACTED]

[REDACTED] The Contract Approval Policy and Procedure applies to all “contractual agreements,” [REDACTED]

**Assessment of Work Completed**

The goal of Baseline Assessment Recommendation CE 2 is to ensure that the Company appropriately documents controls related to the approval of legal settlements and employee settlements in order to mitigate the risk that such agreements are executed outside of management authority. Baseline Assessment Recommendation CE 2 also seeks to ensure sustainability of controls as well as their auditability.

The Contract Approval Policy and Procedure aligns with that objective to the extent that it establishes clear procedures for the approval of all agreements—which is understood to include legal settlements—by designated officers based on expenditure threshold. It also satisfies the requirement for documentation of approval levels granted to the GC of EBH. However, the Policy does not satisfy the requirement for the dual approval of harassment and discrimination settlements, [REDACTED]. While expenditure threshold is a reasonable criteria for determining the level of review to which an agreement should be subject, it is also important to take into account other risk factors, especially when those risk factors have materialized in the past. In this case, the Monitor Team considers it appropriate for sexual harassment and discrimination settlement agreements involving members of senior management or officers to be subject to heightened scrutiny regardless of threshold amount (i.e., dual approval by Wynn Resorts officers or the Audit Committee, as appropriate).

**Follow-Up Recommendations**

Because the Company has not incorporated the controls from Baseline Assessment Recommendation CE 2, we are reissuing that recommendation. In addition, we are recommending that the Company clarify the scope of the Purchasing Authorization Matrix.

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| <p><b>Phase II Report</b><br/><b>Recommendation CE 1</b></p> | <p>By March 31, 2021, update the Contract Approval Policy and Procedure to require dual approval of sexual harassment and discrimination settlements involving officers and senior management at Wynn Resorts, Wynn Las Vegas, and EBH.</p> |
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***Additional Considerations/Further Testing***

The Monitor Team will review the updated documentation and will test its implementation through ongoing review of settlements and employee separations.

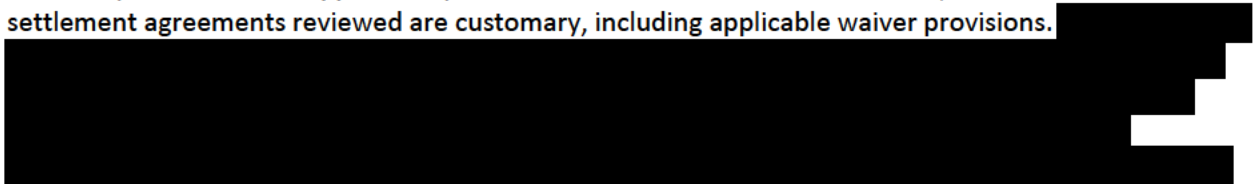
Additionally, the Monitor Team notes that as the Company formalizes the October 2020 Legal Memo into a Legal policy, it should ensure that the new policy is not in conflict with the Contract Approval Policy and Procedure and that the two documents cross reference each other as appropriate.

***2. Additional Observations***

As part of our testing activities, the Monitor Team reviewed settlement and separation agreements entered into by the Company, including settlements related to sexual harassment and discrimination. The scope of our review focused on: (1) the nature of the claim settled; (2) the terms of the settlement, including whether such terms included retractions, mandatory arbitration provisions, gag orders, confidentiality provisions, or non-disparagement provisions; (3) settlement amounts; and (4) evidence of internal review and approval by authorized personnel. We also included template employment agreements in our review, as those had not been examined in our Baseline Assessment.

***Settlement Agreements***

The Monitor Team reviewed two settlement agreements involving claims of sexual harassment and one settlement agreement related to disability discrimination. The settlements related to claims of sexual harassment were entered into in August 2019 and in November 2019 and were executed by the EBH GC. The settlement agreement related to disability discrimination and retaliation was entered into in January 2021 and also approved by the EBH GC. In the Monitor Team’s view, the terms of the settlement agreements reviewed are customary, including applicable waiver provisions.



The Monitor Team has an open and ongoing request to the Company for information on any future settlements related to harassment and discrimination at both EBH, Wynn Resorts, and Wynn Las Vegas and will continue to monitor such settlements as they arise.

***Separation Agreements***

The Monitor Team reviewed separation agreements entered into at both properties. As with the settlement agreements, in the Monitor Team’s view, the confidentiality terms of the Company’s employment and separation agreements are customary and do not include inappropriately restrictive provisions. Indeed, in the case of separation agreements, the standard confidentiality provision includes a carveout stating in relevant part that:



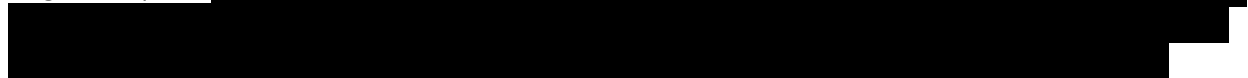
These provisions are important to help mitigate the risk that separation agreements be used as tools to silence employees.



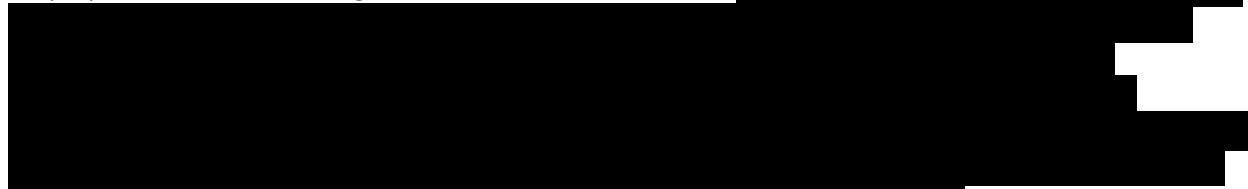
*Employment Agreements*

The Monitor Team reviewed template employment agreements used at EBH, Wynn Resorts and Wynn Las Vegas. The employment agreements include standard and customary provisions and do not include provisions that in the Monitor Team’s view would have the effect of gagging or chilling employees from bringing claims of harassment or discrimination. We note, however, that all three template agreements include a mandatory and binding arbitration provision. Given the MGC’s explicit request that the Monitor Team evaluate the use of such provisions, we discuss them in detail here.

The arbitration provisions in each template agreement—EBH, Wynn Resorts, and Wynn Las Vegas—require “



That provision could have the effect of mandating arbitration for a wide variety of employment claims, including discrimination and retaliation.



The Monitor Team recommends that the Company review the Wynn Resorts and Wynn Las Vegas employment agreement template to clarify its intent that discrimination and harassment claims are excluded from the mandatory and binding arbitration provision.

The Monitor Team also recommends changes to the arbitration provision contained in the EBH employment agreement. Unlike for Wynn Resorts and Wynn Las Vegas, the EBH template does not explicitly exclude claims related to harassment or discrimination. The EBH agreement template states

that "[REDACTED]" would be subject to mandatory and binding arbitration. For completeness, below is the relevant portion of the EBH exclusion:

[REDACTED]

For consistency, the Monitor Team recommends that the Company align the EBH arbitration provision with that of the Wynn Resorts and Wynn Las Vegas provisions.

***Follow-Up Recommendations***

Given the MGC's focus on the use of mandatory and binding arbitration provisions and the Company's history with respect to issues of sexual harassment and discrimination, we recommend that the Company adopt arbitration provisions that explicitly exclude claims related to harassment, discrimination, and retaliation.

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| <b>Phase II Report<br/>Recommendation CE 2</b> | By April 30, 2021, revise separation agreement standards at Wynn Resorts, Wynn Las Vegas, and EBH to explicitly exclude sexual harassment, discrimination, and retaliation from mandatory arbitration. |
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## IV. Follow-up Report Recommendations

### A. Culture of Compliance and Conduct at the Top

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| <p><b>Phase II Report<br/>Recommendation CCCT 1</b></p> | <p>By March 31, 2021, complete Baseline Assessment Recommendation CCCT 1, enhance the EBH communications plan and develop corporate and Wynn Las Vegas communications plans designed to promote significant HRCP knowledge, compliance, and culture throughout the organization. These should be written plans that are periodically internally reviewed and updated by the Company. The plans should involve communication about HRCP matters coming from various levels of leadership and address the risk areas discussed in the Baseline Assessment, this Report, as well as those that emerge from the Company’s Legal and HR functions based on their monitoring of HRCP issues, and from Internal Audit’s HRCP review.</p> |
| <p><b>Phase II Report<br/>Recommendation CCCT 2</b></p> | <p>In future HRCP-related trainings of the Compliance Committee, Board of Directors, and senior Wynn Resorts and Wynn Las Vegas personnel with oversight of HRCP-related functions at EBH, include training on relevant Massachusetts-specific HR considerations.</p>   |

### B. Proper Authority, Oversight, and Independence

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| <p><b>Phase II Report<br/>Recommendation PAOI 1</b></p>     | <p>By March 31, 2021, complete Baseline Assessment Recommendation PAOI 1, the Company should conduct a self-evaluation of the roles and responsibilities of Compliance, Legal, and HR as related to HRCP with participation from each of those functions and memorialize the delineation of responsibilities.</p> <p>In doing so, the Company should give particular consideration to the responsibilities of the CGCO with respect to the HRCP.</p> |
| <p><b>Baseline Assessment<br/>Recommendation PAOI 2</b></p> | <p>By June 30, 2021, the Company should add a member to the Compliance Committee who has substantive and substantial HR expertise.</p>   |
| <p><b>Phase II Report<br/>Recommendation PAOI 2</b></p>     | <p>In consultation with the Monitor Team regarding timing, conduct an evaluation of the resourcing and skill sets of relevant functions, including HR, at EBH.</p>   |

### C. Policies and Procedures

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| <p><b>Phase II Report<br/>Recommendation P&amp;P 1</b></p>     | <p>By March 31, 2021, the Company should amend the Preventing Harassment and Discrimination Policy to:</p> <ul style="list-style-type: none"> <li>▶ include a cross-reference to the Company’s Social Media Policy; and</li> <li>▶ include pregnancy-related conditions as a protected characteristic.</li> </ul> <p>Within four weeks following the launch of the new reporting line, include references to the Company’s new reporting platform, once implemented.</p>  |
| <p><b>Baseline Assessment<br/>Recommendation P&amp;P 2</b></p> | <p>Within four weeks of the launch of the new reporting line, the Company should engage in proactive messaging to employees at both properties regarding the new reporting line and the ability that it provides to make confidential reports.</p> <p>[This can be done in connection with Baseline Assessment Recommendation IRI 1 and Baseline Assessment Recommendation IRI 3.]</p>  |
| <p><b>Baseline Assessment<br/>Recommendation P&amp;P 3</b></p> | <p>Develop and issue the following policies and incorporate references to them throughout the HRCP as appropriate:</p> <ul style="list-style-type: none"> <li>▶ disability accommodations;</li> <li>▶ religious accommodations; and</li> <li>▶ pregnancy discrimination, harassment, and accommodation.</li> </ul>  |
| <p><b>Phase II Report<br/>Recommendation P&amp;P 2</b></p>     | <p>Enhance the Code of Business Conduct and Ethics to encourage employee engagement and awareness, including by improving visual design and readability.</p>  |
| <p><b>Baseline Assessment<br/>Recommendation P&amp;P 5</b></p> | <p>By November 30, 2021, review Code of Personal Conduct to identify the core behaviors that are most fundamental to the Company and relaunch the new Code of Personal Conduct to drive awareness and communication around compliance.</p>  |
| <p><b>Baseline Assessment<br/>Recommendation P&amp;P 6</b></p> | <p>By February 28, 2021, update the Personal Relationships Policy as follows:</p> <ul style="list-style-type: none"> <li>▶ include a straightforward statement at the outset that addresses the risks a personal relationship poses to the Company and why Company intervention is important;</li> <li>▶ clarify that even where there is consent, or the appearance of consent, consent is fluid and can be revoked by either party at any time, and consequently, issues relating to conflict of interest, sexual harassment, or violations of the Code of Business Conduct may still arise; and</li> </ul> |

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|   | <ul style="list-style-type: none"> <li>▶ implement a process to review department-specific policies before they are made available on <i>The Wire</i>.</li> </ul>   |
| <p><b>Phase II Report Recommendation P&amp;P 3</b></p>      | <p>By March 31, 2021, update the Personal Presentation Policy to:</p> <ul style="list-style-type: none"> <li>▶ ensure it is consistent with federal and state harassment and discrimination laws;</li> <li>▶ include a cross-reference to the Company’s religious accommodation policy and guidance to help employees understand that it will provide reasonable accommodation to employees and provide channels for requesting an accommodation;</li> <li>▶ provide additional examples and/or guidance to subjective terms regarding hair and grooming requirements; and</li> <li>▶ implement a process to review department-specific personal presentation policies before they are enforced.</li> </ul> |
| <p><b>Phase II Report Recommendation P&amp;P 4</b></p>      | <p>Make department-specific polices available and accessible to employees to whom they apply.</p>   |
| <p><b>Baseline Assessment Recommendation P&amp;P 9</b></p>  | <p>By March 31, 2021, in the Employee Patronization Policy, clarify from whom employees should seek authorization and under what circumstances patronization of the pool and health spa are authorized.</p>   |
| <p><b>Baseline Assessment Recommendation P&amp;P 10</b></p> | <p>By March 31, 2021, update the Company Policy Review to include:</p> <ul style="list-style-type: none"> <li>▶ a stated purpose for the policy;</li> <li>▶ a section that defines “policy,” “procedure,” and other keywords;</li> <li>▶ define a process for leveraging the knowledge of relevant departments and subject matter experts when developing and reviewing policies;</li> <li>▶ define a process for policy development and policy review;</li> <li>▶ a standard format for all Company policies;</li> <li>▶ a comprehensive list of all Company policies and procedures; and</li> <li>▶ incorporate a downstream compliance process for training, monitoring, and audit.</li> </ul>           |
| <p><b>Baseline Assessment Recommendation P&amp;P 11</b></p> | <p>By March 31, 2021, adopt a comprehensive communications strategy to disseminate the Preventing Harassment and Discrimination Policy and other equally important policies and procedures. This strategy may be folded into the communication campaigns already in development at both properties.</p>   |



#### D. Third Party Relationships

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| <b>Phase II Report<br/>Recommendation TP 1</b>     | By March 31, 2021, incorporate the Monitor Team observations described above and in the Monitor Team comments to the draft Employee Interaction with Guests Policy.   |
| <b>Phase II Report<br/>Recommendation TP 2</b>     | By March 31, 2021, develop manager and supervisor training regarding the Employee Interaction with Guests Policy.   |
| <b>Phase II Report<br/>Recommendation TP 3</b>     | By March 31, 2021, develop a training roll-out plan for the Employee Interaction with Guests Policy. Training should be completed by July 31, 2021.   |
| <b>Phase II Report<br/>Recommendation TP 4</b>     | By March 31, 2021, ensure alignment between the Employee Interaction with Guests Policy and Security Trespass guidance.   |
| <b>Baseline Assessment<br/>Recommendation TP 2</b> | By March 31, 2021, develop a communication strategy for 2021 that is designed to reinforce messaging regarding the Company's expectation that employees report offending conduct by Patrons.  |
| <b>Baseline Assessment<br/>Recommendation TP 3</b> | By April 30, 2021, develop a plan to track and monitor data collected from investigations of offending Patrons.   |
| <b>Phase II Report<br/>Recommendation TP 5</b>     | By March 31, 2021, submit to the Monitor Team a plan and schedule for conducting culture surveys and focus groups (COVID-19 restrictions permitting) to assess employee experience and perceptions regarding the Company's response to reports of offending conduct.  |
| <b>Phase II Report<br/>Recommendation TP 6</b>     | By September 30, 2021, conduct culture survey and focus groups (COVID-19 restrictions permitting) to assess employee experience and perceptions regarding the Company's response to reports of offending conduct and submit results to the Monitor Team.              |
| <b>Baseline Assessment<br/>Recommendation TP 5</b> | By March 31, 2021, develop and submit to the Monitor Team a plan to communicate standards of behavior to Patrons of EBH and Wynn Las Vegas.   |
| <b>Baseline Assessment<br/>Recommendation TP 8</b> | By March 31, 2021, revise the Deconflicting Policy to explicitly prohibit external counsel from dually representing Wynn Resorts personnel, including executives and Board members and the Company, unless such representation is approved by the Company in writing. |
| <b>Phase II Report<br/>Recommendation TP 7</b>     | Within 30 days of revising the Deconflicting Policy, disseminate the revised Policy to existing external counsel, and Wynn executives and Board members and submit documentary evidence of the same to the Monitor Team.  |

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| <p><b>Phase II Report<br/>Recommendation TP 8</b></p>      | <p>By March 31, 2021, issue a formal policy that (1) memorializes the procedures set forth in the October 5, 2020 memorandum on the “Retention of Outside Counsel and Approval of Legal Settlements”; and (2) applies to requests by Company personnel for individual representation by Company outside counsel.</p>  |
| <p><b>Phase II Report<br/>Recommendation TP 9</b></p>      | <p>Ensure that the policy on “Retention of Outside Counsel and Approval of Legal Settlements” is housed in the applicable department-specific portal.</p>   |
| <p><b>Baseline Assessment<br/>Recommendation TP 10</b></p> | <p>By March 31, 2021, communicate Company procedures for requests by Company personnel for individual representation by Company outside counsel. The Communication should be disseminated in writing internally and to external counsel. The communication should be designed to ensure that external counsel, officers, and directors of the Company are aware of the risks associated with dual representation.</p> |

**E. Training and Guidance**

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| <p><b>Phase II Report<br/>Recommendation T&amp;G 1</b></p>     | <p>In future harassment and discrimination trainings for individuals who have roles related to EBH, include training on relevant Massachusetts-specific HR considerations. [This Recommendation satisfies Phase II Report Recommendation CCCT 2.]</p>   |
| <p><b>Baseline Assessment<br/>Recommendation T&amp;G 3</b></p> | <p>By April 30, 2021, incorporate the following topics into trainings for managers and supervisors:</p> <ul style="list-style-type: none"> <li>▶ intake and escalation of employee complaints;</li> <li>▶ the Personal Relationships Policy, including reporting obligations;</li> <li>▶ social media, including as a potential platform for harassment;</li> <li>▶ the risks of alcohol usage in the workplace;</li> <li>▶ the impact and limitations of off-duty conduct, and</li> <li>▶ how to appropriately process and escalate both formal complaints concerning discrimination and harassment and problematic behaviors they have observed or of which they have been made aware.</li> </ul> |
| <p><b>Baseline Assessment<br/>Recommendation T&amp;G 4</b></p> | <p>By March 31, 2021, develop a training plan for ER that includes, at a minimum, annual trainings on all HR subject matter policies and procedures for which ER is responsible and submit documentary evidence of the plan to the Monitor Team.</p>  |

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| <b>Phase II Report<br/>Recommendation T&amp;G 2</b>     | Continue to develop short, tailored trainings that address gaps in knowledge in position-specific realities.  |
| <b>Phase II Report<br/>Recommendation T&amp;G 3</b>     | Develop additional diversity and inclusion training as part of the formal training program.   |
| <b>Phase II Report<br/>Recommendation T&amp;G 4</b>     | Update future Security Academy training to specifically cover harassment and discrimination.  |
| <b>Baseline Assessment<br/>Recommendation T&amp;G 6</b> | Continue to leverage existing communications channels, like pre-shifts, to regularly reinforce messages from trainings.                               |
| <b>Baseline Assessment<br/>Recommendation T&amp;G 7</b> | By April 30, 2021, develop procedures to periodically test and measure the effectiveness of trainings and incorporate feedback into future trainings. |

**F. Internal Reporting and Investigation**

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| <b>Baseline Assessment<br/>Recommendation IRI 1</b> | <p>By April 30, 2021, launch a communication campaign through which senior management at the Wynn Resorts and property levels communicate support for a speak-up culture. While the campaign may be timed with the launch of the Company’s new reporting channel, the lack of a new reporting channel should not delay the start of the campaign.</p> <p>[This can be done in connection with Baseline Assessment Recommendation IRI 3 and Baseline Assessment Recommendation P&amp;P 2.]</p> |
| <b>Baseline Assessment<br/>Recommendation IRI 2</b> | <p>Within two weeks of the launch of the new reporting channel, provide documentary evidence to the Monitor Team that the new reporting channel permits multilingual reporting options to facilitate reports by employees with proficiency in languages other than English.</p>   |
| <b>Baseline Assessment<br/>Recommendation IRI 3</b> | <p>Within two weeks of the launch of the new reporting channel, launch a campaign to promote the new reporting channel, including, for example, posters, table-top messages, computerized messages on TV screens, and pre-shift communications.</p> <p>[This can be done in connection with Baseline Assessment Recommendation IRI 1 and Baseline Assessment Recommendation P&amp;P 2.]</p>   |
| <b>Phase II Report<br/>Recommendation IRI 1</b>     | <p>By February 28, 2021, provide a proposal to extend ER availability to cover the current gaps in the ER on-site schedule.</p>   |
| <b>Phase II Report<br/>Recommendation IRI 2</b>     | <p>By March 31, 2021, inform employees about the in-person ER schedule, including any variations or flexible availability outside of</p>  |

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|   | business hours, ER availability outside of business hours (including remote access), and about any subsequent changes to the schedule.  |
| <b>Baseline Assessment Recommendation IRI 5</b> | <p>By March 31, 2021, update the Investigations Policy to include clearly defined intake and routing protocols. Those procedures should include the following elements:</p> <ul style="list-style-type: none"> <li>▶ designation of personnel authorized to receive reports routed through the Company’s reporting channels, including their role and responsibility in the intake process;</li> <li>▶ objective criteria to help intake-personnel scope the issues presented and route the complaint to the appropriate personnel for response and potential investigation;</li> <li>▶ guidance and procedures to wall off from an investigation anyone who is either the subject of an allegation, or may have a conflict that could jeopardize the objectivity of the investigation;</li> <li>▶ clearly defined guidelines for the intake, routing, and response to complaints against management and senior leadership;</li> <li>▶ substantive guidance for each of the investigative steps enumerated in the Policy; and</li> <li>▶ guidance on measures that should be taken to protect confidentiality in investigations, including guidance with respect to what information may and may not be shared with employees in an investigation.</li> </ul> |
| <b>Phase II Report Recommendation IRI 3</b>     | <p>By March 31, 2021, update the Investigations Policy to include the following additional elements:</p> <ul style="list-style-type: none"> <li>▶ clearly defined guidelines for the retention of electronic data and collection of electronic devices during the course of an investigation; and</li> <li>▶ objective criteria regarding the classification of allegations.</li> </ul>   |
| <b>Baseline Assessment Recommendation IRI 6</b> | By May 15, 2021, develop and conduct mandatory training on updated investigations policy for all personnel authorized to conduct investigations.  |
| <b>Baseline Assessment Recommendation IRI 7</b> | By four weeks following the launch of the new reporting channel, provide documentary evidence to the Monitor Team that HR policies include updated language regarding the Company’s reporting channels to ensure consistency across policies.   |
| <b>Phase II Report Recommendation IRI 4</b>     | By May 15, 2021, provide evidence of a schedule of or plan for annual training for all employees responsible for conducting investigations.   |

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| <b>Phase II Report<br/>Recommendation IRI 5</b> | Provide evidence that Corporate Security has defined and standardized the classification of incidents related to harassment and discrimination. |
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### G. Incentives and Discipline

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| <b>Baseline Assessment<br/>Recommendation I&amp;D 1</b> | By March 31, 2021, explicitly integrate standards of behavior related to compliance in its “Employee of the Month” programs.  |
| <b>Baseline Assessment<br/>Recommendation I&amp;D 2</b> | By March 31, 2021, update the Progressive Discipline and Performance Policy as follows: <ul style="list-style-type: none"> <li>▶ provide additional guidance on how to determine appropriate discipline based on a holistic evaluation of circumstances; and</li> <li>▶ clarify roles, responsibilities, and authority with respect to the disciplinary process.</li> </ul> |
| <b>Phase II Report<br/>Recommendation I&amp;D 3</b>     | Develop a plan for a performance management program that includes a recognition of compliant behavior by both managers and employees. Provide evidence that responsibility for development of the program has been assigned to an individual with oversight over both properties.   |

### H. Risk-Based Review

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| <b>Baseline Assessment<br/>Recommendation RBR 5</b> | In the Company’s existing Security Protocol, document the Security Department’s risk assessment procedures for identifying conditions that could expose employees to physical harm, including sexual assault. Provide the Monitor Team documentation reflecting the updated Security protocol by June 30, 2021. |
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### I. Monitoring and Testing

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| <b>Baseline Assessment<br/>Recommendation M&amp;T 2</b> | Within three months of the launch of the new internal reporting system, develop a monitoring protocol that will facilitate identification of data and trends that could signal opportunities to improve specific aspects of its HRCP. The protocol should include a process for periodic root-cause analysis of the data and trends identified through monitoring and for applying those analyses to propel improvements in its HRCP. |
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| <p><b>Baseline Assessment<br/>Recommendation M&amp;T 3</b></p> | <p>By June 30, 2021, engage in separate, targeted surveys or focus groups to test the effectiveness of the substantive elements of the HRCP.</p> |
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**J. Controls Environment**

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| <p><b>Baseline Assessment<br/>Recommendation CE 1</b></p> | <p>By April 30, 2021, develop and disseminate policies and procedures for the initiation, review, and approval of settlements related to claims of harassment and discrimination. Those policies and procedures should:</p> <ul style="list-style-type: none"> <li>▶ include appropriate segregation of duties; and</li> <li>▶ contemplate and apply to the settlement of claims both <i>before</i> and <i>after</i> initiation of formal legal proceedings, as well as separations with employees who have made allegations of harassment or discrimination.</li> </ul> |
| <p><b>Phase II Report<br/>Recommendation CE 1</b></p>     | <p>By March 31, 2021, update the Contract Approval Policy and Procedure to require dual approval of sexual harassment and discrimination settlements involving officers and senior management at Wynn Resorts, Wynn Las Vegas, and EBH.</p>  |
| <p><b>Phase II Report<br/>Recommendation CE 2</b></p>     | <p>By April 30, 2021, revise separation agreement standards at Wynn Resorts, Wynn Las Vegas, and EBH to explicitly exclude sexual harassment, discrimination, and retaliation from mandatory arbitration.</p>  |



## MASSACHUSETTS GAMING COMMISSION

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### MEMORANDUM

**To:** Chair Judd-Stein and Commissioners Cameron, O'Brien, and Zuniga  
**From:** Karen Wells, Executive Director and Derek Lennon, CFAO  
**Date:** 2/11/2021  
**Re:** Fiscal Year 2021 (FY21) Second Budget Update

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#### **Summary:**

The Massachusetts Gaming Commission approved an FY21 budget for the Gaming Control Fund of \$32.42M, composed of: \$26.9M in regulatory costs and \$5.52M in statutorily required costs. In addition, the entire Research and Responsible Gaming budget will be funded from the Public Health Trust Fund (PHTF), at an additional \$4.62M. The Gaming Control Fund required an initial assessment of \$29.67M on licensees. After balance forwards from FY20, the assessment was reduced to \$27.61M, and The Commission approved an additional \$5M assessment for the PHTF (\$3.75M to be billed beginning in September, with a final assessment of \$1.25M in June of 2021).

This quarterly update, the finance office is recommending: a \$351.8K decrease in payroll, fringe benefits, parking and travel budgets, and an increase of \$513K in independent monitoring fees, litigation spending, and indirect costs, for a net increase of \$172.75K to the Gaming Control Fund budget. The increase in spending is offset by the \$195K in revenue for the independent monitoring fees, therefore, there is no request for additional assessments on our licensees.

The finance office is recommending an administrative budget for the Community Mitigation Fund of \$337K. This memorandum also includes recommended adjustments to each licensee's share of the second half of the FY21 Gaming Control Fund assessment and the assessment to the Public Health Trust Fund, based on revised gaming position counts as of January 1, 2021.

#### **Gaming Control Fund Spending and Revenue Update:**

When the Commission approved the initial FY21 budget, it was with the knowledge that only the bare minimum required by the MGC's insurance policy was funded for litigation. We are requesting an additional \$300K for the litigation budget. This amount should cover anticipated costs for the remainder of the fiscal year. In addition, the FY21 budget funding included a flat spending projection for the Massachusetts State Police overtime (MSP OT). MSP OT as of January 1, 2021 is tracking slightly above the initial projections; however, MSP straight time attrition has made up for the small overage in OT. Therefore, we are not requesting any additional funding for MSP costs. We will continue to monitor both of these items.

For the first time, the Commission also included a projection for turnover savings of \$250K. We have realized the full amount of savings, plus an additional \$50K is projected in savings in turnover savings.



Massachusetts Gaming Commission

The costs of the independent monitor were not included in the FY21 budget, as that item is revenue neutral (each dollar of expense is offset by a corresponding dollar of revenue). We are increasing the spending for bills paid between 10/1 and 12/31/2020 by another \$195K, but also increasing the revenue projection by that same amount.

At the public meeting on December 17, 2020, the Commission approved regulations for the Community Mitigation Fund (CMF). As part of the regulations, the Commission can spend some of the CMF for administration of the program, after approval by the Commission of a budget. This update also contains a budget proposal for the Community Mitigation Fund, which would shift \$227K in salaries, fringe benefit, payroll taxes, and indirect costs, from the Gaming Control Fund to the Community Mitigation Fund.

The FY21 Budget for the Gaming Control Fund relies on fees from licensing and slot machines, and an assessment to maintain regulatory oversight of the gaming operations. Second quarter revenue projections were increased by \$195K for independent monitoring fees, to offset the spending in the second quarter. The finance office continues to monitor licensing fees, as turnover and hiring rates at the casinos continue to be below previous year rates.

#### **Assessments on Licensees:**

205 CMR 121.00 describes how the Commission shall assess its operational costs on casino licensees, including: any increases or decreases that are the result of over or under spending. 205 CMR 121.05, paragraph (2) specifically states:

“(2) In the event that actual revenues exceed actual costs for a given fiscal year, the commission, in its sole discretion may either return any excess revenue (Excess Assessment) in the same manner in which Excess Assessment was assessed or the commission may credit such Excess Assessment to the Annual Assessment due for the next fiscal year.”

The Commission has determined that once a year, on or about January 1, it will revise the number of gaming positions utilized for determining licensee’s proportional share of the assessment and use that percentage for the billing of the second half of the annual assessment. The tables below show reported gaming positions at each facility in July, as well as January 1, 2021. The change in gaming positions impacts each licensee’s proportional share of the second half assessment. The tables below illustrate each licensee’s anticipated assessments for both the Gaming Control Fund and the Public Health Trust Fund for FY21:

|                                       |               |
|---------------------------------------|---------------|
| <b>FY21 Initial Annual Assessment</b> | 29,671,013.01 |
| <b>1/2 of Assessment</b>              | 14,835,506.51 |
| <b>Less FY20 Surplus</b>              | 2,060,392.26  |
| <b>Revised First 1/2 Assessment</b>   | 12,775,114.25 |
| <b>Second Half Assessment</b>         | 14,835,506.51 |
| <b>FY21 Revised Total Assessment</b>  | 27,610,620.75 |



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| FY21 Opening Gaming Positions for First Half Year Assessment |                |             |                         |                         |                                |
|--|----------------|-------------|-------------------------|-------------------------|--------------------------------|
| Licensee   | Slots Machines | Table Games | Table Gaming Positions* | Total Gaming Positions* | Percentage of Gaming Positions |
| MGM  | 822            | 30          | 113                     | 935                     | 23.05%                         |
| Encore   | 1,820          | 189         | 601                     | 2,421                   | 59.67%                         |
| Penn   | 688            | -           | -                       | 701                     | 17.28%                         |
| <b>TOTAL</b>   | <b>3,330</b>   | <b>219</b>  | <b>714</b>              | <b>4,057</b>            | <b>100.00%</b>                 |

| FY21 Gaming Positions as of 1/1/2021 for Second Half Year Assessment |                |             |                         |                         |                                |
|--|----------------|-------------|-------------------------|-------------------------|--------------------------------|
| Licensee   | Slots Machines | Table Games | Table Gaming Positions* | Total Gaming Positions* | Percentage of Gaming Positions |
| MGM  | 1,175          | 30          | 90                      | 1,265                   | 28.01%                         |
| Encore   | 1,819          | 198         | 643                     | 2,462                   | 54.52%                         |
| Penn   | 743            | -           | -                       | 789                     | 17.47%                         |
| <b>TOTAL</b>   | <b>3,737</b>   | <b>228</b>  | <b>733</b>              | <b>4,516</b>            | <b>100.00%</b>                 |

| FY 21 Gaming Control Fund Assessment |                                    |                               |                     |                                    |                                    |                               |
|--------------------------------------|------------------------------------|-------------------------------|---------------------|------------------------------------|------------------------------------|-------------------------------|
| Licensee                             | FY21 1st Half Year % of Assessment | FY21 1st Half Year Assessment | FY20 Surplus        | FY21 Revised First Half Assessment | FY21 2nd Half Year % of Assessment | FY21 2nd Half Year Assessment |
| MGM                                  | 23.05%                             | 3,419,584.25                  | 692,157.57          | 2,727,426.68                       | 28.01%                             | 4,155,650.07                  |
| Encore                               | 59.67%                             | 8,852,346.73                  | 1,056,226.29        | 7,796,120.44                       | 54.52%                             | 8,087,913.42                  |
| Penn                                 | 17.28%                             | 2,563,575.52                  | 312,008.40          | 2,251,567.12                       | 17.47%                             | 2,591,943.01                  |
| <b>TOTAL</b>                         | <b>100.00%</b>                     | <b>14,835,506.51</b>          | <b>2,060,392.26</b> | <b>12,775,114.25</b>               | <b>100.00%</b>                     | <b>14,835,506.51</b>          |

| FY21 Public Health Trust Fund (PHTF) Assessment |                           |                         |                                    |                               |
|---|---------------------------|-------------------------|------------------------------------|-------------------------------|
| Licensee  | FY21 1st Half Year % PHTF | FY21 1st Half Year PHTF | FY21 2nd Half Year % of Assessment | FY21 2nd Half Year Assessment |
| MGM   | 23.05%                    | 576,250.00              | 28.01%                             | 700,287.87                    |
| Encore  | 59.67%                    | 1,491,750.00            | 54.52%                             | 1,362,931.80                  |
| Penn  | 17.28%                    | 432,000.00              | 17.47%                             | 436,780.34                    |
| <b>TOTAL</b>                                    | <b>100.00%</b>            | <b>2,500,000.00</b>     | <b>100.00%</b>                     | <b>2,500,000.00</b>           |

### Community Mitigation Fund

In a public meeting on December 27, 2020, the Commission approved Regulations for the Community Mitigation Fund (205 CMR 153). 205 CMR 153.05 allows the Commission to expend funds for the administration of the program. Specifically, it states the following:

153.05: Expenses Related to Administration of the Community Mitigation Fund

(1) The Commission is the trustee of the Community Mitigation Fund in accordance with G.L. c. 23K, § 4(38).

(2) The Commission finds that administration of the Fund by its staff, including but not limited to development of guidelines for approval by the Commission pursuant to 205 CMR 153.02 and oversight of the grant program, is directly related to and essential to assisting the host and surrounding communities and any other communities or entities



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identified in G.L. 23K, § 61 in receiving funds and offsetting costs related to the construction and operation of the gaming establishments. Accordingly, reasonable administrative costs incurred by the Commission on behalf of and in furtherance of the administration of the Fund may be assessed to the Fund.

(3) The administrative costs shall not exceed 10% of the funds available in the Community Mitigation Fund for the fiscal year. The precise assessment to the Fund shall be set annually by the Commission at a public meeting as part of its budgetary process.

(4) Reasonable administrative costs which may be assessed to the Fund may include, but not be limited to, Commission staff salaries (in full or on a pro-rata basis), technology, software, and office supplies, provided that any such costs shall be directly related to administration of the Fund.

The finance office is recommending a budget of \$337K, for: payroll, travel, fringe, supplies, and the development of a database. This budget would be retro-active to July 1<sup>st</sup> of 2020. The Division of Community Affairs is comprised of 3 FTEs. This proposal would shift 50% of the Chief and 75% of each of the two programmatic personnel's salaries, fringe benefits, and indirect costs to the CMF. We are requesting \$100K in funding to develop or procure a grants administration database. We are also requesting small amounts of funding for supplies, in-state travel reimbursements, and meeting space. The table below is a summary of the request:

| FY21 Community Mitigation Fund       |                      |
|--------------------------------------|----------------------|
| AA-Payroll                           | \$ 153,497.01        |
| BB-Travel (in state)                 | \$ 2,500.00          |
| DD-Fringe and Payroll Taxes (37.99%) | \$ 58,313.52         |
| EE-Supplies                          | \$ 5,000.00          |
| EE-Indirect (10%)                    | \$ 15,349.70         |
| GG-Springfield Leased Space          | \$ 2,400.00          |
| UU-Database                          | \$ 100,000.00        |
| <b>Total</b>                         | <b>\$ 337,060.23</b> |

The Division of Community Affairs bases its available grant funds on a calendar year basis. From the period of 1/1/2020-12/31/2020, the CMF received \$7.6M from taxes on GGR. The requested budget is less than half of the 10% the Commission could authorize for administration of the program.

#### **Conclusion:**

The finance office is requesting approval to increase the litigation budget by \$300K and approve a budget for the Community Mitigation Fund of \$337K, which would shift \$227K in salary, and fringe and indirect costs from the Gaming Control Fund to the CMF.

Attachment: A FY21 Actuals Spending and Revenue as of 1/1/2021



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| 2021  |                         | Budget Projections   |                      |                      |                                      |                         |            |              |
|---|-------------------------|----------------------|----------------------|----------------------|--------------------------------------|-------------------------|------------|--------------|
| Row Labels                                  | Initial Projection      | FY20 Balance Forward | Approved Adjustments | Proposed Adjustments | Current Budget (Initial+Apvd Adjmts) | Actuals To Date Total   | %Spent     | % BFY Passed |
| <b>10500001--Gaming Control Fund</b>        |                         |                      |                      |                      |                                      |                         |            |              |
| <b>MGC Regulatory Cost</b>                  |                         |                      |                      |                      |                                      |                         |            |              |
| AA REGULAR EMPLOYEE COMPENSATION            | \$ 6,794,180.09         |                      | \$ -                 | \$ (203,497.01)      | \$ 6,794,180.09                      | \$ 3,298,662.78         | 49%        | 50%          |
| BB REGULAR EMPLOYEE RELATED EXPEN           | \$ -                    |                      | \$ -                 | \$ 4,561.40          | \$ -                                 | \$ 4,561.40             | #DIV/0!    | 50%          |
| CC SPECIAL EMPLOYEES                        | \$ 331,950.00           |                      | \$ -                 | \$ -                 | \$ 331,950.00                        | \$ 84,244.82            | 25%        | 50%          |
| DD PENSION & INSURANCE RELATED EX           | \$ 2,552,451.33         |                      | \$ -                 | \$ (77,308.51)       | \$ 2,552,451.33                      | \$ 1,213,516.90         | 48%        | 50%          |
| EE ADMINISTRATIVE EXPENSES                  | \$ 503,889.84           |                      | \$ -                 | \$ (4,561.40)        | \$ 503,889.84                        | \$ 76,633.68            | 15%        | 50%          |
| FF PROGRAM, FACILITY, OPERATIONAL SUPPLIES  | \$ -                    |                      | \$ -                 | \$ (71,000.00)       | \$ -                                 | \$ 975.00               | #DIV/0!    | 50%          |
| GG ENERGY COSTS AND SPACE RENTAL            | \$ 1,318,586.22         |                      | \$ -                 | \$ -                 | \$ 1,318,586.22                      | \$ 665,516.62           | 50%        | 50%          |
| HH CONSULTANT SVCS (TO DEPTS)               | \$ 705,094.48           |                      | \$ 195,661.60        | \$ 495,368.75        | \$ 900,756.08                        | \$ 684,687.26           | 76%        | 50%          |
| JJ OPERATIONAL SERVICES                     | \$ 10,335,644.70        |                      | \$ -                 | \$ -                 | \$ 10,335,644.70                     | \$ 2,510,336.95         | 24%        | 50%          |
| KK Equipment Purchase                       | \$ 57,500.00            |                      | \$ -                 | \$ -                 | \$ 57,500.00                         | \$ -                    | 0%         | 50%          |
| LL EQUIPMENT LEASE-MAINTAIN/REPAR           | \$ 44,994.25            |                      | \$ -                 | \$ -                 | \$ 44,994.25                         | \$ 11,758.50            | 26%        | 50%          |
| NN NON-MAJOR FACILITY MAINTENANCE REPAIR    | \$ 20,000.00            |                      | \$ -                 | \$ -                 | \$ 20,000.00                         | \$ 5,100.00             | 26%        | 50%          |
| PP STATE AID/POL SUB/OSD                    | \$ 150,000.00           |                      | \$ -                 | \$ -                 | \$ 150,000.00                        | \$ -                    | 0%         | 50%          |
| TT PAYMENTS & REFUNDS                       | \$ -                    |                      | \$ -                 | \$ -                 | \$ -                                 | \$ -                    | #DIV/0!    | 50%          |
| UU IT Non-Payroll Expenses                  | \$ 4,078,393.44         |                      | \$ -                 | \$ -                 | \$ 4,078,393.44                      | \$ 1,376,674.29         | 34%        | 50%          |
| <b>MGC Regulatory Cost Subtotal:</b>        | <b>\$ 26,892,684.35</b> |                      | <b>\$ 195,661.60</b> | <b>\$ 143,563.23</b> | <b>\$ 27,088,345.95</b>              | <b>\$ 9,932,668.20</b>  | <b>37%</b> |              |
| <b>EE--Indirect Costs</b>                   | <b>\$ 1,966,560.63</b>  | <b>\$ -</b>          | <b>\$ -</b>          | <b>\$ 29,187.17</b>  | <b>\$ 1,966,560.63</b>               | <b>\$ 766,599.99</b>    | <b>39%</b> |              |
| <b>Office of Attorney General</b>           |                         |                      |                      |                      |                                      |                         |            |              |
| ISA to AGO                                  | \$ 2,510,000.00         |                      | \$ -                 | \$ -                 | \$ 2,510,000.00                      | \$ 956,910.04           | 38%        | 50%          |
| TT Reimbursement for AGO 0810-1024          | \$ -                    |                      | \$ -                 | \$ -                 | \$ -                                 | \$ 164,753.72           | #DIV/0!    | 50%          |
| AGO State Police                            | \$ 976,948.80           |                      | \$ -                 | \$ -                 | \$ 976,948.80                        | \$ 417,826.94           | 43%        | 50%          |
| <b>Office of Attorney General Subtotal:</b> | <b>\$ 3,486,948.80</b>  | <b>\$ -</b>          | <b>\$ -</b>          | <b>\$ -</b>          | <b>\$ 3,486,948.80</b>               | <b>\$ 1,539,490.70</b>  | <b>50%</b> |              |
| <b>ISA to ABCC</b>                          | <b>\$ 75,000.00</b>     | <b>\$ -</b>          | <b>\$ -</b>          | <b>\$ -</b>          | <b>\$ 75,000.00</b>                  | <b>\$ -</b>             | <b>0%</b>  | <b>50%</b>   |
| <b>Gaming Control Fund Total Costs</b>      | <b>\$ 32,421,193.78</b> | <b>\$ -</b>          | <b>\$ 195,661.60</b> | <b>\$ 172,750.40</b> | <b>\$ 32,616,855.38</b>              | <b>\$ 12,238,758.89</b> | <b>50%</b> |              |

|  |                         | Revenue Projections |                      |                      |                                      |                         |  |  |
|--|-------------------------|---------------------|----------------------|----------------------|--------------------------------------|-------------------------|--|--|
| Revenues   | Initial Projection      |                     | Approved Adjustments | Proposed Adjustments | Current Budget (Initial+Apvd Adjmts) | Actuals To Date Total   |  |  |
| Gaming Control Fund Beginning Balance 0500       | \$ -                    |                     | \$ 1,060,392.28      | \$ -                 | \$ 1,060,392.28                      | \$ 1,060,392.28         |  |  |
| EBH Security Fees 0500/Monitoring                | \$ -                    |                     | \$ 1,195,661.60      | \$ 195,368.75        | \$ 1,195,661.60                      | \$ 1,305,989.88         |  |  |
| IEB Background/Investigative Collections 3000    | \$ -                    |                     | \$ 16,405.01         | \$ -                 | \$ 16,405.01                         | \$ 16,405.01            |  |  |
| Category/Region Collection Fees 0500             | \$ -                    |                     | \$ -                 | \$ -                 | \$ -                                 | \$ -                    |  |  |
| Phase 1 Refunds 0500                             | \$ -                    |                     | \$ -                 | \$ -                 | \$ -                                 | \$ -                    |  |  |
| Phase 2 Category 1 Collections (restricted) 0500 | \$ -                    |                     | \$ -                 | \$ -                 | \$ -                                 | \$ -                    |  |  |
| Region C Phase 1 Investigation Collections 0500  | \$ -                    |                     | \$ -                 | \$ -                 | \$ -                                 | \$ -                    |  |  |
| Region C Phase 2 Category 1 Collections 0500     | \$ -                    |                     | \$ -                 | \$ -                 | \$ -                                 | \$ -                    |  |  |
| Grant Collections (restricted) 0500              | \$ -                    |                     | \$ -                 | \$ -                 | \$ -                                 | \$ -                    |  |  |
| Region A slot Machine Fee 0500                   | \$ 1,092,773.08         |                     | \$ -                 | \$ -                 | \$ 1,092,773.08                      | \$ 264,150.00           |  |  |
| Region B Slot Machine Fee 0500                   | \$ 456,057.69           |                     | \$ -                 | \$ -                 | \$ 456,057.69                        | \$ 81,658.98            |  |  |
| Slots Parlor Slot Machine Fee 0500               | \$ 451,350.00           |                     | \$ -                 | \$ -                 | \$ 451,350.00                        | \$ 96,603.84            |  |  |
| Gaming Employee License Fees (GEL) 3000          | \$ 450,000.00           |                     | \$ -                 | \$ -                 | \$ 450,000.00                        | \$ 23,400.00            |  |  |
| Key Gaming Executive (GKE) 3000                  | \$ 60,000.00            |                     | \$ -                 | \$ -                 | \$ 60,000.00                         | \$ 2,000.00             |  |  |
| Key Gaming Employee (GKS) 3000                   | \$ 40,000.00            |                     | \$ -                 | \$ -                 | \$ 40,000.00                         | \$ 9,500.00             |  |  |
| Non-Gaming Vendor (NGV) 3000                     | \$ 30,000.00            |                     | \$ -                 | \$ -                 | \$ 30,000.00                         | \$ 42,198.00            |  |  |
| Vendor Gaming Primary (VGP) 3000                 | \$ 75,000.00            |                     | \$ -                 | \$ -                 | \$ 75,000.00                         | \$ 32,100.00            |  |  |
| Vendor Gaming Secondary (VGS) 3000               | \$ 25,000.00            |                     | \$ -                 | \$ -                 | \$ 25,000.00                         | \$ 10,000.00            |  |  |
| Gaming School License (GSB)                      | \$ -                    |                     | \$ -                 | \$ -                 | \$ -                                 | \$ -                    |  |  |
| Gaming Service Employee License (SER) 3000       | \$ 30,000.00            |                     | \$ -                 | \$ -                 | \$ 30,000.00                         | \$ 3,225.00             |  |  |
| Subcontractor ID Initial License (SUB) 3000      | \$ -                    |                     | \$ -                 | \$ -                 | \$ -                                 | \$ -                    |  |  |
| Temporary License Initial License (TEM) 3000     | \$ 15,000.00            |                     | \$ -                 | \$ -                 | \$ 15,000.00                         | \$ -                    |  |  |
| Assessment for PHTF                              | \$ 3,750,000.00         |                     | \$ -                 | \$ -                 | \$ 3,750,000.00                      | \$ -                    |  |  |
| Transfer PHTF Assessment to PHTF                 | \$ (3,750,000.00)       |                     | \$ -                 | \$ -                 | \$ (3,750,000.00)                    | \$ -                    |  |  |
| Veterans Initial License (VET) 3000              | \$ -                    |                     | \$ -                 | \$ -                 | \$ -                                 | \$ -                    |  |  |
| Transfer of Licensing Fees to CMF 0500           | \$ -                    |                     | \$ -                 | \$ -                 | \$ -                                 | \$ -                    |  |  |
| Assessment 0500                                  | \$ 29,671,013.01        |                     | \$ (2,060,392.28)    | \$ -                 | \$ 27,610,620.73                     | \$ 13,339,328.33        |  |  |
| Misc/MCC Grant                                   | \$ 25,000.00            |                     | \$ -                 | \$ -                 | \$ 25,000.00                         | \$ -                    |  |  |
| Misc/Bank Interest 0500                          | \$ -                    |                     | \$ -                 | \$ -                 | \$ -                                 | \$ 6,306.02             |  |  |
| <b>Grand Total</b>                               | <b>\$ 32,421,193.78</b> | <b>\$ -</b>         | <b>\$ 212,066.61</b> | <b>\$ 195,368.75</b> | <b>\$ 32,633,260.39</b>              | <b>\$ 16,293,257.34</b> |  |  |

| 2021  |                    | Budget Projections   |                      |                      |                                      |                       |         |              |
|---|--------------------|----------------------|----------------------|----------------------|--------------------------------------|-----------------------|---------|--------------|
| Row Labels  | Initial Projection | FY20 Balance Forward | Approved Adjustments | Proposed Adjustments | Current Budget (Initial+Apvd Adjmts) | Actuals To Date Total | %Spent  | % BFY Passed |
| <b>4000-1101 Research and Responsible Gaming/Public Health Trust Fund</b> |                    |                      |                      |                      |                                      |                       |         |              |
| AA REGULAR EMPLOYEE COMPENSATION  | \$ 212,145.42      |                      | \$ -                 | \$ -                 | \$ 212,145.42                        | \$ 99,429.21          | 47%     | 50%          |
| BB REGULAR EMPLOYEE RELATED EXPEN   | \$ 10,000.00       |                      | \$ -                 | \$ -                 | \$ 10,000.00                         | \$ 372.00             | 4%      | 50%          |
| CC SPECIAL EMPLOYEES  | \$ -               |                      | \$ -                 | \$ -                 | \$ -                                 | \$ -                  | #DIV/0! | 50%          |
| DD PENSION & INSURANCE RELATED EX   | \$ 80,594.05       |                      | \$ -                 | \$ -                 | \$ 80,594.05                         | \$ 38,101.30          | 47%     | 50%          |

|  |                 |      |      |                 |               |         |     |
|--|-----------------|------|------|-----------------|---------------|---------|-----|
| EE ADMINISTRATIVE EXPENSES                   | \$ 319,389.54   | \$ - | \$ - | \$ 319,389.54   | 77,860.02     | 24%     | 50% |
| FF PROGRAMMATIC FACILITY OPERATONAL SUPPLIES | \$ 1,000.00     | \$ - | \$ - | \$ 1,000.00     | -             | 0%      | 50% |
| HH CONSULTANT SVCS (TO DEPTS)                | \$ 2,851,750.00 | \$ - | \$ - | \$ 2,851,750.00 | 604,691.13    | 21%     | 50% |
| JJ OPERATIONAL SERVICES                      | \$ 10,000.00    | \$ - | \$ - | \$ 10,000.00    | 1,300.92      | 13%     | 50% |
| MM PURCHASED CLIENT/PROGRAM SVCS             | \$ -            | \$ - | \$ - | \$ -            | -             | #DIV/0! | 50% |
| PP STATE AID/POL SUB                         | \$ 1,139,870.99 | \$ - | \$ - | \$ 1,139,870.99 | \$ 370,141.09 | 32%     | 50% |
| UU IT Non-Payroll Expenses                   | \$ 2,000.00     | \$ - | \$ - | \$ 2,000.00     | \$ -          | 0%      | 50% |
| ISA to DPH                                   | \$ -            | \$ - | \$ - | \$ -            | -             | #DIV/0! | 50% |

|  |                 |      |      |                 |                 |     |     |
|--|-----------------|------|------|-----------------|-----------------|-----|-----|
| <b>Research and Responsible Gaming/Public Health Trust</b> |                 |      |      |                 |                 |     |     |
| <b>Fund Subtotal:</b>                                      | \$ 4,626,750.00 | \$ - | \$ - | \$ 4,626,750.00 | \$ 1,191,895.67 | 26% | 50% |

**Revenue Projections**

| Revenues                     | Initial Projection | Approved Adjustments | Proposed Adjustments | Current Budget (Initial+Apvd Adjmts) | Actuals To Date Total |
|------------------------------|--------------------|----------------------|----------------------|--------------------------------------|-----------------------|
| Public Health Trust Fund ISA | \$ 4,626,750.00    | \$ -                 | \$ -                 | \$ 4,626,750.00                      | \$ 4,626,750.00       |

| Row Labels     | Initial Projection | FY20 Balance Forward | Approved Adjustments | Proposed Adjustments | Current Budget (Initial+Bal Fwd+Apvd Adjmts) | Actuals To Date Total | %Spent | % BFY Passed |
|----------------|--------------------|----------------------|----------------------|----------------------|--|-----------------------|--------|--------------|
| <b>1050002</b> |                    | \$ 429,188.71        |                      |                      |  |                       |        |              |

|                               |      |      |      |      |      |      |         |     |
|-------------------------------|------|------|------|------|------|------|---------|-----|
| TT LOANS AND SPECIAL PAYMENTS | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | #DIV/0! | 50% |
| RSF                           |      |      |      |      |      |      |         |     |

**Revenue Projections**

| Revenues                                   | Initial Projection | FY20 Balance Forward | Approved Adjustments | Proposed Adjustments | Current Budget (Initial+Apvd Adjmts) | Actuals To Date Total | %Spent | % BFY Passed |
|--|--------------------|----------------------|----------------------|----------------------|--------------------------------------|-----------------------|--------|--------------|
| Greyhound Balance Forward Simulcast 7200   | \$ -               | \$ -                 | \$ 304,458.62        | \$ -                 | \$ 304,458.62                        | \$ 304,458.62         |        |              |
| Plainridge Greyhound Import Simulcast 7200 | \$ -               | \$ 0                 | \$ -                 | \$ -                 | \$ -                                 | \$ 5,426.59           |        |              |
| Raynham Greyhound Import Simulcast 7200    | \$ -               | \$ 0                 | \$ -                 | \$ -                 | \$ -                                 | \$ 37,233.20          |        |              |
| Suffolk Greyhound Import Simulcast 7200    | \$ -               | \$ 0                 | \$ -                 | \$ -                 | \$ -                                 | \$ -                  |        |              |
| TVG Greyhound Import Simulcast 7200        | \$ -               | \$ 0                 | \$ -                 | \$ -                 | \$ -                                 | \$ -                  |        |              |
| TWS Greyhound Import Simulcast 7200        | \$ -               | \$ 0                 | \$ -                 | \$ -                 | \$ -                                 | \$ -                  |        |              |
| Wonderland Greyhound Import Simulcast 7200 | \$ -               | \$ 0                 | \$ -                 | \$ -                 | \$ -                                 | \$ 1,034.88           |        |              |
|  | \$ -               | \$ -                 | \$ 304,458.62        | \$ -                 | \$ 304,458.62                        | \$ 348,153.29         |        |              |

**Budget Projections**

| Row Labels                                   | Initial Projection | FY20 Balance Forward | Approved Adjustments | Proposed Adjustments | Current Budget (Initial+Bal Fwd+Apvd Adjmts) | Actuals To Date Total | %Spent  | % BFY Passed |
|--|--------------------|----------------------|----------------------|----------------------|--|-----------------------|---------|--------------|
| <b>1050003</b>                               |                    |                      |                      |                      |  |                       |         |              |
| AA REGULAR EMPLOYEE COMPENSATION             | \$ 709,011.74      | \$ -                 | \$ -                 | \$ -                 | \$ 709,011.74                                | \$ 328,122.07         | 46%     | 50%          |
| BB REGULAR EMPLOYEE RELATED EXPEN            | \$ -               | \$ -                 | \$ -                 | \$ -                 | \$ -   | \$ 672.10             | #DIV/0! | 50%          |
| CC SPECIAL EMPLOYEES                         | \$ 450,000.00      | \$ -                 | \$ -                 | \$ -                 | \$ 450,000.00                                | \$ 208,827.77         | 46%     | 50%          |
| DD PENSION & INSURANCE RELATED EX            | \$ 269,353.54      | \$ -                 | \$ -                 | \$ -                 | \$ 269,353.54                                | \$ 129,072.46         | 48%     | 50%          |
| EE ADMINISTRATIVE EXPENSES                   | \$ 42,385.00       | \$ -                 | \$ -                 | \$ -                 | \$ 42,385.00                                 | \$ 2,854.81           | 7%      | 50%          |
| FF PROGRAMMATIC FACILITY OPERATONAL SUPPLIES | \$ 2,000.00        | \$ -                 | \$ -                 | \$ -                 | \$ 2,000.00                                  | \$ -                  | 0%      | 50%          |
| HH CONSULTANT SVCS (TO DEPTS)                | \$ 25,000.00       | \$ -                 | \$ -                 | \$ -                 | \$ 25,000.00                                 | \$ -                  | 0%      | 50%          |
| JJ OPERATIONAL SERVICES                      | \$ 769,268.17      | \$ -                 | \$ -                 | \$ -                 | \$ 769,268.17                                | \$ 297,481.60         | 39%     | 50%          |
| KK EQUIPMENT PURCHASES                       | \$ -               | \$ -                 | \$ -                 | \$ -                 | \$ -   | \$ -                  | #DIV/0! | 50%          |
| LL EQUIPMENT LEASE-MAINTAIN/REPAR            | \$ 915.00          | \$ -                 | \$ -                 | \$ -                 | \$ 915.00                                    | \$ -                  | 0%      | 50%          |
| MM PURCHASED CLIENT/PROGRAM SVCS             | \$ 85,000.00       | \$ -                 | \$ -                 | \$ -                 | \$ 85,000.00                                 | \$ -                  | 0%      | 50%          |
| NN INFRASTRUCTURE:                           | \$ -               | \$ -                 | \$ -                 | \$ -                 | \$ -   | \$ -                  | #DIV/0! | 50%          |
| TT LOANS AND SPECIAL PAYMENTS                | \$ -               | \$ -                 | \$ -                 | \$ -                 | \$ -   | \$ -                  | #DIV/0! | 50%          |
| UU IT Non-Payroll Expenses                   | \$ 65,000.00       | \$ -                 | \$ -                 | \$ -                 | \$ 65,000.00                                 | \$ 478.51             | 1%      | 50%          |
| EE --Indirect Costs                          | \$ 195,328.00      | \$ -                 | \$ -                 | \$ -                 | \$ 195,328.00                                | \$ 83,057.77          | 43%     | 50%          |
| ISA to DPH                                   | \$ 70,000.00       | \$ -                 | \$ -                 | \$ -                 | \$ 70,000.00                                 | \$ -                  | 0%      | 50%          |
| <b>Grand Total</b>                           | \$ 2,683,261.45    | \$ -                 | \$ -                 | \$ -                 | \$ 2,683,261.45                              | \$ 1,050,567.09       | 39%     | 50%          |

**Revenue Projections**

| Revenues   | Initial Projection | FY20 Balance Forward | Approved Adjustments | Proposed Adjustments | Current Budget (Initial+Apvd Adjmts) | Actuals To Date Total |
|--|--------------------|----------------------|----------------------|----------------------|--------------------------------------|-----------------------|
| Racing Oversight and Development Balance Forward 0131          | \$ -               | \$ -                 | \$ 732,712.39        | \$ -                 | \$ 732,712.39                        | \$ -                  |
| Plainridge Assessment 4800                                     | \$ 400,000.00      | \$ -                 | \$ -                 | \$ -                 | \$ 400,000.00                        | \$ 49,488.19          |
| Plainridge Daily License Fee 3003                              | \$ 175,000.00      | \$ -                 | \$ -                 | \$ -                 | \$ 175,000.00                        | \$ 38,070.00          |
| Plainridge Occupational License 3003/3004                      | \$ 105,000.00      | \$ -                 | \$ -                 | \$ -                 | \$ 105,000.00                        | \$ 31,065.00          |
| Plainridge Racing Development Oversight Live 0131              | \$ 20,000.00       | \$ -                 | \$ -                 | \$ -                 | \$ 20,000.00                         | \$ 901.04             |
| Plainridge Racing Development Oversight Simulcast 0131         | \$ 15,000.00       | \$ -                 | \$ -                 | \$ -                 | \$ 15,000.00                         | \$ 35,182.38          |
| Raynham Assessment 4800  | \$ 95,000.00       | \$ -                 | \$ -                 | \$ -                 | \$ 95,000.00                         | \$ 70,148.06          |
| Raynham Daily License Fee 3003                                 | \$ 76,500.00       | \$ -                 | \$ -                 | \$ -                 | \$ 76,500.00                         | \$ 48,900.00          |
| Raynham Racing Development Oversight Simulcast 0131            | \$ 85,000.00       | \$ -                 | \$ -                 | \$ -                 | \$ 85,000.00                         | \$ 44,048.95          |
| Suffolk Assessment 4800  | \$ 470,000.00      | \$ -                 | \$ -                 | \$ -                 | \$ 470,000.00                        | \$ 273,871.51         |
| Suffolk Commission Racing Development Oversight Simulcast 0131 | \$ 145,000.00      | \$ -                 | \$ -                 | \$ -                 | \$ 145,000.00                        | \$ 20,475.62          |

|  |                       |               |                     |               |                       |                       |
|--|-----------------------|---------------|---------------------|---------------|-----------------------|-----------------------|
| Suffolk Daily License Fee 3003                         | \$ 75,000.00          | \$ -          | \$ -                | \$ -          | \$ 75,000.00          | \$ 16,200.00          |
| Suffolk Occupational License 3003/3004                 | \$ 3,000.00           | \$ -          | \$ -                | \$ -          | \$ 3,000.00           | \$ -                  |
| Suffolk Racing Development Oversight Live 0131         | \$ -                  | \$ -          | \$ -                | \$ -          | \$ -                  | \$ -                  |
| Suffolk TVG Commission Live 0131                       | \$ -                  | \$ -          | \$ -                | \$ -          | \$ -                  | \$ -                  |
| Suffolk TVG Commission Simulcast 0131                  | \$ 160,000.00         | \$ -          | \$ -                | \$ -          | \$ 160,000.00         | \$ 305,248.77         |
| Suffolk Twin Spires Commission Live 0131               | \$ -                  | \$ -          | \$ -                | \$ -          | \$ -                  | \$ -                  |
| Suffolk Twin Spires Commission Simulcast 0131          | \$ 90,000.00          | \$ -          | \$ -                | \$ -          | \$ 90,000.00          | \$ 108,122.14         |
| Suffolk Xpress Bet Commission Live 0131                | \$ -                  | \$ -          | \$ -                | \$ -          | \$ -                  | \$ -                  |
| Suffolk Xpress Bet Commission Simulcast 0131           | \$ 45,000.00          | \$ -          | \$ -                | \$ -          | \$ 45,000.00          | \$ 55,790.29          |
| Suffolk NYRA Bet Commission Live 0131                  | \$ -                  | \$ -          | \$ -                | \$ -          | \$ -                  | \$ -                  |
| Suffolk NYRA Bet Commission Simulcast 0131             | \$ 50,000.00          | \$ -          | \$ -                | \$ -          | \$ 50,000.00          | \$ 62,993.77          |
| Transfer to General Fund 10500140 0000                 | \$ -                  | \$ -          | \$ -                | \$ -          | \$ -                  | \$ -                  |
| Wonderland Assessment 4800                             | \$ 10,000.00          | \$ -          | \$ -                | \$ -          | \$ 10,000.00          | \$ 1,528.47           |
| Wonderland Daily License Fee 3003                      | \$ 66,000.00          | \$ -          | \$ -                | \$ -          | \$ 66,000.00          | \$ 21,600.00          |
| Wonderland Racing Development Oversight Simulcast 0131 | \$ 5,000.00           | \$ -          | \$ -                | \$ -          | \$ 5,000.00           | \$ 535.04             |
| Plainridge fine 2700                                   | \$ 25,000.00          | \$ -          | \$ -                | \$ -          | \$ 25,000.00          | \$ 4,050.00           |
| Suffolk Fine 2700                                      | \$ -                  | \$ -          | \$ -                | \$ -          | \$ -                  | \$ -                  |
| Plainridge Unclaimed wagers 5009                       | \$ 175,000.00         | \$ -          | \$ -                | \$ -          | \$ 175,000.00         | \$ -                  |
| Suffolk Unclaimed wagers 5009                          | \$ 220,000.00         | \$ -          | \$ -                | \$ -          | \$ 220,000.00         | \$ -                  |
| Raynham Unclaimed wagers 5009                          | \$ 135,000.00         | \$ -          | \$ -                | \$ -          | \$ 135,000.00         | \$ -                  |
| Wonderland Unclaimed wagers 5009                       | \$ 3,000.00           | \$ -          | \$ -                | \$ -          | \$ 3,000.00           | \$ -                  |
| Misc/Bank Interest 0131                                | \$ 500.00             | \$ -          | \$ -                | \$ -          | \$ 500.00             | \$ -                  |
| <b>Grand Total</b>                                     | <b>\$2,649,000.00</b> | <b>\$0.00</b> | <b>\$732,712.39</b> | <b>\$0.00</b> | <b>\$3,381,712.39</b> | <b>\$1,188,219.23</b> |

| Budget Projections                                  |                    |                      |                      |                      |  |                       |         |              |     |
|---|--------------------|----------------------|----------------------|----------------------|--|-----------------------|---------|--------------|-----|
| Row Labels  | Initial Projection | FY20 Balance Forward | Approved Adjustments | Proposed Adjustments | Current Budget (Initial+Bal Fwd+Apvd Adjmts) | Actuals To Date Total | %Spent  | % BFY Passed |     |
| <b>10500004</b>                                     |                    |                      |                      |                      |  |                       |         |              |     |
| AA REGULAR EMPLOYEE COMPENSATION                    |                    |                      |                      | \$ 153,497.01        |  |                       |         |              |     |
| BB REGULAR EMPLOYEE RELATED EXPEN                   |                    |                      |                      | \$ 2,500.00          |  |                       |         |              |     |
| DD PENSION & INSURANCE RELATED EX                   |                    |                      |                      | \$ 58,313.52         |  |                       |         |              |     |
| EE ADMINISTRATIVE EXPENSES                          |                    |                      |                      | \$ 5,000.00          |  |                       |         |              |     |
| EE INDIRECT COSTS                                   |                    |                      |                      | \$ 15,349.70         |  |                       |         |              |     |
| GG ENERGY COSTS AND SPACE RENTAL                    |                    |                      |                      | \$ 2,400.00          |  |                       |         |              |     |
| PP Grants and Subsidies (Community Mitigation Fund) | \$ -               |                      |                      | \$ -                 | \$ -   | \$ 958,703.84         | #DIV/0! |              | 50% |
| UU IT Non-Payroll Expenses                          |                    |                      |                      | \$ 100,000.00        |  |                       |         |              |     |
| <b>Grand Total</b>                                  |                    |                      |                      |                      | <b>\$337,060.23</b>                          |                       |         |              |     |

| Revenue Projections        |                    |                      |                         |                      |                                      |                       |  |  |  |
|----------------------------|--------------------|----------------------|-------------------------|----------------------|--------------------------------------|-----------------------|--|--|--|
| Revenues                   | Initial Projection | FY20 Balance Forward | Approved Adjustments    | Proposed Adjustments | Current Budget (Initial+Apvd Adjmts) | Actuals To Date Total |  |  |  |
| Balance forward prior year | \$ -               | \$ -                 | \$ 23,107,265.85        | \$ -                 | \$ 23,107,265.85                     | \$ -                  |  |  |  |
| <b>Grand Total</b>         | <b>\$ -</b>        | <b>\$ -</b>          | <b>\$ 23,107,265.85</b> | <b>\$ -</b>          | <b>\$ 23,107,265.85</b>              |                       |  |  |  |

| Budget Projections                                  |                    |                      |                      |                      |  |                       |        |              |     |
|---|--------------------|----------------------|----------------------|----------------------|--|-----------------------|--------|--------------|-----|
| Row Labels  | Initial Projection | FY20 Balance Forward | Approved Adjustments | Proposed Adjustments | Current Budget (Initial+Bal Fwd+Apvd Adjmts) | Actuals To Date Total | %Spent | % BFY Passed |     |
| <b>10500005</b>                                     |                    |                      |                      |                      |  |                       |        |              |     |
| TT LOANS AND SPECIAL PAYMENTS (Race Horse Dev Fund) | \$ 14,500,000.00   | \$ -                 | \$ -                 | \$ -                 | \$ 14,500,000.00                             | \$ 3,681,266.63       | 25%    |              | 50% |

| Revenue Projections                         |                         |                      |                         |                      |                                      |                       |  |  |  |
|---|-------------------------|----------------------|-------------------------|----------------------|--------------------------------------|-----------------------|--|--|--|
| Revenues                                    | Initial Projection      | FY20 Balance Forward | Approved Adjustments    | Proposed Adjustments | Current Budget (Initial+Apvd Adjmts) | Actuals To Date Total |  |  |  |
| Balance forward prior year 3003             |                         |                      | \$ 17,041,274.92        |                      | \$ 17,041,274.92                     | \$ -                  |  |  |  |
| Race Horse Development Fund assessment 3003 | \$ 15,000,000.00        |                      |                         |                      | \$ 15,000,000.00                     |                       |  |  |  |
| <b>Grand Total</b>                          | <b>\$ 15,000,000.00</b> | <b>\$ -</b>          | <b>\$ 17,041,274.92</b> | <b>\$ -</b>          | <b>\$ 32,041,274.92</b>              |                       |  |  |  |

| Budget Projections                           |                    |                      |                      |                      |  |                       |        |              |  |
|--|--------------------|----------------------|----------------------|----------------------|--|-----------------------|--------|--------------|--|
| Row Labels                                   | Initial Projection | FY20 Balance Forward | Approved Adjustments | Proposed Adjustments | Current Budget (Initial+Bal Fwd+Apvd Adjmts) | Actuals To Date Total | %Spent | % BFY Passed |  |
| <b>10500008</b>                              |                    |                      |                      |                      |  |                       |        |              |  |
| Casino forfeited money MGC Trust MGL 267A S4 | \$ -               |                      |                      |                      | \$ -   | \$ -                  |        |              |  |
| <b>Grand Total</b>                           | <b>\$ -</b>        | <b>\$ -</b>          | <b>\$ -</b>          | <b>\$ -</b>          | <b>\$ -</b>                                  |                       |        |              |  |

| Budget Projections            |                    |                      |                      |                      |  |                       |         |              |     |
|-------------------------------|--------------------|----------------------|----------------------|----------------------|--|-----------------------|---------|--------------|-----|
| Row Labels                    | Initial Projection | FY18 Balance Forward | Approved Adjustments | Proposed Adjustments | Current Budget (Initial+Bal Fwd+Apvd Adjmts) | Actuals To Date Total | %Spent  | % BFY Passed |     |
| <b>10500012/ P promo</b>      |                    |                      |                      |                      |  |                       |         |              |     |
| TT LOANS AND SPECIAL PAYMENTS | \$ -               | \$ -                 | \$ -                 | \$ -                 | \$ -   | \$ -                  | #DIV/0! |              | 50% |

| Revenue Projections |                    |                      |                      |                      |                                      |                       |  |  |  |
|---------------------|--------------------|----------------------|----------------------|----------------------|--------------------------------------|-----------------------|--|--|--|
| Revenues            | Initial Projection | FY20 Balance Forward | Approved Adjustments | Proposed Adjustments | Current Budget (Initial+Apvd Adjmts) | Actuals To Date Total |  |  |  |
|                     |                    |                      |                      |                      |                                      |                       |  |  |  |

|   |                     |                      |             |                      |                     |
|---|---------------------|----------------------|-------------|----------------------|---------------------|
| Plainridge Import Harness Horse Simulcast 0131          | \$ 3,500.00         | \$ -                 | \$ -        | \$ 3,500.00          | \$ 8,216.15         |
| Plainridge Racing Harness Horse Live 0131               | \$ 9,000.00         | \$ -                 | \$ -        | \$ 9,000.00          | \$ -                |
| Raynham Import Plainridge Simulcast 0131                | \$ 3,500.00         | \$ -                 | \$ -        | \$ 3,500.00          | \$ 1,622.70         |
| Suffolk Import Plainridge Simulcast 0131                | \$ 25,000.00        | \$ -                 | \$ -        | \$ 25,000.00         | \$ 504.19           |
| Plainridge Racecourse Promo Fund Beginning Balance 7205 | \$ -                | \$ 153,515.23        | \$ -        | \$ 153,515.23        | \$ -                |
| TVG Live 0131   | \$ -                | \$ -                 | \$ -        | \$ -                 | \$ -                |
| TVG Simulcast 0131                                      | \$ 12,000.00        | \$ -                 | \$ -        | \$ 12,000.00         | \$ 10,868.36        |
| Twin Spires Live 0131                                   | \$ -                | \$ -                 | \$ -        | \$ -                 | \$ -                |
| Twin Spires Simulcast 0131                              | \$ 14,500.00        | \$ -                 | \$ -        | \$ 14,500.00         | \$ 5,479.62         |
| Xpress Bets Live 0131                                   | \$ -                | \$ -                 | \$ -        | \$ -                 | \$ -                |
| Xpress Bets Simulcast 0131                              | \$ 3,500.00         | \$ -                 | \$ -        | \$ 3,500.00          | \$ 2,141.72         |
| NYRA Live 0131  | \$ -                | \$ -                 | \$ -        | \$ -                 | \$ -                |
| NYRA Simulcast 0131                                     | \$ 1,000.00         | \$ -                 | \$ -        | \$ 1,000.00          | \$ 1,960.51         |
| <b>Grand Total</b>                                      | <b>\$ 72,000.00</b> | <b>\$ 153,515.23</b> | <b>\$ -</b> | <b>\$ 225,515.23</b> | <b>\$ 30,793.25</b> |

| Budget Projections   |                     |                      |                      |                      |  |                       |         |              |  |
|--|---------------------|----------------------|----------------------|----------------------|--|-----------------------|---------|--------------|--|
| Row Labels   | Initial Projection  | FY20 Balance Forward | Approved Adjustments | Proposed Adjustments | Current Budget (Initial+Bal Fwd+Apvd Adjmts) | Actuals To Date Total | %Spent  | % BFY Passed |  |
| <b>10500013/ P Cap</b>                                     |                     |                      |                      |                      |  |                       |         |              |  |
| TT LOANS AND SPECIAL PAYMENTS                              | \$ -                | \$ -                 | \$ -                 | \$ -                 | \$ -   | \$ -                  | #DIV/0! | 50%          |  |
| Revenue Projections  |                     |                      |                      |                      |  |                       |         |              |  |
| Revenues   | Initial Projection  |                      | Approved Adjustments | Proposed Adjustments | Current Budget (Initial+Apvd Adjmts)         | Actuals To Date Total |         |              |  |
| Plainridge Import Harness Horse Simulcast 0131             | \$ 27,500.00        |                      | \$ -                 | \$ -                 | \$ 27,500.00                                 | \$ 3,657.21           |         |              |  |
| Plainridge Racing Harness Horse Live 0131                  | \$ 15,000.00        |                      | \$ -                 | \$ -                 | \$ 15,000.00                                 | \$ 1,536.74           |         |              |  |
| Raynham Import Plainridge Simulcast 0131                   | \$ 2,500.00         |                      | \$ -                 | \$ -                 | \$ 2,500.00                                  | \$ 2,022.66           |         |              |  |
| Suffolk Import Plainridge Simulcast 0131                   | \$ -                |                      | \$ -                 | \$ -                 | \$ -   | \$ 693.60             |         |              |  |
| Plainridge Capital Improvement Fund Beginning Balance 7205 | \$ -                | \$ 534,709.14        | \$ -                 | \$ -                 | \$ 534,709.14                                |                       |         |              |  |
| TVG Live 0131  | \$ -                | \$ -                 | \$ -                 | \$ -                 | \$ -   | \$ -                  |         |              |  |
| TVG Simulcast 0131   | \$ 30,000.00        | \$ -                 | \$ -                 | \$ -                 | \$ 30,000.00                                 | \$ 16,377.78          |         |              |  |
| Twin Spires Live 0131                                      | \$ -                | \$ -                 | \$ -                 | \$ -                 | \$ -   | \$ -                  |         |              |  |
| Twin Spires Simulcast 0131                                 | \$ 30,000.00        | \$ -                 | \$ -                 | \$ -                 | \$ 30,000.00                                 | \$ 9,843.16           |         |              |  |
| Xpress Bets Live 0131                                      | \$ -                | \$ -                 | \$ -                 | \$ -                 | \$ -   | \$ -                  |         |              |  |
| Xpress Bets Simulcast 0131                                 | \$ 6,500.00         | \$ -                 | \$ -                 | \$ -                 | \$ 6,500.00                                  | \$ 3,392.06           |         |              |  |
| NYRA Live 0131   | \$ -                | \$ -                 | \$ -                 | \$ -                 | \$ -   | \$ -                  |         |              |  |
| NYRA Simulcast 0131  | \$ 1,200.00         | \$ -                 | \$ -                 | \$ -                 | \$ 1,200.00                                  | \$ 2,762.19           |         |              |  |
| <b>Grand Total</b>   | <b>\$112,700.00</b> |                      | <b>\$534,709.14</b>  | <b>\$0.00</b>        | <b>\$647,409.14</b>                          | <b>\$40,285.40</b>    |         |              |  |

| Budget Projections                              |                    |                      |                      |                      |  |                       |         |              |  |
|---|--------------------|----------------------|----------------------|----------------------|--|-----------------------|---------|--------------|--|
| Row Labels                                      | Initial Projection | FY20 Balance Forward | Approved Adjustments | Proposed Adjustments | Current Budget (Initial+Bal Fwd+Apvd Adjmts) | Actuals To Date Total | %Spent  | % BFY Passed |  |
| <b>10500021/ S promo</b>                        |                    |                      |                      |                      |  |                       |         |              |  |
| TT LOANS AND SPECIAL PAYMENTS                   | \$ -               | \$ -                 | \$ -                 | \$ -                 | \$ -   | \$ -                  | #DIV/0! | 50%          |  |
| Revenue Projections                             |                    |                      |                      |                      |  |                       |         |              |  |
| Revenues  | Initial Projection |                      | Approved Adjustments | Proposed Adjustments | Current Budget (Initial+Apvd Adjmts)         | Actuals To Date Total |         |              |  |
| Plainridge Import Suffolk Simulcast 0131        | \$ -               |                      | \$ -                 | \$ -                 | \$ -   | \$ 13,786.10          |         |              |  |
| Raynham Import Suffolk Simulcast 0131           | \$ -               |                      | \$ -                 | \$ -                 | \$ -   | \$ 9,912.62           |         |              |  |
| Suffolk Import Running Horse Simulcast 0131     | \$ -               |                      | \$ -                 | \$ -                 | \$ -   | \$ 9,844.84           |         |              |  |
| Suffolk Racing Running Horse Live 0131          | \$ -               |                      | \$ -                 | \$ -                 | \$ -   | \$ -                  |         |              |  |
| Suffolk Promotional Fund Beginning Balance 7205 | \$ -               | \$ 154,703.76        | \$ -                 | \$ -                 | \$ 154,703.76                                | \$ -                  |         |              |  |
| TVG Live 0131                                   | \$ -               | \$ -                 | \$ -                 | \$ -                 | \$ -   | \$ -                  |         |              |  |
| TVG Simulcast 0131                              | \$ -               | \$ -                 | \$ -                 | \$ -                 | \$ -   | \$ 133,961.72         |         |              |  |
| Twin Spires Live 0131                           | \$ -               | \$ -                 | \$ -                 | \$ -                 | \$ -   | \$ -                  |         |              |  |
| Twin Spires Simulcast 0131                      | \$ -               | \$ -                 | \$ -                 | \$ -                 | \$ -   | \$ 47,061.22          |         |              |  |
| Xpress Bets Live 0131                           | \$ -               | \$ -                 | \$ -                 | \$ -                 | \$ -   | \$ -                  |         |              |  |
| Xpress Bets Simulcast 0131                      | \$ -               | \$ -                 | \$ -                 | \$ -                 | \$ -   | \$ 23,775.30          |         |              |  |
| NYRA Live 0131                                  | \$ -               | \$ -                 | \$ -                 | \$ -                 | \$ -   | \$ -                  |         |              |  |
| NYRA Simulcast 0131                             | \$ -               | \$ -                 | \$ -                 | \$ -                 | \$ -   | \$ 30,103.63          |         |              |  |
| <b>Grand Total</b>                              | <b>\$0.00</b>      | <b>\$0.00</b>        | <b>\$154,703.76</b>  | <b>\$0.00</b>        | <b>\$154,703.76</b>                          | <b>\$268,445.43</b>   |         |              |  |

| Budget Projections                       |                    |                      |                      |                      |  |                       |         |              |  |
|--|--------------------|----------------------|----------------------|----------------------|--|-----------------------|---------|--------------|--|
| Row Labels                               | Initial Projection | FY20 Balance Forward | Approved Adjustments | Proposed Adjustments | Current Budget (Initial+Bal Fwd+Apvd Adjmts) | Actuals To Date Total | %Spent  | % BFY Passed |  |
| <b>10500022/ S Cap</b>                   |                    |                      |                      |                      |  |                       |         |              |  |
| TT LOANS AND SPECIAL PAYMENTS            | \$ -               | \$ -                 | \$ -                 | \$ -                 | \$ -   | \$ -                  | #DIV/0! | 50%          |  |
| Revenue Projections                      |                    |                      |                      |                      |  |                       |         |              |  |
| Revenues                                 | Initial Projection |                      | Approved Adjustments | Proposed Adjustments | Current Budget (Initial+Apvd Adjmts)         | Actuals To Date Total |         |              |  |
| Plainridge Import Suffolk Simulcast 0131 | \$ -               |                      | \$ -                 | \$ -                 | \$ -   | \$ 13,032.23          |         |              |  |
| Raynham Import Suffolk Simulcast 0131    | \$ -               |                      | \$ -                 | \$ -                 | \$ -   | \$ 20,728.24          |         |              |  |

|  |               |                 |                       |               |                       |                     |
|--|---------------|-----------------|-----------------------|---------------|-----------------------|---------------------|
| Suffolk Import Running Horse Simulcast 0131        | \$ -          | \$ -            | \$ -                  | \$ -          | \$ -                  | \$ 2,540.32         |
| Suffolk Racing Running Horse Live 0131             | \$ -          | \$ -            | \$ -                  | \$ -          | \$ -                  | -                   |
| Suffolk Capital Improvement Fund Beginning Balance |               |                 |                       |               |                       |                     |
| 7205   | \$ -          | \$ 2,883,873.58 | \$ -                  | \$ -          | \$ 2,883,873.58       | \$ 13,755.24        |
| TVG Live 0131                                      | \$ -          | \$ -            | \$ -                  | \$ -          | \$ -                  | -                   |
| TVG Simulcast 0131                                 | \$ -          | \$ -            | \$ -                  | \$ -          | \$ -                  | \$ 320,039.98       |
| Twin Spires Live 0131                              | \$ -          | \$ -            | \$ -                  | \$ -          | \$ -                  | -                   |
| Twin Spires Simulcast 0131                         | \$ -          | \$ -            | \$ -                  | \$ -          | \$ -                  | \$ 114,729.26       |
| Xpress Bets Live 0131                              | \$ -          | \$ -            | \$ -                  | \$ -          | \$ -                  | -                   |
| Xpress Bets Simulcast 0131                         | \$ -          | \$ -            | \$ -                  | \$ -          | \$ -                  | \$ 60,344.76        |
| NYRA Live 0131                                     | \$ -          | \$ -            | \$ -                  | \$ -          | \$ -                  | -                   |
| NYRA Simulcast 0131                                | \$ -          | \$ -            | \$ -                  | \$ -          | \$ -                  | \$ 72,309.33        |
| <b>Grand Total</b>                                 | <b>\$0.00</b> | <b>\$0.00</b>   | <b>\$2,883,873.58</b> | <b>\$0.00</b> | <b>\$2,883,873.58</b> | <b>\$617,479.36</b> |

| Row Labels                    | Budget Projections |                      |                      |                      |  | Actuals To Date Total | %Spent | % BFY Passed |
|-------------------------------|--------------------|----------------------|----------------------|----------------------|--|-----------------------|--------|--------------|
|                               | Initial Projection | FY20 Balance Forward | Approved Adjustments | Proposed Adjustments | Current Budget (Initial+Bal Fwd+Apvd Adjmts) |                       |        |              |
| 10500140                      |                    |                      |                      |                      |  |                       |        |              |
| TT LOANS AND SPECIAL PAYMENTS | \$ 721,350.00      | \$ -                 | \$ -                 | \$ -                 | \$ 721,350.00                                | \$ -                  | 0%     | 50%          |

# QUARTERLY REPORT

## Q4 2020



February 11, 2021  
ENCORE BOSTON HARBOR





# Gaming Revenue, Taxes & Lottery Sales



# GAMING REVENUE & TAXES: Q4 2020



| Year | Month        | Table Games GGR        | Slots GGR              | Total GGR              | State Taxes Collected  |
|------|--------------|------------------------|------------------------|------------------------|------------------------|
| 2020 | October      | \$17,477,844.60        | \$23,659,340.11        | \$41,137,184.71        | \$10,284,296.18        |
|      | November     | \$11,854,920.01        | \$15,494,421.88        | \$27,349,341.89        | \$6,837,335.47         |
|      | December     | \$13,174,684.27        | \$16,098,219.50        | \$29,272,903.77        | \$7,318,225.94         |
|      | <b>Total</b> | <b>\$42,507,448.88</b> | <b>\$55,251,981.49</b> | <b>\$97,759,430.37</b> | <b>\$24,439,857.59</b> |

# GAMING REVENUE & TAXES: YEAR-OVER-YEAR



| Year | Quarter               | Table Games GGR         | Slots GGR               | Total GGR               | State Taxes Collected  |
|------|-----------------------|-------------------------|-------------------------|-------------------------|------------------------|
| 2019 | Q1                    | -                       | -                       | -                       | -                      |
|      | Q2<br>(June 23 -30)   | \$7,671,773.61          | \$9,118,170.27          | \$16,789,943.88         | \$4,197,485.97         |
|      | Q3                    | \$86,768,608.64         | \$63,250,534.42         | \$150,019,143.06        | \$37,504,785.78        |
|      | Q4                    | \$79,458,744.98         | \$67,675,347.20         | \$147,134,092.18        | \$36,783,523.05        |
|      | <b>Total</b>          | <b>\$173,899,127.23</b> | <b>\$140,044,051.89</b> | <b>\$313,943,179.12</b> | <b>\$78,485,794.80</b> |
| 2020 | Q1 (through March 15) | \$63,346,567.80         | \$58,267,912.37         | \$121,614,480.17        | \$30,403,620.05        |
|      | Q2                    | \$0.00                  | \$0.00                  | \$0.00                  | \$0.00                 |
|      | Q3 (from July 10)     | \$49,310,059.97         | \$63,032,899.39         | \$112,342,959.36        | \$28,085,739.84        |
|      | Q4                    | \$42,507,448.88         | \$55,251,981.49         | \$97,759,430.37         | \$24,439,857.59        |
|      | <b>Totals</b>         | <b>\$112,656,627.77</b> | <b>\$121,300,811.76</b> | <b>\$233,957,439.53</b> | <b>\$58,489,359.89</b> |

# LOTTERY SALES: Q4 2020



| Year | Month        | Lottery Sales <sup>1</sup> |
|------|--------------|----------------------------|
| 2020 | October      | \$208,705.50               |
|      | November     | \$121,883.00               |
|      | December     | \$302,223.00               |
|      | <b>Total</b> | <b>\$632,811.50</b>        |

1 The periods for which relevant sales are reported are based upon week-end totals, and may not correspond precisely to calendar month periods.

# LOTTERY SALES: YEAR-OVER-YEAR

| Year                    | Quarter                | Lottery Sales <sup>1</sup> | % Change from 2019 |
|-------------------------|------------------------|----------------------------|--------------------|
| <b>2019</b>             | <b>Q1</b>              | -                          | -                  |
|                         | <b>Q2 (June 23-30)</b> | \$5,903.00                 | -                  |
|                         | <b>Q3</b>              | \$499,072.00               | -                  |
|                         | <b>Q4</b>              | \$669,065.00               | -                  |
|                         | <b>Total</b>           | <b>\$1,174,040.00</b>      | -                  |
| <b>2020<sup>2</sup></b> | <b>Q1</b>              | \$707,443.25               | -                  |
|                         | <b>Q2</b>              | \$6,349.45                 | 7.6%               |
|                         | <b>Q3</b>              | \$421,804.00               | -15.5%             |
|                         | <b>Q4</b>              | \$632,811.50               | -5.4%              |
|                         | <b>Total</b>           | <b>\$1,135,596.70</b>      | <b>124.9%</b>      |

- 1 The periods for which relevant sales are reported are based upon week-end totals, and may not correspond precisely to calendar month periods.
- 2 Please note that lottery sales for the entirety of 2020 are reflective of state mandated closures, reduced occupancies and limited operating hours related to the COVID-19 pandemic.



# Workforce



# EMPLOYMENT<sup>1</sup>: ALL EMPLOYEES

| Sector <sup>2</sup>                                     | Goal  | Q4 % | Q4 Total # of Employees in Sector |
|---|-------|------|-----------------------------------|
| Minority  | 40%   | 54%  | 1,871                             |
| Veteran   | 3%    | 3%   | 98                                |
| Women   | 50%   | 42%  | 1,451                             |
|   |       |      |                                   |
| Local/Host/Surrounding Community Residents <sup>3</sup> | 75%   | 86%  | 2,959                             |
| MA Residents  | N/A   | 89%  | 3,067                             |
|   |       |      |                                   |
| <b>Total Number of Employees</b>                        | 3,442 |      |                                   |
| <b>Full-time</b>  | 2,590 |      |                                   |
| <b>Part-time</b>  | 852   |      |                                   |
| <b>On-call</b>  | 0     |      |                                   |

- 1 All employee figures were current as of December 28, 2020.
- 2 An employee may fall into more than one sector (e.g.: minority and local) and, as such, totals may not be reflective of the sum of previous columns.
- 3 “Local/Host/Surrounding Community Residents” includes residents from communities within thirty (30) miles of Encore Boston Harbor.

# EMPLOYMENT<sup>1</sup>: SUPERVISORY EMPLOYEES



|                              | Minority <sup>2</sup> | Women | Veteran | Total Head Count<br>(including non-minority employees) |
|------------------------------|-----------------------|-------|---------|--|
| <b>ALL EMPLOYEES</b>         |                       |       |         |  |
| <b>Number of Employees</b>   | 1,871                 | 1,451 | 98      | 3,442  |
| <b>% Actual</b>              | 54%                   | 42%   | 3%      |  |
| <b>MANAGER AND ABOVE</b>     |                       |       |         |  |
| <b>Number of Employees</b>   | 90                    | 96    | 17      | 228  |
| <b>% Actual</b>              | 39%                   | 42%   | 7%      |  |
| <b>SUPERVISORS AND ABOVE</b> |                       |       |         |  |
| <b>Number of Employees</b>   | 279                   | 210   | 31      | 522  |
| <b>% Actual</b>              | 53%                   | 40%   | 6%      |  |

- 1 All employee figures were current as of December 28, 2020.
- 2 An employee may fall into more than one sector (e.g.: minority and local) and, as such, totals may not be reflective of the sum of previous columns.





# Operating Spend



# OPERATING SPEND<sup>1</sup>: DIVERSITY



| Diversity Category            | Annual Goal | Q4%        | Q4 Spend           |
|-------------------------------|-------------|------------|--------------------|
| Minority Business Enterprise  | 8%          | 23%        | \$3,381,172        |
| Veteran's Business Enterprise | 3%          | 1%         | \$176,888          |
| Women's Business Enterprise   | 14%         | 6%         | \$899,312          |
| <b>Total Diverse Spend</b>    | <b>25%</b>  | <b>30%</b> | <b>\$4,457,372</b> |

1 All spend figures referenced herein are based upon Encore Boston Harbor's Q4 discretionary spend amount of **\$14,619,055**.

## OPERATING SPEND: LOCAL

| Locality                         | Annual Goal     | Q4%                 | Q4 Spend    |
|----------------------------------|-----------------|---------------------|-------------|
| Boston                           | \$20,000,000.00 | 14%                 | \$2,001,013 |
| Chelsea                          | \$2,500,000.00  | 1%                  | \$148,436   |
| Everett                          | \$10,000,000.00 | 5%                  | \$3,502,703 |
| Malden                           | \$10,000,000.00 | 1%                  | \$132,400   |
| Medford                          | \$10,000,000.00 | 0%                  | \$170,681   |
| Somerville                       | \$10,000,000.00 | 3%                  | \$316,874   |
| State of MA                      | -               | 50%                 | \$8,241,139 |
|                                  |                 |                     |             |
| <b>Total Discretionary Spend</b> | <b>N/A</b>      | <b>\$14,619,055</b> |             |



During Q4, Encore Boston Harbor placed an order of approximately \$264,000 in promotional merchandise from Everett, MA vendor, Universal Screening Studio



# Compliance



# COMPLIANCE: MINORS PREVENTED FROM GAMING

| Month           | Minors Intercepted on Gaming Floor and Prevented from Gaming | Minors Intercepted Gaming | Minors Intercepted at Slot Machines | Minors Intercepted at Table Games | Minors Intercepted Consuming Alcohol | Number of IDs NOT Checked that Resulted in Minor on Gaming Floor | Number of Fake IDs Provided by Minors that Resulted in Minor on Gaming Floor |
|-----------------|--|---------------------------|-------------------------------------|-----------------------------------|--------------------------------------|--|--|
| <b>October</b>  | 0  | 2                         | 2                                   | 1                                 | 0                                    | 1  | 1  |
| <b>November</b> | 1  | 0                         | 0                                   | 0                                 | 0                                    | 1  | 0  |
| <b>December</b> | 0  | 0                         | 0                                   | 0                                 | 0                                    | 0  | 0  |
| <b>Total</b>    | <b>1</b>   | <b>2</b>                  | <b>2</b>                            | <b>1</b>                          | <b>0</b>                             | <b>2</b>   | <b>1</b>   |

1 For purposes of this Quarterly Report, “minor” shall mean a person under 21 years of age.

- Average length of time spent on casino floor by minors was 41 minutes.
- Longest length of time spent on casino floor by a minor was 1 hour, 2 minutes.
- Shortest length of time spent on casino floor by a minor was 5 minutes.



# Special Events Update



# SPECIAL EVENTS: INTRODUCTION OF WYNN SPORTS

*Encore*  
BOSTON HARBOR





# SPECIAL EVENTS: MASSACHUSETTS GOLD STAR FAMILY TREE

*Encore*  
BOSTON HARBOR



# SPECIAL EVENTS: EMPLOYEE BAKE SALE TO BENEFIT PINE STREET INN



# QUESTIONS?



# Encore Boston Harbor



**Quarterly Report as of December 31, 2020**  
**Massachusetts Gaming Commission**

**Presented February 11, 2021**

**Quarterly Report as of December 31, 2020****I. Operations at a Glance****A. *The Resort***

Encore Boston Harbor is an approximately \$2.6 billion luxury resort located in Everett, Massachusetts. The resort, which opened for business on June 23, 2019, is comprised of a luxury hotel with 671 guest rooms, a gaming area, retail space, food and beverage outlets, event and meeting space, a spa and gym, a parking garage, and other complimentary amenities. Additionally, Encore Boston Harbor includes extensive landscape and open-space amenities including a public gathering area with an outdoor park-like open space, a pavilion, waterfront features, a public harborwalk and water transportation docking facilities.

**B. *Reopening Requirements and Continued Regulation***

The Massachusetts Gaming Commission (the “MGC”) promulgated “Minimum Requirements for the Initial Phase 3 Opening of Gaming Establishments (the “Reopening Requirements”),” which set forth the minimum requirements for the reopening of the casinos in the Commonwealth after the mandated shutdown of the casinos issued by the MGC effective March 15, 2020. In addition to the Reopening Requirements, Encore Boston Harbor is also subject to the applicable sector-specific reopening requirements set forth by the Commonwealth of Massachusetts. Sector-specific reopening requirements for restaurants, operators of lodgings, fitness centers, office space, retail facilities, private gatherings and close contact personal services are all applicable to Encore Boston Harbor’s operations. As a result of the continued pandemic, the Reopening Requirements and other sector-specific reopening requirements, the number of available gaming positions decreased substantially, restaurant operations were severely curtailed, and the event and meeting business was almost completely shuttered. The sector-specific reopening requirements remain fluid.

**C. *Early Closure of Businesses and Activities and Stay-At-Home Advisory***

Due to the COVID-19 pandemic, and in response to an increase in new COVID-19 cases and hospitalizations, Governor Baker issued an executive order effective November 6, 2020 (“Covid-19 Order No. 53”), that required the early closure of certain businesses and activities each night at 9:30 p.m., including the Commonwealth’s three licensed gaming establishments (the “Early Closure Order”). In response to the Early Closure Order, Encore Boston Harbor submitted its Compliance Plan for COVID-19 Order No. 53 (the “Compliance Plan”) to the MGC, which the MGC approved on November 5, 2020. Pursuant to the Compliance Plan, casino operations at Encore Boston Harbor ceased at 9:00 p.m. on November 6, 2020, and reopened the following morning at 9:00 a.m. Encore Boston Harbor operated on a 9:00 a.m. to 9:00 p.m. schedule for the remainder of the fourth quarter of 2020 (“Q4”). As a result of operational hurdles created by the Early Closure Order, the hotel at Encore Boston Harbor closed as of check-out on November 2, 2020 and remained closed for the remainder of Q4.

In addition to the Early Closure Order, a subsequent executive order effective December 26, 2020 (“Covid-19 Order No. 59”) further reduced occupancy in the casino, dining outlets, hotel common areas, and back-of-house office and other spaces to twenty-five percent (25%).

## II. Revenue

### A. Quarterly Operating Results

Table 1 below details the gross gaming revenue (“GGR”) for table games, the GGR for slot machines, the total GGR for table games and slot machines combined, and the taxes collected by the Commonwealth of Massachusetts for each month during Q4. Comparative figures for the same quarter of 2019 are also provided. Q4 results are highlighted in yellow.

**Table 1: Quarterly Revenue**

| Year | Month        | Table Games GGR        | Slots GGR              | Total GGR               | State Taxes Collected  |
|------|--------------|------------------------|------------------------|-------------------------|------------------------|
| 2019 | October      | \$23,528,188.72        | \$22,284,638.39        | \$45,812,827.11         | \$11,453,206.78        |
|      | November     | \$24,524,180.65        | \$22,783,908.65        | \$47,308,089.30         | \$11,827,022.33        |
|      | December     | \$31,406,375.61        | \$22,606,800.16        | \$54,013,175.77         | \$13,503,293.94        |
|      | <b>Total</b> | <b>\$79,458,744.98</b> | <b>\$67,675,347.20</b> | <b>\$147,134,092.18</b> | <b>\$36,783,523.05</b> |
| 2020 | October      | \$17,477,844.60        | \$23,659,340.11        | \$41,137,184.71         | \$10,284,296.18        |
|      | November     | \$11,854,920.01        | \$15,494,421.88        | \$27,349,341.89         | \$6,837,335.47         |
|      | December     | \$13,174,684.27        | \$16,098,219.50        | \$29,272,903.77         | \$7,318,225.94         |
|      | <b>Total</b> | <b>\$42,507,448.88</b> | <b>\$55,251,981.49</b> | <b>\$97,759,430.37</b>  | <b>\$24,439,857.59</b> |

Table 2 below details the GGR for table games, the GGR for slot machines, the total GGR for table games and slot machines combined, and the taxes collected by the Commonwealth of Massachusetts for each quarter during 2019 and 2020. Q4 results are highlighted in yellow.

**Table 2: Annual Revenue**

| Year | Quarter               | Table Games GGR         | Slots GGR               | Total GGR               | State Taxes Collected  |
|------|-----------------------|-------------------------|-------------------------|-------------------------|------------------------|
| 2019 | Q1                    | -                       | -                       | -                       | -                      |
|      | Q2 (June 23 -30)      | \$7,671,773.61          | \$9,118,170.27          | \$16,789,943.88         | \$4,197,485.97         |
|      | Q3                    | \$86,768,608.64         | \$63,250,534.42         | \$150,019,143.06        | \$37,504,785.78        |
|      | Q4                    | \$79,458,744.98         | \$67,675,347.20         | \$147,134,092.18        | \$36,783,523.05        |
|      | <b>Total</b>          | <b>\$173,899,127.23</b> | <b>\$140,044,051.89</b> | <b>\$313,943,179.12</b> | <b>\$78,485,794.80</b> |
| 2020 | Q1 (through March 15) | \$63,346,567.80         | \$58,267,912.37         | \$121,614,480.17        | \$30,403,620.05        |
|      | Q2                    | \$0.00                  | \$0.00                  | \$0.00                  | \$0.00                 |
|      | Q3 (from July 10)     | \$49,310,059.97         | \$63,032,899.39         | \$112,342,959.36        | \$28,085,739.84        |
|      | Q4                    | \$42,507,448.88         | \$55,251,981.49         | \$97,759,430.37         | \$24,439,857.59        |
|      | <b>Totals</b>         | <b>\$112,656,627.77</b> | <b>\$121,300,811.76</b> | <b>\$233,957,439.53</b> | <b>\$58,489,359.89</b> |

**B. Lottery**

Table 3 below details lottery sales at Encore Boston Harbor for each month during Q4. Comparative figures for the same quarter of 2019 are also provided. Q4 results are highlighted in yellow.

Table 4 below details lottery sales at Encore Boston Harbor for each quarter during 2019 and 2020 as well as yearly totals. Q4 results are highlighted in yellow.

Please note that the periods for which relevant lottery sales are reported are based upon week-end totals and, as such, may not correspond precisely to calendar month periods.

**Table 3: Quarterly Lottery Sales**

| Year | Month        | Lottery Sales       | % Change from 2019 |
|------|--------------|---------------------|--------------------|
| 2019 | October      | \$201,384.00        | -                  |
|      | November     | \$247,350.00        | -                  |
|      | December     | \$220,331.00        | -                  |
|      | <b>Total</b> | <b>\$669,065.00</b> | -                  |
| 2020 | October      | \$208,705.50        | 3.6%               |
|      | November     | \$121,883.00        | -50.7%             |
|      | December     | \$302,223.00        | 37.2%              |
|      | <b>Total</b> | <b>\$632,811.50</b> | <b>-5.4%</b>       |

**Table 4: Annual Lottery Sales**

| Year | Quarter               | Lottery Sales         | % Change from 2019 |
|------|-----------------------|-----------------------|--------------------|
| 2019 | Q1                    | -                     | -                  |
|      | Q2 (June 23-30)       | \$5,903.00            | -                  |
|      | Q3                    | \$499,072.00          | -                  |
|      | Q4                    | \$669,065.00          | -                  |
|      | <b>Total</b>          | <b>\$1,174,040.00</b> | -                  |
| 2020 | Q1 (through March 15) | \$707,443.25          | -                  |
|      | Q2                    | \$6,349.45            | 7.6%               |
|      | Q3 (from July 10)     | \$421,804.00          | -15.5%             |
|      | Q4                    | \$632,811.50          | -5.4%              |
|      | <b>Total</b>          | <b>\$1,135,596.70</b> | <b>124.9%</b>      |

### III. Workforce

Table 5 below details Encore Boston Harbor’s workforce composition as of the dates indicated by the footnotes following Table 5. Please note that the COVID-19 pandemic and COVID-19 regulations imposed by the MGC and the Commonwealth of Massachusetts have impacted and continue to impact workforce levels and recruiting efforts. Encore Boston Harbor continues to assess its workforce and make adjustments to accommodate shifting demands.

**Table 5: Workforce Composition by Minority Group and Locality**

| Sector <sup>6</sup>                                    | Goal | Q1 % <sup>1</sup> | Q1 Total # of Employees | Q2 % <sup>2</sup> | Q2 Total # of Employees | Q3 % <sup>3</sup> | Q3 Total # of Employees | Q4 % <sup>4</sup> | Q4 Total # of Employees |
|--|------|-------------------|-------------------------|-------------------|-------------------------|-------------------|-------------------------|-------------------|-------------------------|
| Minority   | 40%  | 54%               | 2,381                   | 54%               | 2,273                   | 54%               | 1,956                   | 54%               | 1,871                   |
| Veteran  | 3%   | 3%                | 138                     | 3%                | 124                     | 3%                | 104                     | 3%                | 98                      |
| Women  | 50%  | 43%               | 1,907                   | 43%               | 1,804                   | 42%               | 1,520                   | 42%               | 1,451                   |
| Local/Host/Surrounding Community Resident <sup>5</sup> | 75%  | 87%               | 3,832                   | 87%               | 3,676                   | 86%               | 3,110                   | 86%               | 2,959                   |
| MA Residents   | -    | 90%               | 3,965                   | 90%               | 3,798                   | 89%               | 3,214                   | 89%               | 3,067                   |
| <b>Total Number of Employees</b>                       |      |                   |                         |                   |                         |                   |                         |                   |                         |
|  |      |                   | 4,417                   |                   | 4,224                   |                   | 3,604                   |                   | 3,442                   |
| <b>Full-time</b>                                       |      |                   | 3,291                   |                   | 3,183                   |                   | 2,704                   |                   | 2,590                   |
| <b>Part-time</b>                                       |      |                   | 1,126                   |                   | 1,041                   |                   | 900                     |                   | 852                     |
| <b>On-call</b>   |      |                   | 0                       |                   | 0                       |                   | 0                       |                   | 0                       |

1 All Q1 figures are as of March 15, 2020.

2 All Q2 figures are as of June 29, 2020.

3 All Q3 figures are as of September 27, 2020.

4 All Q4 figures are as of December 28, 2020.

5 “Local/Host/Surrounding Community Residents” include residents from communities within thirty (30) miles of Encore Boston Harbor.

6 Please note that an employee may fall into more than one sector (e.g.: minority and local) and, as such, totals may not be reflective of the sum of previous columns.

Table 6 below details Encore Boston Harbor’s supervisory workforce composition as of December 28, 2020. Please note that the information reported under the “All Employees” heading in Table 6 is provided for ease of comparison, and is the same information provided in the last column of Table 5 above. Please also note that an employee may fall into more than one sector (e.g., minority and local) and, as such, totals may not be reflective of the sum of previous columns.



**Table 6: Workforce Composition by Minority Group for Supervisory Roles**

|   | Minority | Women | Veteran | Total Head Count (including non-minority employees) |
|---|----------|-------|---------|---|
| <b>ALL EMPLOYEES</b>  |          |       |         |   |
| Number of Employees   | 1,871    | 1,451 | 98      | 3,442   |
| % Actual  | 54%      | 42%   | 3%      |   |
| <b>MANAGER AND ABOVE</b>  |          |       |         |   |
| Number of Employees   | 90       | 96    | 17      | 228   |
| % Actual  | 39%      | 42%   | 7%      |   |
| <b>SUPERVISORS AND ABOVE</b>  |          |       |         |   |
| Number of Employees   | 279      | 210   | 31      | 522   |
| % Actual  | 53%      | 40%   | 6%      |   |
| <b>TOTAL NUMBER OF EMPLOYEES OF TENANTS/VENDORS WITHIN ENCORE BOSTON HARBOR</b> |          |       | 1,294   |   |

#### IV. Goods and Services

Encore Boston Harbor had a total discretionary spend amount of \$14,619,054.94 during Q4. Encore Boston Harbor's total discretionary spend amount for 2020 was \$62,323,431.28. The Q4 discretionary spend figure includes discretionary purchases made between October 1, 2020 and December 31, 2020. [Table 7](#) below details the amount of such discretionary spend allocated toward Minority Business Enterprises ("MBE"), Veteran's Business Enterprises ("VBE") and Women's Business Enterprises ("WBE") during Q4 and the previous three (3) quarters of 2020. Figures have been rounded to the nearest dollar. Q4 figures are highlighted in yellow.

It is of note that during Q4, Encore Boston Harbor purchased nearly \$129,000 in promotional products from BRY-LEX, LLC, a WBE based in Pennsylvania.

**Table 7: Discretionary Operating Spend by Diversity Category**

| Diversity Category  | Annual Goal | Q1 % | Q1 Spend    | Q2 % | Q2 Spend  | Q3 % | Q3 Spend    | Q4 % | Q4 Spend    |
|---------------------|-------------|------|-------------|------|-----------|------|-------------|------|-------------|
| MBE Vendor Spend    | 8%          | 12%  | \$3,052,924 | 4%   | \$351,147 | 6%   | \$842,158   | 23%  | \$3,381,172 |
| VBE Vendor Spend    | 3%          | 2%   | \$578,949   | 1%   | \$61,560  | 1%   | \$188,154   | 1%   | \$176,888   |
| WBE Vendor Spend    | 14%         | 10%  | \$2,435,139 | 6%   | \$472,467 | 14%  | \$1,980,151 | 6%   | \$899,312   |
| Total Diverse Spend | 25%         | 24%  | \$6,067,011 | 11%  | \$885,174 | 21%  | \$3,010,464 | 30%  | \$4,457,372 |

Table 8 below provides a year-over-year comparison of Encore Boston Harbor's total spend allocated toward MBEs, VBEs and WBEs. Figures have been rounded to the nearest dollar. Totals reflect only the quarters for which comparison data is available.

**Table 8: Year-Over-Year Comparison of Total Diverse Spend**

| Quarter      | 2019                | 2020               |
|--------------|---------------------|--------------------|
| 1            | -                   | -                  |
| 2            | -                   | -                  |
| 3            | \$9,801,062         | \$3,010,464        |
| 4            | \$6,194,450         | \$4,457,172        |
| <b>Total</b> | <b>\$15,995,511</b> | <b>\$7,467,635</b> |

Table 9 below details the amount of the Q4 discretionary spend allocated towards vendors located in Boston, Chelsea, Everett, Malden, Medford, Somerville (collectively, "Local Businesses"), and the Commonwealth of Massachusetts as a whole as well as the same figures for the previous three (3) quarters of 2020. Figures have been rounded to the nearest dollar. Q4 figures are highlighted in yellow.

It is of note that during Q4, Encore Boston Harbor worked with Universal Screening Studio in Everett, MA ("Universal") to reach a place where Universal would be able to fulfill some larger orders for promotional merchandise for Encore Boston Harbor. This collaboration resulted in Encore Boston Harbor placing an order for \$264,840 in promotional outwear from Universal.

**Table 9: Discretionary Operating Spend by Locality**

| Locality                         | Annual Goal  | Q1 % | Q1 Spend            | Q2 % | Q2 Spend           | Q3 % | Q3 Spend            | Q4 % | Q4 Spend            |
|----------------------------------|--------------|------|---------------------|------|--------------------|------|---------------------|------|---------------------|
| <b>Boston</b>                    | \$20,000,000 | 15%  | \$3,839,303         | 4%   | \$291,131          | 14%  | \$2,013,177         | 14%  | \$2,001,013         |
| <b>Chelsea</b>                   | \$2,500,000  | 3%   | \$726,695           | 3%   | \$251,878          | 3%   | \$492,121           | 1%   | \$148,436           |
| <b>Everett</b>                   | \$10,000,000 | 12%  | \$2,988,684         | 5%   | \$397,180          | 5%   | \$674,804           | 24%  | \$3,502,703         |
| <b>Malden</b>                    | \$10,000,000 | 1%   | \$220,994           | 2%   | \$173,772          | 1%   | \$176,191           | 1%   | \$132,400           |
| <b>Medford</b>                   | \$10,000,000 | 0%   | \$106,508           | 0%   | \$17,357           | 0%   | \$30,772            | 1%   | \$170,681           |
| <b>Somerville</b>                | \$10,000,000 | 3%   | \$845,856           | 1%   | \$122,789          | 3%   | \$404,203           | 2%   | \$316,874           |
| <b>Massachusetts (Statewide)</b> | -            | 52%  | \$13,048,412        | 38%  | \$3,122,061        | 50%  | \$7,249,735         | 56%  | \$8,241,139         |
| <b>TOTAL SPEND</b>               | <b>N/A</b>   |      | <b>\$25,114,172</b> |      | <b>\$8,212,317</b> |      | <b>\$14,377,887</b> |      | <b>\$14,619,055</b> |

Table 10 below provides a year-over-year comparison of Encore Boston Harbor's total spend allocated toward Local Businesses. Figures have been rounded to the nearest dollar. Totals reflect

only the quarters for which comparison data is available. Q4 figures are highlighted in yellow. Please note that the year-over-year comparisons provided herein serve to highlight the impact of the COVID-19 pandemic on Encore Boston Harbor’s discretionary spending ability.

**Table 10: Total Local Spend – Year-Over-Year Comparison**

| Total Local Spend Year over Year |                     |                     |
|----------------------------------|---------------------|---------------------|
| Quarter                          | 2019                | 2020                |
| 1                                | -                   | -                   |
| 2                                | -                   | -                   |
| 3                                | \$15,019,758        | \$3,791,268         |
| 4                                | \$9,926,550         | \$6,272,108         |
| <b>Total</b>                     | <b>\$24,946,308</b> | <b>\$10,063,375</b> |

Table 11 below provides a year-over-year comparison of Encore Boston Harbor’s total spend allocated toward businesses located in Massachusetts. Figures have been rounded to the nearest dollar. Totals reflect only the quarters for which comparison data is available. Q4 figures are highlighted in yellow.

**Table 11: Total Massachusetts Spend – Year-Over-Year Comparison**

| Quarter      | 2019                | 2020                |
|--------------|---------------------|---------------------|
| 1            | -                   | -                   |
| 2            | -                   | -                   |
| 3            | \$23,342,988        | \$7,249,735         |
| 4            | \$28,639,107        | \$7,962,745         |
| <b>Total</b> | <b>\$51,982,096</b> | <b>\$15,212,480</b> |

**V. Gaming Floor Compliance**

Table 12 below provides details on minors intercepted gaming or consuming alcohol. For purposes of this Quarterly Report, a “minor” is defined as a person under 21 years of age. It is of note that during Q4, there were no minors intercepted consuming alcohol.

**Table 12: Minor Gaming Report**

| Month        | Minors Intercepted on Gaming Floor and Prevented from Gaming | Minors Intercepted Gaming | Minors Intercepted at Slot Machines | Minors Intercepted at Table Games | Minors Intercepted Consuming Alcohol | Number of IDs NOT Checked that Resulted in Minor on Gaming Floor | Number of Fake IDs Provided by Minors that Resulted in Minor on Gaming Floor |
|--------------|--|---------------------------|-------------------------------------|-----------------------------------|--------------------------------------|--|--|
| October      | 0  | 2                         | 2                                   | 1                                 | 0                                    | 1  | 1  |
| November     | 1  | 0                         | 0                                   | 0                                 | 0                                    | 1  | 0  |
| December     | 0  | 0                         | 0                                   | 0                                 | 0                                    | 0  | 0  |
| <b>Total</b> | <b>1</b>   | <b>2</b>                  | <b>2</b>                            | <b>1</b>                          | <b>0</b>                             | <b>2</b>   | <b>1</b>   |

**VI. Site-specific Reporting****A. ABCD Mystic Valley Head Start Update**

The opening of Action for Boston Community Development, Inc.'s ("ABCD") Head Start and Early Head Start center at 75 Station Landing, Medford, MA (the "Station Landing Center") has been delayed from December 2020 to an anticipated date at the end of February 2021 due to the continuing COVID-19 pandemic. Encore Boston Harbor funded the development and construction of the Station Landing Center, which strives to create an environment rich in natural features. The Station Landing Center boasts columns reimagined as tree trunks, tree-limb like ceiling enhancements and light fixtures, sky blue ceilings, and cloud-like lighting meant to create a natural and welcoming atmosphere for all. Encore Boston Harbor completed construction at the Station Landing Center during the fourth quarter of 2019. The Station Landing Center will provide comprehensive services to enrolled children and their families, which include health, nutrition, social, and other services determined to be necessary by family needs assessments, in addition to education and cognitive development services.

**VII. Special Events****A. Introduction of Wynn Sports Retail**

In November 2020, Encore Boston Harbor reintroduced *Wynn Men* as *Wynn Sports*. *Wynn Sports* carries a collection of specially curated sportswear featuring Boston's favorite teams, Encore branded apparel and souvenirs.

**A. Massachusetts Gold Star Families Tree**

In December 2020, Encore Boston Harbor partnered with the Military Friends Foundation for the annual dedication of the "Massachusetts Gold Star Families Tree." The tree, which was located in the space atop the curved escalators in Encore Boston Harbor, paid tribute to local fallen service members who lost their life while serving. Photos and messages from loved ones were displayed on the tree to remind all of the tremendous sacrifices made for the freedom of every American.

**B. Employee Bake Sale to Benefit the Pine Street Inn**

In December 2020, Encore Boston Harbor's Food and Beverage team held an employee bake sale to raise money for Pine Street Inn, whose mission is to end homelessness. With a generous match from the Wynn Employee Foundation, the bake sale raised \$5,800.

**VIII. Certifications**

**A. *Attestation of President and Chief Financial Officer***

Pursuant to 205 CMR 139.06(1), please see the attestation by Encore Boston Harbor's President, Brian Gullbrants and Chief Financial Officer, Allison Rankin, attached hereto as Appendix 1.

**B. *CFO's Attestation***

Pursuant to 205 CMR 139.06(2), please see the certification by Encore Boston Harbor's Chief Financial Officer, Allison Rankin, attached hereto as Appendix 2.

**Appendix 1**

**Attestation of President and Chief Financial Officer**

Please see attached.

**Encore**<sup>®</sup>  
BOSTON HARBOR  
A WYNN RESORT

February 5, 2021

Massachusetts Gaming Commission  
101 Federal Street, 12<sup>th</sup> Floor  
Boston, MA 02110

***RE: Quarterly Report Attestation Required Under 205 CMR 139.06(1)***

Dear Commissioners:

In accordance with 205 CMR 139.06(1), please accept the enclosed as Wynn MA, LLC's quarterly report for Encore Boston Harbor for the fourth quarter of 2020 (the "Quarterly Report").

Please accept the signatures below as an attestation that the information contained in the Quarterly Report is true and accurate.

Sincerely,



---

Brian Gullbrants  
President



---

Allison Rankin  
Chief Financial Officer

**Appendix 2**

**Certification of Chief Financial Officer**

Please see attached.



**Encore**<sup>®</sup>  
BOSTON HARBOR  
A WYNN RESORT

February 5, 2021

Massachusetts Gaming Commission  
101 Federal Street, 12<sup>th</sup> Floor  
Boston, MA 02110

**RE: Quarterly Report Attestation Required Under 205 CMR 139.06(2)**

Dear Commissioners:

In accordance with 205 CMR 139.06(2), Wynn MA, LLC ("Wynn") hereby certifies that as of the end of the fourth quarter of 2020 ("Q4"), Wynn has:

(a) maintained for Q4, and has the ability to maintain for the upcoming quarter, a gaming bankroll or equivalent provisions adequate to pay winning wagers to gaming patrons when due;

(b) paid in Q4 and has the ability to pay when due all local, state and federal taxes, including the tax on gross gaming revenues imposed by M.G.L. c. 23K, § 55 and any fees imposed under M.G.L. c. 23K or 205 CMR;

(c) the ability to make annual capital expenditures to its gaming establishment in a minimum aggregate amount equal to 3.5% of the net gaming revenues derived from the establishment or in accordance with a multi-year capital expenditure plan approved by the commission pursuant to M.G.L. c. 23K, § 21(a)(4) and 205 CMR 139.09; and

(d) the ability to pay, exchange, refinance or extend debts, including long-term and short-term principal and interest and capital lease obligations, which will mature or otherwise come due and payable during the license term, or to otherwise manage such debts and any default with respect to such debts.

Please accept my signature below as an attestation that the foregoing certification is true and accurate.

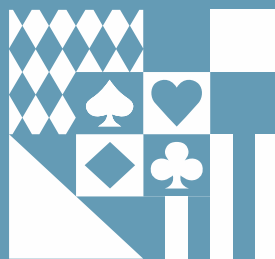
Sincerely,



Allison Rankin  
Chief Financial Officer

# Plainridge Park

Q4 Report



BARSTOOL SPORTSBOOK



# Gaming Revenue and Taxes



| Year | Quarter | Net Slot Revenue | State Taxes  | Race Horse Taxes | Total Taxes  |
|------|---------|------------------|--------------|------------------|--------------|
| 2019 | Q1      | \$40,910,743     | \$16,364,297 | \$3,681,967      | \$20,046,264 |
|      | Q2      | \$42,447,535     | \$16,979,014 | \$3,820,278      | \$20,799,292 |
|      | Q3      | \$36,159,250     | \$14,463,700 | \$3,254,328      | \$17,718,028 |
|      | Q4      | \$32,431,442     | \$12,972,577 | \$2,918,830      | \$15,891,407 |
|      | Total   | \$151,948,970    | \$60,779,588 | \$13,675,403     | \$74,454,991 |
| 2020 | Q1      | \$27,540,704     | \$11,016,281 | \$2,478,663      | \$13,494,944 |
|      | Q2      | \$0              | \$0          | \$0              | \$0          |
|      | Q3      | \$27,857,923     | \$11,143,169 | \$2,507,213      | \$13,650,382 |
|      | Q4      | \$26,855,516     | \$10,742,206 | \$2,416,996      | \$13,159,202 |
|      | Total   | \$82,254,143     | \$32,901,656 | \$7,402,872      | \$40,304,528 |

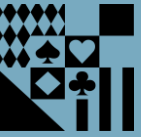
# Lottery Sales



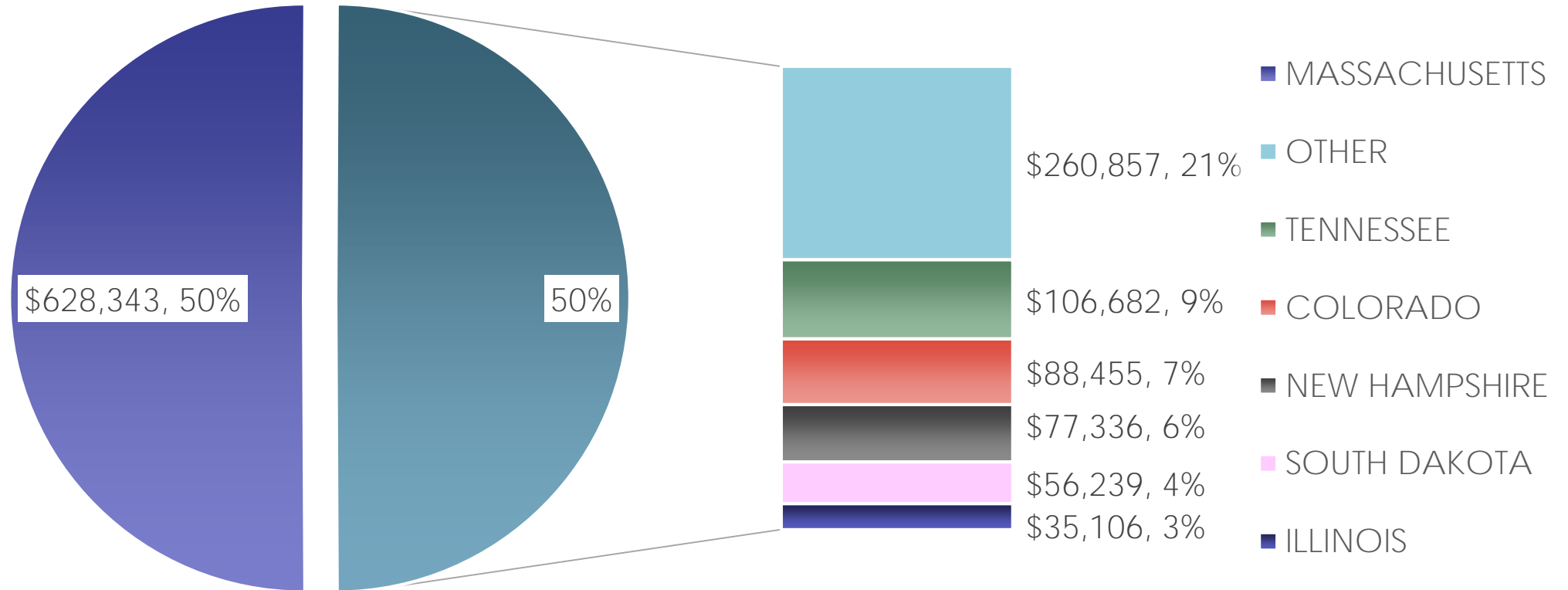
| Quarter | 2020        | 2019        | \$ Difference | % Difference |
|---------|-------------|-------------|---------------|--------------|
| Q1      | \$715,250   | \$868,238   | (\$152,988)   | -17.6%       |
| Q2      | \$0         | \$885,603   | (\$885,603)   | -100.0%      |
| Q3      | \$259,890   | \$856,790   | (\$596,900)   | -69.7%       |
| Q4      | \$354,201   | \$793,846   | (\$439,645)   | -55.4%       |
| Total   | \$1,329,341 | \$3,404,477 | (\$2,075,136) | -61.0%       |

- PPC currently has five instant ticket machines and four online terminals
- Prior to the casino opening the property had one instant ticket machine and two online machines

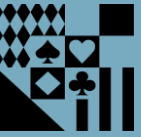
# Spend by State



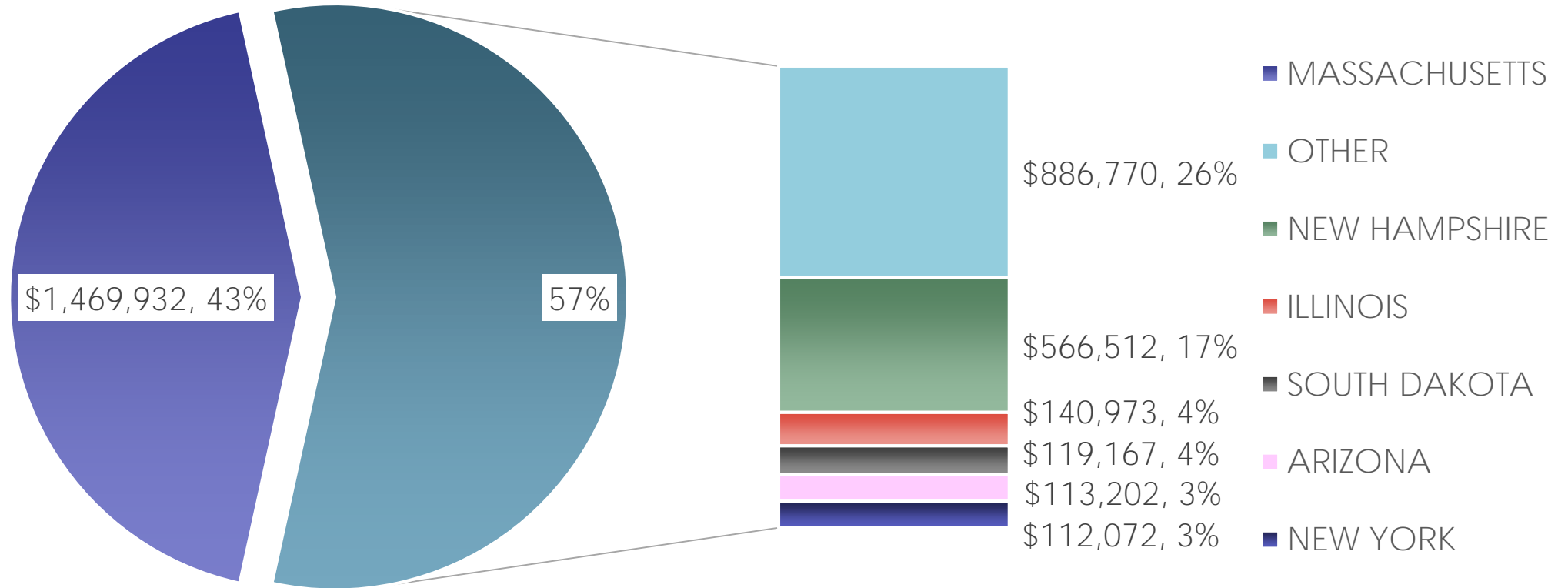
## Q4 2020 Total Qualified Spend By State



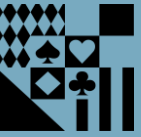
# Spend by State



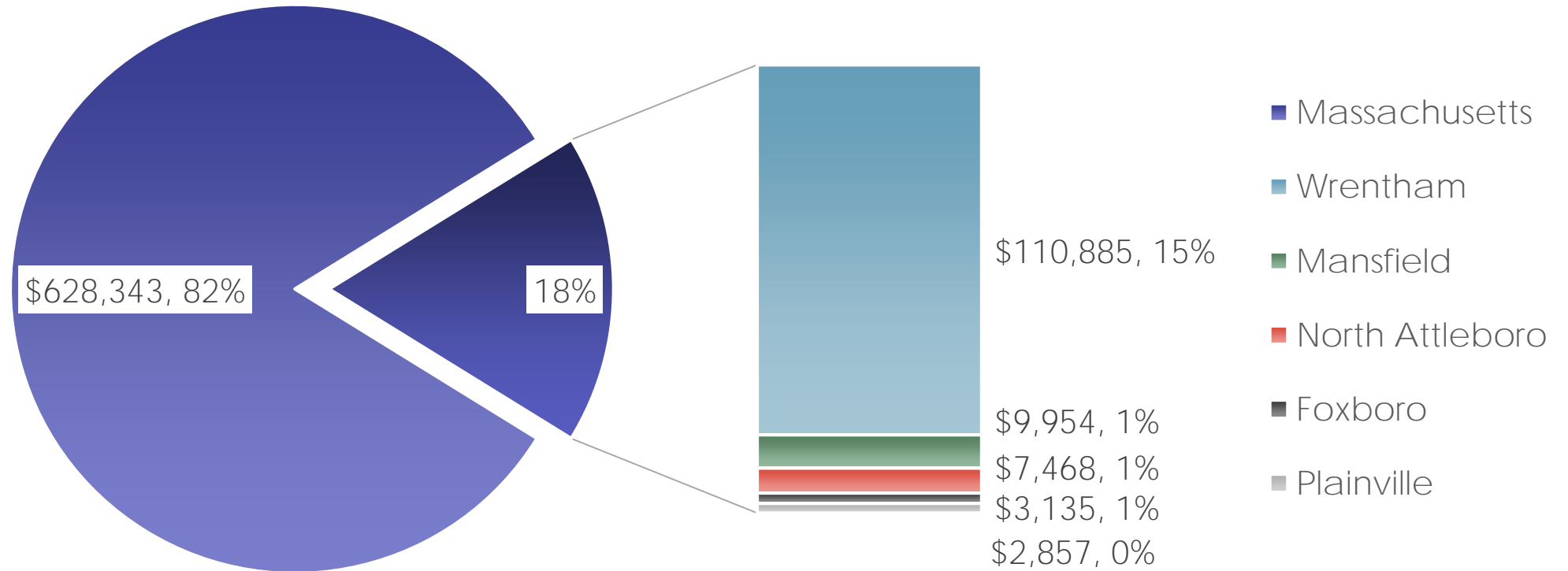
## 2020 Total Qualified Spend By State



# Local Spend

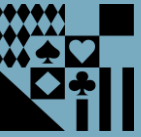


## Q4 2020 Massachusetts vs Host & Surrounding Community Qualified Spend

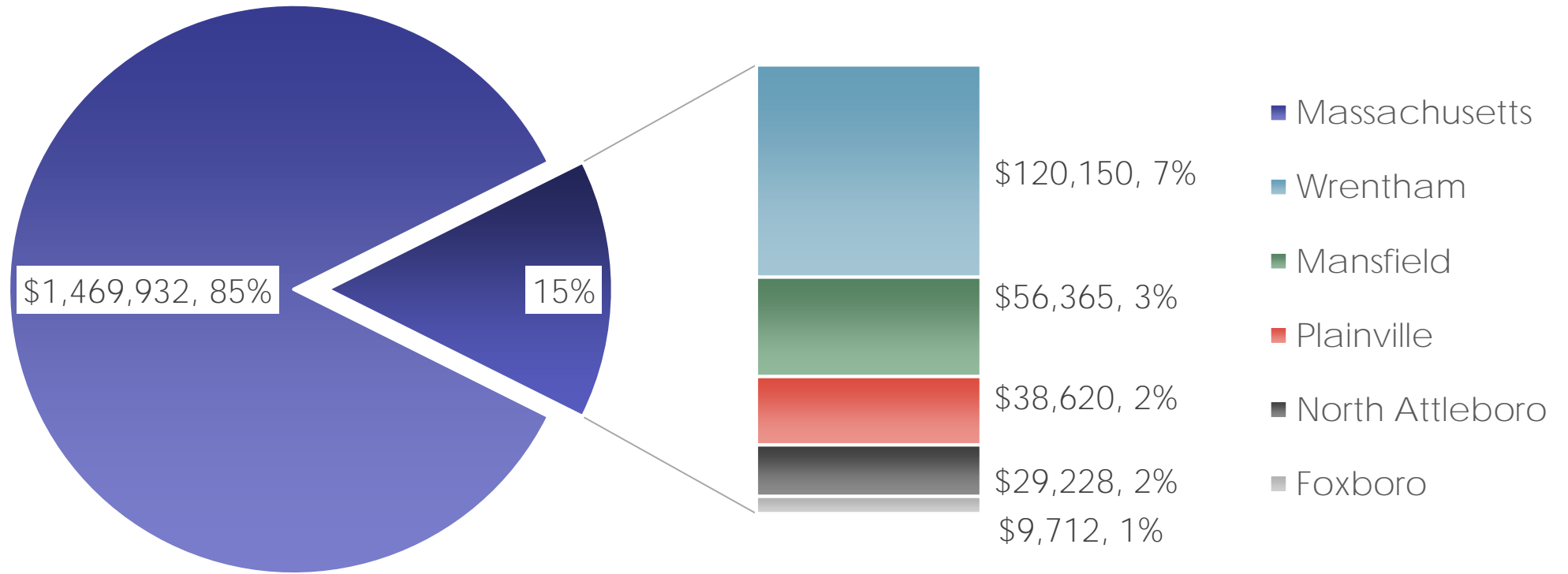


\$134,299 Total Community Spend

# Local Spend



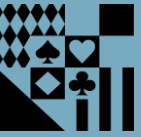
## 2020 Massachusetts vs Host & Surrounding Community Qualified Spend



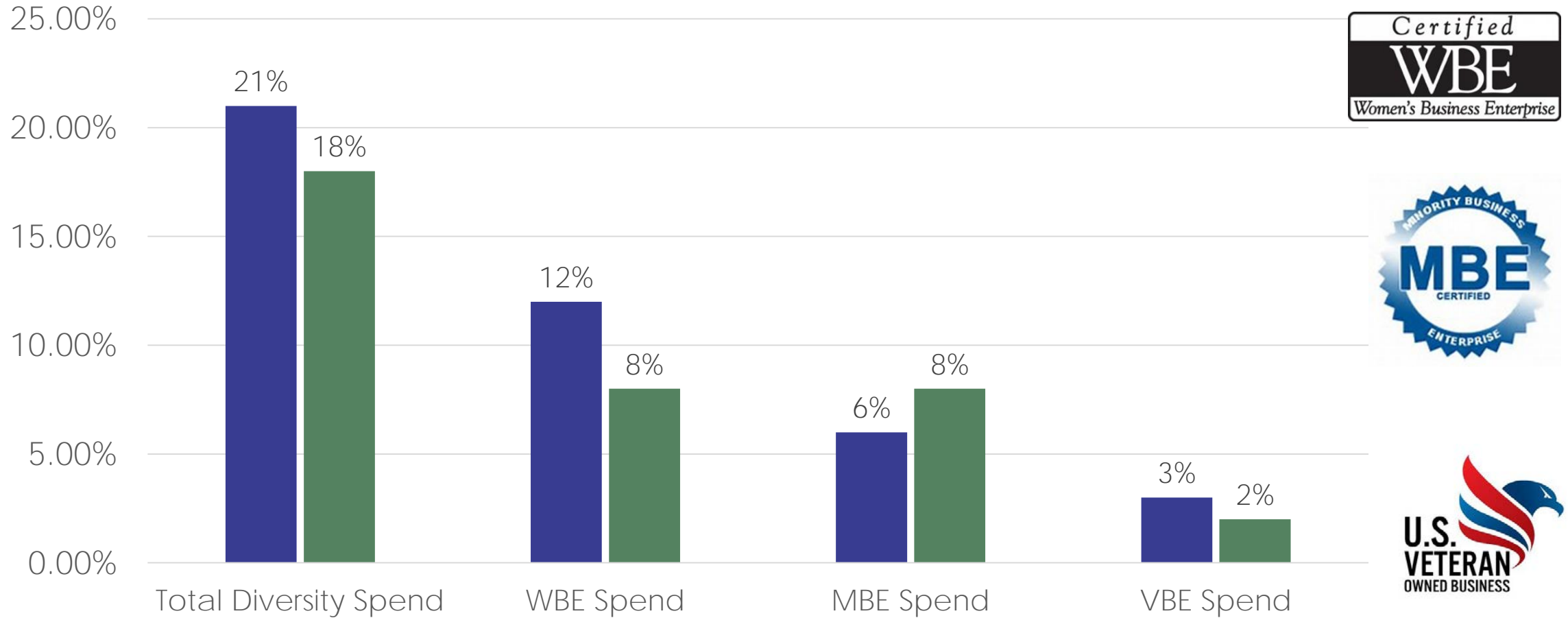
\$254,859 Total Community Spend



# Vendor Diversity



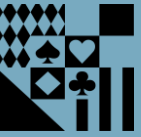
Q4 2020 vs. Goal



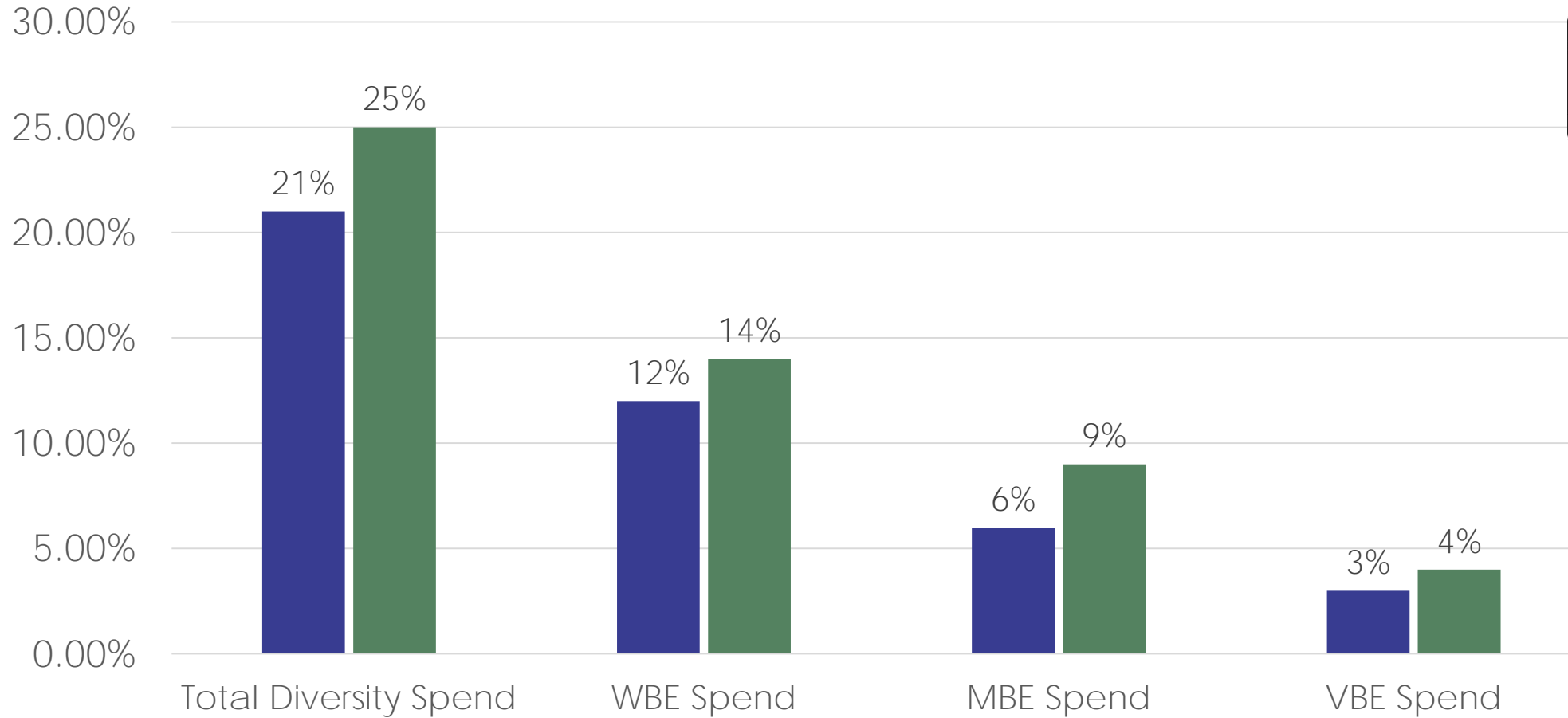
■ Goal ■ Q4 2020 Spend



# Vendor Diversity

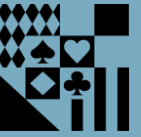


2020 vs. Goal



■ Goal ■ 2020 Spend

# Diverse Spend



| Category <sup>1</sup> | Q4 2020     | Q3 2020   | \$ Difference | % Difference |
|-----------------------|-------------|-----------|---------------|--------------|
| WBE                   | \$87,298    | \$155,006 | (\$67,708)    | -43.7%       |
| MBE                   | \$90,711    | \$35,259  | \$55,452      | 157.3%       |
| VBE                   | \$23,417    | \$16,477  | \$6,940       | 42.1%        |
| Total Diverse Spend   | \$201,426   | \$206,742 | (\$5,316)     | -2.6%        |
| Qualified Spend       | \$1,108,618 | \$550,500 | \$558,118     | 101.4%       |

<sup>1</sup> Includes vendors that are certified in multiple diversity categories. Spend is reported in all qualified categories.

# Compliance

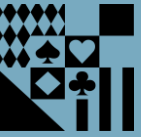


| Month    | Prevented from Entering Gaming Establishment |                     |                       | Expired, Invalid, No ID | Fake ID | Minors and Underage Escorted from the Gaming Area | Minors and Underage Gambling at Slot Machines | Minors and Underage Consuming Alcoholic Beverages |
|----------|--|---------------------|-----------------------|-------------------------|---------|---|---|---|
|          | Total  | Minors <sup>1</sup> | Underage <sup>2</sup> |                         |         |   |   |   |
| October  | 273  | 3                   | 4                     | 266                     | 0       | 0   | 0   | 0   |
| November | 156  | 5                   | 6                     | 145                     | 0       | 0   | 0   | 0   |
| December | 214  | 1                   | 4                     | 209                     | 0       | 0   | 0   | 0   |
| Total    | 643  | 9                   | 14                    | 620                     | 0       | 0   | 0   | 0   |

<sup>1</sup> Person under 18 years of age

<sup>2</sup> Person 18-21 years of age

# Employment<sup>1</sup>: All Employees<sup>2</sup>



| Employee Category  | Percentage Goal | Total # of Employees in Category | Q4 Actual Percentage of Total Employees | Q3 Actual Percentage of Total Employees |
|--------------------|-----------------|----------------------------------|---|---|
| Diversity          | 15%             | 90                               | 27%                                     | 26%                                     |
| Veterans           | 2%              | 18                               | 5%                                      | 4%                                      |
| Women              | 50%             | 142                              | 42%                                     | 53%                                     |
| Local <sup>3</sup> | 35%             | 108                              | 32%                                     | 32%                                     |
| MA Employees       |                 | 208                              | 62%                                     | 63%                                     |

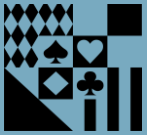
<sup>1</sup> All employees referenced in this slide were current as of Q4 2020

<sup>2</sup> Total number of employees Q4 2020: 335

<sup>3</sup> Local includes Attleboro, Foxboro, Mansfield, North Attleboro, Plainville & Wrentham

|            | Employees | Full-Time | Part-Time | Seasonal |
|------------|-----------|-----------|-----------|----------|
| Total      | 335       | 236       | 89        | 10       |
| % of Total | 100%      | 70%       | 27%       | 3%       |

# Employment<sup>1</sup>: Supervisor and Above<sup>2</sup>



| Employee Category | Total # of Employees in Category | Actual Percentage of Total Employees |
|-------------------|----------------------------------|--------------------------------------|
| Diversity         | 19                               | 26%                                  |
| Veterans          | 3                                | 4%                                   |
| Women             | 26                               | 36%                                  |

<sup>1</sup> All employees referenced in this slide were current as of Q4 2020

<sup>2</sup> Total number of Supervisor and Above Q4 2020: 72



PLAINRIDGE PARK  
CASINO

**PLAINRIDGE PARK CASINO**  
**Q4/2020**  
**205 CMR 139.06(1) Attestation**

205 CMR 139.06(1) requires a gaming licensee to create a quarterly report that provides a continuing view of the gaming licensee's financial position including key performance measures, narrative commentary on operating results, and where applicable, the capital reserve account contributions made in accordance with the plan submitted pursuant to 205 CMR 139.09. The required quarterly report shall be attested to by any two of the following: the Chief Executive Officer, Chief Gaming Executive, Chief Financial Officer, Treasurer, Financial Director, Controller, or their functional equivalent.

PPC Management has submitted the quarterly report containing the information required by 205 CMR 139.06(1) to the Gaming Commission. PPC Management has reviewed the quarterly report and confirms that the information provided in the quarterly report is true and correct and complies with the requirements set for in 205 CMR 139.06(1).

  
Dana Fortney  
VP of Finance

2/5/21  
Date:

  
Mike Mueller  
VP of Operations

2/5/21  
Date:



**PLAINRIDGE PARK CASINO**  
**Q4/2020**  
**205 CMR 139.06(2) Attestation**

205 CMR 139.06(2) requires the licensee's quarterly report required in accordance with 205 CMR 139.06(1) to be accompanied by a statement attested to by the gaming licensee's Chief Financial Officer, or their functional equivalent, that the gaming licensee satisfies the following:

- (a) It has maintained for the previous quarter, and has the ability to maintain for the upcoming quarter, a gaming bankroll or equivalent provisions adequate to pay winning wagers to gaming patrons when due.
- (b) It has paid in the previous quarter and has the ability to pay when due all local, state and federal taxes, including the tax on gross gaming revenues imposed by M.G.L. c. 23K, § 55 and any fees imposed under M.G.L. c. 23K or 205 CMR.
- (c) It has the ability to make annual capital expenditures to its gaming establishment in a minimum aggregate amount equal to 3.5% of the net gaming revenues derived from the establishment or in accordance with a multi-year capital expenditure plan approved by the commission pursuant to M.G.L. c. 23K, § 21(a)(4) and 205 CMR 139.09.
- (d) It has the ability to pay, exchange, refinance or extend debts, including long-term and short-term principal and interest and capital lease obligations, which will mature or otherwise come due and payable during the license term, or to otherwise manage such debts and any default with respect to such debts.

PPC Management has reviewed our financial statements and capital expenditure plan and notes the following:

Penn National Gaming, Inc. reports financial information regionally. PPC's financial performance information is provided to the MGC on an annual basis in the form of third-party audited financial statements.

- a) PPC maintained an adequate gaming bankroll to pay winning wagers.
- b) PPC is current with local, state, federal and gross gaming revenue tax payments.
- c) PPC has complied with the agreed upon capital expenditure requirements for 2016, 2017, 2018 and 2019. However, due to the COVID-19 state ordered shut down of our operations during Q2 2020, PPC is reviewing our 2020 capital expenditure plan with the MGC.
- d) PPC has the ability to pay, exchange, refinance or extend debts, including long-term and short-term principal and interest and capital lease obligations, which will mature or otherwise come due and payable during the license term, or to otherwise manage such debts and any default with respect to such debts.

I do hereby confirm that the information above is true and correct and that, except for the above cited 2020 capital expenditure exception.

  
Dana Fortney  
VP of Finance

2/5/21  
Date: