



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: January 25, 2023

RE: Encore East of Broadway Development

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In preparation for the February 8, 2023 Commission meeting, the Community Affairs Division has prepared this summary memo to recap the events that have happened thus far and to outline the further actions that need to be taken on this project.

The initial question before the Commission is whether Encore Boston Harbor (EBH) is allowed to have gaming in the proposed East of Broadway development.

### **Project Background**

In February 2022, EBH submitted design plans for a new development across Broadway known as the East of Broadway development, consisting of a 999-seat entertainment venue with space for additional restaurants, a parking garage and a bridge connecting the property to EBH. At that time neither gaming nor sports wagering was being proposed at that facility.

Under the Massachusetts Environmental Policy Act (MEPA) process, the Commission reserved the right to review, permit or condition any proposal by EBH occurring on property across Broadway that was purchased during the development of EBH. As such, the Commission first held a public hearing to obtain public input and then held a public meeting to evaluate and deliberate on the proposal. Since there was no gaming proposed at the time, EBH requested that this project not be considered part of the gaming establishment. Ultimately, the Commission decided that the proposed development was not part of the gaming establishment. The Commission placed certain conditions on the proposed development primarily to allay security and access concerns.

In the fall of 2022, EBH refiled the plans with the Commission to include a poker room and sports betting which by necessity requires the Commission to regulate this operation as part of the gaming establishment. When the first proposal came in front of the Commission, staff questioned whether a second referendum would be needed if this property was considered to be part of the gaming establishment. Because the Commission determined



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that the original proposal was not part of the gaming establishment, that question never needed to be answered. Because this new proposal would have to be part of the gaming establishment to operate, this question now does need to be answered.

On November 16, 2022, the Commission initially took up this matter. Several documents were provided to the Commission in support of this matter, which are attached for reference. These were:

- Memorandum of Decision on the East of Broadway Project;
- The East of Broadway Plan Revisions from July 2022;
- A Letter from Mintz to the Commission regarding revisions to the Gaming Establishment;
- Attachments to the Mintz letter – Exhibits A-D;
- The Everett Casino Ballot Question from June 2013;
- Copy of Section 15 of MGL 23k that establishes the referendum requirement; and
- Letter of Support from Mayor DeMaria.

At the November 16 meeting, the Commission asked for additional information regarding the following items:

- A map of lower Broadway showing all of the area properties;
- A legal opinion from Everett regarding the adequacy of the referendum to allow expansion of EBH;
- Input from Plainville and Springfield regarding their interpretation of the referendum results;
- An estimate of the cost of an additional referendum; and
- A legal brief from the MGC General Counsel regarding interpretation of the will of the voters.

In response to these questions, the following items have been attached:

- A section of the City of Everett Assessor’s Map showing the EBH property as well as the East of Broadway properties that are the subject of this request.
- An additional letter dated January 5, 2023, from Mintz Levin that outlines historic ownership of the East of Broadway properties and links to the former Monsanto property.
- A legal opinion by the City of Everett’s outside counsel regarding the adequacy of the referendum and the provisions of the Host Community Agreement.



- A letter from the Town of Plainville providing input from their Select Board regarding their interpretation of the referendum requirement.
- A letter from the City of Everett outlining the probable costs of an additional referendum.

General Counsel Grossman will be providing a legal brief regarding the will of the voters under a separate cover.

In addition, we reached out to the City of Springfield regarding this matter and offered them an opportunity to comment. As of this time, we have not received any written comments from Springfield. We will continue to reach out to them between now and the meeting to see if they would like to opine on the matter either in writing or in person at the Commission meeting.

There may be an additional letter from Mintz providing additional information on the application. This had not been received by the date of this memo. Any additional information will be forwarded to the Commission as soon as it is received.

### **Recent Project Developments**

EBH has continued to pursue the permitting of this project in parallel with the Commission's review. Several events have occurred since the project was last in front of the Commission on November 16, 2022. They are as follows:

- MEPA Review – On November 15, 2022, EBH submitted a Notice of Project Change (NPC) to MEPA to include the full build out of the proposed East of Broadway Development. This includes the first phase of the project which is currently under consideration by the Commission, as well as future phases that will include new hotel, restaurant, convention and warehouse spaces. Numerous comments were received by MEPA mainly focusing on traffic related issues, bicycle and pedestrian accessibility to the site and greenhouse gas emissions. On January 6, 2023, the Secretary of Energy and Environmental Affairs issued their Certificate on the NPC which requires the submission of a Supplemental Draft Environmental Impact Report (SDEIR) and a Supplemental Final Environmental Impact Report (SFEIR). The scope of the SDEIR primarily focuses on traffic related items including transit analysis, pedestrian access, bicycle access, parking, transportation demand management and transportation monitoring. Other areas of study include environmental justice, adaptation and resiliency, greenhouse gas emissions, air quality, stormwater and wastewater.



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- City of Everett Planning Board Review – The first phase of the East of Broadway development was submitted to the Everett Planning Board and was approved. The City of Everett is currently drafting the decision on the project and understands that the project may need to be modified depending on the MEPA review. Once the decision is completed, it will need a final vote of the Planning Board.
- Everett City Council Review – The East of Broadway property was not originally included in the City’s Resort Casino Overlay District. In order for gaming to take place on this property, the City Council approved a zoning change to add this property to the Resort Casino Overlay District.



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**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 definition<sup>1</sup> 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

<sup>1</sup> 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.<sup>2</sup> 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.<sup>3</sup>

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."<sup>4</sup>

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 with within the boundary

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

<sup>3</sup> *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.

<sup>4</sup> *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.<sup>5</sup> 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.<sup>6</sup>

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.”<sup>7</sup>

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 ....”<sup>8</sup>

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.

<sup>5</sup> 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).

<sup>6</sup> *Id.* (pages 8 and 9).

<sup>7</sup> *Id.* (page 9).

<sup>8</sup> *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.<sup>9</sup> In both instances, the Commission emphasized the need to examine the control element “is implicit in the [chapter 23K]’s licensing and registration requirements.”<sup>10</sup>

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.<sup>11</sup> 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.<sup>12</sup>

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

<sup>9</sup> *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 statuses general structure which places control of the licensee at the hear of the Commission’s regulatory authority.”

<sup>10</sup> *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*”).

<sup>11</sup> *Id.* (Page 5 and 8).

<sup>12</sup> *Id.* (Page 10.)





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.<sup>13</sup> 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.<sup>14</sup>

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.<sup>15</sup> 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

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<sup>13</sup> *Id.* (Page 7).

<sup>14</sup> *Id.* (Page 8).

<sup>15</sup> *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.



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February 3, 2023

**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:

Wynn MA, LLC ("Wynn MA") submits this letter, in addition to letters submitted on September 13, 2022 and January 5, 2023, in connection with Wynn MA's request that the Massachusetts Gaming Commission (the "Commission") approve a revised gaming establishment boundary that would include gaming in the East of Broadway Development (the "Proposed Revision").

At the November 16, 2022 open meeting, the Commissioners inquired whether a "YES" vote on the June 22, 2013 ballot question (the "Ballot Question") approved the terms of the Host Community Agreement ("HCA") entered into between the City of Everett ("Everett") and Wynn MA, which specifically contemplates that Wynn MA may undertake construction on property other than the current Encore Boston Harbor ("Encore") site.

Section 15 (13) of the Gaming Act required that the Ballot Question include a site description. In this case, the Ballot Question described the site *generally* as opposed to limiting the proposed casino location to a single parcel. Indeed, as outside counsel for Everett described at the November 16, 2022 open meeting, the colloquial site description—"property located on Horizon Way (off "Lower Broadway") in Everett, formerly known as the Monsanto Chemical Site"—was intended to describe a general landmark that an Everett voter would recognize, while more precise detail was provided in the HCA.<sup>1/</sup> Thus, voters were notified by the clear terms of the HCA—which was incorporated into the Ballot Question—that the Project Site was subject to expansion.<sup>2/</sup>

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<sup>1/</sup> Indeed, the HCA specifically states in the first "Recital" that: "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"). See HCA Recitals (emphasis added). Exhibit A to the HCA does, in fact, depict some of the land across Broadway that is included in Wynn MA's Proposed Revision, though it does not include the full lot boundaries.

<sup>2/</sup> As set forth in Wynn MA's September 13, 2022 letter, the HCA specifically contemplates that such expansion may include new construction on property other than the current site, and provides a mechanism to address such construction. See September 13, 2022 Letter at Section II and HCA at Section I.B.2 (discussing the potential undertaking by Wynn of new construction on new property).

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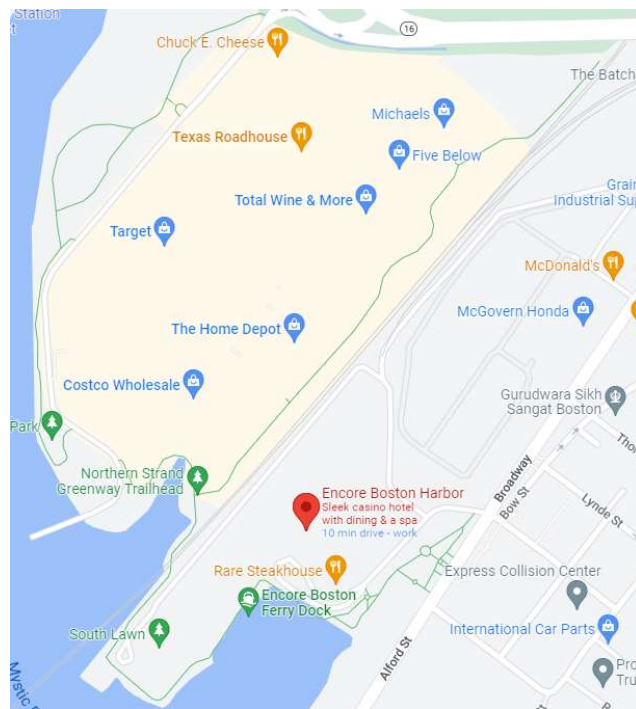
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Counsel for both Wynn MA has reviewed various land records related to property owned by Monsanto Chemical Company (“Monsanto”) in and around the current Encore site. These documents show that Monsanto (and its predecessors) were active west and east of the current Encore site, including two lots in the proposed East of Broadway Development. This further supports the notion that the colloquial term “the Monsanto Chemical Site” was intended to capture more than the parcel of land that Wynn MA purchased from FBT Everett Realty, LLC for the purposes of building the casino.

**Monsanto Owned Property to the West of the Current Encore Site**

Exhibits A-1 and A-2 show that Monsanto owned land on the west side of the railroad tracks that run next to the current Encore site. This area is now a shopping center owned by DDRC Gateway, LLC (“DDRC”). DDRC received title to the parcel from Solutia Inc., which was a subsidiary of Monsanto. Copies of the deed from Monsanto to its subsidiary Solutia, and the deed from Solutia to DDRC are attached as Exhibits A-1 and A-2. Today, there is an easement agreement between EBH MA Property, LLC (a Wynn MA affiliated entity) and DDRC, the owner of this shopping center. An image from google maps appears below, and shows the location of the shopping center to the west of the current Encore site:



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**A Monsanto Predecessor Owned Property to the East of the Current Encore Site**

A 1921 Everett Atlas shows that a predecessor to Monsanto, Merrimac Chemical Company, owned property to the east of the current Encore site (across Broadway on Dexter and Robin). Exhibit B shows those parcels, one of which is designated as “Merrimac Chemical Co., Stables.” Both of these parcels are in the proposed East of Broadway Development in the block surrounded by Broadway, Dexter, Robin, and Mystic, and the “Merrimac Chemical Co., Stables” parcel is within the Proposed Revision. The figure below to the left is an excerpt from Exhibit B showing the Merrimac parcels, and the figure below to the right shows the same location in an excerpt from the proposed East of Broadway Development:



In addition, the 1921 Everett Atlas shows a lot at the corner of Robin and Dexter designated as Mary Cochrane. Cochrane Chemical was a predecessor of Monsanto. See City of Everett / 1892-1970, <https://cityofeverett.com/wp-content/uploads/2021/10/City-History.pdf> (“In 1893 Everett’s only corporation ... was the Cochrane Chemical Works. By 1913 this company had become the New England Chemical Works, by 1931 it had become the Monsanto Chemical Company ...”).

While the land records indicate that Merrimac Chemical, Co. sold these parcels to a private party in the mid 1920’s, it is clear that Monsanto and or its predecessors were historically active both to the west and east of the current Encore site.

**All Everett Residents Received a Copy of the HCA**

Prior to the June 22, 2013 vote, Everett residents received a copy of the HCA. A copy of the Mayor’s communication to Everett residents is attached as Exhibit C. As a result, Everett voters were notified by the clear terms of the HCA that the Project Site was subject to expansion. Importantly, Everett officials also negotiated a specific provision in the HCA to address new construction on

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property other than the current site, which provides a mechanism to address such construction. See September 13, 2022 Letter at Section II; HCA Section 1.B.2. The proposed East of Broadway Development is precisely the type of “new construction” on “new property” that is contemplated in the HCA.

As set forth in Wynn MA’s September 13, 2022 and January 5, 2023 letters, the proposed revised gaming establishment boundary (i) meets the four part test established by the Commission to determine whether to exercise its authority in a gaming establishment; (ii) is contemplated by the existing HCA between Wynn MA and Everett; and (iii) would not require a vote on a new ballot question pursuant to M.G.L. c. 23k § 15 (13). For these reasons, Wynn MA respectfully requests that the Commission approve its proposed revised gaming establishment boundary.

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

Very truly yours,

*/s/ Samuel M. Starr*

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

Enclosure(s)

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



# Exhibit A-1

QUITCLAIM DEED

SOLUTIA INC., a Delaware corporation (hereinafter called "Grantor" or "Solutia") for Fourteen Million Two Hundred Fifty Thousand Dollars (\$14,250,000) consideration paid grants to DDRC GATEWAY LLC, a Delaware limited liability company with its address at 3300 Enterprise Parkway, Beachwood, Ohio 44122 (hereinafter called "Buyer") with QUITCLAIM COVENANTS, subject to the matters herein set forth, the REGISTERED land and the UNREGISTERED land situated in Everett, the County of Middlesex, Commonwealth of Massachusetts, (the "Property") bounded and described as follows:

REGISTERED LAND

Lots 2 and 3, Plan 18691-D

Lots 2 and 3 on a plan entitled "Plan of Land in Everett, Massachusetts prepared for Monsanto Company" dated November 10, 1997 by Martinage Engineering Associates, Inc. and filed with the Engineering Office of the Land Court in Boston, Massachusetts as File Plan No. 18691-D. For Solutia's title, see said Certificate of Title No. 214423 in Book 1202, Page 073 and the Property is subject to, and has the benefit of, as the case may be, the matters contained in and noted upon said Certificate of Title or otherwise of record, to the extent still in force and applicable.

Lot 1, Plan 18691-C

Also the land, mostly flats, situated in Everett, in the County of Middlesex, Commonwealth of Massachusetts, bounded and described as follows:

- Northerly by land now or formerly of the Commonwealth of Massachusetts, Metropolitan District Commission Parks Division, 647 feet;
- Easterly 175 and 80/100 feet, and
- Northeasterly 21 and 16/100 feet by Parcel 1 as shown on a plan hereinafter mentioned;
- Southeasterly 1539 and 99/100 feet, and
- Southwesterly 130 and 91/100 feet by land now or formerly of Metropolitan District Commission; and

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SEE PLAN IN RECORD BOOK PAGE 264-275

Northwesterly by U.S. Pierhead and Bulkhead Line, 1420 and 18/100 feet.

Said parcel is shown as Lot 1 on said plan, (Plan No. 18691C).

All of said boundaries are determined by the Court to be located as shown on a subdivision plan, as approved by the Court, filed in the Land Registration Office, a copy of which is filed in the Registry of Deeds for the South Registry District of Middlesex in Registration Book 787, Page 170, with Certificate 131520.

For Solutia Inc.'s title see said Certificate of Title No. 214423 in Book 1202 at Page 073 of the South Registry District of Middlesex and the Property is subject to, and has the benefit of, as the case may be, the matters contained in and noted on said Certificate of Title or otherwise of record, to the extent still in force and applicable.

#### UNREGISTERED LAND

##### Parcel Z

A certain parcel of land situated in the City of Everett in the County of Middlesex and the Commonwealth of Massachusetts, on the southerly side of Revere Beach Parkway, said parcel being shown as Parcel Z on a plan entitled, "Commonwealth of Massachusetts, Metropolitan District Commission, Parks Division, Mystic River Basin Elevation Project, Revere Beach Parkway - Everett, Plan of Conveyance to Monsanto Chemical Co.", scale 1" = 100', dated September 1969, prepared by Benjamin W. Fink, Director of Park Engineering, Plan Number 46153-V.T., recorded in the Middlesex County Registry of Deeds (Southern Registry District) as Plan No. 1024 of 1970 in Book 11902 at Page 425, and being further bounded and described as follows:

Beginning at a point in the southeasterly corner of the parcel, which point in the southeasterly corner of the parcel is distant N 3°56'04" E, one hundred seventy-five and 80/100 (175.80') feet from a Massachusetts Highway Bound set in the boundary between land of the Commonwealth of Massachusetts Metropolitan District Commission (now part of the Revere Beach Parkway) and the land now or formerly of the Monsanto Fund, said land being shown as Lot 1 on Land Court Plan 18691C;

Thence the line runs N 3°56'04" E, one hundred ninety-nine and 25/100 (199.25') feet, by the sideline of the Revere Beach Parkway to a point;

Thence turning and running in a northwesterly direction by a line curving to the left with a radius of ten thousand two hundred fifty-four and 44/100 (10,254.44) feet, four hundred eighty-seven and 11/100 feet (487.11') by the sideline of said Revere Beach Parkway to a point;

Thence N 72°51'46" W, ninety-five and 77/100 (95.77') feet by the sideline of said Revere Beach Parkway to a point;

Thence turning and running S 18°36'03" W, three hundred twenty-two and 15/100 (322.15') feet by the United States Pierhead and Bulkhead line and the sideline of said Revere Beach Parkway to a point at land now or formerly of the Monsanto Fund, said land being shown as Lot 1 on Land Court Plan 18691C;

Thence turning and running S 83°14' 07"E, six hundred forty-seven (647.00') feet by the land now or formerly of the Monsanto Fund shown as Lot 1 on Land Court Plan 18691C to the point of the beginning.

Said Lot Z containing one hundred fifty-nine thousand seven hundred sixty eight plus (159,768+) square feet, more or less, according to said plan.

Said Lot Z is subject to the condition contained in the deed from the Commonwealth of Massachusetts to the Monsanto Company (recorded in the Middlesex County Registry of Deeds (Southern District) in 11902, Page 425) that the Algonquin Gas Transmission Company, a Delaware corporation, its successors and assigns, may continue permanently to maintain and operate its pipeline as presently located on Parcel Z.

For Solutia's title see Deed of Monsanto Company dated \_\_\_\_\_, 1999 and recorded with said Deeds, Book \_\_\_\_\_, Page \_\_\_\_\_.

The Property, both registered and unregistered, are subject to the following:

**RESTRICTIONS, COVENANTS AND CONDITIONS AND RIGHT OF REVERTER**

- I. The terms used in this Deed shall have the following meanings:
  - A. "Affiliate" of a specified person or party means any other present or future person directly or indirectly controlling or controlled by or under direct or indirect common control with such specified person or party. For purposes of this definition, "control" when used with respect to a specified person or party means the power to direct the management and policies of such person or party directly or indirectly, whether by ownership of voting securities, by contract or otherwise; and the terms "controlling" and "controlled" shall have meanings correlative to the foregoing;
  - B. "Agreement" means the Amended and Restated Real Estate Purchase and Sale Agreement dated March 18, 1999 between Monsanto Company and Monsanto Fund as

Sellers, Solutia Inc., as Solutia, Rosen Associates, Inc., as Rosen, DDRC Gateway LLC as Buyer and Developers Diversified Realty Corporation as DDRC;

- C. "AULs" means the three (3) Notices of Activity and Use Limitations filed with the Middlesex Registry South Registry District of the Massachusetts Land Court on August 4, 1997 as Document Nos. 1038019, 1038020 and 1038021, as amended by three (3) corresponding First Amendments to Notices of Activity and Use Limitations filed with said Registry on March 9, 1999 and March 12, 1999 as Document Nos. 1099694, 1099695 and 1100218;
- D. "Claim" means any claim, demand, action, judgment, decree or order arising under common law or equity or statutory law or regulation;
- E. "Clean Fill" means (i) material which was placed as the first 12 inches above the Horizontal Marker Layer by Monsanto, and (ii) material that is free of compounds which are in excess of MCP reportable concentrations applicable for that use of the Property at the time of LSP certification and is demonstrated by a mutually acceptable protocol or the state's certification to comply with all applicable MCP standards;
- F. "Cleanup" means investigatory, remedial and monitoring work mandated by the Requirements of Environmental Law or a Governmental Agency to investigate, clean up, treat, contain or remove Hazardous Materials deposited on, generated by or emitted from any of the Property;
- G. "Deed" means this Deed, as it may be amended or modified from time to time;
- H. "Effective Date" means date of delivery of the Deed to Buyer and 12:01 A.M. Eastern Standard time on that date;
- I. "Fill Property" means the Property except for the Tidal Flats or Wetlands;
- J. "Fine" means any penalty or fine assessed by a Governmental Agency for violation of the Requirements of Environmental Law relating to the Property;
- K. "Fund" means Monsanto Fund, a nonprofit Missouri corporation;
- L. "Governmental Agency" means any court or environmental agency of the United States or any state, municipality or other subdivision of any of them of competent jurisdiction over the party or matter in question, including without limitation the Massachusetts Department of Environmental Protection ("DEP"), the U.S. Environmental Protection Agency, and the City of Everett;

- M. "Governmental Restricted Use" means any use prohibited from time to time by federal, state or local governmental authorities which relate to soil remediation of the Property;
- N. "Hazardous Materials" mean those substances now or hereafter included within the definitions of "oil," "hazardous waste", "hazardous substances," "hazardous materials", "toxic substances," "pollutant," "contaminant" or "solid waste" in the Comprehensive Environmental Response Compensation and Liability Act (42 U.S.C. § 9601 et seq.) ("CERCLA"), the Resource Conservation and Recovery Act of 1976 (42 U.S.C. § 6901 et seq.) ("RCRA"), and Massachusetts General Laws Chapter 21E, ("Chapter 21E") and in the regulations promulgated pursuant to said laws, all as amended from time to time, including the Massachusetts Contingency Plan promulgated Under Chapter 21E;
- O. "Horizontal Marker Layer" means a combination of geotech fabric, asphalt and/or concrete separating remediated soil from Clean Fill on the Fill Property;
- P. "Liabilities" means any and all liabilities, costs, damages, fines and losses resulting from a Claim, including consultants' fees, experts' fees and related reasonable attorneys' fees, costs and expenses;
- Q. "LSP", or Licensed Site Professional means a hazardous waste site cleanup professional, as defined in M.G.L. c. 21A, § 19, holding a valid license issued by the Board of Registration of Hazardous Waste Site Cleanup Professionals pursuant to M.G.L. c. 21A, §§ 19 through 19J;
- R. "LSP Opinion" and "Opinion" each means a "waste site cleanup activity opinion," as that phrase is defined in M.G.L. c. 21A, § 19, that has been submitted to the Department;
- S. "MBTA Underpass Road" means the secondary access road proposed to be constructed after the Effective Date by Buyer through the Wetlands, the proposed location of which is shown on the Site Plan;
- T. "Massachusetts Contingency Plan" or "MCP" means the plan promulgated under Massachusetts General Law Chapter 21E, 310 C.M.R. 40.0000et. seq.;
- U. "MEPA" means the Massachusetts Environmental Policy Act, M.G.L. c 30, §§ 61 through 62H, and 301 CMR 11.00;
- V. "Monsanto" means Monsanto Company, a Delaware corporation;
- W. "No Build Areas" mean the land areas within the No Build Boundary shown on the Site Plan and described in Exhibit I.W. hereto;

- X. "No Build Boundary" means the boundary within the Property shown on the Site Plan separating the No Build Area from the remainder of the Property;
- Y. "Operation and Easement Agreement" means an easement or license agreement (i) between or among Owners of fee interests in different parcels of the Property who are not Affiliates, (ii) entered into for the sole purpose of developing, maintaining and operating the Property as an integrated shopping center or an integrated real estate development project not otherwise prohibited by the Agreement, (iii) consistent in both its existence and its terms with prevailing industry standards and practices applicable to other shopping centers of similar size, or if the Property is not a shopping center, applicable to other integrated real estate development projects of the same type and of similar size as the integrated real estate development project on the Property, (iv) which does not contain provisions which explicitly or implicitly authorize or permit a breach of the Agreement or this Deed, and (v) which does not contain provisions which create an agency relationship or which otherwise give one party the right to direct or control the actions of the other party or which relinquish a right which would otherwise exist to direct or control the actions of the other party (provided, however, that the existence of a Self Help Remedy within the Operation and Easement Agreement shall not alone be deemed either to create an agency relationship or to give the beneficiary of the Self Help Remedy the right to direct or control the actions of the other party). "Self Help Remedy" means the right of the beneficiary of the easement, license or other non-possessory property right to take action with respect to the servient parcel of the Property in the event the Owner fails to perform its obligations under the Operation and Easement Agreement.
- Z. "Owner" means an owner of an interest in the Property;
- AA. "Requirements of Environmental Law" means all requirements of environmental laws or regulations applicable to any of the Property or the operation of same, including, but not limited to all requirements imposed by any law or regulation, as such may now exist, be enacted or issued or be modified hereafter, of any Governmental Agency which relate to:
- (a) emissions, including releases, into the air, surface water, groundwater or land;
- or
- (b) solid, gaseous or liquid Hazardous Materials generation, treatment, storage, disposal or transportation;
- BB. "Rosen" means Rosen Associates, Inc., a Florida corporation;

- CC. "Sellers Knowledge" or "Knowledge" means the actual knowledge of J. D. Felder, M. R. Foresman and G. M. Rinaldi;
  - DD. "Site Plan" means the set of drawings prepared on behalf of Buyer and filed of record in the Middlesex South Registry of Deeds and/or the Middlesex South Registry District of the Land Court contemporaneous with the filing of this Deed depicting: (i) the location of Transition Zones, No Build Area, permitted penetrations of the Horizontal Marker Layer, and the MBTA Underpass Road; (ii) the future topography of the Property after the required placement of the Clean Fill on the Fill Property; and (iii) buildings, utilities and other improvements within or above the Clean Fill;
  - EE. "Specified Areas" means any one or more of the following: (i) within the Clean Fill; (ii) below the Horizontal Marker Layer; (iii) within the Wetlands; (iv) within the Tidal Flats; and (v) within the No Build Area.
  - FF. "Tidal Flats mean the land areas described in Exhibit I.FF. hereto;
  - GG. "Transition Zones" means the areas at the perimeter of the Property as shown on the Site Plan where the total depth of Clean Fill may be less than seventy two (72) inches;
  - HH. "Unrelated Owner", with respect to the Property, shall mean the Owner or group of Owners holding all right, title and interest in one or more parcels comprising part but not all of the Property who are not Affiliates of, not otherwise acting on behalf of, or not providing some direct or indirect benefit to, the Owner or group(s) of Owners holding any right, title and interest in other parcels comprising part but not all of the Property; and
  - II. "Wetlands" means that portion of the Property as more particularly described in Exhibit I.FF. and in Exhibit I.II. hereto plus such additional wetlands and buffer zone as may be required from time to time by applicable law or regulation;
- II. Seller hereby AGREES and Buyer by the registration and recording of this Deed, also AGREES to the following restrictions, covenants and conditions for the benefit of Seller, its successors and assigns,
- A. precluding:
    - 1. except with the express prior written consent of Solutia, the sale, lease, rental or use of the Property for residential, medical (excluding retail optical sales and related eye exams for eyeglasses and contact lenses, blood pressure exams in a retail store setting, pharmacy sales and sales of medical items in a retail store or wholesale setting and veterinary and pet hospital services provided in conjunction



with retail pet supply and service centers), commercial food processing (excluding restaurants and other retail food centers), educational (excluding pet training classes provided in conjunction with retail pet supply and service centers), recreational sports or other high intensity uses, as that term is defined in the Massachusetts Contingency Plan (310 CMR 40.0933(4)(b))(excluding a bike path on the Property, the location of which shall be expressly approved by Solutia in writing prior to construction of the bike path) or other similar purposes, or Governmental Restricted Use;

2. except as shown on the Site Plan, the use of (a) any sewers in existence as of January 1, 1994, (b) any groundwater at or under the Property, or (c) construction within or below the first twelve inches of Clean Fill above the Horizontal Marker Layer;
3. any exploration including drilling relating to oil or gas or any other minerals;
4. any use of the Wetlands, without Solutia's express prior written consent; consent has been granted only to Buyer, subject to the terms of the Agreement and this Deed, for the MBTA Underpass Road;
5. any Governmental Restricted Use;
6. except for digging and excavations in the Clean Fill above the first twelve (12) inches of Clean Fill above the Horizontal Marker Layer on the Fill Property which do not require prior approval of Solutia, any digging in the Wetlands, or making any other excavations in the Property, without Solutia's express prior written approval; approval has been granted only to Buyer: (a) subject to the terms of the Agreement and this Deed, for digging in connection with construction and maintenance of the proposed MBTA Underpass Road; and (b) for excavations in the Property as designated by Buyer on the Site Plan;
7. non-compliance with any applicable law or regulation relating to disposal of soil from future excavations;
8. except (i) as shown on the Site Plan, (ii) with Solutia's express prior written consent or (iii) pilings which are not prohibited by Section II.A.9 below, any penetration within or below the first twelve (12) inches of Clean Fill above the Horizontal Marker Layer which has not been adequately cured within either: (a) 30 days of the date of such penetration if such penetration could have been cured within said 30 day period or (b) such longer period of time to the extent necessary to cure such penetration had Buyer, or its successor in title or interest as the case

may be, used their respective best efforts, commenced cure promptly and prosecuted such cure to completion diligently and continuously;

9. the installation of any auger-cast piling anywhere on the Property, or the installation of any other piling within the No Build Areas;
10. the use or sale of Hazardous Materials on the Property in quantities and types in excess of normal retail operations; all gasoline stations, quick-lubes, automotive repair stations (except for tire sales, mounting, balancing and alignment), dry cleaning establishments (excluding retail stores which accept clothing for dry cleaning performed off the Property), bulk sale of pesticides and fertilizers and commercial photo processing facilities (excluding photo processing centers which use "one hour" processing equipment and retail stores which accept film for photo processing performed off the Property);
11. installation of underground storage tanks except with Solutia's express prior written approval; and
12. any amendment, release or termination of the AULs imposed upon the Property (a) without the express prior written consent of Solutia; and (b) without an LSP Opinion that such amendment, release or termination of the AUL is not detrimental to health, safety, public welfare or the environment.

**B. requiring:**

1. the express prior approval of Solutia in writing to any amendment, release or termination of an AUL imposed upon the Property and the LSP Opinion of an LSP, that such amendment, release or termination of the AUL is not detrimental to health, safety, public welfare or the environment;
2. the use of Best Management Practices or any successor thereto as defined by the United States Environmental Protection Agency or applicable state agency relating to any construction, operations or maintenance practices at the Property after the sale hereunder (e.g. the control of run-off or the need for dust control during all construction or maintenance projects on the Property);
3. the paving, or otherwise satisfactorily covering (with Solutia's express prior written consent) of all the Clean Fill on the Fill Property, other than plantings as described in Section II.B.8 below, and the Wetlands themselves or the actual buildings on the Property;

4. the testing and proper disposal in accordance with all applicable laws and regulations of any piling spoils;
5. proper disposal of any Hazardous Materials during construction on the Property;
6. noninterference with the rights of Sellers, Solutia and their respective successors in title or interest, assigns, agents, contractors, subcontractors, and representatives to observe and monitor any and all design and construction on the Property pursuant to the Agreement and with their other respective rights of access hereunder;
7. compliance with all environmental, health and safety laws, regulations and requirements applicable at any time before, during or after construction of improvements on the Property by Buyer;
8. the use of plantings on the Fill Property which species are selected such that their roots will not grow within or below the first twelve (12) inches of Clean Fill above the Horizontal Marker Layer;
9. ~~Subject to any modification at the~~ Transition Zones designated on the Site Plan and approved in writing by Solutia as hereinafter provided in Section IX.C., and prior to commencement of any construction at ground floor elevation or higher, and in any event within 24 months after the Effective Date, the installation of additional Clean Fill on the Fill Property required for the total Clean Fill on the Fill Property to reach a height of at least seventy-two (72) inches above the Horizontal Marker Layer, on a compacted basis, except as may be required for proper drainage in those areas reflected on the Site Plan filed of record contemporaneous with this Deed, where such Clean Fill will be installed to the heights reflected on such Site Plan. Buyer and its successors in title or interest shall thereafter maintain: (i) in good condition the approved impermeable barrier installed in the Transition Zones; and (ii) the height of such Clean Fill, on a compacted basis, at least 72 inches above the Horizontal Marker Layer on the Fill Property or, in those areas reflected on the Site Plan where the Clean Fill installed will be less than 72 inches, at the height reflected on the Site Plan. Thereafter, if Buyer or its successors in title or interest or agents or contractors ever penetrate within or below the first 12 inches of Clean Fill above the Horizontal Marker Layer, Buyer and its successors in title or interest shall immediately notify Solutia in writing of the penetration and shall cure the penetration and indemnify and hold Monsanto, Fund and Solutia harmless as hereinafter provided, and

10. maintenance of General Liability Insurance (as defined in Section VIII.A.) by Buyer, its successors in title or interest (including ground lease tenants) and their respective site contractors, general contractors, and by all contractors and subcontractors working within the Specified Areas, and maintenance of pollution legal liability insurance coverage by Buyer, its successors in title or interest (including ground lease tenants), in such amounts, containing such provisions and subject to such terms and conditions as are specified and more fully provided in Section VIII.A., B., C. and D. of this Deed.
- C. The terms of the AULs and this Deed may address similar subjects. Where possible, both are to be observed. However, in the event of any conflict or inconsistency between the AULs and this Deed, the more stringent of the two shall apply.
- III. Without limiting the availability of any other remedies under the terms of the Deed, and subject to subparagraph (C) of this Section III, Solutia shall have the right, but will not be obligated, to reenter and terminate the estate granted to Buyer (or any successor in title or interest to Buyer) upon the occurrence of either of the following events:
- A. if, without the express prior written consent of Solutia, the Property (or any portion thereof) ever is sold, leased, rented or used for residential, medical (excluding retail optical sales and related eye exams for eyeglasses and contact lenses, blood pressure exams in a retail store setting, pharmacy sales and sales of medical items in a retail store or wholesale setting and veterinary and pet hospital services provided in conjunction with retail pet supply and service centers), commercial food processing (excluding restaurants and other retail food centers), educational (excluding pet training classes provided in conjunction with retail pet supply and service centers), recreational sports or other high intensity uses, as that term is defined in the Massachusetts Contingency Plan (310 CMR 40.0933 (4) (b)) (excluding a bike path on the Property, the location of which shall be expressly approved in writing by Solutia prior to construction of the bike path) or Governmental Restricted Use; or
  - B. any breach of any of the restrictive covenants (including but not limited to Buyer's and its successors' in title or interest and assigns obligations) set forth in this Deed, but only after Solutia has complied with the following procedures:
    1. In the event Solutia believes Buyer (or any successor in title or interest to Buyer) has violated any of the conditions set forth in Section III. A. or III. B., Solutia shall notify Buyer, and any successor in title or interest of which Solutia shall have received written notice, of the violation in a writing setting forth the nature of the violation and shall send such writing to the last known address of Buyer or such successor of which Solutia was formally notified ("Violation Notice").

- Solutia and Buyer and such successors shall attempt to resolve the alleged violation between themselves.
2. In the event Solutia and Buyer and such successors are unable to resolve the alleged violation between themselves, Solutia and Buyer and such successors shall submit the question of whether or not the alleged violation set forth in the Violation Notice does in fact violate the provision of Section III. A. or III. B. to a court of competent jurisdiction in Boston, Massachusetts (“Declaratory Relief Action”).
  3. In the event the Court in the Declaratory Relief Action determines that the alleged violation does in fact violate the provisions of either Section III. A. or III. B., Buyer and such successors shall have 30 days from the date of the final, non-appealable judgment of the court in the Declaratory Relief Action to cure the violation if such violation can be cured within said 30 day period or such longer period of time if necessary to cure such violation using Buyer’s and such successors’ best efforts (“Cure Period”), provided Buyer and/or such successors commence cure promptly and prosecute such cure to completion diligently and continuously.
  4. If the Buyer and/or any such successor fails to cure the violation within the Cure Period, Solutia shall have the right to enforce the right to reenter and terminate the estate granted by the Deed and held by Buyer and/or any such successor in title or interest.
- C. Solutia’s respective rights under this Section III shall extend to all existing parcels and future parcels into which the Property is, or with Solutia’s express prior written consent may in the future be, subdivided. However, in the event a breach of the foregoing covenants should occur at a time when separate parcels of Property are owned by Unrelated Owners with Solutia’s express prior written consent, and one Unrelated Owner has not participated in and is not responsible for such breach, then Solutia’s rights to reenter and terminate the estate under this Section III for such breach shall be limited to those parcels of Property then owned by the Unrelated Owner breaching or responsible for such breach. If title to only part of the Property is to be reverted (“Reverted Parcel”) to Solutia as a result of a breach by or on behalf of the Unrelated Owner, and if such Reverted Parcel is then subject to liens, easements, encumbrances, restrictions of record or to an Operation and Easement Agreement with other Unrelated Owners of adjoining parcels of Property which are not being reverted, title to the Reverted Parcel shall revert to Solutia subject to the benefits and burdens of those then existing liens, easements,

encumbrances restrictions of record and Operation and Easement Agreements, if in each case, they do not violate the Agreement, the AULs or the Deed and except that Solutia will not be bound thereby with respect to any beneficiary of such liens, easements, encumbrances, restrictions of record or Operation and Easement Agreements who has participated in, or was responsible for, the breach giving rise to Solutia's right to revert title to the Reverted Parcel.

- D. It is understood for purposes of this limitation on Solutia's rights under paragraph B above, that an Owner is responsible for: (i) all actions which occur on any part of the Property in which the Owner has an ownership interest (excluding actions performed by or on behalf of Sellers or Solutia in the exercise of their respective rights of access to the Property under this Deed); (ii) all actions performed by or under the direction or control of the Owner's Affiliates, directors, officers, employees, agents, tenants, business invitees, contractors or representatives regardless of whether such actions occur on the part of the Property in which the Owner has an ownership interest or on the other parts of the Property; (iii) all actions performed by or under the direction or control of other owners having an interest in the same parcels of Property in which the Owner has an ownership interest ("Related Owner") or their respective directors, officers or employees or Affiliates, but, in each case, only to the extent (a) the Owner has control or the right to control the Related Owner or the action giving rise to the breach, or (b) the Related Owner, its directors, officers or employees or Affiliates, at the time of such actions giving rise to the breach, are acting on behalf of, or providing or attempting to provide, some direct or indirect benefit to the Owner or the parcel of Property in which they share an ownership interest; and (iv) the actions performed by or under the direction or control of Unrelated Owners on other parcels of Property but only to the extent the Unrelated Owner of such parcel is acting on behalf of, or providing or attempting to provide some direct or indirect benefit to, such Owner or to the part of the Property owned by the Owner. The mere fact that an Owner retains or employs as a director, officer or employee one individual who is also a director or officer of a Related Owner or an Unrelated Owner shall not, by itself, result in the Owner being responsible for the actions of the Related Owner or Unrelated Owner on parcels of Property in which the Owner does not have an ownership interest.
- E. Solutia understands that Buyer is developing a shopping center on the Property and that reciprocal easements or licenses may be required for its development in the event the Property is subdivided and parts of the Property are sold to third parties. Provided (i) Buyer and its successors in title or interest obtain, and obligate their respective successors in title or interest to obtain, Solutia's express prior written consent before subdividing or selling any parcel of the Property; (ii) all owners and occupants of that part of the Property

subject to the Operation and Easement Agreement at issue are in full compliance with this Deed and the Agreement at the time such Operation and Easement Agreement is executed; and (iii) the use of the Property is maintained as a shopping center or an integrated real estate development project not otherwise prohibited by this Deed, then the fact of the existence of the Operation and Easement Agreement, by itself, will not result in a party to such Operation and Easement Agreement being found responsible for the actions of the other party to such Operation and Easement Agreement on that part of the Property in which its only interest is an easement or license or other non-possessory property right granted by the Operation and Easement Agreement.

IV.

- A. Except as may otherwise be specifically provided, represented, or warranted in the Agreement: (i) Solutia, Monsanto and Fund HEREBY EXPRESSLY DISCLAIM ANY AND ALL WARRANTIES OR REPRESENTATIONS WHATSOEVER WITH RESPECT TO ANY MATTER and (ii) Buyer and Solutia, Monsanto and Fund agree that the Property is being sold, conveyed, assigned or transferred and delivered by Solutia, and is being purchased and accepted by Buyer, on an "AS IS, WHERE IS, WITH ALL FAULTS" basis.
- B. Buyer and Rosen acknowledge that Solutia or Monsanto and Fund have advised Rosen and Buyer that the Property was used as a manufacturing site and disposal (including disposal of Hazardous Materials) for many years by Monsanto and Fund and their predecessors in title. Buyer and Rosen further acknowledge receipt of and will transmit to and will obligate their respective successors in title or interest to acknowledge receipt of and to transmit to any successor in title or interest prior to any transfer of all or any part of the Property: (i) the reports and documents listed on Exhibit IV.B. hereto; and (ii) such other reports and documents prepared since August 11, 1994 copies of which were provided to Rosen or Buyer and either filed with the DEP or placed in the public record at Parlin Memorial Library in Everett, Massachusetts, all of which reports and documents shall be deemed included within Reports as defined in Section V.A. below. Solutia, Monsanto and Fund MAKE NO EXPRESS OR IMPLIED WARRANTY OR REPRESENTATION WHATSOEVER as to the accuracy or completeness of any of the Reports, individually or collectively.
- C. All easements appurtenant to the Property, including without limitation, those used for gas, electric, water and telephone, are assigned by this Deed without any warranty express or implied to Buyer or its successors in title or interest. The existing headwall located in the Tidal Flats has been left in place. Solutia, Monsanto and Fund make no representation or warranty to Buyer or its successors in title or interest as to the condition or functionality of the existing headwall. Buyer has been advised that debris has been buried on site. Buyer

for itself and its successors in title or interest accepts the final grade levels on the Property at the Effective Date.

- D. Buyer acknowledges for itself and its successors in title or interest that as of the Effective Time, Solutia, Monsanto and Fund have satisfied the requirements of all environmental laws and regulations relating to the Property which are necessary or required by law for Solutia to transfer the Property to Buyer, including but not limited to: (i) the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. §§ 9601-9657, and any amendments thereto, (ii) the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901-6987 and any amendments thereto and (iii) Massachusetts General Laws Chapter 21E and its regulations enacted thereunder CMR 310 C.M.R. 40.000 et seq and any amendments thereto, as administered by any and all governmental agencies and their agents having jurisdiction over the Property, including but not limited to, the United States Environmental Protection, the Massachusetts Department of Environmental Protection, the City of Everett, the Commonwealth of Massachusetts and any additional or successor agencies or boards.

V.

- A. Each party acknowledges that it had the right to enter into the Property in order to continue to make such an independent investigation of the Property as such party deems appropriate in connection with Buyer's intended use of the Property; provided, however, that the type and extent of Buyer's investigation of the Property has been subject to the prior written approval of Solutia, Monsanto or Fund. If such investigation results in a written report or summary, the party obtaining the written report or summary will provide the other party with a copy of same. Monsanto and Fund delivered to Rosen in August or September 1994 copies of all environmental data, soil reports, traffic studies, engineering data, plans, zoning or other land use information, reports prepared to comply with MEPA (collectively "Reports") which Reports Monsanto and Fund have Knowledge of, and which were in its possession or the possession of its agents or independent contractors and were prepared after January 1, 1984. If any of these Reports refer to an earlier report or study which is in Monsanto's, Fund's or Solutia's possession, Monsanto, Fund or Solutia has furnished such reports as Rosen or Buyer requested. Rosen and Buyer agrees to hold Solutia, Monsanto and Fund and their predecessors in title harmless from and against all costs, claims, liabilities and expenses associated with or resulting from Rosen's or Buyer's entry upon and analyses of the Property.
- B. With respect to the terms and conditions in this Deed, Buyer agrees to inform its tenants, successors and assigns including successors in title or interest of their duties thereunder and to require them to bind their subtenants, successors and assigns including successors



in title or interest accordingly and shall supply Solutia with copies of the documents outlining such informational requirements.

VI.

- A. Buyer and Rosen, from and after 12:01 a.m. Eastern Standard Time on the Effective Date (the "Effective Time"), will be responsible for, and will, and shall cause all successors in title or interest to, release, indemnify, defend and hold harmless Monsanto, Fund, Solutia, their predecessors in title to the Property and the officers, directors and employees of any of them from and against, any and all Liabilities arising out of or in any way connected with:
1. any Claim for any Liabilities caused or occurring from and after the Effective Time and arising out of the ownership, operation, maintenance or use of the Property or the conduct of Buyer's business or other successors' in title or interest business which Claim is made by any third party (including, but not limited to:
    - a) any Governmental Agency;
    - b) any employee or worker or business invitee associated with the Property or Buyer's business or any successor's business or any tenant's business located on the Property;
    - c) any subsequent owner or occupant of the Property; and
    - d) owners/occupants in the vicinity of the Property);
  2. any Claim made from and after the Effective Time relating to the condition of the Property from and after the Effective Time except to the extent of Liabilities due to Cleanups of Hazardous Materials deposited, generated or emitted at any time before the Effective Time;
  3. any Fine assessed for a violation occurring at any time from and after the Effective Time arising out of Buyer's or other subsequent owner's use of the Property;
  4. any Cleanup of Hazardous Materials deposited, generated or emitted at any time from and after the Effective Time;
  5. Liabilities to third parties as a result of deposits or emissions of Hazardous Materials in connection with any of the Property at any time from and after the Effective Time, except for and only to the extent of Liabilities which Buyer, Solutia, Monsanto and Fund may otherwise have agreed in the Agreement;

- 6. all Cleanup of Hazardous Materials, Claims, and Liabilities in any way relating to the MBTA Underpass Road or any excavation or construction related thereto, including without limitation, Claims and Liabilities to third parties; and
  - 7. all reasonable legal fees and other costs and expenses incurred by Monsanto, Fund or Solutia in connection with any of the foregoing.
- B. Buyer and Rosen will have no obligation under the foregoing indemnity obligations for any Fine imposed on Solutia or its predecessors in title to the Property relating solely to actions or omissions of Solutia or predecessors in title occurring anytime before the Effective Time, it being understood however that any Fines relating to the MBTA Underpass Road shall under all circumstances be Buyer's responsibility.
- VII. Buyer will, and shall cause its successors in title and interest to, make available to Monsanto, Fund and Solutia, or their representatives, agents, contractors and, from time to time, as may be reasonably required, access to the Property and Buyer's (and/or its successors' in title or interest) personnel and such other assistance as Monsanto, Fund or Solutia may reasonably request to the extent required to prosecute or defend claims or actions based upon events or circumstances occurring prior to the date of this Deed or to inspect Buyer's (and/or its successors' in title or interest) operations on the Property. In addition to the rights of access provided hereinabove, Buyer will, and shall cause its successors in title and interest to, at the request of Monsanto, Fund or Solutia, provide reasonable assistance in the collection of information or documents in such party's control and make Buyer's (and/or its successors' in title or interest) employees available as witnesses when reasonably requested by Monsanto, Fund or Solutia. Monsanto, Fund or Solutia will reimburse Buyer for all reasonable out-of-pocket costs and expenses incurred by Buyer (excluding salaries or wages of Buyer's (and/or its successors' in title or interest) employees) in providing such assistance. Buyer or its successors in title or interest may require such representatives to abide by Buyer's (and/or its successors' in title or interest) reasonable rules and regulations regarding safety, security, and confidentiality.
- VIII.
- A. For so long as Buyer or any successor in title or interest in the Property (including, without limitation, ground lease tenants) is engaged in any demolition, dismantling, construction or commercial activities upon the Property, Buyer and such successors in title or interest (including, without limitation, ground lease tenants): (i) shall maintain commercial general liability insurance, if available, acceptable in both form and substance to Solutia and its successors and assigns or such other general liability insurance then commercially available which is acceptable in both form and substance to

Solutia and its successors and assigns, in place of commercial general liability insurance ("General Liability Insurance"); (ii) shall require all site contractors and general contractors to maintain General Liability Insurance identical to the General Liability Insurance then maintained by Buyer and such successors in title or interest; and (iii) shall require all contractors working within, or employing other contractors working within, Specified Areas to maintain, and to cause all subcontractors working within Specified Areas to each maintain, General Liability Insurance identical in all respects to the General Liability Insurance then maintained by Buyer or such successor in title or interest. Each and every policy of General Liability Insurance must: (i) provide a minimum of ten million dollars (\$10,000,000) coverage, per occurrence and in the aggregate, annually during the first ten years, and after the first ten years, to increase such amount of annual coverage by an amount equal to increases in insurance coverage consistent with the more stringent of industry standards then applicable to owners of shopping centers or of real estate developments of the same type as that then being conducted on the Property or contractors owning or working with real estate containing Hazardous Material; (ii) be issued by insurers reasonably acceptable to Solutia and their respective successors and assigns; and (iii) cover personal injury (including death), property damage, and contractual liability, among other risks, relating to the operation of Buyer's, such successors' in title or interest and tenants' business and the demolition, dismantling, construction or commercial operations of the Property and related off-site contamination. Buyer, such successors in title or interest and such contractors shall cause Monsanto, Fund and Solutia and their respective successors and assigns to be named named insureds or broad form additional insureds on all such policies with coverage for Liabilities at least as broad as the coverage provided to Buyer, such successors in title or interest or such contractors subject to the limitations provided in the Agreement. Buyer, such successors in title or interest and such contractors shall provide certificates evidencing such coverage on the date of this Deed, at the time a successor in title or interest acquires an interest in any part of the Property, prior to or at the time a contractor is engaged to perform services with respect to the Property, and annually thereafter. As to Monsanto, Fund and Solutia and their respective successors and assigns being named named insureds or additional insureds, such coverage shall be primary to any other valid and collectible commercial insurance that Monsanto, Fund and Solutia or their respective successors or assigns may have and shall contain waivers of subrogation. Such policy or policies shall provide for notice to be given by the carrier(s) to Monsanto, Fund and Solutia and their respective successors and assigns not less than sixty (60) days prior to its cancellation or lapse or material change in coverage.

- B. For a term of forty (40) years following the Effective Time and thereafter, Buyer and each successor in title or interest (including, without limitation, ground lease tenants)

also will maintain pollution legal liability insurance coverage, including coverage for Cleanup, personal injury (including death), property damage and contractual liability, and expressly covering claims for off-site contamination and claims resulting from alleged exposure to remediated soil, providing a minimum of fifty million dollars (\$50,000,000) coverage, per occurrence and in the aggregate, annually on a claims-made basis during each of the first twenty (20) years following the date of this Deed and shall increase such coverage at the end of the first twenty (20) years (or at such earlier time as the Property ceases to be used for a shopping center) and thereafter at the end of each four (4) year period following the first twenty (20) year period or change in use, each increase to be by an amount equal to the average of the greater of the increase in the Consumer Price Index or the average of the indices for jury verdicts published by the American Trial Lawyers' Association, the Defense Research Institute, Jury Verdict Research, or comparable organizations in the event none of these three provide such indices for jury verdicts. All such insurance shall be issued by insurer(s) rated A or better, size category 10 or better, by A.M. Best or a comparable organization in the event A.M. Best no longer provides such rating services and shall be otherwise satisfactory in form and substance to Solutia and its successors and assigns. Such pollution legal liability insurance coverage will be endorsed to name Monsanto, Fund, Solutia and their respective successors and assigns named insureds or broad form additional insureds on all such policies with coverage for Liabilities at least as broad as the coverage provided to Buyer or such successor in title or interest subject to the limitations provided in the Agreement. Such coverage shall be specified as primary relative to any other valid and collectible commercial coverage carried by Monsanto, Fund or by Solutia or their respective successors or assigns with respect to liabilities for which Buyer and/or its successors in title or interest are responsible and any proceeds paid as a result of any claims shall be first applied to the costs of Cleanup. If Buyer or its successors in title or interest elect to add their respective tenants as additional insureds under the same insurance coverage as Monsanto, Fund, Solutia and their respective successors and assigns, Buyer or such successor in title or interest shall be permitted to do so provided coverage for Monsanto, Fund, Solutia and their respective successors and assigns is maintained at the minimum coverage then required by this Deed and the rights of all such tenants to insurance coverage shall be subject to and behind the rights as additional insureds of Monsanto, Fund, Solutia and their respective successors and assigns. Such insurance will provide for notice to be given to Monsanto, Fund and to Solutia and their respective successors and assigns as soon as practicable prior to its cancellation or lapse or a material change in coverage. Buyer and such successors will provide to Monsanto, Fund and to Solutia and their respective successors and assigns certificates evidencing such insurance coverage that are issued by the underwriter(s) of such coverage upon the delivery of this Deed and annually thereafter.

- C. Buyer and each successor in title or interest (including, without limitation, ground lease tenants) has the obligation to maintain the pollution legal liability insurance as described above at the \$50,000,000 level and at such greater level after the first twenty (20) years or change in use if required as a result of changes in the Consumer Price Index or the jury verdict indices identified above and covering claims relating to all or any part of the Property, but it is agreed that such obligation is satisfied by any one party maintaining such insurance covering the entire Property. By way of example, if the Property is subdivided and part of the Property is sold to an Unrelated Owner, Buyer and the Unrelated Owner shall each have the obligation to maintain pollution legal liability insurance covering the entire Property but the obligation for both Buyer and the Unrelated Owner is satisfied if one of them maintains the requisite pollution legal liability insurance.
  
- D. In the event that Buyer, its successors in title or interest (including, without limitation, ground lease tenants) or their respective contractors from time to time, fail to maintain the insurance coverage for Monsanto, Fund, Solutia and their respective successors or assigns required by this Section VIII, Monsanto, Fund or Solutia or such successors or assigns after giving 10 days notice to Buyer or such successors in title or interest or Buyer or such contractors, shall have the right, but not the obligation, to obtain and maintain such coverage for Monsanto, Fund, Solutia and their respective successors and assigns and the expense thereof (including the premiums and reasonable administrative expenses) shall be a lien upon the Property, which lien shall be enforced in the manner set forth in Massachusetts General Laws, Chapter 254, Section 5, as it may be amended from time to time.

IX.

- A. Buyer and its successors in title or interest (i) shall file for record (as part of the Deed or otherwise) on the Effective Date the Site Plan, and thereafter shall file for record a revised Site Plan each time the Site Plan is subsequently modified, such filings to be made with all authorities maintaining real property records in the Commonwealth of Massachusetts and having jurisdiction over the Property and (ii) shall provide Solutia with a copy of each such Site Plan as filed. Consistent with this obligation, upon completion of construction of all improvements on the Property shown on the Site Plan as the same may be revised from time to time, Buyer and its successors in title or interest shall file for record a revised Site Plan of the Property showing improvements "as built" on the Property and shall provide Solutia with a copy of such as-built Site Plan, as filed. In the event all of the improvements depicted on the Site Plan are not constructed on or before December 31, 2000, Buyer and its successors in title or interest agrees

nevertheless to file for record a Site Plan showing the improvements "as built" as of December 31, 2000, and to modify the Site Plan thereafter as improvements are completed. The foregoing obligation to file a revised Site Plan with respect to completed improvements on or before December 31, 2000 shall not be construed as an obligation of Buyer to construct or complete improvements at any time. The obligations of Buyer's successors in title or interest to file revised Site Plans shall apply only to those portions of the Property in which such parties own a fee interest.

- B. Buyer or its successors in title or interest may implement changes in dimensions and locations of shopping center improvements outside the No Build Area and the Wetlands shown on the Site Plan filed of record contemporaneous with this Deed provided (i) all such changes comply with the terms of the Agreement, the AULs and this Deed, including without limitation, the restrictive covenants; and (ii) within ten (10) days of its being filed, Solutia is provided with a copy of the Site Plan as modified for its files. Buyer acknowledges that except as shown on the Site Plan filed of record contemporaneous with this Deed, Buyer and its successors in title or interest shall not be able to use the Wetlands except with Solutia's express prior written consent. Buyer also acknowledges that except as shown on the Site Plan filed of record contemporaneous with this Deed Buyer and its successors in title or interest will not be able to use any of the sewers existing as of January 1, 1994, but shall have to develop and operate its own sewers subject to the terms of this Deed. Changes to the Site Plan (other than changes in dimensions and/or locations of shopping center improvements which comply with this Deed) after the Effective Date will require the express prior written consent of Solutia.
- C. If (i) Buyer and its successors in title or interest are in compliance with all terms and conditions of the Agreement; (ii) Buyer or such successor in title or interest has obtained and submitted to the Massachusetts Department of Environmental Protection an LSP Opinion of an LSP that a proposed impermeable barrier and less than thirty six inches of Clean Fill within the Transition Zones would not be detrimental to health, safety, public welfare or the environment; and (iii) the proposed impermeable barrier approved by such LSP under the proposed volume of additional Clean Fill at the Transition Zones along with Buyer's or its successors' in title or interest proposed plans for maintenance, are satisfactory to Solutia, then Buyer or such successor in title or interest shall have the right to install such approved impermeable barrier and such approved volume of Clean Fill at the Transition Zones in lieu of an additional sixty (60) inches of Clean Fill, on a compacted basis, consistent with the LSP opinion and Solutia's prior written approval. In the event of such installation, Buyer and all successors in title or interest at all times shall maintain the impermeable barrier in a good condition and such approved volume of

Clean Fill to comply at all times with Massachusetts law, Solutia's approval, the AULs and the opinion of such LSP.

- D. Buyer, DDRC and their respective successors in title or interest shall promptly supply, and shall obligate their respective future successors in title or interest to supply, Solutia with copies of any reports or correspondence it receives from or submits to any government authorities relating to any part of the Property both prior to and after the Effective Date (excluding, however, reports and correspondence relating to the Property which could not reasonably be expected to have an adverse impact on Monsanto, Fund or Solutia). Notwithstanding the foregoing, Solutia shall be provided with copies of all reports and correspondence from or to any government authority with jurisdiction over the use of, or environmental matters relating in any way to, the Property. Buyer and DDRC and their respective successors in title or interest shall also supply, and shall obligate their respective future successors in title or interest to supply, Solutia with copies of any assessments of any third parties with respect to any part of the environmental status or condition relating to the Property both prior to and after Closing.

X.

- A. Except as provided in the Agreement, the Property is being sold "As Is" and "Where Is". Except as otherwise may be agreed among Solutia, Monsanto, Fund, Rosen, Buyers and DDRC in the Agreement, Rosen, Buyer and DDRC, from and after the Effective Time, each waive, release and relinquish any and all claims each may have or acquire against Monsanto, Fund or Solutia and their predecessors in title, and Rosen, Buyer and DDRC, and their respective successors in title or interest shall cause their respective lenders, successors in title or interest and future tenants to waive, release and relinquish any and all claims, arising under any laws or regulations, including but not limited to environmental or otherwise, except those rights as applicable to Rosen, Buyer, DDRC, their successors in title or interest, and their lenders which Solutia, Monsanto, Fund, Rosen and Buyer may have agreed in the Agreement and will provide Monsanto, Fund and Solutia a waiver and release to that effect at the Effective Date. Rosen, Buyer and DDRC and such successors in title or interest will also supply Monsanto, Fund and Solutia with copies of such waivers by their lenders, their successors in title or interest, and future tenants at such time as they are executed. Rosen, Buyer, DDRC and their successors in title or interest shall and shall cause their respective successors in title or interest to indemnify and hold harmless Monsanto, Fund and Solutia from any and all claims (including attorneys fees) of their respective lenders, successors in title or interest or future tenants.

- B. Buyer agrees the restrictive covenants related to the Property and any transfer of the Property by the Buyer or its successors in title or interest shall specifically include, without limitation, restrictive covenants precluding except with Solutia's express prior written consent: (i) digging in the Wetlands except as permitted in Section II.A.6. of this Deed if Buyer chooses to construct the proposed MBTA Underpass Road; or (ii) boring pilings or making other excavations within or below the first twelve (12) inches of Clean Fill above the Horizontal Marker Layer except for the proposed boring program as described in, and subject to the terms and conditions set forth in, Exhibit X.B. attached hereto and made a part hereof; and requiring proper testing and disposal of soil or other materials from future excavations in accordance with applicable laws and regulations.

#### RESERVATION AND GRANT OF ACCESS TO PROPERTY

- I. Solutia, for itself, Monsanto, Fund and their successors and assigns and their agents, contractors, subcontractors and representatives reserves the right of access to the Property for the purposes of determining the environmental status of the Property, managing and performing the remediation and monitoring of the Property, including but not limited to the right to develop and operate monitoring wells and any groundwater pumping and treatment equipment on the Property, implementing dust suppression, ascertaining the extent of compliance with the Agreement and applicable laws and engaging in such additional investigatory activities as Solutia, Monsanto or Fund deem reasonably necessary or appropriate; provided that Solutia, Monsanto and Fund shall reasonably cooperate with Buyer in an attempt to not materially and adversely impair the Property or materially disturb the tenants therein and further provided that no remediation, except for remediation of a site condition which constitutes an "imminent hazard" within the meaning of the Massachusetts Contingency Plan, 40 C.M.R. 40,000 et seq., or is otherwise required by a federal, state or local governmental agency or an LSP to be cleaned up during the periods set forth below, shall take place between November 15 and January 5 or the 30 days prior to Easter Sunday in any year and further provided that the monitoring wells and remediation activities shall be limited to the areas designated on the Site Plan agreed to by the parties.
- II. Solutia, for itself, Monsanto, Fund and their successors and assigns and their agents, contractors and subcontractors and representatives performing remediation or monitoring, reserve the right to enter onto the Property for purposes of engaging in such investigatory and/or other activities as the party exercising such right deems necessary or appropriate:
- A. for the purpose of facilitating issuance of any and all insurance policy(ies) and bonds on any work to be done by Solutia, Monsanto, Fund and/or its contractors with respect to Monsanto's, Fund's or Solutia's remediation efforts with respect to the Property; and



- B. for remediating or monitoring contamination on the Property or any related off-site contamination at any time.
- III. Neither Solutia, Monsanto, Fund nor any other party entering on to the Property pursuant to rights reserved in this Deed will have any liability to Buyer or its successors or assigns (including successors in title or interest and any ground lease tenants) in the event that the exercise of any such right results in any damage (other than to repair the Property or physical improvements so damaged) to the Property or items located thereon or for personal injury or other property damage. This limitation will not apply in the case of damage to the extent, and then only to such extent, caused solely by the negligence of any such party which has entered onto the Property for purposes of verifying Buyer's and/or such successors' or assigns' compliance with the terms of the Agreement or this Deed and applicable laws, determining the environmental status of the Property or engaging in other investigatory activities and remediation and in that event, Solutia shall be liable to Buyer or its successors in title or interest (including ground lease tenants) only to the extent; (i) of repairing the Property or physical improvements so damaged; (ii) Cleanup of Hazardous Materials on the Property spilled or released by such party at the time of such entry on the Property; and (iii) personal injury claims of third parties caused at the time of such entry on the Property and solely and directly by such negligence. Nothing herein shall be deemed to conflict with the indemnification set forth in Section VI of the Restrictions, Covenants and Conditions and Right of Reverter section of this Deed.
- IV. Buyer hereby grants to Solutia and Monsanto an irrevocable and perpetual license for access to all of the Property, which license shall ensure necessary and reasonable access to and allow activities, upon the Property, by Solutia, Monsanto, their successors, assigns or their respective agents, contractors, subcontractors or representatives after reasonable advance notice to Buyer or such successor except for emergencies (i) for purposes of evaluation, testing, remedial work and (ii) for any other appropriate activities in connection with the matters contemplated by this Deed, and including but not limited to the utilization of groundwater pumping and treatment equipment upon the giving of 48 hours advance written notice by facsimile or otherwise to the then current owner(s) of the Property as to which Solutia and Monsanto were notified in writing as provided in the Agreement.
- V. Buyer and its successors in title or interest agree, and shall obligate tenants and others in possession of the Property to agree, to grant reasonable access to Solutia and its respective successors, assigns, agents, contractors, subcontractors and representatives with respect to utilization of any groundwater pumping and treatment equipment on the Property, subject to Solutia designing the utilization and operation of such equipment, such that the equipment and Solutia's or its respective successors', assigns', agents', contractors', subcontractors' or representatives' access do not materially interfere with Buyer's tenants' operations. Buyer or such successors shall be provided

with written notice at least 48 hours in advance of entry on the Property for utilization of any groundwater pumping and treatment equipment. Such notice may be provided by facsimile.

- VI. Unless otherwise provided in the Agreement or the Deed, Monsanto, Fund or Solutia in the exercise of their rights of access to the Property shall reasonably cooperate with Buyer or its successor in title or interest in an attempt to not materially and adversely impair the Property or materially disturb the tenants.

#### GENERAL PROVISIONS

- I. To the extent the rights and obligations set forth above in this Deed, may be deemed easements, they shall run with the land, are not personal in nature and shall be enforceable perpetually. To the extent the rights and obligations set forth above in this Deed may be deemed restrictions, conditions or covenants, they shall run with the land and are not personal in nature and shall be enforceable for five hundred (500) years in the manner set forth in Massachusetts General Laws Chapter 184, Section 27. The party seeking enforcement may record a notice of the restrictions, conditions or covenants before the expiration of thirty (30) years from the date of recording of this Deed and may thereafter record successive notices of the restrictions, conditions or covenants each within twenty (20) years of the date of recording of the previous notice. The notice shall be in the form described in Massachusetts General Laws Chapter 184, Section 27. In the event Massachusetts General Laws Chapter 184, Section 27 or any other relevant statute is amended, the party seeking enforcement shall be entitled to follow the relevant statutory provisions as amended from time to time.
- II. Each of the covenants, conditions or restrictions contained herein shall run with the land (whether or not any such covenants, conditions or restrictions are contained in any subsequent instruments of transfer or conveyance relating to the Property), and are not personal in nature and are enforceable for 500 years. Furthermore, each such covenant, condition or restriction shall be binding on each person or entity who takes title to, or acquires an interest of any type in the Property, from and after the date this Deed is recorded.
- III. All respective rights of Solutia, Monsanto or Fund inure to benefit of Solutia, Monsanto or Fund and their respective successors and assigns; all obligations of Buyer shall bind successors in title or interest. "Successors in title or interest" includes, without limitation, Buyer's successors in title or interest and each such successor's in title or interest respective successors in title or interest. It is the intention of the parties that Solutia, Monsanto and Fund shall be entitled to enforce their respective rights directly against Buyer's successors in title or interest whether or not Solutia's consent to the transfer has been given and without the need to join in any claim, action or proceeding Buyer or any other successor in title or interest.

- IV. If any term or provision of this Deed or any application thereof shall be invalid or unenforceable, the remainder of this Deed or any other application of such term or provision will not be affected thereby.
- V. Unless other expressly limited by this Deed, all references in this Deed to any statutory citations or authorities shall mean such statutory citations or authorities as they may be amended, modified, or replaced from time to time, including, without limitation, any future statutes or enactments which replace or are intended to replace any such statutory citations or authorities. Except for the Site Plan which when used herein means the Site Plan filed contemporaneous with the Deed, all references in this Deed to any document or agreement, shall mean such document or agreement as it may be amended, modified, restated or replaced from time to time. Neither Solutia, Sellers or their successors and assigns nor Buyer or its successors in title or interest, or any of their successors and assigns, shall be bound by any such amendment, modification, restatement or replacement of the Agreement after they acquire an interest in the Property unless they shall have consented thereto in writing; provided, however, each party and its successors in title or interest who are not so bound shall continue to remain bound by the Agreement as it may exist prior to such amendment, modification, restatement or replacement of the Agreement. All references in this Deed to any specific Governmental Agency shall mean such Governmental Agency and any successor Governmental Agency assuming some or all of the responsibilities of any such Governmental Agency.
- VI. This conveyance does not constitute all or substantially all of the assets of the Grantor in Massachusetts.

IN WITNESS WHEREOF, said Solutia Inc. has caused its corporate seal to be hereto affixed and this instrument to be executed, acknowledged and delivered, all in its name and behalf by Karl R. Barnickol, its Vice President, and by Henry J. Ehrenreich, its Assistant Treasurer, and said DDRC Gateway LLC, has caused this instrument to be executed, acknowledged and delivered, all in its name and behalf by its manager, Developers Diversified Realty Corporation, by Joan U. Allgood, its Vice President, as of this \_\_\_ day of \_\_\_\_\_, 1999 and the corporate seal of Developers Diversified Realty Corporation to be hereto affixed. Massachusetts Deed excise stamps in the amount of \$64,980.00 are hereto affixed and canceled.

DDRC GATEWAY LLC  
By: Developers Diversified Realty Corporation,  
its manager

By: Joan U. Allgood ✓  
Joan U. Allgood  
Vice President

SOLUTIA INC.

By: Karl R. Barnickol ✓  
Vice President

By: Henry J. Ehrenreich  
Assistant Treasurer

STATE OF MISSOURI

County of St. Louis

March 17, 1999

Then personally appeared the above-named Karl R. Barnickol and Henry J. Ehrenreich, who are the Vice President and Assistant Treasurer respectively of Solutia Inc., and acknowledged the foregoing instrument to be the free act and Deed of Solutia Inc. before me.

Deborah J. Anna-Ransom ✓  
Notary Public  
My Commission expires: **DEBORAH J ANNA-RANSOM  
NOTARY PUBLIC STATE OF MISSOURI  
ST. LOUIS COUNTY  
MY COMMISSION EXP. MAY 27, 2001**

COMMONWEALTH OF MASSACHUSETTS

County of Suffolk

March 18, 1999

Then personally appeared the above-named Joan U. Allgood, Vice President of Developers Diversified Realty Corporation, a manager of DDRC Gateway LLC, and acknowledged the foregoing instrument to be the free act and Deed of DDRC Gateway LLC.

Cynthia Bordieri  
Notary Public  
**CYNTHIA BORDIERI  
NOTARY PUBLIC  
My Commission Expires September 15, 2000**

A portion of Lot 3 being bounded and described as follows:

Beginning at a point on the northern boundary of the Plasticizer Area AUL as shown on Exhibit B attached hereto, said point being located S 00°24'38" W, a distance of five hundred thirteen and 58/100 (513.58') feet from the northeasterly corner of the land of the Commonwealth of Massachusetts Metropolitan District Commission, said land being shown as Parcel 1 on a plan entitled, "Commonwealth of Massachusetts, Metropolitan District Commission, Parks Division, Mystic River Basin Elevation Control Project, Revere Beach Parkway - Everett, Plan of Takings and Easements", scale 1" = 100', dated June 28, 1963, prepared by Benjamin W. Fink, Director of Park Engineering, Plan Number 41390-VT, recorded with said Deeds with the Order of Taking as Document No. 398224 ("Parcel 1"), at the sideline of the Revere Beach Parkway;

thence running southeasterly by the remaining land of the Monsanto Company, S 15°52'14" E, a distance of two hundred forty-nine and 40/100 (249.40') feet to a point;

thence running southwesterly by the remaining land of the Monsanto Company, S 40°38'14" W, a distance of five hundred twenty and 37/100 (520.37') feet to a point;

thence running northwesterly by the remaining land of the Monsanto Company, N 49°21'46" W, a distance of five hundred twenty-six and 00/100 (526.00') feet to a point, said point being located a distance of twelve and 26/100 (12.26') feet from the southeastern boundary of the land of the Commonwealth of Massachusetts Metropolitan District Commission, said Parcel 1;

thence running northeasterly by the remaining land of the Monsanto Company, N 40°38'14" E, a distance of six hundred fifty-eight and 00/100 (658.00') feet to a point, said point being located a distance of fifteen and 50/100 (15.50') feet from the southeastern boundary of said Parcel 1;

thence running southeasterly by the remaining land of the Monsanto Company, S 49°21'46" E, a distance of three hundred eighteen and 01/100 (318.01') feet to a point and the point of beginning.

Said parcel containing 7.62 acres, more or less and being shown as "AREA COVERED BY PLASTICIZER AUL" on a plan entitled, "EXHIBIT B, PLAN DEPICTING THE PLASTICIZER AREA ON THE MONSANTO PROPERTY IN EVERETT, MASS.", scale 1"=400', dated June 20, 1997 by Martinage Engineering Associates, Inc., Civil - Environmental Engineers and Land Surveyors, 131 Main Street, 3RD Floor, Reading, Massachusetts, 01867.

# EXHIBIT B PLAN DEPICTING THE PLASTICIZER AREA ON THE MONSANTO PROPERTY IN EVERETT, MASS.

SCALE 1"=400' JUNE 20, 1997  
MARTINAGE ENGINEERING ASSOCIATES, INC.  
CIVIL-ENVIRONMENTAL ENGINEERS & LAND SURVEYORS  
131 MAIN STREET, 3RD FLOOR  
READING, MASS. 01867

### NOTES:

1. PROPERTY LINES COMPILED FROM PLANS OF RECORD.
2. EDGE OF RIVER AND EXISTING DETAIL COMPILED FROM A NOVEMBER 1991 AERIAL SURVEY.

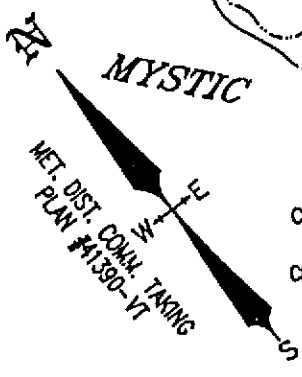
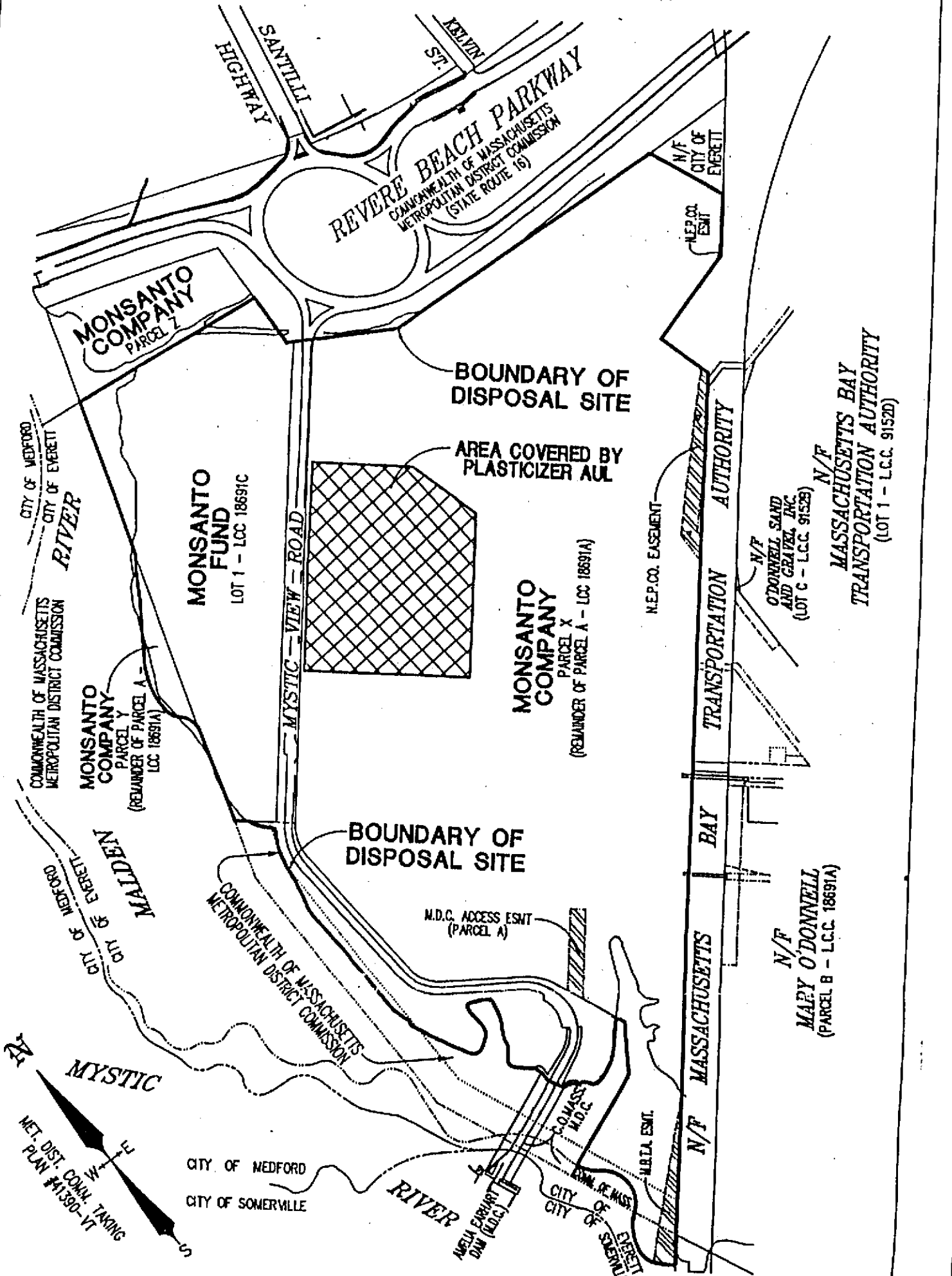
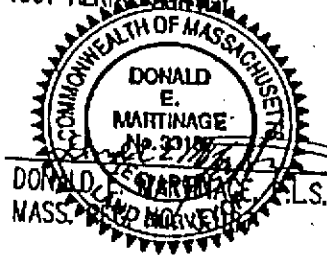


EXHIBIT I.FF.

LEGAL DESCRIPTION TIDAL FLATS

MONSANTO COMPANY/FUND LAND  
 REVERE BEACH PARKWAY & MYSTIC VIEW ROAD  
 EVERETT, MASSACHUSETTS

LEGAL DESCRIPTION

TIDELAND PARCEL

(A PORTION OF PARCEL X - THE EASTERN PORTION OF THE REMAINDER OF  
 PARCEL A, LCC 18691A)

A certain parcel of land situated in the City of Everett, in the County of Middlesex and the Commonwealth of Massachusetts, on the southerly side of the Revere Beach Parkway, westerly of the Massachusetts Bay Transportation Authority railroad line and northeasterly of the Mystic River, said parcel being bounded and described as follows:

- Northwesterly, by the remaining portion of Parcel A as shown on Land Court Plan 18691A, a copy of which is recorded in the Middlesex County Registry of Deeds (South District) with Certificate of Title No. 73296 in Book 485, Page 177, two hundred sixty-one and 95/100 (261.95') feet;
- Northeasterly, by the remaining portion of Parcel A as shown on Land Court Plan 18691A, one hundred and 00/100 (100.00') feet;
- Easterly, by the remaining portion of Parcel A as shown on Land Court Plan 18691A, one hundred eighty-seven and 64/100 (187.64') feet;
- Northeasterly, by the remaining portion of Parcel A as shown on Land Court Plan 18691A, one hundred thirteen and 20/100 (113.20') feet;
- Southeasterly, by the land now of formerly of the Massachusetts Bay Transportation Authority, about nine hundred thirty-one (931'±) feet to the line of low water in the Mystic River in 1861;
- Southerly, Westerly and Southwesterly, by the line of low water in the Mystic River in 1861 about five hundred forty-two (542'±);
- Northwesterly, by land now of formerly of the Commonwealth of Massachusetts, Metropolitan District Commission, said land being shown as Parcel 1 on a plan entitled, "Commonwealth of Massachusetts, Metropolitan District Commission, Parks Division, Mystic River Basin Elevation Control Project, Revere Beach Parkway - Everett, Plan of Takings and Easements", scale 1" = 100', dated June 28, 1963, prepared by Benjamin W. Fink, Director of Park Engineering, Plan Number 41390-VT, recorded in the Middlesex County Registry of Deeds (Southern Registry District) with the Order of Taking as Document No. 398224, about three hundred forty-two and 60/100 (342.60'±) feet;
- Northwesterly, by land now of formerly of the Commonwealth of Massachusetts, Metropolitan District Commission, said land being shown as Parcel 1 on the previously referenced plan, one hundred seventy-two and 51/100 (172.51') feet;
- Southwesterly, by land now of formerly of the Commonwealth of Massachusetts, Metropolitan District Commission, said land being shown as Parcel 1 on the previously referenced plan, seventy-five and 00/100 (75.00') feet;

Said parcel contains 209,069 square feet, more or less, and is a portion of the easterly portion of Parcel A as shown on Land Court

LEGAL DESCRIPTIONS - TIDELAND PARCEL

PAGE 1 OF 2

Enclosure 2-A



**MONSANTO COMPANY/FUND LAND  
REVERE BEACH PARKWAY & MYSTIC VIEW ROAD  
EVERETT, MASSACHUSETTS**

Plan 18691A, a copy of which is recorded in the Middlesex County Registry of Deeds (South District) with Certificate of Title No. 73296 in Book 485, Page 177. The boundaries of the Tidelands Parcel are shown on a plan entitled, "As-Built/Title Insurance Survey, Monsanto Company, Everett Plant, Mystic View Road, Everett, Massachusetts", scale 1"=100', dated July 29, 1994 by Martinage Engineering Associates, Inc., Reading, MA.

EXHIBIT I.II

LEGAL DESCRIPTION WETLANDS

(NOTE: The Legal Description of the Tidal Flats set forth in Exhibit I.FF. is incorporated herein as part of the Legal Description Wetlands.)

**MONSANTO COMPANY/FUND LAND  
 REVERE BEACH PARKWAY & MYSTIC VIEW ROAD  
 EVERETT, MASSACHUSETTS**

**LEGAL DESCRIPTION**

**WETLAND LIMITATION AREA A  
 (THE ENTIRETY OF PARCEL Y - THE WESTERN PORTION OF THE REMAINDER OF  
 PARCEL A, LCC 18691A)**

A certain parcel of land situated in the City of Everett, in the County of Middlesex and the Commonwealth of Massachusetts, on the southerly side of the Revere Beach Parkway, said parcel being bounded and described as follows:

Southwesterly, Westerly and Northwesterly, by the land now or formerly of the Commonwealth of Massachusetts Metropolitan District Commission, said land being shown as Parcel 2 on a plan entitled, "Commonwealth of Massachusetts, Metropolitan District Commission, Parks Division, Mystic River Basin Elevation Control Project, Revere Beach Parkway - Everett, Plan of Takings and Easements", scale 1" = 100', dated June 28, 1963, prepared by Benjamin W. Fink, Director of Park Engineering, Plan Number 41390-VT, recorded in the Middlesex County Registry of Deeds (Southern Registry District) with the Order of Taking as Document No. 398224, and the mean high water mark of the Malden River, about six hundred twenty-five (625'±) feet;  
 Southeasterly, by the U.S. Pierhead and Bulkhead Line and Lot 1 as shown on Land Court Plan 18691<sup>c</sup>, a copy of which is filed in the Middlesex County Registry of Deeds (South Registry District) in Book 787, Page 170, with Certificate 131520, about five hundred eighty-three (583'±) feet.

Said parcel contains 33,000 square feet, more or less, and is the westerly portion of Parcel A as shown on Land Court Plan 18691A, a copy of which is recorded in the Middlesex County Registry of Deeds (South District) with Certificate of Title No. 73296 in Book 485, Page 177. The boundaries of Wetland Limitation Area A are also shown on a plan entitled, "As-Built/Title Insurance Survey, Monsanto Company, Everett Plant, Mystic View Road, Everett, Massachusetts", scale 1"=100', dated July 29, 1994 by Martinage Engineering Associates, Inc., Reading, MA.

**LEGAL DESCRIPTION**

**WETLAND LIMITATION AREA B  
 (THE ENTIRETY OF LOT 1 - LCC 18691<sup>c</sup>)**

A certain parcel of land situated in the City of Everett, in the County of Middlesex and the Commonwealth of Massachusetts, on the southerly side of the Revere Beach Parkway, said parcel being bounded and described as follows:

Northerly by land of the Monsanto Company (formerly of the Commonwealth of Massachusetts, Metropolitan District Commission Parks Division), said land being shown as Parcel 2

Enclosure 7-B

**MONSANTO COMPANY/FUND LAND  
REVERE BEACH PARKWAY & MYSTIC VIEW ROAD  
EVERETT, MASSACHUSETTS**

on a plan entitled, "Commonwealth of Massachusetts, Metropolitan District Commission, Parks Division, Mystic River Basin Elevation Control Project, Revere Beach Parkway - Everett, Plan of Conveyance to Monsanto Chemical Co.", scale 1" = 100', dated September 1969, prepared by Benjamin W. Fink, Director of Park Engineering, Plan Accession Number 46153-V.T., recorded in the Middlesex County Registry of Deeds (Southern Registry District) as Plan No. 1024 Of 1970 in Book 11902, Page 425, six hundred and forty-seven and 00/100 (647.00') feet;

- Easterly, by the land of the Commonwealth of Massachusetts, Metropolitan District Commission, commonly known as the Revere Beach Parkway, said land being shown as parcel 1 on Land Court Plan 18691<sup>b</sup>, a copy of which is filed in the Middlesex County Registry of Deeds (Southern Registry District) in Land Registration Book 667, Page 109 with Certificate of Title No. 107459, one hundred seventy-five and 80/100 (175.80') feet;
- Northeasterly, by the land of the Commonwealth of Massachusetts, Metropolitan District Commission, commonly known as the Revere Beach Parkway, said land being shown as parcel 1 on Land Court Plan 18691<sup>b</sup>, twenty-one and 16/100 (21.16') feet;
- Southeasterly, by land of the Commonwealth of Massachusetts Metropolitan District Commission, said land being shown as Parcel 1 on a plan entitled, "Commonwealth of Massachusetts, Metropolitan District Commission, Parks Division, Mystic River Basin Elevation Control Project, Revere Beach Parkway - Everett, Plan of Takings and Easements", scale 1" = 100', dated June 28, 1963, prepared by Benjamin W. Fink, Director of Park Engineering, Plan Number 41390-VT, recorded in the Middlesex County Registry of Deeds (Southern Registry District) with the Order of Taking as Document No. 398224, fifteen hundred thirty-nine and 99/100 (1539.99') feet;
- Southwesterly, by land of the Commonwealth of Massachusetts Metropolitan District Commission, being shown as Parcel 1 on the previously referenced plan, one hundred thirty and 91/100 (130.91') feet; and
- Northwesterly by land of the Commonwealth of Massachusetts Metropolitan District Commission, said land being shown as Parcel 2 on the previously referenced plan and land of the Monsanto Company, said boundary coinciding with the U.S. Pierhead and Bulkhead Line, fourteen hundred twenty and 18/100 (1420.18') feet.

Said parcel contains 654,880 square feet, more or less, and is shown as lot 1 on Land Court Plan No. 18691<sup>c</sup>. The boundaries of Wetland Limitation Area B are also shown on a plan entitled, "As-Built/Title Insurance Survey, Monsanto Company, Everett Plant, Mystic View Road, Everett, Massachusetts", scale 1"=100', dated July 29, 1994 by Martinage Engineering Associates, Inc., Reading, MA.

**LEGAL DESCRIPTION**

**LEGAL DESCRIPTIONS - WETLAND LIMITATION AREAS  
PAGE 2 OF 7**

MONSANTO COMPANY/FUND LAND  
REVERE BEACH PARKWAY & MYSTIC VIEW ROAD  
EVERETT, MASSACHUSETTS

WETLAND LIMITATION AREA C  
(THE ENTIRETY OF PARCEL 3)

A certain parcel of land situated in the City of Everett in the County of Middlesex and the Commonwealth of Massachusetts, on the southerly side of the Revere Beach Parkway, said parcel being shown as Parcel 2 on a plan entitled, "Commonwealth of Massachusetts, Metropolitan District Commission, Parks Division, Mystic River Basin Elevation Control Project, Revere Beach Parkway - Everett, Plan of Conveyance to Monsanto Chemical Co.", scale 1" = 100', dated September 1969, prepared by Benjamin W. Fink, Director of Park Engineering, Plan Accession Number 46153-V.T., recorded in the Middlesex County Registry of Deeds (Southern Registry District) as Plan No. 1024 Of 1970 in book 11902, page 425., and being further bounded and described as follows:

Beginning at a point in the southeasterly corner of the parcel, which point is distant N 3° 56' 04" E, one hundred seventy-five and 80/100 (175.80') feet from a Massachusetts Highway Bound set in the boundary line between land of the Commonwealth of Massachusetts Metropolitan District Commission (now part of the Revere Beach Parkway) being shown as Parcel 1 on Land Court Plan 18691<sup>b</sup> and the land now or formerly of the Monsanto Fund, said land being shown as Lot 1 on Land Court Plan 18691<sup>c</sup>.

Thence the line runs N 3° 56' 04" E, one hundred ninety-nine and 25/100 (199.25') feet, by the sideline of the Revere Beach Parkway to a point;

Thence turning and running in a northwesterly direction by a line curving to the left with a radius of ten thousand two hundred fifty-four and 44/100 (10,254.44) feet, four hundred eighty-seven and 11/100 (487.11') feet by the sideline of said Revere Beach Parkway to a point;

Thence N 72° 51' 46" W, ninety-five and 77/100 (95.77') feet by the sideline of said Revere Beach Parkway to a point;

Thence turning and running S 18° 36' 03" W, three hundred twenty-two and 15/100 (322.15') feet by the United States Pierhead and Bulkhead line and the sideline of said Revere Beach Parkway to a point at land of the now or formerly of the Monsanto Fund, said land being shown as Lot 1 on Land Court Plan 18691<sup>c</sup>;

Thence turning and running S 83° 14' 07" E, six hundred forty-seven and 00/100 (647.00') feet by the land now or formerly of the Monsanto Fund shown as Lot 1 on Land Court Plan 18691<sup>c</sup>, to the point of beginning.

Said parcel contains 159,768 square feet, more or less. The boundaries of Wetland Limitation Area C are also shown on a plan entitled, "As-Built/Title Insurance Survey, Monsanto Company, Everett

MONSANTO COMPANY/FUND LAND  
REVERE BEACH PARKWAY & MYSTIC VIEW ROAD  
EVERETT, MASSACHUSETTS

Plant, Mystic View Road, Everett, Massachusetts", scale 1"=100', dated July 29, 1994 by Martinage Engineering Associates, Inc., Reading, MA.

LEGAL DESCRIPTION

WETLAND LIMITATION AREA D

(A PORTION OF PARCEL X - THE EASTERN PORTION OF THE REMAINDER OF PARCEL A, LCC 18691A)

A certain parcel of land situated in the City of Everett, in the County of Middlesex and the Commonwealth of Massachusetts, on the southerly side of the Revere Beach Parkway, said parcel being bounded and described as follows:

- Northeasterly, by the land of the Commonwealth of Massachusetts, Metropolitan District Commission, commonly known as the Revere Beach Parkway, said land being shown as parcel 1 on Land Court Plan 18691<sup>6</sup>, a copy of which is filed in the Middlesex County Registry of Deeds (Southern Registry District) in Land Registration Book 667, Page 109 with Certificate of Title No. 107459, two hundred seventy-four and 20/100 (274.20') Feet;
- Northerly, by the land of the Commonwealth of Massachusetts, Metropolitan District Commission, commonly known as the Revere Beach Parkway, said land being shown as parcel 1 on Land Court Plan 18691<sup>6</sup>, nine hundred ninety and 82/100 (990.82') Feet;
- Northeasterly, by land of sundry adjoining owners, two hundred seventy and 87/100 (270.87') feet;
- Southeasterly, by the land now of formerly of the Massachusetts Bay Transportation Authority, five hundred forty-two and 04/100 (542.04') feet;
- Northwesterly, by the remaining portion of Parcel A as shown on Land Court Plan 18691A, a copy of which is recorded in the Middlesex County Registry of Deeds (South District) with Certificate of Title No. 73296 in Book 485, Page 177, two hundred thirty-six and 43/100 (236.43') feet;
- Westerly, by the remaining portion of Parcel A as shown on Land Court Plan 18691A, forty and 00/100 (40.00') feet;
- Southwesterly, by the remaining portion of Parcel A as shown on Land Court Plan 18691A, one hundred twenty and 00/100 (120.00') feet;
- Southerly, by the remaining portion of Parcel A as shown on Land Court Plan 18691A, one hundred and 00/100 (100.00') feet;
- Southwesterly, by the remaining portion of Parcel A as shown on Land Court Plan 18691A, two hundred forty-eight and 00/100 (248.00') feet;
- Southeasterly, by the remaining portion of Parcel A as shown on Land Court Plan 18691A, one hundred thirteen and 00/100 (113.00') feet;
- Southwesterly, by the remaining portion of Parcel A as shown on Land Court Plan 18691A, thirty and 00/100 (30.00') feet;
- Westerly, by the remaining portion of Parcel A as shown on Land Court Plan 18691A, eighty-five and 00/100 (85.00') feet;

**MONSANTO COMPANY/FOND LAND  
REVERE BEACH PARKWAY & MYSTIC VIEW ROAD  
EVERETT, MASSACHUSETTS**

Southerly, by the remaining portion of Parcel A as shown on Land Court Plan 18691A, three hundred fifty-five and 00/100 (355.00') feet;  
Southwesterly, by the remaining portion of Parcel A as shown on Land Court Plan 18691A, three hundred seventy-five and 00/100 (375.00') feet;

Said parcel contains 175,334 square feet, more or less, and is a portion of the easterly portion of Parcel A as shown on Land Court Plan 18691A, a copy of which is recorded in the Middlesex County Registry of Deeds (South District) with Certificate of Title No. 73296 in Book 485, Page 177. The boundaries of Wetland Limitation Area D are shown on a plan entitled, "As-Built/Title Insurance Survey, Monsanto Company, Everett Plant, Mystic View Road, Everett, Massachusetts", scale 1"=100', dated July 29, 1994 by Martinage Engineering Associates, Inc., Reading, MA.

**LEGAL DESCRIPTION**

**WETLAND LIMITATION AREA E**

**(A PORTION OF PARCEL X - THE EASTERN PORTION OF THE REMAINDER OF PARCEL A, LCC 18691A)**

A certain parcel of land situated in the City of Everett, in the County of Middlesex and the Commonwealth of Massachusetts, on the southerly side of the Revere Beach Parkway, westerly of the Massachusetts Bay Transportation Authority railroad line, said parcel being bounded and described as follows:

- Easterly, by the land now of formerly of the Massachusetts Bay Transportation Authority, one hundred five and 00/100 (105.00') feet;
- Southeasterly, by the land now of formerly of the Massachusetts Bay Transportation Authority, one hundred forty-five and 00/100 (145.00') feet;
- Southwesterly, by the remaining portion of Parcel A as shown on Land Court Plan 18691A, a copy of which is recorded in the Middlesex County Registry of Deeds (South District) with Certificate of Title No. 73296 in Book 485, Page 177, seventy-nine and 45/100 (79.45') feet;
- Northwesterly, by the remaining portion of Parcel A as shown on Land Court Plan 18691A, two hundred three and 21/100 (203.21') feet;

Said parcel contains 11,307 square feet, more or less, and is a portion of the easterly portion of Parcel A as shown on Land Court Plan 18691A, a copy of which is recorded in the Middlesex County Registry of Deeds (South District) with Certificate of Title No. 73296 in Book 485, Page 177. The boundaries of Wetland Limitation Area E are shown on a plan entitled, "As-Built/Title Insurance Survey, Monsanto Company, Everett Plant, Mystic View Road, Everett, Massachusetts", scale 1"=100', dated July 29, 1994 by Martinage Engineering Associates, Inc., Reading, MA.

MONSANTO COMPANY/FUND LAND  
 REVERE BEACH PARKWAY & MYSTIC VIEW ROAD  
 EVERETT, MASSACHUSETTS

LEGAL DESCRIPTION

WETLAND LIMITATION AREA F

(A PORTION OF PARCEL X - THE EASTERN PORTION OF THE REMAINDER OF  
 PARCEL A, LCC 18691A)

A certain parcel of land situated in the City of Everett, in the County of Middlesex and the Commonwealth of Massachusetts, on the southerly side of the Revere Beach Parkway, westerly of the Massachusetts Bay Transportation Authority railroad line and northeasterly of the Mystic River, said parcel being bounded and described as follows:

- Northerly, by the remaining portion of Parcel A as shown on Land Court Plan 18691A, a copy of which is recorded in the Middlesex County Registry of Deeds (South District) with Certificate of Title No. 73296 in Book 485, Page 177, forty-five and 00/100 (45.00') feet;
- Easterly, by the remaining portion of Parcel A as shown on Land Court Plan 18691A, two hundred twenty and 00/100 (220.00') feet;
- Northeasterly, by the remaining portion of Parcel A as shown on Land Court Plan 18691A, one hundred fifteen and 98/100 (115.98') feet;
- Southeasterly, by the land now of formerly of the Massachusetts Bay Transportation Authority, about eight hundred ninety-one (891'±) feet to the line of low water in the Mystic River in 1861;
- Southerly, Westerly and Southwesterly, by the line of low water in the Mystic River in 1861 about five hundred forty-two (542'±);
- Northwesterly, by land now of formerly of the Commonwealth of Massachusetts, Metropolitan District Commission, said land being shown as Parcel 1 on a plan entitled, "Commonwealth of Massachusetts, Metropolitan District Commission, Parks Division, Mystic River Basin Elevation Control Project, Revere Beach Parkway - Everett, Plan of Takings and Easements", scale 1" = 100', dated June 28, 1963, prepared by Benjamin W. Fink, Director of Park Engineering, Plan Number 41390-VT, recorded in the Middlesex County Registry of Deeds (Southern Registry District) with the Order of Taking as Document No. 398224, about three hundred forty-two and 60/100 (342.60'±) feet;
- Northwesterly, by land now of formerly of the Commonwealth of Massachusetts, Metropolitan District Commission, said land being shown as Parcel 1 on the previously referenced plan, one hundred seventy-two and 51/100 (172.51') feet;
- Southwesterly, by land now of formerly of the Commonwealth of Massachusetts, Metropolitan District Commission, said land being shown as Parcel 1 on the previously referenced plan, fifty and 00/100 (50.00') feet;
- Northwesterly, by the remaining portion of Parcel A as shown on Land Court Plan 18691A, two hundred thirty-five and 00/100 (235.00') feet;

Said parcel contains 189,953 square feet, more or less, and is a portion of the easterly portion of Parcel A as shown on Land Court Plan 18691A, a copy of which is recorded in the Middlesex County



MONSANTO COMPANY/FUND LAND  
REVERE BEACH PARKWAY & MYSTIC VIEW ROAD  
EVERETT, MASSACHUSETTS

Registry of Deeds (South District) with Certificate of Title No. 73296 in Book 485, Page 177. The boundaries of Wetland Limitation Area P are shown on a plan entitled, "As-Built/Title Insurance Survey, Monsanto Company, Everett Plant, Mystic View Road, Everett, Massachusetts", scale 1"=100', dated July 29, 1994 by Martinage Engineering Associates, Inc., Reading, MA.

EXHIBIT IV. B

LIST OF REPORTS AND DOCUMENTS

(List is attached but subject to addition)

Incorporated herein by reference are such other reports and documents prepared since August 11, 1994, copies of which were provided to Rosen or Buyers and either filed with the DEP or placed in the public record at Parlin Memorial Library in Everett, Massachusetts.

Type	Author	Subject	Date	Addressee	Enclosures?
Report	---	Bldg 409-Closure	8/22/91	M.W. McCombs	none
Memo	MA Welsh	CERCLA-score chg	2/2/93	Brimes, et. al.	G. & M. Rpt
Quest.	--	Hazardous Substances	--	--	none
Memo	RJ Cushing	Syncon Resins	9/30/86	BJ Gilhousen	none
Deed copy	--	Quitclaim Deed	6/28/83	--	Schedules
Agreement	--	Everett property	5/25/83	--	--
e-mail	Brimer	Studies completion	9/18/91	J. Felder	none
Notes	--	Site remedial needs	n.d.	--	none
Notes	--	409 Bldg	n.d.	--	none
Notes	--	Environmental res.	6/6/91	--	none
Document	--	Remediation Primer	n.d.	--	none
Notes	McCombs?	Cleanup	2/5/91	--	photo
Notes	--	Cleanup	n.d.	--	none
Notes	--	Landfills	n.d.	--	'88 Budget worksheet; Cushing memo
Memo	LP Paradis	Consent Agr't DEQE	4/13/87	Pierle, Boesch	doc draft
Letter	AM Robin.	Groundwater Mgmt Pgm	4/27/87	RJ Cushing	source areas
e-mail	J Felder	MCP Waivered status	7/6/92	MA Welsch	none
e-mail	RF Wilkin	NPL Listing	6/12/92	JD Felder, et al	response
Memo	ES Brimer	Remed. Strat. Bkg.	5/14/92	JD Felder, et al	Document
Memo	LP Paradis	Rebuttal/Herald Art.	3/8/90	DB Price	Env. Perf.
Memo	DB Price	2/18 Herald Article	3/5/90	RG Potter	none
Memo	LP Paradis	Response/Herald Art	3/4/90	DB Price	none
Memo	NJ Pollock	Herald Follow-Up	3/2/90	DB Price	Copies of articles
Memo	NJ Pollock	Herald Story	3/1/90	Potter, et al	" "
Memo	SL Foster	National Toxics Camp	3/23/89	MJ Ferrante	none
Notes	--	Article in Herald	n.d.	--	none
Notes	LP Paradis	Herald Article	n.d.	--	none
Memo	M Schannon	Grant/B. Harpor	1/19/87	T. Slocum	none
Memo	SG Collins	Media cov/mtg	4/7/86	Bishop, et al	Articles
Memo	J. Kelly	Summary mtg Wildlife Habitat Enhanc. Counc.		J. Murphy	3/27-3/31

Type	Author	Subject	Date	Addressee	Enclosures?
Memo	SG Collins	Edit. & Reply	2/12/86	Bishop, et al	Articles
Memo	SJ Hender.	closure status	1/3/92	LJ Boesch	none
Memo	SJ Hender.	shutdown issues	11/18/91	LJ Boesch	none
Memo	SJ Hender.	Closure plans	10/21/91	Tuley, Boesch	Plan
Memo	SJ Hender.	Closure status	9/12/91	LJ Boesch	none
e-mail	J Felder	RCRA Disc w/DEP	9/2/93	MA Welsch	Welsch Memo
e-mail	J Felder	Disp/waste Plast.	8/12/93	JF Murphy	Renshaw memo
Memo	JF Murphy	Demolition Debris	5/10/93	The File	none
e-mail	JD Felder	RCRA Corrective Actn	10/22/92	ES Brimer	Brimer memo
Newslet.	RCRA				
Fax Msg	ES Brimer	RCRA to Everett	5/12/92	Wilkinson, Felder	HMM memo
Memo	ES Brimer	H. Waste Update	5/28/92	L. Stricker	Database update
Memo	VTMatt.	Site Presentation	3/27/90	JP Dushney	summary
Document	--	Surface impoundment inven	10/18/89		
Memo	M. Ferrante	Resp/Nat'l toxic rept	4/3/89	Matteucci, et al	Response
Memo	GF Grimm	Liability Compliance	3/27/89	R Cushing	none
Memo	RT Allen	Order on Consent	5/19/88	JG De Pagter	Order
Letter	RJ Chalpin	Sediment study	12/1/87	J Dushney	none
Letter	RJ Cushing	Tidal flats	9/3/87	J. Duggan	none
Letter	G. Furst	RFI Guidance Doc.	4/17/87	L. Paradis	none
Letter	RJ Cushing	Age of Lagoon	3/18/87	RJ Chalpin	none
Letter	GM Lovejoy	AIM Methodology	3/11/87	J. Coleman	none
Letter	JG DePagter	Compliance Report	2/26/87	DEQE	Report
Memo	RT Allen	Phosphoric acid rel.	11/3/86	Foreman, Cushing	none
Letter	RJ Cushing	EPA's Req for Info	10/22/86	L Cusick	none
Letter	RJ Cushing	Re: Site assessment	10/8/86	RJ Chalpin	Report
Notice	C of MA	Release of Info	9/22/86	--	none
Letter	M Williams	EPA Screening Survey	2/29/86	--	Survey
Letter	SA DeGabri	Status Change	2/18/86	JI Doyle	none
Document	--	GZA soil screening	n.d.	--	none
Memo	JI Doyle	Public files at DEQE	7/25/85	JP Dushney	none
Memo	M Foresman	Memo from DEQE file	7/26/85	Allen/Smith	Memo*
*Memo	D. Chapman	Grass fire & Barrel	5/28/85	RJ Chalpin	none
Memo	MR Foresmn	Sludge Stabilization	10/18/84	JI Doyle	none
Letter	JH Skinner	EPA HW survey	9/30/84?	"Survey part't" Survey	
Document	--	disposal area work sheets	8/5/83		
Letter	JDGarrison	Boschetti interview	5/5/83	MR Foresman	letter
Memo	MA Wade	Council meeting	4/20/83	GD Ingenthron	agenda
Memo	JI Doyle	HE management study	2/8/83	MR Foresman	none
Exhibit?	--	"E. Plant Land Ban"	n.d.	--	none
E-Mail	J. Felder	Comments-Rosen Letters	4/25/94	C. Rosen/T. Baird	et al

Type	Author	Subject	Date	Addressee	Enclosures?
E-Mail	J. Felder	Comments-Rosen Present.	4/15/94	C. Rosen	Presentation
Fax	W. Lambert	Contract-Draft	5/2/94	C. Rosen	Contract
Letter	W. Lambert	Real Esta.&Purc. Agree.	5/4/94	C. Rosen/Abbott	Agreement
E-Mail	J. Felder	WHEC	5/6/94	C. Rosen	None
E-Mail	J. Felder	Minutes of Meeting	5/13/94	C. Rosen	Minutes
Letter	J. Felder	Everett Geotec. Data	4/15/94	Rosen Associates	Ltr.-Consult.
Article	J. Felder	Prop. adjacent Everett	5/31/94	C. Rosen	None
Letter	J. Felder	Calcium Sulfate Presence	6/14/94	Rosen Associates	Maps
Letter	W. Lambert	Copy-Rosen Agreement	6/10/94	P. Friedenber	Agreement
Letter	J. Felder	Soil Analysis-Everett	6/16/94	Rosen Associates	Analysis-Soil
Memo	R. Cooper	Everett Plant Sale	6/17/94	W. Lambert	Quitclaim
E-Mail	J. Felder	Approv.-Sale Everett	6/20/94	Cooper, Cody, etc.	Deed
Agreement	J. Felder	Markup copy-Agree. Rosen	6/23/94	Rosen Associates	None
Agreement	W. Lambert	Draft Everett Agreement	6/23/94	Rosen Associates	Agreement
E-Mail	J. Felder	Potter-Brd.Dir.-Everett	6/24/94	Kevin Cahill	Agreement
Report	GZA	Plasticizer Area Physical Chemical Study Treatment	7/11/94		E-Mail-Potter Report

**News Articles**

<b>Publication</b>	<b>Date</b>	<b>Headline</b>
Boston Globe	6/10/90	Advocacy group hails detailing of toxic releases
Boston Herald	6/8/90	Report Slams Top 10 Polluters
Malden Evening News	11/3/88	Some want probe into cancer rate
Everett Leader-Herald	8/4/88	Monsanto Property Natural Gas Plant Plans Before State Agency
Boston Globe	4/16/87	Water authority bars processing of sewage sludge on Deer Island
Boston Globe	4/15/87	DEQE suspects hazardous wastes at 260 more sites
Environment Reporter	3/26/87	Toxic discharges into Boston Harbor up dramatically, Greenpeace report says.
Everett Leader-Herald	2/12/87	Monsanto Veep & Fair Share chew rag 2 hours.
Everett Leader-Herald	2/5/87	Exxon and Monsanto Challenge Greenpeace Pollution Report
Malden Evening News	2/5/87	Fair Share, Mmonsanto Veep to meet today at plant here.
Malden Evening News	2/2/87	Polluters list has local cos.
Boston Globe	1/31/87	3-front war on wastes (editorial)
Boston Globe	1/30/87	Some environmentalists rap Dukakis waste plan.
Boston Globe	1/15/87	State lists 226 new hazardous waste sites
Malden Evening News	1/16/87	DEQE lists hazardous sites
Boston Phoenix	12/16/86	Wasting Away: waiting for clean-up of toxic sites...
Boston Globe	12/11/86	New rules for harbor discharges approved
The World of Greenpeace	7/28/86	(Photo of protest at Everett plant)
Malden Evening News	7/10/86	Letter: Monsanto rebuts contamination Criticism
Everett News	7/16/86	Fair Share speaks out
Malden Evening News	7/8/86	Fair Share files suit for data
Everett News	7/2/86	Monsanto's Commitment to Environmental Quality
Malden Evening News	6/25/86	Everett Aldermen do this
Malden Evening News	6/30/86	Mayor axs fuel storage fee increase
Malden Evening News	6/30/86	Fair Share sets meeting on Monsanto
Malden Evening News	7/2/86	EPA plans to visit Monsanto PCB site
Malden Evening News	7/1/86	Everett fair share to hold meeting
Everett News	6/25/86	DEQE will meet but without news
Malden Evening News	6/27/86	Fair Share holds meeting with DEQE
Everett Leader-Herald	6/26/86	

Boston Herald	6/14/86	Monsanto site
Malden Evening News	6/12/86	Big fuel storers map attack on rate hikes
<b>New Articles</b>		
<b>Publication</b>	<b>Date</b>	<b>Headline</b>
Malden Evening News	5/30/86	Petroleum storers face 90% hike
Malden Evening News	6/26/86	Editorial: We must always determine the "pollution price tag"
Everett News	5/21/86	Monsanto replies to DEQE Announces Remedial Actions Plan
Malden Evening News	5/20/86	PHoto: Cleanup Continues
Malden Evening News	5/20/86	Monsanto Plans Remedial Action
Everett Leader-Herald	5/15/86	Annual Spring Clean-up Underway
Everett News	5/14/86	Everett Clean-Up Drive in Full Swing
Malden Evening News	5/6/86	Monsanto answer to DEQE delayed
Malden Evening News	5/1/86	Acid spill injures 4; shuts area firms
Everett Leader-Herald	5/1/86	Mayor McCarthy Irate w/State DEQE on Monsanto Meet
Everett News	4/30/86	Public Service Ad
Everett News	4/16/86	Monsanto Request for Storage Tank Put on Hold
Everett Leader-Herald	4/17/86	Mosanto Seeks to Construct Tank to Displace Drums
Boston Globe	4/30/87	Braintree firm proposes toxic-waste incinerator
Malden Evening News	3/27/86	Fair Share rep: DEQE Misled me.
Malden Evening News	3/28/86	Parties to meet tonight at City hall.
Channel 7 News Broadcast	3/27/86	...Keep eye on testing
Malden Evening News	3/31/86	Nervous people in Everett tonight...
Malden Evening News	3/31/86	DEQE says it doesn't hide reports...or do research
Malden Evening News	3/31/86	No need to panic on PCB Presence
Everett News	4/2/86	Sounds of Everett
Everett Leader-Herald	4/3/86	Mayor McCarthy and council watching Monsanto testing
Everett News	4/2/86	Hazardous waste materials public safety concern.
Tufts Observer	3/28/86	Monsanto Admits Use of PCB's
Everett Leader-Herald	3/13/86	Low Level of PCB's in soil, no buried drums found. Monsanto test no public threat
Malden Evening News	3/10/86	Monsanto:we'll meet in public
Tufts Observer	2/28/86	Monsanto receives criticism

Type	Author	Subject	Date	Addressee	Enclosures?
<b>RCRA - Permits - Closures</b>					
Present.	JF Murphy	"So the E. Plant.."	n.d.	--	several
Letter	RJ Cushing	Furnace, Lagoon	1/12/87	RJ Chalpin	none
Msg	RJ Cushing	Telecon w/D. Chalpin	11/21/86	--	none
<b>RCRA - Permits - Compliance</b>					
Letter	JI Doyle	Resp: Note of Viol	3/6/85	RJ Chalpin	none
Letter	JI Doyle	Resp: Note of Viol	3/30/84	S DeGabriele	plan
Letter	JI Doyle	Resp: Note of Viol	1/12/84	D. Chapman	viol letter
Letter	RJ Chalpin	Notice of Violation	12/16/83	JI Doyle	none
<b>RCRA - Permits - Part A</b>					
Letter	DA Huebner	Changes to Part A	4/10/84	FL Thompson	none
Letter	FL Thompsn	Revised part A Appl	3/1/84	J Edwar/epa	applic
Memo	MR Foresmn	Draft cover/"A" Appl	2/23/84	FL Thompson	draft letter
Letter	JI Doyle	Part A revisions	11/7/83	Edwards/EPA	applic
Document	--	Part A application	n.d.	--	none
<b>RCRA - Permits - SMDU'A</b>					
Memo	JG DePagtr	ME DEP Info	2/20/90	RJ Cushing	none
Memo	FCioffi,RN	Grant Family	8/11/81	E. Logue	none
Letter	EM Logue	Grant's well water	8/26/81	F Cioffi	none
Form	L. Grant	Consent/release info	9/12/80	--	none
Memo	T. Potter	Soil analysis/w'boro	8/19/81	E Logue	none
Report	--	Results of soil survey	6/10/81	E Logue	(4 pgs)
Letter	FS Brann	Notes/Gravel pit	1984	--	none
Letter	FS Brann	Gravel pit complaint	2/1/84	JI Doyle	none
Letter	FL Thompson	Pit meeting followup	3/14/84	A Woodsome	none
Map	--	Map/Gravel Pit area??			none
Document	B. Kerr	Results of H <sub>2</sub> O tests	6/7/84	F Brann	none
Document	T. Potter	Results of H <sub>2</sub> O tests	2/15/84	F Bran	none
Memo	P Garrett	Site visit 10/26/84	12/30/85	W'boro file	none
Memo	P Garrett	Site visit 4/4/84	12/30/85	W'boro file	none
Document	--	Results of H <sub>2</sub> O tests	9/26/84	F. Brann	none
News Art	Groundwater News	"Monsanto targets.."	2/84	--	none
Copy/Map	USGS	Loc of Ricard's pit	n.d.	--	none
(Fig 1)					
" (Fig 2)	USGS	" in r'tn/aquifers	n.d.	---	none
Document	--	Key to Map #4	--	---	none
Map	Sketched	Hydrogeol./gravel pit	1985	---	none
Document	Garrett	Gravel pit data sheet	n.d.	---	none
Document	Garrett?	Column explanations	8/83	---	none
Photo	--	Pit area? (bad copy)	n.d.	---	none



Type	Author	Subject	Date	Addressee	Enclosures?
Document	Garett	G.W. flow worksheet	9/25/84	--	none
Document	Kerr/Boston	H <sub>2</sub> O test results	11/14/84	Brann/Garrett	none
Document	--	" "	9/28/84	Brann/Garrett	none
Memo	De Pagter	Visit to Mrs. Grant	12/27/89	RJ Cushing	none
Notes	Paradis?	" "	n.d.	--	none
Letter	JI Doyle	Fire at plant	1/13/87	R Bradley/DEQE	none
Letter	G'water Tech	Plast. Recov. System	9/4/86	JI Doyle	Fig 1; cost
<b>RCRA - Remediation - PDA - General - 1992</b>					
Letter	M Welsch	"contained in" policy	1/25/94	T Powers, DEP	none
Memo	J Felder	Impact meeting	10/20/93	KS Cahill, et al	notes/agenda
Memo	MA MacClary	Pub Com/Phase II	10/7/93	KS Cahill, et al	none
Letter	MA MacClary	DEP waiver	9/23/93	J McCarthy	waiver
Memo	MA Welsch	RCRA/DEP Discuss	8/17/93	JD Felder, et al	(see below)
Document -	Secretary of State	submittal, pp A-45 - A-50			
Document -	EPA Directive/superfund	requirements			
Memo	Powers/Kunce	Status of soils	1/20/93	EPA autht's	
Document -	"Management of Investigation-Derived	Wastes During Site Inspections"			
Memo	Shaw/GZA	Statutory deadline	9/11/91	Brimer, et al	CMR docs
Memo	MA Welsch	Strategy Summary	6/18/92	Boesch, et al	Mtg Summary
Maps	GZA	Coast line maps	12/11/91	--	--
Present'n	--	Remediation update	5/93	--	Visuals
Document	--	Hist of Everett Plant	n.d.	--	none
Memo	JD Wilson	PCB's at Ev. cont'd	7/21/93	Felder/Mawels	none
Memo	J Felder	Req for info	7/21/93	Hyland	none
Memo	JD Wilson	PCBs at Everett	7/21/93	Felder	none
Memo	B Powell	Plant Delineation	3/18/92	Brimer/Felder	none
Memo	Powell/Herrud	Constructed Wetlands	3/2/92	Distribn	Document
Memo	M Welsch	Phase II Invest	9/14/92	J Felder	GZA PO's
Memo	MA Welsch	Remediation Deadline	2/17/93	Felder/Wilkinson	none
Letter	Valkenburg/G&M	Facility Assess't	12/23/92	M Welsch	document
Memo	Nickolai/EPA	GE RCRA Appeal	6/26/92	Black, esq/EPA	Memorandum
Memo	Felder	Risk assessment	12/8/92	Brimer	none
Memo	Pulicari	Risk assessment	12/7/92	Felder, et al	none
Note	Felder	RFA memo	11/10/92	Welsch	none
Memo	Welsch	RCRA Liability	11/6/92	Felder, et al	Diagram
Document	Brimer, et al	Agenda/Remedial obj's	7/30/92	Juley, et al	none
Letter	Felder	Wetlands maps	7/20/92	McGauley/C&W	Maps
Memo	Felder	Agency interact mem	7/10/92	Brimer	none
Memo	Brimer	Agency interaction	7/7/92	Cahill, et al	HMM memo
Memo	Brimer	MCP Site Waver	7/8/92	Wilkinson, Felder	document
Letter	Felder	Briefing	7/2/92	McGauley	none

Type	Author	Subject	Date	Addressee	Enclosures?
<b>RCRA - Remediation - PDA - General - 1992</b>					
Letter	GT Coyle	Draft Risk Ass't	2/22/93	JJ Cura	Assessment
Booklet	GZA	Closure Pd Risk...	1/93	Monsanto/Everett	none
Memo	B Powell	Deliniation	3/18/92	Brimer, Felder	none
Memo	RF Wilkinson	MCP Deadlines	3/9/92	Felder, Brimer	none
Memo	Brimer	Permits, value anal	2/28/92	Felder, Wilk	none
Memo	Brimer	RCRA site strat	2/20/92	Felder, wilk	HMM letter
Memo	Brimer	Zoning analysis	2/12/92	Westoby	91 analysis
Tables	GZA	Pot'l impact of remed	9/23/91	Brimer	none
Memo	Powell	Wetlands map	3/5/92	Felder	none
Document	Kastner/EPA	Cleanup program	2/28/92	--	none
Memo	Brimer	Corrective Action	3/3/92	Felder, Wilk	GZA mem2/2
Memo	Brimer	Deadlines for resp.	3/2/92	Felder, Wilk	GZA memo*
*Memo	Shaw/GZA	" "	2/27/92	Brimer	none
Memo	Brimer	Maps of remediation	2/27/92	McGuigan	maps
Letter	Okun/GZA	Discov:buried drums	2/13/92	Fitzgerald/dep	none
<b>RCRA - Remediation - PDA - General - 1986-1991</b>					
Letter	GZA	Drum area proposal	9/24/91	Brimer	charts
Memo	Brimer	Drum soil sample data	9/6/91	Felder	document
Document	Clean Harbors	Sample results	9/6/91	Peachey	none
Letter	Brimer	Drum area map	11/26/91	Haworth/EPA	maps
Memo	Brimer	Remediation revision	12/30/91	Felder	none
Memo	Brimer	Remediation	12/20/91	Felder	primer doc
Memo	DePagter	Grant/waste in pit	12/27/89	Cushing	none
Notes	--	"Scenarios"	n.d.	-	none
Document	--	Potential source areas	n.d.	--	maps
Handouts	--	"ID'd Potential Sources"	n.d.	--	map
Notes	==	"Scenarios"	n.d.	--	none
Letter	Cushing	DEQE Letter, "Delay"	5/16/89	Kunce/DEQE	letter
Memo	Cushing	Site Remedial Actions	8/23/89	Matteucci	none
Notes	--	Meeting w/Okun	n.d.	--	no
Letter	Kunce/DEQE	Resp: 5/16 letter	6/2/89	Dushney	no
Memo	Paradis	Anal S-409 Borings	8/3/89	Cushing	notes
Document	Dames & Moore	Site Rem. flow cht	n.d.	--	no
Memo	Cushing	Phone w/Stromberg	12/8/87	Dushney	no
Document	DEQE	HW Site Fact Sheet	12/87	--	no
News Art	Everett News	"Monsanto Ann'cs Cleanup"	4/2/87	File	no
Memo	Dushney	Phone: Kunce/DEQE	10/2/86	"Mike"?	no
Note	--	Boston Edison	n.d.	--	no
Notes	--	DEQE meeting	9/23/86	File	no
Memo	Dushney	Phone: Chalpin/ DEQE	7/10/86	File	no
Memo	Cushing	Test pit/Area S samp.	7/10/86	Doyle	no

Type	Author	Subject	Date	Addressee	Enclosures?
Memo	Schannon	Part I Action Plan	7/8/86	Dushney, Gheen	no
Letter	Chalpin/DEQE	Meeting w/Fair Share	7/24/86	Mier/FairShare	no
Memo	Dushney	Env't project update	6/18/86	Boesch	no
Letter	Sylva/DEQE	Dam Assessment	5/19/86	Geary	no
Notes	--	Summary: BCM findings	n.d.	--	no
Letter	FairShare	Monsanto Investig	4/27/86	Chalpin/DEQE	no
Notes	Paradis?	MDC Property	n.d.	--	no
<b>RCRA - Remediation - PDA - General - 1983-85</b>					
Photocopies of Photographs of site					
Memo	Marsh	Re: Rebutt to Complnt	n.d.	Foresman	letter
Letter	Bailey/Rollins	Rebuttal to Complaint	12/2/85	Marsh	no
Letter	Chalpin/DEQE	Conf'd HW site list	11/23/85	--	no
Proposal	Rollins ES	Malden R. Clean-up	4/2/85	Thompson	no
Memo	Kearney	Removal of PCBs	1/25/84	Foresman	mtg notes
Document	--	Specs: subsurf boring	7/16/83	--	no
Drawing	Monsanto Engr	5-year program	n.d.	--	no
Drawing	Monsanto Engr	Well, Test Pit Locs	n.d.	--	no
Drawing	"	Slurry Wall Loc	7/85	--	no
Drawing	"	Contam. Excav. Plan	3/87	--	no
Drawing	"	" Section Plan	3/87	--	no
Drawing	"	Level Monit Schem	3/87	--	no
Drawing	"	Cross Sections & Retaining Wall Design	3/87	3/87	no
Drawing	"	Cap Contour & Drainage Plan	3/87	3/87	no
<b>RCRA - Remediation - PDA - Cape Cod Area</b>					
Letter	Welsh	Phase II/Cape Cod Area	3/2/93	Babroudi/DEP	no
Memo	Welsh	C Cod Prelim Rpt: Draft	3/17/92	Faust	report
Memo	Talbot/GZA	C Cod Revised Schedule	3//9/92	Brimer	sched
Document	GZA	Phase II Scope of Work	11/91	--	no
Document	GZA	Phase II Scope of Work	10/91	--	no
<b>RCRA - Remediation - PDA - 409 Building - 1992</b>					
Memo	Welsh	PCBs in Soil	9/20/93	Felder, Faust	figures
Letter	Welsh	Plant Remediation	7/1/92	Parlin Library	minutes
Memo	Brimer	409 close: contr rev	2/5/92	Felder, Foresman	no
Memo	Pelrine	409: Safety Incidents	2/5/92	"	no
Document	--	Field Change Orders	1/22/92	--	no
Document	--	Field Change Orders	1/4/92	--	no
Document	GZA	Final Inspection Rpt	5/1992	Welsh	no

Type	Author	Subject	Date	Addressee	Enclosures?
<b>RCRA - Remediation - PDA - 409 Building - 1987-91</b>					
Agenda	--	Publ Info Mtg	8/13/91	--	no
Memo	C Russ	Clean-up Consideration	6/25/91	Brimer	no
Document	--	History of Plant Site			
Document	--	Bldg 409 Closure			
Document	--	Project Summary	n.d.		no
Document	--	Fact sheet: Waiver of Approvals for Non-Priority Sites	12/10/91		no
Document	--	Field Change Order	11/25/91	Craddock	no
Letter	Palermo/EPA	PCB Disposal	11/18/91	Brimer, Hanson	no
Letter	Craddock	PCB Remediation	11/13/91	Palermo/EPA	no
Letter	Craddock	PCB Remediation	11/13/91	Fonkem	GZA memo
Letter	Brimer	EPA Site Visit	11/13/91	Berry, et al	memo
Memo	Brimer	409 Remediation Mtg	8/21/91	Mccombs	Docs
Memo	Brimer	Publ Partic Plan	7/24/91	--	no
Document	--	Closure Activs/Draft	n.d.		no
Memo	Grundmann	Comments: GZA Report	4/5/91	Brimer	memo
Document	Godt	Statemtn: Contam Pot.	1/3/90	Paradis	no
Document	GZA	Phase III Plan Draft	10/89	--	no
Letter	Duggan, Chalpin	Case #3-0313	9/25/89	Cushing	no
Notes	Paradis?	Chemical Precursors	n.d.	--	no
Memo	Cushing	Future Site Work	2/3/89	Dushney	no
Letter	Chalpin/DEQE	409 Phase II Proposal	7/26/88	Cushing	no
Memo	Cushing	Mtg w/DEQE 1/11/88	1/12/88	Dushney, Paradis	no
Memo	Cushing	409 Building	12/9/87	Dushney	no
Letter	Cushing	Test Data, Boring Logs	9/3/87	Duggan/DEQE	no
Notes	Paradis?	Mtg w/ DEP	nd	--	no
Note	Paradis	DEQE Letter 9/25	n.d.	MAP	no
Letter	Chalpin/DEQE	Field Invest. Prop	4/28/87	Dushney	no
<b>RCRA - Remediation - PDA - Fund Property</b>					
Document	GZA	Scope of Work: PH I/Fund	11/91	--	none
Document	GZA	S of W: Phi Investg	10/91	--	none
Memo	Paradis	New Hot Spot Found	8/8/89	Pierle	maps, etc
Notes	Paradis	Mtg w/DEP: Fundland	3/16/90	--	no
<b>RCRA - Remediation - PDA - MBTA Property 1991</b>					
Letter	Welsh	Letter: Drum Investig	10/30/92	Haworth/EPA	no
Memo	Felder	MBTA Drum Site	9/17/92	Fort, et al	no
Letter	Haworth	MBTA Drum Site	8/31/92	Brimer	no
Memo	Haworth	Drum Site Eval.	8/10/92	EPA files	no
Letter	Welsh	Soil Testing Results	8/14/92	Haworth/EPA	no
Letter	Haworth	Summary of Results	7/8/92	Brimer	tables
Memo	Brimer	MBTA Drum Investig	4/21/92	Welsh, et al	no

Type	Author	Subject	Date	Addressee	Enclosures?
<b>RCRA - Remediation - PDA - MBTA Property 1991 (continued)</b>					
Letter	Wilkinson	Request for Access	3/26/92	Gonzales/EPA	doc
Memo	Cooper	Property Title	3/24/92	Vollmar	docs
Letter	Gonzalez/EPA	Req for Access	3/18/92	Wilkinson	form
Memo	Felder	MBTA Drums	3/16/92	Brimer, et al	no
Memo	Boesch	Drum Site	3/13/92	Tuley	no
Memo	Felder	Drum/Haworth Convers.	3/12/92	Boesch, et al	no
Document	GZA	Magnetic Survey Res.	3/13/92	Felder	no
Memo	Felder	Wilkinson/Access Agmt	3/12/92	Cahill	memo
Notes	Felder	EPA Scope	3/10/92	--	ltr, doc
Letter	Haworth/EPA	Cover for Documents	3/5/92	Felder	3 docs*
*Document	RW Weston, Inc	Request for Proposal	2/92		
*Document	" "	QA/QC Plan	2/92		
*Document	" "	Excav. Work Plan	2/92		
Memo	Felder	Drum Site Update	3/10/92	Boesch, et al	no
Memo	Wilkinson	Permits/EPA Response	3/10/92	Felder	no
Memo	Felder	Drum Site/Update	3/6/92	Boesch, et al	no
Letter/Fax	Krchma	Access	3/6/92	Felder, Brimer	fax
Letter	Haworth/EPA	Consent Agr/Rejection	3/6/92	Wilkinson	doc
Memo	Brimer	Drum Site Update	3/5/92	Wilkinson, et al	no
Notes	--	Weston-SPER	3/4/92	--	memo*
*Memo	Henderson	Req for Access	3/4/92	Boesch	no
Memo	Felder	Drum Site Update	2/20/92	Boesch, et al	no
Memo	Felder	Drum Site Update	2/15/92	Boesch, et al	no
Memo	Felder	Drum Site Update	2/14/92	Brimer, et al	no
Notes	Felder	Haworth Convers.	2/13/92	--	no
Notes	Felder	"No Evid. Drums Ours"	n.d.	--	no
Notes	Felder	MBTA	2/11/92	--	no
Docs	Brimer	EPA Soil Samp. Results	2/11/92	Felder, Wilksn	cover
Letter	Shaw/GZA	Doc'n of N Drums	11/22/91	Brimer	photos
Cover/doc	Brimer	Access Agreements	7/10/91	Weinberg/MBTA	docs
Letter	Brimer	Drum Removal	6/12/91	Stanton/EPA	no
Letter	Brimer	Access/Remove Drums	5/7/91	dePerro/MBTA	no
<b>RCRA - Remediation - PDA - Mystic View Area</b>					
Letter	Welsh	Phase II Investigns	2/3/93	Babroudi/DEP	no
Doc	GZA	Scope of Work - Ph II	11/91	--	no
Doc	GZA	Scope of Work - Ph II	10/91	--	no
<b>RCRA - Remediation - PDA - Plasticizer/Stormwater Lagoon - 1988</b>					
Document	GZA	Scope of Work - Ph II	10/91	--	no
Notes	--	Cleanup?	1/25/90	--	no
Document	--	Plasticizer Area: DeQE	3/8/[?]	--	no

Type	Author	Subject	Date	Addressee	Enclosures?
RCRA - Remediation - PDA - Plasticizer/Stormwater Lagoon - 1988 (continued)					
Memo	Cushing	Lagoon Closure	12/21/88	Paradis	no
Letter	Chalpin/DEQE	Lagoon Closure	11/4/88	Cushing	no
Memo	Cushing	Lagoon Closure Summary	6/24/88	Dushney	no
Memo	Cushing	Meeting w/DEQE	6/20/88	Dushney	no
RCRA - Remediation - PDA - Plasticizer/Stormwater Lagoon 1988-88					
Memo	Paradis/Cummings	Project results	4/8&15/88	Cummings/Paradis	no
Document	--	Prof's/indic'r subs	n.d.	--	no
Document	GZA	Phase II Ass't/V II	6/88	--	*
Document	GZA	Phase II Ass't/V I	6/88	--	no
RCRA - Remediation - PDA - Plasticizer/Stormwater Lagoon - 1987-87					
Cover ltr	Cushing	Scope of Work	9/1/87	Chapin/EPA	no
Memo	Yare	GZA Scope of work	8/3/87	Cushing, paradis *	
*Notes/doc	Yare?	Chngs to Scope of Work	7/28/87	"	no
Document	GZA	Scope of Work - Ph II	7/87	--	no
Cover/doc	Cushing	G'water Status Report	7/28/87	Chalpin/EPA	report
Cover/doc	Cushing	Well 5 Report	7/23/87	Chalpin	report
Notes	Paradis?	Lagoon Follow-up	n.d.	--	no
Notes	??	Lagoon Not RCRA Haz	n.d.	--	no
Notes	Paradis	Lagoon	n.d.	--	no
Notes	Paradis	Lagoon Closure	n.d.	--	no
Document	CDM	Proposal/Phase II	5/6/87	--	no
RCRA - Remediation - PDA - Plasticizer/Stormwater Lagoon - 1987-87					
Memo	Allen	Consent Order	5/29/87	File	no
Notes	Paradis	GZA Review	n.d.	--	no
Document	DEQE	Cons Ord/Note:Noncompl	6/5/87	Dushney	no
Doc/Draft	DEQE	"	n.d.	Dushney	no
Cover/doc	Bingham/DEQE	Consent Order	5/27/87	Dushney	order
Letter	Hanley/GEI	Investig. Proposal	5/6/87	Cushing	costs
Document	GEI	Draft Work Plan	5/6/87	--	no
Proposal	GZA	Assessment/Closure	5/1/87	Cushing	no
Memo	Allen	DEQE Draft Cons. Ordr.	4/30/87	Paradis, Pierle	no
Proposal	Weston	Phase II Study	4/30/87	--	no
Cover/doc	Bingham/DEQE	Draft Consent Order	4/23/87	Allen	doc
Notes	Paradis	Consent Order & Noncomp.	n.d.	--	no
RCRA - Remediation - PDA - Plasticizer/Stormwater Lagoon - 1987-87					
Notes	Paradis	DEQE Draft Consent	4/13/87	Pierle, Boesch	doc
Document	DEQE	Draft of Agreement	4/1/87	--	doc
Document	DEQE	Dfr: Order & Notice	4/1/87	--	no

Type	Author	Subject	Date	Addressee	Enclosures?
<b>RCRA - Remediation - PDA - Plasticizer/Stormwater Lagoon - 1987-87 (continued)</b>					
DOC	DEQE	Consent Order	n.d.	--	no
Doc	Weston	Task 1 Description	n.d.	--	no
Notes	??	Mtg: Lagoon	3/12/87	--	no
Letter	Chalpin	Visits of DEQE	3/11/87	Cushing	no
Document	OHM	Rpt: Analysis	3/30/87	Cushing	report
Document	OHM	Draft Proj Plan	1/16/87	--	no
<b>RCRA - Remediation - PDA - Waiver</b>					
News Artl	Leader-Herald	"Monsanto Continues.."	4/5/90	--	no
Notes	??	Greenbaum Present'n	4/5/91	--	no
Maps	--	Sewer Problems	n.d.	??	no
Handout	--	"Waiver" Phases	n.d.	--	no
<b>RCRA - 3007 - Questionnaire</b>					
<b>RCRA - UST</b>					
Cover/rpt	Brimer	Undergr. Storage Reslt	11/25/91	Moccia/EFD	report
Cover/appl	Brimer	Permit Application	8/21/91	Moccia/EFD	appl
Cover/doc	Brimer	Notif: Ung Storg Tanks	7/12/91	Moccia/EFD	notif
Memo	Hyland	Storage Tanks	5/27/87	Balan, etal	no
Document	Doyle	UST Lists	3/12/85	--	no
<b>RCRA - Remediation - PDA - Lagoon - 1984-86</b>					
Letter	Chalpin/DEQE	Plasticizer Recovery	11/14/86	Cushing	no
Memo	Cushing	Closure Summary	10/1/86	Foresman, Yare	no
Cover/doc	Wardwell/Jordan	Closure Alternatives	9/4/86	Cushing	doc
Notes	?	RCRA Status	6/27/86	--	--
Cover/doc	Wardwell/Jordan	Proposal for Design	6/11/86	Cushing	proposal
Cover/doc	Ertz/P Jordan	Proposl: Design of Ph 2	3/29/85	Doyle	proposal
Handout	--	"Lagoon Closure"	n.d.	--	no
Agenda	--	Closure Design Meeting	3/13/85	--	handouts
Letter	Summer/P Jordan	Samp Colln/Treat Design	3/7/85	Doyle	no
Letter	Zell	Req: Design Package	2/8/85	Ertz/P Jordan	schedule
Notes	MRF	Groundwater Contamination	1/31/85	--	no
Document	--	Addendum to Program	n.d.	--	no
Notes	--	Final Report Review	7/9-13/84	--	no
Document	CED	Project Definition	4/4/84	Yare, etal	n
Memo	Yare	Phase II Design Study	10/22/84	Foresman	no
Document	P Jordan	Phase I Closure Pgm	8/84	--	no
Memo	Yare	Proposal Review	1/24/84	Foresman	docs
Proposal	P Jordan	Revised Proposal	1/17/84	Doyle	proposal

Type	Author	Subject	Date	Addressee	Enclosures?
<b>RCRA - Remediation - PDA - Riverbank - 1985</b>					
Memo	Dushney	Community relations	4/1/86	Shannon	no
Memo	Schannon	Community attitude survey	3/18/86	Dushney, Hebert	no
NewsBcst	Channel 7	"Nervous People in Ever"	3/27/86	--	no
NewsBcst	WRUR-Fm	"Extremely High PCBs"	3/27/86	Allen, etal	docs
Cover/doc	Collins	Preparedness Material	3/6/86		
<b>RCRA - Remediation - PDA - Riverbank - 1979-84</b>					
Letter	Chalpin/DEQE	Waste Disposal & Contam.	10/25/84	Thompson	guidelines
Letter	Kufs/P Jordan	Cost Ests: Soil Samp/Test	10/10/84	Fitzgerald	no
Document	EPA	Consent Agmt & Order	6/18/84	Monsanto	no
NewsArtl	?	Public Hearing: Cleanup	7/9/84	--	no
Invoice	Rollins	Riverbank Cleanup	7/17/84	--	docs
Letter	CECOS	Odor Emissions	6/7/84	Rollis	no
Cov/Rpt	Kufs/P Jordan	Drum Samples Data	5/21/84	Greene/Rollins	report
Letter	Shuler/Rollin	DEMETER as Subcontractor	5/7/84	Foresman	no
Memo	Foresman	Cleanup Status	4/26/84	Papageorge	no
Document	DEQE	Consent Agreement & Order	n.d.	--	no
Memo	Foresman	Soil Sampling Discussion	2/21/84	Doyle	no
Map	--	Plant Dump/Misc Junk	--	--	no
Map	--	Water Table Contours	10/19/79	--	no
Table	--	Compounds in Groundwater	10/19/79	--	no
<b>RCRA - Remediation - PDA - Thermal Furnace - 1988</b>					
Letter	Dushney	Excess Soil Disposal	2/12/88	McBride/OHM	no
News Artl	Leader-Herald	"M. Compl's Slurry Wall"	1/21/88	--	no
News Artl	Everett News	"M. Compl's Slurry Wall"	1/21/88	--	no
<b>RCRA - Remediation - PDA - Thermal Furnace - 1987</b>					
Memo	Boesch	DEQE Agrees with Plan	3/10/87	Corbett	no
Letter	Chalpin	Cond'l Approval of Draft	3/3/87	Cushing	no
Cover/ltr	Paradis	Authorization from DEQE	6/5/87	Pierle	letter
Letter	Chalpin/DEQE	Apprv: Slurry Wall Plan	5/27/87	Dushney	no
Cover	Paradis	Apprv: Wall Plan Draft	3/12/87	Boesch, Pierle	letter
Letter	Chalpin/DEQE	Apprv: Wall Plan Draft	3/3/87	Cushing	no
Letter	Chalpin	Apprv: " "	" "	" "	"
Ltr/final	Cushing	Slurry Wall Proposal	1/29/87	Chalpin	proposal
Letter	Chalpin	Permit Issues	3/3/87	Cushing	doc
Draft Plan	O.H. Materials	Slurry Wall and Cap Cnstr	1/16/87	--	no
Drft ltr	Cushing	Slurry Wall Proposal	1/29/87	Chalpin	no
Memo	Foresman	MA Ch. 21E & Quest. #4	1/12/87	Fort, Shannon	no
Report	OHM	Organic Liquid Analysis	1/12/87	--	no
Memo	Cushing	Wall & Cap Installation	10/9/87	Dushney	no



Type	Author	Subject	Date	Addressee	Enclosures?
<b>RCRA - Remediation - PDA - Thermal Furnace - 1987 (continued)</b>					
Notes	--	Slurry Wall & Cap	9/11/87	--	no
Letter	Cushing	Final Design Documents	3/31/87	Chalpin	no
Letter	Cushing	Workplan for PCB Soils	3/31/87	Chalpin	doc
Letter	McMaster/OHM	Compatibility Testing	3/25/87	Cushing	no
Letter	Quinn/HTS	conduct's Test	3/17/87	McMaster/OHM	results
Letter	Haag/OHM	Draft Work Plans	1/16/87	Cushing	no
<b>Remediation -PDA - Therminol Furnace - 1985-86</b>					
Memo	Cushing	PCB:Heat Transfer Sys-7/78	7/10/86	Foresman	docs
Memo	Siebecker	Review of Design	12/19/86	Chalpin	no
Notes	?	Cut-off Wall	n.d.	--	no
Letter	Graziano/OHM	Proposal for Wall	11/24/86	Dayton	no
Report	OHM	Draft of Design Investig	11/7/86	--	no
Handouts	OHM	Site Alts to Remed	n.d.	--	no
Cov/rprt	Jouzaitis/EPA	Inspection Report/PCBs	9/5/86	Doyle	report
Specs	OHM	Draft Conds/Specs	10/3/86	--	no
Letter	Brod/BCM	Soils Testing Results	7/31/86	Cushing	no
Logs	BCM	Test Boring Logs	5/86	--	no
Report	?	Prelim. Soil Test Analys	6/86	--	no
Letter	Haag/OHM	Prop: Closure Plan Dev	7/2/86	Cushing	no
Cover/	Foresman	PCB Remedial Action Plan	6/10/86	Craddock, Yare	no
Letter	Brod/BCM	Subsurface Characteriz'n	5/8/86	Cushing	no
Letter	Brod/BCM	Res: PH 2 Soil Sampling	5/7/86	Cushing	no
Letter	Brod/BCM	Props: Soil Encapsulation	5/2/86	Cushing	no
Letter	Brod/BCM	Ph 2 Soil Sampling Plan	2/10/86	Cushing	no
Cov/Rprt	Ertz/P Jordan	Therminol 66 Sample Res.	3/6/85	Doyle	boring logs report
<b>RCRA - Remediation - PDA - Tidal Flats</b>					
Handouts?	--	Boring Impact/Analysis	n.d.	--	no
Note	Staples	Tidal Flats Soil Data	5/8/87	Paradis	no
Memo	Staples	Implementation Ass't	1/28/87	Cushing	no
Memo	Staples	Add'l TF Assessment	11/20/86	Cushing	maps
Report	Staples, Adams	TF Area Assessment	10/6/86	--	no
Cover/rep	Cushing	Tidal Flat Test Results	8/6/86	Chalpin	report
Letter	Brod/BCM	Soil Sampling Results	8/4/86	Cushing	map, chart
Letter	Brod/BCM	Soil Sampling Results	7/8/86	Cushing	map, chart
<b>Sale</b>					
Cover/res	Waldbeser	Soil Survey Results	1/11/92	Stohr	survey

Type	Author	Subject	Date	Addressee	Enclosures?
SARA -- General Memo Letter	Cushing Cushing	MBTA Railroad Easement Notify:Emergency Planning	4/8/87 9/9/87	Cooper McCarthy	map no
<b>Water - General</b> Letter Memo Certificate DEQE NewsArtl NewsArtl Report Memo Letter Report NOAA Map	Brimer Brimer B. Globe B. Globe BCM Labs Zell Ertz/P Jordan Lin/ETC	Phase I - Low Ph Event Wetlands Inventory Inspection "Troubled Waters in N.B." "Mass PRIG Says Will Sue" Test Results Aqueous Waste Treatment Soil/Phthalate Analysis Comp:Salt Water Disch Pts Boston Inner Harbor	7/22/91 10/28/91 1987 4/23/87 3/11/87 12/15/86 3/21/85 1/22/85 10/6/83	Imerman/DEP Felder, Powell -- Brod Bright Doyle --	no no -- no results no
<b>Water - Groundwater - General</b> Memo Letter Proposal Proposal Minutes Proposal Memo	DePagter Doyle Gwat. Tech GWat. Tech Marsh GWat. Tech Mieure	Mtg w/Mrs. Grant GTech Proposal Pilot Testing:Plast. Rec. Hydrocarbon Recovery-Init Plasticizer Meeting Hydrocarbon Recovery Dames & Moore Report	4/2/90 5/30/86 5/5/86 4/10/84 4/10/84 3/23/84 5/13/83	File Chalpin DEQE Doyle Doyle Thompson, etal Doyle Foresman	no Proposal no no none no no
<b>Water - Groundwater - Hydrogeology</b> Report Memo	Dames & Moore Waldbeser	HydroGeo Survey HydroGeo Survey: Recomm	2/12/82 3/20/81	-- Newcomber	no map
<b>Water - Groundwater - Monitoring 1990</b> Proposal	GZA	Monit Well Maint Actvys	7/5/81	Brimer	Tables, map
<b>Water - Groundwater - Monitoring 1987-89</b> Report Final Rpt Tables Cover ltr Report Letter	GZA GWat. Tech ETC Cushing BCM GWat. Tech	Sitewide GWater Samp/Anal Well 5 Monitoring Pgm Base/Neutral Compounds GWater Sampling Results GWater Sampling Results Investigation Results	8/89 1/88 4/27/87 2/26/87 2/20/87 1/8/87	-- -- Chalpin Cushing Doyle	no no no report no Docs

Type	Author	Subject	Date	Addressee	Enclosures?
<b>Water - Groundwater - Monitoring - 1986</b>					
Letter	GTech	Lagoon Investig Results	9/4/86	Doyle	no
Map, Chrts	GTech	GWATER Well Monitoring	7/17/86	--	tables
Letter	BCM	GWATER Chemistry Data	8/7/86	Cushing	results
Letter	BCM	Tentatively ID'd Compds	8/4/86	Cushing	tables
Letter	BCM	2nd Set: Data	7/22/86	Cushing	tables
Letter	BCM	Monitoring Well Constr	6/5/86	--	
Tables	BCM	Concen's: Organic Compds	n.d.	--	
docs	-	Well Monitoring	?	-	
<b>Water - Groundwater - Monitoring - 1986</b>					
Cover ltr	BCM	Add'l GWATER Sampling	3/26/86	Cushing	Workplan
Letter	BCM	Status Report	3/19/86	Cushing	no
Notes (7pgs) --	--	Site Assessment	1/14/86	--	no
Letter	BCM	Status Report	3/25/85	Yare	no
Letter	BCM	Status Report	4/10/85	Yare	no
Letter	BCM	Status Report	5/7/85	Yare	no
Letter	BCM	Drum Incident Report	5/29/85	Yare	no
Letter	BCM	Status Rpt: Evt'l Assmt	6/26/85	Yare	logs
Chart	--	Init. Site Eval.	n.d.	-	-
Report	BCM	GWATER/Soil Investig Mtg	11/12/85	-	notes, tables
Letter	BCM	Status Report	7/19/85	Yare	no
Cover ltr	BCM	GWATER Ass't Tables	11/22/85	Foresman	tables
Letter	Yare	G'water Investigation Ltr	7/1/85	Brod	no
Xmittal	BCM	Re: Various Documents	5/23/85	Doyle	no?
Maps, charts	BCM	Monitor Wells/Test Pits	7/86	--	
Letter	BCM	Site Investigation	7/12/85	Chalpin/DEQE	Tables
Handouts	-	Mtg 3/4/86	4/3/86	--	
Document	-	Sampling Plan, Well W-5	n.d.	-	maps
Document	-	Sampling Plan, Tidal Flats	n.d.	-	maps
Document	-	Sampling Plan, Plast'r	n.d.	-	maps
<b>Water - Groundwater-- 1986</b>					
Report	BCM	"Report on Soils and Groundwater"	2/86		no
Report	BCM	"Report on Soils&G'water: Appendices	2/86		no
<b>Water - Groundwater - Order</b>					
Proposal	GZA	Tech Svcs: Invest, Remed	7/91		
Document	DEQE	Consent Ordr/Note:Noncomp	6/4/87	Dushney	
Document	DEQE	Disposition & Order:			
		Prob Eval&Guidance-Draft	n.d.	--	

Type	Author	Subject	Date	Addressee	Enclosures?
Water - Groundwater - Remediation					
Memo	Welsh	Recycl Plastics	8/18/93	Felder, etal	no
Memo	Welsh	RCRA Applicability	8/18/93	Felder, etal	no
Cover ltr	Brimer	CleanHarbors Soil Anal	9/11/91	Haworth	no
Water - Permits - Groundwater - General					
Applic		Permit:Disch to Ground	4/17/80(?)		
Letter	McMahon	Class III Groundwater Des	10/9/85	Thompson	no
Letter	Thompson	Class III GWater Desig'n	12/24/84	McMahon	
Memo	White/DEQE	GW Disch Permit	10/7/85	Chaplin	no
Water - Permits - NPDES - General - 1990					
Cov ltr	Welsh	BMP Plan	1/29/93	MDWPC	doc
Cover ltr	Brimer	Info Re: "Vault"	3/6/92	Friedmann	no
Letter	Richards	CZM Policies	2/19/92	Vergara	no
Letter	Lavery/EPA	Needs a BMP	5/17/91	Henderson	no
Cover ltr	Brimer	Copy of BMP	5/28/91	Lavery/EPA	no
Announcement		\$1 Million Settlement	1/10/91		
Letter	Hale & Dorr	Settlement Agreement	4/6/90	Lehan/EPA	no
Cover ltr	Hale & Dorr	NOAEL Draft Letter	3/5/90	EPA Legal	ltr
Water - Permits - NPDES - Stormwater					
Cov let	Brimer	Inq: Stormw Disch Appl	1/29/93	EPA	ltr
Cov let	Richards	" " "	9/14/92	EPA	docs
Docs	EPA	Stormwater Program	3/92		
Letter	Richards	Dry & Wet Weather Disch	6/5/92	Vergara/epa	no
Letter	Mason	Monsanto Fund Property	1/13/92	Vergara/epa	no
DOC	EPA	Stormw Permit Appl	1/6/91	Richards	no
cov mem	Brimer	Drift Stw Perm Appl	10/17/91	Felder, Smith	doc
Not within a file.					
WWGL #3 - Groundwater assessments - 1986					
Report	ESC	Prelim GW Assessment	4/15/86		
Map	-	MDC Beaches			
WWGL #3 - Groundwater Assessments - 1985					
Report	BCM	GW Soil Investig Mtg	11/12/85		
Cov let	BCM	GW - GeoPhys Report	12/9/85	Cushing	report
Letter	Doyle	GW Investigation	6/28/85	Chalpin	no
Maps	BCM	GW Assessment		2/86	--
Doc	BCM	Supplemental Info	5/30/85		--
Cov let	BCM	Info Packet/Plan Suppl	5/30/85	Chalpin	no

Type	Author	Subject	Date	Addressee	Enclosures?
Doc	GED	Gw Investig/Dist of Chgs	5/21/85	Yare, et al	no
Letter	Yare	BCM Selected	1/24/85	ERT inc	no
Letter	Yare	BCM Selected	1/24/85	BCM	no
Letter	Yare	BCM Selected	1/24/85	G & M	no
Cover let	BCM	Reference Proposal	1/11/85	Doyle	proposal
<b>NWGL #3 - Groundwater Assessments - 1983-84</b>					
Cover mem	Foresman	Groundwater RFP		12/19/84	Allendoc
Memo	Papageorge	Phthalates Review Meeting	7/11/83	Foresman, et al	-
Memo	Mieure	Dames & Moore Report	5/13/83	Foresman	no
Memo	Foresman	Assm't Presentation	5/10/83	Woo	no
Doc	Doyle	GW Impact Assessment	5/5/83	-	no
Memo	Foresman	GW Review	4/28/83	Doyle	no
Notes	-	GW Presentation	4/23/83	-	overheads
<b>NWGL #3 - Groundwater Protection Plan</b>					
Notes	Paradis?	Conv. w/Chalpin??	10/27/87	-	-

SUBJECT	AUTHOR	DATE
<u>Therminol Furnace Area</u>		
Health and Safety Plan Operation & Maintenance Plan Soil Sampling Plan, Bldg. 409 Therminol Furnace Area	HMM Associates, Inc.	12/93
Special Conditions & Technical Specifications for Slurry Wall & Cap at Everett Station Plant	O.H. Materials Corp.	03/87
Groundwater Sampling Therminol Furnace Area	GZA GeoEnvironmental	09/88
Operation and Maintenance Report Stormwater/Process-Water Lagoon, Bldg. 409, Therminol Furnace Area	HMM Associates, Inc.	08/93
Quality Assurance/Quality Control Manual for Slurry-Wall and Cap Construction at Monsanto's Everett, MA Plant	O.H. Materials, Corp.	03/87
<u>Stormwater Lagoon Area</u>		
Lagoon Closure Report	E. C. Jordan (Perkins Jordan)	08/84
Lagoon Closure Specifications	GZA GeoEnvironmental	09/88
Lagoon Closure	GZA GeoEnvironmental	01/89
Pre-Design Studies and Final Remedial Action Plan Plasticizer/Stormwater Lagoon	GZA GeoEnvironmental	09/88
Conceptual Remedial Action Plan Plasticizer/Stormwater Lagoon	GZA GeoEnvironmental	07/88
Health and Safety Plan	ENRAC Division Chemical Waste Mgmt. Inc.	None

SUBJECT	AUTHOR	DATE
Conceptual Scope of Work Plasticizer/Stormwater Lagoon Phase II Site Assessment	GZA GeoEnvironmental	07/87
Final Report for Stormwater Lagoon Closure at Monsanto's Everett, MA Facility	O.H. Materials Corp.	09/88
Plasticizer Lagoon Closure Program Phase I: Site Characterization & Engineering Feasibility Study	Perkins Jordan Co.	None
Scope of Work Plasticizer/Stormwater Lagoon Phase II Site Assessment	GZA GeoEnvironmental	08/87
Project Plan for Stormwater Lagoon Closure at Monsanto's Everett, MA Plant	O.H. Materials Corp.	02/87
<u>409 Area</u>		
Scope of Work - Building 409 Phase II Site Assessment	GZA GeoEnvironmental	12/87
Monsanto 409 Building Area Phase III-Short Term Measure Implementation Plan	GZA GeoEnvironmental	10/89
Monsanto 409 Building Area Phase III-Final Remedial Response Plan	GZA GeoEnvironmental (Rev.)	08/89 10/89
Health and Safety Plan Operation and Maintenance Plan Stormwater/Process-Water Lagoon, Bldg. 409, Therminol Furnace Area	HMM Associates, Inc.	07/93
Notice of Award Clarification Request for Bldg. 409 Closure	Perland Environmental	08/91

SUBJECT	AUTHOR	DATE
Monsanto 409 Building Closure -Health and Safety Plan -Deliverables for Public Hearing -Miscellaneous	Perland Environmental	08/91
Construction Manual 409 Building Remediation Monsanto Facility	GZA GeoEnvironmental	08/91
Preliminary Field Investigation of the 409 Bldg. at the Monsanto, Everett Facility - Final Report	O.H. Materials Corp.	08/87
<u>Site-Wide</u>		
Phase I - Preliminary Assessment and Site Inspection Report	Wehran Engineering	03/87
Review of the BCM February 1986 Report & Other Documents Regarding Monsanto Industrial Chemical Company	Wehran Engineering	06/86
Phase I Environmental Site Assessment February 1990 Low pH Event	GZA GeoEnvironmental	06/91
Site-Wide Groundwater Sampling and Analysis	GZA GeoEnvironmental	08/89
<u>Manufacturing Area</u>		
Preliminary Water Supply Evaluation	GZA GeoEnvironmental	01/90
Health and Safety Plan	GZA GeoEnvironmental	03/90
Report - Hydrogeologic Survey for the Eastern Property of Monsanto Industrial Chemicals Co.	Dames & Moore	02/82
Material and Waste Handling from Discussions with Employees	GZA GeoEnvironmental	07/92



SUBJECT	AUTHOR	DATE
Documentation Report Underground Tank Closure	GZA GeoEnvironmental	08/93
Site No. 3-4425 Waiver Submittal Scope of Work - Phase II Site Investigation, Manufacturing Area	GZA GeoEnvironmental	09/93
Hydrogeologic Survey	Dames & More	01/80
<u>North Fill Area</u>		
Scope of Work - Phase II Site Investigation - Site No. 3-4225 Waiver Submittal-North Fill Area	GZA GeoEnvironmental	09/93
Monsanto Chemical Company North Drum Area Test Pit Excavation Report	GZA GeoEnvironmental	10/92
Phase II Risk Characterization Scope of Work Monsanto Company Uplands Area (Manufacturing, North Fill, Plasticizer and Well 5 Areas) DEP Site Nos. 3-0313 and 3-4425	GZA GeoEnvironmental	12/93
<u>Plasticizers Area</u>		
Additional Phase II Field Activities Monsanto Plasticizer Area (Site No. 30-03 13) Waiver Submittal to Site File	GZA GeoEnvironmental	09/92
Method Documentation and Development Analysis of Phthalate & Adipate Testers in Soil, Sediment & Water Samples from the Plasticizer Lagoon	GZA GeoEnvironmental	05/88
Plasticizer Recovery Feasibility Study	Groundwater Technology	02/87
Plasticizer Biodegradation Study	GZA GeoEnvironmental	11/90

SUBJECT	AUTHOR	DATE
<u>Mystic View Area</u>		
Add'l Phase II Field Activities Monsanto Mystic View Area (Site No. 30-313) Waiver Submittal to Site File	GZA GeoEnvironmental	09/92
Mystic View Area Preliminary Hydrogeologic Investigation	GZA GeoEnvironmental	10/89
<u>Cape Cod Area</u>		
Scope of Work Phase II Site Investigation Cape Cod Area Monsanto Everett facility Site No. 3-0313 Waiver Submittal	GZA GeoEnvironmental	11/91
Add'l Phase II Field Activities Monsanto Cape Cod Area (Site No. 30-0-13) Waiver Submittal to Site File	GZA GeoEnvironmental	09/92
<u>Fund Land Area</u>		
Scope of Work Phase I Limited Site Investigation Fund Land Area	GZA GeoEnvironmental	11/91
Scope of Work Phase II Site Investigation Fund Land Area Monsanto Everett Facility Site No. 3-4200 Waiver Submittal	GZA GeoEnvironmental	02/93
<u>Miscellaneous</u>		
Environmental Assessment of Permanent Easement Area Draw No. 7 Replacement	GZA GeoEnvironmental	10/86
Draw No. 7 Replacement Monsanto Trackwork Soil Sampling Data Report	GZA GeoEnvironmental	10/86

SUBJECT	AUTHOR	DATE
Conclusions and Recommendations Draw 7 Replacement Recommendations for Monsanto Trackwork	GZA GeoEnvironmental	10/86
Detour Tract Excavation Stockpiles Chemical Analyses Results MBTA Contract No. C0CNO8 Draw No. 7 Replacement Somerville and Everett, MA	Geotechnical Engineers	None
Sediment Sampling/Testing Draw No. 7 Replacement Somerville/Everett, MA	GZA GeoEnvironmental	02/86
Stockpiled Monsanto Drainage Swale Soils Chemical Analyses Results MBTA Contract No. C0CNO8 Draw No. 7 Replacement Somerville & Everett, MA	Geotechnical Engineers	None
Surface Soil Sampling/Environmental Assessment Draw No. 7 Replacement Somerville/Everett, MA	GZA GeoEnvironmental	02/86
Wooden Railroad Ties Chemical Analyses Results MBTA Contract No. C0CNO8 Draw No. 7 Replacement Somerville/Everett, MA	Geotechnical Engineers	None
Saugus Branch Stockpiled Soils Chemical Analyses Results MBTA Contract No. C0CNO8 Draw No. 7 Replacement Somerville/Everett, MA	Geotechnical Engineers	None
Rehabilitation, Repair and Replacement of Existing Sewers	Hoyle, Tanner, & Asso.	09/84
Chemical Analysis Results Excavated Soils from Piers 20,21,22 MBTA Contract No. C0CNO8 Everett, MA	Geotechnical Engineers	03/88

SUBJECT	AUTHOR	DATE
Monsanto Everett Site Phase II Scope of Work Waterways Risk Assessment Site No. 3-0313, Waiver Submittal	GZA GeoEnvironmental	None
Wetland Delineation	GZA GeoEnvironmental	10/91
Sampling and QA/QC Plan Sediment Sampling of the Mystic, Malden, and Island End Rivers	Wehran Engineering Corp.	11/87
Massachusetts Fit Contract Draft Field Investigation Report A Study of the Mystic, Malden, & Island End Rivers in Everett, Charlestown, Somerville, Malden, Medford, and Chelsea, MA	Wehran Engineering Corp.	06/88
Massachusetts Fit Contract Draft Record Search for A Study of the Mystic, Malden, & Island End Rivers in Everett, Charlestown, Somerville, Malden, Medford, and Chelsea, MA	Wehran Engineering Corp.	08/87
Scope of Work - Phase II Site Investigation Well 5 Area Monsanto Everett Facility Site No. 3-0313 - Waiver Submittal	GZA GeoEnvironmental	08/92
Mystic View Area Supplemental Environmental Studies, Everett, MA Draft	GZA GeoEnvironmental	08/90
Facility Assessment for the Monsanto Everett Site	Geraghty & Miller, Inc.	04/93
Lagoon Project - File		
409 Bldg. Borehole Exploration Program	GZA GeoEnvironmental	02/88
Geophysical Investigation Site Groundwater Assessment	BCM	12/85

SUBJECT	AUTHOR	DATE
Facility Assessment for the Monsanto, Everett Site	Geraghty & Miller	04/93
Phase II Comprehensive Site Assessment, Cape Cod Area	GZA GeoEnvironmental	02/93
Phase II Comprehensive Site Assessment, Mystic View Area	GZA GeoEnvironmental	02/93
Phase II Comprehensive Site Assessment, Plasticizer Area	GZA GeoEnvironmental	03/93
Phase I Limited Site Investigation Manufacturing Area	GZA GeoEnvironmental	03/93
Phase I Limited Site Investigation North Fill	GZA GeoEnvironmental	03/93
Phase II Comprehensive Site Assessment, Well 5 Area	GZA GeoEnvironmental	12/92
Scope of Work Phase II Site Investigation, Plasticizer Area	GZA GeoEnvironmental	10/91

Box I	FILES PREVIOUSLY SENT	Date
Site-Wide Groundwater Sampling and Analysis, 1990 Sampling Round	GZA GeoEnvironmental	03/91
Phase II Comprehensive Site Assessment Well 5 Area Monsanto Co., Everett, MA Site #3-0313 Waiver Submittal Volume I of II Volume II of II	GZA GeoEnvironmental	03/93
Phase II Assessment Plasticizer/Stormwater Lagoon Everett, MA	GZA GeoEnvironmental	06/88
Phase II - Comprehensive Site Assessment, Plasticizer Area Monsanto Co., Everett, MA Site #3-0313 Waiver Submittal Volume I of III Volume II of III Volume III of III	GZA GeoEnvironmental	03/93
Environmental Site Assessment Everett Cogeneration Plant Site	WCM Group	None
Groundwater Sampling Analysis Results	BCM	04/86
Report of Soils and Groundwater	BCM	02/86
Geophysical Investigation Site Groundwater Assessment	BCM	12/85
Phase I - Limited Site Investigation Manufacturing Area Monsanto Facility, Everett, MA Volume I of II Volume II of II	GZA GeoEnvironmental	03/93
Phase I - Limited Site Investigation North Fill Area Monsanto Facility, Everett, MA	GZA GeoEnvironmental	03/93

**FILES PREVIOUSLY SENT**

**Box II**

Phase II - Comprehensive Site Assessment, Mystic View Area Monsanto Co., Everett, MA Site #3-0313 Volume I of III Volume II of III Volume III of III	GZA GeoEnvironmental	02/93
Phase II - Comprehensive Site Assessment, Cape Cod Area Monsanto Co., Everett, MA Site #3-0313 Waiver Submittal Volume I of III Volume II of III Volume III of III	GZA GeoEnvironmental	02/93
1992 Site Wide Groundwater Monitoring Round Monsanto Co., Mystic View Road Everett, MA Volume I of II Volume II of II Volume II - Site-Wide Groundwater Sampling & Analysis	GZA GeoEnvironmental	05/93
Monitoring Well Maintenance Activities	GZA GeoEnvironmental	Summer 1991 Spring 1992 05/88
Final Report for Slurry Wall and Cap Construction at Monsanto, Everett, MA Plant	P.H. Materials	
409 Building Area - Phase IV Report - Remedial Response Implication Plan	GZA GeoEnvironmental	05/91

**FILES PREVIOUSLY SENT**

**Box III**

Monsanto 409 Building - Phase II Site Investigation Everett, MA Volumes I and II	GZA GeoEnvironmental	02/89
Project Plan for Slurry Wall and Cap Construction at Monsanto, Everett, MA Plant	O.H. Materials	01/87
Former Plasticizer/Stormwater Lagoon Closure Report Monsanto Co., Everett, MA	GZA GeoEnvironmental	10/90
Site-Wide Groundwater Sampling & Analysis - 1991 Sampling Round Volume I of II Volume II of II	GZA GeoEnvironmental	06/92
Phase I - Limited Site Investigation Fund Land Area - Monsanto Facility Site #3-0313, Everett, MA	GZA GeoEnvironmental	07/92
Groundwater Sampling - Therminol Furnace Area	GZA GeoEnvironmental	11/89
409 Bldg.-Borehole Exploration Program	GZA GeoEnvironmental	02/88
Monsanto Chemical Co. - 409 Area Phase I Site Investigation Report and Proposed Phase II Site Evaluation Work Scope	GZA GeoEnvironmental	03/88



**Maps**

December 1992 - Closed Areas

August 1993 - Topographic Plan

August 1993 - Unconfirmed Potential Impacts

August 1993 - Primary Impacts Identified To Date

August 1993 - Sub Area Boundaries

June 1991 - Wetland Resources Plan

July 1992 - Site Buildings and Uses - 1930-1992

March 1989 - Plant Utilities Composite Underground



Solutia Inc.  
10300 Olive Boulevard  
P.O. Box 66760  
St. Louis, Missouri 63166-6760  
Tel 314-674-1000

February 9, 1999

Mr. Alan J. Bellis  
DDRC  
34555 Chagrin Boulevard  
Chagrin Falls, OH 44022

VIA FACSIMILE  
(440) 247 - 1118

Dear Alan:

This letter is in response to your January 22 transmittal of a January 20 proposal from David V. Lewin Corp., DDRC's geotechnical engineer, to conduct a boring program on the Everett, MA, site.

Solutia agrees to the proposed program, subject to the following:

1. The work shall not be performed until after the sale of the property is closed.
2. Before the work, an "LSP Opinion" (accompanied by a certification from DDRC) will be submitted to the DEP, with a copy to Solutia, to address this exception to the prohibition against "excavation, penetration or disturbance" in the "Manufacturing" Activity and Use Limitations (AUL).
3. Consistent with the Manufacturing AUL, the work will be performed in accordance with appropriate "health and safety" and "excavation management" plans.
4. The results of "Phase I" of the boring program will be provided to Solutia, along with, if necessary, a revised "Phase II" program for our agreement before DDRC proceeds.

Sincerely,

G. M. Rinaldi

cc: M. B. Cody  
M. R. Foresman



GEOTECHNICAL ENGINEERING

Suite 540 Caxton Building · 812 Huron Road · Cleveland, Ohio · 44115-1126

RECEIVED

JAN 22 1999

Planning / Development

TELECOPIER TRANSMITTAL

DATE: January 20, 1999

TO: Alan Bellis

cc: Chase Int'l. 617-387-3100  
Jaworski Geotech 603-647-4432

COMPANY: Developers Diversified Realty Corp.

FAX NO.: 440-247-5341

FROM: Alvin Jaffe

REF: Gateway Center

C. NO.: 5630

Number of pages to follow: 3

COMMENTS:  For Your Information  For Your Review  Please Comment

Enclosed is a summary of proposed test boring locations and depths. Except for boring L-8, the borings are intended to help clarify the stratification and properties (after laboratory tests on the samples obtained) of the material underlying the site, including depth to rock and till. The second phase of drilling will of course be dependent on the results obtained in the first.

The direct telecopier No. is 216-696-8154

If you do not receive all of the pages indicated above, or there is a problem during transmission, please call our office at 216-696-8151. Thank you.

CONFIDENTIALITY STATEMENT

PRIVILEGED AND CONFIDENTIAL - The Sender of this facsimile intends that the contents hereof are to be communicated only to the person to whom it is addressed. This facsimile may contain information that is privileged, confidential and/or otherwise exempt from disclosure under applicable law. If the recipient of this facsimile is not the person to whom it is addressed, or the individual responsible for the delivery of this facsimile, then dissemination, distribution or reproduction of the information contained herein is prohibited. If you received this facsimile in error, please notify Sender immediately by telephone at (216) 696-8151, collect, and promptly destroy the original transmission. We thank you for your assistance and apologize for any inconvenience this may have caused you.

Gateway Shopping Center  
January 20, 1999

Everett, Massachusetts

C.5630

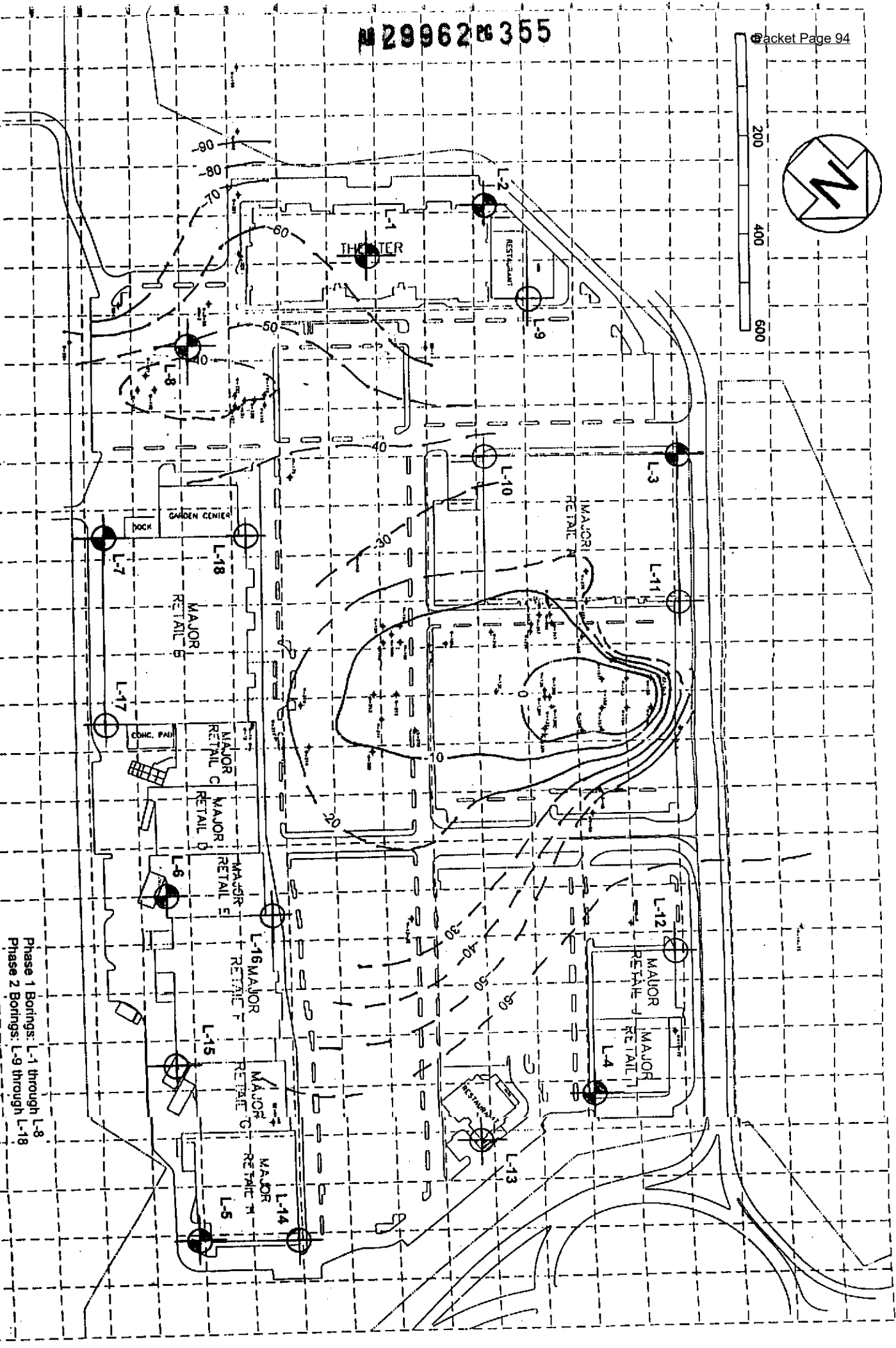
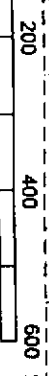
Proposed Boring Locations

Boring	N	W	MSL Elevation	Rock Estimate	Depth to Rock Estimate
<b>PHASE 1</b>					
L-1	1485	2185	11.0	-70	85
L-2	1385	2423	12.5	-90	105
L-3	1904	2808	12.0	-60	75
L-4	3228	2613	12.0	-70	85
L-5	3514	1787	14.0	-70	85
L-6	2800	1752	11.5	-40	55
L-7	2056	1636	10.0	-40	50
L-8*	1670	1820	9.0	-15	25
<b>SUBTOTAL</b>					<b>565</b>
<b>PHASE 2</b>					
L-9	1578	2509	10.0	-80	90
L-10	1904	2414	11.0	-40	55
L-11	2210	2808	13.0	-50	65
L-12	2939	2782	14.5	-70	85
L-13	3319	2374	14.5	-70	85
L-14	3514	1993	15.0	-70	85
L-15	3145	1762	13.0	-60	75
L-16	2845	1964	12.0	-40	55
L-17	2445	1636	12.0	-40	55
L-18	2056	1929	10.0	-35	45
<b>SUBTOTAL</b>					<b>695</b>
<b>TOTAL</b>					<b>1260</b>

\*All borings drilled to rock except boring L-8 to extend through existing fill only.

Phase 1 borings L-1 through L-7 are to be drilled to rock and cored 5 feet.

Phase 2 boring locations are subject to revision based on the results of the Phase 1 exploration.

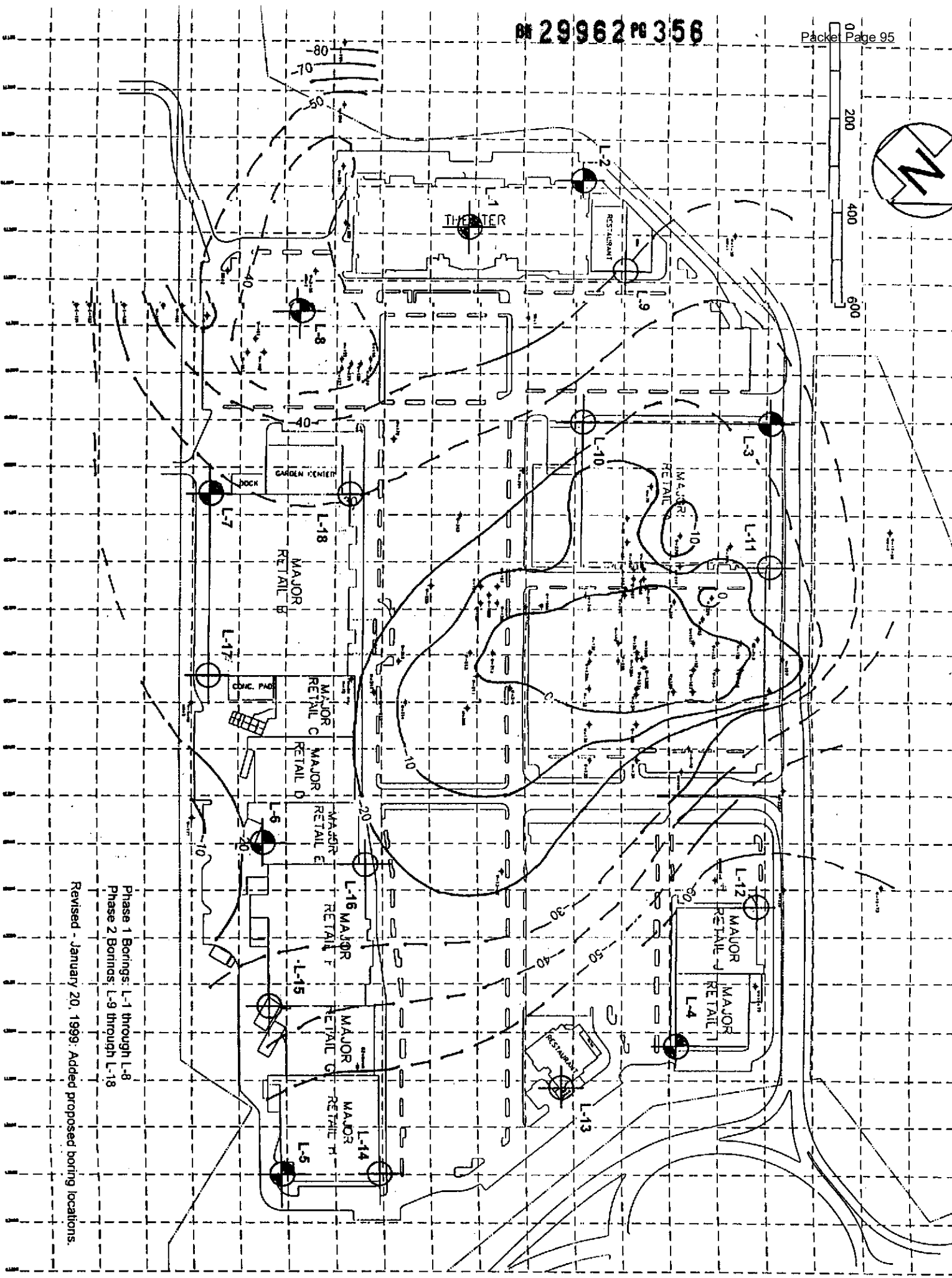


Phase 1 Borings: L-1 through L-8  
Phase 2 Borings: L-9 through L-18

Revised - January 20, 1999: Added proposed boring locations.

Approximate Bedrock Surface Contours  
Gateway Center  
Everett, Massachusetts  
Developers Diversified Realty Corporation

David V. Lewin Corporation  
Geotechnical Engineering  
Drawing: 5630-R  
Date: 1-8-99



Phase 1 Borings: L-1 through L-8  
 Phase 2 Borings: L-9 through L-18  
 Revised - January 20, 1999. Added proposed boring locations.

Approximate Outwash Surface Contours  
 Gateway Center  
 Everett, Massachusetts  
 Developers Diversified Realty Corporation

David V. Lewin Corporation  
 Geotechnical Engineering  
 Drawing: 5630-T  
 Date: 1-8-99

# Exhibit A-2



QUITCLAIM DEED

MONSANTO COMPANY, formerly named Monsanto Chemical Company, a Delaware corporation with a principal place of business at 800 North Lindbergh Boulevard, St. Louis, MO, 63167, for \$1.00 consideration paid grants to SOLUTIA INC., a Delaware corporation having its principal place of business at 10300 Olive Boulevard, St. Louis, MO, 63166-6760, with QUITCLAIM COVENANTS, two parcels of REGISTERED land and one parcel of UNREGISTERED land in Everett, in the County of Middlesex, Commonwealth of Massachusetts, bounded and described as follows:

REGISTERED LAND

Lots 2 and 3

Lots 2 and 3 on a plan entitled "Plan of Land in Everett, Massachusetts prepared for Monsanto Company" dated November 10, 1997 by Martinage Engineering Associates, Inc. and filed with the Engineering Office of the Land Court in Boston, Massachusetts as File Plan No. 18691-D. For Monsanto's title see Certificate of Title No. 73296 in Book 485, Page 177 and the property is subject to and has the benefit of, as the case may be, the matters contained in and noted upon said certificate to the extent still in force and applicable.

For change of name from Monsanto Chemical Company to Monsanto Company, see Document No. 406750.

UNREGISTERED LAND

Parcel Z ✓

A certain parcel of land situated in the City of Everett in the County of Middlesex and the Commonwealth of Massachusetts, on the southerly side of Revere Beach Parkway, said parcel being shown as Parcel Z on a plan entitled, "Commonwealth of Massachusetts, Metropolitan District Commission, Parks Division, Mystic River Basin Elevation Project, Revere Beach Parkway - Everett, Plan of Conveyance to Monsanto Chemical Co.", scale 1" = 100', dated September 1969, prepared by Benjamin W. Fink, Director of Park Engineering, Plan Number 46153-V.T., recorded in

"dup in hd Ct"

3/2  
MSD 03/25/99 04:29:57 1129  
SEE PLAN IN RECORD BOOK PAGE 25.00

the Middlesex County Registry of Deeds (Southern Registry District) as Plan No. 1024 of 1970 in Book 11902 at Page 425, and being further bounded and described as follows:

Beginning at a point in the southeasterly corner of the parcel, which point in the southeasterly corner of the parcel is distant N 3°56'04" E, one hundred seventy-five and 80/100 (175.80') feet from a Massachusetts Highway Bound set in the boundary between land of the Commonwealth of Massachusetts Metropolitan District Commission (now part of the Revere Beach Parkway) and the land now or formerly of the Monsanto Fund, said land being shown as Lot 1 on Land Court Plan 18691C;

Thence the line runs N 3°56'04" E, one hundred ninety-nine and 25/100 (199.25') feet, by the sideline of the Revere Beach Parkway to a point;

Thence turning and running in a northwesterly direction by a line curving to the left with a radius of ten thousand two hundred fifty-four and 44/100 (10,254.44') feet, four hundred eighty-seven and 11/100 (487.11') feet by the sideline of said Revere Beach Parkway to a point;

Thence N 72°51'46" W, ninety-five and 77/100 (95.77') feet by the sideline of said Revere Beach Parkway to a point;

Thence turning and running S 18°36'03" W, three hundred twenty-two and 15/100 (322.15') feet by the United States Pierhead and Bulkhead line and the sideline of said Revere Beach Parkway to a point at land now or formerly of the Monsanto Fund, said land being shown as Lot 1 on Land Court Plan 18691C;

Thence turning and running S 83°14' 07"E, six hundred forty-seven (647.00') feet by the land now or formerly of the Monsanto Fund shown as Lot 1 on Land Court Plan 18691C to the point of the beginning.

Said Lot Z containing one hundred fifty-nine thousand seven hundred sixty eight plus (159,768+) square feet, more or less, according to said plan.

Said Lot Z is subject to the condition contained in the deed from the Commonwealth of Massachusetts to the Monsanto Company (recorded in the Middlesex County Registry of Deeds (Southern District) in 11902, Page 425) that the Algonquin Gas Transmission Company, a Delaware corporation, its successors and assigns, may continue permanently to maintain and operate its pipeline as presently located on Parcel Z.

This deed is delivered pursuant to the terms of the Distribution Agreement dated as of September 1, 1997 between the grantor and its wholly-owned subsidiary, the grantee, concerning the distribution of assets without consideration therefor.

IN WITNESS WHEREOF, said Monsanto Company has caused its corporate seal to be hereto affixed and this instrument to be executed, acknowledged and delivered, all in its name and behalf by A. J. Shoultz, its Vice President, and by Robert L. Brady, its Assistant Treasurer, this 11th day of March, 1999.

MONSANTO COMPANY

By: A. J. Shoultz  
Vice President

By: Robert L. Brady  
Assistant Treasurer

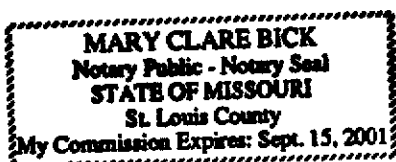
STATE OF MISSOURI

County of St. Louis

March 11, 1999

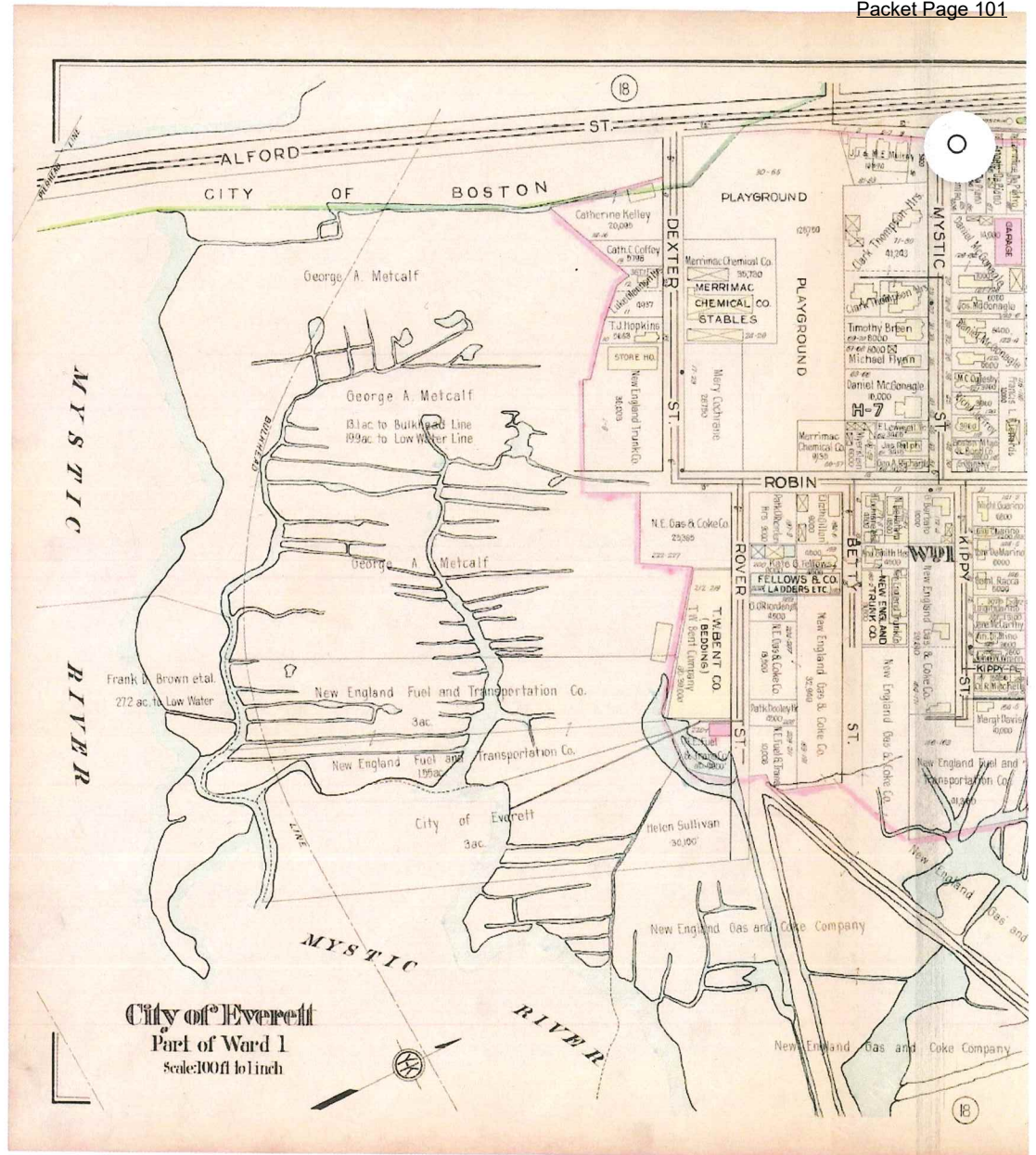
Then personally appeared the above-named A. J. Shoultz and Robert L. Brady, who are the Vice President and Assistant Treasurer, respectively, of Monsanto Company and acknowledged the foregoing instrument to be the free act and deed of said Monsanto Company, before me,

AFFIX NOTARIAL SEAL



Mary Clare Bick  
Notary Public  
My Commission expires:

# Exhibit B



X

# Exhibit C

# City of Everett

## Office of the Mayor

**Carlo DeMaria, Jr.**  
MAYOR



Everett City Hall  
484 Broadway  
Everett, MA 02149-3694  
Phone: (617) 394-2270  
Fax: (617) 381-1150

June 18, 2013

Dear Resident:

As you may have heard, the City of Everett has placed itself at the forefront of the process that will be siting casino gaming establishments in Massachusetts. Currently, the City, under my administration's leadership, has executed a Host Community Agreement with Wynn Resorts and is continuing the process of engaging the public on their thoughts and impressions of how this resort will affect our community. A copy of the full Host Community Agreement, with summary, is attached to this letter for your convenience.

Ultimately, Everett's decision to host a development falls to the voters on **Saturday, June 22, 2013** when a ballot question election will be held to gauge the public's support of the project.

Recently, the Massachusetts Gaming Commission, at the request of me and others, adopted a regulation relative to the scheduling of a local election required by the gaming legislation. In that regulation, a municipality may hold an election prior to the applicant being deemed suitable by the Gaming Commission only if two conditions are met – (1) the governing body of a city or town, in this case the Everett City Council with approval of the Mayor, votes to authorize such an election; and (2) a public awareness notice is mailed to all voting households in a host community regarding the application status of the developer and informing voters about the Commission's standards and procedures for determining suitability.

The City Council of the City of Everett, with my approval, unanimously authorized the election to be held on the ballot question of whether to approve a gaming facility in Everett, thereby satisfying the first condition of the Commission's regulation. This letter serves to inform you, the voting households of Everett, of what the holding of an election on June 22, 2013 means.

The state application process for awarding a license in each of the three designated areas of Massachusetts has two parts. First, "Phase I" of the application is made up of investigations conducted by the Commission and the Massachusetts State Police to determine "suitability and eligibility" of an applicant – that is, whether or not the applicant meets the statutory and financial requirements of opening a gaming facility in Massachusetts. As part of the investigations, the Commission reviews such things as the integrity, honesty, good character and reputation of the applicant; the financial stability, integrity and background of the applicant; the business practices

June 6, 2013  
Page 2

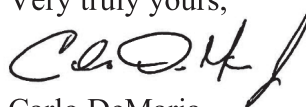
and the business ability of the applicant to establish and maintain a successful gaming establishment; and whether the applicant has a history of compliance with gaming licensing requirements in other jurisdictions. **A final determination on either phase of the application, including Phase I has yet to be made and may not be issued prior to the election.** The Commission will make its determination of suitability after completing a thorough background investigation of the applicant, its principal operating officers and investors. Additionally, the commission will not permit the applicant or its principal operating officers or investors to proceed with the application unless it determines that they are suitable to operate a gaming facility in Massachusetts.

The second part of the application process, "Phase II", involves the Commission's review of the details of the development itself – where it is, what it will look like, how it will work and how the applicant will mitigate the impact of it being sited in the host community. That process will begin following the election by the community and the Commission's determination of suitability.

At the present time, Wynn Resorts has filed its Phase I application, paid the fee required by the Commission, and is undergoing the required investigations. The outcome of the election on June 22, 2013, either approving or opposing the project will have no effect on a final determination of Phase I (eligibility and suitability portion) of the application process. However, if the Commission determines Wynn Resorts to be a suitable applicant, a positive vote at the June 22, 2013 election will permit Wynn Resorts to continue the process and file a Phase 2 application with the Commission.

Please do not hesitate to contact my office with any questions regarding this important matter.

Very truly yours,



Carlo DeMaria  
Mayor  
City of Everett

Encls.



**The Host Agreement memorializes Wynn’s economic and social commitments to the City of Everett, as well as the City’s obligations to Wynn. Details include\*:**

***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:
  - \$20 million for real estate taxes
  - \$5 million Community Impact Fee
  - \$250,000 contribution to Everett Citizens Foundation, which will support local groups
  - 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 is a summary. Please refer to the formal agreement for all terms and conditions. This summary has been approved pursuant to M.G.L c.23K §15(13) by Colleen Mejia, Esq., City Solicitor, City of Everett.*



## **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 the 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 marquee 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 lands 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

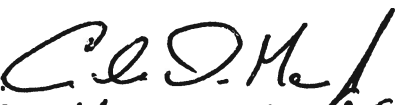
With a copy to: Mintz, Levin, Cohn, Ferris,  
Glovsky & Popeo, P.C.  
Attn: Dan Gaquin, Esquire  
One Financial Center  
Boston, MA 02111  
Facsimile: 617-542-2241  
Email: dogaquin@mintz.com

**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: CFO

**Wynn Resorts, Limited**


  
By: *MATT MADDOX*  
Title: CFO

Exhibit A – Project Site Plan





**Carlo DeMaria, Jr., Mayor**

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484 Broadway  
Everett, MA 02149

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**IMPORTANT MESSAGE FROM  
MAYOR CARLO DeMARIA and THE CITY OF EVERETT**

Samuel M. "Tony" Starr  
617 348 4467  
tstarr@mintz.com



One Financial Center  
Boston, MA 02111  
617 542 6000  
mintz.com

January 5, 2023

**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:

Wynn MA, LLC ("Wynn MA") submits this letter to respond to certain questions raised by the Commissioners at the November 16, 2022 open meeting related to Wynn MA's request that the Massachusetts Gaming Commission (the "Commission") approve a revised gaming establishment boundary that would include gaming in the East of Broadway Development. Specifically, the Commissioners inquired whether a "YES" vote on the June 22, 2013 ballot question (the "Ballot Question") approved the terms of the Host Community Agreement ("HCA") entered into between the City of Everett ("Everett") and Wynn MA, which specifically contemplates that Wynn MA may undertake construction on property other than the current Wynn MA site.

For the reasons that follow, the Ballot Question incorporated the HCA, such that any reasonable Everett voter would understand that a "YES" vote on the Ballot Question would be a vote in favor of Wynn MA receiving a gaming license on the conditions set forth in the HCA.<sup>1/</sup> It follows that because the HCA clearly contemplated expansion of the gaming establishment, with terms to that effect, and the Everett voters approved the grant of a gaming license on those terms, no additional ballot question is required for the Commission to now revise Wynn MA's gaming establishment to include gaming in the East of Broadway Development. Therefore, Wynn MA respectfully requests that the Commission approve its proposed revised gaming establishment boundary.

**I. Section 15 (13) incorporates the HCA into the Ballot Question.**

General laws c. 23K, § 15 sets forth the criteria an applicant is required to meet to be eligible for a license. As relevant here, an applicant must "have received a certified and binding vote on a ballot question at an election in [Everett] in favor of such a license." M.G. L. c. 23K, § 15 (13). Section 15 (13) sets out the procedure for this election precisely:

(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 **the signed agreement**

<sup>1/</sup> A copy of the HCA is attached hereto as Ex. 1.

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***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, ***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*** . . . .

M.G. L. c. 23K, § 15 (13) (emphasis added).

Under the terms of the Gaming Act, Wynn MA could not have even requested an election unless and until it had negotiated and entered into an HCA with Everett. More specifically, Wynn MA is required to:

provide to the commission a signed agreement between the host community and the applicant ***setting forth the conditions to have a gaming establishment located within the host community***; provided, however, that the agreement shall include a community impact fee for the host community ***and all stipulations of responsibilities between the host community and the applicant***, including stipulations of known impacts from the development and operation of a gaming establishment.

M.G.L. c. 23K, § 15 (13) (emphasis added). The executed HCA is therefore a prerequisite to any vote in the host community on whether the applicant should receive a gaming license.

Once Wynn MA secured the HCA, and requested an election, the Gaming Act further required that both the HCA and a “concise summary” of the same (approved by the city solicitor or town counsel) be made available to the voters before the election. *Id.* The Ballot Question itself was also required to be accompanied by a “concise summary” of the HCA “as determined by the city solicitor or the town counsel.” M.G.L. c. 23K, § 15 (13). All of these requirements make clear that the Legislature intended the Everett voters to consider the sum and substance of Wynn MA’s HCA with Everett in casting their votes. Thus, the statute establishes that a majority vote in the affirmative is a vote “in favor of the applicant’s license”—without qualification.

Section 15 (13) also required that the Ballot Question include a site description. Here, the Ballot Question described the site generally and did not limit the proposed location to a single parcel. Rather, as outside counsel for the City of Everett described at the November 16, 2022 open meeting, the site description—“property located on Horizon Way (off “Lower Broadway”) in Everett, formerly known as the Monsanto Chemical Site”— was intended to describe a general landmark that an Everett



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voter would recognize, and more precise detail was provided in the HCA.<sup>2/</sup> Indeed, the HCA specifically states in the “Recitals” section that:

**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”).**

See HCA Recitals.<sup>3/</sup> Thus, voters were notified by the clear terms of the HCA that the Project Site was subject to expansion. Moreover, as set forth in Wynn MA’s September 13, 2022 letter, the HCA specifically contemplates that such expansion may include new construction on property other than the current site, and provides a mechanism to address such construction. See September 13, 2022 Letter at Section II.

**II. The Ballot Question included a “fair and concise” summary of the HCA and a reasonable voter would understand a “YES” vote to be in favor of Wynn MA’s license subject to the conditions described in the HCA.**

Currently, Wynn MA is not aware of any court precedent specifically interpreting Section 15 (13) of the Gaming Act. However, the Commission is not without guidance. In codifying the Gaming Act, the Legislature made clear its intent that the Commission have broad authority to accomplish the Gaming Act’s aims: “the power and authority granted to the commission shall be construed **as broadly as necessary** for the implementation, administration and enforcement of this chapter.” M.G.L. c. 23K, § 1 (10) (emphasis added); M.G.L. c. 23K, § 4 (the Commission “shall have all powers necessary or convenient to carry out and effectuate [the Gaming Act’s] purposes”); see also *Revere v. Mass. Gaming Comm’n*, 476 Mass. 591, 606 (2017) (noting that the Legislature had “vested a tremendous amount of discretion” in the Commission).

In addition, the requirement that a city official (in this case, the city solicitor) prepare a concise summary of the HCA is not unlike the requirement that the Attorney General prepare a “fair, concise summary” of laws or constitutional amendments proposed by means of an initiative petition under art. 48 of the Massachusetts Constitution. The Supreme Judicial Court (the “Court”) has described those

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<sup>2/</sup> Indeed, the colloquial reference to the Monsanto Chemical Site may refer to more than the specific property that the current Encore Boston Harbor occupies. For example, a 1910 Sanborn Map, attached hereto as Ex. 2, depicts three structures labeled as “Cochrane Chemical Co.” on the north side of Dexter Street east of Broadway. Cochrane Chemical was a predecessor of Monsanto. See City of Everett / 1892-1970, <https://cityofeverett.com/wp-content/uploads/2021/10/City-History.pdf> (“In 1893 Everett’s only corporation ... was the Cochrane Chemical Works. By 1913 this company had become the New England Chemical Works, by 1931 it had become the Monsanto Chemical Company ...”). These structures are within the area proposed for the East of Broadway Development. Two of the structures are labeled as “Wagon Sheds”, the third larger structure is unlabeled. Those same three structures are also depicted on the 1896 Atlas of Everett, attached hereto as Ex. 3. On the 1896 atlas the structures are labeled “Cochrane Chemical Co. / A. Cochrane & Co.”

<sup>3/</sup> Exhibit A to the HCA does, in fact, depict some of the land across Broadway that is included in the Proposed Revision, though it does not include the full lot boundaries.

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summaries as “one of the key pieces of information available to voters,” appearing in the voting guides sent to voters before elections and on the ballots themselves. See *Hensley v. Att’y Gen.*, 474 Mass. 651, 659-60 (2016).

If asked to decide whether a vote “YES” on the Official Ballot may be construed as a vote in favor of awarding the casino license subject to the conditions set forth in the HCA, which was summarized on the Official Ballot, a court would almost certainly draw on case law analyzing ballot summaries in the art. 48 context and consider whether the ballot summary fairly and accurately reflected the HCA.

The Court has set out the legal principles for evaluating whether a ballot summary fairly and concisely captures the substance of a proposed measure:

To be ‘fair,’ a summary must not be partisan, colored, argumentative, or in any way one sided, and it must be complete enough to serve the purpose of giving the voter who is asked to sign a petition or who is present in a polling booth a fair and intelligent conception of the main outlines of the measure. The Attorney General is not required to conduct a comprehensive legal analysis of the measure, including possible flaws. All the Constitution demands is a summary. Moreover, as we review the summary to determine whether the Attorney General has fulfilled her constitutional obligation, we keep in mind that the Attorney General’s judgment concerning the form and content of the summary is entitled to some deference. Obviously, an element of discretion is involved in the preparation of a summary—what to include, what to exclude, and what language to use. The exercise of discretion by the Attorney General, a constitutional officer with an assigned constitutional duty, should be given weight in any judicial analysis of the fairness and adequacy of a summary.

*Id.* at 660-61, quoting *Abdow v. Attorney Gen.*, 468 Mass. 478, 505–506 (2014) (internal quotations and citations omitted). Critically, and especially apt in this case, “[t]he summary must be not only ‘fair’ but ‘concise.’” *Id.* at 661. The Court has explained that “there must be a real ‘summary’ . . . however much the subject matter may be condensed, the sum and substance of it must remain. No doubt details may be omitted or in many instances covered by broad generalizations, but mention must be made of at least the main features of the measure.” *Id.* at 661 (quotations omitted).

In short, to pass constitutional muster, a ballot summary “must be complete enough to serve its purpose of giving the voter who is asked to sign a petition or who is present in a polling booth a fair and intelligent conception of the main outlines of the measure,” and it must not be “significantly misleading” in a way that is “likely to have a major impact on voters.” *First v. AG*, 437 Mass. 1025, 1026 (2002); see *Associated Indus. of Mass. v. Sec’y of Commonwealth*, 413 Mass. 1, 12 (1992) (holding summary not “unfair or misleading” notwithstanding omission of certain details, the inclusion of which might have confused voters). Any error or omission “must be assessed in the context of the entire proposal and its likely impact on the voters. A determination cannot be made in a vacuum whether an error in a summary is minor or fatal to the validity of all or part of a proposal.” *Massachusetts Teachers Association v. Secretary of the Commonwealth*, 384 Mass. 209, 234 (1981); see *First v. AG*, 437 Mass. at 1026 (the language of a summary will be invalidated where, in the context of the entire proposal, it is significantly misleading and likely to have a major impact on voters).

Here, the HCA summary that appeared on the Ballot Question is fair and concise. The Everett city solicitor made reasonable judgement calls about what to include, and the Ballot Question summary

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explains the HCA's most important terms. Moreover, the signed HCA was made available to the public in several locations including: the Everett public library, Everett United office, Everett City Hall, and online. See *Hensley v. Attorney General*, 474 Mass. 651, 665 (2016) (making the full text of the proposed act and other information available to voters does not obviate the need for a constitutionally adequate summary, "but it does give [the Court] confidence" that voters understood the scope of the initiative petition).

Because the Ballot Question fairly summarized and incorporated the HCA, which itself contemplates and permits a revision of the type proposed by Wynn MA, no additional ballot question is required.

### **III. CONCLUSION**

As set forth in Wynn MA's September 13, 2022 letter, the proposed revised gaming establishment boundary (i) meets the four part test established by the Commission to determine whether to exercise its authority in a gaming establishment; (ii) is contemplated by the existing HCA between Wynn MA and Everett; and, as set forth in greater detail above, (iii) would not require a vote on a new ballot question pursuant to M.G.L. c. 23k § 15 (13). For these reasons, Wynn MA respectfully requests that the Commission approve its proposed revised gaming establishment boundary.

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

Very truly yours,

*/s/ Samuel M. Starr*

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

Enclosure(s)

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

# Exhibit 1

## **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 effect 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 the 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**

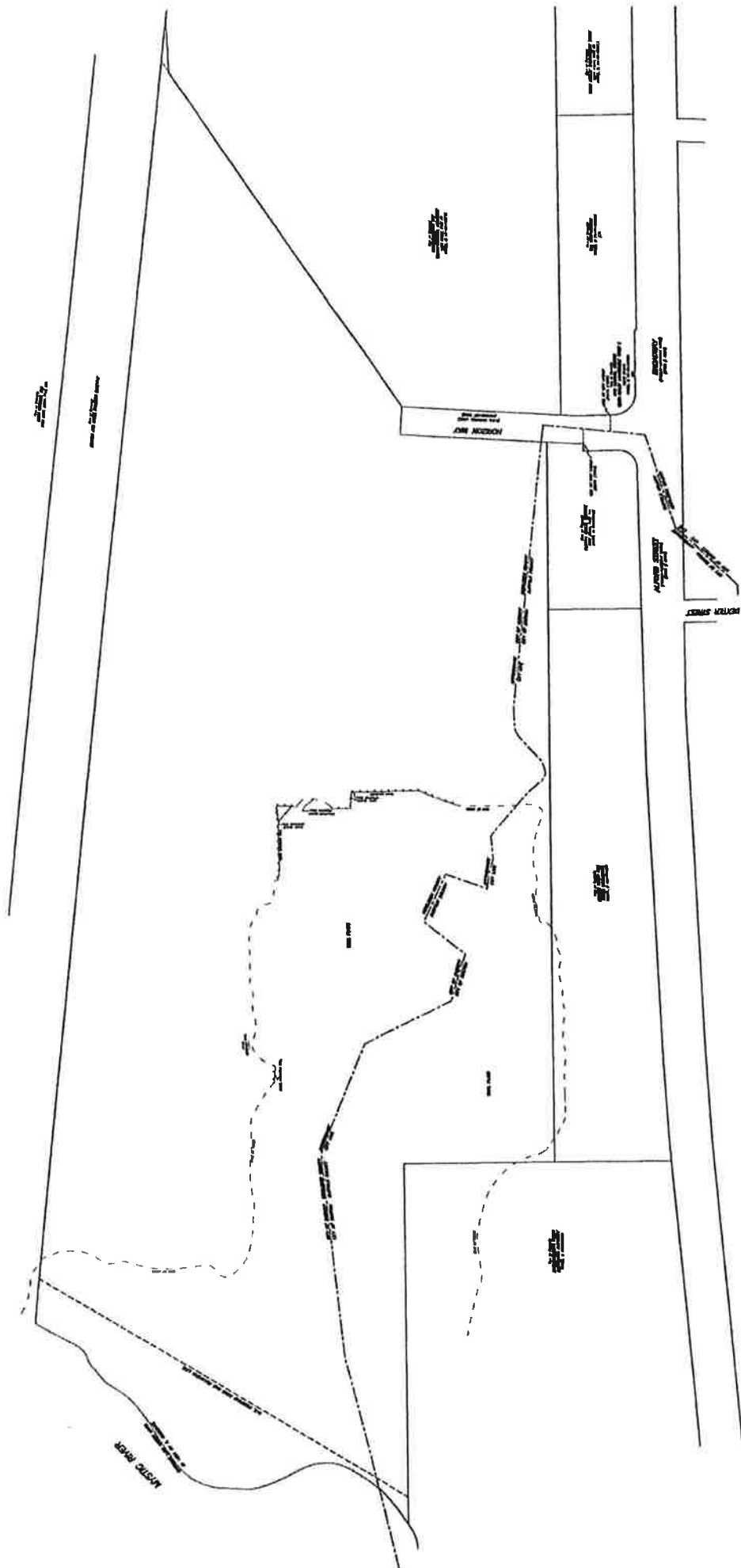
  
By: *MATT ANDROS*  
Title: CFO

**Wynn Resorts, Limited**

  
By: *MATT ANDROS*  
Title: CFO

**Exhibit A - Project Site Plan**

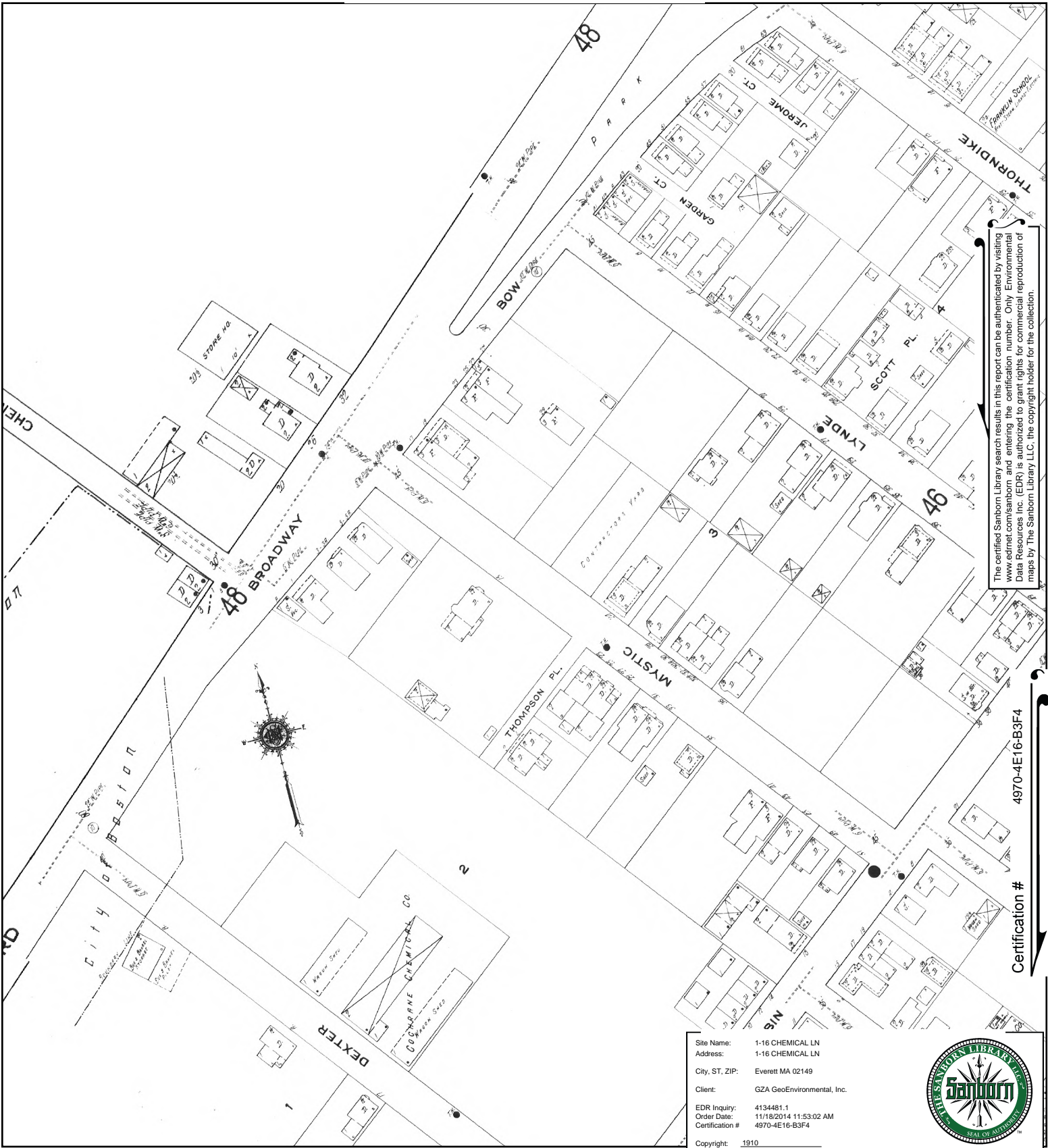
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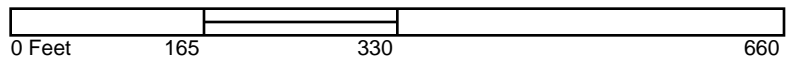
# Exhibit 2

# 1910 Certified Sanborn Map



The certified Sanborn Library search results in this report can be authenticated by visiting [www.edrnet.com/sanborn](http://www.edrnet.com/sanborn) and entering the certification number. Only Environmental Data Resources Inc. (EDR) is authorized to grant rights for commercial reproduction of maps by The Sanborn Library LLC, the copyright holder for the collection.

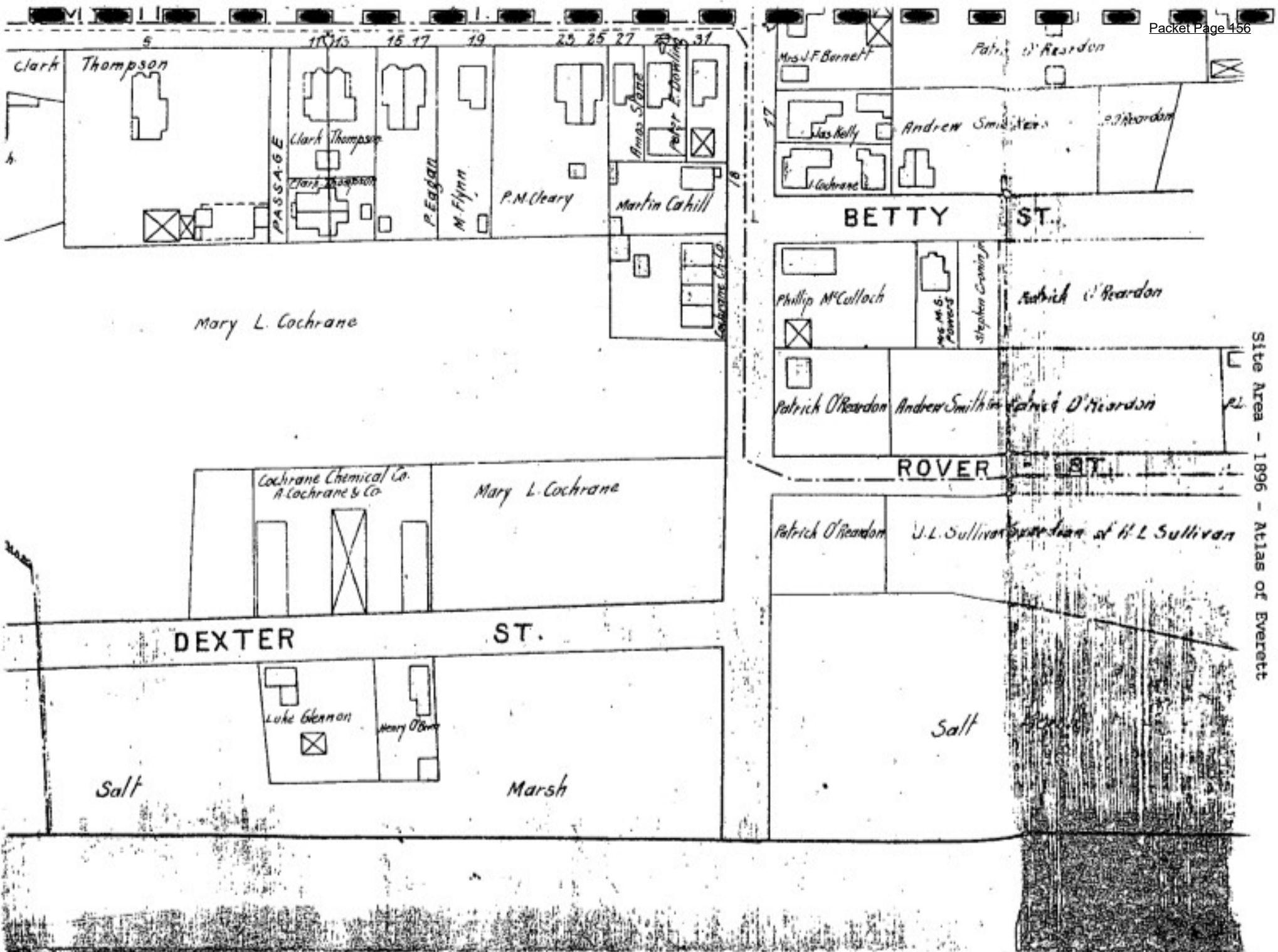
This Certified Sanborn Map combines the following sheets. Outlined areas indicate map sheets within the collection.



- Volume 1, Sheet 45
- Volume 1, Sheet 46
- Volume 1, Sheet 47
- Volume 1, Sheet 48



# Exhibit 3



Site Area - 1896 - Atlas of Everett

# 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 effect 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 the 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 ANDROS*  
Title: CFO

**Wynn Resorts, Limited**

  
By: *MATT ANDROS*  
Title: CFO

**Exhibit A - Project Site Plan**

**11910210v.13**





# **EXHIBIT B**

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

MASSACHUSETTS GAMING COMMISSION

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*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 )  
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**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 applications<sup>1</sup> 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,<sup>2</sup> 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

<sup>1</sup> 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.

<sup>2</sup> 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, § 2<sup>3</sup> 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:

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<sup>3</sup> 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<sup>[4]</sup> and any other nongaming structure related to the gaming area and may include, but shall not be limited to, hotels, restaurants or other amenities.”

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<sup>4</sup> 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.<sup>5</sup> 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 status<sup>6</sup> 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](http://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

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<sup>5</sup> 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).

<sup>6</sup> 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.<sup>7</sup>

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.

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<sup>7</sup> 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](http://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.<sup>8</sup>

#### 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

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<sup>8</sup> 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.<sup>9</sup> 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.

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<sup>9</sup> 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](http://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](http://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](mailto:catherine.bluc@state.ma.us) and [todd.grossman@state.ma.us](mailto: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.



Massachusetts Gaming Commission

- 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 1<sup>st</sup> 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](http://www.massgaming.com) and emailed to: [regs@sec.state.ma.us](mailto:regs@sec.state.ma.us), [melissa.andrade@state.ma.us](mailto:melissa.andrade@state.ma.us).

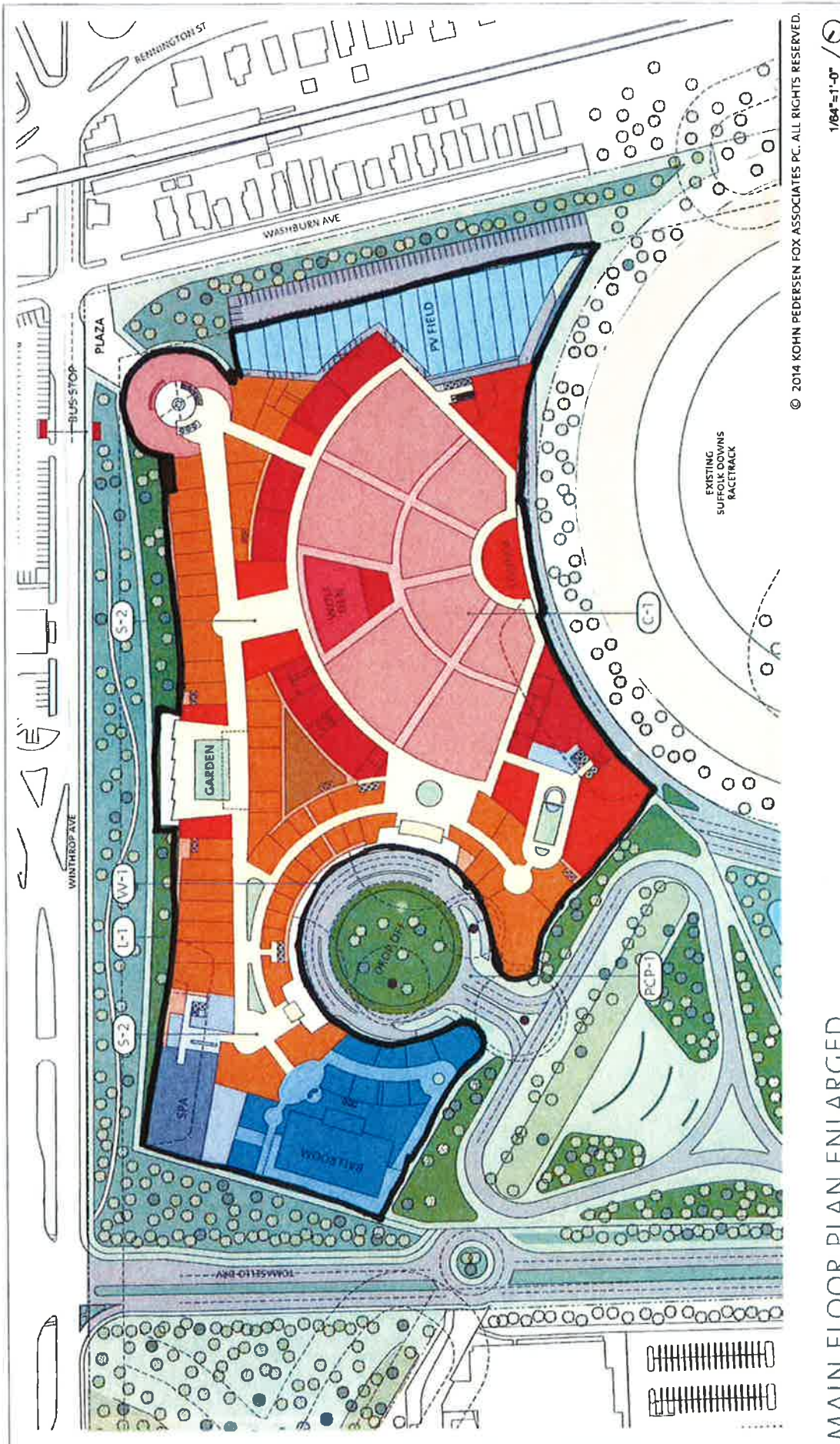
4/28/14  
(date)

  
Stephen P. Crosby, Chairman

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

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Massachusetts Gaming Commission



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1/8" = 1'-0"

MAIN FLOOR PLAN ENLARGED

4-5 SCHEMATIC DESIGN

**KPF**  
Kohn Pedersen Fox Associates PC  
New York, San Francisco, Los Angeles

**EXHIBIT B** MOHEGAN SUN MASSACHUSETTS, LLC

☐ = OUTLINE OF GAMING ESTABLISHMENT



Gaming Establishment Site  
Figure B-6

- LEGEND
- GAMING
  - RESTAURANT/CAFE
  - HOTEL
  - RGH
  - PUBLIC AREA

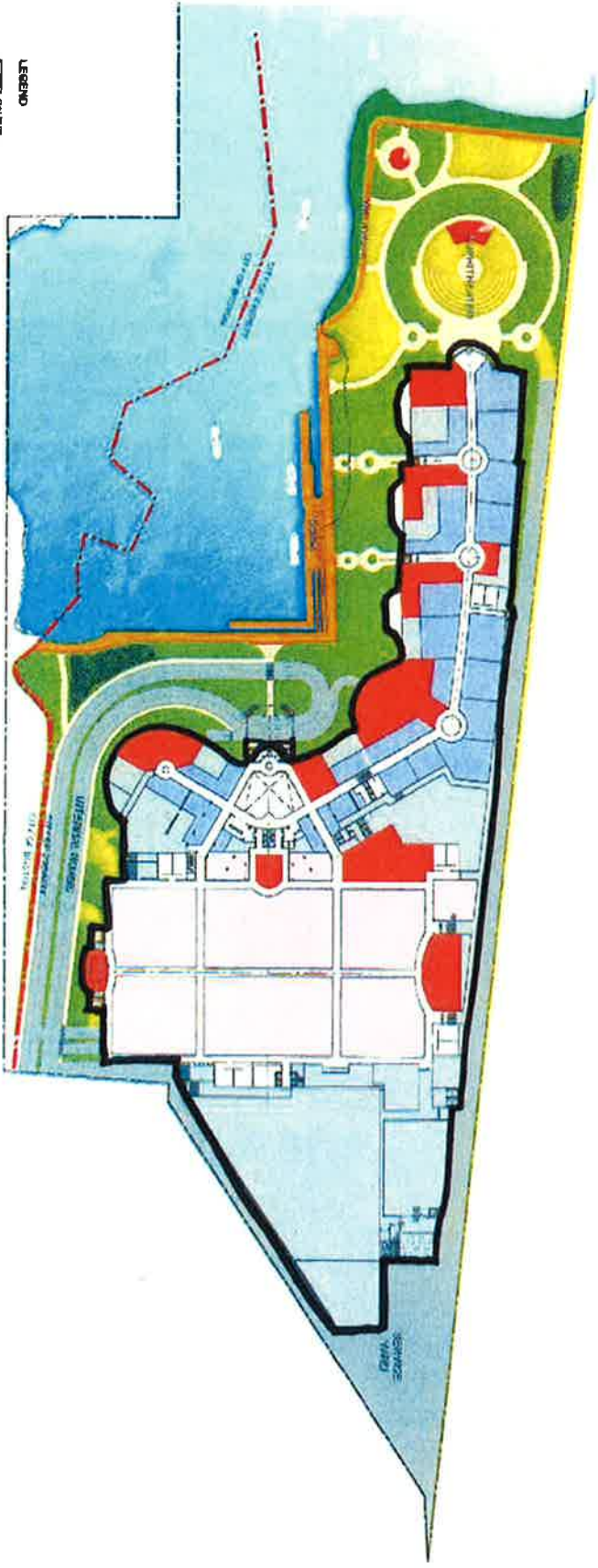


EXHIBIT C



WYNN MA, LLC

= 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 definition<sup>1</sup> 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

<sup>1</sup> 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.<sup>2</sup> 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.<sup>3</sup>

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."<sup>4</sup>

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 with within the boundary

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

<sup>3</sup> *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.

<sup>4</sup> *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.<sup>5</sup> 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.<sup>6</sup>

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.”<sup>7</sup>

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 ....”<sup>8</sup>

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.

<sup>5</sup> 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).

<sup>6</sup> *Id.* (pages 8 and 9).

<sup>7</sup> *Id.* (page 9).

<sup>8</sup> *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.<sup>9</sup> In both instances, the Commission emphasized the need to examine the control element "is implicit in the [chapter 23K]'s licensing and registration requirements."<sup>10</sup>

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.<sup>11</sup> 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.<sup>12</sup>

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

<sup>9</sup> *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 statuses general structure which places control of the licensee at the hear of the Commission's regulatory authority."

<sup>10</sup> *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").

<sup>11</sup> *Id.* (Page 5 and 8).

<sup>12</sup> *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.<sup>13</sup> 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.<sup>14</sup>

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.<sup>15</sup> 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

<sup>13</sup> *Id.* (Page 7).

<sup>14</sup> *Id.* (Page 8).

<sup>15</sup> *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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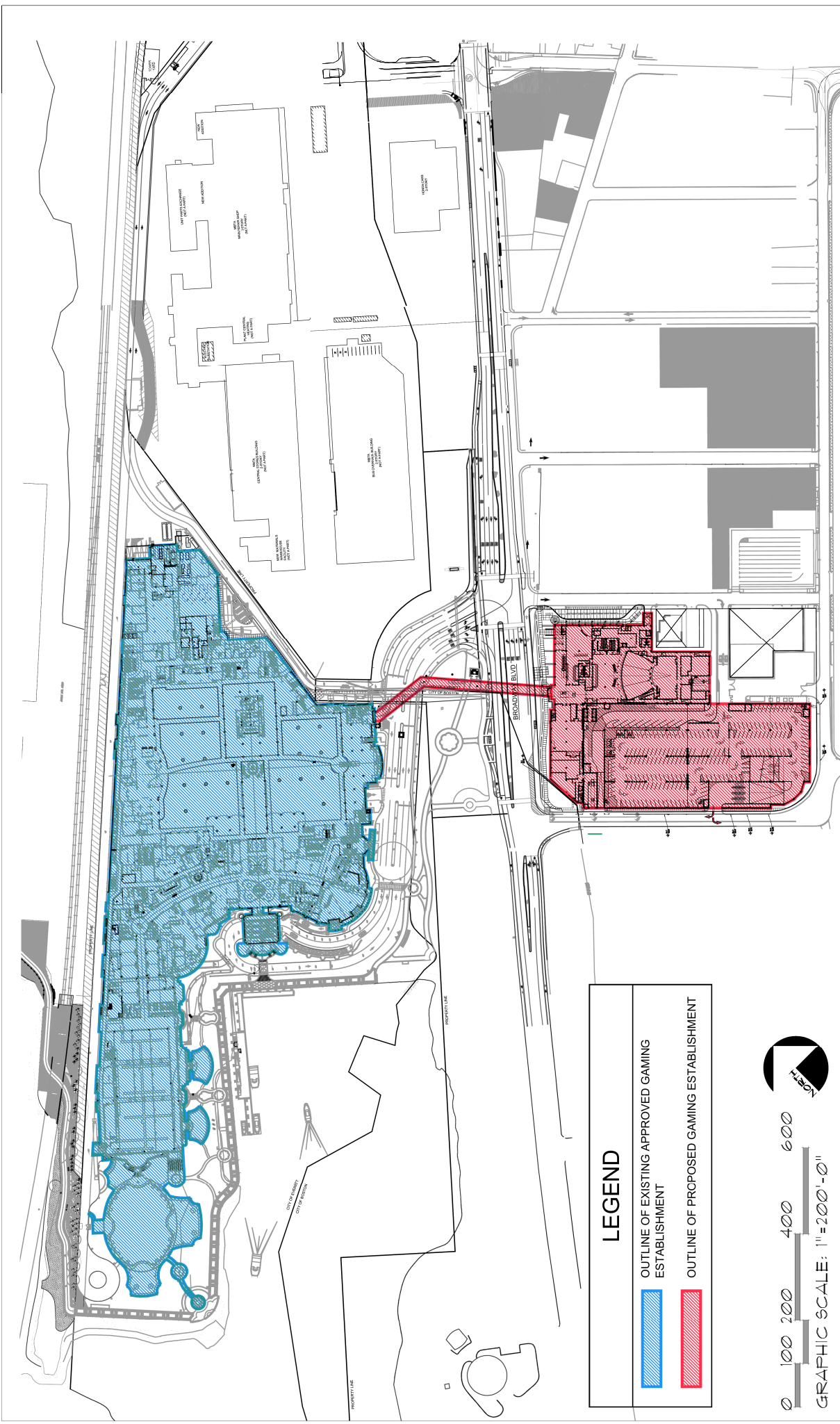
Wynn MA, LLC, and Wynn Resorts, Limited, as applicable, shall implement and comply with the approved plan.

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.




# **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 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 PROJECT.  
 PROJECT: **EAST OF BROADWAY GAMING ESTABLISHMENT SITE PLAN**  
 DRAWING NUMBER: **E08**  
 SHEET: **5**  
**Encore**  
 EAST OF BROADWAY  
 DUBLIN, OH

**EAST OF BROADWAY**  
**GAMING ESTABLISHMENT SITE PLAN**

OWNER REP:   
 PROJECT MANAGER:   
 DATE: September 8, 2022

Samuel M. "Tony" Starr  
617 348 4467  
tstarr@mintz.com



One Financial Center  
Boston, MA 02111  
617 542 6000  
mintz.com

September 13, 2022

**BY EMAIL AND REGULAR MAIL**

Joseph E. Delaney  
Chief, Division of Community Affairs  
Massachusetts Gaming Commission  
101 Federal Street, 12<sup>th</sup> 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<sup>1/</sup> boundary to include a gaming area<sup>2/</sup> 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<sup>3/</sup>; 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

<sup>1/</sup> "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.

<sup>2/</sup> "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.

<sup>3/</sup> 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.*<sup>4/</sup>

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.*<sup>5</sup>

#### **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

<sup>4/</sup> Attached as Exhibit B.

<sup>5</sup> 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.

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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.<sup>6/</sup> 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.*<sup>7/</sup>

### **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.

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<sup>6/</sup> Attached as Exhibit C.

<sup>7/</sup> 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,

A handwritten signature in blue ink that reads "Tony Starr".

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.)

**CITY OF EVERETT**  
**Office of the Mayor**

**Carlo DeMaria**  
Mayor



**Everett City Hall**  
484 Broadway  
Everett, MA 02149-3694  
Phone: (617) 394-2270  
Fax: (617)381-1150

January 4, 2023

**VIA ELECTRONIC MAIL**  
**Joseph.Delaney@massgaming.gov**

The Massachusetts Gaming Commission  
101 Federal Street, 12<sup>th</sup> Floor  
Boston, Massachusetts 02110

**RE: Estimated Preliminary Costs for a Gaming Referendum in Everett**

Dear Honorable Commission Members:

Thank you for your inquiry regarding potential costs incurred if the City of Everett were to conduct a referendum on gaming being included in Wynn MA, LLC East of Broadway Development.

The minimal cost that the City of Everett anticipates would be incurred is \$130,000.00. This cost would include:

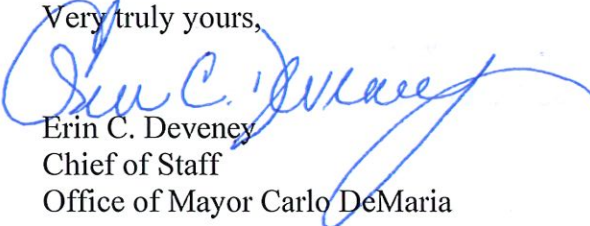
- Poll Workers – early voting, voting day, training, OT for office staff on voting day at a cost of approximately \$40K
- Voting Prep – early and voting day ballots, tabulator cards, machine prep, OT for election staff for mandated deadlines (last day to register, last day to request a ballot, last day to vote absentee, etc.) at a cost of approximately \$35K
- Police OT and custodian OT– police officers at the precincts for the full days, custodians OT at the voting locations at a cost of approximately \$22K
- Election Department supplies/particular signs/anything that may pop up or need to be replaced, etc. at a cost of approximately \$3K
- Postage for mailing of referendum language and explanatory materials at a cost of approximately \$21K
- Advertisements in local newspapers of vote at a cost of approximately \$9K

*MGC Letter*  
*January 4, 2023*  
*Page 2*

Please note that these are preliminary costs. The costs associated with printing the language of the referendum and a letter from the Mayor explaining the process to residents, which was the process undertaken by the City for the initial referendum, is not complete because those costs are dependent on the information that would need to be included. Also not included are costs if the City needed to rent meeting space to conduct public meetings on the referendum.

Mayor DeMaria hopes this preliminary information is of assistance to you in your consideration of Wynn MA, LLC's application for its proposed East of Broadway Development. Please do not hesitate to let us know if you need any additional information from the City regarding this proposal.

Very truly yours,



Erin C. Deveney  
Chief of Staff  
Office of Mayor Carlo DeMaria

cc: Mayor DeMaria  
Colleen Mejia, Everett City Solicitor  
Matthew Lattanzi, Everett Director of Planning and Development

**BLATMAN, BOBROWSKI, HAVERTY & SILVERSTEIN, LLC**

ATTORNEYS AT LAW

9 DAMONMILL SQUARE, SUITE 4A4  
CONCORD, MA 01742  
PHONE 978.371.2226  
FAX 978.371.2296

JONATHAN M. SILVERSTEIN  
JMS@bbhslaw.net

January 5, 2023

**VIA EMAIL**

**Joseph.Delaney@massgaming.gov**

Massachusetts Gaming Commission  
Attn: Joseph Delaney  
101 Federal Street, 12<sup>th</sup> Floor  
Boston, MA 02110

**Re: Revision to Wynn MA, LLC Gaming Establishment in the East of Broadway Development**

Dear Commissioners:

I serve as special counsel for gaming and land use matters for the City of Everett (“City”). I have served in this capacity at all times since the Legislature passed Chapter 23K (“Act”) in November 2011.

In accordance with the Commission’s invitation, I am writing to articulate the basis for the City’s position that the Commission may properly approve the petition of Wynn MA, LLC (“Wynn”) to revise the gaming establishment boundary to include a gaming area in the East of Broadway Development (“Proposed Revision”). As indicated in the letter to the Commission from Mayor Carlo DeMaria, dated November 15, 2022, the City fully supports the Proposed Revision. It is the City’s position that the Proposed Revision is consistent with: (1) long-term planning efforts undertaken for the Lower Broadway District of the City; (2) the intent of the parties to, as well as the terms of, the Host Community Agreement; and (3) the intent of the voters in approving the Host Community Agreement in the context of the City’s ongoing planning and redevelopment of the Lower Broadway District. The City respectfully requests that the Commission approve the Proposed Revision without requiring the delay, expense and burden of holding an additional municipal election.

1. Lower Broadway Planning Efforts by the City.

As discussed below, it is the City’s view that the question of whether a new ballot vote is necessary to authorize the Proposed Revision requires evaluation of the intent of the voters at the original election, held on June 22, 2013, as informed by all of the information available to the voters at the time of that election. In this regard, it is important to recognize that Mayor DeMaria invited Wynn to consider developing a resort casino in the City as a way to anchor redevelopment of the area of the City known as the Lower Broadway District. This invitation did not take place in a vacuum; rather it was consistent with an extensive planning effort undertaken by the City. In April 2012, the Mayor engaged Sasaki Associates, Inc. and GLC Development Resources LLC

to create a Master Plan Vision and Implementation Strategy for the City's Lower Broadway District. Sasaki and GLC held community input meetings and worked closely with City staff, the Metropolitan Area Planning Commission and various local stakeholders. This process culminated in the creation of the award winning Lower Broadway District Master Plan in February 2013, which may be viewed [here](#).<sup>1</sup> At the time, the Lower Broadway District contained a number of derelict and underutilized properties, and heavy industrial uses, interspersed with gas stations, fast food restaurants and other businesses. As stated in the plan's introduction, "[t]he intent of this master plan is to transform the Lower Broadway District into a vibrant mixed use urban neighborhood with an improved public realm and enhanced local and regional identity as a high quality residential, employment, commercial district with pedestrian friendly streets, civic spaces and recreational amenities, including public access to the Mystic River."

Wynn's commitment to redevelop the former Monsanto site as a resort casino clearly represented a substantial step toward the redevelopment of the Lower Broadway District envisioned by the Mayor and outlined in the Lower Broadway District Master Plan. Redevelopment of this one site, however, was not the end of the City's planning and redevelopment efforts for this district. As discussed below, the City and Wynn discussed future expansion of the gaming facility, and this concept was explicitly contemplated in the Host Community Agreement, which also required Wynn to completely reconstruct Lower Broadway to facilitate redevelopment of the rest of the district. In 2015, the DHCD approved the Lower Broadway Urban Renewal Plan ("URP"), which further provided for redevelopment of the entire District.

In short, the development of Encore Boston Harbor did not occur in isolation from the planning and redevelopment efforts of the City relative to the entire Lower Broadway District. These efforts included substantial public engagement and input. It was in the context of this well publicized planning effort that the City and Wynn negotiated a Host Community Agreement and the voters of the City approved the development of a gaming establishment.

## 2. The Host Community Agreement Explicitly Contemplates Expansion of the Gaming Establishment.

In April 2013—approximately two months after completion of the Lower Broadway District Master Plan—the City and Wynn entered into a Host Community Agreement relative to Wynn's development of a resort casino in the Lower Broadway District. The primary location of the project would be the former Monsanto site. However, the City was aware that Wynn was actively negotiating to purchase additional land adjoining the Monsanto site and elsewhere along Lower Broadway. In negotiating the Host Community Agreement, the parties ensured that there would be flexibility, both in defining the location of the project initially and in expanding it in the future, dependent upon Wynn's ability to acquire additional land. Thus, for instance, the term "Project Site" is defined in the very first recital as "land in the City in and around the area depicted in Exhibit A." In crafting the definition in this way, the parties explicitly and intentionally allowed for the possibility that Wynn would acquire additional land that could be included in the "Project Site." Such potential expansion was not limited to adjoining land or land on the same side of

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<sup>1</sup> The Lower Broadway District Master Plan was awarded the Planning Project Award by the American Planning Association in 2013.

Broadway. Rather, such expansion could be on any additional land “around the area depicted in Exhibit A.”<sup>2</sup>

The parties also specifically contemplated the future expansion of the gaming establishment. In establishing the Impact Fee to the City in Section 1.B.1 of the Host Community Agreement, the parties agreed that the City and Wynn MA would negotiate a revised or separate impact fee in the event of any such expansion:

[I]f, 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 [the] 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. [Emphasis added].

The parties included similar language in Section 1.B.2 relative to the establishment of a payment in lieu of taxes (“PILOT”), pursuant to G.L. c.121A:

[I]f, 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 [the] 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 [ ] such substantial New Construction on such New Property. [Emphasis added].

These provisions clearly demonstrate that, months prior to the June 2013 ballot vote, the City and Wynn unambiguously contemplated and provided for expansion of the gaming establishment, both before licensure (by expanding the “Project Site” on land “around the area” depicted on Exhibit A) and after commencement of operations (by expanding onto “New Property”).

Subsequent to execution of the Host Community Agreement, the City held a number of public forums to discuss the project and the benefits to the City under the Host Community Agreement. These forums, at which copies of the Host Community Agreement were available, were very well attended. The Host Community Agreement was posted on the City’s website and reported in local media outlets. Moreover, though there was no requirement to do so, the Mayor had a complete copy of the Host Community Agreement mailed to every household in the City.

Throughout the leadup to the election, there was no suggestion by members of the public that expansion of the project, as contemplated by the Host Community Agreement, should be prohibited. Rather, the prevailing sentiment was always that the project would be a catalyst for the redevelopment of the Lower Broadway District as a whole, and this was a consistent theme espoused by the Mayor when he discussed the project.

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<sup>2</sup> It should be noted that Exhibit A to the Host Community Agreement does, in fact, depict some of the land across Broadway that is included in the Proposed Revision, though it does not include the full lot boundaries.

3. There is no Reason to Believe that Everett Voters Intended to Limit the Gaming Establishment to the Land Originally Acquired By Wynn.

As described above, the period preceding the June 22, 2013, election was characterized by planning efforts and public engagement focused on redevelopment of the Lower Broadway District as a whole—not only the land initially acquired by Wynn. Consistent with these efforts, the Host Community Agreement required Wynn to reconstruct the entirety of Lower Broadway and explicitly contemplated Wynn’s expansion of the gaming establishment, both prior to and after initial licensure. There were numerous, well attended public forums, both in connection to the project itself and the Lower Broadway District Master Plan, and copies of the Host Community Agreement were posted on the City’s website and sent to every household in the City.

It was in this context that the voters of the City overwhelmingly (86%) approved the development of a gaming establishment. The effect of the ballot vote was to approve of the Host Community Agreement, which every voter had received. Chapter 23K, §15(13) specifically requires that the ballot vote may only occur after a host community agreement has been signed and made publicly available; indeed, the statute requires that the host community agreement remain posted on the municipal website until after certification of the ballot vote. Clearly, therefore, the Legislature recognized the obvious fact that the primary information voters would consider in voting on a ballot question would be the terms of the host community agreement.

Courts have repeatedly recognized that voters do not vote in a vacuum—their votes should be evaluated based upon information made available to them in connection with their vote. See, e.g., Hensley v. Attorney General, 474 Mass. 651, 665 (2016) (even though Attorney General’s ballot question summary omitted fact that marijuana legalization question would permit edibles, “the summary is not the only source of information for voters... The availability of other information does not relieve the Attorney General of her duty to preparer a constitutionally adequate summary, but it does give us confidence that the electorate will likely understand that the scope of the petition includes edible marijuana products.”); Board of Health of North Adams v. Mayor of North Adams, 368 Mass. 554, 561 n.5 (1975), citing O'Brien v. Bd. of Election Comm'rs of City of Bos., 257 Mass. 332, 338 (1926) (“if the intent of the voter can be determined with reasonable certainty from an inspection of the ballot, in the light of the generally known conditions attendant upon the election, effect must be given to that intent”) [emphasis added]; Coughlin v. Le Clair, 294 Mass. 434, 436 (1936) (same); contrast Capezuto v. State Ballot Law Commission, 407 Mass. 949 (1990) (initiative petition invalid where signatories were not provided actual text of proposed legislation but only oral description by partisan advocate).

The understanding that voters cast their ballots based upon information provided to them by public officials is further reflected in the Commonwealth’s election statutes, which specifically require that voters be provided with information to inform their votes on ballot measures. See G.L. c.23K, §15(13) (requiring public disclosure and posting of host community agreement prior to election); G.L. c.54, §53 (requiring that voters be provided by mail with summaries, statements and arguments for and against measures appearing on the ballot); G.L. c.54, §53 (providing for preparation of arguments for and against ballot measures to be mailed to voters).

Accordingly, the vote to approve of a gaming establishment by over 86% of the City's voters in June 2013 must be construed based upon the information provided to them by the City in advance of the election. This information included the Host Community Agreement, which explicitly anticipates and provides for expansion of the gaming establishment beyond the land shown on Exhibit A. In light of this fact, and of the fact that the City repeatedly and consistently presented the gaming establishment project as an anchor of the overall redevelopment of the Lower Broadway District, there is no reason to believe that the voters would have voted any differently had the original project included the Proposed Revision. What these voters cast their ballots to support was job creation, municipal revenue generation, environmental remediation and redevelopment of a formerly blighted area.<sup>3</sup> The Proposed Revision is manifestly consistent with all of these goals and, therefore, with the will of the voters, and the City submits that this will should be respected. Cf. Fyntrilakis v. City of Springfield, 47 Mass. App. Ct. 464, 468–69, 713 N.E.2d 1007, 1010 (1999) (“The purpose of election laws is to ascertain the popular will and not to thwart it.”) (internal quotations omitted).

Thank you for the opportunity to present this information on behalf of the City. I would be happy to provide any further information or answer any questions the Commission may have.

Very truly yours,



Jonathan M. Silverstein

cc: Hon. Carlo DeMaria, Jr., Mayor  
Colleen Mejia, Esq., City Solicitor

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<sup>3</sup> The City also refers the Commission to the testimony of Chief of Staff Erin Deveney at the Commission's November 16, 2022 meeting.



## 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;



## TOWN OF PLAINVILLE

SELECT BOARD  
Stanley Widak, Jr., Chair  
Jeffrey Johnson, Vice-Chair  
Brian M. Kelly, Clerk

[www.plainville.ma.us](http://www.plainville.ma.us)  
190 SOUTH STREET, P.O. BOX 1717  
PLAINVILLE, MASSACHUSETTS 02762

TOWN ADMINISTRATOR  
Brian S. Noble  
[bnoble@plainville.ma.us](mailto:bnoble@plainville.ma.us)  
508.576.8470

January 24, 2023

Mr. Joseph E. Delaney, Chief of Community Affairs  
Massachusetts Gaming Commission  
101 Federal Street, 12<sup>th</sup> Floor  
Boston, MA 02110

**RE: Encore Expansion – Adequacy of Referendum**

Dear Mr. Delaney,

Last night, I presented your question to the Select Board at their regularly scheduled meeting.

It was the opinion of the Board that the referendum was site specific to 301 Washington Street. The address (site) includes approximately a 30-acre parcel of land that abuts Routes 1 and 495. This parcel is in the "Adult Entertainment District." The Town created the district specifically to include the casino. The Board believes that neither the wording of the referendum nor the zoning restricts the future expansion of Plainridge in its current location. They were clear, however, that while the referendum secured 75% support, it was not blanket permission for the entire Town.

If you have any additional concerns, don't hesitate to get in touch with me directly.

Sincerely,

BRIAN S. NOBLE  
Town Administrator

BSN:mt

cc: Select Board

enclosures:

Referendum Question and Polling Result  
Presentation to the Select Board on January 23<sup>rd</sup>.

**FW: Encore Expansion - Adequacy of Referendum**

Delaney, Joseph E. <joseph.delaney@massgaming.gov>

Fri 1/20/2023 2:33 PM

To: Brian Noble <bnoble@plainville.ma.us>

Dear Mr. Noble:

As we discussed, the Massachusetts Gaming Commission is considering a request from Encore Boston Harbor to expand gaming to a location across the street from the existing facility. The question before the Commission is whether the gaming referendum that was held in Everett was designed to limit gaming to the site identified in the referendum or to generally endorse the awarding of a gaming license in the community.

The Commission would like to hear the opinions of the other communities that host gaming establishments to help inform the Commission in their deliberations on this application. If you would like to opine on this matter, you may respond in writing or you may appear at the Commission meeting on February 8. If responding in writing, we ask that you submit your letter to us by January 26, 2023 so that the Commission has ample opportunity to review the material. If you wish to speak at the Commission meeting, please let me know and I will send you a link to the on-line meeting.

Thanks for your assistance in this matter.

Sincerely:

Joseph E. Delaney  
Chief of Community Affairs  
Massachusetts Gaming Commission  
(617) 721-9198



**TOWN OF PLAINVILLE  
SPECIAL TOWN ELECTION  
SEPTEMBER 10, 2013**

Norfolk County

To either of the Constables of the Town of Plainville

GREETING:

In the name of the Commonwealth you are hereby required to notify and warn the inhabitants of said Plainville who are qualified to vote in Elections to vote at:

PRECINCT ONE PRECINCT TWO AND PRECINCT THREE  
AT  
BEATRICE WOOD ELEMENTARY SCHOOL  
72 MESSENGER STREET  
PLAINVILLE, NORFOLK COUNTY, MASSACHUSETTS

on **TUESDAY, THE TENTH DAY OF SEPTEMBER, 2013** FROM 7:00 A.M. to 8:00 P.M. to vote on the following **Question:**

*Shall the Town of Plainville permit the operation of a gaming establishment licensed by the Massachusetts Gaming Commission to be located at Plainridge Racecourse, 301 Washington Street, Plainville? \_\_\_\_\_ Yes \_\_\_\_\_ No*

*A "YES" vote would allow the owner of Plainridge Racecourse to apply to the Massachusetts Gaming Commission for a license to operate a gaming facility in accordance with a Host Community Agreement executed between the Town and the Racecourse's owner. The primary terms of the Agreement are set forth below.*

*A "NO" vote would prohibit the operation of such a gaming facility and prevent the applicant from submitting a final application to the Massachusetts Gaming Commission.*

## **Summary of Key-Points Within the Plainridge Host Community Agreement**

### **Financial**

- Plainridge to pay for all consulting and legal costs incurred by the Town as part of the licensing process subject to budgetary review
- Plainridge to pay \$1,500,000 in real and personal property taxes upon full commencement of gaming. The tax payment will increase 2 ½% per year, and increase further upon the construction of any additional space beyond 170,000 square feet.
- Plainridge to pay the Town \$100,000 annually as a Community Impact Fee. The Community Impact Fee will be increased proportionally if slot machine count is ever permitted to exceed 1,250.
- Plainridge to pay the following Host Community Payments:
  - \$2,700,000 annually for the first five (5) years of full operation which will be increased proportionally if slot machine count is permitted to exceed 1,250 during this period.
  - 1.5% of Gross Gaming Revenue during years six through ten (6-10) which is estimated to equate to approximately \$2,300,000 annually
  - 2.0% of Gross Gaming Revenue starting in year eleven (11) and thereafter which is estimated to equate to approximately \$3,300,000 annually
- Plainridge will continue to pay Live Racing and Simulcasting Payments directly to Plainville in the event the State of Massachusetts discontinues to assess the current 0.35% tax.
- Plainridge agrees to the validity and payment of all building permit fees which are estimated to be \$816,000.

### **Employment**

- 300 estimated construction related positions
- 400 estimated full-time positions once full operations commence
- Employment preference to be given to qualified Plainville residents
- Plainridge to schedule a dedicated hiring event for Plainville residents

### **Transportation**

- Traffic improvements to be consistent with requirements of the Planning Board's Special Permit

### **Responsible Gaming**

- Plainridge will implement a Responsible Gaming Plan which will incorporate:
  - Education of employees and patrons on odds of games and responsible gaming decisions
  - Promotion of responsible gaming in daily operations
  - Support of public awareness of responsible gaming

**Miscellaneous**

- Agreement allows for "Initial Limited Operations" if allowed by the Massachusetts Gaming Commission. All transportation improvements and requirements of the Planning Board's Special Permit would have to be met first.
- "Initial Limited Operations" defined as anything less than 800 slot machines.
- If the "Initial Limited Operations" option is exercised, the Town will be paid 1.5% of Gross Gaming Revenue during that period.
- During the "Initial Limited Operations" period, property and personal property tax would be \$500,000

Hereof fail not and make return of this warrant with your doings thereon at the time and place of said voting.

Given under our hands this 12<sup>th</sup> day of August 2013.



Robert H. Fennessy, Jr., Chairman  
 Selectmen  
 of Robert E. Rose  
 Plainville  
 Andrea R. Soucy

Patrick Coleman, Constable  
August 14, 2013

I have this day posted six (6) copies in six (6) public places in the Town of Plainville and have returned one signed copy to the Town Clerk.

Patrick Coleman, Constable  
August 14, 2013

**TOWN OF PLAINVILLE  
 PROCEEDINGS of the SPECIAL TOWN ELECTION – September 10, 2013**

Pursuant to the foregoing warrant for the Special Town Election that was held in the Beatrice Wood Elementary School, 72 Messenger, Plainville, Massachusetts, Norfolk County,

The following election officials were sworn into their faithful performance of duty by the Town Clerk, Ellen M. Robertson.

**PRECINCT ONE**

<u>Name</u>	<u>Position</u>	<u>Party</u>
Nancy Cossette	Warden	Unenrolled
Maryellen Galvin	Clerk	Unenrolled
Patricia Stein	Inspector	Unenrolled
Maureen Headd	Inspector	Unenrolled
Ronald Garron	Inspector	Republican
Sandra Germano	Inspector	Democrat
Cheryl Rowe	Inspector	Unenrolled

**PRECINCT TWO**

Joann Nelson	Warden	Republican
Patricia Stewart	Clerk	Unenrolled
Ursula Dyer	Inspector	Unenrolled
Maureen Udstuen	Inspector	Unenrolled
Judith Molloy	Inspector	Unenrolled
Sandra Hall	Inspector	Unenrolled
Grace Simmons	Inspector	Republican

**PRECINCT THREE**

Joan Clarke	Warden	Republican
Alice Edwards	Clerk	Unenrolled
Valerie Comes	Inspector	Unenrolled
Maureen Garron	Inspector	Republican
Barbara Fulton-Parmenter	Inspector	Republican
Melissa Pace	Inspector	Unenrolled
Colleen Gardner	Inspector/Assist Town Clerk	Unenrolled
Ann Marie Eisele	Inspector/Affirmation Clerk	Unenrolled

The Town Clerk gave instructions to poll workers on the Optec voting system and their conduct regarding the election. The Town Clerk also explained the proper procedure for handling “inactive voters”, “provisional voters” and the filing of “Affirmation of Current and Continuous Residence” forms. Written instructions were handed out to all election workers and police officers.

Officer Brian Scully along with Assistant Town Clerk Colleen Gardner and the Warden of each precinct inspected the ballot boxes. The ballot boxes were found to be empty. The Optec electronic scanner was turned on in each precinct and the machine tapes verified a count of zero. The ballot box keys were turned over to Officer Scully. The ballots were delivered to the precinct clerks at 6:45 A.M.

**TOWN OF PLAINVILLE  
PROCEEDINGS of the SPECIAL TOWN ELECTION – September 10, 2013**

The Town Clerk read the warrant and declared the polls officially open at 7:00 A.M. Police officers on duty during polling hours were Brian Scully, Charles Marcelonis and Steve Dehestani. Ballot box keys were held by Officer Scully from 7:00 AM – 4:00 PM and Officer Dehestani from 4:00 PM -9:30 PM.

The three precinct clerks processed absentee ballots. Twelve (12) people voted by absentee ballot in precinct one, Fourteen (14) in precinct two and Thirteen (13) in precinct three. The absentee ballots go through the Optec scanner and into the ballot box the same way as the regular ballots and are included on the ballot box total. Three ballots were not read in precinct one by the Optech machine and were put into the auxiliary bin to be hand counted at the end of the night. Two ballots were not read in precinct two by the Optech machine and were put into the auxiliary bin to be hand counted at the end of the night. Six absentee ballots in precinct three were not read by the Optech machine and were put into the auxiliary bin to be hand counted at the end of the night.

The Town Clerk officially closed the polls at 8:00 P.M. Precinct one ballot box had a reading of 708 with three ballots in the auxiliary bin for a total of 711. Precinct two ballot box had a reading of 650 with two ballots in the auxiliary bin for a total of 652. Precinct three ballot box had a reading of 715 with six ballots in the auxiliary bin for a total of 721. The ballot boxes were opened and the ballots removed for tallying in the presence of Officer Dehestani, the wardens and clerks. The election tally was completed at 8:20 PM. The total number of ballots cast was 2,084 (37% of the 5,569 registered voters).

<b>QUESTION #1</b>	<b>PCT 1</b>	<b>PCT 2</b>	<b>PCT 3</b>	<b>TOTAL</b>
<b>YES</b>	497	480	605	1582
<b>NO</b>	214	172	116	502
<b>TOTALS</b>	711	652	721	2084



**COMMONWEALTH OF MASSACHUSETTS  
WILLIAM FRANCIS GALVIN  
SECRETARY OF THE COMMONWEALTH**

**SS. NORFOLK**

To either of the Constables of the Town of PLAINVILLE

**GREETING:**

In the name of the Commonwealth, you are hereby required to notify and warn the inhabitants of said PLAINVILLE who are qualified to vote in the Special State Primaries to vote at

PRECINCT ONE, TWO and THREE  
AT  
BEATRICE WOOD ELEMENTARY SCHOOL  
72 MESSENGER STREET  
PLAINVILLE, NORFOLK COUNTY, MASSACHUSETTS

on **TUESDAY, THE TENTH OF DECEMBER, 2013**, from 7:00 A.M. to 8:00 P.M. for the following purpose:

To cast their votes in the Special State Primaries for the candidates of political parties for the following office:

**REPRESENTATIVE IN GENERAL COURT. . . . FOR THE NINTH NORFOLK DISTRICT**

Hereof fail not and make return of this warrant with your doings thereon at the time and place of said voting.

Given under our hands this 28th day of October, 2013.

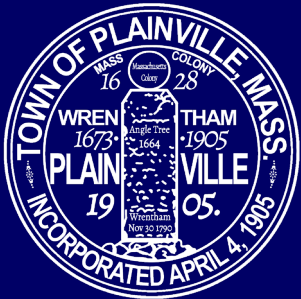


Robert H. Fennessy, Jr, Chairman  
Robert E. Rose  
Andrea R. Soucy

Selectmen of Plainville

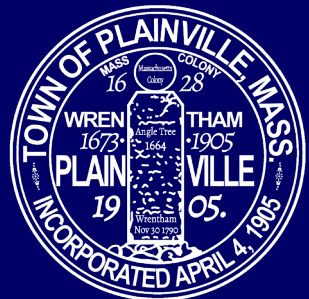
I have on this day posted six (6) copies of this warrant in six (6) public places in the town of Plainville and have on this day returned one signed copy to the Town Clerk.

Patrick Coleman, Constable  
October 29, 2013



# Gaming Commission Request for Comment

*Do you think that most people believed they were legalizing the casino only at that specific address or do you believe they were authorizing it in the Zoning District, then called the “Adult Entertainment” District?*



Massachusetts Gaming Commission

September 10, 2013

Shall the Town of Plainville permit the operation of a gaming establishment licensed by the Massachusetts Gaming Commission to be located at Plainridge Racecourse, 301 Washington Street, Plainville?

Yes or No

September 10, 2013

*A “YES” vote would allow the owner of Plainridge Racecourse to apply to the Massachusetts Gaming Commission for a license to operate a gaming facility in accordance with a Host Community Agreement executed between the Town and the Racecourse’s owner. The primary terms of the Agreement are set forth below.*

*A “NO” vote would prohibit the operation of such a gaming facility and prevent the applicant from submitting a final application to the Massachusetts Gaming Commission.*

September 10, 2013

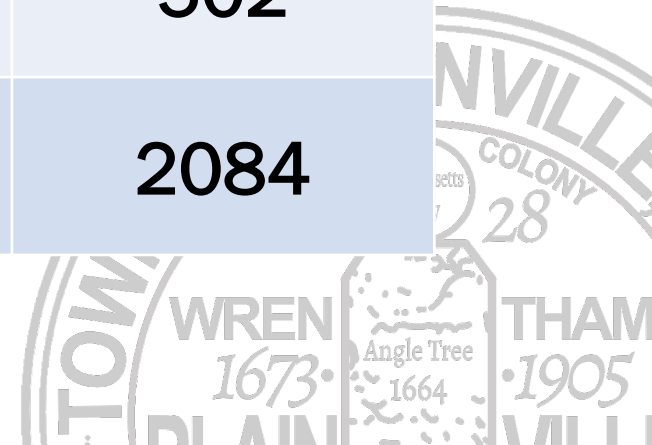
## *Miscellaneous*

- *Agreement allows for “initial Limited Operations” if allowed by the Massachusetts Gaming Commission. All transportation improvements and requirements of the Planning Board’s Special Permit would have to be met first.*
- *“Initial Limited Operations” defined as anything less than 800 slot machines.*
- *If the “Initial Limited Operations” option is exercised, the Town will be paid 1.5% of Gross Gaming Revenue during that period.*
- *During the “Initial Limited Operations” period, property and personal property tax would be \$500,000*

# Voting Results

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Question #1	PCT 1	PCT 2	PCT 3	TOTAL
YES	497	480	605	1582
No	214	172	116	502
TOTALS	711	652	721	2084

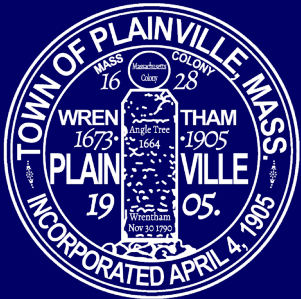


September 10, 2013

**QUESTION:**

*Do you think that most people believed they were legalizing the casino only at that specific address or do you believe they were authorizing it in the Zoning District, then called the “Adult Entertainment” District?*





Thank you.

**CITY OF EVERETT**  
*Office of the Mayor*

**Carlo DeMaria, Jr.**  
Mayor



**Everett City Hall**  
484 Broadway  
Everett, MA 02149-3694  
Phone: (617) 394-2270  
Fax: (617) 381-1150

November 15, 2022

**VIA EMAIL**  
**Joseph.Delaney@massgaming.gov**

Massachusetts Gaming Commission  
101 Federal St.  
12<sup>th</sup> Floor  
Boston, MA 02110  
Attn: Joseph Delaney

**Re: Revision to Wynn MA, LLC Gaming Establishment in the East of Broadway Development**

Dear Commissioners:

I am writing pursuant to Wynn MA, LLC’s (“Wynn MA”) September 13, 2022 petition to the Massachusetts Gaming Commission (the “Commission”) seeking approval of a revised gaming establishment boundary that would include a gaming area in the East of Broadway Development in Everett, Massachusetts (“Proposed Revision”). The City of Everett is in full support of the Proposed Revision. In addition, the City of Everett is of the opinion that the Proposed Revision is contemplated by the existing Host Community Agreement (“HCA”) between Wynn MA and the City of Everett, and, as such, would not require a vote on a new ballot question pursuant to M.G.L. c. 23k § 15 (13).

The East of Broadway Development will be located on Broadway/Route 99 across the street from the Encore Boston Harbor (“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 facilities, water transportation facilities, and retail stores,” the East of Broadway Project

Development will be a multi-use development, which will include restaurant and retail space, a theater, a parking garage, and a pedestrian bridge to cross Broadway (Route 99).

The City of Everett understands that the Proposed Revision would include a gaming area in one of the buildings that will be part of the East of Broadway Project Development, and would include a sports book, nightclub, day club, comedy club, theater, poker room, and a parking garage.

The City of Everett is supportive of the Proposed Revision, and no new ballot vote will be required in order for the Proposed Revision to proceed. First, in establishing the Impact Fee to the City in Section 1.B.1 of the HCA, the parties specifically contemplated that Wynn MA may undertake construction on property other than the current EBH site and provided that the City and Wynn MA will negotiate a revised or separate impact fee relative to any such expansion.<sup>1</sup> The parties included a similar provision in Section 1.B.2 relative to the establishment of a payment in lieu of taxes (“PILOT”), pursuant to G.L. c.121A.<sup>2</sup> In accordance with the HCA, the City will be negotiating with Wynn MA regarding the amount of additional impact and real estate tax (or PILOT) payments to be paid to the City in connection with the Proposed Revision.

In addition, because the HCA was incorporated into the June 22, 2013 ballot question required by M.G.L. c. 23k, § 15 (13), an additional election is not needed to address the Proposed Revision. 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). The signed HCA was also made available to the voters, over 86% of whom voted to approve the HCA. There is no reason to believe that the voters would have voted any differently had the original project included the Proposed Revision, which will only provide additional revenue to the City and further redevelopment of a formerly blighted area.<sup>3</sup> Because the June 22, 2013 ballot question fairly summarized and

---

<sup>1</sup> Specifically, Section 1.B.1 provides, in relevant part, as follows:

[I]f, 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 [the] 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.

<sup>2</sup> Section 1.B.2 provides, in relevant part, as follows:

[I]f, 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 [the] 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 [] such substantial New Construction on such New Property.

<sup>3</sup> This area, including the land on which the East of Broadway development is to be constructed was included in the City’s Lower Broadway District Master Plan and, thereafter, in the City’s Lower Broadway District Urban Renewal Plan, approved by DHCD, the Everett City Council and the Everett Redevelopment Authority, based upon a determination that the area was a decadent area and blighted open area, consistent with the requirements of G.L. c.121B.

incorporated the HCA, which contemplates and permits a revision of the type now proposed by Wynn MA, the City of Everett does not believe a further election is required.

The City of Everett enthusiastically supports the Proposed Revision. The Proposed Revision will further enhance Lower Broadway—the gateway to Everett—making it a vibrant and fruitful Destination District, and it will result in increased impact payments and real property tax or PILOT payments to the City, per the terms of the HCA.

On behalf of the City, I thank you for your time and consideration of this exciting next phase in the redevelopment of the Lower Broadway area.

Sincerely,

A handwritten signature in blue ink that reads "Carlo De Maria". The signature is written in a cursive, flowing style.

Carlo DeMaria  
Mayor  
City of Everett



**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

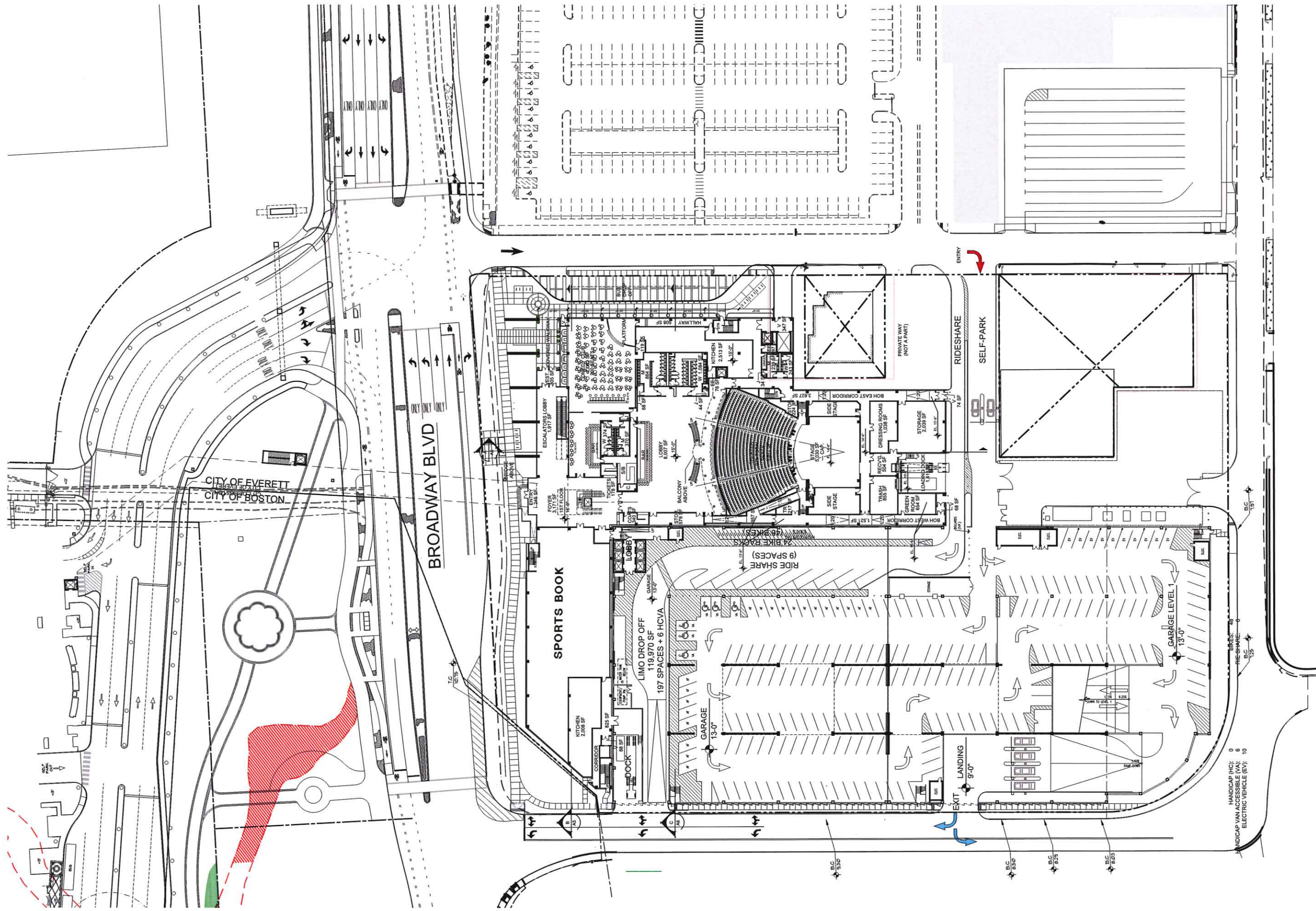
**Wynn's Commitments to Everett**

- 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

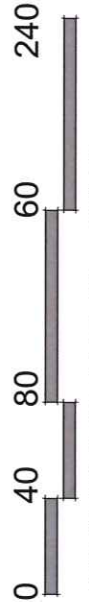
**Everett's Commitments to Wynn**

- 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.*



HANDICAP (HC): 0  
 HANDICAP VAN ACCESSIBLE (VA): 6  
 ELECTRIC VEHICLE (EV): 10



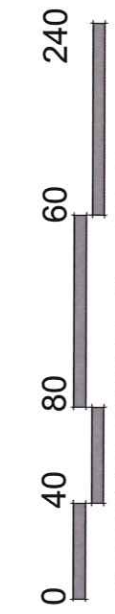
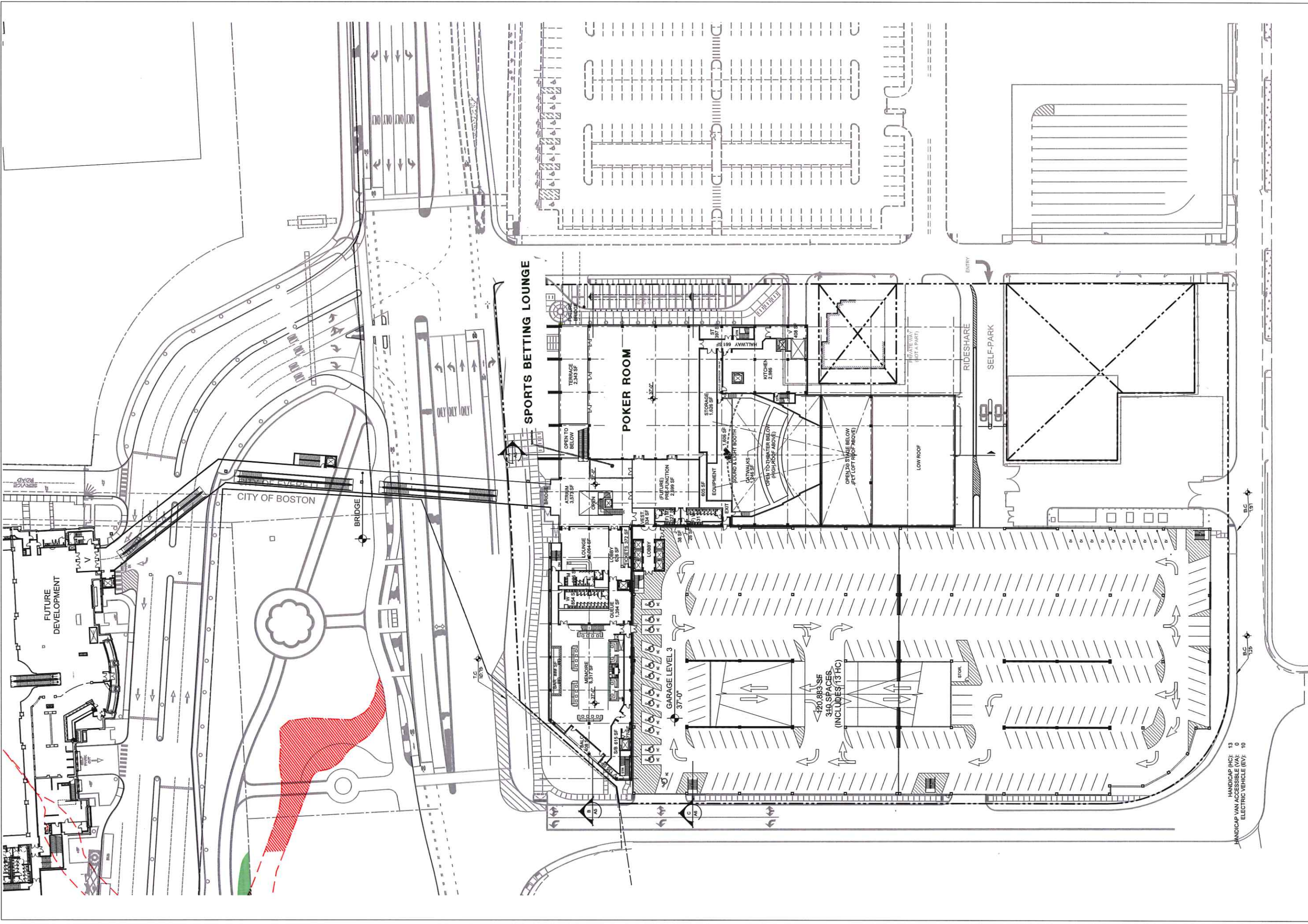
GRAPHIC SCALE: 1" = 80'-0"



**EAST OF BROADWAY**  
 1ST LEVEL PLAN - PARCEL B-1 SITE PLAN

OWNER REP: *Wynn* DESIGN & DEVELOPMENT  
 PROJECT NUMBER: 550-21-001  
 DATE: July 22, 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 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.



GRAPHIC SCALE: 1" = 80'-0"

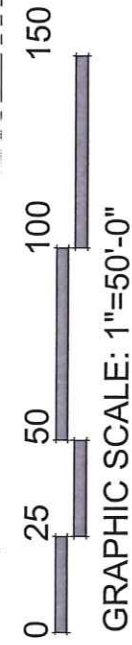
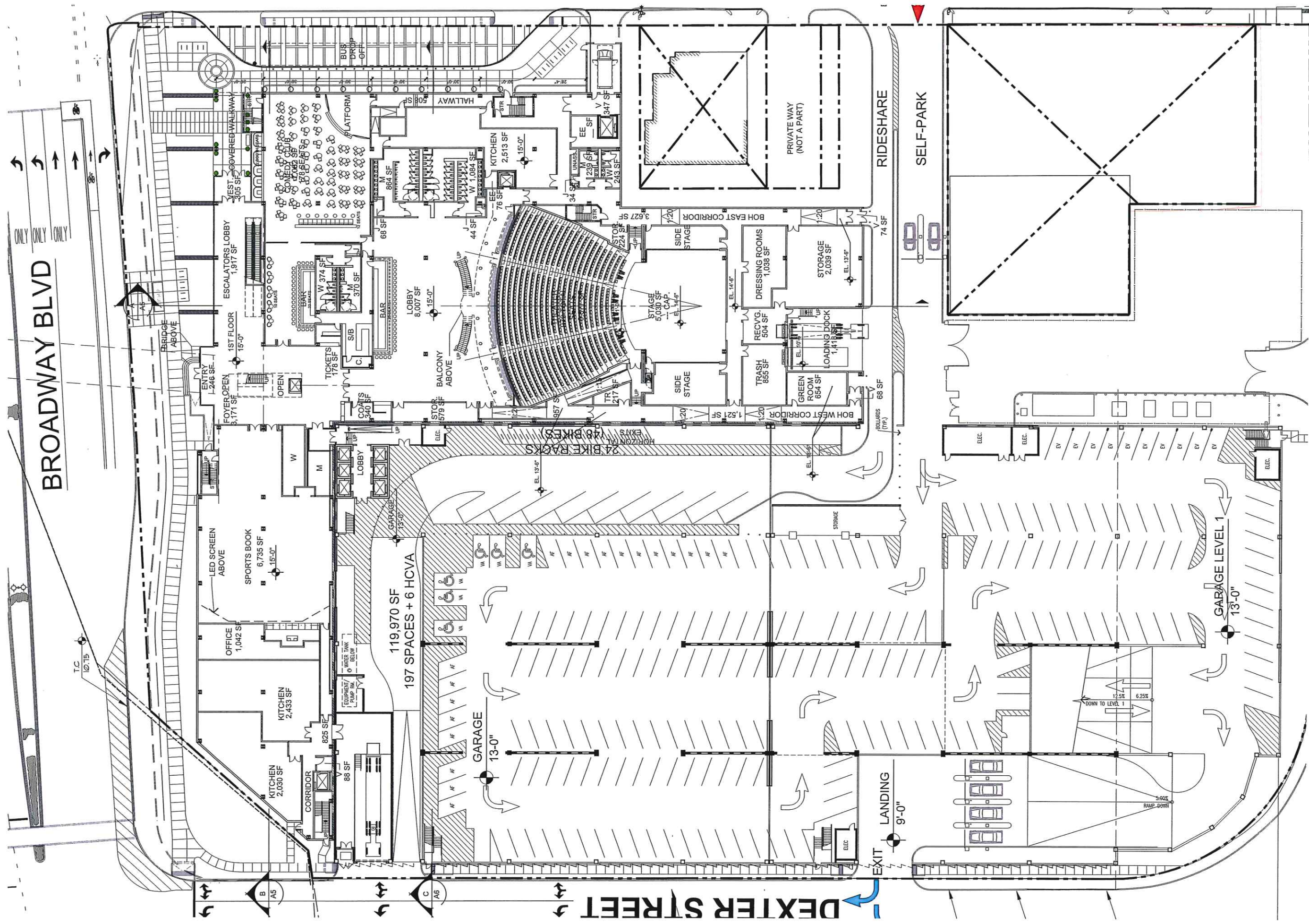


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 PROJECT NUMBER: 550-21-001  
 DATE: July 22, 2022  
 OWNER REP: *Wynn* DESIGN & DEVELOPMENT  
 DRAWING NAME: EAST OF BROADWAY  
 PROJECT: GARAGE LEVEL 3 / EVENTS 2nd LEVEL PLAN - NIGHT CLUB  
 PACKED: Page 240  
 DRAWING NUMBER: EOB  
 SHEET NUMBER: A-2

HANDICAP (HC): 13  
 HANDICAP VAN ACCESSIBLE (VA): 0  
 ELECTRIC VEHICLE (EV): 10



BROADWAY BLVD

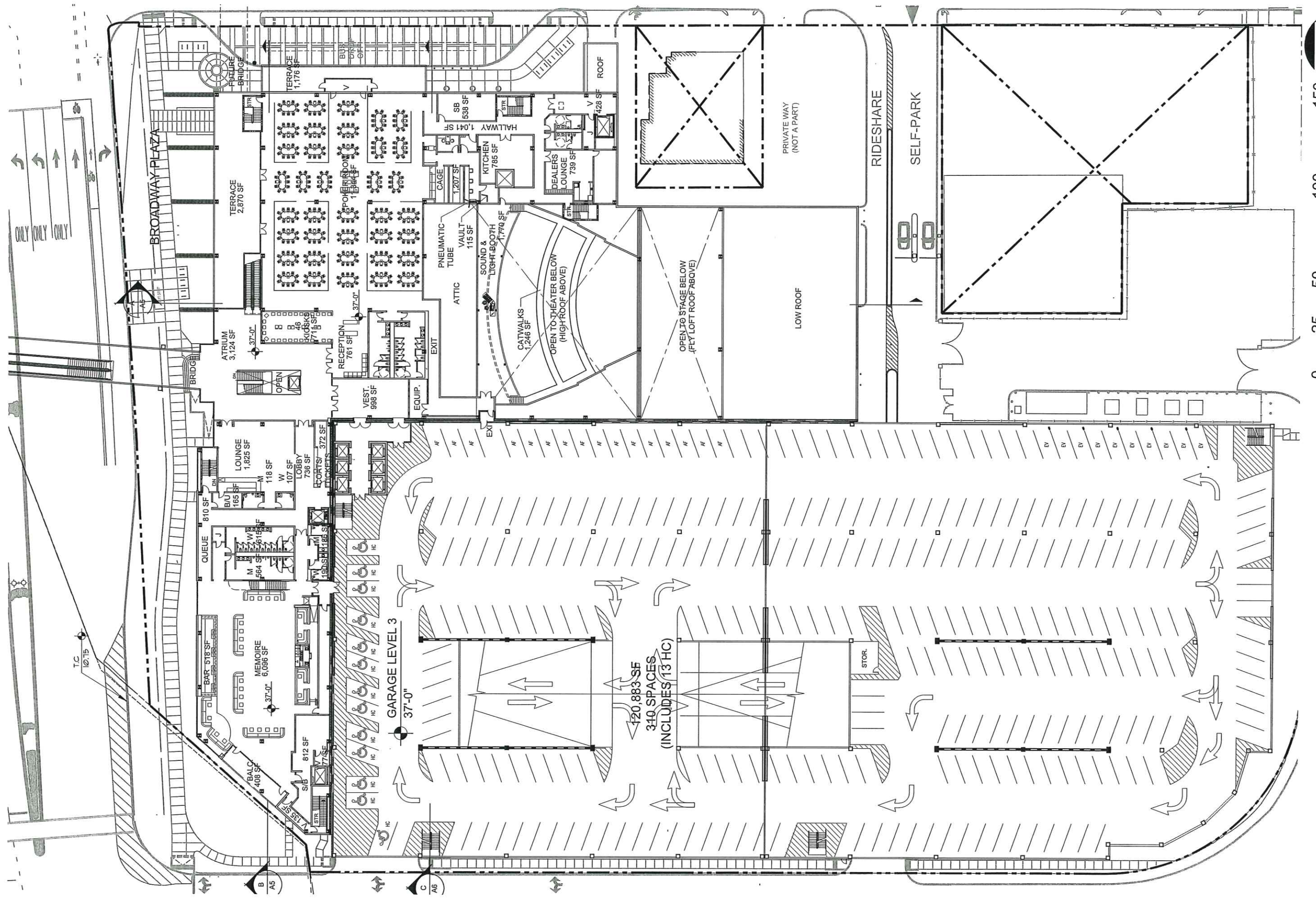


**EAST OF BROADWAY**  
GARAGE LEVEL 1 / THEATER 1st LEVEL PLAN

PROJECT:   
 DRAWING NAME:   
 OWNER REF:   
 PROJECT NUMBER:   
 DATE: August 5, 2022



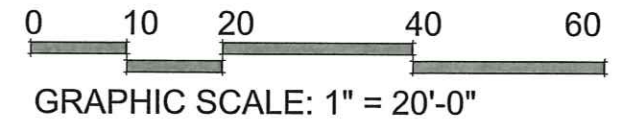
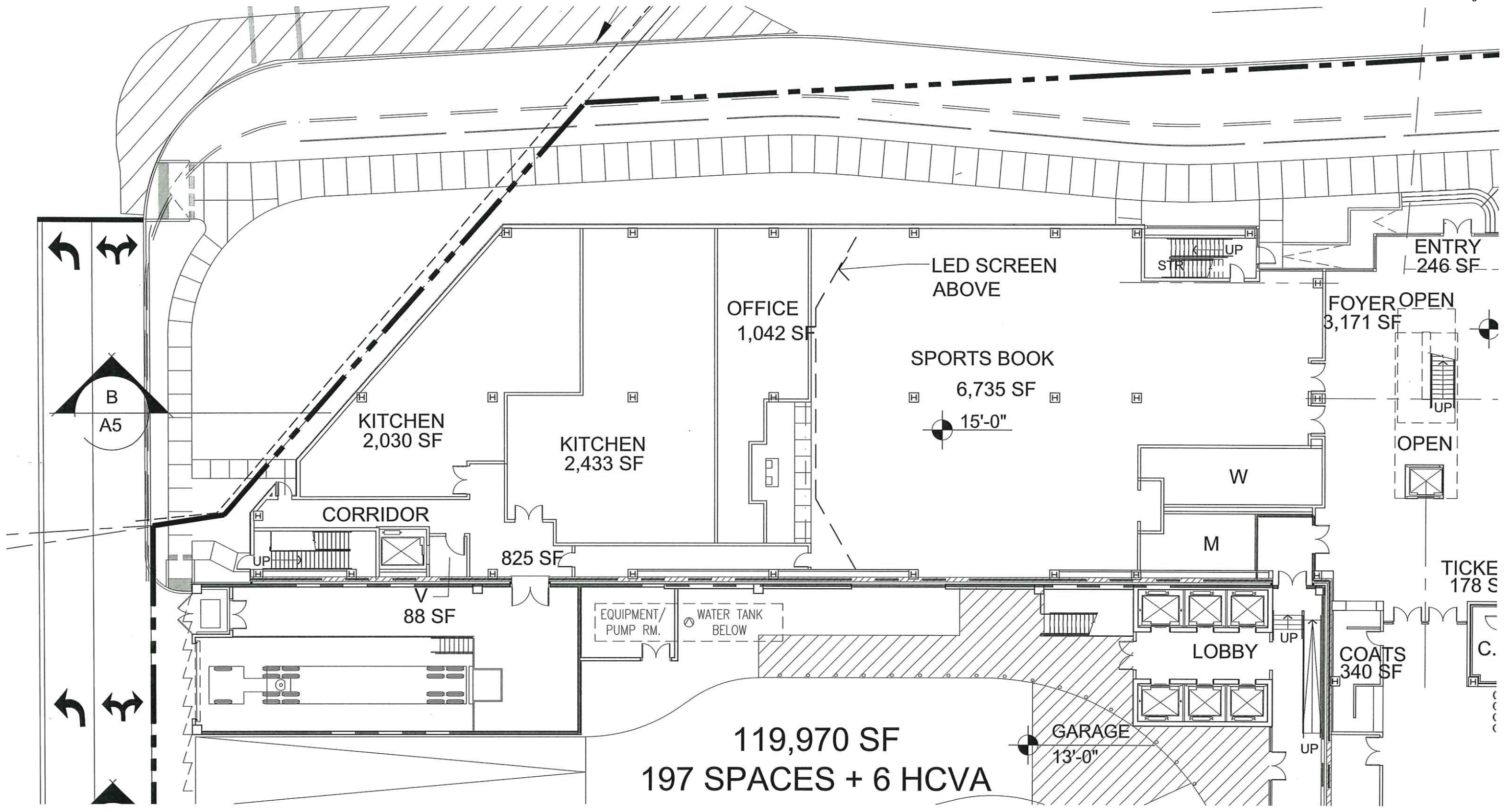
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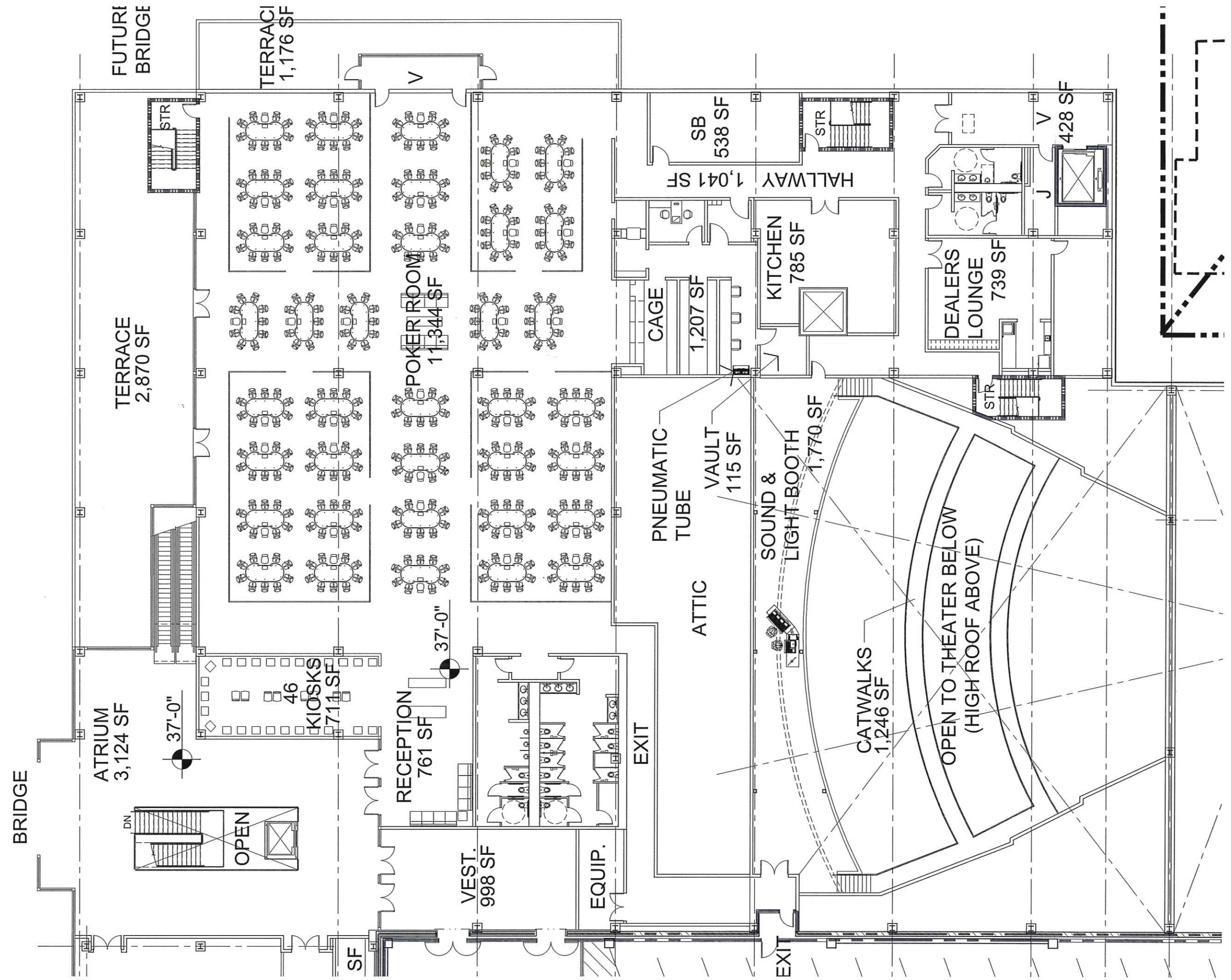


GRAPHIC SCALE: 1"=50'-0"

DRAWING NUMBER: **550-21-001**  
 PROJECT: **EAST OF BROADWAY**  
 PROJECT: **GARAGE LEVEL 3 / EVENTS 2nd LEVEL PLAN - NIGHT CLUB**  
 DATE: **August 5, 2022**  
 OWNER REP: **Wynn**  
 DESIGN & DEVELOPMENT  
 DRAWING NUMBER: **EOB**  
 PROJECT: **A-2a**

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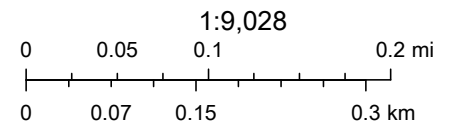


Scale: 1"=20'-0"  
 MU-2

# Lower Broadway Area Everett MA



January 23, 2023



# Quarterly Report Q4 2022

February 8, 2023

Massachusetts Gaming Commission

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BOSTON HARBOR  
A WYNN RESORT

# Gaming Revenue, Taxes & Lottery Sales

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BOSTON HARBOR  
A WYNN RESORT

# Gaming Revenue & Taxes: Q4 2022

Year	Month	Table Games GGR	Slots GGR	Total GGR	State Taxes Collected
<b>2022</b>	October	\$28,365,680.78	\$33,677,401.58	\$62,043,082.36	\$15,510,770.59
	November	\$26,588,480.33	\$32,841,989.82	\$59,430,470.15	\$14,857,617.54
	December	\$33,475,100.78	\$34,984,642.31	\$68,459,743.09	\$17,114,935.77
	<b>Total</b>	<b>\$88,429,261.89</b>	<b>\$101,504,033.71</b>	<b>\$189,933,295.60</b>	<b>\$47,483,323.90</b>



# Gaming Revenue & Taxes: Year-Over-Year

Year	Quarter	Table Games GGR	Slots GGR	Total GGR	State Taxes Collected
<b>2021</b>	<b>Q1</b>	\$51,147,252.30	\$72,828,463.99	\$123,975,716.29	\$30,993,929.07
	<b>Q2</b>	\$66,827,652.69	\$88,842,261.01	\$155,669,913.70	\$38,917,478.42
	<b>Q3</b>	\$76,482,024.77	\$97,903,798.73	\$174,384,053.50	\$43,596,013.38
	<b>Q4</b>	\$86,322,321.24	\$94,064,782.51	\$180,387,103.75	\$45,096,775.94
	<b>Total</b>	<b>\$280,779,251.00</b>	<b>\$353,639,306.24</b>	<b>\$634,416,787.24</b>	<b>\$158,604,196.81</b>
<b>2022</b>	<b>Q1</b>	\$79,459,213.78	\$94,110,326.79	\$173,569,540.57	\$43,392,385.14
	<b>Q2</b>	\$83,618,480.43	\$98,210,588.95	\$181,829,069.38	\$45,457,267.36
	<b>Q3</b>	\$81,026,184.12	\$103,366,682.87	\$184,392,866.99	\$46,098,216.75
	<b>Q4</b>	\$88,429,261.89	\$101,504,033.71	\$189,933,295.60	\$47,483,323.90
	<b>Tota</b>	<b>\$332,533,140.22</b>	<b>\$397,191,632.32</b>	<b>\$539,791,476.94</b>	<b>\$182,431,193.15</b>

# Lottery Sales: Q4 2022\*

Year	Month	Lottery Sales	% Change 2021
<b>2022</b>	October	\$325,295.00	17.4%
	November	\$270,090.50	12.8%
	December	\$516,134.00	31.8%
	<b>Total</b>	<b>\$1,111,519.50</b>	<b>22.4%</b>

\*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%
	<b>Total</b>	<b>\$3,026,737.25</b>	<b>71.2%</b>
2022	Q1	\$818,421.75	33.4%
	Q2	\$828,894.50	14.0%
	Q3	\$879,137.50	13.0%
	Q4	\$1,111,519.50	22.4%
	<b>Total</b>	<b>\$3,637,973.25</b>	<b>20.2%</b>

# Workforce

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A WYNN RESORT

# Employment: All Employees

Sector	Goal	Q1% <sup>1</sup>	Q1 Total # of Employees	Q2% <sup>2</sup>	Q2 Total # of Employees	Q3% <sup>3</sup>	Q3 Total # of Employees	Q4%	Q4 Total # of Employees
Minority	40%	54%	1,879	51%	1,725	55%	1,921	57%	2,032
Veteran	3%	2%	82	2%	82	2%	80	2%	84
Women	50%	45%	1,550	45%	1,529	46%	1,606	45%	1,611
Local/Host/Surrounding Community Resident <sup>3</sup>	75%	87%	3,030	88%	2,992	88%	3,060	88%	3,128
MA Residents	-	90%	3,144	91%	3,097	91%	3,161	91%	3,233
Total Number of Employees <sup>4</sup>			3,482		3,390		3,479		3,555
Full-time			2,403		2,349		2,394		2,504
Part-time			1,079		1,041		1,085		1,051
On-call			0		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 All Q4 figures are as of January 1, 2023.

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

6 Please note that an employee may fall into more than one sector (e.g.: minority and local) and, as such, totals may not be reflective of the sum of previous columns.

# Employment: Supervisory and Above

	Minority	Women	Veteran	Total Head Count (including non-minority employees)
<b>ALL EMPLOYEES</b>				
Number of Employees	2,032	1,611	84	3,555
% Actual	57%	45%	2%	-
<b>MANAGER AND ABOVE</b>				
Number of Employees	105	100	16	231
% Actual	45%	43%	7%	-
<b>SUPERVISORS AND ABOVE</b>				
Number of Employees	335	245	27	569
% Actual	59%	43%	5%	-

# Career Fairs and Hiring Events



- ❖ EBH hosted and/or attended more than 35 career fairs/hiring events during Q4
- ❖ Spoke with hundreds of interested students and employment candidates for positions in food and beverage, public area development, hotel, accounting and cage, security, culinary and retail departments
- ❖ More than 130 hires were made as a result of these hiring events

# Operating Spend

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# Operating Spend<sup>1</sup>: Diversity

Diversity Category	Annual Goal	Q4 %	Q4 Spend
MBE Vendor Spend	8%	8%	\$1,799,634.64
VBE Vendor Spend	3%	2%	\$542,419.37
WBE Vendor Spend	14%	12%	\$2,706,013.47
<b>Total Diverse Spend</b>	<b>25%</b>	<b>22%</b>	<b>\$5,048,067.48</b>

1 All spend figures referenced herein are based upon Encore Boston Harbor's Q4 discretionary spend amount of \$22,777,237.75.

# Operating Spend<sup>1</sup>: Diversity (Year-Over-Year)

Quarter	2021	2022
1	\$3,583,335.02	\$4,707,170.78
2	\$4,147,123.36	\$6,045,666.87
3	\$4,394,841.18	\$5,895,042.92
4	\$6,298,341.63	\$5,048,067.48
<b>Total</b>	<b>\$18,423,641.19</b>	<b>\$21,695,948.05</b>

# Operating Spend: Local

Locality	Annual Goal	Q4 %	Q4 Spend
<b>Boston</b>	\$20,000,000.00	13%	\$3,050,404.58
<b>Chelsea</b>	\$2,500,000.00	3%	\$717,518.89
<b>Everett</b>	\$10,000,000.00	5%	\$ 1,169,534.89
<b>Malden</b>	\$10,000,000.00	1%	\$163,793.11
<b>Medford</b>	\$10,000,000.00	0%	\$87,217.22
<b>Somerville</b>	\$10,000,000.00	5%	\$1,061,744.07
<b>MA (Statewide)</b>	-	56%	\$12,748,150.75

# Operating Spend: Local\* (Year-Over-Year)

Quarter	2021	2022
1	\$5,334,934.01	\$6,887,874.55
2	\$5,150,850.62	\$6,610,952.55
3	\$4,908,981.21	\$6,365,060.28
4	\$6,903,970.63	\$6,250,212.59
<b>Total</b>	<b>\$22,298,736.47</b>	<b>\$26,114,099.97</b>

\*The local spend figures provided in this chart exclude the total spend for MA which is addressed in the next slide.

# Operating Spend: MA (Year-Over-Year)

Quarter	2021	2022
1	\$7,166,273.50	\$11,682,847.37
2	\$8,341,455.43	\$10,733,984.80
3	\$8,542,151.40	\$11,840,493.89
4	\$10,540,893.06	\$12,748,150.75
<b>Total</b>	<b>\$34,590,773.39</b>	<b>\$47,005,476.81</b>

# Compliance

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A WYNN RESORT

# Compliance: Minors<sup>1</sup> 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
October	4	0	0	0	0	1	2	0
November	5	0	0	0	0	4	1	3
December	3	2	1	1	1	3	1	1
<b>Total</b>	<b>12</b>	<b>2</b>	<b>1</b>	<b>1</b>	<b>1</b>	<b>8</b>	<b>4</b>	<b>4</b>

<sup>1</sup> 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 48 minutes.
- The longest length of time spent by a minor on the casino floor was 4 hours, 27 minutes.
- The shortest length of time spent by a minor on the casino floor was 1 minute.

# Promotions, Marketing, Special Events and Volunteerism Update

*Encore*<sup>®</sup>  
BOSTON HARBOR  
A WYNN RESORT



# 2022 TRU Patron Charitable Contributions

Charitable Organization	Dollar Amount	Number of Tickets
Casa Myrna	\$9,205.90	68,496
Last Hope K9 Rescue	\$29,039.77	116,278
Pan-Mass Challenge	\$13,008.31	77,270
Urban League of Eastern MA	\$9,645.30	67,648
Boston Area Rape Crisis Center	\$21,538.77	119,191
Bread of Life	\$22,300.88	121,202
Disabled American Veterans	\$35,552.86	153,240
Mystic River Watershed Association	\$13,385.52	97,280
<b>Total</b>	<b>\$153,677.32</b>	<b>820,605</b>

\*Average donation is just under \$0.19 per ticket.

# Feed the Funnel



❖ During a 3-day span in December, more than 900 EBH team members, volunteer partners and vendors (including the GameSense team!) helped to pack more than 405,000 meals for The Pack Shack

❖ Meals were distributed to several local organizations



# Q4 Employee Volunteer Efforts



- ❖ Employees volunteered 4,359 hours of their time serving local nonprofits
- ❖ EBH collected over 400 toys for ABCD and the City of Everett
- ❖ EBH collected more than 3,400 pounds of food for Bread of Life in Malden
- ❖ Over 100 employees participated in local nonprofit walks/races for Bread of Life in Malden, Northeast Arc, Disabled American Veterans and the Walk to End Alzheimer's

# Sports Wagering Launch



Questions?

**IMPACTED LIVE ENTERTAINMENT VENUE AGREEMENT**

This Impacted Live Entertainment Venue Agreement (the "Agreement") is entered into as of the 30<sup>th</sup> day of January, 2013 (the "Effective Date"), by and between the Massachusetts Performing Arts Coalition, Inc., 2 Southbridge Street, Worcester, MA 01608 ("MPAC") and Wynn MA, LLC, 3131 Las Vegas Blvd., South, Las Vegas, NV 89109 ("Wynn"). (MPAC and Wynn are hereinafter referred to from time to time each as a "Party" and collectively as the "Parties.")

**RECITALS**

**WHEREAS**, Massachusetts General Laws chapter 23K (the "Gaming Statute") has been enacted in part to protect the cultural activities and institutions operated by municipally-owned and not-for-profit theatres from the adverse impacts of expanded gaming activities in the Commonwealth;

**WHEREAS**, MPAC represents the interests of certain non-profit and municipally-owned theatres in Massachusetts listed in Exhibit A attached hereto and made a part hereof, each of which may suffer a materially adverse impact from the development of gaming facilities in Massachusetts;

**WHEREAS**, Wynn has submitted a so-called "Phase 2 Application" with the Massachusetts Gaming Commission (the "Commission") for a gaming license to operate the proposed facility at a site in Everett, Massachusetts as identified in the Phase 2 Application (the "Casino Site");

**WHEREAS**, Wynn's proposed facility does not now but could in the future include a live entertainment venue whose development and operation may pose the potential for a materially adverse impact on MPAC's members and their sustainability as non-profit or municipally-owned live performance venue;

**WHEREAS**, the Parties wish to set forth certain terms and conditions governing the relationship between Wynn and MPAC should the Casino obtain a gaming license to operate a facility at the Casino Site;

**NOW THEREFORE**, in furtherance of the foregoing and in consideration of the agreements set forth below and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

**AGREEMENTS**

1.0 Casino Site Capacity and Performances

1.1 Wynn agrees that it does not currently plan to build, restore, operate or manage an indoor or outdoor, permanent or temporary live entertainment venue on or independent of the Casino Site in the Commonwealth of Massachusetts seating more than 1,000 persons, notwithstanding the fact that the Gaming Statute permits such venues seating more than 3,500 persons. The Parties acknowledge and agree that bars, lounges, common areas, hotel ballroom or other multi-use or meeting space within the gaming establishment or elsewhere at the Casino Site may be used for events, meetings or celebrations that include live entertainment.

1.2 In the event Wynn decides to build a live entertainment venue of the size or type described in 1.1 above at the Casino Site, it will, prior to taking substantial steps toward doing so, notify MPAC in writing describing its planned entertainment venue and promptly engage in good-faith discussions with MPAC and MPAC member venues to ensure compliance with the Gaming Statute.

2.0 Collaborative Efforts by Wynn, MPAC and MPAC Venues.

Wynn and MPAC agree to pursue some or all of the following initiatives with respect to MPAC Venues:

2.1 Wynn and one or more MPAC Venues may collaborate on reasonable “show your ticket stub” promotions, mutual member or patron discounts or other collaborative efforts to encourage visitation by MPAC Venue customers to the Casino Site and visitation by Wynn customers to the MPAC Venue.

2.2 Such other collaborative marketing and cross-promotional efforts as may be determined from time to time by and between Wynn and the MPAC Venue.

3.0 Enforcement.

3.1 The Parties agree that in the event of any uncured material breach of this Agreement by Wynn, MPAC may petition or otherwise communicate to the Commission its good-faith belief that such a material breach has occurred and seek enforcement by the Commission against Wynn under the provisions of the Gaming Statute, including but not limited to sections 23(b), 35 or 36 of the Gaming Statute.

3.2 The provisions of this Article 3 shall survive any termination or expiration of this Agreement.

4.0 Term and Termination.

The term of this Agreement shall commence on the Effective Date and shall continue until the earlier of (i) the mutual written agreement of all of the Parties or (ii) the date on which Wynn ceases gaming operations at the Casino Site.

5.0 Notices.

All notices or other communications required or permitted to be given under or by reason of this Agreement shall be in writing and shall be deemed to have been duly given on the date of personal delivery to or on the date of receipt at the addresses set forth in this Section 5.0 or at such other address that may be specified from time to time in writing the Party to whom notice is to be given. If mailed by first-class, postage prepaid, certified mail, return receipt requested, or if sent by a nationally recognized, overnight, express courier service providing evidence of receipt, such written notices shall be deemed to have been received (i) if sent by certified mail, as of the date set forth on the return receipt, (ii) if sent by overnight courier, as of the date of evidence of receipt. Notices, demands, and communications will, unless another address is specified in writing, be sent to the persons and at the addresses indicated below:

In the case of MPAC, to:

Massachusetts Performing Arts Coalition, Inc.  
2 Southbridge Street  
Worcester, MA 01608  
Attn.: Troy Siebels, President

Copy to:

Peter J. Martin, Esq.  
Bowditch & Dewey, LLP  
311 Main Street  
P. O. Box 15156  
Worcester, MA 01615-0156

In the case of Wynn, to:

Wynn MA, LLC  
c/o Wynn Resorts, Limited  
3131 Las Vegas Blvd. South  
Las Vegas, NV 89109



Attn: Kim Sinatra  
Senior Vice President and General Counsel

6.0 Successors and Assigns.

This Agreement shall be binding upon and shall inure to the benefit of the Parties and their respective successors and assigns as permitted hereunder.

7.0 Choice of Law.

This Agreement shall be governed by, and construed according to, the laws of the Commonwealth of Massachusetts, without regard to any choice of law provisions thereof which would require application of the laws of another jurisdiction.

8.0 Execution in Counterparts.

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

9.0 Severability; Captions.

In the event that any clause or provision of this Agreement should be held to be void, voidable, illegal, or unenforceable, the remaining portions of this Agreement shall remain in full force and effect. Headings or captions in this Agreement are added as a matter of convenience only and in no way define, limit or otherwise affect the construction or interpretation of this Agreement.

10.0 Interpretation.

Whenever a provision of this Agreement uses the term "include" or "including", that term shall not be limiting but shall be construed as illustrative. This Agreement shall be given a fair and reasonable interpretation of the words contained in it without any weight being given to whether a provision was drafted by one party of its counsel.

11.0 Entire Agreement; Amendment.

This Agreement contains all of the terms, promises, conditions and representations, made or entered into by and among the Parties, supersedes all prior discussions, agreements and memos, whether written or oral between and among the Parties, and constitutes the entire understanding of the Parties and shall be subject to modification or change only in writing and signed by all

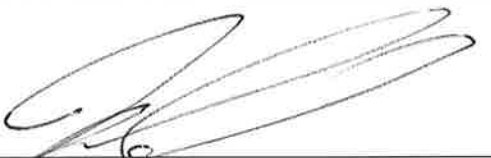
Parties. Notwithstanding the foregoing, in the event Wynn or any Affiliate of Wynn (as defined in the Gaming Statute) expands the existing Casino Site or adds another facility in the Commonwealth of Massachusetts, such expanded or additional site automatically and without further action by any Party shall be construed to be a Casino Site as defined herein and shall be subject to the terms of this Agreement.

13.0 Authority.

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

**IN WITNESS WHEREOF**, the Parties have executed this Agreement on the date first set forth above.

**MASSACHUSETTS PERFORMING ARTS COALITION, INC.**

By:   
Troy Siebels, President

**WYNN MA, LLC**

By:   
Its: SVP, Authorized Signer

**EXHIBIT A**  
**MPAC VENUES**

Symphony Hall, Springfield

The Hanover Theatre, Worcester

Lowell Memorial Auditorium

Cape Cod Melody Tent, Hyannis

South Shore Music Circus, Cohasset

Lynn Auditorium

Zeiterion Theatre, New Bedford



# PLAINRIDGE PARK

Q4 2022 REPORT



# GAMING REVENUE AND TAXES

Year	Quarter	Net Slot Revenue	State Taxes	Race Horse Taxes	Total Taxes
2021	Q1	\$31,572,862	\$12,629,145	\$2,841,558	\$15,470,703
	Q2	\$36,329,149	\$14,531,660	\$3,269,623	\$17,801,283
	Q3	\$37,682,927	\$15,073,171	\$3,391,463	\$18,464,634
	Q4	\$33,762,844	\$13,505,137	\$3,038,656	\$16,543,793
	<b>Total</b>	<b>\$139,347,782</b>	<b>\$55,739,113</b>	<b>\$12,541,300</b>	<b>\$68,280,413</b>
2022	Q1	\$33,730,006	\$13,492,002	\$3,035,701	\$16,527,703
	Q2	\$36,607,522	\$14,643,009	\$3,294,677	\$17,937,686
	Q3	\$36,659,335	\$14,663,734	\$3,299,340	\$17,963,074
	Q4	\$36,066,338	\$14,426,558	\$3,245,970	\$17,672,528
	<b>Total</b>	<b>\$143,063,201</b>	<b>\$57,225,303</b>	<b>\$12,875,688</b>	<b>\$70,100,991</b>

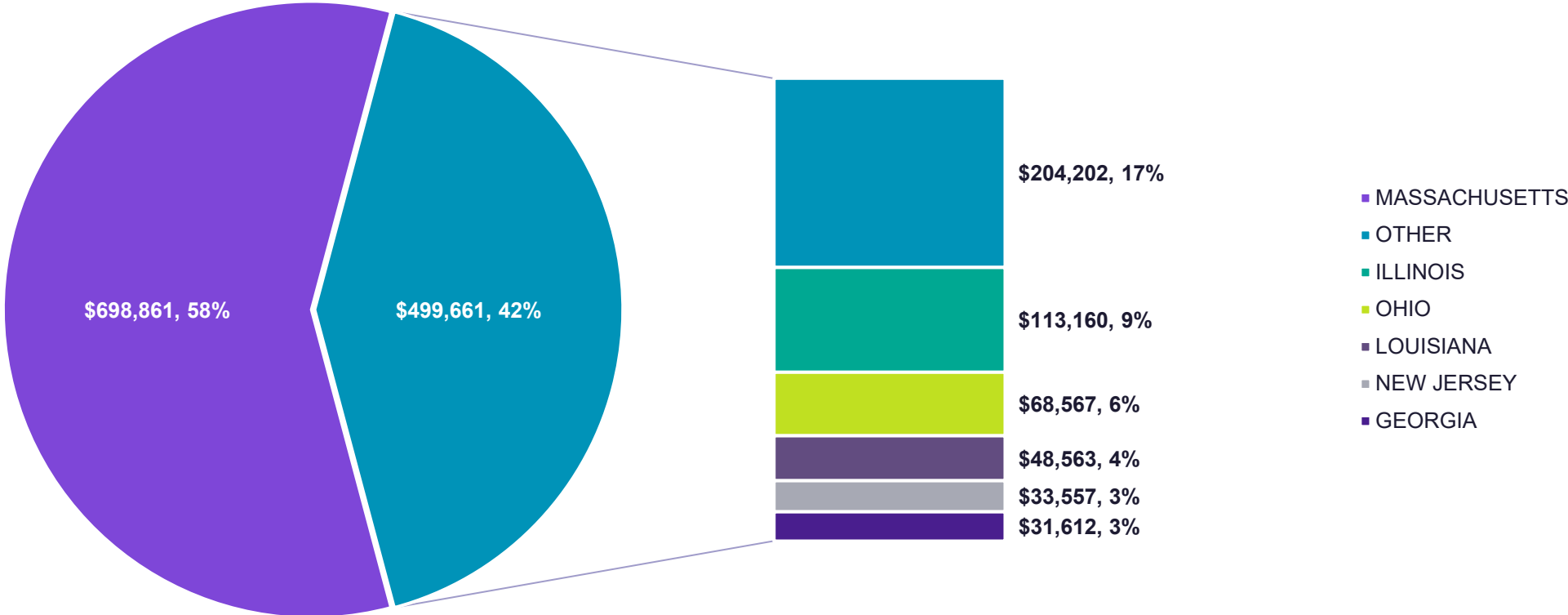
# LOTTERY SALES

Quarter	2022	2021	\$ Difference	% Difference
Q1	\$507,710	\$458,540	\$49,170	10.7%
Q2	\$485,744	\$578,739	\$(92,995)	-16.1%
Q3	\$529,297	\$582,981	\$(53,684)	-9.2%
Q4	\$532,016	\$503,875	\$28,141	5.6%
<b>Total</b>	<b>\$2,054,767</b>	<b>\$2,124,135</b>	<b>\$(69,368)</b>	<b>-3.3%</b>

- PPC currently has five instant ticket machines and four online terminals
- Prior to the casino opening the property had one instant ticket machine and two online machines

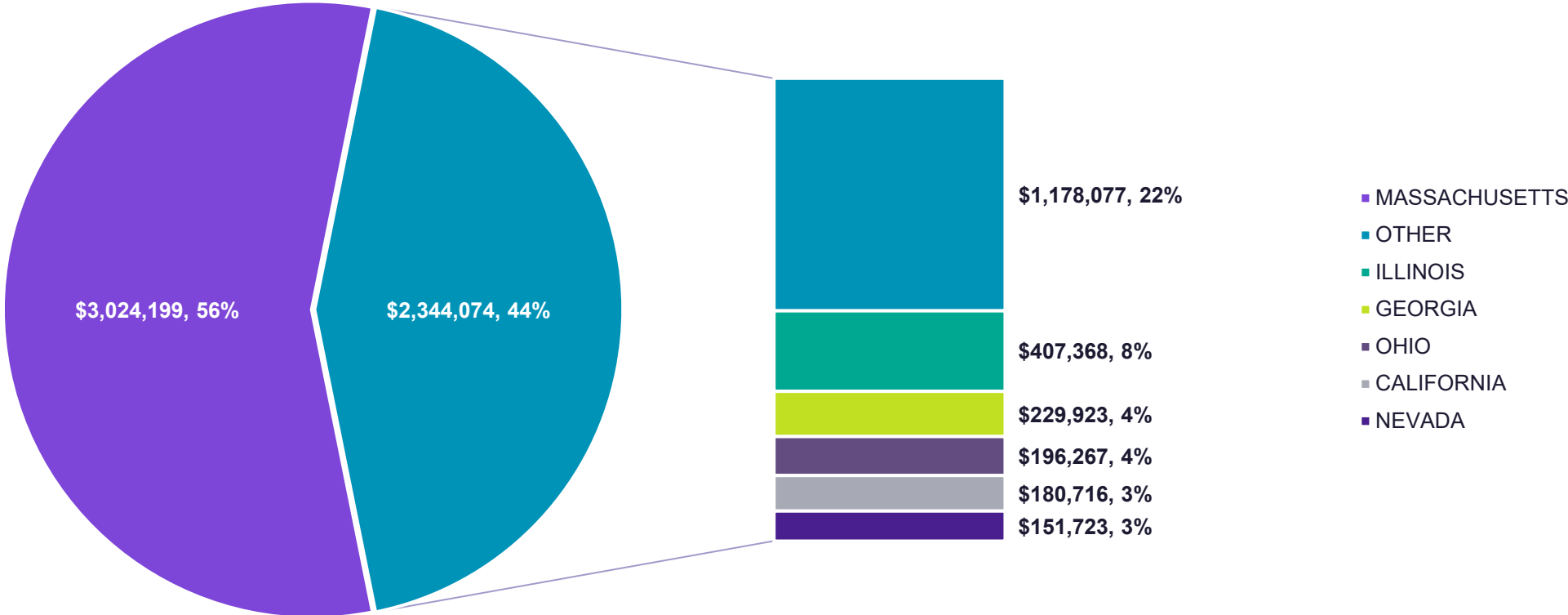
# SPEND BY STATE

## Q4 2022 Total Qualified Spend By State



# SPEND BY STATE

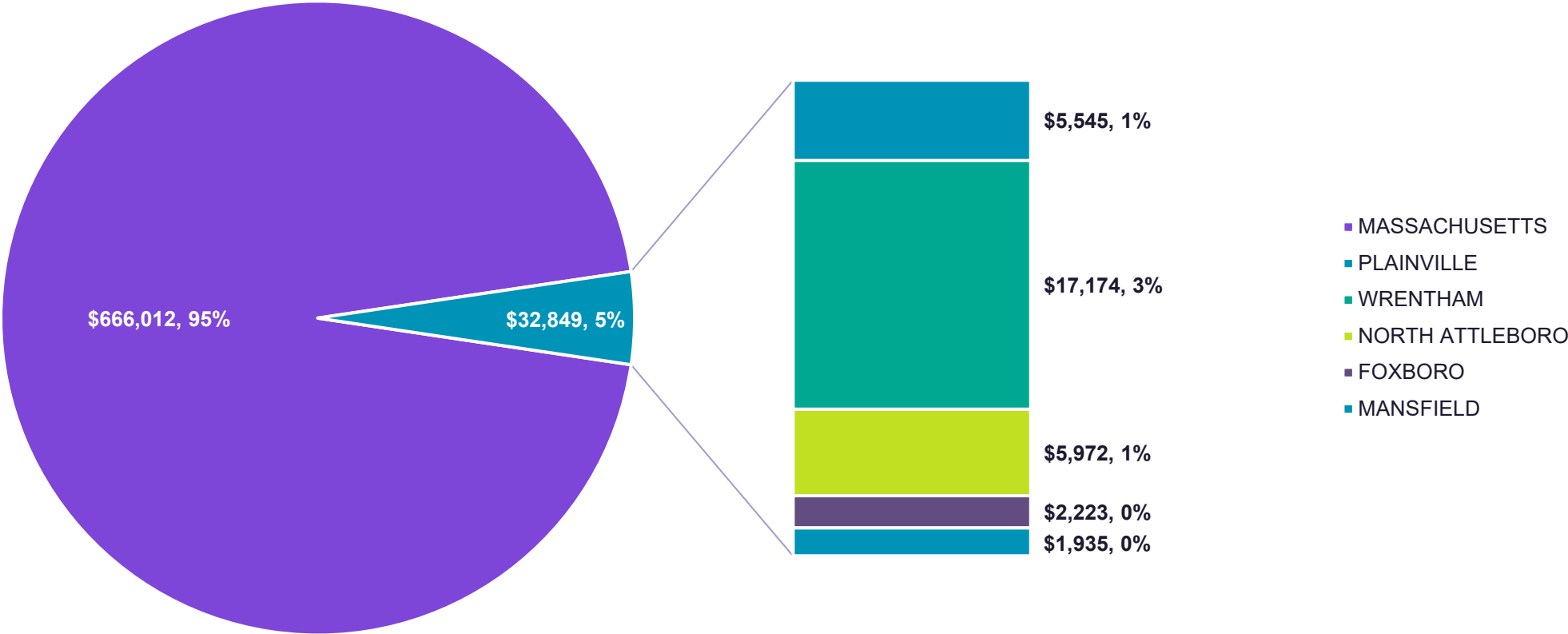
## 2022 Total Qualified Spend By State





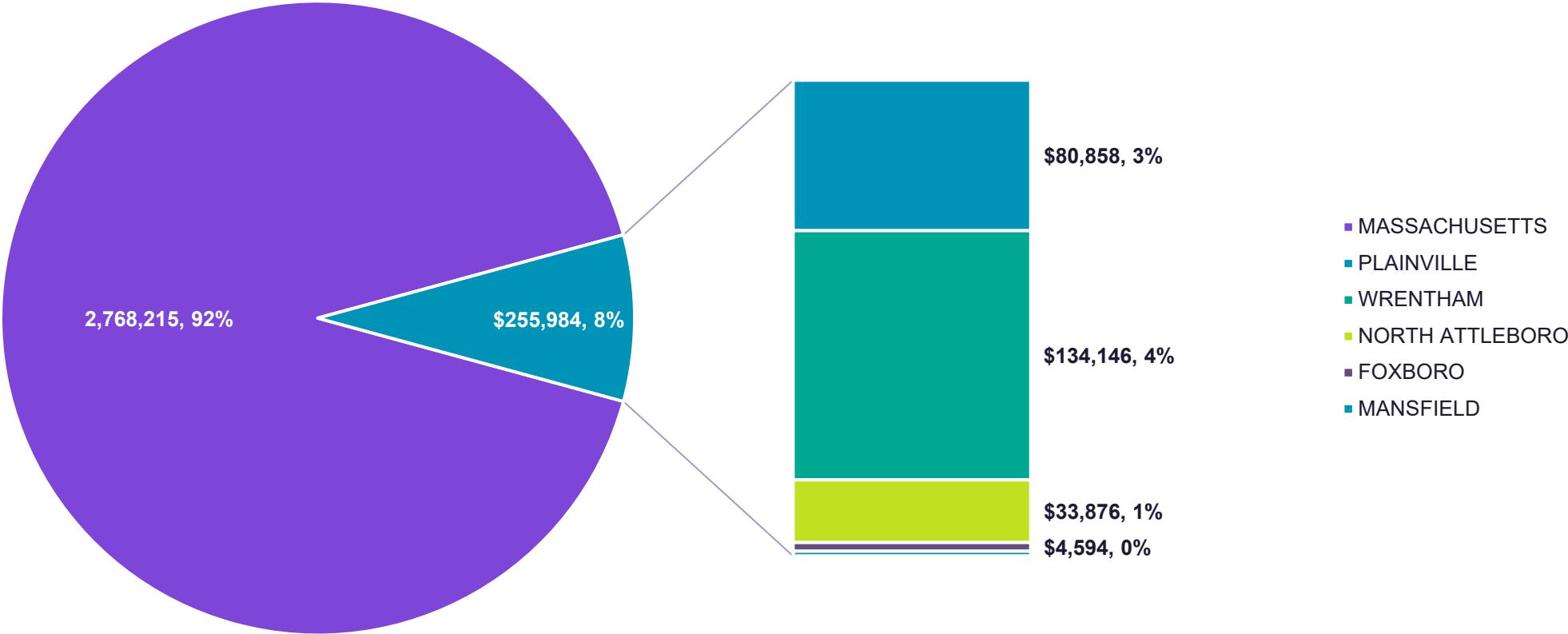
# LOCAL SPEND

## Q4 2022 Massachusetts vs Host & Surrounding Community Qualified Spend



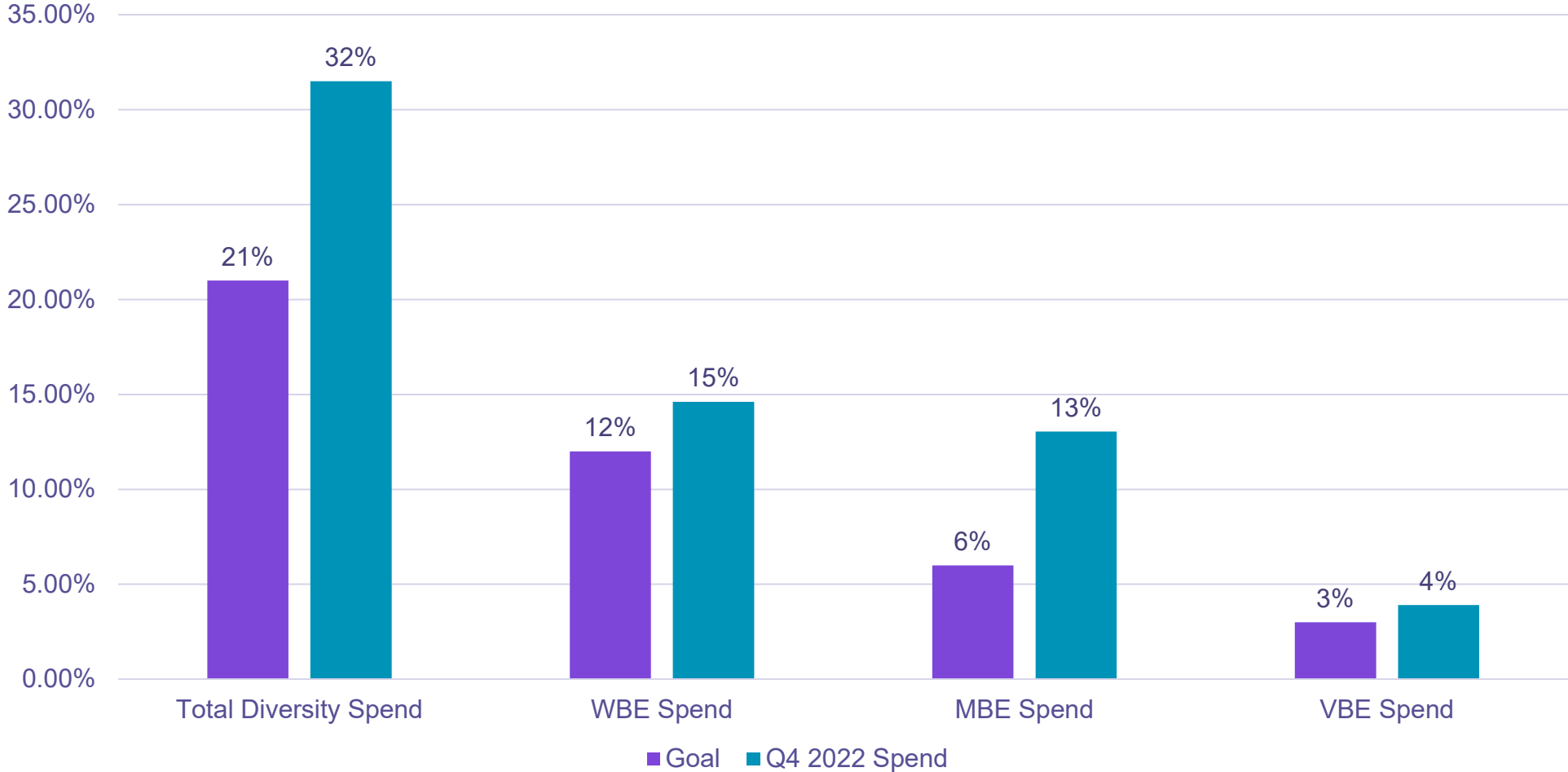
# LOCAL SPEND

## 2022 Massachusetts vs Host & Surrounding Community Qualified Spend



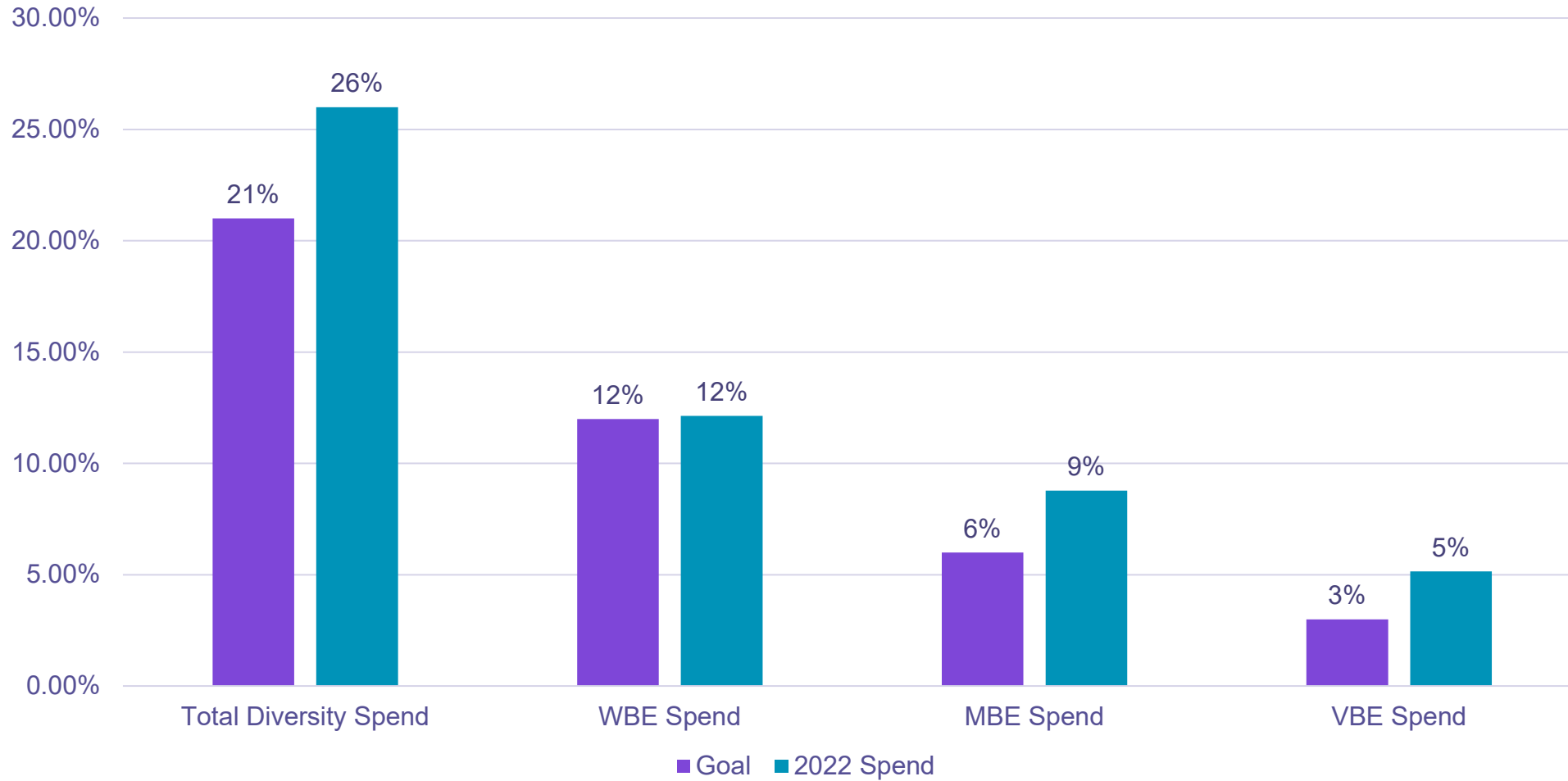
# VENDOR DIVERSITY

### Q4 2022 vs Goal



# VENDOR DIVERSITY

## 2022 vs Goal



# DIVERSE SPEND

Category <sup>1</sup>	Q4 2022	Q3 2022	\$ Difference	% Difference
<b>WBE</b>	\$175,101	\$190,717	-\$15,616	-8.92%
<b>MBE</b>	\$156,271	\$119,252	\$37,019	23.69%
<b>VBE</b>	\$46,757	\$149,041	-\$102,284	-218.76%
<b>Total Diverse Spend</b>	<b>\$378,129</b>	<b>\$459,010</b>	<b>-\$80,881</b>	<b>-21.39%</b>
<b>Qualified Spend</b>	<b>\$1,198,521</b>	<b>\$1,588,717</b>	<b>-\$390,196</b>	<b>-32.56%</b>

<sup>1</sup> Includes vendors that are certified in multiple diversity categories. Spend is reported in all qualified categories.

# COMPLIANCE

Month	Prevented from Entering Gaming Establishment			Expired, Invalid, No ID	Fake ID	Minors and Underage Escorted from the Gaming Area	Minors and Underage Gambling at Slot Machines	Minors and Underage Consuming Alcoholic Beverages
	Total	Minors <sup>1</sup>	Underage <sup>2</sup>					
October	72	5	19	48	0	1	0	0
November	55	3	12	40	0	0	0	0
December	64	4	13	47	0	0	0	0
<b>Total</b>	<b>191</b>	<b>12</b>	<b>44</b>	<b>135</b>	<b>0</b>	<b>1</b>	<b>0</b>	<b>0</b>

<sup>1</sup> Person under 18 years of age

<sup>2</sup> Person 18-21 years of age

# EMPLOYMENT<sup>1</sup>: ALL EMPLOYEES<sup>2</sup>

Employee Category	Percentage Goal	Total # of Employees in Category	Q4-22 Actual Percentage of Total Employees	Q3-22 Actual Percentage of Total Employees
Diversity	15%	91	23%	24%
Veterans	2%	17	4%	5%
Women	50%	176	45%	43%
Local <sup>3</sup>	35%	129	33%	35%
<b>MA Employees</b>		<b>239</b>	<b>61%</b>	<b>64%</b>

<sup>1</sup> All employees referenced in this slide were current as of Q4 2022

<sup>2</sup> Total number of employees Q4 2022: **393**

<sup>3</sup> Local includes Attleboro, Foxboro, Mansfield, North Attleboro, Plainville & Wrentham

	Employees	Full-Time	Part-Time	Seasonal
<b>Total</b>	393	255	138	0
<b>% of Total</b>	<b>100%</b>	<b>65%</b>	<b>35%</b>	<b>0%</b>

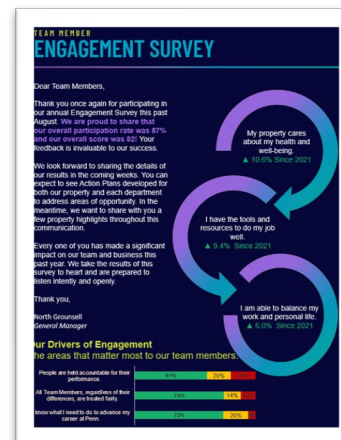
# EMPLOYMENT<sup>1</sup>: SUPERVISOR AND ABOVE<sup>2</sup>

Employee Category	Total # of Employees in Category	Actual Percentage of Total Employees
Diversity	16	23 %
Veterans	2	2 %
Women	19	28 %

<sup>1</sup> All employees referenced in this slide were current as of Q4 2022  
<sup>2</sup> Total number of Supervisor and Above Q42022: 69



- Leadership:
- Engagement Survey
  - Action Planning
  - Aces Training



**LEADER ACES TRAINING**

**Launching Nov. 18**

All leaders will take this training virtually on SuccessFactors. We are requesting all leaders take the training in the first two weeks of its launch to be knowledgeable for team member questions and awareness.

ACKNOWLEDGE • CONVEY • ENGAGE • SHOW APPRECIATION



# PPC CARES: COMMUNITY AND TEAM



Q4 Toys for Tots



Q4 TiTo Ticket Donations:  
 • Standardbred Retirement Foundation



Q4 PPC Donations:  
 • New Hope

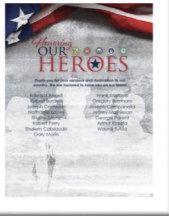
Q4 PPC Donations:  
 • American Cancer Society – Making Strides Against Breast Cancer Walk



# PPC CARES: COMMUNITY AND TEAM



ACES of PENN Q3



HEROS – Veterans Day



Halloween



Holidays

5-18-01

## IMPACTED LIVE ENTERTAINMENT VENUE AGREEMENT

This Impacted Live Entertainment Venue Agreement (the "Agreement") is entered into as of the 30th day of September, 2013 (the "Effective Date"), by and between the Massachusetts Performing Arts Coalition, Inc., 2 Southbridge Street, Worcester, MA 01608 ("MPAC") and Springfield Gaming and Redevelopment, LLC (the "Casino") (MPAC and the Casino are hereinafter referred to from time to time each as a "Party" and collectively as the "Parties").

### RECITALS

**WHEREAS**, Massachusetts General Laws chapter 23K (the "Gaming Statute") has been enacted in part to protect the cultural activities and institutions operated by municipally-owned and not-for-profit theatres from the adverse impacts of expanded gaming activities in the Commonwealth;

**WHEREAS**, MPAC represents the interests of certain non-profit and municipally-owned theatres in Massachusetts listed in Exhibit A attached hereto and made a part hereof, each of which may suffer a materially adverse impact from the development of gaming facilities in Massachusetts;

**WHEREAS**, the Casino is in the process of preparing and submitting a so-called "Phase 2 Application" with the Massachusetts Gaming Commission (the "Commission") for a Category 2 gaming license to operate the proposed facility at the Casino Site in Plainville, Massachusetts;

**WHEREAS**, the Casino's proposed facility does not now but could in the future include a live entertainment venue whose development and operation poses the potential for a materially adverse impact on MPAC's members and their sustainability as non-profit or municipally-owned live performance venues;

**WHEREAS**, the Parties acknowledge and agree that due to the nature of the live entertainment booking industry and the industry-accepted practice of imposing radius restrictions on touring performers or shows, each of the venues listed in Exhibit A (the "MPAC Venues") could be an "impacted live entertainment venue" as defined in section 2 of the Gaming Statute;

**WHEREAS**, the Parties wish to set forth certain terms and conditions governing the relationship between the Casino and MPAC should the Casino obtain a gaming license to operate a facility at the Casino Site;

**NOW THEREFORE**, in furtherance of the foregoing and in consideration of the agreements set forth below, and for ONE AND NO/100 DOLLARS (\$1.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

## **AGREEMENTS**

### **1.0 Casino Site Capacity and Performances**

1.1 The Casino agrees that it does not, other than a less than one hundred seat casino floor lounge, currently plan to build, restore, operate or manage an indoor or outdoor, entertainment venue on the Casino Site or elsewhere in the Commonwealth of Massachusetts.

1.2 The Casino agrees that in the event it decides to build, restore, operate, manage or present live entertainment events at a entertainment venue at the Casino Site or elsewhere as described in Section 1.1 hereof, it will, prior to taking substantial steps toward doing so, notify MPAC in writing describing its planned live entertainment venue and promptly engage in good-faith negotiations with MPAC and any MPAC member venue in MPAC's discretion, to modify this Agreement to comply with the Gaming Statute.

### **2.0 Collaborative Efforts by the Casino, MPAC and MPAC Venues.**

The Casino and MPAC agree to collaborate in good faith, to pursue one or more of the following initiatives with respect to MPAC Venues. Any such collaboration will be at the discretion of the Casino and the individual MPAC Venue:

2.1 To the extent the Casino operates any type of "customer loyalty points" program, such points may be used at MPAC Venues and loyalty points redeemed at an MPAC Venue shall be reimbursed to the Venue by the Casino, terms of which will be at Casino's sole discretion.

2.2 The Casino and one or more MPAC Venues may collaborate on reasonable "show your ticket stub" promotions, mutual member or patron discounts or other collaborative efforts to encourage visitation by MPAC Venue customers to the Casino Site and visitation by Casino customers to the MPAC Venue.

2.3 Such other collaborative marketing and cross-promotional efforts as may be determined from time to time by and between the Casino and the MPAC Venue.

3.0 Enforcement.

3.1 The Parties agree that any material breach of this Agreement by the Casino shall be deemed to be a breach of a condition of the Casino's gaming establishment license issued by the Commission. MPAC may petition or otherwise communicate to the Commission its good-faith belief that such a material breach has occurred and seek enforcement by the Commission against the Casino under the provisions of the Gaming Statute, including but not limited to sections 23(b), 35 or 36 of the Gaming Statute.

3.2 The provisions of this Article 3 shall survive any termination or expiration of this Agreement.

4.0 Term and Termination.

The term of this Agreement shall commence on the Effective Date and shall continue until terminated by the mutual written agreement of all of the Parties.

5.0 Notices.

All notices or other communications required or permitted to be given under or by reason of this Agreement shall be in writing and shall be deemed to have been duly given on the date of personal delivery to or on the date of receipt at the addresses set forth in this Section 5.0 or at such other address that may be specified from time to time in writing the Party to whom notice is to be given. If mailed by first-class, postage prepaid, certified mail, return receipt requested, or if sent by a nationally recognized, overnight, express courier service providing evidence of receipt, such written notices shall be deemed to have been received (i) if sent by certified mail, as of the date set forth on the return receipt, (ii) if sent by overnight courier, as of the date of evidence of receipt. Notices, demands, and communications will, unless another address is specified in writing, be sent to the persons and at the addresses indicated below:

In the case of MPAC, to:

Massachusetts Performing Arts Coalition, Inc.  
2 Southbridge Street  
Worcester, MA 01608  
Attn.: Troy Siebels, President

Copy to:

Peter J. Martin, Esq.  
Bowditch & Dewey, LLP  
311 Main Street  
P. O. Box 15156  
Worcester, MA 01615-0156

In the case of Casino, to:  
Springfield Gaming and Redevelopment, LLC  
825 Berkshire Boulevard  
Wyomissing, PA 19610  
c/o President

Copy to:  
General Counsel's Office

6.0 Successors and Assigns.

This Agreement shall be binding upon and shall inure to the benefit of the Parties and their respective successors and assigns as permitted hereunder.

7.0 Choice of Law.

This Agreement shall be governed by, and construed according to, the laws of the Commonwealth of Massachusetts, without regard to any choice of law provisions thereof which would require application of the laws of another jurisdiction.

8.0 Execution in Counterparts.

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

9.0 Severability; Captions.

In the event that any clause or provision of this Agreement should be held to be void, voidable, illegal, or unenforceable, the remaining portions of this Agreement shall remain in full force and effect. Headings or captions in this Agreement are added as a matter of convenience only and in no way define, limit or otherwise affect the construction or interpretation of this Agreement.

10.0 Interpretation.

Whenever a provision of this Agreement uses the term "include" or "including", that term shall not be limiting but shall be construed as illustrative. This Agreement shall be given a fair and reasonable interpretation of the words contained in it without any weight being given to whether a provision was drafted by one party of its counsel.

11.0 Entire Agreement; Amendment.

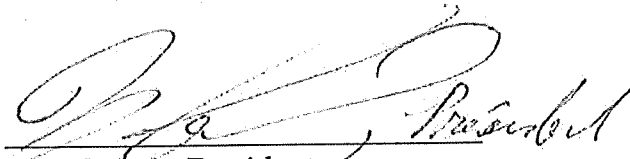
This Agreement contains all of the terms, promises, conditions and representations, made or entered into by and among the Parties, supersedes all prior discussions, agreements and memos, whether written or oral between and among the Parties, and constitutes the entire understanding of the Parties and shall be subject to modification or change only in writing and signed by all Parties. Notwithstanding the foregoing, in the event the Casino or any Affiliate of the Casino (as defined in the Gaming Statute) expands an existing Casino Site or adds another facility in the Commonwealth of Massachusetts, such expanded or additional site automatically and without further action by any Party shall be construed to be a Casino Site as defined herein and shall be subject to the terms of this Agreement.

12.0 Authority.

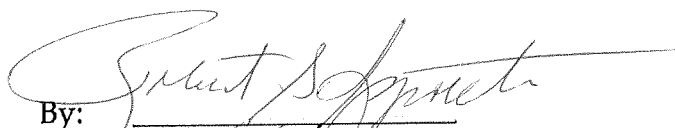
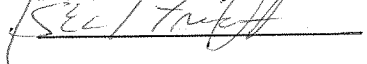
Each Party represents and warrants to the other Party that it has full power and authority to make this Agreement and to perform its obligations hereunder and that the person signing this Agreement on its behalf has the authority to sign and to bind that Party.

IN WITNESS WHEREOF, the Parties have executed this Agreement on the date first set forth above.

**MASSACHUSETTS PERFORMING ARTS COALITION, INC.**

By:   
Troy Siebels, President

**SPRINGFIELD GAMING AND REDEVELOPMENT, LLC.**

By:   
Its: 

**EXHIBIT A**

**MPAC VENUES**

South Shore Music Circus, Cohasset

Zeiterion Theatre, New Bedford

Symphony Hall, Springfield

The Hanover Theatre, Worcester

Lowell Memorial Auditorium

Cape Cod Melody Tent, Hyannis

Lynn Auditorium





# Q4 2022 Report Massachusetts Gaming Commission

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February 8<sup>th</sup> 2023

# Revenue, Taxes, Lottery & Spend Update

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MGM Springfield Q4 2022

# Q4 2022 Gaming Revenue & Taxes

Month	Gaming Revenue	MA Taxes
October	\$22,898,786	\$5,724,697
November	\$22,033,774	\$5,508,444
December	\$22,470,287	\$5,617,572
<b>Total</b>	<b>\$67,402,847</b>	<b>\$16,850,712</b>

# Q4 2022 YOY Gaming Revenue & Taxes

Year	Quarter	Table Games Revenue	Slots Gaming Revenue	Total Gaming Revenue	MA Taxes
2021	Q1	\$8,897,282	\$44,558,482	\$53,455,764	\$13,363,941
	Q2	\$11,978,623	\$51,414,249	\$63,392,873	\$15,848,218
	Q3	\$12,467,529	\$52,407,561	\$64,875,090	\$16,218,773
	Q4	\$15,803,182	\$49,507,129	\$65,310,311	\$16,327,578
	<b>Total</b>	<b>\$49,146,617</b>	<b>\$197,887,421</b>	<b>\$247,034,038</b>	<b>\$61,758,509</b>
2022	Q1	\$13,877,719	\$48,936,406	\$62,814,125	\$15,703,531
	Q2	\$12,384,117	\$52,454,169	\$64,838,286	\$16,209,571
	Q3	\$12,930,756	\$51,151,446	\$64,082,202	\$16,020,550
	Q4	\$14,454,146	\$52,948,701	\$67,402,807	\$16,850,712
	<b>Total</b>	<b>\$53,646,738</b>	<b>\$205,490,721</b>	<b>\$259,137,459</b>	<b>\$64,784,365</b>

# Q4 2022 Lottery

Month	Lottery Sales	% Change from Previous Year
October	\$155,047	39%
November	\$112,447	14%
December	\$119,803	(4%)
<b>Total</b>	<b>\$387,297</b>	<b>16%</b>

# Q4 2022 YOY Lottery Sales

Year	Quarter	Lottery Sales	% Change from Previous Year
2021	Q1	\$283,089	-
	Q2	\$285,253	-
	Q3	\$278,279	-
	Q4	\$335,217	-
	<b>Total</b>	<b>\$1,181,837</b>	<b>-</b>
2022	Q1	\$311,307	10%
	Q2	\$367,556	29%
	Q3	\$347,245	25%
	Q4	\$387,297	16%
	<b>Total</b>	<b>\$1,413,404</b>	<b>20%</b>

# Q4 2022 Diversity Spend

Diversity Category	Annual Goal	Q4%	Q4 Spend
MBE Vendor Spend	10%	3%	\$303,947
VBE Vendor Spend	1%	2%	\$265,545
WBE Vendor Spend	15%	4%	\$437,495
<b>Total</b>	<b>27%</b>	<b>9%</b>	<b>\$1,006,987</b>

\*Total biddable spend was \$11.4M

# Q4 2022 Local Spend

Diversity Category	Annual Goal	Q4%	Q4 Spend
Local* Vendor Spend	\$50M	37%	\$5,714,248
MA Vendor Spend	-	46%	\$7,114,764

\*Local Vendor Spend includes Springfield, Surrounding Communities and Western Massachusetts.



# Compliance

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MGM Springfield Q4 2022

# Q4 2022 Compliance

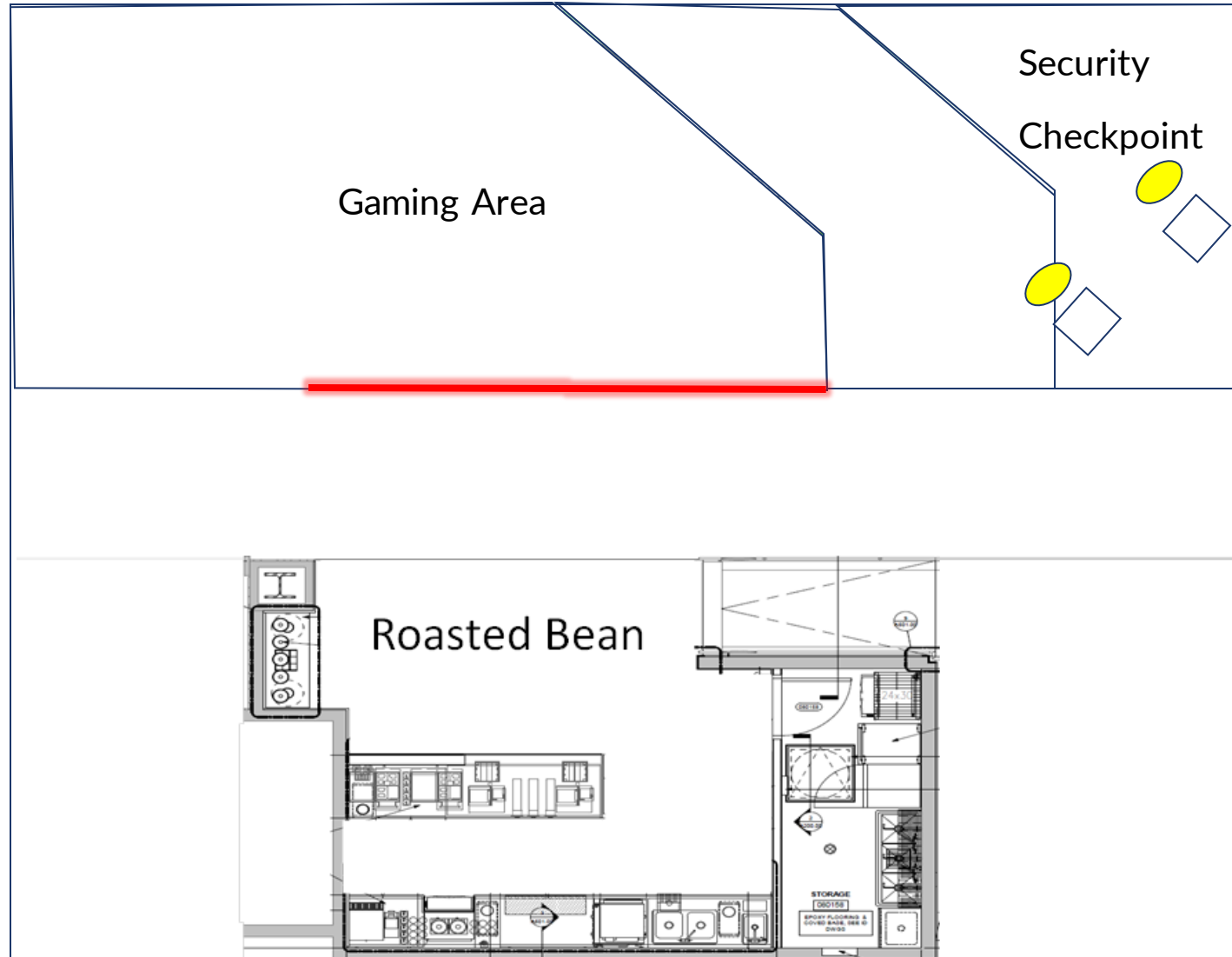
Month	Minors Intercepted in Gaming Area and prevented from Gaming	Compared to 2019	% Change	Minors intercepted Gaming	Compared to 2019	% Change	Minors Intercepted consuming alcohol	Compared to 2019	% Change
Oct	16	155	-89%	0	10	(NA)	1	3	-67%
Nov	30	156	-80%	1	11	-91%	0	1	(NA)
Dec	76	204	-63%	4	9	-65%	0	6	(NA)

- Mean Average time in Gaming Area – 6.14 minutes – Median Average time – 3 minutes.
- Longest time in Gaming Area – 1 hour 55 minutes
- Shortest time in Gaming area – 6 seconds
- Those who managed to gamble or consume alcohol were between the ages of 18 – 21.
- YOY 2019 vs 2022 there were, 81%, 76%, 80% and 83% reductions respectively, in Access, Table Games, Slot play and Alcohol Consumption

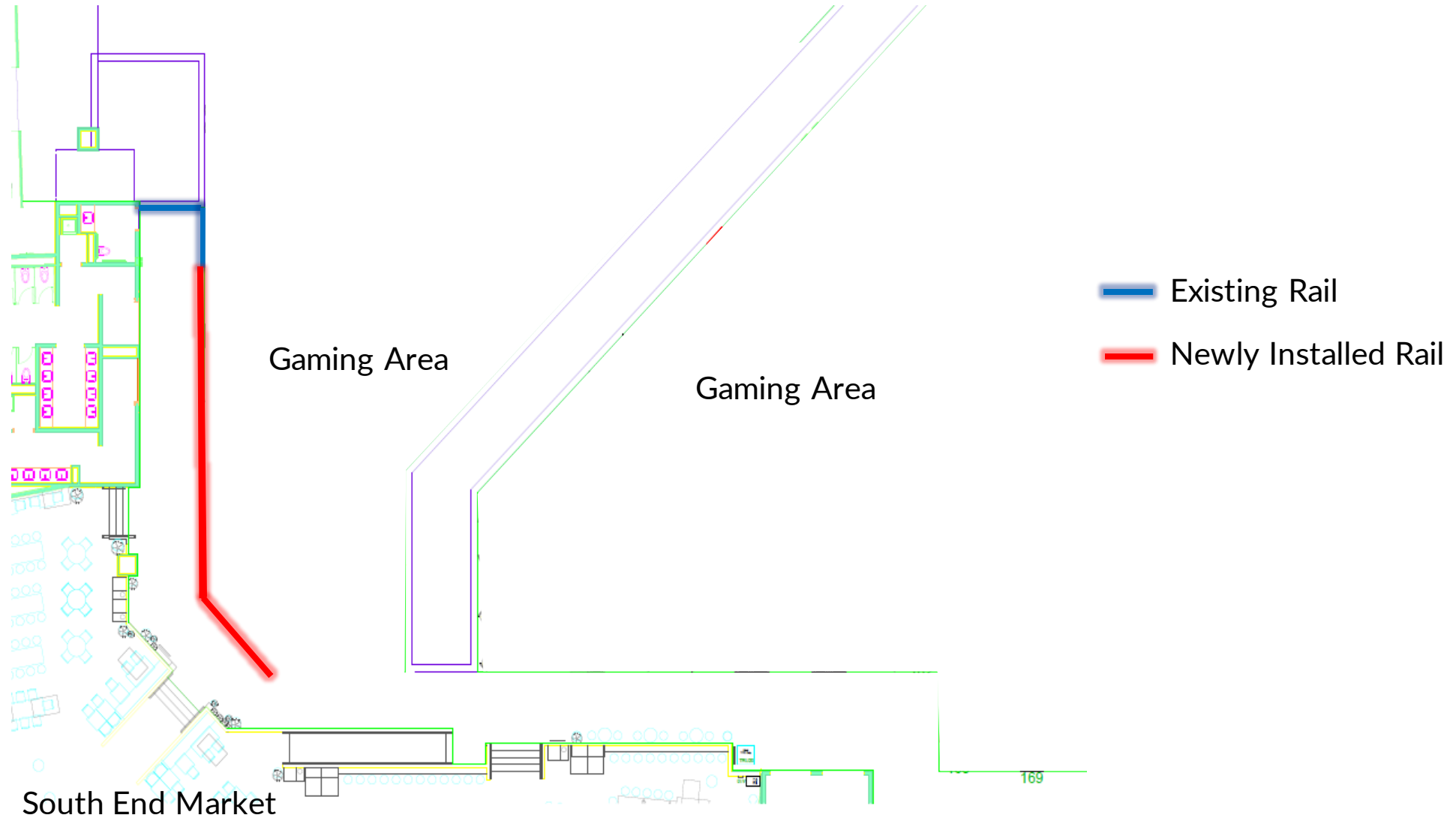
- **Mean Average time in Gaming Area before interception by staff – 3 minutes – Median Average time – 1 minute.**
- 74% of all underage were access to the Gaming Area, lasted under 5 minutes.
- 3 out of the 5 underage found gaming, did so while remaining on the non-gaming walkway and leaning across parents or guardians to hit a button.
- The one underage able to consumer alcohol, never entered the Gaming Area. A family member of age passed an alcoholic drink to them, inside our TAP restaurant for one sip.

# Handrail Installation - Roasted Bean

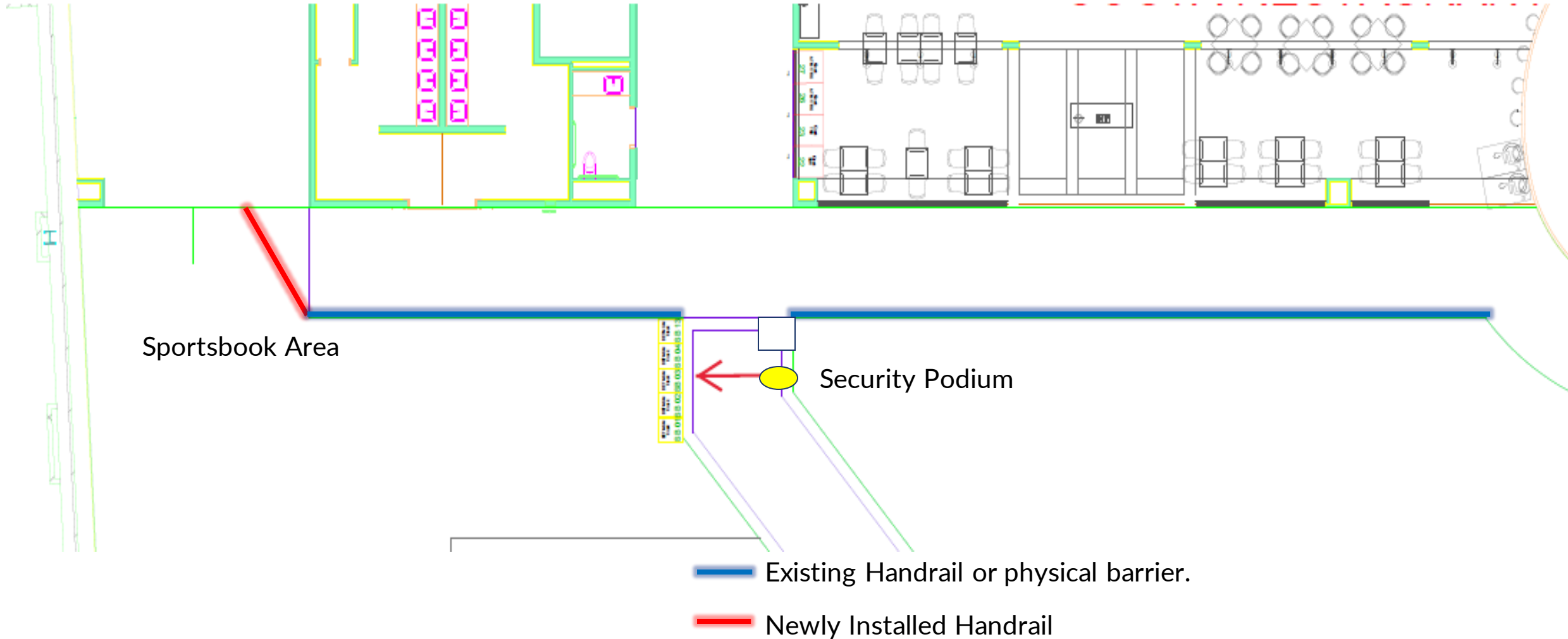
 Handrail installed



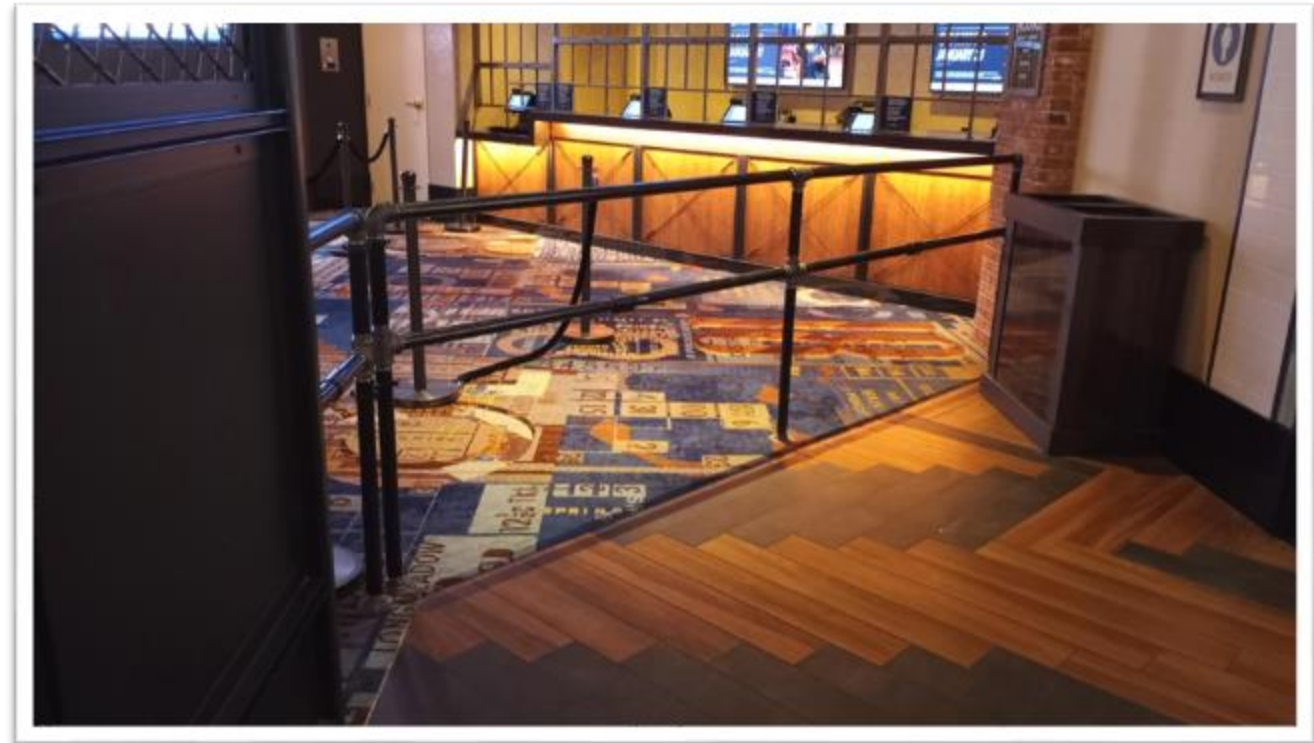
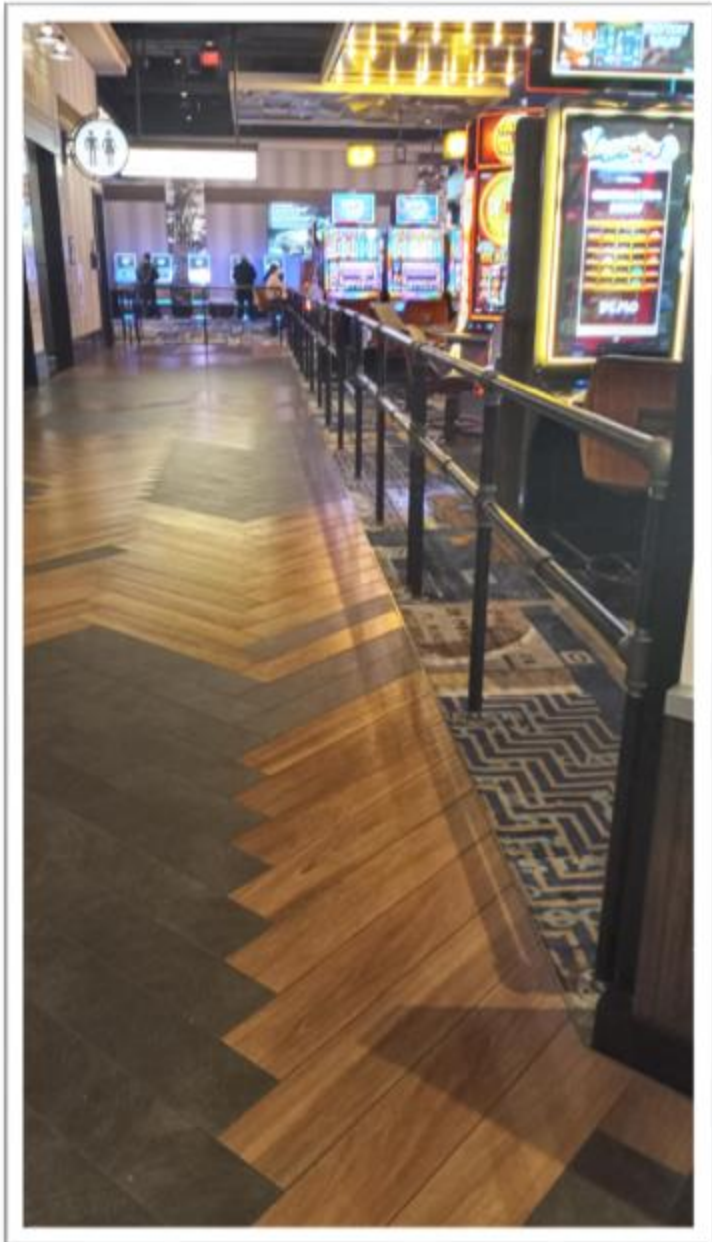
# Handrail Installation - South End Market



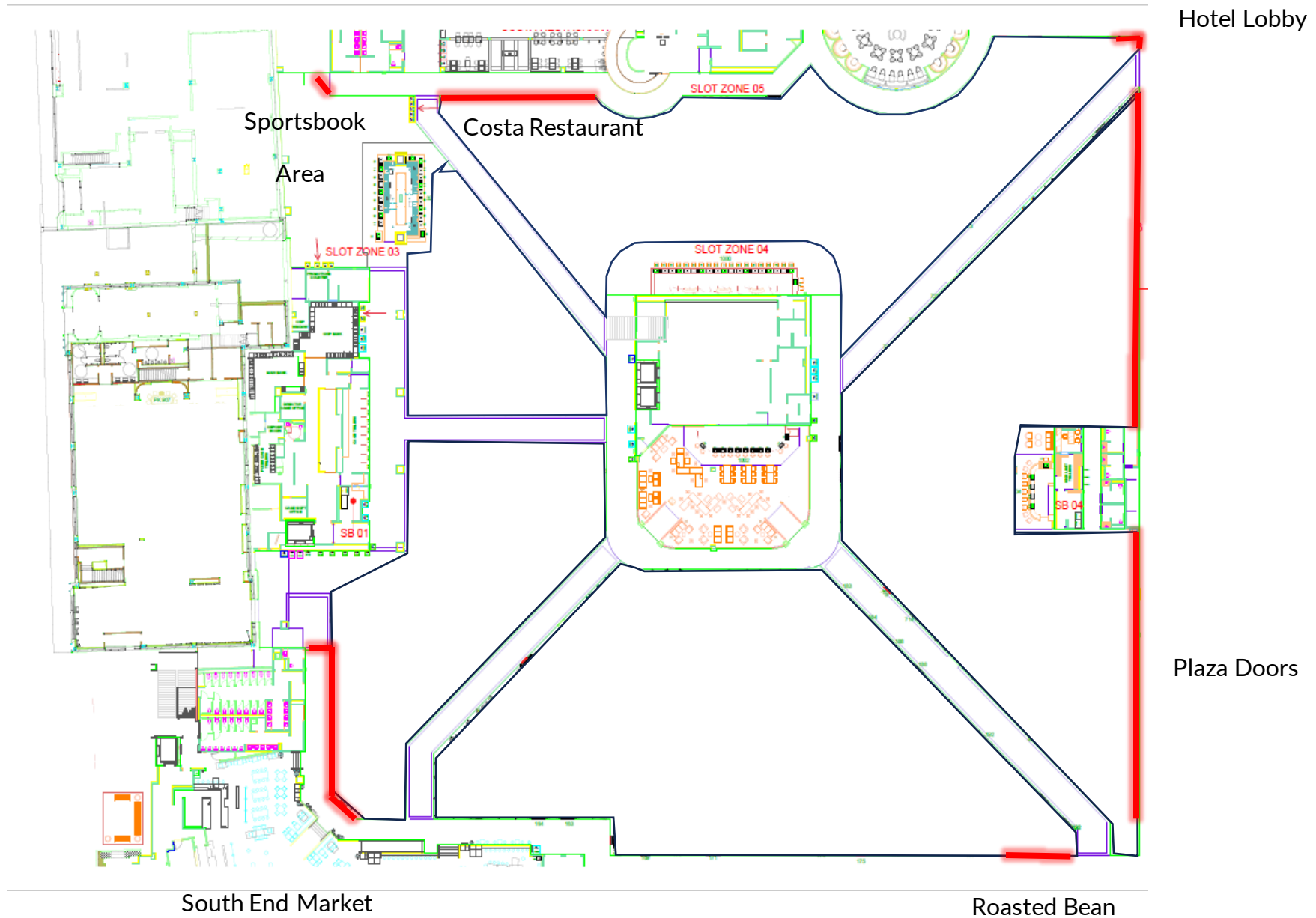
# Compliance - Sportsbook Area



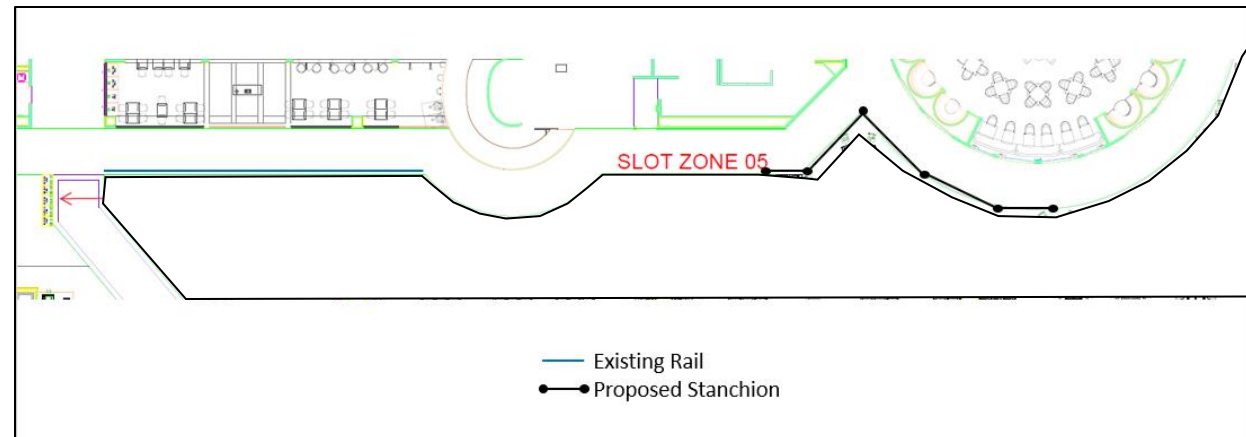
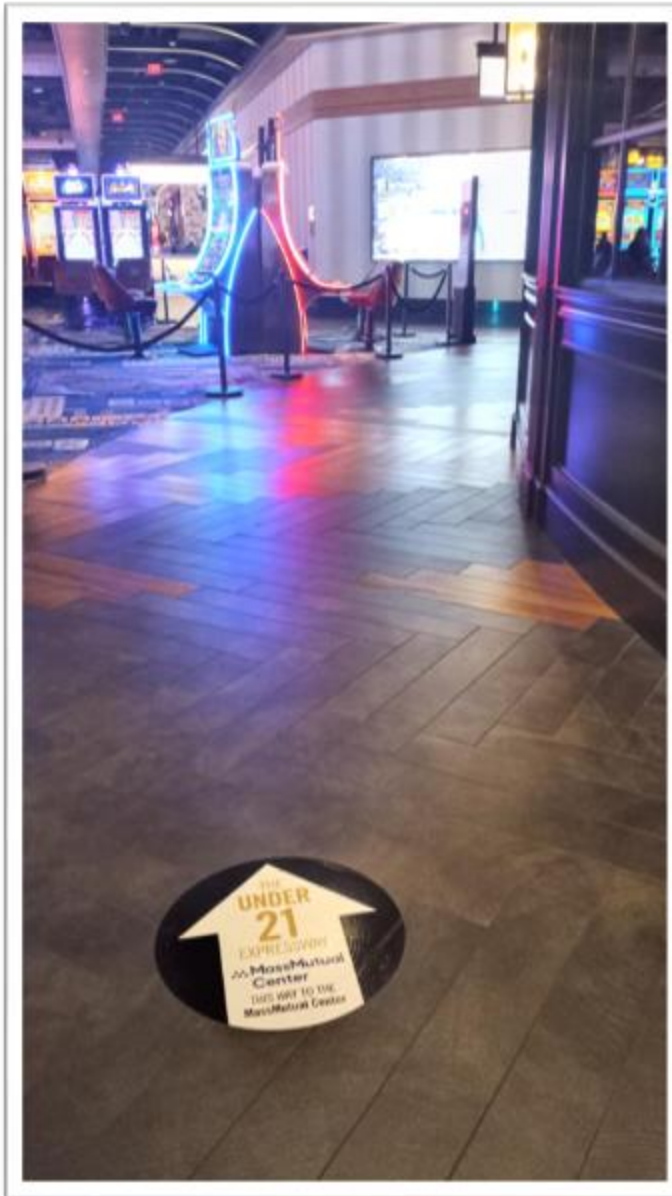
# Newly Installed Handrail



# All Sections of Handrail



# Directional Floor Decals and Stanchions





# Employment

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MGM Springfield Q4 2022

# Q4 2022 Employment Numbers

Q4 2022	Goals	Q1 2022 %	Q1 2022 Total # of Employees	Q2 2022 %	Q2 2022 Total # of Employees	Q3 2022 %	Q3 2022 Total # of Employees	Q4 2022 %	Q4 2022 Total # of Employees
Minority	50%	50%	600	50%	623	51%	683	51%	711
Veteran	2%	6%	68	6%	70	5%	71	5%	67
Women	50%	41%	489	40%	499	40%	537	41%	561
Springfield Residents	35%	37%	437	37%	462	39%	514	39%	534
Western MA Residents	-	74%	885	74%	925	75%	995	75%	1,040
MA Residents	-	77%	911	76%	949	77%	1,022	77%	1,065
Total # Of Gaming Establishment Employees*	-		1,203		1,244		1,330		1,382
Full Time	-		812		843		878		918
Part Time	-		235		234		278		275
On Call	-		156		167		174		189

# Q4 2022 Hiring Goals Percentages

Q4 2022	Minority	Women	Veterans	Total Headcount
<b>ALL EMPLOYEES</b>				
Number of Employees	711	561	67	1,382
% Actual	51%	41%	5%	
<b>MANAGER AND ABOVE</b>				
Number of Employees	53	53	4	141
% Actual	38%	38%	3%	
<b>SUPERVISORS AND ABOVE</b>				
Number of Employees	92	83	9	218
% Actual	42%	38%	4%	

# Community Outreach, Special Events and Development

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MGM Springfield Q4 2022



## MGM Springfield kicks off holiday season with tree lighting, rink opening

SPRINGFIELD, Mass. (WGGB/WSHM) - It is now officially the holiday season and folks of all ages gathered at MGM Springfield to kick it off with one of the city's annual traditions: the tree lighting ceremony.



# Q4 2022 Community Outreach & Special Events Packet Page 318



· Mayflower Marathon · Rachel's Table ·

South End Middle School · Toys for Tots ·

· Festival of Trees ·

# Development



# Q4 External Development



31 Elm St Construction Continues



# Entertainment

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MGM Springfield Q4 2022

# Entertainment

**ROAR!** NOVEMBER SHOWS  
COMEDY CLUB  
Visit [MGMSpringfield.com/ROAR](http://MGMSpringfield.com/ROAR) for more info.

HAIRY JOHNSON | JIMMY KIMMEL | CYNTHIA ROBERTS | KEVIN CONROY

**CIRCUS LIVE!**  
DECEMBER 3 & 4

**KATT WILLIAMS**  
NOVEMBER 18, 2022  
MassMutual Center  
SPRINGFIELD, MA  
TICKETS AVAILABLE AT [MASSMUTUALCENTER.COM](http://MASSMUTUALCENTER.COM)

**A BRONX TALE**  
OCTOBER 8  
CHAZZ PALMINTERI  
"THE BROADWAY HIT VOTED #1 SHOW IN LAS VEGAS"  
LARRY KATZ

**ROAR!** COMEDY CLUB  
DECEMBER SHOWS  
Visit [MGMSpringfield.com/ROAR](http://MGMSpringfield.com/ROAR) for more info.

THE FUNNIEST PEOPLE IN MASSACHUSETTS!

HAIRY JOHNSON | JIMMY KIMMEL | CYNTHIA ROBERTS | KEVIN CONROY

**CLASSIC**  
SPRINGFIELD, MASSACHUSETTS  
SAT. DEC 17 MASSMUTUAL CENTER

**CHRIS ISAAK**  
NOVEMBER 26  
"Everybody Knows It's Christmas Time"

**SYMPHONY HALL**  
SPRINGFIELD  
**CIRQUE MUSICA**  
HOLIDAY WONDERLAND  
DECEMBER 2

**FOREIGNERS JOURNEY**  
The Music of Foreigner & Journey  
featuring Christiane Maroulis  
DECEMBER 31  
MGM



Thank you

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## LIVE ENTERTAINMENT COOPERATION AGREEMENT

This Live Entertainment Cooperation Agreement (the “Agreement”) is entered into as of the 22nd day of January, 2014 (the “Effective Date”), by and among the Massachusetts Performing Arts Coalition, Inc., 2 Southbridge Street, Worcester, MA 01608 (“MPAC”) and Blue Tarp reDevelopment, LLC (“MGM”). MPAC and MGM are hereinafter referred to from time to time each as a “Party” and collectively as the “Parties.”

### RECITALS

**WHEREAS**, certain provisions of Massachusetts General Laws chapter 23K (the “Gaming Statute”) have been enacted, in part, to both encourage cooperation among and prevent competition between institutions operated by municipally-owned and not-for-profit theatres and casino operators in the Commonwealth;

**WHEREAS**, MPAC represents the collective interests of certain non-profit and municipally-owned theatres in Massachusetts, including the Springfield Performing Arts Development Corporation, One Columbus Avenue, Springfield, MA 01103, as operator/manager of Symphony Hall, 34 Court Street, Springfield, MA (the “Springfield Venue”) and The Hanover Theatre, 2 Southbridge Street, Worcester, MA 01608 (the “Worcester Venue”) (collectively, the “Supported Venues”);

**WHEREAS**, the Springfield Venue owns and/or operates a 2600-seat theatre located at 34 Court Street, Springfield, MA (the “Venue Site”) which is in close proximity to MGM’s proposed casino development in Springfield (the “Project”);

**WHEREAS**, pursuant to the Gaming Statute, MGM is prohibited from building a live entertainment venue that has between 1,000 and 3,500 seats at the Project;

**WHEREAS**, MGM has recognized the importance of maintaining and supporting municipally-owned and not-for-profit theatres and, thus, has chosen to utilize existing venues in Springfield, including the Springfield Venue, for live shows, concerts and other entertainment to be promoted in connection with the Project rather than construct any ticketed performance venue at the Project;

**WHEREAS**, MGM wishes to support rather than compete with municipally-owned and not-for-profit theatres in the Commonwealth; and

**WHEREAS**, MGM has prepared and submitted a so-called “Phase 2 Application” with the Massachusetts Gaming Commission (the “Commission”) for a gaming license to construct and operate the Project;

**WHEREAS**, MGM and MPAC desire to enter into the collaborative relationship described in Section 1 hereof;

**NOW THEREFORE**, in furtherance of the foregoing and in consideration of the agreements set forth below, and for ONE AND NO/100 DOLLARS (\$1.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

## **AGREEMENTS**

### 1.0 Cross-Marketing and Promoting of the Supported Venues.

1.1 MGM agrees to work in good faith with MPAC to cross-market with and promote the Supported Venues as follows:

(a) MGM will promote the Supported Venues performances through on-property marketing placements and signage (determined in MGM's sole and absolute discretion) at the Project on a monthly basis during the term of this Agreement. MPAC shall designate which Supported Venues performances shall be promoted, and shall provide digital content and/or print ready graphics for this purpose.

(b) MGM will make tickets to performances at the Supported Venues, as designated by MPAC in accordance with Section 1.1(a), available for purchase online through the Project homepage and on-site at the Project.

(c) MGM will send targeted e-mails promoting the performances at the Supported Venues as designated by MPAC in accordance with Section 1.1(a) to M Life members in the Springfield and surrounding areas, the number and frequency of which shall be determined in MGM's sole and reasonable discretion.

(d) MGM will promote the Supported Venues performances designated in accordance with Section 1.1(a) through its various social media channels (including Facebook and Twitter), the number and frequency of such social media posts shall be determined in MGM's sole and reasonable discretion.

(e) Tickets to the Supported Venues performances designated in accordance with Section 1.1(a) will be sold to MGM employees through the M Life Insider Employee portal.

(f) MGM and MPAC will explore opportunities to block buy performances so that mutually desired performers could perform on consecutive nights at the Project and at one or more of the Supported Venues.

1.2 To ensure that the Parties are able to most effectively cross-market and promote one another on an ongoing basis, the Parties agree to participate in a marketing strategy meeting on at least an annual basis.

## 2.0 No Restrictions on Performances at Parties' Respective Venues.

2.1 MGM shall not enter into any agreement with any performer or show which, through a radius restriction or otherwise, precludes performances by that performer or show at any of the Supported Venues. MPAC shall require that the Supported Venues refrain from entering into any agreement with any performer or show which precludes performances by that performer or show at the Venue.

2.2 In the event MGM fails to include such radius restriction exemption in any contract, MGM shall grant a waiver to such visiting performer or show at the written request of MPAC. MPAC shall not be entitled to any other remedy for breach of Section 2.1.

## 3.0 Term and Termination.

The term of this Agreement shall commence on the Effective Date and shall continue until terminated by the mutual written agreement of all of the Parties.

## 4.0 Compliance Review.

MPAC acknowledges that MGM is subject to the rules, regulations, and jurisdiction of various gaming regulatory bodies and agencies, and as such, is required to perform certain background investigations in connection with material contractual relationships. MPAC agrees to cooperate with such background investigations, including the completion and execution of any standard MGM corporate background forms. MPAC acknowledges that MGM and others of the MGM Resorts Group (as defined below) are engaged in businesses that are or may be subject to and exist because of privileged licenses or other permits issued by governmental authorities or other sovereigns. MGM may terminate this Agreement, without penalty or prejudice and without further liability to MPAC, if any of the MGM Resorts Group: (i) is directed to cease doing business with MPAC by any such authority or sovereign; or (ii) determines, in its sole and exclusive judgment, that MPAC, MPAC's affiliates or any of its or their directors, officers, employees, agents or other representatives is, might be or is about to be engaged in or involved in any activity or relationship that could or does jeopardize any of the businesses or licenses of any of the MGM Resorts Group (including, without limitation, any denial, suspension or revocation, or the threat thereof). Further, MPAC: (a) acknowledges that it is illegal for an applicant to whom a license has been denied, a licensee whose license has been revoked, or a business organization under such a person's control ("Denied Entity"), to enter into, or attempt to enter into, a contract with any of the MGM Resorts Group without the prior approval of certain gaming commissions or licensing authorities; (b) represents and warrants that it is not a Denied Entity and is not under the control of a Denied Entity; and (c) agrees that any breach of the foregoing representation and warranty will allow MGM to immediately terminate this Agreement. "MGM Resorts Group" means MGM Resorts International and its subsidiaries, partnerships, joint ventures and other affiliates.

5.0 Successors and Assigns.

This Agreement shall be binding upon and shall inure to the benefit of the Parties and their respective successors and assigns as permitted hereunder.

6.0 Prohibition on Advertising and Press Releases.

6.1 Except with the prior written consent of MGM, which may be withheld in its sole and absolute discretion, the MPAC acknowledges that it shall not advertise, publish or otherwise disclose in any press release or other form of distribution: (i) its association with MGM or the Project; or (ii) any aspects of this Agreement.

6.2 MPAC may not use the MGM name, marks and/or logos without the express written permission of MGM.

6.3 Except with the prior written consent of MPAC, which may be withheld in its sole and absolute discretion, and in connection with MGM's application with the Massachusetts Gaming Commission, MGM acknowledges that it shall not advertise, publish or otherwise disclose in any press release or other form of distribution: (i) its association with MPAC or the Project; or (ii) any aspects of this Agreement.

6.4 MGM may not use the MPAC name, marks and/or logos without the express written permission of MPAC.

7.0 Choice of Law.

This Agreement shall be governed by, and construed according to, the laws of the Commonwealth of Massachusetts, without regard to any choice of law provisions thereof which would require application of the laws of another jurisdiction.

8.0 Remedies.

In the event that either Party seeks the enforcement of the terms of this Agreement or seeks damages for a breach of any obligations hereunder, it is specifically understood and agreed that any and all such claims shall be submitted to final and binding arbitration to take place in Hampden County, Massachusetts, pursuant to the rules of the American Arbitration Association, and that the prevailing party shall recover its costs and reasonable attorney's fees incurred in such arbitration proceeding.

9.0 Governing Law.

The Parties shall perform all of their respective obligations under the Agreement in compliance with all applicable laws, ordinances, regulations, or codes. The Parties agree that all legal disputes hereunder shall be resolved applying Massachusetts law.

#### 10.0 Severability; Captions.

In the event that any clause or provision of this Agreement should be held to be void, voidable, illegal, or unenforceable, the remaining portions of this Agreement shall remain in full force and effect. Headings or captions in this Agreement are added as a matter of convenience only and in no way define, limit or otherwise affect the construction or interpretation of this Agreement.

#### 11.0 Interpretation.

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

#### 12.0 Entire Agreement; Amendment.

This Agreement contains all of the terms, promises, conditions and representations, made or entered into by and among the Parties, supersedes all prior discussions, agreements and memos, whether written or oral between and among the Parties, and constitutes the entire understanding of the Parties and shall be subject to modification or change only in writing and signed by all Parties. Notwithstanding the foregoing, to the extent this Agreement conflicts with the provisions of a certain Non-Exclusive Joint Marketing and Joint Cooperation Agreement dated December 12, 2012 between Springfield Performing Arts Development Corporation and Blue Tarp reDevelopment, LLC (the Joint Marketing Agreement) as to the Springfield Venue, the Joint Marketing Agreement shall control.

#### 13.0 Execution in Counterparts

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


#### 14.0 Authority.

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



**IN WITNESS WHEREOF**, the Parties have executed this Agreement on the date first set forth above.

**MASSACHUSETTS PERFORMING ARTS COALITION, INC.**

By:   
Troy Siebels, President

**BLUE TARP REDEVELOPMENT, LLC**

By: \_\_\_\_\_

Its: \_\_\_\_\_

IN WITNESS WHEREOF, the Parties have executed this Agreement on the date first set forth above.

**MASSACHUSETTS PERFORMING ARTS COALITION, INC.**

By: \_\_\_\_\_  
Troy Siebels, President

**BLUE TARP REDEVELOPMENT, LLC**

By: Michael C. Mott

Its: V.P. Global Gaming  
Development



TO: Gaming Licensees

FROM: Joseph E. Delaney, Chief of Community Affairs

CC: Todd Grossman, General Counsel, David Muldrew,  
Chief People and Diversity Officer

DATE: December 16, 2022

RE: Additional Reporting Requirements

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To ensure that the Commission has all necessary information required to determine compliance with certain licensee reporting requirements, we request that the Gaming Licensees report on the following items in their fourth quarter report to the Commission and then annually thereafter. These items are:

1. Utilization of Minority, Women and Veteran Business Enterprises (M/W/VBEs) on capital expenditure projects.

205 CMR 139.04 (3) requires at least annual reporting on the use of M/W/VBEs in design contracts, construction contracts and contracts for every good and service procured by the gaming establishment. 205 CMR 139.04 (2) defines construction for the purpose of this reporting to include “the initial and subsequent periods in which any structures upon a licensee’s gaming establishment are altered, converted, fitted out, commissioned, renovated, repaired, maintained, demolished, decommissioned, or dismantled.” The licensees currently report quarterly on the use of M/W/VBEs for goods and services but have not specifically reported on design or construction contracts.

Since the definition of construction includes alterations, conversions, renovations, etc., M/W/VBEs should be utilized on capital expenditure projects. Therefore, the Commission is now requesting that the use of M/W/VBEs be included in the annual report on Capital Expenditures that the Commission currently receives with each licensees’ 4<sup>th</sup> Quarter Report.

Each licensee developed a diversity plan that established construction goals for the use of M/W/VBEs when the gaming establishments were originally permitted. Licensees



Massachusetts Gaming Commission

may want to review these goals to determine if they are still appropriate for capital expenditures and may consider revisions if sufficient justification exists for modifying the goals.

2. Reporting on Impacted Live Entertainment Venue (ILEV) status.

The Commission has recently expressed interest in hearing about licensee’s compliance with their ILEVs. 205 CMR 139.04(4) requires at least annual reporting on “compliance with any executed impacted live entertainment venue agreements.” Therefore, the Commission is requesting licensees to provide an update on the compliance status of ILEV agreements with their 4<sup>th</sup> Quarter Report. This should include a discussion of any correspondence the licensee has had with the ILEV and the status of any commitments made in the ILEV agreement.



Massachusetts Gaming Commission



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

FROM: Joe Delaney, Mary Thurlow and Lily Wallace

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

DATE: February 3, 2023

RE: 2019 Revere Non-Transportation Planning Grant Amendment

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### **Request**

MGC received a request from the City of Revere (attached) to re-allocate \$7,000 of its 2019 Non-Transportation Planning Grant (now called the Community Planning Grant) for development of Revere's Travel and Tourism Master Plan. As the request is for more than 10% of the total grant and the scope differs from the original use, we respectfully ask for the Commission to vote on this reallocation.

### **Background**

The original Community Planning grant established a budget of \$50,000 for the development and distribution of a tourism video. This included \$40,000 for video production, as well as \$10,000 to support distribution and marketing efforts directly associated with the initiative. The video has been completed and promotes Revere's tourist destinations as well as hotels, shops and restaurants.

In May of 2022, Revere established a Department of Travel and Tourism – next Stop Revere – for the promotion and marketing of the City. Revere is currently in the process of developing a Travel and Tourism Master Plan. Revere would like to use \$7,000 from the 2019 Grant to partially fund these master planning efforts. The new Department of Travel and Tourism will be responsible for promotion and marketing of the video as outlined in the Master Plan.

### **Recommendation**

The review team felt that the establishment of the new Tourism Division as well as the master planning efforts would result in a more robust use of the tourism video and aligns with the original intent of the grant. Therefore, the review team recommends approval of this amendment.

# City of Revere, Massachusetts

Department of Planning and Community Development  
281 Broadway, Revere, MA 02151 781. 286. 8181



**Brian M. Arrigo**  
Mayor

February 1, 2023

Joseph Delaney  
Chief of Community Affairs Division  
Massachusetts Gaming Commission  
101 Federal Street 12<sup>th</sup> Floor  
Boston, MA 02110

RE: Amendment to BID 19 1068-1068C-10681L-33629 City of Revere 2019 Non-Transportation Planning Grant

Dear Chief Delaney,

The City of Revere is requesting an amendment to its 2019 Non-Transportation Planning Grant Award that will expire on December 31, 2023. Per the initial request of this grant submitted in 2019, funding in the amount of \$10,000.00 was budgeted for the promotion of the Revere Travel and Tourism Video, featuring the Encore Casino. Furthermore, marketing and promotion of the video would be handled by a reputable Public Relations firm to create linkages with Revere and the Encore Casino through Destination Management and Marketing Organizations.

The City is seeking an amendment of this request to reallocate the remaining funds of \$7,000.00 to be used to partially pay for a Travel & Tourism Master Plan. Since 2019, the video has been completed and the task of promoting Revere within the Hospitality industry will now be the responsibility of the City's new Department of Travel & Tourism—Next Stop Revere—which was officially established in May 2022. The new Department of Travel & Tourism will handle the promotion and marketing of the video in accordance with the recommendations from the Master Planning process to develop strategic marketing campaigns and to identify the appropriate media channels and travel generators to promote Revere and its proximity to Encore. This amendment will ensure that the tourism video will be integrated into the broader strategies of the Travel & Tourism Department. Attached for your review is the RFQ to procure a firm or individual to assist the city in developing this plan. Please do not hesitate to contact me with any questions you may have regarding this request or the Travel & Tourism RFQ.

Sincerely,

Julie DeMauro  
Department of Planning & Community Development  
City of Revere

Cc: Tom Skwierawski, Chief of Planning & Community Development  
Miguel Orenella, Auditing Grant Compliance Manager  
Charlie Giuffrida, Director of Travel & Tourism  
Mary Thurlow, MGC Program Manager.