



NOTICE OF MEETING AND AGENDA

Pursuant to the Massachusetts Open Meeting Law, G.L. c. 30A, §§ 18-25, and Chapter 107 of the Session Acts of 2022, notice is hereby given of a public meeting of the **Massachusetts Gaming Commission**. The meeting will take place:

Wednesday | November 16, 2022 | 10:30 a.m.
VIA REMOTE ACCESS: 1-646-741-5292
MEETING ID/ PARTICIPANT CODE: 111 341 2862
All meetings are streamed live at www.massgaming.com.

Please note that the Commission will conduct this public meeting remotely utilizing collaboration technology. Use of this technology is intended to ensure an adequate, alternative means of public access to the Commission's deliberations for any interested member of the public. If there is any technical problem with the Commission's remote connection, an alternative conference line will be noticed immediately on www.massgaming.com.

All documents and presentations related to this agenda will be available for your review on the morning of the meeting date by visiting our website and clicking on the News header, under the Meeting Archives drop-down.

PUBLIC MEETING - #402

1. Call to Order
2. Administrative Update – Karen Wells, Executive Director
 - a. Casino Update – Bruce Band, Assistant Director, IEB and Gaming Agents Divisions Chief
3. Community Affairs – Joe Delaney, Chief
 - a. Release of MGM Springfield Bond
 - b. Encore Boston Harbor Quarterly Report- Q3
 - c. Development of East of Broadway in Everett, MA
 - i. Project Introduction – Joe Delaney, Chief of Community Affairs
 - ii. Project Presentation – Jacqui Krum, Senior Vice President and General Counsel at Encore Boston Harbor
 - iii. Legal Presentation: MGC – Todd Grossman, General Counsel
 - iv. Legal Presentation: Mintz Levin

VOTE

4. Commissioner Updates



Massachusetts Gaming Commission

5. Other Business - Reserved for matters the Chair did not reasonably anticipate at the time of posting.

I certify that this Notice was posted as “Massachusetts Gaming Commission Meeting” at www.massgaming.com and emailed to regs@sec.state.ma.us. Posted to Website: November 10, 2022 | 5:00 p.m.

November 10, 2022

Cathy Judd-Stein

Cathy Judd-Stein, Chair

If there are any questions pertaining to accessibility and/or further assistance is needed, please email crystal.beauchemin@massgaming.gov.



Massachusetts Gaming Commission



TO: Chair Cathy Judd-Stein and Commissioners Eileen O'Brien, Bradford Hill, Nakisha Skinner and Jordan Maynard

FROM: Joseph E. Delaney, Chief of Community Affairs

CC: Karen Wells, Executive Director; Todd Grossman, General Counsel

DATE: November 10, 2022

RE: MGM Housing Requirement and Bond Release

MGM is requesting that they be released from the requirement to maintain a bond for the development of 54 housing units to be constructed as part of the 31 Elm Street development. Staff recommends that MGM be released from the bond requirement. Below is a chronology of events leading up to this.

- The Gaming License for MGM Springfield required the construction of 54 market rate apartment units in the MGM Springfield development. These were to have been constructed along Main Street.
- When the hotel tower was removed from the project, MGM moved the hotel to the area where the 54 units of housing were originally proposed, and the Commission agreed to the provision of the housing units off-site within ½ mile of the MGM Springfield site.
- MGM purchased a building from the City of Springfield at 195 State Street to provide approximately 30 of the 54 housing units. MGM identified several other potential locations for the other units.
- Meanwhile, the City of Springfield started moving forward with the re-development of 31 Elm Street and asked that MGM Springfield participate in that project in lieu of providing 54 units of housing elsewhere in Springfield.
- The Commission was amenable to that request, and it was determined that a contribution of \$16 million towards that project would satisfy the housing requirement.
- Due to various delays, the MGM Springfield project opened without completion of the housing units and the Wahlburgers. Because these items were incomplete, the Commission required the posting of a performance bond in the amount of \$25 million to ensure the completion of these items.



Massachusetts Gaming Commission

- When the Wahlburgers was completed, the Commission authorized the reduction of the bond to \$16 million – the amount of the MGM contribution to the 31 Elm Street project.
- As the design and financing of the 31 Elm Street project progressed, a cooperative agreement was signed by several parties including MassHousing, Opal Development, Winn Development, MGM, the City of Springfield and a couple of other parties, which established the roles and responsibilities of the parties, financing deadlines, monetary contributions of each party, etc. Separately, the City of Springfield entered into a grant agreement with MGM regarding the payment of funds for the 31 Elm Street project.
- In order for these agreements to move forward, the Commission needed to confirm that the \$16 million payment by MGM would satisfy the housing requirement.
- On February 27, 2020, the Commission made a series of motions that established that the payment of \$16 million from MGM (Blue Tarp Redevelopment) to MassHousing would satisfy the housing requirement that was part of the RFA-2 and the Gaming License.
- The Commission further required the maintenance of a bond if any of the dates in these agreements was not met and that if the deal did not move forward, MGM would still be required to construct the 54 housing units.
- Due to the pandemic and other financial factors, the dates in these agreements were generally not met and were extended by the parties to the agreements. As required, MGM continued to maintain the \$16 million bond throughout.
- On May 20, 2022, MGM made the \$16 million payment to MassHousing, which satisfied the housing requirement as established in the February 27, 2020 motions.
- As such, the Commission may release MGM from the bond requirement.



Massachusetts Gaming Commission



November 16, 2022

Mr. Augustine Kim
Vice President and Legal Counsel, Northeast Group
MGM Resorts International
One MGM Way
Springfield, MA

Subject: MGM Springfield Performance Bond – 54 Housing Units

Dear Mr. Kim:

On February 27, 2020, the Massachusetts Gaming Commission (the Commission) made a series of votes that substituted the payment of \$16,000,000 by Blue Tarp Redevelopment, LLC to MassHousing in lieu of the 54 housing units required as part of the MGM Springfield RFA-2 and the Gaming License. This \$16,000,000 payment allows for the construction of the required housing units in the 31 Elm Street project being developed by 31 Elm LLC. The Commission also required that a bond be provided until such time as the \$16,000,000 payment was made to MassHousing. To date, Blue Tarp Redevelopment LLC has maintained a \$16,000,000 bond as required by the Commission, which expires on December 31, 2022.

On May 20, 2022, Blue Tarp Redevelopment wired \$16,000,000 to the Massachusetts Housing Finance Agency (MassHousing). This payment satisfies the housing commitment made in the RFA-2 and the Gaming License as outlined in the votes taken by the Commission on February 27, 2020. Therefore, the Commission releases Blue Tarp Redevelopment LLC from the bond requirement established for the project.

Sincerely:

Karen Wells
Executive Director
Massachusetts Gaming Commission



Massachusetts Gaming Commission



CONTINUATION CERTIFICATE

Liberty Mutual Insurance Company Boston, MA , Surety upon

a certain Bond No. 609204012

Cross Ref: _____

dated effective 1/1/2021
(MONTH-DAY-YEAR)

on behalf of BLUE TARP REDEVELOPMENT, LLC
(PRINCIPAL)

and in favor of COMMONWEALTH OF MASSACHUSETTS
(OBLIGEE)

does hereby continue said bond in force for the further period

beginning on January 1, 2022
(MONTH-DAY-YEAR)

and ending on December 31, 2022
(MONTH-DAY-YEAR)

Amount of bond \$16,000,000.00

Description of bond MA - Category 1 MA Gaming License

PROVIDED: That this continuation certificate does not create a new obligation and is executed upon the express condition and provision that the Surety's liability under said bond and this and all Continuation Certificates issued in connection therewith shall not be cumulative and that the said Surety's aggregate liability under said bond and this and all such Continuation Certificates on account of all defaults committed during the period (regardless of the number of years) said bond had been and shall be in force, shall not in any event exceed the amount of said bond as hereinbefore set forth.

Signed and dated on November 22, 2021
(MONTH-DAY-YEAR)

Liberty Mutual Insurance Company

175 Berkeley Street, Boston, Massachusetts 02116 610-832-8240

By *Erin Brown*
Attorney-in-Fact Erin Brown, Attorney-In-Fact

Aon Risk Insurance Services West, Inc.
Agent

707 Wilshire Blvd., Suite 2600, Los Angeles, CA, 90017
Address of Agent

(213) 630-3200
Telephone Number of Agent



CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

A Notary Public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

County of Los Angeles

On 11/22/2022 before me, D.Garcia, Notary Public, personally appeared Erin Brown who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that ~~he/she/they~~ executed the same in ~~his/her/their~~ authorized capacity(ies), and that by ~~his/her/their~~ signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Signature *D. Garcia*
D. Garcia Signature of Notary Public



This Power of Attorney limits the acts of those named herein, and they have no authority to bind the Company except in the manner and to the extent herein stated.

Packet Page 8

Liberty Mutual Insurance Company
The Ohio Casualty Insurance Company
West American Insurance Company

Certificate No: 8206381-024029

POWER OF ATTORNEY

KNOWN ALL PERSONS BY THESE PRESENTS: That The Ohio Casualty Insurance Company is a corporation duly organized under the laws of the State of New Hampshire, that Liberty Mutual Insurance Company is a corporation duly organized under the laws of the State of Massachusetts, and West American Insurance Company is a corporation duly organized under the laws of the State of Indiana (herein collectively called the "Companies"), pursuant to and by authority herein set forth, does hereby name, constitute and appoint, Ashraf Elmasry; B. Aleman; Donna Garcia; Edward C. Spector; Emily Newell; Erin Brown; Ethan Spector; KD Wapato; Lisa K. Crail; Marina Tapia; Meghan Hanes; Nathan Varnold; Paul Rodriguez; Rosa E. Rivas; Samantha Fazzini; Simone Gerhard; Thomas Branigan; Tracy Aston

all of the city of Los Angeles state of CA each individually if there be more than one named, its true and lawful attorney-in-fact to make, execute, seal, acknowledge and deliver, for and on its behalf as surety and as its act and deed, any and all undertakings, bonds, recognizances and other surety obligations, in pursuance of these presents and shall be as binding upon the Companies as if they have been duly signed by the president and attested by the secretary of the Companies in their own proper persons.

IN WITNESS WHEREOF, this Power of Attorney has been subscribed by an authorized officer or official of the Companies and the corporate seals of the Companies have been affixed thereto this 1st day of October, 2021.



Liberty Mutual Insurance Company
The Ohio Casualty Insurance Company
West American Insurance Company

By: David M. Carey
David M. Carey, Assistant Secretary

State of PENNSYLVANIA ss
County of MONTGOMERY

On this 1st day of October, 2021 before me personally appeared David M. Carey, who acknowledged himself to be the Assistant Secretary of Liberty Mutual Insurance Company, The Ohio Casualty Company, and West American Insurance Company, and that he, as such, being authorized so to do, execute the foregoing instrument for the purposes therein contained by signing on behalf of the corporations by himself as a duly authorized officer.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my notarial seal at King of Prussia, Pennsylvania, on the day and year first above written.



Commonwealth of Pennsylvania - Notary Seal
Teresa Pastella, Notary Public
Montgomery County
My commission expires March 28, 2025
Commission number 1126044
Member, Pennsylvania Association of Notaries

By: Teresa Pastella
Teresa Pastella, Notary Public

This Power of Attorney is made and executed pursuant to and by authority of the following By-laws and Authorizations of The Ohio Casualty Insurance Company, Liberty Mutual Insurance Company, and West American Insurance Company which resolutions are now in full force and effect reading as follows:

ARTICLE IV – OFFICERS: Section 12. Power of Attorney.

Any officer or other official of the Corporation authorized for that purpose in writing by the Chairman or the President, and subject to such limitation as the Chairman or the President may prescribe, shall appoint such attorneys-in-fact, as may be necessary to act in behalf of the Corporation to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations. Such attorneys-in-fact, subject to the limitations set forth in their respective powers of attorney, shall have full power to bind the Corporation by their signature and execution of any such instruments and to attach thereto the seal of the Corporation. When so executed, such instruments shall be as binding as if signed by the President and attested to by the Secretary. Any power or authority granted to any representative or attorney-in-fact under the provisions of this article may be revoked at any time by the Board, the Chairman, the President or by the officer or officers granting such power or authority.

ARTICLE XIII – Execution of Contracts: Section 5. Surety Bonds and Undertakings.

Any officer of the Company authorized for that purpose in writing by the chairman or the president, and subject to such limitations as the chairman or the president may prescribe, shall appoint such attorneys-in-fact, as may be necessary to act in behalf of the Company to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations. Such attorneys-in-fact subject to the limitations set forth in their respective powers of attorney, shall have full power to bind the Company by their signature and execution of any such instruments and to attach thereto the seal of the Company. When so executed such instruments shall be as binding as if signed by the president and attested by the secretary.

Certificate of Designation – The President of the Company, acting pursuant to the Bylaws of the Company, authorizes David M. Carey, Assistant Secretary to appoint such attorneys-in-fact as may be necessary to act on behalf of the Company to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations.

Authorization – By unanimous consent of the Company's Board of Directors, the Company consents that facsimile or mechanically reproduced signature of any assistant secretary of the Company, wherever appearing upon a certified copy of any power of attorney issued by the Company in connection with surety bonds, shall be valid and binding upon the Company with the same force and effect as though manually affixed.

I, Renee C. Llewellyn, the undersigned, Assistant Secretary, The Ohio Casualty Insurance Company, Liberty Mutual Insurance Company, and West American Insurance Company do hereby certify that the original power of attorney of which the foregoing is a full, true and correct copy of the Power of Attorney executed by said Companies, is in full force and effect and has not been revoked.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seals of said Companies this 22nd day of November, 2021.



By: Renee C. Llewellyn
Renee C. Llewellyn, Assistant Secretary



Empower Results®

Aon Risk Insurance Services West, Inc.
707 Wilshire Blvd., Suite 2600
Los Angeles, CA 90017

November 22, 2021

Joe Delaney
Community Affairs Division Chief
Massachusetts Gaming Commission
101 Federal St, 12th Floor
Boston, MA 02110

RE: Bond #: 609204012 - BLUE TARP REDEVELOPMENT, LLC
Obligee: COMMONWEALTH OF MASSACHUSETTS
Project: MA - Category 1 MA Gaming License

Dear Mr. Delaney :

Enclosed please find the above referenced renewal certificate in the amount of \$16,000,000.00, dated 1/1/2022 – 12/31/2022 for COMMONWEALTH OF MASSACHUSETTS.

If you should have any questions or if I may be of further assistance, please do not hesitate to call me at (213) 996-1586.

Sincerely,

Aon Risk Insurance Services West, Inc.

A handwritten signature in blue ink, appearing to read "Erin Brown".

Erin Brown

Enclosure
Record # 2810024

Cc: MGM Resorts International, Inc.
Blue Tarp redevelopment, LLC

Quarterly Report Q3 2022

November 16, 2022

Massachusetts Gaming Commission

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BOSTON HARBOR
A WYNN RESORT

Gaming Revenue, Taxes & Lottery Sales

Gaming Revenue & Taxes: Q3 2022

Year	Month	Table Games GGR	Slots GGR	Total GGR	State Taxes Collected
2022	July	\$29,672,721.61	\$35,051,906.67	\$64,724,628.28	\$16,181,157.07
	August	\$22,711,324.56	\$35,372,908.84	\$58,084,233.40	\$14,521,058.35
	September	\$28,642,137.95	\$32,941,867.36	\$61,584,005.31	\$15,396,001.33
	Total	\$81,026,184.12	\$103,366,682.87	\$184,392,866.99	\$46,098,216.75

Gaming Revenue & Taxes: Year-Over-Year

Year	Quarter	Table Games GGR	Slots GGR	Total GGR	State Taxes Collected
2021	Q1	\$51,147,252.30	\$72,828,463.99	\$123,975,716.29	\$30,993,929.07
	Q2	\$66,827,652.69	\$88,842,261.01	\$155,669,913.70	\$38,917,478.42
	Q3	\$76,482,024.77	\$97,880,731.41	\$174,362,756.18	\$43,590,689.05
	Q4	\$86,322,321.24	\$94,064,782.51	\$180,387,103.75	\$45,096,775.94
	Total	\$280,779,251.00	\$353,616,238.92	\$634,395,489.92	\$158,598,872.48
2022	Q1	\$79,459,213.78	\$94,110,326.79	\$173,569,540.57	\$43,392,385.14
	Q2	\$83,618,480.43	\$98,210,588.95	\$181,829,069.38	\$45,457,267.36
	Q3	\$81,026,184.12	\$103,366,682.87	\$184,392,866.99	\$46,098,216.75
	Q4	-	-	-	-
	Total (to date)	\$244,103,878.33	\$295,687,598.61	\$539,791,476.94	\$134,947,869.25

Lottery Sales: Q3 2022*

Year	Month	Lottery Sales	% Change 2021
2022	July	\$353,339.50	14.5%
	August	\$267,566.00	13.7%
	September	\$258,232.00	10.5%
	Total	\$879,137.50	13.0%

*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	% Change from Previous Year
2021	Q1	\$613,578.00	-13.3%
	Q2	\$727,269.25	11354.1%
	Q3	\$777,725.00	84.4%
	Q4	\$908,165.00	43.5%
	Total	\$3,026,737.25	71.2%
2022	Q1	\$818,421.75	33.4%
	Q2	\$828,894.50	14.0%
	Q3	\$879,137.50	13.0%
	Q4	-	-
	Total (to date)	\$2,526,453.75	-

Workforce

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Employment: All Employees

Sector	Goal	Q1% ¹	Q1 Total # of Employees	Q2% ²	Q2 Total # of Employees	Q3% ³	Q3 Total # of Employees	Q4%	Q4 Total # of Employees
Minority	40%	54%	1,879	51%	1,725	55%	1,921	-	-
Veteran	3%	2%	82	2%	82	2%	80	-	-
Women	50%	45%	1,550	45%	1,529	46%	1,606	-	-
Local/Host/Surrounding Community Resident ³	75%	87%	3,030	88%	2,992	88%	3,060	-	-
MA Residents	-	90%	3,144	91%	3,097	91%	3,161	-	-
Total Number of Employees ⁴			3,482		3,390		3,479		-
Full-time			2,403		2,349		2,394		-
Part-time			1,079		1,041		1,085		-
On-call			0		0		0		-

1 All Q1 figures are as of April 1, 2022.

2 All Q2 figures are as of July 1, 2022.

3 All Q3 figures are as of October 1, 2022.

4 “Local/Host/Surrounding Community Residents” include residents from communities within thirty (30) miles of Encore Boston Harbor.

5 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.

Employment: Supervisory and Above

	Minority	Women	Veteran	Total Head Count (including non-minority employees)
ALL EMPLOYEES				
Number of Employees	1,921	1,606	80	3,479
% Actual	55%	46%	20%	-
MANAGER AND ABOVE				
Number of Employees	103	97	16	227
% Actual	45%	43%	7%	-
SUPERVISORS AND ABOVE				
Number of Employees	326	236	27	548
% Actual	59%	43%	5%	-

Operating Spend

Operating Spend¹: Diversity

Diversity Category	Annual Goal	Q3%	Q3 Spend
MBE Vendor Spend	8%	9%	\$2,045,101.80
VBE Vendor Spend	3%	3%	\$632,075.87
WBE Vendor Spend	14%	15%	\$3,217,865.25
Total Diverse Spend	25%	27%	\$5,895,042.92

¹ All spend figures referenced herein are based upon Encore Boston Harbor's Q3 discretionary spend amount of **\$21,587,295.11**.

Operating Spend: Local

Locality	Annual Goal	Q3%	Q3 Spend
Boston	\$20,000,000.00	12%	\$2,528,819.26
Chelsea	\$2,500,000.00	2%	\$403,381.09
Everett	\$10,000,000.00	9%	\$1,878,019.16
Malden	\$10,000,000.00	1%	\$176,759.79
Medford	\$10,000,000.00	0%	\$103,134.16
Somerville	\$10,000,000.00	6%	\$1,274,946.82
MA (Statewide)	-	55%	\$11,840,493.89

Compliance

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BOSTON HARBOR
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Compliance: Minors¹ 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	Numbers of Minors on Gaming Floor Under 18 Years of Age
July	8	0	0	0	1	2	2	2
August	4	1	1	0	0	1	3	1
September	2	0	0	0	0	0	2	0
Total	14	1	1	0	1	3	7	3

¹ A “minor” is defined as a person under 21 years of age, provided however, that the last column of the above specifically refers to persons under 18 years of age.

- The average length of time spent by a minor on the casino floor was 18 minutes.
- The longest length of time spent by a minor on the casino floor was 1 hour, 6 minutes.
- The shortest length of time spent by a minor on the casino floor was 2 minutes.

Promotions, Marketing, Special Events and Volunteerism

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BOSTON HARBOR
A WYNN RESORT

Q3* TRU Patron Charitable Contributions

Charitable Organization	Dollar Amount	Number of Tickets
Casa Myrna	\$1,772.54	13,111
Last Hope K9 Rescue	\$5,562.82	22,254
Pan-Mass Challenge	\$2,486.59	14,834
Urban League of Eastern MA	\$1,890.08	13,035
Total	\$11,712.03	63,234

*Contributions are from August 2, 2022 through September 30, 2022. From the inception of the program to date, the change balances of more than 1 million tickets have been donated.

Launch of PlayMyWay



- ❖ PlayMyWay was launched at EBH on September 12, 2022
- ❖ Relevant EBH employees went through a comprehensive training with EBH and GameSense staff and a professional video was produced for property-wide presentation
- ❖ As an incentive, first-time enrollees are offered a Dunkin® gift card
- ❖ During the month of September, 1,698 patrons enrolled in the program and 83 patrons unenrolled in the program



Q3 Employee Volunteer Efforts



- ❖ Employees volunteered 3,072 hours of their time serving local nonprofits
- ❖ Feed the Funnel brought together more than 250 employees, friends and family to pack over 83,000 meals for local organizations (in one day!)
- ❖ EBH collected over 2,500 school supplies which were donated to Beacon Academy and Everett Public Schools

Inaugural Non-Profit Leadership Retreat



❖ In September, EBH hosted its inaugural non-profit leadership retreat, designed to bring local nonprofit leaders together to learn from each other and EBH and Wynn Resorts executives

❖ The retreat was held at Camp Harbor View and 42 attendees from 19 different non-profits were present

❖ Topics included diversity and inclusion and multigenerational leadership and an executive panel was featured

❖ Reviews:

"I learned so much during this conference. It was also great to connect with other local organizations. Great day!!!"

"The retreat opened my eyes on topics that could make my organization more open and inclusive while maintaining a flow of work."



ESOL Graduation



- ❖ In September, EBH celebrated its first graduation ceremony for team members enrolled in the English Speakers of Other Languages Program
- ❖ EBH partnered with the Jewish Vocational Service in Boston to provide a 12-week course
- ❖ A selection of team members volunteered to share their experience and gratitude by writing a speech in English as a testament to what they learned in the program

ABCD Visit and Update

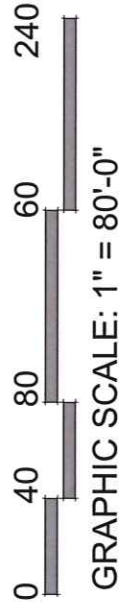
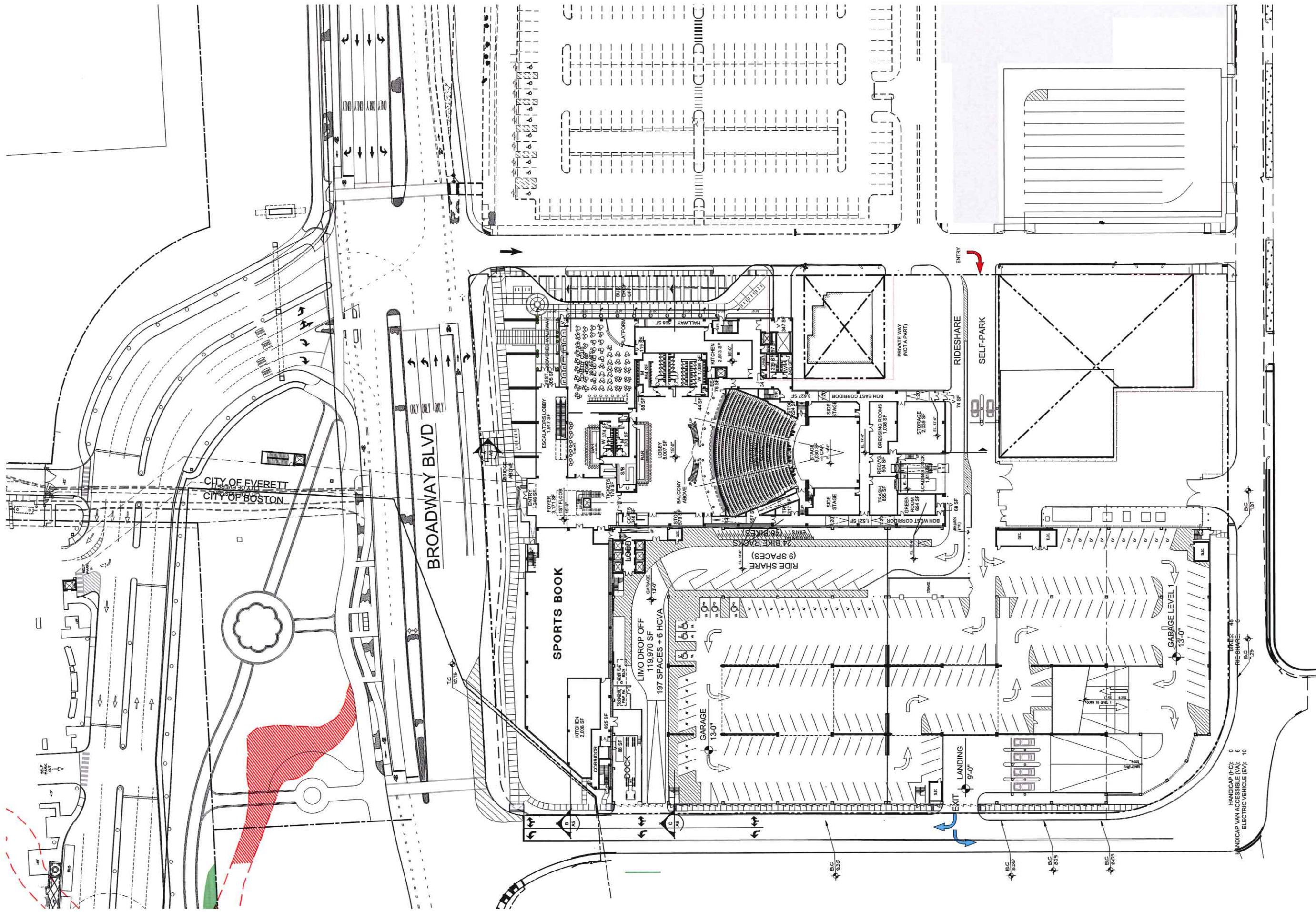


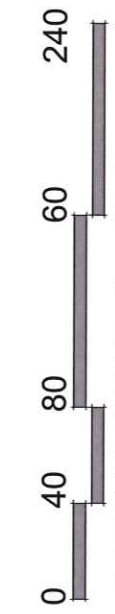
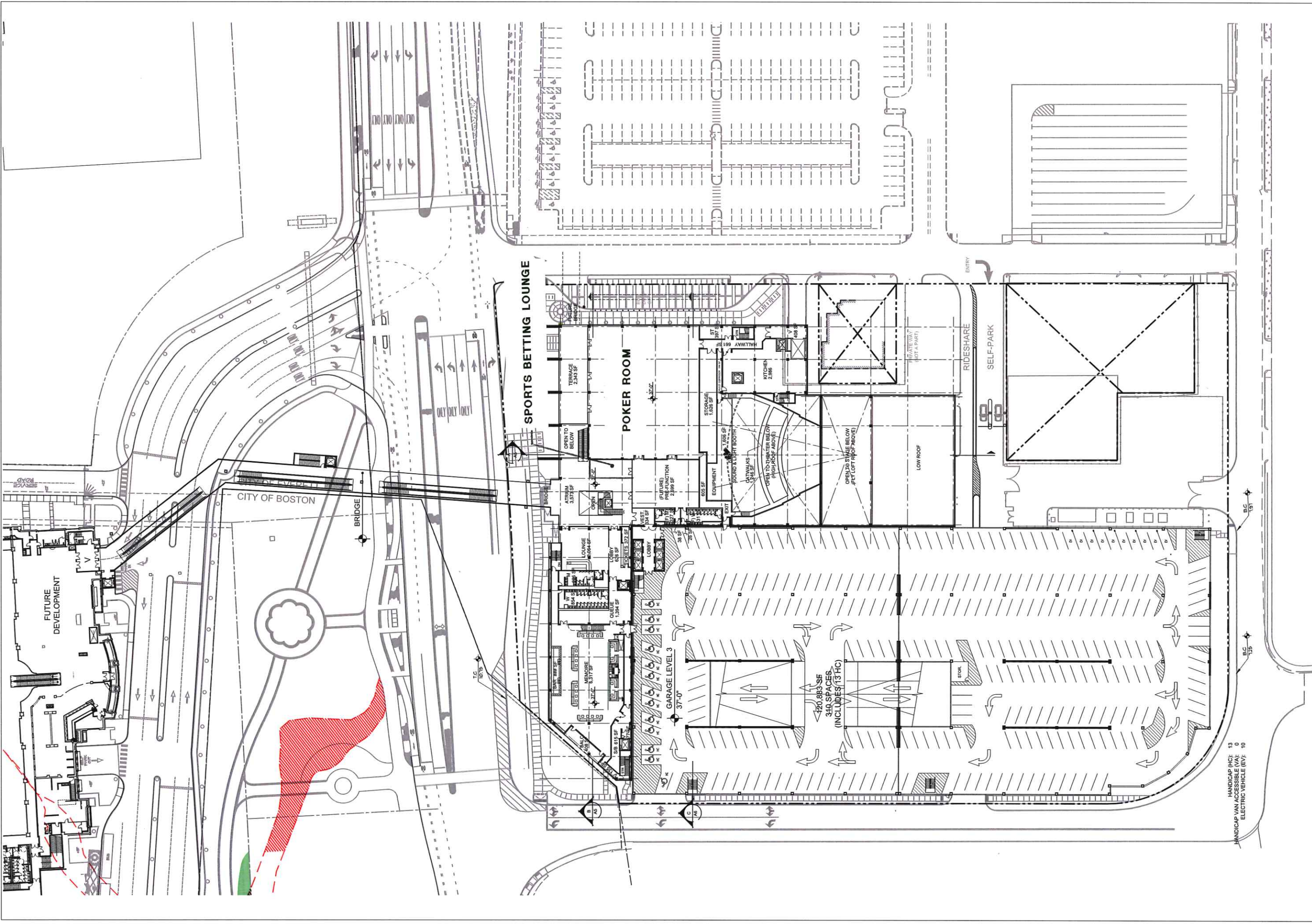
❖ Jacqui Krum, EBH's SVP & General Counsel and Jenny Holaday, EBH's President joined Congresswoman Katherine Clark and Representative Christine Barber in their visit to ABCD Head Start at Station Landing in Medford

❖ The center is currently attended by 16 children with a capacity for 60

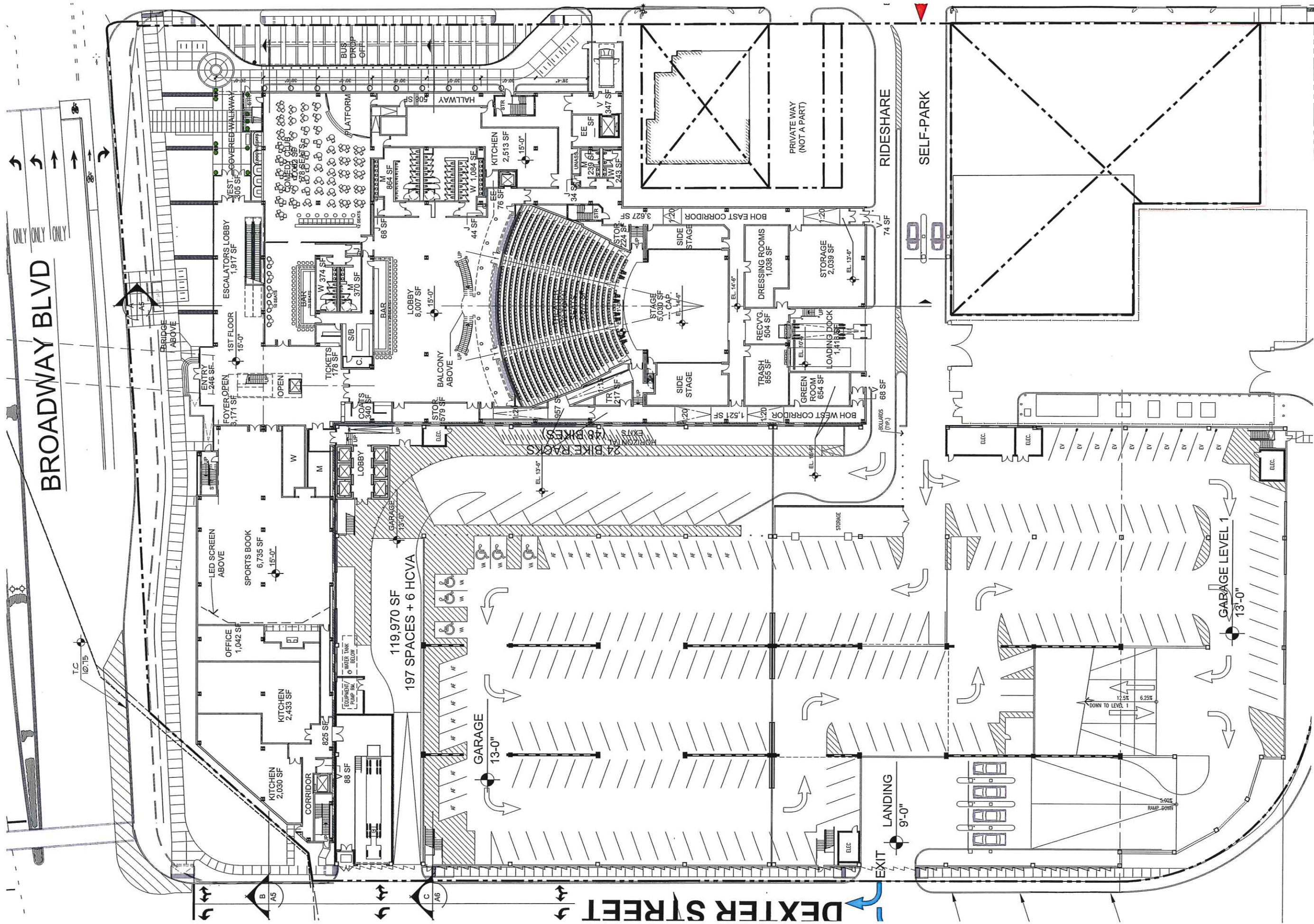


Questions?





PACKET 29



GRAPHIC SCALE: 1"=50'-0"



EAST OF BROADWAY
GARAGE LEVEL 1 / THEATER 1st LEVEL PLAN

PROJECT:

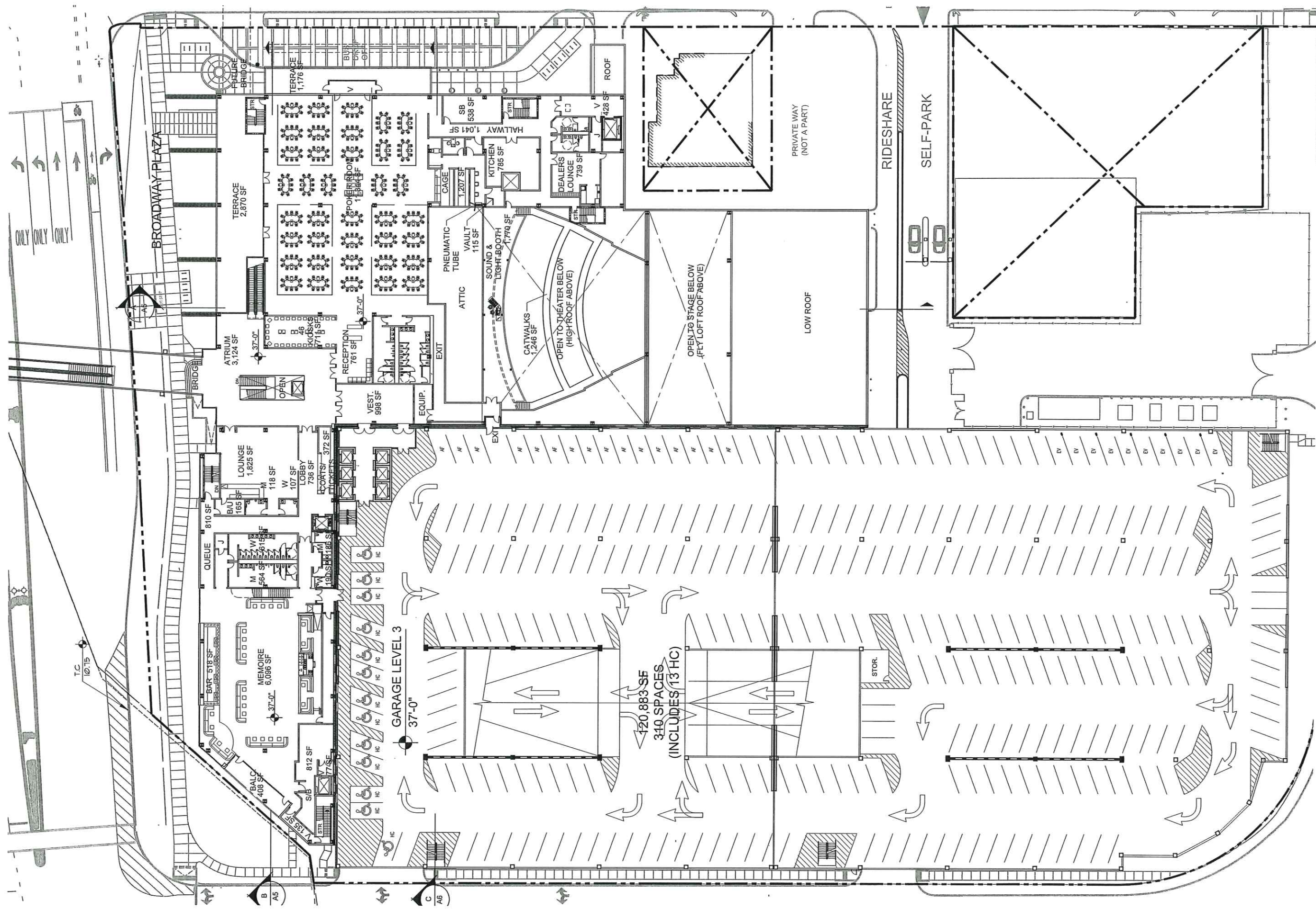
DRAWING NUMBER:
EOB
A-1a

DRAWING NAME:

OWNER REF: *Wynn*
DESIGN & DEVELOPMENT

PROJECT NUMBER: 550-21-001
DATE: August 5, 2022

Drawings as instruments of service are the property of the design professional, and any use or reproduction in whole or in part without written consent is strictly prohibited. Drawings and specifications remain the property of the design professional. Copies of the drawings and specifications may be made for the client's use and for occupying the project for which they were prepared, and not for construction of any other project.



GRAPHIC SCALE: 1"=50'-0"

EAST OF BROADWAY

GARAGE LEVEL 3 / EVENTS 2nd LEVEL PLAN - NIGHT CLUB

EAST OF BROADWAY

GARAGE LEVEL 3 / EVENTS 2nd LEVEL PLAN - NIGHT CLUB

PROJECT:

CALLING NUMBER

A-2a

A-2a

DRAWING NUMBER

35
A-23

35
A-23

0 10 20 40 60
GRAPHIC SCALE: 1" = 20'-0"

U-1

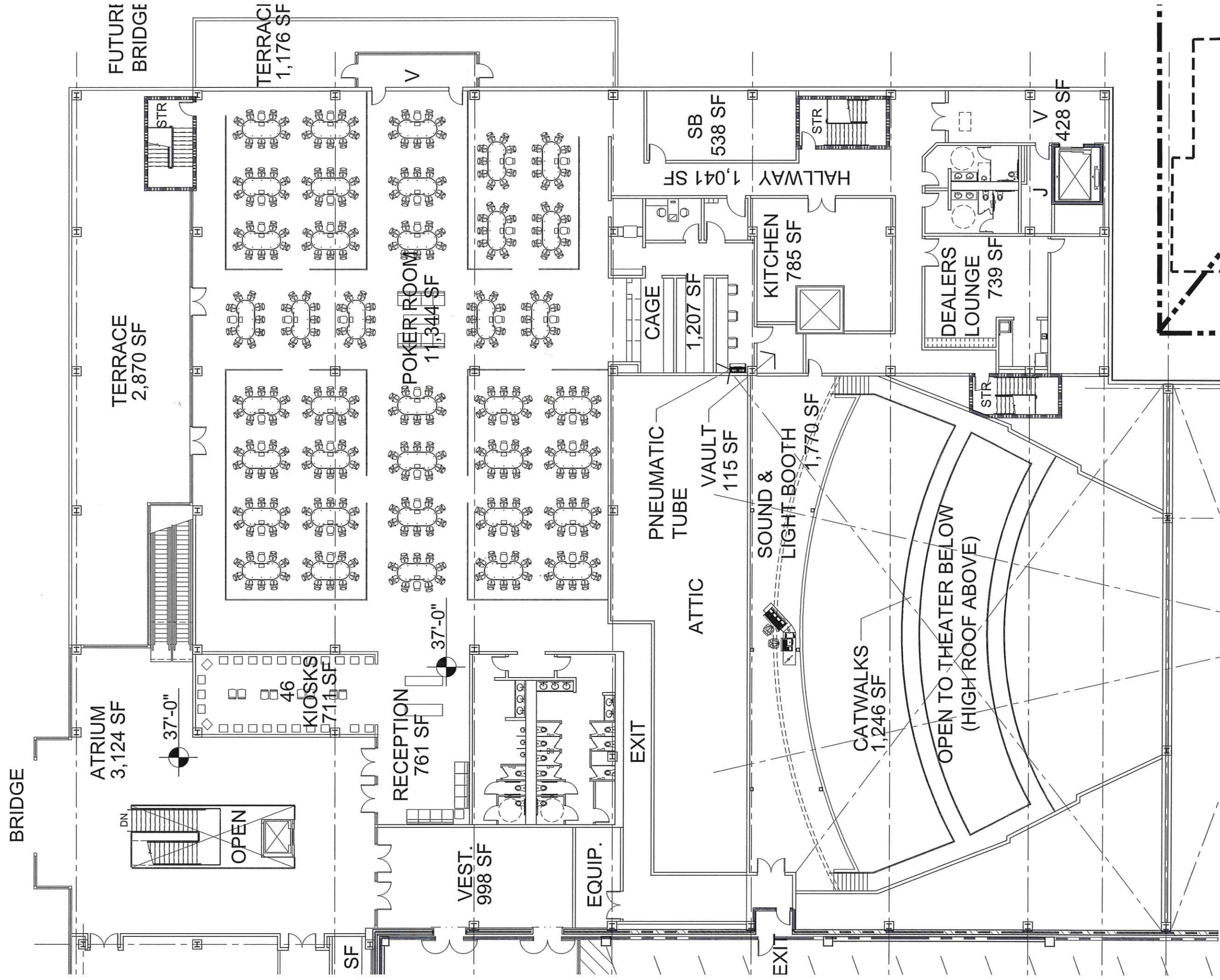


EXHIBIT A

HOST COMMUNITY AGREEMENT

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

This Agreement ("Agreement") is made and entered into as of April 19, 2013 (the "Effective Date"), by and between the City of Everett, Massachusetts ("City" or "Everett"), a municipality in the Commonwealth of Massachusetts, and Wynn MA, LLC ("Wynn"), a subsidiary of Wynn Resorts, Limited ("Wynn Resorts"), whose address is 3145 Las Vegas Boulevard South, Las Vegas, Nevada 89109 (collectively referred to as the "Parties").

RECITALS

The following are the recitals underlying this Agreement:

Wynn, directly or through an affiliate, has or will acquire land and options to acquire land in the City in and around the area depicted in Exhibit A (the "Project Site").

Wynn plans to apply to the Massachusetts Gaming Commission (the "Commission") for a category 1 gaming license and to develop a luxury hotel and destination resort casino on the Project Site (the "Project").

The City believes that the Project will bring economic development to the City, creating new jobs for residents and new sources of income for the City, and accordingly, the City desires to support Wynn in the development of the Project.

Wynn desires to mitigate known impacts from the development and operation of a gaming establishment through the means described herein in accordance with Massachusetts General Laws 23K (Chapter 194 of the Acts and Resolves of 2011) (the "Massachusetts Gaming Act" or "Act").

Wynn and the City desire to enter into this Agreement to set forth the conditions to have a gaming establishment located within the City, in satisfaction of Section 15(8) of the Act.

Accordingly, the Parties for good and valuable consideration, the receipt of which is hereby acknowledged, enter into this Agreement to effectuate the purposes set forth above and to be bound by the provisions set forth below:

Section 1. Impact Payments to Everett

The Parties agree that, except as otherwise specifically provided herein, the Impact Payments to be made pursuant to Section 1 are made in lieu of all taxes and other assessments otherwise due from Wynn (or any affiliate of Wynn owning the Project Site or operating the Project) to the City and/or City departments, boards or commissions, including, but not limited to, its school district, and police and fire departments. In conjunction with the measures set forth herein, the Impact Payments constitute Wynn's mitigation efforts and are in full and complete satisfaction of all local government impacts whether or not identified in this Agreement. Nothing herein shall prevent the City from imposing lawful taxes and assessments on third party tenants and vendors of the Project, consistent with lawful taxes, fees and assessments of general applicability to all tenants and vendors in Everett.

The Parties agree to the following:

A. Pre-Opening

1. Project Planning Payments

Subject to the budget and approval process set forth below, Wynn agrees to pay the City's reasonable and direct costs (including but not limited to planning and peer review costs and reasonable legal fees) of determining the impacts of the Project and negotiating this Agreement and related agreements, as well as other reasonable and direct costs incurred by the City in connection therewith (including but not limited to costs incurred in connection with holding a ballot election, communicating with/appearing before the Commission in connection with Wynn's license application, preparing and presenting amendments to the City's Ordinances and other necessary legislative enactments, and participating in other permitting activities and proceedings relative to the Project). The City shall prepare and submit to Wynn a budget(s) for all costs for which the City will seek payment or reimbursement hereunder, which budget(s) shall be subject to Wynn's review and approval and which approval shall not be unreasonably withheld or delayed. Any costs not included in the approved budget(s) shall require the separate prior approval of Wynn. The City shall also provide Wynn with advance copies of any proposal, contract and scope of work for such consultants. The parties agree that such funding will be made through Wynn's initial license application fee to the Commission and, subject to the foregoing budget and approval process, such further payments as may be necessary to cover the City's costs, and that the parties will cooperate in seeking approval and payment of such costs through the Commission. The City shall provide reasonable substantiation and documentation for any and all costs paid for or reimbursed by Wynn pursuant hereto but shall not be required to divulge privileged billing entries by its legal counsel.

2. Community Enhancement Fee

After the Commission's awarding of an unconditional category 1 license to Wynn and Wynn commencing construction of the Project, Wynn shall pay to the City Thirty Million Dollars (\$30,000,000) (the "Community Enhancement Fee"). The Community Enhancement Fee shall be paid to the City in three installments as follows: (a) Five Million Dollars (\$5,000,000) within thirty (30) days after Wynn commences construction of the Project; (b) Twelve Million Five Hundred Thousand Dollars (\$12,500,000) on or before the first anniversary of the initial payment; and (c) Twelve Million Five Hundred Thousand Dollars (\$12,500,000) on or before the second anniversary of the initial payment. These funds are to be used for capital improvement projects to be identified by the City. For the purposes hereof, Wynn shall be deemed to have commenced construction upon the earlier of (i) thirty (30) days after the issuance of a building permit to Wynn, or (ii) the actual commencing of construction activities other than site preparation or environmental remediation activities.

B. Opening

To achieve certainty for both parties, the City and Wynn agree that, as an alternative to any and all real and personal property taxes for the Project (but excluding motor vehicle excise taxes, which shall be paid as provided in Section 1B(4), below), Wynn will annually make two defined payments: (1) a Community Impact Fee; and (2) a payment in lieu of taxes ("PILOT").

The PILOT will be achieved through the use of a G.L. c. 121A urban redevelopment corporation and agreement, which may carry additional benefits for both parties, but the details and requirements of which need to be reviewed and agreed upon by the parties and the state Department of Housing and Community Development ("DHCD"). The parties hereby agree to work cooperatively to negotiate such an agreement under G.L. c. 121A and to seek all necessary approvals thereof, including the approval of DHCD.

If the efforts of the parties to negotiate and obtain all necessary approvals of the G.L. c.121A agreement are unsuccessful, the parties agree to work cooperatively to prepare and seek all necessary approvals of special legislation to authorize such PILOT.

If such special legislation is not passed by the General Court and signed into law by the Governor, the parties agree that the City will be required to assess real and personal property taxes in accordance with Massachusetts law and generally accepted assessment standards. If, in any given year, the real and personal property taxes so assessed are less than the PILOT would be under Section 1.B.2 hereof, the Annual Community Impact Fee (as hereinafter defined) will be increased by an amount equal to such difference. If, on the other hand, the real and personal property taxes so assessed are more than the PILOT would be under Section 1.B.2

hereof, the Annual Community Impact Fee will be decreased by an amount equal to such difference (the "Excess Taxes"), provided however that if such decrease would exceed the amount of the Community Impact Fee, the City shall not be required to make any repayment to Wynn.

1. Annual Community Impact Fee Payment to Everett

Beginning thirty (30) days after Wynn's commencement of operation of a destination resort casino at the Project Site, Wynn shall pay an annual community impact fee to Everett in the sum of Five Million Dollars (\$5,000,000) (the "Annual Community Impact Fee" or "Impact Fee"). The Annual Community Impact Fee shall continue for as long as Wynn (or any parent, subsidiary or related entity) owns, controls or operates a commercial gaming facility at the Project Site and shall increase by two and one-half percent (2.5%) per annum. Such payments shall be paid to the City in equal quarterly amounts pro-rated for the first calendar year of operation in recognition that the City has a July 1 to June 30 fiscal year. For the purposes of this Agreement, Wynn shall be deemed to have commenced operations upon the date that the hotel or casino portion of the Project is open for business to the general public. The Impact Fee is based on the Project substantially as proposed, containing approximately one million three hundred and twenty thousand (1.32 million) square feet of building area (not including parking areas). The parties recognize that the Project may change and the proposed Impact Fee with annual increases will apply notwithstanding such changes, including any increase to the Project Site and building area. However, if total square footage of the Project building area (not including parking areas) exceeds one million seven hundred and fifty thousand (1.75 million) square feet (the "Area Cap"), then the parties shall renegotiate the Impact Fee in good faith based on the actual impacts resulting from such additional square footage. The Area Cap shall apply to new construction on the Project Site after Wynn has commenced operations; provided, however, if, after Wynn commences operations, Wynn undertakes any substantial new construction ("New Construction") on property which is not a part of the Project Site as of date Wynn commences operations ("New Property"), then the parties shall renegotiate the Impact Fee or negotiate a separate impact fee in good faith based on the actual impacts resulting from such substantial New Construction on such New Property.

2. Annual PILOT Payment to Everett

Beginning thirty (30) days after Wynn's commencement of operation of a destination resort casino at the Project Site, Wynn shall make an annual payment in lieu of taxes to Everett in the sum of Twenty Million Dollars (\$20,000,000) (the "Annual PILOT Payment"). The Annual PILOT Payment shall continue for as long as Wynn (or any parent, subsidiary or related entity) owns, controls or operates a commercial gaming facility at the Project Site and shall increase by two and one-half percent (2.5%) per annum. Such payments shall be paid to the City in equal quarterly amounts pro-rated for the first calendar year of operation in recognition

that the City has a July 1 to June 30 fiscal year. The PILOT is based on the Project substantially as proposed, containing approximately one million three hundred and twenty thousand (1.32 million) square feet of building area (not including parking areas). The parties recognize that the Project may change and the proposed PILOT with annual increases will apply notwithstanding such changes, including any increase to the Project Site and building area. However, if total square footage of the Project building area (not including parking areas) exceeds the Area Cap, then the parties shall renegotiate the PILOT in good faith based upon the full amount of additional space above the currently proposed one million three hundred and twenty thousand (1.32 million) square feet. The Area Cap shall apply to new construction on the Project Site after Wynn has commenced operations; provided, however, if, after Wynn commences operations, Wynn undertakes any substantial new construction ("New Construction") on property which is not a part of the Project Site as of date Wynn commences operations ("New Property"), then the parties shall renegotiate the PILOT or negotiate a separate real estate tax arrangement in good faith based on the such substantial New Construction on such New Property.

3. Meals and Hotel Tax Revenues. Wynn agrees to cooperate with the City in connection with the adoption of reasonable local meals and hotel/room occupancy taxes (estimated proposed rates are .75% and 6%, respectively). If the City has adopted or adopts such reasonable local meals or hotel/room occupancy tax(es), Wynn agrees to assess and collect such taxes from its customers and remit payment to the City in accordance with applicable law.

4. Motor Vehicle Excise Taxes. Wynn shall principally garage and pay excise taxes to the City consistent with applicable law on all vehicles owned by it and used in connection with the Project.

5. Permit Fees. Wynn agrees to pay the City's actual, reasonable costs incurred in connection with review and inspection of permit and license applications, construction and utility plans. Wynn recognizes that the City does not employ sufficient staff to conduct such reviews and will have to retain outside consultants and/or temporary specialized staff for this purpose, and that permanent staff will be required to expend time and resources in retaining, supervising and administering such consultants and temporary staff. Rather than being subject to the City's regular permit and license fee schedules, Wynn agrees to pay the reasonable costs actually incurred by the City in retaining such outside consultants and temporary special employees. The City shall prepare and submit to Wynn a budget(s) for all costs for which the City will seek payment or reimbursement hereunder, which budget(s) shall be subject to Wynn's review and approval and which approval shall not be unreasonably withheld or delayed. Any costs not included in the approved budget(s) shall require the separate prior approval of Wynn. The City shall also provide Wynn with advance copies of any proposal, contract and scope of work for such consultants or staff. With regard to employed staff, Wynn shall be responsible for direct employment costs during the term of

employment only. The City will provide Wynn with documentation of the costs for which it seeks reimbursement.

Wynn agrees, after construction and initial occupancy and opening of the Project, to pay to the City all permitting, inspection and other municipal fees in connection with the maintenance, repair, expansion and operation of the Project, including but not limited to building permit fees, provided all such fees are (i) valid and duly adopted in accordance with applicable law, and (ii) applied consistently and equitably to all commercial businesses in Everett, and (iii) if any such fees are not on a published schedule, such fees shall also constitute a reasonable approximation of the City's actual total costs of providing such service.

Section 2. Workforce Development: Hiring Preference for Everett Residents

A. Construction Jobs

Wynn will work in a good faith, legal and non-discriminatory manner with the Project's construction manager to give preferential treatment to qualified Everett residents for contracting, subcontracting and servicing opportunities in the development and construction of Wynn's Project in Everett. Prior to hiring/retaining contractors, subcontractors or servicers in connection with construction of the Project, Wynn shall advertise and hold at least two events for Everett Residents at venues to be approved by the City, at which it will publicize its construction needs and explain to attendees the process by which they may seek to be hired in connection with construction of the Project.

Wynn intends for the Project to be constructed using union labor. Wynn's construction manager will develop a roster where local residents, who are members of the various construction unions working on the Project, can express their interest in working on the Project. The construction manager will then review and consider the individuals on the roster prior to filling any openings and encourage the project contractors to hire such individuals if they are qualified. To the extent permitted by law, Wynn will instruct subcontractors and vendors to utilize union labor from local chapters located in Everett.

During construction, Wynn agrees to provide quarterly reports to the City regarding its compliance with this provision. At a minimum, such reports shall include: (1) all efforts made to publicize job or subcontracting opportunities to Everett citizens/businesses; (2) the total number of individuals hired and business retained in connection with construction of the Project; and (3) the number of Everett residents hired and Everett business retained in connection with construction of the Project. The information provided in the report shall be supported by reasonable documentation which shall be submitted with, and be considered part of, said report. The City may identify such reasonable additional information to be provided by Wynn in the report required by this section.

B. Permanent Jobs

Prior to beginning the process of hiring employees (other than internally transferred Wynn Resorts employees) for the Project, Wynn shall advertise and hold at least two events for Everett Residents at venues to be approved by the City, at which it will publicize its hiring needs and explain to attendees the process by which they may seek to be hired in connection with the Project.

In seeking to fill vacancies at the Project, Wynn will give reasonable preference to properly qualified residents of the City, to the extent that such a practice and its implementation is consistent with Federal, State or Municipal law or regulation. Further, Wynn shall make every effort to afford Everett residents the opportunity to be trained for such trade/craft positions through all training opportunities offered by Wynn or its affiliates. Wynn agrees to allow the City to monitor and enforce this Agreement.

Wynn shall provide to the City an annual report beginning in the month of January immediately following commencement of operations of a resort casino upon the Project Site and for each successive year thereafter. Said annual report shall include full and part-time employment levels by Wynn and Project tenants at the beginning and end of the reporting period and the number of Everett residents hired by Wynn and Project tenants. The information provided in the report shall be supported by reasonable documentation, which shall be submitted with and be considered part of, said report. The City may reasonably identify additional information to be provided by Wynn in the annual report required by this section.

C. Local Vendors

Wynn shall make a good faith effort to utilize local contractors and suppliers for the construction and future operations of the Project and shall afford such opportunities to local vendors when such contractors and suppliers are properly qualified and price competitive. Such efforts shall include actively soliciting bids from Everett vendors through local advertisements, coordination with the Everett Chamber of Commerce and such other reasonable measures as the City may from time to time request.

Wynn also agrees to make reasonable efforts to utilize women-owned and minority-owned vendors within the City.

In addition, Wynn agrees that it will include as part of its rewards/frequent guest/loyalty or similar programs vouchers/gift certificates to Everett businesses outside of the Project Site. Wynn commits to purchase and issue at least \$50,000 in such vouchers/gift certificates annually.

Section 3. Total Investment/Project Development

Wynn shall invest not less than \$1 billion in the development of the Project. Wynn commits that the Project will be developed in a single phase of construction and be consistent in style and quality exhibited in Wynn Resorts' existing properties.

Upon ballot approval of this Agreement by the City, Wynn shall use all reasonable efforts to promptly apply for, pursue and obtain a category 1 license from the Commission. Wynn shall use all commercially reasonable efforts to complete construction of the Project within three (3) years after the Commission's issuance of a category 1 license for the Project.

Section 4. Project Demand on City Services

Wynn recognizes that the Project may require upgrades to certain components of the City's utility infrastructure and, accordingly, agrees as follows:

A. Electricity

Wynn shall pay for electric power supply and the actual cost to upgrade existing electric facilities to provide electric power service to the Project.

B. Natural Gas

Wynn shall pay the actual costs to upgrade existing gas transmission facilities to provide service to the Project.

C. Water and Sewer

Wynn shall pay all water connection fees and monthly water service charges, and assume all costs to the City required to construct water infrastructure improvements required to reliably expand the water system to provide water service to the Project.

Wynn shall pay all costs associated with the design and construction of the necessary water and sewer extensions and connections from the Project to the City's water and sewer systems and for all maintenance and repairs required for the upkeep of that connection, including all connection fees.

Wynn shall provide the City with all specifications and plans for said water and sewer connections for approval by the City's water and sewer department prior to the commencement of any construction. Upon completion of construction, Wynn shall provide the City water and sewer department with as-built plans of the water and sewer connections.

Wynn shall provide and install a meter(s) of the type(s) and specification, and in such location(s), as shall be agreed upon with the City's water and sewer department.

Wynn shall be responsible for obtaining all necessary permits and approvals required by federal, state and local law, rules, and regulations for the excavation and construction in association with the water and sewer system connections to the Project, and shall maintain same in full force and affect as required for the construction of the connections.

Wynn shall be responsible for the maintenance and repair of the water and sewer system connections from the buildings located within the Project to the point of the actual connection to City's water and sewer system, including any maintenance reasonably required by the City. The City reserves the right to perform any maintenance if Wynn fails to perform such maintenance in a timely manner, as well as the right to enter and perform emergency repairs if necessary upon reasonable notice to Wynn under the circumstances. Wynn shall be responsible for the costs of all such maintenance and emergency repairs.

Wynn agrees to reimburse the City for any assessments, fees, or charges imposed upon the City by the Massachusetts Water Resources Authority ("MWRA") for new and/or enhanced water connections required for the Project, provided that any Infiltration and Inflow ("I&I") fee or charge payable by Wynn specifically related to the Project shall, to the extent permitted by law and MWRA regulations and/or requirements, be applied or credited to any such assessments, fees, or charges for which reimbursement is due to the City and thereafter as a matter of priority to other I&I projects specifically related to service or improvements for the Project, including any connections or upgrades required to be paid for by Wynn as provided herein. The City will provide Wynn with documentation of the costs for which it seeks reimbursement.

Section 5. Site Remediation and Public Waterfront Access

As the location of the former Monsanto Chemical Company, the Project Site is burdened by significant environmental contamination, leaving a large waterfront parcel critical to the City's development plans blighted and vacant.

A. Environmental Remediation

As part of Wynn's development of the Project, Wynn shall diligently pursue the remediation of the existing environmental contamination adversely affecting the Project Site in accordance with the Massachusetts Contingency Plan (310 CMR 40.000, et. seq).

B. Public Access to the Waterfront

Wynn shall make public access to the Project's waterfront part of its development. Wynn agrees to work cooperatively with the City in connection with the development, adoption and implementation of a municipal harbor plan that is consistent with the Project, the City's Lower Broadway Master Plan, and the City's specific vision for its waterfront area. Consistent with such municipal harbor plan and Massachusetts General Law Chapter 91, the Public Waterfront Act and Waterways Regulations, Wynn shall incorporate in its design certain features that promote and protect the Project's waterfront for public access, use and enjoyment. Wynn acknowledges that this aspect of the development may be included within the administrative site plan review referenced in Section 3.

Wynn agrees to use reasonable efforts to include features in the Project designed to be used and enjoyed by the residents of the City, including waterfront access and outdoor gathering spaces.

C. Local Cultural Impacts

Wynn agrees to work cooperatively with the City to include features or programs in the Project for the benefit of the arts and local artists, which may include periodically hosting or providing space for community related shows, exhibits, concerts, and other local cultural and arts programs.

Section 6. Transportation Improvements

Wynn agrees to be responsible for all of the Project's known transportation infrastructure impacts, including road construction necessitated by the Project. To that end, Wynn has retained Vanasse & Associates, Inc. of Andover, Massachusetts (VAI) to study the impacts that will be caused by the construction and operation of the Project, with a particular emphasis on potential effects on traffic patterns. Wynn has provided that study to the City and, to the extent required, will pay for VAI to hold public meetings at which VAI will explain its findings to Everett residents.

Based on the findings of VAI's initial assessment of the Project as they relate to access to the Project site and off-site transportation infrastructure needs, the following transportation-related improvements have been identified within the City and will (unless otherwise agreed upon by the parties based upon, for example, revised assessments and/or recommendations by their respective traffic experts or requirements of state transportation officials) be designed and constructed by Wynn subject to design approval by the City and receipt of all necessary rights, permits and approvals as may be necessary to complete the identified improvement measures:

A. Project Access

1. Access to the Project site will be provided by way of a new driveway that will intersect Broadway proximate to Horizon Way. The driveway will be designed and constructed as a signature entrance to the Project site consisting of a four (4) lane boulevard (two (2) lanes entering and two (2) lanes exiting) with a marque sign, period lighting, sidewalks and bicycle accommodations.
2. Broadway will be widened approaching the primary Project site driveway to accommodate separate left and right-turn lanes to enter the Project, bicycle lanes and sidewalks, while maintaining two (2) through travel lanes per direction.
3. The primary Project site driveway will be placed under traffic signal control and will be interconnected and coordinated with the adjacent traffic signals along the Broadway Street corridor. The traffic signal system will include accommodations for pedestrians and bicyclists.
4. A below grade connection beneath the MBTA Commuter Rail tracks will be developed and will include pedestrian and bicycle connections to the Project site, allowing for an extension of access to the linear park system along the Mystic River and as may be expanded as a riverwalk along the Project waterfront.

B. Off-Site Improvements

Broadway

Subject to the availability of right-of-way, Wynn will reconstruct Broadway between Route 16 and the primary Project driveway in the context of a "Complete Streets" design to provide a four (4) lane roadway (two (2) travel lanes per direction) with additional turning lanes provided at major intersections, sidewalks along both sides, bicycle lanes and street trees where space permits. Existing traffic signals along the corridor will be reconstructed to include ornamental (period) poles, mast arms, lighting and appurtenances, and will include pedestrian and bicycle accommodations.

Route 16 at Santilli Highway and Mystic View Road (a.k.a. Santilli Circle)

As an interim improvement, Wynn will upgrade signs and pavement markings at and within the intersection to improve motorist guidance and safety, and to meet current design standards. In addition, the existing coordinated traffic signal system that comprises the Circle will be upgraded and retimed to accommodate existing and projected future traffic volumes and patterns. Additional geometric enhancements will be provided to improve traffic flow and reduce vehicle queuing, and would include: installation of a traffic control signal at the intersection of Santilli Circle with Mystic View Road and widening of Santilli Highway and Route 99 to provide two (2) approach lands to the Circle.

In addition, in order to accommodate both access to the Project site and to address both current and projected future operational deficiencies at the intersection, Wynn will advance the replacement of the intersection with a grade separated, single-point, urban diamond interchange pursuant to the concept plan (or similar) developed in conjunction with the City of Everett's study of Santilli Circle.

Route 16 at Broadway and Main Street

As an interim improvement, Wynn will upgrade signs and pavement marking at and within the intersection to improve motorist guidance and safety, and to meet current design standards. Additional geometric enhancements may be provided to allow for the addition of travel lanes on the approaches to the intersection in order to reduce vehicle queuing and motorist delays. Specifically, Wynn will: widen the Main Street and Broadway approaches to accommodate two (2) travel lanes approaching the Circle; widen and restripe the Route 16 connector to provide two (2) approach lanes; and reconfigure the circulating area within the Circle to function as a two (2) lane modern roundabout.

Lower Broadway Truck Route

In an effort to reduce truck traffic along the segment of Broadway between Beacham Street and the Boston City Line, Wynn will improve Robin Street and Dexter Street, as well impacted portions of Beacham Street, to facilitate truck access to the commercial/industrial areas to the east of Broadway. These improvements would include rehabilitation of the pavement structure and surface, and improving corner radii to facilitate truck turning movements.

C. Public Transportation Access

The Project site is ideally situated to take advantage of available public transportation resources in the area including subway service on the MBTA Orange Line, MBTA bus service, and water shuttle service to Logan International Airport, Long Wharf, North Station, South Boston, the Boston Convention and Exhibition Center and other existing and planned future service points. To that end, Wynn shall provide the following public transportation enhancements as a part of the Project (unless otherwise agreed upon by the parties based upon, for example, revised assessments and/or recommendations by their respective traffic experts or requirements of state transportation officials):

1. Fixed-route shuttle bus service to and from the Project and the MBTA Orange Line stations at Wellington Station and at Sullivan Square. This service may be expanded to include service to Logan International Airport, North Station, South Station and other major transportation hubs, and will be coordinated with the City and the MBTA.

2. MBTA bus stops either within the Project site or along Broadway at the primary driveway.
3. Water shuttle service to the Project site either through expansion of the MBTA water shuttle program or a private service. A water shuttle terminal will be provided as a part of the Project to include a weather protected waiting area.
4. A touch-and-go dock as a part of the Project for recreational boat access to the Project site and the DCR park system.
5. The City/DCR park and pathway system to the Project site to allow pedestrian and bicycle access to and from Wellington Station on the MBTA Orange Line.
6. In addition, Wynn will explore with the City and the MBTA provision of a stop on the MBTA Commuter Rail system to serve both the City and the Project. Subject to an agreed scope and cost, Wynn agrees to fund (i) studies required by the MBTA and (ii) installation of a flag stop in an agreed location if approved by the MBTA.

Section 7. Community Development

Everett Citizens Foundation

Upon the Commission's awarding of a category 1 license to Wynn and Wynn commencing construction of the Project, Wynn agrees to fund an Everett Citizens Foundation ("Foundation") that will be in charge of supporting and promoting local groups, associations and programs with important City initiatives. The Foundation shall consist of 7 members, 4 of whom shall be appointed by the Mayor; 1 of whom shall be appointed by the City's State Representative; 1 of whom shall be appointed by the City's State Senator; and 1 of whom shall be appointment by the City Council. Wynn shall fund the Foundation with an annual payment of Two Hundred Fifty Thousand Dollars (\$250,000), the first such payment to be made on the date the payments under Section 1B commence and continue on each anniversary thereof for as long as Wynn (or any parent, subsidiary or related entity) owns, controls or operates a commercial gaming facility at the Project Site and shall increase by two and one-half percent (2.5%) per annum.

Section 8. Responsible Gaming in Everett

Wynn recognizes that, while gaming is an enjoyable leisure and entertaining activity for most, there is a small percentage of the population that cannot game responsibly. While gaming is a part of our business, *responsible gaming* is a part of our culture. Therefore, Wynn will implement its existing Responsible Gaming Plan at the Project, the chief goal of which is to make sure that those people who cannot game responsibly get the help they need and to make sure that people who can game responsibly understand the importance of gaming responsibly.

Wynn will accomplish the responsible gaming goals in Everett by: (1) educating its employees and providing information to patrons about the odds of games and how to make responsible gaming decisions; (2) promoting responsible gaming in daily operations; and (3) supporting public awareness of responsible gaming.

Wynn will join and actively participate in the Massachusetts Partnership on Responsible Gambling for the express purpose of assisting the City of Everett, or its designee, to address issues of treatment for compulsive behavior, especially problem gaming in Everett.

Section 9. City Obligations

In consideration of the mitigation measures to be undertaken by Wynn, and in further recognition of the many benefits the Project will bring to the City, Everett shall do the following (with all reasonable costs incurred by the City to be paid by Wynn, subject to the budget and approval process set forth in Section 1A(1) hereof and Wynn's right to receive documentation of such costs):

- A. The City shall support the Project and agrees to actively work with and assist Wynn and its contractors and agents to obtain any and all permits, certifications, legislation or regulatory approvals from governmental entities and officials.
- B. The City shall exercise best efforts to petition the Commission for monies made available under the Act, including, but not limited to, those monies in the Community Mitigation Fund and the Transportation Infrastructure Development Fund.
- C. The City will diligently pursue the development, adoption and implementation of a municipal harbor plan, keep Wynn informed throughout the planning process, and give good faith consideration to Wynn's reasonable comments and suggestions to ensure that the harbor plan is consistent with the Project, and obtain Wynn's prior approval for any proposed improvements on, or mitigation on or affecting, the Project Site or for which Wynn will have financial responsibility.
- D. The parties recognize that the Project will require amendment of the City's Zoning Ordinances and possibly certain other land use regulations and agree to cooperate in the preparation and submission of such amendment(s). Wynn acknowledges that such amendment(s) may include an administrative site plan review process and adoption of reasonable design guidelines. The City will diligently pursue the development, adoption and implementation of any amendments or modifications required to the City's zoning ordinance and other land use ordinances, rules and regulations required to construct and operate the proposed Project on the Project Site, keep Wynn informed throughout the amendment and approval process, and give good faith consideration to Wynn's

reasonable comments and suggestions to ensure that such amendments are consistent with the Project. The City agrees to expedite the preparation, submission and adoption of such amendments so as to achieve finally approval and adoption thereof as soon as possible and, in any event, as close in time as possible to the date of the City-wide election to approve or disapprove this Agreement.

E. The Mayor shall request that the governing body of the City formally approve the holding of an election pursuant to Section 15(13) of the Act prior to a positive determination of suitability having been issued by the Gaming Commission. Upon such approval and receiving Wynn's request therefor, the City Council shall schedule a City-wide election so that qualified Everett residents can vote on a ballot question to support or reject this Agreement and, by extension, the Project. The Mayor will request that the City Council schedule such election on June 22, 2013, provided holding the election on such date is not in direct violation of state law or any duly promulgated regulation of the Massachusetts Gaming Commission. If the election is not so permitted to be held on June 22, 2013, it shall be held upon a mutually acceptable date as soon as permitted under applicable state law and regulations.

Section 10. Agreement Not Transferrable or Assignable

Neither Wynn nor the City shall transfer or assign its rights or obligations under this Agreement without prior written authorization of the other party.

Section 11. Wynn Resorts Bound

Wynn Resorts shall be jointly responsible for the responsibilities of Wynn hereunder, provided, however, Wynn Resorts shall be released and have no further responsibility or liability hereunder if Wynn has commenced and continued operations of the Project for a period of two (2) years without a material uncured default hereunder. Wynn Resorts acknowledges the jurisdiction over it of the Massachusetts Superior Court for Middlesex County, as set forth in Section 12 hereof for purposes of this Agreement.

Section 12. Choice of Law/Forum Selection

This Agreement shall be governed by, and construed in accordance with, the laws of the Commonwealth of Massachusetts, without regard to the conflict of laws provisions in such state. Any dispute arising under or in connection with this Agreement shall be within the exclusive jurisdiction of the Massachusetts Superior Court for Middlesex County. The prevailing party in any such action shall recover its litigation costs (including counsel fees and expert witness fees).

Notwithstanding the foregoing provisions for forum selection, the parties to this Agreement agree that before resorting to any formal dispute resolution process concerning any dispute arising from or in any way relating to this Agreement, they will first engage in good faith negotiations in an effort to find a solution that serves their respective and mutual interests.

Section 13. Miscellaneous

A. **Exercise of Rights and Waiver.** The failure of any party to exercise any right under this Agreement shall not, unless otherwise provided or agreed to in writing, be deemed a waiver thereof; nor shall a waiver by any Party of any provisions hereof be deemed a waiver of any future compliance therewith, and such provisions shall remain in full force and effect.

B. **Severability.** In the event that any clause, provisions or remedy in this Agreement shall, for any reason, be deemed invalid or unenforceable, the remaining clauses and provisions shall not be affected, impaired or invalidated and shall remain in full force and effect.

C. **Headings and Construction.** The section headings in this Agreement are inserted for convenience of reference only and shall in no way affect, modify, define, or be used in construing the text of the agreement. Where the context requires, all singular words in the Agreement shall be construed to include their plural and all words of neuter gender shall be construed to include the masculine and feminine forms of such words.

D. **Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Agreement.

Section 14. Notices

Any notices, consents, demands, requests approvals or other communications issued under this Agreement shall be made in writing and shall be delivered by hand, overnight delivery service or certified mail (return receipt requested), to the other party at the following addresses:

If to the City: City of Everett
 Office of the Mayor
 484 Broadway, Room 31
 Everett, MA 02149

With copy to: City of Everett
 Law Department
 484 Broadway, Room 21

Everett, MA 02149

If to Wynn: Attention: Matt Maddox, CFO & Treasurer
3131 Las Vegas Blvd. South
Las Vegas, NV 89109
Facsimile: 702.770.1221
Email: Matt.Maddox@wynnresorts.com

With a copy to: c/o Wynn Resorts
Attention: Kim Sinatra, Sr. VP & General Counsel
3131 Las Vegas Blvd. South
Las Vegas, NV 89109
Facsimile: 702.770.1102
Email: kim.sinatra@wynnresorts.com

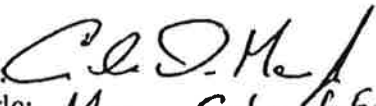
With a copy to: Mintz, Levin, Cohn, Ferris,
Glovsky & Popeo, P.C.
Attn: Dan Gaquin, Esquire
One Financial Center
Boston, MA 02111
Facsimile: 617-542-2241
Email: dogaquin@mintz.com

Section 15. Conditional on City-Wide Vote and Grant of Category 1 License.


Except for Wynn's obligations under Section 1(A)(1) with respect to Project Planning Payments and Section 3 with respect to Wynn's obligations to diligently pursue issuance of a category 1 gaming license, Wynn's and Wynn Resort's obligations under this Agreement are subject to the affirmative vote of the City's residents in a City-wide ballot vote pursuant to Section 15(13) of the Act, and Wynn's receipt of a category 1 gaming license to develop and operate a casino on the Project Site.

IN WITNESS WHEREOF, the Parties hereto have duly executed this Agreement to be effective as of the date first above written.

City of Everett, Massachusetts

By: 
Title: Mayor City of Everett

Wynn MA, LLC
By: Wynn Resorts, Limited


By: *Matt Maddox*
Title: CEO

Wynn Resorts, Limited



By: *Matt Maddox*
Title: CEO

Exhibit A – Project Site Plan

11910210v.13

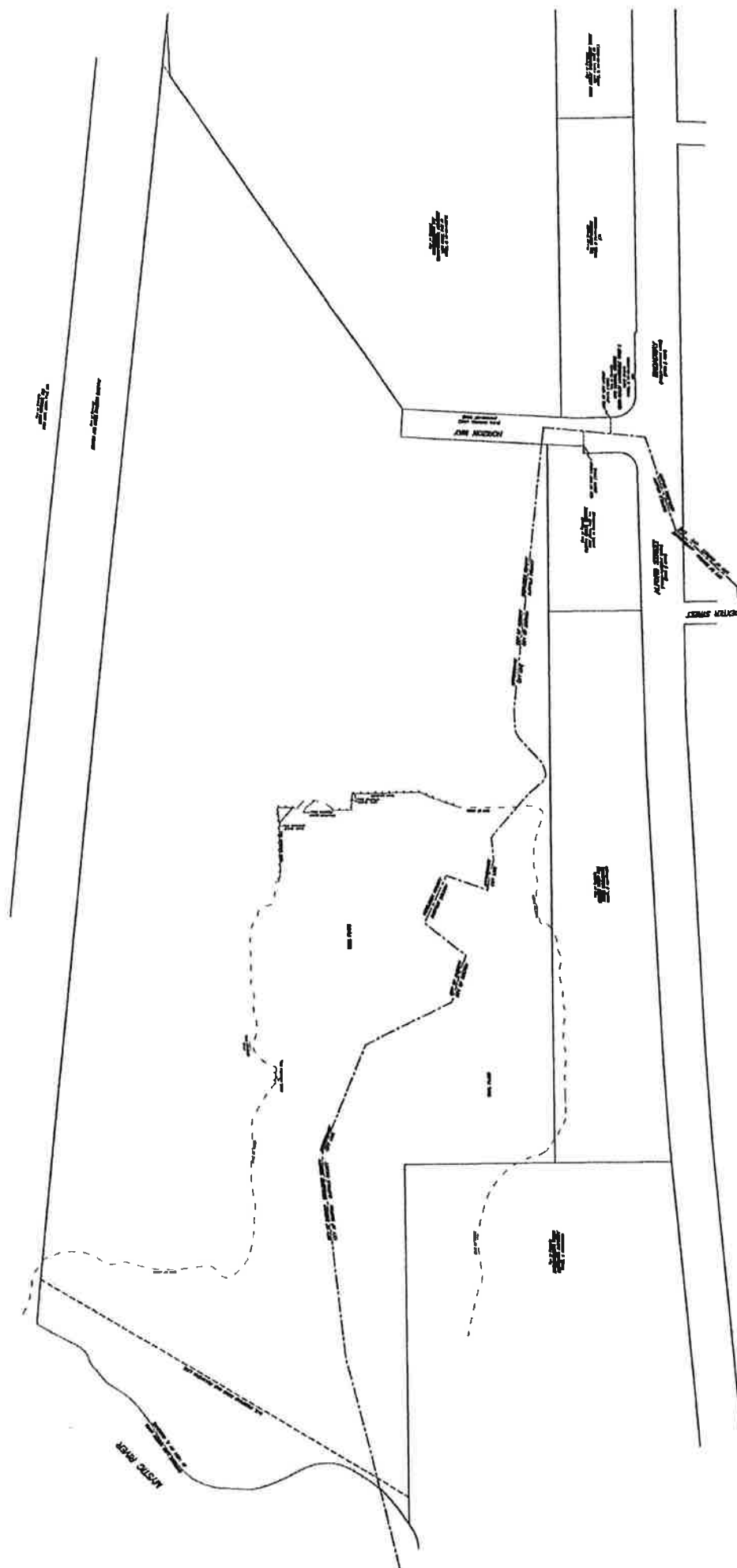


EXHIBIT B

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

MASSACHUSETTS GAMING COMMISSION

In the Matter of:

The Determination of the Premises of the Gaming
Establishment for which Mohegan Sun
Massachusetts LLC Seeks Approval in its
RFA-2 Application

The Determination of the Premises of the Gaming
Establishment for which Wynn MA LLC Seeks
Approval in its RFA-2 Application

**DECISION REGARDING THE DETERMINATION OF PREMISES OF THE GAMING
ESTABLISHMENT FOR MOHEGAN SUN MA, LLC AND WYNN MA, LLC**

1. Introduction and Background

On December 31, 2013 applicants Mohegan Sun MA, LLC (“Mohegan”) and Wynn MA, LLC (“Wynn”) filed RFA-2 applications¹ with the Massachusetts Gaming Commission (“Commission”). Mohegan and Wynn are competing for the award of the sole Category 1 gaming license to be awarded by the Commission in Region A. Mohegan and Wynn are the only applicants in Region A that entered into host community agreements with Revere and Everett, respectively and were approved by a referendum vote in those communities.

Each applicant listed the City of Boston (“City”) as a surrounding community, as defined in G.L. c. 23K, § 2,² in their RFA-2 application. However, on March 19, 2014, the City filed with the Commission a “Declaration” stating that the City was a host community to the Mohegan application and a Declaration stating that the City was a host community to the Wynn application. On April 3, 2014, in response to those Declarations, the Commission issued a notice of public meeting which included a process whereby the Commission would determine the

¹ RFA-2 applications are portions of an application for a gaming license that focus on the features and economic yield of an applicant’s proposed gaming establishment. See 205 CMR 118 and 119. A separate portion of the application called an RFA-1 focuses on the applicant’s suitability to hold a gaming license. See 205 CMR 111 and 115. Only applicants whom the Commission has found to be suitable may file the RFA-2 application.

² The term “surrounding communities” is defined by G.L. c.23K, §2 as “municipalities in proximity to a host community which the commission determines experience or are likely to experience impacts from the development or operation of a gaming establishment, including municipalities from which the transportation infrastructure provides ready access to an existing or proposed gaming establishment.”

premises of the gaming establishment as defined in G.L. c. 23K, § 2³ for the Mohegan and Wynn applications based upon their respective RFA-2 applications. A copy of the hearing notice is attached as Exhibit A. The Commission took that course because, under the statute, the location of those premises determines whether a municipality is or is not a host community. The Commission set May 1, 2014 as the date of the public meeting for the determinations.

Since its inception, the Commission has routinely offered members of the public an opportunity to comment on matters before the Commission in an effort to help shape the Commission's thinking and to ensure that the Commission reviews issues from a variety of angles. Consistent with that practice, the Commission requested the applicants, the City and any other interested persons to submit briefs and affidavits to the Commission on either or both of the two questions by April 17, 2014; reply briefs were due on April 24, 2014. The Commission requested that public comment be submitted in the form of briefs to ensure that the information was presented in a uniform, concise manner and ultimately in a format that the Commission determined would be most beneficial to it as it endeavored to make the determinations regarding the location of the premises. Briefs and/or reply briefs were submitted by Mohegan, Wynn, the City of Revere and an organization called No Eastie Casino. The City submitted a letter challenging the Commission's jurisdiction over the issue, alleging that the Commission's chairman should recuse himself from the deliberations and stating that the Commission should resolve some issues regarding the land in Everett where Wynn proposed to locate its establishment before resolving gaming establishment questions.

Pursuant to the process outlined in the Commission's notice of hearing, persons submitting a brief/reply brief were allowed to present to the Commission at the public meeting. On April 30, 2014, the Commission also invited the City to appear and present at the May 1 public hearing notwithstanding that the City did not submit a brief or reply brief. On May 1, 2014, the Commission granted the City's request for a one-week continuance of the meeting and moved it to May 8, 2014.

At the public hearing on May 8, 2014, oral presentations were made to the Commission by Mohegan, Wynn, the City of Revere, No Eastie Casino, and the City. At the close of the public hearing, the Commission deliberated and issued a decision in principle determining the premises of the gaming establishment for Mohegan and determining the premises of the gaming establishment for Wynn. It stated an intention to issue this written decision after review at its next public meeting.

2. Issues Presented

There are two issues before the Commission. Those issues are to:

³ The term "gaming establishment" is defined by G.L. c.23K, §2 as "the premises approved under a gaming license which includes a gaming area and any other nongaming structure related to the gaming area and may include, but shall not be limited to, hotels, restaurants or other amenities."

1. Determine the premises of the gaming establishment for which Mohegan Sun Massachusetts LLC seeks approval in its RFA-2 application; and

2. Determine the premises of the gaming establishment for which Wynn MA LLC seeks approval in its RFA-2 application.

Based upon the briefs, reply briefs and public submissions received by the Commission, the presentations made to the Commission at the May 8, 2014 public hearing and the information provided to the Commission in the RFA-2 application submitted by Mohegan and by Wynn, the Commission makes the following findings:

The premises of the gaming establishment for which Mohegan seeks approval in its RFA-2 application consists of the components as shown on the site plan attached to this Determination as Exhibit B and as further discussed below. All of the premises of the gaming establishment for which Mohegan seeks approval in its RFA-2 application are located in the City of Revere.

The premises of the gaming establishment for which Wynn seeks approval in its RFA-2 application consists of the components as shown on the site plan attached to this Determination as Exhibit C and as further discussed below. All of the premises of the gaming establishment for which Wynn seeks approval in its RFA-2 application are located in the City of Everett.

3. Discussion

In accordance with G.L. c. 23K, §1 “the power and authority granted to the commission shall be construed as broadly as necessary for the implementation, administration and enforcement of [G.L. c.23K].” Further, “[t]he commission shall have all powers necessary or convenient to carry out and effectuate its purposes” G.L. c.23K, §4. “The commission may issue not more than 3 category 1 licenses” one each in Region A, Region B and Region C. G.L. c.23K, §19(a).

As part of the award of each gaming license, the Commission must determine what the premises of the gaming establishment are. That is, it must determine which premises will be subject to regulatory oversight by the Commission. The Commission’s determination in this regard is required by G.L. c 23K, §2 which defines the “gaming establishment” as: “the premises approved under a gaming license which includes a gaming area^[4] and any other nongaming structure related to the gaming area and may include, but shall not be limited to, hotels, restaurants or other amenities.”

⁴ The term “gaming area” is defined by G.L. c. 23K, § 2 as “the portion of the premises of the gaming establishment in which or on which gaming is conducted.”

Under G.L. c. 23K, §10(a), hotels are necessarily part of the gaming establishment.⁵ Beyond that, though, by use of the term “may” in the definition of ‘gaming establishment,’ it is clear that the Legislature intended to provide the Commission great latitude in determining the components of the gaming establishment. The latitude was designed so that the Commission is able to include any element within the gaming establishment that it deems necessary to ensure proper regulation of the gaming licensee.

Once the gaming establishment is determined by the Commission, the question of whether a municipality is a host community or a surrounding community and thus entitled to rights pertaining to a host community or a surrounding community provided under G.L. c. 23K becomes clear and flows organically as a matter of law. Chapter 23K, §2 defines a host community as: “a municipality in which a gaming establishment is located or in which an applicant has proposed locating a gaming establishment.” Chapter 23K, §2 defines surrounding communities as: “municipalities in close proximity to a host community which the commission determines experience or are likely to experience impacts from the development or operation of a gaming establishment, including municipalities from which the transportation infrastructure provides ready access to an existing or proposed gaming establishment.” It is clear that the host community determination is a matter of geographic location of the gaming establishment while surrounding community status⁶ is determined based by impacts.

a. Mohegan briefs and presentations

The Commission received briefs and an oral presentation from Mohegan, the City of Revere and No Eastie Casino, and an oral presentation from the City on the definition of the gaming establishment for which Mohegan seeks approval under its RFA-2 application. All of the written material received and reviewed by the Commission is available for public review on the Commission’s website, www.massgaming.com.

The City argued that the gaming establishment for which Mohegan seeks approval includes the horse racing track owned and operated by Suffolk Downs. The City urged that Suffolk Downs, pursuant to an agreement with Mohegan, leases a portion of the Suffolk Downs property in Revere to Mohegan for the development and operation of the gaming establishment and that the track, which sits on a parcel of land located both in East Boston and Revere, is an amenity to the gaming establishment. Moreover, the City contended, the agreement between Mohegan and Suffolk Downs provides that Suffolk Downs will receive rent in the form of basic rent and additional rent based upon gaming revenues generated at the gaming establishment. The City argues that those provisions make Mohegan and Suffolk Downs “joint venturers” in the

⁵ G.L. c.23K, §10(a) states in pertinent part: “a gaming licensee shall make a capital investment of not less than \$500,000,000 into the gaming establishment which shall include, but not be limited to, a gaming area, at least 1 hotel and other amenities as proposed in the application for a category 1 license.” (Emphasis added).

⁶ The Commission promulgated regulations further outlining the process for the determination of a surrounding community. See 205 CMR 125.00.

gaming establishment and that the gaming establishment includes the track as a nongaming structure related to the gaming area.

Mohegan's presentation to the Commission defined the gaming establishment as including the gaming area, two hotels, parking areas, restaurants, nightclubs, bars, spas, retail area, convention/meeting space and internal roadways. Mohegan stated that, unlike with the original proposal forwarded by Suffolk Downs, the gaming establishment in Mohegan's proposal and the track are owned by separate entities; that Mohegan has no control over the track and Suffolk Downs does not have operational control over the proposed gaming establishment; Suffolk Downs is a landlord to Mohegan and receives rent; and the receipt of rent based upon revenues generated is a common feature of a commercial lease. Mohegan acknowledged that the agreement between Mohegan and Suffolk Downs did contain a provision that allowed Suffolk Downs to require, at Suffolk Down's option and at some unnamed future date, to take over the operation of the track. Mohegan and Suffolk Downs stated that by mutual agreement of the parties that provision in the agreement has been deleted. Both Mohegan and Suffolk Downs asserted that even if that provision had remained in place, the gaming establishment and the track would remain owned by separate legal entities and that the provision did not provide for a sale of the track to Mohegan.⁷

Suffolk Down's presentation to the Commission stressed that no property on which the track was located, whether in Revere or East Boston, was part of the real property leased to Mohegan. In addition, there was no marketing agreement between Mohegan and Suffolk Downs to jointly market the track and the gaming establishment. The Commission asked Suffolk Downs whether the track was an amenity to the gaming establishment. Suffolk Downs responded by saying that in its view, to be an amenity, the track has to be located on the same real property as the gaming establishment and must be controlled by the gaming establishment. Neither situation existed here. The Commission further asked Suffolk Downs whether the revenues from the agreement with Mohegan, if used to support track operations, would make the track an amenity. Suffolk Downs responded that profits received do not create an amenity.

The City of Revere argued that the proposed gaming establishment is located entirely in Revere, that Revere will provide all emergency police and fire services, and that all water and sewer connections would be provided by Revere.

No Eastie Casino's supported the City's position. No Eastie Casino stated that Mohegan presented the track as an integral part of its application for a gaming license. It also urged that the impacts from the proposed gaming establishment cannot be separated from East Boston and that this proposal is no different in that respect from the earlier proposal submitted by Suffolk Downs.

⁷ The provision at issue also included language making any such exercise of the option subject to Commission approval and if allowed by law. Where the provision has been removed from the agreement the Commission declines to comment on whether an exercise of the option would have been legal.

b. Wynn briefs and presentations

The Commission received briefs and oral presentations from Wynn, and No Eastie Casino, and an oral presentation from the City on the definition of the gaming establishment for which Wynn seeks approval under its RFA-2 application. All of the written material received and reviewed by the Commission is available for public review on the Commission's website, www.massgaming.com.

The City first argued that the option agreement for the real property on which Wynn proposed to locate the gaming establishment is not valid and without a valid agreement for the land there can be no gaming establishment. The agreement's invalidity, in the City's view, stems from issues regarding FBT Everett Realty LLC, the land's owner, which the Commission explored extensively at hearings it held on December 13 and December 16, 2014. The Commission understands the City's argument to be that if FBT Everett Realty LLC is unsuitable the agreement between FBT Everett Realty LLC therefore violates G.L. c. 23K and that, as a result, there can be no gaming establishment. However, FBT Everett Realty LLC is not a "qualifier" as defined in G.L. c. 23K, §14 or 205 CMR 116.00 and the City's argument is not supported by the Commission's investigation, prior findings or conditions imposed on FBT Everett Realty LLC at the conclusion of the commission's December hearings.

The City further argued to the Commission that if there is in fact a valid agreement for the purchase of the real property, there is still an issue with access to the real property. While Wynn proposed alternate access through a new access point in Everett, the current access is through Horizon Way, which begins in part in the City. Their argument hinged on *Beale v Planning Board of Rockland*, 423 Mass. 690 (1996). The City's assertion based on *Beale* is essentially that if Horizon Way will be used to access a casino and casinos are not permitted in that part of the City then the road cannot be used for casino use so there is no access to the proposed gaming establishment.

The City further argued that Wynn's RFA-2 application listed attractions in the City, such as a marketing agreement with the TD Garden and the Boston Symphony Orchestra, and that the proposed water shuttle from the gaming establishment will take patrons of the gaming establishment to locations in the City. Based upon these activities, it suggested, the gaming establishment includes amenities located in the City.

No Eastie Casino argued in support of the City's position making specific note of the access to the proposed gaming establishment, and the agreements with attractions in the City. No Eastie Casino further supported the City's interpretation of the *Beale* case and its relevance to the access issue.

Wynn's presentation to the Commission defined the gaming establishment as the gaming area, two hotels, parking areas, restaurants, nightclubs, bars, spas, retail area, and

convention/meeting space. Wynn presented the site plan of the proposed gaming establishment and described in detail each aspect and how it was part of the gaming establishment.

Wynn disagreed with the City's interpretation of the *Beale* case, stating that the *Beale* case is a zoning use case and is not relevant to the definition of the gaming establishment under G.L. c. 23K. While Wynn's preferred access is not through Horizon Way, Wynn stated that Horizon Way is an existing public road that runs from Alford Street and is bisected by the Everett border. Wynn cannot own or change Horizon Way. Horizon Way, Wynn urged, provides "ready access" to the proposed gaming establishment. As a result, to the extent that Horizon Way is in the City, the City's "transportation infrastructure provides ready access to [a] . . . proposed gaming establishment," which makes the City a surrounding community within the definition contained in G.L. c. 23K, § 2.

In sum, Wynn stated that physical location defines the host community; access and impacts define the surrounding community. Based upon the definitions in M.G.L. c. 23K, Wynn stated that its proposed gaming establishment is located in Everett.

c. Analysis and determinations

The Commission considered all of the briefs, reply briefs, and oral presentations made at the May 8, 2014 hearing and the information provided in each of Mohegan and Wynn's RFA-2 applications. The Commission considered those materials in light of G.L. c.23K and specifically the definitions of "gaming area," "gaming establishment," "host community," and "surrounding community" found in G.L. c.23K, §2. When viewed as a whole, the law sets out essentially a four part analysis to determine what features proposed by the applicant will be part of a gaming establishment. That is, whether the feature: (1) is a non-gaming structure, (2) is related to the gaming area, (3) is under common ownership and control of the gaming applicant, and (4) the Commission has a regulatory interest in including it as part of the gaming establishment. Part 4 only comes into play though, where the first three parts are satisfied. The control element of part 3 is implicit in the statute's licensing and registration requirement, see G.L. c. 23K, §§30 through 32, the requirement for the licensee to own or control all land on which the gaming establishment is located, G.L. c. 23K, §15(3), and the statute's general structure which places control of the licensee at the heart of the Commission's regulatory authority.

As a result, and for the following reasons, the Commission has determined that the gaming establishment for the Mohegan application is as identified in Exhibit B, and the gaming establishment for the Wynn application is as identified in Exhibit C.

Mohegan's gaming establishment

In the case of Mohegan, the Commission concludes that the gaming area and the nongaming structures related to the gaming area all are located in Revere.

The Commission considered the arguments regarding the track as an amenity to the gaming establishment and determined that it does not satisfy all elements of the 4 part test set forth above and as such, is not an amenity to be included in the gaming establishment. Given the lack of proximity between the entrance to the track from the entrance to the gaming area, no infrastructure connecting the structures, lack of common ownership or control of track operations by Mohegan now, and in the future based upon the parties mutual agreement to delete the provision in the agreement between them that would have allowed Suffolk Downs to require Mohegan to manage the track and lack of any cross marketing plans or agreements between the two entities we find that the track is not related to the gaming area.

On the record presently before the Commission, the Commission concludes that the gaming area, hotels, meeting rooms, spas, ball room, retail areas, restaurants/food and beverage/lounge areas, nightclub, back of the house, underground parking areas, physical plant/facilities maintenance, and all public areas related to those spaces meet the 4 part test and are accordingly part of the gaming establishment. They are all non-gaming structures that are related to the gaming area. They are related in that they are included to support the gaming area by making the entire facility a more attractive destination. They are all owned by Mohegan. In its discretion, the Commission considers them to be amenities to the gaming area because it has an interest in, amongst other things, ensuring that all employees working in those areas are licensed or registered in accordance with 205 CMR 134.00 and having knowledge of the flow of money through these areas. Such control helps ensure the integrity of gaming in the Commonwealth through strict oversight.

For similar reasons the Commission, again in the exercise of its discretion, does not consider the internal roadways on the site, entrance to the property, and exterior parking areas to be part of the gaming establishment. Although they are owned by Mohegan, the Commission does not have any regulatory interest in overseeing those areas. They are all subject to governmental oversight in the ordinary course and there is no additional benefit to including those areas within the gaming establishment. Further, by inclusion of hotels and restaurants as an example of an amenity in the definition of gaming establishment in G.L. c.23K, §2, the Legislature suggested that the term structure be applied in its traditional sense. Here, where those areas would not be structures in the traditional sense, they would not meet part 1 of the analysis and as such cannot be included as part of the gaming establishment.⁸

Wynn's gaming establishment

In the case of Wynn, the Commission found that the concerns raised by the City about FBT Everett Realty LLC are a separate matter and not part of the determination of the premises of the gaming establishment for a number of reasons. First, the members of FBT are not "parties

⁸ It is possible that some parts of the internal roadway could be made part of the gaming establishment for limited purposes in the future. See G.L. c.23K, §6(c).

in interest to the gaming license, including affiliates and close associates and the financial resources of the applicant.” G.L. c.23K, §12(a)(6). Further, they are not individuals who possess “a financial interest in a gaming establishment, or with a financial interest in the business of the gaming licensee or applicant for a gaming license or who is a close associate of a gaming licensee or an applicant for a gaming license.” G.L. c.23K, §14(a). Nor do they fit into a category of individuals whom the Commission has specifically identified as having to be qualified as part of the RFA-1 suitability determination or have the ability to exercise control or provide direction to Wynn. See 205 CMR 116.02. Essentially, once the transfer of the land is complete, FBT Everett Realty LLC will have no further involvement with the gaming licensee. Accordingly, where they are not qualifiers to the Wynn proposal, the Commission has and will continue to deal with them separately.

The primary issue raised by the City was essentially that because Horizon Way is partly in the City, the City is a host community. However, Horizon Way does not satisfy the 4 part analysis and it is not part of the gaming establishment. For the same reason, internal roadways on the site, the harbor walk, and exterior parking areas are not part of the gaming establishment. None of these elements are structures in the traditional sense as discussed above. Accordingly, they do not satisfy part 1 of the analysis and cannot be included as part of the gaming establishment. Further, under part 4, the Commission does not have any regulatory interest in overseeing those areas. Similarly, though it may be considered a structure, the Commission does not have any regulatory interest in overseeing the proposed dock for the water shuttle. They are all subject to governmental oversight in the ordinary course and there is no additional benefit to including those areas within the gaming establishment.⁹ As to the City’s argument about the applicability of the *Beale* case, we do not find *Beale* to be relevant to the determination in this matter. That case was a zoning case and is not applicable here.

On the record presently before the Commission, and as Wynn has agreed, the Commission concludes that the gaming area, hotels, meeting and convention spaces, spas, ball room, retail areas, restaurants/food and beverage/lounge areas, nightclub, back of the house, underground parking areas, physical plant/facilities maintenance, and all public areas related to those spaces meet the 4 part test and are accordingly part of the gaming establishment. They are all non-gaming structures that are related to the gaming area. They are related in that they are included, at least in part, for purposes of enhancing the gaming area by making the entire facility a more attractive destination. They are all owned by Wynn. In its discretion, the Commission considers them to be amenities to the gaming area because it has an interest in, amongst other things, ensuring that all employees working in those areas are licensed or registered in accordance with 205 CMR 134.00 and having knowledge of the flow of money through these areas. Such control helps ensure the integrity of gaming in the Commonwealth through strict oversight.

⁹ It is possible that some parts of the internal roadway could be made part of the gaming establishment for limited purposes in the future. See G.L. c.23K, §6(c).

The Commission further considered the arguments raised by the City and by No Eastie Casino regarding cross marketing agreements with entities, such as the TD Garden and Boston Symphony Orchestra, located in the City and the fact that the City may be an attraction for patrons of the gaming establishment. Cross marketing agreements and encouraging gaming establishment patrons to visit other regional attractions is in fact a goal set forth in G.L. c. 23K. See e.g. G.L. c.23K, §§1(6), 9(a)(13), 9(a)(18), and 18(5). Each applicant for a gaming license is evaluated in part on how the applicant proposes to support other local and regional business and increase tourism. The fact that Wynn has cross marketing agreements and intends to provide water shuttle transportation to parts of the City's waterfront are simply actions by Wynn to comply with the requirements of G.L. c. 23K. Further, none of these attractions is related to the gaming area, Wynn has no ownership or control over their operations, and the Commission does not have an interest in regulatory oversight of these entities.

4. Conclusion

Based upon the briefs and reply briefs submitted and public submissions received by the Commission, the presentations made to the Commission at the May 8, 2014 public meeting, and the information provided to the Commission in the RFA-2 application submitted by Mohegan the Commission determines that the premises of the gaming establishment for which Mohegan Sun Massachusetts, LLC seeks approval in its RFA-2 application consists of the gaming area, hotels, meeting rooms, spas, ball room, retail areas, restaurants/food and beverage/lounge areas, nightclub, back of the house, underground parking areas, physical plant/facilities maintenance, and all public areas related to those spaces, and that based upon the definition of gaming establishment found in G.L. c. 23K, §2, the premises of the gaming establishment are located in Revere. The gaming establishment is identified in the attached Exhibit B as the area located within the black marker boundary line.

Based upon the briefs and reply briefs submitted and public submissions received by the Commission, the presentations made to the Commission at the May 8, 2014 public meeting, and the information provided to the Commission in the RFA-2 application submitted by Wynn MA, LLC the Commission determines that the premises of the gaming establishment for which Wynn MA, LLC seeks approval in its RFA-2 application consists of the gaming area, hotels, meeting and convention spaces, spas, ball room, retail areas, restaurants/food and beverage/lounge areas, nightclub, back of the house, underground parking areas, physical plant/facilities maintenance, and all public areas related to those spaces, and that based upon the definition of gaming establishment found in G.L. c. 23K, §2, the premises of the gaming establishment are located in Everett. The gaming establishment is identified in the attached Exhibit C as the area located within the black marker boundary line.

A plain review of the definitions of the terms 'host community' and 'surrounding communities' reveals a clear legislative intent that a host community be determined based solely upon matters of geography, and that surrounding communities be determined based upon

impacts. Our findings relative to location of the respective gaming establishments for the Mohegan and Wynn applications are consistent with that intent. The Mohegan gaming establishment is located solely in Revere. Accordingly, by definition, the City of Boston is not a host community to that project. The Wynn gaming establishment is located solely in Everett. Accordingly, by definition, the City of Boston is not a host community to that project. Based upon the proximity and impacts from the respective projects, however, the City of Boston is clearly a surrounding community to both.

SO ORDERED.

MASSACHUSETTS GAMING COMMISSION



James F. McHugh, Commissioner



Gayle Cameron, Commissioner



Bruce Stebbins, Commissioner



Enrique Zuniga, Commissioner

DATED: May 15, 2014



EXHIBIT A

UPDATED

NOTICE OF MEETING and AGENDA

May 1, 2014

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

Thursday, May 1, 2014
10:30 a.m. – 5:00 p.m.
Boston Convention and Exhibition Center
415 Summer Street, Room 102A
Boston, MA

PUBLIC MEETING - #118

1. Call to order
2. Determine the premises of the gaming establishment for which Mohegan Sun Massachusetts, LLC seeks approval in its RFA-2 application.
3. Determine the premises of the gaming establishment for which Wynn MA, LLC seeks approval in its RFA-2 application.
 - In anticipation of the May 1, 2014 discussion by the Commission, public comment is hereby requested essentially in the form of legal briefs or memoranda relative to agenda items 2 and 3.
 - The briefs should be prepared so as to assist the Commission in its discussion of agenda items 2 and 3 referenced above. Any individual or group may submit a brief relative to one or both of the aforementioned agenda items. The briefs should state the reasons for the position(s) taken, identify supporting legal authorities, and include any sworn affidavits, authenticated documents, and other relevant evidence not otherwise included in an RFA-2 application. Briefs shall be limited to 15 pages exclusive of attachments.
 - Initial briefs are due by **April 17, 2014 at 5 p.m.** All briefs, including any affidavits and other documents submitted with the briefs, will be posted on www.massgaming.com the day after the due date.
 - Any individual or group may submit a reply brief by **April 24, 2014 at 5 p.m.** An individual or group need not have submitted an initial brief to submit a reply brief. A reply brief, however, may only address specific issues that were addressed in a brief submitted by another individual or group. Reply briefs shall be limited to 10 pages exclusive of attachments. All reply briefs, including any affidavits and other documents submitted with the reply briefs, will be posted on www.massgaming.com the day after the due date.
 - A brief or reply brief may be submitted by way of mail or hand delivery to the Commission's office or via email at catherine.bluc@state.ma.us and todd.grossman@state.ma.us. No briefs or reply briefs will be accepted or considered if received by the Commission after the submission deadline.
 - At any time before conclusion of the May 1, 2014 meeting the Commission may request the City of Boston or the applicants or any other individual or group to provide the Commission with documents or other information the Commission believes would be helpful in determining the location of the proposed gaming establishments.

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- The City of Boston and the Region A applicants for a gaming license will be invited to offer an oral presentation to the Commission at the public meeting on May 1, 2014 if they have submitted a brief or reply brief. The Commission may invite any other individual or group that has filed a brief or reply brief to make an oral presentation at the public meeting. No person or group will be permitted to address the Commission relative to agenda items 2 and 3 unless they have submitted a brief. Oral presentations should be confined to the subject areas contained in the brief and/or reply brief submitted by the individual or group.
 - Speakers representing a municipality or applicant will be allotted 30 minutes for oral presentation. All other speakers will be allotted 15 minutes. The Commission may allow a speaker more time if helpful to clarify an issue. A group may split its allotted speaking time amongst multiple speakers.
 - In reviewing the issues before it, the Commission may ask any question(s) of any individual and review and consider any document or other source of information. For purposes of the record of the meeting, the Commission will take notice of the contents of the RFA-2 applications submitted by Mohegan Sun Massachusetts, LLC and Wynn MA, LLC.
 - After discussion by the Commission, the Commission will announce its determination as to whether the City of Boston is a host community for each of the two proposals. After the conclusion of the hearing, the Commission will issue written findings that describe the respective gaming establishments for the projects the applicants have proposed.
4. Approval of Minutes
 - a. March 6, 2014
 - b. April 17, 2014
 5. Administration – Rick Day, Executive Director
 - a. General Update
 - b. High Performance Project Scope Consideration – Commissioner Cameron
 - c. Potential Changes to 23K and Legislation – Chairman Crosby
 - d. Request for Comment on Design Excellence
 6. Legal Report – Todd Grossman, Deputy General Counsel
 - a. New Qualifiers Regulations – Rick Day, Executive Director
 7. Information Technology Division – John Glennon, CIO
 - a. Slots Standards and Approval Process Regulations
 8. Other business – reserved for matters the Chair did not reasonably anticipate at the time of posting.

Any matters on the agenda for May 1, 2104 that the Commission does not address at the May 1st meeting will be addressed at the May 2, 2014 meeting scheduled for 10:30 a.m. at the Boston Convention and Exhibition Center, 415 Summer Street, Room 102A, Boston, MA.

I certify that on this date, this Notice was posted as "Gaming Commission Meeting" at www.massgaming.com and emailed to: regs@sec.state.ma.us, melissa.andrade@state.ma.us.

4/28/14
(date)

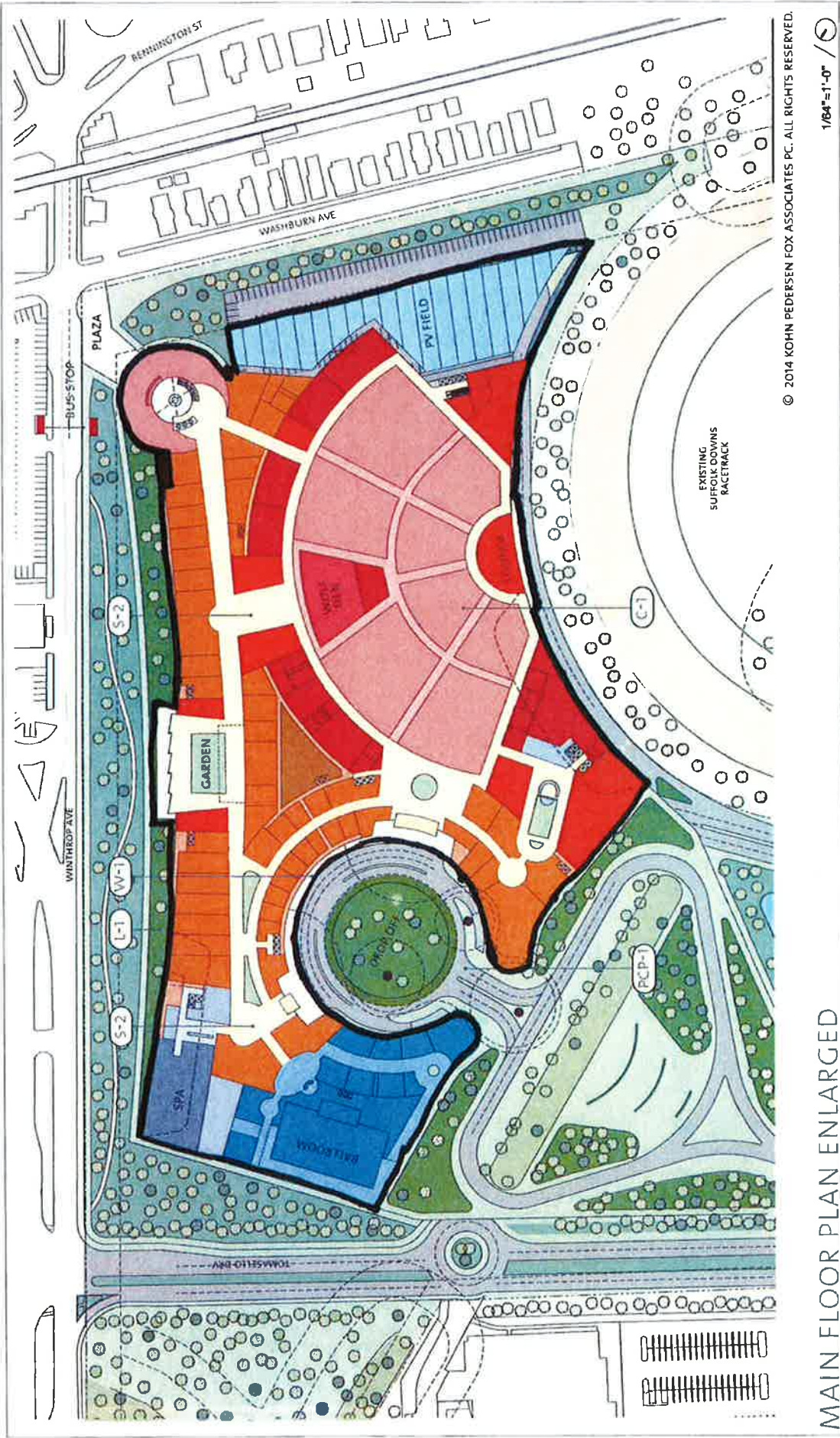

Stephen P. Crosby, Chairman

Date Posted to Website: April 28, 2014 at 10:30 a.m.

★ ★ ★ ★ ★

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MOHEGAN SUN MASSACHUSETTS, LLC

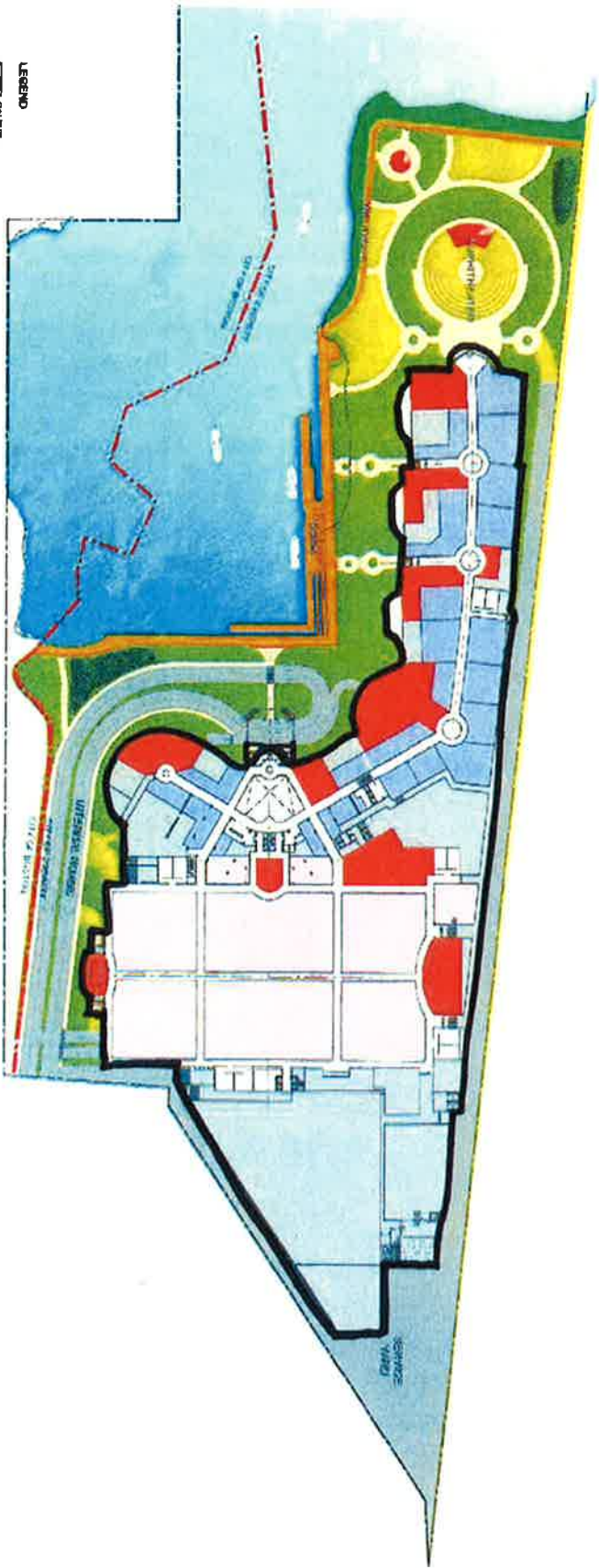
EXHIBIT B

= OUTLINE OF GAMING ESTABLISHMENT



Gaming Establishment Site
Figure B-6

- LEGEND
- GAMING
 - RESTAURANT/BAR
 - POOL
 - BOH
 - PUBLIC AREA



Wynn
EVERETT
Everett, Massachusetts

WYNN MA, LLC

EXHIBIT C



= OUTLINE OF GAMING ESTABLISHMENT

EXHIBIT C



MEMORANDUM

FROM: Massachusetts Gaming Commission
RE: Development East of Broadway in Everett, MA
DATE: May 12, 2022

Background

Wynn MA, LLC, the Region A gaming licensee which owns and operates the gaming establishment, Encore Boston Harbor, notified the Commission of a proposed new development on Lower Broadway, (hereinafter, “the project”). According to the information provided by the licensee, the project will consist of approximately 20,000 square-feet of restaurant space; a live entertainment venue with associated pre-function space of less than 1000 seats; a 2,200-space parking garage; and a 400-foot elevated pedestrian bridge across Broadway, which will connect the project to the existing gaming establishment. Potential future additions to the proposed project include two hotels, north of the project site. Accordingly, the issue presented to the Massachusetts Gaming Commission (hereinafter, “Commission”) is whether the project should be considered part of the Encore Boston Harbor’s existing gaming establishment and thus, subject to Commission regulatory oversight. On February 28, 2022, the Commission held a public hearing, at which it solicited comments from interested members of the public. It then considered this matter at its March 10, 2022, and March 14, 2022, public meetings, respectively. After review and discussion, the Commission concluded that the proposed project will not be considered part of the existing gaming establishment, but the gaming licensee will be subject to certain conditions pertaining to the project, as outlined below.

Overview

In accordance with G. L. c. 23K, § 1(10), “the power and authority granted to the commission shall be construed as broadly as necessary for the implementation, administration, and enforcement of [G. L. c. 23K].” Additionally, G. L. c. 23K, § 4, states “the commission shall have all powers necessary or convenient to carry out and effectuate its purposes.” Accordingly, the Commission is afforded broad discretion in deciding matters directly within its purview. In this case, that took the form of a determination as to the proper boundaries of a “gaming establishment” in accordance with the statutory definition¹ to ensure proper regulatory oversight of gaming related matters under chapter 23K.

The Commission outlined a 4-part analysis, rooted in chapter 23K, to examine whether a particular structure, or area would be considered part of a gaming establishment. The analysis

¹ G. L. c. 23K, § 2 defines “gaming establishment” as “the premises approved under a gaming license which includes a gaming area and any other nongaming structure related to the gaming area, and may include, but shall not be limited to, hotels, restaurants or other amenities.”



requires a determination as to whether each component of the project: (1) is a non-gaming structure; (2) is related to the gaming area; (3) is under common ownership and control of the gaming licensee; and (4) if of the character that the Commission has a regulatory interest in including it as part of the gaming establishment. The Commission noted in prior determinations that part 4 of the analysis is only conducted if the first 3 elements are satisfied. This analysis was established as part of the Commission's 2014 decision that determined the boundaries of the 2 applicants for the Region A, category 1 gaming license.² Since its inception, this analysis has been applied by the Commission not only in determining the boundaries of the three existing gaming establishments, but also in later amendments to the boundaries at MGM Springfield and Plainridge Park Casino, in 2018 and 2021, respectively.³

It is also significant that courts have twice examined the 4-part analysis, as well as the discretion of the Commission to make determinations relative to the composition of a gaming establishment. Specifically, it was recently recognized that the application of the analysis in determining the boundary of the proposed gaming establishments in 2014 "has a certain, practical logic and must be afforded extreme deference by this court."⁴

In applying the 4-part analysis to the current project, the Commission has determined that no portion of the project will be considered a part of the existing gaming establishment. The licensee, Wynn MA, LLC, and its parent corporation, Wynn Resorts, Limited, shall however, be subject to certain conditions, set forth here in 'Exhibit A,' to ensure that the regulatory concerns raised by the Commission during the public discussions of the project are adequately addressed throughout the project's construction and eventual operation. The Commission's analysis is as follows:

I. Non-Gaming Structure

The first element of the analysis requires an evaluation as to whether the components of the project are non-gaming structures. Determination of this factor rests largely upon the definition of 'gaming establishment' which includes the "gaming area and any other nongaming structure related to the gaming area." While the term "non-gaming structure" is not itself defined, the statute does offer some guidance as to its intended meaning. Within the same definition, examples of non-gaming structures were listed to include hotels, restaurants, or other amenities.

Consequently, the Commission used this definition to infer that a component needed to be a structure of some sort, to be included in the boundary of a gaming establishment. In 2014, the Commission found that the gaming area, hotel, meeting and convention spaces, ball room, retail areas, restaurants/food and beverage lounge areas, night club, back of house, underground parking areas, physical plant/facilities, maintenance, and related public spaces were within the boundary

² Mass. Gaming Comm'n, *Decision Regarding the Determination of the Gaming Establishment for Mohegan Sun MA, LLC, and Wynn MA LLC*. May 15, 2014.

³ Memorandum from [MGC] Staff Recommending Approval of MGM Springfield. April 23, 2018. See also, *Petition to Amend the Premises of the Gaming Establishment for Plainridge Park Casino*, submitted by licensee, 2021.

⁴ City of Revere, et al. v. Massachusetts Gaming Comm'n, et al., Suffolk Superior Court Civ. A. NO. 1484CV03253-BLS1 at 20. (February 16, 2022).



of the proposed gaming establishments proposed by the two category 1 applicants.⁵ By contrast, the Commission found that municipal or internal roadways, surface parking lots, and entry ways to the casino were not “structures in traditional sense” and they were ultimately not included in the gaming establishment boundaries of either applicant.⁶

In evaluating the current project, the Commission considered each component of the project individually. In contrast with the submissions of the category 1 applicants, Wynn, and Mohegan in 2014, all buildings in the proposed project: parking garage, restaurant, and live entertainment venue are actual structures and thus satisfy the first element of the test. The elevated footbridge connecting the two properties, as currently designed, would similarly meet this definition, as it is a structure in the traditional sense. In conclusion, the project, as currently designed, satisfies part one of the analysis.

II. Relation to Gaming Area

The next factor requires the Commission to decide whether the project is related to the gaming area of the existing gaming establishment, Encore Boston Harbor. The statute, G. L. c. 23K, § 2, defines “gaming area” as “the portion of the premises of the gaming establishment in which gaming is conducted.” In 2014 the Commission determined that the “gaming area, hotel, meeting and convention spaces, ball room, retail areas, restaurants/food and beverage lounge areas, night club, back of house, underground parking areas, physical plant/facilities, maintenance, and related public spaces” were part of the gaming establishment as they were intended, at least in part, to “support the gaming area by making entire facility a more attractive destination.”⁷

Conversely, the racetrack at Suffolk Downs was found unrelated to the gaming area of the gaming establishment proposed by Mohegan Sun, in part due to a “lack of proximity between the entrance to the track from the entrance to the gaming area, no infrastructure connecting the structures, and lack of common ownership or control of track operations by applicant Mohegan”⁸

In the current matter, each of the components of the project were deemed by the Commission to be related to the gaming area of Encore Boston Harbor, as the development would make the entire facility a more attractive destination. Specifically, the 20,000 square-foot of restaurant and dining space; live entertainment venue of less than 1000 seats; 2,200-space parking garage; and elevated pedestrian bridge connecting the two properties, are each separately and as a whole likely to draw more visitors to the gaming establishment and enhance the overall destination. The proximity of the project to the existing gaming area, connection of the two facilities via infrastructure, and the proposed amenities support a conclusion that the project relates to the gaming area; satisfying the second factor of the 4-part analysis.

⁵ Mass. Gaming Comm’n, *Decision Regarding the Determination of the Gaming Establishment for Mohegan Sun MA, LLC, and Wynn MA LLC*, May 15, 2014 (page 9).

⁶ *Id.* (pages 8 and 9).

⁷ *Id.* (page 9).

⁸ *Id.* (page 8).



III. Common Ownership and Control of Gaming Applicant

At the heart of this third element is the question as to whether the Commission could practically and effectively assert its jurisdiction over a particular area of the project and require that all the Commission's familiar regulatory requirements be followed in that area. Common ownership and "operational control" or lack thereof, was previously considered by the Commission in 2014, as well as 2018.⁹ In both instances, the Commission emphasized the need to examine the control element "is implicit in the [chapter 23K]'s licensing and registration requirements."¹⁰

In its 2014 decision, the Commission delineated that applicant Mohegan Sun's lack of operational control of Suffolk Downs' racetrack supported a finding of a lack of requisite ownership under the third component of the 4-part analysis.¹¹ Similarly, the Commission found that there was no common ownership or control that would allow for regulatory oversight of the Boston Symphony Orchestra and TD Garden, with which Wynn MA, LLC executed cross marketing agreements.¹²

In the present matter, Wynn MA, LLC does not own, or control the proposed project. An entity named East Broadway, LLC owns the land, and another entity, Wynn Resorts Development, LLC would oversee the project's construction. The analysis does not end there though. Each of these entities are wholly owned subsidiaries of Wynn Resorts, Limited which is the parent company of the gaming licensee, and accordingly, a qualifier subject to the authority of the Commission, pursuant to G. L. c. 23K, § 14 and 205 CMR 115.

Moreover, there are ample examples in Massachusetts jurisprudence of courts or government entities looking beyond the corporate form to determine control when it becomes necessary to carry out a law's intended purpose. In *Berg v. Town of Lexington*, 68 Mass.App.Ct. 569, 574 (2007), the Court found that related parties' practice of placing ownership of adjoining lots in separate forms, known as "checkerboarding," had been utilized to avoid zoning provisions that require lots held in common ownership to be combined for determining area and frontage. In evaluating the context of checkerboarding, and land ownership, the Court weighed the amount of control over a parcel as dispositive, asking: "did the landowner have it 'within his power,' i.e., his legal control to use the adjoining land so as to avoid or reduce the nonconformity?" *Planning Bd. of Norwell v. Serena*, 27 Mass.App.Ct. 689, 691 (1989).

Applying this analysis to the present matter, the Commission finds that by virtue of the parent/subsidiary relationship the requisite ownership and control over the project exists such that

⁹ *Id.* (Page 7). See also, *Memorandum* page 2, citing the 2014 Decision, G. L. c. 23K, §§ 30 – 32, "The requirement for the licensee to own or control all land on which the gaming establishment is located, G. L. c. 23K, §15 (3), and the statutes general structure which places control of the licensee at the hear of the Commission's regulatory authority."

¹⁰ *Decision Regarding the Determination of the Gaming Establishment for Mohegan Sun MA, LLC, and Wynn MA LLC*. May 15, 2014 (Page 7, "Analysis and Determinations").

¹¹ *Id.* (Page 5 and 8).

¹² *Id.* (Page 10.)



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the Commission could exert regulatory oversight. Specifically, Wynn Resorts, Limited, a qualifier subject to the Commission's oversight, ultimately controls the land that is owned by East Broadway, LLC, and that would be developed by Wynn Resorts Development, LLC. Accordingly, the requisite ownership and control over the project exist. For these reasons, the Commission finds that third element of the 4-part analysis is adequately satisfied.

IV. Regulatory Interest

The Commission has broad discretion in deciding whether it has a regulatory interest in exerting jurisdiction over the project pursuant to the objectives set forth in G. L. c. 23K. In its 2014 decision determining the gaming establishment boundaries for applicants Mohegan and Wynn, the Commission held that the fourth component of the 4-part analysis was only considered if the first three parts of the analysis were satisfied.¹³ The Commission recognized that it was important to include certain amenities as part of the gaming establishment, in part, because it held an interest in ensuring that the employees working in those areas were licensed or registered by the Commission, and the Commission have knowledge of the flow of money through those areas.¹⁴

In its discretion, the Commission has also previously concluded that it did not have an interest in including certain non-gaming structures within the gaming establishment boundary. For example, the boat dock at the Encore Boston Harbor property met the first three parts of the 4-part analysis, however, the Commission determined that it did not have a regulatory interest in the area, as the dock was subject to other government oversight and there was no additional benefit to including it within the boundary.¹⁵ A similar rationale was applied to the race track at Plainridge Park Casino, which was already subject to the Commission's jurisdiction under G. L. c. 128A. Both components were excluded from their respective gaming establishments.

In the present matter, the Commission concluded that while there are some concerns stemming from the development and operation of the project, that those issues can be adequately remedied by way of a license condition attached to the existing Wynn MA, LLC gaming license rather than modifying the existing gaming establishment boundary to include the new project. These conditions, discussed and finalized at the March 14, 2022 public meeting, are set out within the attached 'Exhibit A'. The conditions were drafted to address the concerns raised at the Commission's March 10, 2022, public meeting, namely: the number of seats included in the live entertainment venue; compliance with Massachusetts Environmental Policy Act ("MEPA"); security issues associated with the project including coordination with local law enforcement; contemporaneous reporting guidelines to the Investigation and Enforcement Bureau ("IEB"); ensuring that future employees of the project, who will not be licensed or registered by the Commission, do not have access to the sensitive areas of the gaming establishment; and egress, ingress, and security issues associated with the pedestrian bridge. Accordingly, with these conditions in place, the Commission concludes that it does not have a

¹³ *Id.* (Page 7).

¹⁴ *Id.* (Page 8).

¹⁵ *Id.* (Page 9).



regulatory interest in including the components of the project as part of the existing gaming establishment.

Conclusion

For the foregoing reasons, the Commission concluded that no elements of the project will be considered part of the existing gaming establishment, and subject to its regulation. Further, the gaming license awarded to Wynn MA, LLC is hereby amended to include the conditions set forth in the attached 'Exhibit A.'



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EXHIBIT A

The conditions attached to the Category 1 gaming license awarded to Wynn MA, LLC as prescribed in the November 7, 2014, decision issued by the Commission are hereby amended to add the following conditions that relate to the proposed development east of Broadway in Everett, MA across from Encore Boston Harbor (hereinafter, “the project”). Wynn MA, LLC, and Wynn Resorts, Limited, as applicable, shall ensure that:

1. Any entertainment venue that is developed as part of the project for purposes of hosting live entertainment, in whole or in part, shall at all times contain less than 1000 or more than 3500 ticketed seats whether such seating is permanent, temporary, or a combination thereof. Further, in accordance with the plans presented to the Commission on February 10, 2022, no more than 999 ticketed patrons, whether paid or complimentary, may be permitted entry for any single live entertainment event. If live entertainment in the entertainment venue will be viewable from any restaurant or other amenity on the premises, any such seats or positions shall be counted towards the aforementioned figures. Nothing in this condition should be deemed to prohibit live entertainment events of more than 3,500 ticketed seats consistent with G. L. c. 23K, § 9 (a)11. For purposes of this provision, ‘live entertainment’ shall mean any one or more of the following activities performed in-person by one or more individuals: (1) musical act; (2) theatrical act; (3) comedy act; (4) play; (5) magic act; (6) disc jockey; or (7) similar activity consistent with the common understanding of ‘live entertainment’ as determined by the Commission, or its designee, if necessary.
2. Booking agreements and/or contracts executed for the provision of live entertainment at the live entertainment venue shall not include any provision establishing a radius restriction that would actually or effectively prevent the entertainer(s) from performing elsewhere within any specific geographic area within the Commonwealth of Massachusetts.
3. A Notice of Project Change, Request for Advisory Opinion or Environmental Notification Form shall be submitted, as appropriate, to the Massachusetts Environmental Policy Act Office (hereinafter, “MEPA”) of the Executive Office of Energy and Environmental Affairs. Promptly upon such filing, a copy of said documents as well as any MEPA decisions shall be submitted to the Commission. The Commission reserves the right to provide comments on any application submitted relative to the project.
4. A security plan for the parking garage proposed as part of the project shall be submitted to the Commission for approval at least 60 days prior to opening of such garage. The security plan shall include, at a minimum, regular patrolling of the garage by security personnel, and a provision that requires security personnel to conduct regular checks of parking areas for minors left in motor vehicles and immediately report any such finding to the City of Everett Police Department. Any such reports involving patrons of the gaming establishment shall contemporaneously be reported to the IEB. Upon approval,



Massachusetts Gaming Commission

Wynn MA, LLC, and Wynn Resorts, Limited, as applicable, shall implement and comply with the approved plan.

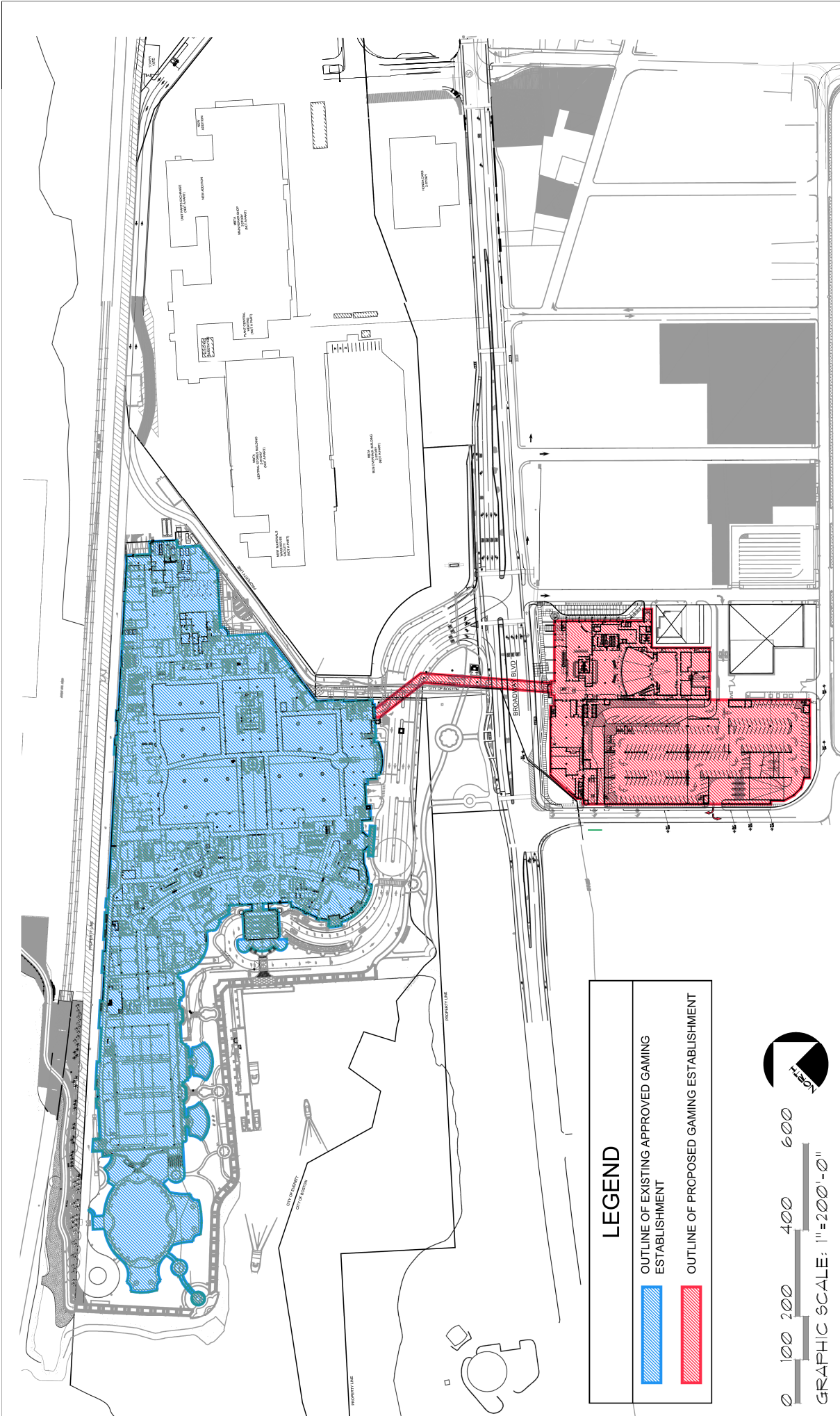
5. The licensee shall submit any proposed plan for further development or construction within the area included as part of the City of Everett's *Lower Broadway District Urban Renewal Plan*, as amended, by any entity owned or controlled by Wynn Resorts, Limited, or affiliated with Wynn MA, LLC, or upon any land owned by said entities, to the Commission for review prior to or contemporaneous with its filing with any other governmental agency.
6. Employees of the facilities on the project site shall not be afforded access to any restricted areas of the gaming establishment unless they follow the applicable visitor access protocols.
7. The licensee shall submit a plan relative to the proposed pedestrian bridge connecting the project site to the existing gaming establishment to the Commission for approval within 90 days of execution of this decision (March 14, 2022) that includes, at a minimum, the following:
 - a) A depiction of a point of egress from the bridge in the vicinity where patrons would enter the gaming establishment to allow the public to depart the bridge without entering the gaming establishment. The licensee shall submit the final design plans for the bridge, which shall incorporate said point of egress, to the Commission promptly upon submission to the City of Everett building department; and
 - b) A security outline for the bridge which includes, but is not limited to:
 1. a description of any surveillance camera coverage;
 2. a schematic of the security checkpoint and the interior area of the existing gaming establishment at the point of entry;
 3. security department patrol procedures; and
 4. a plan identifying the coordination with the relevant law enforcement authorities to address security and incident response.

Upon approval, Wynn MA, LLC, and Wynn Resorts, Limited, as applicable, shall implement and comply with the approved plan.



Massachusetts Gaming Commission

EXHIBIT D



LEGEND

	OUTLINE OF EXISTING APPROVED GAMING ESTABLISHMENT
	OUTLINE OF PROPOSED GAMING ESTABLISHMENT

0 100 200 400 600

GRAPHIC SCALE: 1" = 200'-0"

DRAWINGS AS INSTRUMENTS OF SERVICE ARE THE PROPERTY OF THE DESIGN PROFESSIONAL AND ANY USE OR REPRODUCTION IN WHOLE OR IN PART WITHOUT WRITTEN CONSENT IS STRICTLY PROHIBITED. DRAWINGS AND SPECIFICATIONS REMAIN THE PROPERTY OF THE DESIGN PROFESSIONAL. COPIES OF THE DRAWINGS AND SPECIFICATIONS REMAINED BY THE CLIENT MAY BE UTILIZED ONLY FOR THE USE AND FOR OCCUPANCY OF THE PROJECT FOR WHICH THEY WERE PREPARED AND NOT FOR CONSTRUCTION OF ANY OTHER PROJECTS.

PROJECT: **EAST OF BROADWAY GAMING ESTABLISHMENT**

DRAWING NUMBER: **EQB SITE**

PROJECT NUMBER: 550-21-001

DATE: September 8, 2022

OWNER REP: *Wynn*

DESIGNER: **Encore**

EAST OF BROADWAY GAMING ESTABLISHMENT

EAST OF BROADWAY

GAMING ESTABLISHMENT SITE PLAN

Samuel M. "Tony" Starr
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September 13, 2022

BY EMAIL AND REGULAR MAIL

Joseph E. Delaney
Chief, Division of Community Affairs
Massachusetts Gaming Commission
101 Federal Street, 12th Floor
Boston, MA 02110

Re: Revision to Wynn MA, LLC Gaming Establishment

Dear Chief Delaney:

As you know, this office represents Wynn MA, LLC. Wynn MA, LLC submits this letter to request approval of a revised gaming establishment^{1/} boundary to include a gaming area^{2/} in the East of Broadway Development in Everett, Massachusetts. As set forth below, the proposed revised gaming establishment boundary (i) meets the four part test established by the Massachusetts Gaming Commission ("Commission") to determine whether to exercise its authority over a gaming establishment; (ii) is contemplated by the existing Host Community Agreement ("HCA") between Wynn MA, LLC and the City of Everett^{3/}; and (iii) would not require vote on a new ballot question pursuant to M.G.L. c. 23K § 15 (13). Therefore, Wynn MA, LLC respectfully requests that the Commission approve its proposed revised gaming establishment boundary.

BACKGROUND

On May 15, 2014, the Commission approved a gaming establishment boundary for Encore Boston Harbor ("EBH") that included the gaming area, hotel, meeting and convention spaces, ball room, retail areas, restaurants/food and beverage/lounge areas, nightclub, back of house, underground parking areas, physical plant/facilities maintenance, and all public spaces related to those spaces. See

^{1/} "Gaming establishment", the premises approved under a gaming license which includes a gaming area and any other nongaming structure related to the gaming area and may include, but shall not be limited to, hotels, restaurants or other amenities. M.G.L. c. 23K, §2.

^{2/} "Gaming area", the portion of the premises of a gaming establishment in which or on which gaming is conducted. M.G.L. c. 23K, §2.

^{3/} Attached as Exhibit A.

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Decision Regarding the Determination of Premises of the Gaming Establishment for Mohegan Sun MA, LLC and Wynn MA, LLC, May 15, 2014.^{4/}

In evaluating its statutory authority to determine the boundary of a “gaming establishment,” the Commission concluded:

“[u]nder G.L. c. 23K, §10(a), hotels are necessarily part of the gaming establishment. Beyond that, though, by use of the term ‘may’ in the definition of ‘gaming establishment,’ it is clear that the Legislature intended to provide the Commission great latitude in determining the components of the gaming establishment. The latitude was designed so that the Commission is able to include any element within the gaming establishment that it deems necessary to ensure proper regulation of the gaming licensee.”

Id. at page 4.

In applying its authority to specific elements of the gaming establishment, the Commission set out a four part test: (1) the component is a non-gaming structure, (2) the component is related to the gaming area, (3) the component is under common ownership and control of the gaming applicant, and (4) whether the Commission has a regulatory interest in including it as part of the gaming establishment. The fourth component only comes into play where the first three components are satisfied. *Id.* at page 7.

Under this analysis, the Commission found that the gaming area, hotel, meeting and convention spaces, ball room, retail areas, restaurants/food and beverage/lounge areas, nightclub, back of house, underground parking areas, physical plant/facilities maintenance, and all public spaces related to those spaces were within the boundary of the gaming establishment for EBH. *Id.* at page 10.

Conversely, the Commission found that Horizon Way, internal roadways on the remaining part of the EBH site, the harbor walk and exterior parking areas were not part of the gaming establishment. *Id.* at page 9. The basis for excluding these areas was that they did not satisfy the first component of the test in that they are not “structures in the traditional sense” and that “the Commission does not have any regulatory interest in overseeing those areas” *Id.*⁵

EAST OF BROADWAY DEVELOPMENT

As the Commission is aware, the East of Broadway Development will be located on Broadway/Route 99 across the street from the EBH. Consistent with Everett’s 2013 Lower Broadway District Master Plan, which aims to “[t]ransform Lower Broadway into a vibrant mixed use urban neighborhood with a strong identity, civic spaces, employment opportunities, recreational amenities, and public access to the Mystic River,” and the Lower Broadway District Urban Renewal Plan, which created a Destination District with “desired uses in the District include[ing] restaurants, hotels, recreational uses, entertainment venues such as theaters, cinemas, and concert halls, recreational

^{4/} Attached as Exhibit B.

⁵ These elements were not proposed for inclusion by EBH but were raised by the City of Boston in furtherance of its argument that it was a Host Community for EBH.

MINTZ

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Page 3

facilities, water transportation facilities, and retail stores," the East of Broadway Project Development is a multi-use development, which includes the construction of an approximately 20,000-gross-square-foot, two-story restaurant/retail building with an outdoor dining terrace, a 999-seat Events Center and associated pre-function space, a parking garage, and a pedestrian bridge to cross Broadway (Route 99).

The Commission previously considered "whether the [East of Broadway Project Development] should be considered part of the Encore Boston Harbor's existing gaming establishment and thus, subject to Commission regulatory oversight." *See Memorandum Regarding Development East of Broadway in Everett, MA*, May 12, 2022.^{6/} The Commission concluded "the proposed project will not be considered part of the existing gaming establishment, but the gaming licensee will be subject to certain conditions pertaining to the project." Ex. C at Background. With respect to the four-prong test, the Commission concluded that the East of Broadway Project Development satisfied the first three prongs of the test (i.e., non-gaming structure, related to the gaming area, and under common ownership and control of the gaming applicant). The Commission concluded, however, that the East of Broadway Project Development did not satisfy the fourth prong, and, therefore, the Commission did "not have a regulatory interest in including the components of the project as part of the existing gaming establishment." *Id.* at Section IV. In support of this conclusion, the Commission explained that concerns stemming from the East of Broadway Project Development could be "adequately remedied by way of a license condition attached to the existing Wynn MA, LLC gaming license rather than modifying the existing gaming establishment boundary to include the new project." *Id.*^{7/}

REVISED GAMING ESTABLISHMENT PROPOSAL

EBH would now like to include a gaming area in one of the buildings that will be part of the East of Broadway Project Development and therefore requests that the Commission revise the gaming establishment boundary to include that building and the pedestrian bridge providing access from the existing EBH to that building. The proposed revision is set forth in red on Exhibit D and would include a sports book, nightclub, day club, comedy club, theater (less than 1,000 seats), poker room, and a parking garage.

The Commission has already determined that the East of Broadway Project Development satisfies the first three elements of the four-prong test. With the inclusion of a gaming area in the East of Broadway Project Development, EBH believes the fourth prong would be satisfied, and EBH respectfully requests that the Commission exercise its discretion to revise the gaming establishment boundary to include this building where the gaming area will be located and the pedestrian bridge which will connect the existing EBH gaming establishment with this new building.

^{6/} Attached as Exhibit C.

^{7/} These conditions included the number of seats included in the live entertainment venue; compliance with Massachusetts Environmental Policy Act ("MEPA"); security issues associated with the project including coordination with local law enforcement; contemporaneous reporting guidelines to the Investigation and Enforcement Bureau ("IEB"); ensuring that future employees of the project, who will not be licensed or registered by the Commission, do not have access to the sensitive areas of the gaming establishment; and egress, ingress, and security issues associated with the pedestrian bridge.

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In satisfaction of the fourth part of the Commission's test, the Gaming Commission does have a regulatory interest in this gaming area being part of the gaming establishment. EBH would of course manage this area consistent with the measures taken in the current gaming establishment. The Commission has an interest in ensuring that its jurisdiction, rules, and regulations apply to this important part of EBH's gaming establishment.

Finally, nothing included in EBH's proposal is inconsistent or seeks to change the Commission's May 15, 2014 decision, specifically as it pertains to its impact on host and surrounding communities. All proposed spaces are clearly within the City of Everett, the addition of a gaming area in the East of Broadway Development is contemplated by the HCA between Wynn MA, LLC and the City of Everett, and the revision to the gaming establishment boundary would not require a vote on a new ballot question pursuant to M.G.L. c. 23k § 15 (13).

I. All spaces in the proposed revision to the gaming establishment boundary are in Everett, MA.

Wynn MA, LLC's proposed revisions to the gaming establishment boundary are set forth in Exhibit D. The current gaming establishment boundary appears in blue and the proposed revision appears in red. Together, the blue and red sections make up the proposed revised gaming establishment. As depicted in Exhibit D, all elements of the East of Broadway Development, shown in red, including the pedestrian bridge, are in Everett, MA. There is no impact on any surrounding communities, and the HCA between Wynn MA, LLC and the City of Everett permits a revision of this type.

II. The addition of a gaming area in the East of Broadway Development is contemplated by the HCA between Wynn MA, LLC and the City of Everett.

The HCA between Wynn MA, LLC and the City of Everett specifically contemplates that Wynn MA, LLC may undertake construction on property other than the current EBH site. And the HCA provides a mechanism to address such construction. Section 1 of the HCA establishes "Impact Payments to Everett" and Section 1.B.2 describes the "Annual PILOT Payment to Everett." Ex. A, Section I.B.2. In pertinent part, this section provides:

The parties recognize that the Project may change and the proposed PILOT with annual increases will apply notwithstanding such changes, including any increase to the Project Site and building area. However, if total square footage of the Project building area (not including parking areas) exceeds the Area Cap, then the parties shall renegotiate the PILOT in good faith based upon the full amount of additional space above the currently proposed one million three hundred and twenty thousand (1.32 million) square feet. The Area Cap shall apply to new construction on the Project Site after Wynn has commenced operations; provided, however, *if, after Wynn commences operations, Wynn undertakes any substantial new construction ("New Construction") on property which is not a part of the Project Site as of date Wynn commences operations ("New Property"), then the parties shall renegotiate the PILOT or negotiate a separate real estate tax arrangement in good faith based on the such substantial New Construction on such New Property.*

Id. at pages 4-5 (emphasis added). The East of Broadway Development is being developed on "property which is not a part of the Project Site as of date Wynn commence[d] operations" and therefore meets the definition of "New Property" under the HCA. *Id.* As a result, Wynn

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MA, LLC and the City of Everett have two choices in addressing this New Property: the parties can either (i) "renegotiate the PILOT," or (ii) "negotiate a separate real estate tax arrangement." *Id.* Here, Wynn MA, LLC and the City of Everett will negotiate a separate real estate tax arrangement. As a result, the proposed revision to the gaming establishment does not require any change to the existing HCA between Wynn MA, LLC and the City of Everett.

III. The HCA between Wynn MA, LLC and the City of Everett was incorporated into the June 22, 2013 ballot question required by the Gaming Act such that an additional election is not required.

The election mandated by M.G.L. c. 23k, § 15 (13) took place in the City of Everett on June 22, 2013. As required, the ballot question was accompanied by a "concise summary" of the HCA "as determined by the city solicitor or town counsel." M.G. L. c. 23K, § 15 (13). In addition, the signed HCA was made available to the public including at the Everett public library, Everett United office, Everett City Hall, and online. Because the June 22, 2013 ballot question fairly summarized and incorporated the HCA that contemplates and permits a revision of the type now proposed by Wynn MA, LLC, no further election is required.

Based on the above, EBH requests that the Commission approve a revised gaming establishment boundary as set forth in Exhibit D.

Thank you for your attention to this matter. Please contact me with any questions or concerns.

Very truly yours,

Samuel M. "Tony" Starr
Member / Co-Chair, Construction Law Practice

SMS/pm

Enclosures

cc: Caitie Hill, Esq. (by email – w/encs.)
Jacqui Krum, Esq. (by email – w/encs.)



MEMORANDUM

FROM: Massachusetts Gaming Commission
RE: Development East of Broadway in Everett, MA
DATE: May 12, 2022

Background

Wynn MA, LLC, the Region A gaming licensee which owns and operates the gaming establishment, Encore Boston Harbor, notified the Commission of a proposed new development on Lower Broadway, (hereinafter, “the project”). According to the information provided by the licensee, the project will consist of approximately 20,000 square-feet of restaurant space; a live entertainment venue with associated pre-function space of less than 1000 seats; a 2,200-space parking garage; and a 400-foot elevated pedestrian bridge across Broadway, which will connect the project to the existing gaming establishment. Potential future additions to the proposed project include two hotels, north of the project site. Accordingly, the issue presented to the Massachusetts Gaming Commission (hereinafter, “Commission”) is whether the project should be considered part of the Encore Boston Harbor’s existing gaming establishment and thus, subject to Commission regulatory oversight. On February 28, 2022, the Commission held a public hearing, at which it solicited comments from interested members of the public. It then considered this matter at its March 10, 2022, and March 14, 2022, public meetings, respectively. After review and discussion, the Commission concluded that the proposed project will not be considered part of the existing gaming establishment, but the gaming licensee will be subject to certain conditions pertaining to the project, as outlined below.

Overview

In accordance with G. L. c. 23K, § 1(10), “the power and authority granted to the commission shall be construed as broadly as necessary for the implementation, administration, and enforcement of [G. L. c. 23K].” Additionally, G. L. c. 23K, § 4, states “the commission shall have all powers necessary or convenient to carry out and effectuate its purposes.” Accordingly, the Commission is afforded broad discretion in deciding matters directly within its purview. In this case, that took the form of a determination as to the proper boundaries of a “gaming establishment” in accordance with the statutory definition¹ to ensure proper regulatory oversight of gaming related matters under chapter 23K.

The Commission outlined a 4-part analysis, rooted in chapter 23K, to examine whether a particular structure, or area would be considered part of a gaming establishment. The analysis

¹ G. L. c. 23K, § 2 defines “gaming establishment” as “the premises approved under a gaming license which includes a gaming area and any other nongaming structure related to the gaming area, and may include, but shall not be limited to, hotels, restaurants or other amenities.”



requires a determination as to whether each component of the project: (1) is a non-gaming structure; (2) is related to the gaming area; (3) is under common ownership and control of the gaming licensee; and (4) if of the character that the Commission has a regulatory interest in including it as part of the gaming establishment. The Commission noted in prior determinations that part 4 of the analysis is only conducted if the first 3 elements are satisfied. This analysis was established as part of the Commission's 2014 decision that determined the boundaries of the 2 applicants for the Region A, category 1 gaming license.² Since its inception, this analysis has been applied by the Commission not only in determining the boundaries of the three existing gaming establishments, but also in later amendments to the boundaries at MGM Springfield and Plainridge Park Casino, in 2018 and 2021, respectively.³

It is also significant that courts have twice examined the 4-part analysis, as well as the discretion of the Commission to make determinations relative to the composition of a gaming establishment. Specifically, it was recently recognized that the application of the analysis in determining the boundary of the proposed gaming establishments in 2014 "has a certain, practical logic and must be afforded extreme deference by this court."⁴

In applying the 4-part analysis to the current project, the Commission has determined that no portion of the project will be considered a part of the existing gaming establishment. The licensee, Wynn MA, LLC, and its parent corporation, Wynn Resorts, Limited, shall however, be subject to certain conditions, set forth here in 'Exhibit A,' to ensure that the regulatory concerns raised by the Commission during the public discussions of the project are adequately addressed throughout the project's construction and eventual operation. The Commission's analysis is as follows:

I. Non-Gaming Structure

The first element of the analysis requires an evaluation as to whether the components of the project are non-gaming structures. Determination of this factor rests largely upon the definition of 'gaming establishment' which includes the "gaming area and any other nongaming structure related to the gaming area." While the term "non-gaming structure" is not itself defined, the statute does offer some guidance as to its intended meaning. Within the same definition, examples of non-gaming structures were listed to include hotels, restaurants, or other amenities.

Consequently, the Commission used this definition to infer that a component needed to be a structure of some sort, to be included in the boundary of a gaming establishment. In 2014, the Commission found that the gaming area, hotel, meeting and convention spaces, ball room, retail areas, restaurants/food and beverage lounge areas, night club, back of house, underground parking areas, physical plant/facilities, maintenance, and related public spaces were within the boundary

² Mass. Gaming Comm'n, *Decision Regarding the Determination of the Gaming Establishment for Mohegan Sun MA, LLC, and Wynn MA LLC*. May 15, 2014.

³ *Memorandum from [MGC] Staff Recommending Approval of MGM Springfield*. April 23, 2018. *See also*, *Petition to Amend the Premises of the Gaming Establishment for Plainridge Park Casino*, submitted by licensee, 2021.

⁴ *City of Revere, et al. v. Massachusetts Gaming Comm'n, et al.*, Suffolk Superior Court Civ. A. NO. 1484CV03253-BLS1 at 20. (February 16, 2022).



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of the proposed gaming establishments proposed by the two category 1 applicants.⁵ By contrast, the Commission found that municipal or internal roadways, surface parking lots, and entry ways to the casino were not “structures in traditional sense” and they were ultimately not included in the gaming establishment boundaries of either applicant.⁶

In evaluating the current project, the Commission considered each component of the project individually. In contrast with the submissions of the category 1 applicants, Wynn, and Mohegan in 2014, all buildings in the proposed project: parking garage, restaurant, and live entertainment venue are actual structures and thus satisfy the first element of the test. The elevated footbridge connecting the two properties, as currently designed, would similarly meet this definition, as it is a structure in the traditional sense. In conclusion, the project, as currently designed, satisfies part one of the analysis.

II. Relation to Gaming Area

The next factor requires the Commission to decide whether the project is related to the gaming area of the existing gaming establishment, Encore Boston Harbor. The statute, G. L. c. 23K, § 2, defines “gaming area” as “the portion of the premises of the gaming establishment in which gaming is conducted.” In 2014 the Commission determined that the “gaming area, hotel, meeting and convention spaces, ball room, retail areas, restaurants/food and beverage lounge areas, night club, back of house, underground parking areas, physical plant/facilities, maintenance, and related public spaces” were part of the gaming establishment as they were intended, at least in part, to “support the gaming area by making entire facility a more attractive destination.”⁷

Conversely, the racetrack at Suffolk Downs was found unrelated to the gaming area of the gaming establishment proposed by Mohegan Sun, in part due to a “lack of proximity between the entrance to the track from the entrance to the gaming area, no infrastructure connecting the structures, and lack of common ownership or control of track operations by applicant Mohegan”⁸

In the current matter, each of the components of the project were deemed by the Commission to be related to the gaming area of Encore Boston Harbor, as the development would make the entire facility a more attractive destination. Specifically, the 20,000 square-foot of restaurant and dining space; live entertainment venue of less than 1000 seats; 2,200-space parking garage; and elevated pedestrian bridge connecting the two properties, are each separately and as a whole likely to draw more visitors to the gaming establishment and enhance the overall destination. The proximity of the project to the existing gaming area, connection of the two facilities via infrastructure, and the proposed amenities support a conclusion that the project relates to the gaming area; satisfying the second factor of the 4-part analysis.

⁵ Mass. Gaming Comm’n, *Decision Regarding the Determination of the Gaming Establishment for Mohegan Sun MA, LLC, and Wynn MA LLC*, May 15, 2014 (page 9).

⁶ *Id.* (pages 8 and 9).

⁷ *Id.* (page 9).

⁸ *Id.* (page 8).



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III. Common Ownership and Control of Gaming Applicant

At the heart of this third element is the question as to whether the Commission could practically and effectively assert its jurisdiction over a particular area of the project and require that all the Commission's familiar regulatory requirements be followed in that area. Common ownership and "operational control" or lack thereof, was previously considered by the Commission in 2014, as well as 2018.⁹ In both instances, the Commission emphasized the need to examine the control element "is implicit in the [chapter 23K]'s licensing and registration requirements."¹⁰

In its 2014 decision, the Commission delineated that applicant Mohegan Sun's lack of operational control of Suffolk Downs' racetrack supported a finding of a lack of requisite ownership under the third component of the 4-part analysis.¹¹ Similarly, the Commission found that there was no common ownership or control that would allow for regulatory oversight of the Boston Symphony Orchestra and TD Garden, with which Wynn MA, LLC executed cross marketing agreements.¹²

In the present matter, Wynn MA, LLC does not own, or control the proposed project. An entity named East Broadway, LLC owns the land, and another entity, Wynn Resorts Development, LLC would oversee the project's construction. The analysis does not end there though. Each of these entities are wholly owned subsidiaries of Wynn Resorts, Limited which is the parent company of the gaming licensee, and accordingly, a qualifier subject to the authority of the Commission, pursuant to G. L. c. 23K, § 14 and 205 CMR 115.

Moreover, there are ample examples in Massachusetts jurisprudence of courts or government entities looking beyond the corporate form to determine control when it becomes necessary to carry out a law's intended purpose. In *Berg v. Town of Lexington*, 68 Mass.App.Ct. 569, 574 (2007), the Court found that related parties' practice of placing ownership of adjoining lots in separate forms, known as "checkerboarding," had been utilized to avoid zoning provisions that require lots held in common ownership to be combined for determining area and frontage. In evaluating the context of checkerboarding, and land ownership, the Court weighed the amount of control over a parcel as dispositive, asking: "did the landowner have it 'within his power,' i.e., his legal control to use the adjoining land so as to avoid or reduce the nonconformity?" *Planning Bd. of Norwell v. Serena*, 27 Mass.App.Ct. 689, 691 (1989).

Applying this analysis to the present matter, the Commission finds that by virtue of the parent/subsidiary relationship the requisite ownership and control over the project exists such that

⁹ *Id.* (Page 7). See also, *Memorandum* page 2, citing the 2014 Decision, G. L. c. 23K, §§ 30 – 32, "The requirement for the licensee to own or control all land on which the gaming establishment is located, G. L. c. 23K, §15 (3), and the statutes general structure which places control of the licensee at the hear of the Commission's regulatory authority."

¹⁰ *Decision Regarding the Determination of the Gaming Establishment for Mohegan Sun MA, LLC, and Wynn MA LLC*. May 15, 2014 (Page 7, "Analysis and Determinations").

¹¹ *Id.* (Page 5 and 8).

¹² *Id.* (Page 10.)



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the Commission could exert regulatory oversight. Specifically, Wynn Resorts, Limited, a qualifier subject to the Commission's oversight, ultimately controls the land that is owned by East Broadway, LLC, and that would be developed by Wynn Resorts Development, LLC. Accordingly, the requisite ownership and control over the project exist. For these reasons, the Commission finds that third element of the 4-part analysis is adequately satisfied.

IV. Regulatory Interest

The Commission has broad discretion in deciding whether it has a regulatory interest in exerting jurisdiction over the project pursuant to the objectives set forth in G. L. c. 23K. In its 2014 decision determining the gaming establishment boundaries for applicants Mohegan and Wynn, the Commission held that the fourth component of the 4-part analysis was only considered if the first three parts of the analysis were satisfied.¹³ The Commission recognized that it was important to include certain amenities as part of the gaming establishment, in part, because it held an interest in ensuring that the employees working in those areas were licensed or registered by the Commission, and the Commission have knowledge of the flow of money through those areas.¹⁴

In its discretion, the Commission has also previously concluded that it did not have an interest in including certain non-gaming structures within the gaming establishment boundary. For example, the boat dock at the Encore Boston Harbor property met the first three parts of the 4-part analysis, however, the Commission determined that it did not have a regulatory interest in the area, as the dock was subject to other government oversight and there was no additional benefit to including it within the boundary.¹⁵ A similar rationale was applied to the race track at Plainridge Park Casino, which was already subject to the Commission's jurisdiction under G. L. c. 128A. Both components were excluded from their respective gaming establishments.

In the present matter, the Commission concluded that while there are some concerns stemming from the development and operation of the project, that those issues can be adequately remedied by way of a license condition attached to the existing Wynn MA, LLC gaming license rather than modifying the existing gaming establishment boundary to include the new project. These conditions, discussed and finalized at the March 14, 2022 public meeting, are set out within the attached 'Exhibit A'. The conditions were drafted to address the concerns raised at the Commission's March 10, 2022, public meeting, namely: the number of seats included in the live entertainment venue; compliance with Massachusetts Environmental Policy Act ("MEPA"); security issues associated with the project including coordination with local law enforcement; contemporaneous reporting guidelines to the Investigation and Enforcement Bureau ("IEB"); ensuring that future employees of the project, who will not be licensed or registered by the Commission, do not have access to the sensitive areas of the gaming establishment; and egress, ingress, and security issues associated with the pedestrian bridge. Accordingly, with these conditions in place, the Commission concludes that it does not have a

¹³ *Id.* (Page 7).

¹⁴ *Id.* (Page 8).

¹⁵ *Id.* (Page 9).



regulatory interest in including the components of the project as part of the existing gaming establishment.

Conclusion

For the foregoing reasons, the Commission concluded that no elements of the project will be considered part of the existing gaming establishment, and subject to its regulation. Further, the gaming license awarded to Wynn MA, LLC is hereby amended to include the conditions set forth in the attached 'Exhibit A.'



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EXHIBIT A

The conditions attached to the Category 1 gaming license awarded to Wynn MA, LLC as prescribed in the November 7, 2014, decision issued by the Commission are hereby amended to add the following conditions that relate to the proposed development east of Broadway in Everett, MA across from Encore Boston Harbor (hereinafter, “the project”). Wynn MA, LLC, and Wynn Resorts, Limited, as applicable, shall ensure that:

1. Any entertainment venue that is developed as part of the project for purposes of hosting live entertainment, in whole or in part, shall at all times contain less than 1000 or more than 3500 ticketed seats whether such seating is permanent, temporary, or a combination thereof. Further, in accordance with the plans presented to the Commission on February 10, 2022, no more than 999 ticketed patrons, whether paid or complimentary, may be permitted entry for any single live entertainment event. If live entertainment in the entertainment venue will be viewable from any restaurant or other amenity on the premises, any such seats or positions shall be counted towards the aforementioned figures. Nothing in this condition should be deemed to prohibit live entertainment events of more than 3,500 ticketed seats consistent with G. L. c. 23K, § 9 (a)11. For purposes of this provision, ‘live entertainment’ shall mean any one or more of the following activities performed in-person by one or more individuals: (1) musical act; (2) theatrical act; (3) comedy act; (4) play; (5) magic act; (6) disc jockey; or (7) similar activity consistent with the common understanding of ‘live entertainment’ as determined by the Commission, or its designee, if necessary.
2. Booking agreements and/or contracts executed for the provision of live entertainment at the live entertainment venue shall not include any provision establishing a radius restriction that would actually or effectively prevent the entertainer(s) from performing elsewhere within any specific geographic area within the Commonwealth of Massachusetts.
3. A Notice of Project Change, Request for Advisory Opinion or Environmental Notification Form shall be submitted, as appropriate, to the Massachusetts Environmental Policy Act Office (hereinafter, “MEPA”) of the Executive Office of Energy and Environmental Affairs. Promptly upon such filing, a copy of said documents as well as any MEPA decisions shall be submitted to the Commission. The Commission reserves the right to provide comments on any application submitted relative to the project.
4. A security plan for the parking garage proposed as part of the project shall be submitted to the Commission for approval at least 60 days prior to opening of such garage. The security plan shall include, at a minimum, regular patrolling of the garage by security personnel, and a provision that requires security personnel to conduct regular checks of parking areas for minors left in motor vehicles and immediately report any such finding to the City of Everett Police Department. Any such reports involving patrons of the gaming establishment shall contemporaneously be reported to the IEB. Upon approval,



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Wynn MA, LLC, and Wynn Resorts, Limited, as applicable, shall implement and comply with the approved plan.

5. The licensee shall submit any proposed plan for further development or construction within the area included as part of the City of Everett's *Lower Broadway District Urban Renewal Plan*, as amended, by any entity owned or controlled by Wynn Resorts, Limited, or affiliated with Wynn MA, LLC, or upon any land owned by said entities, to the Commission for review prior to or contemporaneous with its filing with any other governmental agency.
6. Employees of the facilities on the project site shall not be afforded access to any restricted areas of the gaming establishment unless they follow the applicable visitor access protocols.
7. The licensee shall submit a plan relative to the proposed pedestrian bridge connecting the project site to the existing gaming establishment to the Commission for approval within 90 days of execution of this decision (March 14, 2022) that includes, at a minimum, the following:
 - a) A depiction of a point of egress from the bridge in the vicinity where patrons would enter the gaming establishment to allow the public to depart the bridge without entering the gaming establishment. The licensee shall submit the final design plans for the bridge, which shall incorporate said point of egress, to the Commission promptly upon submission to the City of Everett building department; and
 - b) A security outline for the bridge which includes, but is not limited to:
 1. a description of any surveillance camera coverage;
 2. a schematic of the security checkpoint and the interior area of the existing gaming establishment at the point of entry;
 3. security department patrol procedures; and
 4. a plan identifying the coordination with the relevant law enforcement authorities to address security and incident response.

Upon approval, Wynn MA, LLC, and Wynn Resorts, Limited, as applicable, shall implement and comply with the approved plan.



Massachusetts Gaming Commission

**ABSENTEE
OFFICIAL BALLOT
CITY OF EVERETT
SPECIAL CITY ELECTION
JUNE 22, 2013**

INSTRUCTIONS TO VOTERS

A. TO VOTE, completely fill in the OVAL to the RIGHT of your choice like this: ☒

ARTICLE

Shall the City of Everett permit the operation of a gaming establishment licensed by the Massachusetts Gaming Commission to be located at property located on Horizon Way (off "Lower Broadway") in Everett, formerly known as the Monsanto Chemical Site?

YES ☐

NO ☐

This question asks voters to consider approval or denial of the operation of a gaming establishment in the City of Everett. Massachusetts law, under G.L. c.23K, authorizes the Massachusetts Gaming Commission ("the Commission") to award a limited number of licenses to operate gaming establishments, subject to the Commission's approval, as well as other prerequisites. Those prerequisites include approval by the voters at a ballot question election in the municipality where the establishment would be located, as well as a Host Community Agreement ("Agreement") between said municipality and the gaming license applicant. The City of Everett and Wynn MA, LLC have executed an Agreement and a summary of it is as follows:

Wynn's Payments to Everett

- \$30 million in advance payments for a Community Enhancement Fund payable during the construction period
- \$25,250,000 annually directly to the City of Everett beginning at Resort opening as follows:
 - o \$20 million for real estate taxes
 - o \$5 million Community Impact Fee
 - o \$250,000 contribution to Everett Citizens Foundation, which will support local groups
 - o These payments all increase 2.5% per year
- \$50,000 annual payment to purchase vouchers/gift certificates from Everett businesses to be distributed by Wynn as part of its rewards/frequent guest/loyalty or similar programs
- An estimated \$2.5 million per year in hotel and restaurant taxes paid by Wynn customers
- Payment for costs incurred by the City for items necessitated by the Project, including determining impacts; holding an election; assessing zoning and permitting; upgrading electric, gas and water/sewer infrastructure; review and inspection of permit and license applications, construction and utility plants

Wynn's Commitments to Everett

- Investment of more than \$1 billion in the development of the Resort
- Full opening at one time; no phased construction
- Mitigation of transportation infrastructure impacts
- Hiring preference to Everett citizens for over 8,000 construction and permanent jobs
- Good faith effort to use Everett contractors and suppliers
- Completion of multi-million dollar remediation of existing environmental contamination
- Public access to the Resort's waterfront consistent with the City's developing municipal harbor plan and the City's Lower Broadway Master Plan
- Support for local artists and art programs

Everett's Commitments to Wynn

- Support of the Project and assistance in obtaining permits, certifications, legislation and regulatory approvals
- Petition the Massachusetts Gaming Commission for available funds
- Pursue development and approval of a Municipal Harbor Plan
- Work to amend zoning and other land use regulations
- Schedule an election

This summary has been approved pursuant to M.G.L. c.23K §15(13) by Colleen Mejia, Esq., City Solicitor, City of Everett.

MGL 23k Section 15

(13) have received a certified and binding vote on a ballot question at an election in the host community in favor of such license; provided, however that a request for an election shall take place after the signing of an agreement between the host community and the applicant; provided further, that upon receipt of a request for an election, the governing body of the municipality shall call for the election to be held not less than 60 days but not more than 90 days from the date that the request was received; provided further, that the signed agreement between the host community and the applicant shall be made public with a concise summary, approved by the city solicitor or town counsel, in a periodical of general circulation and on the official website of the municipality not later than 7 days after the agreement was signed by the parties; provided further, that the agreement and summary shall remain on the website until the election has been certified; provided further, that the municipality that holds an election shall be reimbursed for its expenses related to the election by the applicant within 30 days after the election; provided further, that the commission shall deny an application for a gaming license if the applicant has not fully reimbursed the community; provided further, that, for the purposes of this clause, unless a city opts out of this provision by a vote of the local governing body, if the gaming establishment is proposed to be located in a city with a population of at least 125,000 residents as enumerated by the most recent enumerated federal census, "host community" shall mean the ward in which the gaming establishment is to be located for the purpose of receiving a certified and binding vote on a ballot question at an election; provided further, that, upon the signing of an agreement between the host community and the applicant and upon the request of the applicant, the city or town clerk shall set a date certain for an election on the ballot question in the host community; provided further, that at such election, the question submitted to the voters shall be worded as follows: "Shall the (city/town) of _____ permit the operation of a gaming establishment licensed by the Massachusetts Gaming Commission to be located at _____ [description of site] _____? YES _____ NO _____"; provided further, that the ballot question shall be accompanied by a concise summary, as determined by the city solicitor or town counsel; provided further, that if a majority of the votes cast in a host community in answer to the ballot question is in the affirmative, the host community shall be taken to have voted in favor of the applicant's license; provided further, that, if the ballot question is voted in the negative, the applicant shall not submit a new request to the governing body within 180 days of the last election; and provided further, that a new request shall be accompanied by an agreement between the applicant and host community signed after the previous election; provided further, that if a proposed gaming establishment is situated in 2 or more cities or towns, the applicant shall execute an agreement with each host community, or a joint agreement with both communities, and receive a certified and binding vote on a ballot question at an election held in each host community in favor of such a license;