

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

MASSACHUSETTS GAMING COMMISSION

_____)
In the Matter of:)
)
 Wynn MA, LLC)
 _____)

AGREEMENT TO AWARD THE CATEGORY 1 LICENSE IN
REGION A TO WYNN MA, LLC

This instrument shall serve as an Agreement by the Massachusetts Gaming Commission (hereinafter, "Commission") to award the Category 1 gaming license in Region A (hereinafter, "license") to Wynn MA, LLC (hereinafter, "Wynn") and Wynn to accept the award of the license. Upon reviewing all of the applicable requirements of G.L c. 23K and 205 CMR, weighing Wynn's RFA-1 and RFA-2 applications, and considering information and comments submitted by the public and other interested individuals and groups, the Commission has determined that the license will be awarded to Wynn pursuant to the terms and conditions of this Agreement. By executing this Agreement, the Commission is hereby taking action pursuant to G.L. c.23K, §17(e) and 205 CMR 118.06(1)(d), and has determined that the license will be awarded by a vote of the Commission and accepted by Wynn on or after the Effective Date of the license as described in the *Summary of Conditions* attached hereto and incorporated herein.

Terms and Conditions

Gaming Establishment The gaming establishment will be as described in the *Decision Regarding the Determination of Premises of the Gaming Establishment for Mohegan Sun MA, LLC and Wynn MA, LLC* dated May 15, 2014 (Attached as Exhibit 1).

Term of the license The term of the license commences upon the Commission approval of the commencement of operation of the Gaming Establishment and continues for a period of 15 years thereafter.

Conditions The *Summary of Conditions* for Wynn MA, LLC approved by the Commission on DATE (Attached as Exhibit 2) is hereby incorporated into this Agreement by reference in its entirety.

SO ORDERED

MASSACHUSETTS GAMING COMMISSION


James F. McHugh, Commissioner

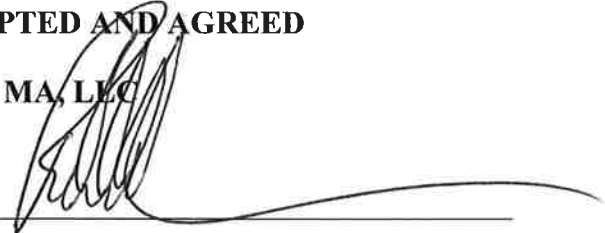

Bruce Stebbins, Commissioner


Gayle Cameron, Commissioner


Enrique Zuniga, Commissioner

ACCEPTED AND AGREED

WYNN MA, LLC

By: 

Title: SR. V.P. DEVELOPMENT

Dated: September 17, 2014

EXHIBIT 1

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

MASSACHUSETTS GAMING COMMISSION

In the Matter of:)
)
)
 The Determination of the Premises of the Gaming)
 Establishment for which Mohegan Sun)
 Massachusetts LLC Seeks Approval in its)
 RFA-2 Application)
)
 The Determination of the Premises of the Gaming)
 Establishment for which Wynn MA LLC Seeks)
 Approval in its RFA-2 Application)
)
)
)

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

1. Introduction and Background

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

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

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

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

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

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

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

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

2. Issues Presented

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

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

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

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

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

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

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

3. Discussion

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

As part of the award of each gaming license, the Commission must determine what the premises of the gaming establishment are. That is, it must determine which premises will be subject to regulatory oversight by the Commission. The Commission’s determination in this regard is required by G.L. c 23K, §2 which defines the “gaming establishment” as: “the premises approved under a gaming license which includes a gaming area⁴ and any other nongaming structure related to the gaming area and may include, but shall not be limited to, hotels, restaurants or other amenities.”

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

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

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

a. Mohegan briefs and presentations

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

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

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

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

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

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

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

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

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

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

b. Wynn briefs and presentations

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

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

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

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

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

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

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

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

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

c. Analysis and determinations

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

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

Mohegan's gaming establishment

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

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

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

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

Wynn's gaming establishment

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

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

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

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

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

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

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

4. Conclusion

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



Bryce Stebbins, Commissioner



Enrique Zuniga, Commissioner

DATED: May 15, 2014



EXHIBIT A

UPDATED

NOTICE OF MEETING and AGENDA

May 1, 2014

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

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

PUBLIC MEETING - #118

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

* * * * *

Massachusetts Gaming Commission

84 State Street, 10th Floor, Boston, Massachusetts 02109 | TEL 617.979.8400 | FAX 617.725.0258 | www.massgaming.com

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

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

4/28/14
(date)

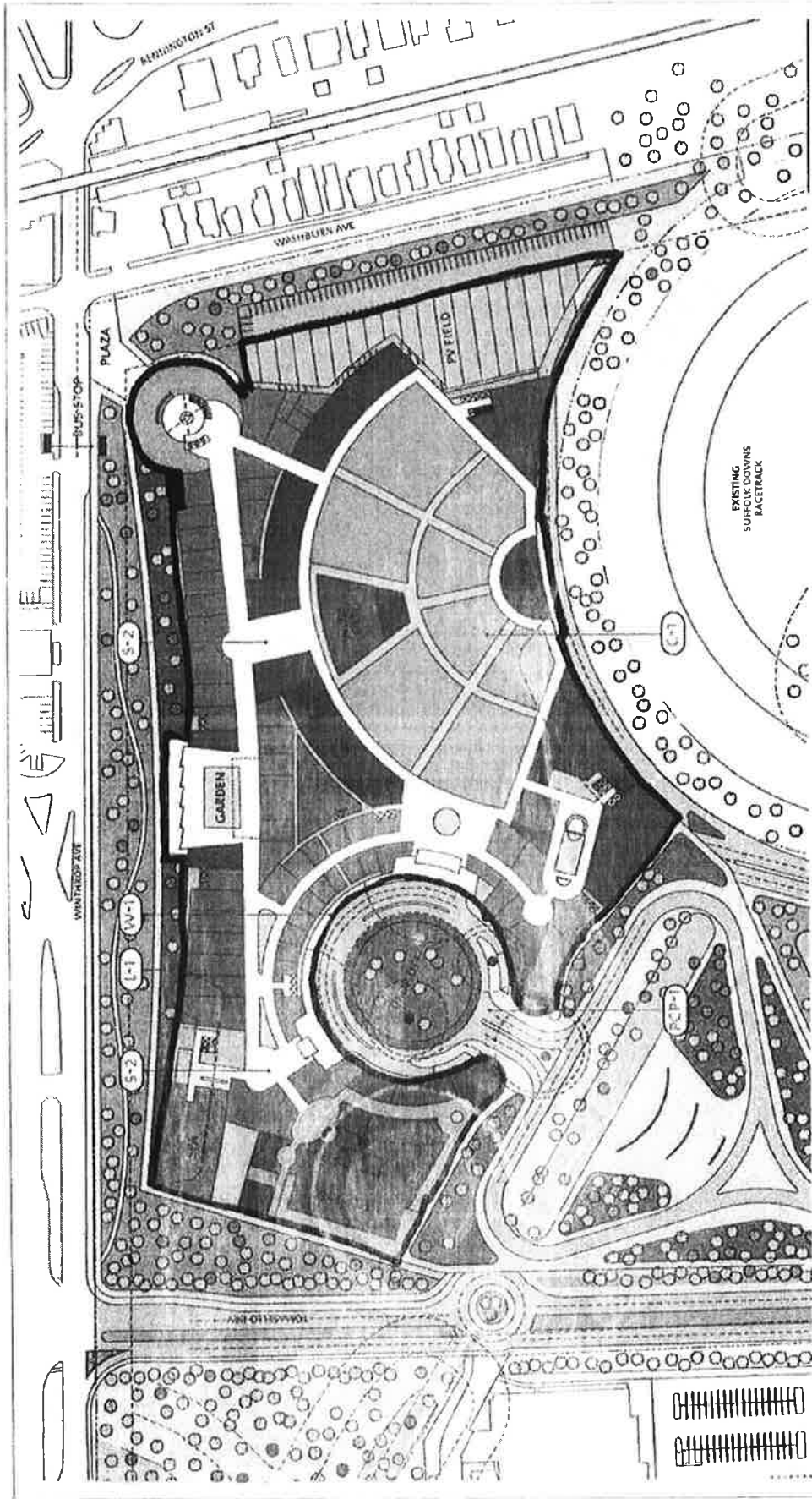

Stephen P. Crosby, Chairman

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

* * * * *

Massachusetts Gaming Commission

State Street Tower, 10th Floor, Boston, Massachusetts 02109 | Tel: 617-879-2400 | Fax: 617-725-0258 | www.massgaming.com



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MAIN FLOOR PLAN ENLARGED

4-5 SCHEMATIC DESIGN








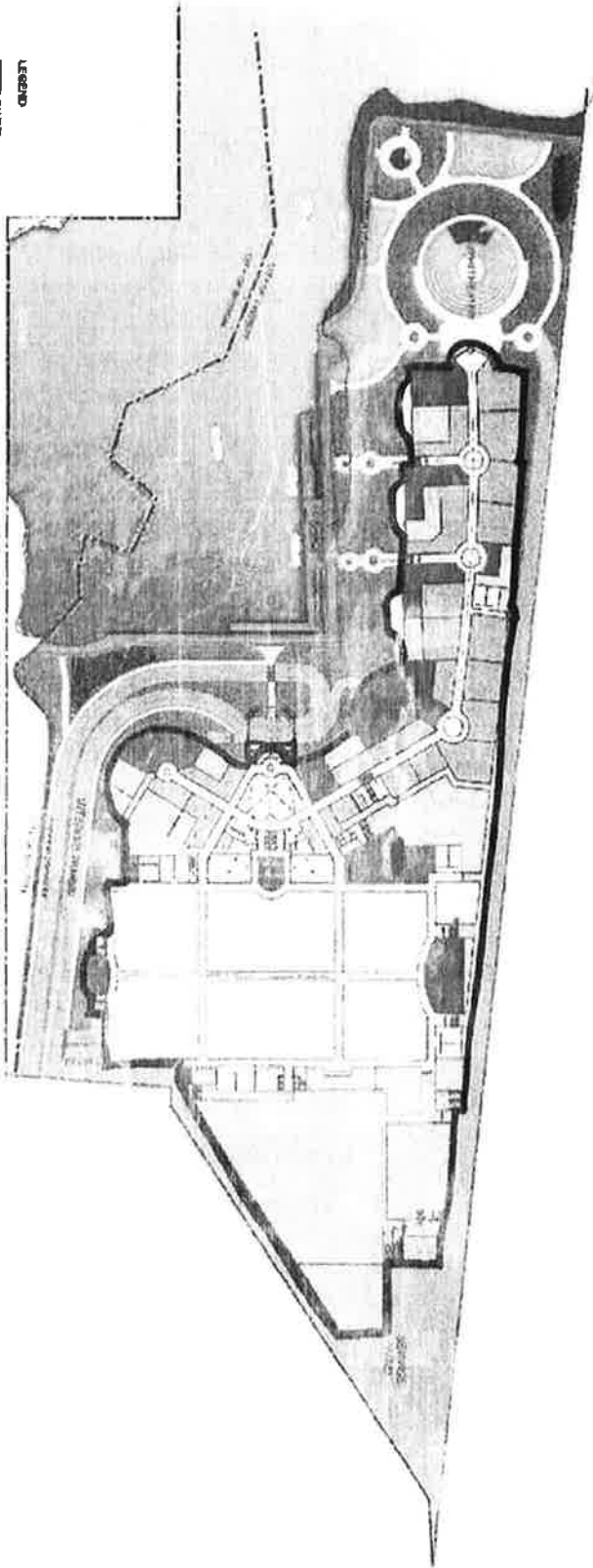
MOHEGAN SUN MASSACHUSETTS, LLC

EXHIBIT B

= OUTLINE OF GAMING ESTABLISHMENT



- LEGEND
-  OUTLINE
 -  EXISTING 10' ST. PAVING STRIP
 -  ROAD
 -  R/W
 -  PAVED AREA



Gaming Establishment Site
Figure B-6



Wynn
EVERETT
Entertainment

WYNN MA, LLC

EXHIBIT C



= OUTLINE OF GAMING ESTABLISHMENT

EXHIBIT 2

**SUMMARY OF CONDITIONS
WYNN MA, LLC**

Section 1	
Definitions	
	As used in this License, terms shall have the meaning defined in G.L. c. 23K and 205 CMR 101.00 <i>et. seq.</i> , unless the context clearly requires otherwise. In addition, the following terms shall have the following meanings:
Effective Date	The Effective Date of the License shall be three (3) business days after the rejection of the repeal petition in the November 4, 2014 general election.
EOEEA	Executive Office of Energy and Environmental Affairs.
FEIR	The Final Environmental Impact Report dated June 30, 2014, for the Project.
LEED	Leadership in Energy and Environmental Design, which is a rating system for the design, construction, operation, and maintenance of green buildings developed by the U.S. Green Building Council.
License	The Category 1 gaming license issued by the Commission to Wynn for operation of the Gaming Establishment.
MBE	Minority Business Enterprise.
MEPA	Massachusetts Environmental Policy Act, G.L. c. 30, §§ 61 through 62I, and the regulations promulgated by EOEEA pursuant thereto, 301 CMR 11.00 <i>et. seq.</i>
Opening Date	The Date on which the Gaming Establishment commences operations and opens to the general public as approved by the Commission in accordance with G.L. c. 23K and 205 CMR 101 <i>et. seq.</i>
Project	The construction and operation of the Gaming Establishment that is the subject of the License described in Wynn's RFA-2 application and as approved by the Commission as part of the Category 1 gaming license.
Secretary's Certificate	The MEPA Certificate issued by the Secretary of EOEEA on the FEIR and/or on the SFEIR (as applicable) for the Project.
SFEIR	The Supplemental Final Environmental Impact Report for the Project.
Term	The term of the license commences upon the Commission approval of the commencement of operation of the Gaming Establishment and continues for a period of 15 years thereafter.
VBE	Veteran Business Enterprise.
WBE	Women Business Enterprise.
Wynn	Wynn MA, LLC, a Nevada limited liability company with principal address and offices located at 3131 Las Vegas Boulevard South, Las Vegas, Nevada 89109.

		Section 2
General Conditions		
1.	Compliance with G.L. c. 23K and 205 CMR	Compliance with all of the requirements of G.L. c. 23K, including but not limited to all conditions set forth in G.L. c.23K, §21(a) and (b), as now in effect and as hereafter amended and 205 CMR 101 et seq., as now in effect and as hereafter promulgated or amended.
2.	Compliance with MEPA	Compliance with all of the terms and conditions required by MEPA as provided in the Secretary's certificate and in any FEIR or SFEIR required by the EOEEA
3.	Compliance with debt to equity ratio requirements	Compliance with any debt-to-equity ratio requirements established by the Commission's regulations or directives.
4.	Payment of the License Fee	Payment of the License fee as established in G.L. c. 23K, § 10(d) and 205 CMR 121.01(1) within three (3) business days of the Effective Date.
5.	Payment of the Assessment Fee	Payment of assessments made pursuant 205 CMR 121.00 within three (3) business days of the Effective Date. Such assessments shall be offset by any installment payment made by Wynn under 205 CMR 121.02(1).
6.	Payment of the Installment and Slot Assessment Fee	Payment within three (3) business days of the Commission's vote to enter into the Agreement to Award the License to Wynn of an installment fee pursuant to 205 CMR 121.02(1) in the amount of \$6,330,513. This payment shall be considered an installment payment and credited to the Slot Assessment in the amount of \$1,550,843 and six (6) months of the Commission's Annual Assessment in the amount of \$4,779,670 as set forth in G.L. c. 23K, §56(a) and (c); 205 CMR 121.01(3) (a) and (3) (b); 205 CMR 121.02(2) and (3) and subject to the revision pursuant to 205 CMR 121.00.
7.	Bond	Within 30 days after the Effective Date, Wynn shall: (a) make a cash deposit representing 10% of the total investment proposed in the RFA-2 application into an interest bearing escrow account held by the Commission in accordance with G.L. c. 23K, §10(a); or (b) secure a deposit bond, in a form and from an institution acceptable to the Commission representing 10% of the proposed capital investment. Such cash deposit or bond shall be forfeited to the Commonwealth of Massachusetts if Wynn is unable to complete the

		Gaming Establishment, as determined by the Commission.
8.	Compliance with G.L. c.23K, §15(3)	Compliance with the requirements of G.L. c. 23K, §15(3) regarding land acquisition within 60 days of the Effective Date.
9.	Compliance with Agreements	<p>Wynn shall have an affirmative obligation to abide by and comply with the terms and conditions of the following:</p> <ol style="list-style-type: none"> 1. the host community agreement; 2. surrounding community agreements; 3. conditions imposed by the Commission in lieu of a surrounding community agreement with the City of Boston, 4. impacted live entertainment agreements; 5. lottery agreements; 6. any agreements related to the Licensee’s RFA-2 application signed with local partners as of the Effective Date; 7. the memorandum of understanding between Wynn and the Massachusetts Community College Casino Career Institute attached to the RFA-2 application as exhibit 3-03-02; 8. affirmative marketing programs for those businesses identified in G.L. c. 23K, §21(a)(21)(i),(ii), and (iii) for design and construction of the Gaming Establishment; 9. affirmative action programs identified under G.L. c.23K, §21(a)(22); 10. all federal, state and applicable and lawful local permits and approvals required to construct and operate the Gaming Establishment; and 11. all executed Signature Forms contained in section B of the RFA-2 application.
10.	Affirmative Marketing Program – Design and Construction	The provision of a plan including public events and outreach within thirty (30) days of the Commission’s request after the Effective Date for the Commission’s review and approval creating an affirmative marketing program for those businesses identified in c.23K, §21(a)(21)(i) and (ii) (MBEs, VBEs and WBEs) for design and construction. The plan will include a robust public outreach component to those businesses identified in c.23K, §21(a)(21)(i) and (ii) for design and construction.
11.	Affirmative Marketing Program – Goods and	The provision of a plan including public events and outreach within ninety (90) days of the Commission’s request after the Effective Date for the Commission’s

	Services	review and approval creating an affirmative marketing program for those businesses identified in G.L. c.23K, §21(a)(21)(iii) for provision of goods and services procured by the Gaming Establishment. The plan will include a robust public outreach component to those businesses identified in G.L. c.23K, §21(a)(21)(iii) for provision of goods and services procured by the Gaming Establishment.
12.	Affirmative Action Program	<p>The provision of a plan including public events and outreach within thirty (30) days of the Commission’s request after the Effective Date of the License for the Commission’s review and approval creating an affirmative action program of equal opportunity to those residents identified in G.L. c.23K, §21(a)(22) on construction jobs.</p> <p>The plan will include a robust public outreach component to those residents identified in G.L. c.23K, §21(a)(22) (minorities, women and veterans).</p>
13.	Compliance with Construction Plans	Compliance with the construction plans, specifications, and timelines as approved by the Commission in accordance with G.L. c. 23K and 205 CMR.
14.	Creation of a Plan to Identify and Market Employment Opportunities to Unemployed Residents	The provision of a plan within ninety (90) days of the Commission’s request after the Effective Date to work with the Massachusetts Department of Labor and Workforce Development and related state and local agencies, including consultation with the Massachusetts Department of Labor and Workforce Development, to create a plan for approval by the Commission to identify and market employment opportunities to unemployed residents of Massachusetts. The plan will include a robust public outreach component to identify and market employment opportunities to unemployed residents of Massachusetts.
15.	Creations of a Regional Tourism Marketing Plan	The creation of a regional tourism, marketing, and hospitality plan in consultation with the regional tourism council and the Massachusetts Office of Travel and Tourism, and subject to approval by the Commission. Such plan shall include, but is not limited to, making space available in the Gaming Establishment for state and regional tourism information, links on Wynn’s website to the regional tourism council website, a joint marketing program with the regional tourism council and the Massachusetts Office of Travel and Tourism, staff training in regards to the plan and sharing of visitor data with the

		regional tourism council and the Massachusetts Office of Travel and Tourism. Such plan shall be provided to the Commission for its approval at least ninety (90) days prior to the anticipated Opening Date.
16.	Creation of a Plan to Identify Local Vendors	In conjunction with the Massachusetts Gaming Commission Vendor Advisory Team and any local grant awardee, the creation of a plan within ninety (90) days of the Commission's request after the Effective Date for the Commission's review and approval to assess Wynn requirements and to identify potential local vendors.
17.	Institution of Credit and Collection Practices	Institution of credit and collection practices that comply with G.L. c. 23K and 205 CMR.
18.	Compliance with Commission Free Play Standards	Compliance with any free play standards set by the Commission
19.	Litigation Update to the Commission	Within 30 days of the Effective Date and thereafter on an ongoing basis, Wynn shall file with the Commission and timely update a list regarding the status of all litigation to which Wynn is a party. For the purposes of this condition, litigation is defined as any matter in which (a) the damages may reasonably be expected to exceed \$100,000 and which is not fully and completely covered under an insurance policy with a licensed insurance carrier or (b) the legal or equitable relief requested seeks to revoke or suspend Wynn's license or otherwise may affect Wynn's ability to apply for or maintain a license for a casino or gaming establishment in the Commonwealth or any other jurisdiction. For purposes of this section Wynn shall include Wynn MA, LLC and Wynn Resorts, Limited.
20.	Notification of Defaults	Wynn shall promptly inform the Commission of any declared default or any material failure to meet any payment of interest or principal when due under any of its existing or future debt.
21.	Notification of Refinancing of Debt	Wynn shall promptly notify the Commission if it intends to enter into a transaction to refinance its existing debt or incur any additional capital debt obligations of \$50,000,000 or more, whether in a single transaction or cumulative transactions during any consecutive 12-month period
22.	Submission of Audited	Within fourteen (14) days of their availability and throughout the Term of the License, Wynn shall submit to

	Financial Statements	the Commission annual audited financial statements, if available; otherwise, it shall file consolidated audited financial statements with the Commission in the manner provided by 205 CMR.
23.	Compliance with Bank Secrecy Act of 1970	Wynn shall submit at least 90 days prior to the anticipated Opening Date and adhere to a Plan for compliance with the United States Currency and Foreign Transactions Reporting Act (“The Bank Secrecy Act of 1970”).
24.	LEED Gold Certification	Wynn shall commit to being LEED Gold or higher certifiable in the manner indicated in the FEIR and the most recent LEED Gold score sheet submitted by Wynn as part of its RFA-2 application, whichever is more recent.
25.	Compliance with Wage Scales Provided in RFA- 2	Wynn shall adhere as reasonably as practicable to the average wage scales provided in its RFA-2 application.
26.	Application for Alcoholic Beverage License	Wynn shall apply for an alcoholic beverage license in accordance with G.L. c. 23K and 205 CMR.
27.	Compliance with All Permitting Requirements	Wynn shall take all reasonable steps necessary to obtain all required permits for commencement of the Project, and to continue related design work, and to put in place all necessary contracts such that Wynn will be ready to commence work on the Project as soon as practicable after the Effective Date of the License. For the purposes of this paragraph, determination of reasonableness and practicability shall be determined through agreement between Wynn and the Commission. Wynn shall report to the Commission on a monthly basis regarding its progress.
28.	Notification of Selection of General Contractor	Wynn shall report to the Commission upon selection of a General Contractor and meet with the Commission to review MBE, WBE and VBE commitments and to ensure that the Contractor is aware of and accepts the MBE/WBE/VBE commitments set out in the RFA-2 application.
29.	Construction labor report	Wynn shall provide to the Commission, on a quarterly basis, a detailed statistical report on the number, gender and race of individuals hired to perform labor as part of the construction of the gaming establishment.
30.	Maintenance of Workplace Population in	Wynn shall report to the Commission regarding discussions with the City of Everett to maintain workforce

	Everett	population in the City of Everett.
31.	Provision of Reports on Macau Operations	Wynn shall provide the Commission in a timely manner with copies of all reports on Macau operations by Wynn or any of its affiliates that are required to be filed in any U.S. jurisdiction.
32.	Re-opener Provisions Re: the City of Boston	At any time prior to the Opening Date, Wynn and the City of Boston may negotiate and enter into a surrounding community agreement to mitigate impacts pursuant to 205 CMR 125.00. In the event that Wynn and the City of Boston enter into a surrounding community agreement, the parties will submit the agreement to the Commission. The Commission will determine if any of the conditions of the License should be amended or modified and if the Commission so determines, the Commission has the authority to make such amendments or modifications to the License conditions.
33.	Re-opening of Conditions by the Commission	Nothing shall prevent the Commission from amending or modifying the License conditions upon a petition from the City of Boston, or a petition by Wynn or upon a motion by the Commission. Provided, however, any such petition filed by the City of Boston shall be limited to those conditions contained in Sections 3 or 4 of these conditions directly related to its interests.
34.	Conditions Binding on Successors and Assigns	All of the terms and conditions of the License shall be binding upon Wynn and its permitted successors and assigns.

		Section 3
	Conditions Required to Mitigate Impacts to the City of Boston	
1.	Mitigation Required by MEPA	Wynn shall complete all mitigation, including traffic mitigation, required pursuant to the MEPA process for the Project and subsequent permitting including but not limited to the measures concerning impacts identified in the Secretary's certificate, the FEIR dated June 30, 2014, the future SFEIR and the Secretary's certificate for the SFEIR and shall be responsible for all costs associated with such mitigation.
2.	Mitigation Payments	<p>1. <u>Upfront Payment</u></p> <p>Wynn shall pay a one-time, upfront, non-refundable payment of One Million Dollars (\$1,000,000.00) which amount shall be payable within sixty (60) days following the Effective Date (as defined in the Conditions to License) to the General Fund..</p> <p>2. <u>Annual Payment</u></p> <p>Following the Opening Date, Wynn shall make an annual payment of One Million Six Hundred Thousand Dollars (\$1,600,000.00), which amount shall be due on or before the ninetieth (90th) day following the Opening Date and on each annual anniversary thereof. The allocation of this annual payment shall for Other Mitigation, which amount shall be deposited into the General Fund.</p> <p>For purposes of this section, "Other Mitigation" shall include the following: (i) staffing and other public safety initiatives related to increased pedestrian and vehicular traffic in the City of Boston related to the Wynn Resort in Everett following the Opening Date; (ii) improvements to facilities within Boston to facilitate water transportation and to fund staffing and other public safety initiatives related to increased use of water transportation in the Boston Harbor related to the Wynn Resort in Everett; (iii) support of Charlestown's non-profits, parks, after-school activities, senior programs, job training programs, cultural events and related activities that promote Charlestown's heritage, quality of life, recreational and cultural activities including, without limitation, the Charlestown Little League and Charlestown Youth Hockey programs; and (iv) any other impacts including any transportation infrastructure impacts and the SSIP, as described in Section 4.1 below, related to the Wynn Resort in Everett.</p>

		<p>For purposes of this section, “General Fund” shall mean an interest bearing escrow fund held by an escrow agent approved by the Commission and in a bank located in the Commonwealth of Massachusetts. Funds shall be distributed in accordance with the terms of an escrow agreement.</p>
<p>3.</p>	<p>Escalation of Payments</p>	<p>Beginning with the second annual payment, the Annual Payment shall be adjusted to reflect any increase in the cost of living based upon the CPI (as defined below), calculated as the average annual increase over the immediately prior twelve (12) month period. “CPI” shall mean the United States Department of Labor, Bureau of Labor Statistics, Consumer Price Index for all Urban Consumers, Boston-Brockton-Nashua, MA-NH-ME-CT All Items, 1982-84=100.</p> <p>In the event that the United States Department of Labor shall cease to promulgate the CPI, the Annual Payment shall be increased annually by one percent (1%) beginning with the later of the second annual payment or the year in which the United States Department of Labor ceases to promulgate the CPI.</p>
<p>4.</p>	<p>Business Development</p>	<p>During the construction phase of the Project and once the Project is operational, subject to Wynn’s obligations to the City of Everett and other surrounding communities, Wynn shall make a good faith effort to utilize City of Boston contractors and suppliers for the Project and shall afford such opportunities to City of Boston vendors when such contractors and suppliers are properly qualified and price competitive. Such efforts shall include actively soliciting bids from City of Boston vendors through local advertisements, coordination with the City of Boston Chamber of Commerce and such other reasonable measures as the City of Boston may from time to time request.</p> <p>In furtherance thereof, on and after the Opening Date and throughout the Term of the License, Wynn shall use good faith efforts to purchase annually at least Fifteen Million Dollars (\$15,000,000.00) of goods and services from vendors with a principal place of business in the City of Boston. Wynn shall work with the City of Boston to hold vendor fairs that provide City of Boston businesses with information concerning the process of providing goods and services to the Project. Wynn shall, on at least an annual basis, consult with the City of Boston Chamber of Commerce and such other business groups or associations as the City of Boston may reasonably request to identify opportunities in furtherance of the objectives set forth</p>

		<p>in this condition. Wynn shall, upon reasonable request, meet with the City of Boston to provide updates on Wynn’s efforts to comply with this condition. Notwithstanding anything herein to the contrary, Wynn’s obligations under this condition shall be subject to the availability of such goods and services at a level of quality that is consistent with the Project specifications and on commercially reasonable terms.</p> <p>Wynn shall work with and assist local businesses in the City of Boston to become “Wynn certified” in order to participate in this local purchasing program. Wynn certification represents a Wynn-specific vendor qualification program that requires vendors to be pre-qualified, which may include but not be limited to background checks and other screening methods utilized to qualify vendors.</p> <p>In recognition of the unique cultural, historical and entertainment attractions located in the City of Boston and throughout the region, Wynn shall develop and maintain a proprietary concierge program for the purpose of cross-marketing these attractions. Wynn shall allow the City of Boston to participate in this cross-marketing venture for the purpose of promoting its local businesses and other attractions. Prior to the Opening Date and throughout the Term of the License, Wynn shall cooperate with the City of Boston’s Chamber of Commerce to include City of Boston businesses in Wynn’s Concierge Program so that they may benefit from the Project.</p>
5.	Jobs Program	<p>In recognition of the above, subject to its obligations to the City of Everett and other surrounding communities, Wynn shall undertake the following measures:</p> <p>Wynn will work in a good faith, legal and non-discriminatory manner with the Wynn’s construction manager to give preferential treatment to qualified City of Boston residents and, in particular, residents of Charlestown for contracting, subcontracting and servicing opportunities in the development and construction of the Gaming Establishment. Following the engagement of a construction manager, Wynn shall advertise and hold at least one event every six (6) months prior to the Opening Date for City of Boston residents at a venue located in Charlestown, at which it will publicize its construction needs and explain to attendees the process by which they may seek to be hired in connection with the construction of the Gaming Establishment.</p>

		<p>Prior to beginning the process of hiring employees (other than internally) for the Gaming Establishment, Wynn shall advertise and hold at least one event for City of Boston residents at a venue located in Charlestown, 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 Gaming Establishment and shall hold one event annually thereafter. In addition, Wynn shall work with non-profit entities to develop a job readiness training program that will be available to all residents of the City of Boston. In seeking to fill vacancies at the Gaming Establishment, Wynn will give preference to properly qualified residents of the City of Boston and, in particular, residents of Charlestown, to the extent that such a practice and its implementation is consistent with Federal, State or local law or regulation.</p> <p>Notwithstanding the foregoing, in recognition of Wynn’s host community agreement with the City of Everett and Wynn’s surrounding community agreements with the Cities of Malden and Medford, the preferences provided above shall be secondary to the preferences provided by Wynn in those agreements. The preferences provided in this condition shall be on a pooled basis with any other community that has entered or that enters into a surrounding community agreement with Wynn.</p> <p>Wynn shall consult in good faith with the City of Boston on an annual basis to identify prospective, qualified City of Boston employees to effectuate the terms and conditions herein.</p>
6.	Responsible Gaming	<p>Wynn shall coordinate in good faith with the City of Boston to promote responsible gaming and to develop resources available to residents of the City of Boston to address problem gambling. In furtherance thereof, Wynn and its employees and agents shall use commercially reasonable efforts to not send any marketing materials to or otherwise communicate for marketing purposes with residents of the City of Boston who have opted to participate in Wynn’s self-exclusion or self-limitation programs that enable individuals to opt out of receiving marketing materials. In addition, Wynn shall provide the City of Boston and its residents with access to all compulsive gambling services associated with the Gaming Establishment and shall make available to the City of Boston its resources and employees as may be reasonably necessary to publicize those services and conduct associated educational programs. Further, to address any unanticipated adverse impacts, the City of Boston may apply to the Commission or other state agencies for grants from the</p>

		Community Mitigation Fund and/or Public Health Trust Fund established under the Act. Wynn shall reasonably support applications made by the City of Boston to the Community Mitigation Fund and/or the Public Health Trust Fund to address the unanticipated adverse impacts.
7.	Reopening of mitigation terms	205 CMR 127.00 shall apply to the conditions of this License in the same manner as if the City of Boston was designated as a surrounding community.
8.	Reimbursement Of Expenses	In accordance with 205 CMR 114.03(2), Wynn shall reimburse Boston for actual, documented reasonable out-of-pocket expenses incurred by Boston, not to exceed \$750,000.00, for legal, financial and other professional services incurred by the City of Boston, acting reasonably, as the cost of determining the impact of the proposed Gaming Establishment on the City of Boston and in particular on Charlestown.

		Section 4
	Conditions Required to Mitigate Traffic and Other Impacts Caused by the Construction and Operation of the Gaming Establishment	
1.	Definitions	<p>As used in this section, the following terms shall have the following meanings:</p> <p><u>Sullivan Square Infrastructure Project</u> (“SSIP”): For purposes of the license issued to Wynn, the SSIP is defined as the design, construction and maintenance of all of the improvements to Sullivan Square and adjacent roads leading into and/or connected to Sullivan Square included in any plan that is approved and permitted by the City of Boston and the Massachusetts Department of Transportation, as the long term solution to alleviate traffic congestion in Sullivan Square and the roads leading into and/or connected to Sullivan Square. The SSIP includes, but is not limited to, long term improvements to the Sullivan Square rotary; all other roadways within 500 feet of the Sullivan Square rotary (including without limitation, Main Street, Rutherford Avenue, Cambridge Street, Alford Street, Mishawum Street, Maffa Way, D Street, and Spice Street), and any Rutherford Avenue underpass beneath the Sullivan Square rotary as well as any improvements approved and permitted by the City of Boston to Rutherford Avenue between Sullivan Square and City Square. As determined by the permits issued by the City of Boston and the Massachusetts Department of Transportation, the SSIP may be designed and constructed in its entirety or in phases.</p> <p><u>Sullivan Square Infrastructure Fund</u> (“SSIF”): shall mean an interest bearing escrow fund held by an escrow agent approved by the Commission and in a bank located in the Commonwealth of Massachusetts.</p>
2.	Sullivan Square Mitigation Plan/Traffic Reduction Incentive Payment	<p>In order to mitigate increased traffic arising from the Gaming Establishment, and incentivize the use of alternate transportation methods Wynn shall be required to pay to the SSIF an annual payment equal to \$20,000 per additional vehicle trip (“AVT”) entering and leaving the Gaming Establishment using Sullivan</p>

		<p>Square during the Friday afternoon peak hour in excess of the number of vehicle trips entering and leaving the Gaming Establishment using Sullivan Square during the Friday afternoon peak hour shown in the data used by the City of Boston as the basis for its issuance of any required permits necessary for the Sullivan Square mitigation plan for a period beginning on the Opening Date and ending on the 10th anniversary of the Opening Date (“Traffic Reduction Incentive Payment”).</p> <p>Provided, however, such payment shall not exceed \$20,000,000.00 over that 10 year period. Wynn shall provide a plan for the Commission’s review and approval for a vehicle trip measurement system that will measure the number of trips entering and leaving the Gaming Establishment using Sullivan Square. No later than 30 days after the first anniversary of the Opening Date and continuing for ten (10) years thereafter, Wynn shall provide the Commission with a calculation showing the number of AVT during the Friday afternoon peak hour in excess of the Boston Permit Vehicle Trip Data and shall provide evidence of Wynn’s Traffic Reduction Incentive Payment to the SSIF in an amount equal to \$20,000 times the AVT during the Friday afternoon peak hour in excess of the Boston Permit Vehicle Trip Data.</p>
<p>3. SSIF Escrow Account</p>		<p>All payments required to be made by Wynn into the SSIF shall be paid into an interest bearing escrow fund held by an escrow agent approved by the Commission and in a bank located in the Commonwealth of Massachusetts. The SSIF escrow fund shall be available to reimburse the City of Boston for the costs incurred in the design, construction and maintenance of the SSIP up to the amount in the SSIF. If requested by the City of Boston and approved by the Commission, funds in the SSIF Escrow Account may be applied to costs associated with the Sullivan Square mitigation plan. If the City of Boston does not commence the SSIP within 10 years of the Opening Date, Wynn may petition the Commission for the return of any unused funds plus any interest accrued to Wynn.</p> <p>For purposes of this condition “Commencing the SSIP” is defined as beginning construction of/demolition for the SSIP, or any portion thereof deemed significant by the Commission, pursuant to a plan approved and permitted by the City of Boston.</p>

4.	SSIP Contribution	In addition to any costs for mitigation required under MEPA and in addition to the payments to the City of Boston described in Section 3, Wynn shall be responsible for a payment equal to \$25 million provided that the SSIP is designed, constructed and permitted to accommodate the traffic impacts of the Gaming Establishment. Such payment shall be made directly to the SSIF escrow account payable in equal annual installments of \$2,500,000.00 beginning on the first anniversary of the Opening Date for a term of 10 years.
5.	Transportation Demand Management	Wynn will conduct an analysis of the automobile mode shares of employee and patron trips to and from the Gaming Establishment each year during the Term of the License on the anniversary of the Opening Date to determine if Wynn is meeting the goals in its Transportation Demand Management (“TDM”) Program as determined in the SFEIR. ¹ The monitoring shall be conducted by an independent organization approved by the Commission and paid for by Wynn and using the measurements described in the SSIF AVT Payment condition above. If such analysis determines that Wynn has not met the TDM goals on an annual basis for the applicable study period, Wynn shall, no later than the forty-fifth (45th) day following the anniversary of the Opening Date submit to the Commission a plan describing the method by which Wynn shall within one year meet the TDM goals and maintain compliance with the TDM (the “TDM Remediation Plan”).
6.	Community Outreach	Wynn will engage in community outreach to the Charlestown neighborhood and consult with the neighborhood regarding the progress of the project including any transportation mitigation or changes in transportation mitigation plans. Wynn shall report on such outreach to the Commission as part of its regular reporting.
7.	Public Involvement Plan for	Wynn will comply with the generally applicable public

¹ In the FEIR, Wynn has set a goal of 29% of patrons to arrive to the site via non-automobile modes and 71% arriving via automobile and taxi. For employees, the goal is for 59% to arrive via non-automobile modes and the remaining 41% arriving via automobile. Nothing herein shall prevent the Commission from establishing a higher non-automobile mode share than set in the FEIR or an approved SFEIR.

	Hazardous Materials	involvement provisions of 310 CMR 40.0000. Wynn will provide all submittals required in accordance with said regulations to the Commission and the Chief Municipal Officers of the Cities of Everett, Boston and Somerville, the Boards of Health in Everett, Boston and Somerville, and such other municipal officials or community organizations as the Commission
8.	Failure to Obtain Required Permits from the City of Boston	Wynn will vigorously pursue all mitigation (including initiating legal proceedings, if necessary, to obtain necessary permits). Within ninety (90) days following the Effective Date, Wynn will submit to the Public Improvements Commission the application relating to Wynn's Sullivan Square mitigation.

		Section 5
	Other Conditions	
1.	Building and Site Design	The Commission strongly urges Wynn to reconsider the exterior design of the buildings and present a revised design to the Commission and, in any event, Wynn shall submit exterior material and finish selection and samples for review and approval by the Commission as part of the planned reporting to the Commission in accordance with the design and construction schedule to be approved by the Commission in accordance with 205 CMR.
2.	Economic Development	Wynn will use good faith efforts to hire no less than 75% of the Project employees from within 30 minutes of Everett as stated at the June 25, 2014 Host Community hearing in Everett.
3.	Hiring preference	Wynn will offer a hiring preference to qualified Suffolk Downs employees in the event that Suffolk Downs closes upon the award of the License to Wynn. Wynn will provide a training and recruitment plan for said employees to the Commission for approval.
4.	Medical and Dental benefits	Wynn will commit to provide its employees with competitive medical and dental benefits that are commensurate with those provided in the region.